



SCHOOL OF  
ECONOMICS AND  
MANAGEMENT

## **Addressing Forced Labour in Global Supply Chains**

Assessing the Legal Changes arising through the  
Implementation of the new EU Regulation on Prohibiting  
Products made with Forced Labour on the Union Market

**Antonia Gina Blümm**

DEPARTMENT OF BUSINESS LAW

Master's Thesis in European and International Trade Law

15 ECTS

HARN63

Spring 2024



# Contents

<b>Abstract .....</b>	<b>5</b>
<b>Abbreviations .....</b>	<b>6</b>
<b>1 Introduction .....</b>	<b>7</b>
1.1 Background .....	7
1.2 Purpose and Research Questions.....	8
1.3 Delimitations .....	8
1.4 Method and Materials.....	9
1.5 Outline.....	11
<b>2 Status quo: The Actual and Legal Status of Forced Labour prior to the Regulation .....</b>	<b>12</b>
2.1 The Evolution of Forced Labour and the Necessity to take Action .....	12
2.1.1 What is Forced Labour?.....	12
2.1.2 From Traditional Slavery to Modern Slavery: Forced Labour is still current .....	14
2.1.3 Necessity to take Actions on an EU Level.....	15
2.2 Legal Situation Before the Regulation .....	16
2.2.1 ILO Instruments against Forced Labour .....	17
2.2.1.1 The ILO Forced Labour Convention, 1930 (No. 29) .....	19
2.2.1.2 The ILO Abolition of Forced Labour Convention, 1957 (No. 105).....	19
2.2.1.3 The Protocol of 2014 on the Forced Labour Convention, 1930 .....	20
2.2.1.4 Conclusion .....	21
2.2.2 Free Trade Agreements.....	21
2.2.3 European Instruments against Forced Labour .....	22
2.2.3.1 Article 5 Charter of Fundamental Rights of the European Union .....	22
2.2.3.2 Art. 4 European Convention on Human Rights.....	24
2.2.3.3 Corporate Sustainability Due Diligence Directive .....	24
2.2.4 Conclusion .....	26
<b>3 The Road to the Regulation: Starting point and Implementation .....</b>	<b>27</b>
3.1 The chronological Progress of the Regulation: from the State of the Union Speech to the Parliament decision.....	27
3.2 Legal Status of the Regulation .....	29
3.2.1 The legal Status of Regulations under EU Law.....	29
3.2.2 Legal Competencies for the Implementation of the Regulation .....	30

3.3	The Concept and the Organisation of the Regulation .....	31
3.3.1	Objective of the Regulation .....	31
3.3.2	Responsibilities within the Regulation .....	32
3.3.2.1	Responsibilities of the Commission .....	32
3.3.2.2	Responsibilities of the Member States and the Competent Authorities.....	34
3.3.2.3	Responsibilities of the Customs Authorities .....	34
3.3.3	Supporting Elements .....	35
3.4	The process on Prohibiting Products made with Forced Labour on the Union Market .....	36
3.4.1	Investigations .....	36
3.4.2	Decision .....	38
3.4.3	Enforcement.....	39
3.4.4	Conclusion .....	40
<b>4</b>	<b>Comparison and Conclusion .....</b>	<b>42</b>
4.1	Comparison .....	42
4.2	Conclusion.....	45
	<b>References.....</b>	<b>47</b>

# Abstract

The upcoming EU Regulation on prohibiting products made with forced labour on the Union market is forming the occasion for this Master's Thesis.

In particular, the topic of forced labour is analysed to provide a brief insight into the necessity of the Regulation. Furthermore, a variety of international and European legal instruments are compared to the new Regulation in order to identify the actual innovations introduced by the Regulation.

Above all, the new EU Regulation is intended to solve a long-standing issue through a transparent allocation of responsibilities among the authorities, close cooperation and coordination between different bodies, and strong enforcement mechanisms.

In conclusion, it can be pointed out that the proposal of the new Regulation addresses the economic operator directly, the definition of forced labour remains unchanged and the enforcement shall be ensured by close monitoring by the customs authorities.

**Keywords:** EU Regulation on prohibiting products made with forced labour, ILO Forced Labour Convention, 1930 (No. 29), Corporate Sustainability Due Diligence Directive (CSDDD), responsibilities, enforcement

# Abbreviations

BB	Betriebsberater
CCZ	Corporate Compliance Zeitschrift
CFR	Charta of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CSDDD	Corporate Sustainability Due Diligence Directive
ECHR	European Convention on Human Rights
EU	European Union
EUZW	Europäische Zeitschrift für Wirtschaftsrecht
FTA	Free Trade Agreements
IAO	Internationale Arbeitsorganisation
ILO	International Labour Organization
IOM	International Organization for Migration
LkSG	Lieferkettensorgfaltspflichtengesetz (German Supply Chain Act)
LMuR	Lebensmittel und Recht
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
SME	Small and medium-sized enterprises
TEU	Treaty on European Union
TFEU	Treaty of the Functioning of the European Union
UFLAP	Uyghur Forced Labour Prevention Act
UNODC	United Nations Office on Drugs and Crime
USMCA	United States-Mexico-Canada Agreement

# 1 Introduction

## 1.1 Background

The European Parliament is about to adopt a Regulation regarding the prohibition of products made with forced labour on the Union market (“the Draft Regulation”)<sup>1</sup>. It is, therefore, extremely relevant and important to examine the current legal situation regarding forced labour and to analyse the European legislative process and the potential changes through the Draft Regulation.

According to statistics published by the International Labour Organization (ILO) forced labour is not just a problem of the past but rather a problem of the present that should not be ignored and must be actively addressed. In 2021, approximately 27,6 million people worldwide performed forced labour.<sup>2</sup> Samira Rafaela, one of the co-rapporteurs on prohibiting products made with forced labour on the Union market, emphasises in a press conference of the European Parliament that forced labour exists not only outside, but also within the European Union (EU) and must therefore be prohibited.<sup>3</sup>

The ban on the products made with forced labour is not an entirely new idea; rather, it is a measure that has already been implemented worldwide or is currently being discussed.<sup>4</sup> The United States Tariff Act 1930<sup>5</sup>, for instance, prohibits the import of products made with forced labour into the United States in Section 307. The United States has extended this ban due to the situation of the Uyghurs in China<sup>6</sup> and assumes in its "Uyghur Forced Labour Prevention Act" (UFLPA)<sup>7</sup> of 2021 that all products imported from this area are the result of forced labour until valid counterarguments are presented.<sup>8</sup> Moreover, Article 23.6 of the Free Trade

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<sup>1</sup> P9\_TC1-COD(2022)0269 European Parliament legislative resolution of 23 April 2024 on the proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market (COM(2022)0453 – C9-0307/2022 – 2022/0269(COD)); Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market, Brussels, 13 March 2024 2022/0269(COD) 7542/24.

<sup>2</sup> ILO ‘Forced labour, modern slavery and human trafficking’ <[www.ilo.org/global/topics/forced-labour/lang-en/index.htm](http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm)> accessed 31 March 2024.

<sup>3</sup> European Parliament Press conference by Maria-Manuel Leitão-Marques and Samira Rafaela on 17 October 2023 <[https://multimedia.europarl.europa.eu/en/webstreaming/press-conference-by-maria-manuel-leitao-marques-and-samira-rafaela-co-rapporteurs-on-prohibiting-pro\\_20231017-1430-SPECIAL-PRESSER](https://multimedia.europarl.europa.eu/en/webstreaming/press-conference-by-maria-manuel-leitao-marques-and-samira-rafaela-co-rapporteurs-on-prohibiting-pro_20231017-1430-SPECIAL-PRESSER)> accessed 31 March 2024.

<sup>4</sup> Robert Lodde ‘Die Vereinbarkeit eines europäischen Importverbots von Zwangsarbeitsgütern mit WTO-Recht’ (2023) *EuZW* 2023, 886, 886, 887.

<sup>5</sup> United States Tariff Act of 1930 17 June 1930 <[www.govinfo.gov/content/pkg/COMPS-8183/pdf/COMPS-8183.pdf](http://www.govinfo.gov/content/pkg/COMPS-8183/pdf/COMPS-8183.pdf)> accessed 14 May 2024.

<sup>6</sup> China is accused of committing crimes against humanity and genocide against the Uyghurs and other Muslim minorities in Xinjiang. These groups are taken to so-called reeducation camps or prisons, where they have to suffer not only forced labour but also other abusive practices. Some people who were able to escape from the camps reported serious abuse and mental and physical torture. The Chinese government denies all accusations and claims that the camps are only used to control terrorism, as Uyghurs are violently rebelling against China with the aim of establishing an independent state. (BBC News ‘Who are the Uyghurs and why is China being accused of genocide?’ 24 May 2022 <[www.bbc.com/news/world-asia-china-22278037](http://www.bbc.com/news/world-asia-china-22278037)> accessed 8 May 2024).

<sup>7</sup> Uyghur Forced Labour Prevention Act (UFLPA) Public Law 117-78 23 December 2021 <[www.govinfo.gov/content/pkg/PLAW-117publ78/pdf/PLAW-117publ78.pdf](http://www.govinfo.gov/content/pkg/PLAW-117publ78/pdf/PLAW-117publ78.pdf)> accessed 14 May 2024.

<sup>8</sup> Lodde, *EuZW* 2023, 886, 886, 887.

Agreement between the United States, Mexico and Canada (USMCA)<sup>9</sup> explicitly states that the objective of the parties is to eliminate forced and compulsory labour by prohibiting the import of products made with forced labour. Current legislation to introduce such bans has also been pending in England and Australia.<sup>10</sup>

Considering the current and long-standing situation of the Uyghurs in China, who, according to the European Commission Vice-President in charge, Josep Borrell Fontelles, are not only affected by crimes against humanity but also have to perform forced labour,<sup>11</sup> the EU needs to act regarding the ban on products made with forced labour. Combating forced labour and eliminating violations of fundamental principles and labour rights are among the priorities of the EU.<sup>12</sup>

## 1.2 Purpose and Research Questions

This Master's Thesis is motivated, above all, by the current European legislation and the need to analyse the legal status of the upcoming Regulation. The main objective is to examine closely the new Draft Regulation. A particular focus is on the competence to issue the Regulation, the allocation of responsibilities set out in the Draft Regulation, and the specific process from initiating investigations to the actual enforcement mechanism. In addition, this Master Thesis aims to compare the amendments of the Draft Regulation with the existing legal situation regarding forced labour. For this reason, particular attention will be paid to various international and European legal instruments, which will then be analysed and compared regarding several specific comparative criteria. Because the Regulation is not yet in force, it is limited to speculation as to what extent the Regulation will change the legal status quo.

Therefore, the research questions will be: What are the primary areas of focus in the Draft Regulation? Which international and European legal instruments relating to the fight against forced labour have been adopted, how do they relate to the Draft Regulation, and to what extent are they comparable with the Draft Regulation regarding specific comparative criteria, or which differences could be relevant for fighting forced labour?

## 1.3 Delimitations

The analysis of the Regulation on prohibiting products made with forced labour is based on the most recent version of the Draft Regulation at the time of submission of this Thesis. The most recent version is the version dated 23 April 2024, which is

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<sup>9</sup> United States-Mexico-Canada Agreement 7/1/20 Text <<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>> accessed 14 May 2024.

<sup>10</sup> Lodde, *EuZW* 2023, 886, 887.

<sup>11</sup> EEAS Press Statement by High Representative/Vice-President Josep Borrell on the assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region by the Office of the United Nations High Commissioner for Human Rights 01 September 2022 <[www.eeas.europa.eu/eeas/china-statement-high-representativevice-president-josep-borrell-assessment-human-rights-concerns\\_en](http://www.eeas.europa.eu/eeas/china-statement-high-representativevice-president-josep-borrell-assessment-human-rights-concerns_en)> accessed 2 April 2024.

<sup>12</sup> EEAS Petition Uyghurs - the situation of Ilham Tohti and the Uyghur people in Xinjiang 01 July 2021 <[www.eeas.europa.eu/eeas/petition-uyghurs-situation-ilham-tohti-and-uyghur-people-xinjiang\\_en](http://www.eeas.europa.eu/eeas/petition-uyghurs-situation-ilham-tohti-and-uyghur-people-xinjiang_en)> accessed 2 April 2024.



identical in wording to the Council's proposal dated 13 March 2024. Therefore, both versions are always quoted when referring to the Draft Regulation. Any potential subsequent amendments and adjustments are not taken into account.

This Thesis will mainly focus on European circumstances and legislation and will only compare international legal acts. The international and European legal instruments, which primarily serve to analyse the change brought by the Draft Regulation, are only discussed to the extent that this is necessary for a comparison with the Draft Regulation. Moreover, a detailed review of national legislation on forced labour will not be considered in this Thesis.

Furthermore, the aspect of child labour will be left out of consideration since it will exceed the scope of this Thesis. Even though almost all forced labour laws cover children, there will be no focus on child labour and the specific instruments to prevent it.

This Thesis does not analyse any case law, as the Regulation has not yet been adopted, and therefore, there is no concrete case law on the subject.

#### **1.4 Method and Materials**

It is essential to look at the different international instruments regarding the prevention of forced labour in order to answer the research questions. Moreover, a practical comparison between the legal situation before and after the implementation of the Regulation requires a precise analysis of the Draft Regulation and various selected aspects that can be directly compared with the existing legal instruments. Comparable aspects to be addressed in the comparison are the definition of forced labour, the addressees of the different instruments, the organisation, and the enforcement. The analysis of the comparable aspects is carried out in chapter four primarily based on the information provided in chapters two and three.

In order to approach this Thesis in an understanding and well-structured way, the legal dogmatic method was used.<sup>13</sup> The basis and the origin of legal method is always the legal text and its analysis.<sup>14</sup> Furthermore, the interpretation of the legal text might be another important aspect in the legal dogmatic method. According to the theory of Karl Friedrich von Savigny, the interpretation of legal text can be categorised into four different sections, namely the textual or grammatical, the historical, the systematic and teleological understanding of the legal text.<sup>15</sup>

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<sup>13</sup> Sanne Taekema / Bart van Klink / Wouter de Been 'Introduction: Facts, norms and interdisciplinary research' *Facts and Norms in Law Interdisciplinary Reflections on Legal Method* Edward Elgar Publishing Limited 2016 pp. 3-4 <[www-elgaronline-com.ludwig.lub.lu.se/edcollbook/edcoll/9781785361081/9781785361081.xml](http://www-elgaronline-com.ludwig.lub.lu.se/edcollbook/edcoll/9781785361081/9781785361081.xml)> accessed 8 May 2024.

<sup>14</sup> *ibid.*, p. 5.

<sup>15</sup> Winfried Brügger 'Legal Interpretation, Schools of Jurisprudence, and Anthropology: Some Remarks from a German Point of View' *The American Journal of Comparative Law* 42, no. 2 1994 p. 396 <<https://doi.org/10.2307/840752>> accessed 8 May 2024.

This Thesis will begin by gathering information from various sources, including statutory law, normative sources, authoritative sources, and secondary sources.<sup>16</sup> It follows the descriptive research objective by analysing different legal instruments and bringing all relevant aspects together in an organised manner.<sup>17</sup>

Regarding the various international and European instruments, the analysis is primarily based on the legal text. Moreover, some official documents by international organisations like the ILO were considered. Only the aspects relevant to the subsequent comparison are considered in the elaborations of the various legal instruments. A comprehensive analysis of the various international and European instruments is not possible due to the time and scope limitations of this Thesis. When it comes to the international and European instruments, a particular focus will be on the ILO Forced Labour Convention, 1930 (No. 29)<sup>18</sup> and the ILO Abolition of Forced Labour Convention, 1957 (No. 105)<sup>19</sup> as well as the proposal of the Corporate Sustainability Due Diligence Directive (CSDDD)<sup>20</sup>. The ILO Conventions were chosen for the comparison as they represent the original legal instruments and form the basis for all subsequent legal acts. Reference is also made to the Charter of Fundamental Rights of the European Union (CFR)<sup>21</sup> and the European Convention on Human Rights (ECHR)<sup>22</sup>, which constitute the basis for violations of human rights. The Draft CSDDD is also examined in more detail, as it is one of the EU's latest legal acts for enforcing sustainable and responsible action by companies and has clear similarities with the Draft Regulation.

