Annex III. Proposal for a Directive on Living Wages in the Garment, Textile, Leather and Footwear Sector

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on XXX

(Text with EEA Relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50, 53 (1) and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee

Acting in accordance with the ordinary legislative procedure,

Whereas:

1. More than 75 million people work in the global garment-related trade, which is worth EUR 2.86 trillion. At European level, the garment and textile industry employs 1,7 million people and generates a turnover of EUR 166 billion. An estimated 70-80% of employees in the garment sector in production countries are female workers.

2. The garment and footwear sector is shaped by undertakings that decide what is produced, where and by whom, with production that can move quickly from one country or region to another. Manufacturers therefore have to face fierce global competition and are constantly exposed to aggressive purchasing practices by the international wholesale and retail trade.

3. Furthermore, garment industry trends such as fast fashion put enormous pressure on garment workers in producing countries. Given that low prices continue to be one of the determining factors in the undertakings' purchasing practices, clothes are often produced in conditions that do not respect basic dignity. This overall situation leads to massive violations of human rights and exploitation of workers in the garment sector supply chain. One of the most urgent issues in this context are low wages, which do not meet the basic needs of workers and their families, coupled with low or non-existent social protection. In nearly all major garment and footwear producing countries, wages in the sector are significantly less than 50% of what is necessary to sustain a basic decent life. At the same time, the wage of a worker in the garment industry represents on average only 0,6% of the costs of a branded t-shirt. Such wages are poverty wages. This situation makes female workers, migrant workers and children, particularly vulnerable to exploitation. Connected is the fact that in many garment and footwear producing countries, individuals are

effectively prohibited from joining trade unions of their own choosing and do not have the right to engage in collective bargaining. Strong collective bargaining is crucial for ensuring decent wages.

4. Earning a living wage is a prerequisite to break the cycle of poverty and imperative to enabling human rights including the right to food, housing, health, and education. Together with the principle of equal pay for equal work as laid down in Article 157 of the Treaty on the Functioning of the European Union and in the ILO Equal Remuneration Convention N° 100, it also contributes to greater gender equality, given that women suffer disproportionate and disparate impacts of poverty wages.

5. At international level, Article 23 of the Universal Declaration of Human Rights of 1948 states that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity. In the same vein, Article 7 of the International Covenant on Economic, Social and Cultural Rights of 1966 recognizes the right to a remuneration which provides all workers, as a minimum, with a decent living for themselves and their families. Both agreements are part of the International Bill of Human Rights. Article 3 of the ILO Convention N° 131 on Minimum Wage Fixing of 1970 reiterates that the level of minimum wages shall include, in particular, the needs of workers and their families.

6. At European level, Article 4 of the European Social Charter and Article 5 of the Community Charter of the Fundamental Social Rights of Workers likewise have reaffirmed the right of workers to a fair remuneration.

7. The United Nations Guiding Principles on Business and Human Rights of 2011, which implements the United Nations Framework for Business and Human Rights, introduced for the first time a global standard for due diligence and provides that the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

8. The United Nations Guiding Principles on Business and Human Rights have clearly defined the responsibilities of governments and businesses, which are under an obligation to protect and respect human rights irrespective of the point in the supply chain, the country in which production takes place, and of whether it is the country of the company placing the order or of the supplier.

9. The Guidelines for Multinational Enterprises issued by the Organisation for Economic Cooperation and Development and updated in 2011 draw upon the United Nations Framework for Business and Human Rights and are in line with the Guiding Principles. They have been specified by the OECD in its Due Diligence Guidance for Responsible Business Conduct. Specifically for the garment and footwear sector, the OECD has adopted Due Diligence Guidance for Responsible Supply Chains in the Garment & Footwear Sector. Modules 6 and 7 of this Guidance particularly address the need to protect the workers' right to form and join trade unions and their right of collective bargaining and to ensure that wages satisfy the basic needs of workers and their families. In addition, the Guidance outlines that enterprises should develop pricing models that account for the cost of wages, benefits and investments in decent work.

10. In its resolution on the EU flagship initiative on the garment sector adopted on 28 March 2017, the European Parliament called for the Commission to extend corporate social responsibility and binding due diligence initiatives beyond existing frameworks for the garment sector so as to ensure that the EU and its trading partners and operators fulfil their obligation to respect both human rights and the highest social and environmental standards.

11. Due diligence legislation on human rights has been adopted in several Member States of the European Union. In France, the law on a duty of vigilance of parent and ordering undertakings requires large undertakings to adopt, publish and implement a due diligence plan to identify and prevent in particular human rights risks caused by the undertaking, its subsidiaries, sub-contractors or suppliers. Those due diligence obligations also refer to the International Bill of Human Rights. The German legislature adopted in June 2021 a human rights due diligence law, which imposes due diligence obligations for undertakings in their operations and in their supply chains for the respect of human rights, including for the payment of fair wages. In many other Member States, intensive debates take place on the introduction of human rights due diligence legislation and some Member States are currently considering the adoption of such legislation, including the Netherlands, Sweden, Austria, Finland, Denmark and Luxembourg. Within the European Economic Area, Norway has adopted the 'Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions', whose due diligence obligations also aim at ensuring the payment of living wages.

