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TOWARDS FAIR AND RESPONSIBLE GARMENT PRODUCTION

Why isn't there EU legislation ensuring
a socially sustainable garment supply chain?



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Acronyms and abbreviations

CCC	Clean Clothes Campaign
Commission	European Commission
CoR	Committee of the Regions
Council	Council of the European Union
CSR	Corporate social responsibility
CWP	Commission work programme
DEVE	European Parliament Committee on Development
DG	European Commission Directorate General
DG DEVCO	Directorate-General for International Cooperation and Development
DG EMPL	Directorate-General for Employment, Social Affairs and Inclusion
DG ENV	Directorate-General for Environment
DG FISMA	Directorate-General for Financial Stability, Financial Services and Capital Markets Union
DG GROW	Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
DG JUST	Directorate-General for Justice and Consumers
DG TRADE	Directorate-General for Trade
DROI	European Parliament Committee on Human Rights
EC	European Commission
EEAS	European External Action Service
EESC	European Economic and Social Committee
EP	European Parliament
EPP	European People's Party
EU	European Union
EURATEX	European Apparel and Textile Confederation
EMPL	European Parliament Committee on Employment
GSP	Generalised Scheme of Preferences
GUE/NGL	Group of the European United Left/Nordic Green Left
G7	Group of Seven
G20	Group of Twenty
IA	Impact assessment
ILO	International Labour Organization
INTA	European Parliament Committee on International Trade
ISC	Inter-service consultation
ISO	International Organization for Standardization
INDITEX	Industria de Diseño Textil S.A.
MEP	Member of the European Parliament
MFF	Multi-annual financial framework

NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OLP	Ordinary legislative procedure
Parliament	European Parliament
RBC	Responsible business conduct
SDGs	Sustainable development goals
SMEs	Small and medium-sized enterprises
TFEU	Treaty of the Functioning of the European Union
UN	United Nations
UNGPs	United Nations guiding principles
USA	United States of America

Terms and definitions

Corporate social responsibility	The responsibility of an organisation or company for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour (ISO, 2010).
Due diligence	The process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts (OECD, 2018).
General scheme of preferences	The EU's general scheme of preferences removes import duties from products coming into the EU market from vulnerable developing countries. This helps developing countries to alleviate poverty and create jobs based on international values and principles, including labour and human rights (EC, 2019a).
Human rights	Rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more (UN, 2019a).
Own-initiative report	A report by the European Parliament that is not based on a Commission proposal (Hardacre & Akse, 2015).
Social sustainability	Social sustainability means identifying and managing business impacts, both positive and negative, on people (UN, 2019b).
Supply chain	A sequence of activities or parties that provides products or services to an organisation (ISO, 2010).
Sustainable development	Development that meets the needs of the present without compromising the ability of future generations to meet their own needs (UN, 2019c).
Traceability	The process by which enterprises track materials and products and the conditions in which they were produced through the supply chain (OECD, 2018).
Transparency	Openness about decisions and activities that affect society, the economy and the environment, and willingness to communicate these in a clear, accurate, timely, honest and complete manner (ISO, 2010).

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Executive summary

Background: The garment sector, particularly the ‘fast fashion’ subsector, has come under public scrutiny due to a series of human rights violations and industrial accidents, including the deadly Rana Plaza collapse in Dhaka, Bangladesh, in 2013.

Following the Bangladesh tragedy, the European Commission pledged to launch an EU-flagship initiative to bolster responsible management in the garment industry. To date, this initiative has not been launched. Instead, the EU has focused on voluntary measures and has supported initiatives to promote a sustainable garment supply chain regionally and globally.

The **purpose** of this study is to investigate the reasons for the EU’s non-legislative approach to a socially sustainable garment supply chain. It aims to shed light on the divergent approaches of the EU institutions to the EU flagship initiative on the garment sector and on the consequences for EU policy.

The **method** used is the ‘case study’ model, based on: a review of relevant literature from the EU institutions; an identification of key EU-level stakeholders and an analysis of their positions, and lobbying campaigns; and qualitative research based on face-to-face interviews of key EU officers and other stakeholders.

Key findings:

- The Commission’s plans for an EU flagship initiative on the garment sector got stranded. The Commission’s plans for an EU flagship initiative fell short in building momentum within the Commission and in Member States, and failed to deliver an all-encompassing strategy at EU level. Additionally, DG DEVCO had neither the core competence nor plans to develop legislation on mandatory due diligence in the garment sector.
- The Parliament’s resolution on the EU flagship initiative—calling for EU legislation on mandatory due diligence in the garment sector—led to a dead end. The Parliament failed to convince the Commission to put forward a legislative proposal on due diligence in the garment supply chain.

The Commission considered that developing new legislation on mandatory due diligence for companies based in the EU was not a priority. Commission officials alleged that it was necessary to evaluate the impact of the recently adopted EU directive on non-financial reporting, which was due for transposition to the national level in December 2016 (EP, 2019a).

- The Council of the EU supported voluntary initiatives rather than the development of new EU legislation on mandatory due diligence in the garment sector. The Council called on the Commission to support sustainable garment supply chains in a comprehensive manner, beyond cooperation and development policy, promoting a safer, greener and fairer garment industry (Council, 2017). However, the Commission failed to deliver a common strategy on the sustainability of garment supply chains (Alcain, 2019c).
- The topic of human rights in business could gather momentum in the EU's new political agenda, taking into account the following elements: the Parliament's recent calls for EU legislation on mandatory due diligence in global supply chains, the Commission's reflection paper 'Towards a sustainable Europe by 2030', and the EU action plan on sustainable finance. Additionally, the Commission President-elect has placed sustainability at the core of the EU's trade policy in her political guidelines for the next Commission's mandate in 2019-2024.

Conclusions:

- A new paradigm is necessary in global fashion retail, that of a responsible company which guarantees due diligence, traceability, and transparency throughout the garment supply chain.
- The EU is well placed to set the right conditions for a truly responsible and fair garment supply chain, but this requires a firm commitment and resolute action from all EU institutions and other key stakeholders.
- The goal of making global garment supply chains more socially sustainable should not only be high on the new Commission's political agenda. It should be followed by a coherent policy implementation by all relevant Commission DGs.
- The topic of human rights in business should and is likely to become a priority for several Parliament committees.

1. Introduction and outline

1.1. Background

The garment sector is a key economic driving force in low-income countries, providing a cheap supply of garments for developed countries. The sector has a yearly turnover of around €1.3 trillion and employs 75 million workers globally, 75% of whom are women whose average salary is €50 per month (EC, 2019b).

The last 30 years have seen the production of textiles and garments move away from developed countries—including the European Union (EU)—to developing countries. This delocalisation accelerated after early 2005 with the removal of all quotas for the quantities of garments that developing countries could export.

Dismantling the multi-fibre agreement that had ruled the world trade in textiles and garments from 1974 to 2004 had a major impact on international trade. This meant a change in the geographical distribution of global garment production and in the livelihood of the workers employed in the sector (Richero & Ferrigno, 2017).

The garment sector has a great potential to increase sustainable economic growth and development in poor countries, if the right conditions are in place. Yet the sector, particularly the ‘fast fashion’ subsector, has come under public scrutiny due to a series of human rights violations and industrial accidents; these have shocked public opinion worldwide. The deadliest accident was the Rana Plaza collapse in Dhaka (Bangladesh) on 24 April 2013, which killed 1,130 people and injured more than 2,500.

Following the Bangladesh tragedy, the European Commission pledged to launch an EU-flagship initiative to bolster responsible management in the garment industry. To date, this initiative has not been launched. Instead, the EU has focused on voluntary measures and has supported initiatives to promote a sustainable garment supply chain regionally and globally (EP, 2019a).

'...I couldn't believe I was underneath this building that had just collapsed. There was a dead girl's body underneath me...' (Human Rights Watch, 2015).

Roksana

Worker trapped at Rana Plaza

1.2. Purpose of the research

This thesis aims to investigate the reasons for the EU's non-legislative approach to a socially sustainable garment supply chain. It looks into the EU's activities in this regard and into the impact of key EU-level stakeholders' lobbying campaigns. Additionally, it examines the elements and processes that would be necessary to create EU legislation on a sustainable garment supply chain.

1.3. Rationale for the research

There is limited research on the European Union's policy on fair and responsible garment production. This report aims to shed light on the divergent approaches of the EU institutions to the EU flagship initiative on the garment sector and on the consequences for EU policy.

These divergences are, on the one hand, linked to the European Parliament resolution of 27 April 2017 (EP, 2017a) calling on the EU to go beyond voluntary initiatives and asking the European Commission to propose legislation on **mandatory** due diligence for supply chains in the garment sector. On the other hand, both the European Commission and the Council of the EU favour a **voluntary** approach to businesses performing due diligence.

1.4. Methodology

The method used in this report is the ‘case study’ model, based on three elements:

- Literature review: a research analysis of the relevant documents produced by the EU, including policy initiatives, research commissioned by the EU institutions, and reports and position statements produced by key stakeholders.
- A map of key actors: an identification of the key EU-level stakeholders and an analysis of their positions, and lobbying campaigns.
- Qualitative research: a series of one-to-one interviews with selected key EU policy officers and with other stakeholders, such as industry, trade unions, and civil society.¹

1.5. Overview of the study

The core of this report comprises the following:

- Chapter 2 explains the context of the research and so it refers to policy initiatives by and positions of the EU institutions and the key stakeholders and it examines the elements and processes necessary to create EU legislation.
- Chapter 3 contains an overview of the key findings from information gathered through both library and empirical research to provide a concrete response to the research question, as well as the author’s interpretation of this research.
- Chapter 4 presents the main conclusions drawn from the results of the research.

