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Regulation on prohibiting products made with forced labour on the Union market: comments from the perspective of comparative, labour and administrative procedural laws*

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1. Introduction

On 14 September 2022, the Commission proposed a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market.[1] The initiative

* This article is the result of discussions and joint efforts of the two authors, who share its content as a whole. However, part 3 is attributable to Aneta Tyc, while part 4 is attributable to Robert Siuciński. Parts 1, 2 and 5 are attributable to both authors.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0453 (access: 3.03.2025).

was first announced by President von der Leyen in her State of the Union speech on 15 September 2021. The general elements of this proposal were laid down on 23 February 2022 in the Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee on decent work worldwide for a global just transition and a sustainable recovery[2] and in the Commission proposal for a directive (now directive of 13 June 2024) on corporate sustainability due diligence.[3] The European Parliament (EP) issued the 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 (adopting its position at first reading),[4] and then, on 19 November 2024, the Council made a decision on the adoption of the EU regulation. On 12 December 2024, the EU regulation on prohibiting products made with forced labour on the Union market (hereinafter referred to as "the EU regulation")[5] was published in the Official Journal of

[2] Brussels, 23.2.2022, com/2022/66 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022DC0066 (access: 3.03.2025).

[3] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending directive (EU) 2019/1937 and regulation (EU) 2023/2859 (text with EEA relevance), OJ L, 2024/1760, 5.7.2024, https://eur-lex.europa.eu/eli/dir/2024/1760/oj (access: 3.03.2025).

[4] https://www.europarl.europa.eu/doceo/document/TA-9-2024-0309_EN.html (access: 3.03.2025). Importantly, a ban on products made with forced labour has been mentioned in some of the European Parliament resolutions, namely: resolution on human rights and social and environmental standards in international trade agreements (November 2010), resolution on child labour in mines in Madagascar (February 2020), resolution on forced labour and the situation of the Uyghurs in Xinjiang (December 2020), resolution regarding sustainable and responsible corporate behaviour (March 2021), resolution on forced labour in the Linglong factory in Serbia (December 2021) and resolution on a new trade instrument to ban products made by forced labour (June 2022). More: A. Altmayer, S. Spinaci, *Proposal for a ban on goods made using forced labour, Briefing EU Legislation in Progress*, PE 739.356, November 2023, p. 4, https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739356/EPRS_BRI(2023)739356_EN.pdf (access: 3.03.2025).

[5] https://eur-lex.europa.eu/eli/reg/2024/3015/oj/eng#ntr2-L_202403015EN.000101-E0002 (access: 3.03.2025).

the European Union and has entered into force on the day following its publication. It shall apply from 14 December 2027.[6]

According to the EU regulation, the global number of people in forced labour is estimated at 27.6 million. The authors of this work would like to emphasise that sometimes there is a huge gap between the ratification of the International Labour Organization (ILO) convention itself and its implementation and compliance. For example, China ratified the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105) of the ILO, but this does not mean that it has eliminated violations of workers' rights. Quite the reverse, the report by Uluyol et al. shows that huge amounts of clothing produced through forced Uyghur labour are flooding the EU.[7]

Eradicating forced labour by 2030 is included in United Nations Sustainable Development Goals (Goal 8.7) and the EU regulation seems to fit perfectly into its implementation. Moreover, the EU Charter of Fundamental Rights in its Article 5(2) explicitly prohibits forced labour. This prohibition is well enshrined in the EU legislation. The objective of the EU regulation is to effectively prohibit the placing and making available on the EU market and the export from the EU of products made with forced labour, including forced child labour. The prohibition was designed to cover both domestically produced and imported products. It is supported by a robust, risk-based enforcement framework – one of the key elements of the document which will be discussed in this article. The literature rightly draws attention to the broad definitions used in the EU regulation.[8]

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[6] With the exceptions of Articles 5(3), 7, 8, 9(2), 11, 33, 35, and 37(3), which are applicable from 13 December 2024.