The analysis of the Draft Regulation of the European Parliament and the Council on prohibiting products made with forced labour on the Union market is primarily based on the legal text due to a lack of secondary literature yet. A more detailed analysis of the relevant points of the comparison will be provided. This assessment of the Draft Regulation focuses primarily on the organisation of the implementation and the allocation of responsibilities to the different EU Member States and within the EU Member States to the competent authorities, as well as the actual enforceability.

Due to the relevance of international legal instruments, such as the ILO Conventions, for German legislation and that Germany is considered a member of the EU, German research materials were considered using the extensive specialised literature and previous knowledge of German national research tools.

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<sup>16</sup> Mark Van Hoecke 'Legal Doctrine: Which Method(s) for What Kind of Discipline?' *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?* London: Hart Publishing p. 11 <<http://dx.doi.org/10.5040/9781472560896.ch-001>> accessed 8 May 2024.

<sup>17</sup> Lina Kestemont 'Research objectives' *Handbook on Legal Methodology: From Objective to Method* Intersentia 2018 p. 9 <[www.cambridge-org.ludwig.lub.lu.se/core/services/aop-cambridge-core/content/view/334431D6C1638CF12E49B2567DCD8530/9781839702389c2\\_p9-18\\_CBO.pdf/research-objectives.pdf](http://www.cambridge-org.ludwig.lub.lu.se/core/services/aop-cambridge-core/content/view/334431D6C1638CF12E49B2567DCD8530/9781839702389c2_p9-18_CBO.pdf/research-objectives.pdf)> accessed 8 May 2024.

<sup>18</sup> ILO C029 - Forced Labour Convention, 1930 (No. 29).

<sup>19</sup> ILO C105 - Abolition of Forced Labour Convention, 1957 (No. 105).

<sup>20</sup> COM (2022) 71 final Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.

<sup>21</sup> Charter of Fundamental Rights of the European Union (2000/C 364/01).

<sup>22</sup> European Convention on Human Rights.

## **1.5 Outline**

Firstly, this Thesis will deal with the concrete definition of forced labour and stress the existing status quo. Afterward, the legal situation before the Regulations's entry into force will be analysed. Reference is made in particular to both international and European legislation. In order to gain a more precise understanding of the current legislative process regarding the Regulation, the process and the individual steps leading to the implementation of the Regulation will be clarified after that.

A more detailed reference will be made to the Draft Regulation itself. Both the legal basis and the key provisions will be evaluated more thoroughly. In this context, particular emphasis will be placed on the enforcement aspect.

In the conclusion, there will be a comparison of the international und European legal acts, and the Draft Regulation based on comparative criteria. The differences and similarities will be pointed out.

## 2 Status quo: The Actual and Legal Status of Forced Labour prior to the Regulation

### 2.1 The Evolution of Forced Labour and the Necessity to take Action

The situation regarding forced labour remains problematic as forced labour can constitute a severe violation of human rights and a restriction of individual freedom.<sup>23</sup> In recent years, there has even been an increase in the number of individuals coerced into labour.<sup>24</sup> Forced labour can be understood very broadly. The necessity of taking action against forced labour becomes particularly clear through international comparisons and the long history of the issue as pointed out below.

#### 2.1.1 What is Forced Labour?

The term ‘forced labour’ can be understood as a legal term, but at the same time describes an economic issue.<sup>25</sup> It is essential to work out the term in more detail to be able to act against it. The definition is recognised as being challenging to access due to its broadness. Many authorities reach their limits when fighting forced labour as a result of the unclear definition.<sup>26</sup> Even though the definition of forced labour is quite broad, it does not imply that all workers who are not paid a fair wage, work under poor working conditions or feel the necessity to stay in their workplace due to a lack of human resources are automatically subject to forced labour. To categorise any work as forced labour there must be some human rights violation.<sup>27</sup>

The Draft Regulation on prohibiting products made with forced labour on the Union market does not legally define the term ‘forced labour’. The Draft Regulation instead refers to the definition of the ILO.<sup>28</sup>

The ILO Convention No. 29 defines forced labour in Art. 2 (1) as ‘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’<sup>29</sup>. This definition consists of three parts, namely (i) work or services, (ii) menace of any penalty, and (iii) involuntariness. The term work and services can be understood quite broadly and describe all kinds of work, services, or employment in any area both in the private

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<sup>23</sup> ILO ‘A global alliance against forced labour’ International Labour Conference 93<sup>rd</sup> session 2005 para. 13.

<sup>24</sup> ILO / Walk Free / IOM, Global Estimates of Modern Slavery, p. 2 <[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipec/documents/publication/wcms\\_854733.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf)> accessed 2 April 2024.

<sup>25</sup> IAO ‘Schluss mit der Zwangsarbeit’ Internationale Arbeitskonferenz 89. Tagung 2001 p. 9.

<sup>26</sup> ILO International Labour Conference 93<sup>rd</sup> session 2005 para. 80.

<sup>27</sup> Steve Gibbons ‘A Modern Definition of Forced Labour’ International Union Rights vol. 14 no. 4 2008 p. 12 JSTOR <[www.jstor.org/stable/41937441](http://www.jstor.org/stable/41937441)> accessed 18 April 2024.

<sup>28</sup> Joshua Blach ‘Zum Kommissionvorschlag einer „Verordnung über das Verbot von Produkten, die mit Zwangsarbeit hergestellt wurden“‘ CCZ 2022, 341, 342.

<sup>29</sup> ILO C029 - Forced Labour Convention, 1930 (No. 29) Art. 2 (1).

and public sectors.<sup>30</sup> Nevertheless, around 86% of registered forced labour is carried out in the private sector.<sup>31</sup> The definition of penalty according to the ILO definition of forced labour must also be interpreted widely and includes both physical and psychological penalties, as well as the withholding of benefits for workers or the lack of payment of wages.<sup>32</sup> Involuntariness can be interpreted as acting against the free will and consent of the worker to enter or leave the employment relationship at any time.<sup>33</sup> Involuntariness can also be assumed if the consent to perform labour only appears to be given based on fear of punishment.<sup>34</sup> This far-reaching definition makes it possible to apply the Draft Regulations on forced labour to a great variety of cases and to guarantee their applicability for possible future modifications of the term.<sup>35</sup>

In Art. 2 (2), ILO Convention No. 29 provides some exceptions to the broad forced labour definition. Compulsory military service, any activities that are considered normal civic obligations, any work consequent to a court ruling, and work in emergencies such as war or minor communal services should, therefore, not fall under the definition of forced labour.<sup>36</sup> Since the Draft Regulation on prohibiting products made with forced labour in Art. 2 (a) refers to the entire Art. 2 of the ILO Convention (No. 29), it can be assumed that the forced labour definition under the Draft Regulation includes the exceptions as well.

Currently, approximately 28 million people are in situations of forced labour.<sup>37</sup> While Asia and the Pacific hold the largest share of people in forced labour, Europe and Central Asia are closely following, with approximately 4.1 million people involved in forced labour. Even when considering the proportionality between forced labour and population, Europe, along with Central Asia, still holds the second position in the rankings.<sup>38</sup>

Moreover, forced labour occurs in its various forms in different societies with different levels of development. It is therefore not limited to specific countries or sectors.<sup>39</sup> Nevertheless, sectors such as services, manufacturing, construction, and agriculture are among those significantly affected by forced labour violations, while mining also contributes a considerable share.<sup>40</sup>

A report by the ILO, Organisation for Economic Cooperation and Development (OECD), International Organization for Migration (IOM), and United Nations Children's Fund narrows down three criteria for the emergence of forced labour,

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<sup>30</sup> ILO 'ILO Standards on Forced Labour The new Protocol and Recommendations at a Glance' 2016 p. 5 <[www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_508317.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_508317.pdf)> accessed 10 April 2024.

<sup>31</sup> Alessandro Fruscione 'The European Commission Proposes a Regulation to Ban Products Made With Forced Labour' *Global Trade and Customs Journal* vol. 18, Issue 3 2023 p. 121.

<sup>32</sup> ILO 'ILO Standards on Forced Labour The new Protocol and Recommendations at a Glance' 2016 p. 5.

<sup>33</sup> *ibid.*, p. 5.

<sup>34</sup> Lars Thomann 'Steps to Compliance with International Labour Standards' *VS Research* 2012 p. 191.

<sup>35</sup> ILO 'ILO Standards on Forced Labour The new Protocol and Recommendations at a Glance' 2016 p. 5.

<sup>36</sup> ILO C029 - Forced Labour Convention, 1930 (No. 29) Art. 2 (2).

<sup>37</sup> ILO / Walk Free / IOM, *Global Estimates of Modern Slavery*, p. 2.

<sup>38</sup> *ibid.*, p. 3.

<sup>39</sup> ILO International Labour Conference 93<sup>rd</sup> session 2005 para. 3.

<sup>40</sup> ILO/ Walk Free / IOM, *Global Estimates of Modern Slavery*, p. 3.

namely (i) the gaps in statutory law and thus the gap in enforceability and access to a legal system, (ii) socio-economic pressure of workers and (iii) the business conduct and conditions.<sup>41</sup> In many cases, it is mainly due to the private circumstances of the workers affected, such as heavy debt or a critical status about their residence permit, that they accept the existing situation and forced labour.<sup>42</sup> Women, ethnic and racial minorities, children and poorer workers are particularly affected by forced labour.<sup>43</sup>

Forced labour is an international issue that is far from settled and which covers a wide range of practices that cannot be precisely defined by law.

### **2.1.2 From Traditional Slavery to Modern Slavery: Forced Labour is still current**

In the 19<sup>th</sup> century, slavery was the primary form of forced labour. The indigenous population was often affected by slavery.<sup>44</sup> Nevertheless, there is a distinction between the term ‘forced labour’ and ‘slavery’. Slavery can be considered a type of forced labour, which is characterised by the fact that the restriction of freedom occurs in the form of ownership of the enslaved people, and the duration of the restriction is particularly long.<sup>45</sup>

The ILO addressed forced labour as one of the first human rights issues after its foundation.<sup>46</sup> When the ILO Convention (No. 29) was implemented, forced labour was mainly used by colonial governments in dependent states.<sup>47</sup> During this period, the objective of forced labour was to expand the transport network and to build infrastructure in the colonised countries.<sup>48</sup>

During and after the Second World War and the implementation of some international legal acts to take actions against forced labour, changes regarding the motives of forced labour leading to politically and ideologically motivated forced labour were recognisable.<sup>49</sup> A significant focus was placed on gender-specific forced labour and child labour, particularly in the 1980s and 1990s.<sup>50</sup>

In addition to the traditional forms of forced labour, more recent practices such as human trafficking have developed.<sup>51</sup> The increase in forced labour is closely connected to the migration problem since migrants are at high risk of getting involved in forced labour due to their lack of understanding, the non-existence of alternative working options and therefore the dependence on the workplace.<sup>52</sup> Many

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<sup>41</sup> ILO / OECD / IOM / United Nations Children’s fund ‘Ending child labour, forced labour and human trafficking in global supply chains’ 2019 p. 17 <<https://mneguidelines.oecd.org/Ending-child-labour-forced-labour-and-human-trafficking-in-global-supply-chains.pdf>> accessed 2 April 2024.

<sup>42</sup> ILO International Labour Conference 93<sup>rd</sup> session 2005 para. 14.

<sup>43</sup> IAO Internationale Arbeitskonferenz 89. Tagung 2001 p. 3.

<sup>44</sup> *ibid.*, p. 4, 10.

<sup>45</sup> Lars Thomann, VS Research 2012 p. 205.

<sup>46</sup> International Labour Office Geneva ,General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)’ 2007 p. 1 accessed 10 April 2024.

<sup>47</sup> ILO ‘ILO Standards on Forced Labour The new Protocol and Recommendations at a Glance’ 2016 p. 3.

<sup>48</sup> IAO Internationale Arbeitskonferenz 89. Tagung 2001 p. 10.

<sup>49</sup> *ibid.*, p. 4, 10.

<sup>50</sup> *ibid.*, p. 12.

<sup>51</sup> ILO International Labour Conference 93<sup>rd</sup> session 2005 para 1.

<sup>52</sup> Steve Gibbons, International Union Rights, vol. 14, no. 4, 2008, p 12.

migrants are unaware of their rights as workers due to a lack of knowledge, and they often accept the situation of forced labour and other poor working conditions due to a shortage of opportunities in their home country.<sup>53</sup> The traditional forms of forced labour primarily consist of the bonded labour system, debt bondage, and slavery-like practices, which are usually present in the agricultural sector.<sup>54</sup>

Globalisation and the increasingly far-reaching supply chains may also have significantly influenced the development of forced labour. While global supply chains can have a lot of positive effects like economic growth, the invention of new technologies, or technological transfer, on the contrary, a lot of negative aspects such as forced labour, child labour or human trafficking are linked to it.<sup>55</sup> Identifying these potential violations and determining where exactly they occurred within the supply chain can be challenging.<sup>56</sup> For this to succeed, it is essential that both the supply chain is fully traceable and that the specific relevant data is transmitted entirely and correctly.<sup>57</sup> The problem of forced labour in supply chains must be understood as a structural problem that individuals or single countries cannot solve, it requires wide-ranging structural control and restrictions.<sup>58</sup>

Notably, recent developments in the field of technology have also contributed to the fact that traditional forms of forced labour have changed and reached more extensive dimensions. In terms of human trafficking, technology offers particular opportunities regarding transport and cross-border criminal activities.<sup>59</sup> Moreover, the use of new technologies brings along the risk of weak data security and the possibility of data manipulation.<sup>60</sup> New technologies may develop rapidly compared to the enforcement measures and instruments of the monitoring authorities which makes it difficult for the authorities to take effective action.<sup>61</sup>

Forced labour was, therefore, permanently present in history, and different periods have changed the forms and focus of forced labour.

### **2.1.3 Necessity to take Actions on an EU Level**

There are significant differences between the legal situation regarding forced labour and the actual reality, which is why it seems essential to take measures at an EU level.<sup>62</sup> A case study analysing forced labour under the United States Tariff Act 1930 revealed that a ban on importing products can have significant commercial pressure

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<sup>53</sup> Conny Rijken 'When Bad Labour Conditions Become Exploitation: Lessons Learnt from the Chowdury Case' Towards a Decent Labour Market for Low Waged Migrant Workers, edited by Conny Rijken and Tesseltje de Lange, Amsterdam University Press 2018 p. 190 JSTOR <[www.jstor.org/stable/j.ctv6hp34j.11](https://www.jstor.org/stable/j.ctv6hp34j.11)> accessed 20 May 2024.

<sup>54</sup> IAO Internationale Arbeitskonferenz 89. Tagung 2001 p. 5.

<sup>55</sup> ILO / OECD / IOM / United Nations Children's fund 'Ending child labour, forced labour and human trafficking in global supply chains' 2019 p. 1.

<sup>56</sup> *ibid.*, p. 5.

<sup>57</sup> *ibid.*, p. 16.

<sup>58</sup> *ibid.*, p. 17.

<sup>59</sup> ILO International Labour Conference 93<sup>rd</sup> session 2005 para. 4.

