

# EU proposal for Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market

## Eurometaux feedback

Eurometaux believes the European Commission’s proposal for an EU Regulation to **address products linked to forced labour originating in both EU and non-EU countries and prevent them from entering the EU internal market** is an important milestone to strengthen sustainable and responsible sourcing of minerals and metals throughout global value chains.

In this regard, our sector calls for a coherent and practical system, which ensures a **level playing field** for European companies while avoiding excessive burdens, which, we believe should also apply to all EU due-diligence frameworks, including the future EU instrument to ban forced labour products.

### Our key recommendations:

- **Ensure a harmonised approach** – overlapping regulation will create unnecessary confusion and bureaucracy.

Ensuring a **harmonised approach** with other pieces of legislation containing due diligence requirements that affect the minerals sector (e.g. EU Responsible Minerals Regulation, the proposed Battery Regulation and other upcoming product-specific legislation with due diligence requirements, the proposal for the Corporate Sustainability Due Diligence Directive and the Corporate Sustainability Reporting Directive) will be a fundamental act that will improve the capacity of the European legal system. In terms of the due-diligence frameworks, our sector is highly regulated. In view of this, a harmonization of the additional instrument with already existing legislation that contains due-diligence requirements is an essential element to creating a robust and well-functioning regulation. This has also many more connections to our sector, especially concerning the recognition and approval in the law of existing standards and schemes. Existing due diligence approaches, schemes and programs in the metals sector such as the Copper Mark ESG Assessment Framework, which was used as the blueprint for other Assessments (such as Zinc, Nickel and Molybdenum, that are now in their pilot phase and ready to be launched next year) and for which Forced Labour stands as Point N.6, the Responsible Jewellery Council, Cobalt Industry’s Responsible Assessment Framework (CIRAF), LBMA, Responsible Gold Mining Principles, Responsible Minerals Initiative, ITA Code of Conduct and ITSCI, Metal Alliance for Responsible Sourcing (Mars), Aluminium Stewardship Initiative and Responsible Steel should remain the basis of any effort towards increased transparency in the area of responsible sourcing. Eurometaux and its’ Members, therefore, commend the efforts poured by the European Commission to make this harmonisation process a valuable solution, as quoted in the Recitals of the proposal (e.g. Rec. 23 page 16: “[...] competent authorities designated under this Regulation should request information from other relevant authorities, where necessary, on whether economic operators under assessment are subject to and carry out due diligence in relation to forced labour in accordance with applicable Union legislation or Member States legislation setting out due diligence and



transparency requirements with respect to forced labour”). However, Eurometaux also recommends further considering and explaining how different pieces of legislation are going to intertwine and subsequently fit together in practice, given the different natures of legislations themselves (e.g., how Corporate Sustainability Due Diligence, in the form of a Directive, is going to be adapted to a Regulation, such as the Forced Labour Product Ban).

- Eurometaux appreciates the reference made in Art. 9, page 14 of the legislative text, in which it is explained that commodities and companies extracting minerals should respect the same obligations falling under the 2017 Regulation on Conflict Minerals, as well as the ones that are foreseen in its revised version. However, since no specific address was given when defining the goods that will be banned in case of breaching of rules, Eurometaux suggests **increasing the clarity of the scope** by listing the main differences in categories and the specific products that can be subject to the ban, as well as avoiding many different and fragmented frameworks of disclosure requirements under this legislation and the Corporate Sustainability Reporting Directive, amending Art. 16 of the proposal to foresee alignment with the CSRD reporting standards.
- Avoid disengagement of the EU companies from suppliers in high-risk areas or prohibition for investing in those areas affected by conflicts (e.g. the Democratic Republic of Congo); a practice that can impact the EU's security of supply of critical minerals.
  - The proposal should be included in **a broader framework** that addresses products made with forced labour and the economic operators concerned in order to identify the root causes that can generate forced labour (i.e. conflict, poverty, worker representation, discrimination, etc.). This would also include a request for further guidance on how engagement by companies in **collaborative initiatives** to tackle the root causes of forced labour is taken into account by competent authorities when investigating a concern of a violation and reaching a final decision.
  - The proposal should take into account **other legislations** and import bans on products made with forced labour from like-minded countries such as the US, Canada, and Australia and favour an alignment regarding certain aspects of these legislations without necessarily copying them.
- **Avoid unintended consequences** – if the EU wants to have open strategic autonomy, it should be cautious to avoid designing a ban that could potentially have other unintended consequences.
  - It is important for both responsible sourcing and Europe's strategic autonomy that European companies – operating to high standards – invest in global mine capacity, some of which will exist in conflict-affected and high-risk areas (e.g. the Democratic Republic of Congo). Barriers for European companies could have the unintended consequence of simply facilitating investment from countries with lower standards and different geopolitical interests, worsening the situation at the mine sites and for Europe.
  - If a product is found to be in violation of Article 3, reasonable time should be given to the company to mitigate or remedy the impact before the product is banned. This would avoid “cut and run” companies, that are not caught by the trade ban, filling supply gaps with lower standards, which could result in the same situation, or worse.
- **Additional information requirements** – there are some elements of the proposal that would need to be clarified for businesses.



- It is important that **further clarity is provided on what constitutes “forced child labour”**. The proposal defines ‘forced labour’ as “forced or compulsory labour as defined in Article 2 of the Convention on Forced Labour, 1930 (No. 29) of the International Labour Organization, including forced child labour”. Forced labour of children is one of the worst forms of child labour. However, children can be in child labour without being in forced labour. Specific reference should be made to the ‘ILO Toolkit on Developing National Action Plans on Forced Labour Tool No.2 (pp.6-8)’, which makes the distinction between forced labour and child labour, thereby providing clarity on the elements that would constitute “forced child labour”.
  - More detail is required around **who bears the cost of storage, operational disruption etc.** in instances where competent authorities cannot establish that Article 3 of the proposal has been violated by an economic operator.
- More guidance should be provided to enterprises on the **differences and expectations around incidents of state-imposed forced labour**, and forced labour imposed by the private enterprises or by individuals. The proposal should take into account **other legislations** and import bans on products made with forced labour from like-minded countries such as the US, Canada, and Australia and favour an alignment regarding certain aspects of these legislations without copying them. Eurometaux also recommends to make sure that rules are respected in every jurisdiction, therefore crafting a law with cross-regional inspiration. In fact, as our sector operates in global supply chains, the exchange of good practices and the uptake of good elements deriving from this law in every jurisdiction are, in our opinion, key enablers of the worldwide effectiveness of this legislation.

