

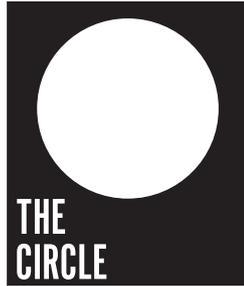
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# FASHION FOCUS: A PROPOSAL FOR NEW EU LEGISLATION ON A LIVING WAGE

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APRIL 2021





The Circle, a global NGO, founded by singer, songwriter and activist Annie Lennox, uses the collective power of women to support the world's most vulnerable women and girls. We focus our advocacy and fundraising support on the fight for equality, safety, and economic empowerment. Our partnerships with grassroots organisations across the world enable us to amplify the voices of women and girls most affected by human rights abuses. The Lawyers Circle, set up by Melanie Hall QC, is a powerful network of women who work at all levels of the legal profession and use their skills and experience to effect positive change.

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# GLOSSARY

CCP – Common Commercial Policy

CSR – Corporate Social Responsibility

EBA – Everything but Arms

EC – European Commission

EEA – European Economic Area

EEC – European Economic Community

EPZ – Export Processing Zone

EU – European Union

EuCD – European Consensus on Development

FTA – Free Trade Agreement

GATT – General Agreement on Trade and Tariffs

GFDDD – Garment and Footwear high risk low-wage Due Diligence Declaration

GSP – Generalised System of Preferences

ILO – International Labour Organisation

ILS – International Labour Standards

LDC – Least Developed Country

MEA – Multi-lateral Environment Agreement

MLD – Anti-Money Laundering Directive (or AMLD)

MNE – Multinational Enterprise

OECD – Organisation for Economic Co-operation and Development

PCD – Policy Coherence for Development

SAD – Single Administrative Document

SDG/s – Sustainable Development Goal/s

TEU – Treaty on European Union

TFEU – Treaty on the Functioning of the European Union

UCC – Union Customs Code

UN – United Nations

UNGPs – United Nations Guiding Principles (on Business and Human Rights)

UNHRC – United Nations Human Rights Council

WTO – World Trade Organisation



# FOREWORD I

Global supply chains operate in a world with many serious human rights risks. Since the 2013 Rana Plaza disaster our eyes have been opened to the exploitative labour conditions in garment factories. Improvements have been made, especially in factory safety, but the lack of living wages for garment workers, linked with excessive overtime, remains one of the most pressing issues. Trade unions have for years fought in vain for the payment of living wages. Despite occasional increases, minimum wages remain below the level needed to cover basic living costs. An important reason is the uneven balance of power between international brands and local producers. Governments of producer countries are hesitant about raising minimum wages out of a fear of losing international business. Market forces drive down prices and inhibit producers from paying higher wages. Higher productivity leads to lower prices not to higher wages. Despite the good will of parties engaged in voluntary living wage projects, their meagre impact shows that legislation is needed to bring the necessary systemic change.

Fortunately, the EU has announced mandatory human rights due diligence legislation for 2021. This upcoming legislation offers a unique opportunity to make living wages a reality in the textile sector. In this report, The Circle offers a concrete proposal for a due diligence mechanism within one sector (the garment sector) on one issue (a living wage). This added focus will enable new roles and responsibilities of business and governments to be tested. In so doing, it will increase the chance of the new legislation making the impact intended. Real improvements for workers on the ground is what so many stakeholders on both sides of the supply chain are longing for. Not just small adjustments but really bridging the wage gap in a three-year timeframe. The Circle shows the way with a proposal that is bold, concrete, and practical.

Now it requires the political will to embrace a pro-active role for the EU; to lay down (in collaboration with the ILO) concrete norms in respect of wages paid to workers making products sold by companies in the EU, and so to prevent breaches of human rights and protect EU consumers from buying products made exploitatively. The methodology to calculate living wages is there; ever more benchmarks for adequate minimum wages are available. The time is here for the EU to take a leading role in requiring EU businesses to work towards ensuring that the products they sell are made by producers that pay living wages. In parallel, the EU can engage with the production countries to support them in bringing their statutory minimum wage levels up above the benchmark and promoting collective bargaining.

This proposal is not about the EU setting wages for other countries but rather about ensuring that adequate minimum wages (living wages) are paid, which are the best guarantee for a level playing field for business. Both EU development cooperation as well as trade policy can be supporting tools to contribute to this human rights policy agenda.

I congratulate The Circle for this visionary, well designed and substantiated proposal. Now it is up to political decision makers. Wouldn't realising a living wage in the garment sector be a great achievement as a contribution to the SDG agenda? I believe it can be done.

**Jos Huber**

International labour rights expert

Formerly with the Ministry of Foreign Affairs of the Netherlands



## FOREWORD II

What are Human Rights good for if they are not implemented in daily life? As a diplomat, I witnessed harsh realities in the field, and as a former member of the European Parliament, I was involved in the adoption of the European Charter of Fundamental Rights. These experiences led me to the conclusion that human rights should not stay in the lofty domain of ideas. Rather, they must become concrete realities. In other words, one must transform human rights into tangible rights.

In a world characterised by complexity, rare are the minds that are capable of considering every dimension of a subject matter. This is as true for organisations as it is for individuals. The Circle rose to this challenge and addressed the problem from A to Z with a sense of determination, responsibility, vision, and common-sense. As stated in the preamble of the proposed EU regulation on living wages in the retail garment industry, 'decent work is core to human dignity'. It can feel very ambitious and adventurous to ensure that wages are increased in faraway countries. There is nothing simple about this, and it is much deeper than a question of money and financial output. The issue is also political, cultural, diplomatic, and institutional. However, The Circle concludes that, ultimately, a large part of the solution lies with state governance.

This proposed EU regulation will follow pioneering initiatives such as the UK Modern Slavery Act and the Devoir de Vigilance in France. For far too long, consumers have taken the easy route in turning a blind eye towards the labour conditions behind the products they purchase. However, this wilful ignorance is decreasing thanks to initiatives following the Rana Plaza tragedy and the current global pandemic. It is nevertheless disturbing to see how international institutions' timeframes do not necessarily match up to the timescale of actual human beings: with respect to human lives, every single day counts.

This initiative of The Circle has many merits, not least of which is the fact that it provides the EU Parliament with a ready-to-debate draft regulation. There is no room for yet more excuses; it is time for action.

### **François Zimeray**

Attorney at law to the Paris and Geneva Bars  
Former Ambassador of France  
Former Member of the European Parliament

## EXECUTIVE SUMMARY

The starting point for our proposal is that receipt of a minimum wage sufficient to sustain a basic decent life ('a living wage') is a fundamental human right recognised in international law since at least 1919. This has been reiterated in numerous international Declarations, Recommendations, and Agreements. Despite that, in most garment and footwear producing countries, the minimum statutory wage comes nowhere close to being enough to support a decent life. Indeed, it is largely set at levels that entrench poverty, prevent development and negate human dignity.

Our proposal addresses one of the key structural causes of poverty wages in garment producing countries: the high mobility of demand. Purchasers (companies) of footwear and garments can move from one production zone to another to obtain the lowest labour costs, treating labour as if it were nothing more than a commodity. In this context, governments cannot increase statutory minimum wages without risk of losing business (jobs) to lower wage countries, and workers have little or no power to effect change. Our proposal aims to reverse this 'race to the bottom' and create an incentive for garment producing countries to have statutory minimum wages set at adequate levels.

The proposal also addresses the real difficulty faced by garment and footwear retailers that do wish to ensure their products are made by workers paid an adequate wage. Generally, garment and footwear factories pay workers only the statutory minimum wage. As a matter of practical reality, it is difficult for a lone retailer to attain higher worker wages for a particular production contract within a factory which produces for other customers. Accordingly, garment and footwear retailers' due diligence statements tend to admit that the workers who made their products were paid no more than the statutory minimum wage, that is, that their goods were produced by workers who were not paid enough to sustain a basic decent life; put simply, in breach of their right to a living wage.

The proposed EU regulation in this report aims to achieve two things. First, and most importantly, by targeting EU importers and retailers' purchasing practices, it aims to achieve a gradual increase in statutory minimum wages in garment producing countries, so that after three years the level should be no less than that necessary to sustain a basic decent life. Secondly, and in the interim, it aims to encourage factories to change their practices and pay their workers significantly more than the statutory minimum wage so that retailers can use those production facilities without breaching the stringent additional due diligence requirements of the regulation. Thus, the approach should achieve real change on the ground as well as longer term legislative changes.

The proposed regulation uses legislative techniques already applied by the EU to imports from territories with risks of human rights and environmental abuses, for example, timber and minerals coming from areas of environmental risk or conflict zones. The Commission (in cooperation with the ILO) would apply a formula to determine the point at which wages in a garment producing country risk being so low as to be inadequate to sustain a basic decent life (the 'at risk wage point'). If the statutory minimum wage in that country falls below that point, then the country will be listed in an Annex to the proposed regulation. In addition, should a garment producing country not guarantee the right to collective bargaining, that too will be cause for it to be listed on the Annex. The proposed regulation will only apply to importers and retailers that purchase garment and footwear products made in countries listed on the Annex. As soon as collective bargaining is guaranteed and the relevant statutory minimum wage exceeds the 'at risk wage point', the country will be removed from the Annex, and retailers using those countries will no longer be subject to the heightened due diligence obligations contained in the proposed regulation.

The proposal allows for a three-year transition period in which the 'at risk wage point' is raised in stages, enabling countries to gradually increase statutory minimum wages and ensure collective bargaining so as not to be listed on the Annex.

Where the proposed regulation applies, importers and buyers in the EU will be subject to stringent additional due diligence obligations in respect of wages. Specifically, they will be required to attest to having taken all reasonable measures to ensure that the workers who made their products were paid a 'living wage'. This is a wage that must be *more than* the 'at risk wage point' set for the relevant country or territory in the proposed regulation. Thus, retailers will be required to engage in the process of assessing what a proper wage is – it will not be sufficient for them merely to attest that more than the 'at risk wage point' was paid. Potential fines and sanctions will apply. The consequence of the new regime should be to make companies engage actively in relation to wage levels paid to workers producing their goods. That in turn would be likely to lead to factories paying above the statutory minimum wage (and the relevant 'at risk wage point' set out in the proposed regulation) in order to retain and attract business.

Crucially, the proposal should have the effect of encouraging governments to increase the statutory minimum wage so that their country is removed from the scope of the proposed regulation, thus potentially becoming a more attractive production country for retailers. We hope that the proposal will spark a discussion about new legislative means that could be used to reverse the structural deficiency in the garment and footwear labour market, specifically to reverse the race to the bottom in terms of wages.

Within the discussion of general due diligence requirements, particular attention needs to be given to certain sectors. The garment and footwear sector is one of them; a sector that employs millions of women on grossly inadequate wages. This is the third stage in five years of work on this problem by The Circle but the exploitation and discussion about how to end it has been going on for decades. It is time for some solutions.

**Jessica Simor QC**

**In its simplest form our proposal is a three-step process as set out below. Each step includes additional considerations, outlined briefly here and explained fully in the draft regulation.**

### STEP ONE

The European Commission shall identify “high risk low-wage countries” and these shall be listed in ANNEX I to the Regulation.



- The regulation applies to imports and sales of garments and footwear on the EU market from “garment and footwear (GF) producing countries”, defined as countries from which imports of GF into the EU exceed a total set annual value (to be defined by the Commission as appropriate).
- The Commission recognises the diverse systems used by third countries to set wages.
- The “wage risk point” is an estimate of the minimum wage necessary for a GF worker to sustain a basic decent life.
- A “high risk low-wage” country is one where the statutory minimum wage falls below the wage risk point calculated by the Commission and/or the right to collective bargaining is not guaranteed.
- Countries shall be subject to annual reassessment with the possibility of being removed from or added to Annex I.
- A transition period of three years is included, allowing time for countries to raise their statutory minimum wages incrementally.

### STEP TWO

Any importer and/or trader of goods produced within an ANNEX I country shall be subject to additional due diligence (DD) requirements, import verifications and transparency expectations.



- Additional DD only applies to the final stages of production (cut and sew) and will need to be certified
- Import DD requirements include: verifying that the products were made by workers paid a living wage (that is, more than the wage risk point) and the right to collective bargaining
- A requirement to publish specified information on their websites.
- Member States shall designate competent authorities to ensure compliance and apply sanctions and penalties where necessary.

### STEP THREE

Infringements shall be sanctioned by effective, proportionate, and dissuasive penalties.

- Penalties designed and implemented by Member States shall be set, including potentially criminal sanctions, relating to the liabilities of the Directors of the importer and/or trader.



# INTRODUCTION

Since we published our last report eighteen months ago,<sup>1</sup> COVID-19 struck bringing much economic activity to a standstill and starkly exposing the extreme vulnerability of workers in global supply chains.

The impact on the fashion industry has been profound. As demand fell away, many clothing companies cancelled production contracts, invoking *force majeure* clauses or defaulting on payments. Factories closed and workers were let go, often without being paid for work they had completed. One study estimated that garment workers lost between \$3.19 - \$5.78 billion in unpaid wages in the first three months of the pandemic alone (March-May 2020).<sup>2</sup> This has left vast numbers of garment workers (a workforce that totals over 80 million globally<sup>3</sup>), the majority of whom are women, in an even weaker position than they were before the pandemic. With reduced or nil income and no savings, many have faced destitution, with no safety net to fall back on.

The fashion industry, with an estimated global value of \$2.5 trillion, has a history of poverty wages. Despite companies signing up to voluntary commitments, a 2019 report showed that no brand could show that a living wage was being paid to workers in developing countries.<sup>4</sup> It is precisely because of this pre-pandemic injustice that garment workers were so vulnerable when the pandemic hit.

There are various predictions about how the fashion industry will emerge from this crisis.<sup>5</sup> Some consider that it will recover more slowly than the rest of the economy, with a permanent reduction in consumption levels and a change in consumer attitudes. Others predict that the fashion brands that survive will do so because they have developed more resilient supply chains, including bringing elements of production closer to home, potentially even within their own jurisdiction. The ongoing, and perhaps permanent, retraction of the industry presents new challenges for workers within global supply chains. This includes indications that some operators are squeezing suppliers even more on price, which will inevitably push wages down yet further.<sup>6</sup>

It is within this context that we offer this proposal; our thoughts on how the EU could regulate to generate an upward trend in wages for workers in the garment industry's global supply chains. We are convinced that the time is now ripe for such a change. Workers have suffered for too long. As nations make promises to "build back better" in the years ahead, worker remuneration can no longer be allowed to embed poverty and prevent development; wages sufficient to ensure a decent life must be put at the forefront of sustainability efforts – exploitation must end.

## Background

Our involvement in this area of advocacy began with the film, *The True Cost*,<sup>7</sup> executive produced by two of our Ambassadors, Livia Firth and Lucy Siegle. Women in the Lawyers Circle – our members who use their skills to progress social justice – were struck by the film and considered, particularly in relation to poverty wages, that this was not an insurmountable problem so much as a failure of will in the face of the promise of larger profits. The very sort of injustice that the law is there to tackle and to solve. Thus, the determination to bring a legal solution to bear on this issue was born.

