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The impact of the EU Proposal for a Directive on Corporate sustainability and due diligence on the textile industry

Dissertação com vista à obtenção do grau de
Mestre em Direito na especialidade de Direito Internacional e Europeu.

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de Lisboa

Setembro 2023


The impact of the EU proposal for a Directive on Corporate sustainability and due diligence on the textile industry
September 2023

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To my parents, for all the unconditional love, support, and the constant sacrifices that you have made for me. Thank you for believing in me and always allowing me to pursue my dreams, giving me the wings to fly, and pushing me to be my best self. I couldn't have ever done it without you. A simple thank you will never be enough. This is for you.

To my aunt and grandparents, for standing by me in all the moments of my life, for always taking care of me, for believing in me and for being a fundamental pilar in my life.

To Patricia, thank you for all your support even when you didn't realize it. Your academic drive and passion have always inspired me and if I am here today it is also because of you. I hope that one day your daughters can look up to me in the same way I looked up to you.

To professor Lucila, for her guidance and knowledge provided during this process.

Abbreviations list

CSDDD- Corporate sustainability due diligence directive

EU- European Union

EC- European Commission

UN- United Nations

UNGPs- United Nations Guiding Principles

OECD- Organization for Economic Co-operation and Development

ILO- International Labor Organization

ECCJ- European Coalition for Corporate Justice

GHG- Greenhouse gas

Índice

1.	RESUMO.....	1
2.	INTRODUCTION.....	3
2.1.	METHODOLOGY	5
2.2.	LIMITATIONS.....	7
2.3.	LITERATURE REVIEW.....	8
3.	THE PROBLEMS THAT OCCUR IN THE TEXTILE INDUSTRY	14
3.1.	HOW THE INDUSTRY WORKS- THE SUPPLY CHAIN AND BUSINESS MODEL	15
3.2.	THE ENVIRONMENTAL PROBLEMS.....	21
A.	<i>GHG emission and climate</i>	21
B.	<i>Water consumption</i>	22
C.	<i>Waste Pre- and Pos-consumption</i>	28
3.3.	THE HUMAN RIGHTS VIOLATIONS	30
A.	<i>Child labor</i>	30
B.	<i>Women are more at risk</i>	33
C.	<i>Low adherence to trade unions</i>	36
D.	<i>Forced labor and human trafficking</i>	37
E.	<i>Poor conditions and lack of safety in the workplace</i>	39
F.	<i>Low Wages</i>	41
4.	THE ANALYSIS OF THE PROPOSAL FOR A DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE	45
4.1.	THE NEED FOR A NEW DIRECTIVE:	45
4.2.	THE OBJECTIVES	48
4.3.	THE SCOPE.....	49
4.4.	THE ENFORCEMENT	51
4.5.	THE LIMITATIONS	52
5.	THE DIRECTIVE APPLIED TO THE TEXTILE INDUSTRY	54
5.1.	HOW DOES THE DIRECTIVE APPLY TO THIS INDUSTRY?	54
5.2.	CAN THIS PROPOSAL SOLVE THE ADVERSE IMPACTS OF THE INDUSTRY?	64
6.	RECOMMENDATIONS.....	78
7.	CONCLUSION.....	86
8.	BIBLIOGRAPHY	90

1. Resumo

A responsabilidade empresarial e a devida diligência ocupam hoje em dia um lugar predominante no mundo jurídico. Atualmente, as empresas têm um grande impacto no mundo, mais do que os Estados afirmam certos autores. Com esta influência e globalização crescente das empresas adveio igualmente a necessidade de legislar as suas práticas, que se tornaram uma preocupação crescente à medida que violações de direitos perpetuadas pelas mesmas foram expostas.

Com esta preocupação, a União Europeia decidiu adotar uma proposta para uma diretiva on *corporate sustainability and due diligence* (CSDDD). Indiscutivelmente, alguns sectores são mais problemáticos do que outros, sendo um deles a indústria têxtil, um sector que tem vindo a preocupar a União Europeia. O crescente consumo e procura por produtos mais baratos, torna o sector responsável por um número excessivo de violações ambientais e de direitos humanos.

Esta tese pretende compreender o impacto desta proposta de diretiva neste sector assim como os seus impactos e limitações desta regulamentação na indústria têxtil.

Palavras-chaves: direitos humanos, ambiente, responsabilidade empresarial, UE, indústria têxtil, sustentabilidade

Abstract

Business responsibility and due diligence have taken a more predominant place in the legal world, over the years. Nowadays, enterprises have a large impact on the world, even more than states as some might argue. The need to legislate their practices have become a real concern as violations perpetuated by the companies have been exposed.

With this growing concern, the European Union adopted a proposal for a directive on corporate sustainability and due diligence (CSDDD). Arguably, some sectors are more problematic than others, one of them being the textile industry, a sector under close scrutiny of the European Union.

The growing consumption and demand for cheaper products makes the sector responsible for a growing number of environmental and human rights violations.

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry

This thesis aims to understand the impact of this directive on this sector and its impacts, exposing the limitations of this regulation on this industry.

Keywords: human rights, environment, business responsibility, corporate governance, due diligence, EU, fast-fashion, supply-chain, sustainability, CSDDD

2. Introduction

The discussion on the importance of business responsibility over human rights has been surfacing since the 1970s, with authors like Milton Friedman¹ and later John Ruggie², author of the UN Guiding Principles on business and Human rights (UNGPs)³.

Soon after, international organizations like the UN and OECD adopted non-binding regulations with regards to due diligence measures to be implement by the companies as well as the States⁴. This adoption sets new standards on what the States and companies should do regarding due diligence. The question of the importance and actual need for binding regulations on the matter is nowadays an important topic in the legal field. Multiples States have now raised their concern about the regulatory gap that benefits many of the corporations operating globally, allowing them to violate rights without a proper consequence. France or the United Kingdom for example, have already adopted national laws to impose due diligence obligations on enterprise incorporated as well as those operating in their territory⁵.

The rising concern has now reached the European Union. To harmonize due diligence obligation in the EU territory and to reach their overall objectives, the European Commission issued in 2022 the Proposal for a Directive on Corporate Sustainability and due diligence (CSDDD)⁶. The European Commission understood that regulating the due diligence measures of companies, would also be beneficial to reach their goals on carbon neutrality, sustainability, and human rights expectations⁷.

¹ Friedman, M. (1970). The social responsibility of business is to increase its profit. *The New York Times Magazine*

² Ruggie, J. (2008). Protect, respect and remedy: A framework for business and human rights. *Innovations: Technology, Governance, Globalization*, 3(2), 189-212.

³ United Nations Human Rights Office of the High Commissioner (2011). Guiding Principles on Business and Human Rights, implementing the United Nations “Protect, Respect and Remedy” Framework

⁴ OECD (2011). Guidelines for Multinationals enterprises, 2011 edition

⁵ Journal Officiel de la République Française (2017). LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (1) and UK Public General Acts (2015) Modern Slavery Act

⁶ European Commission (2022). Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

⁷ “This Directive is important to fulfil objectives of various existing and planned Union measures in the field of the human rights, including labour rights, and environment.” (European Commission 2022 p.2)

All the while, reducing the legal uncertainty and creating an even playfield for the companies operating across Member-States

Although due diligence measures are important across all sectors, some are far more prone to the perpetuation of violations and adverse impacts than others. It is the case of the textile industry. This industry covers multiple sectors, one of them being fast fashion and more recently introduced the ultra-fast fashion.

Famously known for producing garments at a fast rate and reduced price, which also make them infamous for numerous adverse impacts on human rights and on the environment⁸. Their supply chain and their dependence on third countries for their sourcing and production, are a recipe for disaster, making for violations to be far more common in this sector⁹. In fact, the supply chain is extremely fragmented and global, therefore, the retail market industry is connected through contracts with producers located in different countries and consequently operating in different jurisdictions.

For this reason, it would be incorrect to treat this industry with the same level of concern as the remaining ones.

With these specificities in mind, the goal of this thesis is to answer the following question:

How would the EU Proposal for a directive on corporate sustainability and due diligence apply to the textile industry and what would be the impacts of this proposal on the sector?

To answer this problematic, we will be exploring the problems that occur in the textile industry, from two perspectives, environment as well as human rights. For example, waste production, soil damage as well as child labor, human trafficking, to name a few.

⁸ Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

⁹ Ibid

In order to better grasp the reason why they occur, we will need to understand the business model and supply chain. In a second time, we will study the EU proposal for directive, then how the directive applies in the textile industry.

And lastly, the recommendations on possible improvements for this directive in accordance with its application to the sector.

2.1. Methodology

The methodology of this thesis consists of mostly literature review. In the first 3 chapters of this thesis, the review of articles will be predominant, as the topics mentioned have been greatly covered to this day. The sources analyzed include research papers, articles of opinion, reports, and scientific data. In order to obtain the most relevant and accurate information possible, the dates of the data analyzed in regard to environmental problems has been restricted mostly to the past 3 years.

In the first chapter, on problems of the textile industry, multiples articles on the latter, its method of production and supply chain have been analyzed. Statistics on the data of this sector have also been utilized. For the section on environmental problems, the website of science direct has been utilized, to reduce the number of unwanted articles, specific keywords have been introduced, “environmental impact and issues; textile industry”, the methodology specific to this section will be explored in further detail in the correspondent chapter. As mentioned prior, due to the possible variation of data, as well as, the vast number of articles found on the subject, only the articles dated from 2020 to the present day have been considered. In the section on human rights violations, articles and reports were mostly studied, reports belonging to different organizations which exposed the problems related to the industry.

In the second chapter, the analysis of the proposal for a directive on corporate sustainability due diligence, the EU proposal was examined, alongside articles on the latter in order to complement this analysis.

As for the section on how the directive would apply to the textile industry, the proposal has been investigated with the knowledge on how the industry works based on the articles and reports used in the previous chapter as to understand the impact of the directive on the industry. For the section with regards to, if the proposal could in fact solve the adverse impacts of the sector, the method used in the previous section was reproduced, analyzing the industry and its problems presented prior alongside the proposal.

Furthermore, the study of the ECCJ on the directive as well as other articles, mostly the article of Bright and Smit, on “*The new European Directive on Corporate Sustainability Due Diligence*” and Paces’ article “*Civil Liability in the EU Corporate Sustainability Due Diligence Directive Proposal: A Law & Economics Analysis*”, have also been utilized as to obtain a different perspective on the possible loopholes of this regulation.

The last chapter on recommendations aims to establish possible solutions to the violations perpetuated by the industry. To present the most relevant and accurate recommendations in possible alterations that would better work on the sector, loopholes and limitations of the proposal presented in the previous chapters as well as, all the specificities and adverse impacts of the industry, have been analyzed. To enrich the opinion, articles from the ECCJ and Christophe Clerc have been examined. As previously mentioned, due to the recent introduction of this proposal not many articles have yet been written, limiting the field of research.

The use of the qualitative analysis for this research has been chosen due to the number of research available on the topics studied. In the same way, quantitative research would not be beneficial to answer the main question of this thesis. Therefore, the objective is to analyze the data already available and introduce a new perspective, to complete the identified gap on the analysis of the proposal as well as the link between the proposal and the due diligence measures applied to the textile industry which hasn’t been done until the moment.

2.2. Limitations

During the writing of this thesis, some limitations have been identified. As the research on the textile industry and mostly on fast fashion and ultra-fashion is still unexplored for the most part, the number of articles regarding the supply chain and business model are reduced.

Regarding the topic of human rights violations perpetuated by the textile industry, the articles and reports are older than desired, possibly explained due to the COVID-19 pandemic, most numbers date from 2019 or older. However, throughout the research, older reports and articles on the topic were also found, which reported the same violations as the most recent ones. Unlike environmental problems, in which the statistics can change significantly over the years, we can assume that the human rights reported remain unchanged to this day. Even if the numbers might have changed, the belief is that they haven't changed significantly enough to no longer be relevant or accurate.

During the research, a lack of articles and research on the CSDDD proposal has been identified, due to its novelty not many articles have been published to date, potentially allowing for a lack of different perspectives to be introduced on the subject.

In June of 2023, the European Parliament published multiple amends to the proposal presented in this thesis. Due to the time frame and the date of this publication, that occurred at the end of the thesis schedule, the amends have not been considered in the description of the directive, the articles mentioned are the ones published in February of 2022. However, it has been considered that the amends aren't significative enough to change the conclusions made on said proposal.

2.3. Literature review

The academic research around the topic of human rights and business responsibility is extensive and has been ensuing for quite some time now. Reported to have started in 1946, when Bernard Dempsey and Donald K. David wrote on the topic of corporate social responsibility¹⁰, while the actual attribution of the creation of the latter being attributed to Harold Bowen when he published *Social Responsibilities of the Businessman*¹¹.

The discussion regarding if the companies did or not in fact have a social responsibility, begun to rise in the 70s. In reality, not everyone agreed that protecting human rights and helping with social justice was under the scope of companies but rather solely a responsibility of the State, portraying a more traditional vision. This was the case of Milton Friedman, who explored this question in 1970¹², in accordance with Friedman, this question lacks rigor and analytical concordance. For the author, only people can have responsibilities, businesses are a moral person and therefore only have “artificial responsibilities”¹³, for him the only time that a company needs to be concerned with the violations of human rights is when such violations occur and makes a loss of profit for the company¹⁴. In this perspective, the importance is profit, companies exist to make money and not to better the world.

The question about the importance of due diligence measures started to arise with John Ruggie, founder of the UN Guiding principles on business and human rights (UNGPs), with its creation and implementation the question became more and more relevant.

The author looked for a way to make the human rights norms a constant practice for the State and the businesses¹⁵.

¹⁰ A.Ramasastry (2015) Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability

¹¹ *ibid*

¹² Friedman, M. (1970). The social responsibility of business is to increase its profit. *The New York Times Magazine*

¹³ *ibid*

¹⁴ *ibid*

¹⁵ Ruggie, J. (2008). Protect, respect and remedy: A framework for business and human rights. *Innovations: Technology, Governance, Globalization*, 3(2), 189-212.

Other authors, like Stephen Turner not only explored the responsibilities that companies do have but also what makes business an interesting and unique legal construct¹⁶.

The concepts that benefit business and make them harder to regulate are explored throughout the literature, Nicolas Bueno and Claire Bright explore the way that the human rights due diligence can be introduced through corporate civil liability¹⁷. Other concepts like the directors' duties are explored by MacCorquodale and Neely¹⁸. In more recent times, a study with the aim of understanding if companies would be willing to implement more due diligence measures and what kind of requirements the companies already have in place has been conducted. This study conducted by Claire Bright et al.¹⁹ helps to understand that companies now consider that these measures are beneficial, however the study conducted by the European Commission also evidenced that companies do not conduct due diligence measures over their first-tier suppliers²⁰.

To better understand the violations and why they are so recurrent in the industry, we need to understand the business model of the companies of the sector. To do so, the articles of Camargo and colleagues as well as the work of Fraser and Van der Ven have been reviewed. In fact, their work is quite complete in explaining the fashion supply chains²¹ and its impact on the workers and the reasons for the industry to locate their factories in the third countries²².

¹⁶ Turner, S. J. (2019). Business practices, human rights and the environment. In *Elgar Encyclopedia of Environmental Law* (pp. 376-386). Edward Elgar Publishing.

¹⁷ Bueno, N., & Bright, C. (2020). Implementing human rights due diligence through corporate civil liability. *International & Comparative Law Quarterly*, 69 (4), 789-818

¹⁸ Mccorquodale, R. & Neely S. (2022). Directors duties and human rights impacts: a comparative approach. *Journal of Corporate Law studies*, 1-35.

¹⁹ Bright, C., Marx, A., Pineau, N., & Wouters, J. (2020). Toward a Corporate Duty for lead companies to respect Human rights in their global value chains? *Business and Politics*, 22(4), 667-697.

²⁰ European Commission, Directorate-General for Justice and Consumers, Torres-Cortés, F., Salinier, C., Deringer, H. (2020). Study on due diligence requirements through the supply chain: *final report*, Publications Office. <https://data.europa.eu/doi/10.2838/39830>

²¹ Camargo, L. R., Pereira, S. C. F., & Scarpin, M. R. S. (2020). Fast and ultra-fast fashion supply chain management: an exploratory research. *International Journal of Retail & Distribution Management*, 48(6), 537-553.

²² Fraser, E., & van der Ven, H. (2022). Increasing Transparency in Global Supply Chains: The Case of the Fast Fashion Industry. *Sustainability*, 14(18), 11520.

Although not much has yet been written on the *Proposal for the directive on corporate sustainability and due diligence*, the work of Claire Bright and Lise Smit, has been heavily used, as it underlines the scope of the directive, the duties, objectives, and other important topics²³. Other articles have also been used to comment on this proposal, namely the paper by Paccès, which focuses on the notion of the liability presented in the proposal²⁴.

As well as the work of the ECCJ, which highlights the many loopholes and critics to the proposal²⁵ and the article of Christophe Clerc which analyzes the French duty of vigilance law, drawing recommendations for the EU directive, which some of them have been integrated while others haven't²⁶.

The concept of the fast fashion industry and their impacts on human rights is a more embryonic research. Explained by the fact that these brands have started to gain exposure in the last decade only, not only this, but violations have also been more exposed in this decade, mostly exposed by the medias.

In fact, studies have been conducted in more recent years. In 2014 Turker and Altuntas have analyzed the sustainability of the supply chain of these brands²⁷. Neha Aggarwal and Chinmay More, explored the violations of the environment and human rights made by the fast fashion. In their study, they investigate the model of supply chain as well as exploring the violations of the workers of the fast fashion factories²⁸.

