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ENSURING HUMAN RIGHTS ARE REALLY NOT FOR SALE

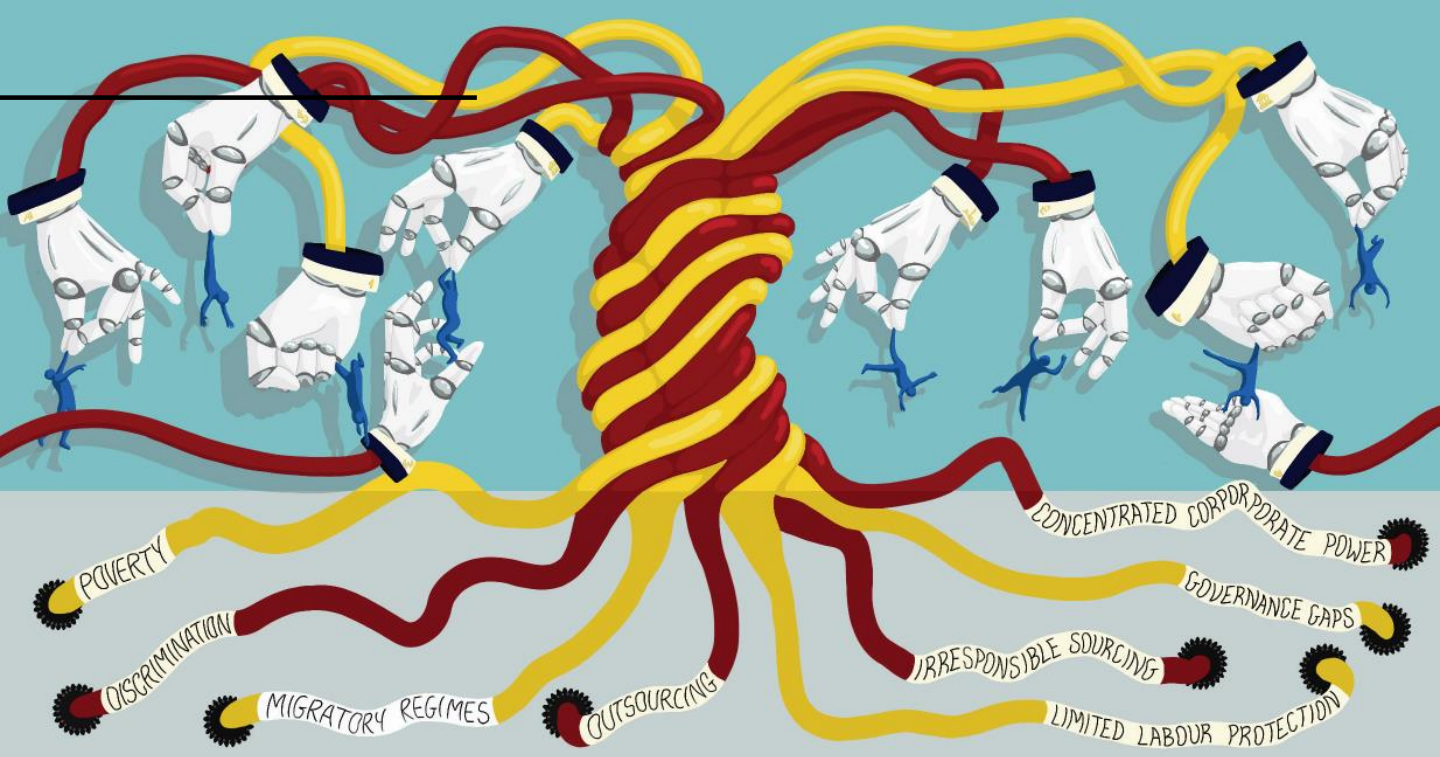
Recommendations from the Fair Trade movement to strengthen the EU's proposal on Prohibiting Products Made with Forced Labour on the EU market

Overview of recommendations

Building on the [‘Civil Society Statement on the Proposed Regulation on Prohibiting Products Made With Forced Labour on the Union Market’](#), the Fair Trade movement wishes to put forward its recommendations on how to strengthen the Proposed Regulation.