In our first report, *Fashion Focus: The Fundamental Right to a Living Wage*, released in 2017, we analysed the large body of international treaties, declarations, charters, guidelines and conventions that explicitly reference wages and the right to a living wage.<sup>8</sup> Whilst the language used varies between instruments,<sup>9</sup> the message from the international community is clear: a "living wage" is a basic and fundamental human right,<sup>10</sup> recognised in international law since 1919,<sup>11</sup> and is an essential component of a just and peaceful society. A minimum wage cannot be less than a living wage.

Despite more than a century of international agreement on this issue, wage levels within the global garment industry have remained at unacceptably low levels. As demonstrated in the report, a series of problems endure within this sector:

1. The statutory minimum wage in the largest garment producing countries comes nowhere close to a living wage, with most countries providing for minimum wage levels at less than 50% of that necessary to secure a decent life.<sup>12</sup>
2. A weak regulatory environment in garment producing countries means that even the limited relevant labour laws and regulations often remain unenforced.
3. Fashion retailers operate in a highly competitive market and can negotiate aggressively with supplier factories on price, which consequently drives down workers' wages.
4. The highly mobile nature of fashion retailers' business means they can move quickly to source their product from a lower wage economy, further increasing their negotiating leverage with factory owners.
5. The consequence of this is that there is a disincentive on states to increase their statutory minimum wage levels on the basis that factories would lose contracts to suppliers in lower minimum wage economies.
6. Even where fashion retailers wish to ensure that their products are made by individuals paid a living wage, it is difficult for them to ensure this within a factory that makes products for other companies and guarantees only the minimum wage.<sup>13</sup> A further risk arises from the possibility that a factory sub-contracts the work.

**The essential problem can therefore be summed up as deriving from a perverse incentive within a globalised sector whereby states that decide to increase their statutory minimum wages risk losing business to other states with lower minimum wages.<sup>14</sup>**

Many large clothing companies source from these countries. They say in their published codes of conduct and CSR reporting that they pay the applicable national minimum wage. Since these come nowhere close to that needed to sustain a decent life, their claims are in effect an admission that their goods are produced in breach of fundamental rights and international labour standards (namely the right to a living wage).

In the face of such a situation we became convinced that a legal solution that tackles the cause of the problem by correcting this dynamic should be possible and we set out to explore how this could be framed within an EU legal context.

In our 2019 report, *Fashion Focus: Towards a Legal Framework for a Living Wage*,<sup>15</sup> we explored the extent to which the European Union has shown itself willing to regulate matters that happen beyond its borders. We examined 11 diverse areas of EU regulation that operate with extra-territorial effect and considered how these might provide precedents for an EU regulation on a living wage. There are five key principles that underpin existing extra-territorial regulations, all of which have relevance to poverty wages within fashion's global supply chains:

- (a) that the EU should not cause harm;
- (b) that the EU should be protected from anti-competitive behaviour caused by lower standards outside the EU;
- (c) that the EU acts to address abuses of power;
- (d) that the EU supports the sustainable development goals; and
- (e) that the EU seeks to ensure compliance with international law.

Considering these principles, and the mechanisms the EU had already implemented in other

high-risk areas, we concluded not only that there was legal scope for the EU to act with regard to wages in global supply chains but also that both the Parliament and Commission would be open to considering options that combine wage level obligations with due diligence standards.

## An increased appetite for change?

The appetite for change on this issue seems even stronger now in the wake of the global pandemic than when we published our last report. There are multiple initiatives currently progressing at the EU that indicate considerable political will to regulate for both environmental **and** social abuses in global supply chains.<sup>16</sup> Additionally, on 7 December last year, the Council adopted a decision and a regulation establishing a global human rights sanctions regime, allowing it to target individuals, entities and bodies – including state and non-state actors – responsible for, involved in or associated with serious human rights violations and abuses worldwide, no matter where they occurred.<sup>17</sup>

## Format of this report

The body of this report is written and structured to emulate a European Commission proposal for an EU regulation. It provides the full development of the initial concept we proposed in our last report, having taken in the feedback and advice we received at our 2019 Living Wage Symposium and through discussions with stakeholders since then.

In presenting this “shadow proposal” we hope to trigger debate and discussion around alternative models. Specifically, our objective is to draw the focus of debate towards actionable solutions that will reverse the current “race to the bottom” regarding wages in the garment industry’s global supply chains. As the EU plans its post-pandemic recovery and develops its mandatory due diligence proposals, we hope that this sectoral proposal will add to the discussion and influence the approach finally adopted.

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- <sup>7</sup> *The True Cost*, 2015. Directed by Andrew Morgan. [Available at: <https://truecostmovie.com/>]

<sup>8</sup> The Circle, 2017. *Fashion Focus: The Fundamental Right to a Living Wage*. pp27-31 [Available at: <https://www.thecircle.ngo/wp-content/uploads/2015/11/Fashion-Focus-The-Fundamental-Right-to-a-Living-Wage-1.pdf>]

<sup>9</sup> Including, for example: “a living wage”, “a living minimum wage”, “a just share of the fruits of progress”, “just and favourable remuneration”, “fair remuneration”, “the best possible wages [...] at least adequate to satisfy the basic needs of the workers and their families”.

<sup>10</sup> We find “a living wage” to be the clearest and most widely accepted option for describing “a wage sufficient to maintain a decent standard of life”.

<sup>11</sup> Tracing these international agreements back to the 1919 Treaty of Versailles, when 32 countries met in Paris to broker peace at the end of WWI, we see the recognition that there was a relationship between peace and poverty; that the protection of wages and the status of labour was a critical issue.

<sup>12</sup> Our first report presented evidence from 14 major garment producing countries across the globe. Collecting country-specific data via a network of legal professionals we explored whether minimum wage legislation in those states provides for a living wage. In all we found that it did not: the minimum wage ranged from as little as 6% of a living wage to, at best, 57%.

<sup>13</sup> Starmanns, M. 2017. *Purchasing practices and low wages in global supply chains: Empirical cases from the garment industry*. Conditions of Work and Employment Series No. 86. ILO. [Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_561141.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_561141.pdf)]

<sup>14</sup> This is a dynamic that is now being recognised as impacting wages for garment workers within EU states. See Clean Clothes Campaign, 2021. *Another Wage is Possible. A cross-border base living wage in Europe*. [Available at: <http://cleanclothes.org/livingwage/europe>]

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<sup>16</sup> European Commission, 19 October 2020. *Commission Work Programme 2021. A Union of vitality in a world of fragility*. [Available at: [https://ec.europa.eu/info/sites/info/files/2021\\_commission\\_work\\_programme\\_and\\_annexes\\_en.pdf](https://ec.europa.eu/info/sites/info/files/2021_commission_work_programme_and_annexes_en.pdf)].

<sup>17</sup> Official Journal of the European Union. Vol. 63. *COUNCIL REGULATION (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses*. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:410:FULL&from=EN>]



**This is a proposal of The Circle NGO and is in no way to be misconstrued or misrepresented as being an EU publication or constituting part of the EUs workplan**

**Proposal for a  
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on due diligence and import obligations regarding  
living wages in the retail garment sector supply chain**

**EXPLANATORY MEMORANDUM**

**1. CONTEXT OF THE PROPOSAL**

**Grounds for and objectives of the proposal**

The central objective of the proposal is to achieve an increase in wages paid to garment workers specifically in garment and footwear producing countries, in accordance with the EU's commitment to sustainable development and the protection of human rights, as well as the need to protect EU consumers from social dumping and from purchasing goods produced in breach of human rights standards. The key mechanism for achieving that objective is by way of an increase in the statutory minimum wage levels for garment workers in garment and footwear producing countries. Contrary to fundamental rights, these are significantly below that necessary to sustain a basic decent life. The proposal should have the effect of raising statutory minimum wage levels by removing the disincentive that currently exists for governments in garment and footwear producing countries to keep statutory minimum wages at levels that are unsustainably low in order to retain external 'investment': 'the race to the bottom'. This perverse incentive has resulted in workers - predominantly women - being trapped in long-term poverty. Poverty wages undermine sustainable development. They also allow for social dumping onto the EU market. Even absent governmental moves to increase statutory minimum wages, the effect of the proposal should be that suppliers increase wages paid in their production facilities in order to retain business from operators importing and selling clothing and footwear into the EU market, which would be required in the context of due diligence obligations to ensure that such wages had been paid.

This proposal compliments the current Commission proposal on adequate minimum wages within the EU<sup>1</sup> and the European Parliament resolutions of 10 March 2021 on corporate due diligence and corporate accountability (2020/2129(INL)),<sup>2</sup> and on a WTO-compatible EU carbon border adjustment mechanism (2020/2043(INI)).<sup>3</sup> It fits into the EU's broader overarching objectives in the Treaty on European Union ("TEU") to promote and protect human rights in its external actions, most recently demonstrated by its enactment of Council Regulation 2020/1998 and Decision 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses.<sup>4</sup> It tackles the retail garment and footwear sector specifically because grossly inadequate wages and the lack of a right to collective bargaining are particularly prevalent in this sector. As these two core harms stem from governmental inaction<sup>5</sup> it is extremely difficult for

<sup>1</sup> Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union. 28 October 2020. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682&from=EN>]

<sup>2</sup> European Parliament resolution of 10 March 2021 with recommendation to the Commission on corporate due diligence and corporate accountability. [Available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html)]

<sup>3</sup> European Parliament resolution of 10 March 2021 towards a WTO-compatible EU carbon border adjustment mechanism. [Available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0071\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0071_EN.html)]

<sup>4</sup> COUNCIL REGULATION (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:410:FULL&from=EN>]

<sup>5</sup> It is of course also true that even where freedom of association is guaranteed under national law, employers may in practice make it impossible for that right to be exercised. See for example: <https://cleanclothes.org/union-busting>

enterprises on their own to counter and address them; something that is noted in Modules 6 and 7 of the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (“**the OECD Guidance**”). Thus, action by the EU needs to focus on making it beneficial for governments in the relevant countries to raise their statutory minimum wages and provide for the right to collective bargaining, that is, reverse the structural problem in the market that causes the ‘race to the bottom’. The approach, targeted on a specific but highly significant manufacturing sector largely occupied by women enables the EU to act in a focused and proportionate way, whilst creating wider effects; potentially the raising of minimum wage levels in developing countries in other sectors. Such an achievement would be in line with its equality objectives mandated in Article 8 of the Treaty on the Functioning of the European Union (“**TFEU**”) and further materialise the EU’s commitment to the UN sustainable development goals and its obligation under Article 3(5) of the TEU “[i]n its relations with the wider world [to] uphold and promote its values [and] contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights.”

### General context

Decent work<sup>6</sup> is core to human dignity. It ensures the sharing of wealth and the creation of a more just society. Where labour is exploited and remunerated at levels insufficient to sustain the basics of a decent life, the fruits of that labour produce unjustifiable profits made at a cost to human dignity and the life chances of those who generated them. Work in this case undermines sustainable development as set out in the UN Sustainable Development Goals (“**SDGs**”)<sup>7</sup>; decent sustainable work means work that not only alleviates absolute poverty but enables personal growth and human fulfilment. Properly paid labour is therefore a prerequisite for sustainable development. This proposal puts proper payment for labour front and centre in the strategy to achieve sustainable development that respects and furthers human dignity.

Its focus is therefore on wages and the right to freedom of association/collective bargaining in the retail garment and footwear sector. The grossly inadequate wages in this sector disproportionately affect women who make up around 80% of the workforce.<sup>8</sup> As we set out in our first report: *Fashion Focus: the Fundamental Right to a Living Wage*,<sup>9</sup> in the retail garment sector, wages well below that necessary to sustain a decent life remain a stubborn and persistent problem.

The cause of inadequate wages in the retail garment sector is structural. It derives not just from the over-supply of labour but also from the fact that demand for this labour is highly mobile and competitive, creating a ‘race to the bottom’ between states in terms of minimum wages. Because of the ability of companies to shift their production and purchasing from one country to another, wages are persistently forced down to below that needed to sustain a decent life. Labour, being treated as if it were merely a commodity, and aggressive commercial practices driven by the power of global competition means that companies can move from market to market in search of cheaper sources and are able moreover, to force down prices by threatening to do so.<sup>10</sup>

Equally, those companies that do want to ensure that their products are made by workers who are paid proper wages are faced with severe practical difficulties. Factories will for the most part be

<sup>6</sup> ILO 87th Session. June 1999. *Decent Work: Report of the Director General*. [Available at: <https://www.ilo.org/public/english/standards/reln/ilc/ilc87/rep-i.htm>]

<sup>7</sup> <https://sdgs.un.org/goals>

<sup>8</sup> The EU has recognised that the majority of minimum wage earners are women and that its proposal for a Minimum Wage Directive within the EU also supports gender equality and the reduction of the gender pay gap. In the same way, a proposal that would have the effect of causing minimum wages to increase in developing countries, would support SDG 5 on gender equality.

<sup>9</sup> The Circle, 2017. *Fashion Focus: The Fundamental Right to a Living Wage*. [Available at: <https://www.thecircle.ngo/wp-content/uploads/2015/11/Fashion-Focus-The-Fundamental-Right-to-a-Living-Wage-1.pdf>]

<sup>10</sup> An analogous ‘race to the bottom’ problem has been recognised to exist in the EU with workers moving and undercutting wage levels in other Member States, see Posted Workers Directive: Directive 2014/67/EU7, allowing easy access to information on the statutory minimum rates of pay to ensure adequate minimum wage protection in the EU.

paying the statutory minimum wage and producing garments for multiple retailers. In practice it is difficult for a single purchaser either to insist on, or ensure that, for the production of its order, say a thousand shirts, the workers are paid significantly more than they are usually paid. In order for wages to increase at factory level all (or a significant majority) of purchasers would need to request the increase; such that the factory management could guarantee the wage increase across all production orders. Not only is this an unlikely scenario but it is made even more difficult by the prohibition under EU law, which applies extra-territorially, on retailers/purchasers discussing and agreeing labour costs and pricing with their competitors. We consider that the proposed Regulation would, however, incentivise factory owners to increase the wages they pay in order to attract purchasers who will need to ensure that adequate wages are paid to workers who make their products.

This proposal therefore targets the structural problem that underlies inadequate wages – namely, the ‘race to the bottom’. It aims to achieve an increase in statutory minimum wages in garment and footwear producing countries and to remove the incentive on such states to maintain their statutory minimum wages at inadequate levels. The conceptual idea behind the proposal is to remove the fear of disinvestment and create a positive incentive on states to raise their statutory minimum wage, so reversing the ‘race to the bottom’. Moreover, it is likely on its own to incentivise factories to increase wage levels, even absent state action on minimum wages.

