



FESI position on an EU initiative on human rights due diligence

Brussels, July 2020

FESI key learnings from its members' long-standing experience in supply chain compliance management systems. Any EU initiative shall:

1. make strong reference to and be based on existing and recognised global standards;
2. be flexible enough to avoid a "box ticking" mentality and stifling innovative processes that have proven their benefits;
3. be reasonable in scope and results in a sufficiently clear and practically feasible EU-wide framework, with precisely defined responsibilities;
4. be founded on business enterprises' own activities and activities directly linked to their operations, products or services by their business relationships;
5. keep the focus on human rights;
6. have a horizontal approach.

Additionally, FESI calls for the EU to:

7. work on the adoption of a common language and definitions;
8. take SMEs' specificity into account: special incentives and capacity building are always beneficial;
9. continue and even strengthen its engagement, including an open consultation process with international organisations and governments of sourcing countries, for the purpose of building the required infrastructures and capacities;
10. promote continuous improvements and effective collaboration along the value chains.

Among its membership, **FESI – the Federation of the European Sporting Goods Industry** – counts a large number of companies that have been operating supply chain compliance management systems for several years. This contributed to significant improvements in their supply chains, whose complexity requires a large amount of time and effort in order to establish a consensus with numerous actors. As part of these management systems, sporting goods companies are involved in private compliance initiatives to audit the social performance of their suppliers and to foresee and mitigate labour rights violations in their supply chains. FESI members have been applying true leadership practices in public disclosure and reporting for many years. In their regular reports, these companies describe progress in driving significant social and

environmental improvements in their respective supply chains in an open and transparent manner. As one can read in the 2020 Fashion Transparency Index by Fashion Revolution, where sporting goods companies rank very high, brands are publishing more policies and commitments than they were in previous years and there is an encouraging progress on disclosing supplier lists. Already today, the majority of FESI members and suppliers are committed to external review and verification exercises that add credibility to their efforts and programmes.

Furthermore, sporting goods companies have a long-standing experience of being involved with and in global multi-stakeholder platforms such as ILO and OECD. FESI members are proactively engaging in a large number of public and private initiatives focused on improving supply chain conditions such as the Sustainable Apparel Coalition (SAC), Ethical Trading Initiative (ETI), amfori BSCI – Business Social Compliance Initiative, the Fair Labour Association (FLA), The Fair Wear Foundation, the Better Cotton Initiative (BCI), and Zero Discharge of Hazardous Chemicals (ZDHC) – just to name a few. One can also add national initiatives such as the German sustainable textile alliance and the Dutch textile Covenant.

Drawing from this long-standing experience, FESI hereby wishes to share key learnings on due diligence and global value chains and looks forward to an open dialogue and collaboration with the European Commission and other relevant stakeholders in order to contribute constructively to further discussions on a comprehensive European wide approach on due diligence.

1. Harmonisation of measures at EU level

A growing number of national, regional, and international initiatives on due diligence are being launched in some cases without coordination. This situation creates an unpredictable and uneven playing field for companies operating in a global and already complex supply chain and increase replicative auditing burden on suppliers. In this respect, **FESI sees the added value of the European Union's efforts in leading harmonisation and convergence of existing national initiatives** supporting a comprehensive European wide approach on due diligence.

A joint understanding between the European Commission and Member States on sustainable value chains and standardised systems would foster alignment on what to expect from companies – with a special focus on SMEs and on how to promote collaboration on sustainable value chain management.

The EU shall be responsible for monitoring the enforcement of any approach, to ensure its uniform application throughout the EU Member States.

To ensure an even level playing field across all sectors, **any EU initiative shall have a horizontal approach**. Where sectors' specificities are important, certain exceptions could be envisioned; however, this could be addressed via a set of guidelines within that sector. FESI believes it is critical to **include state owned enterprises and public procurement in the process**.

2. Reinventing the wheel is neither necessary nor desirable

The global challenges facing the textile industry require equally global solutions. **FESI strongly recommends that any EU initiative must be based on existing and recognised global standards**, thereby sparing companies duplicated work. Reference points are the UN Guiding Principles on Business and Human Rights,

OECD guidelines for Multinational Enterprises and ILO norms. It is paramount that policy makers take into consideration the input from experts and recognise the significant efforts taken by the industry already, as well as the resources invested in responsible management of supply chains.