²³ Bright, C., & Smit, L. (2022). The new European Directive on Corporate Sustainability Due Diligence. *British Institute of International and Comparative Law and NOVA School of Law*, 23.

²⁴ Paccès, A. M. (2023). Civil Liability in the EU Corporate Sustainability Due Diligence Directive Proposal: A Law & Economics Analysis. *European Corporate Governance Institute-Law Working Paper*, (691).

²⁵ ECCJ (2022). Analysis of proposal for a directive on Corporate Sustainability Due Diligence

²⁶ Clerc, C. (2021). The French 'Duty of Vigilance' Law: Lessons for an EU Directive on Due Diligence in Multinational Supply Chains. *ETUI Research Paper-Policy Brief*, 1.

²⁷ Chan, H. L., Wei, X., Guo, S., & Leung, W. H. (2020). Corporate social responsibility (CSR) in fashion supply chains: A multi-methodological study. *Transportation Research Part E: logistics and transportation review*, 142, 102063.

²⁸ Aggarwal, N., & More, C. (2020). Fast Fashion: A Testimony on Violation of Environment and Human Rights. *International Journal*, 1(3).

Authors like Monay²⁹ and Niebank³⁰, report in their studies, the conditions that the workers face in the factories and the dangers associated to these.

Throughout the research, the reports made by the organizations have been the most utilized sources to prove the human rights violations, the reports made the Clean Clothes Campaign, the SOMO and ICN, highlight the violations that occur mostly in the factories, with actual testimonies from workers. The studies and statistics released by the International Labor Organization have mostly been utilized for their numbers and investigation on child labor. The work of Lambert has also been used to better understand the global impact of the industry³¹.

As for the environmental violations perpetuated by the industry, these are heavily documented. As evidenced by the methodology explained prior, multiple scientific articles have been utilized.

Over the past few years, the impact of the textile industry on the environment has been studied and quantified. We can now have access to precise information and statistics of the real danger of these practices represent. The scientific community identified the industry as a heavy contributor for global warming, like GHG emissions, water pollution and many others.

Authors like Rahman, Siddiqua and Cherian, have reported on the fibers used by the industry and their impacts on biodiversity, soil pollution and the water consumption³². The work of Oliveira and colleagues, focuses on the post-consumer waste and the landfills, part of land where clothes are disposed of, creating multiple challenges to the environment and dangers to the nearby pollution directly³³.

²⁹ Monay, S. (2021). Human Rights Implications in the Fast Fashion Industry: *A Qualitative Analysis*

³⁰ Niebank, J. C. (2018). Bringing Human Rights into Fashion: issues, challenges, and underused potentials in the transnational garment industry (p. 78). *DEU*.

³¹ Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

³² Rahman, S. S., Siddiqua, S., & Cherian, C. (2022). Sustainable applications of textile waste fiber in the construction and geotechnical industries: A retrospect. *Cleaner Engineering and Technology*, 100420.

³³ de Oliveira, C. R. S., da Silva Júnior, A. H., Mulinari, J., Ferreira, A. J. S., & da Silva, A. (2023). Fibrous microplastics released from textiles: Occurrence, fate, and remediation strategies. *Journal of Contaminant Hydrology*, 104169.

The issue of the chemical use is reported by many authors, like Kishor and colleagues³⁴, Khan and collaborators that focus their research on the pollution created and its impact on the individuals³⁵, while Guo and counterparts mention its impact on the air³⁶.

Although, with some differences, all these authors report on the use of chemicals in garments and its impact on the environment and individuals.

Another problem in the industry, is the use of microplastics reported by Yadav and colleagues³⁷, as well as Rahman and collaborators, that concur that the release of these microplastic does impact the biodiversity³⁸. The wastewater issue is reported by Khan and counterparts³⁹ and Partal et al⁴⁰. as well as Jeong et al., that report the contamination of soils and affects the quality of water and therefore the living species⁴¹.

The heavy water consumption is described in the works of John and Mishra, Partal et al., as well as Esteve-Turrillas and de la Guardia .

Rahman and colleagues have heavily researched the environmental impact of the sector and have many complete studies on the latter, being a good source of literature.

³⁴ Kishor, R., Purchase, D., Saratale, G. D., Saratale, R. G., Ferreira, L. F. R., Bilal, M., & Bharagava, R. N. (2021). Ecotoxicological and health concerns of persistent coloring pollutants of textile industry wastewater and treatment approaches for environmental safety. *Journal of Environmental Chemical Engineering*, 9(2), 105012.

³⁵ Khan, W. U., Ahmed, S., Dhoble, Y., & Madhav, S. (2022). A critical review of hazardous waste generation from textile industries and associated ecological impacts. *Journal of the Indian Chemical Society*, 100829.

³⁶ Guo, Y., Zhu, L., Wang, X., Qiu, X., Qian, W., & Wang, L. (2022). Assessing environmental impact of NOX and SO2 emissions in textiles production with chemical footprint. *Science of The Total Environment*, 831, 154961.

³⁷ Yadav, S., Kataria, N., Khyalia, P., Rose, P. K., Mukherjee, S., Sabherwal, H., ... & Khoo, K. S. (2023). Recent analytical techniques, and potential eco-toxicological impacts of textile fibrous microplastics (FMPs) and its associated contaminants: A review. *Chemosphere*, 138495.

³⁸ Rahman, S. S., Siddiqua, S., & Cherian, C. (2022). Sustainable applications of textile waste fiber in the construction and geotechnical industries: A retrospect. *Cleaner Engineering and Technology*, 100420.

³⁹ Khan, W. U., Ahmed, S., Dhoble, Y., & Madhav, S. (2022). A critical review of hazardous waste generation from textile industries and associated ecological impacts. *Journal of the Indian Chemical Society*, 100829.

⁴⁰ Partal, R., Basturk, I., Hocaoglu, S. M., Baban, A., & Yilmaz, E. (2022). Recovery of water and reusable salt solution from reverse osmosis brine in textile industry: A case study. *Water Resources and Industry*, 27, 100174.

⁴¹ Khan, W. U., Ahmed, S., Dhoble, Y., & Madhav, S. (2022). A critical review of hazardous waste generation from textile industries and associated ecological impacts. *Journal of the Indian Chemical Society*, 100829.

Therefore, the world is aware of the violations that occur in the sector and therefore studies are growing, and literature becoming more predominant. Although the studies of the due diligence regulations and violations of these regulations are still very few, which creates a lack in understanding the real impacts of these measures in the industry.

3. The problems that occur in the textile industry

In this chapter, the problems caused by the textile industry will be explored. The textile industry englobes multiple sectors, including the clothing sector⁴², which represents 60% of the industry⁴³. Literature explored the numerous issues that are caused by the latter, which can be divided between the human rights violations and the environmental ones⁴⁴. With alarming and global impacts, the industry is under scrutiny by the EU⁴⁵, the fashion (or clothing) industry was in 2021 considered the third biggest polluter by the World Forum Research.

The clothing sector has been growing for decades now and it doesn't seem to be slowing down, in fact statistics show that the numbers of sales rose from 100 to 200 billion units/year, while the actual wear of the garment decreased by 36%⁴⁶. Which means that people buy more but wear it less. Hence, the profit made by the sector is also expected to increase, "The Fast Fashion Market size was valued at \$122,257.5 Million in 2021 and is projected to reach \$283,457.5 million by 2030; growing at a CAGR of 10.13% from 2023 to 2030."⁴⁷

⁴² Mezatio, e. P., Aghelinejad, M., Amodeo, L., & Ferreira, I. (2022). Design a sustainable supply chain for the textile and clothing industry with consideration of carbon emissions. *I fac-papersonline*, 55(10), 1687-1692.

⁴³ *ibid*

⁴⁴ Lambert, M. (2014). The lowest cost at any price: the impact of fast fashion on the global fashion industry.

⁴⁵ <https://www.europarl.europa.eu/news/en/press-room/20230524ipr91913/parliament-wants-to-make-eu-textiles-and-clothing-industry-greener>

⁴⁶ <https://blog.gitnux.com/fast-fashion-statistics/>

⁴⁷ *ibid*

3.1. How the industry works- The supply chain and business model

To understand how and why violations are common in this industry, it is fundamental to understand how the business works. In fact, as will be explained, the industry is far more prone to violations due to their form of production and sourcing of raw materials as well as their establishment in third countries, which tend to have less strict regulations and/or monitoring mechanism as those in place in the Eu member states.

The motive to study these types of businesses in the textile industry is because these brands present the most complex supply chain, moreover, it is the fast fashion companies that are under scrutiny for their numerous adverse impact due to their practices and methods of production. Therefore, understanding the supply chain and their form of conducting the business would give us a better insight into the causes of these adverse impacts that will be explored later.

The emergence of fast fashion has occurred mostly in the last two decades, therefore the extent of articles is limited, this is even more noticeable when addressing the ultra-fast fashion sector, since its creation is far more recent. One of the most used articles for this section is by Camargo and colleague, which studied the fast and ultra-fast fashion sector extensively. Another piece of work used, although not as recent, is the article of Lambert, who explored the global impacts of the fast fashion sector.

The textile industry englobes multiple branches, including the clothing industry that ranges from haute couture to the fast fashion or ultra-fashion industry⁴⁸. Although similar, these types of businesses have some key differences. As the name states the fast fashion produces cheaper clothes at a fast rate⁴⁹.

While the higher end and especially the haute couture, produces only few collections with few products, without having a mass production and therefore have no excess of inventory, maintaining the exclusivity of their brand, it can also signify that the products can sometimes be manufactured in more developed countries with more “savoir-faire”, but not always.

⁴⁸ Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

⁴⁹ *ibid*

Keeping in mind that no sector is free from the violations, we will however explore the mode of production of the fast fashion industry, like mentioned prior it illustrates the more exaggerated version of the sector and is the most responsible for violations to keep on occurring.

The way fast fashion works is the following:

Brands will get inspiration from the haute couture runways shows which often predict the trends for the season, while also creating their own trends. For this to occur, they establish multiple collections throughout the year, creating a sense of exclusivity on some products. The consumer will then be led to believe that if they don't acquire it in that moment, they will no longer have the chance to. To keep this flow, the production needs to be fast and effective with new collections coming into stores multiples times a year This rises the demand from the consumer to have the new fashionable pieces of clothing⁵⁰. The average lead time of production ranges from 2 to 4 weeks and the sector creates an average of 2 000 to 11 000 garments a year⁵¹.

Since the garments are "trendy pieces" is more likely that the person who bought, them will not want to wear it once the trend has passed, get rid of the garment and buying more new pieces as the trend changes⁵², Accordingly, the sector is accused of being responsible for the excess of clothing, as well as the waste that this produces.

For this production to be possible, the companies rely heavily on a long and complex supply chain, fundamental to deliver the desired product and the desired time and price⁵³.

Supply chain is defined as the entire process from the beginning of production to the delivery of the material.

⁵⁰ ibid

⁵¹ Camargo, L. R., Pereira, S. C. F., & Scarpin, M. R. S. (2020). Fast and ultra-fast fashion supply chain management: an exploratory research. *International Journal of Retail & Distribution Management*, 48(6), 537-553.

⁵² ibid

⁵³ ibid

“In the fashion industry, a supply chain encompasses the whole range from manufacturing and distribution processes, including the transformation of raw materials, to finished products ready to be launched on to the market. It is a system constituted of material suppliers, production facilities, logistics operations and customers (Basak et al., cited in Camargo et al. 2020 p.2).”

Multiple strategies are used in this process to better match the desired outcome. With changing trends and different demands from consumers, the chain needs to be able to respond in an efficient manner to possible alterations or new demands. With the increase in demand so came the increase of the complexity of the supply chain⁵⁴.

The sector uses a combination of the agile supply chain⁵⁵, which is responsive to possible changes, is adaptable to these possible alterations, which means that instead of being based on an inventory previously selected like most traditional supply chains, this type adapts to be desires of the consumer⁵⁶, and the lean supply-chain, who tries to limit these changes⁵⁷. “Efficient (or lean) supply chains usually aim at achieving economies of scale, where there is a need for high use of effective communication throughout the chain.” (Camargo et al 2020 p.2)

This combination allows that industry to respond to the demand on the desired time. “(...) agile supply chains must be flexible to changes or disturbances, while lean systems aim to reduce any internal and external variation as much as possible.” (Camargo et al 2020 p.3)

As affirmed by Fraser and Van der Ven, the supply chains are often located in third countries, to ensure that their cost remain as low as possible⁵⁸, which also reduced the price of the garment and therefore raised the possibility of more sales and overall profit.

⁵⁴ Ibid

⁵⁵ Fraser, E., & van der Ven, H. (2022). Increasing Transparency in Global Supply Chains: The Case of the Fast Fashion Industry. *Sustainability*, 14(18), 11520.

⁵⁶ Camargo, L. R., Pereira, S. C. F., & Scarpin, M. R. S. (2020). Fast and ultra-fast fashion supply chain management: an exploratory research. *International Journal of Retail & Distribution Management*, 48(6), 537-553.

⁵⁷ ibid

⁵⁸ Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

By operating in these countries, they benefit from the low wages as well as less strict policies in the production⁵⁹.

“Fast fashion retailers are often associated with cost-focused supply chains which aim to keep costs to a minimum to stay competitive with other retailers. The industry benefited from the growing globalization of production in the 1990s, outsourcing clothing production to countries with fewer social and environmental regulations and lower minimum wages” (Fraser and Van der Ven 2022 p.1)

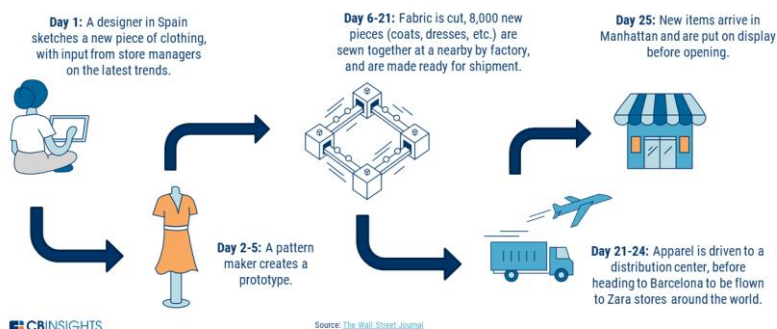
However, some brands, like Zara for example will keep their inventory low and most of their production in Europe while the remaining occurs in the third countries⁶⁰, this ensures that apparels arrive in shops in a shorter timeframe time of 5 weeks on average⁶¹.

This is just one example of how complex and fragmented the supply chains can be, which is often responsible not only for the lack of transparency but used as an excuse for the brands to be unaware of the violations that occur in their suppliers.

The below image illustrates the business model used by Inditex, the parent company of multiple fast-fashion brands.

Fast fashion's speedy supply chain quickly caters to new trends

Fast fashion retailer Zara, owned by Spain-based Inditex, can get a piece of apparel from a design workshop in Spain to a display rack in a Manhattan store in **25 days**.



62

⁵⁹ ibid

⁶⁰ ibid

⁶¹ ibid

⁶² <https://www.cbinsights.com/research/zara-apparel-supply-chain/>

The ultra-fast fashion sector is similar but has some key differences, the main ones being in the final steps of production⁶³. Starting with the lead time, this sector can fabricate new garments and have them delivered to the consumer in less than a week⁶⁴. Therefore, production is accelerated, and the suppliers need to respond in a shorter time.

While fast fashion is often responsible for creating the trends, ultra-fashion recreates the trendy pieces but at an even lower cost, producing what they know to be popular and will be guaranteed to sell⁶⁵. The business relies greatly on the information systems to predict future demand⁶⁶. The often used tactic is the use of Instagram and other social media platforms, to predict the consumer, for example the brand will see that a particular dress is gaining attention and that individuals seem to want something identical but at a much lower price. The company will therefore replicate said dress and sell it at a price that most people will be able to afford⁶⁷.

The brands will produce and sell a smaller quantity of product in a first state, this allows them to access how the garment will be received among consumers⁶⁸. If this is a success and the demand for it continues, then the production for it will increase⁶⁹.

This type of business model is named as direct-to-consumer, this means that the production will be done in accordance with the demand⁷⁰. They also adopt a type of vertically integrated e-commerce described prior, “Technology-focused, mainly using artificial intelligence, social tagging and trend-watching by style scouts” (Camargo & Pereira 2020). Meaning that they use social media for identifying the trends as well as promoting their product to their target audience, reducing the cost of the “traditional” publicity. These brands also mainly sell online, which also reduces their costs⁷¹.

⁶³ Camargo, L. R., Pereira, S. C. F., & Scarpin, M. R. S. (2020). Fast and ultra-fast fashion supply chain management: an exploratory research. *International Journal of Retail & Distribution Management*, 48(6), 537-553.

