



# Prohibiting products made with forced labour on the Union market

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# Executive Summary

**AK welcomes** the Commission proposal for a **Regulation on prohibiting products made with forced labour on the Union market**. According to recent ILO estimates around **28 million people worldwide work in forced labour, including more than 3 million children**. There is an urgent need for action from the point of view of AK. In order to effectively combat forced labour **improvements to the Commission proposal are necessary**, however.

## Content of the proposal

The proposed Regulation bans products made with forced labour on the Union market. The placing and making available on the Union market as well as the export are banned. The ban applies to both imported and EU-manufactured products. The proposal is cross-sectoral and covers all economic operators with no SME exception. Products made with forced labour shall be withdrawn from circulation. For enforcement, the proposal relies on the national authorities of the Member States as well as on customs authorities.

## AK demands

- The scope of the Regulation must be extended: **Freedom of association** and the **right to collective bargaining** should also be covered, since they are key in combatting forced labour.
- **The burden of proof should be on the economic operator, not the authority**. The proposal requires the authority to establish a violation of the ban on forced labour. AK would prefer the burden of proof to be shifted to the economic operator.
- **Affected Workers must receive remediation**. The proposal in no way addresses the situation of workers affected by forced labour. AK calls for remediation to be included in the Regulation.
- **Trade unions and NGOs must be better involved**. The proposal provides for the establishment of a forced labour database and a Union network against forced labour products. Trade unions should be explicitly involved in both.
- **Products should be detained during investigation**. According to the proposal products are freely available on the market until the investigation is completed. From the point of view of AK, the effectiveness of the Regulation is severely limited by this.
- **The scope of product bans must be extended**. According to the proposal bans may only be issued regarding one product or product group at a time. AK calls for bans of products from a specific production site, a specific economic operator, a specific territory (in the case of state-imposed forced labour) and a specific cargo ship or fleet to be provided for as well.
- **Economic operators must be obliged to provide information**. The lack of such an obligation represents a major gap in the proposed Regulation in the opinion of the AK. Without being provided with any information, customs authorities will in many cases not be able to determine whether a ban has already been imposed on a product.
- **Accompanying measures to combat forced labour are necessary**. The Commission should assist in building **effective labour inspectorate capacity** in both EU Member States and third countries.

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# AK's Position

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## **Forced Labour: Still a reality in the 21<sup>st</sup> century**

According to recent [ILO estimates](#) around **28 million people worldwide work in forced labour, including more than 3 million children**. Forced labour is widespread throughout the world and also exists within the EU. Forced labour occurs mainly in the private sector (86%), but there are also cases of state-imposed forced labour (14%).

The International Trade Union Confederation's (ITUC) [Global Rights Index 2022](#) addresses the **situation of the Uyghurs in China**. They are "...the target of unrelenting persecution and mass detentions by the authorities, who, among other human rights abuses, coerced them into forced labour to supply the garment industry ...".

The elimination of all forced labour by 2030 is one of the Sustainable Development Goals (SDGs) of the United Nations. Forced labour continues to generate billions of dollars in [profits](#). In the last five years, cases of forced labour have increased. **From the point of view of AK, there is an urgent need for action.** Against this background, AK supports the European Commission in introducing an EU ban of products made with forced labour without having conducted an impact assessment.

## **Proposal for a Regulation on prohibiting products made with forced labour on the Union market**

The present proposal is closely linked to the proposal for a Corporate Sustainability Due Diligence Directive ([CSDDD](#)). The CSDDD will require large companies to exercise due diligence with regard to human rights and the environment along their value chains. **The present proposal is an important additional measure to the CSDDD**, not least because it covers economic operators regardless of their size, which AK expressly welcomes. Since according to the present proposal products made with forced labour shall be withdrawn from circulation, economic operators will face a loss of profit in case forced labour is detected

in their products. This will incentivise them to monitor their supply chains with regard to forced labour. At the same time, the pressure on producers to end forced labour will be increased.

**AK welcomes the present proposal but demands improvements.** AK has already [communicated](#) important requirements for an EU ban of products made with forced labour. The present proposal fulfills some of AK's requirements, but important elements are missing.

