

Recitals

Final CA 7 (accompanying recitals CA 1):

(CA replacing all relevant amendments, including AM 1 Rapp, AM 105 Left, AM 106 S&D, AM 108 Greens, AM 109 Renew, AM 113 Left, AM 114 Greens, AM 115 Renew, AM 2 Rapp, AM 117 Renew, AM 3 Rapp, AM 118 Greens, AM 119 S&D, AM 125 S&D, AM 126 Renew, AM 127 ECR, AM 128 EPP, AM 130 Left, AM 4 Rapp, AM 138 Left, AM 139 Greens, AM 142 S&D)

- (1) As recognised in the Preamble to the 2014 Protocol to Convention No. 29 on forced labour ('ILO Convention No. 29') of the International Labour Organization ('ILO'), forced labour constitutes a serious violation of human dignity and fundamental human rights, ***contributes to the perpetuation of poverty and stands in the way of the achievement of decent work for all.*** The ILO declared the elimination of all forms of forced or compulsory labour as a principle concerning the fundamental rights. The ILO classifies ILO Convention No. 29, ***including the supplementing 2014 Protocol to Convention No. 29 and the Forced Labour (Supplementary Measures) Recommendation No. 203*** and the ILO Convention No.105 on the abolition of forced labour ('ILO Convention No.105') as fundamental ILO Conventions ¹⁶ ***and issues recommendations to prevent, eliminate, and remedy forced labour***^{16a}. Forced labour ***includes work and services, which is performed or provided along the value chain, and is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.*** ¹⁷ ***According to the ILO and the UN, some economic activities in certain productive sectors such as processing, agriculture, garment and fisheries, and in certain services sector, such as transportation, storage and logistics, cleaning and seasonal work have a higher occurrence of forced labour***^{17a}. ***This definition applies to work or service exacted by governments and public authorities as well as private bodies and individuals. The ILO has developed several indicators used to identify and indicate cases of forced labour, such as threats and actual physical and sexual harm, abuse of vulnerability, abuse of working and living conditions and excessive overtime, deception, restriction of movement or confinement to the workplace or a limited area, isolation, debt bondages, withholding wages or excessive wage reduction, retention of passports and identity documents or threat of denunciation to the authorities when the worker has an irregular immigration status*** ^{17b}. ***Forced labour is very often linked to poverty and discrimination. The manipulation of credit and debt, either by employers or by recruiting agents, is still a key factor that traps vulnerable workers in forced labour situations***^{17c}. ***The European Court of Human Rights has repeatedly found that, under Article 4 of the European Convention on Human Rights, initial consent and voluntariness become null and void if there is an abuse of position of vulnerability***^{17d}. ***According to the ILO supervisory bodies, prison labour, including where it is performed for private companies, is not in itself constitutive of forced labour provided that it is done on a voluntary basis, for the benefit of the prisoner and approximates the conditions of a free labour relationship. Community work as an alternative penal sanction to imprisonment should always be in the public general interest and should, under no circumstances, be abused by States as means to degrade the convicted person or deprive the person of their dignity***^{17e}. ***In cases in which work or service is imposed by exploiting the worker's vulnerability, under the threat of a penalty, such***

threat does not need to take the form of a penal sanction but might take the form also of a loss of rights or benefits. (EMPL exclusive)

- (2) The use of forced labour is widespread in the world. It is estimated that about 27.6 million people were in forced labour in 2021.¹⁸ Vulnerable and marginalised groups in a society, ***such as women, children, ethnic minorities, persons with disabilities, lower casters, indigenous and tribal people, migrants, especially if they are undocumented, with a precarious status and in the informal economy,*** are particularly susceptible to be pressured into performing forced labour. Even when it is not state imposed, forced labour is often a consequence of the ***absence or*** lack of good governance of certain economic operators ***and a demonstration of a state's failure to enforce social and labour rights, particularly for vulnerable and marginalised groups. Forced labour can also take place as a result of authorities' tacit consent. Women and girls account for 11.8 million of the total in forced labour. More than 3.3 million of all those in forced labour are children. Between 2016 and 2021, the estimated number of people in forced labour increased by 2.7 million^{18a}. Migrant workers who are not protected by law or are unable to exercise their rights face a higher risk of exposure to forced labour than other workers do. According to the ILO, 15 % of all adults in forced labour are migrants^{18b}. The Union's Agency for Fundamental Rights has found that this is also the case within the Union. Abusive employers use the weak position of migrant workers to force them to work for endless hours with no or little pay, often in dangerous settings, and without the minimum safety equipment required by law^{18c}. The vast majority of forced labour occurs in the private sector, in particular through forced labour exploitation (17.3 million people), which accounts for 86 % of all forced labour cases^{18d}. The obligations of economic operators deriving from this Regulation should be predictable and clear in order to ensure full and effective compliance and contribute to bringing forced labour to an end. (EMPL exclusive)***
- (3) The eradication of forced labour ***in all its forms, including state imposed forced labour,*** is a priority for the Union. Respect for human dignity and the universality and indivisibility of human rights are firmly enshrined in Article 21 of the Treaty on European Union. ***In order to achieve Target 8.7 of the Sustainable Development Goals, the Union should uphold and promote its values and contribute to the protection of human rights, in particular the rights of the child.*** Article 5 of the Charter of Fundamental Rights of the European Union ***explicitly prohibits slavery, servitude, forced or compulsory labour and trafficking in human beings*** and Article 4 of the European Convention on Human Rights provide that no one is to be required to perform forced or compulsory labour. The European Court of Human Rights has repeatedly interpreted Article 4 of the European Convention on Human Rights as requiring Member States to penalise and effectively prosecute any act maintaining a person in the situations described set out in Article 4 of the European Convention on Human Rights.¹ ***The right to effective remedies for violations of fundamental rights is a human right, and a fundamental element in the process of effective prosecution of crimes. Existing Union law, the UN Guiding Principles on the Business and Human Rights (UNGPs), the Council of Europe and the OECD affirm the right of victims to an effective remedy for business-related human rights violations or abuses, including forced labour.***
- (4) All Member States have ratified the fundamental ILO Conventions on forced labour and child labour.²⁰ They are therefore legally obliged to prevent and eliminate the use

