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Commission Proposal for a Regulation on prohibiting products made with forced labour on the Union market

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Commission Proposal for a Regulation on prohibiting products made with forced labour on the Union market: The issue of remedies



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BRIEFING

Commission Proposal for a Regulation on prohibiting products made with forced labour on the Union market: The issue of remedies

ABSTRACT

The European Union (EU) is committed to the elimination of forced labour, a denial of rights of which there are 28 million victims globally. In September 2022, the European Commission proposed a Regulation to ban all products made by forced labour from the EU market (COM (2022) 453). This proposal has been criticised for failing to facilitate remedies for forced labour victims, in line with EU and global standards such as the United Nations Guiding Principles on Business and Human Rights. This Briefing examines the case for including measures to promote access to effective remediation for victims of forced labour located outside the EU into the Commission's proposed Regulation. First, it outlines the legal framework for EU action to promote remediation for victims of forced labour located outside EU territory, as well as obstacles to accessibility and effectiveness of remediation for victims in the forced labour context. Second, it considers a range of measures to promote remediation for victims of forced labour that could be incorporated in the Regulation and their feasibility. In conclusion, the Briefing highlights changes to the Commission's proposed Regulation to advance remediation for victims that are feasible and would increase its alignment with international and EU legal and policy commitments.

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List of abbreviations

CSDDD	Corporate Sustainability Due Diligence Directive
CSO	Civil Society Organisation
EU	European Union
ILO	International Labour Organization
MDB	Multi-lateral Development Banks
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
USA	United States of America
WRO	Withhold Release Orders

1 Introduction

Forced labour is a pressing global problem with 28 million victims worldwide¹, the majority women², and most exploited in the private sector. Forced labour violates human rights and labour standards, which the European Union (EU) is committed to uphold in its internal and external action³. When forced labour occurs in global supply chains which deliver products or services to EU markets, this constitutes market distortion that contravenes EU objectives of securing fair competition in internal and international trade, as well as sustainable development goals and decent work commitments⁴.

In line with the United Nations Guiding Principles on Business and Human Rights (UNGPs)⁵, EU policies and legislation expect that all businesses will respect human rights, through performing due diligence to avoid causing, contributing or being directly linked to human rights abuses, including forced labour⁶. The EU has accordingly established: due diligence rules for operators in high-risk value chains that mandate businesses to identify and address risks of forced labour⁷; non-financial corporate reporting duties⁸; and rules to facilitate environmental, social and governance investment⁹. Cross-sectoral corporate human rights and environmental due diligence measures, and further steps to support remediation of business-related human rights abuses linked to due diligence failures, are foreseen at European¹⁰ and international levels¹¹.

¹ ILO, [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), 12 September 2022.

² Due to gender inequalities, women are more likely to experience significant abuse in the workplace and additional barriers to access justice: ILO, [Fair recruitment and access to justice for migrant workers: Discussion paper](#), International Labour Office, Geneva, 30 June 2022.

³ ILO, [C029 - Forced Labour Convention, 1930 \(No. 29\)](#), 14th ILC session, Geneva, 28 June 1930, Article 2; European Union, [Consolidated Version of the Treaty on the Functioning of the European Union](#), Official Journal of the European Union, C 202/47, 7 June 2016, Articles 82(2) and 83(1); European Union, [Consolidated version of the Treaty on the European Union](#), Official Journal of the European Union, 2008/C 115/01, 13 December 2007, Article 5; European Union, [Charter of Fundamental Rights of the European Union](#), Official Journal of the European Union, 2012/C 326/02, 26 October 2012, Article 4(2); Council of Europe, [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), as amended by Protocols Nos. 11 and 14, 4 November 1950.

⁴ European Commission, [‘Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress’](#), SWD(2019) 143 final, 20 March 2019; European Commission, [‘Trade policy Review - an Open, Sustainable and Assertive Trade Policy’](#), COM(2021) 66 final, 18 February 2021; European Commission, [‘Decent work worldwide for a global just transition and a sustainable recovery’](#), COM(2022) 66 final, 23 February 2022.

⁵ OHCHR, [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#), HR/PUB/11/04, 2011.

⁶ European Commission, [‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’](#), COM(2011) 681 final, 25 October 2011.

⁷ [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 May 2017.

⁸ [Directive \(EU\) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation \(EU\) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting](#), OJ L 322/15, 16 December 2022.

⁹ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, OJ L 317, 9 December 2019; [Regulation \(EU\) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation \(EU\) 2019/2088](#), OJ L 198, 22 June 2020.

¹⁰ European Commission, [Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937](#), COM/2022/71 final, 23 February 2022.

¹¹ UNHRC, [Resolution 26/9 Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights](#), UN Document, A/HRC/RES/26/9, 14 July 2014, Articles 7-8; Open-ended intergovernmental working group, [Third revised draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises](#), Working Group on transnational corporations and other business enterprises with respect to human rights, 17 August 2021.

Despite such positive steps to control business-related human rights abuses, the global incidence of forced labour has continued to increase¹². In this context, the European Commission advanced a draft Regulation banning all products made by forced labour from the EU market or from being exported from the EU, regardless of industry or geographic origin¹³. Applying a risk-based approach, this would require competent authorities to investigate where there are indicators of forced labour in the supply chain (Articles 4-14). Competent authorities would further be empowered to conduct checks and inspections both inside and outside the European Economic Area, the latter subject to consent by the economic operator and third-country governments. On this basis, authorities, following investigation of the products and economic operators concerned (Articles 4-5) might execute: decisions to prohibit the marketing of products; orders to withdraw relevant products from the market; and disposal of such products (Article 6). Penalties, determined at the national level, are foreseen for non-compliance with such orders (Article 30). EU-level mechanisms to promote effectiveness are envisaged, including: a database of forced labour risk areas or products (Article 11); guidelines on risks, due diligence, risk indicators and data sources (Article 23); and a 'Union Network Against Forced Labour Products' (Article 24). Enforcement action by competent authorities is subject to review and appeal before national courts¹⁴.

The Commission's proposal has been criticised by stakeholders, however, for not requiring remediation for victims of forced labour or that operators undertake corrective actions to avoid recurrence¹⁵, as provided for by the UNGPs, along with other European and international human rights and labour standards¹⁶. Existing EU criminal law establishes various remedies for victims of labour exploitation and human trafficking, including compensation funds and complaints mechanisms involving third parties¹⁷. However, such laws generally address the rights of victims of exploitation inside EU Member States and not those outside EU territory¹⁸. Whereas the proposed Directive on Corporate Sustainability and Due Diligence (hereinafter the CSDDD), may provide for civil liability linked to due diligence failures, this is expected to focus on large economic operators, while civil remedies in tort may not be effective or sufficient for forced labour victims¹⁹. To date, EU sector-specific due diligence standards do not require remediation for victims either²⁰. Measures to promote remediation for forced labour victims implicated in EU-linked value chains but situated outside EU territory might therefore address a 'governance gap'.

