

**EU Due diligence legislation for a positive impact:
How to ensure smallholder farmers, workers and artisans in global
supply chains are not left behind?
- Fair Trade movement position -**



© Eric St-Pierre, Cocoa at ECOJAD, Côte d'Ivoire

November 2021

The European Commission plans to present a legislative proposal on Human Rights and Environmental Due Diligence (HREDD) as part of the EU Sustainable Corporate Governance initiative. This legislation will be a key step towards respect for human rights and the environment in global supply chains.

This is crucial because, global supply chains are characterized by stark power asymmetries leading to unequal distribution of value. A few large international traders or processors are able to impose terms and conditions which

demand suppliers to provide goods at very low cost or with very short lead times, often without long-term purchasing commitments. These purchasing practices are an important driver of human rights violations in the supply chain and should be addressed.

In this demands paper, we outline essential elements for the EU HREDD legislation to ensure a positive impact throughout the supply chains for smallholder farmers, workers, and artisans in the Global South.

Sustainable Corporate Governance legislation and accompanying mandatory guidance should ensure the root causes of human rights and environmental violations are addressed and require a real shift in business practices, leading to better livelihoods for smallholder farmers, workers, and artisans.

In this paper we refer to smallholders as encompassing both smallholder farmers and artisans. The definition of a smallholder farmer can vary depending on the crop they grow or region where they are based. Generally, those who don't hire workers on a continuous basis with farm work being done by the family members, are usually considered to be smallholder farmers. These farmers are responsible for producing a third of the world's food supply and play an important role in several global supply chains.¹ Smallholder artisans produce handicrafts and other manufactured goods often work as self-employed, and sometimes organised in groups of various sizes. They generally own the production facilities and sell their goods to downstream actors but operate as very small enterprises or self-employed which puts them in a disadvantaged position

To have a positive impact on vulnerable rightsholders in global value chains, the legislation on HREDD legislation and corporate governance must:

- **Cover the entire value chain:** Often, the risks to human rights and the environment are highest at the beginning of the supply chain. Companies' due diligence should hence cover all human rights and the environmental risks occurring, both, in their own activities, and those resulting from their business relationships, throughout the entire value chains. Covering only the first tier is insufficient as it does not address the power imbalances and the unequal distribution of risk and value in global supply chains. Only if companies have a legal responsibility to assess and act upon the risks in their entire supply chains we can expect more transformative cooperation, partnerships, and co-investments to address the problems.
- **Cover business enterprises of all sizes based in the EU and non-EU based companies placing products and services on the EU market:** Egregious violations of human rights and environmental standards also take place in value chains of SMEs. Therefore, they should be obliged to conduct due diligence in ways appropriate to their size and structure. Existing good practices of small and medium enterprises such as many social and Fair Trade enterprises demonstrate that effective due diligence can be an integral part of an enterprise's practice.
- **Address purchasing practices:** In global supply chains, common bad practices include insufficient lead times, last minute changes to orders, prices that undercut the costs of sustainable production and fraudulent quality complaints. They contribute to human rights violations, such as excessive overtime and lack of living wages and living incomes. Companies need to assess the impact of their purchasing practices at every step of their due diligence process and improve where necessary.
- **Offer guidance on responsible disengagement from vulnerable suppliers and require companies to report on steps taken before deciding to disengage, to prevent cut and run:** Many human rights violations are rooted in the economic and social context, so it takes time and partnerships to mitigate and cease them. The legislation should support long-term sourcing relationships and providing suppliers with stability, enabling, and motivating them to invest in sustainable production. It must clarify that business relationships can only be ended where sustained efforts to address the negative impacts have failed. When disengaging, companies need to assess and potentially remediate the adverse human rights and environmental impacts of disengagement. Impacted and potentially impacted stakeholders of disengagement or their legitimate representatives should be consulted.
- **Refer to living wages and living income as human rights and as preconditions for other human rights and environmental protection:** The purpose of the law should recognize that

living wages for workers and living income for smallholders is essential to guarantee decent livelihoods. Without living income/living wages, supply chains can never be truly sustainable. The Commission should foresee explicit guidance in the form of delegated acts to support companies on assessing wage and income gaps and developing pathways to achieve living incomes and wages.

