

## **EBCA POSITION ON THE DRAFT CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE**

28 November 2022

The [European Branded Clothing Alliance](#) (EBCA) welcomes the European Commission's proposal for a Corporate Sustainability Due Diligence Directive (CSDDD).

EBCA supports the adoption of **mandatory horizontal and risk-based due diligence criteria** at the EU level. This shall provide a level-playing field between EU and non-EU companies and legal certainty, as well as provide clearer information for consumers.

Our sector has long been committed and has been involved in setting own voluntary due diligence measures against violations of human rights and the environment, accompanied by responsible business agreements with outside bodies.

EBCA members are keen to work with EU policymakers to share best practice from years of experience in implementing due diligence at the corporate level, and to discuss challenges related to visibility and traceability of complex supply chains, including in developing countries.

EBCA would like to provide key considerations that should be considered by lawmakers during the next steps of the ordinary legislative procedure.

### **1. Guarantee a level playing field**

In order to safeguard level playing field and avoid overlapping regulation, the law must be **aligned with existing international standards** (e.g., OECD guidelines and UNGP) and should aim at **horizontal and harmonized minimum requirements**.

EBCA also strongly advocates for the **CSDDD scope to reflect the scope of the Corporate Sustainability Reporting Directive (CSRD)** to guarantee policy coherence and reduce administrative burden and complexity for companies.

Moreover, **SMEs should also fall under the scope** of the CSDDD in a proportionate manner to guarantee a level playing field. **Capacity building and financial support** for SMEs is key and an **industry-wide approach based on risk** is important, which could help to redirect resources to where they are needed most. This approach to risk would minimise red tape and ensure proportionality in the EU's policy framework.

Furthermore, a level playing field should be safeguarded between EU and non-EU companies. Thus, **thresholds should be the same for third countries economic operators** independently of whether they have a subsidiary or branch in the EU. Thresholds should be assessed at **group level** (number of employees and net turnover of subsidiaries should be considered).

### **2. Avoid too extensive and unworkable scope**

The CSDDD should **only cover the supply chain**, while strengthening technical capacity and fostering dialogue and increased transparency further upstream.

Including the entire value chain of a company may be **too extensive** and would lead to uncontrollable obligations and unforeseeable risks. The introduction of responsibility for actions by third parties - i.e. indirect suppliers or resellers - is unconceivable under European legal standards. In many cases, **companies have no knowledge of the identity of indirect suppliers or resellers**.

The European textiles industry understands the need for companies in scope to engage with players in their value chain through risk-based due diligence approach. However, a mechanism providing for liability for the actions of third parties would be a rare exception in European and international legal systems and is **not in line with the UN Guiding Principle**. Companies should only be liable for their **own activities**, not those of their business partners or their suppliers

Lastly, EBCA deems it **unnecessary to cover corruption and good governance** under the CSDDD since legislation tackling these issues is already in place (e.g., Anti-Money Laundering Directive).

### 3. Establish common and clear definitions

Common definitions and standards should be promulgated to avoid confusion and misinterpretation. In particular, the definition of “**indirect**” relations and “**established business relationships**” must be clarified. EBCA members support the prioritisation of the **most relevant and direct business relations** only, based on a **company’s leverage** instead of the intensity and duration of those relationships.

### 4. Ensure harmonisation in the Single Market

EBCA warns against the risk of **conflicting interpretations** of compliance requirements and **implementation** of the CSDDD in EU member states.

This would be further complicated by **the fragmentation of the Single Market** due to national legislation on due diligence in addition to the EU directive. In addition, badly conceived legislation will harm companies’ ability to remain competitive worldwide, with repercussions on employment and local communities. Lack of harmonisation must be avoided and EU **competitiveness** maintained if the EU wants to have a real impact globally.

The current proposal includes no provisions that **limit the ability of a Member State to legislate beyond the provisions** of the proposal which is not delivering a level playing field. The variety of new legal vague terms without established methodologies can lead to a myriad of interpretations, requirements and implementation processes, leading to **unequal conditions of competition** within the EU. On top of that, in case of groups of companies where there are several entities subject to the CSDDD requirements, the different affiliates should be able to benefit from the measures and controls implemented/published at corporate/group level in order to avoid duplicities and ensure efficiency of resources.