12. The proposal of the Commission on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 also addresses in Part I of the annex violations of the human right for a living wage as laid down in Article 7 of the International Covenant on Economic, Social and Cultural Rights in view of 'the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear.

13. The present Directive complements and builds on the proposals for a Directive on Corporate Sustainability Due Diligence and for a Directive on Adequate Minimum Wages.

14. In terms of scope, this Directive covers all undertakings in the garment, textile, leather and footwear sector, regardless the size of the undertaking, with due regard to the principle of proportionality as laid down in Article 5 (4) of the Treaty on the functioning of the European Union. Given that small and medium-sized undertakings are predominantly active in this sector, a broad scope of application is necessary for the achievement of the objectives of this Directive. At the same time, this approach ensures a level playing field for all undertakings in this sector.

15. The due diligence obligations as laid down in this Directive apply to all business relationships in the supply chains in the garment, textile, leather and footwear sector. A limitation of the scope of application to established business relationships would not give sufficient consideration of the volatile sourcing structures in the sector and lead to considerable regulatory gaps and, thus, deprive this Directive to a large extent of its intended effect.

16. This Directive not only covers the human right for a living wage, but also lays down rules on due diligence obligations regarding workers' freedom of association, including the right to form and join trade unions, and the right of collective bargaining. These rights are closely interrelated. Where collective agreements are negotiated by independent and democratically elected unions, there is a better chance that wage levels will be higher. At

the same time, experience - in particular in Europe - shows that high collective bargaining coverage generally results in a lower share of poverty wages. Furthermore, collective bargaining agreements are particularly appropriate to address all aspects of workers' living standards.

17. Due diligence obligations include in particular identifying, assessing, preventing, mitigating, and remediating of potential or adverse impacts on living wages, freedom of association and right to collective bargaining connected with undertakings' own operations, subsidiaries and business relationships. With regard to the transposition of the obligations laid down in the Directive, Member States particularly should pay attention to the guidelines provided in the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, which are widely accepted by undertakings and stakeholders as minimum standards. Forthcoming OECD guidance for the garment and footwear sector should also be taken into consideration for the purpose of transposing this Directive.

18. Following the example of the Directive (EU) 2019/633 on unfair trading practices in the agricultural and food supply chain, certain unfair trading practices should also be prohibited in the garment sector. Unequal power relations along the supply chain are widespread in the industry. The consequence is unfair trading practices, which are contrary to good commercial conduct and good faith. The Covid-19 crisis has reinforced the effects of these imbalances. Workers eventually bear the risk if payments of orders are delayed or missing. The effects are all the more disastrous given that many countries, where suppliers are based, do not have strong social security systems able to mitigate those effects. Protection against unfair trading practices should not only apply to suppliers established in the Union, but also to suppliers established in third countries. Not only are such suppliers liable to be equally vulnerable to unfair trading practices, but a broader scope could also avoid the unintended diversion of trade towards non-protected suppliers, which would undermine the protection of suppliers in the Union.

19. Meaningful stakeholder engagement is a critical element of human rights due diligence processes. Consultation with relevant stakeholders enables undertakings to have a better understanding of those who may be affected. Moreover, stakeholders have a particular knowledge of the context in which the undertakings are active. To this end, all relevant stakeholders should be involved in the design and implementation of the undertakings' human rights due diligence processes related to wages, freedom of association and the right of collective bargaining. However, stakeholder engagement can only be effective if it is based on an ongoing process of interaction and dialogue with the undertakings concerned.

20. Undertakings are also required to act in a transparent manner. This implies an obligation for undertakings to publish their due diligence strategy and further information on their supply chains. Furthermore, undertakings have to disclose on request further information regarding how they address actual and potential adverse impacts on living wages, freedom of association and the right to collective bargaining. The Norwegian transparency act has set the example in this regard and should also guide the European Union in its efforts to strengthen transparency in the garment and footwear sector. All these transparency obligations are necessary to prevent 'social washing', increase undertakings' accountability and enable investors, customers and business partners to take well-informed decisions.

21. The planned Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information

of relevance to financial services, capital markets and sustainability should be amended in order to facilitate public access to the due diligence strategies of the undertakings to be established under this Directive.

22. It is particularly necessary to ensure protection of workers in high-risk low-wage countries as defined in this Directive. To this end, undertakings bringing on the EU market products from such high-risk low-wage countries should be subject to enhanced scrutiny from the competent national authorities. Penalties sanctioning breaches of this directive should be effective, proportionate and dissuasive.

23. Civil liability constitutes an important incentive for the undertakings active in the sector for the implementation of the due diligence obligations laid down in this Directive. At the same time, it enables workers who suffer harm due to an undertaking's failure to respect the obligations laid down in this Directive to claim compensation. Thus, a mere checkbox exercise is not sufficient to fulfil those due diligence obligations and cannot exonerate undertakings at fault from their liability. The Commission should pay particular attention in its reporting on the application of this Directive whether the provisions put in place to ensure an appropriate and necessary liability are sufficiently effective and if further legislative steps are necessary.