<sup>60</sup> Cory Searcy / Grant Michelson / Pavel Castka 'How Canadian companies can use tech to identify forced labour in their supply chains' The Conversation 2023 <<https://theconversation.com/how-canadian-companies-can-use-tech-to-identify-forced-labour-in-their-supply-chains-216322>> accessed 1 May 2024.

<sup>61</sup> ILO / OECD / IOM / United Nations Children's fund 'Ending child labour, forced labour and human trafficking in global supply chains' 2019 p. 18.

<sup>62</sup> Gabrielle Holly / Leonard Feld for The Danish Institute for Human Rights 'Setting the Scene for an effective Forced Labour Ban in the EU' p. 5.

on companies to ascertain that there is no forced labour within the supply chains.<sup>63</sup> These findings can be transferred to the EU level. The implementation of the Regulation, as the ban on imports, exports, and trade within the EU, can also impose considerable pressure on companies.

In 2015, the United Nations and its Member States formulated the 2030 Agenda for Sustainable Development, which outlines 17 Sustainable Development Goals to be achieved by 2030. Of particular relevance, Target 8.7 mandates the eradication of forced labour through immediate and effective measures by 2030.<sup>64</sup> This global commitment underscores the gravity of the issue and the need for comprehensive solutions to combat forced labour.

Despite the existence of the far-reaching ILO Convention (No. 29) and other measures implemented by ILO Member States, the Tripartite Meeting of Experts on forced labour and trafficking for labour exploitation in February 2013 concluded that ‘gaps remain in the effective eradication of forced labour and need to be urgently addressed in terms of prevention, victim protection, compensation, enforcement, policy coherence and international cooperation’<sup>65</sup>.

The Draft Regulation primarily provides extensive rules for investigating forced labour violations. Through close cooperation between different authorities and institutions, the enforcement of placing and making available products made with forced labour on the market and exporting them shall be made more effective.<sup>66</sup> To achieve this, the Draft Regulation also sets out a wide range of support and coordination mechanisms to assist companies, authorities, and reporting persons. The specific measures are analysed in more detail in the following sections of this Thesis.

## 2.2 Legal Situation Before the Regulation

There is consensus that States are bound by the human rights. It has long been claimed that only states, and not private persons, must protect the human rights of individuals.<sup>67</sup> Nevertheless, it can be assumed that natural persons not only have rights but also obligations. The obligations of private persons can be divided into obligations to society and obligations to respect the (human) rights of other individuals.<sup>68</sup> Over the past decades, the focus on respecting human rights has also expanded to businesses and the first initiatives were taken to encourage companies to act responsibly and in accordance with human rights.<sup>69</sup> After international organisations and associations initially turned their attention to developing legal acts

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<sup>63</sup> The Remedy Project / The Freedom Fund ‘Remediation of Forced Labour under the Tarif Act 1930’ 2023 p 4.

<sup>64</sup> UNODC, and the Sustainable Development Goal.

<sup>65</sup> ILO Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, Conclusions adopted by the Meeting TMELE/2013/6 p 2.

<sup>66</sup> Joshua Blach, CCZ 2022, 341, 344.

<sup>67</sup> John H. Knox ‘Horizontal Human Rights Law’ The American Journal of International Law vol. 102 no. 1 2008 p. 1 JSTOR <[www.jstor.org/stable/40007767](http://www.jstor.org/stable/40007767)> accessed 1 May 2024.

<sup>68</sup> *ibid*, pp. 1-2.

<sup>69</sup> Holger Hembach ‘Das LkSG und seine Umsetzung – ein Überblick’ LMuR 2023, 9, 10.



covering such cases, the EU and some of its Member States have thereupon realised the need for legal action.<sup>70</sup>

Several governments have initiated legislation on supply chain transparency and due diligence obligations over the last decades. While the United States already implemented its Transparency in Supply Chains Act in 2010<sup>71</sup>, the United Kingdom adopted its Modern Slavery Act in 2015<sup>72</sup>, and France followed with the implementation of the Corporate Duty of Vigilance Law in 2017<sup>73</sup>.<sup>74</sup> Creating a level playing field for companies worldwide without any unfair trade advantages or disadvantages for companies could be an argument against national legislation to eradicate forced labour.<sup>75</sup> Companies or countries that do not overserve any fundamental labour rights could gain advantages due to higher market competitiveness.<sup>76</sup> Even if national laws are implemented, such laws should always be based on international standards so that companies in certain jurisdictions do not suffer any significant advantages or disadvantages due to the national legal acts.<sup>77</sup>

Besides various legal acts of international, European, and national organisations or governments, private persons can fight forced labour by boycotting products made with forced labour. For private sanctions, wide-ranging information about the companies and the production is fundamental for private persons to detect and find out that forced labour was used within the supply chain of a specific product.<sup>78</sup>

The following section examines some international and European regulatory mechanisms that aim to eliminate forced labour.

### 2.2.1 ILO Instruments against Forced Labour

The ILO is an international organisation with the overarching objective of ensuring fair trade and protecting the working conditions of workers.<sup>79</sup> The labour standards worked out by the ILO usually take the form of Conventions and Recommendations<sup>80</sup> which are adopted at the annual International Labour Conference.<sup>81</sup> There are two ILO Conventions regarding the topic of forced labour

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<sup>70</sup> Patricia Sarah Stöbener de Mora/ Paul Noll 'Noch grenzenlosere Sorgfalt?' EuZW 2023, 14, 15.

<sup>71</sup> Transparency in Supply Chains Act in 2010, Senate Bill No. 657 <[https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb\\_657\\_bill\\_ch556.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb_657_bill_ch556.pdf)> accessed 15 May 2024.

<sup>72</sup> Modern Slavery Act 2015 <[www.legislation.gov.uk/ukpga/2015/30/data.pdf](http://www.legislation.gov.uk/ukpga/2015/30/data.pdf)> accessed 15 May 2024.

<sup>73</sup> Corporate Duty of Vigilance Law 2017 <[www.business-humanrights.org/en/latest-news/french-duty-of-vigilance-law-english-translation/](http://www.business-humanrights.org/en/latest-news/french-duty-of-vigilance-law-english-translation/)> accessed 15 May 2024.

<sup>74</sup> ILO / OECD / IOM / United Nations Children's fund 'Ending child labour, forced labour and human trafficking in global supply chains' 2019 p. 45 et seqq.

<sup>75</sup> *ibid.*, p. 48.

<sup>76</sup> Gary Burtless 'Workers' Rights: Labor Standards and Global Trade' The Brookings Review vol. 19 no. 4 2001 p. 10 JSTOR <[www.jstor.org/stable/20080997?origin=crossref](http://www.jstor.org/stable/20080997?origin=crossref)> accessed 16 April 2024.

<sup>77</sup> ILO / OECD / IOM / United Nations Children's fund 'Ending child labour, forced labour and human trafficking in global supply chains' 2019 p. 48.

<sup>78</sup> Gary Burtless, The Brookings Review vol. 19 no. 4 2001 p. 10.

<sup>79</sup> Roger Blanpain / Susan Bisom-Rapp / William R. Corbett / Hilary K. Josephs / Michael J. Zimmer 'The International Labour Organization and International Labor Standards. in: The Global Workplace: International and Comparative Employment Law - Cases and Materials' Cambridge University Press; 2007 p. 53.

<sup>80</sup> ILO Office of the Legal Adviser, ILO legal instruments <[www.ilo.org/global/about-the-ilo/how-the-ilo-works/organigramme/jur/legal-instruments/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/organigramme/jur/legal-instruments/lang--en/index.htm)> accessed 21 April 2024.

<sup>81</sup> ILO Conventions and Recommendations <[www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm](http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm)> accessed 16 April 2024.

which are nearly universally ratified,<sup>82</sup> and are both part of the eleven fundamental instruments of the ILO.<sup>83</sup> According to the ILO instruments ILO Member States have not only the obligation to prohibit all kinds of forced labour by criminalisation or prosecution but moreover to prevent forced labour and provide protection and remedies for workers involved in forced labour.<sup>84</sup> However, it should also be mentioned that there are other ILO instruments that are closely related to the two main Conventions on fighting forced labour. Without the interaction of the various rights, the ban on forced labour would be difficult to achieve.<sup>85</sup>

Before discussing the two ILO Conventions in more detail, it is essential to understand the implementation and enforcement procedure of ILO Conventions in general. The idea of ILO Conventions is, above all, to appeal to the self-reflection of the ILO Member States and to impose an obligation to report on the extent to which the objectives set by the ILO have been met.<sup>86</sup> Due to the priority of the two ILO Conventions (No. 29) and (No. 105) on forced labour, a report must be submitted by the ILO Member States every two years. By contrast, other less important Conventions are only subject to a reporting obligation every five years.<sup>87</sup> According to Art. 24 and 26 of the ILO Constitution, employer's/worker's organisations and other ILO Member States can report to the ILO if in their opinion another ILO Member State has failed to observe a Convention effectively.<sup>88</sup> Where the organisations or ILO Member States accuse another state of not complying with the provisions of a particular Convention, the ILO can investigate and report its findings. However, the ILO itself cannot impose sanctions or penalising measures. In these cases, the ILO can only provide advice and assistance to ensure compliance with labour rights.<sup>89</sup> The ILO enforcement system is therefore not characterised by the fact that it imposes particularly harsh penalties or economic sanctions but rather by a shame and moral approach, which is brought through the publication of the evaluated information regarding compliance with the ILO rules.<sup>90</sup> The effective enforcement of ILO labour standards has already been subject to a wide range of criticism.<sup>91</sup> The lack of punishment and enforcement, especially concerning forced labour, is one reason why forced labour is not entirely abolished.<sup>92</sup>

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<sup>82</sup> Gabrielle Holly / Leonard Feld for The Danish Institute for Human Rights 'Setting the Scene for an effective Forced Labour Ban in the EU' p. 5.

<sup>83</sup> ILO Conventions and Recommendations.

<sup>84</sup> ILO 'ILO Standards on Forced Labour The new Protocol and Recommendations at a Glance' 2016 p. 4.

<sup>85</sup> Lars Thomann, VS Research 2012 p. 200.

<sup>86</sup> Marley S. Weiss 'Ruminations on the Past, Present and Future of International Labor Standards: Empowering Law in the Brave New Economic World' *The Good Society* 16 no. 2 2007 p. 75 JSTOR <[www.jstor.org/stable/20711271](http://www.jstor.org/stable/20711271)> accessed 15 May 2024.

<sup>87</sup> Franziska Humbert 'UN and ILO implementation mechanisms for the prohibition of child labour' *The Challenge of Child Labour in International Law*, Cambridge Studies in International and Comparative Law, Cambridge University Press 2009 p. 156.

<sup>88</sup> Drusilla K. Brown 'Labor Standards: Where Do They Belong on the International Trade Agenda?' *The Journal of Economic Perspectives* vol. 15 no. 3 2001 p. 108 JSTOR <[www.jstor.org/stable/2696558](http://www.jstor.org/stable/2696558)> accessed 21 April 2024.

<sup>89</sup> Gary Burtless, *The Brookings Review* vol. 19 no. 4 2001 p. 11.

<sup>90</sup> Franziska Humbert, Cambridge University Press; 2009 p. 192.

<sup>91</sup> Velibor Jakovleski / Scott Jerbi / Thomas Biersteker 'The ILO's Role in Global Governance: Limits and Potential' *The ILO @ 100: Addressing the Past and Future of Work and Social Protection* vol. 11 Brill 2019 p. 97 JSTOR <[www.jstor.org/stable/10.1163/j.ctvrxk4c6.12](http://www.jstor.org/stable/10.1163/j.ctvrxk4c6.12)> accessed 21 April 2024.

<sup>92</sup> Lars Thomann, VS Research 2012 p. 191.

### 2.2.1.1 The ILO Forced Labour Convention, 1930 (No. 29)

The ILO Forced Labour Convention (No. 29) was established in 1930 and is, almost 100 years after its implementation, still in force.<sup>93</sup> The ILO Convention No. 29 has undergone some changes and especially deletions in 2014, mainly due to historical developments.<sup>94</sup> It consists of 33 Articles of which 21 Articles were deleted during this process. The Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35) provides supplements to the ILO Convention No. 29 and lays out three primary principles for the ILO Member States to be considered.<sup>95</sup> Moreover, the ILO Convention No. 29 is addressed to the ILO Member States and thus not to the private companies that carry out the majority of forced labour. Nevertheless, the ILO Member States must be responsible for preventing and punishing forced labour violations of private actors.<sup>96</sup>

The most frequently referenced provision is Art. 2, which defines forced labour. Furthermore, the ILO Convention No. 29 states in Art. 25 that using forced or compulsory labour must be punished as a penal offence, and the penalty must be appropriate.

The ILO Convention No. 29 was initiated specifically for cases of forced labour due to economic circumstances. Beyond that, it was also noted that there were further cases of forced labour, for example, for punishment or disciplinary measures.<sup>97</sup> Some supplements were necessary, which will be explained further down. One is the ILO Abolition of Forced Labour Convention, 1957 (No. 105), focussing on a different aspect of forced labour.

### 2.2.1.2 The ILO Abolition of Forced Labour Convention, 1957 (No. 105)

The ILO Convention No. 105 mainly supplements the ILO Convention No. 29 and does not substitute it.<sup>98</sup> It consists of a total of 10 Articles.

Moreover, ILO Convention No. 105 provides in comparison to the comprehensive forced labour definition in ILO Convention No. 29, a list of five cases in which forced labour is prohibited and needs to be suppressed.<sup>99</sup> According to Art. 1 of ILO Convention No. 105 this is the case for the means of (i) 'political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system'<sup>100</sup>, (ii) if forced labour is used for 'economic development'<sup>101</sup>, (iii) when it is used as a disciplinary measure, (iv) or in cases to sanction the participation in a strike and/or

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<sup>93</sup> Janice R. Bellace 'The ILO Declaration of Fundamental Principles and Rights at Work' vol. 17 2001, *International Journal of Comparative Labour Law and Industrial Relations*, Issue 3, p. 277, <<https://kluwerlawonline.com/JournalArticle/International+Journal+of+Comparative+Labour+Law+and+Industrial+Relations/17.3/360553>> accessed 6 May 2024.

<sup>94</sup> ILO C029 - Forced Labour Convention, 1930 (No. 29).

<sup>95</sup> ILO R035 - Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35).

<sup>96</sup> Lars Thomann, *VS Research* 2012 p. 191.

<sup>97</sup> *ibid.*, p. 196.

<sup>98</sup> *ibid.*, p. 196.

<sup>99</sup> *ibid.*, p. 197.

<sup>100</sup> ILO C105 – Abolition of Forced Labour Convention, 1957 (No. 105) Art. 1 (a).

<sup>101</sup> *ibid.*, Art. 1 (b).