The Proposed Regulation must:

- 1** Address the root causes of forced labour, inter alia, through due diligence requirements and accompanying measures. Forced labour is typically rooted in exploitation, poverty, prices that do not cover the costs of (sustainable) production, and the lack of living incomes and living wages.
- 2** Explicitly cover purchasing practices as a key factor affecting the occurrence of forced labour, recognising that unfair and exploitative practices often lead to human and labour rights abuses.
- 3** Ensure a fair sharing of compliance costs, recognising that forced labour is an outcome of unfair supply chain practices, regardless of where in the chain forced labour is found to occur.
- 4** Include obligations for responsible and inclusive disengagement, as a last resort. Ensuring that no further harm is done to affected people (formal and informal workers).



Source of the image: [Confronting root causes: forced labour in global supply chains](#)

1. Address the root causes of forced labour - the particular role of prices and living wages and living incomes

As illustrated in the image above, there are several root causes leading to forced labour.

Situations of poverty, discrimination, irresponsible sourcing practices, limited labour protection, lack of economic alternatives, and outsourcing, complemented by faltering migratory regimes, concentrated corporate power and governance gaps all lie at the roots of forced labour.^{1,2}

Having this in mind, the Fair Trade movement calls on EU policy makers to explicitly refer to root causes of forced labour and how to tackle them, in the Proposed Regulation.

In many instances, the root cause of human rights violations at factory or producer level is exploitation, poverty, vulnerability, unequal power relations in the supply chain and lack of economic alternatives.³ Forced labour is an outcome of the volatility and unfair trading practices present in and around supply chains.

The multi-faceted causes of forced labour are the reasons why an instrument tackling forced labour must also address the issue of companies not paying a price that enables their upstream producers to respect and uphold human rights, paying living wages to workers and earning a living income for smallholder farmers.

Ensuring these issues are effectively addressed and measures are effectively implemented – as to the benefit of the affected people – must be part of the Proposed Regulation. This by (1) being part of the conditions an EU economic operator must prove through the established due diligence on forced labour, and (2) a *conditio sine qua non* for lifting any prohibitions imposed on the economic operator. A decision of the national authorities asserting presence of forced labour in investigated product - besides prohibiting imports and ordering withdraw and disposal of products – shall also command the economic operator to engage with their suppliers throughout the supply chain and identify and address root causes leading to use of forced labour in the investigated product.

A survey conducted by the [ILO in 2017](#) found that more than a third of producers accepted orders worth less than the cost of production and one-third of the suppliers that sold below cost did so under pressure from their buyers.⁴ Factory owners and producers operate on thin margins and sometimes with very limited resources, making it more difficult for them to comply with international labour standards and to provide sustainable protection or remediation to affected workers. Not being able to secure prices that at least cover production costs also has a direct effects on wages because of the absence of a profit margin, and may in that way boost undeclared.⁵

According to the [ILO Global Survey \(2016\)](#), certain suppliers would indicate that prices below the costs of production would likely lead into difficulties in paying workers' wages and/or overtime pay.

Link with Directive on Unfair Trading Practices

There is an opportunity to broaden the EU Directive on Unfair Trading practices in the agricultural sector to include other sectors where such practices are equally or even more present as for example the clothing and footwear sector.

Additionally, the UTP directive should address the issue of downward price pressure and include a general ban of buying below cost of sustainable production.

In addition, it exposes them to the risk of going out of business, an extreme situation that can lead the management to reduce labour costs by cutting wages or by evading social security contributions and labour tax in order to remain in business.⁶ This as, often, wages are the most flexible production costs, as machinery and materials have a certain minimum price, but the same is not true for people.

Agreeing on prices that are below production costs thus puts the suppliers in a difficult and untenable situation regarding payment of wages, improving working conditions, and combatting informal work. Imposing prices below the cost of production can thus lead to increased use of forced labour as a way to cut production costs.

