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FEDIL contribution to the European Commission's call for evidence on Guidelines on the implementation of the EU rules on forced labour

1. Introduction

This paper sets out FEDIL's contribution to the European Commission's call for evidence on the Guidelines for the implementation of the EU rules on forced labour. This response builds on and complements the submission of the BusinessEurope, of which FEDIL is a founding member. FEDIL fully supports the messages put forward by BusinessEurope and reiterates its strong support for these positions. In this context, FEDIL would simply like to provide a limited number of additional remarks and clarifications reflecting the perspectives and priorities of its member companies.

As a starting point, FEDIL would like to stress that forced labour is a serious human rights violation that the Luxembourg business community fully condemns. The EU's Forced Labour Regulation (FLR), prohibiting the placing, making available on the Union market or exporting from the Union market products made with forced labour,¹ has already entered into force. However, significant steps remain to be taken to ensure its effective implementation from 14 December 2027.

In this context, the provision of Guidelines represents an important step in this process. Such Guidelines should contribute to ensuring a correct and harmonised implementation of the FLR, promoting a shared interpretation of its provisions and providing legal certainty to economic operators and competent authorities alike. They should also be adopted well in advance of the Regulation's application to allow sufficient time for economic operators and authorities to prepare, while minimising costs and administrative burdens.

Moreover, many elements of the Guidelines depend on the completion of work under other FLR provisions, such as the establishment of the database on forced labour risk areas or products (Art. 8), the creation of the single information submission point (Art. 9), the support measures for SMEs (Art. 10) and the launch of the forced labour single portal (Art. 12). Advancing work on these elements in parallel with the Guidelines will be critical to ensure a coherent and harmonised framework.

As a general principle, any guidance adopted in the context of the FLR should remain illustrative in nature and should not be construed as creating additional obligations for economic operators beyond those expressly set out in the Regulation. This principle underpins and should be read in conjunction with each of the specific recommendations set out below.

2. Alignment with international standards and guidelines

Work on the Guidelines should be aligned with internationally recognised and highly authoritative standards and guidelines, such as those developed by the United Nations (UN) and the International Labour Organisation (ILO), as well as the Organisation for Economic Cooperation and Development (OECD). In particular, the Guidelines should recognise the relevance of established human-rights due diligence frameworks, such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the

¹ Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937, OJ L, 2024/3015, 12.12.2024.

OECD Due Diligence Guidance for Responsible Business Conduct, including inter alia the principle that responsibility and remediation should be proportionate to a company's contribution to the adverse impact and its leverage in the supply chain.

It should also build on the EU's work in the area, including the joint European Commission and European External Action Service Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains, as well as the other instruments referenced under Annex I to the CS3D.

It is relevant to note that European companies are already developing and applying their due diligence systems in alignment with internationally recognised standards and frameworks. The FLR Guidelines should support and reinforce such alignment to ensure consistency and legal clarity. Harmonisation through international standards will facilitate consistent implementation throughout global value and supply chains, contribute to a broader uptake of solutions and avoid adverse impacts on the competitiveness of European companies.

3. Clarifying relationship between FLR and other EU legislation

Given the CS3D framework, the Guidance should clarify the interplay between CS3D and FLR. In particular, it would be important to clarify specific aspects and interpretation, such as:

- clarifications are necessary on the obligations of economic operators and the approach of the competent authorities regarding decisions on the prohibition of placing or making available or the withdrawal or the disposal of withdrawn products under the FLR. It is our view that derogations enshrined in the CS3D for specific cases must be considered before banning a product from the market. In this respect, we also support that a graduated and proportionate procedure should be designed by making use of the provisions in CS3D, before any ban is imposed on a specific product under the FLR. This is even more relevant if there is no prior record of forced labour, if companies manufacture or make available a product that is difficult to substitute and which is of strategic importance to the EU.
- Further clarifications should address the interplay between the FLR and other relevant EU instruments that touch upon forced labour or impose related due diligence, traceability or reporting requirements, so as to identify and resolve potential conflict points and avoid duplicative compliance burdens. Such instruments include, among others and by way of example, the EU Deforestation Regulation, the Ecodesign for Sustainable Products Regulation and the Digital Product Passport, the Packaging and Packaging Waste Regulation, the Conflict Minerals Regulation, and the Battery Regulation.