Furthermore, **FESI encourages the EU to work on the adoption of a common language**, including standard definitions, and to assess the statistical data between the various stakeholders: OECD, ILO, WTO, European Commission, World Bank and International Monetary Fund. FESI believes that any confusion resulting from misinterpretation shall be avoided and that coherent initiatives shall be elaborated between the different public bodies involved in this field, each having various competences.

Global supply chains are extremely complex and dynamic business networks that are constantly and increasingly changing and shifting in response to economic, geopolitical, and sanitary factors and market conditions. This is particularly evident in light of recent trade disputes and disruptions caused by the COVID-19 pandemic. These changes evolve much faster than any legislation and industry driven initiatives are constantly working hard to adapt. In order to be future-proof, **FESI recommends that any EU initiative be flexible to avoid a “box ticking” mentality and stifling innovative processes and sound industrial relationships that have proven their benefit.**

3. Focus on where the leverage is the greatest, paired with clear responsibilities

The UN Guiding Principles provide a clear approach as to the different responsibilities of governments and companies with regard to human rights. The role of business enterprises as an integral part of society and performing specialised functions requires compliance with all applicable laws and obliges to respect human rights. As provided in Principle 13, companies are required to *“avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”*

FESI members work hard to meet and sometimes even surpass this responsibility and to identify adverse human rights impacts in their supply chain, by mitigating these risks before they occur or correcting them when they are found. However, the term *“seek to”* also indicates that a company has only limited means to influence the business conduct of supply chain companies. Moreover, the UN Guiding Principles make a clear and important distinction between cause, contribute and direct linkage, by clarifying that *“where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so.”* Similarly, the OECD Guidelines on Multinational Enterprises state that the corporate responsibility to respect *“is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship.”*

It is very important to underline that FESI members operate in very complex supply chains, with larger companies often having several thousands of suppliers in many tiers, which are also continuously changing. Concrete opportunities for companies to influence the supply chain are varied and depend especially on the number of suppliers involved, as well as the structure and complexity of the supply chain and the market position of the company relative to the supplier. Furthermore, it is often either economically or logistically impossible or impractical to influence all suppliers and subcontractors.

There is a common belief that leading companies influence their supply chains as buyers and use their market power to dictate the prices and details of the production in the supply chain. However, the reality is more nuanced and a buyer's ability to influence the business conduct of the suppliers depends on their market position. Not only do SMEs often have little leverage over their suppliers, but large multinationals may also find themselves similarly constrained when they source only a marginal quantity of the supplier's total production or when the supplier has a monopoly. Moreover, a supplier may just be a much bigger company with customers in other parts of the world outside the EU, as is the case with some intermediaries. This complexity is reflected in the UN Guiding Principles: as stated in Principle 19, leverage is considered to exist where an enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm. Leverage is among the factors that need to be considered when determining the appropriate action in a case where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity.

Even though the UN Guiding Principles indicate that the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure, Principle 14 recognises that the scale and complexity of the means through which enterprises meet that responsibility may vary according to the aforementioned factors and with the severity of the enterprise's adverse human rights impacts. Furthermore, Principle 17 continues by recognising that where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. In that case is recommended to identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.

In light of this, **FESI urges that any EU initiative on due diligence is reasonable in scope and results in a sufficiently clear and practical EU-wide framework, with precisely defined responsibilities.** To be effective, any EU initiative shall be pragmatic about companies' limitations from an operational and leverage perspective: **the EU framework shall be founded on business enterprises' own activities and activities directly linked to their operations, products or services by their business relationships**, i.e. where companies can have the greatest leverage. Moreover, due diligence may prove costly for SMEs, considering that generally they might lack of expertise or resources and that even for large groups some of the due diligence guidelines are challenging to implement. **The EU shall take SMEs' specificity into account: special incentives and capacity building are always beneficial.**

4. The state has the duty to protect human rights

The central role and responsibility of states for safeguarding human rights must be emphasised: enterprises cannot be put in charge of fully compensating lapses in governmental action. The risk of privatising human rights shall be avoided. Especially in view of the situation in countries with a weak governance structure and difficult political framework conditions, companies must not be made liable to compensate state failure.