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ *ibid*

⁶⁹ *ibid*

⁷⁰ *ibid*

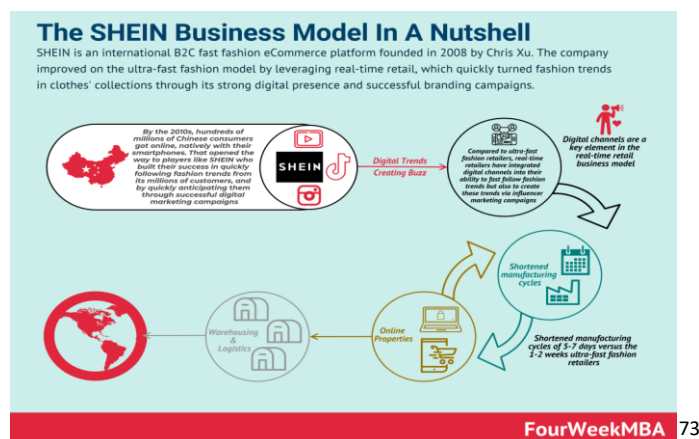
⁷¹ *ibid*

This has been reported as being the cause of no excessive production, in contrast to the fast fashion sector. This has been assumed as the reason for this sector to be described as more “ethical” and sustainable, since there will allegedly be less waste created. However, the quantity produced annually by these brands varies from 11 000 to 200 000 pieces⁷², far more than the fast fashion sector.

“Ultra-fast fashion does not overproduce items, but rather focuses on producing on- demand, with less quantity and fashion pieces for their customers, while maintaining high product rotation. Ultra-fast retailers have been focusing on producing less of the same products, impacting the retailers’ inventory management. These retailers have no excess inventory or a minimum reasonable inventory (MRI). With the focus on producing based on consumer demand and from market feedback, they only produce what is necessary, thus never have excess inventory.” (Camargo et al 2020 p.11)

However, it can’t be disregarded that the waste experienced by the fast fashion industry applies to all the clothing lines and therefore includes the ultra-fast fashion as well.

The following image illustrates the business model of Shein, one of the most important ultra-fashion brands at the moment.



⁷² ibid

⁷³ <https://fourweekmba.com/shein-business-model/>

3.2. The environmental problems

In the attempt to identify the environmental problems caused by the textile industry, the systematic method was used. With the resort of Science direct and the keywords “environmental impact and issues; textile industry” around 30,423 articles were found, to narrow down the field of research only the articles from 2020 to the present day have been analyzed, in order to present as much as possible, the relevant and most up to date data. The articles that were deemed relevant, were the ones exposing the problems as well as exploring them. With this methodology, many problems and potential solutions were found, however the ones that will be explored throughout this chapters are the ones that were the most mentioned through the literature and not all will be considered, for a question of lack of time of this research.

A. GHG emission and climate

The most known effects of the industry are, GHG emissions, contribution to climate change and global warming, the pollution of air and water, as well as soil damage.⁷⁴

“It is consuming 1.5×10^{12} L of water, producing more than 1.7×10^9 t of emissions, and polluting the ocean with more than 190×10^9 t of microplastic (Peters et al., 2020). An estimated 18.6×10^9 t of garments were thrown away in landfills in the year 2020. According to the Ellen Macarthur Foundation, landfills would be filled with more than 150×10^6 t of garment trash if the current trend persists by the year 2050.” (John and Mishra 2023)

⁷⁴ John, E. P., & Mishra, U. (2023). A sustainable three-layer circular economic model with controllable waste, emission, and wastewater from the textile and fashion industry. *Journal of Cleaner Production*, 388, 135642.

However, throughout the literature review, the most explored problems were air and water pollution caused by the water waste and the use of chemicals. These will be explored more greatly than the remaining problems as more research is currently available. Nonetheless, the remaining issues will be explored since most of these issues end up being interconnected, as it will be put into evidence.

B. Water consumption

One of the most explored issues is the severe water consumption of the industry. In fact, the sector is infamous for being very water intensive, being one of the main water-consuming sectors.⁷⁵ In order to obtain 1 ton of textile material around 230 to 270 tons of water are required.⁷⁶

Starting at the beginning of the production chain, most of the fabrics used require great amounts of this resource, for example, cotton is responsible for an average of 2.6% of the global water use⁷⁷. This problem is connected to another major one, wastewater.

Wastewater and the use of chemicals is mentioned greatly through the literature. Starting with the dyeing process, a fundamental part of production and one of the most pollutants⁷⁸ since many chemicals are employed during this process. For this reason, the textile industry is considered one of the worst polluters of water and soils, contributing to carcinogenic, genetic mutations, cytotoxic and allergies in the living beings.⁷⁹

In fact, this process creates not only water waste but environmental pollution, as without proper treatment of the chemicals, these end up being incorrectly discharged⁸⁰ contributed to the problems mentioned above.

⁷⁵ Partal, R., Basturk, I., Hocaoglu, S. M., Baban, A., & Yilmaz, E. (2022). Recovery of water and reusable salt solution from reverse osmosis brine in textile industry: A case study. *Water Resources and Industry*, 27, 100174.

⁷⁶ *ibid*

⁷⁷ Esteve-Turrillas, F. A., & de La Guardia, M. (2017). Environmental impact of Recover cotton in textile industry. *Resources, conservation and recycling*, 116, 107-115.

⁷⁸ Jeong, S., Lim, J., Hong, S. I., Kwon, S. C., Shim, J. Y., Yoo, Y., & Kim, J. (2023). A framework for environmental production of textile dyeing process using novel exhaustion-rate meter and multi-layer perceptron-based prediction model. *Process Safety and Environmental Protection*, 175, 99-110.

⁷⁹ *ibid*

⁸⁰ *ibid*

Furthermore, the treatment of these chemicals is extremely difficult to be performed properly⁸¹ and therefore the likelihood for this to continue to be an issue is accentuated.

The method of dyeing that is commonly applied is the exhaust method, as it can create the best product in the shortest amount of time. This method consists of a mixture of neutral salt in addition to another solution that contains the reactive dye⁸².

The problem with this method is that the final dye products are extremely changeable, due to the multiple alterations in ratio when making the dye, which compromises its quality from time to time. This then leads to the re-dyeing of the garment to obtain the desired result.⁸³ Therefore, increasing the water use and waste production.

“Worldwide, it is estimated that 700,000 tons of dyes are generated annually, and 12 % of them are inappropriately disposed into aquatic resources.” (Artifon et al 2021 p.181)

This process also utilizes other pollutant chemicals that are highly reactive and corrosive like peroxides or acids, some of which are often imported, increasing the issue of GHG emissions.

“High biochemical oxygen demand (BOD) and toxic chlorinated by-products are produced during the de-sizing and bleaching process. Mercerization (the technique of textile finishing to improve its physical properties) releases a large amount of NaOH, while the dyeing process introduces harmful chemicals like heavy metals, salts, surfactants, sulfite, and formaldehyde (Madhav et al., 2018).” (Rahman et al 2022 p.2)

⁸¹ Kishor, R., Purchase, D., Saratale, G. D., Saratale, R. G., Ferreira, L. F. R., Bilal, M., ... & Bharagava, R. N. (2021). Ecotoxicological and health concerns of persistent coloring pollutants of textile industry wastewater and treatment approaches for environmental safety. *Journal of Environmental Chemical Engineering*, 9(2), 105012.

⁸² Jeong, S., Lim, J., Hong, S. I., Kwon, S. C., Shim, J. Y., Yoo, Y., & Kim, J. (2023). A framework for environmental production of textile dyeing process using novel exhaustion-rate meter and multi-layer perceptron-based prediction model. *Process Safety and Environmental Protection*, 175, 99-110.

⁸³ *ibid*

Furthermore, the pollution of water will compromise its quality, resulting in potential sickness and dangers for marine biodiversity and ecosystems.⁸⁴ The metals that are used in this process are heavy metals which have the potential to significantly disrupt the environment.⁸⁵ For example, the detergents applied during the process like Alkylphenol ethoxylates (apeo), when incorrectly disposed of can cause hormone disruption in sea life⁸⁶.

Another form of disruption marine life is through the interference with oxygen circulation.

“Wastewater, when released into pure water, hampers the infiltration of sunlight and affects photosynthesis for aquatic and biota. Textile wastewater also restricts the transmission procedure of oxygen air-water articulation, which is a highly significant issue of textile effluent and consequently hampers the self-purification of water.” (Khan et al 2022 p.3)

Even if the environmental impact of the industry is global, this impact is far more perceived in the countries where the production is located⁸⁷.

An investigation conducted on the land and water in a city of Bangladesh, uncovered the following:

“They detected severe degradation in pH, electrical conductivity (EC), temperature, dissolved oxygen (DO), BOD, chemical oxygen demand (COD), and total dissolved solids (TDS) in the waterbodies. The quantity of nitrogen, potassium, and phosphorus also deviated from the standard values determined by Bangladesh Agriculture Research Council (BARC) for the surrounding soil”. (Rahman et al 2022 p.4)

⁸⁴ Khan, W. U., Ahmed, S., Dhoble, Y., & Madhav, S. (2022). A critical review of hazardous waste generation from textile industries and associated ecological impacts. *Journal of the Indian Chemical Society*, 100829.

⁸⁵ ibid

⁸⁶ Ibid

⁸⁷ Rahman, S. S., Siddiqua, S., & Cherian, C. (2022). Sustainable applications of textile waste fiber in the construction and geotechnical industries: A retrospect. *Cleaner Engineering and Technology*, 100420.

Some possible solutions have been explored like wastewater treatment plants or the discharge into sewers, however research evidences their ineffectiveness in the long term, as it can contribute to problems like salinization, which is “the process by which a non-saline soil becomes saline (...)”⁸⁸ as well as chemical contamination, putting in danger the species.⁸⁹

The wastewater is also responsible for the contamination of the soil. As the use of contaminated water will compromise the quality of the soil.⁹⁰ “Textile wastewater also solidifies the soil surface and restricts root penetration.” (Khan et al 2022 p.3)

Chemicals are not the only substance that can be found in the water but fibers and microplastics as well.

“Several studies showed that one batch of laundry of polyester apparel releases 700,000 micro-plastic fibers into the environment, and these toxins eventually end up in human beings by the means of bio-accumulation.” (Rahman et al 2022 p.2)

The fibers utilized in the textile industry are thin with a diameter between 7 and 20 μm , reaching up to 70 μm ⁹¹, since thinner fibers, give the perception of a better quality and overall appearance to the garment.

These are being released into water, soil, and air⁹² mostly during the washing of the clothes. In fact, fibers like polyester, a growing material used in garments, contributes to the presence of around 0.5 Mts of microfiber in the oceans⁹³.

⁸⁸ <https://www.dictionary.com/browse/salinization>

⁸⁹ Partal, R., Basturk, I., Hocaoglu, S. M., Baban, A., & Yilmaz, E. (2022). Recovery of water and reusable salt solution from reverse osmosis brine in textile industry: A case study. *Water Resources and Industry*, 27, 100174.

⁹⁰ Khan, W. U., Ahmed, S., Dhoble, Y., & Madhav, S. (2022). A critical review of hazardous waste generation from textile industries and associated ecological impacts. *Journal of the Indian Chemical Society*, 100829.

⁹¹ de Oliveira, C. R. S., da Silva Júnior, A. H., Mulinari, J., Ferreira, A. J. S., & da Silva, A. (2023). Fibrous microplastics released from textiles: Occurrence, fate, and remediation strategies. *Journal of Contaminant Hydrology*, 104169.

⁹² de Oliveira, C. R. S., da Silva Júnior, A. H., Mulinari, J., Ferreira, A. J. S., & da Silva, A. (2023). Fibrous microplastics released from textiles: Occurrence, fate, and remediation strategies. *Journal of Contaminant Hydrology*, 104169.

⁹³ *ibid*

Furthermore, the most known used fibers used are made of fiberglass and polyester, both composed of macromolecules of repeated monomers, which means that this makes them less degradable and therefore more dangerous to the environment⁹⁴.

With these fibers comes the liberation of microplastics, often ingested by the animals and who can then be found in the human body through the food chain⁹⁵.

The textile industry is in fact the biggest contributors to the microplastic pollution, producing in 2019, 73.5 million synthetic fibers, which represent around 68.4% of all the textile fibers⁹⁶.

The problem with these microplastics is that they are resistant to degradation and therefore easily accumulated in the environment⁹⁷.

Another problem arises with the textile industry, the fact that the fibers suffer many treatments making them even more resistant to degradation.

“They reported that untreated fibers showed 70% degradation, while fibers containing fabric softener degraded much faster, around 90%, and fibers with a durable press finishing degraded at about 63%.” (Oliveira et al 2023)

Additionally, it needs to be considered that water pollution is not only an environmental problem but can also be viewed as a human right one.

⁹⁴ Roy, M., Sen, P., & Pal, P. (2020). An integrated green management model to improve environmental performance of textile industry towards sustainability. *Journal of Cleaner Production*, 271, 122656.

⁹⁵ *ibid*

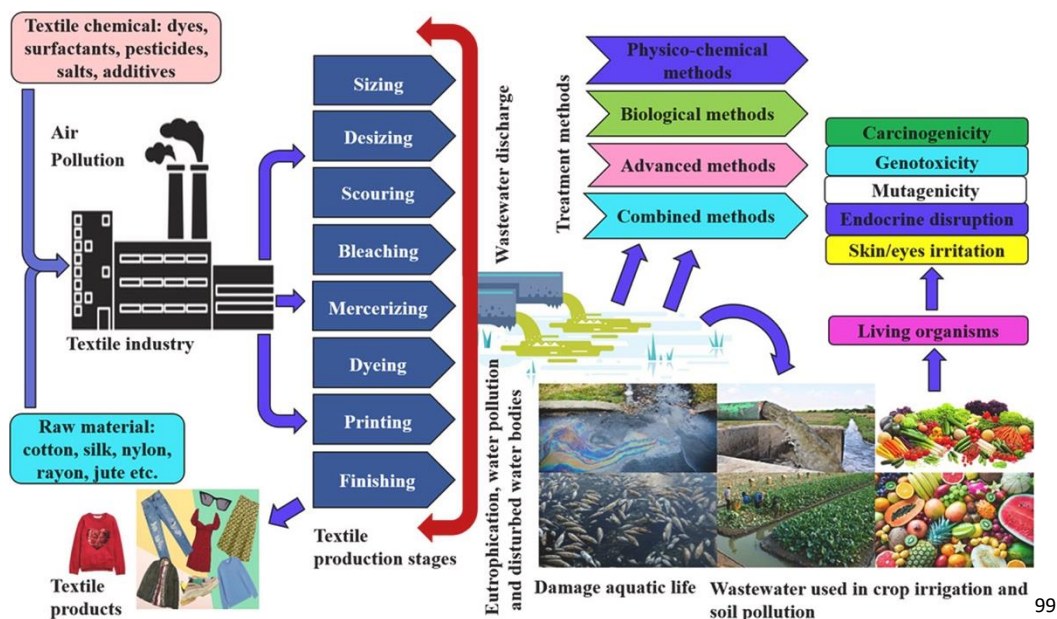
⁹⁶ Yadav, S., Kataria, N., Khyalia, P., Rose, P. K., Mukherjee, S., Sabherwal, H., ... & Khoo, K. S. (2023). Recent analytical techniques, and potential eco-toxicological impacts of textile fibrous microplastics (FMPs) and its associated contaminates: A review. *Chemosphere*, 138495.

⁹⁷ de Oliveira, C. R. S., da Silva Júnior, A. H., Mulinari, J., Ferreira, A. J. S., & da Silva, A. (2023). Fibrous microplastics released from textiles: Occurrence, fate, and remediation strategies. *Journal of Contaminant Hydrology*, 104169

In fact, although this impact is explored in this chapter and not in the following one, the pollution can create multiple problems for the individuals, such as skin allergy for example or worst toxicity in the food consumed⁹⁸.

“Textile effluent is the primary source of environmental deterioration and human sickness. Almost 40% of colourants utilized globally carry essentially bound chlorine, a well-recognized toxin. We inhale chemically polluted air, and our skin absorbs the chemicals, leading to skin allergies and skin diseases [2]. These pollutants also affect cell functioning in animals and cause problems in respiration, reproduction, and osmoregulation. Heavy metals used in textile industries are non-biodegradable and culminate in the human body.” (Khan et al 2023 p.3)

The following image illustrates this phenomenon:



⁹⁸ Khan, W. U., Ahmed, S., Dhoble, Y., & Madhav, S. (2022). A critical review of hazardous waste generation from textile industries and associated ecological impacts. *Journal of the Indian Chemical Society*, 100829.

⁹⁹ Kishor, R., Purchase, D., Saratale, G. D., Saratale, R. G., Ferreira, L. F. R., Bilal, M., ... & Bharagava, R. N. (2021). Ecotoxicological and health concerns of persistent coloring pollutants of textile industry wastewater and treatment approaches for environmental safety. *Journal of Environmental Chemical Engineering*, 9(2), 105012.

As already evidenced, the issues are interconnected. Chemical use and waste develop the issue of air pollution, the latter is mentioned less during the articles, but is not to be considered insignificant.

In fact, the chemicals deliver into the atmosphere substances that are dangerous to the environment and to the human beings' respiratory system. This occurs through the entire supply chain, from cotton picking for example until the post-consumer waste¹⁰⁰.

Furthermore, the production generates great amounts of toxic emissions, like NO_x and SO₂¹⁰¹.

“In addition to this, some dyes and auxiliaries in the fabric printing and dyeing process also emit NO_x and SO₂ into the air under heating conditions.” (Guo et al 2022 p.2)

For example, in China where the textile industry is predominant, the emissions contributed by the chemicals mentioned above, has reached 80,276 in 2019¹⁰².

C. Waste Pre- and Pos-consumption

As evidenced, the textile industry is problematic from the very beginning of production and unfortunately continues even after the garments have reached the consumer. With the growing demand and trend created by the brands, more clothes are being disposed of, most of them can later be found in the landfills, which are becoming a growing problem¹⁰³ as it is estimated that in 2025 the volume of disposed garments will be of 193 billion pieces¹⁰⁴.