[7] Y. Uluyol et al., *Tailoring Responsibility: Tracing Apparel Supply Chains from the Uyghur Region to Europe*, Sheffield Hallam University Helena Kennedy Centre for International Justice 2023, https://www.shu.ac.uk/-/media/home/research/helena-kennedy-centre/projects/eu-apparel/eu-tailoring-responsibility-february-24.pdf (access: 3.03.2025).

[8] A. Fruscione, *The European Commission Proposes a Regulation to Ban Products Made With Forced Labour*, "Global Trade and Customs Journal" 2023, Vol. 18 (3), pp. 121–122. In particular, "'product' means any item that can be valued in money and is capable, as such, of being the subject of commercial

The aim of the study is to deliver an analysis and critical evaluation of the EU regulation from the perspective of comparative, labour, and administrative procedural laws. Thus, the analysis made using the dogmatic method will be the starting point for our research. Using, additionally, the comparative legal method, the authors will also examine some other primary source texts, namely the Fighting Against Forced Labour and Child Labour in Supply Chains Act (Canada),[9] the Modern Slavery Act 2015 (the UK),[10] the Modern Slavery Act 2018 (Australia),[11] the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023,[12] and the Uyghur Forced Labor Prevention Act.[13] They will also take into consideration relevant secondary sources, in particular the opinion of the European Economic and Social Committee (EESC) on "Prohibiting products made with forced labour in the Union market".[14]

The Article proceeds in five parts. Part 2 explores bans on forced labour from a comparative legal standpoint. Part 3 delves into the EU regulation from the perspective of labour law and part 4 from the perspective of administrative procedure. Part 5 includes conclusion.

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transactions, whether it is extracted, harvested, produced or manufactured"; and "'product made with forced labour' means a product for which forced labour has been used in whole or in part at any stage of its extraction, harvest, production or manufacture, including in the working or processing related to a product at any stage of its supply chain".

[9] https://laws.justice.gc.ca/eng/acts/F-10.6/page-1.html (access: 3.03.2025).

[10] https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted (access: 3.03.2025).

[11] https://www.legislation.gov.au/C2018A00153/latest/text (access: 3.03.2025).

[12] https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbills%2Fr7122_first-reps%2F0000%22;rec=0 (access: 3.03.2025).

[13] https://www.congress.gov/bill/117th-congress/house-bill/1155/text (access: 3.03.2025).

[14] OJ C 140, 21 April 2023, p. 75–83, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022AE5362 (access: 3.03.2025).

2. A comparative overview

Bans on forced labour are being introduced in many countries of the Western World and confirm a trend in this direction. Sometimes they are related to certain obligations under free trade agreements, e.g. the United States-Mexico-Canada Agreement (USMCA). In Canada, the Fighting Against Forced Labour and Child Labour in Supply Chains Act received Royal Assent on 11 May 2023 and entered into force on 1 January 2024. The purpose of the Act is to implement Canada's international commitment to contribute to the fight against forced labour and child labour through introducing certain reporting requirements not only on government institutions producing, purchasing, or distributing goods in Canada or elsewhere, but also on entities meeting certain criteria (including threshold criteria) set out in the Act and producing goods in Canada or elsewhere or in importing goods produced outside Canada.

In the United States, the Uyghur Forced Labor Prevention Act was enacted on 23 December 2021 and took effect on 21 June 2022. One of its crucial characteristics is that it establishes a rebuttable presumption that all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of China, or by persons working with the Xinjiang Uyghur Autonomous Region government for purposes of the "poverty alleviation" programme or the "pairing-assistance" programme, which subsidises the establishment of manufacturing facilities in the Xinjiang Uyghur Autonomous Region, shall be deemed to be goods, wares, articles, and merchandise described in section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)[15] and shall not be entitled to entry at any of the ports of the United States (section 4 entitled "Prohibition on importation of goods made in the Xinjiang Uyghur Autonomous

[15] Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) states that it is illegal to import into the United States "goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part" by forced labour. Such merchandise is subject to exclusion or seizure and may lead to criminal investigation of the importer.