That is why ensuring a living wage for workers at every stage of the supply chain, lessens the likelihood of them becoming victims of forced labour or child labour.⁷

While this does not lessen the responsibility of the operator who actually uses forced labour in their production process, companies must be responsible for using their leverage to contribute to prevention or mitigation in their value chains, including through a living income. Whereas living wage refers to wage earners, a living income for smallholders is understood as the income they derive from their production, which needs to meet the needs of their household as well as their farm needs, including those of their dependents (e.g., living wages for workers). It is a key human right and both living wage and living income are crucial to address poverty as a root cause of adverse human and labour rights.⁸

Ensuring workers and smallholder farmers have the means to support themselves and their dependants will decrease the probability of them being forced into a situation of forced labour and child labour in some of the world's most vulnerable industries.⁹

2. Covering purchasing practices

Targeting companies' purchasing practices, is the path to avoid putting human rights for sale.

The Proposed Regulation – through the due diligence on forced labour and accompanying measures for implementation of the Regulation– must ensure that companies assess the negative impacts of their purchasing practices, ensuring that these do not represent an obstacle for their suppliers to respect and uphold human and labour rights.

Addressing purchasing practices is an effective approach, as companies have direct control over their own purchasing practices, which are one of the key tools for companies to exercise their leverage over suppliers and partners. **Though the Proposed Regulation is a product-based mechanism, the sanctions are imposed on economic operators (and their imports) and it looks into the operators' efforts to 'identify, mitigate or bring to an end the use of forced labour'**.¹⁰ As such, the proposal also resorts to due diligence as a means to 1) allow operators to avoid an investigation into the use of forced labour in and around their supply chains; 2) prove no forced labour was used in production of the investigated product; and, 3) as a means to lift the restrictions (of placing in and importing to the EU market). However, implementing due diligence procedures should never act 1) as a safe haven against investigations, 2) as prove no forced labour was used and 3) as sole condition for the lifting of restrictions.

This means that the Proposed regulation does have space to explicitly cover purchasing practices as a key factor affecting forced labour risks.

Dispossessed farmers and other workers face highly predatory business practices from more powerful firms. The companies have big power, and it is used to control as well as reduce the costs of production.¹¹ They do this, for example, by imposing short-term contracts, penalties and fees for late or low-quality orders. They also float disproportionate profits to the top of value chains by demanding razor thin margins at the bottom.¹²

Suppliers are squeezed by bigger actors that shift all costs into the suppliers' books.¹³ This, in turn, places major pressure on suppliers to balance their own books, resorting to the use of coercive, exploitative, and otherwise unacceptable labour practices. Extensive research shows correlations between such lead firm practices and the widespread abuse and exploitation of workers.¹⁴

Furthermore, current (rather insufficient) lead times imply that, on average, suppliers may be using more than 25,000 unnecessary hours of labour a year due to insufficient lead times.¹⁵ The existence of peak demand periods is sometimes beyond the control of the supplier and might be due to excessive pressure on suppliers to deliver orders on time.¹⁶ Such overtime hours are generated by buyers' failure to provide sufficient lead times.

Results from a survey conducted by Traidcraft¹⁷ show that suppliers adapt to peak times and unexpected delays - often caused by purchasing practices - not only through greater use of overtime hours (although this remains the most common way of coping with periods of high demand) but also by increasing the number of temporary workers and often outsourcing, a shift that is often associated with lower wages and worse working conditions.

Buyers' purchasing practices may influence the level of outsourcing. Imposing prices below production costs and a weak bargaining position of upstream producers, were found to be associated with an increase in outsourcing. Where outsourcing is also often associated to higher degrees of informal work, forced labour or even child labour.

In this sense, the Commission must include in the Proposed Regulation, part of the recommendations included in its [Guidance on Due Diligence for EU businesses to address the risk of forced labour in their operations and supply chains](#). Particularly when stating that 'internal company awareness of how its own activities, such its purchasing practices, may increase the risk of unauthorised subcontracting and other forced labour risk factors will be particularly important'.

3. Ensuring a fair sharing of compliance costs

The Proposed Regulation must be designed with clear provisions that prohibit the transfer of compliance costs upstream the supply chain to the actors in a weaker position and onto affected people. The Regulation must ensure a fair sharing of compliance costs among supply chain actors.