¹⁰⁰ Guo, Y., Zhu, L., Wang, X., Qiu, X., Qian, W., & Wang, L. (2022). Assessing environmental impact of NO_x and SO₂ emissions in textiles production with chemical footprint. *Science of The Total Environment*, 831, 154961.

¹⁰¹ ibid

¹⁰² ibid

¹⁰³ de Oliveira, C. R. S., da Silva Júnior, A. H., Mulinari, J., Ferreira, A. J. S., & da Silva, A. (2023). Fibrous microplastics released from textiles: Occurrence, fate, and remediation strategies. *Journal of Contaminant Hydrology*, 104169.

¹⁰⁴ Rahman, S. S., Siddiqua, S., & Cherian, C. (2022). Sustainable applications of textile waste fiber in the construction and geotechnical industries: A retrospect. *Cleaner Engineering and Technology*, 100420.

The clothing waste produced by an American citizen is of more than 36kg per year and it has been estimated by the US environmental protection agency that only 15% of this waste has been recycled, the remain percentage is disposed in the landfills¹⁰⁵.

“According to US Environmental Protection Agency (USEPA) (2018), textile waste accounted for 5.8% of the total landfilled MSW which approximated around 17 Mt.” (Rahman et al 2022 p.1)

This type of waste is the post-consumer waste, while all the waste created during the production is the pre-consumer¹⁰⁶.

It is concerning to the well-being of the communities surrounding these landfills, as well as for the environment as it will create multiple water and air pollution, when not disposed correctly, especially bearing in mind that the fiber is not recycle as mentioned prior. The following problems are created due to this disposable,

“Heavy water footprint, soil pollution, and loss of natural biodiversity are some common issues associated with textile waste disposal.” (Rahman et al 2022 p.2)

¹⁰⁵ Rahman, S. S., Siddiqua, S., & Cherian, C. (2022). Sustainable applications of textile waste fiber in the construction and geotechnical industries: A retrospect. *Cleaner Engineering and Technology*, 100420.

¹⁰⁶ de Oliveira, C. R. S., da Silva Júnior, A. H., Mulinari, J., Ferreira, A. J. S., & da Silva, A. (2023). Fibrous microplastics released from textiles: Occurrence, fate, and remediation strategies. *Journal of Contaminant Hydrology*, 104169.

3.3. The Human Rights violations

Although more difficult to prove than the environmental issues since they can be harder to identify. The human rights violations remain heavily reported especially by the human rights organizations. The constant demand makes for the sector look for ways of achieving their orders faster and cheaper, generating forms of production that violate multiple rights¹⁰⁷.

Human rights violations in the industry have been known and studied for a long time, many articles can be found through various dates. For this section, the most use reports of these violations are from diverse human rights organization, namely *the Clean Clothes Campaign* and the reports of the *ILO* and *SOMO and ICN*. Although, the reports of the *SOMO & ICN* and *the clean clothes campaign*, focus mostly on the violations perpetrated to female workers, the violations that are reported can still be considered, especially bearing in mind that women and other minorities are more prone to these violations, as we will be exploring. Furthermore, these reports are older than pretended, as reports from earlier years haven't been found, however unlike environmental data that can mutate significantly with time, it is expected that human rights violations remain the same and are likely to not have changed significantly.

A. Child labor

According to the International labor Organization, child labor can be defined as follows,

“(...) refers to work that deprives children (any person under 18) of their childhood, their potential and their dignity, and that is harmful to their physical and/or mental development. It refers to work that is mentally, or morally dangerous and harmful to children; and/or interferes with their schooling by: depriving them of the opportunity to attend school, obliging them to leave school prematurely, requiring them to attempt to combine school attendance with excessively long and heavy work.”¹⁰⁸

¹⁰⁷ Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

¹⁰⁸ https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_531953.pdf

The standard set by the organization for working children is of 15 years old, in the case of “light work” it decreases to 13, in the case of hazardous work the standard is 18 years old¹⁰⁹. Hazardous work is defined by the organization as work that create various risks, naming industries like mining, agriculture, and construction¹¹⁰.

As reported by the same organization, in 2020 160 million children were victims of child labor, it is estimated that in 2025 this number will decrease of 140 million¹¹¹. The textile industry is a contributor for keeping those numbers high¹¹².

Like environmental problems, the human rights issues initiate right at the beginning of the supply chain, child labor isn’t any different as this form of labor is mostly use for the harvesting of materials. In fact, the agriculture sector relies heavily on it, in 2020 the sector represented 70% of the child labor use globally¹¹³.

Overall, children are a preferred work force,

“In cotton picking, employers prefer to hire children for their small fingers, which do not damage the crop.” Children are also often one of the least expensive forms of labor, thus driving the cost of garments down.”
(Lambert 2022 p.256)

While not mentioned in the sector for hazardous work, the industry falls under the scope of this definition and in what the ILO defines as the “worst forms of child labor”¹¹⁴. Since it is more likely to harm their health, stop them for enjoying their childhood and affects their education¹¹⁵.

¹⁰⁹ Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

¹¹⁰ <https://www.ilo.org/safework/areasofwork/hazardous-work/lang--en/index.htm>

¹¹¹ International Labour Office and United Nations Children’s Fund (2021). Child Labour: Global estimates 2020, trends and the road forward, *ILO and UNICEF, New York, 2021*.
License: CC BY 4.0.

¹¹² Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

¹¹³ International Labour Office and United Nations Children’s Fund (2021). Child Labour: Global estimates 2020, trends and the road forward, *ILO and UNICEF, New York, 2021*.
License: CC BY 4.0.

¹¹⁴ Ibid

¹¹⁵ Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

In the context of most third countries, it can easily be understandable how children are recruited. In fact, children and their families are often in need, this is the perfect ground for recruiters to prey on these fragilities to recruit them. Recruiters will often trick family into sending their kids to work, under the promise of a better future and conditions that often they can't provide¹¹⁶. Families also send them so they can have access to education, however children are working full-time¹¹⁷, which makes it almost impossible for them to go to class and follow a proper education plan. Furthermore, according to the International Labor Organization, a child who started working is far more likely to never go back to school¹¹⁸

Additionally, selecting children over adults also means that companies can reduce their cost of production, since they aren't paid full wages¹¹⁹. Since, employing children is illegal in all the countries studied, to not have evidence of this kind of labor, children do not have contract, which means that the pay received is arbitrary to the company¹²⁰.

This is even more problematic due to the vicious cycle that it generates, in fact low wages make it harder for adults to attend to their families, children are then forced to work, since they receive lower wages, the adult wages remain permanently low and adults aren't the preferred workforce, perpetuating the cycle¹²¹.

Moreover, as these children will often not attend school, their education is compromised not allowing them to work elsewhere, being forced to keep working in the factories or farms, once again perpetuating this cycle¹²².

¹¹⁶ *ibid*

¹¹⁷ *ibid*

¹¹⁸ International Labour Office and United Nations Children's Fund (2021). *Child Labour: Global estimates 2020, trends and the road forward*, ILO and UNICEF, New York, 2021. License: CC BY 4.0.

¹¹⁹ Lambert, M. (2014). *The lowest cost at any price: The impact of fast fashion on the global fashion industry*.

¹²⁰ *ibid*

¹²¹ Overeem, P., & Theuws, M. (2014). *Fact Sheet: Child Labour in the Textile & Garment Industry: Focus on the Role of Buying Companies*.

¹²² *ibid*

With the demand for this type of labor, arises the recruitment of children in other areas of the country, increasing the problem of child trafficking, for example it is known that Nepali children are often trafficked to work in factories in India¹²³.

It can be questioned how this is missed during the audits and in fact, the answer is quite simple, children are often recruited due to the illegality of this labor they are given false documents, they are also hidden during the audits since they do not have a contract there also aren't any official records of them working there. Additionally, they are also forced to lie about their age, making it even harder to report, remediate and eventually for changes to be made¹²⁴.

B. Women are more at risk

Women are a fundamental part of the industry's workforce; they represent most workers in the South and Southeast Asia¹²⁵. According to the ILO, the textile industry, employed in 2019, around 50 million of women globally, representing in that year around 50% of the workers¹²⁶.

"In garment manufacturing more specifically, it has been estimated that women account for about 80 per cent of employment." (International Labor Organization 2022 p.5)

Yet, they are the more vulnerable and the ones carrying most of the burden. In fact, women are faced with discrimination, violence, and overall inequality¹²⁷.

¹²³ *ibid*

¹²⁴ Oral, E. (2019). Sustainability challenges of fast fashion: Environmental and social impacts of cotton growing and the ready-made garment industry in Turkey. *Yuridika*, 34(3), 443-466.

¹²⁵ Vijayarasa, R., & Liu, M. (2022). Fast fashion for 2030: Using the pattern of the sustainable development goals (SDGs) to cut a more gender-just fashion sector. *Business and Human Rights Journal*, 7(1), 45-66.

¹²⁶ International Labour Organization (2022) The state of the apparel and footwear industry: Employment, automation and their gender dimensions

¹²⁷ Vijayarasa, R., & Liu, M. (2022). Fast fashion for 2030: Using the pattern of the sustainable development goals (SDGs) to cut a more gender-just fashion sector. *Business and Human Rights Journal*, 7(1), 45-66.

“One well-documented example from the garment sector highlights the lack of hydration and restroom breaks which have increased the risks of urinary tract infections faced by women workers. Sexual and reproductive health rights are further undermined by lack of soap, water, and sanitary napkins. Such experiences are endemic in countries that are the world’s primary producers of fast fashion, including India, Pakistan, and Bangladesh.” (Vijayarasa & Liu, 2022 p.49)

Female employees are repeatedly faced with violence and harassment, a 2016 study conducted by Sisters for Change, reported that 1 in 14 women has suffered physical violence, 1 in 7 has been sexually harassed or raped, 60% have been intimidated and threaten, between 40 and 50% of them suffered humiliation and verbal abuse, majority of it committed by their manager or superior, for this reason almost no reports are filled, it is estimated that around 90% were kept hidden, and therefore no persecution occurs¹²⁸.

“Of all sexual harassment cases reported, action was taken against perpetrators in 3.6% of incidents but no criminal charges were brought.” (Sisters for change 2016 p.5)

One of the reasons stated by women for these non-reports, is that they didn’t feel that their testimony would be heard or follow through by the authorities¹²⁹. Moreover, even if an Internal Complaints Committee has been created, in the mentioned study, 75% of workers claim to not have access to one in their workplace¹³⁰.

This study also reports that 1 in every 4 women has reported feeling unsafe in the workplace, while 80% of them fear that their health and safety is at risk¹³¹. In fact, the women’s health is often more at risk than their male counterparts, especially due to possible pregnancies.

Pregnant women have a higher chance of being dismissed, when this doesn’t occur, access to maternity leave or child support is inexistent¹³².

¹²⁸ Sisters for Change (2016) Eliminating violence against women at work

¹²⁹ *ibid*

¹³⁰ *ibid*

¹³¹ *ibid*

¹³² *ibid*

The mentioned study reports that,

“(...) nearly 30% of garment workers surveyed claimed to have no social security insurance. Of respondent workers who were pregnant while working at a garment factory, 43% were not given maternity leave; 48% were not allowed to take time off work when ill with pregnancy-related symptoms and 27% were not paid maternity leave.” (Sisters for Change 2018 p.6)

The Clean Clothes Campaign has reported that during their visits to the factories in Bangladesh, multiple heavily pregnant women were still working, including extra hours and night shifts¹³³. They also denunciate that the childcare centers present in the factories were only there for show and not for real use.

“All but two of the ten Bangladeshi factories had a room that acted as a childcare centre, but workers explained that in half of those with childcare centres, supplying all five of the Giants between them, these rooms were only used when the factories were visited by buyers or auditors.” (Clean Clothes Campaign 2016 p.8)

Job security is often not existent for female workers, as most don't have a signed employment contract¹³⁴.

“Of the 151 interviewed workers, only 20 workers signed a contract with their employer (...)” (SOMO & ICN 2014 p.37)

Furthermore, even when given a contract, the workers did not get a copy, or given enough time to read through it or understand what they were signing¹³⁵,

¹³³ Clean Clothes (2016) Chashing in giant retails, purchasing practices and working conditions in the garment industry

¹³⁴ SOMO, ICN (2014). Flawed Fabrics: The abuse of girls and women workers in the South Indian textile industry. Amsterdam: Available online: <http://www.indianet.nl/pdf/FlawedFabrics.pdf> [28.07. 2020].

¹³⁵ *ibid*

“One Jeyavishnu worker said: “They only showed me a place where I had to sign; they didn’t show me the rest of the papers”.” (SOMO & ICN 2014 p.38)

In the study conducted by ICN and SOMO, none of the women interviewed had a copy of their contract.

The other issue is the evident pay gap between male and female. In accordance with a study conducted by CARE, it is said that 2 in 5 women do not receive an equal salary or profit from equal opportunities¹³⁶.

Similarly to what occurs with child labor, women are also recruited through false promises of a safe workplace, accommodation, meals, and education, when in reality none of these promises are met¹³⁷.

C. Low adherence to trade unions

““If we try to form a union, we will lose our job. So, I do not want any union.”

Worker at a Lidl and Walmart supplier, Bangladesh” (Clean Clothes Campaign 2016 p.6)

Unions are an important tool for workers to revendicate their rights and demands, when this right is taken away from them, negotiations become inexistant, their demands are not heard or met and therefore the abuse becomes more likely to continue to ensue. This also makes dispute resolution and remediation harder for workers who tend to not know the jurisdiction or who they can contact to seek legal advice.

In the textile industry, mostly in the factories, trade unions are nonexistent¹³⁸. In fact, factory workers fear that attempting to create or join a union may cost them their livelihood¹³⁹, as reports evidence that those who have joined are discriminated in the workplace, therefore even when unions do existent the adherence is low¹⁴⁰.

¹³⁶ CARE (2018) made by women – promoting dignified work for garment workers

¹³⁷ SOMO and ICN (2014), Flawed Fabrics: The abuse of girls and women workers in the South Indian textile industry

¹³⁸ SOMO and ICN (2014), Flawed Fabrics: The abuse of girls and women workers in the South Indian textile industry

¹³⁹ Clean Clothes Campaign (2016). Cashing In: Giant Retailers, Purchasing Practices, and Working Conditions in the Garment Industry

¹⁴⁰ SOMO and ICN (2014), Flawed Fabrics: The abuse of girls and women workers in the South Indian textile industry

“Many factories have no coordinating committees or collective bargaining agreements in place. Instead, trade union leaders and activists are discriminated against in terms of payment, promotion, overtime payment and often find their contracts terminated arbitrarily. Only very few workers are unionised.” (Niebank 2018 p.39)

According to the study conducted by SOMO and ICN, unions aren’t prohibited by management, however their nonexistence is mostly due to the lack of awareness of the employees¹⁴¹. However, from the declarations presented prior, this prohibition doesn’t need to be formally written for employees to consider it unsafe to join one. There is also no knowledge that is passed to the employees about them and their rights, therefore even if no human rights are violated, there is also no incentive from suppliers to give their employees this right.

Like reported prior, women workers also face even more difficulty in adhering to unions¹⁴², due to social perception that women are not supposed to be in join one or have a voice.

D. Forced labor and human trafficking

As mentioned briefly through this chapter, forced labor is often used in the textile industry. One common form of forced labor is long working-hours and night shifts, furthermore, in many factories that have been investigated these hours are mandatory, and employees do not have the chance to refuse them¹⁴³.

““No, it is not our choice. We must do overtime. If not, the gate is open for us to quit our job.” Contract worker producing for Tesco in Delhi” (Clean Clothes Campaign 2016 p.32)

The most affected workers are the most the most vulnerable ones, women, and children, the matter of child labor will not be explored in this section as it has already been mentioned previously.

¹⁴¹ ibid

¹⁴² ibid

¹⁴³ ibid

These hours far exceed the ones stipulated by law, the 48h/week is almost never respected, and neither is the maximum of 60h/week¹⁴⁴.

Often the workers are given a quota to accomplish, and they will need to work over hours in order to do so, these hours will not be pay by their employers¹⁴⁵. To be paid, the overtime needs to exceed the 60h¹⁴⁶.

“Workers in a Sri Lankan factory supplying Tesco said they worked an average of more than 64 hours per week. Of ten factories surveyed in Bangladesh, no factory had a regular working week of less than 60 hours; more than half exceeded this, and in four the average week was over 80 hours.” (Clean Clothes Campaign 2016 p.6)

Another major issue is the human trafficking, as an important number of workers are recruited through third parties the contract is often made based on false promises, who are extremely tempting to the mostly recruited young girls and their families, especially considered the situations of precarity that these individuals face¹⁴⁷.

“Recruiters convince parents in impoverished rural areas to send their daughters to the spinning mills with promises of a well-paid job, comfortable accommodation, three nutritious meals a day and opportunities for training and schooling, as well as a lump sum payment at the end of three years. However, when the girls arrive at the mills, it turns out that the reality of their new working life is not so attractive.” (SOMO & ICN 2014 p.5)

Once arrived at the factories, these individuals are stripped of their passports and their freedom of movement is restricted to almost nonexistent¹⁴⁸.

¹⁴⁴ Clean Clothes Campaign (2016). Cashing In: Giant Retailers, Purchasing Practices, and Working Conditions in the Garment Industry

¹⁴⁵ *ibid*

¹⁴⁶ *Ibid*

¹⁴⁷ SOMO and ICN (2014), Flawed Fabrics: The abuse of girls and women workers in the South Indian textile industry

¹⁴⁸ *ibid*

The investigation conducted by SOMO and ICN, reported that workers are not allowed to leave the hostel that has been provided to them, although this is mostly true for women and not necessarily to the male employees¹⁴⁹, as the reports analyzed only reported this issue in the perspective of the female employees.

