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Addressing the power imbalance in the fashion industry: Can the Corporate Sustainability Due Diligence Directive finally put an end to unsustainable practices in the fashion industry?

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Ten years after the [Rana Plaza disaster](#), the landmark Corporate Sustainability Due Diligence Directive (CSDD) passed the [European Parliament \(EP\)](#) vote on the 1st of June 2023. Within the fashion industry, there is a [power imbalance](#) between brands, manufacturers and other stakeholders. Fashion brands have enormous power which allows them to set the rules for the rest of the value chain in order to reduce costs of production as much as possible. In order to meet these demands, suppliers have to fall back on unsustainable [sourcing practices](#) and [exploitative labour practices](#). The EP's ambitious position has the potential to address this power imbalance as it includes purchasing practices in the due diligence obligations for companies and allows for a stronger voice for stakeholders by strengthening the stakeholder engagement framework. This way, the Directive would be capable of ensuring sustainable and responsible corporate behaviour within the fashion industry. The visionary instrument can lead to a shift in focus for companies from a single economic view towards a holistic view where companies genuinely incorporate sustainability into the [governance](#) of business across global value chains.

The EP's position forms a strong premise for the trilogue discussions between the European Parliament, the Council and the Commission. This blogpost argues that a strong legal framework that addresses the power imbalance is necessary to address unsustainable purchasing practices and increase stakeholder engagement. To this regard, the blogpost

will first explain what unsustainable purchasing practices entail in the fashion industry and how the EP's position will address these. Secondly, the blogpost will analyse the importance of conducting meaningful stakeholder engagement and will continue by showing how the EP's position aims to strengthen the role of stakeholders in the due diligence process.

Unsustainable purchasing practices

Within the fashion industry's global value chains, suppliers are faced with a high demand in small and fast orders, characterized by short lead times and [uncertain trading terms](#). As a consequence of [globalisation](#), profit-driven fashion brands command enormous [power](#) in the global value chain they direct. These brands seized the opportunity to establish highly flexible and intricate value chains in developing countries and Europe. This enabled them to exert pressure on their suppliers, demanding the lowest possible prices in order to control and reduce the costs of production. The root causes of [labour abuse and environmental](#) harm are caused by [exploitative purchasing practices](#) that are an imperative part of the linear business model. These practices consist of last minute order changes, imposing short-term contracts, extended payment deadlines and an increasing transfer of 'hidden' costs to manufacturers. Extensive [research](#) shows that there are [correlations](#) between these exploitative [purchasing practices](#) and the exploitation of workers.

The [power imbalance](#) in these 'captive' value chains allows fashion brands to shift the responsibility to protect human rights and the environment to the suppliers in the upstream value chain, and local authorities in the concerned countries. The value chains are [captive](#) because thanks to [rising inequality](#), people are unable to say no to exploitation as they lack the power and money to do so. In his book the '[Fashion Revolution](#)' Nelson Lichtenstein states that big brands squeeze their suppliers "by shifting every imaginable cost, risk and penalty onto their books". Suppliers can only balance their books by not taking environmental considerations into account and by falling back on unacceptable labour practices.

Voluntary corporate responsibility initiatives such as brands' [codes of conduct](#) and [social audits](#) allowed brands to avoid [transparency](#) about their purchasing practices. As they were setting the rules themselves, fashion brands could use these initiatives to show the outside world they were trying to fix labour rights abuses in the value chain. At the same time these brands could continue with business as usual, since [audit tools](#) do not address the exploitative practices that cause labour right abuses and environmental harm. With the introduction of mandatory human rights due diligence, the Directive shows it is time that companies take their responsibility to protect human rights and the environment.

The behaviour of companies is key to the success of the European Union in transitioning to a climate-neutral and green economy. The Corporate Sustainability Due Diligence Directive tackles unsustainable practices by creating binding obligations for companies to conduct due diligence to identify, prevent, mitigate and terminate adverse impacts of their corporate activities on human rights and the environment. Although the Directive is not specifically focused on the fashion industry, its legal obligations can have major impacts for fashion companies. EU and non-EU companies are covered by the scope of the Directive if they meet certain criteria based on the number of employees and the worldwide net turnover of companies. After modification of the scope by the European parliament, EU companies are covered if they have more than 250 employees and a worldwide net turnover exceeding €40 million. Furthermore, the Directive includes companies that are the ultimate parent company of a group that had 500 employees and a net worldwide turnover of more than 150 million. The new obligations will apply to non-EU companies if they have a net worldwide turnover of more than €150 million and have generated at least €40 million in the European Union.

The substantive obligations listed in Articles 7 and 8 of the Directive, as adopted by the European Parliament, require companies to adapt their business models and strategies, including *purchasing practices*, and those which contribute to living wages and incomes for their suppliers. These obligations aim to prevent potential adverse impacts, and develop and use purchasing policies that do not encourage such impacts on human rights or the environment. Genuinely addressing the structural failures of the fashion industry which create adverse impacts is only possible when the [root causes](#) of human rights violations and environmental harm created by this unsustainable business model are tackled.

