

DUE DILIGENCE

EURATEX Position Paper

EURATEX



THE EUROPEAN APPAREL
AND TEXTILE CONFEDERATION

The world's textile and fashion industry is geographically widely dispersed. Global supply chains create jobs for some 60 million workers worldwide¹.

At present, the industry is under increased scrutiny, due to the various challenges related to the sustainability of production methods and overproduction. The current crisis caused by Covid-19 has created additional challenges for the textile and fashion industry.

Through continued investment and know-how transfer, European companies contribute to sustainable growth and employment in Europe as well as in developing countries, demonstrating a high degree of commitment and corporate responsibility.

The **European textile and apparel industry reaffirms its commitment to responsible business conduct and sustainable development as defined by the UN Guiding Principles for Business and Human Rights and by the OECD Due Diligence Guidelines** for responsible business conducts in the textile value chain. By applying these guiding principles as guidelines for responsible business conduct, businesses can be drivers of positive societal change and can contribute to the fulfilment of the SDGs.

The concept of due diligence stands at the core of responsible business conduct. It describes the process by which businesses are expected to identify, prevent, mitigate, and account for adverse corporate impact on human rights and the environment. As a trade association, due diligence constitutes a key component in our guidance to the industry. We support businesses in understanding and integrating due diligence procedures into business strategies and decision-making.

To achieve concrete progress in the due diligence practices while avoiding unintended consequences, EURATEX stresses the following recommendations:

- Harmonised approach needs to ensure legal clarity across the EU and avoid grey zones
- Proportionality of measures should be assessed
- Consideration of the role of SMEs
- A 'smart mix' of measures to include incentives, valorisation of specific standards and support
- Implementation should be reality driven

1. Global Fashion Agenda: https://globalfashionagenda.com/wp-content/uploads/2017/05/Pulse-of-the-Fashion-Industry_2017.pdf

Harmonisation across the EU

When human rights' due diligence is contemplated by policy makers in Europe, a harmonised EU-wide approach is inherently more suitable than multiple different national approaches pursued by individual member states. A single initiative at EU level can ensure a shared understanding of due diligence in practice, establish a level playing field for businesses operating in the EU and minimise confusion over different interpretations of responsible business conduct.

To enable compliance, the scope of any new legal provision, including companies' responsibilities, must avoid any ambiguity and avoid "grey-zones", which may also arise from different interpretations across EU Member States, when transposing the law into national legislation.

Proportionality

An effective legislation should be applicable without disproportionate impact on business, as well as on the capacity of Member States' authorities to monitor and enforce legislation.

A socio-economic impact assessment should be carried out to properly assess how proposed measures may deliver; this shall include an assessment of the measures' impact across the value chain, costs and operational issues to ensure compliance, capacity of monitoring and enforcement by authorities.

The reporting obligation and bureaucratic burden must be limited to a necessary minimum. Reporting by companies needs to be accepted as a proof of compliance. European companies need to be protected against risks of liability for offences which are legal in a third country or committed by third parties. The burden of proof must not be reversed to the detriment of companies.

If fines will be considered, they must be limited to cases of intentional or grossly negligent violations. Civil liability must be excluded. Legal uncertainty, liability and recourse risks need to be avoided.

Economic operators in international business need maximal predictability. There must be sufficiently long transition periods (at least 4 years) to set up the corresponding systems and processes and to engage with business partners.

The entrepreneurial duty of care should relate to the position, i.e. the leverage that a company has in the supply chain, its potential role in causing or contributing risks

of harmful impact and the limits of data traceability. For many companies, a duty of care beyond tier one would de facto not be feasible.

As a matter of fact, companies in the supply chains have different capabilities to cope with risks, based on their size, the context of its operations, the likelihood and severity of adverse impacts.

Impact of measures on SMEs and their capacity to comply

While due diligence is expected by all enterprises, any future EU legislation should consider the feasibility for small and medium-sized enterprises to actually apply due diligence in light of its limited resources, position in the supply chain and little or no capacity to leverage larger players.

The scope of the legislation should focus on larger companies. This would enable reconciling the targets set in the European Parliament draft report² as well as in the Commission Study³ with the situation and means of the SMEs.