¹ For instance paras. 89 and 102 in *Siliadin v. France* or para. 105 in *Chowdury and Others v. Greece*.

of forced labour and to report regularly to the ILO. *However, there are Member States, which have not yet ratified the Protocol to ILO Convention No. 29, despite Council Decisions calling on Member States for a ratification and implementation^{20a}. The ILO estimates that there are 880 000 forced labour victims inside the Union, in addition to the forced labour involved inter alia in the Union's imports from the rest of the world.^{20b} Moreover, there continue to be shortcomings in the implementation of the fundamental ILO Conventions.^{20c} It is necessary that Member States fully implement the fundamental ILO conventions and correctly transpose all the Union legislation aimed at combating forced labour, labour rights violations and human trafficking in order to enforce the import and export ban of any product or service using forced labour. This Regulation aims to legally bind Member States to prevent and bring to an end the use of forced labour, to provide to victims protection and access to remedy and effective remediation, such as compensations, to penalise non-compliance with decisions referred to in Article 6(4). According to the ILO, remediation remains one of the key policy priorities for addressing forced labour. In that regard, Protocol to ILO Convention No. 29 stipulates that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, should have access to appropriate and effective remedies, such as compensations. The third pillar of the UN Guiding Principles on Business and Human Rights stipulates that remediation is a fundamental right and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. (EMPL exclusive)*

- (5) Through its policies and legislative initiatives the Union seeks to eradicate the use of forced labour *and promote decent work and labour rights worldwide*. The Union promotes due diligence in accordance with international guidelines and principles established by international organisations, including the ILO, the Organisation for Economic Co-operation and Development (hereinafter "OECD") and the United Nations (hereinafter "UN"), to ensure that forced labour does not find a place in the *supply* chains of undertakings established in the Union.
- (6) Union trade policy supports the fight against forced labour in both unilateral and bilateral trade relationships. The trade and sustainable development chapters of Union trade agreements contain a commitment to ratify and effectively implement the fundamental ILO Conventions, which include ILO Convention No. 29 and ILO Convention No. 105, *whereas trade and gender chapters and provisions establish a gender lens that is essential for the economic empowerment of women in order to combat gendered forced labour*. Moreover, unilateral trade preferences under the Union's General Scheme of Preferences *can* be withdrawn for serious and systematic violations of ILO Convention No. 29 and ILO Convention No. 105.
- (6a) *Forced labour has a distinct impact on vulnerable and marginalised groups, such as children, women, migrants, refugees or indigenous peoples, and therefore an intersectional and gender sensitive approach is essential to combat forced labour effectively. This Regulation should therefore aim to achieve the objectives of the ILO Convention 182, Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, the Beijing Declaration, the Global Compact for Safe, Orderly and Regular Migration, the Geneva Convention Relating to the Status of Refugees; the United Nations Declaration on the Rights of*

Indigenous Peoples, the ILO Convention 169, as well as other relevant international agreements and conventions.

- (7) The Anti-trafficking Directive (Directive 2011/36/EU) of the European Parliament and of the Council² (the Anti-trafficking Directive) harmonises the definition of trafficking in human beings, including forced labour or services, and establishes minimum penalties. Any rules laid down concerning the prohibition of placing and making available on the Union market domestic or imported products made with forced labour, or exporting such products, and the obligation to ensure that such products are withdrawn from the Union market ('the prohibition'), should be without prejudice to that Directive, and in particular to the competence of law enforcement and judicial authorities to investigate and prosecute offences on trafficking in human beings, including labour exploitation.
- (8) [In particular, Directive 20XX/XX/EU on Corporate Sustainability Due Diligence sets out horizontal due diligence obligations **for companies** to identify, prevent, mitigate and account for actual and potential adverse impacts on human rights, including forced labour, and the environment **that they caused, contributed to or are directly linked to** the company's own operations **and** its subsidiaries ~~and~~ in its value chains, in accordance with international human and labour rights standards and environmental conventions. ***That Directive also strengthens access to remedy for those affected by such impacts.*** Those obligations apply to large companies over a certain threshold in terms of number of employees and net turnover, and to smaller companies in high-impact sectors over a certain threshold in terms of number of employees and net turnover.³ ***Consistency between that Directive and this Regulation should be ensured.***
- (9) In addition, Regulation (EU) 2017/821 of the European Parliament and of the Council⁴ requires Union importers of minerals falling under the scope of that Regulation to carry out due diligence obligations consistent with Annex II to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, and the due diligence recommendations set out therein. [Regulation (EU) No XX/20XX concerning batteries and waste batteries contains obligations for economic operators to carry out due diligence in their supply chains, including with respect to labour rights.⁵] [Regulation (EU) XX/20XX on making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation⁶ requires due diligence regarding the legal and deforestation free character of products and commodities within its scope, including with respect to human rights.]

² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, p.1.

³ Directive 20XX/XX/EU of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, OJ XX, XX.XX.20XX, p. XX.

⁴ Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, OJ L 130, 19.5.2017, p. 1.

⁵ REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 20XX/XX, OJ XX, XX.XX.20XX, p. XX.

⁶ Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No XXX/20XX, OJ XX, XX.XX.20XX, p. XX.

- (10) Articles [XX] of Directive 2013/34/EU of the European Parliament and of the Council require Member States to ensure that certain economic operators annually publish non-financial statements in which they report on the impact of their activity on environmental, social and employee matters, respect for human rights, including regarding forced labour, anti-corruption and bribery matters.⁷ [Furthermore, Directive 20XX/XX/EU on Corporate Sustainability Reporting puts forward detailed reporting requirements for covered companies regarding the respect of human rights, including in global supply chains. The information that undertakings disclose about human rights should include, where relevant, information about forced labour in their *supply chains*.⁸]
- (10a) *As a member of the World Trade Organisation (WTO), the Union is committed to promoting a rules-based, open, multilateral trading system. Any measures introduced by the Union that affect trade should be WTO compliant. Furthermore, all measures introduced by the Union that affect trade should take into account the possible response of the Union's trade partners and ensure that the enforcement of the measure is not perceived as a unilateral, protectionist measure.*
- (11) In July 2021, the Commission and the European External Action Service published guidance to assist Union businesses in taking appropriate measures to address the risk of forced labour in their operations and supply chains.⁹
- (12) As recognised in the Commission's Communication on decent work worldwide¹⁰, notwithstanding the current policies and legislative framework, further action is needed to achieve the objectives of eliminating forced-labour products from the Union market and, hence, further contributing to the fight against forced labour worldwide.
- (12a) *Promoting decent work and a human-centred future of work ensuring the respect of fundamental principles and human rights, promoting social dialogue as well as the ratification and effective implementation of relevant ILO conventions and protocols, strengthening responsible management in global supply chains and access to social protection are core priorities of the EU as enshrined in the EU Action Plan on Human Rights and Democracy 2020-2024.*
- (13) The European Parliament in its resolutions strongly condemned forced labour and called for a ban on products made with forced labour.¹¹ It is therefore a matter of public moral concern that products made with forced labour could be available on the Union market or exported to third countries without an effective mechanism to ban or withdraw such products.

⁷ Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ

⁸ Directive 20XX/XX/EU of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, OJ XX, XX.XX.20XX, p. XX.

⁹ Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains.

¹⁰ Communication 23 March 2022 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).

¹¹ See Resolutions: [MOTION FOR A RESOLUTION on a new trade instrument to ban products made by forced labour \(europa.eu\)](#), [Texts adopted - Forced labour and the situation of the Uyghurs in the Xinjiang Uyghur Autonomous Region - Thursday, 17 December 2020 \(europa.eu\)](#), [Texts adopted - Forced labour in the Linglong factory and environmental protests in Serbia - Thursday, 16 December 2021 \(europa.eu\)](#).

- (14) To complete the Union legislative and policy framework on forced labour, the placing and making available on the Union market products made with forced labour or exporting domestically produced or imported products made with forced labour should be prohibited and it should be ensured that those products are withdrawn from the Union market.
- (15) Currently there is no Union legislation that empowers Member States' authorities to directly detain, seize, or order the withdrawal of a product on the basis of a finding that it was made, whether in whole or in part, with forced labour.
- (16) In order to ensure the effectiveness of the prohibition, such prohibition should apply to products for which forced labour has been used at any stage of their production, manufacture, harvest, and extraction, including working or processing related to the products. The prohibition should apply to all products, of any type, including their components, and should apply to products regardless of the sector, the origin, whether they are domestic or imported, or placed or made available on the Union market or exported.
- (17) ***The market ban, which enables the prohibition of import and export of products and services made with forced labour,*** should contribute to the international efforts to abolish forced labour. The definition of 'forced labour' should therefore be aligned with the definition laid down in ILO Convention No. 29. The definition of 'forced labour applied by state authorities' should be aligned with ILO Convention No. 105, which prohibits specifically the use of forced labour as punishment for the expression of political views, for the purposes of economic development, as a means of labour discipline, as a punishment for participation in strikes, or as a means of racial, religious or other discrimination³¹. ***Article 3(a) of ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour refers to all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict. The UN Convention on the Rights of Persons With Disabilities prohibits exposing persons with disabilities to forced labour and requires that persons with disabilities are protected, on an equal basis with others, from forced or compulsory labour. The principle of equal treatment should also apply in sheltered workshops. Where products or services originating from geographic areas, production sites or economic activities in certain sectors in specific areas with systematic and wide spread forced labour practices listed in the database under Article 11 of this Regulation, competent authorities should presume that they were manufactured or provided using forced labour. In such cases, it should be the responsibility of the economic operator to demonstrate that its product or service was manufactured or provided without using forced labour, and that, in case of a decision under Article 6(4), any use of forced labour was remediated. In all cases, competent authorities should ensure that the burden of proof is not disproportionately high. The Commission, after engaging with relevant experts, including from the ILO, OECD, EEAS, social partners and civil society, should engage in the efforts to bring to an end forced labour by providing, in the database under Article 11 of this Regulation, regularly updated information on forced labour risks in specific geographic areas, production sites and economic activities in certain sectors in specific areas. The database should be clear and transparent in order to enable economic operators, and in particular SMEs and micro-enterprises, to use the data for their due diligence. Such data should be freely and easily accessible to the public, in a format also***

