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Consultation Document Proposal for an Initiative on Sustainable Corporate Governance

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The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.
Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

Introduction

Political context

The Commission's political guidelines set the ambition of Europe becoming the world's first climate-neutral continent by 2050 and foresee strong focus on delivering on the UN Sustainable Development Goals[1], which requires changing the way in which we produce and consume. Building on the political guidelines, in its Communication on the European Green Deal[2] (adopted in December 2019) and on A Strong Social Europe for Just Transition[3] (adopted in January 2020) the Commission committed to tackling climate and environmental-related challenges and set the ambition to upgrade Europe's social market economy.

The European Green Deal sets out that "sustainability should be further embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects."

Sustainability in corporate governance encompasses encouraging businesses to frame decisions in terms of their environmental (including climate, biodiversity), social, human and economic impact, as well as in terms of the company's development in the longer term (beyond 3-5 years), rather than focusing on short-term gains.

As a follow-up to the European Green Deal, the Commission has announced a sustainable corporate governance initiative for 2021, and the initiative was listed among the deliverables of the Action Plan on a Circular Economy[4], the Biodiversity strategy[5] and the Farm to Fork strategy[6]. This initiative would build on the results of the analytical and consultative work carried out under Action 10 of the Commission's 2018 Action Plan on Financing Sustainable Growth and would also be part of the Renewed Sustainable Finance

Strategy.

The recent Communication “Europe's moment: Repair and Prepare for the Next Generation” (Recovery Plan)[7] (adopted in May 2020) also confirms the Commission’s intention to put forward such an initiative with the objective to “ensure environmental and social interests are fully embedded into business strategies”. This stands in the context of competitive sustainability contributing to the COVID-19 recovery and to the long-term development of companies. Relevant objectives are strengthening corporate resilience, improving predictability and management of risks, dependencies and disruptions including in the supply chains, with the ultimate aim for the EU economy to build back stronger.

This initiative is listed in the Commission Work program for 2021 [8].

EU action in the area of sustainable corporate governance will complement the objectives of the upcoming Action Plan for the implementation of the European Pillar of Social Rights, to ensure that the transitions towards climate-neutrality and digitalisation are socially sustainable. It will also strengthen the EU’s voice at the global scene and would contribute to the respect of human rights, including labour rights– and corporate social responsibility criteria throughout the value chains of European companies – an objective identified in the joint Communication of the Commission and the High Representative on the Global EU response to COVID-19[9].

This initiative is complementary to the review of the Non-Financial Reporting Directive (NFRD, Directive 2014/95/EU[10]) which currently requires large public-interest companies to disclose to the public certain information on how they are affected by non-financial issues, as well as on the company’s own impacts on society and the environment. The NFRD also requires companies to report on their social and environmental policies and due diligence processes if they have them, or otherwise explain why they do not have any (comply or explain approach). Whilst the NFRD is based on incentives “to report”, the sustainable corporate governance initiative aims to introduce duties “to do”. Such concrete actions would therefore contribute to avoiding “greenwashing” and reaching the objectives of the on-going review of the NFRD too, in particular the aim of enhancing the reliability of information disclosed under the NFRD by ensuring that the reporting obligation is underpinned by adequate corporate and director duties, and the aim of mitigating systemic risks in the financial sector. Reporting to the public on the application of sustainability in corporate governance and on the fulfilment of directors’ and corporate duties would enable stakeholders to monitor compliance with these duties, thereby helping ensure that companies are accountable for how they mitigate their adverse environmental and social impacts.

The initiative would build upon relevant international standards on business and human rights and responsible business conduct, such as the United Nations’ Guiding Principles on Businesses and Human Rights and the OECD Guidelines for Multinational Enterprises and its Due Diligence Guidance for Responsible Business Conduct.

As regards environmental harm linked to deforestation, the Commission is also conducting a fitness check of the EU Timber Regulation and an impact assessment.

Finally, Covid-19 has put small and medium sized companies under financial pressure, partly due to increased delay in the payments from their larger clients. This raises the importance of the role of board members of companies to duly take into account the interests of employees, including those in the supply chains as well as the interests of persons and suppliers affected by their operations. Further support

measures for SMEs also require careful consideration.

Results of two studies conducted for the Commission

To integrate properly sustainability within corporate strategies and decisions, the High-Level Expert Group on Sustainable Finance[11] recommended in 2018 that the EU clarifies corporate board members´ duties so that stakeholder interests are properly considered. Furthermore, they recommended for the EU to require that directors adopt a sustainability strategy with proper targets, have sufficient expertise in sustainability, and to improve regulation on remuneration.

