

# OMNIBUS PROPOSAL

## Re-centering workers and human rights in the EU Corporate Sustainability Due Diligence and Reporting Directives

### BACKGROUND

The adoption of the Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD) represented a major milestone in the creation of more just and sustainable value chains, in particular in the garment and footwear sector. While the CSRD provided a much needed common standards for sustainability reporting in the EU, the CSDDD, although far from perfect, offered a credible pathway to corporate accountability for workers, trade unions and other victims of corporate abuse. The latter also introduced clear and harmonised obligations for companies regarding their human rights and environmental due diligence obligations, in line with long-established international standards such as the United Nations' Guiding Principles on Business and Human Rights (UNGPs) and the OECD's Guidelines on Responsible Business Conduct for Multinational enterprises.

Yet, in a misguided drive towards deregulation, the European Commission backtracked on the recently approved Directives through an [Omnibus simplification package](#). While stating that the aim of the Omnibus would be simplification and not deregulation, the Commission's proposal empties the CSDDD of its more important provisions and represents real risks for garment workers worldwide.

The proposal also risks making sustainability reporting more complex for companies and less impactful for rightsholders. In this light, and as [already stated when the Commission published the Omnibus proposal](#), **the Clean Clothes Campaign opposes the Commission's drive to backtrack on the protection of labour rights, human rights and the environment.**

In this position paper, the Clean Clothes Campaign (CCC) offers a brief analysis of the changes introduced by the proposed Omnibus, together with practical recommendations for Members of the European Parliament (MEPs) and EU Member States to correct course and safeguard labour rights, human rights and the environment.

### ON THE CSDD

#### Value chain scope

The proposal tabled by the Commission moves the obligation on companies to perform human rights and environmental due diligence from a risk-based approach for the whole value chain to one that is focused on direct business partners, that is to say, partners that are based in 'tier 1' of their 'chain of activities'. Companies would only have to go beyond their direct business partners when they have 'plausible information' that adverse impacts on human rights or the environment are likely to occur within the context of an indirect business relationship.

While at first it may seem that this approach would reduce administrative burdens and compliance costs for companies, there are reasons to believe that it will increase both, while reducing the impact of the law on preventing human rights abuses and damage to the environment. Experience with the German Supply Chain Act shows that focusing exclusively on business partners that are closest to the company's own activities pushes economic undertakings to perform checks and carry out due diligence on economic actors that may present relatively low risks.

Additionally, even when they go beyond tier one, companies will be prohibited from requesting the information necessary for their due diligence exercise to companies that have fewer than five hundred employees. Even in cases where plausible information incentivises companies to request information from indirect business partners beyond tier one, they will have to rely on cascading contractual assurances that the indirect business partner will respect the code of conduct of the in-scope company. In short, the approach proposed by the Commission increases red-tape and will fail to tackle the most severe cases of human rights abuses. The Omnibus proposal focuses on paper-based assessments, including [flawed audit reports](#), and will create a ripple effect of administrative burden and compliance costs along companies value chains while doing little to achieve the objectives of the Directive. Moreover, the contractual cascading and the costs associated with it risk being reflected negatively in workers' wages, which may ultimately bear the brunt of it. On the contrary, the original CSDDD text required companies to first conduct a broad risk assessment, and to focus their due diligence practice first and foremost where adverse impacts are most severe and most likely to occur.

### Recommendations

- **Members of the European Parliament (MEPs) and Member States should revert to a risk-based approach. If necessary, the language in Article 8 of the CSDDD could be simplified by clarifying a company's obligation to first conduct a broad risk assessment, mapping and prioritisation and then move to tackling potential and actual adverse impacts where they exist.**
- **MEPs and Member States should ensure that responsibilities are shared appropriately between the in-scope companies and the business partners.**

### Civil liability

The original CSDDD text introduced a common, harmonised regime for the 27 Member States under which companies could be held liable for harm caused as a result of a failure to prevent, mitigate or remedy adverse impacts – an approach that fostered legal clarity. The Omnibus proposal removes the harmonised civil liability regime established by Article 29.1 of the text, while retaining provisions on access to justice for victims.

In practice, the Commission's proposal increases legal uncertainty for both victims and in-scope companies. The former will have to navigate 27 different systems of tort law when seeking remedy for harm they have suffered. The latter will have to ensure compliance with each Member State's legal systems. Moreover, the Commission also proposes to remove the overriding mandatory provisions with regards to applicable law, meaning that victims and companies will be left wondering which law applies on a case to case basis.

### Recommendations

- **In order to increase legal certainty for victims and for in-scope companies, MEPs and Member States should reintroduce the harmonised civil liability regime initially foreseen by the CSDDD.**
- **MEPs and Member States should re-establish the overriding mandatory provision established in Art 29.**

### Administrative sanctions

The CSDDD allows supervisory authorities appointed by Member States at the national level to impose fines on companies that fail to comply with the Directive. While supervisory authorities are left free to set their own monetary sanctions, the Directive establishes that fines shall be based on a company's turnover and amount to at least 5% of global net turnover (and consolidated net turnover in case of group of companies).

