

The EU Regulation Banning Products Made with Forced Labour: Key Provisions to Note

Client Alerts

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On 23 April 2024, the European Parliament approved the much-anticipated regulation banning products made with forced labour from entering the EU market (the ‘Forced Labour Ban’). The approved text builds on the provisions of the European Commission’s proposal of 14 September 2022 (the ‘Proposal’), which we addressed in our client alert: [The EU Proposed Ban on Products Made with Forced Labour: Four Things You Need to Know](#).

The final step in this process is approval by the EU Council, which is expected to pass without issue during their next meeting, likely to be in June. The Forced Labour Ban will enter into force upon publication in the Official Journal the following day, after which EU Member States will be required to give it effect by mid-2027. This client alert builds on our earlier assessment by recapping what companies need to know about the new regulation, highlighting key developments since the proposal and setting out how best to prepare.

1. Which companies will be affected by the regulation?

The Forced Labour Ban will apply to all companies selling goods in, or exporting goods from, the EU. The companies in scope will be prohibited from making any “*products made with forced labour*” available within the EU market, regardless of where they were manufactured. EU products made from forced labour will be prohibited from being exported overseas.

The European Commission will develop accompanying measures to support micro, small and medium-sized companies in their efforts to comply with their obligations.

2. What are products made from forced labour?

The definition of “*forced labour*” is in line with that of the International Labour Organisation, which comprises “*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.*” In contrast to the Proposal, the Forced Labour Ban also specifically incorporates “*forced child labour*” into its definition.

A “*product made with forced labour*” is, in turn, defined as one where forced labour is used in whole or in part in extraction, harvest, production or manufacture – at any stage in the supply chain. The

Forced Labour Ban newly clarifies that “*supply chain*” means all actors, activities and processes involved at all upstream stages of the product being made available on the market. This would therefore not only encompass the point at which a product is exported or made available for sale, but all prior stages in the product lifecycle. Companies would not, however, be similarly responsible for the downstream use of their products, such as where their voluntarily produced parts are sold onto another entity who makes use of them in a way which contravenes the definition.

3. How will the EU enforce the ban?

A key development in the approved text of the Forced Labour Ban is that the designation of the “*lead competent authority*” responsible for investigating and taking enforcement action against breaches of the Forced Labour Ban will be determined by reference to the location of the (suspected) forced labour violation. Where the violation is suspected to have taken place within the EU, the competent authorities of the relevant EU Member State will bear primary responsibility. In contrast, however, where the forced labour is alleged to have occurred outside of the EU, the European Commission itself will have exclusive jurisdiction.

Whoever the lead competent authority is, they will be able to take action following reports made by any person or entity of alleged violations. The European Commission will establish the Forced Labour Single Portal (the ‘Portal’) to receive such complaints. The Portal will also contain published final decisions, a database of risk areas and sectors, and the outcome of reviews.

Competent authorities and the Commission will follow a risk-based approach when assessing the likelihood of a violation. The Forced Labour Ban provides new details on this risk-based approach, as compared to the Proposal, which clarifies that competent authorities will prioritise based on:

- The scale and severity of the suspected forced labour violation, including whether state imposed.
- The quantity or volume of the offending product available within the EU market.
- The proportion of parts of a product suspected to have been made with forced labour.
- The proximity of the company to the risk of forced labour, and its leverage to bring about its end.

Where a lead competent authority finds a “*substantiated concern*” that a product has been produced using forced labour, it will be required to launch a formal investigation. Companies found to be selling products made with forced labour will be subject to a final decision requiring that it either refrain from selling those products or, if already on the market, withdraw the products and dispose of them at their own cost. Noncompliant companies may also be subject to financial penalties. Guidance will be published by the European Commission in order to support good compliance and set out best practices.

The Forced Labour Ban bears some similarities to the US forced labour legislation passed in 2022 known as the Uyghur Forced Labor Prevention Act ('UFLPA') (described in our *Law360* article: *Import Best Practices Under New Uyghur Forced Labor Law*). The UFLPA is narrower than the Forced Labour Ban insofar as the UFLPA focuses solely on goods sourced from the Xinjiang Uyghur Autonomous Region of China ('Xinjiang') or by certain designated entities, whereas the Forced Labour Ban applies to *any* products made with forced labour. However, the UFLPA is also more stringent in that it presumes that *all* goods manufactured in whole or in part in Xinjiang are made with forced labour and are therefore barred from entering the United States, requiring companies to overcome the presumption of forced labour by providing "*clear and convincing evidence*" that the goods in question were not made with forced labour. By contrast, the Forced Labour Ban places the burden on the lead competent authority to make a determination as to whether a product has been produced with forced labour.

4. What do companies need to do?

Provisions of the Forced Labour Ban – such as that allowing for the submissions of alleged violations – will come into force immediately after publication in the Official Journal. In preparation for the full ambit of the legislation, companies should consider the following actions:

- **Identify** their highest-risk areas based on the Forced Labour Ban's factors. For instance, noting which products are offered in quantity in the EU market, or whether any products may originate from areas with suspected or actual state imposed forced labour.
- **Assess and document** each stage of the upstream supply chain of products that go to market, including all activities, processes and actors involved. The Forced Labour Ban specifically names the 'extraction, harvesting, production, and manufacturing of a product in whole or in part.' The Ban also includes work and processing related to the product. Companies should have a keen understanding of their upstream process and ensure that appropriate records have been maintained. In the event of an investigation, it will be critical to show records showing each stage of that process.
- **Conduct due diligence**, such that companies can show authorities how they identified risks, and, if those risks existed, how those companies mitigated their impact or eliminated them altogether. (For more guidance on such due diligence, see our client alerts: *Human Rights in Supply Chains: How New Laws in Europe and the UK Impact Companies Around the World*; *EU Guidance on Forced Labour in Supply Chains*, and *Six Best Practices in Corporate Human Rights and Social Responsibility*).

This preparation will also help companies importing products into the US from certain regions and companies in China meet the standards of proof necessary to overcome the presumption of forced labour under the UFLPA. It is critical to prepare for both the UFLPA and the Forced Labour Ban. Preparations for the UFLPA will satisfy some, but not all, of the requirements under the Forced

Labour Ban – and vice versa. UFLPA is narrower in geographical scope, but more stringent, as it creates a rebuttable presumption. The Forced Labour Ban, while without the rebuttable presumption, is broader in geographical scope. It will be essential that companies are aware of the scope of both laws and ensure that they have policies and practices in place that are compliant with both.

The Forced Labour Ban is part of a growing body of international legislation that presents an increasingly complex challenge for global supply chains. Jenner & Block's Human Rights and Global Strategy Practice is ready to help companies navigate both the legal requirements and business human rights best practices.

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