

President of the European Commission, Ms. Ursula von der Leyen
Executive Vice-President and European Commissioner for Trade, Mr. Valdis Dombrovskis
European Commissioner for Justice, Mr. Didier Reynders
European Commissioner for Internal Market, Mr. Thierry Breton.

09 November 2021

Your excellencies,

We, members and endorsers of the Coalition to End Forced Labour in the Uyghur Region¹, comprising over 400 civil society organisations and trade unions, as well as other individual organisations, are writing to you as officials involved in the European Union's (EU) Sustainable Corporate Governance Initiative to urge you to make sure the upcoming proposal contains robust and comprehensive provisions. In addition, we emphasise that this initiative must be complemented by additional policy approaches such as an import control mechanism and the use of sanctions regimes. Only by incorporating the highest ambitions and international standards in each of these initiatives will these be fit to address the egregious human rights abuses against people from the Uyghur Region in China.

The government of China is perpetrating mass human rights abuses against Uyghurs and other Turkic and Muslim-majority peoples in the Xinjiang Uyghur Autonomous Region (Uyghur Region) in Western China. These abuses include mass surveillance, arbitrary detention, rape, torture, political "re-education," forced sterilisations, and forced labour. A minimum estimated 1 million to 1.8 million Uyghurs and other Turkic and Muslim-majority peoples are held in mass arbitrary detention; Uyghurs are forced to work in factories in the Uyghur Region and across China that produce goods sold all over the world. Up to 20% of all cotton-based products, and up to 97% of all polysilicon-based solar panels around the world are at high risk of being tainted with Uyghur forced labour.

As the EU is China's biggest trading partner, European businesses and consumers in particular are exposed to - and at times complicit in - these human rights abuses. The European Parliament has expressed its concern over these systematic human rights violations in multiple resolutions², and has called on the Commission to adopt relevant legislative proposals on mandatory human rights and environmental supply chain due diligence legislation combined with a prohibition of placing the relevant goods on the EU market.

As the institution responsible for these initiatives, the European Commission now finds itself in a critical position to reshape the way in which companies in and outside Europe do business. In today's globalised economies, companies can no longer hide behind empty sustainability policies or statements, but must be bound to actively identify, mitigate, prevent, and remedy environmental or human rights abuses, and be held accountable if they fail to do so. Such standards are well-established in international frameworks.³ The importance of

¹ <https://enduyghurforcedlabour.org/>

² Most notably: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0375_EN.html;

³ https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf;
<http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

incorporating these into the upcoming due diligence legislation has also been noted by the Office of the UN High Commissioner for Human Rights (OHCHR) in its July 2021 recommendations to the European Commission.⁴

The Coalition to End Forced Labour in the Uyghur Region therefore calls upon the European Commission and other responsible institutions to ensure the inclusion of the following provisions in the future EU Human Rights and Environmental Due Diligence and Corporate Accountability legislation:

- 1) **Company scope:** The proposed legislation should apply to business enterprises, both public and private, including financial institutions, of *all* sizes and across all sectors, domiciled or based in, operating, or offering a product or service, within the EU.⁵ Companies of all sizes have been implicated in allegedly having Uyghur forced labour in their supply chains, operating in the textile, apparel, solar panel, food, technology, and hair and beauty industries, amongst others.
- 2) **Scope of due diligence obligation:** The due diligence obligation must encompass the entire value chain, both upstream and downstream. Full coverage is fundamental for the law to have any meaningful impact on Uyghur forced labour. The risk of Uyghur forced labour in the apparel and solar industries exemplifies this need - in both sectors, the risk of linkage to Uyghur forced labour sits across numerous supply chain tiers, in particular at raw material or material-processing levels.
- 3) **Transparency of supply chain requirements** Companies must be required to map and publicly disclose subsidiaries, suppliers, sub-suppliers and business partners in their whole value chains. Mapping of supply chains is a prerequisite step for companies to identify the risk of Uyghur forced labour in their supply chains - for example, to identify the sourcing practices of sub-suppliers. Several European companies have been urgently advancing mapping of supply chains in response to Uyghur forced labour risks - this work should be harmonised across industries and companies through a legal obligation. This information must be disclosed for enforcement and accountability purposes.
- 4) **Disengagement:** The proposed legislation must adequately account for situations where risk mitigation is not possible and disengagement becomes the only option and is necessary. Given the scale of the repression and the level of state control in the Uyghur Region, it is impossible for companies to operate in the Uyghur Region in accordance with the UN Guiding Principles on Business and Human Rights. We call on companies to immediately disengage from business relationships if - following their supply chain mapping through the HREDD process - they identify links with suppliers, sub-suppliers and/or business partners in the Uyghur Region. The future legislation must make it clear that, as per the OECD Guidelines, companies must also be ready for disengagement.

https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf

⁴ <https://www.ohchr.org/Documents/Issues/Business/ohchr-recommendations-to-ec-on-mhrdd.pdf>