The exclusion of female workers continues by restricting their communication with the outside world by prohibiting mobile phones¹⁵⁰.

“If workers want to make a phone call, the warden will check the number they are dialling. The workers may only contact their parents if their number has been given to the warden. Phone calls are always made in the presence of the hostel warden.” (SOMO & ICN 2014 p.58)

The lack of job security is another problem, a lot of workers are also recruited through third party without access or knowledge of their contract¹⁵¹, Furthermore, research done by the Clean Clothes Campaign in India, Sri Lanka and Thailand has evidenced that the employees recruited by third party contracts with holding temporary contracts, “(...) face lower pay, poorer conditions, and a constant fear that they will lose their jobs.” (Clean Clothes Campaign 2016 p.7)

This issue will not be explored further, since not enough information has been retrieved on the latter.

E. Poor conditions and lack of safety in the workplace

Perhaps the most known example of the dangerous conditions that the workers face in factories, is the Collapse of the Rana Plaza in 2013 in Bangladesh. This collapse is now known as the “worst garment factory disaster in modern human history”, responsible for killing 1.134 people and left 2.500 injured¹⁵².

¹⁴⁹ *ibid*

¹⁵⁰ *ibid*

¹⁵¹ *ibid*

¹⁵² Vijayarasa, R., & Liu, M. (2022). Fast fashion for 2030: Using the pattern of the sustainable development goals (SDGs) to cut a more gender-just fashion sector. *Business and Human Rights Journal*, 7(1), 45-66.

This collapse occurred due to the ignorance of multiple warnings by the superior that the building was in danger of collapsing since the structure wasn't secure. The warnings were ignored, and workers kept inside and working¹⁵³.

“A survivor of the fire recalled being told by a manager that the fire was a “false alarm” and had to resort to jumping out of a window as exits became blocked.” (Herlinger cited in Monay 2021p.6)

Furthermore, the factories are overall unsafe, many of them missing proper escape exits, which make them a fire hazard, for this reason fires are one of the most common incidents.

“Due to the rapid growth of the textile and garment industry as well as the lax enforcement of labour safety regulations, factories in many countries perform poorly in terms of safety standards. This includes, among other things, insufficient emergency escape routes. According to fire department figures quoted by the Clean Clothes Campaign, factory fires alone killed almost 500 workers in Bangladesh between 2006 and 2010. As their work typically takes place in closed environments, employees suffer from fine-dust pollution, which has well-documented negative health effects.” (Niebank 2018 p.25)

Nevertheless, since the collapse the “Alliance for Bangladesh Worker Safety” has been created¹⁵⁴, the purpose is to develop a standard for overall safety, including fire, structural and electric. In this Alliance, factories are subject to independent inspections¹⁵⁵. A helpline was created in 2014, in which workers can call and expose their concerns regarding their own workplace. Furthermore, training on fire safety has also been provided¹⁵⁶.

¹⁵³ Monay, S. (2021). Human Rights Implications in the Fast Fashion Industry: A Qualitative Analysis

¹⁵⁴ Niebank, J. C. (2018). Bringing Human Rights into Fashion: issues, challenges and underused potentials in the transnational garment industry (p. 78). DEU.

¹⁵⁵ *ibid*

¹⁵⁶ *ibid*

While it is difficult to calculate how this alliance has improve the quality of the workplace or prevented potential disasters, NGOs point out how these kinds of organizations have failed to prevent adverse impacts¹⁵⁷.

It also needs to be considered that the organization is only made of members of the management, creating issues of transparency and discussion with workers.

“It is also characterised by low levels of transparency. In particular, there is a lack of reports on progress made at individual factories that go beyond general categorisations such as “on track”.” (Niebank 2018 p.35)

Another issue is the work-related injuries. In fact, in order to have compensation for this type of incidents, there needs to be a contract, however in the industry, work contracts are rare, therefore no protection is given to the workers on this matter¹⁵⁸.

In the agricultural side of the supply-chain accidents succeed due to unsafe transportation, as well as unhealthy living in the fields and the joint working without health or security insurance¹⁵⁹.

In the factories, workers can be exposed to chemicals; without the proper equipment, employees face multiple health consequences. Certain techniques issue to produce the clothes are also dangerous without the use of proper equipment, for example, a technique used for denim jeans, sandblasting, increases the risk of lung disease¹⁶⁰.

F. Low Wages

Low wages are a constant problem in the industry since the amount that the workers receive is consider insufficient to have a decent living¹⁶¹.

¹⁵⁷ *ibid*

¹⁵⁸ *ibid*

¹⁵⁹ Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

¹⁶⁰ Monay, S. (2021). Human Rights Implications in the Fast Fashion Industry: A Qualitative Analysis

¹⁶¹ Niebank, J. C. (2018). Bringing Human Rights into Fashion: issues, challenges and underused potentials in the transnational garment industry (p. 78). *DEU*.

Companies need to pay their workers a decent living wage, this amount differs from country to country, however a decent living wage should be enough to, “(...) provide enough for shelter, nourishment, healthcare, education, and small savings.” (Lambert 2014 p.120)

Yet, wages received are far from doing this,

“In Bangladesh for example, living wage estimates are 2.8 times its current minimum wage and, in Vietnam, the current minimum wage is half of the estimated living wage.” (Sanders, and Mawson, 2019 p.19)

This continues to keep workers and their families in poverty, perpetuating the cycle explained prior.

The low wages practiced by the industry ensue because the competition between suppliers is constant¹⁶², therefore pressure is placed on them to be the most cost-effective factory, since the lower the production cost the more orders, a factory might receive¹⁶³. Wages are also the most manipulatable costs, in fact, cost of production can be reduced mostly by keeping the wages low since the remaining costs of production are generally not changeable¹⁶⁴.

The enforcement of adequate living wages is made more difficult through the growing importance of informal labor in the supply chains, as this form of labor is not yet regulated¹⁶⁵. Since low wages are equivalent to lower cost for the company, countries who seek foreign investment will use it to attract it¹⁶⁶.

¹⁶² *ibid*

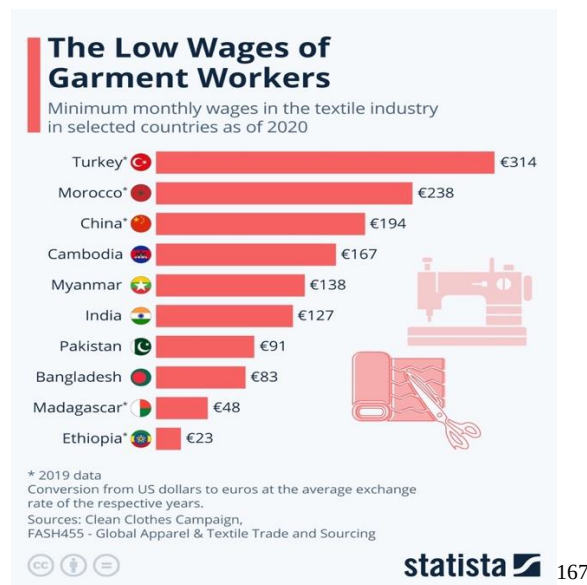
¹⁶³ *ibid*

¹⁶⁴ *ibid*

¹⁶⁵ Lambert, M. (2014). The lowest cost at any price: The impact of fast fashion on the global fashion industry.

¹⁶⁶ Niebank, J. C. (2018). Bringing Human Rights into Fashion: issues, challenges and underused potentials in the transnational garment industry (p. 78). DEU.

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry- The impact of the industry, the Human rights violations- Low wages



Another obstacle is the fact that employees often do not sign contracts, or when they do, they don't hold a physical copy of them¹⁶⁸.

Workers also do not get pay slips, without this documentation, the workers lack the real documentation that can help to prove and revindicate their rights to a proper wage. Furthermore, calculations on what is a decent living wage are often made considering only the individual without considering the families that they are supporting. Wages also do not consider the over working hours¹⁶⁹, like mentioned in a previous section, therefore workers are constantly robbed of what they are owned.

¹⁶⁷ <https://www.statista.com/chart/17903/monthly-minimum-wage-in-the-global-garment-industry/>

¹⁶⁸ SOMO and ICN (2014), Flawed Fabrics: The abuse of girls and women workers in the South Indian textile industry

¹⁶⁹ Clean Clothes Campaign (2016). Cashing In: Giant Retailers, Purchasing Practices, and Working Conditions in the Garment Industry

“In four out of the five researched mills, workers get paid in cash, without signing for receipt, and without any supporting documentation or explanation about hours worked or overtime rates. There is no minimum wage for spinning mill workers. Research showed that average monthly salaries ranged from € 20 to € 52 at the five mills. Many of the interviewed workers send most of their money home to support their families and to pay for siblings to go to school.” (Flawed Fabrics 2014 p.6)

Furthermore, like all the workers issues in the industry, it needs to be reflected that this problem is even more intense for vulnerable workers, like women and children, who generally do not even receive a minimum wage¹⁷⁰.

¹⁷⁰ Oral, E. (2019). Sustainability challenges of fast fashion: Environmental and social impacts of cotton growing and the ready-made garment industry in Turkey. *Yuridika*, 34(3), 443-466.

4. The Analysis of the proposal for a Directive on Corporate Sustainability Due Diligence

4.1. The need for a new directive:

With growing globalization and interdependence between States, the world is now more interconnected than ever¹⁷¹. Businesses are a great representation of this, as many of them, operate in multiple States¹⁷².

The concern around due diligence began rising when the regulation gap became more noticeable, and the violations caused by multiple industries exposed¹⁷³. This led some Member-States to implement national laws to regulate specific violations committed by multinationals, for example the French Duty of Vigilance Law that requires companies to establish a vigilance plan that can identify and prevent potential and actual violations¹⁷⁴.

The EU proposal came to be due to these rising concerns by the Member-States and the diverse regulations implemented by them¹⁷⁵, moreover, if the Union wanted to reach certain objectives like carbon-neutrality more measures need to be imposed to the private sector¹⁷⁶.

Prior to the introduction of this proposal, the European Commission conducted a study, *the BIICL-led study on due diligence requirements through the supply chain (the EC study)*, published in February of 2020¹⁷⁷.

¹⁷¹ A. Ramasastry (2015) Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability

¹⁷² *ibid*

¹⁷³ *ibid*

¹⁷⁴ C. Bright & K. Buhman (2021). Risk-Based Due Diligence, Climate Change, Human Rights and the Just Transition

¹⁷⁵ European Commission (2022). Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

¹⁷⁶ *ibid*

¹⁷⁷ Bright, C., & Smit, L. (2022). The new European Directive on Corporate Sustainability Due Diligence. *British Institute of International and Comparative Law and NOVA School of Law*, 23.

The aim was to grasp if the companies deemed necessary an EU due diligence directive. To understand this, the study has taken by multiple companies' stakeholders¹⁷⁸. The results evidenced the following:

- Currently only one third of businesses conduct due diligence that considers their impact on human rights as well as on the environment.
- Said measures mostly focus on their direct suppliers¹⁷⁹.

However, there was a strong support from the stakeholders for its implementation, 70% of them respondent positively, as they believe that it would harmonize the legislation across the Member-states, and avoid possible unfair competition¹⁸⁰ between companies, which would ultimately benefit them.

In fact, fragmentation has been established as one of the main reasons for the Union to implement this directive. Currently, businesses can be subject to multiple different regulations on due diligence and sustainability.

“One Member State may require the company to carry out due diligence in relation to established business relationships whilst the other Member State may cover the direct suppliers only. This would lead to a multiplication of different partially incompatible requirements distorting the free flow of goods and services in the Union.” (European Commission 2022 p.12)

This can generate legal uncertainty and additional costs for companies, as well as produce an uneven playfield between the companies who are only subject to one regulation and those subject to multiple¹⁸¹.

¹⁷⁸ *ibid*

¹⁷⁹ *ibid*

¹⁸⁰ *ibid*

¹⁸¹ European Commission (2022). Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

Another fundamental point, is that by creating a directive it can not only reduce the fragmentation but produce a unified vision on due diligence, avoiding multiple interpretations by different national laws on the same topic, as well as supporting the measures and evidencing the need for such a regulation among member-states in order to them successfully implement these measures. “Finally, compared to individual action by Member States, EU intervention can ensure a strong European voice in policy developments at the global level.” (European Commission 2022 p.14)

Consequently, having only one regulation could be an advantage for companies to create due diligence measures regulations that are similar across enterprises, therefore eliminating the possible competitive disadvantages between them, the adherence by the businesses could also be higher since they wouldn’t have to rely on multiple different policies and since their competitors would be under the same requirements, also facilitating possible investments within the companies¹⁸². Furthermore, multiple regulations generate a lack of legal clarity about the responsibility that needs to be implemented, this would therefore make the effective implementation harder, and the results may not be the expected¹⁸³.

Additionally, the mentioned study puts into evidence that the measures taken by companies are not sufficient, as they don’t mitigate their potential and actual impacts, and the due diligence measures are not actually considered in the ways the company carry the business¹⁸⁴, this means that although these measures exist, they aren’t considered on their daily actions or investments for example. Therefore, even with all the legislation already in place, these remain insufficient, especially to cross-border problems like climate change¹⁸⁵.

¹⁸² *ibid*

¹⁸³ *ibid*

¹⁸⁴ Bright, C., & Smit, L. (2022). The new European Directive on Corporate Sustainability Due Diligence. *British Institute of International and Comparative Law and NOVA School of Law*, 23.

¹⁸⁵ European Commission (2022). Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

This proposal also comes as a complement to many already existing EU directives. This new directive would be fundamental for the fulfillment of the objectives of the already existing ones.

The common EU objectives are the following:

- Reducing the greenhouse gas emission by at least 55% by 2030
- Become carbon neutral by 2050¹⁸⁶

This directive will not only complete the climate change action that the EU is attempting but will complement the field of human rights as well, included in the European Green Deal, for aims to create a circular economy and building a strong European single market, with the objective of creating a sustainable economy¹⁸⁷.

Complementing the EU action Plan on human rights and democracy, to promote the implementation of international standards on responsible business conducts, as well as the zero-tolerance regarding child labor (EU strategy on the rights of the Child) and the Eu strategy on combatting trafficking in human beings, and the contribution to the Commission communication on the need of creating decent work worldwide¹⁸⁸. This will be further explored in the following section.

4.2. The objectives

As mentioned prior, the directive comes to complement multiple existing directives, making them more effective, like the ones mentioned above and many others¹⁸⁹. The ones mentioned in the proposal are, the Non-financial Reporting Directive (NFRD) that sets requirements for environmental and human rights and was recently replaced by Corporate Sustainability Reporting Directive (CSRD), sustainable finance disclosure regulation (SFDR), Directive 2011/36/EU that mentions the prevention and combating of human trafficking and slavery.

¹⁸⁶ *ibid*

¹⁸⁷ *ibid*

¹⁸⁸ *ibid*

¹⁸⁹ *ibid*

More than complementing the existing directives mentioned, the main objectives mentioned in this proposal are the following:

- “(1) improving corporate governance practices;
- (2) avoiding fragmentation of due diligence requirements in the single market and creating legal certainty for businesses and stakeholders;
- (3) increasing corporate accountability for adverse impacts, and ensuring coherence for companies regarding obligations;
- (4) improving access to remedy for those affected by adverse corporate human rights and environmental impacts;
- (5) complement other measures in force or proposed within the EU through an overarching horizontal framework.” (Bright and Smit 2022 p.2)

This directive will be beneficial to make companies, their suppliers and their direct business relationship, improve their due diligence policies, their risk management and remediation, in order to mitigate and prevent their potential or actual risks and impact. It will create a unified vision on the matter, avoiding the fragmentation mentioned prior, it will also create obligations and liabilities for the companies, as well as set multiple due diligence obligations for the businesses.

4.3. The scope

The directive will be applicable to a large number of large European and non-European companies that operate in the EU market, and it can later be extended to smaller companies.

By large companies, it refers to companies that have over 500 employees and a net turnover of over 250 million worldwide in the last financial year.

After the directive has been implemented for more than 2 years, the scope will be extended to mid-cap European companies with 50% of their turnover being generated in high impact sectors.

By mid-cap companies there are referring to companies with more than 250 employees and a net turnover of over 40 million in the last financial year.

The high impact sectors are:

- “Manufacture of textiles, leather and related products (including footwear) and wholesale trade of textiles, clothing and footwear
- Agriculture, forestry, fisheries (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages;
- Extraction of mineral resources regardless from where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).”
(Bright and Smit 2022 p.3)

This Directive will also cover third countries companies, that generate a turnover over 150 million, in the first year of the directive’s implementation and after the second year it will extent to the ones that generate a net turnover of over 40 million with 50% of said turnover in the high-impact sector mentioned above. However, the turnover needs to be generates in the EU,

“The relevant turnover must have been generated in the EU which ‘creates a territorial connection between the third-country companies and the EU territory by the effects that the activities of these companies may have on the EU internal market.” (Bright and Smit 2022 p.4)

Overall, this scope will cover around 13 000 EU companies and 4 000 third-countries companies.

This directive will also impose objectives and duties to the States, like the integration of the due diligence into their national policies, as well as the role to identify and prevent and remedy the impacts, they will be responsible for establishing a procedure for complaints and monitoring the application of the measures by the companies and promoting the measures.