In its 2018 Action Plan on Financing Sustainable Growth[12] the Commission announced that it would carry out analytical and consultative work on the possible need to legislate in this area.

The Commission has been looking at further obstacles that hinder the transition to an environmentally and socially sustainable economy, and at the possible root causes thereof in corporate governance regulation and practices. As part of this work, two studies have been conducted which show market failures and favour acting at the EU level.

The *study on directors' duties and sustainable corporate governance* [13] evidences that there is a trend in the last 30 years for listed companies within the EU to focus on short-term benefits of shareholders rather than on the long-term interests of the company. Data indicate an upward trend in shareholder pay-outs, which increased from 20% to 60% of net income while the ratio of investment (capital expenditure) and R&D spending to net income has declined by 45% and 38% respectively. The study argues that sustainability is too often overlooked by short-term financial motives and that to some extent, corporate short-termism finds its root causes in regulatory frameworks and market practices. Against these findings, the study argues that EU policy intervention is required to lengthen the time horizon in corporate decision-making and promote a corporate governance more conducive to sustainability. To achieve this, it spells out three specific objectives of any future EU intervention: strengthening the role of directors in pursuing their company's long-term interest by dispelling current misconceptions in relation to their duties, which lead them to prioritise short-term financial performance over the long-term interest of the company; improving directors' accountability towards integrating sustainability into corporate strategy and decision-making; and promoting corporate governance practices that contribute to company sustainability, by addressing relevant unfavourable practices (e.g. in the area of board remuneration, board composition, stakeholder involvement).

The *study on due diligence requirements* through the supply chain[14] focuses on due diligence processes to address adverse sustainability impacts, such as climate change, environmental, human rights (including labour rights) harm in companies' own operations and in their value chain, by identifying and preventing relevant risks and mitigating negative impacts. The study shows that in a large sample of mostly big companies participating in the study survey, only one in three businesses claim to undertake due diligence which takes into account all human rights and environmental impacts. Therefore voluntary initiatives, even when backed by transparency do not sufficiently incentivise good practice. The study shows wide stakeholder support, including from frontrunner businesses, for mandatory EU due diligence. 70% of businesses responding to the survey conducted for the study agreed that EU regulation might provide benefits for business, including legal certainty, level playing field and protection in case of litigation. The study shows that a number of EU Member States have adopted legislation or are considering action in this field. A potential patchwork of national legislation may jeopardise the single market and increase costs for

businesses. A cross-sectoral regulatory measure, at EU level, was preferred to sector specific frameworks.

Objectives of this public consultation

This public consultation aims to collect the views of stakeholders with regard to a possible Sustainable Corporate Governance Initiative. It builds on data collected in particular in the two studies mentioned above and on their conclusions, as well as on the feedback received in the public consultation on the Renewed Sustainable Finance Strategy[15]. It includes questions to allow the widest possible range of stakeholders to provide their views on relevant aspects of sustainable corporate governance.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- (•) English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* Surname

Cioffo

* I am giving my contribution as

- ○ Academic/research institution
- ○ Business association
- ○ Company/business organisation
- ○ Consumer organisation
- ○ EU citizen
- ○ Environmental organisation
- ○ Non-EU citizen
- ◉ Non-governmental organisation (NGO)
- ○ Public authority
- ○ Trade union
- ○ Other

* First name

Giuseppe

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cioffo@cidse.org

* Organisation name

255 character(s) maximum

CIDSE - International Alliance of Catholic Social Justice Organisations, COMECE (Commission of the Episcopates of the European Union), The Conference of European Justice & Peace Commissions, Pax Christi International

* Organisation size

- ○ Micro (1 to 9 employees)
- ◉ Small (10 to 49 employees)
- ○ Medium (50 to 249 employees)
- ○ Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

61263518557-92; 47350036909-69; 018773539412-80; 404818141269-72

* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
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- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa

- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d’Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
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- Rwanda
- Saint Barthélemy
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen

- Czechia
- Democratic Republic of the Congo
- Denmark
- Lebanon
- Lesotho
- Liberia
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Zambia
- Zimbabwe

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- **Anonymous**
  Only your contribution, country of origin and the respondent type profile that you selected will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- **Public**
  Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☑ I agree with the personal data protection provisions

If you replied that you answer on behalf of a business, please specify the type of business:

- institutional investor, asset manager
- other financial sector player (e.g. an analyst, rating agency, data and research provider)
- auditor
- other

If other, please specify:

Consultation questions

If you are responding on behalf of a large company, please indicate how large is the company:

- ○ Large company with 1000 or more people employed
- ○ Large company with less than 1000 but at least 250 people employed

If you are responding on behalf of a company, is your company listed on the stock-exchange?

