

H&M Group's view on EU Commission's proposal for a Corporate Sustainability Due Diligence Directive

June 2022

At H&M Group we recognize the importance for companies to take responsibility to respect human rights and protect the environment. The recent European Commission's proposal for a Corporate Sustainability Due Diligence Directive has the ambition to address human rights and environmental adverse impacts in companies' value chains through harmonized rules on EU level. We welcome and support this ambition: a well-designed EU framework has the potential to lead to increased understanding on companies' human rights and environmental risks and coordinated efforts that can ultimately speed up the actions for more sustainable development.

Incorporating sustainability in operations and decisions is key to us at H&M Group. A fundamental aspect is to be aware of and address the risks to people and environment across our value chain. Our existing due diligence approach is based on the international standards of the UN Guiding Principles of Business and Human Rights (UNGPs) and the Organisation for Economic Co-operation and Development's (OECD) due diligence sector specific guidelines. On climate, we support the ambition of companies' strategies to be compatible with the Paris Agreement. H&M Group is committed to reduce emissions by 56% by 2030 (compared to specific guidelines 2019) across the value chain. Our work to constantly improve our efforts on sustainability is annually shared, this year in the [sustainability disclosures](#) as part of our Annual and Sustainability Report.

Initial considerations on the European Commission's proposal for a Directive

H&M Group supports the European Commission's objective of setting out a horizontal framework on due diligence avoiding fragmentation. However, being proposed as a Directive and with key concepts not fully defined, there is a risk that the Commission's proposal will not solve the growing discrepancies among Member States' legislations and hence will not achieve its objective. Firstly, it is critical to ensure a higher level of **harmonisation and a common implementation plan**, particularly addressing the multiplication of national legislations in the area as well as other related EU initiatives, to provide better legal clarity.

Secondly, for a company group, due diligence processes and reporting systems are often set for the entire group and do not necessarily focus on single legal entities, as company groups together create the value. **This reality needs to be better reflected and clarified** to ensure effective implementation and level playing field.

Thirdly, whereas international standards refer to business partners, the Commission's proposal introduces the new definition of "**established business relationship**". This concept is central in the proposal; hence it is critical to further clarify:

- a) the aspects that would qualify a business relationship as established: the concepts of duration, intensity and non-negligibility do not currently offer enough legal certainty; and
- b) to what extent and under which circumstances it covers indirect business partners in the value chain, i.e. partners with whom there is no contractual relationship. Interpreted in light of Recital 20, it seems to cover most part of the value chain.

Moreover, it is key that the EU Directive is **based on the logic of recognized international standards of the UNGPs and relevant OECD Guidelines**. This allows actors to build on and accelerate existing work, which would support a more effective application of the legislation. On climate, it is important that the target setting is aligned with globally recognised methods. While it is positive that the proposed Directive has the ambition to be aligned with international standards and existing frameworks, we encourage the European co-legislators to further strengthen this alignment:

- Due diligence is a process to identify, prevent, mitigate and account for how companies address their actual and potential impacts on human rights and the environment. To be applicable to many different sectors and companies, the corporate due diligence process should allow for flexibility, as one size does not fit all. Companies need to be agile to govern and address risks in a fast-changing environment. We welcome that the Commission recognised this principle in the definition of what constitutes an appropriate measure in Art. 3(q) and Recital 15. At the same time,

we recommend reinforcing the references to the **risk-based approach** outlined in the UNGPs – whereby companies are recommended to prioritise and focus on the salient issues for greater impact – and to recognise that **due diligence is an ongoing and dynamic process**.

- As recognised in international standards, a due diligence process is relevant for all companies, regardless of the size and sector. It is positive that the Commission sets out a horizontal framework. However, from the scope defined in Art. 2, the proposed Directive covers only a significantly limited part of companies present in EU markets. **We recommend the Directive to include companies of various sizes and business models**. With the right design allowing for proportionality and prioritization of risks and with effective support to SMEs, due diligence can be conducted by all. In this way all companies are part of the needed solutions and the EU would create a level playing field for all.
- According to the logic of the OECD and UNGPs, when an adverse impact occurs, the actions that companies are expected to take to meet their responsibility depend on the mode of their involvement to the harm (cause, contribution or linkage). This logic should be better reflected and clarified. In Art. 22 the proposal foresees that companies shall be liable if damages arise due to failure to comply with Art. 7 and 8. It would be more appropriate to **limit possible civil liability** to cases when a company has caused or contributed to damages.
- The proposed Directive gives particular attention to contractual clauses. Ensuring that contractual business partners comply with our Code of Conduct is an important and fundamental aspect in supplier relations. However, having each supplier signing the proposed connected documentation, such as preventive and corrective action plans, could constitute a big administrative exercise with limited impact. While emphasizing the aim of the legislation, it is also important to avoid unnecessary administration. Action plans focusing on country level or addressing specific complex topics would better encourage collaboration and would be more effective. The proposed Directive should promote responsible purchasing practices by companies as well as encourage proper engagement with their supply chain partners and other stakeholders as part of the prevention and mitigation activities.

Further, we recognize the importance of meaningful **stakeholder engagement** as part of a company's due diligence process, for it to be informed by the affected stakeholders and/or their legitimate representatives. The concept of meaningful stakeholder engagement should allow for flexibility on how to undertake stakeholder engagement as this will vary depending on context and topic.

Additionally, according to Art. 13, the Commission may issue **guidance for specific sectors**. For the garment and footwear sector, we urge the Commission's Guidelines to be closely aligned with the globally acknowledged OECD Guidelines.

Finally, we strongly recommend recognizing the concept of a **smart mix of measures** as defined under the UNGPs. This can create an interplay between regulations, policy measures and support for voluntary efforts by businesses, with each strengthening the effect of the others. Responsible business conduct should be encouraged and supported. Supporting investments, innovation and existing leading industry and multi-stakeholder initiatives to promote harmonization in implementation will be important. Due diligence should thus be part of a toolbox **of complementing policy measures** and the EU should address these issues through multilateral cooperation, and bilateral and unilateral actions, for example creating incentives and address underlying root causes of structural issues. This will support a holistic and aligned approach on global level that will enable the necessary changes towards a more inclusive and sustainable development.

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H&M Group        

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