24. In addressing in the first place the risk of poverty wages and lack of collective bargaining, this Directive in no way detracts from the obligations of undertakings in respect of their due diligence obligations in relation to other risks in the sector.

25. Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive lays down rules

    a. on obligations for undertakings regarding actual and potential adverse impacts on the human right to a living wage, freedom of association and the right of collective bargaining, with respect to their own operations, the operations of their subsidiaries, and the production supply chain operations carried out by entities with whom the undertaking entertains business relationships and

    b. on liability for violations of the obligations mentioned above.

   Those rules apply to all undertakings that are placing garment, textile, leather and footwear products on the internal market.

2. With a view to combating practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner

to one another, the Directive also establishes a minimum list of prohibited unfair trading practices in relations between buyers and suppliers in the garment, textile, leather and footwear sector and lays down minimum rules concerning the enforcement of these prohibitions and arrangements for coordination between national authorities.

1. This Directive shall not constitute grounds for reducing the level of protection of the human rights referred to in paragraph 1 of this Article provided for by the law of Member States at the time of the adoption of this Directive.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

1. ‘garment, textile, leather and footwear’ means the items set out in Section XI chapters 61-62 and Section XII chapters 64-65 of Commission Implementing Regulation (EU) 2020/1577 of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff;

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

3. ‘freedom of association’ means the right to freedom of association with others, including the right of everyone to form and join trade unions for the protection of his or her interests in accordance with Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights, Article 8 of the International Covenant on Economic, Social and Cultural Rights, the ILO Freedom of Association and Protection of the Right to Organise Convention (No. 87), the ILO Right to Organise and Collective Bargaining Convention (No. 98), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the ILO Declaration on Fundamental Principles and Rights at Work.

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

a. determining working conditions and terms of employment; and/or

b. regulating relations between employers and workers; and/or

c. regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations

in accordance with Article 8 of the International Covenant on Economic, Social and Cultural Rights, the ILO Collective Bargaining Convention (No. 154), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the ILO Declaration on Fundamental Principles and Rights at Work;

1. ‘OECD Guidance’ means the OECD Due Diligence Guidance for Responsible Supply Chains in the Clothing and Footwear Sector (2018);

2. ‘placing on the market’ means the supply by any means, irrespective of the selling technique used, of garments, textile, leather and footwear for the first time on the internal market for distribution or use in the course of a commercial activity, whether in return for payment or free of charge. The supply on the internal market of garments, textile, leather and footwear already placed on the internal market shall not constitute ‘placing on the market’;

3. ‘production supply chain’ means the original equipment manufacturers and subcontractors, including cutting, sewing, assembling and packing, processing facilities, including printing, dying, laundering and embroidery, and processing facilities, including, spinning, knitting, weaving, processing of raw materials into fibres, application of dyes and bleach and slaughtering and skinning of animals;

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

5. ‘business relationships’ means relationships with business partners, entities in its supply chain and any other non-State or State entity directly linked to its business operations, products or services.

6. ‘buyer’ means any natural or legal person, irrespective of that person's place of establishment, who buys garment, textile, leather or footwear products or parts of them; the term ‘buyer’ may include a group of such natural and legal persons or buying agents and other intermediaries;

7. ‘supplier’ means any producer or any natural or legal person, irrespective of their place of establishment, who sells garment, textile, leather or footwear products or parts of them; the term ‘supplier’ may include a group of such producers or a group of such natural and legal persons, such as producer organisations, organisations of suppliers and associations of such organisations;

8. ‘workers’ means all workers, including piece-rate workers, active in the garment, textile, leather and footwear sector working in the supply chain of an undertaking irrespective of employment status or workplace settings;

9. ‘precarious contracting arrangements’ means contractual arrangements that have the effect of depriving workers of the extent of legal protection they would have been due had they been under an employment relationship;

10. ‘wage theft’ means workers being denied full compensation for their work, including legally mandated wages, benefits, severance payments and arrears;

11. ‘categories’ means the types of garments, textiles, leather and footwear as defined by the World Customs Organisation Harmonized System of Product Codes;

12. ‘wage risk point means the point identified by the Commission pursuant to the mechanism to be set out on the basis of Article 18 (2) as the wage level below which a worker cannot reasonably be expected to sustain a basis decent life and which defines whether or not a garment, textile, leather and footwear producing country or part thereof is included in the list to be established on the basis of Article 18 (1);

13. ‘stakeholders’ means persons or groups who are or could be directly or indirectly affected by the actions of the undertaking or its business relationships, as well as organisations whose statutory purpose is the defence of human rights, including social, labour and women’s rights. These can include workers and their representatives, local communities, children, indigenous peoples, citizens’ associations, trade unions and civil society organisations;

14. ‘subsidiary’ means a legal person through which the activity of a ‘controlled undertaking’ as defined in Article 2(1), point (f), of Directive 2004/109/EC of the European Parliament and of the Council is exercised;

15. ‘competent national authorities’ means the authorities designated under Article 13.