4. Providing illustration of evidence

Whether in the preliminary investigative phase or during the formal investigation, proportionality should apply to information requests, based on a company's size, role and leverage in the supply chain.

We recommend the European Commission and competent authorities of EU Member States consider the effectiveness of a company's overall HRDD approach to identifying, preventing, mitigating or bringing to an end forced labour, in line with the principle of human rights due diligence as outlined in international frameworks (i.e., UN Guiding Principles on Business and Human Rights, OECD Due Diligence Guidance for Responsible Business Conduct), as referred to in Art. 17 the FLR.

Examples of documentation that may be provided include:

- Supply chain documentation: supply-chain mapping, traceability records, certificates of origin, supplier audit reports;
- Labour and employment records: employment contracts, payroll data, working hours and rest logs, wage payment records;
- Due diligence documentation: HRDD policies/methodologies, supplier codes of conduct, risk assessments, corrective action plans, questionnaires or self-assessments, training records;
- Third-party or field evidence: independent audit findings, inspection reports, worker interviews, witness statements, EcoVadis or similar assessments;
- Grievance and remediation records: grievance mechanisms, complaints received and resolved, remediation measures;

5. Best practices for forced-labour-related due diligence

The Guidelines should set out, for illustrative purposes and without imposing obligations beyond those provided for in the FLR, best practices for conducting due diligence across product groups and economic sectors. Such best practices could cover in particular:

- Supply chain mapping, including identification of all supplier tiers with focus on raw material extraction and labour-intensive stages;
- Risk analysis utilising ILO forced labour indicators, with attention to vulnerable groups and recruitment practices;
- Information gathering aligned with applicable EU or national laws addressing due diligence and forced labour, Commission guidelines, and UN/ILO/OECD recommendations, including consultation of the database on forced labour risk areas and products;
- Prevention and mitigation measures, including integration of forced labour prohibitions into supplier contracts, cascading due diligence requirements, independent audits, confidential grievance channels, and worker interviews conducted away from management;
- Sector-specific approaches addressing particular risks in electronics, textiles, agriculture, construction and other relevant industries; and
- Stakeholder engagement with civil society organisations, trade unions, industry peers and international organisations.
- Follow-up to infringement allegations through grievance mechanisms, media reports or civil society alerts, covering targeted investigations to assess the validity of the claim and subsequent reviews of companies' due diligence systems in case gaps have been identified.
- Monitoring and verification, which are expected to rely on credible data sources such as independent assessments, supplier audits and relevant risk databases.

6. Helping SMEs implement the FLR

We recall that, according to the FLR, guidance for economic operators on due diligence in relation to forced labour (Art. 11 a), guidance for economic operators on best practices (Art. 11 b) and guidance for economic operators on due diligence in relation to forced labour imposed by state authorities (Art. 11 f) will focus in particular on assisting SMEs. This is welcomed as SMEs are fully included in the scope of the FLR. However, the size, resources and the scale of risk of forced labour need to be considered both in the preliminary phase of the investigations, as well as during the investigations. In this respect, we would like

to invite the European Commission to consider including clarifications related to the obligations and treatment of SMEs in more guidance documents, including:

- guidance for competent authorities on the practical implementation of the FLR, in particular Arts. 8, 17 and 18, including benchmarks for assisting competent authorities in their risk-based assessments in the context of investigations and guidelines on the applicable standard of evidence (Art. 11 c);
- information on risk indicators of forced labour, including how to identify such indicators, which shall be based on independent and verifiable information, including reports from international organisations, in particular the ILO, civil society, business organisations and trade unions, and on experience from implementing Union law setting out due diligence requirements regarding forced labour (Art. 11 e);
- guidance for economic operators and product suppliers on how to engage in dialogue with competent authorities pursuant to Chapter III, in particular the type of information submitted (Art. 11 g);
- guidance for Member States on the method for calculating financial penalties and applicable thresholds (Art. 11 i).