¹² ILO, [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), 12 September 2022.

¹³ European Commission, [Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market](#), COM(2022)453 final, 14 September 2022, Article 3.

¹⁴ *Ibid*, Chapter III.

¹⁵ Clean Clothes Campaign, ['Statement on Proposed EU Regulation Prohibiting Products Made with Forced Labour'](#), 13 October 2022.

¹⁶ A. Marx, et al., ['Access to legal remedies for victims of corporate human rights abuses in third countries'](#), Policy Department for External Relations, European Parliament, PE 603.475, February 2019; European Parliament, [Resolution of 9 June 2022 on a new trade instrument to ban products made by forced labour \(2022/2611\(RSP\)\)](#), P9_TA(2022)0245, 9 June 2022; FRA, [Business and Human Rights – Access to Remedy](#), Publications Office of the European Union, Luxembourg, 5 October 2020.

¹⁷ [Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#), OJ L 168, 30 June 2009; [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 April 2011.

¹⁸ [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#), OJ L 315, 14 November 2012, Recital 13.

¹⁹ C. Methven O'Brien and G. Holly, ['Human Rights due diligence laws: Key considerations. Briefing on Civil Liability for Due Diligence Failures'](#), Danish Institute for Human Rights, 2021.

²⁰ See for instance [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 May 2017.

Practically accessible and effective remedies should be available to all victims of human rights violations²¹. Especially given the grave character of forced labour as a form of human rights abuse, strengthening mechanisms and routes to effective remediation for victims of forced labour in EU-linked value chains is crucial. A good legislative design for the proposed EU Regulation should integrate measures on remediation for victims as well as preventing and penalising corporate malpractice²². Yet, establishing mechanisms to remediate extra-EU forced labour raises technical questions, concerning *inter alia*: the EU legal basis²³; how to allocate responsibility for remediation amongst economic operators in a value chain; as well as how to monitor and evaluate remediation to victims, including cases where this serves as a criterion for terminating marketing restrictions²⁴.

Section 2 of this Briefing presents the framework of legal rights and duties concerning EU action to promote remediation for victims where products on, or intended for, the EU market are made with forced labour. It also highlights obstacles to accessibility and effectiveness of remediation for victims in the forced labour context. Section 3 considers the extraterritorial application of such standards. Section 4 analyses how measures to mandate remediation for victims could be incorporated in the Regulation and assesses their feasibility. Section 5 presents conclusions on how to enhance access to remedies for victims in the Commission's proposed Regulation.

In terms of methodology this Briefing draws on: results from a focused desk-based review of relevant international and regional standards; EU and national due diligence and forced labour laws; customs measures addressing forced labour; judicial decisions and interpretations; institutional studies; civil society reports; as well as other proposals and scholarly material.

2 Remediating forced labour in global value chains

2.1 Remedy for human rights violations: Right, duty and responsibility

The right to remedy is a human right²⁵. It entails duties on states to bring perpetrators to justice, to provide reparation and redress to victims, including compensation, together with adequate, effective and timely investigation²⁶. Remedies must be sufficient and certain in practice²⁷ and context-specific, with reference

²¹ OHCHR, [Accountability and Remedy Project: Improving accountability and access to remedy in cases of business involvement in human rights abuses](#), A/HRC/32/19, 2016.

²² A. Jokinen and N. Ollus (eds.), ['Shady Business: Uncovering the Business Model of Labour Exploitation'](#), HEUNI Publication Series, No 92a, 2020.

²³ European Union, [Consolidated Version of the Treaty on the Functioning of the European Union](#), Official Journal of the European Union, C 202/47, 7 June 2016, Articles 114 and 207.

²⁴ C. Methven O'Brien and O. Martin-Ortega, ['EU human rights due diligence legislation: Monitoring, enforcement and access to justice for victims'](#), Policy Department for External Relations, European Parliament, PE 603.505, June 2020.

²⁵ [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), as amended by Protocols Nos. 11 and 14, 4 November 1950, Article 13; European Union, [Charter of Fundamental Rights of the European Union](#), Official Journal of the European Union, 2012/C 326/02, 26 October 2012, Article 47; UNGA, [International Covenant on Civil and Political Rights](#), UN Treaty Series, Vol. 999, p. 171, 16 December 1966, Article 2(3); UNGA, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), A/RES/60/147, 21 March 2006.

²⁶ UNGA, ['2005 World Summit Outcome'](#), A/RES/60/1, 16 September 2005; OHCHR, [General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant \(2004\)](#), CCPR/C/21/Rev.1/Add.13, 29 March 2004; Council of Europe, [Human Rights and business – Recommendation CM/Rec\(2016\)3 of the Committee of Ministers to Member States](#), 2016; Council of Europe, ['Factsheet – Slavery, Servitude and Forced Labour'](#), January 2022; GRETA, [9th General Report on GRETA's Activities](#), 2019; C. Methven O'Brien and G. Holly, ['Human Rights due diligence laws: Key considerations. Briefing on Civil Liability for Due Diligence Failures'](#), *Danish Institute for Human Rights*, 2021; C. Methven O'Brien, ['Business and Human Rights. A Handbook for Legal Practitioners'](#), *Council of Europe*, 133518GBR, 2019.

²⁷ ECHR, ['McFarlane v Ireland'](#), *App no 31333/06*, 10 September 2010, §114; European Court of Human Rights, ['Riccardi Pizzati v Italy'](#), Application No 62361/00, 10 November 2004, §38.

to victims' individual circumstances²⁸. These standards apply to breaches of the right to freedom from forced labour and linked denials of other human rights that workers subjected to forced labour routinely experience²⁹, including discrimination; fair and just working conditions; as well as health, dignity and the right to life.

Such norms generally concern human rights breaches occurring within a state's territorial jurisdiction³⁰. While these must be upheld by EU Member States with regard to forced labour occurring inside the Union, they do not automatically impose duties on EU States regarding victims of forced labour taking place outside their borders³¹. However, new standards have gradually sought to highlight and bridge this gap, albeit in a non-binding fashion. The United Nations (UN) Framework, UNGPs and Council of Europe guidance affirm victims' right to an effective remedy for business-related human rights violations or abuses. They describe duties and responsibilities for governments and businesses respectively concerning remedy, including in cross-border supply chain and value chain settings³². Specifically, the UNGPs provide that businesses should: *address* human rights impacts which they have *caused or contributed to through their own activities*; and seek to *prevent or mitigate* adverse human rights impacts that are *directly linked* to their operations, products or services by their business relationships, even if they have not contributed to those impacts, by providing for or cooperating in remediation³³. This is the position also carried forward by the European Commission's Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains³⁴. The Organization of Economic Co-operation and Development's guidance similarly affirms that in the business context, remedies should seek to redress the harm caused, pre-empt future abuses and discourage not only a given actor but also others from engaging in the same or similar abuses in future³⁵. The European Parliament³⁶ has referred to such norms, combined with persisting abuses in third countries, as one justification for EU mandatory due diligence rules.