- ○ Yes, in the EU
- ○ Yes, outside the EU
- ○ Yes, both in and outside the EU
- ○ No

If you are responding on behalf of a company, does your company have experience in implementing due diligence systems?

- ○ Yes, as legal obligation
- ○ Yes, as voluntary measure
- ○ No

If resident or established/registered in an EU Member State, do you carry out (part of) your activity in several EU Member States?

- ◉ Yes
- ○ No

If resident or established/ registered in a third country (i.e. in a country that is not a member of the European Union), please specify your country:

If resident or established registered in a third country, do you carry out (part of) your activity in the EU?

- ○ Yes
- ○ No

If resident or established registered in a third country, are you part of the supply chain of an EU company?

- ○ Yes
- ○ No

Section I: Need and objectives for EU intervention on sustainable corporate governance

Questions 1 and 2 below which seek views on the need and objectives for EU action have already largely been included in the public consultation on the Renewed Sustainable Finance Strategy earlier in 2020. The Commission is currently analysing those replies. In order to reach the broadest range of stakeholders possible, those questions are now again included in the present consultation also taking into account the two studies on due diligence requirements through the supply chain as well as directors' duties and sustainable corporate governance.

Question 1: Due regard for stakeholder interests', such as the interests of employees, customers, etc., is expected of companies. In recent years, interests have expanded to include issues such as human rights violations, environmental pollution and climate change. Do you think companies and their directors should take account of these interests in corporate decisions alongside financial interests of shareholders, beyond what is currently required by EU law?

- (●) Yes, a more holistic approach should favour the maximisation of social, environmental, as well as economic/financial performance.
- ( ) Yes, as these issues are relevant to the financial performance of the company in the long term.
- ( ) No, companies and their directors should not take account of these sorts of interests.
- ( ) Do not know.

Please provide reasons for your answer:

Yes, companies and their directors should take into account the effects of their activities on internationally recognised human rights, the environment (including pollution) and climate change, going beyond what is currently required by EU law. Corporate activities may often damage our shared environment, health and future, causing forced displacements, destruction of forests, land or fishing grounds, contamination of water sources, repeated exploitation of workers and child labour, with a disproportionate impact on women and indigenous peoples. When they cause or contribute to harm to individuals or the environment in their supply chains, businesses should be held accountable while victims must be put in a position to access justice and remedy in an effective and fair manner.

The globalisation of value chains and the increasing international reach of EU companies mean that adverse impacts of corporate activities on the environment or human rights are ever more important to address, identify, prevent, mitigate, monitor and account for, address and remediate. Over the years, a number of international mechanisms have been adopted, mostly on a voluntary basis, in response to such risks. For example, the OECD Due Diligence Guidance for Responsible Business Conduct provide a detailed and in-depth tool for environmental and human rights due diligence. The United Nation's Guiding Principles for Business and Human Rights go further in detailing the legal and environmental obligations of business operations.

However, as a recent study by the EU Commission highlights, while due diligence remains the tool of choice to assess corporate adverse impacts, voluntary mechanisms have fallen short of their expectations and business operations continue to pursue profit maximisation, while neglecting the adverse impact of their activities on human rights and the environment. EU law currently imposes human rights due diligence obligations only on companies importing “3TG” metals into the Union (EU Regulation 2017/821) and environmental and human rights due diligence only on companies importing timber products (EU Reg 995 /2010). In this regard, the EU legislation requiring extractive and logging companies listed and registered in the EU to disclose their revenue payments to governments around the world, is also important to mention (EU Accounting Directives 2013/34/EU and Transparency Directive 2013/50/EU). The above-mentioned legislative instruments only impose a duty to report and monitor but, importantly, are still lacking any meaningful mechanisms to ensure access to justice for victims and to recognise the responsibilities of businesses. It is urgent that companies operating in the EU, across sectors of activity, be required to carry out mandatory due diligence on their impacts on internationally recognised human rights and the environment, and that their civil and criminal responsibility for harm is recognised, while provisions are put in place to guarantee justice for affected stakeholders.