Article 3

Due Diligence Obligations

1. Member States shall lay down rules to ensure that undertakings carry out effective due diligence with respect to living wages, including wage theft, freedom of association, right of collective bargaining and precarious contracting arrangements in their operations, their subsidiaries’ operations and in their production supply chain in accordance with the OECD Guidance.

2. These rules shall as a minimum include the obligation for undertakings to:

   a. identify and assess the risks of actual and potential adverse impacts in their own operations, their subsidiaries’ operations and in their production supply chain, specifically, the risk of workers being paid less than a living wage, including wage theft, the risk of workers not being able to exercise freedom of association and the right of collective bargaining and the risk of being exposed to precarious contracting arrangements;

   b. implement a strategy to respond to the identified risks designed to prevent, mitigate and remediate adverse impacts in their own operations, their subsidiaries’ operations and in their production supply chains by:

i. reporting findings of the production supply chain risk assessment to its designated governing body in cases where the importer is not a natural person,

i. adopting a risk management plan, which particularly includes an evaluation and necessary adjustment of purchasing practices, specifically related to price setting and product costing, consistent with the due diligence recommendations of the OECD Guidance, considering its ability to influence, and where necessary take steps to actively cooperate with suppliers who can most effectively prevent, mitigate or remediate the identified risk, by making it possible either to

- continue trade while simultaneously implementing measurable risk mitigation and/or remediation efforts,
- suspend trade temporarily while pursuing ongoing measurable risk mitigation and/or remediation efforts, or
- responsibly disengage, as a measure of last resort, after consultations with relevant stakeholders to minimise harms to workers from the disengagement.

i. implementing the risk management plan, monitoring and tracking performance of risk prevention, mitigation and remediation efforts, reporting back to designated governing bodies and considering responsibly disengaging, as a measure of later resort, after consultations with relevant stakeholders to minimise harms to workers from the disengagement;

a. structure internal management systems to support due diligence in relation to the living wage, freedom of association and the right of collective bargaining by assigning responsibility to governing bodies to oversee the due diligence process as well as maintain records for a minimum of five years.

1. If an undertaking pursues risk mitigation and remediation efforts while continuing trade or temporarily suspending trade, it shall consult with actors in the production supply chain and all relevant stakeholders, and agree on a strategy for measurable risk mitigation and remediation in the risk management plan.

2. An undertaking shall only consider responsibly disengaging, as a measure of last resort, when, in line with the OECD Guidance, steps to prevent, mitigate and remediate negative impacts have failed or are not feasible. When considering responsible disengagement, an undertaking shall evaluate, in particular, the social impact of leaving the supplier and consult all relevant stakeholders. Special care is required when the undertaking can reasonably foresee that disengaging can lead to layoffs or factory closure. Where the supplier's production location is part of a conglomerate of production locations under the same ownership, the undertaking must investigate whether the adverse impacts in question also occur at other production locations where the undertakings' products are being produced. In such a case, all orders placed at those other production locations must also be stopped.

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

4. The Commission shall adopt delegated acts in accordance with Article 30 specifying the deadlines for the implementation of the due diligence and risk management obligations referred to in paragraph 2.

5. The Commission shall adopt implementing acts in accordance with Article 29 laying down benchmarks which may be taken into consideration for the determination of living wages referred to in paragraph 1 of this Article.

6. The Commission shall issue guidelines on methodology addressed to undertakings for the fulfilment of their due diligence and risk management obligations. For this purpose, the Commission shall conduct consultations with all relevant stakeholders. The Commission shall adopt the guidelines no later than one year after the entry into force of this Directive.

Article 4

Unfair Trading Practices

1. Member States shall ensure that at least all the following unfair trading practices are prohibited:

   a. the buyer pays the supplier later than 60 days after the end of an agreed delivery period in which deliveries have been made or later than 60 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later;

   b. the buyer cancels orders of garments, textiles, leather or footwear where such cancellation is

      (i) without following escalation leading to responsible disengagement in cases of fault of the supplier or
      (ii) without fully paying for all costs incurred by the supplier.

   A notice of less than 30 days shall always be considered as short notice requiring additional scrutiny by the buyer before cancelling orders, whether or not the supplier was at fault.

   a. the buyer unilaterally changes or fails to provide complete information regarding the terms of a supply agreement that concern the frequency, method, technical specifications, place, timing or volume of the supply or delivery of the products, the quality standards, the terms of payment or the prices;

   b. the buyer requires the supplier to pay for the deterioration or loss, or both, of garments, textiles, leather or footwear that occurs on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier;

   c. the buyer refuses to confirm in writing the terms of a supply agreement between the buyer and the supplier for which the supplier has asked for written confirmation;

   d. the buyer unlawfully acquires, uses or discloses the trade secrets of the supplier within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council;

   e. the buyer threatens to carry out, or carries out, acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including by filing a complaint with enforcement authorities or by cooperating with enforcement authorities during an investigation;

   f. the buyer refuses to agree on a production price in conformity with the due diligence obligations referred to in Article 3.