2.2 Remediating forced labour: International and regional standards

Turning to international instruments specifically addressing forced labour, these likewise oblige states to provide access to remedy for victims. The 2014 International Labour Organization (ILO) Protocol to the Forced Labour Convention³⁷, for instance, requires that states take effective measures for victims 'identification, release, protection, recovery, and rehabilitation'³⁸. The Protocol further entails that victims

²⁸ ECHR, [Case of El-Masri v. the former Yugoslav Republic of Macedonia, Judgment \(Grand Chamber\)](#), Application No 39630/09, 13 December 2012, §255; European Court of Human Rights, [Case of Kudła v. Poland, Judgment \(Grand Chamber\)](#), Application No 30210/96, 26 October 2000, §152.

²⁹ FRA, [Business and Human Rights – Access to Remedy](#), Publications Office of the European Union, Luxembourg, 5 October 2020, p. 35.

³⁰ C. Methven O'Brien, 'The Home State Duty to Regulate the Human Rights Impacts of TNCs Abroad: A Rebuttal', *Business and Human Rights Journal*, Vol 3, No 1, 2018, pp. 47-73.

³¹ European Union, [Charter of Fundamental Rights of the European Union](#), Official Journal of the European Union, 2012/C 326/02, 26 October 2012, Article 5; Council of Europe, [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), as amended by Protocols Nos. 11 and 14, 4 November 1950, Article 4; [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 April 2011.

³² OHCHR, [Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework](#), HR/PUB/11/04, 2011; Council of Europe, [Human Rights and business – Recommendation CM/Rec\(2016\)3 of the Committee of Ministers to Member States](#), 2016.

³³ *Ibid*, UNGP13 and UNGP22.

³⁴ European Commission, [Guidance on due diligence for EU companies to address the risk of forced labour in their operations and supply chains](#), 12 July 2021, p. 4.

³⁵ OECD, [OECD Due Diligence Guidance for Responsible Business Conduct](#), 2018.

³⁶ European Parliament, [Resolution of 9 June 2022 on a new trade instrument to ban products made by forced labour \(2022/2611\(RSP\)\)](#), P9_TA(2022)0245, 9 June 2022.

³⁷ ILO, [C029 - Forced Labour Convention, 1930 \(No. 29\)](#), 14th ILC session, Geneva, 28 June 1930.

³⁸ ILO, [P029 - Protocol of 2014 to the Forced Labour Convention, 1930](#), 103rd ILC session, Geneva, 11 Jun 2014, Article 3.

must be granted access to compensation for personal and material damages³⁹. The accompanying ILO Recommendation No. 23 provides for administrative, civil and criminal remedies (Article 12(e)), including: recompense for unpaid wages and statutory contributions for social security benefits, through effective access to courts, tribunals and other resolution mechanisms; access to compensation schemes (Article 12(a)-(c)); information and advice on legal rights and entitlement to legal assistance (Article 12(d)). The Palermo Protocol makes provision in similar terms in relation to protecting victims of trafficking that is transnational in nature and involves organised criminal groups (Article 4)⁴⁰; notably, it explicitly foresees the involvement of ‘non-governmental organizations, other relevant organizations and other elements of civil society’ in measures to support the recovery of victims (Article 6(3)) as well as access to compensation for damage suffered via domestic law (Article 6(6)). While these rules offer protection to victims of forced labour regardless of nationality or legal status, the duties established apply with reference to the state where the forced labour occurred⁴¹.

Council of Europe standards also oblige states to protect the rights of victims of human trafficking, including for the purpose of labour exploitation⁴². This extends to assisting in victims’ physical, psychological and social recovery, for instance through secure accommodation and material assistance; medical treatment; interpretation; legal and other counselling; support to participate in criminal proceedings; and education for children (Article 12), while gender equality is a cross-cutting requirement (Article 17). As regards compensation and legal redress, rights to information on judicial and administrative proceedings; legal assistance and compensation from perpetrators are specifically provided (Article 15). Again, such provisions are generally assumed as territorially focused⁴³.

2.3 Remediating forced labour: Challenges and obstacles for victims

Protection from forced labour and access to effective remediation are fundamental human rights. Yet, despite the clear legal protections identified above, in practice victims of forced labour face extreme difficulties in securing remediation⁴⁴, including but also beyond the trafficking context⁴⁵. Individually, victims encounter trauma, precarity, resource constraints, language barriers, lack of rights awareness and risks of reprisals, so that victims may be unwilling to approach or engage with authorities⁴⁶. Other practical barriers include lack of access to information on redress, legal advice or legal aid. Legally, collective remedies may be lacking, while procedural or evidentiary rules may not work in victims’ favour⁴⁷. In

³⁹ ILO, [R203- Forced Labour \(Supplementary Measures\) Recommendation, 2014 \(No. 203\)](#), 103rd ILC session, Geneva, 11 Jun 2014; D. Anton, ‘[Protocol of 2014 to the forced labour convention, 1930 \(I.L.O.\)](#)’, *International Legal Materials*, Vol 53, No 6, 2014, pp. 1227-1235.

⁴⁰ UNGA, [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime](#), A/RES/55/25, 15 November 2000.

⁴¹ ILO, [Ending forced labour by 2030: A review of policies and programmes](#), International Labour Office, Geneva, 2018, pp. 14-15.

⁴² Council of Europe, [Council of Europe Convention on Action Against Trafficking in Human Beings](#), 16 May 2005, Article 15(4).

⁴³ GRETA, [9th General Report on GRETA’s Activities](#), 2019; Myria, [Rapport annuel traite et trafic des êtres humains 2019: De la force d’action pour les victimes](#), *Centre Fédéral Migration*, 22 November 2019, pp. 60-61.

⁴⁴ ILO, [Ending forced labour by 2030: A review of policies and programmes](#), International Labour Office, Geneva, 2018; I. Wintermayr and A. Weatherburn, ‘[Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands](#)’, *ILO*, April 2021; FRA, [Business and Human Rights – Access to Remedy](#), Publications Office of the European Union, Luxembourg, 5 October 2020, pp. 29-30; K. Schwarz, et al., ‘[External policy tools to address modern slavery and forced labour](#)’, Policy Department for External Relations, European Parliament, PE 653.664, April 2022, p. 89.