1.6. Choices and limitations

The geographical scope of the current study is the European Union. Therefore, to allow proper focus on the subject matter, national or global policies and initiatives are not examined in depth.

¹ See annexes 6.1 and 6.2.

The EU policy areas and initiatives analysed in this study include the European Commission's EU flagship initiative on the garment sector and the European Parliament resolution of 27 April 2017 on the EU flagship initiative on the garment sector (2016/2140(INI)) calling for an EU legislative proposal on mandatory due diligence in the garment sector.

This study concentrates on only the social pillar of sustainable development, and more particularly on human rights due diligence in garment supply chains.

The organisations included in the literature review and qualitative research of this study comprise the EU institutions, including the European Commission, the Council of the EU, and the European Parliament. Other target groups encompass key stakeholders that have provided input to the EU policy on socially sustainable garment supply chains, such as industry, non-governmental organisations and trade unions.

Given the geographic focus chosen for this study, findings and conclusions pertain to the EU institutions. As such, they cannot be extrapolated to the global level. The findings may, nevertheless, offer insights to countries or regions that are considering policy options to ensure a socially sustainable supply chain in the garment sector, so, insights to both importing and exporting countries.

Some limitations were encountered when researching and analysing information on the subject matter. These include very scarce information on the Commission's plans for an EU flagship initiative on the garment sector, a lack of response from a leading fashion brand, the number of interviews (sample size), and the transition period between the previous and current European Parliament. While both a larger sample and the participation of a leading fashion brand would have allowed a more insightful analysis of the research topic, the interviews conducted within this study provided pertinent and valuable information since the interviewees have been involved in EU policy-making on the sustainability of garment supply chains.

2. Context analysis

2.1. The EU flagship initiative on the garment sector

This section provides an overview of key developments and initiatives made by the EU institutions on the social sustainability of the supply chain in the garment sector following the collapse of a building at the Rana Plaza in Bangladesh in 2013, killing 1,132 people and injuring over 2,500. This disaster became a tipping point for EU policy in this sector. In the aftermath of Rana Plaza, the EU led a series of international cooperation initiatives and called for ensuring human rights due diligence in global garment supply chains.

2.1.1. Timeline

YEAR	EVENTS
2013	<ul style="list-style-type: none">• The Rana Plaza collapse in Bangladesh• A Parliament resolution on labour conditions and health and safety standards following factory fires and collapses in Bangladesh• The EU joins the Bangladesh Global Sustainability Compact
2014	<ul style="list-style-type: none">• DG DEVCO of the Commission initiates informal consultations with Member States on the EU flagship initiative on the garment sector
2015	<ul style="list-style-type: none">• A Parliament resolution on the second anniversary of the Rana Plaza collapse• The EU co-finances G7 'vision zero' fund• DG DEVCO organises informal meetings with Member States and other stakeholders on the proposed EU flagship initiative on the garment sector
2016	<ul style="list-style-type: none">• The first high-level conference on the responsible management of the supply chain in the garment sector, organised by DG DEVCO and the EEAS• The Council issues conclusions on responsible global value chains• The Council publishes conclusions on human rights in business

- 2017**
 - Parliament adopts a resolution on the EU flagship initiative on the garment sector
 - DG DEVCO produces a staff working paper on sustainable value chains through EU development action
The Council issues conclusions on sustainable garment value chains
 - Parliament restates its request for an EU legislative proposal on mandatory due diligence in the garment supply chain
 - The Commission produces a response to the Parliament’s resolution on the EU flagship initiative on the garment sector
- 2018**
 - Parliament reiterates its call for an EU legislative proposal on mandatory due diligence in the garment supply chain

2.1.2. EU policy initiatives

EU call for action on Bangladesh in the wake of the Rana Plaza disaster

Following the Rana Plaza building collapse in Bangladesh in April 2013, the European Commission released several statements expressing the EU’s concern about the labour conditions of the garment sector workers in Bangladesh. The EU called upon the Bangladeshi authorities to take immediate action to remedy the situation.

The EU conveyed its willingness to assist Bangladeshi authorities to meet the International Labour Organization’s (ILO) conventions. Moreover, it asked European and international companies to promote better health and safety standards in Bangladeshi garment factories in accordance with internationally recognised Corporate Social Responsibility (CSR) guidelines.

It should be noted that, at that time, the European Union was Bangladesh’s largest trade partner and that the country had been granted duty-free and quota-free access to the EU market through the Generalised Scheme of Preferences (GSP) in trade. Concretely, this occurred through the ‘Everything But Arms’ scheme, which promoted responsible management of supply chains (except those of arms and armaments) that involved developing countries.

On 23 May 2013 the European Parliament adopted a **resolution on labour conditions and health and safety standards following the recent factory fires and building collapse in Bangladesh** (EP, 2013). The Parliament called on brand-name garment companies that (sub)contracted to factories in Bangladesh and other countries to adhere to internationally recognised CRS practices² and to ensure that their goods were produced in factories that complied with safety standards and labour rights. It also called on the Commission to actively promote responsible business conduct among EU companies operating abroad through compliance with all their legal obligations.

EU joins the Bangladesh Global Sustainability Compact

In July 2013 Bangladeshi authorities, alongside industry and trade unions, the EU, USA, and ILO launched a joint Bangladesh Global Sustainability Compact³ to promote continuous improvements in labour rights and factory safety in the ready-made garment and knitwear industry in Bangladesh. The EU expressed its willingness to support the Bangladeshi government also through existing cooperation initiatives and to allocate additional capacity-building and financial resources through its development assistance programmes scheduled for 2014-2020.

EU flagship initiative on the garment sector

Following the appointment of the new European Commission in 2014, the Commission's Directorate General for International Cooperation and Development (DG DEVCO) initiated informal consultations with Member States on plans to develop an EU flagship initiative on the garment sector. On the second anniversary of the Rana Plaza disaster, DEVCO Commissioner Neven Mimica announced that the Commission was reflecting on possible incentives for partner countries and for the private sector to ensure responsible management of the supply chain in line with international standards.

² Including the OECD guidelines, the UN Global Compact principles, the ISO 26000 standard, the ILO tripartite declaration of principles concerning multinational enterprises and social policy, and the UN guiding principles on business and human rights.

³ Compact for Continuous Improvements in Labour Rights and Factory Safety in the Ready-Made Garment and Knitwear Industry in Bangladesh.

European Parliament resolution on the second anniversary of Rana Plaza

In April 2015, on the second anniversary of the Rana Plaza building collapse, the Parliament adopted a resolution on the state of the Bangladesh Sustainability Compact welcoming the Commission's flagship initiative on the garment sector (EP, 2015). The resolution declared that, in light of national initiatives by some Member States, the EU had the ability and duty to be a global champion of supply chain responsibility.

EU co-finances G7 'Vision zero fund'

In October 2015 the European Commission announced a €3 million contribution to the G7's 'Vision zero fund'⁴—stemming from the G7 summit commitments in Schloss Elmau (Germany) and supported by the G20—to support low-income countries in improving human rights and labour rights conditions. Its vision is to achieve zero severe and fatal work-related accidents, injuries, and diseases in global supply chains.

Throughout 2015 the Commission organised informal meetings with Member States and other stakeholders to present a series of proposals on the EU garment initiative and to obtain feedback from all parties. DG DEVCO, who led this initiative within the Commission, put forward a plan to create a multi-stakeholder platform for the EU flagship initiative on the garment sector. Moreover, the Commission announced that a study on the responsible management of the garment supply chain had started to look into existing initiatives, identify possible gaps and areas in which the EU could add value.

Third anniversary of Rana Plaza: high-level conference delivers recommendations

In April 2016 the European Commission DG DEVCO and the European External Action Service (EEAS) held their first high-level conference on the responsible management of the supply chain in the garment sector, which gathered delegates from the EU institutions and other key stakeholders. The conference looked into the results of a study (AETS, 2016) commissioned by DG DEVCO to investigate different policy options. Take-home messages included a call for all stakeholders to work together through an EU-led multi-stakeholder forum for greater

⁴ It brings together governments, employers' and workers' organisations, companies, and other stakeholders.

information-sharing and to work on areas where there was an engagement gap, such as gender equality, environmental issues, workers' rights, and supply chain transparency.

Council delivers conclusions on responsible global value chains

In May 2016 the Council of the EU published a set of conclusions on the EU's role in responsible global value chains: the conclusions supported relevant efforts that had been undertaken through initiatives such as the EU garment initiative. Additionally, the Council further *'strongly [encouraged] the Commission and Member States to share best practices, including the promotion of new and innovative approaches, and to scale up such initiatives and expedite their delivery'* (Council, 2016a).

Council conclusions on human rights in business

In June 2016 the Council put forward conclusions supporting the international guidance by the UN, OECD and ILO on human rights in business. The Council encouraged the Commission to strengthen the implementation of due diligence and to foster dialogue and cooperation among all relevant public and private stakeholders (Council, 2016b). The Council, however, did not ask for a legislative proposal on this topic.

Parliament adopts a resolution on the EU flagship initiative on the garment sector

On the fourth anniversary of the Rana Plaza tragedy, a Parliament resolution on the EU flagship initiative on the garment sector (EP, 2017a) called on the EU to strengthen its existing approach by going beyond voluntary initiatives, because these were considered ineffective for addressing human rights and labour rights violations in the sector. Among other requests, the Parliament called on the Commission to propose legislation on mandatory due diligence for supply chains in the garment sector in line with international standards, such as the OECD guidance (OECD, 2018), on the enforcement of labour standards and human rights, on supply chain transparency and traceability, and on the promotion of gender equality.

