



JOINT RECOMMENDATIONS FROM AN ALLIANCE OF GARMENT INDUSTRY REPRESENTATIVES FOR THE EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

*Due diligence:
taking responsibility in value chains*





JOINT RECOMMENDATIONS FROM AN ALLIANCE OF GARMENT INDUSTRY REPRESENTATIVES FOR THE EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

Due diligence: taking responsibility in value chains

The signatories of this joint letter support the commitment of EU decision makers to implement a regulatory approach to due diligence, in order to ensure companies are taking their responsibility to respect human rights and the environment throughout their value chains. We therefore welcome the proposal for a Corporate Sustainability Due Diligence (CSDD) Directive that was published on 23 February 2022 as a very important step.

Mandatory due diligence needs to be well-designed **to promote the creation of an EU wide level playing field**. Still, more importantly, it should **capture the responsibility of companies to respect human rights and the environment in their supply chain as formulated in the OECD Guidelines**, and reflect the obligation of means this duty constitutes: to contribute continually and structurally to positive changes. The law should capture the nature of the process that due diligence is, and not allow for a static box-ticking exercise.

In both the Explanatory notes and the Preamble, the proposal refers to the United Nations Guiding Principles on Business and Human Rights (UNGPs)^[i] as well as the Organisation for Economic Cooperation and Development's guidelines for multinational enterprises (OECD guidelines)^[ii] including three (high risk) sector-specific guidelines, including Textile and Garment supply chains.





The current proposal of the CSDD Directive, however, deviates from the UNGPs and OECD guidelines on crucial points. The following points are most urgent:

1. Performing Human Rights and Environmental Due Diligence should be risk based.

In the UNGPs and OECD Guidelines, responsibility flows from the connection between negative impacts (in the value chain) and a companies' operations, products and services. It is up to each individual company to assess the risk caused by these operations, products and services, prioritise risks and, within the notion of proportionality, take their responsibility in preventing, mitigating and ending adverse effects.

The current proposal limits the scope of the due diligence duty by introducing the ambiguously defined concept of *established relationships*, making due diligence a *relationship-based duty*. One of the problems in the garment and textile industry is that most *relationships are transactional, and contracts rare*. By only imposing a due diligence duty on companies in case of established relationships, companies could be invited to actively avoid these, or at best, to look for risks and impacts primarily among their strategic suppliers and other proximate relationships, ignoring risks of (potential) adverse impacts in more remote parts of the value chain, where they are often more severe.

We ask EU decision makers to take an approach that is truly **risk based and in line with the UNGPs and the OECD guidelines**. The current practice of many garment and textile companies shows that the due diligence concept of prioritisation based on severity is crucial in making due diligence manageable for business, while addressing the most salient risks to people. Moreover, companies already performing their due diligence have been doing so according to these international standards. They have had almost a decade of practical experience with applying them and have developed processes and tools with these standards in mind. An EU directive should reward these efforts, and expect all companies to adopt this same internationally accepted approach.

2. Due diligence does not shift responsibility

In line with the UNGPs, all companies have a responsibility to respect human rights when doing business, and the OECD guidelines state they cannot shift the responsibility of due diligence onto others^[iii], such as their suppliers, industry schemes and/or multi-stakeholder initiatives.



The proposal suggests large companies within its scope rely on contractual assurances and audit/verification processes to show compliance and results. Many companies that implement a more 'mature' due diligence system, have found that relying solely on audits has limited effect in delivering impact for workers and human rights.

Reviewing a companies' own purchasing practices is part and parcel of due diligence. Numerous studies^[iv] have shown that purchasing practices have an enormous influence on working conditions in the supply chain. Responsible purchasing practices are essential in order to achieve the improvements in working conditions that many companies have publicly committed to. The response of companies to the COVID-19 crisis has highlighted how crucial responsible purchasing practices are for ensuring the protection of workers' rights.

We would like to ask EU decision makers to make sure that, in line with the UNGPs and the OECD guidelines, *companies in scope of the legislation cannot shift their responsibility to companies down the supply chain*. Future legislation should promote responsible purchasing practices by EU market companies as well as encourage proper engagement with their supply chain partners and other stakeholders as part of the prevention and mitigation activities. The proposed legislation should take into account the set-up of manufacturing supply chains and the power imbalances between buyers and suppliers, commonly in a context of weak governance protection of human and environmental rights.

3. Due diligence legislation must provide certainty and clarity

The current proposal contains many concepts (partner, indirect partner, business partners, established relationship) that are either not or not clearly defined, i.e. in their current form they are open to multiple interpretations which is problematic. Although we understand the choice for a Directive, the current proposal leaves room for Member States (MS) to adapt and add to the legislation. This will not lead to the desired level playing field. Currently, the proposal expressly mandates MS as well as the European Commission to publish guidelines as to how the legislation needs to be interpreted. In a worst-case scenario, enterprises may be facing up to 27 national versions of the due diligence legislation, with 27 different monitoring and sanctioning regimes, as well as 28 different sets of guidelines, should the EC choose to provide these as well.

