



POSITION PAPER: Mandatory due diligence



The European Federation of Jewellery supports the idea of an EU-wide cross-sectorial legislative framework on due diligence provided that the future requirements are coherent with the ones already in place and that a level playing field is ensured for EU companies at European and international level.

Key points:

- ◆ The European Federation of Jewellery (EFJ) welcomes the upcoming adoption by the European Commission of a **legislative initiative on mandatory and cross-sectorial due diligence** and urges the Commission to **take into account the specificities of the sector**.
- ◆ The European jewellery and diamond sector, which is fragmented and consists mainly of SMEs, has been **very proactive in ensuring responsible and sustainable mineral sourcing** through the implementation of the EU Conflict Minerals Regulation and the Kimberley Process, as well as the setting up of industry-driven certification schemes.
- ◆ Consequently, the Federation advocates for the **adoption of an EU legislation** that would:
 - rely on and be consistent with the existing requirements in place for the sector.
 - ensure legal certainty for companies with clear definitions of the risks and duties.
 - set up an appropriate support mechanism to help companies and in particular SMEs comply with the rules.
 - support European companies' competitiveness at EU and international level.
- ◆ The Federation is committed to **remaining fully involved and active in the ongoing decision-making process**.

On the 29th of April, Didier Reynders, European Commissioner for Justice, announced to the European Parliament Responsible Business Conduct Working Group that the European Commission plans to **propose a legislative initiative on mandatory due diligence in 2021**¹. Commissioner Reynders further specified that the legislation will be **cross-sectorial** and will include **enforcement mechanisms** to ensure compliance and access to justice for the victims. The European Commission launched a public consultation to gather further inputs ahead of the release of its Directive proposal in the second quarter of 2021.

The **European Federation of Jewellery (EFJ)** supports the idea of an **EU-wide cross-sectorial legislative framework on due diligence** and is ready to take a proactive role in the decision-making process.

In this respect, the EFJ would like to point out that the European jewellery sector actively prepared to comply with **EU Regulation 2017/821** laying down supply chain due diligence obligations for Union importers of minerals originating from conflict-affected and high-risk areas², that entered into force on the 1st of January 2021. The EFJ cooperated with the EU decision-makers all along the legislative process to make sure that the Regulation took into consideration the **specificities of the European jewellery sector**, a sector mainly composed of Small and Medium-Sized Enterprises (SMEs), with limited human and financial resources.

¹ <https://responsiblebusinessconduct.eu/wp/2020/04/30/european-commission-promises-mandatory-due-diligence-legislation-in-2021/>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0821>



The EFJ had **welcomed the adoption of the Regulation** and had noted with satisfaction its alignment with the Organisation for Economic Co-operation and Development (OECD) framework as well as the provisions making it possible for **industry / private sector schemes to be recognised as compliant** with the European rules. The Federation was also an active contributor in the process that led to the creation of a set of tools aimed at supporting SMEs to comply with the regulation³. The EFJ indeed thinks that all the actors in the jewellery sector should comply with the EU Regulation 2017/821 as a medium-term objective⁴.

Furthermore, the EFJ would like to recall that the **European diamond sector**, which is an essential component of the jewellery sector, **is committed to improving transparency and accountability in the global diamond value chain** through the **Kimberley Process** (KP), an international certification scheme established in 2003 to prevent conflict diamonds from entering the mainstream rough diamond trade. Council Regulation 2368/2002⁵ sets up a Union system of certification, as well as import and export controls for rough diamonds for the purposes of implementing the Kimberley Process Certification Scheme.

In light of the considerations above, the EFJ would like to **invite the European Commission to build the new due diligence framework on the basis of existing schemes** such as the so-called Conflict Minerals Regulation and the Kimberley Process Certification Scheme in order to **avoid any duplication of legal requirements** which would lead to an increased administrative and financial burden on EU companies or even create incentives to companies to relocate their activities outside of the EU. The EFJ notes that it will be more difficult, or even virtually impossible, for **EU companies to comply with the new legislative framework if coherence is not ensured** between the new requirements and the ones already in place.

The EFJ welcomes the decision of the European Commission to **carry out a thorough impact assessment** as well as an **analysis of the existing schemes** to clearly identify potential compliance issues.

The EFJ would like to invite **the Commission to also take into consideration existing third-party's schemes such as the Responsible Jewellery Council's (RJC) Code of Practices (CoP)**. The RJC is an industry-driven body and its CoP integrates the OECD guidelines into a special framework for jewellery companies to handle and trade gold, silver, platinum-group metals as well as diamonds in a way that is fully traceable and responsibly sourced. The CoP addresses human and labour rights, environmental impact and responsible mining practices. The RJC has already applied to have its certification schemes recognised as compliant with EU Regulation 2017/821 and thus represents a valuable example of due diligence for the jewellery sector. Moreover, the **World Diamond Council's (WDC) renewed System of Warranties⁶ (SoW)** provides assurances relative to due diligence and the protection of human rights and labour rights, as well as to anti-money laundering and anti-corruption practices along the diamond supply chain.

