

To the attention of the DEVE committee

Civil society input on the proposed REGULATION ON PROHIBITING PRODUCTS MADE WITH FORCED LABOUR ON THE UNION MARKET

Undersigned civil society organisations welcome the opportunity provided by the DEVE committee to provide input on the European Commission's (Commission) legislative [proposal](#) for a Regulation on prohibiting products made with forced labour on the Union market and exporting products made with forced labour within the EU.

According to the ILO's [2021 Global Estimates](#), modern slavery is on the rise. Thus, the world needs urgent, meaningful action and laws to tackle the exploitation of workers around the world.

We believe that the Commission proposal is an essential step toward building a smart mix of tools to help eliminate forced labour, including forced child labour, across the world, as per EU commitments. We welcome in particular the wide scope of the proposal, in that it covers all products from all regions and all company sizes, big and small.

However, **the Commission's proposal fails the 17.3 million people in forced labour in the private sector and the 3.9 million people in state-imposed forced labour.** The proposal falls significantly short of its potential, in particular as it fails to put workers at its heart. We therefore call upon the DEVE committee to improve the proposal where it is missing its purpose, whilst building on its key positive elements. Below are our key concerns and initial recommendations on how to effectively address them.

Additionally, we would also recommend the DEVE committee to proactively reach out to a variety of affected stakeholders in forced labour such as children, women, migrant workers, etc., both from within the EU and beyond, to seek their perspectives on the file.

Remedy, remedy and remedy

It is essential that the **proposal is amended to focus on ensuring that all workers**, regardless of their age, racial or ethnic origin, caste, religion or belief, disability, nationality, migration and residence status, gender and sexual orientation **receive remediation as an integral component of the legislation and that relevant entities in the supply chain cooperate to provide and/or support such remediation.** In particular article 6.6 on the procedure of withdrawal of a ban should be thus amended, **whereby proof of effective remediation for workers victims of forced labour would be added as a condition for the withdrawal of the ban.** In all cases, remediation must be adapted to the specific context and condition of the rightsholder.

This would both ensure that further occurrences of forced labour are prevented, but also that the victims of forced labour are able to receive compensation for the unpaid work they performed under previous exploitation, get reimbursed for recruitment fees and related costs they were asked to pay and thus help them break free from debt-bondage, or minimise its risks.

Correcting the role of Due Diligence

While we welcome the attention paid to due diligence measures undertaken by companies under investigation as a key element to prevent irresponsible disengagement, we underscore that **due diligence should not be used as a shield against the opening of an investigation**. Crucially, the **pre-investigation must focus only on the determination of whether there is a substantiated concern of forced labour**. However, the effectiveness and quality of due diligence could be considered in the investigation stage in that it, among other things, allows for companies to prove timely and adequate remediation (or support for remediation) has been meaningfully provided and measures have been introduced to prevent recurrence of forced labour, *prior* to any sanctioning decision. This would prevent, in cases where economic actors are already taking appropriate measures to meaningfully address the indicators of forced labour, that such processes be disrupted and workers' right to collective bargaining be undermined. At the same time, it may equally lead to an improved formulation and implementation of these appropriate measures in terms of effectiveness. Finally, the investigation phase should include forced child labour monitoring mechanisms, including child-oriented protocols for inspections and follow up.

The procedure itself and the sanction

Additionally, it is regrettable that, currently, the proposal foresees only one ultimate sanction: the prohibition to place these products on the market, coupled with an obligation to dispose of existing products. **Such a decision relies on an excessively high evidentiary standard with the burden of proof being placed entirely on the Member State competent authority**. This also means that, for the whole duration of the investigation, products will continue to be freely available on the market and can be readily rerouted to other markets, thereby depriving the Regulation of its effectiveness and essence. **As such, we recommend co-legislators to lower the evidentiary standard and impose a suspension period to products' market circulation until a final decision on the product is made and to seek ethical alternatives to the wasteful destruction of goods**. Furthermore, in framing its decision to sanction economic operators the authorities should take into account the imbalances of power in and around global supply chains and the proposal should clarify that any penalties to economic operators are non-transferable

Due diligence as a support

The proposal also fails to address the root causes of forced labour. **A set of accompanying measures would be required to support workers, trade unions, civil society, human rights defenders, small and medium enterprises, smallholders and local communities - wherever forced labour occurs**. This could include, among others, capacity strengthening and funding to support communities and workers to address the root causes of abuses such as discrimination, power imbalances, unfair purchasing practices and production delays, lack of livelihood opportunities, the absence of a living wage, land rights, etc. These measures, to be considered as part of the due diligence process, would empower affected workers and stakeholders to better understand and claim their rights and restore their own agency.