(v) as an instrument for racial, social, religious or national discrimination.<sup>102</sup> Nevertheless, there can also be limitations to those freedoms if the exercise of individuals rights is connected to violence or if minor restrictions are proportionate to the loss of individual freedoms, also with regard to the exceptions of ILO Convention No. 29.<sup>103</sup> In comparison to ILO Convention No. 29, ILO Convention No. 105 does not provide a punishment through a penal in case the ILO Member States carry out forced labour. Nevertheless, the ILO Convention No. 105 also addresses the Member States of the ILO and not the companies carrying out forced labour.<sup>104</sup>

### 2.2.1.3 The Protocol of 2014 on the Forced Labour Convention, 1930

At the Tripartite Meeting of Experts on forced labour and trafficking for labour exploitation in February 2013, it was concluded that the existing provisions of the ILO Conventions No. 29 and No. 105 were not sufficient and that the existing gaps to eliminate forced labour need to be filled. The experts concluded that for the effective elimination of forced labour ‘prevention, victim protection, compensation, enforcement, policy coherence and international cooperation’<sup>105</sup> must be addressed. The Protocol of 2014 on the Forced Labour Convention, 1930<sup>106</sup> is moreover intended to respond to the fact that the traditional forms of forced labour have changed, and that human trafficking in particular has become a very significant sub-category of forced labour. When drafting the Protocol, attention was also paid to the fact that there are groups that are particularly vulnerable to forced labour.<sup>107</sup>

At first, the experts could not agree on whether this problem should be addressed in the form of a binding additional Protocol or through a non-binding Recommendation. At the 103<sup>rd</sup> International Labour Conference, the Protocol was decided on as the final choice and was adopted.<sup>108</sup> Additionally, the Forced Labor (Supplementary Measures) Recommendation, 2014 (No. 203)<sup>109</sup> was introduced, which supplements both the Protocol and the ILO Convention No. 29.<sup>110</sup>

According to Art. 1 (1), the Protocol makes the ILO Member States responsible for taking ‘effective measures to prevent and eliminate’<sup>111</sup> forced labour and ‘to provide victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour’<sup>112</sup>. The obligations for the prevention of forced labour are described in more detail in

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<sup>102</sup> ILO R035 - Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35).

<sup>103</sup> Lars Thomann, VS Research 2012 p. 197.

<sup>104</sup> ILO C105 - Abolition of Forced Labour Convention, 1957 (No. 105) Art. 1.

<sup>105</sup> ILO Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, Conclusions adopted by the Meeting TMELE/2013/6 p. 4.

<sup>106</sup> ILO P029 - Protocol of 2014 to the Forced Labour Convention, 1930.

<sup>107</sup> *ibid*, Preamble.

<sup>108</sup> Anton Donald K ‘Introductory Note to Protocol of 2014 to the Forced Labour Convention, 1930 (I.L.O.)’ *International Legal Materials* vol. 53 no. 6 2014 pp. 1227–28 JSTOR <<https://doi.org/10.5305/intelegamate.53.6.1227>> accessed 21 April 2024.

<sup>109</sup> R203 - Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

<sup>110</sup> Beate Andrees ‘Defending Rights, Securing Justice: The International Labour Organization’s Work on Forced Labour’ *Journal of International Criminal Justice*, vol. 14, Issue 2, May 2016, pp. 343–362 <<https://academic.oup.com/jicj/article/14/2/343/2412036?searchresult=1>> accessed 12 May 2024.

<sup>111</sup> ILO P029 - Protocol of 2014 to the Forced Labour Convention., 1930 Art. 1 (1).

<sup>112</sup> *ibid*, Art. 1 (1).

Art. 2 of the Protocol, which are binding but not exclusive measures.<sup>113</sup> Art. 3 and 4 are particularly victim-focused, as they guarantee assistance and support by the ILO Member States as well as access to remedies for all victims of forced labour.<sup>114</sup>

In summary, the Protocol imposes further obligations on ILO Member States to address the problem of forced labour more precisely. However, the obligations are formulated in comprehensive and general terms, so whether, how, and to what extent the Members will implement the obligations remains open.

#### 2.2.1.4 Conclusion

The ILO's instruments for fighting forced labour indicate that the ILO has recognised the changing nature of forced labour and the need to act and adapt existing legislation.<sup>115</sup> While the ILO Convention No. 29 refers to the mere obligation to suppress forced labour,<sup>116</sup> the ILO Convention No. 105 broadens the scope of the original understanding of forced labour and refers to forced labour beyond economic reasons. The Protocol finally addresses the problem of the concrete approach to prohibit forced labour in more detail for the first time. It regulates specific prevention methods, support, and remedial measures and penalties. Besides, all measures are directly addressed to the Member States of the ILO, which are responsible for taking appropriate measures.<sup>117</sup> The ILO Member States are given broad freedom in terms of actual implementation, particularly about remediation, the application of penalties, and cooperation with the various ILO Member States. In principle, the ILO measures can be considered the basis for measures taken by the ILO Member States against forced labour. The acknowledged lack of enforcement of the Conventions, Protocols, and Recommendations by the ILO, nevertheless, leads to the fact that non-compliance with the provisions will not have harsh consequences.<sup>118</sup> The actual effectiveness of the obligations and prohibitions of the ILO instruments outlined regarding the elimination of forced labour is thus questionable.

### 2.2.2 Free Trade Agreements

The pursuit of higher standards for workers has seen significant strides through the inclusion of labour rights, particularly the prohibition of forced labour, in Free Trade Agreements (FTA). This trend has been on the rise over the past few decades, with a notable increase in the number of FTAs incorporating various forms of labour protection.<sup>119</sup>

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<sup>113</sup> Anton Donald K, *International Legal Materials* vol. 53 no. 6 2014 p. 1229.

<sup>114</sup> *ibid*, p. 1229.

<sup>115</sup> Beate Andrees, *Journal of International Criminal Justice*, vol. 14, Issue 2, May 2016, pp. 343–362.

<sup>116</sup> ILO C029 - Forced Labour Convention, 1930 (No. 29) Art. 1.

<sup>117</sup> ILO C029 - Forced Labour Convention, 1930 (No. 29) Art. 1 (1); ILO C105 - Abolition of Forced Labour Convention, 1957 (No. 105) Art. 1 (1); ILO P029 - Protocol of 2014 to the Forced Labour Convention., 1930 Art. 1 (1).

<sup>118</sup> Franziska Humbert, Cambridge University Press; 2009 p. 192.

<sup>119</sup> ILO 'How International Labour Standards are used' < <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-use/lang--en/index.htm>> accessed 16 April 2024.

Besides respecting labour rights by referring to existing international instruments such as the ILO Conventions, some Trade Agreements additionally provide provisions regarding conflict resolution.<sup>120</sup> About 40 percent of all FTAs include economic consequences for non-compliance with the agreed-on labour provisions. The remaining 60 percent do not contain any economic consequences but rather pure cooperation and dialogue measures that are intended to eliminate non-compliance with labour rights.<sup>121</sup> If either party fails to comply with the agreed obligations with labour rights, the parties should first enter into consultation and, if disagreement remains and the FTA provides a provision regarding economic consequences or dispute settlement, the dispute may be referred to international arbitration. The non-compliant party may also be subject to trade penalties if it continues to fail to act in accordance with the agreed obligations.<sup>122</sup>

Criticism continues to be expressed regarding the insufficiency of labour rights in FTAs, as the level of compliance alone can be considered too low and ineffective, especially in countries where no other labour rights are taken into account in addition to the obligations arising from the FTAs.<sup>123</sup> Nevertheless, the reference to labour rights and the agreement that consequences and penalties will follow in the event of non-compliance may, in comparison with the ILO instruments, lead to more effective compliance with the agreed labour rights due to the fear of consequences by the parties to the FTAs.

### 2.2.3 European Instruments against Forced Labour

European primary law, which includes the CFR and European secondary law,<sup>124</sup> as well as the European Convention on Human Rights, contain provisions on the identification and prohibition of forced labour. Although the ECHR is not EU law, many Member States are part of the Convention. The accession of the EU has also been subject to discussion.<sup>125</sup>

#### 2.2.3.1 Article 5 Charter of Fundamental Rights of the European Union

The CFR was first proclaimed on 7 December 2007 at the Nice European Council. At that time, the CFR was still not legally binding but served as a guide to the general principles of the EU. It was not until the introduction of the Lisbon Treaty in December 2009 that the CFR finally became legally binding.<sup>126</sup>

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<sup>120</sup> ILO 'Free Trade Agreements and Labour Rights' <[www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/lang--en/index.htm](http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/lang--en/index.htm)> accessed 6 April 2024.

<sup>121</sup> ILO / ILS 'Studies on Growth with Equity: Social Dimension of Free Trade Agreements' Geneva: ILO, 2013 Revised edition 2015 p. 1.

<sup>122</sup> Jeffrey S. Vogt 'Focus: Labour Rights and Trade: Raising Standards for Workers?' *International Union Rights* vol. 21 no. 3 2014 p. 3 JSTOR <<https://doi.org/10.14213/inteunionigh.21.3.0003>> accessed 14 May 2024.

<sup>123</sup> *ibid.*, p. 4.

<sup>124</sup> EUR-Lex, Summaries of EU Legislation 'Das Primärrecht der Europäischen Union' <<https://eur-lex.europa.eu/DE/legal-content/summary/the-european-union-s-primary-law.html>> accessed 15 May 2024; Charter of Fundamental Rights of the European Union (2000/C 364/01).

<sup>125</sup> Council of Europe, European Union accession to the European Convention on Human Rights - Questions and Answers <[www.coe.int/en/web/portal/eu-accession-echr-questions-and-answers](http://www.coe.int/en/web/portal/eu-accession-echr-questions-and-answers)> accessed 16 May 2024.

<sup>126</sup> Armin Cuyvers 'General Principles of EU Law' *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, edited by Armin Cuyvers et al., Brill 2017 pp. 224–225 JSTOR <[www.jstor.org/stable/10.1163/j.ctt1w76vj2.16](http://www.jstor.org/stable/10.1163/j.ctt1w76vj2.16)> accessed 15 May 2024.

It should also be noted that the CFR does not apply to purely internal situations but only if there is an actual connection to EU law. EU law should only be applicable in three internal situations: if the Member State implements EU law, if the Member State restricts an EU law, or if a measure of a Member State falls under EU law, even if it is not directly applicable.<sup>127</sup>

According to Article 5 of the CFR, no natural person shall be held in slavery or servitude (paragraph 1), no person shall be required to perform forced or compulsory labor (paragraph 2), and trafficking in human beings shall be prohibited (paragraph 3). In general, Art. 5 CFR prohibits the activities mentioned above and constitutes an enforceable right.<sup>128</sup> The EU institutions, organs, and other bodies, as well as the EU Member States, insofar as they apply EU law, must comply with the CFR.<sup>129</sup> Besides the Union and the EU Member States, these duties also apply to individuals, but the state is responsible for ensuring their compliance.<sup>130</sup> While the prohibition of Art. 5 CFR may lead to an obligation to ensure that the obliged party may not initiate, carry out or be involved in the prohibited measure; the obliged party shall also take positive steps to ensure that private actors do not carry out the prohibited measures.<sup>131</sup>

The term forced or compulsory labour is not defined in the CFR and is based on the definitions of various international agreements and organisations. Nevertheless, it can be recognised that forced or compulsory labour under the CFR is any obligation to perform personal physical or mental services, which is not voluntarily performed but instead is carried out under the threat of a penalty or in a similarly threatening situation.<sup>132</sup>

The justification of an infringement in Art. 5 (1) and (2) CFR is based on Art. 52 (3) CFR stating that rights regulated in the CFR and corresponding to those in the ECHR must have the same meaning and scope as in the ECHR. Therefore, Art. 5 (1) and (2) CFR cannot be effectively restricted, as the comparable right of the ECHR is also granted unconditionally. In the case of Art. 5 (3) CFR, Art. 52 (1) CFR applies, so justification should be possible under the stated conditions. Nevertheless, due to the systematic connection with human dignity, absolute protection is assumed regarding Art. 5 (3) CFR.<sup>133</sup>

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<sup>127</sup> Armin Cuyvers, p. 227.

<sup>128</sup> Hans D. Jarass 'Charta der Grundrechte der Europäischen Union unter Einbezug der sonstigen Grundrechtsregelungen des Primärrechts und der EMRK Kommentar' 4<sup>th</sup> edition 2021 Art. 5 EMRK para. 2, 3.

<sup>129</sup> European Commission, Your rights in the EU, How to report a breach of your rights <[https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/how-report-breach-your-rights\\_en#:~:text=Violation%20by%20an%20EU%20institution,the%20legality%20of%20the%20act.](https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/how-report-breach-your-rights_en#:~:text=Violation%20by%20an%20EU%20institution,the%20legality%20of%20the%20act.)> accessed 15 May 2024.

<sup>130</sup> Martin Borowsky 'Charta der Grundrechte der Europäischen Union' 5<sup>th</sup> edition 2019 Art. 5 GRCh para. 32.

<sup>131</sup> Hans D. Jarass, 2021 Art. 5 EMRK para. 10, 11.

<sup>132</sup> Christian Calliess / Matthias Ruffert 'EUV / AEUV Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtscharta Kommentar' 6<sup>th</sup> edition 2022 Art. 5 EU-GR Charta para. 12.

<sup>133</sup> *ibid.*, p. 28.

### 2.2.3.2 Art. 4 European Convention on Human Rights

The ECHR is an international treaty established by the Council of Europe in 1950, whose mission was to establish and guarantee the protection of human rights worldwide. Subsequently to the Second World War events, the intention of the ECHR was primarily to secure democracy in the Member States of the Convention and to improve cooperation between the individual states. It served less as a legal foundation for private individuals to assert human rights violations.<sup>134</sup> The Council of Europe is an independent organisation and not part of the European Union. The EU's accession to the ECHR has been under discussion for several years.<sup>135</sup>

Art. 4 ECHR states that no one shall held in slavery or servitude or shall be required to perform forced or compulsory labour. Furthermore, paragraph 2 lists exceptions that shall not be included in the term of forced and compulsory labour like services of a military character or services in cases of emergencies. The definition of forced labour is based on the ILO Convention (No. 29), as there is no definition provided in the ECHR.<sup>136</sup>

This provision is mainly addressed to states which, in addition to negative duties, also have rights of defence and positive duties to take action.<sup>137</sup>

Therefore, the CFR and the ECHR impose almost identical obligations regarding forced labour. While a violation of the CFR must be brought before the Court of Justice of the European Union (CJEU), in case of a violation of the ECHR, the victims must turn to the European Court on Human Rights.<sup>138</sup>

### 2.2.3.3 Corporate Sustainability Due Diligence Directive

The European Union is actively pursuing the objective of achieving climate neutrality by implementing the EU Green Deal initiative. It introduces mechanisms that hold companies with high-emission production accountable in order to create sustainable businesses.<sup>139</sup> The Draft CSDDD aims to promote sustainable and responsible corporate behaviour in global supply chains<sup>140</sup> by mandating businesses to take due diligence measures throughout their supply chains.<sup>141</sup> The proposal of the Directive is according to Art. 32 addressed to the EU Member States and their obligation to ensure compliance with the due diligence obligations of the companies. Although the Draft Directive almost failed due to the lack of a qualified majority in the EU Council vote, the Council adopted it, and the European Parliament also

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<sup>134</sup> Steven Greer 'What's Wrong with the European Convention on Human Rights?' *Human Rights Quarterly* vol. 30 no. 3 2008 pp. 680–682 JSTOR <[www.jstor.org/stable/20072864](http://www.jstor.org/stable/20072864)> accessed 15 May 2024.

<sup>135</sup> Council of Europe, European Union accession to the European Convention on Human Rights - Questions and Answers <[www.coe.int/en/web/portal/eu-accession-echr-questions-and-answers](http://www.coe.int/en/web/portal/eu-accession-echr-questions-and-answers)> accessed 16 May 2024.

<sup>136</sup> ECHR Case of Van der Musselle v. Belgium Application no. 8919/80 23 November 1983 para. 32; Joshua Blach, *CCZ* 2022, 341, 342.

<sup>137</sup> Huber in *Handkommentar-EMRK* 5<sup>th</sup> edition 2023, Art. 4 para. 7.

<sup>138</sup> Johan Callewaert, 'The accession of the European Union to the European Convention on Human Rights' *Council of Europe* 2014 pp. 10, 13.