A proper monitoring and enforcement mechanism should work equally for each EU member state with an **integrated data framework and unique reporting at EU level**, ideally based on the **CSRD**. EBCA supports a **regulation** on due diligence in the long-term. We call on the Commission to consider a recast procedure of the CSDDD in future reviews of the legislation to ensure that it remains fit for purpose and contributes to internal market harmonisation.

Lastly, **sector-specific guidance** and an enforcement strategy must be provided before enforcement starts. EBCA is in favour of **voluntary model contract clauses** and encourages the publication of timely guidelines also on these clauses.

### 5. Adopt a risk-based approach

EBCA strongly supports a **risk-based approach** and “**smart mix of measures**”, as currently included in existing international frameworks such as the UNGPs and the OECD due diligence guidelines. For effective due diligence, companies must first undertake a thorough **risk mapping and assessment** to identify and assess potential human rights and environmental risks related to their business activities and relevant relationships. After this, and depending on **severity and likelihood** (in line with the

existing international framework), companies should undertake efforts to prevent, mitigate and remediate identified risks, where necessary.

Additionally, EBCA members support a **progressive implementation** and **phased-in approach**. Due diligence obligations should be recognised as an **ongoing and dynamic process**. The progressive nature of due diligence should be fully integrated into upcoming legislation, which should incentivise continuous improvements resulting from tracking and monitoring human rights efforts from companies.

## 6. Guarantee implementable and realistic due diligence requirements

Overall, EBCA believes that the new due diligence requirements need to be **feasible and proportional** to be impactful, both regarding the administrative burden for companies as well as the **availability of scalable technologies for traceability** and methodologies available to assess the environmental impact of businesses. Dedicated **funding** to support the development of traceability tools should be made available to ensure better visibility and traceability throughout the supply chain. In particular, digital innovation opportunities should be taken into consideration.

Moreover, **clear guidance** should be provided when it comes to the application of **environmental due diligence requirements**, given that the methodology available to define science-based targets on environmental impact are still being defined.

EBCA does not support the inclusion of short-, medium- and long-term targets related to corporate climate objectives, including absolute GHG reduction targets for scope 1, 2 and 3 emissions for 2030 and in five-year steps up to 2050, as proposed in the European Parliament ENVI Committee report. **Liability based on Paris Agreement objectives** would be particularly burdensome for companies that targets are set on nations and not on economic entities.

## 7. Establish a proportionate liability and responsibility framework

In terms of liability, EBCA members believe that **companies and states have a responsibility** to address human rights violations and environmental impacts. Companies have a clear responsibility to respect human rights, but they cannot replace the critical role and proper functioning of the state. Systemic and sustainable change on the ground can only be achieved through **supporting countries** in enabling them to better fulfil their duty to protect human rights.

EBCA is supportive of **enhanced responsibility requirements** along the supply chain. However, it would be more appropriate **to limit civil liability** to cases when a company has **caused or contributed** to damages under its control and to those risks a company prioritises based on likelihood and severity of impact in compliance with due diligence best practices. The **scope of responsibility and liability should be reasonable** and clearly defined to not create legal uncertainty.

**Overcompensation** should be prevented for the damages occurred. EBCA calls on lawmakers to **incentivise rather than penalise** responsible business practices and recognise companies that exceed minimum legal requirements in their due diligence process.

Additionally, the Directive should not create additional administrative burdens and unrealistic demands for directors. Hence, EBCA supports the **deletion of Articles 25 and 26 on directors' duties**, as well as any reference to variable remuneration.

Moreover, the **burden of proof** should reflect the proposed approach taken in the draft Regulation on prohibiting goods made with forced labour, meaning that authorities should oversee proving that there is a violation of due diligence rules and that there is an impact. If there is a substantiated evidence that a risk exists, companies would then have the burden of proving that they are complying with rules and/or addressing the adverse impact.

Lastly, disengagement could be a potential and unintended consequence of this proposal if it is developed in the wrong way. **Disengagement should be a solution of last resort.** A company should not be required to disengage from a market when it is expected that it would result in a more severe adverse impact. If **temporarily suspending or terminating business relationships**, the company should do so in a **responsible way**, limiting the impact of the suspension or of the termination on the human rights or on the environment.

**About EBCA:**

*EBCA is a coalition of major retail clothing brand companies, representing over 60 brands. The alliance works to ensure a positive trade agenda and a more predictable business environment, while also ensuring sustainability throughout the global value chains.*

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