1. The prohibition referred to in point a) of the first paragraph shall be without prejudice to the consequences of late payments and remedies as laid down in Directive 2011/7/EU of the European Parliament and of the Council, which shall apply, by way of derogation from the payment periods set out in that Directive, on the basis of the payment periods set out in this Directive.

2. Member States shall ensure that the prohibitions laid down in paragraph 1 constitute overriding mandatory provisions which are applicable to any situation falling within the scope of those prohibitions, irrespective of the law that would otherwise be applicable to the supply agreement between the parties.

Article 5

Stakeholder engagement

1. Member States shall ensure that undertakings carry out in good faith effective, meaningful and informed discussions with relevant stakeholders when establishing and implementing their due diligence strategy. Member States shall guarantee, in particular, the right for trade unions at the relevant level, including sectoral, national, European and global levels, and for workers' representatives to be involved in the establishment and implementation of the due diligence strategy in good faith with their undertaking. Undertakings may prioritise discussions with the most impacted stakeholders.

2. Member States shall ensure that stakeholders are entitled to request from the undertaking that they discuss potential or actual adverse impacts on living wages, freedom of association, collective bargaining and precarious contracting arrangements that are relevant to them within the terms of paragraph 1. Undertakings shall ensure that affected or potentially affected stakeholders are not put at risk due to participating in the discussions referred to in paragraph 1.

3. Workers' representatives shall be informed by the undertaking on its due diligence strategy and on its implementation, to which they shall be able to contribute, in accordance with Directives 2002/14/EC and 2009/38/EC of the European Parliament and of the Council and Council Directive 2001/86/EC.

Article 6

Annual Statement

1. Member States shall ensure, with due regard for commercial confidentiality, that undertakings make publicly available, easily accessible and free of charge, especially on the undertakings' websites, a most recent report on the strategy and implementation of its obligations under this instrument.
2. Undertakings shall make publicly available and easily accessible each annual report on their website for a period of ten years.
3. The Commission shall adopt guidelines specifying the requirements and the information to be included in the annual reports.

Article 7

Transparency Obligations

1. Member States shall ensure undertakings provide full transparency in the public domain, including on its website, the following information in relation to the production of garments, textile, leather and footwear:

    a. the full name of all production units and processing facilities in their production supply chain;

    b. the site addresses;

    c. the parent company of the business at the site;

d. categories of garments, textile, leather and footwear made, including but not limited to apparel, footwear, home textile and accessories;

e. the number of workers at each site (less than 1000, 1001 to 5000, 5001 to 10000, more than 10000);

f. the weekly take-home wage for entry-level workers based on a standard work week of no more than 48 weekly working hours, excluding overtime.

1. Member States shall ensure that undertakings update the information referred to in paragraph 1 of this Article on a regular basis.

2. Undertakings shall keep a record of the information referred to in the first paragraph for at least ten years and shall provide that information to the competent national authorities if they request it.

Article 8

Right to information

1. Member States shall ensure that any natural or legal person has the right to request information from an undertaking regarding the processing of actual and potential adverse impacts related to wages and precarious contracting arrangements. This includes general information as well as information about specific suppliers in the undertaking's production supply chain. An acknowledgement of receipt shall be sent to the applicant.
2. Undertakings may refuse access to information where disclosure would undermine the protection of:

    a. commercial interests of a natural or legal person,
    b. personal data in accordance with applicable Union legislation,

    unless there is an overriding interest in disclosure. There is an irrefutable presumption for an overriding interest in disclosure as far as information regarding actual adverse impacts on wages and precarious contracting arrangements is concerned.
    Voluntary certifications, social audits and multistakeholder assessments referring to wages and precarious contracting arrangements are not deemed to be commercially sensitive information for the purposes of this paragraph.
    Access to information referred to in paragraph 1 of this Article may only be granted in accordance with the principles of competition law.

1. If the request for information is not sufficiently precise, the undertaking shall ask the applicant to clarify the request and shall assist the applicant in doing so.
2. Member States shall ensure that the undertaking shall provide the requested information within 15 working days after reception of the information requested. If it is too burdensome for the undertaking to provide the amount or type of information requested within 15 working days, the undertaking shall provide the information within 40 working days after reception of the request. The undertaking shall inform the applicant no later than 15 working days after reception of the request of the extension of the time limit, the reasons for the extension of the time limit, and when the information can be expected.
3. Member States shall ensure that the undertaking states the reasons for the total or partial refusal of a request for information within the time limit of 15 working days or, where the undertaking has extended the time limit referred to in paragraph 4, within 40 working days after reception of the request for information.
4. Member States shall ensure that the applicant shall have the right to effective administrative and judicial remedies where an undertaking declines to provide the requested information.

5. The obligations laid down in Article 7 and Article 8 shall not apply to micro-enterprises within the meaning of Article 2 (3) of the Annex to Commission Recommendation 2003/361/EC.

Article 9

Disclosure of non-financial and diversity information

This Directive is without prejudice to the obligations imposed on certain undertakings by Directive 2013/34/EU and forthcoming amendments to include in their management report a non-financial statement including a description of the policies pursued by the undertaking in relation to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, and the due diligence processes implemented.

