

PRESS RELEASE

Fair Trade movement's reaction to the publication of the legislative proposal on Corporate Sustainability Due Diligence

EU DUE DILIGENCE LEGISLATION FOR A POSITIVE IMPACT: COUNCIL POSITION TAKES A STEP BACK IN MAKING DUE DILIGENCE WORK FOR STALLHOLDER FARMERS AND WORKERS

1st of December, Brussels – Today, responsible ministers met as part of the Competitiveness council to vote on the Council position on the Corporate Sustainable Due Diligence Directive. Since the Commission presented the legislative proposal on the 23rd February 2022, the Council has been discussing their position and while there are some positive developments, the Council has failed to deliver a strong position that would hold business accountable.

The Fair Trade movement is happy to see that a slightly stronger role was given to stakeholder engagement by expanding the definition and by including human rights defenders, trade unions and civil society organisations. The position also strengthens the requirement to consult with stakeholders in some parts of the due diligence process, although not at all relevant steps. At the same time, the text remains gender blind, not acknowledging the need to account for different impacts felt by different groups in a vulnerable position.

The aim of the directive should be to support long term development of sustainable global value chains, which requires that the entire value chain is covered. In a positive development, the Council **removed the concept of “established business relationships”** which led to unclarity on how far through the supply chain the obligation reached and posed the danger of companies avowing long term sourcing relationships. However, at the same time, the **scope of the due diligence obligation was narrowed from “value chains” to “chain of activities”** which not only significantly limits the coverage of downstream impacts, but also unduly restricts the coverage in the upstream supply chain to immediate inputs into the production process.

Elena Lunder, Policy and Project Advisor leading on CSDDD at the FTAO comments that ***“to ensure sustainable improvements in global value chains, the status quo of business as usual must be challenged so it is disappointing to see that the due diligence obligation does not include a revision of a companies’ purchasing practices.”***

Their importance is already acknowledged in the recital 30, that a company's **own trading, procurement and pricing practices** can play a key role in the ability of business partners to produce sustainably.

Instead, the Council text sticks to the Commission's proposed emphasis on the use of **cascading contractual clauses** that would pass on a company's code of conduct to their business partners. Combined with verification of compliance by **third party audits**, this mechanism has the potential to enable companies to also "cascade" accountability to their business partners without addressing their own practices that might be causing or contributing to adverse impacts.

To reach the aims of the CSDDD a collaborative approach would need to be encouraged by the due diligence obligation which would mean that the accountability and responsibility for adverse impacts is proportionately carried by relevant actors. A step in this direction is the strengthening of the support to SMEs that should be part of due diligence by larger companies which includes guarantees for long term sourcing. Such agreements are key for smaller actors in global value chains to be able to plan for an invest into a more sustainable production. However, the Fair Trade movement was disappointed to see that the Council position narrowed the application of support measures in recital 47, excluding non-EU actors in global value chains. **Without also offering relevant support to non-EU actors further up the supply chain, effective change in occurrence of human rights violations and environmental harm is not possible.**

The same is true without good accountability and access to remedy provisions. The Council position has significantly watered down the proposed text of the Commission on civil liability. **Without clear accountability mechanisms, including civil liability, none of the other elements in the due diligence process will be enforced to their full extent.**

In furthering a more cooperative approach, the Fair Trade movement also welcomes the clarification by the Council that disengagement from business partners should only be used as a last resort when previous attempts to prevent or mitigate the adverse impacts were not successful. However, it should be clarified, that stakeholder engagement plays a key role in this process. At the same time, the Council adds an exception to the need to disengage in cases where there is no comparable supplier and termination would cause substantial prejudice to the company. This is not in line with the UNGPs or OECD Guidelines and in practice, it would mean that business interests are placed above human rights and the environment even in cases of harm that are well known to the company.

Finally, the due diligence obligation only covers a limited list of human rights and environmental impacts. The Council position would only oblige very large companies to adopt a climate transition plan in line with 1.5°C objective of the Paris Agreement. The due diligence obligation does not include contributions to climate change and the responsibility to be held accountable for prevention, mitigation and remediation.

It is key that the CSDDD refers to living wages, however, by not also explicitly mentioning living incomes a large group of people working in global value chains will not be protected. This includes smallholder farmers who produce most of the world's food, self-employed people, platform workers and other precarious forms of work.

Press contact: Elena Lunder (lunder@fairtrade-advocacy.org)

Fair Trade Advocacy Office
Village Partenaire – bureau 1 | 15 rue Fernand Bernier | 1060 Brussels – Belgium