³ https://ec.europa.eu/growth/sectors/raw-materials/due-diligence-ready_en

⁴ As the jewellery sector is mainly comprised of SMEs, the current 100kg threshold set by the EU legislation on gold imports, above which the mineral must be traced, means that many companies fall outside of the scope of the current regulation.

⁵ Council Regulation No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamond:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002R2368-20210101&qid=1616146798496>

⁶ <https://www.worlddiamondcouncil.org/introduction-system-of-warranties/>

Furthermore, the EFJ urges the Commission to **ensure a level playing field for EU companies at EU and international level** in order to support European competitiveness. To this end, third-country companies which are not established in the EU but carry out activities in the EU should also be covered by the future Directive. The EU trade policy plays also a crucial role in this area and the Commission should promote the future EU legal framework in international fora, through bilateral and multilateral trade agreements and political high-level contacts.

Commissioner Reynders stressed that the new EU rules would be mandatory and that enforcement mechanisms will also be put in place. In this respect, the EFJ would like to underline that **emphasis should be put on rewarding companies** as opposed to sanctioning them at first stage. This will positively trigger and motivate companies to implement due diligence practices into their business structure. In addition, any framework on due diligence should be based on an obligation of means rather than an obligation of results. Furthermore, the future Directive should **incorporate a supporting mechanism to promote compliance** and **tools to support EU companies during the implementation phase**. EU member states should also be encouraged to develop additional national support measures to help companies fulfilling their due diligence requirements.

To take into account the specificities of the European jewellery and diamond sector, the new legislative framework should apply to **all companies with proportionate requirements for SMEs** and with the exemption of micro-enterprises (less than 10 employees). In this respect, it is crucial that an agile framework is envisaged for SMEs so that they can incorporate due diligence into their business model without increasing the administrative and financial burden.

The EFJ would like to emphasise that the European jewellery and diamond sector has been very proactive in ensuring responsible and sustainable mineral sourcing through the implementation of EU legislation (EU Conflict Minerals Regulation & EU Council Regulation implementing the Kimberley Process Certification Scheme) and industry-driven certification schemes (such as the RJC Code of Practices and the WDC's renewed System of Warranties). Since the European jewellery and diamond sector is highly regulated through national and European legislation, as well as industry initiatives, it therefore cannot be considered as a high-risk sector.

With regard to the value chain, the EFJ believes that due diligence should encompass **only the direct suppliers in the company's value chain**, and if possible, all parts of the value chain that companies can reasonably control. Indeed, not all companies within the European jewellery and diamond sector, mainly composed of SMEs with limited human and financial resources, can have control over the whole supply chain. **Risks** related to human rights, environment, climate change and governance should be covered, but they **must be very precise and clearly defined to ensure legal certainty for companies**. For example, there could be an exhaustive list of all the different legislations, such as treaties and conventions, that companies have to consider in an Annex of the Directive.

Finally, the cross-sectorial EU legal framework on mandatory due diligence should include a **transition period of at least 3 years** before entering into full force to allow national governments and companies to adapt to the new regulation.

The EFJ believes that an EU-wide cross-sectorial legal framework on due diligence has the potential to significantly **influence the way EU businesses will conduct their operations in the future** and will define an ambitious threshold for countries and companies globally.



However, it is essential that the new rules are **pragmatic and implementable**, and this can be achieved only by fully involving all stakeholders in the discussion and by taking into consideration the challenges and needs of the different sectors as well as their specificities.

The EFJ was founded in 2013 by recognized national associations from Belgium, France, Italy and Portugal, which together represent over 60% of all jewellery items manufactured and distributed in Europe. The Federation aims notably at exchanging best practices, promoting the unique European know-how of the sector as well as developing a high level of education and research.

EFJ members:

- ◆ **UFBJOP** - Union Française de la Bijouterie, Joaillerie, Orfèvrerie, des Pierres et des Perles (France)
- ◆ **ARS NOBILIS** – Fédération Belge du Bijou et de la Montre (Belgium)
- ◆ **AORP** - Associação de Ourivesaria e Relojoaria de Portugal (Portugal)
- ◆ **FEDERORAFI** - Federazione Nazionale Orafi Argentieri Gioiellieri Fabbricanti (Italy)
- ◆ **AWDC** - Antwerp World Diamond Centre (Belgium)

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