

# The European Council's position on the Corporate Sustainability Due Diligence Directive falls short to achieve change in the garment- and textile industry

## Response STITCH to the position of the European Council on the Corporate Sustainability Due Diligence Directive (CSDDD).

On December 1, 2022, the European Council presented its position on the Corporate Sustainability Due Diligence Directive. With this position brief, STITCH would like to thank the Dutch Cabinet for its efforts to improve the position and express our concerns in relation to some of the provisions in the proposal. STITCH (Sustainable Textile Initiative: Together for Change) is a consortium of six international organisations working for better working conditions in the textile production chain.

### Company scope

At least 90% of all companies in the EU garment and textile industry are enterprises with fewer than 50 employees. They have a joint share of 60% in the sector's total annual turnover of EUR 166 billion<sup>1</sup>. Less than 1% is considered to be a large company. The Dutch Ministry has rightfully addressed the fact that the EU CSDDD should be OECD-guidelines aligned and not only large companies should fall under the scope of due diligence legislation. However, in the current proposal companies with 250+ employees will only fall under the scope after 5 years, meaning 8 years until these companies are required to take action. In order to prevent, mitigate and stop the adverse impacts on the 75 million textile workers globally<sup>2</sup>, the scope of the EU CSDDD should be brought in line with the scope of the UNGPs and OECD guidelines. Focusing regulations on only a few large brands will not bring significant change to the working conditions for the garment workforce.<sup>3</sup> Furthermore, the Directive should include retail companies within its scope.

### Stakeholder involvement

The Dutch government has pushed for better stakeholder consultation and improving the mandatory complaint mechanism in the directive. The right of victims of human rights impacts to be fully compensated was explicitly provided for in the compromise text. Yet, the definition of a stakeholder in the text remains too narrow, their involvement limited, and their access to justice is hampered. The Council introduced a series of amendments to article 22 on access to justice that severely impact the outcome of this article. Adding negligence, intent, and national legal protection to this article creates barriers to a judicial process to take place. To make sure stakeholders have access to remedy, the Directive should include reversal of the burden of proof, collective redress, and better position of the victim. Furthermore, the proposal should clarify that companies are also liable for damage caused by entities over which they have no control and should specify (in paragraph 4) that the civil liability rules of the Directive do not exclude or limit the civil liability of companies under other Union or national rules.

<sup>1</sup> European Commission, Textiles and clothing in the EU, at: <[https://single-market-economy.ec.europa.eu/sectors/fashion/textiles-and-clothing-industries/textiles-and-clothing-eu\\_en](https://single-market-economy.ec.europa.eu/sectors/fashion/textiles-and-clothing-industries/textiles-and-clothing-eu_en)>

<sup>2</sup> Solidarity Center, *Global Garment and Textile Industries - Workers, Rights and Working Conditions*, at: <<https://www.solidaritycenter.org/wp-content/uploads/2019/08/Garment-Textile-Industry-Fact-Sheet.8.2019.pdf>>

<sup>3</sup> Catalyst Initiative, *Working Paper 1: Sizing up the the Garment Industry*, at: <<https://katalystinitiative.org/wp-content/uploads/2022/02/WP1-Sizing-up-the-garment-industry-Katalyst.pdf>>

## A risk-based approach covering the entire value chain

The proposal of the European Commission introduced the concept of 'established business relationships', while the Council introduced the concept of 'chain of activities' as a scope for HRDD. These concepts are vague and limit the scope of HRDD significantly. The Dutch Ministry has recognized this problem and has succeeded to improve the proposal on this part.

The OECD's 2018 Due Diligence Guidance for Responsible Business Conduct clearly states that due diligence provisions are intended to apply to the full value chain. This includes "across an enterprise's own operations (e.g. activities and product lines) and its business relationships (including all stages of the supply chain or value chain)".<sup>4</sup> This should not be limited to activities to produce a garment, but also **include (other) services it procures**, and downstream and upstream activities. A risk-based approach should not be limited to a particular tier or activity but cover the entire value chain allowing companies flexibility to prioritize most severe risks and adverse impacts in a risk-based manner, proportionate to its size and influence. Such an approach should include an assessment of the extent in which a company is causing, contributing or linked to adverse human rights impacts.



## Responsible purchasing practices as an appropriate measure

Business relationships in the garment industry are often informal and characterized by an unequal power balance between supplier and buyer. We often see irresponsible purchasing practices in the garment industry that have an adverse impact on working conditions. Art. 7 and 8 of the proposed Directive should therefore include that companies assess and adapt purchasing practices that have an adverse impact on working conditions as an appropriate measure.<sup>5</sup> Furthermore, the Directive should provide for balancing HRDD responsibilities between brands and suppliers in their agreements through model contract clauses that clearly define responsibilities for HRDD between the parties. These clauses should include agreements on responsible purchasing practices of the buyer.

STITCH is a collaboration based on a common vision: a global textile and clothing industry that contributes to an equal and just society by respecting human rights in the world of work. STITCH consists of 6 partners: labour rights organizations CDI in Vietnam and Civedep in India, the Dutch trade unions CNV International and Mondiaal FNV and two multi-stakeholder initiatives ETI in England and the Dutch Fair Wear. The Dutch Ministry of Foreign Affairs is a strategic partner of STITCH and supports the program financially.

<sup>4</sup> The Due Diligence Guidance defines business relationships to include numerous downstream entities: "suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers, and any other non-State or State entities linked to its business operations, products or services", OECD, 2018, *OECD Due Diligence Guidance for Responsible Business Conduct*, p. 61

<sup>5</sup> The Common Framework for Responsible Purchasing Practices could be used as a point of reference.