DG DEVCO launches a staff working document on sustainable value chains through EU development action

The vote on the Parliament resolution was preceded by a joint Commission and Parliament hearing on ‘Remembering Rana Plaza—how can we create fair and sustainable supply chains in the garment sector?’. On this occasion, DEVCO Commissioner Mimica presented a staff working document on ‘Sustainable garment value chains through EU development action’ (EC, 2017a). The document considered international cooperation on development as an effective tool to encourage the private sector and governments in third countries to make the value chains more sustainable. It set three priorities: the economic empowerment of women, decent work and living wages, and transparency and traceability. The measures proposed included bilateral, regional, and multilateral dialogue, technical assistance, building capacity, support for the implementation of trade and other bilateral agreements, and multilateral EU action.

Council of the European Union conclusions on sustainable garment value chains

On the same day as the Parliament resolution, the Council published conclusions welcoming the Commission staff working document and the Parliament’s resolution calling for comprehensive action in the sector. The Council called on the Commission to address sustainable garment value chains *‘in a comprehensive manner that also extends beyond development cooperation to promote a safer, greener and fairer garment industry’* (Council, 2017).

European Commission response to the EP resolution on the EU flagship initiative

In its response, the Commission pointed out that building trust between actors and continuing work with partners, e.g., the Bangladesh Sustainability Compact, remained the crucial way to address key challenges (EC, 2017b). The Commission reaffirmed its support for the uptake of the relevant OECD guidance and it referred to existing EU legislation, notably Directive 2014/95/EU on non-financial reporting. This directive requires large companies to disclose certain information on the way they operate and manage social and environmental challenges (EP & Council, 2014).

With that in mind, the Commission declared its intention to focus on obtaining the best results from their current policy and related instruments. Additionally, the Commission stated that, on human rights in business, the EU promotes the implementation of the UNGPs through policy dialogue and cooperation with third countries on development. It added that the EU contributes to the activities of the inter-governmental working group during the preparation of an international treaty on human rights in business.

In September 2017 DG DEVCO published a report entitled 'Background analysis on transparency and traceability in the garment value chain' that aimed to feed the Commission's ongoing work on traceability and transparency in the garment sector (Richero & Ferrigno, 2017).

Parliaments reiterates its call for a legislative proposal on mandatory due diligence in the garment supply chain

In 2017 and 2018 the Parliament restated its request that the Commission develop a legislative proposal on mandatory due diligence on human rights in the garment sector. In his reply to Parliament, Commissioner Mimica replied that '*the Commission intended to focus on obtaining the best results from the current approach and the related instruments*' (EP, 2017b).

2.1.3. Key stakeholders and their positions

This section provides an overview of the organisations contacted for this research. They have provided input to the EU policy on socially sustainable garment supply chains. These organisations include trade unions and industrial and civil society organisations.

Organisation	Type	Geographical scope	In favour of EU legislation on mandatory due diligence in the garment supply chain
Clean Clothes Campaign	NGO	Global	YES
EURATEX	Trade association	Europe	NO
INDITEX	Fashion brand	Global	NO
industriAll Europe	Trade union	Europe	YES

Clean Clothes Campaign (<https://cleanclothes.org>)

About:

- The Clean Clothes Campaign (CCC) is a global alliance dedicated to improving working conditions and empowering workers in the global garment and sportswear industries.
- Since 1989, the CCC has worked to ensure that the fundamental rights of workers are upheld. The CCC educates and mobilises consumers, lobby companies, and governments and offers direct support and solidarity to workers as they fight for their rights and demand better working conditions.
- The CCC brings together more than 200 trade unions and NGOs covering a broad spectrum of perspectives and interests, such as women’s rights, consumer advocacy and poverty reduction.
- It operates in 16 European countries through an international office in Amsterdam. It has a staff member based in Brussels working on lobbying and advocacy.

Position:

- The CCC is in favour of an EU regulation on legislation on mandatory due diligence on human rights in the garment supply chain, as well as legislation on traceability and transparency.

- As part of a coalition of seven civil society and consumer organisations, in 2015 it co-signed a letter addressed to DEVCO Commissioner Mimica, asking that the EU flagship initiative on the garment sector focus on actions that deliver real results, namely eradicating the terrible realities in the global garment supply chains across the world, including in the EU. One of its requests was for mandatory due diligence, transparency, and traceability.
- Together with 70 civil society organisations, it has called on the European Commission to put forward a proposal for legislation on mandatory due diligence on human rights, in accordance with international guidance by the UN and the OECD, and to promote greater traceability and transparency in the garment supply chains.
- It has called on the European Commission to require companies to disclose information about their production units and the processing facilities in their supply chains.
- It has called on recently elected members of the European Parliament to push for an EU regulation on mandatory due diligence on human rights, including the human right to a living wage.

EURATEX: European Apparel and Textile Confederation (<https://euratex.eu>)

About

- The voice of the European apparel and textile industry.
- EURATEX works together with EU institutions and other European and international stakeholders.
- EURATEX member federations represent some 171,000 companies in the EU, mostly small and medium companies that produce in Europe, with a total turnover of €178 billion, employing 1.7 million workers. Of these companies, 114,000 work in the clothing industry.
- The membership comprises national associations from 16 countries, five branch associations and five corresponding members.
- The EU is the world's second biggest exporter of textiles and clothing, with 23% and 28% of world sales, respectively, in 2018.

Position

- EURATEX considers that voluntary initiatives do work, e.g., the Bangladesh Accord on Fire and Building Safety, and other global/local initiatives, without requiring a new EU regulation.
- There should be no new regulation on mandatory due diligence. There is no evidence that new, complex EU regulations, new trade rules, or new certification systems will solve the problem. New regulations would hinder businesses, such as SMEs.
- EURATEX has asked the EU institutions to ensure sustained support of voluntary initiatives, building on the achievements of international players such as the OECD, the ILO, and the UN.

Inditex: Industria de Diseño Textil S.A. (<https://www.inditex.com>)

About:

- One of the world's largest fashion retailers, with eight brands: Zara, Pull&Bear, Massimo Dutti, Bershka, Stradivarius, Oysho, Zara Home, and Uterqüe.
- It sells in 202 markets through its online platform and at over 7,000 stores in 96 markets.

Position:

- Inditex favours a voluntary approach to due diligence in the supply chain.
- Inditex and industriAll Global signed a global framework agreement in 2002 to raise the standards in the global garment supply chain. The framework was updated in 2017 to increase the rights of workers in the supply chain.
- Traceability is a priority. Inditex conducts more than 10,000 social and environmental audits each year.
- The company's strategy includes human rights in its due diligence procedure; the aim is to identify potential risks to human rights throughout the supply chain.

IndustryAll European Trade Union (<https://news.industrialall-europe.eu>)

About:

- A federation of independent and democratic trade unions representing manual and non-manual workers in the metal, chemical, energy, mining, textile, clothing, and footwear sectors and in related industries and activities.
- It speaks for 7 million working men and women united within 180 national trade union affiliates in 38 European countries.

Position:

- IndustriAll Europe is in favour of EU regulation on mandatory due diligence in the garment sector and of more traceability and transparency in the supply chain.
- It firmly believes that the time has come for legislative action, with obligations for companies to trace their supply chains and to perform due diligence on upholding workers' rights, both in Europe and across the world.
- Together with 70 civil society organisations, it has called on the European Commission to put forward a legislative proposal on mandatory due diligence on human rights, in accordance with international guidance by the UN and the OECD, and to promote greater traceability and transparency in the garment supply chains.
- It has called on the European Commission to require companies to disclose information about their production units and the processing facilities in their supply chains.

2.2. Essential elements and processes in creating EU legislation

This section presents key elements on the path towards creating a piece of EU of legislation through the ordinary legislative procedure (OLP), also known as co-decision, which is the main process for passing EU legislation.⁵

The **OLP** is the process whereby a piece of secondary legislation—regulation, directive, or decision proposed by the Commission—is negotiated and adopted by both the European

⁵ Laid down in Article 294 of the Treaty of the Functioning of the EU (TFEU).

Parliament and the Council of the EU (Hardacre & Andrien, 2015). The OLP⁶ is followed once the Commission has put forward a legislative proposal. This procedure applies to those policy areas where the EU has exclusive or shared competence together with Member States. For example, international trade is an area where the EU has exclusive competence, while justice is a shared competence.

2.2.1. Commission strategy and plan

A Commission legislative proposal typically stems from a political request from the Council of the EU in one of its ten configurations and/or from the Commission's political guidelines.⁷ The Council's political impetus comes in the form of Council recommendations or conclusions, as laid down in Article 241 of the Treaty on the Functioning of the European Union (TFEU).

It is important to keep in mind that the Commission sets its political priorities for a five-year term through a rolling multi-annual work programme (CWP). Similarly, the Commission puts together a multi-annual financial framework (MFF), which leads to an annual budget allocation. Both the CWP and MFF are discussed with and adopted by the Council and the Parliament.

The CWP and MFF result in annual management plans for each Commission DG, containing specific objectives and a roadmap. As such, the management plans specify the type of initiatives—legislative or not—that each DG will focus on during the legislative period.

⁶ The OLP can also be launched on the initiative of a quarter or more of the Member States.

⁷ State of the Union document.

2.2.2. Preparation of the dossier

The most relevant Commission DG is assigned to lead the preparation of the legislative proposal, and a specific unit of the DG is responsible for drafting and coordinating the legislative proposal and all accompanying documents.

