

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

Initial comments

The ETUC welcomes the upcoming European Commission initiative on forced labour and the opportunity to give input to this Call for evidence. The ETUC intends to come back to the European Commission with further details about the initiative at a later stage.

The ETUC supports the broad aim of the initiative to cover products made, extracted or harvested wholly or in part with forced or compulsory labour, both from the EU and imported from outside of the EU and calls the Commission to enlarge the scope to products also transported with forced labour. The ETUC believes an import ban is an important tool to tackling forced labour, when complemented by a holistic approach addressing the roots causes of forced labour wherever it is found. It is important that the ban be horizontal, regarding all products notwithstanding the origin, to be WTO compatible¹. The ETUC also wants to stress the importance of the initiative covering all businesses / economic actors. There must be no derogations for small and medium sized business, nor in the tiers of the supply chain. Furthermore, ETUC considers, as the European Parliament², that the new instrument should allow for bans of forced labour products from a particular site of production, a particular importer of company, those from a particular region in case of state-sponsored forced labour and those from a particular transport vessel or fleet.

The ETUC agrees with using the International Labour Organization (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’. We wish to emphasize that the ILO definition of forced labour includes “all work or service”, therefore goods transported with forced labour should also be included by the new Commission’s initiative. The European Commission should therefore not develop an own definition of forced labour.

The ILO 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 No. 105. The Background note correctly identifies the importance of ILO Conventions No.29 and No. 105 and lists the variety of conditions that constitute forced labour. We recommend that specific reference be made to Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35), Protocol of 2014 to the Forced Labour Convention, 1930 and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) which guide the interpretation and implementation of Conventions No.29 and No.105. The features of this fundamental right are further defined in the case law of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) which should be duly taken into account by this EU initiative. Furthermore, according to the call for evidence, the EU initiative rightly intends to cover both products originating from EU and non-EU countries. The EU initiative should build upon and take due account of the standards established in the Council of Europe European Convention on Human Rights (ECHR, Article 4, in particular §§2 and 3) and European Social Charter (ESC, Article 1§2) and as further clarified in the case law of respectively the European Court of Human Rights (ECtHR³) and the European

¹ See the ILAW legal memo on WTO compatibility. <https://www.ilawnetwork.com/wp-content/uploads/2022/03/WTO-Law-Aspects-of-Import-Prohibitions-on-Products-and-Services-Made-Using-Forced-Labour-Layout-3-3-2022-1.pdf-2-1.pdf>

² European Parliament resolution of 9 June 2022 on a new trade instrument to ban products made by forced labour - https://www.europarl.europa.eu/doceo/document/TA-9-2022-0245_EN.html

³ For a summary of the ECtHR case law, see the ECtHR Case Law Guide on “[Article 4 – prohibition of slavery and forced labour](#)”, updated 31 December 2021.

Committee of Social Rights (ECSR⁴). As mentioned in the call for evidence, Article 5 on 'prohibition of slavery and forced labour' of the EU Charter of Fundamental Rights should further underpin this initiative.⁵

Urgent action is needed to make sure that two fundamental and enabling rights of the ILO, namely 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 Bargaining⁶) are fully respected and applied as those "enabling" rights are key to the eradication of forced labour. The ILO's fundamental labour standards against forced labour are universally applicable, and therefore applicable indistinctly for all EU Member States. Freedom of association and collective bargaining are vital to addressing the poverty, inequality and vulnerability that contributes to forced labour. At the same time social protection is also important and it should be clearer that social protection is extended to the informal sector. Taken together, the right to freedom of association and collective bargaining and the extension of comprehensive social protection to the formal and informal sector addresses the key drivers of forced labour. Further, the EU must be a strong advocate for human rights as "human dignity" and "respect for human rights" are amongst the EU founding values as expressed in Article 3 TEU. In that sense, and in order to strengthen the EU and Member States action in fighting forced labour, the EU would be giving a strong signal by living up to its legal obligation and a longstanding ETUC demand to accede the Council of Europe European Convention on Human Rights and the European Social Charter.