4.4. The enforcement

The enforcement of the obligations that are set is performed through public supervision authorities in each of the Member-states and through judicial remedy systems. According to the principle of proportionality, the sanction needs to be proportionate, the first procedure needs to allow a time to the company to remediate their wrong doings, however the conditions of the sanctions applicable is left at the criteria of Member-States. This is also used as a form of limiting excessive litigation. Member-states will also be responsible for the enforcement, deciding on the supervisory authorities, that can already be an existing authority of the States or a new one. The Commission will set up a European Network of Supervisory authorities, to collaborate on this matter and provide support for the implementation of the measures, offering the advice of experts and consultation with the relevant European bodies.

“Such Network will be composed by the representatives of the supervisory authorities designated by the Member States and where necessary joined by other Union agencies with relevant expertise in the areas covered by this Directive, to ensure compliance by the companies of their due diligence obligations, in order to facilitate and ensure the coordination and convergence of regulatory, investigative, sanctioning and supervisory practices, and the sharing of information among these supervisory authorities.” (European Commission 2022 p.23)

Not all the companies will be regulated the same, but every enterprise should be regulated proportionally, meaning that the company needs to act based on the degree of their impacts, either potential or factual.

This sets the personal scope of the directive. Following this the directive will not apply to the small and medium enterprises (SME) which represent 99% of the EU companies.

Since for these companies the financial burden will be too significant and their impact significantly lower. But they will still be indirectly covered by it through the relationship with the companies under the scope.

Civil liability will only be applicable to established relationships.

The directive will also briefly touch on the directors' duties, by mentioning,

“(…) that when fulfilling their duty to act in the best interest of the company, directors should take into account the sustainability matters of the proposal for a corporate sustainability reporting Directive, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term horizons.” (European Commission 2022 p.22)

4.5. The limitations

The directive will be limited to the large companies, excluding 99% of the EU companies, which are small and medium enterprises¹⁹⁰. As mentioned above, this is done to guarantee that the directive remains proportionate, a concern very often raised throughout the text, and in order to not create an excessive burden to these enterprises. The possibility to extend this directive to these companies in the future remains possible.

However, this will create a big gap, since most companies will in fact only be indirectly covered, leaving a margin for possible breaches perpetuated by smaller companies. As the principle of proportionality is so often mentioned, the SMEs could have still been covered by possible adjustments to the articles to include them in the scope while keeping the burden low, since their activity might be less concerning due to a smaller exposure.

¹⁹⁰ Bright, C., & Smit, L. (2022). The new European Directive on Corporate Sustainability Due Diligence. *British Institute of International and Comparative Law and NOVA School of Law*, 23.

Concerning the third-country companies that will be covered, the criteria is the net turnover and not the number of employees, in fact, the directive mentions the difficulty that is accounting accurately to the number of employees in these enterprises, evidence by the French duty of Vigilance law and mentioning that the criteria of turnover has been developed by the Country-by-country reporting directive. This will leave possible companies out of the scope that may have a big impact.

Regarding the directors' duties this will only be limited to the EU companies and will not cover third countries.

The stakeholder engagement is not made compulsory, where in fact this could be extremely beneficial, to understand if the measures are in fact being well understood by the stakeholders, what could be changed to be more effective, for example.

Article 8 mentions the requirement for business termination when the remediation is not possible, however Bright and Smit highlight that the UNGPs view business termination as the last resort as in fact, terminations can bring more harm.

“There is a likelihood that such a legal requirement on business to terminate relationships will have a counter-productive effect, lead to 'hiding' of issues and diminished transparency, divestment from high-risk areas, irresponsible knee-jerk (but legally required) exits, accompanying loss of livelihoods and other harms to rights-holders and similar impacts that could have been prevented had the company been allowed to stay in the relationship and proactively engage.” (Bright & Smit 2022)

Companies can use a third party to verify the compliance of their code of conduct, however in the case of the third country the methods of audits as proven to be limited.

5. The directive applied to the textile industry

5.1. How does the directive apply to this industry?

Due to all the adverse impacts presented in the previous chapter, the textile industry is classified by the EU as a high impact sector.

As explored earlier, the directive covers the potential and actual adverse impacts caused by the businesses. But what can these impacts be? In fact, article 3 defines environment and adverse human rights impact as a violation of the rights or of the multiple conventions, cited in the proposal's annex. This annex can be used by companies as a guide to evaluate if their impacts are considered violations or not. Although, this shouldn't come as a surprise to most businesses, as the violations present in this are the most known violations, like the prohibition of child labor for example.

The proposal also distinguishes “severe adverse impact” that are defined as,

“(…) an adverse environmental impact or an adverse human rights impact that is especially significant by its nature, or affects a large number of persons or a large area of the environment, or which is irreversible, or is particularly difficult to remedy as a result of the measures necessary to restore the situation prevailing prior to the impact;” (European Commission 2022 p.51)

Meaning, that a severe impact is one that is significant in time and nature, has a considerable impact in a great number of individuals or nature and is due to its severity is almost impossible to remedy, or reverse its impact. Great examples of such would be climate change or the contamination of waters through the chemicals released.

Most of the violations mentioned are very relevant for this industry, mentioning multiple violations that occur in the sector for example, the need for favorable work conditions, the fair wage that allows access to a decent living, as well as healthy working conditions and reasonable working hours.

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry The directive applied to the textile industry, how does the directive apply to this industry?

The environmental violations are completed through the conventions, for example, the incorrect disposal of waste included in Article 6 of the POPs Convention¹⁹¹.

There is also mention of the prohibition of child labor, freedom of association, prohibition of unequal treatment, for the human adverse impacts. When it comes to the adverse environmental impacts, there is mentioned of the prohibition to take land, the excess emission, soil, water, and air pollution. All violations that are very present in the textile industry, this also explains why the industry is considered of high impact and therefore needs more attention and regulation.

To be complaint with the directive, the companies will have to conduct human rights due diligence, mentioned from article 4 through 11 of the proposal. What this means practically is that companies will have to integrate the due diligence measures into their companies' code of conduct and of their subsidiaries. The measures need to be able to identify the impacts of the business, as well as be able to prevent and remediate them or at the very least mitigate them.

Furthermore, a complaint procedure needs to be established, so that individuals can present their complaints directly to the enterprises, the business then needs to follow through with the latter and give proper feedback to the complainant. More importantly these measures must be monitored, this is an important part of the due diligence as to guarantee that the measures are promoting change and remediating or mitigating the impact, if proven to not be effective the measures need to be changed or adapted to serve their purpose. Another step is the public communication of their policies.

Article 7 of the proposal indicates the steps to be taken in the prevention of potential adverse impacts, where the company may consider relevant.

These are, the implementation of a prevention plan, “(...) with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement.

¹⁹¹ European Commission (2022). Annex to the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

The prevention action plan shall be developed in consultation with affected stakeholders;” (European Commission 2022 p.55).

Companies need to guarantee that said plan is also followed by their direct business relationship and the business will have to give proper support and incentives for them to do so.

“(...) collaborate with other entities, including, where relevant, to increase the company’s ability to bring the adverse impact to an end, in particular where no other action is suitable or effective.” (European Commission 2022 p.55)

Making the necessary investments to guarantee that this prevention plan is being properly followed through.

By EU definition, an established business relationship is a relation between two companies that is expected to continue during some time. “(...) business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain’.” (European Commission 2022 p.8) This means that the other company can act on their behalf or have a commercial or financial contract with the primary company.

However, if suspected that the impact can’t be prevented or remediated by the responsible company as well as their business relations, article 7 section 3 refers to the possibility of seeking help from a third company to do so.

“3. As regards potential adverse impacts that could not be prevented or adequately mitigated by the measures in paragraph 2, the company may seek to conclude a contract with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company’s code of conduct or a prevention action plan. When such a contract is concluded, paragraph 4 shall apply.” (European Commission 2022 p.55)

Paragraph 4 refers to “contractual assurances”, this states that companies need to guarantee the compliance of their prevention plan across all their business partners.

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry The directive applied to the textile industry, how does the directive apply to this industry?

In fact, the support between businesses is important and often mentioned in the proposal. This support is considered as fundamental to obtain the desired results.

Mentioned in article 14, not only do the businesses need to support one another but Member-States also play an important role, in fact as referred in the article they should provide the necessary information and support, the Commission may also intervene where extra support may be needed.

This is an important measure as in practice the support from Member-States and bigger companies is essential and may be used as an incentive to implement the directive and the due diligence measures that might otherwise be wrongly adopted.

Article 7, paragraph 5 mentions the possibility of the relations' termination, in case the impacts couldn't be prevented, mitigated, or remediated through all the mentioned steps. Then the company needs to refrain from entering into a new relationship with the responsible partner or suspend their commercial transaction if any are occurring.

“5. As regards potential adverse impacts within the meaning of paragraph 1 that could not be prevented or adequately mitigated by the measures in paragraphs 2, 3 and 4, the company shall be required to refrain from entering into new or extending existing relations with the partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions:

(a) temporarily suspend commercial relations with the partner in question, while pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts will succeed in the short-term;

(b) terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.” (European Commission 2022 p.55)

Article 8 states the need for the end of these impacts, the Member-states do play a significant role in this matter by assuring that the companies are taking the appropriate measures to minimizing them, this means that the companies need to be taking the steps mentioned in article 7. There is also mention of the correction plan and the same steps mentioned in article 7.

“(…) including by the payment of damages to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the contribution of the company’s conduct to the adverse impact;” (European Commission 2022 p.56)

Article 9 indicates the procedure of complaints that need to be adopted. The complaint can however only be brought by certain people or organizations. This is mostly to ensure that the claims are legitimate, this way they can only be brought by individuals or organizations who would in fact have effective knowledge of the violations.

“(a) persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact,
(b) trade unions and other workers’ representatives representing individuals working in the value chain concerned,
(c) civil society organisations active in the areas related to the value chain concerned.” (European Commission 2022 p.58)

The monitoring of the measures is one crucial step as described in article 10. The companies are required to perform an assessment of the measures implemented to make sure of their effectiveness.

“Such assessments shall be based, where appropriate, on qualitative and quantitative indicators and be carried out at least every 12 months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise. The due diligence policy shall be updated in accordance with the outcome of those assessments.” (European Commission 2022 p.58)

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry The directive applied to the textile industry, how does the directive apply to this industry?

Article 16 of this proposal cites the authorized representative, that has the role of supervising the activity and ensuring the fulfillment of the measures put in place. This authority is designated by the company and can be a natural or a legal person, the only requirement stipulated by the article is that this authority needs to be domiciled in one of the Member-States where the business is operating or where they generate the most of their turnover.

The question of climate change is an important one in this directive and for the EU in general as mentioned prior, in fact this directive serves as a complement to the Paris Agreement to fulfill the EU objectives.

Article 15 of the proposal mentions this point, as Member-States need to ensure that the companies,

“(…) shall adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company’s operations.”
(European Commission 2022 p.60)

An improvement that is brought by this proposal is the introduction of supervisory authorities. In fact, the enforcement and the verification of compliance has been previously left to the companies and Member-States, although these are the ones to still choose the authorities, the verification is now more automated and consistent than before.

These authorities may be the ones to initiate an investigation or motion when there are legitimate concerns to do so, this then covers the fact that some Member-States don’t have administrative sanctions to cover these violations.

In case they identify a failure to comply with the measures, the authorities need to provide the companies with an appropriate amount of time to remedy the situation, when possible.

This timeframe isn't specified in the directive, it is believed that this is an arbitrary decision made by the authorities, since any decision made by these authorities is legally binding. The authorities can also receive the complaints,

“(...) substantiated concerns to any supervisory authority when they have reasons to believe, on the basis of objective circumstances, that a company is failing to comply with the national provisions adopted pursuant to this Directive ('substantiated concerns')." (European Commission 2022 p.63)

When the concern is valid, then the supervisory authorities assess it and informs the person or organization who brought the concern on their assessment and their rationale.

“5. Member States shall ensure that the persons submitting the substantiated concern according to this Article and having, in accordance with national law, a legitimate interest in the matter have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.” (European Commission 2022 p.63)

Other than the authorities established by the enterprises and the Member-States, the EU is also involved in the supervision. In fact, the Commission establishes the “European Network of Supervisory Authorities”, which will be composed of

“(...) representatives of the supervisory authorities” (EC 2022 p.64). This is made to facilitate the cooperation between the already established, “(...) and the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, sharing of information among them.” (European Commission 2022 p.64)

These authorities will then share relevant information and provide mutual assistance to one another, for example when one supervisory authority cannot act in one company, they can rely on another supervisory authority to do so. All these authorities need to be in constant communication and collaboration.

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry The directive applied to the textile industry, how does the directive apply to this industry?

“3. Supervisory authorities shall take all appropriate steps needed to reply to a request for assistance by another supervisory authority without undue delay and no later than 1 month after receiving the request. Such steps may include, in particular, the transmission of relevant information on the conduct of an investigation.” (European Commission 2022 p.64)

Article 20 mentions the possible sanctions. If concluded that the company couldn't remedy or put an end to their violations, they can be held liable under certain conditions.

First, the article emphasizes the need for sanctions to be proportionated to the violations, as well as be deterrent enough for the company to not repeat it.

“The sanctions provided for shall be effective, proportionate and dissuasive.” (European Commission 2022 p.63) Second, all sanctions need to be based on the company's turnover. Furthermore, to establish them, the Member-State need to take certain points into account,

“(…) due account shall be taken of the company's efforts to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as collaboration with other entities to address adverse impacts in its value chains, as the case may be.” (European Commission 2022 p.63)

Companies can also be found civilly liable, as defined by article 22. The Member-States can hold the enterprise liable if the following has occurred,

“(a) they failed to comply with the obligations laid down in Articles 7 and 8 and;
(b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage.

2. Notwithstanding paragraph 1, Member States shall ensure that where a company has taken the actions referred to in Article 7(2), point (b) and Article 7(4), or Article 8(3), point (c), and Article 8(5), it shall not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact.” (European Commission 2022 p.65)

Paragraph 2 refers to the fact that a company cannot be liable for the damage that has been caused by the indirect partners unless it was unreasonable. This sets a standard for what would a reasonable company do, and this is the standard that needs to be followed.

A reasonable company would “verify compliance, would be adequate to prevent mitigate, bring to an end or minimise the extent of the adverse impact.”¹⁹²

Furthermore, the company is not liable for the damage caused by an indirect partner, however in article 7 and 8, the companies are encouraged to seek out an indirect partner if they believe that they would help with their adverse impacts.

The directors’ duties are an important and fundamental question in due diligence and this matter is often raised as a potential issue, in fact the directors have the duty to act on the company’s best interest, this means that directors are almost never brought to justice or found liable.

¹⁹² European Commission (2022). Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry- The directive applied to the textile industry, how does the directive apply to this industry?

Article 25 of this proposal, clarifies that,

“(…) when fulfilling their duty to act in the best interest of the company, directors of companies referred to in Article 2(1) take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.” (European Commission 2022 p.66)

This is one important step in the due diligence measures. The directors have the responsibility to ensure that the due diligence measures are being implemented and reported to the board of directors, as well as making sure that their corporate strategy is in alignment with their adverse impacts.

5.2. Can this proposal solve the adverse impacts of the industry?

Violations in the industry/ adverse impacts	Applicable article	Will it remedy?
GHG emissions	Article 7, 8, 9, 10, 15, 17, 18,19, 20	NO
Air and water pollution	Article 7, 8, 9, 10, 15, 17, 18, 19, 20	NO
Soil damage	Article 7, 8, 9, 10, 15, 17, 18, 19, 20	NO
Waste pre- and post-consumption	Article 7, 8, 9, 10, 15, 17, 18, 19, 20	NO
Child labor	Article 7, 8, 9, 10, 17, 18, 19, 20	NO
High impact on women	Article 7, 8, 9, 10, 17, 18, 19, 20	NO
Low adherence to trade unions	Article 7, 8, 9, 10, 17, 18, 19, 20	NO
Forced labor and human trafficking	Article 7, 8, 9, 10, 17, 18, 19, 20	NO
Poor work conditions	Article 7, 8, 9, 10, 17, 18, 19, 20	NO
Low wages	Article 7, 8, 9, 10, 17, 18, 19, 20	NO

During this chapter, the possible loopholes in this directive will be exposed, especially in the light of the problems exposed prior. The objective is the understanding and analyze the effectiveness of this policy in the specific sector of textile industry. As each sector may have its specificities and difficulties, as already presented, the textile industry is now being accused of many severe violations and therefore due to the ever-increasing demand for this industry, special attention should be brought. Although many loopholes presented here, are also generic ones that can be adapted to every company regardless of its sector.

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry-The directive applied to the textile industry, can this proposal solve the adverse impacts of the industry?

Starting with article 3 and the definitions of the adverse impact, which considered as limitative. In fact, when defining the adverse impacts, these are defined through the annex list of violations, which is limitative in itself but other than this they are defined by the violation of a right, this means that in order to be considered a violation there needs to be an intent by the company to commit it. This is also restrictive as many violations occur by negligence and these would therefore not fall under the scope of this definition. When analyzing this definition in the light of the textile industry, the problematic becomes even more evident. As in the sector, many violations can occur by omission or negligence and the right itself may not be especially violated. Taken for example, the right to a fair wage. The company will only be violating this in case they do not provide a fair wage to their employees, however we have seen that the problematic goes beyond, and it doesn't contemplate for example late payment or payments without the extra hours that the workers provided.