Before drafting the piece of legislation, the unit in charge prepares an **impact assessment (IA)** to analyse whether there is a need for EU action and to investigate the possible social, economic and environmental impacts of the currently available solutions. The unit formally consults external stakeholders through hearings, questionnaires, etc. In parallel, it launches an internal consultation through an Inter-Service Coordination (ISC) Group and the IA Steering Group. Consequently, the Commission's Regulatory Scrutiny Body performs a quality check, and issues an opinion (Hardacre & Akse, 2015).

Once the IA has been completed, the unit drafts a **legislative proposal**. This and all supporting documents (e.g., the IA) are then sent to the DG hierarchy and the Commissioner's cabinet—and if necessary, to the relevant Vice-Presidents—for approval. The approved draft and other documents go in the ISC to get input from all other DGs and services, in accordance with the collegiality principle (Hardacre & Akse, 2015).

The ISC comments on the draft. If necessary, the lead DG modifies the draft as needed and the DG and the Commissioner's cabinet formally approve it. Once approved, the unit submits the draft proposal to the College of Commissioners for approval in compliance with the most suitable of the Commission's four decision-making procedures.⁸

⁸ Oral, written, empowerment, and delegation.

Following the Commission’s approval, the draft legislation is translated into all the official languages and sent to both the Parliament and the Council for its first reading. The proposal is also sent to national parliaments for a subsidiarity check and to get their opinion;⁹ this occurs in parallel to the consultations with the Parliament and the Council. Additionally, the proposal is submitted for consultation to the European Economic and Social Committee (EESC) and to the Committee of the Regions (CoR), who both provide a non-binding opinion.

2.2.3. First reading of Ordinary Legislative Procedure

The first reading, depicted in the following graph, is the main step in co-decision; around 85% of the legislative proposals are agreed at this stage.

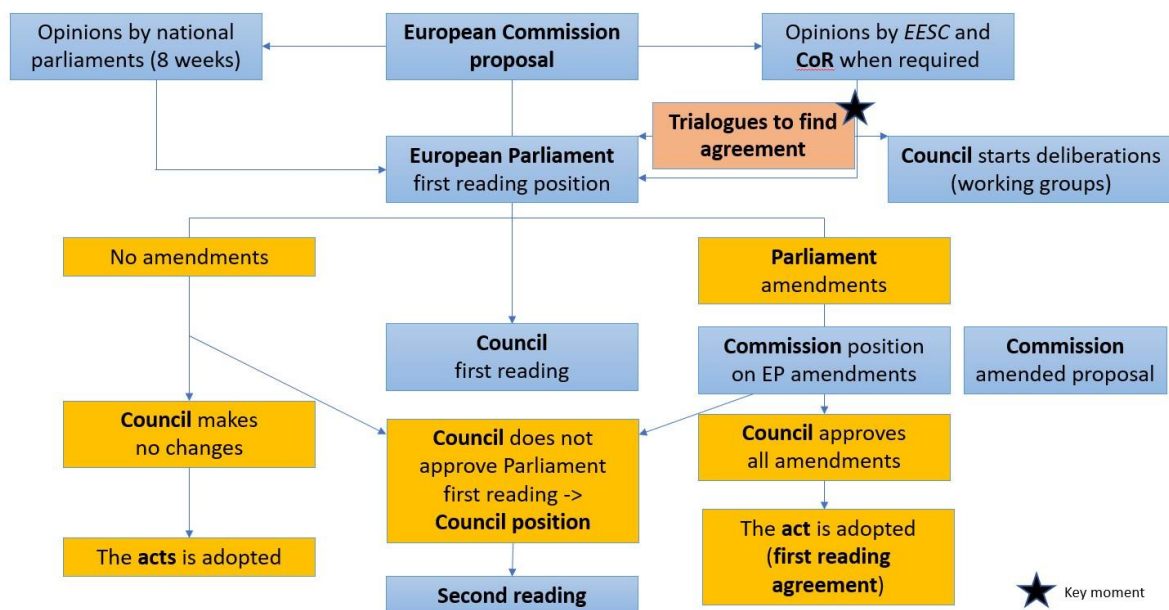


Figure 1: First reading of Ordinary Legislative Procedure

Source: Hardacre & Andrien, 2015

Whereas both the Parliament and the Council start working on the proposal, it is the Parliament who comes up first with a position. The Parliament’s position—as put forward by the lead committee after input from opinion-giving committees and as mandated by the Parliament’s negotiating team—is often finalised after informal negotiations with the Council

⁹ If national parliaments oppose the draft, the Commission must review it (Article 12 of the TEU).

(in trilogue negotiations). The Commission may accept some or all of the Parliament's amendments, which it incorporates into a modified proposal. If, in contrast, the Commission disagrees with the Parliament's amendments, this can require the Council to act by unanimity.¹⁰

If the Parliament's plenary session adopts the Commission proposal as agreed at the trilogue meetings (with or without amendments), the draft legislative proposal goes to the Council for final adoption by qualified majority.¹¹ In the unlikely event that the Parliament's plenary rejects the proposal, the draft is sent back to the lead committee, who will try to persuade the Commission to withdraw the proposal. The Commission is disinclined to do this unless it is certain that the Council shares the Parliament's opinion. If the Commission withdraws the draft legislative proposal, it means that it is politically dead and the procedure ends (Hardacre & Andrien, 2015).

If the Parliament's position is adopted by the Council—with or without amendments—the draft legislative proposal is adopted at the first reading and the procedure ends. Otherwise, the Council adopts its own first reading position and the dossier goes to a second reading.

Hardacre and Andrien point out that *'entirely new legislative acts are less likely to be concluded in first reading than files that are recasts, codifications, revisions, etc'*.

2.2.4. Second reading of Ordinary Legislative Procedure

The second reading procedure allows little room for new elements in the legislative proposal under review, and timewise each legislative body is limited to three to four months. Nevertheless, in practical terms, there is indeed space for manoeuvres to extend this period (Hardacre & Andrien, 2015).

¹⁰ Both at first and second reading.

¹¹ Adoption by at least 55% of Member States and representing 65% of the EU population.

The procedure for the second reading is presented in the following graphic.

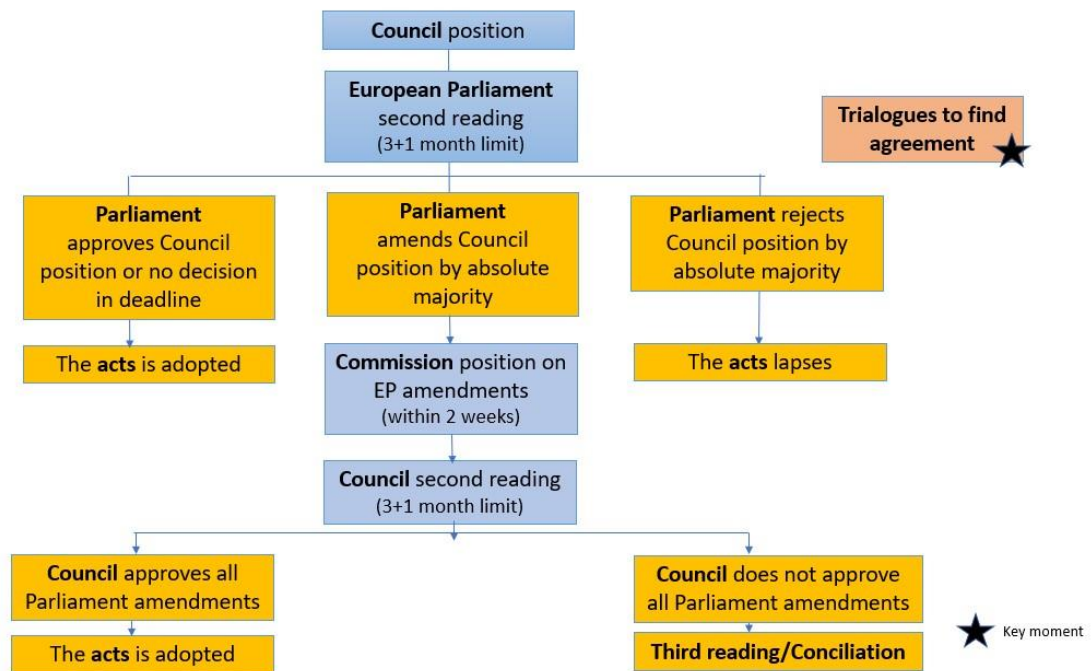


Figure 2: Second reading of Ordinary Legislative Procedure

Source: Hardacre & Andrien, 2015

The second reading can lead to three possible results (Hardacre & Andrien, 2015):

1. The Parliament's plenary approves the Council's first reading position with no changes: this is called early second reading agreement. The Parliament will then send a letter of assurance to the Council announcing its support for the Council position.
2. The Parliament, through the lead committee, proposes amendments to the position that the Council took during the first reading. The Commission prepares an opinion on the Parliament's proposed amendments before these go to a vote at the plenary. Tabling amendments is subject to strict admissibility criteria and amendments must be adopted by absolute majority in plenary.

If the Commission's opinion opposes one or several amendments adopted by Parliament in plenary, the Council must vote unanimously to pass them, and the draft legislative proposal is then adopted as an act. However, if the Council rejects some or all of the

amendments, the Presidents of the Council and of the Parliament call a meeting of the Conciliation Committee, which marks the beginning of the third reading.

3. The Parliament rejects the Council's first reading position and, consequently, the legislative proposal is stopped.

Throughout the second reading, discussions are also carried out via informal triilogue negotiation. The aim is to complete the formal adoption of the proposed legislation.

2.2.5. Third reading/Conciliation of Ordinary Legislative Procedure

This final phase, the third reading, comprises four steps (see the following graphic).

