

**The draft EU Regulation
on Forced Labor
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The European Commission has recently decided to specifically regulate forced labor (draft Regulation dated 14 September 2022), while also working on a directive dedicated to the duty of vigilance (to be voted by the Parliament on 1 June 2023).

This European duty of vigilance will inevitably include forced labor as a violation of human rights as it is targeted as such in the proposed Directive. It shall encompass a large scope of companies and concern in particular the biggest SMEs (250 employees and 40 million euros in turnover).

The draft Forced Labor Regulation proposed by the Commission is specifically aimed at **prohibiting the importation into the E.U. of all products produced in whole or in part by forced laborers**. In accordance with the definition provided by the International Labor Organization (I.L.O.), forced labor is defined as work done under threat of a sanction or by a person who did not voluntarily apply for the position.

According to figures from the I.L.O., forced labor **28 million people across de world** were concerned by forced labor in 2021.

No distinction is made as to the field of activity. Also, **no distinction is made on the geographical origin or the place of manufacture of the products, contrary to other legislations**, in particular in America where Uighurs are specifically targeted.

Member States will have to **create an authority, specifically responsible for applying this new Regulation**.

This authority will be responsible for **investigating the facts** on the recourse to forced labor.

A coordination structure will also be created at the EU level to ensure cooperation between the Commission and the competent authorities.

The EU Commission will also provide support for companies by publishing guidelines, and advice on the due diligence to be carried out so as to detect forced labor in the supply chain.

SMEs will be particularly assisted, insofar as the decision to prohibit all products resulting from forced labor may have consequences for companies whose smaller size prevents them from having the necessary means to fight against forced labor.

Companies that import or that have imported products resulting from forced labor will be responsible for withdrawing such products from the European market. In the event of refusal, they may be prosecuted at a national level.

However, the Commission shall continue to prioritize dialogue with companies.

According to the Commission, the purpose of this Regulation, as an addition to the EU Directive on corporate vigilance, is to clearly prohibit the manufacturing and especially the importation of products resulting from forced labor.

A number of European members of Parliament and experts have **called for the future Regulation to reverse the burden of proof**, so that it will be up to the companies to establish that their products do not result from forced labor, similarly to the American law on forced

labor of Uyghurs which obliges companies to prove that the products coming from Xinjiang do not result from forced labor.

This idea was ruled out by the drafters of the future “forced labor” regulation. It should be noted that, in its deliberation of 1 June 2023, the European Parliament also did not retain such a reversal of the burden of proof, as also requested by NGOs for the duty of vigilance.

Certain NGOs have asked for coercive measures, because they consider that for the moment this Regulation only contains a ban for the commercialization of such products.

The Regulation should enter into force by the end of 2025.

The decision to subject the matter to a Regulation rather than to a Directive was done in order to avoid **distortions of competition** resulting from the discrepancies that would otherwise occur in the various legislations of EU member states.

Companies must clearly **prepare themselves for the future and increase vigilance when choosing their international suppliers, particularly in terms of environmental and human rights considerations**. They must now also give forced labor a special place in their **prevention plans and risk management decisions**.