

# JBCE’s initial comments on the Commission’s proposal for a Forced Labour Product Ban<sup>1</sup>

## 1. General overview of JBCE’s position on the proposal

JBCE warmly welcomes the EU’s effort to tackle forced labour, in line with its Treaties, in the context of the international community’s commitment to eradicate this scourge by 2030.

The specific objective of this proposal being the effective prohibition of the placing and making available on the EU market and the export from the EU of products made with forced labour, the important impact on economic operators should be reflected by a **high level of legal certainty** for companies to be able to **properly comply with the requirements** and to **avoid unnecessary red tape in daily business operations**.

Since **banning the products** manufactured with forced labour **does not itself solve the root-cause**, we would like to encourage the EU to:

- ❖ engage in those markets where forced labour is present by **establishing direct dialogues with the states** concerned
- ❖ **provide capacity building** for both **companies** and **competent authorities**.

Indeed, in our view, companies cannot be solely responsible for addressing the issue and the involvement of governments is essential. There should be a clear repartition of responsibilities between the **companies’ role** and the **states’ duty to protect human rights under UNGP**.

JBCE believes it is of **paramount importance for the EU**, through its Member States’ competent authorities, to **take into consideration the industry’s efforts to mitigate the risk of forced labour through its due diligence practices** before enforcing the regulation. JBCE fears that doing otherwise might lead to companies’ full disengagement from the market who rooted the forced labour. In some cases, companies have limited leverage to end forced labour in supply chains on their own.

In this regard, the EU should **avoid fragmentating the enforcement** which will be carried out by each Member State concerning other EU legislations such as Corporate Sustainability Due Diligence Directive.

## 2. JBCE’s initial concrete recommendations

### i. Increased legal certainty regarding the requirements

#### a. Additional definitions

Commission’s proposal	JBCE’s recommendations
Article 2 “Definitions”	Some additional words would benefit from being properly defined such as:

<sup>1</sup> Proposal for a Regulation on prohibiting products made with forced labour on the Union market 2022/0269 (COD)

	<ul style="list-style-type: none"> <li>▪ “Withdrawal” in Article 6.4 (b)</li> <li>▪ “Dispose” in Article 6.4 (c)</li> </ul> <p>Clarifying these terms would ensure a correct enforcement by companies and a level playing field.</p>
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b. Article 23: Guidelines

Commission’s proposal	JBCE’s recommendations
<p><b>Article 23:</b></p> <p><i>“The Commission shall issue guidelines no later than 18 months after the entry into force of this Regulation, which shall include the following [...]”</i></p>	<p>If the guidelines are to be published no later than 18 months after the entry into force of the Regulation, companies will only have the guidelines at the latest 6 months before the application date. However, this would not be sufficient for the companies.</p> <p><b>We suggest that the guidelines should be issued no later than 6 months after the entry into force of this Regulation.</b></p> <p>Also, JBCE believes that a different approach needs to be taken to state-sponsored forced labour and specific guidance is needed on how to deal with these situations. Additional guidance in areas prevalent to conflict should be considered also.</p>

Justification: The guidelines should be published at least a year, and ideally 18 months, before the application of this Regulation as companies need the guidance to properly address the issues identified in the Regulation.

ii. Coherence with the Corporate Sustainability Due Diligence Directive (CSDDD)

c. Decisions of competent authorities

Commission’s proposal	JBCE’s recommendations
<p><b>Article 6.5 a, b and c</b></p> <p><i>“5. Where an economic operator has failed to comply with the decision referred to in paragraph 4, the competent authorities shall ensure all of the following:</i></p> <p><i>(a) that it is prohibited to place or make available the products concerned on the market;</i></p> <p><i>(b) that the products already placed or made available on the market are withdrawn from the Union market;</i></p> <p><i>(c) that any product remaining with the economic operator concerned is disposed of in accordance with national law consistent with Union law at the expense of the economic operator”</i></p>	<ul style="list-style-type: none"> <li>▪ (b): Withdrawal action should not have an immediate effect, allow <b>at least a year</b> to improve the situation through corrective action plans.</li> <li>▪ A <b>different approach needs to be taken to state-sponsored forced labour and/or forced labour within conflict zones</b> and specific guidance is needed on how to deal with these situations.</li> <li>▪ There should be a specific <b>measure to encourage recycling</b> of withdrawn/non-compliant products. Such a measure could avoid full product disposal.</li> <li>▪ <b>Product disposal should be avoided</b> considering the cost and unfairness for other components which are not using forced labour.</li> </ul>

Justification: According to JBCE, these requirements are in contradiction with the requirements discussed under the CSDDD. Indeed, they do not contribute to the improvement of working conditions but might lead to the full disengagement from certain markets, where forced labour is persistently existing. Product bans risk *de facto* cutting European businesses out of the global supply chains without improving the of working conditions or consideration of the actual sourcing dependencies.