Such obligations must fit in a larger process of rethinking business models in the context of an economic model respecting human rights and the planet. In the words of Pope Francis, “Economy should be the art of achieving a fitting management of our common home, which is the world as a whole. Each meaningful economic decision made in one part of the world has repercussions everywhere else; consequently, no government can act without regard for shared responsibility” (Evangelii Gaudium – 206). This principle should be extended, in particular, to protect the most vulnerable people in conflict-affected and high-risk areas as well as indigenous communities, where ccorporate activities may have adverse impacts.

European law should clarify the responsibility of companies to integrate due diligence procedures within current governance structures. When making decisions, companies shall consider, through proactive consultation, the interests of all stakeholders concerned by their economic activities, and not limit themselves to the financial interests of shareholders.

Question 2: Human rights, social and environmental due diligence requires companies to put in place continuous processes to identify risks and adverse impacts on human rights, health and safety and environment and prevent, mitigate and account for such risks and impacts in their operations and through their value chain.

In the survey conducted in the context of the study on due diligence requirements through the supply chain, a broad range of respondents expressed their preference for a policy change, with an overall preference for establishing a mandatory duty at EU level.

Do you think that an EU legal framework for supply chain due diligence to address adverse impacts on human rights and environmental issues should be developed?

- (●) Yes, an EU legal framework is needed.
- ( ) No, it should be enough to focus on asking companies to follow existing guidelines and standards.
- ( ) No action is necessary.
- ( )

Do not know.

Please explain:

A study published in February 2020 by the European Commission found that only one in three companies in the EU is currently carrying out human rights and environmental due diligence, while data show that around 70% of European businesses surveyed support EU-wide due diligence rules (Alliance for Corporate Transparency, Corporate Human Rights Benchmark). COMECE, CIDSE, Pax Christi International and Justice and Peace Europe have been advocating for a binding EU due diligence legislation for several years. Effective due diligence should require companies to map their value chains in order to identify, assess, prevent, cease, mitigate, monitor and account for, address and remediate adverse human rights and environmental impacts they might have caused, directly or indirectly, through their business activities and relationships, including imports, exports, services and investments. Such legislation should apply to all businesses operating within the EU, and should be in line with internationally agreed standards, namely the UN Guiding Principles for Business and Human Rights. Mandatory human rights due diligence is only effective insofar as its implementation can be monitored by strong national and European enforcement mechanisms, meaning that legislation should clearly indicate the obligations of Member States and of the EU Commission to monitor companies' behaviour, to enforce due diligence obligations and to impose effective sanctions for non-compliance.

In 2020, more than 230 Catholic Bishops from around the world signed the letter "Now more than ever, we need mandatory supply chain due diligence to stop corporate abuse and guarantee global solidarity ", calling for the introduction of mandatory legislation to address the failure of voluntary measures. This is necessary, according to the signatories, to protect our human family and our common home from the threats of environmental destruction and corporate abuse.

As evident in the mapping carried out by the European Coalition for Corporate Justice (ECCJ), citizens' campaigns for corporate accountability have spread across Europe. Such legislation would also respond to increasing demands for corporate accountability from citizens, consumers, shareholders and civil society, providing a common framework for companies to report on their human rights and environmental impacts. A common mandatory legal framework would also provide a level playing field amongst companies operating in the EU market, and dissuade companies from establishing their headquarters in Member States with little or no due diligence requirements. At national level, several Member States, such as France and the Netherlands, have adopted similar legislations. Proposals are being discussed in Denmark, Austria, and Germany, and governments in countries such as Italy and Finland have already expressed their commitment. European legislation should not halt these national initiatives, but it should build upon and complement them.

Any European legal framework should align with multilateral processes on this issue, and, in particular, the ongoing work of the United Nations' Intergovernmental Working Group on Business and Human Rights. Any legislation the EU will adopt mandating due diligence obligations and providing for access to justice should complement and reinforce the binding instrument currently being discussed at the United Nations. Adopting such law would also put the EU ahead of the curve, reducing costs and facilitating adoption of the upcoming UN instruments. The Commission should also engage proactively in the IGWG negotiations to ensure coherence in the international legal framework on Business and Human Rights.

Question 3: If you think that an EU legal framework should be developed, please indicate which among the following possible benefits of an EU due diligence duty is important for you (tick the box/multiple choice)?