The consequences of success would be significant; wages would be increased in line with the fundamental right to a living wage, companies would be at much lower risk of breaching this right in their supply chain or being subject to unfair competition from those willing to pay poverty wages, and social dumping in the EU, which undercuts EU jobs, would be reduced. Consumers in the EU would be protected from purchasing goods produced by workers paid less than necessary to sustain a decent life.

In summary, wages as a route out of poverty are crucial to the development agenda. And for wages to increase to a level that enables individuals to improve their lives, legislation that removes perverse incentives and triggers positive structural change is required. It is hoped that this proposal could be a means of achieving that change.

### **Efforts of individual countries and stakeholders cannot solve the problem**

The ILO has recognised that “*efforts of other stakeholders to promote workplace compliance can support, but not replace, the effectiveness and efficiency of public governance systems.*”<sup>11</sup> In this regard, voluntary codes or multi-stakeholder initiatives (“**MSIs**”) and more or less enforceable national due diligence obligations, which are largely dependent on the size of the relevant enterprise, cannot address the structural problem described above and have failed to produce significant increases in wages.<sup>12</sup> Human Rights Watch noted in the context of this sector that MSIs can be slow to adopt industry good practices or raise the bar on human rights standards.<sup>13</sup> Even the most basic good practices relevant to an industry – such as supply chain transparency – are often not made a condition of corporate membership. Only one MSI – the US Fair Labor Association – has thus far made supply chain transparency a condition of MSI membership and then only from March 2023. Most of the MSIs do not have any meaningful oversight over members’ poor purchasing practices, one of the key drivers of rights abuses in their global supply chains. Poor purchasing practices and their impacts on workers’ livelihoods have been exposed during the COVID-19 pandemic. Similarly,

<sup>11</sup> ILO 105th session. 10 June 2016. *Resolution concerning decent work in global supply chains 2016*. §10. [Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_497555.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_497555.pdf)]

<sup>12</sup> It is important to note that companies are increasingly willing to provide transparency, however, transparency does not address the fundamental problem of workers being paid far too little to sustain a decent life. See for example: Human Rights Watch, 2019. *Fashion’s Next Trend: Accelerating Supply Chain Transparency in the Apparel and Footwear Industry*. [Available at: <https://www.hrw.org/report/2019/12/18/fashions-next-trend/accelerating-supply-chain-transparency-apparel-and-footwear>]

<sup>13</sup> *Ibid.*

national due diligence obligations and national action plans (NAPs) under the UNGPs are at different levels of development and involve varying due diligence obligations.<sup>14</sup> Nevertheless, they all tend to be restricted to larger companies. The same applies in respect of the EU Directive 2014/95/EU (amending Directive 2013/34/EU) on non-financial reporting requirements on human rights and sustainability.

Crucially, compliance with even the most stringent of these due diligence rules, does nothing to address the widespread problem of low wages. Companies, which verify that the workers who made their products were paid the statutory minimum wage, are generally considered to have met their due diligence requirements. Very few, if any, can claim in their due diligence statements that the workers who made their goods were paid a living wage.<sup>15</sup>

That is not to say that garment and footwear retailers, and investors, have not recognised the need for higher wages. Platform Living Wage Financials (PLWF), an alliance of 15 financial institutions, encourages and monitors investee companies to address the non-payment of living wage in global supply chains.<sup>16</sup> The largest global brands have recognised the problem of poverty wages through their membership of ACT, which is a collaboration of 21 global companies representing a broad range of brands and labels and IndustriALL Global Union representing garment, textile and footwear workers from around the globe. ACT members claim to be committed to working together to help transform the way wages and working conditions are currently set in the global garment, textile and footwear sector and explicitly recognise that a living wage and collective bargaining at industry level are essential to ensure that workers also benefit from productivity growth and that a larger share of the added value stays with workers in the producing countries.<sup>17</sup> The objective of ACT is however, not to raise statutory minimum wage levels. Rather, it works to support negotiation between national representatives of manufacturers, such as employer organisations, and trade unions, towards collective bargaining agreements at industry level to achieve a living wage. Further, members commit to purchasing practices that itemise labour as an individual cost component.<sup>18</sup>

### Consistency with other policies and objectives of the Union

The proposal is in line with the four main priorities of the EU's strategic agenda for 2019-2024,<sup>19</sup> including the promotion of European interests and values on the global stage, protecting its citizens and developing a strong, vibrant economic base and a fair social Europe. Specifically, its intention to promote sustainable development and implement the 2030 Agenda and to implement the European Pillar of Social Rights. The Commission 2021 work programme includes a legislative proposal for a directive on sustainable corporate governance to be published in the fourth quarter of 2021. According to the inception impact assessment, the issues to be regulated include a duty of environmental and human rights due diligence in companies' own operations and value chains. It is in line with the communication from the Commission of 14 January 2020: 'A Strong Social Europe for Just Transitions,'<sup>20</sup> and its recognition that "a fair minimum wage" must be one that "allows for a decent living" and provides "fair and dignified conditions", as well as its decision to consult social

<sup>14</sup> The Circle, 2019. *Fashion Focus: Towards a Framework for a Living Wage*. Member states' due diligence regulations are considered at Annex B, pp81-83 [Available at: [https://thecircle.ngo/wp-content/uploads/2020/05/Towards\\_a\\_Legal\\_Framework\\_for\\_a\\_Living\\_Wage.pdf](https://thecircle.ngo/wp-content/uploads/2020/05/Towards_a_Legal_Framework_for_a_Living_Wage.pdf)]

<sup>15</sup> Fashion Checker (Tracker of living wage claims by fashion companies): <https://fashionchecker.org/brand-profile.html?q=8749>

<sup>16</sup> Platform Living Wage Financials: <https://www.livingwage.nl/>

<sup>17</sup> ACT Members: <https://actonlivingwages.com/members/>

<sup>18</sup> ACT *Global Purchasing Practices Commitments*: <https://actonlivingwages.com/wp-content/uploads/2019/10/ACT-GLOBAL-PURCHASING-PRACTICES-COMMITMENTS-1.pdf> and *ACT Purchasing Practices: Accountability & Monitoring*: [https://actonlivingwages.com/wp-content/uploads/2019/10/ACT-Info-Brief\\_PPC-and-accountabilityv2-2.pdf](https://actonlivingwages.com/wp-content/uploads/2019/10/ACT-Info-Brief_PPC-and-accountabilityv2-2.pdf)

<sup>19</sup> European Council. 20 June 2019. *A new strategic agenda for the EU. 2019-2024*. [Available at: <https://www.consilium.europa.eu/en/eu-strategic-agenda-2019-2024/>]

<sup>20</sup> *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: A Strong Social Europe for Just Transitions*. 14 January 2020. [Available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52020DC0014>]

partners on how to ensure a fair minimum wage for workers in the Union.<sup>21</sup> In that regard, it also aligns with the need to protect EU citizens from social dumping, which President Von der Leyen has recognised damages EU citizens as well as the development agenda.<sup>22</sup>

The proposal is in line with the EU's commitment to the UN Guiding Principles for Business and Human Rights<sup>23</sup> to respect, protect and fulfil human rights and fundamental freedoms and its commitments to sustainable development, as set out in the 2030 Agenda for Sustainable Development,<sup>24</sup> the ILO labour conventions and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.<sup>25</sup>

The proposal builds upon EU Trade policy's objectives that "*can help to drive change both within our single market and around the world, notably by using its tools (multilateral, bilateral or unilateral) to foster a sustainable approach to trade and investment and to contribute to development*". It directly aims at engaging with the EU trading partners on "*the need to address joint challenges*" that include human and labour rights, or gender equality issues".<sup>26</sup>

### Existing provisions in the area of the proposal

There are no EU provisions that directly concern the area of the proposal. However, there are several that concern analogous issues or involve similar approaches to that suggested in this proposal. These include due diligence, transparency or disclosure obligations, for example in the context of financial reporting and provisions that seek to prevent companies operating in the EU from engaging in, whether directly or through their supply chains, exploitation and abuse of people and the environment outside the EU. They include the following:

- Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment
- Sanctions or restrictive measures adopted under Article 215 TFEU, most recently: Council Regulation 2020/1998 and Decision 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses,
- Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer
- Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008
- Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species

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<sup>21</sup> "Minimum wages should be set according to national traditions, through collective agreements or legal provisions. A well-functioning collective bargaining between employers and unions is an effective way to set adequate and fair minimum wages, as workers and employers are those who know their sector and their region the best. The Commission launches today a first stage consultation of social partners on how to ensure fair minimum wages for workers in the Union." [*Ibid.* p.9]

<sup>22</sup> *State of the Union Address by President von der Leyen at the European Parliament Plenary*. 16 September 2020. [Available at: [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/speech_20_1655)]

<sup>23</sup> United Nations, 2011. *Guiding Principles on Business and Human Rights*. [Available at: [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)]

<sup>24</sup> United Nations, 2015. *Transforming our world: the 2030 Agenda for Sustainable Development*. [Available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>]

<sup>25</sup> *OECD Guidelines for Multinational Enterprises and OECD Due Diligence Guidance for Responsible Business Conduct*. [Available at: <https://mneguidelines.oecd.org/mneguidelines/>]

<sup>26</sup> *European Commission. A renewed trade policy for a stronger Europe. Consultation Note*. 16 June 2020. [Available at: [https://trade.ec.europa.eu/doclib/docs/2020/june/tradoc\\_158779.pdf](https://trade.ec.europa.eu/doclib/docs/2020/june/tradoc_158779.pdf)]

- Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors
- Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons
- 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 (adopted under Article 192 TFEU – environment) (“**Timber Regulation**”).
- Regulation 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 (adopted under Article 207 CCP) (“**Conflicts Minerals Regulation**”).
- Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (Text with EEA relevance) (“**Financial Disclosures Regulation**”).
- 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 Text with EEA relevance (“**Non-Financial Reporting Directive**”).
- Council Directive 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing (“**4<sup>th</sup> Anti-Money Laundering Directive**”), for example Article 13(1), 14(4) and enhanced due diligence obligations in relation to at risk countries: Article 18(1).
- Council Directive 2019/633 Unfair Trading Practices in Business-to-Business Relationships in the Agricultural Food Supply Chain Directive (“**Agricultural Supply Chain Directive**”).
- Regulation (EC) No 765/2008 of the European Parliament and the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, OJ L218, 13.8.2008, p.30

#### **Applicable international instruments in the area of the proposal**

##### Right to a living wage:

- OECD Guidelines for Multinational Enterprises, Chapter V, Paragraph 4.b.
- OECD Guidance on Due Diligence in the Garment and Footwear Sector: Module 6.
- ILO Constitution 1919: “the provision of an adequate living wage”
- ILO Declaration of Philadelphia 1944: “a minimum living wage to all employed and in need of such protection”.
- ILO Protection of Wages Convention, 1949 (No. 95) and Recommendation, 1949 (No.85).
- ILO Minimum Wage Fixing Convention, 1970 (No. 131) and Recommendation, 1970 (No.135).
- ILO Protection of Workers’ Claims (Employer’s Insolvency) Convention, 1992 (No.173) and Recommendation, 1992 (No.180).
- ILO Declaration 2008 on Social Justice for a Fair Globalization.
- ILO Centenary Declaration 2019 Ch III, Article B(ii)

- UN Charter on Social, Economic and cultural rights, Article 7.
- Universal Human Rights Declaration, Article 23.

Right to collective bargaining:

- OECD Guidelines for Multinational Enterprises, Chapter IV. Human Rights
- OECD Guidelines for Multinational Enterprises, Chapter V. Employment and Industrial Relations
- OECD Guidance on Due Diligence in the Garment and Footwear Sector: Module 7.
- ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- ILO Workers' Representatives Convention, 1971 (No. 135); Recommendation 1972 (no 143)
- Universal Declaration of Human Rights Article 23
- International Covenant on Civil and Political Rights Article 22
- International Covenant on Economic, Social and Cultural Rights, Article 8

## 2. LEGAL ELEMENTS OF THE PROPOSAL

### **The role of the EU in ensuring adequate wages: a summary of the proposal**

This proposal entails the EU engaging with the substantive meaning of '*the fundamental right to a minimum wage sufficient to ensure a decent life*' and taking action with extra-territorial implications in relation to breaches of that right. In that regard it involves the EU doing what it has been willing to do in relation to products,<sup>27</sup> data,<sup>28</sup> competition law,<sup>29</sup> money laundering<sup>30</sup> and unfair contract trading practices in relation to companies trading within the EU. Thus, the EU has been willing to take steps in relation to unlawful and dangerous practices taking place outside the EU in so far as they potentially affected EU consumers. Under this proposal the EU would do the same; it would be taking steps to reduce to risk to EU consumers of them purchasing goods made by people outside the EU, whose fundamental rights are being violated.

Whilst essentially a proposal on due diligence obligations, it imports different and specific requirements, as well as consequences for breach of those requirements, depending on the risk level in the country of production. Thus, it goes beyond merely requiring companies to satisfy themselves, for example, that their suppliers pay the relevant statutory minimum wage, however insufficient. Companies that choose to use suppliers in countries where the minimum wage is manifestly below that necessary to sustain a decent life will be required to provide additional information in relation to their supply chain and ensure that the labour used to produce the goods that they import is adequately rewarded. In this regard, it is a new proposal and something that has not yet been discussed at a pre-legislative or legislative stage.

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<sup>27</sup> See for example the EU Timber Regulation (EU Directive 995/2010) and the Conflicts Minerals Regulation (Regulation 2017/821). Reference could also be made to the EU rules that apply to origins of the products which come from the State of Israel in its internationally recognised borders ('made in Israel'), and those which come from the settlements in the territories that international law defines as occupied since June 1967 (cf. Judgment in Case C-363/18. 12 November 2019).

<sup>28</sup> The General Data Protection Regulation treats the location of the data as irrelevant if the data being processed is processed by an EU entity.

<sup>29</sup> The European Commission interprets anti-competitive and abuse of dominant provisions as applicable irrespective of where the conducts happens if its effects are felt within the EU.

<sup>30</sup> The Fourth EU Directive on Money Laundering requires that money be recognised as laundered even where the relevant activities took place outside the EU.

It draws, however, on analogous provisions such as the fourth MLD, which imposes additional due diligence obligations in relation to financial dealings with countries that have been identified as 'at risk', as well as the Conflict Mineral Regulation and the Timber Regulation.<sup>31</sup> Similarly, the Agricultural Supply Chain Directive blacklists certain practices in the food supply business even in relation to contracts with suppliers outside the EU. Another example is the EU list of non-cooperative jurisdictions for tax purposes, which is a tool to tackle tax fraud or evasion: illegal non-payment or under payment of tax; tax avoidance: use of legal means to minimise tax liability; money laundering: concealment of origins of illegally obtained money and lists non-EU countries that encourage abusive tax practices, which erode member states' corporate tax revenues. The aim of that list is not to name and shame countries, but to encourage positive change in their tax legislation and practices, through cooperation. The same is the case in respect of this Proposal.