Article 10

Grievance mechanism

1. Member States shall ensure that undertakings provide grievance mechanisms at operational level, both as an early-warning mechanism for risk awareness and as a mediation system, allowing any stakeholder to voice reasonable concerns regarding the existence of a potential or actual adverse impact on the human right to a living wage, freedom of association or the right of collective bargaining.

   Undertakings may provide such a mechanism through collaborative arrangements with other undertakings or organisations, by participating in multi-stakeholder grievance mechanisms or by joining a Global Framework Agreement.

2. Member States shall ensure that grievance mechanisms, as referred to in paragraph 1, are legitimate, accessible, predictable, safe, equitable, transparent, rights-compatible and adaptable as set out in the effectiveness criteria for non-judicial grievance mechanism in Principle 31 of the United Nations Guiding Principles on Business and Human Rights. Such mechanisms shall provide for the possibility to raise concerns either anonymously or confidentially, as appropriate in accordance with national law.

3. Member States shall ensure that undertakings take the necessary measures to protect persons referred to in paragraph 1 against retaliation.

   1. Member States shall ensure that grievance mechanisms, as referred to in paragraph 1, shall provide for timely and effective responses to stakeholders, both in instances of warnings and of expressions of concern.

   2. Undertakings shall report on reasonable concerns raised via their grievance mechanisms and regularly report on progress made in those instances. All information shall be published in a manner that does not endanger the stakeholders' safety, including by not disclosing their identity.

   3. Grievance mechanisms shall be entitled to make proposals to the undertaking on how potential or actual adverse impacts may be addressed.

   4. Undertakings shall take decisions informed by the position of stakeholders when developing grievance mechanisms.

   5. Member States shall ensure that undertakings established on their territoires provide information on the applicable grievance mechanism and how to access it.

6. The information referred to in paragraph 7 of this Article shall be provided in a clear, comprehensible and easily accessible way on the undertaking's website.
7. Recourse to a grievance mechanism shall not preclude the claimants from having recourse to effective judicial and non-judicial remedies.

Article 11

Reporting of breaches and protection of reporting persons

Directive (EU) 2019/1937 of the European Parliament and of the Council shall apply to the reporting of all breaches of this Directive and the protection of persons reporting such breaches.

Article 12

Other performing parties

1. If the performance of the obligations under this Directive has been entrusted to a performing party or agent, the undertaking who has entrusted such obligations, shall nevertheless be liable for the acts and omissions of that performing party or agent.

2. In addition, the performing party or agent to whom the performance of an obligation has been entrusted by the undertaking shall be subject to the provisions of this Directive with regard to the obligations entrusted.

Article 13

Competent national authorities

1. Each Member State shall designate one or more competent national authorities responsible for the supervision of the application of this Directive, as transposed into national law.

2. If a Member State designates more than one competent national authority in its territory, it shall designate a single contact point for both cooperation among the competent national authorities and cooperation with the Commission.

3. The Commission shall establish and manage a website that allows the exchange of information among the competent national authorities and the Commission. The Commission shall establish a public website that provides the contact details of the designated competent national authorities and links to websites of the competent national authorities.

4. The Commission shall adopt guidelines determining the division of competences between the different national authorities.

Article 14

Complaints and confidentiality

1. Member States shall ensure that any natural or legal person, including suppliers as referred to in Article 2, may address complaints to the competent national authority.

2. Member States shall ensure that, where the complainants so requests, the competent national authorities shall take the necessary measures for the appropriate protection of the identity of the complainant and for the appropriate protection of any other information in respect of which the complainant considers that the disclosure of such information would

be harmful to the interests of the complainant. The complainant shall identify any information for which it requests confidentiality.

3. Member States shall ensure that the competent national authority that receives the complaint shall inform the complainant within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.

4. Member States shall ensure that, where a competent national authority considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant of the reasons therefore within a reasonable period of time after the receipt of the complainant.

5. Member States shall ensure that, where a competent authority considers that there are sufficient grounds for acting on a complaint, it shall initiate, conduct and conclude an investigation of the complaint within a reasonable period of time.

Article 15

Powers

Member States shall ensure that the following powers are conferred to the competent national authorities:

a. to initiate and conduct investigations on its own initiative or on the basis of a complaint regarding a possible breach of the obligations provided for in Article 4;

b. to carry out checks in accordance with Article 16 to verify if undertakings comply with the requirements set out in Article 3;

c. to require undertakings and any other natural or legal persons to provide all necessary information for the application and enforcement of this Directive within a specified and reasonable time limit;

d. to summon any representative of an undertaking, any representative of other legal persons, and any natural person, where such representative or person may possess information relevant for the application of this Directive, to appear for an interview;

e. to carry out unannounced on-site inspections within the framework of its investigations and checks, in accordance with national rules and procedures;

f. to take decisions finding an infringement of the obligations under this Directive and requiring the undertaking to bring the infringement to an end;

g. to issue a notice of remedial action to be taken by the undertaking, if the competent national authority identifies a failure to comply with the obligations under Article 3;

h. to adopt interim measures;

i. to impose penalties and sanctions in accordance with Article 20;

j. to publish its decisions taken under points f), g), h) and i).