⁴⁵ FRA, [Protecting migrant workers from exploitation in the EU: workers’ perspectives](#), 25 June 2019; A. Weatherburn and A. Toft, ‘[Managing the Risks of Being a Victim of Severe Labour Exploitation: Before and After the Modern Slavery Act 2015](#)’, in M. Borracetti (ed.), *Labour Migration in Europe Volume II: Exploitation and Legal Protection of Migrant Workers*, Palgrave Macmillan, London, 2018, pp. 99-138.

⁴⁶ A. Lietonen, et al., ‘[Normative Framework Guide Responsibility of Businesses Concerning Human Rights, Labour Exploitation and Human Trafficking](#)’, HEUNI Publication Series, No 94, 2020.

⁴⁷ OHCHR, [Accountability and Remedy Project: Improving accountability and access to remedy in cases of business involvement in human rights abuses](#), A/HRC/32/19, 2016.

transnational value chain settings, identifying, locating or prosecuting corporate perpetrators can become more difficult, and judicial proceedings longer, more costly and uncertain. Protecting victims from traffickers and exploitative businesses, repatriation, and securing financial restitution and compensation in cross-border situations, for example, entail complex and prolonged legal proceedings⁴⁸. Where remedies are secured, this usually depends on support from human rights defenders and Civil Society Organisations (CSOs)⁴⁹.

Such obstacles curtail the right to individual remediation for forced labour victims. Without remediation, there is a high risk of repeat victimisation. As forced labour victims often suffer long-term physical or psychological injury, which poses challenges for their social and economic reintegration⁵⁰, such deficits increase the likelihood of chronic rights denials as well as diminished realisation of sustainable development outcomes for affected individuals, their dependents and wider communities.

2.4 Remedies for forced labour victims: Due diligence legislation

In transnational supply chains, general challenges for victims of forced labour as outlined above in obtaining remediation are often exacerbated by diverse factors such as business' reluctance to disclose supply chain information due to intellectual property concerns⁵¹; opaque ownership and governance arrangements amongst corporate perpetrators and beneficiaries⁵²; and complexities in terms of attributing causation and fault⁵³.

The ILO Forced Labour Protocol of 2014 hence calls on states to adopt additional measures to support due diligence by public and private actors to address forced labour⁵⁴. Recently enacted national due diligence laws seek accordingly to penalise inadequate due diligence directly or by facilitating civil actions for ensuing harms. Under France's due diligence law, for instance, a forced labour victim could in principle sue a company for harm perpetrated by controlled entities or suppliers in an established commercial relationship, where this could have been avoided by establishing or implementing a vigilance plan⁵⁵. Yet this would still require a claimant to prove the defendant's culpability, including causation and foreseeability which may be challenging given factors already mentioned. Other due diligence laws, such as Germany's, do not establish an independent basis for claims of civil liability⁵⁶. Tort claims, besides, may not always offer full or appropriate remediation for forced labour victims. They do not, for instance: identify or address root causes; seek to prevent re-victimisation; allow for involvement of stakeholders in their implementation; nor are they guaranteed to account for and compensate the grave nature or full extent

⁴⁸ I. Wintermayr and A. Weatherburn, '[Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands](#)', ILO, April 2021; FRA, [Business and Human Rights – Access to Remedy, Publications Office of the European Union](#), Luxembourg, 5 October 2020, p. 44.

⁴⁹ See discussion of the Vinci and Kik case in L. Marx, et al., '[Access to legal remedies for victims of corporate human rights abuses in third countries](#)', Policy Department for External Relations, European Parliament, PE 603.475, February 2019.

⁵⁰ S. Doherty and R. Morley, '[Promoting psychological recovery in victims of human trafficking in Malloch](#)', in: M. Malloch and P. Rigby (eds.), *Human Trafficking: the complexities of exploitation*, Edinburgh University Press, 2016, pp. 121-135.

⁵¹ L. Benton, '[Protecting Intellectual Property in global supply chains](#)', World Economic Forum, 26 December 2012; US Securities and Exchange Commission, '[Intellectual Property and Technology Risks Associated with International Business Operations](#)', CF Disclosure Guidance: Topic No.8, 19 December 2019.

⁵² R. Chambers and A. Vastardis, '[Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability](#)', *Chicago Journal of International Law*, Vol 21, No 2, 2021, pp. 323- 366.

⁵³ C. Methven O'Brien and G. Holly, '[Human Rights due diligence laws: Key considerations. Briefing on Civil Liability for Due Diligence Failures](#)', *Danish Institute for Human Rights*, 2021; N. Sheriff and C. Rosenthal, '[A Broken Partnership: How Clothing Brands Exploit Suppliers and Harm Workers – And What Can Be Done About It](#)', *NYU Stern Center for Business and Human Rights*, April 2023.

⁵⁴ ILO, [P029 - Protocol of 2014 to the Forced Labour Convention](#), 1930, 103rd ILC session, Geneva, 11 Jun 2014, Article 2(3); OHCHR, '[Recommended Principles and Guidelines on Human Rights and Human Trafficking](#)', E/2002/68/Add. 1, 2022, Principle 6.

⁵⁵ French Republic, '[Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre](#)', n° 2017-399, 27 March 2017, Article 2.

⁵⁶ German Parliament, '[Act on Corporate Due Diligence to Prevent Human Rights Violations in Supply Chains \(Lieferketten-sorgfaltspflichten-gesetz\)](#)', Federal Law Gazette, 1 January 2023.

of the harm directly and indirectly suffered by victims and dependents⁵⁷. Such limitations would also constrain the scope of remediation for victims of forced labour via any civil actions established under the foreseen EU due diligence legislation⁵⁸.

2.5 Remediating forced labour: Challenges of existing approaches

At EU level forced labour is identified as one form of labour exploitation under anti-trafficking rules⁵⁹. Hence it has generally been tackled through criminal law, and provisions on ‘particularly exploitative working conditions’ of third-country nationals who lack legal residence in the EU⁶⁰. Importantly, however, extending criminal liability via the proposed Regulation would be difficult for a variety of reasons. These include, firstly, limitation of the EU’s competence to establishing minimum rules for definition of criminal offences and sanctions concerning serious crime with a cross-border dimension⁶¹; and secondly, the lack of a harmonised approach to criminalising use of forced labour as a standalone offence in national law across Member States⁶².

