



POSITION PAPER ON MANDATORY DUE DILIGENCE AND SMEs

IN FAVOUR OF MANDATORY DUE DILIGENCE ON HUMAN RIGHTS

As Fair Wear and the Ethical Trading Initiative (ETI), we envision a global garment industry that contributes to an equal and just society by respecting human rights in the world of work.

We applaud the efforts made by so many small and medium-sized companies (SMEs) within the European Union to enhance the protection of human rights in international supply chains. They have shown that meaningful human rights due diligence is possible. Therefore **we take the view that all SMEs should fall under a practicable, proportionate, and effective corporate due diligence directive.** Our position is informed by working with over 250 garment and textile brands, the majority of which are SMEs, with a combined turnover of approx. 9 billion Euros. In the following position paper we outline the advantages of a directive that covers all businesses, regardless of their size.

We recognise the challenge of the European Commission to define which companies should fall under the Directive on corporate sustainability due diligence¹. In this context we also recognise the important role of the Directive to promote companies to develop sustainability strategies that include appropriate due diligence throughout the supply chain, and measurable sustainability targets.

We view the hesitancy to include SMEs in the Directive on corporate sustainability due diligence to be based on misconceptions about administrative burdens and economic feasibility. **The many brands that ETI and Fair Wear have guided over the last two decades have shown that a business model that respects human rights globally is a viable one for SMEs and does not undermine their profitability.**

THE EU GARMENT AND TEXTILE INDUSTRY AND SMEs

The textile industry employs over 75 million workers globally², that work in poor and often dangerous working conditions. The industry is one of the most polluting industries worldwide, with textile mills generating one-fifth of the world's industrial water pollution³. To improve the

¹ [European Commission](#)

² [Solidarity Center](#)

³ [NRDC](#)

situation in this high-risk industry, it is essential that the Directive on corporate sustainability due diligence⁴ creates enough momentum and leverage on the side of the (European) companies to have a positive effect on human rights being respected in their supply chain. **At least 90% of all companies in the EU garment and textile industry are Small Sized Enterprises with less than 50 employees and a share of 60% in the sector's total annual turnover of EUR 166 billion⁵. Less than 1% is considered to be a large company⁶. Without the inclusion of SMEs, a significant system change of the garment and textile sector cannot be achieved⁷.**

HUMAN RIGHTS DUE DILIGENCE WILL ENSURE A LEVEL PLAYING FIELD

The advantages of an effective implementation of human rights due diligence from a business perspective are considerable; it would lead to less production interruptions through a reduction in workplace related accidents⁸, a reduced litigation risk, a positive reputation⁹ and other potential benefits. However, these benefits are realised in the mid- and long-term, while the costs for frontrunner SMEs are immediate and **undermine a level playing field**.

Hence, under the current absence of human rights due diligence legislation, SMEs that decide to implement human rights due diligence face higher short-term costs compared to SMEs that choose to ignore their duty of human rights due diligence. Including SMEs in the Directive on corporate sustainability due diligence **would ensure that SMEs are not disincentivised to carry out human rights due diligence by cost disadvantages vis-à-vis their competitors**.

For example, many companies are not visible to consumers in such a way that their reputation might be at risk, decreasing the incentive for human rights due diligence¹⁰. moreover, companies face different human rights due diligence requirements depending in which (EU Member) State they are operating, with France already having a due diligence legislation in place, Germany having passed their due diligence legislation only recently¹¹ and the Netherlands and Belgium are currently planning a legislative proposal¹².

⁴ 'Due diligence' as defined in the United Nations Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprise

⁵ [European Commission](#)

⁶ [Euratex FACTS & KEY FIGURES](#)

⁷ [Katalyst Initiative, Building blocks for governing the garment industry, Workpaper I](#)

⁸ [Business & Human Rights Resource Centre](#)

⁹ [Ethical Trading Initiative](#)

¹⁰ [Friedrich Ebert Stiftung 2015](#), p. 15

¹¹ [Business & Human Rights Resource Centre](#)

¹² [iPoint](#)

HUMAN RIGHTS DUE DILIGENCE WILL PREVENT A SPLINTERING OF SUPPLY CHAINS

A directive that exempts SMEs from human rights due diligence obligations could lead to companies splitting up their production chains in the EU into smaller entities that are not covered by any such legislation, to reduce the short-term costs of human rights due diligence¹³. This would come at the cost of lower human rights compliance at enterprises in third countries that benefit from cooperation with larger companies through stable business relationships, assistance in the execution of human rights due diligence and support in the implementation of higher standards. In addition, many industries – garments being a prime example¹⁴ – are already extremely fragmented and cannot be adequately covered by a regulation that excludes SMEs¹⁵. Another dimension with far reaching consequences which would lead to splintering of supply chains in third country production countries is if the Directive would only go as far as tier 1. Therefore, **the Directive on corporate sustainability due diligence should cover the entire supply chain.**