“By requiring the actual or potential existence of a ‘violation’, the proposal risks limiting the notion of ‘impact’ and thus the scope of the due diligence obligations and of the associated liability regime.” (ECCJ 2022 p.8)

The second issue that has been evidenced in this annex, is the definition of environmental violations through the violations of conventions and not an actual list of issues. Moreover, several conventions are missing from the list¹⁹³. This means that an environmental violation is only considered if there is a violation of one of these conventions mentioned.

“(…) the current fragmented patchwork of international environmental conventions does not provide for sufficient coverage of impacts. This regulatory gap needs to be filled by targeting environmental damage in general, as the French due diligence law does, and not specific violations of international standards.” (ECCJ 2022 p.9)

Another important definition presented in this article is the “established business relationship”, important to establish the scope of the directive.

¹⁹³ ECCJ (2022). Analysis of proposal for a directive on Corporate Sustainability Due Diligence

Nevertheless, this definition is considered too generic, perhaps to cover most relationships, however the opposite can also occur.

In fact, there is no mention of the duration of this relation or definition of its “intensity”, which can provide a loophole for companies to give their own interpretation¹⁹⁴. Besides, this can also leave room for companies to only rely on indirect relations, who are not covered by this directive. They could also not focus on the impacts of their indirect partner, who may also be significant¹⁹⁵.

“The proposal risks creating perverse incentives: as short-term relationships would not be covered, companies could be tempted to switch suppliers regularly in order to avoid due diligence obligations and their associated liability. This clearly runs against the spirit of the UN Guiding Principles, which aim to foster longer lasting and cooperative business relationships.” (ECCJ 2022 p.10)

The question of switching suppliers may be an enlarged problem in the textile industry, as evidenced in the previous chapter, as the supply chain is often long and complex. This would signify that companies will have no problem in changing suppliers, since often, suppliers are only responsible for producing a small fragment and not its entirety, making it easier for changes to occur.

The question of liability is exposed in article 7, in this article multiples forms can be found by businesses to escape liability.

“Companies seem to be able to evade liability either by choosing a favourable regime of the burden of proof, or by making it more difficult for victims to claim damage causation by due diligence failure through the choice of incorporation or the design of complex supply chains.” (Paccès 2023 p.15)

In fact, when observing article’s section b, which mentions the assurance of compliance from the direct business relationship, it can be deducted that having assured said compliance, the company would most likely not be held liable.

¹⁹⁴ *ibid*

¹⁹⁵ *ibid*

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry- The directive applied to the textile industry, can this proposal solve the adverse impacts of the industry?

In fact, having followed all the measures explained here, the business would have taken the appropriate steps and consequently would be protected in a way in case of possible violations. Since they were compliant with the directive.

The contract with an indirect partner may also offset the company's responsibility as it doesn't specify what is the role of the company in these cases.

Furthermore, point 5 of the article mentions the termination of the business relationship in case of impacts that cannot be prevented or mitigated by the measures presented prior.

“(...) the company shall be required to refrain from entering into new or extending existing relations with the partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions:

(a) temporarily suspend commercial relations with the partner in question, while pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts will succeed in the short-term;

(b) terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.” (European Commission 2022 p.55)

Once again, the company, can use this as a defense, as in the case that an adverse impact cannot be resolve, the solution would be to terminate their relationship with the supplier that might be causing these impacts. Hence, by terminating this relation the company discards their responsibility. This also means that the impacts will not be prevented or mitigated, creating more potential severe impacts as mentioned.

Furthermore, termination has not been considered as a good form of putting an end to violation and in fact should be the last resort¹⁹⁶.

¹⁹⁶ Bright, C., & Smit, L. (2022). The new European Directive on Corporate Sustainability Due Diligence. *British Institute of International and Comparative Law and NOVA School of Law*, 23.

“There is a likelihood that such a legal requirement on business to terminate relationships will have a counter-productive effect, lead to ‘hiding’ of issues and diminished transparency, divestment from high-risk areas, irresponsible knee-jerk (but legally required) exits, accompanying loss of livelihoods and other harms to rights-holders and similar impacts that could have been prevented had the company been allowed to stay in the relationship and proactively engage.” (Bright and Smit 2022 p.7)

The article considers the possible minimization of the impact, when the latter cannot be ended, however there isn’t a clear definition on what this minimization should be or is considered sufficiently satisfactory. This will also leave a margin of leverage to the corporations.

The mention of severity is also problematic, as no definition has been provided and is up for interpretation. This could potentially leave other problems unattended that are not considered severe.

Article 7 also mentions the development of an action plan when deemed relevant and only “when necessary due to the nature or complexity of the measure required (...)” (European Commission 2022 p.55), this signifies that said action plan will only be established when the business considers necessary and will therefore not be put in place for every impact that the business may identify.

Nevertheless, all the problems should still be solved by the enterprises and actions put in place, no matter the severity or complexity of the problem.

“Whether more or less complex, action plans should always be developed and effectively implemented whenever potential or actual impacts are identified, no matter the nature of the response required.” (ECCJ 2022 p.12)

One mechanism introduced in this directive is the complaint procedure, which could be a great form of uncovering issues. It has been established as to avoid false or unjustified claims, that the scope of potential claimants would be reduced. Claims may only be considered if they are brought by legitimate individuals or organizations, significantly reducing the number of complaints.

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry- The directive applied to the textile industry, can this proposal solve the adverse impacts of the industry?

The outstanding question is, what is the criteria to be deemed a “legitimate individual”? Could this range from the employees, to a parent of an employee for example? This remains ambiguous as the scope hasn’t been defined.

In the meantime, this remains a difficult procedure to occur in the textile industry, in fact as we have seen prior, employees are often scared of complaining, due to fear of losing their job or potential ill-treatment by their employers. For example, reports of violations are almost non-existent because it is believed that their reports will not be considered.

Trade unions are also hard to come across, due to the lack of information. This means that for the factory workers, bringing in a claim will probably not be something that will be contemplated. Therefore, it will mostly be up to the organizations to bring the violations to light. However, the burden of proof may still be hard to reach, in fact a company might try to question how much knowledge and legitimacy the organization may have.

“The Council’s Political Compromise is completely different. As there are no exculpatory provisions, the credibility of supply chain liability depends on the plaintiff’s ability to claim a breach of due diligence obligations and damages caused by it. Leaving aside the issue of mass claims, which is left to Member States, the Council has taken quite a restrictive position on at least two conditions for liability, which may undermine effective deterrence.” (European Commission 2022 p.12)

Subsequently, if this type of procedure may be feasible in the Western part of the world, where access to trade unions is easier, the same type will be far more difficult to occur in the third-countries companies. Furthermore, the complaint doesn’t mean that bring justice will be brought to the victims¹⁹⁷ and shouldn’t be use as a replacement of actual court cases.

¹⁹⁷ ECCJ (2022). Analysis of proposal for a directive on Corporate Sustainability Due Diligence

Another new feature brought by the proposal is the introduction of the supervision authorities. This can ensure that the adverse impacts may be found quicker, and businesses will be required to take immediate action after the request from the authorities.

As for the supervision authorities established by the companies, the person who conducts it and in the way they do it is a choice made by the corporation itself. They might rely on internal or on external auditors. However, as evidenced, audits have proven to be an unreliable source in third countries, in fact, there are multiple ways of adverse impacts to not be detected during them¹⁹⁸, for example to hide the use of child labor, children may hide or give false documents, remaining undetected¹⁹⁹. Another issue is the corruption of auditors, common in those countries²⁰⁰, making it harder to guarantee their accuracy. Relying on this form of verification, is problematic as they have proven to be ineffective to verify compliance and identify violations²⁰¹.

This problem may be solved through the supervision of the remaining authorities, nevertheless the issue of the hidden violations will remain, for example in Bangladesh rooms for rest or childcare were only showed to the auditors during their visit but never used²⁰².

The establishment of potential civil liability and sanctions for the companies is undeniably a step in the right direction. However, the loopholes are evident.

First, The Council established the criteria of prioritization of the adverse impacts for those corporations who are faced with multiple adverse impacts simultaneously. This being the case in the textile industry, where companies are confronted not only with one but with multiple impacts.

¹⁹⁸ Clean Clothes Campaign (2016). Cashing In: Giant Retailers, Purchasing Practices, and Working Conditions in the Garment Industry

¹⁹⁹ SOMO (2014). Fact Sheet Child labour in the textile & garment industry, Focus on the role of buying companies

²⁰⁰ Clean Clothes Campaign (2016). Cashing In: Giant Retailers, Purchasing Practices, and Working Conditions in the Garment Industry

²⁰¹ ECCJ (2022). Analysis of proposal for a directive on Corporate Sustainability Due Diligence

²⁰² Clean Clothes Campaign (2016). Cashing In: Giant Retailers, Purchasing Practices, and Working Conditions in the Garment Industry

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry- The directive applied to the textile industry, can this proposal solve the adverse impacts of the industry?

In practice, this criterion leaves a margin of decision for businesses to decide on which impact is deemed more severe or which one should be addressed first. This poses the question, on which basis is used to make this choice, is child labor less important than climate change for example? As mentioned by Paccès, this creates a way for the businesses to claim that another impact has yet not been addressed due to this question of prioritization but was going to be remediate.

“Assuming that all adverse impacts can be ranked based on their severity and likelihood, as required by the Council’s text, where should one draw the line above which the impacts are ‘significant’ and must be addressed ‘in a reasonable time’? As a result, companies who are sued for breach of due diligence obligations will have an additional way to escape liability by arguing that the damage occurred in parts of their supply chains that couldn’t be prioritised.” (Paccès 2023 p.15)

The possible application of civil liability is established in article 22. A sanction is applicable to a company in the case they didn’t comply with article 7 and 8, and in case this noncompliance “led to damage”. This signifies that an enterprise didn’t take the appropriate steps to prevent, identify and mitigate their potential (article 7) and actual (article 8) adverse impacts. The company either had to be intentional in the perpetuation of the violations or negligent enough for it to occur.

Furthermore, the liability can only be applied if the burden of proof is met, meaning that the plaintiff will have to show the following 4 conditions, “i) a breach of duty; ii) a company’s fault; iii) a damage; and iv) the causal link between the breach and the damage.”²⁰³

²⁰³ Paccès, A. M. (2023). Civil Liability in the EU Corporate Sustainability Due Diligence Directive Proposal: A Law & Economics Analysis. *European Corporate Governance Institute-Law Working Paper*, (691).

This liability doesn't apply in case the damage occurred due to an activity performed by their "indirect partner with whom they have an established business relationship", this counts for partner above and below the company. This will pose the need to prove that the doctrine of causation chain has broken.

In other words, this means that there is proof that the company has been negligent, and that this negligence did in fact cause damage.

"Causation is the relationship between the cause and effect of the defendant's action(s) and the injuries the plaintiff sustains."²⁰⁴

In these cases, the question is if in fact it's the company's noncompliance with the directive that led to the damage. Paccès points out that this will cause the company to allocate the blame elsewhere.

"This will likely create the regulatory arbitrage situation I hinted at before: companies will tend to locate where the causal link between the breach of due diligence and the damage done by the business partner is easier to exclude." (Paccès 2023 p.14)

The article also refers an important point that is that companies will also not be found liable,

"(...) unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact." (European Commission 2022 p.65)

This brings once again the standard on what would be done by a reasonable company and what steps would have been taken.

²⁰⁴ <https://www.wkw.com/legal-dictionary/blog/chain-of-causation-legal-definition-and-examples/>

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry- The directive applied to the textile industry, can this proposal solve the adverse impacts of the industry?

This is an introduction to the following paragraph of the same article that mentions the company's efforts to address the problem should be considered when judging the company, as well as if they were or not compliant with the actions required by the authorities.

“In the assessment of the existence and extent of liability under this paragraph, due account shall be taken of the company's efforts, insofar as they relate directly to the damage in question, to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as any collaboration with other entities to address adverse impacts in its value chains.” (European Commission 2022 p.65)

This would mean that the enterprise could also avoid liability by claiming that they have taken all the appropriate measures to solve the problem, claiming that these actions weren't enough to solve the problem. Furthermore, case law shows that reports and companies' communications are now being used as evidence to understand the companies' involvement in their impacts²⁰⁵. Therefore, by disclosing theirs and their suppliers' measures a business may not be found liable, if considered that they have proven to have taken the right steps. However, this will also increase the evidence for litigation if the opposite is proven²⁰⁶.

The limitation of the liability is criticized, as Paccès states that in fact, companies are more likely to not understand the negative consequences of their actions, as well as more likely to repeat said action if the probability of persecution is low. This will lower the incentive to be compliant with the directive.

²⁰⁵ Rajavuori, M., Savaresi, A., & van Asselt, H. (2023). Mandatory due diligence laws and climate change litigation: Bridging the corporate climate accountability gap?. *Regulation & Governance*

²⁰⁶ *ibid*

“In fact, the doctrine of foreseeability, which limits causation to the damages that can be reasonably foreseen and is tantamount to the break of causal link exception to supply chain liability, reduces the incentive to monitor and is economically justified only when foreseeing remote damages would be too expensive. The Council’s approach therefore defies the CSDDD’s purpose to foster internalisation of externalities by MNCs to the extent that it undermines the deterrence of supply chain liability and the monitoring incentives stemming from it.” (Pacces 2023 p.14)

Pacces also mentions a study conducted by Akey and Appel which evidenced that companies who have access to limited liability are more likely to do environmental damage. Their opinion is based on the study of case law which ruled that parent companies are only found liable for their subsidiary’s environmental violations “if the conditions for veil piercing apply”. This means that shareholders and directors can be held liable for the actions of a company, the corporate veil refers to the separation between the business and the owners/managers.

They found that in the states where parent companies can have limited liability, their subsidiaries increased the use of pollutants by at least 5%.

“The empirical evidence to date confirms that companies use limited liability strategically, not only in corporate groups, but also by reshaping the firm boundaries and supply chains to minimise liability risk. This strategic behaviour of corporations undermines tort liability’s function to foster the internalisation of negative externalities.” (Pacces 2023 p.11)

Overall, the limitation of liability will mean that corporations will weigh the costs and gains between violating the directive or not, this will mean that the directive will only be followed due to potential economic reasons and not due to a real concern.

A simple fine based on the company’s turnover is often not viewed as deterrent enough based on the profit that they are making by perpetuating the violations.

In fact, this is an important point as the measures that the business establishes in the code of conduct are not monitored, it can be argued that these measures aren't satisfactory, as these measures need to prove their effectiveness or altered in the case they aren't.

However, the monitorization of these are done by the corporations and can therefore have some biases. Therefore, the plan should be reviewed by an external auditor, like mentioned in the French duty of vigilance law.

“5° A system for monitoring the measures implemented and evaluating their effectiveness.”²⁰⁷

An important matter in the textile industry is the use of many third-country suppliers, and in fact those can be covered by the directive if their turnover exceeded a certain amount. However, this as some defaults, in fact Paccès mentions in his article the problem of this criteria being on non-consolidated financials, that can be avoided by “(...) operating in the EU through many small companies.” (Paccès 2023 p.11)

This is an even more important point to consider in the textile industry, as the supply chain is extremely long and complex. This means that since each supplier does a specific part of the garment, it can also be argued that often their non-consolidated turnover will not be enough to be covered by this directive.

Another form of avoiding this is to operate through subsidiaries that are incorporated in the EU.

“While the subsidiaries would be individually subject to the CSDDD, the CSDDD would not apply to the non-EU parent company, which might be the one where the group's net worth is concentrated.” (Paccès 2023 p.11)

This restrictive scope may also incentive the companies to adapt their structure or rely on suppliers who fall outside the scope of the directive to avoid it.

²⁰⁷ Journal Officiel de la République Française (2017). LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (1)

Furthermore, article 22 also fails to mention who needs to hold the burden of proof, as this is left to the States to decide.

“In addition, the proposal does not regulate who should prove whether the company breached its duty or not. This is all extremely hard for victims to prove in court, especially since it requires access to information in the hands of the company (particularly considering the compliance- focused approach to due diligence measures in the proposal).” (ECCJ 2022 p.20)

Another important matter in this industry is the question of the violations being more likely to occur to women. In fact, as evidenced prior, women suffer more heavily in this sector. However, this proposal fails to consider the gender in this policy, understandably as human rights is often focused on humanity entirely. Nonetheless, it is known that often minorities suffer more than the rest from inequalities and therefore should be taken into consideration.

Although climate change is mentioned in article 15 of this directive, only the companies, that have more than 500 employees and a turnover of more than 150 million and the third countries companies with a turnover of more than 150 million, need to adopt a plan for climate change.

“(...) shall adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement.” (European Commission 2022 p.60)

This means that the scope is even more restricted for the problem of climate change, a problem that is global and of apparent great concern to the Union, this restriction therefore seems contradictory to the objectives set.

Moreover, climate change is not mentioned in the annex of violation that need to be identified and prevented in the measures.

The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry-- The directive applied to the textile industry, can this proposal solve the adverse impacts of the industry?

“The proposal seems to refer exclusively to the climate impacts of the company’s operations, which could be interpreted as excluding indirect emissions. This exclusion would run counter the overall spirit of the directive itself, as well as the objective of UN and OECD standards, which aim to address both internal and outsourced impacts.” (ECCJ 2022 p.18)

Furthermore, article 25 refers to the director’s duty of care, which according to the law, directors need to act in the best interest of the company. Although this article is still vague, it stipulates that they need to “(...) take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.” (European Commission 2022 p.66)

This is still a step in the right direction so as to make due diligence part of the directors’ responsibilities and ensure that these questions are considered when taking any kind of business decision.