**accessible to persons with disabilities and in all working languages of the Union.
(EMPL exclusive)**

- (17a) ***Based on the definition of forced labour specified in ILO Convention No. 29 and used in this Regulation, the ‘ILO Indicators of Forced Labour’ and the ‘Hard to See, Harder to Count’ ILO guidelines represent the most common signs that point to the possible existence of a forced labour case and should be taken into account when enforcing the prohibition. However, these indicators may be insufficient for the identification of forced labour imposed by state authorities. These practices of forced labour are based on systemic and global coercive policies that require additional, specifically designed indicators.***

Final CA 8 (accompanying recitals CA 2):

(CA replacing all relevant amendments, including AM 6 Rapp, AM 152 Greens, AM 153 Renew, AM 7 Rapp, AM 159 ECR, AM 160 Greens, AM 161 Left, AM 162 Renew, AM 8 Rapp, AM 166 Renew, AM 167 ECR, AM 169 S&D, AM 170 EPP, AM 173 EPP, AM 175 Greens, AM 176 Left, AM 9 Rapp, AM 178 S&D, AM 179 Renew, AM 180 MEPs, AM 181 Left, AM 182 Greens, AM 183 ECR, AM 184 Renew, AM 185 EPP, AM 188 EPP, AM 189 Renew, AM 190 ECR, AM 13 Rapp, AM 205 S&D, AM 207 Greens, AM 14 Rapp, AM 220 S&D, AM 223 Greens, AM 228 Left)

- (19) The competent authorities of the Member States should monitor the market to identify violations of the prohibition. In appointing those competent authorities, Member States should ensure that those authorities have sufficient ***human and financial*** resources and that their staff has the necessary competences and knowledge, especially with regard to human rights, ***labour rights, gender equality, supply*** chain management and due diligence processes. Competent authorities should closely coordinate with national labour inspections and judicial and law enforcement authorities, including those responsible for the fight against trafficking in human beings in such a way as to avoid jeopardising investigations by such authorities.
- (20) In order to increase the effectiveness of the prohibition, competent authorities should grant reasonable time to economic operators to identify, mitigate, prevent and bring to an end the risk of forced labour.
- (21) When identifying potential violations of the prohibition, ***the Commission or*** the competent authorities should follow a risk-based approach and assess all information available to them. ***In order to implement the risk-based approach in the prioritisation of their investigations, the Commission and competent authorities should take into account the size and economic resources of the economic operator, and in particular if this operator is a micro, small or medium-sized enterprise, the share of forced labour components in the final product, the quantity of products concerned, the scale of suspected forced labour, and whether forced labour imposed by state authorities could be a concern. They should also take into account if the economic operator is under the scope of Directive XXX [CSDD] and has to perform mandatory due diligence. The Commission or*** competent authorities should initiate an investigation where, based on their assessment of all available information, ***or on the basis of any other facts available where it was not possible to gather information and evidence,*** they establish that there is a substantiated concern of a violation of the prohibition. ***Before initiating an investigation, competent authorities should be able to request***

additional information from economic operators under assessment but also from other relevant stakeholders, including the persons or associations having submitted relevant information to competent authorities and any other stakeholder working on the products or regions related to the assessment, as well as from diplomatic representations of the Union in relevant third countries. Competent authorities can choose not to request additional information from economic operators if they assess that lead to an attempt to hide a situation of forced labour and thus endanger the investigation.

- (22) Before initiating an investigation, competent authorities should request from the economic operators under assessment information on actions taken to mitigate, prevent, or bring to an end risks of forced labour *or remediate forced labour cases* in their operations and *supply* chains with respect to the products under assessment. Carrying out such due diligence in relation to forced labour should *contribute to helping* the economic operator to be at a lower risk of having forced labour in its operations and *supply* chains. Appropriate due diligence *could mean* that forced labour issues in the *supply* chain have been identified and addressed in accordance with relevant Union legislation and international standards. That implies that where the competent authority considers that there is no substantiated concern of a violation of the prohibition, *or that the reasons that motivated the existence of a substantiated concern 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, *and, where possible, demonstrates that remediation of forced labour cases has been provided*, no investigation should be initiated. *Economic operators, which are not within the scope of [Directive 20XX/XX/EU on Corporate Sustainability Due Diligence], shall not be disadvantaged for the sole fact of not having conducted due diligence in accordance with that Directive, including when they are faced with a reversed burden of proof as a consequence of the high risk of forced labour imposed by state authorities.*
- (23) In order to ensure cooperation among *the Commission and* competent authorities designated under this and other relevant legislation and in order to ensure consistency in their actions and decisions, competent authorities designated under this Regulation should request information from other relevant authorities, where necessary, on whether economic operators under assessment are subject to and carry out due diligence in relation to forced labour in accordance with applicable Union legislation or Member States legislation setting out due diligence and transparency requirements with respect to forced labour. *When requesting information from economic operators, competent authorities should whenever possible follow the Commission's Once-Only principle, through increased cooperation and dialogue between authorities who are engaged in overseeing product regulation.*
- (23a) *Considering the robust amount of evidence available regarding forced labour cases, in particular products, regions or sectors, competent authorities should, after a risk-assessment, focus their investigations on situations that present a higher risk of use of forced labour and that have an increased societal and economic impact, due to the large dimension of economic operators or their presence in a large number of supply chains.*
- (23b) *In order to ensure consistency in the actions and decisions by competent authorities, the Commission should closely coordinate with competent authorities.*