In any event, tackling forced labour and securing remedies for victims primarily via criminal justice measures has significant limitations. First, this tends to restrict remedies to victims where the exploitation took place on an EU Member State’s territory. Second, criminal justice-based remedies are challenging to execute. Prosecution and conviction rates for offences linked to labour exploitation are extremely low, so that activation of associated compensation measures for victims is rare. Further, enforcing compensation claims against convicted perpetrators is hard, with monitoring bodies highlighting, for instance, the need for greater efforts to freeze and confiscate assets during early stages of criminal investigations to finance compensation awards imposed later⁶³. Third, anti-trafficking legislation addresses legal persons (Articles 5-6) that commit trafficking offences (Article 2), including incitement as well as aiding and abetting (Article 3)⁶⁴. Article 6 of the trafficking Directive requires that Member States ensure that legal persons held liable for trafficking offences are subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines. Yet, a discretionary part of the provision allowing Member States the option to impose additional sanctions⁶⁵ on legal persons has provoked criticism - only a minority of Member States have transposed all optional measures - prompting calls for mandatory sanctions for legal persons in future EU anti-trafficking laws⁶⁶. For these and other reasons, commentators have highlighted

⁵⁷ C. Methven O'Brien and G. Holly, '[Human Rights due diligence laws: Key considerations. Briefing on Civil Liability for Due Diligence Failures](#)', *Danish Institute for Human Rights*, 2021.

⁵⁸ European Commission, [Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937](#), COM/2022/71 final, 23 February 2022, Article 22; European Commission, [Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937 - General Approach](#), 2022/0051(COD), 30 November 2022.

⁵⁹ [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 April 2011.

⁶⁰ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30 June 2009;

⁶¹ European Union, [Consolidated version of the Treaty on the Functioning of the European Union](#), Official Journal of the European Union, 2008/C 115/01, 13 December 2007, Article 83(1).

⁶² A. Weatherburn, *Labour exploitation in human trafficking law*, Intersentia, Cambridge, 2021.

⁶³ GRETA, [9th General Report on GRETA's Activities](#), 2019; Myria, [Rapport annuel traite et trafic des êtres humains 2019: De la force d'action pour les victimes](#), *Centre Fédéral Migration*, 22 November 2019, pp. 68-73.

⁶⁴ 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 April 2011.

⁶⁵ The five optional measures that are optional for Member States to transpose are: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) judicial winding-up; (e) temporary or permanent closure of establishments which have been used for committing the offence.

⁶⁶ European Commission, [Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims](#), COM/2022/732 final, 19 December 2022.

the need to move beyond criminal law towards ‘a broader system of labour justice [...] to address [...] systemic root causes’⁶⁷.

Forced labour bans have been deployed in some jurisdictions in this context. In the United States of America (USA), Section 307 of the US Tariff Act 1930⁶⁸, banning products made with forced or child labour, was an early landmark. Following a petition by any party, the US Customs and Border Protection Agency is empowered to issue Withhold Release Orders (WROs), which instruct Customs Officers to prevent imports, based on ‘reasonable but not conclusive’ evidence that forced labour was used in the overseas production of the goods in question. Goods subject to a WRO may then be detained at US ports.

In addition, the 2021 US Uyghur Forced Labor Prevention Act⁶⁹ was enacted specifically to prevent ‘goods, wares, articles, and merchandise mined, produced, or manufactured’ made wholly or in part in Xinjiang, China, from entering the US market. This prohibition operates by establishing a presumption that such materials are subject to Section 307 Tariff Act 1930 discussed above; this may be rebutted only if the importer complies with specified conditions and provides ‘clear and convincing’ evidence that the materials in question were not produced using forced labour.

Neither of the US statutes banning importation of products made with forced labour just mentioned provides for remediation for victims⁷⁰. Such measures may have other challenges, besides. There is still, for instance, limited evidence on the effectiveness of import bans in reducing forced labour in supply chains⁷¹, with research pointing to the need for more consistent enforcement⁷². Even in cases where enforcement action has been taken, moreover, the use of forced labour may persist. In the Malaysia Top Glove case, for instance, civil society action, media coverage and legal proceedings eventually led to the repayment to migrant workers of recruitment fees paid to employment agents⁷³. A US WRO imposed in July 2020 was accordingly lifted six months later⁷⁴. Still, by 2021, multiple forced labour indicators continued to be observed in the company’s medical glove supply chain⁷⁵.

⁶⁷ B. Andrees, [‘Defending Rights, Securing Justice The International Labour Organization’s Work on Forced Labour’](#), *Journal of International Criminal Justice*, Vol 14, No 2, 2016, pp. 343–362.

⁶⁸ US Congress, [‘An Act To provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes’](#), 19 USC ch.4, 13 March 1930, §1307.

⁶⁹ US Congress, [‘Uyghur Forced Labor Prevention Act’](#), H.R.1155, 21 April 2021.

⁷⁰ Although the US Customs and Border Protection Agency does not specifically require remediation it will ‘modify an existing WRO or finding only if all forced labour indicators found have been remediated: I. Pietropaoli, et al., [‘Policy Brief: Effectiveness of Forced Labour Import Bans’](#), *Modern Slavery and Human Rights: Policy Evidence Centre*, 2021, p. 3.

⁷¹ I. Pietropaoli, et al., [‘Policy Brief: Effectiveness of Forced Labour Import Bans’](#), *Modern Slavery and Human Rights: Policy Evidence Centre*, 2021.

⁷² Congressional Research Service, [Section 307 and Imports Produced by Forced Labor](#), CSR Report, 26 July 2022.

⁷³ K. Schwarz, et al., [‘External policy tools to address modern slavery and forced labour’](#), Policy Department for External Relations, European Parliament, PE 653.664, April 2022, p. 6.

⁷⁴ US Customs and Border Protection, [CBP Modifies Forced Labor Finding on Top Glove Corporation Bhd](#), 9 September 2021.

⁷⁵ Anti-Slavery International, ECCHR and the Greens/EFA Group in the European Parliament, [Progressing the proposed EU Regulation on prohibiting products made with forced labour: A Model Law](#), 2022, p. 7; M. Bhutta, et al, [Forced Labour in the Malaysian Medical Gloves Supply Chain before and during the COVID-19 Pandemic: Evidence, Scale and Solutions](#), *Modern Slavery and Human Rights Policy Evidence Centre*, 2021, pp. 29-47.

3 Remediating forced labour for extra-EU victims: Legal basis

In general, post-Lisbon Treaty, the EU has a duty to integrate human rights in EU external action and trade policy⁷⁶. Article 207(1) of the Treaty of the Functioning of the European Union (TFEU) requires that development of the common commercial policy must be 'conducted in the context of the principles and objectives of the Union's external action', namely respect for and promotion of human rights⁷⁷. This provision should be read in conjunction with Article 114(1) TFEU which enables the EU to 'adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market'.