The Omnibus proposal rids the text of this harmonised approach, leaving supervisory authorities with no common guidance on how monetary sanctions should be determined. Such an approach creates risks of forum shopping, as companies will be incentivised to base their operations in Member States that have lower penalties. Experience with the implementation of the [Conflict Minerals Regulation](#), the [EU Timber Regulation](#) and the [Unfair Trading Practices Directive](#) shows that, when left with no harmonised guidance, national authorities can adopt fines that vary greatly in amount.

### Recommendation

- **MEPs and Member States should reintroduce harmonised set amounts for monetary sanctions in order to discourage forum-shopping and create a level playing field across Member States.**

### Meaningful stakeholder engagement

Meaningful engagement with stakeholders is an essential component of a well-functioning due diligence process. Engagement with stakeholders can ensure that companies identify and address actual and potential adverse impacts properly, and can create a virtuous flow of information between companies, potentially and actually affected stakeholders, trade unions and civil society. In line with international guidelines, the original CSDDD text envisages meaningful stakeholder engagement at every step of the due diligence process. It also includes a broad definition of stakeholders to ensure that companies can flexibly engage with the most relevant persons and groups, including civil society organisations.

The Omnibus proposal takes a restrictive approach that is not conducive to a proper due diligence process. Indeed, the Commission proposes that companies only consult with those that are directly impacted by their activities and, importantly, excludes civil society organisations and NGOs from the Article 3(1) (n) relative to definition. Moreover, the proposal removes the obligation to consult with stakeholders in two key steps of the due diligence process; namely in cases of suspension of a business relationship and of the development of monitoring indicators.

## **“THE COMMISSION’S PROPOSAL EMPTIES THE CSDDD OF ITS MORE IMPORTANT PROVISIONS AND REPRESENTS REAL RISKS FOR GARMENT WORKERS WORLDWIDE. ”**

### Recommendations

- **MEPs and Member States should include civil society organisations whose stated mission is the protection of human rights and the environment as provided for in the definition of stakeholder in the current text. Qualifying that only “relevant” stakeholders should be consulted is also a misguided restriction.**
- **MEPs and Member States should restore the obligation for companies to engage with stakeholders when suspending business relationships and when developing monitoring indicators .**

### Monitoring

The original CSDDD text asks companies to regularly assess their due diligence policies and to update it whenever significant changes or risks and impacts occur, and at least every twelve months.

The Omnibus proposal increases the minimum updating requirement to five years. Such a long monitoring period is inconsistent with international standards and risks incentivising due diligence processes that are unable to react to significant changes on the ground and to tackle risks and impacts appropriately. Indeed, the [OECD Guidelines for Responsible Business Conduct](#) incite companies to update their due diligence policies, including targets and indicators, whenever it is deemed relevant.

### Recommendation

- **MEPs and Member States should revert to requiring companies to update their due diligence policies on a needs basis, and at least yearly.**

## ON THE CSRD

The CSRD requires companies to conduct a 'double materiality' assessment of its operations' impacts, risks and opportunities, and report on a number of environmental, social and governance issues. These are divided into three levels: a cross-cutting level, a sector-specific level, and one specific to the company (if needed).

The Omnibus proposal seeks to eliminate the sector-specific level. It also calls explicitly upon the standard-setting body (EFRAG) to reduce the number of narrative data-points in favour of quantitative data-points. This supposed simplification ignores the fact that, in many high-risk sectors, risks are already well-known. The proposal would also make it harder for companies to conduct their double materiality assessments, as they would have to re-invent the wheel rather than use well-established sectoral risk profiles. Additionally, most of the reporting datapoints on supply chain workers, affected communities and consumers, are narrative by design, to avoid box-ticking exercises without real impact.

### Recommendations

- **MEPs and Member States should insist on sector-specific standards, as these address well-known risks, provide guidance for companies and avoid additional indicators to be developed by companies.**
- **MEPs and Member States should insist that reporting on supply chain workers, affected communities and consumers is robust and impact-driven, and avoid it becoming a tick-box exercise.**

**"THE OMNIBUS PROPOSAL RISKS MAKING SUSTAINABILITY DUE DILIGENCE AND REPORTING MORE COMPLEX FOR COMPANIES AND LESS IMPACTFUL FOR RIGHTS-HOLDERS. THE CLEAN CLOTHES CAMPAIGN OPPOSES THE COMMISSION'S DRIVE TO BACKPEDAL ON THE PROTECTION OF LABOUR RIGHTS, HUMAN RIGHTS AND THE ENVIRONMENT."**

## ABOUT THE CLEAN CLOTHES CAMPAIGN

**Clean Clothes Campaign** is the garment's industry oldest and largest alliance of labour unions and non-governmental organisations, counting more than 230 members in over 45 countries.

Through our Urgent Appeal system we offer direct solidarity support to workers fighting against specific worker rights violations. We also collaborate with workers to co-develop global campaigns on achieving systemic goals like the payment of living wages and the eradication of gender based violence in the workplace.

To ensure the fundamental rights of workers are respected we educate and mobilise consumers and we lobby companies and governments at a regional and national scale. All members, partners and associates of CCC are dedicated to empowering workers to improve the working conditions of the global garment and sportswear industries.

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