Article 16

Checks on undertakings

1. The competent national authorities shall carry out checks to verify if operators comply with the requirements set out in Article 3.

2. The checks referred to in paragraph 1 shall be conducted in accordance with a periodically reviewed plan following a risk-based approach. In addition, checks may be conducted when a competent national authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning potential non-compliance with Article 3.

3. The checks referred to in paragraph 1 may include, inter alia:

    a. examination of the due diligence system, including risk assessment and risk mitigation;

    b. examination of documentation and records that demonstrate the proper functioning of the due diligence system and procedures;

    c. spot checks, including field audits.

1. Each Member State shall ensure that the annual checks carried out by their competent authorities cover at least [x%] of the undertakings placing products on their market.

2. For products produced in garment, textile, leather and footwear producing countries or part thereof listed as high-risk low wage countries in accordance with Article 18 and 19, the competent national authority shall carry out enhanced scrutiny as specified in Article 17.

3. Checks shall be carried out without prior warning of the undertaking, except where prior notification of the undertaking is necessary in order to ensure the effectiveness of the checks.

4. The competent national authorities shall keep records of the checks indicating in particular their nature and results, as well as on the measures taken in case of non-compliance. Records shall be kept for at least 5 years.

Article 17

Enhanced scrutiny

Where products were produced in a garment, textile, leather and footwear producing country or part thereof listed as high-risk low wage country in accordance with Article 18 and 19, each Member State shall ensure that the annual checks carried out by their competent authorities cover at least [x%] of the undertakings placing the relevant products on their market.

Article 18

High-risk low-wage countries

1. The Commission shall establish a list of all the garment, textile, leather and footwear producing countries or parts thereof, where the applicable statutory minimum wage at the cut and sew stage of the production of those goods is below the wage risk point and the minimum living wage.

2. By [XXX], the Commission shall adopt an implementing act in accordance with Article 29 determining a formula by which the wage risk point and minimum living wage shall be calculated for garment, textile, leather and footwear producing countries or parts thereof. The Commission may amend those implementing acts. The Commission may seek the

advice of the International Labour Organization in developing the formula referred to in the first subparagraph.

3. The Commission shall obtain information on the applicable statutory minimum wage in the sector from the relevant country or from the International Labour Organisation.

4. The Commission shall adopt each year an implementing act in accordance with Article 29 including a list of the garment, textile, leather and footwear producing countries or parts thereof, where the statutory minimum wage in the sector is below the wage risk point. If in the course of its annual assessment, the Commission determines that a garment, textile, leather and footwear producing country or part thereof has no longer a statutory minimum wage below the wage risk point, subject to compliance with Article XXX, the garment, textile, leather and footwear producing country or part thereof shall be removed from this list.

5. For the first three years following the entry into force of this Directive, the Commission shall apply transitionary measures for the purpose of the determination referred to in paragraph 1 of this Article. Specifically, in the first year the Commission shall reduce the wage risk point by 40%, in the second year by 25% and in the third year by 10% from the amount determined in accordance with the formula referred to in paragraph 2 of this Article.

Article 19

Freedom of association and collective bargaining

1. Irrespective of whether a garment, textile, leather and footwear producing country or area within that country is listed by virtue of the assessment carried out pursuant to Article 18 above, where the relevant legislation applicable to the country (or area within the country) does not guarantee freedom of association and the right to collective bargaining, the country (or area within the country) shall be included in the list referred to in Article 18 (4).

2. Subject to Article 18, a country (or area within that country) included in the list referred to in Article 18 (4) on the basis that it does not allow freedom of association and the right to collective bargaining, shall be removed from the list as soon as its national law guarantees such rights.

3. The Commission shall adopt implementing acts in accordance with Article 29 for the purpose of implementing paragraph 1 and 2 of this Article.

Article 20

Penalties and sanctions

1. Member States shall provide for proportionate penalties applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that those penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive.

2. Member States shall ensure that the following non-exhaustive and indicative criteria are taken into account in relation to the imposition of penalties:

a. the nature, gravity, scale and duration of the infringement;

b. the intentional or negligent character of the infringement;

c. any action taken by the importer or trader to mitigate or remedy the damage suffered by the workers who produced the goods or the consumers who purchased them;

d. any previous infringements by the undertaking;

e. the financial benefits gained or losses avoided by the undertaking due to the infringement, if the relevant data are available;

f. any other aggravating or mitigating factors applicable to the circumstances of the case.

1. In circumstances where an undertaking is in breach of Article 3, Article 4 or Article 7, the competent national authority may impose a fine of up to [x %] of the undertaking's annual turnover in the Member State or Member States concerned.
2. In the case of particularly serious infringements of Article 3 or Article 4 , Member States may impose criminal sanctions, including in relation to liabilities of the Directors of the undertakings.
3. Member States shall ensure that the competent national authorities are empowered to temporarily or indefinitely exclude undertakings from public procurement, from state aid, from public support schemes including schemes relying on Export Credit Agencies and loans, resort to the seizure of commodities and other appropriate administrative sanctions.