Self-evidently, economic operators or Member State authorities relying on or permitting forced labour in intra-EU production or service delivery would contravene internal market (as well as other EU legal) requirements. It is hard to see why imports into the EU should be analysed differently. As the Court of Justice of the EU affirmed, the Council is bound 'to examine, carefully and impartially, all the relevant facts in order to ensure that the production of goods for export is not conducted to the detriment of the population of the territory concerned or entails infringements of fundamental rights'⁷⁸.

Regarding remedy as articulated under the Charter for Fundamental Rights, the European Convention on Human Rights and other international instruments, it may be that a positive legal basis for a specific enforceable duty to provide remedies to extra-EU victims of forced labour on the part of the EU or Member States is lacking, and likewise as regards intra-EU economic operators. On the other hand, construed as measures with extraterritorial effects, rather than extraterritorial scope, remediation requirements linked to EU customs controls might not demand such duties as a legal foundation in any case⁷⁹.

4 Remedies in the EC Regulation: Possible measures

An EU ban on products made with forced labour should have potential to contribute to addressing gaps in remedy for victims as highlighted by the European Parliament⁸⁰ and stakeholders⁸¹. This section considers a number of measures to provide or facilitate access to remediation in the Commission's draft Regulation banning products made with forced labour from the EU market and reviews their feasibility.

⁷⁶ P. Van Elswege, ['The Nexus between the Common Commercial Policy and Human Rights'](#) in M. Hahn and G. Van de Loo (eds.), *Law and Practice of the Common Commercial Policy*, Brill, Nijhoff, 2020, pp. 416-433; E. Fahey, ['The Global reach of EU law'](#), Routledge, London, 2017.

⁷⁷ European Union, [Treaty on European Union \(Consolidated Version\)](#), Treaty of Maastricht, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, Articles 3(5) and 21; L. Bartels, ['The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects'](#), *The European Journal of International Law*, Vol 25, No 4, 2015, pp. 1071–1091.

⁷⁸ CJEU, [Front populaire pour la libération de la saquia-el-hamra et du rio de oro \(Front Polisario\) v Council of the European Union](#), Judgment of the General Court (Eighth Chamber), Case T-512/12, 10 December 2015, § 228.

⁷⁹ L. Bartels, ['The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects'](#), *The European Journal of International Law*, Vol 25, No 4, 2015, pp. 1071–1091; E. Kassoti, ['The extraterritorial applicability of the EU charter of fundamental rights: some reflections in the aftermath of the Front Polisario saga'](#), *European Journal of Legal Studies*, Vol 12, No 2, 2020, pp. 117-141; V. Moreno-Lax and C. Costello, ['The Extraterritorial Application of the EU Charter of Fundamental Rights: From Territoriality to Facticity, the Effectiveness Model'](#), in S. Peers, et al. (eds.), *The EU Charter of Fundamental Rights: A Commentary*, Hart Publishing, London, 2014, p. 657.

⁸⁰ European Parliament, [Resolution of 9 June 2022 on a new trade instrument to ban products made by forced labour \(2022/2611\(RSP\)\)](#), P9_TA(2022)0245, 9 June 2022.

⁸¹ Anti-Slavery International, ECCHR and the Greens/EFA Group in the European Parliament, ['Progressing the proposed EU Regulation on prohibiting products made with forced labour: A Model Law'](#), 2022; K. Schwarz, et al., ['External policy tools to address modern slavery and forced labour'](#), Policy Department for External Relations, European Parliament, PE 653.664, April 2022, p. 213.

While such measures could be implemented individually, they might also form an integrated package and a holistic approach would be more likely to be effective in terms of prevention, redress and deterrence.

Two general provisions should be registered before moving to this section's main discussion. First, all of the measures considered should deploy a flexible and context-sensitive approach to defining form and standards of remediation that fully involves forced labour victims. Secondly, to that end, the Regulation should incorporate explicit language affirming the right to remediation for victims in line with the various international and regional instruments identified earlier in this Briefing, and clearly identify securing the achievement of effective remediation as one of its objectives.

4.1 Remediation as a condition of lifting bans

Where a ban has been imposed, the harm to affected individuals from working conditions amounting to forced labour should be redressed. To this end, remedy requirements should be integrated into any prohibition on products within the internal market, and specifically a duty on economic operators to provide evidence that they have undertaken effective and appropriate remediation efforts should be established. Such efforts might include, *inter alia*: providing financial and non-financial compensation; restitution for victims; rehabilitation; preventative measures or guarantees of non-recurrence; and formal apologies⁸². Where products have been prohibited from the market, a ban could then be lifted where appropriate and effective remediation measures have been implemented by the economic operator, taking into account victims' characteristics and context.

4.2 Civil liability

The European Commission's proposed CSDDD⁸³ envisages a civil liability regime that would in principle apply to relevant operators implicated in forced labour outside the EU via their business relationships, where this results from due diligence failures. Given challenges for forced labour victims in accessing remediation, and that redress for forced labour via private law currently remains limited⁸⁴, it might be considered the forced labour Regulation should similarly seek to extend civil liability, beyond those businesses within the CSDDD's personal scope.

The grounds for imposing import bans under the proposed Regulation, and for a successful action in tort, are however not aligned in terms of substantive law, procedure or evidence, so that including provisions on civil liability within the Regulation would not be straightforward. Still, it might be considered whether the two instruments could nevertheless be articulated to strengthen their mutual impact. One way this might proceed is that where an economic operator was prevented from placing or making available products made with forced labour via a ban, or otherwise subject to an adverse determination under the Regulation, and where the economic operator met the criteria outlined in Article 2(1)(a) CSDDD, a presumption that due diligence duties established under the draft Directive had been breached might be raised. Yet to be impactful, this measure would also depend on additional measures to facilitate identification of complaints and effective access for victims to support in making complaints via third parties, such as domestic trade unions and CSOs⁸⁵, on victims' behalf⁸⁶ (as also foreseen, albeit regarding

⁸² Anti-Slavery International, ECCHR and the Greens/EFA Group in the European Parliament, '[Progressing the proposed EU Regulation on prohibiting products made with forced labour: A Model Law](#)', 2022, Article 16.

⁸³ European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final, 23 February 2022.

⁸⁴ US Supreme Court, '[Alien Tort Claims Act \(ATCA\)](#)', Code of Laws of the United States of America, 28 U.S.C. § 1350, 1948; J. Lauzon, '[Araya v. Nevsun resources: remedies for victims of human rights violations committed by Canadian mining companies abroad](#)', *Quebec Journal of International Law*, Vol 31, No 1, 2018, pp. 143–169.

⁸⁵ FRA, '[Business and Human Rights – Access to Remedy](#)', Publications Office of the European Union, Luxembourg, 5 October 2020, p. 39.