In exercising due diligence, companies rely heavily on social audits. Multinational companies themselves are being audited in their emerging markets' operations by their own clients. Audits provide the buying company with an overview of the situation in a supplier company at a given point in time; however, there are

limitations to audits and even rigorous auditing cannot guarantee full overview of a supplier's behaviour. Furthermore, an average exporting factory may go through five to ten social compliance audits per year, most of which are very similar in content. Suppliers spend much needed human resources to accommodate audits; these could be instead allocated to continuous improvement programmes. To address audit fatigue, it is important to include the possibility of **recognising the compliance of supply chain due diligence industry schemes**, so that international partnerships or organisations, industry associations and groupings of interested organisations having due diligence schemes in place may apply to the Commission to have the supply chain due diligence schemes that are developed and overseen by them recognised as granting compliance with the EU policy by the Commission.

Academic research has shown that social audits can be a helpful complement to national labour inspections, but never a complete replacement for them. The latter underscores the importance of **capacity building for national labour inspection systems as a top priority**, especially as this enables to address deficits in all production sites within an entire economy and not just those connected to global supply chains and the sporting goods industry.

Under the UN Guiding Principles local governments indeed have the duty to protect human and labour rights in their respective countries. Accordingly, they are required to build and maintain the necessary regulatory framework and establish effective labour inspectorates that monitor workplace conditions in supplier factories. Furthermore, states shall take appropriate steps to ensure access to justice and grievance mechanisms for victims. Such mechanisms can be both nonjudicial and judicial.

Owing to several leadership programs, which have been developed and organised by FESI members with the objective of encouraging sustainable strategies in global supply chains, the sporting goods industry has acquired several key learnings that can be summarised as follows:

- a) Improvement of labour, environment, health and safety conditions are dynamic processes that cannot be managed only by one-off spot check audits and auditing measures. These should be complemented by a comprehensive management process.
- b) Local ownership and capacity are to be built and strengthened, in order to drive sustainable development.
- c) Basics for effective industrial relationship and social dialogues are to be promoted at country level.

Hereby, **FESI calls for the EU and Member States governments to continue and even strengthen their engagement with developing countries, for the purpose of building the required infrastructures and capacities**, e.g. to establish social security networks as a response to the COVID-19 crisis. **FESI urges the EU to consider these fundamental conclusions for further driving sustainable and economically prudent solutions.**

At the same time, any requirement or obligation with regard to social and environmental aspects imposed on brands and retailers that are valid in the European Union can create conflicts if implemented in other countries. These conditions might also be counterproductive for the economic developments and welfare of the sourcing countries, as they may be perceived as foreign intervention or as additional market barriers. Therefore, **FESI recommends an open consultation process with international organisations and governments of sourcing countries**, as this is key in elaborating how the EU can positively influence positive changes on field level. A successful solution for all, including the workers, will require collaborative

partnerships across all stakeholders in the supply chain with an emphasis for government dialogue between importing and sourcing countries. The sporting goods industry is willing to contribute to a multi-stakeholder group led by public authorities to collectively address concerns in the supply chain at a European and global level.

5. Due diligence shall focus on human rights

The protection of the environment is among the priorities of FESI and its members, from the fight against climate change to the circularity of the sector. While sporting goods companies acknowledge that there can be some overlaps between human rights and environment impacts, due diligence is already a very large and complex exercise. The EU is addressing environmental impacts and externalities, either generally or specifically, through other initiatives, e.g. the EU Green Deal, the Circular Economy Action Plan and the announced Strategy for the Textile Sector. Furthermore, environment and human rights due diligence pose different challenges and the skill sets to tackle them are different. Trying to solve both matters in a single policy discussion is expected to complicate the conversation and create unnecessary delays in arriving to positive and scalable results. Thus, **FESI recommends that any EU initiative on due diligence keep the focus on human rights.**

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About FESI

Founded in 1960 FESI - the Federation of the European Sporting Goods Industry represents the interests of approximately 1.800 sporting goods manufacturers (85% of the European market) through its National Sporting Goods Industry Federations and its directly affiliated member companies. 70-75% of FESI's membership is made up of Small and Medium Sized Enterprises. In total, the European Sporting Goods Industry employs over 700.000 EU citizens and has an annual turnover of some 81 billion euro.