In proving the provision of remedy and preventative measures, companies thus should not rely on code of conducts, social audits, and other contractual clauses. Taken alone, these have already been proven wholly ineffective to meaningfully address forced labour in companies' value chains. We note that Article 4(3) refers only to yet non-mandatory obligations of due diligence, without any guarantee around their appropriateness nor any formal validation or monitoring process. Generally, **the Commission should include in its guidance (article 23) criteria on determining the appropriateness of the due diligence measures undertaken by companies and clearer indications on the need to follow international standards as defined by the UNGP and the OECD Guidelines**.

As a legislation very much complementary to the Corporate Sustainability Due Diligence Directive, both texts should be thought through in parallel to ensure they are meaningfully designed to address forced labour.

Broadening the scope

The proposal also poses ambiguities in terms of the scope of its enforcement: First, in its focus on product-line level, it disregards the fact that forced labour is often a systemic pattern across an entire producer, manufacturer, importer or exporter - regardless of the specific product. Therefore, while identifying products is important as a starting point, forced labour should not be addressed in silos. **The Regulation must explicitly include the scope to extend findings to all products from an entire production site or economic entity, given that forced labour will not be isolated to one product line within a facility.** Simply put, the problem is the facility and not the product per se.

Second, the proposal fails to explicitly include the scope for bans on entire product groups from a region, such as cotton from Turkmenistan and the Uyghur Region. As such, the proposal poses severe limitations in addressing systemic state-imposed forced labour (SIFL). In the absence of a clear procedure for regional bans, this will vastly reduce the power of this law to address the pervasiveness of SIFL in EU supply chains and compel companies to remove it. **The text should thus be amended to explicitly include the possibility to establish region-wide bans, and, where relevant, align their scope with forced-labour based sanctions (for example, under the EU global human rights sanctions regime)** to ensure legislative coherence, impact and legal certainty for companies.

Publicly disclosed value chain information

Companies should also be required to map and publicly disclose their suppliers, sub-suppliers and business partners in their whole value chains. If not, competent authorities, as well as petitioners, will face significant obstacles to identify the presence of entities implicated in forced labour within a company's value chain. While we appreciate that the proposal requires companies, when put under investigation, to disclose details of their value chain, upon request and to the competent authorities only (article 5(3)), this measure is too weak to make any structural impact and enable efficient implementation of the regulation. **Making this essential information systematic and public, as well as the decisions on offenders, would also assist companies (and small and medium sized enterprises in particular) to assess the risk of forced labour in their value chains and to undertake effective due diligence measures.** It would also help the general public, concerned groups, organisations, communities and workers themselves to monitor the situation and submit better information on alleged violations to the competent authorities.

Protecting petitioners against retaliation

To identify and mitigate any potential unintended consequences on affected workers, **the proposal should ensure that workers and their representatives are adequately engaged before the authorities take the decision to impose or lift a ban.** It is essential to ensure that **all affected stakeholders, including but not only petitioners, should be protected from retaliation** when engaging with companies and enforcement authorities either during the investigation or while discussing remediation measures. **Confidentiality should be automatic (unless otherwise mentioned by the petitioner themselves) and in particular when dealing with forced labour cases in Europe, the workers' condition as a potential victim of forced labour should take full precedence over any potential immigration enforcement action,** for example, whether or not the investigation concludes that there is a situation of forced labour.

We trust that the DEVE committee will use this unique opportunity to improve this proposal in order to make it truly impactful for those who suffer daily across the world. As the lasting impacts of the COVID-19 pandemic remain, and armed conflicts and climate change create unprecedented risks of modern slavery, including of forced child labour, it is essential that the European Union adopts an ambitious proposal that demonstrates global leadership in addressing modern slavery meaningfully.

Signatories:

- Anti-slavery International
- Association of Ethical Shareholders Germany
- Clean Clothes Campaign European Coalition (CCC – European Coalition)
- Collectif Ethique sur l'étiquette
- CorA-Netzwerk fuer Unternehmensverantwortung
- European Center for Constitutional and Human Rights (ECCHR)
- Fair Trade Advocacy Office (FTAO)
- FEMNET e.V.
- FIAN Germany
- Finnwatch
- Global Labor Justice - International Labor Rights Forum (GLJ-ILRF)
- Helsinki Citizens' Assembly Banja Luka (hCa BL)
- Human Rights Watch (HRW)
- La Strada International
- Terre des Hommes International Federation (TDHIF)
- World Uyghur Congress (WUC)