<sup>139</sup> Lois Elshof 'Corporate Sustainability Due Diligence and EU Competition Law' *Journal of European Competition Law & Practice* 2024 p. 1 <<https://academic-oup-com.ludwig.lub.lu.se/jeclap/advance-article/doi/10.1093/jeclap/lpae025/7659279?searchresult=1>> accessed 14 May 2024.

<sup>140</sup> Patricia Sarah Stöbener de Mora / Paul Noll 'Noch grenzenlosere Sorgfalt?' *EuZW* 2023, 14.

<sup>141</sup> Lois Elshof, *Journal of European Competition Law & Practice* 2024 p. 1.



approved its adoption on 24 April 2024. Only the announcement in the Official Journal is now pending.<sup>142</sup>

Due diligence is a widely recognised mechanism used in international and national law. It can have a variety of purposes. For example, due diligence can uncover and disclose liabilities; it can also identify and prevent risks, or it assess the risks of mergers and acquisitions in business relations. In international law, due diligence is mainly used to uncover and define the responsibility of a state for the actions of third parties.<sup>143</sup>

The companies shall integrate due diligence into their policies and identify the impacts of their businesses regarding human rights and the environment.<sup>144</sup> The Draft Directive also includes forced labour impacts in its Annex<sup>145</sup> and is meant to fight the problem of forced labour within global supply chains.<sup>146</sup> The Draft Directive is only applicable to certain companies that reach a minimum size and annual turnover in accordance with Art. 2.

The implementation of guidelines is one method of ensuring that EU Member States comply with due diligence requirements.<sup>147</sup> In every company that is subject to the obligations of the Draft Directive, authorised representatives must be appointed to cooperate with the supervisory authorities of the EU Member States according to Art. 16 (4). The supervisory authorities are responsible for carrying out investigations and requesting information from the companies to ensure compliance with the Draft Directive. If the authorities identify a violation, the companies should first be allowed to remedy the situation.<sup>148</sup> The imposition of sanctions for violation of the due diligence obligations should be determined by the EU Member States in their national legislation. They shall be effective, proportionate, and dissuasive, according to Art. 20. Furthermore, Art. 21 states that a European Network of Supervisory Authorities will be introduced to guarantee support for the various supervisory authorities. The EU Member States need to transpose the provision of the Draft Directive into national law within two years after the entry into force of the Directive.<sup>149</sup>

Nevertheless, the Draft Directive does not provide any concrete measures to ensure that products made with forced labour are not offered and made available on the EU market.<sup>150</sup> The European Economic and Social Committee states that it is necessary

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<sup>142</sup> Stephan Schäfer / Alexandra Manon Schütze 'Die CSDDD - eine erste Vorstellung der Richtlinie und ihrer Folgen für die deutsche Wirtschaft' BB 2024, 1091.

<sup>143</sup> Virginie Rouas 'Achieving Access to Justice in Europe through Mandatory Due Diligence Legislation' *Achieving Access to Justice in a Business and Human Rights Context: An Assessment of Litigation and Regulatory Responses in European Civil-Law Countries* University of London Press 2022 pp. 288-289 JSTOR <[www.jstor.org/stable/j.ctv293p4bn.13](http://www.jstor.org/stable/j.ctv293p4bn.13)> accessed 14 May 2024.

<sup>144</sup> Christina Hiessl 'Labour rights & their enforcement in global value chains' ERA Forum 24 2023, p. 201-215 <<https://doi-org.ludwig.lub.lu.se/10.1007/s12027-023-00754-9>> accessed 19 May 2024.

<sup>145</sup> COM(2022) 453 final European Commission Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market, Brussels, 14 September 2022 p. 2.

<sup>146</sup> COM(2022) 71 final European Commission Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive EU 2019/1937 p. 7.

<sup>147</sup> *ibid.*, Art. 13.

<sup>148</sup> *ibid.*, Art. 18.

<sup>149</sup> *ibid.*, Art. 30.

<sup>150</sup> *ibid.*, p. 2.

to clarify the extent to which the CSDDD and the Regulation prohibiting products made with forced labour are linked and work together.<sup>151</sup>

#### **2.2.4 Conclusion**

In summary, measures are in place at international and European levels to limit the extent of forced labour. While some measures relate solely to eliminating forced and compulsory labour, there have also recently been approaches to tackle the issue differently, namely through a concrete analysis of the initial situation. Nevertheless, it seems remarkable that the ILO Conventions provide a basis for all subsequent measures frequently referred to.

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<sup>151</sup> Opinion of the European Economic and Social Committee on ‘Prohibiting products made with forced labour in the Union market’ (COM(2022) 453 final), Official Journal of the European Union 21 April 2023 para. 1.8 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022AE5362>> accessed 12 May 2024.

## 3 The Road to the Regulation: Starting point and Implementation

### 3.1 The chronological Progress of the Regulation: from the State of the Union Speech to the Parliament decision

Ursula von der Leyen's landmark speech on 15 September 2021 marked a significant turning point in the fight against forced labour. For the first time, she unequivocally declared a ban on products made with forced labour in the EU market. Her noteworthy statement, asserting that Human Rights should never be 'for sale'<sup>152</sup>, resonated with the gravity of the issue at hand.<sup>153</sup>

In May and June 2022, the Commission provided stakeholders the chance to comment on the proposal for a first Regulation draft during a public consultation. Among the stakeholders who participated in the public consultation were companies of all sizes, EU Member States and non-EU countries, international organisations, and non-governmental organisations (NGOs). In principle, all participants agreed that forced labour is a problem that needs to be addressed, but the participants did not all agree on the competencies, the requirements for evidence and the burden of proof, and the exceptions and special treatment of small and medium-sized enterprises (SMEs).<sup>154</sup>

Some stakeholders have argued that the EU should not tackle the problem of forced labour, but it should rather be addressed by the EU Member States' criminal law. Regarding the evidence requirements, civil societies wanted to have presumptions about special products from specific regions where forced labour is standard. At the same time, the private sector prefers investigations in case of reasonable suspicion. Furthermore, it was questionable if the authorities had to prove the use of forced labour in production or if the importers had to give evidence that there was no forced labour within the supply chain. There is some dispute about whether SMEs should be granted exemptions from the Regulation, as a large percentage of European companies can be labelled as SMEs, and full inclusion is therefore essential, according to some experts. On the other hand, it is also mentioned that these companies have fewer financial resources and, therefore, limited capabilities to detect and investigate any forced labour violations.<sup>155</sup>

In the Resolution on a new trade instrument to ban products made with forced labour adopted by the European Parliament on 9 June 2022, the European Parliament also emphasises that forced labour is an urgent issue that must be tackled and that banning products made with forced labour is a political priority for the Parliament and the

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<sup>152</sup> European Commission State of the Union Address 2021 by Ursula von der Leyen 15 September 2021 p. 15 <[https://state-of-the-union.ec.europa.eu/document/download/c62c9cb5-6031-4bb0-89b6-dceb00537413\\_en?filename=soteu\\_2021\\_address\\_en.pdf](https://state-of-the-union.ec.europa.eu/document/download/c62c9cb5-6031-4bb0-89b6-dceb00537413_en?filename=soteu_2021_address_en.pdf)> accessed 26 April 2024.

<sup>153</sup> *ibid.*, p. 15.

<sup>154</sup> COM(2022) 453 final pp. 5-7.

<sup>155</sup> *ibid.*, pp. 5-7.

EU as a whole.<sup>156</sup> Resolutions are not binding law, but soft law, which can nevertheless have practical effects.<sup>157</sup>

On 14 September 2022, the European Commission then published the proposal on the Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market.<sup>158</sup> In principle, the proposal aims to prohibit the placement, the accessibility or export of products made with forced labour on the Union market and to empower EU Member States to conduct investigations to identify products made with forced labour and to ban, withdraw or eliminate the product once it has been determined to be made with forced labour.<sup>159</sup> In addition, the proposed Regulation puts a particular emphasis on the coordination and cooperation of the EU Member States with each other and with the Commission.<sup>160</sup> The draft was presented to the joint committee meeting 23 May 2023.<sup>161</sup>

Following the publication of the Regulation proposal, the Committee on International Trade and the Committee on the Internal Market and Consumer Protection met in October 2023 and held interinstitutional negotiations, which ended with approval of the text at the first reading of the interinstitutional negotiations at the end of March.<sup>162</sup>

On 5 March 2024, the Parliament and the Council concluded an agreement. As per the previous draft, the authorities should be able to withdraw certain products from the market. Moreover, a list of particularly high-risk products and areas is to be drawn up, for which additional information may have to be provided when the products are exported or placed on the market. Furthermore, a particular focus will be placed on the coordination with third countries in order to address forced labour effectively.<sup>163</sup>

There was a debate about the Draft Regulation on 22 April 2024 in the European Parliament.<sup>164</sup> One day after the debate, the European Parliament decided on the

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<sup>156</sup> European Parliament resolution of 9 June 2022 on a new trade instrument to ban products made by forced labour <[www.europarl.europa.eu/doceo/document/TA-9-2022-0245\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-9-2022-0245_EN.html)> accessed 30 April 2024.

<sup>157</sup> Damian Chalmers 'European Union law: text and materials' 4<sup>th</sup> edition 2019 3. Lawmaking p. 116.

<sup>158</sup> European Parliament Legislative Observatory, 2022/0269(COD) Prohibiting products made with forced labour on the Union market <[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0269\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0269(COD)&l=en)> accessed 30 April 2024.

<sup>159</sup> Gabrielle Holly / Leonard Feld for The Danish Institute for Human Rights 'Setting the Scene for an effective Forced Labour Ban in the EU' p. 6.

<sup>160</sup> European Parliament Legislative Train Schedule Regulation on prohibiting products made with forced labour on the Union market <[www.europarl.europa.eu/legislative-train/theme-an-economy-that-works-for-people/file-forced-labour-product-ban#:~:text=On%2016%20October%202023%20the,produced%20in%20high%20risk%20areas.>](http://www.europarl.europa.eu/legislative-train/theme-an-economy-that-works-for-people/file-forced-labour-product-ban#:~:text=On%2016%20October%202023%20the,produced%20in%20high%20risk%20areas.>) accessed 30 April 2024.

<sup>161</sup> European Parliament Legislative Train Schedule Regulation on prohibiting products made with forced labour on the Union market.

<sup>162</sup> European Parliament Legislative Observatory, 2022/0269(COD).

<sup>163</sup> European Parliament Legislative Train Schedule Regulation on prohibiting products made with forced labour on the Union market.

<sup>164</sup> European Parliament Verbatim report of proceedings Monday, 22 April 2024 – Strasbourg 19. Prohibiting products made with forced labour on the Union market (debate) <[www.europarl.europa.eu/doceo/document/CRE-9-2024-04-22-ITM-019\\_EN.html](http://www.europarl.europa.eu/doceo/document/CRE-9-2024-04-22-ITM-019_EN.html)> accessed 30 April 2024.

adoption of the Draft Regulation at the first reading. The Council's decision remains pending.<sup>165</sup>

## 3.2 Legal Status of the Regulation

The first steps to stop and prevent forced labour must be taken at the legislative level. The legislative bodies have the obligation to develop a framework of legal acts that protect workers within the territories.<sup>166</sup>

### 3.2.1 The legal Status of Regulations under EU Law

The European Parliament and the Council adopted the new law as a Regulation. The Commission argues that a Directive would not be sufficient since discrepancies might arise during the national transposition process.<sup>167</sup> Regulations are part of the European secondary law and are legally defined in Art. 288 Treaty of the Functioning of the European Union (TFEU).<sup>168</sup> In contrast to primary EU law, which mainly describes the foundation and origin of EU law, secondary EU law focuses on the principles and objectives that result from primary EU law.<sup>169</sup> In addition to Regulations, secondary EU law includes the following legal instruments: Directives, Decisions, Recommendations, and Opinions.

According to the TFEU, Regulations shall have general applicability.<sup>170</sup> Therefore, Regulations are usually chosen as a legal form when it is essential to establish uniformity between the EU Member States.<sup>171</sup> Furthermore, they are binding to all EU Member States and directly applicable within the EU Member States. Compared to the other legal instruments of secondary EU law, Regulations are the strongest legislative instrument in terms of the impact on the EU Member States, as the EU Member States have no actual freedom of implementation. Since a Regulation is directly implemented in national law, individuals can also refer to the EU Regulation and enforce the arising rights before national courts.<sup>172</sup> In some cases, EU Regulations need national authorities to adopt the measures set out in the Regulation.<sup>173</sup> The Regulation on prohibiting products made with forced labour on the Union market will therefore be directly applicable in all EU Member States. In general, Regulations are applicable the day they enter into force, or the day which is set out in the Regulation itself.<sup>174</sup> If this fails, Regulations will enter into force 20

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<sup>165</sup> European Parliament Legislative Observatory, 2022/0269(COD).

<sup>166</sup> ILO / OECD / IOM / United Nations Children's fund 'Ending child labour, forced labour and human trafficking in global supply chains' 2019 p. 18.

<sup>167</sup> COM(2022) 453 final p. 4.

<sup>168</sup> EUR-Lex Glossary of summaries Regulations <<https://eur-lex.europa.eu/EN/legal-content/glossary/regulation.html>> accessed 26 April 2024.

<sup>169</sup> European Commission 'Types of EU Law' <[<sup>170</sup> Consolidated Version of the Treaty of the Functioning of the European Union \(C326/49\) 26 October 2012 Art. 288.](https://commission.europa.eu/law/law-making-process/types-eu-law_en#:~:text=following%20a%20referendum.,Regulations,be%20transposed%20into%20national%20law.></a> accessed 26 April 2024; Consolidated Version of the Treaty of the Functioning of the European Union (C326/49) 26 October 2012.</p></div><div data-bbox=)

<sup>171</sup> Damian Chalmers 'European Union law: text and materials' 4<sup>th</sup> edition 2019 3. Lawmaking p. 114.

<sup>172</sup> EUR-Lex Glossary of summaries 'Regulations'.

<sup>173</sup> Damian Chalmers 'European Union law: text and materials' 4<sup>th</sup> edition 2019 3. Lawmaking p. 114.

<sup>174</sup> EUR-Lex Glossary of summaries 'Regulations'.

days after they were published in the Official Journal of the European Union.<sup>175</sup> The Draft Regulation states that it should enter into force the day after it was published in the Official Journal of the European Union.<sup>176</sup>

### 3.2.2 Legal Competencies for the Implementation of the Regulation

The implementation of the Regulation on prohibiting products made with forced labour requires a legal basis on which the EU and not the EU Member States themselves can adopt such a Regulation.

Regarding the allocation of competencies between the EU and the EU Member States, Art. 4 (1) Treaty on European Union (TEU)<sup>177</sup> defines the principle that the EU Member States should hold the competencies whenever the Union has not been expressly granted a competence by the Treaties. The TFEU specifies when and which competencies are granted to the EU Member States and the Union. The exclusive competencies of the Union are explicitly listed in Art. 3 TFEU. According to Art. 4 TFEU, there can also be so-called shared competencies between the EU and the EU Member States, in which EU Member States exercise their competencies if the EU has not yet adopted any legal acts in a specific area or if the EU acts have ceased to exist according to Art. 2 (2) TFEU. In addition, the Union may also support, coordinate, or supplement the EU Member States in accordance with Art. 6 TFEU. Nevertheless, regarding the use of the Union competence, the Union has to act following the principles of subsidiarity and proportionality according to Art. 5 TEU.

