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SUMMARY

Fortum's comments on the Forced Labour Ban regulation

Fortum supports the objectives of the proposal for a regulation on prohibiting products made with forced labour on the Union market. It is important that risks of forced labour in businesses' operations and supply chains are addressed. There are some uncertainties about the impacts of the proposal on companies and on the functionality of the provisions, that should be clarified.

The legal certainty of companies must be ensured and the administrative burden should be kept on a justified and reasonable level. Fortum supports the risk-based approach in the proposal. We also support that companies' due diligence actions are taken into account when assessing the need to initiate an investigation.

It is important that the authorities have the burden of proof as to whether forced labour has taken place. In this regard, art. 6.2, that would allow national authorities to conclude for a violation on the basis of any other facts available where it was not possible to gather information and evidence, could be problematic.

The proposal does not sufficiently open up what kind of evidence the finding of forced labour must be based on. Being subject to an actual investigation is based on strong suspicion and the required evidence is not opened in more detail in the articles concerning the actual investigation either. It is essential that the final results of the investigation are based on objective and verifiable evidence from the supply chain of the product in question.

From the point of view of legal certainty for companies, Fortum considers Article 8 (review of decision) very important. Companies must be able to request a review of decisions. We also find important that the decision of the competent authorities is not communicated to the customs authorities before the review has been done.

Fortum also supports that a wide range of companies are included in the scope of the proposal. The responsibilities of different companies in the value chain should however be clarified. Penalties should be limited to situations where the company causes possible harmful effects.

Fortum sees that the database in article 11 will give useful information and support for the implementation of the regulation. The role of the database and the connection between the database and the burden of proof is not clear though.

There might be situations where in the production of identical products, or even the same product, different sub-suppliers have been used. This can lead to a situation where forced labour might have been used in one supply chain of a product, but not in another with the same end-product name and identification. The decisions by competent authorities must therefore be specific enough and include the right level of detail.

Fortum questions that anyone could provide information that triggers a preliminary phase of investigation and that all submissions lead to a preliminary phase of

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investigation (art. 4 paragraph 1a and art. 10). It should be considered that there might also be submissions that are not appropriate or valid.

Article 4 is not clear on whether a preliminary phase of investigation always includes an information request from the economic operator. There should be the possibility for the competent authority to conclude that a preliminary phase of investigation is not needed or conclude in the preliminary phase of investigation that there is no substantiated concern of a violation of Article 3, without requesting information from the economic operator.

Fortum supports the proposal to established a Union Network Against Forced Labour Products.

The proposal generally includes tight deadlines, for example for the information requests. These should be re-evaluated.

Enough time is needed after the entry into force before the regulation applies. In this regard, the commission guidelines are useful, but the guidelines should be received in sufficient time, preferably already 12 months after the entry into force.

For additional information:

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