



What is the Good Clothes, Fair Pay ECI legal proposal?



Key definitions the ECI proposal uses

‘due diligence’: the process put in place by an undertaking (company) aimed at identifying, assessing, preventing, mitigating, monitoring, disclosing, accounting for, addressing and remediating the risks in their production supply chain, linked to low wages and the violation of freedom of association and the right for collective bargaining, both in its own operations, its subsidiaries’ operations and its business relationships. It is an on-going, proactive and reactive process subject to review.

‘living wage’: a remuneration received for a standard work week of no more than 48 weekly working hours by a worker sufficient to afford a decent living for the worker and her or his family, including food, water, housing, education, health care, transportation, clothing and other essential needs including provision for unexpected events (Article 23 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Economic, Social and Cultural Rights)

‘wage risk point’: 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, textile, leather and footwear producing country or part thereof is included in the list to be established by the Commission

‘production supply chain’: manufacturers and subcontractors, including cutting, sewing, assembling and packing, processing facilities, including: printing, dyeing, laundering and embroidery, and processing facilities, including, spinning, knitting, weaving, processing of raw materials into fibres, application of dyes and bleach and slaughtering and skinning of animals.



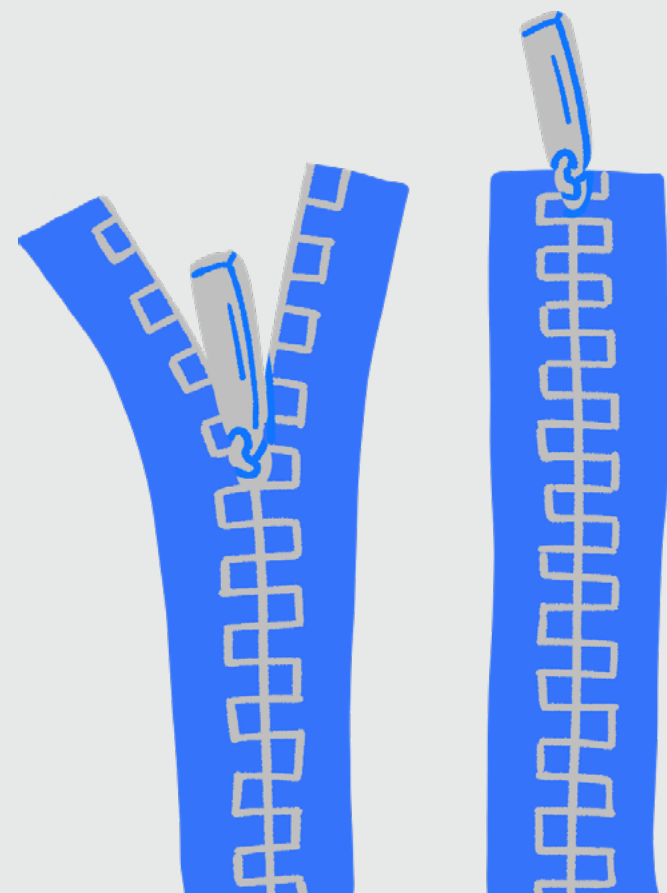
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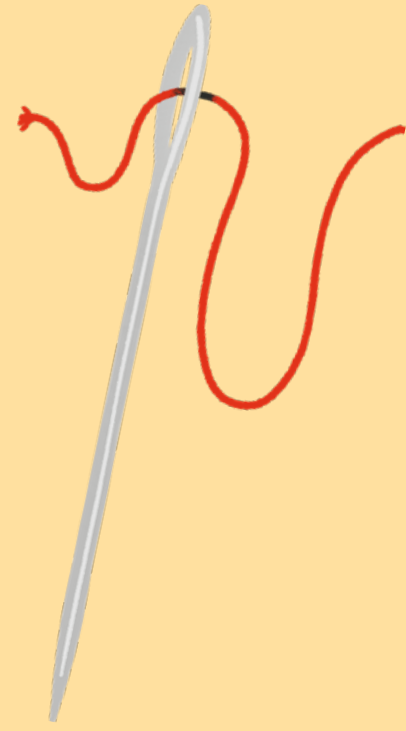
‘freedom of association’: the right to freedom of association with others, including the right of everyone to form and join trade unions for the protection of his or her interests

(Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights, Article 8 of the International Covenant on Economic, Social and Cultural Rights, the ILO Freedom of Association and Protection of the Right to Organise Convention (No. 87), the ILO Right to Organise and Collective Bargaining Convention (No. 98), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the ILO Declaration on Fundamental Principles and Rights at Work.)