The proposal of the Regulation justifies the vertical competence of the Union to introduce a universal prohibition, which the individual EU Member States could not achieve.<sup>178</sup> There are two legal bases required to determine the competence of the Union in this particular situation, as the Draft Regulation has an impact both within the EU and on exports and imports into or out of the EU.<sup>179</sup> The specific allocation of competence in terms of exports and imports in the EU results from the general competence provision in Art. 3 (1) e) TFEU in conjunction with Art. 207 TFEU and relates primarily to the term ‘common commercial policy’. The common commercial policy is primarily and mainly characterised by international agreements. Should it be possible for the individual EU Member States to sign international agreements, this would lead to significant restrictions on the Union’s scope of organisation, which is why the EU is considered to have exclusive competence in this area.<sup>180</sup>

Regarding the harmonisation of national laws and the prevention of possible divergences in terms of trade and competition between the EU Member States, the competence of the Union to adopt the Regulation is based on Art. 4 (2) (a) TFEU in conjunction with Art. 114 TFEU and is thus primarily intended to protect the

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<sup>175</sup> Damian Chalmers ‘European Union law: text and materials’ 4<sup>th</sup> edition 2019 3. Lawmaking p. 114.

<sup>176</sup> P9\_TC1-COD(2022)0269 para. 70; 2022/0269(COD) 7542/24 para 70.

<sup>177</sup> Consolidated Version of the Treaty on European Union (C326/13) 26 October 2012.

<sup>178</sup> P9\_TC1-COD(2022)0269 para. 69; 2022/0269(COD) 7542/24 para. 69..

<sup>179</sup> *ibid.*, pp 3, 4.

<sup>180</sup> Martin Nettsheim ‘Das Recht der Europäischen Union, AEUV Art. 3 Ausschließliche Zuständigkeiten’ 81<sup>st</sup> edition 2024 para. 19.

functioning of the internal market.<sup>181</sup> According to Art. 26 (2) TFEU, the internal market can be defined as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties’<sup>182</sup>.

The Commission also states that the principles of proportionality and subsidiarity are observed and that the Regulation does not go further than necessary.<sup>183</sup> Even though the EU Member States are supposed to carry out the investigations and prohibit of products made with forced labour autonomously, there is still an overarching necessity for organisation and legislation by the Union due to the fact that otherwise, trade barriers could arise, the enforcement system could differ in the national legislation and in many cases, cross-border issues affecting several EU Member States are dealt with.<sup>184</sup>

### **3.3 The Concept and the Organisation of the Regulation**

The proposal by the Council of the European Union, from 13 March 2024, which contains some modifications of the first proposal by the Commission, e.g., a list of high-risk products or the close coordination with third countries,<sup>185</sup> consists of six chapters with a total number of 39 Articles. The chapters are categorised as follows: General Provisions, Governance, Investigations, Decisions, Enforcement, and Final Provisions. It can be noted that the European Parliament also approved the Council’s proposal in its final version of 23 April 2024. Therefore, the latest version of 23 April 2024, corresponds to the proposal of the Council of 13 March 2024.

In principle, the Draft Regulation is very wide-ranging and covers all products in all stages of production and from all countries.<sup>186</sup>

#### **3.3.1 Objective of the Regulation**

The fundamental objective of the Draft Regulation is to prohibit forced labour globally.<sup>187</sup> Therefore, products made with forced labour ‘at any stage of their production, manufacture, harvest and extraction’<sup>188</sup> or any other process should be prohibited under this Draft Regulation. Not only making available and placing products made with forced labour at the Union market but also imports into and exports from the EU are subject to the regulatory ban.<sup>189</sup> While placing on the market is the ‘first making available of a product on the Union market’<sup>190</sup>, making available on the market according to Art. 2 (d) means ‘any supply of a product for distribution,

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<sup>181</sup> COM(2022) 453 final pp. 3, 4.

<sup>182</sup> Consolidated Version of the Treaty of the Functioning of the European Union (C326/49) 26 October 2012 Art. 26 (2).

<sup>183</sup> P9\_TC1-COD(2022)0269 para. 69; 2022/0269(COD) 7542/24 para. 69.

<sup>184</sup> COM(2022) 453 final p. 4.

<sup>185</sup> European Parliament Legislative Train Schedule Regulation on prohibiting products made with forced labour on the Union market.

<sup>186</sup> Alessandro Fruscione, *Global Trade and Customs Journal* vol. 18, no. 3 2023 p. 120.

<sup>187</sup> Lodde, *EuZW* 2023, 886, 887.

<sup>188</sup> P9\_TC1-COD(2022)0269 para. 18; 2022/0269(COD) 7542/24 para. 18.

<sup>189</sup> P9\_TC1-COD(2022)0269 para. 16; 2022/0269(COD) 7542/24 para. 16.

<sup>190</sup> P9\_TC1-COD(2022)0269 Art. 2 (e); 2022/0269(COD) 7542/24 Art. 2 (e); Joshua Blach, *CCZ* 2022, 341, 343.

consumption or use on the Union market in the course of a commercial activity, whether in return for payment or for free<sup>191</sup>. The withdrawal of products made with forced labour already passed to the end-user in the EU is, according to Art. 1 (2), not regulated in the Draft Regulation. Art. 4 of the Draft Regulation states that products offered online or through any distance selling should fall within the scope of the Draft Regulation.

### 3.3.2 Responsibilities within the Regulation

The allocation of responsibilities between the competent authorities, the Commission, and the customs authorities is characterised by close cooperation and coordination between the individual authorities.<sup>192</sup> Newly introduced or existing information systems are intended to facilitate and strengthen this cooperation.<sup>193</sup> The statement made by Executive Vice President Dombrovskis in the plenary debate of the European Parliament on the Regulation underscores the urgency and significance of effective implementation, stating that ‘the instrument will only be as strong and effective as the team implementing it’<sup>194</sup>.

#### 3.3.2.1 Responsibilities of the Commission

The Commission’s responsibility can be divided into two main areas. On the one hand, the Commission acts as a competent authority.<sup>195</sup> On the other hand, it establishes various mechanisms to facilitate the implementation and enforcement of the Regulation for all parties involved.<sup>196</sup>

In order to fulfil these obligations, the Commission is granted additional implementing powers to guarantee the uniformity of the implementation of the Regulation. It is granted legislative powers regarding non-essential amendments of the Regulation and the extent of information the economic operators have to disclose to the customs authorities according to Art. 290 TFEU.<sup>197</sup>

The duty to operate as a competent authority and to conduct investigations to identify forced labour in the supply chains is granted to the Commission according to Art. 14 of the Draft Regulation.<sup>198</sup> The Commission itself acts as a competent authority according to Art. 15 (1), if the violation of the prohibition of forced labour takes place outside the territory of the EU.

The other main functions of the Commission are to set up specific networks and databases, not only to facilitate better coordination and cooperation between the lead competent authorities and the Commission itself but also to improve investigations

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<sup>191</sup> P9\_TC1-COD(2022)0269 Art. 2 (d); 2022/0269(COD) 7542/24 Art. 2 (d).

<sup>192</sup> P9\_TC1-COD(2022)0269 para. 28; 2022/0269(COD) 7542/24 para. 28.

<sup>193</sup> P9\_TC1-COD(2022)0269 para. 30; 2022/0269(COD) 7542/24 para. 30.

<sup>194</sup> European Commission, Statement by Executive Vice-President Dombrovskis at the European Parliament Plenary debate on the Regulation on prohibiting products made with forced labour on the Union market 22 April 2024 <[https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_24\\_2237](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_24_2237)> accessed 19 May 2024.

<sup>195</sup> P9\_TC1-COD(2022)0269 para. 24, Art. 14 et seqq.; 2022/0269(COD) 7542/24 para. 24, Art. 14 et seqq.

<sup>196</sup> P9\_TC1-COD(2022)0269 para. 28 et seqq.; 2022/0269(COD) 7542/24 para. 28 et seqq.

<sup>197</sup> P9\_TC1-COD(2022)0269 para. 62 et seqq.; 2022/0269(COD) 7542/24 para. 62 et seqq.

<sup>198</sup> P9\_TC1-COD(2022)0269 Art. 14; 282022/0269(COD) 7542/24 Art. 14.



by the authorities. Furthermore, the Commission shall also offer assistance to economic operators and provide an accessible platform for reporting forced labour violations. Therefore, it is the Commission's obligation, according to Art. 6 (4), to coordinate the Union Network Against Forced Labour Products, which aims to structure the coordination and cooperation between the different competent authorities of the EU Member States, the Commission, and in some cases, the customs authorities. It is also part of the Commission's responsibility to establish a database for particularly high-risk forced labour regions and products, according to Art. 8 (1). The Commission is also responsible for the introduction of the reporting system for natural and legal persons to report suspected cases of forced labour.<sup>199</sup> Another important function of the Commission is to provide support for economic operators and SMEs, according to Art. 10 to ensure that the objectives of the Draft Regulation can be achieved. The Commission, moreover, is responsible for drafting specific guidelines together with the stakeholders,<sup>200</sup> and for making as much information as possible accessible to the public.<sup>201</sup>

In addition to internal EU matters, the Commission should also be in constant cooperation and exchange with third countries in order to uncover and address forced labour in supply chains outside the EU.<sup>202</sup> The Commission shall therefore engage in international relations with authorities from third countries, international organisations, civil society representatives, trade unions, business organisations, and other relevant stakeholders according to Art. 13.

The Commission must also prepare a report on the implementation and enforcement of the Regulation and submit it to the European Parliament, the Council, and the European Economic and Social Committee. In particular, the consequences concerning the fight against forced labour, as well as the cooperation of the various competent authorities and international cooperation, and the influence of the Regulation on the economic operator are to be examined in detail in the report.<sup>203</sup> The first report shall be published two years after the Regulation is in force and after that every five years.<sup>204</sup>

In principle, it can be assumed that the Commission faces extensive obligations concerning the new Regulation. The Commission's function to investigate forced labour violations outside the EU is far-reaching, as most direct violations within a supply chain are likely to occur rather outside than inside the EU. In addition, the Commission is primarily responsible for largely organisational and guiding activities, such as implementing guidelines or information platforms, to guarantee the implementation and enforcement of the Regulation.

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<sup>199</sup> P9\_TC1-COD(2022)0269 Art. 9; 2022/0269(COD) 7542/24 Art. 9.

<sup>200</sup> P9\_TC1-COD(2022)0269 Art. 11; 2022/0269(COD) 7542/24 Art. 11.

<sup>201</sup> P9\_TC1-COD(2022)0269 Art. 12; 2022/0269(COD) 7542/24 Art. 12.

<sup>202</sup> P9\_TC1-COD(2022)0269 para. 37; 2022/0269(COD) 7542/24 para. 37.

<sup>203</sup> P9\_TC1-COD(2022)0269 para. 67; 2022/0269(COD) 7542/24 para. 67.

<sup>204</sup> P9\_TC1-COD(2022)0269 Art. 38 (1); 2022/0269(COD) 7542/24 Art. 38 (1).

### 3.3.2.2 Responsibilities of the Member States and the Competent Authorities

Besides appointing competent authorities and ensuring the correct exercise of their responsibilities and cooperation with other authorities, EU Member States must also ensure that sufficient resources are available to the authorities and that each person has sufficient knowledge of human rights, labour rights, and supply chains.<sup>205</sup>

According to Art. 5 (1), at least one competent authority in each EU Member State must carry out the rights and obligations under the Draft Regulation. The appointed competent authorities and the Commission shall work together in close cooperation to achieve the objective of the Draft Regulation and to ensure the effective implementation of the Draft Regulation.<sup>206</sup> Generally, the lead competent authorities are responsible for the assessment of submissions, the conduct of investigations and the decision-making process according to Art. 15.<sup>207</sup> The Draft Regulation distinguishes between the terms ‘competent authorities’ and ‘lead competent authorities’. While the simple term ‘competent authorities’ only refers to the competent authorities of the EU Member States, the term ‘lead competent authorities’ always refers to the competent authorities of the EU Member States and/or the Commission.<sup>208</sup>

Moreover, competent authorities should be granted the power to impose penalties on economic operators in cases the economic operators did not comply with the decision not to place products made with forced labour on the Union market.<sup>209</sup> This transfer of competencies is regulated in Art. 5 (7) of the Draft Regulation.

Competent authorities, and the Commission are, therefore, the main actors investigating forced labour violations under the Draft Regulation. Above all, cooperation between the various authorities of the EU Member States is a fundamental requirement for effective action.

### 3.3.2.3 Responsibilities of the Customs Authorities

The customs authorities are mainly responsible for enforcing the prohibition on placing, making available, or exporting products made with forced labour through the control of imported and exported products at the EU border.<sup>210</sup> According to the reference in Art. 2 (r) of the Draft Regulation to Art. 5 (1) of Regulation No 952/2013 customs authorities mean ‘customs administrations of the Member States responsible for applying the customs legislation and any other authorities empowered under national law to apply certain customs legislation’<sup>211</sup>. The obligation of the customs authorities to identify and suspend products at the EU

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<sup>205</sup> P9\_TC1-COD(2022)0269 para. 24; 2022/0269(COD) 7542/24 para. 24.

<sup>206</sup> P9\_TC1-COD(2022)0269 Art. 5 (1); 2022/0269(COD) 7542/24 Art. 5 (1).

<sup>207</sup> P9\_TC1-COD(2022)0269 Art. 2 (q); 2022/0269(COD) 7542/24 Art. 2 (q).

<sup>208</sup> P9\_TC1-COD(2022)0269 Art. 2 (q); 2022/0269(COD) 7542/24 Art. 2 (q).

<sup>209</sup> P9\_TC1-COD(2022)0269 para. 66; 2022/0269(COD) 7542/24 para. 66.

<sup>210</sup> P9\_TC1-COD(2022)0269 para. 55, Art. 26 et seqq; 2022/0269(COD) 7542/24 para. 55, Art. 26 et seqq.

<sup>211</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code Art. 5 (1).

border is based on the information provided by the lead competent authorities.<sup>212</sup> It should be carried out by using a risk-based approach in accordance with Art. 26.

If the customs authorities have identified a product based on the decision of the lead competent authorities, they shall suspend the free circulation and export of the product and inform the competent authorities immediately.<sup>213</sup> In case the competent authorities do not respond to the notification of the customs authorities within the period specified in Art. 29 (1) (a), the competent authorities may issue a release order, or if there is insufficient evidence of an infringement, the customs authorities must release the products and allow circulation on the market.<sup>214</sup> If a violation occurs and the competent authorities confirm the violation, the products should not be released, and the customs authorities are required to dispose of the product unless the competent authorities request the disposal to be carried out by the competent authorities themselves.<sup>215</sup>

### 3.3.3 Supporting Elements

The Draft Regulation provides a wide range of support measures to facilitate coordination and cooperation between the various institutions and authorities, support economic operators in acting according to the Draft Regulation, and guide natural and legal persons in reporting possible forced labour violations. It is primarily the Commission that is responsible for the establishment and implementation of these measures.

A Union Network Against Forced Labour Products is to be established to improve the coordination and cooperation between the competent authorities, the EU Member States, and the Commission and to guarantee effective enforcement of the Draft Regulation.<sup>216</sup> The responsibilities of the Network include, above all, coordinating investigations, facilitating the identification of common enforcement priorities and achieving the effective implementation of the Regulation through assistance and training for the authorities, EU Member States, the Commission and Union Delegations in third countries.<sup>217</sup>

In addition, the Draft Regulation shall ensure the application of the existing information and communication system of Regulation (EU) 2019/1020<sup>218</sup> and establish a link to other sources of information that could be of importance to the competent authorities, EU Member States, and the Commission.<sup>219</sup>

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<sup>212</sup> P9\_TC1-COD(2022)0269 para. 56; 2022/0269(COD) 7542/24 para. 56.

<sup>213</sup> P9\_TC1-COD(2022)0269 Art. 28; 2022/0269(COD) 7542/24 Art. 28.

<sup>214</sup> P9\_TC1-COD(2022)0269 Art. 29; 2022/0269(COD) 7542/24 Art. 29.

