



Joint statement of Fair Wear Foundation, Ethical Trading Initiative and Solidaridad Germany on the Draft Due Diligence Law (Sorgfaltspflichtengesetz).

As organisations with each several decades of experience in human rights due diligence, over 200 member companies in the textile sector, with an annual turnover of almost 200 billion Euros, we, Ethical Trading Initiative UK, Fair Wear Foundation and Solidaridad Germany, welcome the federal government's draft for the "Law on corporate due diligence to prevent human rights violations in supply chains." (Sorgfaltspflichtengesetz).

Although our efforts as multi-stakeholder initiatives and civil society organisation have produced and strengthened pioneers in the textile industry, we recognize the limits of our voluntary mandate. Companies that have already started to implement improvements fear competitive disadvantages if the entire industry is not tied to the same standards. We therefore consider effective legislation as the mandatory component of the smart mix to be indispensable in order to create **uniform competitive conditions** and to induce all companies to implement human rights due diligence. In this letter, we would like to share a few specific comments with you in order to strengthen the design of the draft law and to ensure broad acceptance. The points in this letter result from intensive discussions that we have had the last several years with a larger group of multi-stakeholder initiatives with member companies and other partners in the industry.

First and foremost, we advocate that the **OECD Guidelines for Multinational Enterprises** be integrated into the draft law as a practical code of conduct. From our point of view, the planned legislation would be considerably strengthened if the link with the OECD guidelines were direct and unambiguous. The OECD Guidelines already integrate the United Nations Guiding Principles on Business and Human Rights, and offer companies and other stakeholders concrete advice on how to translate them into practice.

Scope: While the Rana Plaza factory collapse catalyzed multiple endeavors to improve working conditions in supply chains, the industry involved in the accident is now excluded from this legislation nearly in its entirety. With the draft only covering companies with both their headquarters and at least 3000 workers situated in Germany, few textile companies fall within its scope and the number rises only marginally with the anticipated lowering of the worker threshold to 1000 workers starting in 2024. Particularly in risk sectors such as the textile industry, the **applicability of due diligence legislation to all companies operating in Germany is central, regardless of turnover or number of employees.**

This is in line with the OECD Guidelines, which take the size of a company into account and define principles for a proportionate application of due diligence and thus creates a level playing field and fair competition. We therefore very much hope that the evaluation envisaged in the draft law will come to the conclusion that the threshold should be drastically lowered, but even better, lifted entirely.

Scope in supply chains: In its current iteration, the law limits the application of human rights due diligence to direct suppliers and is therein inconsistent both with OECD guidelines and the UN's guiding principles. Both of these demand respect for human rights in the entire value chain, as this **inclusion of all levels of production** is essential for minimizing human rights violations. The UN Guiding Principles and OECD Guidelines also provide for a proportionality for the inclusion of the entire supply chain, in which the form of appropriate measures depends on whether a company

causes, contributes to or is associated with an adverse impact, and what its sphere of influence is to counter the adverse effect.

A duty of care should proceed in a risk-based and comprehensive manner in order to identify the causes of problems along the entire supply chain and to work preventively towards eliminating them. With a reduction to direct suppliers (Tier 1) there is a risk that the legislation inadvertently leads to brands and retailers transferring responsibility for compliance with human rights standards to suppliers with limited capacity to do so.

In many cases, this would counteract the aim of the draft law to improve the working conditions of factory workers in producing countries.

Remedial action is only to be taken when ‘prompted’ by substantial information:

Discrepancies with the UN Guiding Principles and the OECD guidelines also exist in the fact that essential steps such as the determination of potential risks in the case of indirect suppliers are not guaranteed. While the OECD guidelines guide companies through a system of step-by-step improvement of their processes, the draft law rules out active prevention, in that companies are only called upon to investigate on a case-by-case basis. A due diligence law should promote continuous, structural progress and therefore requires an obligation to make efforts and of active prevention instead of adjustments on an ad hoc basis.

Unless the law is changed at this point, we consider it important that the interpretation of the event-related risk management for indirect suppliers is not a selective, but a broad understanding and, for example, the business activity in a well-known risk sector or - area is seen as reason for comprehensive risk management. Only in this way can the spirit of the UN Guiding Principles be fulfilled.

Against this background, we very much welcome the fact that the government draft already assigns an important role to industry initiatives. The Fair Wear Foundation and the Platform for Sustainable Textiles, for example, have already developed a lot of experience in the production of joint, industry-specific standards and practical recommendations for action. We assume that it can also provide important guidance when interpreting the sector-specific requirements for corporate due diligence - both for companies and for the controlling authority. We would be pleased if such commitment were recognized accordingly when the law is implemented.

We see this German legislation as a significant step towards European legislation and as a tailwind for such measures at EU level. Despite our hope for a collective, European endeavor, we attach considerable importance to national initiatives and recognize these, among other things, as an opportunity to try out and further develop approaches.

We are of the opinion that the implementation of the law is practicable for companies and can have an important protective effect for the local people. Due to the significant role of this draft law, we would like to expressly support its passage.

With this statement we hope to make a substantial, practical contribution.

We and our member companies are always at your disposal for questions and discussions.

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