The core idea is grounded in the EU's willingness to take action to prevent harm by companies trading in the EU and to provide moral leadership with respect to human rights. The proposed measures, which will apply to labour in non-EU states will be complimented by the Commission Proposal in relation to a living wage within the EU. Both pursue the purpose of sustainable development and human rights. Both ensure fair competition in the single market and further the general objective of the EU internal market.

In broad terms the proposal is for companies that purchase or produce goods for sale in the EU in countries where there is no minimum statutory wage or where there is such a wage but it is insufficient to provide for a decent life, to be under heightened due diligence and substantive obligations, with potentially civil and criminal liability for non-compliance. It is believed that, as in other areas such as competition law, data protection, and money laundering, the dissuasive effect of potential liability would have significant behavioural consequences, that would in themselves improve human rights compliance by businesses.

The EU Commission would determine annually a wage level below which an individual could not reasonably live a decent life in the relevant non-EU garment and footwear producing third country ("the wage risk point"). This would be defined as a minimum baseline point and not as a minimum living wage. These 'wage risk points' would be provided by way of an annual decision. In countries with a minimum statutory wage ("the statutory wage"), that wage would then be compared by the Commission with its calculated wage risk point. Where a country's statutory wage was less than the wage risk point or there was no minimum wage, it would be placed in Annex I.

Further, any garment and footwear producing country that does not ensure the right to collective bargaining (and freedom of association) and enable workers to form and join organisations of their own choosing (ILO Convention No. 87 and ILO Core Labour standards) would also be placed on Annex I.

Retail garment companies trading in the EU that chose to manufacture or purchase their goods in countries in Annex I would be bound by the requirements of the Regulation, and as such be subject to a higher level of due diligence to ensure that the workers who had produced the relevant goods had been paid no less than the wage risk point, as calculated by the European Commission and had

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<sup>31</sup> In the context of timber imports into the EU, the EU also uses Voluntary Partnership Agreements (VPAs) between the EU and timber-producing countries to promote trade in legal timber products and help to close the EU market to illegal products. A VPA guarantees that timber and timber products exported to the EU are legal. Each VPA defines 'legal timber' according to the laws and regulations of the timber-producing country. Negotiating the Agreement provides an opportunity for private sector and civil society to get involved in developing national legality standards. Each VPA sets out a strong timber legality assurance system that can verify that a consignment of timber is legal and merits the award of a 'FLEGT licence'. FLEGT-licensed timber will be free to enter the EU market as it will automatically meet the requirements of the EU Timber Regulation. A VPA can help a timber-producing country achieve its development objectives by securing employment, increasing government revenues, strengthening the rule of law and safeguarding the rights of forest peoples: <https://www.euflegt.efi.int/home>. It is possible that an equivalent development could take place in the context of living wages.

not been deprived of the right to collective bargaining and freedom of association. This would be in line with companies' obligations under the UNGPs. The companies would be obliged to certify that they had paid a minimum living wage, which would be for them to calculate but in any event would have to be above the 'wage risk point'. This would ensure that companies would engage with wages paid to the workers who produce their goods and consider for themselves the wages that should be paid.

A breach of that due diligence obligation would potentially expose the company to large fines and even Director level criminal responsibility. There would also be a mechanism for compensation to ensure that at least a proportion of the fine reached the relevant workers.

### **EU commitment to sustainable development and the fundamental right to a living wage**

The ILO declaration on Social Justice for a Fair Globalization (**10 June 2008**)<sup>32</sup> is the third major statement of principles and policies adopted by the International Labour Conference since the ILO's Constitution of 1919, which first laid down the fundamental right to a minimum living wage.<sup>33</sup> It builds on the Philadelphia Declaration of 1944 and the Declaration on Fundamental Principles and Rights at Work of 1998 and is intended as a compass for the promotion of a fair globalisation based on Decent Work, as well as a practical tool to accelerate progress in the implementation of the Decent Work Agenda at the country level, including: *"policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection."*

**In June 2011**, the United Nations Human Rights Council (UNHRC) unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs) (UN Human Rights Council, 2011a and 2011b). The implementation of the UNGPs is strongly emphasised in the EU Action Plan on Human Rights and Democracy 2015-2019.<sup>34</sup> The responsibility of business enterprises to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. The latter emphasises that for there to be a *"link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential."*<sup>35</sup> Consistent with the UNGPs, the OECD updated its Guidelines for multi-national enterprises (MNEs) to include a new human rights chapter. Specifically, the Guidelines provided that MNEs *"operat[ing] in developing countries, where comparable employers may not exist, [should] provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families,"*<sup>36</sup> that is, MNEs should provide a 'living wage'.

<sup>32</sup> ILO 97th Session. 10 June 2001. *ILO Declaration on Social Justice for Fair Globalization*. [Available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms\\_371208.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf)]

<sup>33</sup> "The ILO is committed to promoting policies on wages and incomes that ensure a just share of the fruits of progress to all and a minimum living wage for all employed in need of such protection. In order to do so it undertakes research and provides evidence-based policy advice on minimum wages, public sector pay, wage bargaining and gender pay gaps. Since 2008, the ILO publishes the Global Wage Report, one of its flagship reports and an authoritative source of information on wage trends and policies at national and global levels." [Quote from ILO "Wages" website page: <https://www.ilo.org/global/topics/wages/lang-en/index.htm>]

<sup>34</sup> *EU Action Plan on Human Rights and Democracy*. [Available at: [https://eeas.europa.eu/sites/eeas/files/eu\\_action\\_plan\\_on\\_human\\_rights\\_and\\_democracy\\_en\\_2.pdf](https://eeas.europa.eu/sites/eeas/files/eu_action_plan_on_human_rights_and_democracy_en_2.pdf)]

<sup>35</sup> ILO 86th Session. 18 June 1998. *ILO Declaration on Fundamental Principles and Rights at Work*. [Available at: <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>]

<sup>36</sup> OECD, 2011. *OECD Guidelines for Multinational Enterprises*. Part I, Section V, §4b. [Available at: <http://www.oecd.org/daf/inv/mne/48004323.pdf>]

**On 25 September 2015**, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development (the '2030 Agenda'). The 2030 Agenda has at its core the Sustainable Development Goals (SDGs) and covers the three dimensions of sustainability: economic, social and environmental. Goal 8 of the 2030 Agenda calls for the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work. Furthermore, key aspects of decent work are widely embedded in the targets of many of the other 16 goals of the UN's new development vision. The Commission communication of 22 November 2016 on the next steps for a sustainable European future links the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, both within the Union and globally, take the SDGs on board at the outset.<sup>37</sup> In its conclusions of 20 June 2017 the Council confirmed the commitment of the Union and its Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner, in close cooperation with partners and other stakeholders.

In its Resolution concerning decent work in global supply chains of **8 July 2016**,<sup>38</sup> the ILO reiterated the responsibility of business to respect labour rights in their operations as laid out in the UNGPs, and the duty of states to adopt, implement and enforce national laws and regulations, and to ensure that the fundamental principles and rights at work and ratified international labour Conventions protect and are applied to all workers, taking into account other international labour.<sup>39</sup> Specifically, the ILO provided that Governments have *"the duty to adopt, implement and enforce national laws and regulations, and to ensure that the fundamental principles and rights at work and ratified labour Conventions protect and are applied to all workers"* and in that context it stated that Governments should: *"(h) Consider to include fundamental principles and rights at work in trade agreements, taking into account that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes. (i) Set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations, and the fundamental principles and rights at work for all workers, including migrant workers, homeworkers, workers in non-standard forms of employment and workers in EPZs. (j) Implement measures to improve working conditions for all workers, including in global supply chains, in the areas of wages, working time and occupational safety and health, and ensure that non-standard forms of employment meet the legitimate needs of workers and employers and are not used to undermine labour rights and decent work."*<sup>40</sup>

**On 17 March 2017** the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of 1977 (**ILO MNE Declaration**) was amended<sup>41</sup> to respond to new economic realities, including increased international investment and trade, and the growth of global supply chains as well as to take into account new labour standards and policy outcomes adopted by the International Labour Conference, the Guiding Principles on Business and Human Rights (2011) and the 2030 Agenda for Sustainable Development. The ILO MNE Declaration provides direct guidance to enterprises on social policy and inclusive, responsible and sustainable workplace practices. At paragraph 12 it provides: *"Governments of home countries should promote good social practice in accordance with this Declaration among their multinational enterprises operating abroad, having regard to the social and labour law, regulations and practices in host countries as well as to relevant international standards. Both host and home country governments should be prepared to have consultations with each other,*

<sup>37</sup> European Commission Memo. 22 November 2016. *Next steps for a sustainable European future - European action for sustainability: Questions & Answers*. [Available at: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_16\\_3886](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_3886)]

<sup>38</sup> ILO 105th session. 10 June 2016. *Resolution concerning decent work in global supply chains 2016*. [Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_497555.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_497555.pdf)]

<sup>39</sup> *Ibid.* §10

<sup>40</sup> *Ibid.* §§15-16

<sup>41</sup> ILO Press Release. 17 March 2017. *ILO revises its landmark Declaration on multinational enterprises*. [Available at: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_547615/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_547615/lang--en/index.htm)]

whenever the need arises, on the initiative of either.”<sup>42</sup> Further, that “Governments, especially in developing countries, should endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises.”<sup>43</sup> Stating that wages should be set to take into account: “(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; and (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment. Where the employer provides workers with basic amenities such as housing, medical care or food, these amenities should be of a good standard.”<sup>44</sup> In its Declaration of 2019, the ILO “call[ed] upon all Members...to work individually and collectively...with the support of the ILO, to further develop its human-centred approach to the future of work [including that]: ...All workers should enjoy adequate protection in accordance with the Decent Work Agenda, taking into account: (i) respect for their fundamental rights; (ii) an adequate minimum wage, statutory or negotiated.”<sup>45</sup>

On 27 April 2017, the European Parliament adopted by 505 votes to 49, with 57 abstentions, a resolution on the EU flagship initiative on the garment sector.<sup>46</sup> Members recalled the aggressive purchasing practices by the international wholesale purchaser and consequent widespread labour rights violations, including: poverty wages in this sector, noting that this is also detrimental to the European industry, leading to social dumping. Accordingly, the Parliament called for the Commission to propose binding legislation on due diligence obligations for supply chains in the garment sector, and to align these with the new OECD due diligence guidance for responsible supply chains in the garment and footwear sector in line with the OECD Guidelines for Multinational Enterprises which are importing into the European Union, the ILO resolution on decent work in supply chains and internationally agreed human rights, social and environmental standards. Specifically, it asked that this legislative proposal include core standards including a living wage and freedom of association and collective bargaining. Thus, the Parliament called for an effective and compulsory reporting system and due diligence for garment and footwear products entering the EU market and recommended that further action be taken to improve inspections and social audits in the clothing and footwear supply chain.<sup>47</sup> The European Commission rejected that approach, preferring a voluntary approach.<sup>48</sup>

On 7 June 2017 the Presidents of the Commission, Parliament and Council of the European Union signed a joint statement on the adoption of the new European Consensus on Development (“EuCD”).<sup>49</sup> The EuCD (a joint statement by the Council and the representatives of the Governments of the member states meeting within the Council, the European Parliament and the European

<sup>42</sup> ILO, 2017. *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*. [Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf)]

<sup>43</sup> *Ibid.* §42

<sup>44</sup> *Ibid.* §41

<sup>45</sup> ILO 108th Session. 21 June 2019. *ILO Centenary Declaration for the Future of Work*. [Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_711674.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711674.pdf)]

<sup>46</sup> *EU flagship initiative on the garment sector*. [Available at: <https://oeil.secure.europarl.europa.eu/oeil/popups/summary.do?id=1488116&t=e&l=en>]

<sup>47</sup> **Consumer information:** Parliament called for consumers to be provided with clear, trustworthy information about sustainability in the garment sector, where products originate from and the extent to which workers’ rights have been respected. It proposed, to this end, the development of **EU-wide labelling standards for “fair clothing”**, accessible to both multinational companies and SMEs, to assist customers in their purchasing decisions. **Trade preferences and sustainability:** Members considered that sustainable development chapters of EU trade agreements should be mandatory and enforceable. They called on the Commission to introduce tariff preferences for **demonstrably proven sustainably produced textiles** in the forthcoming reform of the GSP/GSP + rules and to promote the production of Fair Trade products through this instrument of tariff preferences. The Commission is called upon to: (i) continue to include the ratification of core ILO standards, health and safety inspection, and freedom of association in discussions on continued preferential trade with countries linked to the global supply chain for the garment sector, and; (ii) strengthen human rights, labour and environmental conventions under the Generalised System of Preferences.

<sup>48</sup> See the Commission response to Parliament’s *EU flagship initiative on the garment sector* at: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/2140\(INI\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/2140(INI)&l=en)

<sup>49</sup> *European Commission Statement. 7 June 2017. Joint public statement: Adoption of the new European Consensus on Development*. [Available at: [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_17\\_1547](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_1547)]

Commission) is “the cornerstone of the EU’s development policy, which is part of the overall EU response to the 2030 Agenda. The primary objective of EU development policy, as laid down in Article 208 of the Treaty on the Functioning of the European Union, is the reduction and, in the long term, the eradication of poverty.” Further, that “The EU and its Member States will apply the principle of policy coherence for development (PCD), and will take into account the objectives of development cooperation in all external and internal policies which they implement and which are likely to affect developing countries.”<sup>50</sup> “The EU and its Member States will pursue an end to hunger and all forms of malnutrition as well as promote universal health coverage, universal access to quality education and training, adequate and sustainable social protection, and decent work for all within a healthy environment. Progress in these areas will provide a stronger foundation for sustainable development.”<sup>51</sup> The EuCD specifically provides that: “The EU and its Member States will continue to support responsible business practices and responsible management of supply chains, respecting tenure rights and integrating human and labour rights, financial probity and environmental standards and accessibility. They will work to prevent human rights abuses and promote the UN Guiding Principles on Business and Human Rights. They will promote labour standards that ensure decent employment conditions and decent wages for workers, in particular those defined by the International Labour Organisation, both in the formal and informal sector...”<sup>52</sup> Further, “the EU and its Member States will help to create a more business-friendly environment in developing countries, that respects international human rights standards and principles. They will contribute to improving conditions for inclusive economic activity by promoting more sustainable policies and regulatory frameworks, human rights, including core labour standards and due diligence requirements, more conducive business environments, new business models and greater government capacity.”<sup>53</sup>

In **November 2017**, the European Parliament, the Council and the Commission proclaimed the European Pillar of Social Rights<sup>54</sup> to deliver on Europe’s promise of prosperity, progress and convergence, and make social Europe a reality for all. Principle 6 provides for a right to “fair wages that provide for a decent standard of living” specifically stating this requires that “[a]dequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented.”