<sup>215</sup> P9\_TC1-COD(2022)0269 Art. 30; 2022/0269(COD) 7542/24 Art. 30; Lodde, *EuZW* 2023, 886, 887.

<sup>216</sup> P9\_TC1-COD(2022)0269 Art. 6 (1), (2); 2022/0269(COD) 7542/24 Art. 6 (1), (2).

<sup>217</sup> P9\_TC1-COD(2022)0269 Art. 6 (7); 2022/0269(COD) 7542/24 Art. 6 (7).

<sup>218</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

<sup>219</sup> P9\_TC1-COD(2022)0269 Art. 7; 2022/0269(COD) 7542/24 Art. 7.

The Commission will establish moreover a database to identify high-risk geographical areas and products and product types that are particularly affected by forced labour.<sup>220</sup>

Regarding the communication of potential forced labour violations by natural and legal persons, a centralised mechanism is to be introduced by the Commission to guarantee the submission of information and suspicions without significant obstacles. The persons or organisations raising the suspicion should substantiate their assumption with reasons and evidence and preferably with documentation.<sup>221</sup>

Furthermore, the economic operators and, above all, the SMEs are to be supported in implementing and applying the Regulation through specific assistance measures. In this context, the Commission should provide certain contact points as well as training on how to recognise and assess forced labour risks and how to deal with the authorities.<sup>222</sup> It is essential for SMEs not to be imposed with unnecessary administrative burden due to the commonly occurring lack of resources.<sup>223</sup>

Moreover, the Commission should publish regularly updated guidelines for both the EU Member States and the authorities. The exact specification of the various guidelines can be found in Art. 11.

A large amount of information, such as the contact information of the competent authorities, as well as the guidelines, database, information that may be important for the implementation of the Regulation, the submission point for natural and legal persons, and all decisions regarding the prohibition of products made with forced labour should be accessible to the public.<sup>224</sup>

The supporting measures provided for in the Regulation are comprehensive. It is worth noting that these are not only addressed to the competent authorities, but also in particular to the economic operators and the natural and legal persons reporting suspected cases. Even if the range of planned support measures initially appears plausible and well thought through, it remains to be seen to what extent the measures can eliminate the problem of forced labour.

### **3.4 The process on Prohibiting Products made with Forced Labour on the Union Market**

#### **3.4.1 Investigations**

Every individual, whether a natural or legal person, holds a significant role in the collective effort to combat forced labour. The ability to report possible violations of the ban on forced labour is crucial. This notification and information can be submitted via the Forced Labour Single Portal, a platform designed to empower

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<sup>220</sup> P9\_TC1-COD(2022)0269 Art. 8; 2022/0269(COD) 7542/24 Art. 8.

<sup>221</sup> P9\_TC1-COD(2022)0269 Art. 9; 2022/0269(COD) 7542/24 Art. 9.

<sup>222</sup> P9\_TC1-COD(2022)0269 Art. 10; 2022/0269(COD) 7542/24 Art. 10.

<sup>223</sup> P9\_TC1-COD(2022)0269 para. 33; 2022/0269(COD) 7542/24 para. 33.

<sup>224</sup> P9\_TC1-COD(2022)0269 Art. 12; 2022/0269(COD) 7542/24 Art. 12.

natural and legal persons in this process. Moreover, Directive (EU) 2019/1937<sup>225</sup> shall secure the protection of whistleblowers who provide information.<sup>226</sup>

Investigations by the Commission and the competent authorities should be based primarily on a risk-based approach. They should focus on criteria such as the percentage of the product affected by forced labour, the quantity produced using forced labour, the reach of the producer of such products, and the nature of the supply chains, according to Art. 14.<sup>227</sup> The division of competencies for conducting the investigations depends mainly on where the forced labour is carried out. If forced labour takes place outside the Union's territory, the Commission is responsible for the investigation. If, on the other side, the forced labour violation can be assumed within the EU territory, the competent authorities of the responsible Member State will be in charge of the investigations.<sup>228</sup> Nevertheless, it is the lead competent authority's obligation to communicate any information regarding forced labour violations outside its territory to the information and communication system.<sup>229</sup>

Prior to the initiation of investigations, the lead competent authorities should be able to request statements and information from both economic operators and the reporting persons.<sup>230</sup> In addition, the economic operators should be given the opportunity to identify, prevent, mitigate, bring to an end or remediate possible violations within the supply chains and to provide information in favour of their defence.<sup>231</sup> The economic operators have up to 30 working days to respond to the lead competent authority's request.<sup>232</sup> Once the economic operators have made a statement, the lead competent authorities must also decide within 30 working days whether there are actual concerns regarding a violation of the ban on forced labour.<sup>233</sup> The outcome must be communicated through the information and communication system.<sup>234</sup>

If the lead competent authorities come to the conclusion that a violation may have occurred, the investigation will begin, and the economic operator must be informed within three working days.<sup>235</sup> In order to be able to start investigations, the lead competent authorities can first request necessary information from the economic operators. A particular focus should be placed on the area of the supply chain, where the risk of forced labour violations is exceptionally high.<sup>236</sup> Insofar as the investigation takes place in the country of the Member State, the investigation is governed by the national law of that state. As far as those investigations are carried

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<sup>225</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

<sup>226</sup> P9\_TC1-COD(2022)0269 para. 39; 2022/0269(COD) 7542/24 para. 39; Joshua Blach, CCZ 2022, 341, 343.

<sup>227</sup> P9\_TC1-COD(2022)0269 para 42; 2022/0269(COD) 7542/24 para. 42; Joshua Blach, CCZ 2022, 341, 343; European Parliament Press Release 23 April 2024, Products made with forced labour to be banned from the EU single market <[www.europarl.europa.eu/news/en/press-room/20240419IPR20551/products-made-with-forced-labour-to-be-banned-from-eu-single-market](http://www.europarl.europa.eu/news/en/press-room/20240419IPR20551/products-made-with-forced-labour-to-be-banned-from-eu-single-market)> accessed 19 May 2024.

<sup>228</sup> P9\_TC1-COD(2022)0269 Art. 15; 2022/0269(COD) 7542/24 Art. 15.

<sup>229</sup> P9\_TC1-COD(2022)0269 Art. 16 (3); 2022/0269(COD) 7542/24 Art. 16 (3).

<sup>230</sup> Lodde, EuZW 2023, 886, 887.

<sup>231</sup> P9\_TC1-COD(2022)0269 para. 44, 68, Art. 17 (1); 2022/0269(COD) 7542/24 para. 44, 68, Art. 17 (1).

<sup>232</sup> P9\_TC1-COD(2022)0269 Art. 17 (2); 2022/0269(COD) 7542/24 Art. 17 (2).

<sup>233</sup> P9\_TC1-COD(2022)0269 Art. 17 (3); 2022/0269(COD) 7542/24 Art. 17 (3).

<sup>234</sup> P9\_TC1-COD(2022)0269 Art. 17 (6); 2022/0269(COD) 7542/24 Art. 17 (6).

<sup>235</sup> P9\_TC1-COD(2022)0269 Art. 18 (1); 2022/0269(COD) 7542/24 Art. 18 (1).

<sup>236</sup> P9\_TC1-COD(2022)0269 Art. 18 (3); 2022/0269(COD) 7542/24 Art. 18 (3).

out outside the EU, the consent of the economic operator concerned must be granted, and the third country must have been notified of the investigations and not have raised any objections.<sup>237</sup>

The investigations can therefore not be considered as an action of the competent authorities against the economic operators in order to convict them or to impose the highest possible penalty on them, but rather as a kind of cooperation between the competent authorities and the economic operators to achieve the common objective of eliminating forced labour. There should be a constant exchange between the lead competent authorities and the economic operators in finding the source of forced labour and tackling it before further consequences for the economic operator arise.

### 3.4.2 Decision

Following the investigations, and at the latest, within nine months after the investigations have been initiated, the lead competent authorities must decide whether there is a violation of Art. 3 of the Draft Regulation, namely the prohibition of placing or making available products made with forced labour on the market or being exported.<sup>238</sup>

In cases where a violation of the ban on forced labour has been identified during the investigations, the distribution of the product on the EU market and export out of the EU should be immediately blocked, and products already in circulation should be withdrawn and possibly donated to charitable organisations. If neither product donation nor recycling is possible, the product must be destroyed.<sup>239</sup> An exception to these measures should apply if the disposal would lead to a ‘disruption of a supply chain of strategic or critical importance for the Union’<sup>240</sup>. This is the case if the disposal of the product affected by forced labour alters the proper functioning of the internal market or the respective supply chains.<sup>241</sup> In this case, the economic operator should first be given a notice period to remedy the forced labour violation, according to Art. 20 (5). If the lead competent authorities come to the conclusion that there is no violation of Art. 3 of the Draft Regulation, the investigations will be closed. The possibility of new investigations being initiated in the future cannot be excluded if new relevant information is presented.<sup>242</sup>

Economic operators are always entitled to have the decisions reviewed.<sup>243</sup> If the economic operators have removed the violation, the decision can also be withdrawn by the lead competent authorities and removed from the Forced Labour Single Portal.<sup>244</sup> Additionally, economic operators should always have access to a court or a tribunal to review the decisions of the competent authorities.<sup>245</sup> While the decisions of the competent authorities are subject to legal review by the national courts, the

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<sup>237</sup> P9\_TC1-COD(2022)0269 Art. 19 (2), (3); 2022/0269(COD) 7542/24 Art. 19 (2), (3).

<sup>238</sup> P9\_TC1-COD(2022)0269 Art. 20 (1); 2022/0269(COD) 7542/24 Art. 20 (1).

<sup>239</sup> P9\_TC1-COD(2022)0269 para. 48; 2022/0269(COD) 7542/24 para 48.

<sup>240</sup> P9\_TC1-COD(2022)0269 Art. 20 (5); 2022/0269(COD) 7542/24 Art. 20 (5).

<sup>241</sup> P9\_TC1-COD(2022)0269 para. 48; 2022/0269(COD) 7542/24 para. 48.

<sup>242</sup> P9\_TC1-COD(2022)0269 Art. 20 (3); 2022/0269(COD) 7542/24 Art. 20 (3).

<sup>243</sup> P9\_TC1-COD(2022)0269 Art. 21 (1); 2022/0269(COD) 7542/24 Art. 21 (1); Joshua Blach, CCZ 2022, 341, 344.

<sup>244</sup> P9\_TC1-COD(2022)0269 Art. 21 (3); 2022/0269(COD) 7542/24 Art. 21 (3).

<sup>245</sup> P9\_TC1-COD(2022)0269 Art. 21 (5); 2022/0269(COD) 7542/24 Art. 21 (5).

Court of Justice rules on the decisions of the Commission according to Art. 263 TFEU.<sup>246</sup>

### 3.4.3 Enforcement

The pure existence of laws is not sufficient to reduce forced labour. Moreover, it is necessary that these formal laws will also effectively be enforced.<sup>247</sup>

In cases where an infringement has been identified, and the economic operator has not successfully resolved the issue within the time limit set by the competent authorities, the competent authorities are responsible for enforcing the decision. The competent authorities should guarantee that the products are not placed or made available on the Union market or exported, that products that have already been placed or made available are withdrawn, and that the remaining products of the economic operator are disposed.<sup>248</sup> In addition, penalties can be imposed on the economic operator by the competent authorities.<sup>249</sup> It is up to the EU Member States to set the rules on penalties and to implement them according to national law.<sup>250</sup> The penalties should always be effective, proportionate and dissuasive, taking into account factors such as the gravity and duration of the violation, previous violations, willingness to cooperate with the competent authorities and other factors that may be relevant in the individual case.<sup>251</sup>

In order to guarantee an effective enforcement strategy, the decisions of a competent authority from one EU Member State should also be recognised in the other EU Member States.<sup>252</sup> The competent authorities of the EU Member States should not only be responsible for internal enforcement but also import and export issues.<sup>253</sup>

If a violation of forced labour has not been resolved, the lead competent authorities should report the violation to the customs authorities, which are responsible for identifying the product upon entering or leaving the EU and preventing its import or export.<sup>254</sup> The controls by the customs authorities are to be oriented towards risk-based management under Regulation (EU) No 952/2013. If the customs authorities have identified the products concerned, they are to be suspended from being freely circulated and exported.<sup>255</sup>

Close cooperation between the lead competent authorities and the customs authorities is crucial for the enforcement process, as the customs authorities may be the only authority able to hinder the placement and making available products on the Union market and to prevent exports. Nevertheless, whether a national penalty

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<sup>246</sup> P9\_TC1-COD(2022)0269 para. 68; 2022/0269(COD) 7542/24 para. 68.

<sup>247</sup> ILO / OECD / IOM / United Nations Children's fund 'Ending child labour, forced labour and human trafficking in global supply chains' 2019 p. 18.

<sup>248</sup> P9\_TC1-COD(2022)0269 para. 48, Art. 23 (1); 2022/0269(COD) 7542/24 para. 48, Art. 23 (1).

<sup>249</sup> P9\_TC1-COD(2022)0269 para. 66, Art. 23 (2); 2022/0269(COD) 7542/24 para. 66, Art. 23 (2).

<sup>250</sup> P9\_TC1-COD(2022)0269 para. 66, Art. 37 (1); 2022/0269(COD) 7542/24 para. 66, Art. 37 (1).

<sup>251</sup> P9\_TC1-COD(2022)0269 para. 66, Art. 37 (1), (2); 2022/0269(COD) 7542/24 para. 66, Art. 37 (1), (2).

<sup>252</sup> P9\_TC1-COD(2022)0269 para. 51, Art. 20 (8); 2022/0269(COD) 7542/24 para. 51, Art. 20 (8).

<sup>253</sup> P9\_TC1-COD(2022)0269 para. 55; 2022/0269(COD) 7542/24 para. 55.

<sup>254</sup> P9\_TC1-COD(2022)0269 para. 58, Art. 26 (3); 2022/0269(COD) 7542/24 para. 58, Art. 26 (3); Joshua Blach, CCZ 2022, 341, 344.

<sup>255</sup> P9\_TC1-COD(2022)0269 para 57, Art. 28; 2022/0269(COD) 7542/24 para. 57, Art. 28.

system is adequate to ensure a uniform ban remains questionable. Some emphasise the importance of uniform punishment to maintain the principle of a level playing field.<sup>256</sup> Otherwise, it could be considered to import or export into or out of the EU Member States where the prohibited activity is still the most profitable. The Committee of Legal Affairs also assumes that there must be more detailed rules on the imposition of penalties.<sup>257</sup>

Furthermore, the Draft Regulation makes little reference to the remedy of persons subjected to forced labour. Remedy can be understood as a remedy for a human rights violation as well as compensation for the negative impact of the violation in terms of for example rehabilitation, financial or non-financial compensation or penalties.<sup>258</sup> Remedies aim to ensure that the individual is placed in a position as if the forced labour had never occurred.<sup>259</sup> Remediation within the Draft Regulation is only mentioned in relation to the preliminary phase of investigations in which the lead competent authorities should give economic operators a chance to remediate the risk of forced labour and when it comes to the obligation of the Commission to hand in a report to the European Parliament, the Council and to the European Economic and Social Committee. The Commission needs to mention in its report the need to address the remediation of forced labour.<sup>260</sup> The implementation of remedies within the Regulation is an essential element in fighting forced labour and can have a justice-creating effect, especially for the victims of forced labour.<sup>261</sup>

In principle, therefore, it can be assumed that the prohibitions' enforcement can definitely be successfully implemented through the coordination of the authorities. On the other hand, the system for imposing penalties and remedial measures for economic operators could have been regulated even more uniformly for all EU Member States.

