

Input to the call for evidence for the initiative: *“Effectively banning products produced, extracted or harvested with forced labour”*

Brussels, 20 June 2022

Initial comments

IndustriAll European Trade Union (industriAll Europe) supports the European Commission’s proposal to bring forward a legislative proposal to ban products produced, extracted or harvested with forced labour. As a federation of independent and democratic trade unions representing manual and non-manual workers in the metal, chemical, energy, mining, textile, clothing and footwear sectors and related industries and activities, industriAll Europe represents workers in many of the sectors where forced labour is unfortunately still prevalent.

The mere existence of forced labour is unacceptable and industriAll Europe insists that the legislative proposal must cover **all countries (including EU Member States), all sectors, and all companies regardless of their size**. Furthermore, it must be stressed that this proposal in no way takes away from the ongoing work on **Corporate Sustainability Due Diligence** which industriAll Europe insists¹ remains vital.

IndustriAll Europe supports the European Commission’s proposal to use the **International Labour Organization’s (ILO) definition of forced labour**: ‘*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*’. It must be remembered that the ILO has identified the elimination of all forms of forced or compulsory labour as a fundamental labour right, which is covered by the fundamental ILO Conventions No. 29 and 105 with an accompanying Protocol and Recommendation, calling on member states of the ILO to universally commit, to give effect, systematically and continually, to Convention No. 29, through prevention, protection, reparation and compensation for victims of forced labour.

IndustriAll Europe also **approves of the European Commission’s decision not to undertake a full Impact Assessment** noting that there is already overwhelming data from internationally respected organisations, such as the ILO and Organisation for Economic Co-operation and Development (OECD), on examples of forced labour.

Forced Labour

In 2017, the ILO estimated that around **24.9 million people were in forced labour** and eight million people were in debt bondage. Forced labour can manifest itself in many ways from forced overtime, deductions

¹ <https://news.industrial-europe.eu/Article/704>

from salaries (including for extremely poor and unsanitary accommodation), harassment, grave occupational health and safety concerns, and passport seizures which prevents workers from finding another job, and in the case of migrant workers, from returning to their home country.

Migrant workers are most vulnerable when it comes to forced labour and are sometimes obliged to take loans with high interest rates to pay illegal or excessive fees to recruiters. They then become trapped in low-wage, abusive and modern slavery conditions. This must stop and EU legislation on forced labour, if enforced properly, could make a positive difference to millions of workers.

Sectoral examples

Unfortunately, many of the sectors covered by industriAll Europe, and its sister organisation [IndustriALL Global Trade Union](#), have cases of forced labour. This includes workers at **ATA Industrial, suppliers for Dyson, in Malaysia**² who were subjected to forced labour, false imprisonment and dangerous working conditions and **miners in Pakistan**³ with workers being forced to work for more than ten hours a day without adequate safety equipment.

Perhaps most international media attention has been **given to garment workers including those in the Xinjiang Uyghur Autonomous Region in China**, with terrible reports of forced labour including in cotton and yarn production. IndustriAll Europe welcomes the recently adopted **European Parliament Resolution**⁴ which *‘Calls on the Commission to propose an import ban on all products produced by forced labour and on products produced by all Chinese companies listed as exploiting forced labour; reiterates its position in favour of an ambitious corporate sustainability due diligence directive;’*. With public outrage, and pressure from civil society, major brands such as H&M are divesting from the region. However, concrete EU action could help tackle this issue more systematically.