Region").[16] The other characteristic of the Uyghur Forced Labor Prevention Act is related to the enforcement strategy to effectively address forced labour in the Xinjiang Uyghur Autonomous Region of China or products made by Uyghurs, Kazakhs, Kyrgyz, Tibetans, or members of other persecuted groups through forced labour in any other part of China. The strategy shall include, *inter alia*, issuing specific "Withhold Release Orders" to support enforcement of section 4, with regard to each listed facility or entity. For example, on 4 October 2024, US Customs and Border Protection personnel at all US ports of entry detained in this way work gloves produced by Shanghai Select Safety Products Company, Limited and its two subsidiaries from China, Select (Nantong) Safety Products Co. Limited and Select Protective Technology (HK) Limited.[17]

The "Modern Slavery Act 2015" received Royal Assent in the United Kingdom and became law on 26 March 2015 and entered into force on 31 July 2015. The Act outlines certain penalties and sentencing for offence and states that a person commits an offence if the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour. Moreover, Part 6 (section 54) of the Act entitled "Transparency in supply chains etc", which came into force on 29 October 2015, sets out that a commercial organisation – which supplies goods or services and has a total turnover of not less than an amount prescribed by regulations made by the Secretary of State – must prepare a slavery

[16] This presumption applies unless the Commissioner of US Customs and Border Protection determines, by clear and convincing evidence, that any specific goods, wares, articles, or merchandise were not produced wholly or in part by convict labour, forced labour, or indentured labour under penal sanctions; and submits to the appropriate congressional committees and makes available to the public a report that contains such determination.

[17] CBP issues Withhold Release Order on Shanghai Select Safety Products and its subsidiaries, https://www.cbp.gov/newsroom/announcements/cbp-issues-withhold-release-order-shanghai-select-safety-products-and-its (access: 3.03.2025).

and human trafficking statement for each financial year of the organization.[18]

A very similar regulation, also called the "Modern Slavery Act" was enacted in Australia on 21 June 2018, and entered into force on 1 January 2019. On 30 November 2023, the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 was introduced in the House of Representatives with the purpose to amend the Modern Slavery Act 2018 and to establish the Australian Anti-Slavery Commissioner. The "Modern Slavery Act 2018" defines modern slavery as a conduct which would constitute an offence under Division 270 or 271 of the Criminal Code or an offence under either of those Divisions if the conduct took place in Australia, or trafficking in persons, or the worst forms of child labour. Thus, modern slavery means also forced labour, slavery, servitude, debt bondage, slavery like practices, forced marriage, and deceptive recruiting for labour or services. One of the main characteristics of the "Modern Slavery Act 2018" is that it requires entities based, or operating, in Australia, which have an annual consolidated revenue of more than $100 million, to report annually on the risks of modern slavery in their operations and supply chains, and actions to address those risks. Other entities – based or operating in Australia – may report voluntarily. The Commonwealth is required to report on behalf of non-corporate Commonwealth entities, and the reporting requirements also apply to Commonwealth corporate entities and companies with an annual consolidated revenue of more than $100 million. More specifically, the "Modern Slavery Act 2018" requires modern slavery statements to be given annually to the Minister, describing the risks of modern slavery in the operations and supply chains of reporting entities and entities owned or controlled by those entities. These documents must include information about actions taken to address those risks. According to the Act, joint modern slavery statements may be given on behalf of one or more reporting enti-

[18] The duties imposed on commercial organisations by section 54 of the Modern Slavery Act are enforceable by the Secretary of State bringing civil proceedings in the High Court for an injunction.

ties. A certain obligation has also been imposed on the Minister, who must prepare an annual modern slavery statement on behalf of all non-corporate Commonwealth entities. Importantly, the entity's failure to comply with a requirement in relation to modern slavery statements may cause the Minister to request an explanation from an entity and to request that the entity undertake remedial action in relation to that requirement. If the entity fails to comply with the request, the Minister may publish information about the failure to comply on the register or elsewhere, including the identity of the entity.