In its current design, the Proposal does not include any floodgates restricting EU economic operators to push the cost of compliance up their supply chain. This can mean that, e.g., the producer is made responsible for the loss of profit suffered by the EU economic operator when its products are withdrawn from the shelves. As well as the costs of complying with new transparency and traceability requirements.

Link with Directive on Unfair Trading Practices

To a limited extent, restricting the transfer of cost of compliance with the forced labour regulation can be obtained through the application of the UTP Directive.

This is restricted by: Article 3.1: a, d, e, l; and Article 3.2: a, b.

However, this has limited scope in terms of suppliers benefiting from this protection and most importantly, only applies to agri-food supply chain.

This makes it even more necessary to count with a similar instrument for the garment sector.

There must be shared responsibility in the eradication of forced labour. Which means that all actors involved in and around the supply chain must play their respective role in combatting forced labour. **This entails that affected people (formal and informal workers) and/or those in a more vulnerable position cannot bear the entire responsibility for eradicating forced labour.**

This point also links to the need of a) establishing meaningful stakeholder engagement¹⁸; b) including the principle of do no further harm to affected people at core of the regulation; and c) including provisions for responsible disengagement as a last resort.

When the Proposed Regulation establishes conditions for economic operators to: 1) avoid investigations; 2) prove no forced labour has been used in production of investigated product; and 3) lift restrictions (on imports and placing in market of products); the regulation must include obligations for meaningful and inclusive engagement and support to smallholders from whom the actor sources. Especially to ensure that the usage of forced labor use is not pushed elsewhere, i.e. the waterbed effect.

This means that, to address root cases of forced labour and ensure compliance with applicable regulations, companies must be required to meaningfully engage with affected stakeholders, paying special attention to vulnerable rights holder groups and support smallholder farmers from whom they source. This must include companies ensuring fair remuneration that effectively covers the cost of sustainable production.

As to effectively eradicate forced labour, the EU's Proposed Regulation must recognize the need for companies to take responsibility and support their suppliers in respecting human rights, including labour rights, as part of a continuous and meaningful engagement approach rather than simply disengaging. Following the [United Nations Guiding Principles on Business and Human Rights](#), disengagement should only be a last resort.

4. Responsible disengagement as last resort – ensuring no further harm is done

The conditions are often lacking for smallholders to produce their goods in a socially responsible and sustainable way, namely, the lack of living wages and living incomes; unfair purchasing practices; prices not covering cost of (sustainable) production, etc.

This situation can discourage risk-averse downstream companies from forming or maintaining lasting business relationships with these actors and other suppliers.

The EU forced labour regulation must disincentivize harmful disengagement and encourage long term investments to support suppliers, as this would contribute to addressing root causes of forced labour.

Following the Commission's [Guidance on Due Diligence for EU businesses to address the risk of forced labour in their operations and supply chains](#), disengagement from a business relationship is appropriate as a last resort, after failed attempts at preventing or mitigating severe impacts, when adverse impacts are irremediable, where there is no reasonable prospect of change, or when the entity causing the impact does not take immediate action to prevent or mitigate identified impacts.

Furthermore, if an economic operator determines that disengagement is the most appropriate action, there are a range of measures it may take to ensure that its disengagement process is responsible, for example:

- Comply with national laws, international labour standards and the terms of collective bargaining agreements.
- Articulate escalation measures for disengagement upfront with the business relationship.
- Provide detailed information supporting the decision to disengage to management and to the trade union, where one exists.
- Where feasible, provide sufficient notice of the disengagement to the business relationship.¹⁹

Finally, the Proposed Regulation must also account for unintended consequences that it may generate to affected people. To mitigate risks of unintended consequences, the Proposed Regulation shall require:

- A fair share of compliance costs.
- Meaningful and inclusive stakeholder engagement.
- Do not further harm to affected people (formal and informal workers).
- Responsible disengagement as last resort.
- Set up support mechanisms for smallholder farmers and SMEs in and outside the EU, including remedies.

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Footnotes

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10. Article 4, no. 6: The competent authority shall duly take into account where the economic operator demonstrates that it carries out due diligence on the basis of identified forced labour impact in its supply chain, adopts and carries out measures suitable and effective for bringing to an end forced labour in a short period of time.
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