In addition, experiences show that in conflict areas, it is extremely difficult for companies to reach out and obtain valid information.

d. Respect of the companies' risk-based approach

Commission's proposal	JBCE's recommendations
n/a	<p>The proposed Regulation needs to clearly mention that <b>competent authorities' decisions should respect the companies' risk-based approach in the due diligence practice.</b></p> <p>Companies should be <b>strongly supported in their conduct of due diligence</b> and their <b>actions to mitigate/prevent identified salient human rights risks</b> as it is stated in United Nations Guiding Principles on Business and Human Rights <b>need to be taken into consideration.</b></p>

Justification: Recognising risk-based approach will encourage companies to work for improved outcomes for people. Remedy is an important dimension of human rights due diligence. The Regulation should further recognise companies' responsibilities to remediate impacts and harm caused, rather than encouraging disengagement.

e. Timing of applicability of the proposed Regulation

Commission's proposal	JBCE's recommendations
<p><b>Article 31:</b> <i>"This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.</i></p> <p><i>This Regulation shall apply from [OP enter DATE = 24 months from its entry into force].</i></p> <p><i>This Regulation shall be binding in its entirety and directly applicable in all Member States."</i></p>	<p>The Regulation should align its application date to the entry into force/application date of the CSDDD which should not be posterior.</p>

iii. Proportionate requirements for companies

f. Preliminary phase of investigations & investigations

Commission's proposal	JBCE's recommendations
<b>Article 4.4</b>	We propose to <b>slightly increase the time limit to</b>

<p><i>“Economic operators shall respond to the request of the competent authority referred to in paragraph 3 within 15 working days from the day they received such request. Economic operators may provide to competent authorities any other information they may deem useful for the purposes of this Article.”</i></p>	<p><b>“30 working days from the day they received such request”</b>, instead of 15 working days, for economic operators to respond to the request of the competent authority referred to in Article 4.3.</p>
<p><b>Article 5.4</b></p> <p><i>“Economic operators shall submit the information within 15 working days from the request referred to in paragraph 3 or make a justified request for an extension of that time limit.”</i></p>	<p>We propose to <b>slightly increase the time limit to “30 working days from the request”</b>, instead of 15 working days, for economic operators to respond to the request of the competent authority referred to in Article 5.3.</p>

Justification: Slightly increasing the time limit will allow companies to properly react to the request from the competence authorities.

Also, “30 days” is the period adopted by the USA’s tariff Act of 1930, the Uyghur Forced Labour Prevention Act adopted “90 days” and considering the number of economic operators which operate across the globe, these alignments are very much necessary.

g. Decisions of competent authorities

Commission’s proposal	JBCE’s recommendations
<p><b>Article 6.1</b></p> <p><i>“Competent authorities shall assess all information and evidence gathered pursuant to Articles 4 and 5 and, on that basis, establish whether Article 3 has been violated, within a reasonable period of time from the date they initiated the investigation pursuant to Article 5(1)”</i></p>	<p>The competent authorities should <b>acknowledge the complexity of supply chains</b> when making decisions.</p>

In some cases, companies have limited leverage to end forced labour in supply chains on their own.

For example, if a material is critical to the performance of a product, but a company - or even industry – is not the main buyer of this material, its leverage to influence suppliers will be extremely limited. However, it will face very strict requirements not to place the final product on the market.

h. Avoid a fragmented enforcement

Commission’s proposal	JBCE’s recommendations
<p><b>Article 23</b></p> <p><i>“The Commission shall issue guidelines no later than 18 months after the entry into force of this Regulation, which shall include the following: [...]”</i></p> <p><i>(d) further information to facilitate the competent authorities’ implementation of this Regulation.”</i></p>	<p>JBCE strongly advocates for <b>detailed and timely Guidelines</b> to provide support to <b>Member State enforcement authorities</b> to <b>avoid a fragmented approach across the EU</b> which would lead to <b>legal uncertainty for the companies</b>.</p>

Justification: Same standards of enforcement should be in place for all Member States for the risk of fragmentation to be avoided. It is therefore necessary to provide national enforcement authorities with clear guidelines to enforce the proposed regulation.

A harmonised approach across the EU is crucial when it comes for instance to the criteria leading to the launch of an investigation ([Article 5.1](#)), information available to customs authorities ([Article 16.1](#)) or to the penalties to be imposed ([Article 12.6](#)). JBCE would also like to highlight here that these penalties need to be reasonable and proportionate to the size of the relevant business.

## **ABOUT JBCE**

Founded in 1999, the Japan Business Council in Europe (JBCE) is a leading European organization representing the interests of over 90 multinational companies of Japanese parentage active in Europe.

JBCE's members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, textiles and glass products.

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