When carrying out comparisons, first, it is worth noting a broader approach adopted in the UK and Australia, namely the concept of modern slavery which is rather an umbrella term not limited to forced labour. In Canada and the EU the scope of legal acts embraces forced labour and in the US it is additionally limited territorially. Second, by way of comparison, the EU regulation assumes that all economic operators, including micro, small, and medium-sized enterprises, placing and making available products made with forced labour of any type and provenance on the EU market, would fall within its scope. The European Commission assessed the merits of introducing a threshold for the volume or value of products, below which authorities would not initiate investigations; however, it finally concluded that introducing *de minimis* thresholds would distort the level playing field in the internal market and would create loopholes. As follows from the above analysis, the situation is different in other countries under discussion, where threshold criteria do exist. Third, for the purpose of comparability among the legal acts in question, one shall also pay attention to the rebuttable presumption regulated in the US under the Uyghur Forced Labor Prevention Act. This is a completely different solution from the one proposed by the European Commission. In accordance with the EU regulation, "the risk-based" enforcement is the preferred solution. This implies that "[…] the Commission and competent authorities should take into account the share of the part of the product suspected to have been made with forced labour in the final product, the quantity and volume of products concerned, and the scale and severity

of the suspected forced labour, including whether forced labour imposed by state authorities could be a concern. The Commission and competent authorities should also take into account the size and economic resources of the economic operators and the complexity of the supply chain, and focus to the extent possible on the economic operators and where relevant product suppliers that are closer to the risk of forced labour and have the highest leverage to prevent, mitigate and bring to an end the use of forced labour". Last but not least, the EU regulation assumes commencing an investigation by the lead competent authority when it has a substantiated concern that there has been a violation of Article 3 (prohibition of products made with forced labour). In the light of the solution adopted in the US, it would be appropriate to consider "Withhold Release Orders" a desired option.

3. The EU regulation from the perspective of labour law

As set out in the EU regulation, forced labour impacts are covered by the directive on corporate sustainability due diligence. In particular, the Annex to the directive mentions forced labour among the violations of rights and prohibitions, as included in relevant international agreements, such as the ILO Convention No. 29 and Protocol of 2014, and the ILO Convention No. 105. While the directive includes sanctions in case of non-compliance with the due diligence obligations, it does not require Member States or companies to prohibit the placing and making available of any product on the market. For the authors of this article, it seems unclear what the relationship between these legal acts is and how they would function in practice in the context of this vague situation.[19]

[19] Besides, according to views expressed in the literature, "the main problem [...] relies on how to measure the efforts made in relation to implement voluntary or non-binding norms" given that "due diligence in relation to forced labour" means "efforts by economic operators to implement mandatory requirements, voluntary guidelines, recommendations or practices to identify, prevent, mitigate or bring to an end the use of forced labour with respect to products

It is generally appropriate to agree with the proposed approach to definitions used in Article 2 of the EU regulation. Thus, "forced labour" means forced or compulsory labour as defined in Article 2 of the ILO Convention No. 29, including forced child labour, and "forced labour imposed by state authorities" means the use of forced labour as described in Article 1 of the ILO Convention No. 105. However, some authors emphasised that it was not clear whether the proposed definition also included exceptions from Article 2.2 of the Convention No. 29. "[…] [A] loophole in the Proposal" is that it "fails to clarify if these listed situations remain exceptions for the purposes of the Regulation. […] [I]t would be necessary for the final text to specify it and interesting to update them, as they were established almost a hundred years ago".[20] It should be added that the final text of the EU regulation envisages the exceptions in the 19th recital of the proposed regulation.

Importantly, the EU regulation refers to the ILO's 11 indicators of forced labour, which are derived from theoretical and practical experience of the ILO's Special Action Programme to Combat Forced Labour and represent the most common signs or "clues" that point to the possible existence of a forced labour case. The indicators are as follows: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions,

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that are to be placed or to be made available on the Union market or to be exported […]". It would also be essential to answer the question: "[…] will these non-binding international norms become practically binding for non-state actors that have not formally and solemnly consent to it at some point due to the implementation of these future Regulation and Directive?" Martínez San Millán C., *European Union's governance through trade. Considerations on the Proposal for a Regulation on prohibiting products made with forced labour on the Union market*, "Spanish Yearbook of International Law" 2024, No. 27, p. 172, https://doi.org/10.36151/SYBIL.2024.007 (access: 3.03.2025). Revealingly, the EU regulation does not dispel all doubts. It however sets out that "this Regulation does not create additional due diligence obligations for economic operators other than those already provided for in Union or national law".