The ETUC understands this initiative to create a ban on products made with forced labour not as an end to itself but should be used as mean to put pressure on producers in EU and non-EU countries to end forced labour.

The ETUC also shares the views that there are grounds for the European Commission to derogate from the Better Regulation Guidelines. Problems with forced labour are well documented. There is no need for the Commission to conduct an impact assessment given the urgency to tackle this problem.

Furthermore, the ETUC calls on the European Commission to actively consult with the United States and Canada, in the framework of the Trade and Technology Council (TTC), to learn from the US and Canadian experiences on the forced labour ban recently adopted there. There might also be scope within the TTC to discuss and potentially develop joint US and European structures to address forced labour.

Finally, and as the current existing soft law and non-binding initiatives have clearly demonstrated their limitation, the ETUC believes that the legal form for the legislative proposal needs to be carefully considered, developing either a regulation or a directive.

Involvement of Trade Unions

The ETUC, together with its affiliated unions and through its partnerships with trade unions in third countries, can play a key role in helping the Commission in shaping the initiative and also in implementing it. Even though tracking forced labour cases may be difficult, it is not impossible to detect. The main challenge trade unions face is not the impossibility to detect forced labour, but to have detected cases enforced. Improving effective enforcement should be a priority in fighting

⁴ For a summary of the ECSR case law on Article 1(§2), see *ECSR Digest of Case Law, December 2018*, pp. 56-62.

⁵ To ensure coherent interpretation, action should be taken according to the [Directive 2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims as well as the [Directive 2009/52/EC](#) of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals ('[Employers sanction directive](#)').

⁶ And as they are recognized in and clarified under the ECHR (Article 11) and the ESC (Articles 5 and 6).

labour exploitation. The ETUC is part of a broad network of free and democratic trade unions around the world that can support the effort to gather information on the ground and alert the Commission of cases of forced labour both within and outside of the EU. As an example, the [ITUC yearly Global Rights Index](#), which depicts the world's worst countries for workers by rating 139 countries on a scale from 1-5 based on the degree of respect for workers' rights can provide useful updated information.

The ETUC invites the Commission to look at the reports of the [ILO Committee of Experts on the Application of Conventions and Recommendations](#), the pending and recently decided cases before the ECtHR and the ECSR as they are useful sources for tracking forced labour cases and situations of violation both in law and practice of international and regional human rights standards.

Furthermore, the ETUC recommends to the European Commission, if a network of national enforcement authorities is being considered, that trade unions are structurally involved both at national and European level.

The ability to adequately enforce such a mechanism will also rely on the availability of data. It is important that EU import and export shipping data be collected and made available not only to all relevant agencies but also to the public. This will be critical to understanding trade flows and when and where certain suspect shipments may be bound for the European market.

Legal consequences and enforcement

A key element of the legislative initiative must be that public authorities, on their own initiative or following information they have received, should detain goods at the EU border when they consider that there is reason to believe that these goods were made or transported with forced labour. The ETUC believes that the importer whose goods have been detained should then be given the opportunity to demonstrate that the goods were not made or transported with forced labour, which may then lead to the release of the goods. It is important that evidence to prove an absence of forced labour must be based on ILO and Council of Europe standards.

The ETUC believes that products should be seized, and prevented from being re-exported, following findings by public authorities leading to sufficient evidence that forced labour has been used to produce or transport goods or if goods are coming from a particular region where forced labour is pervasive. ETUC could accept that seized cargo is released if the company can prove that no forced labour has been used or to prove that remediation took place and indicators of forced labour are no longer present. Where an importer knew or should have known that the goods were made in whole or in part with forced labour, the EU should levy fines against the importer to deter further behaviour and to encourage due diligence, which means tracing the supply chain.

The ETUC understands from the Call for evidence that the Commission intends to request Member States to indicate relevant national authorities to be in charge of the enforcement of the initiative. The ETUC would encourage the Commission to advise Member States to involve national labour ministries as they have the expertise on the matter and keep the relations with the ILO and Council of Europe. The ETUC also encourages the Commission to set up an effective complaint mechanism so that trade unions can send evidence of forced labour violations such as the Single Entry Point (SEP). The ETUC calls on the SEP to be improved, ensuring an effective follow-up and to make it accessible also for non-EU trade unions.

