



Red lines to the Regulation
on “prohibiting products made with forced labour on the Union market”
(COM(2022) 453)

As the negotiations on the content of the legislation advance, and in order to ensure that the European Commission proposal fulfils its best potential, we, the undersigned Civil Society Organisations, Coalitions and Trade Unions, believe that the below elements are essential to make the proposed regulation efficient, implementable and above all, impactful to address forced labour meaningfully.

Indeed, the changes below are crucial to create the sufficient leverage to both foster better working conditions for all and to improve the lives of workers trapped in situations of forced labour by providing them with adequate remedies.

Thus, we consider the elements below as fundamental:

- The inclusion of **remedies for all workers** (both EU and non-EU based) trapped in forced labour must be a crucial point of the legislation. The provision of remedy - including compensation and back wages - should be a prerequisite to the lifting of a ban in particular (Art 6.6). These remedies should be defined through meaningful **stakeholder engagement and ideally include the victims themselves when and wherever possible**.
- **All complainants should be protected**, whether or not they are based in the EU and thus under the scope of the Whistleblower directive. This implies that **all complainant’s information should be treated as confidential** (Art. 10.3 and Art. 25).
- To be implementable, the proposed legislation should foresee appropriate **lower evidentiary standards** to initiate the investigation and to adopt a decision. The available sanctions should, similarly, be adapted as appropriate. For example, the US Customs and Border Protection authorities¹ use “reasonable but not conclusive” as the evidentiary standard to

¹ <https://www.cbp.gov/sites/default/files/assets/documents/2016-Aug/Fact%20Sheet%20-%20Forced%20Labor%20Procedures.pdf>

issue a “Withhold Release Order” that allows the re-exportation of goods subject to the order, but uses the “conclusive evidence, i.e., probable cause that the goods were made with forced labour” to issue a final decision (called “forced labour finding”) which then allows authorities to seize the goods, as currently foreseen in the European Commission proposal.

- Avoid that due diligence measures reported by companies could be used **as a defence against the opening of a full investigation**. In particular, social audits and certifications cannot be deemed sufficient defence to ward off an investigation.
- The **European Commission should be designated as a competent authority** (art. 12), to be able to conduct politically sensitive investigations (such as ones linked to state-imposed forced labour (SIFL)) or to contribute to the investigation process when appropriate and, in particular, when investigating in third countries is required.
- **The Regulation should establish a rebuttable presumption of forced labour on specific product groups** (like all cotton or all tomatoes) from specified countries or regions (such as Turkmenistan or the Uyghur Region) that would lead to a ban of these specific product groups.
- **Bringing to an end the use of forced labour shall not mean disengagement with the economic operator except as a measure of last resort**. With the exception of situations of state-imposed forced labour where remediation by an economic operator is rendered impossible, the obligation to eliminate forced labour cannot be fulfilled by simply disengaging from their operators (art. 2 and art. 6).

Other significant elements are the following:

- The definition of a product made with forced labour should include **working or processing at any stage of its supply chain** including extraction, harvest, production, manufacture, packaging, distribution and **transport** (Art 2.g).
- The pre-investigation and investigation should also be **extended to cover the buyer(s) purchasing from the manufacturer(s)** employing the workers alleging forced labour (**Art 4 and Art 5**).
- When a final decision is made on goods being made partly or in whole with forced labour and thus banned, that decision **should be extended to all products from the same production site(s) in that country or group of production sites in that country at minimum**.
- The **complaint process should be centralised at the EU level, accessible and available in different languages** to ensure complainants can access it easily (Art. 10.1a).
- Competent authorities must be able **not to inform the economic operator** during the pre-investigation phase, **when it represents a negative risk to the investigation**.
- **Specific regions where a presumption of state imposed forced labour** has been established should be listed as such in the database.
- **The penalties should be aligned at EU level** (Art. 30.1) and shall take the form of **finances and its amount** shall be effective, proportionate and dissuasive (Art. 30.2). Fines could contribute to the creation of a victims’ compensation fund (Art. 30.2). Any penalties to economic operators shall be non-transferable (recital 29).
- **Standards of decisions should be aligned** based on binding instructions by the EC to avoid discrepancies in the decisions made by individual member States and forum shopping opportunities (Art. 14).
- We would caution **against the inclusion of hazardous forms² of child labour** within the regulation as:
 - Child labour is a complex problem of great international scale; addressing it requires consideration of the root causes and systemic nature of child labour and how these can be addressed or exacerbated by international efforts. Forced

² ILO definition includes any activity or work by children that is likely to harm their health, safety or morals

- labour bans being extended to child labour could cause further economic devastation making the problem worse.
- Though the ILO proposes a non-exhaustive list of hazardous work³, it is not mandatory and ILO member States have the possibility to adapt it to their national circumstances. As a result, there is no uniform understanding about what hazardous labour includes, and the definition can be different depending on sector and location (e.g., cotton harvesting can be considered hazardous in one context and not in another). Should hazardous forms of child labour be included, this would render the enforcement of the regulation impossible.
 - To avoid a race to the bottom on enforcement, Member States should be required to **publish annually aggregated information** on the implementation and enforcement of the Regulation (PECH am 67, Article 30a(1)).

Signatories:

AK EUROPA
Anti-slavery International
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Clean Clothes Campaign Europe
European Center for Constitutional and Human Rights
European Trade Union Confederation
Fair Trade Advocacy Office
Fashion Revolution
GoodWeave International
Human Rights Watch
IndustriAll European Trade Union
La Strada International
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Terre des Hommes International Federation
The Remedy Project
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³ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf from page 229 on