- (24) During the preliminary phase of investigation, ***the Commission and*** competent authorities should focus on the economic operators involved in the steps of the ***supply*** chain where there is a higher risk of forced labour with respect to the products under investigation, ***while*** also taking into account ***the potential imbalance of power in the concerned supply chain. In their assessment, they should also take into account the size and economic resources of the economic operator, the quantity of products concerned, the share of forced labour components in the final product, and the scale of the suspected forced labour and whether forced labour imposed by state authorities could be a concern.***
- (25) Competent authorities, when requesting information during the investigation, should prioritise to the extent possible and consistent with the effective conduct of the investigation the economic operators under investigation that are involved in the steps of the ***supply*** chain as close as possible to where the likely risk of forced labour occurs and take into account the size and economic resources of the economic operators, the quantity of products concerned, as well as the scale of suspected forced labour.
- (26) ***In all cases other than those falling within the areas and sectors determined as high risk of forced labour imposed by state authorities,*** competent authorities should bear the burden of establishing that forced labour has been used at any stage of production, manufacture, harvest or extraction of a product, including working or processing related to the product on the basis of all information and evidence gathered during the investigation, including its preliminary phase. To ensure their right to due process, economic operators should have the opportunity to provide information in their defence to the competent authorities throughout the investigation.
- (27) ***The Commission and*** competent authorities that establish that economic operators violated the prohibition, should without delay prohibit the placing and making available of such products on the Union market and their export from the Union, and require the economic operators that have been investigated to withdraw the relevant products already made available from the Union market and ***donate perishable products to charitable or public interest purposes. If such products are not perishable, economic operators should recycle those products, and if that is not possible, they should have the products destroyed, rendered inoperable, or otherwise disposed of in accordance with national law consistent with Union law, including Union legislation on waste management. The prohibition to place and make available the products on the Union market and to export them from the Union should only be lifted if economic operators are able to demonstrate that forced labour has been eradicated from the supply chain and forced labour cases have been remediated. The assessment of the fulfilment of such conditions should rest with the authority responsible for the decision. The prohibition and the subsequent withdrawal should concern the specific products identified in the decision.***
- (28) In that decision, ***the Commission or*** competent authorities should state the findings of the investigation, and the information underpinning the findings, and set a reasonable time within which the economic operators should comply with the decision, as well as information allowing for the identification of the product to which the decision applies. The Commission should be empowered to adopt the implementing acts necessary to specify the details about the information to be contained in such decisions. ***The decisions from the Commission or competent authorities should be made publicly available.***

- (29) In setting a reasonable time to comply with the order, *the Commission and* competent authorities should take into account the size and economic resources of the economic operators concerned.
- (30) If the economic operators fail to comply with the decision of *the Commission or* the competent authorities by the end of the established timeframe, *the Commission or* the competent authorities should ensure that the relevant products are prohibited from being placed or made available on the Union market, exported or withdrawn from the Union market and that any such products remaining with the relevant economic operators are *donated to charitable or public interest purposes, in case they are perishable. If such products are not perishable, economic operators should recycle those products, and if that is not possible, they should have the products destroyed, rendered inoperable, or otherwise disposed of in accordance with national law consistent with Union law, including Union legislation on waste management at the expense of the economic operators.*
- (31) Economic operators should have the possibility to request an *administrative* review of the decisions by the competent authorities *and by the Commission*, after having provided new *substantial* information showing that it cannot be concluded that the relevant products have been made with forced labour. Competent authorities *and the Commission* should withdraw their decision where they establish on the basis of that new information, that it cannot be established that the products have been made with forced labour. *The decisions adopted by the Commission under this Regulation are subject to review by the Court of Justice in accordance with Article 263 TFEU.*

Final CA 9 (accompanying recitals CA 3):

(CA replacing all relevant amendments, including AM 10 Rapp, AM 191 S&D, AM 11 Rapp, AM 192 ECR, AM 193 Left, AM 194 S&D, AM 15 Rapp, AM 230 ECR, AM 231 Greens, AM 232 Left, AM 233 S&D, AM 235 Renew)

- (25a) *The Commission should call upon external expertise to provide an indicative, non-exhaustive, verifiable and regularly updated database of forced labour risks in specific geographic areas or with respect to specific products including with regard to forced labour imposed by state authorities. The database should be based on independent and verifiable information, including reports from international organisations, in particular the International Labour Organization, civil society, business organisations, social partners, and experience from implementing Union law setting out due diligence requirements with respect to forced labour. The database should include a list of all decisions of competent authorities, including information on the provision of remediation of forced labour cases that enabled the withdrawal of the ban.*
- (25b) *Where there is clear, reliable and verifiable evidence that products produced in specific economic sectors within specific geographic areas present a high risk of having been made with forced labour imposed by state authorities, these sectors in these areas should be identified in the database established under this Regulation. In order to facilitate for the competent authorities the investigations of cases where there is evidence of high risk of forced labour imposed by state authorities, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by determining specific economic sectors*

in specific geographic areas, where such risk occurs. For the products coming from these areas and these sectors, economic operators concerned should bear the burden of establishing that forced labour has not been used at any stage of extraction, harvest, production, or manufacture of a product, including working or processing related to the product.