Tackling Forced Labour

Although industriAll Europe strongly supports the EU’s proposal for EU legislation on forced labour, it must be stressed that international action is also needed to deal with the risk factors. These have been identified in a joint ILO, OECD and International Organization for Migration (IOM) Report⁵ as *“(a) gaps in statutory legislation, enforcement and access to justice that create space for non-compliance; (b) socio-economic pressures facing individuals and workers; and (c) business conduct and overall business environment.”*

As such, trade unions recognise that EU legislation will not be an end in itself in the fight against forced labour, but that it should be used to put pressure on producers. Furthermore, proper implementation, enforcement and monitoring, including with social partners and civil society will be essential in ensuring that it is effective. Furthermore, urgent action is needed to make sure that two other ILO fundamental and enabling rights, **freedom of association** (enshrined in ILO Convention No. 87 - Freedom of Association and Protection of the Right to Organise) and the right to collective bargaining (enshrined in ILO Convention No. 98 - Right to Organise and Collective Bargaining) are fully respected and applied as those “enabling” rights are key solutions to eradicate forced labour.

² <https://www.industriall-union.org/reports-of-abuse-in-dyson-factory-malaysia>

³ <https://www.industriall-union.org/pakistans-deadly-coal-mines>

⁴ https://www.europarl.europa.eu/doceo/document/TA-9-2022-0237_EN.html

⁵ <https://www.oecd.org/fr/corruption/ending-child-labour-forced-labour-and-human-trafficking-in-global-supply-chains.htm>

Process and enforcement

It will be essential to develop a clear and transparent process with regards to acting on reports of forced labour including the seizure of said products. IndustriAll Europe, stresses the need to ensure that products are **swiftly seized by the relevant public authority if sufficient evidence has been received** that they have been produced, extracted or harvested with forced labour. These seized products must also be **blocked from re-exportation** to a non-EU country while a thorough investigation takes place.

While the thresholds of evidence and standards of proof required to refute a claim are yet to be established in detail, they must be based on ILO and Council of Europe standards. To increase efficiency, it would also be sensible to establish a **traffic light system** with countries or sectors shown to have issues of forced labour raised by international organisations such as the ILO or OECD, or via numerous individual complaints from relevant stakeholders, to be placed on some form of “amber warning” resulting in an increase in checks via EU representatives, national public authorities and EU entry ports.

The release of goods should only take place after public authorities have concrete evidence that no forced labour has been proved, or that appropriate remediation has taken place, and indicators of forced labour are no longer present. **Trade unions and international human rights defenders should be consulted** as part of this process before the goods are released.

While the European Commission plans to request Member States to specify the national authorities who will be in charge of the enforcement of this legislation, industriAll Europe stress the need to **include national labour ministries** due to their expertise and relationships with the ILO and Council of Europe. Furthermore, the European Commission should dedicate appropriate funding for human resources at EU level to monitor enforcement and **establish a dedicated and effective complaint mechanism** which can be used by key stakeholders, such as trade unions.

Furthermore, EU Missions should also dedicate resources to this important topic including via the establishment of **labour-reporting officers** who should work closely with national social partners and the European Trade Union Movement to monitor the situation on the ground. The European Parliament (EP) also has a role to play, and **EP delegations should monitor the situation** and raise any concerns on high-level missions.

Finally, it will be essential to ensure that **EU Member States dedicate enough funding and resources to their national public authorities and EU entry ports** to ensure that the legislation is fully enforced. As recognised in European Commission evaluations of existing pieces of EU legislation focused on customs controls, such as the EU timber regulation or sanitary and phytosanitary standards -provisions in free trade agreements (FTAs), effective enforcement is massively undermined when national customs authorities are under-resourced. If the European Commission intends to give the further responsibility for enforcement of the forced labour ban, then there must be a commensurate investment in enforcement personnel in all Member States.

To conclude, for the legislation to be a real success, a clear and accessible complaints process must be put in place which is open to all stakeholders and is swiftly reacted on by an adequately staffed team in a transparent manner. Seizures must be swift with products being blocked from re-exportation until a thorough investigation has taken place and they should not be released until concrete evidence is established that no forced labour has been proved, or that appropriate remediation has taken place, and indicators of forced labour are no longer present. **Key stakeholder, such as trade unions, should be involved at every step of the process.**

Countries of concern

If forced labour is unfortunately detected, then immediate action should be taken with the European Commission entering into **urgent dialogue with the country concerned as well as the national social partners**. Measures should be established to step up technical assistance, capacity-building and awareness raising. Attention should be paid to the fact that forced labourers may not work at “official” or visible sites but in hidden or domestic settings. Certain groups (women, people with disabilities, of a minority ethnicity, religion or sexual orientation, etc.) are especially vulnerable. Should the situation not improve, then the European Commission should establish **clear and binding roadmaps** with the country concerned. EU Missions, international organisations such as the ILO or OECD, and trade unions could help undertake research on the ground to establish whether the situation has improved or not.