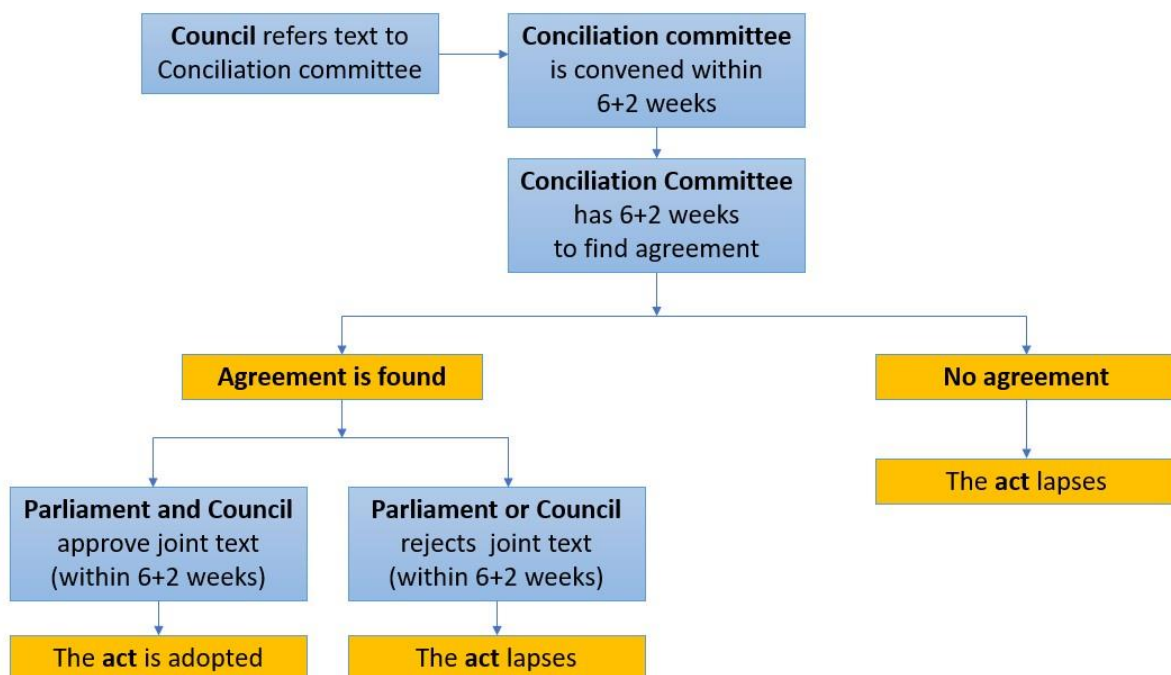


Figure 3: Third reading/Conciliation of Ordinary Legislative Procedure

Source: Hardacre & Andrien, 2015

1. The Council's second reading prepares for the third reading, as mentioned in the previous section under bullet point 2.
2. Preparatory triologue negotiation meetings occur, in which the formal text is put together for the meetings of the Conciliation Committee, which comprises delegations from the Parliament and the Council, and the Commissioner. Timewise, the Conciliation Committee is bound to convene within six to eight weeks and has another six to eight weeks to reach an agreement.
3. If an agreement is reached through dialogues, both the Parliament and Council delegations are presented separately with the text on which they will each vote, i.e., the Parliament by simple majority and the Council by qualified majority.
4. If the Conciliation Committee agrees on a joint text, either the General Secretariat of the Council or the Secretariat of the Parliament will prepare the draft legislative text and an explanatory letter. These will be sent to the Presidents of the Parliament and the Council for a vote within six to nine weeks. If both legislators approve the joint text, the draft law is adopted. In contrast, if the Parliament and the Council disagree, the draft legislation dies (Hardacre & Andrien, 2015).

Once the Council's and the Parliament's agreement is formalised, the legislative act is published in the ***Official Journal of the European Union***, stating the implementation and enforcement dates.

2.2.6. Parliament resolutions

A Parliament resolution originates from a Parliament own-initiative report, which often aims to influence the Commission's right of initiative on a specific topic.

A Parliament resolution does not automatically trigger a Commission legislative proposal. According to the Treaty of the Functioning of the EU, it is up to the Commission to consider the Parliament's request (resolution), but the Commission is not legally obliged to put forward a legislative proposal in response to a Parliament resolution (Hardacre & Mulder, 2015).

Unlike national parliaments, the European Parliament does not have the formal right to initiate legislation (Hardacre & Mulder, 2015). This right is reserved to the Commission only—except in the areas of police and judicial cooperation in criminal matters, where the Commission shares this right of initiative with the Council of the EU (Hardacre & Akse, 2015).

An own-initiative report is put forward by a lead committee within the European Parliament. If it is adopted by the lead committee—having previously received input (amendments) from opinion-giving committees within the Parliament—the own-initiative report becomes a Parliament resolution once adopted in plenary.

The Parliament resolution of 27 April 2017 on the EU flagship initiative on the garment sector called on the Commission to put forward a legislative proposal on mandatory due diligence in the garment supply chains. The resolution was not based on a Commission legislative proposal and, as such, the Commission was not legally obliged to put forward a legislative proposal on mandatory due diligence in the garment sector in response to the Parliament's resolution.

3. Findings

This section covers the outcome of the literature review and qualitative research carried out on this project.

3.1 The Commission's EU flagship initiative on garment gets stranded

In the wake of the Rana Plaza collapse in 2013, the EU committed to work together with the Bangladeshi authorities, the USA, Canada, and the ILO to improve the labour rights of garment workers, in line with the ILO's conventions under the newly-launched Sustainability Compact for Bangladesh. Additionally, the EU called on the European and international companies that subcontract to Bangladesh and other countries to adhere to international corporate social responsibility (CSR) guidance and standards.

As part of the EU's commitment to support the Bangladeshi government, the Commission announced its readiness to allocate additional capacity-building and financial resources to improving the working and safety conditions of garment workers in developing countries through 2014-2019.

With the appointment of the new Commission headed by Jean-Claude Juncker in 2014, the Commissioner for International Cooperation and Development, Nemen Mimica, was assigned to lead an ambitious EU flagship initiative on the garment sector. With this initiative DG DEVCO aimed to address the challenges in the garment sector in a coordinated way, i.e. by ensuring coherence and complementarity with relevant initiatives undertaken at national and international levels, such as the OECD and ILO guidelines for sustainable supply chains (EC, 2015a).

DG DEVCO aimed at establishing an inclusive multi-stakeholder platform on the garment flagship initiative, structured in thematic work groups, and at *'establishing an EU toolbox on how the EU engages in responsible supply chain management in the garment sector'* (EC, 2015a).

It is important to notice that from the onset, DG DEVCO's annual management plans made no reference to developing a legislative proposal on mandatory due diligence to ensure human rights in the garment sector. This absence, in our view, was a clear indication that DG DEVCO did not aim to develop a legislative proposal on the subject.

Furthermore, DG DEVCO was perceived by some stakeholders as a DG lacking the core competence to develop legislation on this topic. *'DG DEVCO was not a strong operator and it had no interest in regulating this topic,'* according to Ben Vanpeperstraete, Lobby and Advocacy Coordinator at Clean Clothes Campaign (Alcain, 2019a).

During the preparatory work in 2015 and 2016, DG DEVCO had informal discussions with representatives from Member States, which delegates from other Commission services also attended, such as DGS Trade; Employment, Social Affairs and Inclusion (EMPL); Environment (ENV); Internal Market, Industry, Entrepreneurship and SMEs (GROW); and the European External Action Service (EEAS). In parallel, DG DEVCO ran informal meetings and a consultation with key stakeholders—e.g., the private sector, civil society, social partners, and international organisations—to gather their views on the proposed EU flagship initiative.

Discussions between DG DEVCO and Member States on the proposal to launch the EU flagship initiative did not include the possibility of developing EU-level legislation on due diligence to ensure human rights in the garment sector. Instead, all parties focussed on how the EU flagship initiative could facilitate coherence and complementarity with similar initiatives led at national and international levels. This would entail: having an inclusive multi-stakeholder platform as a coordinating body, promoting existing best practices and policies, reaching out to consumers, mainstreaming environmental and social issues in the EU flagship initiative so as to have a holistic view, and linking this initiative to the EU CSR strategy that was due to be reviewed in 2016 (EC, 2015a).

Several Member States, including Denmark, France, Germany, and Sweden, supported DG DEVCO's proposal to create a multi-stakeholder platform on the EU flagship initiative. However, not all EU Member States participated in the preparatory discussions and, therefore, those countries' positions were not publicly available (EC, 2015a).

In addition, DG DEVCO's consultation with stakeholders, e.g., the private sector, civil society and social actors, revealed that almost all were supportive of the EU garment initiative. The Commission's role in providing guidance for greater coordination was seen as an added value because it could facilitate alignment and synergies between existing initiatives. According to DG DEVCO, stakeholders suggested that the EU's action should focus on funding and capacity-building. The long-term priorities proposed included increasing transparency in the value chain and working with producing countries on strengthening labour standards (EC, 2015b).

Member States and most stakeholders were in favour of having the EU flagship initiative as an umbrella for coordination, with a flexible structure and a decentralised setup (EC, 2015b). However, a small group of stakeholders challenged this.

As part of DG DEVCO's consultation with stakeholders, a small group of non-governmental organisations (NGOs) and consumer organisations made a more ambitious request to the Commission. They called on the Commission to put forward a set of legislative initiatives addressing the need for transparency and traceability, mandatory due diligence, effective remediation, and concrete actions for specific cases, such as guaranteeing compensation to Rana Plaza victims. They also suggested that the Commission could mandate an ombudsperson to assess and remedy human violations in the garment supply chain. Additionally, they expressed concern about the risk that *'establishing another multi-stakeholder platform [...] could jeopardise concrete proposals in this area,'* (achACT, Clean Clothes Campaign, the European Coalition for Corporate Justice, CNCD/11.11.11, Tests-Achats, Altroconsumo, & OCU, 2015) as they felt there was a risk of using the platform for what was merely a public relations exercise to promote past efforts.