On **7 March 2018** the OECD adopted Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector<sup>55</sup> and in **May 2018** its Recommendation on the OECD General Due Diligence Guidance for Responsible Business conduct,<sup>56</sup> which is applicable to all sectors. On 30 May 2018 the OECD adopted Due Diligence Guidance for Responsible Business Conduct to provide practical support to enterprises on the implementation of the OECD’s Guidelines for Multinational Enterprises, as well as to promote a common understanding among governments and stakeholders on due diligence for responsible business conduct and to help enterprises implement the UN Guiding Principles on Business and Human Rights as well as the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. The European Commission is represented at the OECD Investment Committee, which oversees the implementation of the OECD Guidelines for Multinational Enterprises and under which a Working Party on Responsible Business Conduct has been established. The Commission is actively involved in and supports the OECD's horizontal and sector-specific work, in particular on the financial sector due diligence; on

<sup>50</sup> THE NEW EUROPEAN CONSENSUS ON DEVELOPMENT ‘OUR WORLD, OUR DIGNITY, OUR FUTURE’. §10 [Available at: [https://ec.europa.eu/international-partnerships/system/files/european-consensus-on-development-final-20170626\\_en.pdf](https://ec.europa.eu/international-partnerships/system/files/european-consensus-on-development-final-20170626_en.pdf)]

<sup>51</sup> *Ibid.* §22

<sup>52</sup> *Ibid.* §54

<sup>53</sup> *Ibid.* §49

<sup>54</sup> European Pillar of Social Rights. [Available at: [https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights_en)]

<sup>55</sup> OECD, 2018. *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*. [Available at: [https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-in-the-garment-and-footwear-sector\\_9789264290587-en](https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-in-the-garment-and-footwear-sector_9789264290587-en)]

<sup>56</sup> OECD, 2018. *OECD General Due Diligence Guidance for Responsible Business Conduct*. [Available at: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>]

responsible supply chains in agriculture, minerals and garment and stakeholder engagement in the extractive sector.

On **1 September 2018** the ILO commenced a project with the Ministry for Foreign Affairs of the Netherlands to develop indicators for setting adequate wages, to be completed by 31 August 2021.<sup>57</sup>

In **June 2019** the ILO adopted the Centenary Declaration of the Future of Work, which in section III(B)<sup>58</sup> called upon all members to strengthen the institutions of work and ensure adequate protection of all workers. In particular, it declared that “[a]ll workers, regardless of their employment status or contractual arrangements, should be guaranteed: (ii) an adequate living wage; (iii) limits on maximum working hours; (iv) safety and health at work.”

In **July and November 2019** the European Commission President-candidate Ursula von der Leyen in presenting her political guidelines for the next Commission 2019–2024 to the European Parliament proposed an action plan to fully implement the European Pillar of Social Rights, including committing to “support those in work to earn a decent living.” In this regard, she committed her Commission “to proposing a legal instrument to ensure that every worker in our Union has a fair minimum wage, [which] should allow for a decent living wherever they work.” In that regard, she committed to ensuring that “by 2024 every worker should have a fair minimum wage.”<sup>59</sup> In her state of the Union Address on **20 September 2020**, Von der Leyen deprecated ‘dumping wages’ as “destroy[ing] the dignity of work, penalis[ing] the entrepreneur who pays decent wages and distort[ing] fair competition in the Single Market.” For this reason, she explained that the Commission would put forward “a legal proposal to support Member States to set up a framework for minimum wages that secure jobs and create fairness – both for workers and for the companies who really value them.”<sup>60</sup> On **13 October 2020** the Council published Council Decision (EU) 2020/1512/EU on guidelines for the employment policies of the Member States. Guideline 5 calls on Member States, including those with national statutory minimum wages, to ensure an effective involvement of social partners in wage setting, providing for fair wages that enable a decent standard of living and allowing for an adequate responsiveness of wages to productivity developments, with a view to upward convergence.<sup>61</sup> On **28 October 2020** the Commission put forward its proposal for a Directive to ensure adequate minimum wages are paid in EU member states.<sup>62</sup>

<sup>57</sup> ILO Project. *Indicators and methodologies for wage setting*. [Available at:

[https://www.ilo.org/global/topics/wages/projects/WCMS\\_736786/lang-en/index.htm](https://www.ilo.org/global/topics/wages/projects/WCMS_736786/lang-en/index.htm)]

<sup>58</sup> ILO 108th Session. 21 June 2019. ILO Centenary Declaration for the Future of Work. [Available at:

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_711674.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711674.pdf)]

<sup>59</sup> European Parliament Briefing. *The von der Leyen Commission's priorities for 2019-2024*. [Available at:

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646148/EPRS\\_BRI\(2020\)646148\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646148/EPRS_BRI(2020)646148_EN.pdf)]

<sup>60</sup> State of the Union Address by President von der Leyen at the European Parliament Plenary. 16 September 2020. [Available at:

[https://ec.europa.eu/commission/presscorner/detail/en/speech\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/speech_20_1655)]

<sup>61</sup> COUNCIL DECISION (EU) 2020/1512 of 13 October 2020 on guidelines for the employment policies of the Member States.

[Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D1512&from=EN>]

<sup>62</sup> Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union. 28 October 2020. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682&from=EN>].

On 5 November a consultation was opened: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12721-Initiative-on-adequate-minimum-wages>. Guideline 5 of Council Decision (EU) 2020/1512/EU calls on Member States, including those with national statutory minimum wages, to ensure an effective involvement of social partners in wage setting, providing for fair wages that enable a decent standard of living and allowing for an adequate responsiveness of wages to productivity developments, with a view to upward convergence. The Guideline also calls on Member States to promote social dialogue and collective bargaining on wage setting. It also calls on Member States and social partners to ensure that all workers have adequate and fair wages by benefitting from collective agreements or adequate statutory minimum wages, and taking into account their impact on competitiveness, job creation and in-work poverty. The general aim of the proposal is to ensure that the workers in the Union are protected by adequate minimum wages. Its goals include the promotion of collective bargaining, supporting the involvement of social partners, and the establishment of clear and stable criteria, that support statutory minimum wage adequacy. See also: Eurofound, 2020. *Minimum wages in 2020: Annual review*. [Available at:

[https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef20005en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20005en.pdf)]

On 7 December 2020 the Council adopted Regulation 2020/1998 and Decision 2020/1999 concerning restrictive measures against serious human rights violations and abuses.<sup>63</sup> These two important measures, adopted pursuant to Article 215 of the TFEU, enable the EU to adopt targeted restrictive measures to address serious human rights violations and abuses worldwide. The Decision provides for the freezing of funds and economic resources of, and the prohibition to make funds and economic resources available to, natural or legal persons, entities or bodies responsible for, providing support to or otherwise involved in serious human rights violations or abuses, as well as those associated with the natural and legal persons, entities and bodies.) Violations or abuses of freedom of peaceful assembly and of association is specifically included as an example of the kind of conduct that may be addressed (Article 2(1)(d)(iii)). In its Trade Policy Review of 18 February 2021, the Commission made clear that “[t]he new global human rights sanctions regime will also have a role to play to ensure compliance with human rights. With this regime, the EU equipped itself with a framework that will allow it to target individuals, entities and bodies – including state and non-state actors – responsible for, involved in or associated with serious human rights violations and abuses worldwide.”<sup>64</sup>

At the heart of all these principles, objectives and actions, to which the EU has committed and in relation to which the European Commission plays an active role, is the payment of decent wages - wages sufficient to enable workers to live a decent life, sharing in the fruits of wealth creation. As noted in the ILO Integrated Strategy on Fundamental Principles and Rights at Work (2017-2023): “fundamental principles and rights at work provide the foundation on which equitable and just societies are built. Without their realisation in law and practice, neither the ILO’s Decent Work Agenda nor the wider 2030 Sustainable Development Agenda can be achieved.”<sup>65</sup>

### EU Trade to promote sustainable development

The proposal accords with the trade strategy of the European Commission announced on 18 February 2021.<sup>66</sup> The strategy signals a renewed focus on strengthening multilateralism and reforming global trade rules to ensure that they are fair and sustainable. Specifically, the Commission states that “[w]here necessary, the EU will take a more assertive stance in defending its interests and values, including through new tools” and that it will put sustainability at the heart of its new trade strategy. In that regard, the Commission reiterated that “[t]he EU works with partners to ensure adherence to universal values, notably the promotion and protection of human rights. This includes core labour standards, and social protection in line with the European Pillar of Social Rights, gender equality, and the fight against climate change and biodiversity loss.”<sup>67</sup> Thus, the Commission resolved over the next decade in its trade strategy to “[include] promoting responsible business conduct and the respect of environmental, human rights and labour standards [and create] the conditions and opportunities for sustainable products and services.” Crucially, the Commission stated that: “Making this vision a reality will require action at all levels – **multilaterally, bilaterally and autonomously.**”

<sup>63</sup> COUNCIL REGULATION (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1998#ntc1-LI2020410EN.01000101-E0001>] and COUNCIL DECISION (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.LI.2020.410.01.0013.01.ENG&toc=OJ%3A2020%3A410%3ATOC>]

<sup>64</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS. Trade Policy Review - An Open, Sustainable and Assertive Trade Policy. p.13 [Available at: [https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc\\_159438.pdf](https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf)]

<sup>65</sup> ILO, 2019. Integrated Strategy on Fundamental Principles and Rights at Work 2017-2023. p.3 [Available at: [https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@ipec/documents/publication/wcms\\_648801.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipec/documents/publication/wcms_648801.pdf)]

<sup>66</sup> European Commission Press Release. 18 February 2021. Commission sets course for an open, sustainable and assertive EU trade policy. [Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_644](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_644)]

<sup>67</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS. Trade Policy Review - An Open, Sustainable and Assertive Trade Policy. p.13 [Available at: [https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc\\_159438.pdf](https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf)] p.6

In that regard, the Commission states that particular priority will be given to the implementation of commitments made by partners in relation to respect for core human and labour rights, as reflected in the UN fundamental conventions of the ILO and that one of the key objectives of the upcoming review of the Generalised System of Preferences (GSP) will be to further increase trading opportunities for developing countries to reduce poverty and to create jobs based on international values and principles, such as labour and human rights standards. Importantly, the Commission notes that:

“Imports must comply with relevant EU regulation and standards...under certain circumstances as defined by WTO rules, it is appropriate for the EU to require that imported products comply with certain production requirements. Global trade rules aim at securing a predictable and non-discriminatory framework for trade while safeguarding each country’s right to regulate in line with their societal preferences. The legitimacy of applying production requirements to imports is based on the need to protect the global environment or to respond to ethical concerns. Whenever the EU considers applying such measures to imported products, this will be done in full respect of WTO rules, notably the principle of non-discrimination and proportionality, aiming at avoiding unnecessary disruption of trade.”<sup>68</sup>

The EU has stated that it is fully committed to implementing Agenda 2030 and its Sustainable Development Goals into EU policies. EU law requires all relevant EU policies, including trade policy, to promote sustainable development. EU trade policy aims to ensure that economic development goes hand in hand with social justice, respect for human rights, high labour standards, and high environmental standards. This includes ensuring that EU trade policy helps to promote sustainable development by addressing specific issues within trade agreements, including environmental concerns, human rights, labour rights and responsible business.

To achieve these sustainable development aims, modern EU trade agreements require the EU and its trade partners to: follow international labour and environment standards and agreements; effectively enforce their environmental and labour laws; not deviate from environmental or labour laws to encourage trade or investment, and thereby prevent a 'race to the bottom'; sustainably trade natural resources, such as timber and fish; combat illegal trade in threatened and endangered species of fauna and flora; encourage trade that supports tackling climate change, and promote practices such as corporate social responsibility.<sup>69</sup> EU trade agreements with the following countries include rules on trade and sustainable development: Canada, Central America, Colombia, Peru, and Ecuador, Georgia, Japan, Mercosur, Mexico Moldova, Singapore, South Korea, Ukraine, Vietnam

After a debate involving EU institutions, EU Member States and civil society organisations, the Commission services published on 26 February 2018<sup>70</sup> a non-paper with 15 points for action to make the implementation of trade and sustainable development chapters more effective and to improve their enforcement: **the action plan on Trade and Sustainable Development**.<sup>71</sup> In that paper, the Commission noted that it had intensified its exchanges with the ILO in order to ensure a coherent approach in the implementation of the ILO conventions and that the ILO was ready to provide technical assistance on the ratification and implementation of international labour standards.<sup>72</sup> The

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<sup>68</sup> *Ibid.* pp.13-14

<sup>69</sup> European Commission “Sustainable development” website page: <https://ec.europa.eu/trade/policy/policy-making/sustainable-development/>

<sup>70</sup> *Non paper of the Commission services. Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements.* 26 February 2018. [Available at: [https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf)]

<sup>71</sup> *European Commission. Civil Society Dialogue on Trade and Sustainable Development.* 29 April 2019. [Available at: [https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc\\_157881.pdf](https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157881.pdf)]

<sup>72</sup> *Non paper of the Commission services. Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements.* 26 February 2018. p.4 [Available at: [https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf)]

same approach will be explored in the case of Multi-lateral Environment Agreements (“MEAs”). The Commission services prepare periodical updates of the implementation of the 15-point action plan.

The European Commission and the ILO have a longstanding partnership on supporting EU trading partner countries jointly identified to improve the application of the ILO Fundamental Conventions. This includes bringing labour law and practice in line with International Labour Standards (ILS), building the institutional capacity of public administrations, social partners and other relevant stakeholders to support law reform and reporting, and strengthening institutional frameworks to facilitate social dialogue and conflict resolution. Since 2013, DG TRADE and DG DEVCO have funded projects on ILS implemented by the ILO in numerous countries such as Armenia, Bangladesh, Cabo Verde, El Salvador, Guatemala, Myanmar, Mongolia, Pakistan, Philippines, Thailand and Vietnam. Regular consultations between the ILOs International Labour Standards Department (NORMES),<sup>73</sup> DG TRADE and DG EMPL on labour related matters in selected countries have contributed to joint reflection to find appropriate solutions within the national contexts to improve labour relations and working conditions in line with core ILS.

On 1 January 2019 the ILO and the EC launched the **Trade for Decent Work Project** which aims at improving the application of the ILO Fundamental Conventions and working conditions in EU trading partner countries and contributing to SDG 8 through improved labour relations and working conditions. The project operates within a framework including a Global Facility providing global initiatives in the area of ILS and *ad hoc* support to specific needs arising in partner countries; and a Country-focused Facility supporting each year a number of target countries. The project started with the following beneficiary countries: Bangladesh, Myanmar and Vietnam.<sup>74</sup> It runs until 31 December 2021.

## WTO

The proposal potentially engages GATT Article I:1 (Most Favoured Nation Treatment) and Article III because it envisages imports from certain countries being treated differently as regards certain ‘formalities in connection with importation’. Even assuming however, that that Article is engaged, the Article XX exception is considered to be met by the proposal. Specifically, GATT XX(a): “public morals” and Article XX(b): necessary to protect ‘human ... life or health’. As regards GATT Article XX(e): prison labour, it is arguable that a wider definition must now be given to this provision having regard to current norms. In that regard, the United States' unilateral ban against the import of products produced in Myanmar in 2003 by way of legislation did not even result in a mention at the U.S. Trade Policy Review at the WTO. As the Commission reiterated in its February 2021 Trade Policy Review, referred to above, ethical matters apply in the context of trade.