- (32) Any person, whether it is a natural or legal person, or any association not having legal personality, should be allowed to submit information to the competent authorities when it considers that products made with forced labour are placed and made available on the Union market and to be informed of the outcome of the assessment of their submission. *Submissions should be addressed to one or more competent authorities. Adequate protection measures should be put in place to ensure the safety of any person associated with the submission or the information contained within it, including from retaliation and reprisals. Where necessary, these protection measures could go beyond the provisions in Directive (EU) 2019/1937. To ensure ease of use for the submission of information and the standardisation of the information provided, the Commission should set up a mechanism for the submission of information, such as a designated webportal at the Union level, available in all official languages of the institutions of the Union, and free of charge, and ensure that it is user-friendly and easily accessible, including for persons with disabilities.*
- (42) To ensure effective enforcement decisions taken by a competent authority in one Member State should be recognised and enforced by competent authorities in the other Member States regarding products with the same identification from the same supply chain for which forced labour has been found.

Final CA 10 (accompanying recitals CA 5):

(CA replacing all relevant amendments, including AM 5 Rapp, AM 143 Renew, AM 151 EPP, AM 238 EPP, AM 241 Left, AM 242 Greens, AM 272 EPP, AM 17 Rapp, AM 274 S&D, AM 275 Greens, AM 279 Renew, AM 18 Rapp, AM 280 Greens, AM 281 S&D)

- (18) Micro, small and medium-sized enterprises ('SMEs') can have limited resources and ability to ensure that the products they place or make available on the Union market are free from forced labour. The Commission should therefore issue **thorough** guidelines on due diligence in relation to forced labour, which should take into account also the size and economic resources of economic operators. In addition, the Commission should issue **clear** guidelines on forced-labour risk indicators, *including on how to identify them, which should be based on independent and verifiable information, including reports from international organisations, in particular the International Labour Organization, whose "Hard to See, harder to Count" guidelines are the current gold-standard for identification of forced labour.*
- (18a) *The Commission should also issue guidelines on how to engage in dialogue with competent authorities in order to help economic operators, and in particular SMEs, as well as other stakeholders, to comply with the requirements of the prohibition. Furthermore, the Commission should also issue guidelines to assist any person or association in submitting information.*
- (18b) *Taking into account the variety of Union law dealing with forced labour issues, the Commission should provide additional guidance for economic operators, in particular SMEs, on how to apply the different obligations stemming from Union law.*

The Commission should also, where appropriate, prevent unnecessary administrative burdens on SMEs. In addition, the Commission should develop accompanying measures to support the efforts of economic operators and their business partners in the same supply chain, in particular the SMEs. These measures shall include a one-stop shop for all matters related to the application of this Regulation and support to multi-stakeholder initiatives.

- (33) The Commission should issue *detailed* guidelines in order to facilitate the implementation of the prohibition by economic operators and competent authorities. Such guidelines should include guidance on due diligence in relation to forced labour, *in particular for all economic operators that fall outside the scope of the [Directive 20XX/XX/EU on Corporate Sustainability Due Diligence], since they will not have to comply with any mandatory due diligence obligations*, and complementary information for the competent authorities to implement the prohibition. *The guidance for economic operators outside the scope of [CSDD] should focus in particular on compliance in cases where these economic operators are faced with a reversed burden of proof as a consequence of delegated acts adopted by the Commission of forced labour imposed by state authorities.* The guidance on due diligence in relation to forced labour should build on the Guidance on due diligence for Union businesses to address the risk of forced labour in their operations and supply chains published by the Commission and the European External Action Service in July 2021. The guidelines should be consistent with other Commission guidelines in this regard and relevant international organisations' guidelines. *The guidelines should provide tailored recommendations for different sectors of activity, taking into account specificities of the activities and the respective supply chains.* The reports from international organisations, in particular the ILO, as well as other independent and verifiable sources of information should be considered for the identification of risk indicators.
- (40) For the collection, processing and storage of information, in a structured form, on issues relating to the enforcement of the prohibition, the competent authorities should use ICSMS. The Commission, competent authorities and customs authorities should have access to that system to carry out their respective duties under this Regulation.
- (41) In order to optimise and unburden the control process of products entering or leaving the Union market, it is necessary to allow for an automated data transfer between the ICSMS and customs systems. Three different data transfers should be distinguished in view of their respective purposes. Firstly, decisions establishing a violation of the prohibition should be communicated from the ICSMS to the Electronic Customs Risk Management System (CRMS) referred to in Article 36 of Commission Implementing Regulation (EU) 2015/2447¹², without prejudice to any future evolution of the customs risk management environment, for use by customs authorities to identify products that may correspond to such a decision. The available interfaces of the customs environment should be used for those first data transfers. Secondly, where customs authorities identify such a product, case management will be necessary to, among others, transfer the notification of the suspension, the conclusion of competent authorities and the outcome of the actions taken by customs. The EU Single Window Environment for customs should support those second data transfers between ICSMS and national customs systems. Thirdly, customs systems contain information on products entering