In view of the overall positive feedback DG DEVCO received, it is unclear why the proposed multi-stakeholder platform on the EU flagship initiative never came into being. This is particularly strange, given Commissioner Mimica's personal interest. For example, the Commissioner told MEP Lola Sánchez Caldentey¹² that he was considering Commissioner

¹² EP rapporteur of EP DEVE Committee on an own-initiative report on the EU flagship initiative.

Timmermans as a potential leader of the platform, given the obvious link of the topic with the UN sustainable development goals (SDGs) (Alcain, 2019b).

In the absence of a physical multi-stakeholder coordination structure, DG DEVCO created an online information hub containing news, events and details on initiatives to promote sustainable garment supply chains on www.capacity4dev.eu (Alcain, 2019c). Additionally, DG DEVCO organised high-level panel meetings and pertinent roundtable discussions as part of the European Development Days.¹³

At the end of 2015 DG DEVCO commissioned a study on the responsible management of the supply chain in the garment sector. The study aimed to provide an in-depth analysis of existing initiatives and engagement activities carried out hitherto, identify gaps, and assist DG DEVCO in finding potential priority areas where the EU could provide added value.

In its recommendations to the Commission, the authors of the study suggested focusing activities on the following issues that sustainable garment supply chains face:

- Gender equality and the economic empowerment of women
- Environmental sustainability and access to clean energy
- Workers' rights: Decent work and living wages
- Transparency and traceability in the supply chain

The authors of the study recommended tackling these issues by promoting best practices through international cooperation on development and by increasing consumer awareness (AETS, 2016).

It should be noted that the authors of the study also suggested implementing EU-level regulation as a possible policy option, including mandatory due diligence in the sector (EC, 2016). This is a suggestion that the authors presented at a high-level conference DG DEVCO and the EEAS co-organised in 2016 on responsible management of the supply chain in the garment sector. However, this recommendation was not included in the final report of the

¹³ A yearly development forum taking place since 2006.

aforementioned study, as the Commission asked to have it removed (Alcain, 2019a). As a matter of fact, the final report specifically stated that *'...it was not the Commission's intention that the report should analyse the policy and regulatory environment'* (AETS, 2016). This omission is another indication that the Commission was not planning to put forward a legislative proposal on the EU flagship initiative.

DG DEVCO updated its policy objectives on the garment supply chains in view of input received from Member States and other stakeholders and the recommendations in the aforementioned report. However, it abandoned the proposal for an EU flagship initiative on the garment sector aimed at ensuring coherence and complementarity between EU-level initiatives and those undertaken at national and international levels. The reasons for leaving the EU flagship initiative stranded are, in our view, unclear.

DG DEVCO's objectives became tangible when the Commission presented to the Council a staff working document on the sustainable garment value chains and the EU actions in international cooperation and development in April 2017. The working document was prepared for a Council meeting to be held on the fourth anniversary of the Rana Plaza collapse. The Council and the Parliament were developing a set of recommendations and an own-initiative report, respectively, on the topic.

DG DEVCO's working document provided the Council with an overview of the EU's ongoing activities on international cooperation and development to make the garment value chains more sustainable and to respond to the numerous challenges ahead. DG DEVCO announced that activities would be directed to three thematic areas—women's economic empowerment, decent work and living wages, and transparency and traceability in the value chain—through three intervention areas, i.e., providing financial support, promoting social and environmental best practices, and reaching out to consumers and awareness-raising.

DG DEVCO's working document emphasised that effective cooperation on development in order to positively contribute to sustainable garment value chains depended on the sustained commitment of all relevant parties, including governments, the private sector, social actors, civil society, and international organisations.

DG DEVCO's current activities to promote sustainable garment supply chains through international cooperation on development are still driven by the priorities laid down in the staff working document. Furthermore, DG DEVCO recently confirmed that there is no ongoing work towards an EU flagship initiative on the garment sector. DG DEVCO pointed out that, although there is coordination and information sharing between different Commission services, there is not a common Commission strategy on the sustainability of global supply chains in the garment sector (Alcain, 2019c). This lack of a common strategy was substantiated in the Commission's follow-up response to the European Parliament resolution of 27 April 2017 on the EU flagship initiative on the garment sector (EC, 2017b).

DG DEVCO also confirmed that a report was being prepared to assess policy initiatives and instruments to support sustainability in garment value chains.

In parallel to the Commission's report, three fair trade organisations¹⁴ recently commissioned a research study to explore different regulatory options for an '*ambitious and integrated EU strategy in support of fair and sustainable textile supply chains*'.¹⁵ The study is to cover both the social and environmental components in the value chain. The report should provide a basis for the three organisations to build a lobbying strategy for the new legislative period.

3.2. Parliament calls for EU legislation on mandatory due diligence: a dead end

In essence, the Parliament's resolution on the EU flagship initiative on the garment sector urged the Commission to go a step further than cooperation on development through voluntary initiatives. It called for an EU legislative proposal on mandatory due diligence to ensure human rights protection across global supply chains in the garment sector.

The Parliament requested that legislation on mandatory due diligence be based on the OECD guidance for the garment supply chains (OECD, 2018), on OECD guidelines for multinational

¹⁴ Oxfam-Magasins du Monde, The Fair Trade Advocacy Office, and the World Fair Trade Organisation-Europe.

¹⁵ Call for research proposals on fair and sustainable textile supply chains (2019). The study is part of the EU-financed project 'Trade Fair, Live Fair' led by the three organisations.

enterprises importing into the EU, on the ILO resolution on decent work in supply chains, on internationally agreed human rights, and on social and environmental standards. MEPs also called for the enforcement of labour standards and human rights, remedies for victims, the promotion of gender equality, and increased transparency and traceability in the supply chain.

The Parliament resolution emphasised that voluntary initiatives were not sufficiently effective in addressing abuses of human rights and labour rights. Furthermore, it considered that chapters of EU trade agreements on sustainable development should be obligatory and enforceable. The Parliament also called on the Commission to introduce preferential tariffs for garments whose sustainable production had been demonstrably proven into the upcoming reform of the GSP rules on trade.

During the Parliament's deliberations, Commission representatives declared that developing legislation on mandatory due diligence for companies based in the EU was not a priority. Commission officials alleged that it was necessary to evaluate the impact of the recently adopted EU directive on non-financial reporting, which was due for transposition to the national level in December 2016 (EP, 2019a). Under this directive, large companies have to publish reports on the policies that they implement on environmental protection, social responsibility and treatment of employees, human rights, anti-corruption and bribery, and diversity on company boards. The directive was transposed to national legislation in 2016; it requires companies with more than 500 employees to publish those reports annually since 2018.

In spite of both the Commission's and the Council's preference for voluntary initiatives on due diligence to ensure human rights, the rapporteur—MEP Lola Sánchez Caldentey from the Group of the European United Left/Nordic Green Left (GUE/NGL)—and members of the Committee on Development (DEVE) were able to convince all major Parliament groups to vote in favour of the own-initiative report on the EU flagship initiative on the garment sector calling on the Commission to table an EU legislative proposal on mandatory due diligence in the garment supply chains. The resolution was voted on a very symbolic date, the fourth

anniversary of the Rana Plaza disaster, and adopted by 505 votes in favour, with 49 against and 57 abstentions (EP, 2017c).

The GUE/ENL, however, faced opposition from certain Parliament groups, particularly from the European People's Party (EPP), during the initial group negotiations to obtain the leadership (rapporteur position) of the own-initiative report. According to Ms. Sánchez Caldentey, *'Certain political groups considered that GUE/ENL was not the right crowd to lead this report because we would have a very radical position on this issue'* (Alcain, 2019b). Ultimately, GUE/ENL managed to convince the sceptics that *'they were not going against anyone'* (Alcain, 2019b).

Ms. Sánchez Caldentey also obtained firm support during the drafting of the report from civil society groups, such as the Clean Clothes Campaign and the fair trade movement. *'We worked closely with them and gave them opportunities to speak at Parliament hearings, etc.'*, she said (Alcain, 2019b).

It is worth noting that while NGOs engaged with the rapporteur during the drafting process and the subsequent deliberations at committee level, other stakeholders, particularly the retail sector (fashion brands), only approached her once the report had been voted on Parliament's DEVE Committee. The reason for this late reaction is unknown, but, in our view, it could indicate that fashion brands did not believe in the viability or success of the Parliament's own-initiative report.

According to Ms Sánchez Caldentey, the world's largest fashion retailer, Inditex,¹⁶ sent her a letter challenging the contents of her report and inviting her to visit their headquarters in Arteixo (Spain), claiming they did not have an umbrella representation in Brussels. Inditex wished to demonstrate what it was doing to make the supply chains more sustainable. Ms. Sánchez Caldentey, however, argued that *'the issue was not in Arteixo, but in Bangladesh.'* (Alcain, 2019b).

¹⁶ Comprises eight brands: Zara, Pull&Bear, Massimo Dutti, Bershka, Stradivarius, Oysho, Zara Home, and Uterqüe.

Other leading fashion brands, including H&M, Primark, and M&S, also voiced their opinions against the Parliament's call for EU legislation and advocated for a voluntary approach. *'Big brands were putting great pressure on the EU institutions. They did not want EU legislation on mandatory due diligence because of the complexity of the garment supply chain,'* according to Ms Sánchez Caldentey (Alcain, 2019b).