Small and Medium-sized Enterprises (SMEs), although not directly within the



scope of the directive, will face even more – possibly conflicting – ‘guidance’, as large companies within the scope of the current proposal are encouraged to cascade their codes of conduct throughout their value chains.

We strongly support **one set of guidelines at EU-level to provide clear and coherent guidance for MS and companies**. We urge EU decision makers to provide more clarity and certainty, by *aligning the current proposal closely to the UNGPs and OECD guidelines* and giving *clear and uniform guidance to MS for the implementation of the Directive* in order to avoid a myriad of guidelines and guidance that companies need to adhere to, not to mention competitive (dis)advantages depending on in which MS a company has its headquarters or seat.

Although welcoming a regulatory approach to due diligence, we recommend that the current proposal be brought more in line with the accepted and long-standing international standards. We believe that by doing so, it will be more likely to achieve its stated goals of creating legal certainty, clarity and a level playing field, as well as increase acceptance by all actors involved. We would like to see companies engage in meaningful and impactful due diligence.

Signatories:

The global fashion, garment, footwear and textile sector is as diverse as it is fragmented. This letter brings together critical mass in market and production volume as well as supply chain complexity. It presents a united voice from multinationals and SMEs, from retail, brands, manufacturers and industry stakeholders, through a wide representation of platforms that concentrates on the garment sector but also includes substantial knowledge and coverage of other sectors.





Business and Multistakeholder Initiatives:



amfori brings together over 2,400 retailers, importers, brands and associations from more than 40 countries. Its membership contains organisations of all sizes and all sectors with a combined turnover of more than one trillion euros.



The Sustainable Apparel Coalition (SAC) is an independent and impact-creating organization that aims to lead the industry toward a shared vision of sustainability based upon a joint approach for measuring, evaluating, and improving performance. As a non-profit organization, it has members from across the apparel, footwear and textile sector, but exists independently outside any one company so that it can drive progress. The SAC's collective action efforts bring more than 280 global brands, retailers, manufacturers, NGOs, academics and industry associations together. They represent about half of the apparel and footwear industry along the whole supply chain – from sustainability pioneers to organizations just getting started.



The Ethical Trading Initiative is a leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe. With a combined turnover of approx. 200 billion euros, our company members include supermarkets, fashion retailers and brands, department stores and stone sourcing companies, as well as major suppliers to retailers of food & drink, flowers, clothing, shoes, home wear, promotional and other products.



Fair Wear is an international multi-stakeholder organisation in the garment and textile sector. With our 140 frontrunner brands we take practical steps to show that it's possible to make clothes in a way that respects workers' rights. With trade unions, NGOs, governments and industry influencers, we push towards a new normal to create systemic, lasting change.



Transformers Foundation is the unified voice representing the denim industry and its ideas for positive change. It was founded to provide a thus-far missing platform to the jeans and denim supply chain, and a central point of contact for consumers, brands, NGOs, and media who want to learn more about ethics and sustainable innovation in the industry.



Manufacturers associations that participate in the Sustainable Terms of Trade Initiative (STTI):

The manufacturer associations represent the garment and textile industry in seven of the most important producing countries. The majority of these industries are integral parts of the supply chains of EU apparel brands and retailers. Together, they represent half of all extra-EU imports of garment and textiles.



Turkish Clothing Manufacturers Association (TCMA)

Turkey



Moroccan Association of Textile and Apparel Industries (AMITH)

Morocco



Apparel Export Promotion Council of India (AEPC)

India



Association of Indonesian Apparel and Textile Industries (API)

Indonesia



Bangladesh Garment Manufacturers and Exporters Association (BGMEA)

Bangladesh



Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA)

Bangladesh



Myanmar Garment Manufacturers Association (MGMA)

Myanmar



Pakistan Textile Exporters Association (PTEA)

Pakistan



Towel Manufacturers Association of Pakistan (TMA)

Pakistan



Pakistan Hosiery Manufacturers and Exporters Association (PHMA)

Pakistan



[i]

UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, 2011

https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf

[ii]

OECD Guidelines for Multinational Enterprises, 2011

<https://www.oecd.org/daf/inv/mne/48004323.pdf>

[iii]

OECD Due Diligence Guidance for Responsible Business Conduct, 2018 - 'due diligence does not shift responsibilities', p.17)

<https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

[iv]

The Joint Ethical Trade Initiative's Guide to Buying Responsibly, 2017

<https://www.ethicaltrade.org/resources/guide-to-buying-responsibly>;

Purchasing practices and working conditions in global supply chains: Global Survey Results.

International Labour Office, INWORK Issue Brief No.10. 2016/2017.

http://www.ilo.org/travail/info/fs/WCMS_556336/lang--en/index;

Better Buying Index Reports. Dr Marsha A. Dickson with the support of Dipti Bhatt and Doug Cahn.

www.betterbuying.org

Fair Wear Foundation

<https://www.fairwear.org/programmes/living-wage>