By addressing the purchasing practises of the fashion industry, the CSDD Directive creates the opportunity to challenge the exploitative business model of fashion brands. In order to meet the Directive's requirements, fashion brands will have to rethink how they use their power in the relationship with their suppliers. A business model that squeezes workers and puts heavy burdens on the environment will go directly against the obligations of the Directive. This change can be seen in a broader, more structural development as part of the Green Deal towards a circular economy as seen in the [EU Circular Economy Action Plan](#), as well as the trend to promote decent work worldwide, as seen in the proposal for a [Regulation](#) prohibiting products made with forced labour on the Union Market.

Companies will not be kept in the dark on how they have to fulfil their due diligence obligations. The Commission will, according to the EP Position, provide support to both companies and the Member States Authorities by issuing guidelines with information on responsible purchasing practices. These guidelines should refer to the [Common](#)

[Framework for Responsible Purchasing Practices](#), a sectoral standard developed by several multi-stakeholder initiatives for the garment and textile sector. The consequences of the guidelines remains to be seen, but they can provide for the requested [legal certainty](#) for companies. However, this practical tool does not take away the risk that companies will be able to treat the obligations under the Directive as a box-ticking exercise rather than developing a tailored due diligence mechanism for the fashion industry. It also remains questionable what the impact will be of simply following the guidance on civil liability procedures and national administrative enforcement, as negative impacts on human rights and the enforcement might still occur. A standardised guidance cannot capture all possible situations of negative impacts of corporate behaviour, especially not if the document is not tailored for the fashion industry.

A key role for stakeholder engagement

Understanding the negative impacts of purchasing practices is only possible by conducting meaningful stakeholder engagement, as it is [key](#) to human rights due diligence to understand the perspective of potentially affected individuals and groups, such as employees and communities. It is laudable that in the EP position stakeholder consultation is no longer limited to situations “where relevant” in the opinion of the companies. “Where relevant” as was mentioned in the [Commission’s proposal](#) of 23th February 2022, could be interpreted by companies as only when necessary for a business objective like obtaining a permit or license. [Stakeholders](#) should not play a limited role within the due diligence process, as they are best suited to inform companies on whether a change in the companies purchasing practices or its business model are effective. As [key sources of information](#) it is crucial for a company to engage with stakeholders in order to identify whether the affected stakeholders have the same perspectives on whether the company has adequately identified and assessed adverse impacts and taken the appropriate measures to prevent or mitigate them.

However, considering the current [power imbalance](#) in the fashion industry, stakeholders might be reluctant in sharing information about negative impacts on human rights and the environment in the global value chain. Therefore, it remains important that the Directive provides for quality requirements for stakeholder consultation. To that end, Article 8(d) of the EP’s position of the Directive clarifies that stakeholder engagement shall be comprehensive, structural, effective, timely and culturally and gender sensitive. Furthermore, the EP position provides that companies must guarantee that stakeholders are not the subject of retaliation or retribution, including by maintaining confidentiality or anonymity. In case a meaningful dialogue with affected stakeholders is not possible, it is essential that companies engage with other reasonable alternatives, such as civil society organisations, and other independent expert resources.

According to Article 9 of the EP's position of the Directive, the Member States have to ensure that companies set up notification and non-judicial grievance mechanisms for people and organisations affected by or have reasonable grounds to believe that they might be affected by an adverse impact. Interestingly, the EP's position expanded the list of (reasonably) affected persons and organisations to the legitimate representatives of such individuals, or, in cases where there are no individuals, groups or communities affected by an adverse impact on the environment, credible and experienced organisations whose purpose includes the protection of the environment. Organisations aiming to protect human rights including labour conditions, are included by paragraph 2(a). These amendments show the EP's willingness to take upon a 'multi-stakeholder' approach, meaning that companies should let go of the aim to maximize short-term shareholder value, but rather focus on multi-stakeholder [long-term interests](#).

The public enforcement provisions also testify of the EP's willingness to adopt a 'multi-stakeholder' approach. Article 18 of the EP's position of the Directive states that Member States' supervisory authorities should have the power to carry out investigations, which can – or should in order to facilitate meaningful engagement with affected stakeholders – include, where appropriate, onsite inspections and the hearing of relevant stakeholders. Furthermore, Article 20 of EP's position of the Directive states that in the shaping of administrative sanctions due account shall be taken of whether the company has effectively dealt with complaints or proposals raised by persons or affected stakeholders, including pursuant to Article 9 of the Directive. Stakeholder engagement can play an important role in advancing the directive's aim of enhancing corporate accountability for negative impacts, and at the same time, understanding the perspective of potentially affected individuals and groups can address the power imbalance in the fashion industry.

Conclusion

It remains unclear whether human rights due diligence legislation will effectively put an end to the exploitative purchasing practices in the fashion industry. The outcome of the trilogues remains to be seen. However, the EP's position implements obligations that may lead companies to shift towards making social and environmental impacts the central goals of their business activity by addressing the unsustainable purchasing practices of the fashion industry and giving a key role to stakeholders in the due diligence processes. The EP's position takes a promising step forward to meet the [Green Deal](#) objectives as it requires a fundamental change in the behaviour of companies. Another necessary way forward, and complementary to the human rights due diligence legislation which challenges the power imbalance in the fashion industry, might be a legislation on unfair purchasing practices as seen in the [EU Directive on unfair practices in Food Supply Chains](#).