¹² Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558.

and leaving the Union market that would be relevant for competent authorities to carry out their duties but that is not accessible to them. The relevant information should therefore be extracted and transmitted to the ICSMS. The three interconnections should be highly automated and easy-to-use, so as to limit any additional burden for customs authorities. The Commission should be empowered to adopt, in cooperation with customs authorities and competent authorities, the implementing acts necessary to determine the procedural rules, practical arrangements and data elements to be transferred between the ICSMS and customs systems and any other ancillary requirement.

- (42a) ***Acknowledging current developments in traceability technology to facilitate monitoring of supply chains, the Commission should support economic operators in the uptake of such technology, including through financial and technical assistance.***
- (43) Where, for the prohibition, it is necessary to process personal data, such processing should be carried out in accordance with Union law on the protection of personal data. Any processing of personal data under the prohibition should be subject to Regulation (EU) 2016/679 of the European Parliament and of the Council¹³ and Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁴.
- (44) To ensure effective enforcement of the prohibition, it is necessary to establish a network, ***coordinated by the Commission***, aimed at structured coordination and cooperation between the ***Commission, the*** competent authorities of the Member States and, where appropriate, experts from customs authorities, ~~and the Commission~~. That network should also aim at streamlining the practices of the competent authorities within the Union that facilitate the implementation of joint enforcement activities by Member States, including joint investigations, ***facilitate capacity building activities, such as the organisation of training programmes for competent authorities and other relevant stakeholders, promote exchanges of personnel between competent authorities and, where appropriate, with the authorities of partner third countries or with international organisations, assist in the organisation of information campaigns and voluntary mutual visit programmes between competent authorities, involve and facilitate the diplomatic representations of the Union to assist in the information gathering efforts of this Regulation. The administrative support structure to be provided by the Commission*** should allow the pooling of resources and maintain a communication and information system between Member States and the Commission, thereby helping to strengthen the enforcement of the prohibition.
- (44a) ***The Commission should ensure the effective and uniform application of this Regulation and to that effect support and encourage cooperation between enforcement authorities through the Network.***

Final CA 11 (accompanying recitals CA 4):

¹³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

¹⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

(CA replacing all relevant amendments, including AM 224 Renew, AM 248 Renew, AM 16 Rapp, AM 259 Greens, AM 260 EPP, AM 264 Renew)

- (34) Decisions of the *Commission or the* competent authorities establishing a violation of the prohibition should be communicated to customs authorities, who should aim at identifying the product concerned amongst products declared for release for free circulation or export. *The Commission and Member States should ensure that the customs authorities have sufficient resources to carry out these controls.* The *Commission and the* competent authorities should be responsible for the overall enforcement of the prohibition with regard to the internal market as well as products entering or leaving the Union market. Since forced labour is part of the manufacturing process and does not leave any trace on the product, and Regulation (EU) 2019/1020 covers only manufactured products and its scope is limited to release for free circulation, the customs authorities would be unable to act autonomously under Regulation (EU) 2019/1020 for the application and enforcement of the prohibition. The specific organisation of controls of each Member State should be without prejudice to Regulation (EU) No 952/2013 of the European Parliament and of the Council¹⁵ and its general provisions on the control and supervisory powers of customs authorities.
- (35) The information currently made available to customs authorities by economic operators includes only general information on the products but lacks information on the manufacturer or producer and product suppliers as well as specific information on products. In order for customs authorities to be able to identify products entering or leaving the Union market that may violate the Regulation and should accordingly be stopped at the EU external borders, economic operators should submit to customs authorities information allowing matching a decision of the *Commission or the* competent authorities with the product concerned. This should include information on the manufacturer or producer and the product suppliers as well as any other information on the product itself. To this end, the Commission should be empowered to adopt delegated acts identifying the products for which such information should be provided using, amongst others, the database established under this Regulation as well as the information and decisions of the competent authorities encoded in the information and communication system set out in Article 34 of Regulation (EU) 2019/1020 ('ICSMS'). Moreover, the Commission should be empowered to adopt, the implementing acts necessary to specify the details of the information to be made available to customs by the economic operators. This information should include the description, name or brand of the product, specific requirements under Union legislation for the identification of the product (such as a type, reference, model, batch or serial number affixed on the product, or provided on the packaging or in a document accompanying the product, or unique identifier of the digital product passport) as well as details on the manufacturer or producer and the product suppliers, including for each of them their name, trade name or registered trademark, their contact details, their unique identification number in the country they are established and, where available, their Economic Operators Registration and Identification (EORI) number. The review of the Union Customs Code will consider introducing in the customs legislation the information required to be made available to customs by the economic operators for the enforcement of this Regulation and more broadly to strengthen the transparency of the supply chain. *The Commission*

¹⁵ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ L 269, 10.10.2013, p. 1).

should issue guidance and support to economic operators, especially SMEs, on how to collect the required information.