## **Chapter I - Scope, Definitions, Prohibition of Products of Forced Labour**

AK welcomes the fact that the proposal refers to the definition of "forced labour" according to ILO Convention No. 29 and the definition of "forced labour imposed by public authorities" according to ILO Convention No. 105 (Article 2). In line with the ILO definitions however, **products transported in forced labour should also be covered** by the ban. Products from [fisheries](#) should also be explicitly covered (this is not quite clear in the German version of the proposal).

AK demands that the **proposal should be extended** to violations of the **right to freedom of association** and the **right to collective bargaining** (ILO Conventions 87 and 89). Only the free exercise of these rights and comprehensive social protection allow for addressing inequalities, vulnerabilities and poverty, which are the main drivers of forced labour. From the point of view of AK, further EU legislation should be adopted to effectively enforce all five ILO Fundamental Principles and Rights At Work (freedom of association and the right to collective bargaining, elimination of forced labour, abolition of child labour, prohibition of discrimination in employment and occupation, and occupational health and safety).

AK demands that the proposal should be **extended to include services from forced labour**. According to ILO Convention No. 29, 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, is considered forced labour. The prohibition

of services requires other forms of law enforcement than a prohibition of products of course. These are completely missing in the proposed regulation. For example, one could think of forced labour in call centres in third countries, but also of services in forced labour within the Union market.

## Chapter II - Investigations and decisions by the competent authorities

AK criticises the **high hurdle of the burden of proof**. Prior to the withdrawal of a product from the market, the authority is obliged to conduct a preliminary phase of an investigation (Article 4) and an investigation (Article 5). AK demands that the economic operator should have to prove that there is no forced labour rather than authority having to prove forced labour. This approach is also applied in the US where the customs authority orders the release of the product to be withheld (“Withhold Release order”) as soon as “information available reasonably but not conclusively *indicates*” that the product may violate the [US Tariff Act](#). The company can subsequently prove that no forced labour is involved or remove the product from the market; if it fails to do so, the product will be seized and destroyed.

Contrary to the US Tariff Act, the present proposal requires the authority to establish a violation of the ban on forced labour first. On the positive side, the authority can establish a violation even if it is not possible to obtain information from the economic operators (Art 5(3)) or by means of investigations (Article 5(6)); in this case the authority may rely on other facts available. Nevertheless, **AK would prefer the burden of proof to be shifted to the economic operators**. Experience shows that authorities are often not provided with sufficient resources (although Article 12(5) requires this). The [European parliament](#), too, points out that authorities should be authorised to detain goods at the EU border when they consider that there is sufficient evidence and the importer should then be given the opportunity to refute this accusation by proving that the goods were not made or transported with forced labour. Furthermore, from the AK’s point of view, checks and inspections by authorities including investigations in third countries should not be subject to prior consent of the economic operator. (Art 5 (6)).

**AK demands the detention of the product for the duration of the investigation.** According to the present proposal products that are the subject of an investigation are freely available on the market until the investigation is completed. From the point of view of AK, the effectiveness of the Regulation is severely limited by this. AK welcomes the fact that according to the

proposal the product can be detained by the customs authorities, but this should apply to the competent authorities as well.

### **AK calls for a broader approach to issuing bans.**

According to the proposal the authority issues a ban for one product or product group at a time. **AK demands that decisions may also be adopted with regard to a specific production site, a specific economic operator, a specific territory (in the case of state-imposed forced labour) and a specific cargo ship or fleet.** If forced labour is found in relation to a product, it is likely that other products from the same production site are also produced with forced labour. A ban on the production site would therefore be much more effective. State-imposed forced labour can be better addressed if the authority imposes a ban on a specific area, while giving economic operators the chance to prove that forced labour is not involved.

### **AK welcomes the fact that products made with forced labour are to be withdrawn from the Union market and are not allowed to be imported/exported**

(Article 6). From the point of view of AK, it is of crucial importance that the economic operator no longer has the product at disposal and the possibility to make a profit from it. AK particularly welcomes the fact that the export is also prohibited, since a mere diversion of the product to other markets would severely weaken the effectiveness of the Regulation. If and to the extend this would not run counter to the objectives of the Regulation or other public interests, AK additionally suggests allowing for products to be donated to charitable purposes.