- **Require meaningful rightsholder consultation and engagement:** At every stage of the due diligence process, companies should actively seek and heed the perspectives of actually or potentially affected workers, smallholders, their representatives and other rightsholders, enabling them to influence policies that directly impact them. Inclusion of rightsholders in each step of the due diligence process is an essential step to guarantee that the risks that are most significant for smallholders - not for companies themselves - are identified, mitigated, and remediated. The approach to stakeholder inclusion must be intersectional and gender sensitive. Companies should ensure access to timely and sufficient information throughout HREDD to enable active and effective involvement.
- **Recognise smallholders as a vulnerable group in HREDD processes:** In the absence of legislation, companies have tended to address the risks that are most salient for their own operations and not for the rightsholders. Particularly small actors situated towards the beginning of global supply chains, are often overlooked. The EU legislation shall address this by explicitly recognising smallholders as rightsholders in a vulnerable situation which should be given specific attention. Moreover, the HREDD legislation shall foresee specific measures to ensure the participation of vulnerable and marginalised groups in the HREDD processes.
- **Set objective criteria for reliable voluntary sustainability schemes (VSS):** While they do not exempt companies from their obligation to conduct HREDD, reliable VSS can serve as development and support tools for organisations implementing HREDD. To prevent accountability gaps, clear criteria must be established to determine which VSS are reliable and in line with UNGPs, including among others, an obligation for VSS to conduct due diligence of their own operations with special attention to addressing root causes of human rights and environmental violations; involve rightsholders and civil society; and have inclusive and transparent standard setting and provisions for liability when appropriate.
- **Encourage the adoption of mission-led business models:** To make corporate governance truly sustainable, the legislation should be considered as an absolute minimum threshold and be based on the expectation that businesses move away from short-termism rooted in profit-maximization, by integrating sustainability in their business models as a core purpose. The considerations inherent in HREDD must become key factors in management decision making so companies take a proactive approach to making positive social and environment impact as a natural part of their business practices. The EU should ensure technical support, capacity-building and other incentives in proportionate measure for companies to undergo this transition.
- **Foresee the need to put the right structures in place to ensure effective implementation and enforcement:** The legislation should ensure that dedicated independent national authorities are equipped with supervisory powers to oversee the implementation of the due diligence obligations; a 'right to know' procedure to ensure transparency on the law and its enforcement; the identification of dissuasive penalties for noncompliance that can be enforced by the national body, including liability. To ensure effective implementation, producing country governments should be included in dialogue on the legislation, accompanying policies and resource allocation to find means to address the root causes of human rights violations.
- **Require EU Member States to provide for effective, proportionate, and dissuasive legal consequences:** Legal consequences should be based on the severity of misconduct for non-

compliance with due diligence obligations; including sanctions, for example exclusion from public procurement for non-compliant companies. The HREDD legislation should not only create a due diligence duty but also include a robust liability regime. In this context, civil liability will play a key role in providing justice and remedy to victims, such as vulnerable smallholders.



© Diamanta, Peru

We also support the recommendations, shared by many civil society organisations¹² that the human rights and environmental due diligence legislation must:

- **Apply to all sectors with complementary guidance** for specific high-risk sectors and/or specific types of human rights risks.
- Cover business enterprises of all sizes **including financial institutions**.
- **Include a non-exhaustive list of environmental impacts:** climate change (including greenhouse gas emissions), air, soil, water and noise pollution (including through disposal of chemicals), hazardous substances and production of waste, loss of and damage to forests and natural ecosystems, loss of biodiversity, and loss of habitats and species.
- **Be proportionate to company's actual and potential impacts**.
- **Require a continuous, risk-based due diligence process and access to effective remedy**, based on the UNGP and OECD Due Diligence Guidance.
- Include an **explicit gender dimension** and perspectives of particularly vulnerable groups.
- Enable **participation and empowerment** of human rights defenders from trade unions, civil society, and human rights organisations.

¹ [Key considerations for an EU instrument to control the importation of forced labour products - ECCJ \(corporatejustice.org\)](https://www.corporatejustice.org/)

² [Putting-the-Environment-in-Human-Rights-and-Environmental-Due-Diligence.pdf \(fairtrade-advocacy.org\)](https://www.fairtrade-advocacy.org/)

- Establish an **inclusive and transparent monitoring system** in cooperation with rightsholders.
- Include at least **civil and administrative liability**.



© Tobias Thiele

Fairtrade is committed to inclusivity and producer-led organizing and exists to advance and support smallholder farmers' and workers' rights. Our awareness raising and advocacy work seeks to highlight and transform unfair and unsustainable trade rules, business practices, and consumption patterns. Contact: **Tytti Nahi**, Lead, Business and Human Rights, tytti.nahi@fairtrade.fi

World Fair Trade Organisation Europe is the European branch of WFTO (global), the worldwide network of social enterprises that fully practice Fair Trade. Present in more than 80 countries and gathering both the pioneers and the innovators in Fair Trade, we set high standards of fair business practice for all. We work to ensure that responsible business practice becomes the norm. Contact: **Mikkel Kofod Nørgård**, Regional Coordinator, coordination@wfto-europe.org

The Fair Trade Advocacy Office catalyses collaboration within the international Fair Trade movement on policy, advocacy and campaigning activity; facilitates knowledge co-creation and sharing on Fair Trade policies and practices; and leads advocacy work on European Union legislation, policies and their implementation. Contact: **Jorge Conesa**, Policy Manager, conesa@fairtrade-advocacy.org



On behalf of:

Commerce Équitable France

Coordinadora Estatal de Comercio Justo (Spain)

Coordinadora Latinoamericana y del Caribe de Pequeños Productores y Trabajadores de Comercio Justo (CLAC)

Equo Garantito

EZA Fairer Handel

Fairtrade Africa

Fairtrade Belgium

Fairtrade Deutschland

Fairtrade Lëtzebuerg

Fairtrade Max Havelaar Switzerland

Fairtrade Netherlands

Fairtrade Österreich

Fairtrade Poland

Fairtrade Iberica

Fairtrade Italy

Fairtrade Sweden

Forum Fairer Handel

Max Havelaar France

Polish Fair Trade Association

Reilu kauppa ry

Weltladen-Dachverband