In that regard, Articles 31-32 of the Vienna Convention apply to the interpretation of the WTO rules, such that other agreed principles of international law must be taken into account, including fundamental rights set out in the ILO Declarations in interpreting its provisions. The WTO Singapore Ministerial Declaration of 2008 supports that position. It provides: “[w]e renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards.” That Declaration also makes clear that the WTO “reject[s] the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question.”

<sup>73</sup> ILO “Labour Standards” website page: <https://www.ilo.org/global/standards/lang--en/index.htm>

<sup>74</sup> ILO “Trade for Decent Work Project” [See: [https://www.ilo.org/global/standards/WCMS\\_697996/lang--en/index.htm](https://www.ilo.org/global/standards/WCMS_697996/lang--en/index.htm) and [https://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--normes/documents/publication/wcms\\_723342.pdf](https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--normes/documents/publication/wcms_723342.pdf)]

The proposal does not involve any protectionist purposes or characteristics; on the contrary its purpose and aim is to protect developing countries from the harm caused by national governments being unable to raise minimum statutory wages for fear of losing jobs and investment to lower wage countries. It pursues an objective centred on assisting trade and ensuring its sustainability in line with international law. The measures are the least restrictive available to achieve the objective sought, namely guaranteeing fundamental rights to workers and protecting EU consumers from purchasing items produced by workers in breach of their fundamental rights. The onus is on the importer/trader to show that wages above a wage risk point have been paid. Any fines imposed are to be spent on improving worker conditions and wage levels in producer countries. The relevant country or part of the country can avoid being affected by the proposed formalities by raising the statutory minimum wage to at least above the wage risk point and ensuring the fundamental right to collective bargaining.

The EU has trade agreements with many of the largest garment producing countries. In relation to these it is notable that several are covered by GSP/EBA, Vietnam has a Trade Agreement that specifically recognises labour rights and Turkey is within a customs union. Consideration will need to be given to how the proposal aligns with these different relationships. At this stage, the Proposal, being centred around due diligence is considered to be in harmony with those different legal relationships.

### **Legal basis for the proposal**

Article 207 and Article 114 of the Treaty on the Functioning of the European Union (TFEU).

The proposal is in line with Article 208(1) TFEU, which provides that the Union is to take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

Further, the proposal is in line with the values of the EU as set out in (i) Articles 2 and 3 of the Treaty on the European Union (“TEU”) and (ii) the rights in the EU’s Charter of Fundamental Rights.

Article 21 of the Treaty on the European Union (TEU) mandates that the EU shall act on the international scene to advance democracy, the rule of law, human rights and fundamental freedoms respect for human dignity and the principles of international law. This extends further into EU action into ensuring responsible supply chains and appropriate due diligence in business engagements in third countries in line with the UN Guiding Principles of Human Rights and the UN Sustainable Development Goals.

The Charter of Fundamental Rights of the European Union recognises the freedom to conduct business (Article 16). In addition, it contains provisions related to the rights of the child (Article 24) and the prohibition of child labour as well as the protection of young people at work (Article 32). It also includes provisions on fair and just working conditions (Article 31), the prohibition of slavery, trafficking in human beings and forced labour is developed in Article 5.

### **The principles of subsidiarity and proportionality**

The proposal falls under the exclusive competence of the Union because it ultimately bites on controls in relation to imports in the same way as, for example, the Minerals Regulation. The subsidiarity principle does not therefore apply. In any event, however, even were that principle to apply EU-level action provides more critical mass and global leverage relative to individual Member State action. It is therefore necessary and appropriate that action be taken at an EU level.

The principle of proportionality requires that any intervention is targeted and does not go beyond what is necessary to achieve the objectives. This principle has guided the preparation of this proposal

from the identification and evaluation of alternative policy options to the drafting of the legislative proposal. Specifically, this proposal targets only the garment and footwear sector. The Option chosen also relates only to the last stage of the production supply chain.

### **Choice of the instrument**

The proposed instrument is a Regulation having regard to the fact that its objectives concern controls at the external border of the EU and thus fall within the common commercial policy. Different legislative requirements, including differently implemented due diligence standards in relation to imports could affect where companies choose to import their goods into the EU internal market, thus creating unfair competition between states and potentially a perverse incentive to impose less rigorous controls in relation to due diligence import requirements.

### **Options**

#### Option 1

The Regulation would capture every stage in the supply chain in relation to the products sold in the EU. Thus, a retailer would need to ascertain the source country of the raw material, the country where the textile or leather was produced and dyed and where it was cut and sewn. In relation to each of these, the relevant requirements of the regulation would apply. In light of the demanding nature of such due diligence obligations, it is considered that were this option to apply, it would have to be restricted to retailers/importers above a certain turnover, since it is unlikely that it could be met by smaller retailers/importers.

#### Option 2

The Regulation would be restricted to the last stage in the production chain, namely the cut and sew stage. In such circumstances the requirements of the regulation would apply to all retailers/importers into the EU since the due diligence obligation could be met relatively easily; retailers/importers would know the country where the production took place and would be able to carry out the necessary risk assessment to meet the obligations of the Regulation. Retailers/importers would be required to take all reasonable steps to ensure that the products imported were made by workers who were paid a minimum living wage, which is defined as being higher than the 'at risk' wage point defined by the Commission. That wage point is to be defined by the importer/retailer so as to ensure that it engages with the reality of wages in its supply chain and is not merely a tick-box due diligence obligation.

Option 2 is considered the option more likely to achieve the objective. First, it would be relatively easy to implement and secondly, it would not be possible for companies to evade the effect of the regulation by using companies with turnovers below the specified level to import the goods. Care has been taken to ensure that companies first placing goods for sale on the market, whether to retailers or direct to consumers are bound by the due diligence obligations in the Regulation so as to prevent companies from circumventing its requirements by using agents or logistics companies. It is possible that provisions will need to be developed to ensure that the relevant entity is properly held accountable, for example by reference to the relevant global parent company.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**setting up a Union system for supply chain due diligence self-certification of importers of retail garments and footwear from inadequate wage countries**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114, 207 and 208(1) and the Treaty of the European Union, in particular Articles 2, 3 and 21 thereof

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Tens of millions of workers are employed in the retail garment and footwear sector, the vast majority of whom are women. It is a sector of vast profitability, which has the potential to generate growth, employment and development. A key component in that potential is the payment of decent wages, that is, wages sufficient to sustain the basic needs of the worker and her family; a minimum living wage. In nearly all major garment and footwear producing countries however, wages in the sector are significantly less than 50% of that necessary to sustain a basic decent life. Such wages are poverty wages; embedding rather than alleviating poverty.
- (2) Significant risks exist throughout the sector, including but not limited to: child labour; discrimination; forced labour; excessive hours of work; work-related and health violations; violations of the right of workers to establish or join trade unions and representative organisations of their own choosing; violations of the right of workers to bargain collectively; noncompliance with minimum wage laws and wage levels that do not meet the basic needs of workers and their families; discrimination; hazardous chemicals; water consumption; water pollution; greenhouse gas emissions; and bribery and corruption.
- (3) In its relations with the wider world, the Union is committed to the eradication of poverty and the protection of human rights. The Union has been actively engaged in an Organisation for Economic Co-operation and Development initiative in relation to due diligence in this sector, which has resulted in a government-backed multi-stakeholder process leading to the adoption of the OECD Due Diligence Guidance for Responsible Supply Chains in the Clothing and Footwear (2017).<sup>75</sup>
- (4) The Union notes the OECD Recommendation of the Council of 17 May 2017, which emphasises that building responsible production supply chains in the garment and footwear sector is critical to sustainable development, promoting inclusive growth, particularly for women who make up the overwhelming majority in this sector, respecting labour and human rights, and meeting international standards on the environment. The concept of responsible sourcing is referred to in the updated OECD Guidelines for Multinational

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<sup>75</sup> OECD, 2018. *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*. [Available at: [https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-in-the-garment-and-footwear-sector\\_9789264290587-en](https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-in-the-garment-and-footwear-sector_9789264290587-en)]

Enterprises<sup>76</sup> and is in line with the United Nations Guiding Principles on Business and Human Rights,<sup>77</sup> the International Labour Organization's Declaration on Fundamental Principles and Rights at Work,<sup>78</sup> relevant ILO Conventions and Recommendations and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.<sup>79</sup>

- (5) Consumers within the EU are entitled to be protected against the risks of purchasing goods that were produced by individuals paid less than that necessary to sustain a decent life.
- (6) Workers not receiving sufficient payment for their work to sustain themselves and their families is one of the core reasons that the sector has failed in its potential to alleviate poverty and support development. Connected is the fact that in many garment and footwear producing countries, individuals are prohibited from joining trade unions and do not have the right to engage in collective bargaining.
- (7) Poverty wages are a consequence of both an over-supply of labour and hyper-mobility of demand in a competitive global environment. Retail garment companies (traders) are able to move their production or purchasing to obtain the lowest production costs, which is reflective of labour costs. This in turn creates a disincentive for retail garment and footwear producing countries to increase their statutory minimum wage levels for fear of losing investment: the *race to the bottom*. At the same time, it results in suppliers having to offer ever lower prices in order to maintain orders from retail garment companies.
- (8) Poverty wages are therefore often a harm, which derives at least in part from the setting of the statutory minimum wage at an inadequate level. This harm cannot effectively be addressed by multi-stakeholder initiatives or national due diligence regimes. Whilst responsible purchasing practices can mitigate the risks of poverty wages, including by enterprises developing models that account for the cost of wages, benefits and investments in decent work, which should be reflected in freight on board prices, such systems do not ensure that workers actually receive more than the statutory minimum wage. At best, they increase the payment to suppliers.
- (9) Moreover, enterprises wishing to use suppliers or source their product from suppliers that pay at least a minimum living wage are hindered in their ability to do so by the inadequacy of statutory minimum wages in many of the main garment and footwear producing countries. In sourcing goods from countries where the minimum wage is less than that necessary to sustain a decent life, the risk of enterprises breaching fundamental rights is significantly increased. The same applies in relation to enterprises purchasing from countries where collective bargaining is not guaranteed in law or where trade unions are repressed. No mitigation by enterprises can alter the fact that the relevant national law does not allow for the exercise of these fundamental rights.
- (10) This is recognised in the OECD Guidance<sup>80</sup>, which expressly states in Modules 6 and 7 that inadequate statutory minimum wages and the denial of the right to collective bargaining frequently derives from governmental action. The Guidance notes that in such cases

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<sup>76</sup> OECD Guidelines for Multinational Enterprises [Available at: <http://www.oecd.org/daf/inv/mne/48004323.pdf>] supplemented by the OECD Due Diligence Guidance for Responsible Business Conduct [Available at: [OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf](https://www.oecd.org/etd/due-diligence-guidance-for-responsible-business-conduct/)]

<sup>77</sup> United Nations, 2011. *Guiding Principles on Business and Human Rights*. [Available at: [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)]

<sup>78</sup> ILO 86th Session. 18 June 1998. *ILO Declaration on Fundamental Principles and Rights at Work*. [Available at: <https://www.ilo.org/declaration/textdeclaration/lang-en/index.htm>]

<sup>79</sup> ILO, 2017. *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*. [Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf)]

<sup>80</sup> OECD, 2018. *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*. Modules 6 and 7 pp.146-152 [Available at: [https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-in-the-garment-and-footwear-sector\\_9789264290587-en](https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-in-the-garment-and-footwear-sector_9789264290587-en)]

enterprises have limited ability to avoid the relevant harm and advises that, in so far as they are unable to exercise leverage to effect a legislative change, they should suspend sourcing until those harms can be prevented.<sup>81</sup> Accordingly, the OECD Guidance ultimately recommends not to source from countries that do not guarantee an adequate wage and where poverty wages are paid as a consequence. The UN Guiding Principles on Business and Human Rights also recognises that states are the primary duty-bearers under international human rights law.

- (11) A sector-based Regulation to address the risk of poverty wages and the lack of rights to collective bargaining is needed in order to achieve wage increases in factories and to alter the structural deficiency in the market. The Regulation must operate to remove the perverse incentives that currently exist in the market for States to maintain low wages and lack of rights' protection. The effect of the Regulation should be twofold. First, it should make it more likely that suppliers pay a living minimum wage and ensure the right to collective bargaining for their workers, and secondly, it should persuade governments to enact legislation to protect those fundamental rights without incurring the risk of losing investment and jobs. Consequently, this Regulation should facilitate sustainable development by both increasing the likelihood of commercial operators being able to produce their goods in compliance with human rights standards and providing sustainable wages for workers.
- (12) The OECD Guidance advises enterprises to determine country risk factors, including the risk of poverty wages and lack of the right to collective bargaining.
- (13) The Commission shall identify high risk low-wage garment and footwear producing countries. It shall do so by setting a floor below which wages in the sector in each relevant country or area within the country should not fall. In so doing, the Commission is not purporting to set a minimum living wage level. Rather, it is identifying the point at which the risk of a breach of the fundamental right to a wage sufficient to sustain a decent life materialises.
- (14) The Commission shall fix the wage risk point annually in accordance with a formula established on the basis of advice [*and/or/in conjunction with the ILO*] set out in Annex II. The wage risk point shall represent an estimate of the minimum wage necessary for a garment or footwear worker to sustain a basic decent life. The Commission may set different wage risk points for different areas within a single country.
- (15) In fixing the wage risk point, the Commission recognises the diversity of means by which different countries set minimum wages, and their different applicability, including some that use complex systems of sectoral and/or occupational minimum wages, as well as systems in which public authorities determine multiple minimum wage rates for different economic activities or occupations.
- (16) Garment and footwear producing countries that either have a statutory minimum wage that is lower than that identified by the wage risk point and/or where the right to collective bargaining is prohibited shall be listed in Annex I to the Regulation as 'high risk low-wage countries' and thus, fall within the scope of the Regulation. An annual reassessment shall take place, at which point, where statutory minimum wages have been increased to above the wage risk point, and the right to collective bargaining is guaranteed, the country shall be removed from Annex I and imports from those countries will no longer fall within the scope of this Regulation.
- (17) A transition period shall be provided to enable countries to raise their statutory minimum wages incrementally over a period of three years to reach or exceed the wage risk point and

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<sup>81</sup> *Ibid.* p.80

thus to avoid being listed in Annex I. Accordingly, in year one, the wage risk point shall be fixed at 60% of the Commission's assessment of the wage risk point, the second year at 75% and the third year at 90%. In the fourth year of operation of the Regulation, the wage risk point shall be the full estimate of the wage below which a decent life cannot reasonably be sustained. Applying this incremental approach will enable garment and footwear producing countries to raise their minimum statutory wages in a more manageable way.