Remediation

As previously mentioned, seized products should not be released until concrete evidence has been received that no forced labour has been proved, or that appropriate remediation has taken place.

IndustriAll Europe insists that trade unions are involved in both instances.

With regards to remediation, the process must involve the impacted workers in the design and implementation of the remediation process. Effective remedy should ensure that workers can participate and are empowered in the overall process. Companies that violate the rights of workers must acknowledge and apologise for the harm caused and provide guarantees that it will not be repeated.

It must be stressed that **remediation goes much further than simple repayment of wages/recruitment costs**. Although the repayment of recruitment costs is important and should be conducted in an appropriate manner⁶, other services and actions must be taken as part of the remediation process including access to legal rights and services, and civil and criminal remedies when appropriate. Repayment must not prevent workers from making further claims through criminal justice systems or other available mechanisms.

Many workers in forced labour have suffered abuse, mistreatment (e.g. psychological damage and loss of opportunities) and restrictions to their very freedom. Appropriate remediation must ensure that:

1. Workers and their families are protected from harm and retaliation throughout the remediation process;
2. The process is completed in a transparent manner with actions and payment publicly disclosed;
3. All relevant stakeholders (including workers and their trade unions) are engaged throughout the process;
4. A governing body is established to provide oversight throughout the process and its enforcement;
5. Workers have access to alternate channels for remedy (e.g. medical, legal, psychological support);
6. Lessons learned will be shared amongst all stakeholders.

⁶ <https://impacttlimited.com/principles-for-repayment-of-recruitment-fees/>

Case Study: rubber glove production in Malaysia

One interesting case study to consider in relation to lessons learned, and improvements needed, is the production of rubber gloves in Malaysia, noting the high demand for huge orders of these products during the COVID-19 pandemic. [Horrendous reports of forced labour](#), especially for migrant workers, were reported including the confiscation of passports, freedom restrictions and the illegal withholding of pay. This makes for an important case study as diligent work by human rights campaigners, such as [Andy Hall](#), plus the fear of losses via a US import ban [led to some positive developments](#) including the reimbursement of recruitment fees, passports being returned and some improvements in accommodation. While this is a case demonstrating the real positive impact of forced labour sanctions, with remediation currently around \$150m, it must be stressed that full and complete remediation goes much further than the simple remediation of recruitment fees. Many of these workers have suffered from psychological harm and loss of opportunities for many years, and more adequate remediation is needed including accountability for those who abused and/or were part of corporate neglect.

While threat of an US import ban was a strong catalyst for change with some of the identified companies having since increased wages above the minimum wage, improved working conditions, and attempted to increase transparency via the creation of the [Responsible Gloves Alliance](#), there is still room for improvement in the current US system. For example, while the US legislation requires the removal of forced labour indicators (e.g. debt bondage), it does not set requirements for remediation, and as such, **the EU legislative proposal must clearly outline criteria for remediation**, including the involvement of workers and trade unions to ensure that real remediation takes place before an import ban is lifted.

Finally, while workers in Malaysia continue to face harassment and are often too frightened to join a trade union, noting that migrant workers are forbidden to create unions, then a complete imbalance of power remains. Malaysia ratified the ILO Protocol on forced labour in 2022 and has adopted a national action plan (2021-2025), however, the international community must do more to ensure that improvements take place and that fundamental workers’ rights, such as freedom of association and the right to collective bargaining, are being protected on the ground. The forthcoming EU legislation **must include concrete measures to ensure enforcement**, focusing on countries like Malaysia where clear examples of forced labour have been found, for example via a “traffic light system” (see previous comments).