Yet not only fashion retailers campaigned for voluntary initiatives. The European Apparel and Textile Industry (EURATEX) pointed out that there were neither actual proposals nor evidence that new complex EU regulations or new trade rules could solve the due diligence issues in the global garment supply chains. On the other hand, *'enabling traceability along the value chain and following OECD guidelines on due diligence in the garment sector are the way forward.'* (Alcain, 2019d) affirmed EURATEX Director for Sustainable Businesses, Mauro Scalia.

In EURATEX's views, mandatory due diligence could be ineffective and very burdensome for the EU garment industry, which is primarily made up of small and medium-sized companies (SMEs). Therefore, during the discussions they had with MEPs on the Parliament resolution, EURATEX took the opportunity to convey a real picture and a sense of the scale of the European apparel and textile industry (Alcain, 2019d).

Furthermore, Mr Scalia pointed out that *'The policy debate on the Parliament's call for EU legislation did not propose specific measures and a significant number of stakeholders did not see how new legislation could solve the problems encountered in the garment supply chain'* (Alcain, 2019d).

During the time her report was under discussion at committee level, Ms Sánchez Caldentey met representatives from garment trade associations in Italy, Portugal, and Romania. These confirmed that they supported the recommendations in her report. They sensed that mandatory due diligence legislation could bring about a level-playing field for all garment producing companies and potentially save companies who produce in Europe (Alcain, 2019b).

Other Europe-based garment-producing SMEs also expressed concern. Their viewpoint was that, unless there is EU legislation that applies to all companies in a uniform way, companies who invest more resources in due diligence would inevitably have higher costs for the end product. Both ethical and economic arguments were part of the debate (Alcain, 2019e).

The Parliament's call for legislation on mandatory due diligence did not, however, garner support from Member States. The rapporteur met EU permanent representatives from three countries that developed legislation—France, the Netherlands, and the United Kingdom—during the time that the Parliament was discussing the report in committee. Interestingly, none of these countries supported adopting EU legislation on mandatory due diligence. It appears that France wanted to ascertain whether their brand-new law¹⁷ was effective and did not damage French industry (Alcain, 2019b).

On the day before the Parliament's plenary vote, Commissioner Mimica presented MEPs with DG DEVCO's staff working document (EC, 2017a). *'I am aware that some of you will say today that what we are doing is not enough. (...) I confirm that the Commission is here to listen to the Parliament,'*¹⁸ he said.

Both in 2017 and 2018, the Parliament reiterated its call on the Commission to develop an EU legislative proposal on mandatory due diligence to ensure human rights in the garment sector. For example, in June 2017, a group of MEPs tabled questions to the Commission on this topic and asked for a timetable of the launch of a public consultation process for civil society organisations and other stakeholders that would lead to a legislative procedure (EP, 2017b).

Commissioner Mimica replied that the existing legislation applied, for example, the non-financial reporting directive, and that the Commission *'intended to concentrate its efforts on obtaining the best results from the current approach and related instruments.'* (EP, 2017b).

¹⁷ Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.

¹⁸ Speech of Commissioner Nemen Mimica at the European Parliament/European Commission joint event on 'Remembering Rana Plaza - how can we create fair and sustainable supply chains in the garment sector?' (26 April 2019).

This meant that the Commission's activities to promote sustainable garment supply chains focussed on international cooperation and development.

In September 2017 the Commission produced a detailed response (EC, 2017b) to the Parliament's resolution on the EU flagship initiative, welcoming the Parliament's work and reconfirming the Commission's viewpoint on the topic, in line with the contents of DG DEVCO's staff working document.

In sum, Parliament's repeated calls for EU legislation on mandatory due diligence in the garment sector led to a dead end. According to the rapporteur, the Commission had no intention of proposing EU legislation on mandatory due diligence in the garment sector because there was no political will for it. *'If legislation entails human or environmental damages, these are considered as side effects. However, if legislation means a negative impact on companies' profits, this is the leading argument. It is a question of values scale,'* (Alcain, 2019b) argued the rapporteur.

'We cannot turn a blind eye, if our clothes are made at the cost of vast human suffering. Only binding rules could guarantee that products sold on European markets do not violate the dignity and the rights of millions of workers. The EU has the means to act and we ask the Commission to do so.' (EP, 2017c)

MEP Lola Sánchez Caldentey
Rapporteur of the EP resolution on
the EU flagship initiative in the garment sector

3.3. The Council of the EU supports voluntary initiatives for the garment sector

In May 2017 the Council put forward a set of conclusions on sustainable garment value chains. The Council pointed out the need for greater and proactive engagement between public and private actors within the EU and beyond in order to strengthen sustainable supply chains. It welcomed the Commission staff working document (EC, 2017a) and encouraged greater coherence between cooperation on development, environmental, labour, trade, and other external policies to promote sustainable garment supply chains. Furthermore, the Council called on the Commission to address sustainable garment value chains in a comprehensive manner, '*...beyond development cooperation promoting a safer, greener and fairer garment industry*' (Council, 2017). However, the Commission failed to deliver a common strategy on the sustainability of garment supply chains.

The Council did not favour the development of EU legislation on mandatory due diligence. Instead, it pointed out the importance of preventing human rights violations and of promoting CSR, and the need to have relevant internationally recognised labour conventions, guidelines, and principles¹⁹ applied across the garment value chain.

As stated in chapter 4.2., although some Member States have developed legislation on due diligence to ensure human rights,²⁰ none of these called for an EU legislative proposal on the topic. The reasons for this are unclear.

3.4. Human rights in business: high on the EU's new political agenda?

The topic of human rights in business is gaining political momentum in the EU institutions.

The Parliament has recently called on the Commission to put forward a legislative proposal requesting companies to carry out due diligence to ensure human rights in their supply chains,

¹⁹ ILO core conventions, UN guiding principles on business and human rights, OECD guidelines for multinational enterprises, etc.

²⁰ See Annex 6.4.

i.e., from a cross-sectoral perspective. That request is at the core of the Parliament RBC Working Group's shadow EU action plan, (EP, 2019b) which aims to contribute to reflections on the incoming Commission's work programme. Legislation on mandatory due diligence would require both EU-based companies and companies operating in the EU to carry out checks on their supply chains to ensure the absence of human rights abuse. The Parliament's initiative seeks to implement the UNGPs²¹ on human rights in business.

The Parliament's shadow action plan is a reaction to the EU's failure to develop an action plan on RBC—despite encouragement to do so by the Council in 2016 (Council, 2016b)—in line with the European Commission's commitment to implement the UNGPs and to take the necessary steps to ensure a responsible and accountable European industrial sector.

Unlike in the garment sector, the EU has already enforced legislation on due diligence in other areas: the timber regulation,²² the conflict minerals regulation,²³ and the directive on non-financial reporting.²⁴ The conflict minerals regulation specifies mandatory due diligence on human rights. It requires EU companies to ensure that they import tin, tungsten, tantalum, and gold²⁵ from responsible sources, as conflict minerals can be used to finance armed groups, fuel forced labour and other human rights abuses, and support corruption and money laundering (EP & Council, 2017d).

RBC is an important part of the EU's contribution to the UN 2030 agenda on sustainability. The reflection paper 'Towards a sustainable Europe by 2030' (EC, 2019c) recognises that ever more companies have included environmental and social responsibility in their corporate missions. It stresses the growing complexity and globalisation of supply chains and the

²¹ A set of guidelines for UN Member States and companies to prevent, address, and remedy human rights abuses committed in business operations.

²² Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

²³ Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

²⁴ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

²⁵ They can find their way into mobile phones, cars, and jewellery.

importance for companies to promote the application of high sustainability standards also in third countries. Additionally, it points out the need for the EU to keep promoting the implementation of internationally agreed guidelines and principles on RBC, including the UNGPs on business and human rights.

In this regard, the Council (Council, 2019) recently stressed the importance of the private sector in achieving the UN SDGs and encouraged its constructive involvement in line with RBC and CSR principles. The Council added that these principles should bolster a robust EU policy framework, including an EU action plan on RBC to promote responsible management of global supply chains.

The Commission's reflection paper also refers to the EU action plan on sustainable finance,²⁶ which aims to connect the financial system with more sustainable projects. As part of the action plan, The Commission's Directorate General for Justice and Consumers (DG JUST) is currently leading analytical work on corporate governance and due diligence in supply chains.

In early 2019 DG JUST commissioned the British Institute of International Comparative Law to conduct an in-depth study—and consultative work with stakeholders—in order to assess the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout their supply chain, and to measure sustainability targets. The focus is on how to make companies more accountable (Alcain, 2019f).

According to DG JUST, preliminary results of the study reveal a great interest in the topic (Alcain, 2019f). There is a call from companies, including the garment sector, for more binding rules. It appears that businesses are calling for a level playing field and greater legal certainty so as to improve their contribution to the UN SDGs.

²⁶ Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, and the Committee of the Regions - COM (2018) 97 final.

The results of the study will be available in November 2019. They will provide DG JUST with evidence in case the new Commission considers action on due diligence to ensure human rights in business as part of its political priorities for the next five-year term.

The new Commission's President elect Ursula von der Leyen's political guidelines for the next Commission in 2019-2024 place sustainability at the core of the EU's trade policy. This looks like a positive signal, but it remains to be seen if and how the new Commission will implement due diligence requirements within the EU's general scheme of preferences for low-income countries.

*'... I will ensure that every new [trade] agreement concluded will have a dedicated sustainability-development chapter **and the highest standards of climate, environmental and labour protection, with a zero-tolerance policy on child labour**' (von der Leyen, 2019).*

Ursula von der Leyen

President elect of the European Commission

4. Discussion and conclusions

The motives for an EU legislative vacuum on the garment supply chain sector are numerous. Some reasons may be known only to people with sufficient political influence.