⁸⁶ Cour de Cassation, '[Information judiciaire portant sur les activités d'une société française pendant la guerre civile en Syrie](#)', Chambre criminelle, 7 September 2021.

statutory enforcement rather than tort proceedings, by new national due diligence laws)⁸⁷ as addressed in section 4.7 below.

4.3 Trust fund for forced labour victims

As noted earlier, international and regional legal instruments tackling forced labour and human trafficking require states to guarantee compensation for victims, with an emphasis on recuperating damages from the perpetrator in the first instance and failing this, through state-based compensation funds (see *supra* section 2.2). In line with these norms and taking inspiration from the UN Voluntary Trust Fund on Contemporary Forms of Slavery and Alliance 8.7⁸⁸, the proposed EU Regulation could establish a fund for victims of forced labour who contributed to production of a product or goods subsequently made subject to a ban from being placed or made available on the internal market. Where financial sanctions (such as administrative fines or penalties for non-compliance with orders under the Regulation) are imposed on economic operators, once recovered, these might be directed into the fund. Arrangements for partnerships or coordination between an EU forced labour trust fund and similar facilities as mentioned might also be considered. While this measure might significantly advance remediation for victims', particularly where perpetrators cannot be identified or where their financial contributions to remediation cannot be enforced, it ought also to cohere with the EU's wider emphasis on prevention via a sanctions-focused approach⁸⁹ intended to disrupt economic activities implicated in serious human rights violations.

4.4 Exclusions from public procurement and self-cleaning

Under EU procurement laws, economic operators may lose their right to participate in public tenders⁹⁰. Some grounds of exclusion of operators are mandatory, for example, relating to involvement in child labour and human trafficking, or terrorism, corruption, fraud and money laundering, and breaches of tax and social security obligations. Operators may also be excluded on discretionary grounds, including 'grave professional misconduct', misrepresentation during procurement proceedings, violations of environmental, social and labour laws, and distortion of competition⁹¹. Economic operators may, however, regain the ability to participate in public tenders by taking measures that are assessed by contracting authorities as appropriate to remedy their past misconduct, a process known as 'self-cleaning'. This entails that an economic operator (i) prove that it has paid or undertaken to pay compensation in respect of any damage caused by criminal offence or misconduct; (ii) comprehensively clarify the circumstances of its defaults via active collaboration with investigating authorities, and (iii) undertake concrete technical, organisational and personnel measures appropriate to prevent misconduct. Germany's supply chain law likewise provides for exclusion, for up to three years, from procurement procedures of enterprises that have been fined, by final and binding decisions, for having breached its statutory due diligence requirements, 'until they have proved that they have cleaned themselves'⁹².

⁸⁷ German Parliament, '[Act on Corporate Due Diligence to Prevent Human Rights Violations in Supply Chains \(Lieferketten-sorgfaltspflichten-gesetz\)](#)', Federal Law Gazette, 1 January 2023, Section 11.

⁸⁸ See OHCHR, UN Voluntary Trust Fund on Contemporary Forms of Slavery, [webpage](#) and Alliance 8.7, About, [webpage](#).

⁸⁹ Council of the EU, [Council Regulation \(EU\) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses](#), Official Journal of the European Union, L 410/1, 7 December 2020.

⁹⁰ [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance](#), OJ L 94, 28 March 2014, Art 57; C-387/19, CJEU, [RTS infra and Aannemingsbedrijf Norré-Behaegel](#), Judgment of the Court (Fourth Chamber), Case C-387/19, 14 January 2021.

⁹¹ S. Van Garssen and S. De Mars, 'Exclusion and Self-cleaning in the 2014 Public Sector Directive', in: Y. Marique and K. Wauters (eds.), *EU Directive 2014/24 on Public Procurement: a New Turn for Competition in Public Markets?*, Larcier, Brussels, 2016, pp. 121-138.

⁹² German Parliament, '[Act on Corporate Due Diligence to Prevent Human Rights Violations in Supply Chains \(Lieferketten-sorgfaltspflichten-gesetz\)](#)', Federal Law Gazette, 1 January 2023, Section 22, Exclusion from the Award of Public Contracts.

Reliance on the combination of exclusions and self-cleaning provisions by EU procurement as well as national due diligence laws suggests that such a mechanism might also be feasibly included in the proposed Regulation on forced labour. Though not all operators are exposed to the risk of loss of public contracts, for others this measure might be highly dissuasive. Given the scale of the public procurement market, accounting for 13.3 % of gross domestic product across the EU, the preventive impact might accordingly be significant⁹³.

Self-cleaning measures, in the forced labour context, might also be linked to and reinforce remediation for victims, for instance, by way of payment of compensation to victims for harm caused, refunding of recruitment fees by economic operators, active cooperation with investigating or prosecuting authorities; and compliance with independent grievance mechanisms⁹⁴. They might also address needed enhancements in capacity across the supply chain to prevent forced labour reoccurring, such as strengthening of inspection and compliance systems, establishment of whistle-blower channels; and relating to freedom of association and collective bargaining for workers. The flexibility of defining self-cleaning would align well with the need for context-specific remediation for victims, while self-cleaning requirements might be linked to indicators of forced labour risk as provided for, *inter alia*, in the ILO's 11 indicators of forced labour⁹⁵. On the other hand, it should be recognised that any extension of exclusion from public procurement and related provisions for self-cleaning would imply additional tasks for contracting authorities in Member States that may not always be equipped to fulfil them⁹⁶. Whatever approach is taken as regards linking the proposed Regulation to EU public procurements, provisions for self-cleaning under the 2014 Directive highlight that operator-level measures to evidence a re-entry into compliance with labour and other social laws may already be demanded as a condition of market access under EU law.

4.5 Debarment measures

Somewhat similarly to EU procurement law's exclusion and self-cleaning regime, multi-lateral Development Banks (MDB) operate a scheme of cross-debarment where economic operators have engaged in corrupt, fraudulent, coercive or collusive practices⁹⁷. By an agreement concluded between MDBs, common guidelines and principles are articulated for undertaking investigations of such practices while mutual recognition of debarments made by each individual institutions is also provided for: when one MDB has debarred an entity, it sends a Notice of Debarment Decision to other MDB signatories⁹⁸. Harmonised approaches are articulated concerning due process, evaluation of investigative findings and definition of sanctions to be imposed. According to the World Bank, 'cross debarment multiplies the deterrence factor of a single sanction and allows participating institutions to make the most of limited investigative resources' while cross-debarment also brings increased transparency and consistency to the sanctions process⁹⁹. In the current context, it could be considered whether economic operators under investigation or subject to adverse determinations under the proposed Regulation could be excluded from lending and procurement by relevant MDBs, such as the European Investment Bank, as well as national development banks, export and insurance agencies. Self-cleaning or other remediation requirements

⁹³ European Commission, [Public Procurement Indicators 2017](#), 4 November 2019; O. Martin-Ortega and C. Methven O'Brien, '[Advancing Respect for Labour Rights Globally through Public Procurement](#)', *Politics and Governance*, Vol 5, No 4, 2017, pp. 69-79.

