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European Supply Chain Act: 'No more Rana Plazas!'

Nine years ago, 1,134 people died when the Rana Plaza textile factory collapsed. The EU's proposed Supply Chain Act could prevent these tragedies — but it needs improvement

Back in 2013, the eight-story Rana Plaza textile factory in Bangladesh's capital Dhaka collapsed, killing 1,134 people and leaving at least twice as many injured. The factory produced textiles mostly for European and US companies. Despite several inspections just a few months before the collapse, no deficiencies were found. The collapse has made it clear that voluntary commitments by multinational corporations are disastrously dysfunctional. Rana Plaza prompted a global outcry over exploitation, working conditions, and duties of multinationals.

Now, just short of a decade later, the European Union has presented its proposal for a directive on corporate sustainability due diligence. The directive is intended to compel multinational companies to safeguard human rights and protect the environment throughout their supply chains, and to provide remedy and reparations should any breaches occur. If companies fail to comply, penalties and legal action could follow. Several European countries already have mandatory due diligence laws in place. The UK enacted the Modern Slavery Act in 2015, prohibiting various forms of modern slavery. In 2017, France became the first European country to adopt comprehensive legislation on corporate human rights due diligence. A similar Supply Chain Act will come into force in Germany next year.

The EU Commission has drawn from the German legislation in drafting its own directive. However, many hope that legislation at the EU level will close the gaps in the German Act. Comparing the two laws, one sees a mixed picture. The European proposal directive goes beyond the German Supply Chain Act on several points, which are critical to ambitious human rights and environmental protection: More companies have been included, the supply and value chain has been defined more comprehensively, the objects of protections are broader in scope and

contain the right to a living wage for example. Climate protection has been mentioned several times, the duties of directors have been specified and civil liability has been stipulated for companies. This makes the European proposal a sound basis for the ongoing negotiations in the European Parliament and the Council.

Where EU legislation falls short

However, the proposal also falls short in several areas. One key point of criticism is that the due diligence duties laid down, such those for risk analysis, should be limited to 'established business relationships', i.e. suppliers with whom there is a long-term supply relationship. But human rights violations occur in short-term and ad-hoc supply relationships too – and too often. The draft therefore provides an incentive to swap business partners frequently to get around the obligations and liability risks. This is highly problematic, because one of the biggest lessons to learn from Rana Plaza is that long-term cooperation, particularly one built on trust, is needed to tackle human rights abuses in supply chains.

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The EU legislation proposal also focuses more on what is feasible for companies in their due diligence, and less on what would be most effective in the interest of rights holders. For example, one major preventative and remedial measure in the draft is that companies can lay down contractual clauses between them and their business partners to ensure compliance with certain standards and monitor this through audits and industry standards and initiatives. Yet, Rana Plaza and countless other disasters worldwide have dramatically shown that these instruments not only vary greatly in quality, but are also often ineffective. In short, the fact that audits and voluntarily multi-stakeholder initiatives haven't worked has led to the very need for legislation. So, policymakers shouldn't make the mistake of portraying the original problem as part of the solution.

The European proposal directive seeks to address this by laying down quality criteria for these instruments. But that won't be enough. In practice, we need to ensure that companies don't just outsource their own responsibilities through contractual clauses and pass the pressure on through their procurement practices. A good starting point can be found in the obligations specified under the German Supply Chain Act, which

provides that companies must develop and implement appropriate procurement strategies and practices to prevent violations of human rights. This is necessary because when companies outsource, they often create conditions that can lead to violations of human rights, such as low wages and exorbitant overtime, all in the pursuit of low prices and short delivery periods. Companies are also required to train and educate their suppliers so they can contractually comply with human rights and environmental regulations. This should also prevent a 'race to the bottom'.

Involve workers and trade unions

Corporate due diligence is a continuous process that requires trade unions and workers' representatives to be involved effectively. And yet, the current EU proposal directive provides that those whose rights are at stake and their representatives need to be involved only if a company deems it relevant. This is highly problematic.

One of the most important lessons from Rana Plaza is that we need listen to those whose rights are at risk of being violated. They are the experts. Even before the collapse, textile workers pointed out the cracks in the building. Workers themselves are also included in the Bangladesh ACCORD, a legally binding agreement on building and fire safety between global brands, retailers, and trade unions that arose as a result of the disaster. For example, its steering committee is composed equally of trade unions and companies.

The demand 'No more Rana Plazas!' echoed all across the world after the disaster.

Therefore, consulting stakeholders – such as those whose rights may be affected – should always form an integral part of risk analysis and remedial measures. This is the only way for companies to assess their risks correctly and adopt countermeasures. The EU must learn from Germany here, whose Act strengthens the rights of works councils. Following an amendment to the country's Works Constitution Act, works councils now have the right to be consulted and involved on matters of corporate due diligence through an economic affairs committee.

While Germany's Supply Chain Act doesn't lay down civil liability because of the huge opposition from the Conservatives, corporate due diligence under the European directive is to be enforced through administrative enforcement and civil liability. This combination is

important, because administrative enforcement is preventative in nature, serving to stop any breaches from happening in the first place. But civil liability is also required as it allows the injured persons to assert their rights and sue for damages.

We need an effective European Supply Chain Act

However, in the European proposal both enforcement measures still lack details to ensure they will be effective. As far as administrative enforcement is concerned, there is for instance no scope for excluding companies that breach their due diligence duty from public procurement procedures. Effective legal protection via civil liability also requires a reversal of the burden of proof: companies should have to prove that they did not act improperly. At present, the burden lies with the injured parties, so it's the textile workers of Rana Plaza or survivors of victims who have to prove that the company violated its due diligence. How difficult this is was demonstrated in the dramatic pictures taken after the Rana Plaza disaster. Human rights activists spent days searching the rubble for labels to show which companies had their goods produced in the building.

The demand 'No more Rana Plazas!' echoed all across the world after the disaster. Politicians and businesses said they would do everything they could to prevent any human rights violations and environmental disasters in their operations in future – promises that were endlessly repeated when the German legislation and the European draft law were published. Now, politicians and business-owners have the opportunity to make good on their promises with action on the European level.

With an effective European Supply Chain Act in place, long-term structural change can be achieved, while creating a level playing field for companies on the European market. For without a doubt, legislating on corporate due diligence can close gaps in regulations globally. And it can go a long way in making globalisation more sustainable and equitable. That way, we can put a stop to immense environmental damage and the weakening of workers' rights across the world.



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