‘collective bargaining’: all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for

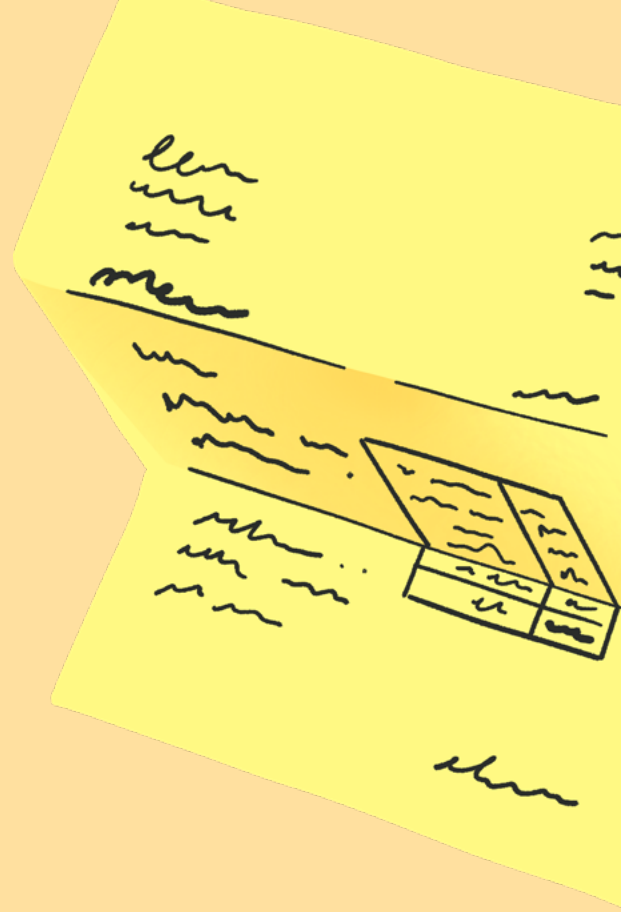
- a. determining working conditions and terms of employment; and/or
- b. regulating relations between employers and workers; and/or
- c. regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations





Key asks to the European Commission are for new legislation to:

- complement and build on the EU's Sustainable Corporate Governance framework, and the EU Adequate Minimum Wage Directive
- require brands to identify, prevent and mitigate adverse impacts on the human right to a living wage and freedom of association and collective bargaining rights;
- reduce poverty in the EU and worldwide, paying particular attention to the circumstances of women, migrants and workers with precarious contracts and the need to combat child labour;
- prohibit unfair trading practices which cause, or contribute to, actual and potential harms to workers in the garment and footwear sector and promote fair purchasing practices;
- provide a right to information for consumers regarding brands in the garment and footwear sector;
- improve transparency and accountability of brands in the garment and footwear sector.



Due Diligence Requirements of Brands

- To identify, prevent, mitigate and remedy adverse impacts on living wages, freedom of association and the right to collective bargaining in the regions they source from, taking account of the right to equal pay for equal work.
- To track and communicate the progress of the mitigating measures taken within the due diligence process, including through a publicly available time-bound and target-bound plan, assessed on a yearly basis. Involve all relevant stakeholders in the design and implementation of the undertakings' due diligence processes.
- To adopt a risk management plan, which particularly includes an evaluation and necessary adjustment of purchasing practices, specifically related to price setting and product costing.
- Brands would only be compliant if they have taken all appropriate and necessary measures to prevent, mitigate and remedy adverse impacts on living wages so moves like joining initiatives, setting targets that aren't providing evidence of living wages being easier to meet are insufficient.