⁵ While the responsibility to respect human rights applies fully and equally to all business enterprises, regardless of their size, international standards recognize that 'the means through which a business enterprise meets its responsibility to respect human rights will be proportional'. See https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

- 5) **Stakeholder engagement:** The due diligence obligation must require companies to engage with (potentially) affected stakeholders in all stages of the due diligence process. Where on-the-ground engagement is credibly unfeasible, for example due to severe limitations on freedoms and security risks in particular regions or on particular groups of workers, companies should ensure that the views of local stakeholders are meaningfully captured through credible representatives and consultations with experts. This is extremely pertinent for Uyghur forced labour, both in the Uyghur Region and as regards Uyghurs transported to other regions in China, where engagement with affected stakeholders on the ground is impossible, and companies must engage with global Uyghur groups to assess the risks posed to the Uyghur population in China.
- 6) **Liability and access to justice:** The proposed legislation should contain a liability regime, ensuring that human rights violations in an undertaking's value chain give rise to civil, administrative and criminal liability before European courts. This should include a rebuttable presumption where the burden of proof lies with an undertaking to prove that it is not, or has not been, involved in a human rights abuse. This process should further ensure effective access to remedies without fear of retaliation, reflecting Point 5 on stakeholder engagement.

In addition, while the Sustainable Corporate Governance Initiative sets out a company duty, the primary duty to protect human rights lies with States. The EU and its Member States therefore have a responsibility of their own to address Uyghur forced labour. It must thus be stressed that the upcoming due diligence legislation and the other mechanisms at the disposal of, or to be proposed by the EU, are not interchangeable but complementary and mutually reinforcing. Therefore, we urge the European Commission and other responsible institutions to introduce the following supplementary measures, to work in tandem with the Sustainable Corporate Governance Initiative:

- 7) **Import Control Mechanism:** As the most important complementary tool to the future corporate due diligence obligation, the EU should introduce import controls to block or seize the imports of goods made or transported in whole or in part with forced labour, including forced labour of children. In her State of the Union Address⁶, President von der Leyen announced that the European Commission “*will propose a ban on products in our market that have been made by forced labour.*” We welcome this announcement as we believe that such a mechanism would be particularly relevant to address Uyghur forced labour.⁷ Carrying out an appropriate due diligence process on the ground in the Uyghur region is impossible which is why complementary measures such as import controls are necessary. This should include the option to apply import controls against specific entities, both manufacturers or importers of goods, and at a regional level, i.e. comparable to the US Withhold Release Order on cotton-based products from the Uyghur Region. Furthermore, such measures would also serve as an appropriate enforcement measure - additional to those attached to the future due diligence legislation - to compel non-EU companies importing to the EU market to end links with Uyghur forced labour.

⁶ https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_4701

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<https://enduyghurforcedlabour.org/news/coalition-statement-on-european-commissions-proposed-ban-on-products-made-with-forced-labour/>

- 8) **Uyghur-specific guidelines or country fact sheet:** As an immediate step in anticipation of pending legislative processes, we urge the EU to introduce guidance to EU companies on the risks of operating in or sourcing from the Uyghur Region, and the recommended steps in response. Such guidance has been published by the US, UK, Canada and would represent a complementary tool to the “Guidance on Due Diligence for EU businesses to address the risk of forced labour in their operations and supply chains” published by the European Commission and EEAS in July 2021⁸.
- 9) **Additional listings under the EU’s sanctions regime:** Reflecting the deliberations of the March 2021 decision of the European Union to sanction four Chinese individuals and the Xinjiang Production and Construction Corps (XPCC), additional Chinese individuals and/or entities involved in the rights abuses in the Uyghur Region should be listed under the EU’s Global Human Rights Sanctions Regime.
- 10) **Disclosure of EU customs data:** To facilitate the identification and monitoring of the importation of products made in whole or in part by, or transported, with forced labour, it is crucial to ensure improved public access to customs data. This is why the Union Customs Code must be amended to clarify that customs data is not confidential and can be disclosed publicly.

The European Commission holds an important opportunity to address human rights abuses in international value chains and ensure products made with Uyghur forced labour can no longer enter the EU market. We call on you to take into consideration our recommendations and build ambitious and comprehensive policy and regulatory initiatives on Sustainable Corporate Governance, import controls and other mechanisms.

We are available for meetings to discuss this matter and will gladly respond to potential requests for additional information.

Sincerely,

Coalition to End Forced Labour in the Uyghur Region - Steering Committee

**End Uyghur
Forced Labour**

European Center for Constitutional and Human Rights (ECCHR)

ECCHR EUROPEAN CENTER
FOR CONSTITUTIONAL
AND HUMAN RIGHTS

⁸ https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc_159709.pdf

European Coalition for Corporate Justice (ECCJ)



Unrepresented Nations and Peoples Organization (UNPO)