### 3.4.4 Conclusion

Overall, the EU's approach of prohibiting any products made with forced labour from being placed or made available on the Union market from all regions and banning their export can be considered affirmatory. Due to the low incidence of forced labour in Europe, the problem is less significant than in other parts of the world, which is why the EU's efforts to tackle the issue are to be welcomed.<sup>262</sup>

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<sup>256</sup> Opinion of the European Economic and Social Committee on 'Prohibiting products made with forced labour in the Union market' (COM(2022) 453 final), Official Journal of the European Union 21 April 2023 para. 1.17.

<sup>257</sup> Opinion of the Committee on Legal Affairs on the proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market (COM(2022)0453 – C9-10986 – 2022/0269(COD)) 30 May 2023 p. 2 <[www.europarl.europa.eu/doceo/document/JURI-AL-749170\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/JURI-AL-749170_EN.pdf)> accessed 12 May 2024.

<sup>258</sup> Opinion of the Committee of Foreign Affairs for the Committee on the Internal Market and Consumer Protection and the Committee on International Trade on the proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market (COM(2022)0453 – C9-0307/2022 – 2022/0269(COD)) 19 July 2023 p. 26.

<sup>259</sup> P9\_TC1-COD(2022)0269 para. 36; 2022/0269(COD) 7542/24 para. 36.

<sup>260</sup> P9\_TC1-COD(2022)0269 Art. 17 (1), 38 (4); 2022/0269(COD) 7542/24 Art. 17 (1), 38 (4).

<sup>261</sup> Opinion of the Committee of Foreign Affairs for the Committee on the Internal Market and Consumer Protection and the Committee on International Trade (COM(2022)0453 – C9-0307/2022 – 2022/0269(COD)) p.3.

<sup>262</sup> Joshua Blach, 2022, 341, 344.



In addition, the combination of the various supporting measures and systems is also noteworthy and very well thought out. Insofar as the measures proposed by the Draft Regulation are complied with and implemented by the various EU Member States and their competent authorities, the Commission, and the customs authorities, comprehensive coordination and cooperation can certainly be ensured.

Focusing on cooperation and mutual exchange between the lead competent authorities and the affected economic operators, it should be possible in many cases to uncover, eliminate, and remediate the forced labour violation before the prohibition or penalties for the economic operators must be enforced. Through the close cooperation between the lead competent authorities, and the customs authorities the effective enforcement of the ban on imports and exports to and from the EU is practicable and can be successfully achieved.

Nevertheless, the Draft Regulation grants the EU Member States the competence to decide on penalties according to Art. 37 of the Draft Regulation. It would make sense to introduce an EU-wide rule regarding the penalisation of competent authorities in cases of forced labour violations to ensure uniformity and to prevent possible negative consequences of unequal treatment.

## 4 Comparison and Conclusion

After analysing the existing international and European legal instruments and the Draft Regulation on prohibiting products made with forced labour on the Union market, the instruments can now be compared using specific comparative criteria. The following aspects of the forced labour definition, the addressees of the various measures, the specific rights and obligations arising from the provisions, the fundamental organisation of the implementation, and the enforcement of the various legal instruments will be compared. This comparison aims to identify the innovations and possible improvements of the new Regulation and the aspects that still require adjustment. A conclusion will be provided, showing a critical assessment of the Draft Regulation.

### 4.1 Comparison

The comparison of the different instruments is carried out based on the criteria mentioned above. Each aspect of the various legal acts is analysed and final statements regarding the specific comparison criterion are made.

In terms of the **definition** of forced labour, it should first be noted that almost all instruments after the ILO Convention No. 29 have been based on and applied the definition set out in Art. 2 of the ILO Convention No. 29. As the definition is to be understood very broadly, it covers a wide range of situations and, on the other hand, also offers a great deal of leeway, which makes it more difficult to apply the definition accurately.<sup>263</sup> Both the Draft CSDDD in Annex Part 1 No. 12 and the Draft Regulation in Art. 2 (a) either explicitly refer to ILO Convention No. 29 or adopt the wording of the forced labour definition. Although neither the CFR nor the ECHR itself defines forced labour in its legal text, it is nevertheless recognised that the ILO definition of forced labour is applied in the interpretation of the legal term by the CJEU or the European Court of Human Rights. If FTAs are concluded, the definition of forced labour depends mainly on the contractual agreement, but usually, reference is made to existing legal instruments such as the ILO Conventions.<sup>264</sup> In 1957, the ILO Convention No. 105 further broadened the definition of forced labour, initially primarily motivated by economic considerations. However, the subsequent legal instruments make no further reference to this definition. Therefore, the definition of forced labour introduced by the ILO in 1930 is still used today, and the Draft Regulation also uses it.

Another interesting point of comparison for evaluating innovations through the Draft Regulation is the specific **addressee** of the respective measures. The addressees of the ILO Conventions are the ILO Member States that have ratified the Conventions. Consequently, the ILO Member States have the rights and obligations to ensure that

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<sup>263</sup> ILO International Labour Conference 93<sup>rd</sup> session 2005 para. 80.

<sup>264</sup> ILO 'Free Trade Agreements and Labour Rights'.

the problem is addressed and remedied within the ILO Member State. The agreed contractual provisions for FTAs shall also apply to the addressee of the measure. It is assumed that, in most cases, the contracting parties are the addressees of the respective measures. The CFR and the ECHR are not explicit regarding the person/organisation responsible for preventing forced labour. It merely states that ‘no one’<sup>265</sup> should perform forced labour. However, no allocation is made to the person responsible for ensuring forced labour will be prevented. Consequently, given the nature of the legal acts, the Union and the individual EU Member States but also private individual must respect the fundamental rights set out in the CFR and ECHR. According to Art. 32 CSDDD, the Draft Directive is addressed to the Member States of the EU. Nevertheless, the obligation to carry out due diligence applies to companies that exceed a specific size and have a minimum annual turnover, according to Art. 4 Draft CSDDD. Concerning the Draft Regulation, the economic operators have the primary obligation according to Art. 3 not to place and make available products made with forced labour on the Union market and to not export such products. As a result, there is a recognisable tendency to transfer obligations and responsibilities to companies directly instead of delegating authority to the states. Not only is this a development that can be seen over time, but it is also a development in which the group of affected parties is becoming smaller. A transfer of responsibilities has only been found for EU instruments, not international legal acts. A potential reason for this development might be that the forced labour situation is constantly not improving or even worsening, which leads to the conclusion that the existing instruments are ineffective or insufficient. A higher success rate might be achieved by approaching the problem directly at its origin.

Furthermore, particular attention is paid to the specific **obligations and prohibitions** imposed on the addressees. The obligations in the ILO Conventions are kept rather general and are not further specialised. For example, ILO Convention No. 29 states that ILO Member States undertake ‘to suppress the use of forced or compulsory labour in all its forms within the shortest possible period’<sup>266</sup>. FTAs shall define the specific obligations and prohibitions either by contract or by reference to a legal instrument. Art. 5 CFR states that no one shall be held in slavery or servitude, that no one shall be subjected to forced or compulsory labour, and that human trafficking shall be prohibited.<sup>267</sup> Except for the last point relating to human trafficking, Art. 4 ECHR regulates the first two points without any changes to the wording.<sup>268</sup> Art. 4 Draft CSDDD requires companies to carry out due diligence concerning human rights and the environment. The due diligence requirements are explained further in the following articles.<sup>269</sup> Regarding the Draft Regulation, the prohibition of placing, making available, and exporting products made with forced labour by economic operators is explicitly named in Art. 3 of the Draft Regulation.<sup>270</sup> While the ILO Convention and also the CFR or the EMRC are pretty general about the specific obligations and prohibitions and grant the Member States a broad leeway,

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<sup>265</sup> Charter of Fundamental Rights of the European Union (2000/C 364/01) Art. 5 (2); European Convention on Human Rights Art. 4 (2).

<sup>266</sup> C029 - Forced Labour Convention, 1930 (No. 29) Art. 1 (1).

<sup>267</sup> Charter of Fundamental Rights of the European Union (2000/C 364/01) Art. 5.

<sup>268</sup> European Convention on Human Rights Art. 4.

<sup>269</sup> COM (2022) 71 final Art. 4 (1).

<sup>270</sup> P9\_TC1-COD(2022)0269 Art. 3; 2022/0269(COD) 7542/24 Art. 3.

the Draft CSDDD and the Draft Regulation provide for exact actions through which the overarching goal of preventing forced labour is to be achieved.

Regarding the **organisation** within the legal acts, it can be noted that the earlier ILO Conventions did not provide any further details regarding the actual organisation. It is stated in general terms that the ILO Member States are responsible for suppressing forced labour. How this is managed is not specified and is therefore left to the responsibility of the ILO Member States. More than 70 years after the implementation of ILO Convention No. 29, it was recognised that the mere general obligation was probably not sufficient and that the implementation gaps had to be closed in order to guarantee an effective fight against forced labour.<sup>271</sup> For this reason, the Protocol of 2014 to the Forced Labour Convention, 1930 was introduced, which sets out more detailed measures for ILO Member States to combat forced labour. Nevertheless, the ILO Conventions are not isolated cases since neither the CFR, nor the ECHR makes any further statements about the conditions for achieving the premise that no one shall be forced to work. However, the newly adopted or future EU secondary legal instruments may provide more precise provisions concerning the specific procedure for achieving the objectives. For example, Art. 4 to 11 Draft CSDDD describes the precise measures and steps companies must take to carry out due diligence. The organisation of the Draft Regulation is characterised, above all, by the close cooperation and collaboration between the various authorities. While the competent authorities appointed by the EU Member States are primarily responsible for investigations within the EU, the Commission is mainly responsible for introducing organisational measures and handling international relations. The customs authorities are also involved in enforcing the prohibition. As a result, it can be stated that the ILO instruments as well as the CFR and the ECHR, are primarily concerned with achieving the goal of eliminating forced labour. The Draft CSDDD and the Draft Regulation focus on the path to achieve the objective and list measures and provisions that contain clear and comprehensible information regarding the procedure.

Finally, the **enforcement** mechanisms of the various legal instruments will also be compared. Concerning the ILO instruments, it can be stated that the enforcement of ILO measures is recognised as being based less on harsh penalties than on a name-and-shame approach.<sup>272</sup> So the main focus is on offering support measures and assistance to the various ILO Member States in order to achieve the objectives by mutual agreement. The FTAs can provide a more effective enforcement despite the primary application of the ILO principles and objectives, as additional provisions can be agreed on to regulate enforcement and dispute settlement.<sup>273</sup> A breach of the ILO provisions can then lead to actual consequences for non-compliance, which are defined in the agreement. In case violating the forced labour provisions of the CFR and the ECHR, enforcement by the respective courts is ensured. In principle, the Draft CSDDD and the Draft Regulation are very similar in their enforcement mechanisms. Both EU secondary legislation acts offer support measures to the

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<sup>271</sup> ILO Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, Conclusions adopted by the Meeting TMELE/2013/6 p 4.

<sup>272</sup> Franziska Humbert, Cambridge University Press; 2009 p. 192.

<sup>273</sup> ILO 'Free Trade Agreements and Labour Rights'.

responsible entities and appoint one or more competent authorities per EU Member State to ensure and investigate the obligations of the companies/economic operators. In the event of violations, sanctions can be imposed by the EU Member States in their national legislation. Furthermore, both legal acts establish a network for better coordination and communication between the various authorities. The enforcement mechanisms indicate effective implementation of the obligations imposed in the acts, so it can be assumed that the companies carry out due diligence and that the products made with forced labour are not placed on the market, made available, or exported. Despite the theoretically reasonable implementation of the measures there can still be difficulties regarding the actual cooperation of the authorities, the identification of the products, and the suspension of the identified products. Nonetheless, the fact that the legal acts leave the implementation of sanctions to the EU Member States seems questionable, especially about the Regulation, as it no longer requires implementation by the EU Member States but is directly applicable.

## **4.2 Conclusion**

In summary, it can therefore be concluded that the draft of the EU Regulation on prohibiting products made with forced labour on the Union market is an essential step in effectively fighting forced labour. While the previous legal acts focused mainly on achieving the objective, the new Draft Regulation provides a clear path for the EU Member States, economic operators, competent authorities, the Commission, and customs authorities to work together to achieve the objective by providing detailed explanations of the process. This approach seems relatively new, especially in the fight against forced labour, and to date, it can only be recognised in the Draft CSDDD, which was adopted in March 2024 and has not yet entered into force. Nevertheless, a final evaluation can only be made after the implementation.

The main aspects that differentiate the Draft Regulation from previous instrument are that economic operators are directly subject to the Draft Regulation, that there is a detailed coordination and cooperation strategy between different authorities, and that the Regulation is to be effectively enforced at the EU borders. Nevertheless, a final evaluation can only be made after the implementation. Regarding practical aspects, there are still several aspects where potential difficulties may arise.

The direct obligations imposed on economic operators are a logical response to years of ineffective state addressing. However, this direct approach necessitates detailed training and information dissemination to ensure economic operators fully comprehend the extent of their responsibilities.

However, to effectively address the problem, the main focus is always on the enforcement of the legal act. Even the best communication and coordination systems or guidelines can only achieve success with effective enforcement. Once the Draft Regulation has been implemented, it remains to be awaited whether the identification and suspension at the EU borders will be carried out correctly. As soon as there is any gap in import and export controls, profit-oriented companies will recognise and exploit this gap. The Draft Regulation does not contain any provisions for the possibility that a product manufactured entirely or partially with forced labour is

incorrectly approved by the customs authorities and is then placed on the EU market. This lack of ruling will make it challenging to identify the product retrospectively before it reaches the consumer. Consequently, the system can only be guaranteed if all authorities respect the Regulations. No matter how small, every crossing into the EU must be able to secure and control the border. This may seem utopian in practice, but the Regulation aims to guarantee effective enforcement at every EU border.

Furthermore, there are no universal penalties for economic operators in the event of violations. This could be a problem if there are different levels of penalties in the EU Member States so that economic operators accept the risk of minimal penalties and start importing and exporting to the EU Member States with the lowest penalties.<sup>274</sup> On the other hand, the mere interception of the products at customs and the possible destruction or donation could represent a sufficient economic loss for the economic operator to ensure compliance with the prohibition. Obviously, it depends on the product, the number, and the economic damage from the economic operator. However, from my point of view, introducing an EU-wide penalty system is of minor importance.

It can already be stated at this point that the implementation of the Regulation can only be successful if each provision of the Draft Regulation is specifically observed, the authorities make no exceptions, and the penalties for non-compliance are almost similar in the individual national legislation of the EU Member States.

Despite the pressure from the outside world due to existing similar legal acts or the intensifying situation of the Uyghurs in China, the Draft Regulation is more than just an empty instrument to adapt. It can improve the current forced labour situation if the provisions are effectively implemented. Especially the theoretical enforcement measures can lead to comprehensive prevention of the import and export of forced labour products; as long as the customs authorities are adequately and sufficiently informed about the relevant products, proper identification can occur at the border, and the products are suspended or disposed. As the Executive Vice-President Dombrovskis states in the European Parliament Plenary debate: “We expect that the [Regulation on prohibiting products made with forced labour on the Union market] will lead to a balanced and effective instrument [...]”<sup>275</sup>.

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<sup>274</sup> Opinion of the European Economic and Social Committee on ‘Prohibiting products made with forced labour in the Union market’ (COM(2022) 453 final), Official Journal of the European Union 21 April 2023 para. 1.17.

<sup>275</sup> European Commission, Statement by Executive Vice-President Dombrovskis at the European Parliament Plenary debate on the Regulation on prohibiting products made with forced labour on the Union market 22 April 2024 <[https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_24\\_2237](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_24_2237)> accessed 19 May 2024.

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