6. Recommendations

In this chapter, some recommendations will be introduced to the proposal. These have been discussed by authors and organizations as a way of improving this directive. Some of these recommendations are general ones, that can be applied to every company, however some are more specific and will benefit the textile industry especially. For this chapter, the works provided by Christophe Clerc and the ECCJ were used.

To start, the directive contemplates stakeholder's consultation "where necessary", however it is believed that this consultation should be occurring on a specific time basis. In fact, stakeholders are the "(...) is a party that has an interest in a company and can either affect or be affected by the business. The primary stakeholders in a typical corporation are its investors, employees, customers, and suppliers."²⁰⁸, hence by consulting with them, a company may get a better picture on which actions should be taken. It might potentialize the employees and suppliers voice, which might be forgotten when consultation isn't occurring. Moreover, knowing how difficult it is for employees to join a union in this industry, these types of discussions may be an incentive for them to do so, as they can have evidence that their concerns will be valued.

This might also help the company to comprehend which adverse impact should be prioritized first, as recommended by the proposal. By providing a better and inside perspective, stakeholders could contribute to the understanding of which problems are in fact affecting their employees or population the most. In fact, as seen in previous chapters, the textile industry is affected by many and diverse impacts, these discussions could highlight which ones need to be worked on first.

Consultation might also bring to light problems that have been hidden during the audits, also a constant problem in the industry that affects all the remaining problems as false or inaccurate reports might give the company a false representation of the violations that they are responsible for. Although we need to consider some points to this recommendation to be effective.

²⁰⁸ <https://www.investopedia.com/terms/s/stakeholder.asp>

In fact, companies need to ensure protection for the stakeholders who may decide to speak up, as we have seen in the sector, the fear of reprisal is the biggest reason for violations to remain unexposed, it is fundamental that the companies, demonstrate how valuable this can be to their stakeholders and assure them that their participation will not cost them their job, for example. Furthermore, the ECCJ has exhibited the benefits of having consultation with NGOs, although organization aren't included in the definition of stakeholders, this could give the company a better understanding of the problems and eventually possible solutions.

Consequently, these consultations should occur once or twice a year at a minimum, this frequency could be decided by the enterprise according to its sector, as corporations of high impact sector should perform them more regularly than the remain ones, as they deal with various and concerning impacts that could evolve at a faster rate or become more problematic with the passing of time. Therefore, their prioritization may need to adapt.

Another point of improvement is the complaint procedures. As evidenced by ECCJ, the complaints shouldn't determine which case is brought to court, as they have proven to be ineffective and therefore shouldn't affect the right of the impacted party to bring in a legal claim.

“Complaints procedures have a proven track record of failure and should in no possible way preclude access to justice. Complaints mechanisms will continue to be ineffective if affected people lack the real possibility of going to court to assert their legal right to a proper remedy. This also means victims should never be forced to turn to complaints procedures before bringing a legal case.” (ECCJ 2022 p.15)

This is especially important in the textile sector, as evidenced prior, workers are reluctant to bring claims for fear of reprisal or because they feel that their complaints aren't heard or acted on. Therefore, access to justice should be provided without this criterion, as in fact, the individual may feel safer presenting their case directly to the justice.

As explained above, the complaints procedure should also consider the protection of the claimants. In fact, to have claims, the individuals need to feel safe enough to do so, without this guarantee, the claims will be reduced and therefore the effectiveness of this procedure. Companies could install witness protection for example, as suggested by ECCJ.

“It should also be clarified that complaints procedures must provide for the possibility to raise concerns either anonymously or confidentially.” (ECCJ 2022 p.16)

Moreover, companies need to advertise and encourage to use this procedure to their stakeholders. This would ensure that individuals come forward, without having to rely on other organizations who might, especially in third countries, not be easily reachable. This would also be beneficial to increase the burden of proof, potentially increasing their credibility.

Additionally, the companies need to remedy these complaints in an established period after the claim has been brought, the complaints should follow up the claims and bring feedback to the claimants, discussion should be open between the company and the later.

As claimed by ECCJ in their analysis, companies need to,

“(…) be required to map their value chain and, with due regard for commercial confidentiality, publicly disclose relevant information about it, including names, locations, types of products and services supplied, amongst other relevant information, as proposed by the European Parliament.” (ECCJ 2022 p.17)

In fact, this can be beneficial in the sector as the supply chain is complex, business could claim to not know their suppliers or their activity and violations. By making this information public, suppliers can be tracked and linked to a company that might fall under the scope of this proposal. Moreover, the companies should be required to keep their documents regarding their activity for a relevant amount of time, as this might be used as evidence in possible legal cases, covering the possible claims of non-knowledge and the actions taken.

One important recommendation for this industry is the expansion of the description of environmental impacts. As a matter of fact, environmental impacts aren't included in the annex of impacts. Currently, the environmental impacts are only contemplated through conventions in annex, yet the latter is the document to be used by companies to identify if their actions are considered as adverse impacts or not. Therefore, environmental impacts should be expectedly mentioned. By including them explicitly, enterprises would have to include them in their due diligence measures.

Climate change should also be included and the scope of the companies that need to act on this extended to all the companies under the scope of this directive, not only through their direct emissions but their indirect emissions as well. For example, the textile industry is not only responsible for direct emissions through their production, but through indirect due to waste produced for example, therefore they should be held responsible for both.

The reduction of their emissions and the climate change action plan should be applied to all the companies and their subsidiaries, as this is a serious global problem, therefore the scope should be extended and not reduced to cover the most ground.

A raising concern for the textile sector is the lack of clarity in the definition of established business relationships, which should be more explicit as to avoid the possible loopholes exposed prior. For the textile industry, this is even more problematic as the duration of the relation might not be long enough for them to fall under this scope. We should also consider that in this sector, the suppliers might not fulfill the criteria used for third countries in number of employees or revenues. Therefore, for these companies as they are considered as high impacts, the scope of these relations should be reduced to reflect the reality of the sector.

Furthermore, when defining the scope, the calculation should include the number of employees for the company and their subsidiaries, consequently increasing the scope of the directive.

This could also help avoid the problem of switching suppliers to escape the directive.

“For the purpose of calculating the number of employees of EU companies, the proposal should also clarify that employees worldwide – meaning employees of the parent company and of its subsidiaries – should be taken into account, as foreseen in the French due diligence law. This approach would reflect the size and power of transnational corporations more accurately than the number of staff in their home country.” (ECCJ 2022 p.7)

Contrary to what the proposal indicates, the audits should be performed without prior warning.

“Inspections shall be conducted in compliance with the national law of the Member State in which the inspection is carried out and with prior warning to the company, except where prior notification hinders the effectiveness of the inspection. Where, as part of its investigation, a supervisory authority wishes to carry out an inspection on the territory of a Member State other than its own, it shall seek assistance from the supervisory authority in that Member State pursuant to Article 21(2).” (European Commission 2022 p.62)

In fact, as already mentioned, audits are already an unreliable form of verification, conducting them with warning will increase the chance of potential hiding and corruption of auditors. If the goal is to have the best and accurate representation of the way a business is being conducted, then the auditors should arrive unexpectedly.

A recommendation that might be beneficial, although difficult to implement, is to impose fines or the exclusion of third countries companies who perpetuated violations from selling in the member-State, as suggested by Christophe Clerc, “Exclusion of access to the EU market for suppliers and contractors found to violate the core humanitarian principles.” (Clerc 2021 p.4).

In fact, this could potentially be the most effective form of dissuasion, as the exclusion from the EU market would mean a great loss in profit.

Furthermore, in the case of the textile industry, most of the violations occur at the suppliers' level and therefore this could help in the prevention of the violations.

“The proposal expects Member States to lay down a regime of effective, proportionate and dissuasive sanctions, which should be based on the company's turnover, but leaves the amounts to their full discretion. For the purpose of levelling the playing field and preventing a race to the bottom between Member States, the directive should also provide for detailed criteria for the determination of sanctions and a specific minimum level of fines.” (ECCJ 2022 p.19)

Besides, fines should be dissuasive enough, which is difficult to predict the amount that will indeed stop business from the violations. In fact, often the profit that the company makes from perpetuating the adverse impact is greater than the fine received. Consequently, other options should be complemented, as introduced by ECCJ, these companies should be prohibited to seek public procurement,

“The directive should also foresee the explicit exclusion of non-compliant companies from public support schemes including those of Export Credit Agencies, as proposed by the European Parliament.” (ECCJ 2022 p.19)

Clerc also reinforced this point, the author suggests the establishment of stronger sanctions, namely criminal sanctions for those who do not follow the law,

“Criminal sanctions for the most flagrant violations of the law, such as the lack of an established plan or monitoring process, or gross or wilful misrepresentation in the plan or the report on its implementation.” (Clerc 2021 p.4)

Although extreme, this might be a great way to make companies compliant, as well as establishing that due diligence is a serious matter and not only a mandatory process within the company. Furthermore, it could possibly avoid the bypass of the law, that have been mentioned prior, like avoiding the designation of subsidiary for example.

Another recommendation given by Clerc is, “Disgorgement of profits made by the company through suppliers and subcontractors which are not compliant with the core humanitarian principles.” (Clerc 2021 p.4)

This is also an idea for those companies in which paying a fine and a remedy is not enough. In fact, in the fast fashion industry violations have been constant, and ongoing furthermore, they are also known and documented. Although companies have not been found directly liable for this. These companies should be able to prove that their production doesn't contain these violations, and if proven otherwise, the enterprise should give part of their annual profit to those affected by their violations.

Along this line, another recommendation could be the possible liability of the directors. Briefly mentioned by article 25, the directors' duties should not only include the fact that due diligence should be considered during the decision-making, but sanctions should be established for those who do not follow this guideline.

Moreover, the termination of a relation with a non-compliant partner should in fact be a last resource. As we have seen, terminating a relationship might bring more harm than good. Hence, companies should use their influence over their business partner as a form of leverage to put an end to the violations. For example, the business might set out a period in which the partner has to remediate their impacts, if this isn't done then the company could choose to terminate the relationship. The companies may also offer their knowledge and experience to help the company, likewise, they could offer incentive to their partner for complying with the due diligence measures.

In fact, companies should financially encourage their suppliers, not only to prevent human rights and environmental violations, but also to better the work conditions and impacts on even what isn't considered as a violation.

For example, when encouraging their employees to join a union, suppliers could receive compensation.

For this sector, this is even more important to ensure that first, suppliers are thinking critically about their way of conducting business and not only doing the mandatory tasks and second in a sector where fast production and cost is valuable, Incentives might help the suppliers to avoid violations by showing them they will still be compensated and will not lose money.

Furthermore, Clerc suggests the introduction of a simplified due diligence plan for SMEs, in fact excluding them from the proposal, means excluding the majority of the EU enterprises²⁰⁹. Therefore, a simplified, more adapted plan should be followed by them. Although the European Parliament has proposed an amendment to extend the scope of the directive to SMEs, under the following conditions,

“(…) applicable to all large companies and SMEs listed in stock exchanges or operating in high-risk sectors, with consequences up to and including civil liability for those companies that cause or contribute to harm by failing to carry out due diligence (…)” (European Parliament 2022 p.7)

²⁰⁹ European Commission (2022). Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

7. Conclusion

To conclude, the specificities of the textile industry allow it to be considered a high impact sector, deserving of special attention and stricter control. In fact, the sector is ever growing, with more production and more disposal, the sector is responsible for important and alarming violations. Companies overproduce garments at a cheap price and at fast rate, establishing short lead times and produce up to 11 000 garments/year in the case of fast fashion brands, while this number can go up to 200 000 garments/year in the case of ultra-fast fashion, creating an ever-ending cycle of consumption. These numbers and prices can only be met with an effective long and complex supply chain with many factories and resources located in third countries, these brands also benefit from fewer social and human rights regulations, leaving them unpunished for their wrongdoings.

The impact of this industry on the environment is very well accounted for. In fact, the impact of the sector on the environment is now being studied and heavily quantified, giving us plenty of data to understand its magnitude. The sector is being reported to contribute to gas emissions, climate change, global warming, air, and water pollution as well as soil damage. All these issues are interconnected and have a global effect on the environment, as the textile industry has considered in 2021 as the biggest polluter. The sourcing and actual production uses greatest amounts of water, not only that but this water becomes contaminated during the production process, due to the use of chemicals, fibers and microplastics that can later be found in the environment, through the improper release of the latter, which contribute not only for environmental damage but put in risk living species and humans. However, the issues don't stop at the production, but continue after the clothes have been used, in what is called, post-consumer waste. As many garments aren't recycled, they will finish their cycle in the landfills, contaminating the soil and water once again and exacerbating the issues mentioned. This is also one of the dangers of the sector, as companies might discard their responsibilities after the production and sales.

The sector is mostly infamous for its the many violations of human rights, as these have been more and more exposed in the media in recent years.

Much like the environmental ones are ongoing all throughout the supply chain, starting at the harvesting of materials into post-consumer. Obviously attempting to obtain the cheaper product at the fastest rate, could never be done without risks and many laws and rights must be contoured in order to do so, the reason why companies have taken their production to third countries, where policy is far less strict on the matter. As these countries often attempt to have legislation that can be favorable to the implementation of foreign investments in the regions, as a form of improving the conditions. As mentioned, the research for a better future also drives the individuals to seek jobs, that can improve their conditions, considering the social context is also fundamental to understand why these situations keep occurring.

These brands are being called out to take responsibility for violations on, child labor, the fact that women are far more vulnerable and prone to violations in the workplace, the low adherence to unions due to the lack of information, the use of forced labor and human trafficking as well as poor work and safety conditions and low wages.

Although treated separately and often distinguished from one another, I consider however that environmental problems should be included in the human rights violations. In fact, dissociating environmental from human rights is in a way, assuming that one is completely different from the other and they don't impact each other. Nonetheless, as seen, the environmental violations impact the population, not only regionally but globally and without access to a proper environment we couldn't have the plenitude of our human rights.

The difference in regulations of multinationals companies creates the called "regulatory gap", this gap began to worry the States and the public on the violations have been occurring without remediation or solution. Some governments realized that regulations on due diligence and corporate responsibility should be implemented.

Over the years, many national laws have been introduced like the French Duty of Vigilance law for example. This increase of regulations made the EU acknowledge that a European regulation would be beneficial, the Union also identified that due to the rising importance of the private sector on the global markets, their regulation on sustainable matter could be an asset in the promotion of responsible practices worldwide.

This would not only help the Union reach their objective on global warming and others like human trafficking combat for example, but it will also reduce the fragmentation that companies can experience. This created the proposal for a directive on corporate sustainability and due diligence.

In the case of the textile industry, the sector will fall under the scope of this proposal through the high impacts sectors. Third-countries companies will also be covered if their turnover (generated in the EU) is over 40 million, in which 50% are generated in a high impact sector. Although this directive sets multiple due diligence obligations, it would be wrong to say that this could solve the violations that occur in the sector. In fact, this directive has multiple loopholes that can easily be used as a defense by the companies.

Nevertheless, some amends have been made on the directive in June 2023, which improved some articles, like the inclusion of civil liability that cause or contribute to harm in the case they didn't carry out their due diligence measures, however these amends are fundamental to change the existing loopholes. The most significant amendment being the amend 25 with extends the scope of the directive to companies with less employees, going from 500 to 250, and less turnover, going from 150 million to 40 million. Multiple new articles have been added to the proposal, which can help the companies better understand their requirements and extend some of them²¹⁰.

The biggest issue with the directive for the textile industry is that concepts presented are often too broad, which can lead to multiple interpretation and a possible defense. For example, violations are only considered when a right is not respected, not including possible violations to occur by omission for instance. Furthermore, like many other regulations, this directive leaves plenty of room for companies to circumvent the law and find possible alternatives that aren't under its scope.

²¹⁰ European Parliament (2023). Amendments on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))(2)

The proposal also includes practices which have either proven to be inefficient in the past, like audits, or ones that have strongly been discouraged, like business terminations.

Many of the loopholes identified as well as the recommendations made, can still be applied across all sectors, as many are specific limitations of the directive itself that will impact its effectiveness overall. Although these loopholes might be more accentuated in the textile industry due to the business model.

It is also important to reinforce the importance of such a regulation. In fact, this proposal allows for more harmonized regulation and requirements throughout the Member-States and companies, setting an international standard on the matter of due diligence and corporate sustainability. Furthermore, the directive also allows many companies to fall under its scope, especially the larger ones which tend to have a greater impact. Therefore, this directive is overall a step in the right direction to establish international requirements for global companies.

This directive will overall not solve the problems that the textile industry presents, as many of the loopholes can be used, it will however, improve the possible due diligences measures already existent. This directive may be more effective in a sector with less adverse impacts. This directive could nonetheless bring forward the importance of regulating businesses on this matter.

Overall, as mentioned above much more could be done to improve the effectiveness of this directive, especially related to the textile industry, which is an industry that is concerning to all and to the Union inclusive, as they have already expressed their concerns. Perhaps, knowing the risks of this sector, especial articles or even an annex to this proposal could be added. Although, it is evident that by doing so, the Union would then be called to perform the same for others sector.

However, it should be considered that there are multiple sectors that have proven to be more prone to violations, just like the textile industry, the mining industry for example. Therefore, shouldn't these sectors be especially covered since they represent the biggest threats to the goals of the Union, or should we consider that including them in a list of high impact sectors is doing enough?

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The impact of the EU proposal for a directive on Corporate sustainability and due diligence on the textile industry