Article 21

Recovery of costs by competent authorities

Member States shall ensure that their competent authorities may reclaim from the undertakings the totality of the costs of their activities with respect to instances of non-compliance.

Article 22

Cooperation at Union level

1. The Commission shall set up a network of competent national authorities to ensure, together with the competent national authorities referred to in Article 13, the coordination and convergence of regulatory, investigative and supervisory practices, the sharing of information, and monitor the performance of national competent authorities.
2. Competent national authorities shall cooperate to enforce the obligations provided for in this Directive.

1. The Commission, assisted by the European Union Agency for Fundamental Rights and European social partners shall publish, based on the information shared by national competent authorities and in cooperation with other public sector experts and stakeholders, an annual due diligence score-board.

Article 23

Alternative dispute resolution

Without prejudice to the right of suppliers to submit complaints under Article 4, and the powers of the competent authorities under Article 15 and Article 16, Member States may promote the voluntary use of effective and independent alternative dispute resolution mechanisms, such as mediation, with a view to the settlement of disputes between suppliers and buyers regarding the use of unfair trading practices by the buyer.

Article 24

Civil liability

1. Member States shall ensure that undertakings are liable for any damage in their operations, their subsidiaries' operations and in their production supply chain arising out of adverse impacts on living wages, including wage theft, freedom of association and right of collective bargaining they have caused or contributed to by acts of omission.

2. Undertakings shall bear the burden of proving that they did not cause or contribute to the damage. To this end, they must provide evidence that they acted with due care and took all reasonable measures in accordance with Article 3 of this Directive.

3. Especially with regard to actions for damage arising out of adverse impacts on living wages, undertakings shall bear the burden of proving that pricing and trading practices in their operations, their subsidiaries' operations or their suppliers' operation in the production supply chain, depending on where the damage occurred, did not prevent them from paying living wages.

   The mere reference to compliance with the applicable national or sub-national minimum wage regulations is not sufficient, in itself, to satisfy the burden of proof of the undertakings.

   The fact that no collective bargaining agreement was applicable in the relevant period to the undertaking, the subsidiary or the supplier, depending on where the damage occurred, cannot justify that an undertaking did not take any measures to prevent or mitigate a damage.

1. Member States shall ensure that the liability provided for in provisions of national law transposing this Article is of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.

2. The civil liability of an undertaking for damages arising under this provision shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the value chain.

Article 25

Limitation periods for civil liability

1. Member States shall ensure that the limitations periods for bringing actions for damage are at least five years.

2. Limitation periods shall not begin to run before the adverse impact of the rights referred to in Article 3 (1) has ceased and the claimant knows, or can reasonably be expected to know:

a. of the fact that the behaviour of the undertaking has an adverse impact on the rights referred to in Article 3 (1);

b. of the fact that the adverse impact on the rights referred to in Article 3 (1) caused harm to it; and

c. identity of the undertaking.

1. Member States shall ensure that a limitation period is suspended or, depending on national law, interrupted, if a competent national authority takes action for the purpose of the

investigation or its proceedings in respect of an adverse impact on the rights referred to in Article 3 (1) to which the action for damage relates. The suspension shall end at the earliest one year after the infringement decision has become final or after the proceedings are otherwise terminated.

Article 26

Public procurement

In accordance with Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU, Member States shall take appropriate measures to ensure that in the performance of public procurement or concession contracts economic operators comply with the due diligence requirements as set out in this Directive.

Article 27

Amendments to Regulation XXX establishing a European single access point

Annex is amended as follows:

In Part B, the following point is added:

17. Directive (EU) XXX.

Article 28

Amendments to Directive (EU) No 2019/1937

In Point I of Part I of the Annex to Directive (EU) No 2019/1937, the following point is added: '(x) [Directive … of the European Parliament and of the Council of … XXX and amending Directive (EU) 2019/1937+]'.

Article 29

Committee procedure

1. For the purpose of implementing Articles 3 (6), Article 18 (2), 18 (4) and 19 (3), the Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 30

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3 (5) shall be conferred on the Commission for a period of 5 years from ... [date of entry into force of this Directive].
3. The delegation of power referred to in Article 3 (5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union, or at a later date specified therein. It shall not affect the validity of any delegated act already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 3 (5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 31

Reporting and review

1. Member States shall submit to the Commission by 30 June of each year at the latest a report on the implementation of this Directive during the previous calendar year.
2. On the basis of this information the Commission shall draw up a report which shall be submitted to the European Parliament and to the Council every three years.
3. By [XXX], and every six years thereafter, the Commission shall review the functioning and effectiveness of the Directive, including on the promotion of responsible production supply chains in the garment and footwear sector to promote respect for fundamental human rights and sustainable development. The Commission shall submit a review report to the European Parliament and to the Council.

Article 32

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [within 24 months after the entry into force of this Directive]. They shall immediately inform the Commission thereof.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 33

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 34

Addressees

This Directive is addressed to the Member States.

Done at Brussels

For the European Parliament *For the Council*

The President

The President