HUMAN RIGHTS DUE DILIGENCE WILL NOT UNDERMINE SMEs PROFITABILITY

The garment and textile industry is considered to be a high-risk sector due to its severe human rights violations. Therefore we need both SMEs and large companies to fulfil the obligation of due diligence and advocate that SMEs should fall within the scope with a close eye for proportionality in line with the OECD guidelines. **A disproportionate burden on SMEs can be ruled out**, as the size of the company correlates with the risks to be monitored as does the companies' capacity to manage these risks¹⁶. This relationship can also be observed in a value-added assessment of the European Parliament which concludes that the costs decrease with the size of the SME. In this context, existing human rights due diligence practices even suggest that SMEs can carry out human rights due diligence more easily and perform better thanks to more flexibility¹⁷, clearer business structures and more local proximity¹⁸. Finally, an **effective Directive will prevent larger costs in the long term** as it significantly reduces the risks of production interruptions due to accidents or strikes, litigations and lawsuits, and related reputational damages.

¹³ [Nolan & Bott 2018](#), pp. 6-7

¹⁴ [Katalyst Initiative, Building blocks for governing the garment industry, Workpaper I](#)

¹⁵ [EUideas](#)

¹⁶ [OECD 2021, Introductory paper on SMEs and Responsible Business Conduct in the Garment and Footwear Sector](#)

¹⁷ [Ilgen 2019](#), p. 9

¹⁸ *Ibid.*, p. 16

HUMAN RIGHTS DUE DILIGENCE WILL PROMOTE A COLLABORATIVE APPROACH

The Directive on corporate sustainability due diligence should take a **collaborative approach**, focusing on transparency and the identification of risks in supply chains of SMEs and large corporations. Despite the zero-tolerance approach that ethical trading requires, we realistically see the full elimination of human rights violations as a long-term goal. Hence, recognising the persistence of human rights violations, the directive would encourage companies to detect, openly communicate and cooperatively mitigate human rights violations in their supply chains. This would also be reflected in the determination of possible penalties as a last resort. More importantly we recognise that human rights due diligence is a learning process for all stakeholder involved and require to take into account the engagement, or respectively, negligence of a company towards its supply chains¹⁹.

HUMAN RIGHTS DUE DILIGENCE LEADS TO THE HARMONISATION AND PREDICTABILITY OF PRACTICES

A directive covering both SMEs and large companies – regardless of their size – would **streamline and simplify the administrative processes of human rights due diligence and make it predictable**. By following the scope of the UN Guiding Principles and the OECD Guidelines, the Directive would go hand in hand with the creation of uniform standards and clear guidelines to which companies can reliably orient themselves²⁰. Thus, the **inclusion of all SMEs and absence of exemptions comes along with more clarity, predictability, and legal certainty**.

Furthermore, it would enable a **centralised exchange between those organisations already active in this field, and adoption of best practices by newcomers**. Finally, institutionalised support networks of government bodies, multi stakeholder initiatives, trade unions, NGOs and business associations would emerge to support individual companies by providing information, expertise, and financial resources. In the latter case, several positive examples already exist, such as the Bangladesh Accord which offers help to improve conditions on the ground against measurable self-commitments. Moreover, multi stakeholder organisations, such as Fair Wear and ETI, can support SMEs in setting up and implementing a verifiable due diligence system, whereas the trade unions and labour NGOs serve as a valuable source of information and expertise for brands, while they strengthen the collective bargaining capacities of workers.

The Directive would thus create more clarity as well as formalised structures for information exchange, cooperation, and support. This corresponds with the results of previous evaluations

¹⁹ [Friedrich Ebert Stiftung, 2015](#), p. 26

²⁰ [German Federal Ministry for Economic Cooperation and Development](#), p. 46

in the field of human rights due diligence, according to which a harmonisation of existing human rights due diligence models and the introduction of sectoral support²¹ reduce the costs of due diligence for SMEs considerably.

CONCLUSION

In conclusion, Fair Wear and the Ethical Trading Initiative view **the Directive on corporate sustainability due diligence as imperative** to achieve an equal and just society by respecting human rights in the world of work. However, for this to materialise, SMEs and large companies should be covered under the Directive. It will promote a level playing field for companies building the change, will not undermine the competitiveness and profitability of SMEs and will make the business environment more predictable and stable to the benefit of companies and workers alike.

²¹ [Hermon 2020](#)