- (18) No transitional period is provided in relation to the right to freedom of assembly/collective bargaining since the prohibition of such rights by a State is a systemic breach of fundamental rights, in respect of which the EU may impose sanctions as provided for in Council Regulation 2020/1998 and Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses.
- (19) Importers and traders that choose to import or sell garments and footwear onto the EU internal market from high risk low-wage countries (Annex I countries) are required to meet a specified set of due diligence obligations to ensure that the workers who made the products received a minimum living wage, that is a wage higher than the wage risk point, and were guaranteed the right to collective bargaining. That specific and additional production supply chain due diligence obligation applies only in respect of the final stages of production (cut and sew) for the purposes of this Regulation, without prejudice to due diligence obligations that apply in relation to earlier stages in the production supply chain pursuant to any other provisions, whether legally binding or not.
- (20) The due diligence system includes three elements inherent to risk management: access to information, risk assessment and mitigation of the risk identified. The due diligence system should provide access to information about the sources and suppliers of the garment and footwear products being imported into the internal market.
- (21) On importation of goods whose production supply chain as defined in this Regulation involved the cut and sew stage of production within an Annex I territory, importers should be required to certify at the moment of importation that they have satisfied themselves that due diligence requirements have been met and that the relevant products were produced by workers who received a minimum living wage and were guaranteed the right to collective bargaining. Importers are required to verify compliance with due diligence obligations by way of a "Garment and footwear high risk low-wage country due diligence declaration" (hereafter "GFDDD") in a document associated with the Single Administrative Document (hereafter "SAD") provided for in the Union Customs Code (hereafter "UCC") adopted in Regulation (EU) No 952/2013 of the European Parliament and the Council (OJ L-269 10/10/2013) (CELEX 32013R0952) and the UCC Transitional Delegated Act adopted in Commission Delegated Regulation No 2016/341 (OJ L-69 15/03/2016) (CELEX 32016R0341). Regulation (EU) No 952/2013 shall apply to the GFDDD and in particular, Article 15 thereof.
- (22) In addition, traders that purchase or produce the footwear or garments in Annex I territories, must publish specified information on their websites.
- (23) In accordance with Articles 134 and 267 Regulation (EU) No 952/2013 (Union Customs Code), customs authorities will carry out the checks in the context of enforcement of this Regulation, and will stop goods entering the European union customs territory without the GFDDD.
- (24) In addressing only the risk of poverty wages and lack of collective bargaining, this Regulation in no way detracts from the obligations of enterprises in respect of their due diligence obligations in relation to other risks in the sector, such as those referred to in recital (2) above.

- (25) Member States shall also designate competent authorities responsible to ensure the uniform compliance by importers and traders with this Regulation carrying out appropriate ex-post market surveillance checks to verify the certification by importers that the due diligence obligations in relation to the products were met. Records of such checks should be kept for at least five years. Member States are responsible for laying down the rules applicable to infringements of the provisions of this Regulation.
- (26) Member States shall also designate enforcement authorities, which may be the same as the relevant competent authorities, in relation to infringements of this Regulation by importers and economic operators. Infringements of this Regulation shall be sanctioned by effective, proportionate and dissuasive penalties.
- (27) Whereas the European Parliament has pointed out in its Resolution of 7 October 2020 (A9-0160/2020) on the implementation of the common commercial policy<sup>82</sup> that the large number of trade and non-trade barriers and the current divergences in the level and quality of controls, customs procedures and sanctions policies at the EU's points of entry into the Customs Union, often result in distortion of trade flows, which puts at risk the integrity of the single market and has urged the Commission to address this issue to ensure that companies can compete fairly on a level playing field;
- (28) Accordingly, whilst sanctions and penalties in relation to breaches of this regulation have not been specified at EU level, minimum levels have been provided in relation to breaches of import requirements in order to reduce distortions of competition brought about by sanctions or penalties in one Member State of entry or sale being lower than in another.
- (29) The Regulation shall be listed in Annex I of Regulation 2017/2394 of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws, so as to enable enforcement in relation to intra-EU infringements.
- (30) The Commission should report regularly to the Council and the European Parliament on the effects of the scheme. No later than three years after entering into force and every six years thereafter, the Commission should review the functioning and the effectiveness of this Regulation.
- (31) Traders and monitoring organisations should refrain from measures which could jeopardise the attainment of the objective of this Regulation.
- (32) To ensure the proper implementation of this Regulation, implementing powers should be conferred on the Commission pursuant to Article 290 of the Treaty on the Functioning of the European Union in relation to: the assessment of the wage risk point in garment and footwear producing countries; decisions regarding whether or not a country or part of a country should be put in Annex I; the list of Member State competent authorities; recognition and withdrawal of recognition of monitoring organisations; and any relevant risk assessment criteria that may be necessary to supplement those already provided for in this Regulation. The implementing powers should be exercised in accordance with Regulation (EU) No 182/2011. The Commission shall in exercising its implementing powers carry out appropriate consultations during its preparatory work, including at expert level.
- (33) Importers and Member State customs and market surveillance competent authorities should be given a reasonable period in order to prepare themselves to meet the requirements of this Regulation.

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<sup>82</sup> European Parliament. 18 September 2020. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION on the implementation of the common commercial policy – annual report 2018. [Available at: [https://www.europarl.europa.eu/doceo/document/A-9-2020-0160\\_EN.html#title1](https://www.europarl.europa.eu/doceo/document/A-9-2020-0160_EN.html#title1)]

- (34) Since the objective of this Regulation, namely the fight against poverty wages which undermine sustainable development, cannot be achieved by the Member States individually but can be better achieved at Union level, by reason of its scale and the Union's position as the largest consumer in this sector, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### INTRODUCTORY PROVISIONS

#### Article 1

##### Subject matter and scope

1. This Regulation applies to importers and traders that import garments or footwear into the internal market or first place such garments and footwear onto the market for sale to consumers where the cut and sew stage of production of those goods took place in a high risk low-wage country listed in Annex I.
2. In respect of those importers, it lays down specific due diligence obligations that must be verified at the point of import to ensure importers and traders can be held accountable for adverse impacts throughout their production supply chain. It is aimed at ensuring that importers and traders fulfil their duty to guarantee responsible production supply chains in the garment and footwear sector to promote sustainable development and ensure the protection of EU consumers from purchasing goods produced by individuals subject to exploitative practices that are in breach of international human rights norms.

#### Article 2

##### Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) '**Annex I territories**' means a location, whether a garment and footwear producing country or part of a garment and footwear producing country as listed in Annex I to this Regulation;
- (b) '**due diligence**' means the process put in place by an importer or trader aimed at identifying, ceasing, preventing, mitigating, monitoring, disclosing, accounting for, addressing, and remediating the risks in their production supply chain, linked to low wages and lack of collective bargaining rights, both by its own operations and by those of its business relationships. It is an on-going, proactive and reactive process subject to review;
- (c) '**garments and footwear**' means the items set out in Section XI chapters 61-62 and Section XII chapters 64-65 of Commission Implementing Regulation (EU) 2020/1577<sup>83</sup> of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff;

<sup>83</sup> COMMISSION IMPLEMENTING REGULATION (EU) 2020/1577 of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 361. Vol. 63. 30 October 2020)  
[Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:361:FULL&from=EN>]

- (d) '**garment and footwear producing countries**' are countries from which imports of garments and footwear into the EU exceed a total value of €[xxx]<sup>84</sup> per annum;
- (e) '**OECD Guidance**' means the OECD Due Diligence Guidance for Responsible Supply Chains in the Clothing and Footwear Sector (2018);
- (f) '**production**' and '**produced**' means the making and packaging of the garments or footwear from the stage of cutting and sewing of the material to the making of the final product and excludes the prior stages in the production supply chain;
- (g) '**production supply chain**' means system of activities, organisations, actors, and services involved in the production of garments and footwear;
- (h) '**placing on the market**' means the supply by any means, irrespective of the selling technique used, of garments and footwear for the first time on the internal market for distribution or use in the course of a commercial activity, whether in return for payment or free of charge. *[It also includes the supply by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts].* The supply on the internal market of clothing and footwear already placed on the internal market shall not constitute 'placing on the market';
- (i) '**living minimum wage**' means a wage above the wage risk point determined by the importer or trader;
- (j) '**importer**' means any natural or legal person declaring garments or footwear within the scope of this Regulation for release for free circulation within the meaning of Article 201 of Council Regulation No 952/2013<sup>85</sup> or any natural or legal person on whose behalf such declaration is made in accordance with Annex B to Commission Delegated Regulation (EU) 2015/2446;
- (k) '**trader**' means any natural or legal person in the supply chain other than the importer who places on the market garments or footwear for the first time for direct sale to consumers or for sale to retailers;
- (l) '**grievance mechanism**' means an early-warning risk awareness mechanism allowing any interested party, including whistle-blowers, to voice concerns regarding the circumstances of garment and footwear production in Annex I territories;
- (m) '**production supply chain policy**' means a policy that conforms to Modules 6 and 7 of the OECD Guidance outlining the risks of significant adverse impacts which may be associated with the garment and footwear industry;
- (n) '**Member State competent authorities**' means the designated one or more authorities with auditing competences and knowledge as regards garment and footwear production;
- (o) '**wage risk point**' is the point identified by the Commission pursuant to the mechanism set out in Annex II as the wage level below which a worker cannot reasonably be expected to sustain a basic decent life and which defines whether or not a garment producing country or territory within such a country is listed on Annex I;
- (p) '**risk management plan**' means the written response of a [Union] importer to the identified production supply chain risks based on the OECD Guidance;
- (q) '**the sector**' means the retail garment and footwear sector.

<sup>84</sup> [Throughout the document, items in square brackets and italics remain open for discussion and determination as appropriate]

<sup>85</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p.1). [Available at: [https://www.legislation.gov.uk/eur/1992/2913/pdfs/eur\\_19922913\\_1997-01-01\\_en.pdf](https://www.legislation.gov.uk/eur/1992/2913/pdfs/eur_19922913_1997-01-01_en.pdf)] and [Common Customs Nomenclature Regulation](#)

## CHAPTER II

### OBLIGATIONS OF IMPORTERS

#### Article 3

##### Setting of wage risk point and transitional measures

1. The Commission shall *[in conjunction with the ILO and]* on the basis of expert advice determine a formula by which the wage risk point and minimum living wage shall be calculated for garment and footwear producing countries or areas within those countries.
2. The formulae shall be set out in Annex II to the Regulation and may be amended by the Commission pursuant to its powers under Article 20.
3. Each year the Commission shall calculate for each garment and footwear producing country or area within that country, depending on the national methodology used for the setting of minimum statutory wages, the wage risk point. The Commission shall at the same time compare for each country (or area within the relevant country) the wage risk point with the statutory minimum wage applicable to the sector, which shall be obtained from the ILO or directly from the relevant country. Where the statutory minimum wage for the country (or area within the country) is below the wage risk point, the country (or area within the country) shall be listed in Annex I so as to fall within the scope of this Regulation.
4. If in the course of its annual assessment the Commission determines that a country (or area within a country) listed in Annex I no longer has a statutory minimum wage below the wage risk point, subject to compliance with Article 4 below, the country (or area within the country) shall be removed from Annex I and no longer fall within the scope of this Regulation.
5. For the first three years following the entry into force of this Regulation, the Commission shall apply transitional measures for the purposes of the determination referred to in paragraph 3 above. Specifically, in the first year, the Commission shall reduce the wage risk point by 40%, in the second year by 25% and in the third year by 10% from the amount determined in accordance with the formula set out in Annex II.

#### Article 4

##### Collective bargaining

1. Irrespective of whether a country or area is listed in Annex I by virtue of the assessment carried out pursuant to Article 3 above, where the relevant legislation applicable to the country (or area within the country) does not guarantee the right to collective bargaining, the country (or area within the country) shall be listed in Annex I, so as to fall within the scope of this Regulation.
2. Subject to Article 3 above, a country (or area within a country) listed on Annex I on the basis that it does not allow collective bargaining, shall be removed from Annex I as soon as its national law guarantees such a right.

#### Article 5

##### Import declarations

An importer of garments or footwear that were produced within the meaning of Article 2(f) in an Annex I area shall:

- (a) Declare on a Garment and footwear high risk low-wage country due diligence declaration (GFDDD) form attached at Annex III that in respect of the goods being imported it has taken all reasonable steps as described in Article 7 to verify that those goods were produced by

workers remunerated at a level higher than the wage risk point identified in respect of the relevant country or territory in Annex I, and that the collective bargaining rights of those workers were guaranteed by the national law applicable to the relevant territory.

- (b) Where the importer is not the trader, the minimum reasonable steps required under (a) shall be obtaining an undertaking from the trader that it has taken all reasonable steps to verify that those goods were produced by workers remunerated at a level higher than the wage risk point identified in Annex I.
- (c) The GFDDD shall be provided as one of the documents associated to the Single Administrative Document (SAD) provided for in the Union Customs Code (UCC) adopted in Regulation (EU) No 952/2013 of the European Parliament and the Council (OJ L-269 10/10/2013) (CELEX 32013R0952) and the UCC Transitional Delegated Act adopted in Commission Delegated Regulation No 2016/341 (OJ L-69 15/03/2016) (CELEX 32016R0341). Regulation (EU) No 952/2013 shall apply to the GFDDD and in particular, Article 15 thereof.

#### Article 6

#### **Transparency obligations**

An importer or trader that places on the market for sale to consumers garments or footwear produced in an Annex I territory shall:

- (a) Adopt and clearly communicate to suppliers, downstream purchasers and the public, including on their website, its due diligence and production supply chain policy for the production of garments and footwear originating from Annex I territories.
- (b) Make available to its immediate downstream purchasers all information gained and maintained pursuant to its due diligence with due regard to business confidentiality and other competitive concerns.
- (c) Provide full transparency in the public domain, including on its website, the following information in relation to the production of garments and footwear in Annex I territories:
  - (i) the full name of all production units and processing factories, which include but are not limited to printing, embroidery and laundry,
  - (ii) the site addresses,
  - (iii) the parent company of the business at the site,
  - (iv) categories of garments and footwear made, including but not limited to apparel, footwear, home textile and accessories,
  - (v) the number of workers at each site (less than 1000, 1001 to 5000, 5001 to 10000, more than 10000),
  - (vi) confirmation that the hourly pay level for workers was a minimum living wage.
- (d) Strengthen its engagement with suppliers by incorporating its production supply chain into contracts and agreements with suppliers consistent with Chapters 6 and 7 of the OECD Guidance.
- (e) Establish a grievance mechanism as an early-warning risk-awareness system or provide such mechanism through collaborative arrangements with other companies or organisations, or by facilitating recourse to an external expert or body such as an ombudsman. Information regarding the grievance mechanism, including how to access it, shall be made available on the importer's website.