[20] C. Martínez San Millán, op.cit., p. 172.

and excessive overtime.[21] According to the EU regulation, apart from the definition of forced labour specified in ILO Convention No. 29 and the ILO indicators of forced labour, for the correct implementation of the EU regulation, its 20th recital also mentions the "Hard to See, Harder to Count"[22] ILO guidelines.[23]

From the labour lawyer's viewpoint, it is very worrying that the European Commission has not ordered any impact assessment studies before making its proposal for the EU regulation. The Explanatory Memorandum of that proposal gives us only a surprising and laconic information: "[...] forced labour requires urgent action, which does not allow for an impact assessment".[24] During the consultation stage all stakeholders criticised the Commission's failure to perform impact assessments. The authors of this article share these criticisms and, at the same time, warn that there is a possibility that the European Commission's actions may have counterproductive effects. The experience of Bangla-

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[21] ILO, *ILO indicators of forced labour*, Geneva 2012, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf (access: 3.03.2025).

[22] See: ILO, *Hard to see, harder to count: Handbook on forced labour surveys*, 3rd edition, https://www.ilo.org/publications/hard-see-harder-count-handbook-forced-labour-surveys (access: 3.03.2025).

[23] It is, however, noted that these indicators may be insufficient for the identification of forced labour imposed by state authorities and that these practices of forced labour – which are based on systemic and global coercive policies – require additional, specifically designed indicators.

[24] Even the European Commission itself emphasises on its website that "when the expected impacts of an EU law or policy are likely to be significant, the Commission conducts an impact assessment before making its proposal". *Planning and proposing law*, https://commission.europa.eu/law/law-making-process/planning-and-proposing-law_en (access: 3.03.2025). Undoubtedly, the proposal for the EU regulation on prohibiting products made with forced labour on the Union market was one of those types of regulations. The European Commission also further points out that the purpose of impact assessment studies is to "analyse in more detail the issue to be addressed, whether action should be taken at EU level and the potential economic, social and environmental effects of the different solutions outlined". In addition, as highlighted in the opinion of the EESC, "[t]his regulation focuses on the banning, suspension of circulation and detention at customs or ports of imported and exported products, which will result in new procedures" and "the assessment should be balanced and take into account the benefits and costs of tackling forced labour". The question therefore arises why this important element was ignored by the European Commission.

desh in 1993 can be evoked as an analogous example. The owners of garment factories in Dhaka fired all children under the age of 16 due to the threat of US sanctions based on the 1992 Child Labour Deterrence Act. As a consequence, many of these children ended up as prostitutes, street vendors, or in factories and workshops not producing for export.[25]

Not only the absence of impact assessment studies on the matter in question but also the lack of appropriate compensation for forced labour victims envisaged in the EU regulation may be subject to criticism from a labour lawyer's perspective. The proposal for the EU regulation (but not its final text) only in its part entitled "Expected generated Union added value (ex-post)", stipulated in a vague manner that "by prohibiting products made with forced labour from being made available on the Union market, the Union will contribute significantly to the eradication of forced labour all over the world. This will also benefit the victims of forced labour as the economic operators will address forced labour by taking the appropriate measures of paying compensations, correcting the employment contracts, etc. in line with the international due diligence standards". The question is whether the economic operators would be willing to pay compensations and if not how to put pressure on them. The EESC in its opinion only briefly signalled that the EU law should give consideration to an adequate compensation for victims in order to improve the situation of workers forced into labour. The EU regulation proposes to include remediation issues in guidelines for economic operators. Thus, guidelines for economic operators should include, *inter alia*, best practices for bringing to an end and remediating forced labour.[26]

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[25] K. Addo, *Core Labour Standards and International Trade: Lessons from the Regional Context*, Heidelberg–New York–Dordrecht–London 2015, pp. 36–37 (see the cited literature).