- [x] Ensuring that the company is aware of its adverse human rights, social and environmental impacts and risks related to human rights violations other social issues and the environment and that it is in a better position to mitigate these risks and impacts
- [x] Contribute effectively to a more sustainable development, including in non-EU countries
- [x] Levelling the playing field, avoiding that some companies freeride on the efforts of others
- [x] Increasing legal certainty about how companies should tackle their impacts, including in their value chain
- [x] A non-negotiable standard would help companies increase their leverage in the value chain
- [x] Harmonisation to avoid fragmentation in the EU, as emerging national laws are different
- [ ] SMEs would have better chances to be part of EU supply chains
- [x] Other

Other, please specify:

Another benefit of an EU legislation would be to provide an effective mechanism to access justice and remedy for victims of human rights violations or environmental damage, and to the organisations representing them. The UN Guiding Principles on Business and Human Rights, under Pillar 3, clearly state that Member States should take measures to guarantee access to justice for victims. EU legislation should take that into account, and provide for the liability of companies throughout the value chains for harm they have caused or contributed to, since access to justice for victims is increasingly important given the structure of global value chains, in reason of a global legislative gap for accountability. Corporations should be required to cooperate with affected stakeholders in providing remedy, while assessments of damages should be made in an objective way.

The need for clear, field-levelling provisions with regard to liability for harm caused or contributed to throughout the supply chain is illustrated eloquently by the many cases of corporate abuse worldwide, and by the numerous victims who are still awaiting justice. One such case is that of the collapse of the dam on the Rio Paraopeba in Brumadinho, Brazil. The dam, operated by a company supplying global German businesses such as BMW and Thyssenkrup, collapsed causing the death of 272 people, while releasing a dangerous amount of toxic waste in the Rivers' waters. Shortly before the tragedy, a Brazilian subsidiary of German firm TÜV SÜD had inspected the dam and considered it safe. After the disaster, TÜV SÜD declined to compensate victims and argued they had acted in accordance with Brazilian law.

CIDSE member organisation MISEREOR, in collaboration with the European Center for Constitutional and Human Rights (ECCHR), has filed a lawsuit against TÜV SÜD in Germany, arguing that under German law the company shares responsibility for the disaster, together with the company managing the dam and its Brazilian subsidiary. To date, victims are still awaiting justice.

A similar case is that of the fire at Ali Enterprises textile factory in Karachi, Pakistan, in 2012. Ali Enterprises'

main customer was the German clothing retail business KiK. Three of the victims of the fire filed a case against at a court in Dortmund, Germany. The case was dismissed in 2019 as the court considered it had passed the statute of limitations. Once again, victims are still awaiting justice.

Both cases clarify that a clear legal framework is needed to ensure that liability for corporate abuse is clearly established throughout value chains. Such responsibility, as highlighted in the Brumadinho case, should extend to all business relationships.

Any provisions contained in upcoming legislation should ensure that clear and homogenous standards are applied throughout the EU with regards to corporate responsibility, and that such provisions are mandatory and overriding, in order to respond to failures of domestic law in the country where the company operates.

This legislation is an important opportunity to ensure respect for indigenous peoples' rights, by making sure that consultations with indigenous peoples shall be undertaken in accordance with international human rights standards, including the standard of free, prior and informed consent and respecting indigenous peoples' right to self-determination. Indigenous peoples are amongst the most vulnerable groups affected by business activities violating human rights. For the new EU legislation to contribute to the promotion and respect of the rights of indigenous communities, we recommend reference being made in the legislative text to ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples.
The legislation will also offer an opportunity for gender transformative justice by ensuring that due diligence processes are informed by relevant experts, the use of sex-disaggregated data, stakeholder consultations including women, and the provision of effective, prompt, just, transformative, culturally sensitive and gender-responsive reparations.

In addition to these examples, it should also be considered that in conflict-affected settings access to justice is even more precarious. Avenues for accountability and remedy for victims are often insufficient, non-existing or cannot function as intended due to weak governance, inability or the unwillingness of governing authorities. EU legislation could bridge the corporate accountability gap and ensure that European companies are duly held liable in conflict affected areas, and that victims are provided with appropriate grievance mechanisms.

Question 3a. Drawbacks

Please indicate which among the following possible risks/drawbacks linked to the introduction of an EU due diligence duty are more important for you (tick the box /multiple choice)?