### Key features of forced labour

Forced labour involves work situations featuring two key, interrelated conditions. The first is a lack of free and informed consent (i.e. involuntariness) in taking the job or accepting the working conditions. The second is the application of some form of coercion, such as a penalty or threat of a penalty, to prevent an individual from leaving a situation or to otherwise compel work.

Source: International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), Geneva (2022)

**AK welcomes the creation of a website** on which decisions and withdrawals of the authorities are made available (Article 9(2)). There should be a clarification that this is a **publicly accessible website**, though. **AK also demands that a list of all sanctioned products, units or regions/countries** be published on the website.

**AK welcomes the possibility to submit information to authorities** on alleged violations of the prohibition of forced labour and to receive feedback from the authority (Article 10). Both natural and legal persons as well as associations without legal personality can submit information. In the view of AK, this possibility is an **important tool for trade unions and civil society organisations to draw attention to cases of forced labour**.

**AK welcomes the establishment of a publicly available database** on forced labour risks in specific geographical areas and with respect to specific products (Article 11). The database will play an important role in investigating and identifying violations of the prohibition of forced labour. In AK's view, the database should be made available as soon as the Regulation enters into force, not 24 months thereafter. The ILO and the International Trade Union Confederation (ITUC) have comprehensive data on forced labour, so that the database can be quickly compiled and made accessible.

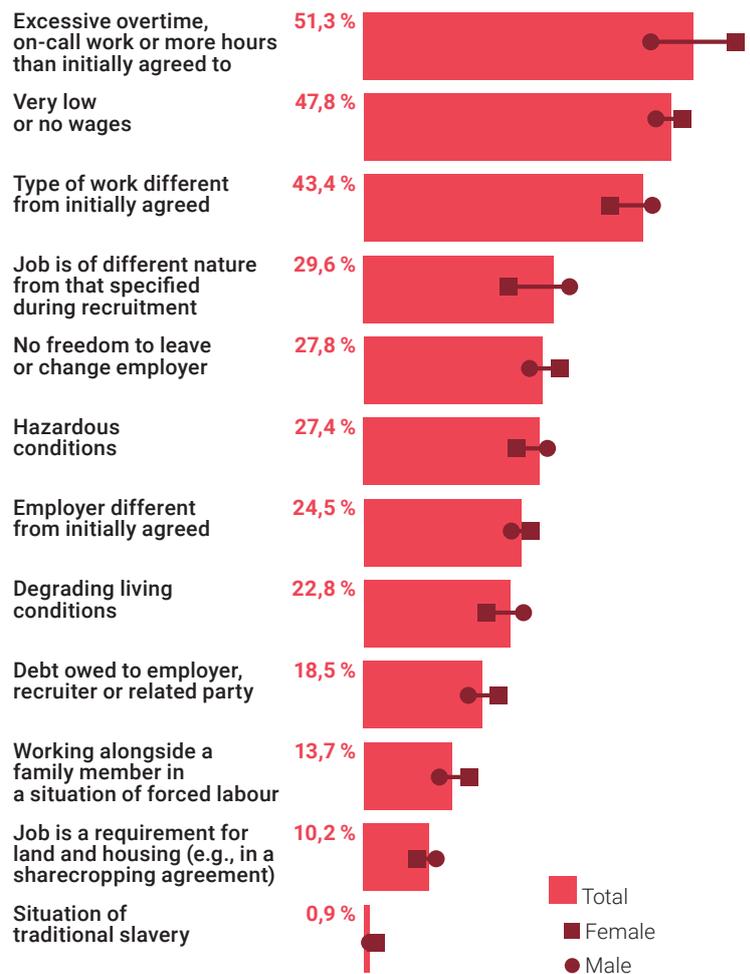
**AK welcomes the recognition and enforcement of decisions** of a competent authority of one Member State by the competent authorities of the other Member States. (Article 14). This ensures that there is **no "easy entry point"** into the Union market.