[26] There is even a definition of "remediation" according to which it "is understood to be the restitution of the affected person or persons or communities to a situation equivalent or as close as possible to the situation they would be in had forced labour not occurred, proportionate to the company's involvement in the forced labour, including financial or non-financial compensation provided by the company to a person or persons affected by forced

The need for enhanced access to remedies for victims of forced labour has been highlighted in the literature.[27] Methven O'Brien and Weatherburn point out that current EU criminal law provides for some remedies, but generally only in the case of victims inside, and not outside, EU Member States. In addition, the EU directive on corporate sustainability due diligence establishes civil liability claims for damages, but the authors argue that "this is expected to focus on large economic operators, while civil remedies in tort may not be effective or sufficient for forced labour victims". Moreover, "[t]o date, EU sector-specific due diligence standards do not require remediation for victims either". Thus, they suggest that "a governance gap" could be bridged by the introduction of practically accessible and effective remediation measures for victims "implicated in EU-linked value chains but situated outside EU territory".[28]

An important issue also arises in the context of the relationship between the EU regulation and the World Trade Organisation (WTO) rules. The EU regulation sets out that "as a member of the World Trade Organisation (WTO), the Union is committed to promoting a rules-based, open, multilateral trading system. Any measures introduced by the Union that affect trade should be WTO compliant". The authors of this article believe that the European Commission should have better explained how it planned to eliminate possible contradictions between its proposal and the WTO rules, in particular the principle of non-discrimination between "like" products. For example, the European Commission should have clarified whether and how the proposal fitted into the excep-

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labour and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures".

[27] C. Methven O'Brien, A. Weatherburn, *Commission Proposal for a Regulation on prohibiting products made with forced labour on the Union market: The issue of remedies*, European Parliament 2023, pp. 2–3.

[28] The EU regulation only generally sets out that: "Existing Union law, the United Nations Guiding Principles on the Business and Human Rights (UNGPs), the Council of Europe recommendation on human rights and business and the Organisation for Economic Cooperation and Development (OECD) guidelines, such as the Guidelines for Multinational Enterprises on Responsible Business Conduct, affirm that victims have the right to an effective remedy for business-related human rights violations or abuses, including forced labour".

tions included in Article XX of the General Agreement on Tariffs and Trade. Two sentences without any detailed justification are not enough.[29]

4. The EU regulation from the perspective of administrative procedure

The EU regulation fits into the use of so-called third generation administrative procedures.[30] The document refers to the introduction of socially significant public policies with the use of appropriate administrative procedures (policy- and decision-making procedures). It establishes controls and the evaluation of the enforcement and the implementation of the regulation, which exert impact on its efficiency, thanks to which the implementation of administrative procedures can be perceived as an ongoing process.

In comparison to Chapter II of the proposal for the EU regulation entitled "Investigations and decisions of competent authorities", the final version of the EU regulation rightly divides this material into two separate chapters, thus ensuring greater transparency. Chapter III, entitled "Investigations", covers provisions regarding: allocation of investigations (Article 15), coordination of investigations and mutual assistance (Article 16), preliminary phase of investigations (Article 17), and investigations (Article 18). There is also a new quality compared to the proposal for the EU regulation, namely Article 19 entitled "Field inspections". Chapter IV establishes provisions on decisions regarding the violation of Article 3 (Article 20), review of decisions regarding the violation of Article 3 (Article 21), and content of decision (Article 22).

Importantly, Chapter V ("Enforcement") of the EU regulation introduces, among other things, the following provisions: enforcement of decisions (Article 23), withdrawal and disposal of prod-

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[29] See also: C. Martínez San Millán, op.cit., passim.