- (36) Customs authorities that identify a product that may be covered by a decision communicated by *the Commission or* competent authorities establishing a violation of the prohibition should suspend the release of that product and notify the competent authorities immediately. *The Commission or the* competent authorities should reach a conclusion within a reasonable timeframe on the case notified to them by the customs authorities, either by confirming or by denying that the product concerned is covered by a decision. Where necessary *and duly justified*, the *Commission or the* competent authorities should be authorised to require maintaining the suspension of its release, *taking into account the potential damage for the economic operator*. In the absence of a conclusion by competent authorities within the specified time limit, customs authorities should release the products if all other applicable requirements and formalities are fulfilled. Generally, the release for free circulation or export should also not be deemed to be proof of compliance with Union law, since such a release does not necessarily include a complete control of such compliance.
- (37) Where the *Commission or the* competent authorities conclude that a product corresponds to a decision establishing a violation of the prohibition, they should immediately inform customs authorities which should refuse its release for free circulation or export. The product should be *donated to charitable or public interest purposes if it is perishable. If such products are not perishable, they should be recycled, and if that is not possible, they should be* destroyed, rendered inoperable, or otherwise disposed of in accordance with national law consistent with Union law, including legislation on waste management, which excludes re-export in case of non-Union goods.
- (37a) *The Commission should take into due consideration the risk of disengagement by economic operators who are either related to products or regions in the database, or who have had their product removed from the Union market, as well as the consequences on affected workers. The Commission should therefore, where appropriate, support economic operators in adopting and carrying out measures suitable and effective for bringing forced labour to an end. Responsible disengagement entails, as a minimum, complying with collective agreements and articulating escalation measures.*
- (38) The conditions applicable to products during the suspension of their release for free circulation or export, including their storage or destruction and disposal of in case of a refusal of release for circulation, should be determined by customs authorities, where applicable pursuant to Regulation (EU) No 952/2013. Should products entering the Union market require further processing, they are to be placed under the appropriate customs procedure allowing such processing in accordance with Articles 220, 254, 256, 257 and 258 of Regulation (EU) No 952/2013.
- (39) A uniform enforcement of the prohibition as regards products entering or leaving the Union market can only be achieved through systematic exchange of information and cooperation amongst competent authorities, customs authorities and the Commission. *This cooperation should be coordinated by the Commission.*

Final CA 12 (accompanying recitals CA 6):

(CA replacing all relevant amendments, including AM 283 MEPs, AM 282 EPP, AM 284 Left, AM 286 Renew, AM 19 Rapp)

- (45) Since forced labour is a global problem and given the interlinkages of the global *supply* chains, it is necessary to promote international cooperation against forced labour, which would also improve the efficiency of applying and enforcing the prohibition. The Commission should as appropriately cooperate with and exchange information with authorities of third countries and international organisations, *as well as with other actors*, to enhance the effective implementation of the prohibition. International cooperation with authorities of non-EU countries should take place in a structured way as part of the existing dialogue structures, for example Human Rights Dialogues with third countries, or, if necessary, specific ones that will be created on an ad hoc basis. *Existing dialogue structures with third countries include the (sub)committees on trade and sustainable development in trade agreements or the dialogue foreseen within the Generalised System of Preferences. The Commission should ensure coherence and synergies between relevant external policies, in particular development cooperation and projects focusing on the eradication of forced labour, and it should also foster the creation of enabling environments in third countries to promote and protect human rights, including capacity building to support workers and local communities in their efforts to root out forced labour from global supply chains. Additionally, the Commission should have regular contact and cooperation in particular with countries that have similar legislation in place, to share information of risk products or regions as well as best practices for bringing to an end forced labour. EU Delegations should have an important role when it comes to disseminating information on this Regulation and should facilitate the possibility of third parties in third countries to provide information on the existence of forced labour on a determined product.*
- (46) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁶.
- (47) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (48) In order to ensure that the customs authorities are provided with all the necessary information about the product to act effectively, including the information identifying the relevant product, information about the manufacturer or the producer and information about the product suppliers as regards products entering or leaving the Union market, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. Customs authorities need to be enabled to obtain information rapidly on specific products, identified in the decisions of the competent

¹⁶ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

authorities in order to take actions and measures effectively and swiftly. In such cases, delegated acts should be adopted in an urgent procedure.

- (48a) *In order to ensure that penalties are effective and fair and to prevent a distorted approach to penalties in the internal market, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. The Commission should define the method for the calculation of financial penalties and the thresholds applicable, define where they are to be used, and specify mitigating and aggravating circumstances to guide Member States in designing their penalty regimes.***
- (48b) *The Commission should carry out an evaluation of this Regulation in light of the objective it pursues, and should submit a report thereon to the European Parliament, to the Council and to the European Economic and Social Committee. The report should assess whether this Regulation achieved its objectives, in particular with regard to reducing the number of products on the Union market made with forced labour, improving cooperation between competent authorities and strengthening the controls on products entering the Union market, the impact on business of administrative procedures, the cost of compliance, the impact on trade and on competitiveness of companies operating in the internal market, the alignment with other relevant Union legislation, the contribution to fight forced labour globally, and the overall cost-benefit and effectiveness.***
- (49) Since the objective of this Regulation, namely, the prohibition, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (50) In order to allow for the prompt application of the measures provided for in this Regulation, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union,