### Chapter III - Products entering or leaving the Union market

**AK welcomes controls by customs authorities on products entering or leaving the Union market.** The customs authorities have the task to identify products which may violate the prohibition of forced labour (Article 15). They shall rely on the decisions of the competent authorities which shall be made available via the ICSMS information system. AK points out that in order for the customs authorities to be able to match a product which they control with the information received via ICSMS, **the customs authorities need information on the product.** According to recital 35 of the proposed Regulation the **information currently made available** by economic operators to the customs authorities **is not sufficient.**

**AK calls for an obligation of the economic operator to provide information.** This concerns information

### Involuntariness in work can arise from an array work conditions



Percentage of adults in forced labour exploitation experiencing conditions leading to involuntariness\* by sex  
 \* Note: Percentages add to more than 100 because people can be subject to more than one condition leading to involuntariness.

Source: Figure 11: International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), Geneva (2022)

on the manufacturer or producer and the product suppliers as well as other necessary information about the product. **The lack of such obligation represents a major gap in the proposed Regulation in the opinion of the AK.** Economic operators are obliged to provide information to the customs authorities only with regard to products or product groups\* for which the Commission has adopted a delegated act (Article 16). This is not sufficient from the point of view of AK since the customs authority has no means of action in cases where an economic operator does not provide information. AK is aware of the fact that the customs authority may suspend the release for free circulation

or the export of a product (Article 17); however, without being provided with any information, the customs authority will in many cases not be able to determine whether a ban has already been imposed on a product subject to a control. Unlike the competent authority, which may issue a decision “on the basis of any other facts available” (Article 6(2)), the customs authority does not have this possibility.

The customs authority can suspend the release for only four (two) working days (Article 18) after which the product will normally be released for free circulation or export. In other words, economic operators who do not provide information will have their way. In AK’s view, the proposal needs to be tightened up in this respect. Economic operators must be obliged (not only with regard to certain products, but in general) to provide information to the customs authorities. According to recital 35 the information required to be made available to customs by the economic operators will be considered in the review of the Union Customs Code. AK welcomes this, but points out that a provision in this respect should also be included in the present proposal for a regulation.

### Remedy and remediation for affected workers

AK demands remedy and remediation for affected workers. The proposed regulation in no way addresses the situation of workers affected by forced labour. As already mentioned, the present proposal is closely linked to the proposal for an “EU supply chain law” (CSDDD). The CSDDD will oblige companies to exercise due diligence with regard to human rights and the environment along global supply chains. The CSDDD contains a civil liability provision that will enable affected persons to sue for damages in court if due diligence obligations have been violated. However, as things stand at present, the CSDDD lacks a provision obliging companies to take remedial action irrespective of whether or not legal proceedings have been initiated. In the [draft report](#) of the Legal Affairs Committee of the European Parliament on the CSDDD of November 7, 2022, such a provision is therefore proposed (Amendment 84). AK calls for such an obligation in the present proposal as well, in order to provide remedy and remediation for affected workers in forced labour. Trade unions should be involved in this. AK demands that a product ban should only be withdrawn (Article 6(6)) when the forced labour has been stopped, the workers have received remediation and it has been ensured that no new cases of forced labour occur again.