⁹⁴ K. Schwarz, et al., '[External policy tools to address modern slavery and forced labour](#)', Policy Department for External Relations, European Parliament, PE 653.664, April 2022.

⁹⁵ ILO, [C029 - Forced Labour Convention, 1930 \(No. 29\)](#), 14th ILC session, Geneva, 28 June 1930.

⁹⁶ D. Sack and E. Sarter, 'To comply or to be committed? Public procurement and labour rights in global supply chains', *Global Social Policy*, Vol 22, No 3, 2022, pp. 521-539.

⁹⁷ World Bank, [Quick Brief: Cross Debarment](#), nd.

⁹⁸ AfDB, ADB, EBRD, EIB, IMF, IADB and WB, [Uniform Framework for Preventing and Combating Fraud and Corruption](#), September 2006.

⁹⁹ World Bank, [Quick Brief: Cross Debarment](#), n.d.

imposed on operators under the EU forced labour Regulation might also be notified to institutions participating in the existing MDB cross-debarment regime. Measures adopted by MDBs in the context of cross-debarment to harmonise due process and penalties may also provide valuable insights for EU Member State authorities and the Regulation's foreseen Union Network Against Forced Labour Products.

4.6 Enhanced role for the Union Network Against Forced Labour Products

Achieving redress for forced labour presents complex challenges for victims, as earlier noted. This makes it vital that victims can connect with supportive stakeholders such as CSOs, trade unions, relevant value chain or thematic initiatives, media entities and legal advisers¹⁰⁰. Otherwise, attempts to hold economic operators to account may prove unfruitful: in France's Vinci case, for example, a preliminary investigation was closed due to a shortage of identified victims¹⁰¹. Hence the proposed EU Regulation should outline a broad mandate for the Union Network Against Forced Labour Products (Art 24) to support, for example, multi-stakeholder engagement with a view to facilitating investigations and evidence-gathering of national competent authorities and, where relevant, in cooperation with third country authorities¹⁰²; assistance to economic operators lacking resources to follow up or monitor implementation of remediation measures by business partners; and information-sharing on forced labour risk metrics and remediation practice guidelines. To realise such a multi-functional role, the Union Network could build on existing engagement with stakeholders in third countries in Free Trade Agreements through establishment of domestic advisory groups and their role in monitoring compliance with international conventions¹⁰³, albeit recognising the need for stronger complaint, dispute and settlement procedures in this regard¹⁰⁴.

4.7 Complaints: Enhancing the role of competent authorities

The proposed Regulation (Article 10) provides that competent authorities must facilitate channels for the submission of information regarding violations of Article 3 which prohibits products made with forced labour from being made available on the EU market and exporting them. Submissions can be received by third parties, including stakeholders, labour unions and CSOs in third countries. The submission of information facilitates an intelligence-led approach to investigations by competent authorities in determining the presence of forced labour in global value chains. Such a mechanism may also help to mitigate the known imbalances of power and resources between economic operators and claimants in the context of civil litigation that can discourage victims from pursuing lengthy, costly and complex proceedings. Facilitating the submission of complaints to competent authorities would make it much easier to assess the impact of a product ban on the affected population, wherein further detrimental effects must be minimised and mitigated. To promote the effectiveness of this avenue for submitting complaints to the competent authorities of Member States, the Regulation should provide for two additional functions

¹⁰⁰ Anti-Slavery International, ECCHR and the Greens/EFA Group in the European Parliament, '[Progressing the proposed EU Regulation on prohibiting products made with forced labour: A Model Law](#)', 2022, Articles 22 and 26. FRA, '[Business and Human Rights – Access to Remedy](#)', Publications Office of the European Union, Luxembourg, 5 October 2020, pp. 38-39; I. Wintermayr and A. Weatherburn, '[Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands](#)', *ILO*, April 2021.

¹⁰¹ A. Marx, et al., '[Access to legal remedies for victims of corporate human rights abuses in third countries](#)', Policy Department for External Relations, European Parliament, PE 603.475, February 2019, p. 23.

¹⁰² *Ibid.*

¹⁰³ K. Schwarz, et al., '[External policy tools to address modern slavery and forced labour](#)', Policy Department for External Relations, European Parliament, PE 653.664, April 2022.

¹⁰⁴ P. Van Elsuwege, '[The Nexus between the Common Commercial Policy and Human Rights](#)' in M. Hahn and G. Van de Loor (eds.), *Law and Practice of the Common Commercial Policy*, Brill, Nijhoff, 2020, pp. 416-433.

to be undertaken by competent authorities. Firstly, when they open an investigation, competent authorities should have a duty to attempt to identify and inform potential victims, or entities acting on behalf of victims, of avenues for remedy that may be available to them. Secondly, competent authorities should monitor and evaluate remediation provided to victims in cases where forced labour has been identified.

5 Conclusion

As part of a wider group of EU measures on responsible business and investment, decent work and sustainable development, the forced labour Regulation has a potentially significant role to play¹⁰⁵. The development of an effective EU model for remediating forced labour violations for victims may have a wide impact beyond the EU: firstly, by directly facilitating appropriate and adequate remedies for victims; secondly, by imposing penalties on and exacting remedial action from economic operators active in multiple jurisdictions; and thirdly by influencing policy transfer across other jurisdictions. Based on the analysis of this Briefing, the proposed Regulation could incorporate additional measures to advance a holistic and victim-centred approach to facilitating remediation for forced labour in global value chains, which may lead in turn to a stronger and more sustainable impact of the Regulation and enhance the achievement of the EU legislator's objectives. As considered here, such a package could include: (i) requirements on operators to remediate forced labour as a condition of lifting bans on products; (ii) an EU fund for forced labour victims to support remediation; (iii) exclusions from eligibility for public procurement based on adverse determinations under the Regulation; (iv) self-cleaning procedures that depend on effective remediation for victims; (v) measures to promote linkages between adverse determinations under the forced labour Regulation to MDB debarment and cross-debarment regimes, as well as to promote harmonisation of due process and remediation standards; (vi) a Union Network against forced labour products with broad mandate; (vii) an enhanced role for competent authorities in facilitating complaints by or on behalf of victims.

¹⁰⁵ C. Jacob, et al., '[Trade-related policy options of a ban on forced labour products](#)', Policy Department for External Relations, European Parliament, PE 702.570, November 2022, p. 35.

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