In essence, “Reasonable Efforts” shall be expected, without expecting the same amount of due diligence work from a small company as from a large company. For instance, documents for monitoring and enforcement must not result in a disproportional administrative burden on economic operators. Significant support and advice must be ensured.

Companies abiding by the law must not be exposed to the double risk of getting “stuck” between buyers’ demands and limited capacity to leverage their supply chain.

Clarity is needed on the actual cost of due diligence at the earliest stage of policy development. The initial indication on overall costs of compliance⁴ appears significantly underestimated.

A Smart mix of measures

According to the UNGP⁵, legislation should be seen as one element in a broader ‘smart mix’ of measures. Since not all the due diligence needs can be solved via

2. European Parliament, Committee on Legal Affairs, Draft Report with recommendations to the Commission on corporate due diligence and corporate accountability, November 2020.

3. European Commission, Directorate-General for Justice and Consumer, Study on due diligence requirements through the supply chain, January 2020.

4. Reference DG Justice report date and chapter.

5. Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect

legislation, a policy combined with incentives and value of responsible practices would be more effective.

Incentives should be available to motivate and reward business efforts especially those which already strive to embed due diligence processes and the wider sustainability aspects. Incentives can include: trade preferences (like the well-functioning GSP plus scheme), investment policies in the form of e.g. tax benefits, credits, credit insurances etc.

Voluntary standards and actions which facilitate due diligence shall be properly acknowledged and valorised. Established industry-specific schemes (“safe harbour approach”) should be accepted as a tool to confirm compliance with regulation; likewise, the value of state guidelines or risk reports for each country need to be recognised.

Supporting business to adopt traceability solutions may also be instrumental to remove barriers to actual data-exchange, hence to facilitate due diligence processes and safeguard technological neutrality and interoperability.

Implementation of policies

Recent experiences from policy makers, multi stakeholders initiatives and business have shown that due diligence is a process that should be adapted to the individual company and be proportionate to its size, sourcing model, leverage in the supply chain and commensurate with the nature of the adverse impact.

Furthermore, we urge decision-makers at EU-level to duly consider the economic situation in Europe which has deteriorated significantly due to the corona pandemic. Against this background, it is now even more essential to avoid new additional burdens for the economy, especially for SMEs, through laws and other new regulatory requirements.

EU institutions and national governments have vast procurement budgets and their procurement policies have significant impact on the behaviour of business. Making responsible business conduct one of the criteria of the EU Institutions’ and Member States’ procurement policies could be an important tool in promoting due diligence and responsible business conduct.

human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so.” (https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf, S. 24f)

“Enterprises should (...) seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.” (<http://www.oecd.org/daf/inv/mne/48004323.pdf>, S. 20)

Background to this paper

This paper states the EURATEX position on the development of mandatory due diligence in the EU and acknowledge the contributions to the policy making debates brought authorities and stakeholders, notably: some European countries (France, Netherlands, UK) have adopted national due diligence legislation in various shapes, and debates are taking place in several other European countries (e.g. Germany, Finland, Denmark, Switzerland, Belgium). The European Commission (DG Justice) announced in April 2020 that a proposal for a mandatory due diligence legislation for companies might be introduced in early 2021, arguing that voluntary initiatives on due diligence had failed and that a general due diligence requirement could provide benefits for business by constituting a level playing field. In September 2020, MEP Lara Wolters has tabled a draft opinion with proposals on EU legislation on mandatory due diligence.

About EURATEX

As the voice of the European textile and clothing industry, EURATEX works to achieve a favourable environment within the European Union for design, development, manufacture and marketing of textile and clothing products.

The EU-27 textile and clothing industry, with around 160,000 companies employing 1.5 million workers, is an essential pillar of the local economy across many EU regions. With over € 61 billion of exports, the industry is a global player successfully commercializing high added value products on growing markets around the world.

Working together with EU institutions and other European and international stakeholders, EURATEX focuses on clear priorities: an ambitious industrial policy, effective research, innovation and skills development, free and fair trade, and sustainable supply chains.

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