[30] J. Barnes, *Towards a third generation of administrative procedure*, in: *Comparative Administrative Law*, eds. S. Rose-Ackerman, P.L. Lindseth, Cheltenham, Northampton 2016, pp. 349–350; 353–355.

ucts made with forced labour (Article 24), manner of disposal of products made with forced labour (Article 25), controls by customs authorities (Article 26), and exchange of information and cooperation (Article 31). In relation to the allocation of investigations, the Commission shall act as lead competent authority where the suspected forced labour is taking place outside the territory of the EU, and where it is taking place in the territory of a Member State, a competent authority of that Member State shall act as such an authority. According to the EU regulation, the Commission and competent authorities shall cooperate closely with each other and provide each other with mutual assistance in order to implement the regulation in a consistent and efficient manner. The preliminary phase of investigations referred to in Article 17 means that the lead competent authority shall request information from the economic operators under assessment and, where relevant, other product suppliers, on the relevant actions they have taken in order to identify, prevent, mitigate, bring to an end or remediate risks of forced labour in their operations and supply chains with respect to the products under assessment. Then, the lead competent authority that determines that there is a substantiated concern of a violation of Article 3, shall initiate an investigation on the products and economic operators concerned and fulfill certain information obligations. This body shall set a deadline for economic operators to submit any information that is relevant and necessary for the investigation of – as a matter of principle – at least 30 working days and no longer than 60 working days. The key point about the procedure is that there are generally three types of decisions adopted by the lead competent authority in cases where it establishes that the products concerned have been placed or made available on the market or are being exported in violation of Article 3:

- a decision containing a prohibition to place or make the products concerned available on the EU market and to export them;
- a decision containing an order for the economic operators that have been subject to the investigation to withdraw from the EU market the products concerned that have already

been placed or made available on the market or to remove content from an online interface referring to the products or listings of the products concerned;
- a decision containing an order for the economic operators that have been subject to the investigation to dispose of the products concerned or, if the parts of the product, which are found to be in violation of Article 3, are replaceable, an order to dispose of the respective parts of products.

If the economic operator has failed to comply with the decision, the competent authority shall impose penalties on the economic operator (Article 23.2).

According to the EU regulation (Article 19.3), where the risk of forced labour is located outside the territory of the EU, the Commission acting as lead competent authority may carry out all necessary checks and inspections provided that the economic operators concerned give their consent and that the government of the third country in which the inspections are to take place has been officially notified and raises no objection. The authors of this article cannot agree with the argument of the EESC that "[…] competent authorities need the consent of economic operators to carry out investigations, as stated in Article 5(6). This weakens the investigation process and creates a loophole in the proposed regulation". It is hard to imagine the EU interfering in the territory of a third country without its consent.

According to the EU regulation, the Commission shall make available, by 14 June 2026, and regularly update, guidelines including guidance for economic operators, competent authorities, customs authorities, as well as Member States, and certain information specified in Article 11. For example, given that micro, small and medium-sized enterprises can have limited resources and ability to ensure that the products they place or make available on the EU market are free from forced labour, the Commission should issue guidelines on due diligence in relation to forced labour, which should also take into account the size and economic resources of economic operators. In the opinion of the authors of this article, such guidelines should be developed and made pub-

licly available before the entry into force of the regulation in order to allow, in particular, micro, small, and medium-sized enterprises to prepare themselves adequately. A similar position was also expressed in the opinion of the EESC, in the light of which the Commission should "publish these guidelines [...], both in a way that makes them easily accessible and as soon as possible, in any case well before the regulation enters into force. This will enable the competent national authorities, customs and business entities to prepare for the implementation of the legal act and the possible related difficulties".

The EU regulation, in its recital 24th, emphasises that Member States should ensure that the competent authorities have sufficient human and financial resources and that their staff have the necessary competences and knowledge, in particular with regard to labour rights, human rights, gender equality, supply chain management, as well as due diligence processes. We should realise that the lack of sufficient resources will jeopardise the effectiveness of the regulation. Questions arise whether national customs authorities will have sufficient resources, whether they will be able to cope with the tasks imposed on them by the EU regulation, whether the operation of these authorities in individual Member States will be consistent and whether it will be necessary to create new procedures or even new competent bodies at the national level.