An attempt to untangle the reasons why the EU has not adopted legislation ensuring a socially sustainable garment supply chain inevitably requires considering the EU's institutional set up and decision-making procedures, policy makers' priorities, political will, and the roles played by industry, social actors and civil society.

In the following, those considerations are discussed.

The Commission's EU flagship initiative lacked political momentum

As explained in chapter 2, the Commission's ambitious plans for an EU flagship initiative on the garment sector fell short to build momentum within the Commission and in Member States, and failed to deliver an all-encompassing strategy at EU level. One of the reasons for that stems from the choice of the DG to lead this initiative.

DG DEVCO is in charge of development policy in a wider framework of international cooperation and is responsible for formulating general and sectoral policies in this regard. However, it lacked the core competence and political weight to steer a legislative proposal in response to the Parliament's call for EU legislation on mandatory due diligence in the garment sector.

The Commission possibly did not aim to create EU legislation on mandatory due diligence in the garment sector. In any case, it failed to acknowledge that developing EU legislation on the subject was a policy option to be properly weighed up. This seems particularly so in light of the recommendations made in the report (AETS, 2016) commissioned by DG DEVCO. One of these recommendations to the Commission was implementing EU regulation on mandatory due diligence in the garment sector. A legislative approach could have been justifiable as some Member States were developing due diligence legislation during that time. EU regulation could have facilitated legislative harmonisation across the EU.

Unlike the Commission's policies on timber or conflict mineral sourcing, the flagship initiative on the garment sector did not garner political commitment of other key DGs—e.g. TRADE, JUST or GROW—or from all Member States.

The Parliament's resolution became a symbol rather than a gamechanger

All political groups in the Parliament, even an initially sceptic EPP, backed the resolution calling for EU mandatory due diligence legislation in the garment supply chain.

While the Parliament's draft own-initiative report drew attention and support from civil society at an early stage—e.g. through a coalition of NGOs and trade unions working in human rights and the garment supply sector²⁷—the textile and clothing industry and leading fashion brands expressed a firm opposition to the report's call for new EU legislation. Industry maintained that voluntary initiatives are a workable solution. Industry pointed out progress made in Bangladesh to improve garment workers' health and safety conditions²⁸ and stressed its commitment to greater transparency throughout the supply chain.

One could deduce that virtually no fashion brand believed on the viability of an EU legislative proposal on due diligence. It is worth noting that fashion brands engaged with the rapporteur once the Parliament's own-initiative report had been voted within the DEVE Committee. One possible explanation for this is that fashion brands operating in the EU were not coordinated as they did not yet have a European trade association in place.

The Parliament failed to convince the Trade Commissioner to put forward a legislative proposal on due diligence in the garment supply chain (Alcain, 2019a). An option for the Trade Commissioner could have been to follow the path of her predecessor, who led the

²⁷ e.g. Clean Clothes Campaign, Fair Trade Europe, IndustryALL Europe and the Business and Human Rights Resource Centre.

²⁸ Accord on Fire and Building Safety in Bangladesh (2013).

development of an EU Regulation on conflict minerals²⁹, by developing EU regulation on mandatory due diligence in the garment supply chains.

Globalised garment supply chains need a paradigm shift

The globalisation of garment supply chains—contracting and subcontracting to garment producers in developing countries—has for 30 years gone hand in hand with labour and human right abuses, including child labour, low wages, excessive working hours and unsafe and unhealthy working conditions. The underlying business model is very lucrative for multinational fashion retailers (Alcain, 2019g).

Yet, the Rana Plaza collapse in 2013 was a tipping point for the garment business. The Rana Plaza collapse caused an increasing public awareness of the high human cost of fast and cheap fashion across the world. Ever since fashion retailers have to face the responsibility for the way they run operations in developing countries.

Public opinion and social actors are calling for a paradigm shift in the way fashion retailers manage their supply chains; a call for fashion retailers to act ethically in their business operations, including their purchasing practices, and to implement full traceability and transparency across their global supply chains.

Furthermore, both private operators' and EU decision-makers' choice for voluntary initiatives on human rights due diligence fall short in delivering sustainable garment supply chains. Voluntary initiatives also create an unlevel playing field for those companies that operate in the EU, adhere to international standards³⁰ and deliver on traceability and transparency across the garment supply chain.

²⁹ Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

³⁰ e.g. ILO, OECD and UNGP.

Against this backdrop, a new paradigm is necessary in global fashion retail, that of a responsible company which guarantees due diligence on human rights alongside traceability and transparency throughout the garment supply chain.

New EU legislative period: opportunities ahead

In our view, the EU is well placed to set the right conditions for a truly responsible and fair garment supply chain, but this requires a firm commitment and resolute action from all EU institutions and other key stakeholders.

The goal of making global garment supply chains more sustainable while guaranteeing respect for workers' rights should not only be high on the new Commission's political agenda. It should be followed by a coherent policy implementation by all the relevant Commission DGs, including e.g. DG DEVCO, DG TRADE, DG EMPL, DG GROW, DG JUST and DG FISMA, and the Member States.

In the previous legislative period the Parliament called for EU legislation on mandatory due diligence in the garment supply chains and it has recently asked the Commission and the Council to put systematic and effective measures in place to implement the UNGPs on human rights in business (EP, 2019b).

All things considered, this request should and is likely to become a priority for several Parliament committees, e.g. DEVE, Human Rights (DROI) and International Trade (INTA).

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6. Annexes

6.1. Face-to-face interviews carried out in the framework of the research:

Chloé Allio

Head of Sector – Investment Climate, Trade, Sustainable Value Chains

Private Sector, Trade Unit

Directorate C. Planet and Prosperity

European Commission Directorate-General for International Cooperation and Development

Brussels, 30 August 2019

Duration: 20 minutes

Ebba Aurell

Seconded national expert - Investment Climate, Trade, Sustainable Value Chains

Private Sector, Trade Unit

Directorate C. Planet and Prosperity

European Commission Directorate-General for International Cooperation and Development

Brussels, 30 August 2019

Duration: 45 minutes

Ioana Logofatu

Policy Officer

Committee on Development

European Parliament

<https://www.linkedin.com/in/ioana-logofatu-533b1053/>

Brussels, 12 July 2019

Duration: 45 minutes

Lola Sánchez Caldentey

Member of the European Parliament between 2014-2019

Rapporteur of the own-initiative report on the EU flagship initiative on the garment sector

Committee on Development

European Parliament

<https://www.linkedin.com/in/lola-sánchez-caldentey-b2619815b/>

León (Spain), 26 July 2019

Duration: 45 minutes

Mauro Scalia

Director Sustainable Businesses

EURATEX - European Apparel and Textile Confederation

<https://www.linkedin.com/in/mauro-scalia-51349620/?originalSubdomain=be>

Brussels, 3 and 11 July 2019

Duration: 90 minutes

Marija Simic

Policy Office, Company Law Unit

Directorate A. Civil and Commercial Justice

European Commission Directorate-General for Justice and Consumers

<https://www.linkedin.com/in/marija-simic-857a6635/?originalSubdomain=be>

Brussels, 4 September 2019

Duration: 45 minutes

Ben Vanpeperstraete

Lobby and Advocacy Coordinator

Clean Clothes Campaign

<https://www.linkedin.com/in/ben-vanpeperstraete-b309283/>

Brussels, 15 July 2019

Duration: 60 minutes

Laurent Zibell

Policy Adviser

IndustryAll European Trade Union

<https://www.linkedin.com/in/laurent-zibell-1572374/>

Brussels, 26 August 2019

Duration: 45 minutes

6.2. Other organisations and individuals contacted:

María Morell

Corporate Social Responsibility

Inditex

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(Contact by mail and telephone in August: no reply)

6.3. OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector¹

This guidance helps brands and retailers observe standards of responsible business conduct in garment and footwear supply chains. Adopted in 2017, it establishes a common understanding of due diligence in the sector to help companies meet the due diligence expectations laid out in the OECD Guidelines for Multinational Enterprises.

The guidance was developed through a multi-stakeholder process. It was approved by all governments that adhere to the OECD guidelines and endorsed by business, trade unions and civil society. It is a direct response to the G7 Leaders' Declaration on 7-8 June 2015 in Schloss Elmau, which welcomed international efforts to promulgate industry-wide standards for due diligence in the textile and ready-made garment sector. The guidance is applicable to all companies, large and small, operating in global garment and footwear supply chains.



Source: OECD, 2018

¹ <https://mneguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm>.

6.4. Examples of national legislation on due diligence

French law on duty of care: Devoir de vigilance des entreprises donneuses d'ordres²

The French law on duty of care, adopted in March 2017, makes it obligatory for large French companies to set up and implement a due diligence plan. This plan should comprise the measures companies put in place to identify and prevent the occurrence of serious human rights risks and environmental risks associated to either their own activities, those of companies they control, or those of subcontractors or suppliers.

The Netherlands' Child Labour Due Diligence Law³

The law, adopted in February 2017, requires companies selling goods and services to Dutch end-users to determine whether child labour occurs in their supply chains. If so, companies must set out a plan of action on how to combat it and issue a due diligence statement on their investigation and plan of action.

United Kingdom's Modern Slavery Act 2015⁴

Section 54 of the Modern Slavery Act 2015 requires organisations to develop a slavery and human trafficking statement each year. The slavery and human trafficking statement should set out what steps organisations have taken to ensure modern slavery is not taking place in their business or supply chains.

² Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.

³ Business and Human Rights Resource Centre.

⁴ <https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide>.