Proportionality

- The obligations laid down in this Directive shall be carried out in accordance with the principle of proportionality as set out in Article 5 of the Treaty on European Union taking into account, in particular, the size of the undertaking, the context of its operations and the severity and likelihood of risks related to the respect of the human right to a living wage, including wage theft, the freedom of association, the right of collective bargaining and precarious contracting arrangements.

Approach to Living Wage setting

- The ECI asks the Commission to determine which benchmarks may be taken into consideration for the determination of living wages and that these living wage benchmarks should also be taken into account for wage negotiations in the sector.



**Key Components
of the ECI asks**

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Transparency

Brands are obliged to:

- make publicly available an annual report on the strategy and implementation of their obligations on their websites (the information should be available for a period of 10 years).
- Publicly disclose:
 - a. the full name of all production units and processing facilities in their production supply chain;
 - b. the site addresses;
 - c. the parent company of the business at the site;
 - d. categories of garments, textile, leather and footwear made, including but not limited to apparel, footwear, home textile and accessories;
 - e. the number of workers at each site (less than 1000, 1001 to 5000, 5001 to 10000, more than 10000);
 - f. the weekly take-home wage for entry-level workers based on a standard work week of no more than 48 weekly working hours, excluding overtime.

Approach to purchasing practices/unfair trading practices

The ECI draft legal act prohibits unfair trading practices. These include:

- Buyer paying the supplier later than 60 days after the end of an agreed delivery period
- Buyer cancelling orders without notice
- Buyer changes or fails to provide complete information regarding the terms
- Buyer requiring the supplier to pay for damages that occur after ownership has been transferred to the buyer
- Buyer refusing to agree on a production price in conformity with the due diligence obligations

Right to Information

The ECI includes a right to information for consumers regarding actual and potential adverse impacts related to wages and precarious contracting arrangements. Any natural or legal person has the right to request information from a company. This includes general information as well as information about specific suppliers in the supply chain.

Public Procurement

Government contracts for garments, footwear, leather textiles are in scope here. The ECI asks that Member States shall take appropriate measures to ensure that in the performance of public procurement or concession contracts economic operators comply with the due diligence requirements as set out in this Directive.



Key Components of the ECI asks

High-Risk Low-Wage Countries

- The ECI requests that the Commission establishes an annual list of all the garment, textile, leather and footwear producing countries or parts thereof, where the applicable statutory minimum wage at the cut and sew stage of the production of those goods is below the wage risk point and the minimum living wage.
- Brands that source from these countries shall be subject to enhanced scrutiny by the national authorities and subject to penalties.
- Even where the minimum wage is above the wage risk point, if the country does not guarantee freedom of association and the right to collective bargaining, it should be included on the list.

Sanctions and Penalties for Non-Compliant Brands

- Member States shall put penalties on companies who are found not to comply.
- The national authorities will be given powers by the Commission to temporarily or indefinitely exclude undertakings from public procurement, from state aid, from public support schemes including schemes relying on Export Credit Agencies and loans, resort to the seizure of commodities and other appropriate administrative sanctions.

- In the case of particularly serious infringements Member States may impose criminal sanctions, including in relation to liabilities of the Directors of the undertakings.

How EU member states will apply it nationally

- Member States would have to adopt binding rules at national level. In principle, the Member States can decide how to transpose the objectives of the Directive but the more detailed the Directive is, the less flexibility they have. Normally, there is a deadline of several years within which the directive has to be transposed by the Member States. Given that the Directive we have proposed is quite prescriptive, if the EU chooses to follow what we have laid out this would be a quite uniform regulation level within the EU.
- Member states will designate a national authority to initiate and conduct investigations on its own initiative or in response to complaints.
- They will be able to take decisions and impose penalties if violations apply. Each Member State will designate one or more competent national authorities to supervise and apply national law.
- The Commission will set up a website that allows the exchange of information among the competent national authorities and the Commission and listing all the national authorities who are responsible.