Article 7

**Due diligence and risk management obligations**

1. Importers and traders of garments and footwear produced in Annex I territories shall:
  - (a) identify and assess the risks of adverse impacts in its production supply chain on the basis of the information provided pursuant to Article 6 against the standards of its production supply chain policy, consistent with Modules 6 and 7 of the OECD Guidance, specifically, the risk of workers being paid less than the wage risk point set out in Annex I, less than the minimum living wage defined by the importer and trader and the risk of workers not being able to exercise collective bargaining rights;
  - (b) implement a strategy to respond to the identified risks designed to prevent or mitigate adverse impacts by:
    - (i) reporting findings of the production supply chain risk assessment to its designated senior management in cases where the importer is not a natural person,
    - (ii) adopting a risk management plan consistent with the due diligence recommendations of the OECD Guidance, considering its ability to influence, and where necessary take steps to put pressure on suppliers who can most effectively prevent or mitigate the identified risk, by making it possible either to
      - (a) continue trade while simultaneously implementing measurable risk mitigation efforts,
      - (b) suspend trade temporarily while pursuing ongoing measurable risk mitigation efforts, or
      - (c) disengage with a supplier after failed attempts at mitigation;
    - (iii) implementing the risk management plan, monitoring and tracking performance of risk mitigation efforts, reporting back to designated senior management and considering suspending or discontinuing engagement with a supplier after failed attempts at mitigation,
    - (iv) undertaking additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances;
  - (c) structure internal management systems to support due diligence in relation to the living minimum wage and collective bargaining rights by assigning responsibility to senior staff to oversee the due diligence process as well as maintain records for a minimum of five years;
2. *[If an importer or trader pursues risk mitigation efforts while continuing trade or temporarily suspending trade, it shall consult with actors in the production supply chain and affected stakeholders, including local and central government authorities, international or civil society organisations and affected third parties, and agree on a strategy for measurable risk mitigation in the risk management plan.]*
3. The Commission, in consultation with relevant stakeholders, shall prepare non-binding guidelines on methodology to assist importers and traders in fulfilling their due diligence and risk management obligations. The Commission shall publish the guidelines by [xxx].

Article 8

**Annual statement**

1. By 31 March at the latest of each year, the importer or trader within the scope of this Regulation shall publish on its website the following documentation covering the previous calendar year:
  - (a) its name, address, full contact details and a description of its commercial activities,
  - (b) a declaration of conformity with the obligations set out in Articles 5, 6 and 7 of this Regulation.

2. The importer and/or trader shall make available to its immediate downstream purchasers all information gained and maintained pursuant to its due diligence with due regard to business confidentiality and other competitive concerns.
3. The importer shall publicly report as widely as possible, including on the internet and on an annual basis, on its due diligence policies and practices. The report shall contain the steps taken by the responsible importer to implement the obligations as regards its transparency, due diligence and risk management obligations set out in Articles 6 and 7 with due regard to business confidentiality and other competitive concerns.

#### Article 9

##### **Other performing parties**

1. If the performance of the obligations under this Regulation has been entrusted to a performing party or agent, the importer or trader who has entrusted such obligations, shall nevertheless be liable for the acts and omissions of that performing party.
2. In addition, the performing party or agent to whom the performance of an obligation has been entrusted by the importer or trader shall be subject to the provisions of this Regulation with regard to the obligation entrusted.

#### CHAPTER III

##### **COMPETENT AUTHORITIES, THEIR POWERS AND PENALTIES**

#### Article 10

##### **Member State competent authorities**

1. Each Member State shall designate one or more competent authorities in charge of the application of this Regulation. Member States shall inform the Commission of the names and addresses of the competent authorities within three months after the entry into force of this Regulation. Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.
2. The Commission shall publish, including on the internet, a list of competent authorities in accordance with the template in Annex IV. The Commission shall update the list regularly.
3. Member State competent authorities shall ensure the effective and uniform implementation of this Regulation throughout the Union.

#### Article 11

##### **Ex-post market surveillance checks on importers/traders**

1. Union importers and traders shall be subject to ex-post market surveillance checks by Member State competent authorities. They shall perform those controls on the basis of risk analysis in accordance with Articles 46 and 47 of Regulation (EU) No 952/2013 *[and, where relevant, on the basis of risk-based approach as referred to in the second paragraph of Article 11(3) of this Regulation (EU) 2019/1020<sup>86</sup> on market surveillance and compliance of products.]*

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<sup>86</sup> Regulation (EU) 2019/1020 of the European Parliament and of The Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R1020&from=EN>] It shall apply from 16 July 2021. However, Articles 29, 30, 31, 32, 33 and 36 shall apply from 1 January 2021.

2. Member State competent authorities designated pursuant to Article 10 shall carry out appropriate ex-post checks in order to ensure that importers and traders of garments and footwear within the scope of this Regulation comply with the obligations set out in Articles 5, 6 and 7.
3. The checks referred to in paragraph 1 shall be conducted by taking a risk-based approach. In addition, checks may be conducted when a Member State competent authority is in possession of relevant information, including through the grievance mechanism referred to in Article 6(3) or on the basis of substantiated concerns provided by third parties, concerning the compliance by a responsible importer with this Regulation.
4. The checks referred to in paragraph 1 shall include, inter alia:
  - (a) examination of the importer or trader's implementation of due diligence obligations, including the management system, risk management and disclosure;
  - (b) examination of documentation and records that demonstrate the proper compliance with due diligence obligations;
  - (c) examination of the veracity of the attestations made on import on the GFDDD form set out in Annex III and associated with the SAD import declaration; and
  - (d) on-the-spot inspections, including field audits.
5. Importers and traders shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1, notably as regards access to premises and the presentation of documentation and records.

#### Article 12

##### **Records of checks on importers and traders**

1. Member State competent authorities shall keep records of the checks referred to in Article 11 indicating in particular their nature and results, as well as records of any notice of remedial action issued under Article 15(2).
2. Records of the Member State competent authorities' ex-post checks shall be kept for at least five years.

#### Article 13

##### **Cooperation between authorities and information exchange**

1. Member State competent authorities shall exchange information, including with their respective customs authorities, on matters pertaining to compliance with Articles 5-8 and ex-post checks carried out.
2. Member State competent authorities shall exchange information on shortcomings detected through the ex-post checks referred to in Article 11 and on the rules applicable to infringement in accordance with Article 15 with the competent authorities of other Member States and with the Commission.
3. Cooperation between authorities shall be in full respect of the Regulation (EU) 2016/679 Regulation (EU) 2018/1725 on data protection and the provisions of the Council Regulation (EEC) No 952/2013.

Article 14

**National enforcement bodies**

1. Each Member State shall designate a new or existing body or bodies responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure compliance with this Regulation. This body may be the same body as the Member State competent authority designated under Article 10.
2. Member States shall inform the Commission of the body or bodies designated in accordance with this Article.
3. Anybody may submit a complaint, in accordance with national law, to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

Article 15

**Rules applicable to infringement**

1. The Member States shall lay down the rules applicable to infringements of the provisions of this Regulation.
2. In case of an infringement of the provisions of this Regulation, the national enforcement body of the Member State shall issue a notice of remedial action to be taken by the importer/trader and/or any penalty to be paid.
3. The Member States shall notify the rules to the Commission and shall notify it without delay of any subsequent amendment thereto.

Article 16

**Penalties**

1. Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all necessary measures to ensure that they are implemented. The penalties provided for, including criminal sanctions, shall be effective, proportionate and dissuasive.
2. Member States shall ensure that the following non-exhaustive and indicative criteria are taken into account in relation to the imposition of penalties:
  - (a) the nature, gravity, scale and duration of the infringement;
  - (b) any action taken by the importer or trader to mitigate or remedy the damage suffered by the workers who produced the goods or the consumers who purchased them;
  - (c) any previous infringements by the importer or trader;
  - (d) the financial benefits gained or losses avoided by the importer or trader due to the infringement, if the relevant data are available;
  - (e) penalties imposed in respect of the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council;
  - (f) any other aggravating or mitigating factors applicable to the circumstances of the case.
3. In circumstances where the importer is found to have breached Article 5, the enforcement authority shall impose a fine of no less than 50% of the value of the goods imported.
4. In circumstances where an importer and/or trader is in breach of Articles 6 or 7 the enforcement authority may impose a fine of up to  $[x\%]$  of turnover.
5. Further or in addition, the Member State competent authority may issue a penalty notice in respect of the infringements referred to in paragraphs 3 and 4.

6. In the case of particularly serious or repeated infringements, Member States may impose criminal sanctions, including in relation to liabilities of the Directors of the importer and/or trader.
7. Member States shall ensure that when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394, they include the possibility either to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, or both, the maximum amount of such fines being at least 4% of the trader's annual turnover in the Member State or Member States concerned.
8. Member States shall notify its rules and measures to the Commission by *[insert date]* and shall notify it without delay of any subsequent amendment affecting them.

Article 17  
**Central fund**

1. Fines collected by Member States shall be paid into a central fund, which shall be used by the Commission/Member States to improve labour conditions in garment and footwear producing countries.
2. Where it is possible to identify and compensate workers whose rights have been infringed as a result of non-compliance with the obligations laid down in this Regulation, such payment shall be made.

Article 18  
**Co-ordination of enforcement between Member States**

This Regulation shall be listed in Annex I of Regulation 2017/2394 of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws, so as to enable national enforcement bodies as referred to in Article 14 to act in relation to offences with intra-EU implications.

Article 19  
**Cooperation between enforcement bodies**

National enforcement bodies as referred to in Article 14 shall, whenever appropriate, exchange information on their work and decision-making principles and practices. The Commission shall support them in this task.

CHAPTER IV

**FINAL PROVISIONS**

Article 20  
**Reporting and review**

1. Member States shall submit to the Commission by 30 June of each year at the latest a report on the implementation of this Regulation during the previous calendar year.
2. On the basis of this information the Commission shall draw up a report which shall be submitted to the European Parliament and to the Council every three years.
3. Three years after the entry into force of this Regulation and every six years thereafter, the Commission shall review the functioning and effectiveness of this Regulation, including on the promotion of responsible production supply chains in the garment and footwear sector to promote respect for fundamental human rights and sustainable development. The Commission shall submit a review report to the European Parliament and to the Council.

Article 21

**Commission powers**

To ensure the proper implementation of this Regulation, implementing powers should be conferred on the Commission pursuant to Article 290 of the TFEU in relation the assessment of the wage risk points and collective bargaining rights in garment and footwear producing countries and decisions regarding whether or not a country should be put in Annex I, the list of Member State competent authorities, recognition and withdrawal of recognition of monitoring organisations and any relevant risk assessment criteria that may be necessary to supplement those already provided for in this Regulation. Further, the Commission shall have powers to adopt measures to enable the repayment of workers in accordance with Article 17(2). The implementing powers should be exercised in accordance with Regulation (EU) No 182/2011.<sup>87</sup> The Commission shall in exercising its implementing powers carry out appropriate consultations during its preparatory work, including at expert level.

Article 22

**Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Article 23

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

[XXX]

For the Council

The President

[XXX]

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<sup>87</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. (OJ L 55, 28.2.2011, p.13).



## **Annex II**

### **Formula for assessment of wage risk point**

The Commission to adopt a formula alone or in conjunction with another body such as the ILO, or alternatively appoint another body to produce formula/means of assessment of wage risk point.

At an international level, there are two key documents guiding best practice in minimum wage setting: The ILO's Minimum Wage Fixing Convention, 1970 (No. 131) and related recommendation (No. 135). These two texts outline basic principles on minimum wage setting processes.

In **Article 1** of the recommendation, the two fundamental principles on the purpose of minimum wage fixing suggest a worker-oriented view.

1. Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.
2. The fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages.

**Article 3** suggests that the following six criteria should be taken into account 'amongst others', when fixing the level of the minimum wage:

- (1) the needs of workers and their families
- (2) the general level of wages in the country
- (3) the cost of living and changes therein
- (4) social security benefits
- (5) the relative living standards of other social groups
- (6) economic factors, including the requirements of economic development, levels of productivity and the
- (7) desirability of attaining and maintaining a high level of employment

Methodologies that have been developed for calculating a living wage include:

- **The 'Anker Methodology' for Estimating a Living Wage.**  
Described fully in *Living Wages Around the World: Manual for Measurement* by Martha and Richard Anker, published in 2017. Online access available at: [www.elgaronline.com/view/9781786431455/9781786431455.xml](http://www.elgaronline.com/view/9781786431455/9781786431455.xml)  
Developed by the Ankers, this methodology is the culmination of 45 years working in the field, including long careers at the ILO and WHO. The method has been adopted by the five founding members of the Global Living Wage Coalition ([www.globallivingwage.org](http://www.globallivingwage.org)).
- **Asia Floor Wage.**  
The Asia Floor Wage Alliance aims to counteract the impact of purchasers' mobility by building regional unity for a cross-border Asia-level living wage for garment workers in Asia. The methodology is woman-centred and includes unpaid household and care work. Further information available at: [asia.floorwage.org/calculating-a-living-wage/](http://asia.floorwage.org/calculating-a-living-wage/)

**Annex III**  
**Garment and footwear high risk low-wage country due diligence declaration (GFDDD)**

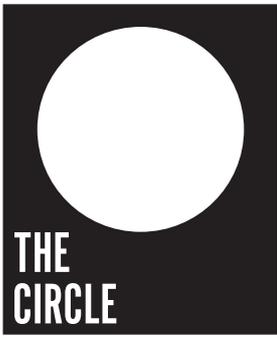
For the Commission to complete

**A PROPOSAL OF  
THE CIRCLE NGO**

**Annex IV**  
**List of Competent Authorities of Member States**

For the Commission to complete

**A PROPOSAL OF  
THE CIRCLE NGO**



The Circle (of Women) is a global NGO, registered as a charity in England and Wales (1160293) and in Scotland (SC046315) and a registered company limited by guarantee (08993335). Registered address: Merchant House, 30 Cloth Market, Newcastle Upon Tyne NE1 1EE

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“The Circle proposal for EU legislation on a living wage deserves broad support, because it has the right elements for systemic change:

**TIMELY:** makes use of the EU commitment to introduce mandatory due diligence.

**LEGITIMATE:** an exhaustive overview of current legislation and human rights frameworks that support the case.

**IMPACT ORIENTED:** focusses on actually realising a living wage, not just small wage improvements and process steps.

**NORM SETTING:** lets the EU, in co-operation with the ILO, identify the “wage risk point”.

**AMBITIOUS:** sets a three-year timeframe, with annual targets.

**ENCOURAGES ACTION:** production country governments can meet EU import standards by setting adequate minimum wages and guaranteeing the right to collective bargaining.

**BALANCED:** sets the due diligence requirements for all companies, regardless of size, but limited to the first tier of the supply chain.

**ENFORCEMENT:** member state authorities, including customs authorities, responsible for checking compliance with the living wage due diligence requirements.

**SANCTIONING:** imposes significant fines which will fund support to production countries for implementation of adequate minimum wages.

**TRACKING PROGRESS:** includes annual EU monitoring reports.”

**Jos Huber**  
International labour rights expert  
Formerly with the Ministry of Foreign Affairs of the Netherlands