The role of trade unions

Clearly, there will be an important role for trade unions at national, European and international level. Trade unions should be involved in the shaping and implementation of the legislation, noting that there is an opportunity to learn from previous cases. Trade unions will be essential in identifying and raising issues related to forced labour, with European and International trade unions being able to support local trade unions both in terms of resources, but also by providing anonymity with genuine concerns for whistle-blowers in many countries. Again, it must be stressed that a **simple and clear direct complaints procedure should be established**, allowing key stakeholders such as trade unions, to rapidly notify the European Commission of their concerns.

For the legislation to be successful, **regular monitoring and reporting should be conducted by the EU**. It is essential that key stakeholders, including trade unions, have access to this data. Regular dialogue should be established between the European Commission and civil society, including trade unions, on the enforcement of the legislation.

Further measures

As previously mentioned, while the proposed EU legislation to ban products produced, extracted or harvested with forced labour will be a useful tool in putting pressure on producers, further action is required to fully eradicate the issue. Centre to this is the assurance that **all workers** have the right to freedom of association and the right to collective bargaining. **True social dialogue at all levels in all workplaces is essential to ending forced labour.**

Furthermore, concrete resources are required, now more than ever, to increase the number of labour inspectors, the EU can also assist by utilising EU Missions and establishing labour-reporting officers.

Complementary ongoing EU initiatives and instruments

As well as by providing concrete support as previously mentioned, the EU should also look at how other EU legislation can help in the fight against forced labour. The current review of the Generalised Scheme of Preferences (GSP) and the Review of the Enforcement of the TSD Chapters both provide excellent opportunities to ensure that EU trade tools promote fair trade, with workers' rights at its core. IndustriAll Europe continues to call for more engagement with trade unions, and wider civil society, on both instruments, with increased transparency and monitoring to ensure that EU trade positively impacts the rights of workers in third countries⁷.

Clearly, the forthcoming legislative initiative on forced labour should also complement both existing and forthcoming sectoral and horizontal EU initiatives and instruments such as the following:

- The sectoral EU Regulations like the [Responsible Minerals Regulation 2017/821](#) and the [Timber Regulation 995/2010](#), in particular the joint and severe liability regimes provided there in;
- The forthcoming [Directive on Corporate Sustainability Reporting Directive](#) (CSRD);
- The work undertaken in/by the European Financial Reporting Agency which is amongst currently working on horizontal and sectoral due diligence standards/indicators, including on the issue of forced (child) labour;
- The recent [Commission proposal for a Directive on Corporate Sustainability Due Diligence](#) (CSDD).

Regarding **Corporate Sustainability Due Diligence**, while industriAll Europe welcomes a legislative proposal, it must be stressed that [trade unions remain very concerned](#) with **solutions needed for the massive and unacceptable loopholes which remain**. An EU legal framework is still missing that would empower stakeholders, starting with trade unions and worker representatives, to participate in the design of due diligence, sustainable and Just Transition policies at company level. Furthermore, the high thresholds in the current proposal mean that high-risk sectors, such as the international garments sector unfortunately known for examples of workers' rights abuses, remain out of the scope.

Conclusion

Forced labour is a terrible practice which impacts millions of workers across the world. Although the issue is complex and concrete action and positive changes are needed to get to the root of the problem, the EU has a precious opportunity now to make a real difference. An ambitious EU legislative proposal on forced labour, improvements to the legislative proposal on Corporate Sustainability Due Diligence plus positive improvements to the EU GSP and the enforcement of TSD Chapters would allow the EU to take the lead in

⁷ <https://news.industrial-europe.eu/Article/653>

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stamping out the abuse of workers’ rights across the world. The EU has the chance to change the lives of millions of workers and we encourage them to take it.