To ensure that proper enforcement can take place EU Member States must dedicate enough funding and resources to their national public authorities and their EU entry. 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), have already recognised that 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.

Furthermore, if forced labour is detected within the EU or outside the EU, the ETUC calls on the Commission to enter into a prompt dialogue with the country concerned and the national social partners in order to stop forced labour and, if necessary, to step up technical assistance, capacity-building and awareness raising. EU delegations could play a key role in engaging with third countries and stakeholders, including with ILO local and regional offices to ensure effective compliance with fundamental labour standards on the ground and on issues related to the new legislation. In this regard, the ETUC reiterates its request that EU delegations should include labour-reporting officers with close relations with the social partners in those countries as well as with the European Trade Union Movement to monitor violations of labour rights. If the situation is not addressed and not resolved by the country, the ETUC calls on the Commission to establish clear and binding roadmaps with the country concerned. EU missions could be envisaged to research on the ground whether the situation has improved or not. If information or access or other cooperation by authorities is refused, the Commission should assume that forced labour is being used.

The ETUC also calls on the Commission to ensure that the new EU instrument requires those having responsibility for the violations, including companies that have caused or contributed to the use of forced labour to provide remediation to the affected workers prior to import restrictions being lifted; calls for the monitoring of remediation and corrective actions to be undertaken in cooperation with trade unions. Trade unions stress that remediation goes much further than the only repayment of wages/recruitment costs and that other services and actions must be included such as access to legal rights and services, and civil and criminal remedies when appropriate. Furthermore, repayment must not prevent workers from making further claims through criminal justice systems or other available mechanisms.

Complementing existing/forthcoming EU initiatives with a forced labour ban

As indicated in the call for evidence, this legislative initiative should “complement” existing (and forthcoming) horizontal and sectoral EU instruments.

For the ETUC, it would be crucial to ensure that this legislative initiative would not only complement but more importantly not undermine the rights and obligations as set out in:

- 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 [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 15 point action plan on the revision of the TSD chapters in trade agreements and social clauses in unilateral trade instruments (such as GSP arrangements) and social safeguards in particular on forced labour in instruments supporting public and private investments;
- The Binding UN treaty on business and human rights still under negotiation.
- The recent [Commission proposal for a Directive on Corporate Sustainability Due Diligence \(CSDD\)](#);

In order to ensure coherence and avoid undermining of existing rights and obligations, the ETUC would in relation to recent proposal for a Directive on Corporate Sustainability Due Diligence (CSDD) like to reiterate its [main demands as adopted by the ETUC Executive Committee in December 2019](#):

- A European directive on mandatory human rights due diligence and responsible business conduct.
- To establish mandatory and effective due diligence mechanisms covering companies' activities and their business relationships, including their supply and subcontracting chains.
- As an important step forward to ensure the respect and enforcement of Human Rights. Human Rights should include trade unions and workers' rights as main components.
- To empower workers to fight against of Human Rights' violations. It should ensure the full involvement of trade unions and workers' representatives in the whole due diligence process.
- For effective remedies and access to justice for victims, including trade unions.
- To hold companies accountable for the impacts of their operations : liability must be introduced for cases where companies fail to respect their due diligence obligations, without prejudice to joint and several liability frameworks.

Following the launch of the Commission CSDD proposal, [a first analysis by the ETUC](#), unfortunately revealed a series of serious deficiencies and omissions in the proposal and it would be crucial that those are not repeated but rather duly taken into account in relation to the legislative initiative on banning forced labour products, those deficiencies included amongst others :

- A too limited scope of businesses covered seriously undermines the proposals' added value and impact,
- Trade union and workers' representatives are ignored and by-passed,
- Confusion of (alternative) grievance proceedings, little to no support for victims to access to justice, little to no effective remedies and sanctions.