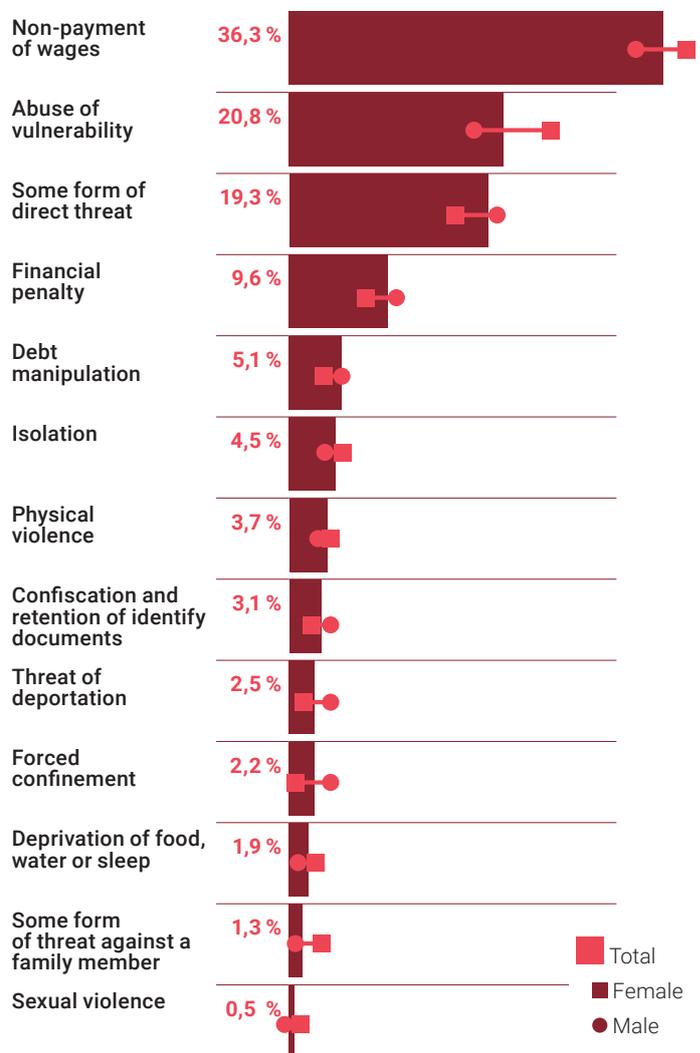
As a positive example, AK refers to the “[Top Glove](#)” [case](#). After US customs authorities had imposed an

import ban on two subsidiaries of Top Glove in Malaysia, the world’s largest rubber producer, the company paid compensation to the affected workers.

## Chapter IV - Information Systems, Guidelines and Coordinated Enforcement

AK welcomes the use of the ICSMS information and communication system for the purposes of this Regulation (Article 22). This is an already existing [system](#)

### Non-payment of wages and threats of dismissal stand out as the most common forms of coercion faced by workers



Percentage of adults in forced labour exploitation, by forms of coercion\* and sex

\* Note: Percentages add to more than 100 because people can be subject to more than one form coercion.

Source: Figure 12: International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), Geneva (2022)

with a separate access for consumers. AK proposes to make this access available to consumers also with regard to the present regulation. According to the proposal, only the Commission, the competent authorities and the customs authorities shall have access for the purposes of this regulation.

AK welcomes the issuing of guidelines on due diligence in relation to forced labour as well as the issuing of information on risk indicators of forced labour by the Commission (Article 23).

AK welcomes the establishment of a Union network against forced labour products (Article 24) and calls for the inclusion of trade unions in the network.

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## Chapter V - Final Provisions

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AK calls for confidentiality to be guaranteed to persons submitting information on alleged violations of the forced labour ban. Confidentiality should not have to be requested but should rather be automatic unless the contrary is requested (Article 25).

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## Concluding remarks

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**Labour inspectorates** are key in effectively combating forced and exploitative labour. The European Commission should therefore assist in building effective labour inspectorate capacity in both EU Member States and third countries. Labour inspectorates must be provided with sufficient powers and resources. The ILO specifies as a minimum one labour inspector (full-time equivalent) per 10,000 workers. Article 26 of the proposed regulation (International cooperation) should be amended to this effect. Effective resources for labour inspections must be ensured in the EU Member States as well. A 2018 [report](#) by the EU Fundamental Rights Agency states: "... monitoring and inspections - at least of certain economic sectors in which workers are at high risk of severe labour exploitation - are insufficient." Furthermore, AK suggests examining how the European Labour Authority (ELA) can more effectively support the fight against exploitative practices.

The [ETUC](#) calls on the Commission to immediately enter into **a dialogue with the country concerned** and the national social partners when forced labour is identified within or outside the EU, in order to put an end to forced labour and, where necessary, to provide support, capacity building and awareness raising. Furthermore, the ETUC calls on the Commission to establish clear and binding roadmaps with the country concerned to address and resolve the situation. AK agrees with these demands.



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## About Us

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The Austrian Federal Chamber of Labour (AK) is by law representing the interests of about 3.8 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.