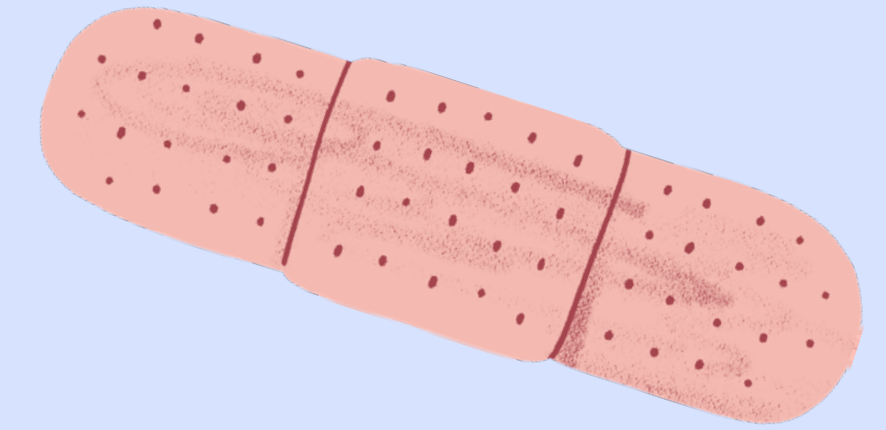
The ECI & the EU's Corporate Sustainable Due Diligence Directive



Areas where our ECI asks go beyond the Commission's draft law:

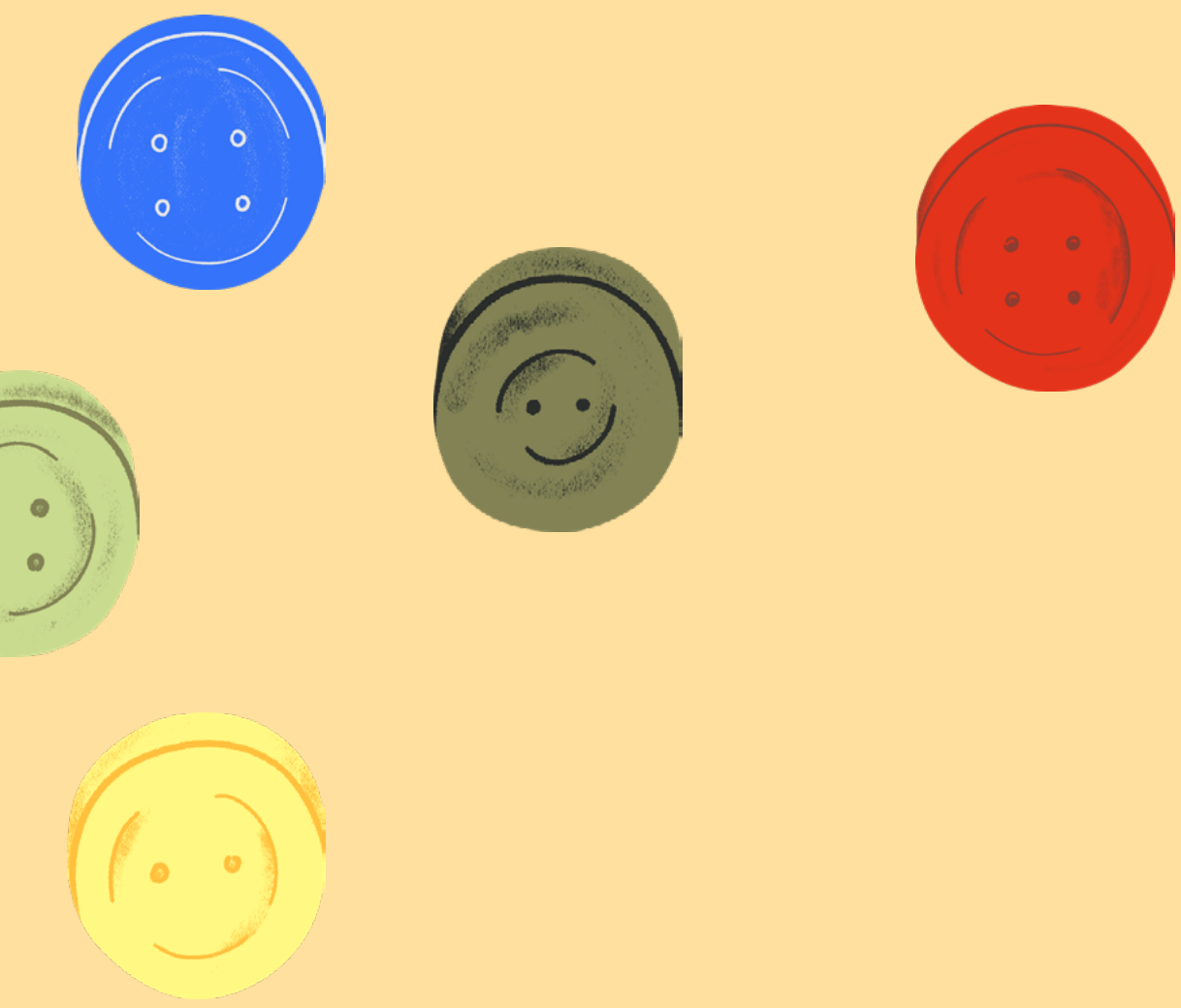
Living wages	In the communication from the Commission on decent work worldwide for a global just transition and a sustainable recovery issued in parallel with the corporate sustainability legislation living wage is not explicitly named but income and labour market inequalities are referenced several times, alongside freedom of association and supporting social dialogue, with textiles particularly mentioned. However, living wages are not explicitly given attention in the draft law.
Scope	The European Commission (EC) proposal has a limited scope, as it only includes large companies. The reality in the garment sector is that many fashion brands are small and medium sized enterprises. The scope of our proposal encompasses all companies active in the textile, garment, leather and footwear sector who are placing products on the EU market.
Stakeholder engagement	Our ECI heavily references the need to engage with workers and compels brands to allow for collective bargaining. The EU proposal makes lip service to "stakeholder engagement, where relevant." Our take is that it's always relevant.
Grievance mechanism	We're calling for a real grievance mechanism to resolve problems throughout the supply chain and act as an early warning system before things get out of hand. The draft law, by comparison, puts in a vague 'complaints procedure' but would be out of scope for more vulnerable workers down the chain and seems like it could fall into the trap of 'suggestion box' style complaints systems that haven't worked in the industry over many years.