5. Conclusion

The main objective of this study was to analyse and critically assess the EU regulation on prohibiting products made with forced labour on the Union market from the perspective of comparative, labour, and administrative procedural laws. The comparative legal method has allowed for the identification of a trend consisting in bans on forced labour being introduced in many countries of the Western World. However, there are significant differences in the regulations established by individual jurisdictions, e.g. they cover a broad term of "modern slavery" or "forced labour" only;

there may or may not be territorial restrictions; micro, small, and medium-sized enterprises may or may not be covered; the burden of proof may rest entirely on the competent authorities[31] or the rebuttable presumption as regulated under the US Uyghur Forced Labor Prevention Act may be introduced.

On the one hand, this article has highlighted problems relating to the EU regulation assessed from the perspective of labour law. The results indicate that there are unclear relationships between the EU regulation itself and the directive on corporate sustainability due diligence, as well as between the EU regulation and the WTO rules. Moreover, the findings of this paper call into question why the European Commission has not ordered any impact assessment studies before making its proposal for the EU regulation. There is also an urgency to develop mechanisms to grant compensation to the victims of forced labour. On the other hand, focusing specifically on the advantages of the EU regulation, the authors support the use of definitions of "forced labour" and "forced labour imposed by state authorities" stemming from the ILO Conventions Nos. 29 and 105.

To gain a better understanding of the EU regulation, this article examined it also from the administrative procedural law viewpoint. It has been argued that it falls into the use of so-called third generation administrative procedures. It relates to the establishment of socially significant public policies with the use of appropriate administrative procedures.

The final text of the EU regulation expands the Commission's powers compared to the proposal for the EU regulation and makes designated Member State competent authorities and the Commission work together and cooperate. The Commission is given the power to act as lead competent authority when forced labour occurs outside the EU. Otherwise, namely when forced labour occurs inside the EU, a competent authority of a given Member State conducts an investigation. The article discusses three types of decisions (non-compliance of which will result in a penalty)

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[31] More on the burden of proof see: M. de Pinieux, N. Bernaz, *Doing Business in Xinjiang*, "Erasmus Law Review" 2023, No. 1, p. 67.

issued when the products have been placed or made available on the market or are being exported in violation of prohibition of products made with forced labour (in violation of Article 3). Time will tell whether national authorities – already existing or newly created – provided with appropriate resources, will be able to cope with the new tasks and cooperate effectively with the Commission. Future work might focus on examining the effectiveness of the EU regulation and its functioning in practice.

SUMMARY

Regulation on prohibiting products made with forced labour on the Union market: comments from the perspective of comparative, labour and administrative procedural laws

The aim of this article is to analyse and critically evaluate the regulation on prohibiting products made with forced labour on the Union market, which was published in the Official Journal of the European Union on 12 December 2024 and has entered into force on the day following its publication. Except for some provisions, it shall apply from 14 December 2027. The authors examine its provisions from the perspective of comparative, labour, and administrative procedural laws, and highlight the advantages and disadvantages of the new regulation.

Keywords: forced labour; labour law; administrative procedural law; regulation on prohibiting products made with forced labour on the Union market

STRESZCZENIE

Rozporządzenie w sprawie zakazu produktów wytwarzanych z wykorzystaniem pracy przymusowej na rynku unijnym: uwagi z punktu widzenia prawa porównawczego, pracy i postępowania administracyjnego

Celem artykułu jest analiza i krytyczna ocena rozporządzenia w sprawie zakazu produktów wytwarzanych z wykorzystaniem pracy przymusowej na rynku unijnym, które zostało opublikowane w Dzienniku Urzędowym

Unii Europejskiej 12 grudnia 2024 r. i weszło w życie następnego dnia po jego opublikowaniu. Z wyjątkiem niektórych przepisów rozporządzenie będzie stosowane od 14 grudnia 2027 r. Autorzy analizują jego przepisy z punktu widzenia prawa porównawczego, prawa pracy oraz postępowania administracyjnego, a także uwypuklają wady i zalety nowej regulacji.

Słowa kluczowe: praca przymusowa; prawo pracy; postępowanie administracyjne; rozporządzenie w sprawie zakazu produktów wytwarzanych z wykorzystaniem pracy przymusowej na rynku unijnym

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