Beyond the provision of guidelines, dedicated training and capacity-building sessions to SMEs could be particularly useful to raise awareness and to increase compliance with the FLR.

In addition, practical guidance should clarify what constitutes “meaningful” versus “incomplete” information in the context of exchanges with competent authorities, to avoid misinterpretation of legitimate limitations in available information as non-cooperation.

7. Focus on remediation

The question of remedies is particularly important to address in the context of guidance documents, both in guidelines addressed to economic operators as well as guidelines that aim to inform the work of competent authorities. How “remedies” are defined and what would be considered sufficient remediation measures are some of the overarching questions that need to be addressed to give more clarity and legal certainty to companies. In particular, the Guidelines should clarify the following:

- economic operators should be afforded the flexibility to assess, on an ad hoc basis, which remediation measure is best suited to the specific circumstances of each case, taking into account the nature and severity of the forced labour situation, the operator's relationship with the affected supplier, and the potential consequences for affected workers;
- a direct link to the economic operator's supply chain should be established before remediation obligations are triggered, and the operator should be afforded the opportunity to demonstrate that the allegations are not linked to its supply chain;
- remediation should be proportionate to a company's contribution to the adverse impact and its actual control over the affected production step.

In particular, the Guidelines should address:

- immediate remedial actions, including cessation of forced labour conditions while protecting workers' employment and income, safe exit options, return of identity documents, back pay, compensation for illegal deductions, and provision of medical and psychological support;

- systemic corrections, including reform of recruitment practices, revision of employment contracts, and implementation of direct wage payment systems, while considering the risk of disengagement and its consequences on affected workers; and
- workplace improvements, including compliance with legal and international standards on working hours, rest periods, accommodation and grievance mechanisms.

8. Complementary resources

In addition to the Guidelines, the Commission may wish to consider providing complementary resources to assist economic operators in the implementation process to support implementation. Such resources should be of an illustrative and practical nature and should not be construed as imposing any additional obligations beyond those set out in the FLR. These resources could include:

- comprehensive FAQs addressing obligations, procedures, timelines, and the relationship between the FLR and other EU due diligence legislation;
- step-by-step procedural guides and flowcharts explaining each stage of the investigation process from the economic operator's perspective, with timeline visualisations;
- industry-specific supplements with case studies for high-risk sectors;
- updated geographic risk resources, including country and regional risk assessments and guidance on state-imposed forced labour;
- practical due diligence tools such as supplier questionnaire templates, risk assessment matrices, audit checklists incorporating ILO indicators, and model supplier contract clauses; and
- regular technical Q&A sessions or dialogue platforms between the European Commission, competent authorities and companies.

About FEDIL

Founded in 1918, FEDIL – The Voice of Luxembourg's Industry is a multisectoral business federation that represents over 750 companies across industry, services, and construction. These members significantly contribute to Luxembourg's economy, accounting for 95% of the nation's industrial production, 75% of private research activity, 25% of national employment, and 35% of the GDP.

As a founding member of BusinessEurope, the European employers' association, FEDIL maintains a dedicated representative office in Brussels to advocate on behalf of its members at the European level.

The federation is also registered in the Luxembourg Chamber of Deputies' transparency register and the EU Transparency Register (number 286194516022-33), underscoring its commitment to transparent and ethical advocacy.

This position paper has been prepared by FEDIL's Sustainability Legislation Expert Forum (SLE Forum), a collaborative platform that addresses evolving sustainability regulations. The SLE Forum offers member companies regulatory insights, advocacy support, and structured collaboration to effectively tackle sustainability legislation challenges.

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