The ECI & the EU's Corporate Sustainable Due Diligence Directive



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Liability	Our ECI puts forward that companies can be held liable for any harm arising out of potential or actual adverse impacts on living wages or collective bargaining rights- this applies to the brand and its business partners. In the draft legislation, civil liability concerns only established business relationships with which a company expects to have a lasting relationship. This is a vague term and when applied to our industry where in many cases there are no contractual relationships between brands and suppliers, it seems like an area where brands can easily shirk responsibility.
Approach to due diligence	The approach to due diligence the EC is proposing is not in line with the OECD guidelines and the United Nations Guiding Principles on Business and Human Rights (UNGPs). The proposal limits the supply chain to established business relations and sets limitations on the number of risks to be included. In this case the garment sector would only have to focus on so-called 'severe' risks, while it is not clarified what those risks would entail. Our ECI calls for risk-based due diligence with respect to living wages, freedom of association and collective bargaining and precarious contracting arrangements in their operations and business relationships encompassing both direct and indirect suppliers.
At-risk groups	Particular groupings of people who may be vulnerable to corporate abuses are not explicitly referenced in the legislation.
Child labour	In the communication from the Commission on decent work worldwide for a global just transition and a sustainable recovery issued in parallel with the corporate sustainability legislation talks of the "specific focus" on child labour mentioning that child labour eradication needs to be kept "at the forefront of reflections in all relevant policy areas." Our ECI promotes the payment of living wages as a solution to the challenge of child labour.



*GOOD CLOTHES
FAIR PAY*