- ☐ Increased administrative costs and procedural burden
- ☐ Penalisation of smaller companies with fewer resources
- ☐ Competitive disadvantage vis-à-vis third country companies not subject to a similar duty
- ☐ Responsibility for damages that the EU company cannot control
- ☐ Decreased attention to core corporate activities which might lead to increased turnover of employees and negative stock performance
- ☐ Difficulty for buyers to find suitable suppliers which may cause lock-in effects (e.g. exclusivity period/no shop clause) and have also negative impact on business performance of suppliers

- [ ] Disengagement from risky markets, which might be detrimental for local economies
- [x] Other

Other, please specify:

Many of the risks listed are unfunded and can be avoided through the careful implementation of mandatory due diligence. Well-designed due diligence legislation, with requirements in line with the UN Guiding Principles and complementary approaches, could successfully mitigate these risks.

Regarding the alleged risk of penalisation of smaller companies with fewer resources, it is worth noting that, as stressed by international standards on corporate due diligence, the means through which SMEs will be expected to meet their responsibility to respect human rights and the environmentwould be proportional to, among other factors, their size. For SMEs, the type of policies and processes expected would match their capacity, following the Commentary to Principle 14 of the UN Guiding Principles on Business & Human Rights. Studies of the compliance costs of a variety of due diligence regimes do not identify a disproportionate economic burden for SMEs. In fact the cost of compliance is typically related to the size of the enterprise. Moreover, the Commission's study on due diligence requirements through the supply chain shows that, even for SMEs, the costs of carrying out mandatory supply chain due diligence appears to be relatively low compared to the company's revenue. The additional recurrent company-level costs, as percentages of companies' revenues, amount to less than 0.14% for SMEs. Smaller companies would therefore not be penalised by due diligence legislation, as long as the legal framework follows international standards. However, such risk would materialise if the EU legal framework introduces instead a rigid, procedural obligation based on a misunderstanding that such an approach would be beneficial to companies, or with the intention to shield companies from any liability.

With regard to the alleged risk of responsibility for damages that the EU company cannot control, under well-established legal principles governing civil liability, the latter would only apply if a link between the harm and the company's actions or omissions could be established. Therefore, liability would be determined in accordance with the level of control or influence the company has over the relevant subsidiary or business partner. It is also important to highlight that liability for harm would apply for a breach of the duty of care owed by EU companies. Companies would thus not be held liable if they can prove they took all due care to avoid the harm in question or that the harm would have occurred even if all due care had been taken.

Regarding the alleged risk of disengagement from risky markets, which might be detrimental for local economies, it is worth stressing that:

As per international due diligence standards, disengagement should only be considered as a last resort after all other steps have been exhausted, as outlined in UN Guiding Principle 19, which notes that business enterprises should only consider ceasing relationships where options for leverage to prevent or mitigate negative impacts have been exhausted or leverage is insufficient. A similar approach is elaborated upon in the OECD Due Diligence Guidance (3.2.h). A hands-off approach where a company simply disengages without taking further measures would not be in line with these standards (see SOMO papers on responsible disengagement, 2016, 2020).

Due diligence legislation would therefore prevent irresponsible disengagement from happening by compelling companies to evaluate all possible options for alternatives to disengagement to consider the potential adverse impact associated with a decision to disengage, and by holding them liable in case of irresponsible disengagement.

As stated in the EC study on due diligence requirements through the supply chain, in practice, it is unlikely that companies would be in a position to restructure their global business model in such a significant way for this purpose. Similarly, the literature has shown that companies rarely terminate their business relationships based exclusively on social or human rights-related concerns. Exceptions include, for example, companies' disengagement from contexts with state-imposed forced labour (e.g. Uzbekistan and the Xinjiang Uyghur Autonomous Region), due to the lack of leverage to change the practice, the severity of the abuses, and, therefore, the need to disengage in line with the UN Guiding Principles.

Section II: Directors' duty of care – stakeholders' interests

In all Member States the current legal framework provides that a company director is required to act in the interest of the company (duty of care). However, in most Member States the law does not clearly define what this means. Lack of clarity arguably contributes to short-termism and to a narrow interpretation of the duty of care as requiring a focus predominantly on shareholders' financial interests. It may also lead to a disregard of stakeholders' interests, despite the fact that those stakeholders may also contribute to the long-term success, resilience and viability of the company.

Question 5. Which of the following interests do you see as relevant for the long-term success and resilience of the company?

	Relevant	Not relevant	I do not know/I do not take position
the interests of shareholders	◉	○	○
the interests of employees	◉	○	○
the interests of employees in the company's supply chain	◉	○	○
the interests of customers	◉	○	○
the interests of persons and communities affected by the operations of the company	◉	○	○
the interests of persons and communities affected by the company's supply chain	◉	○	○
the interests of local and global natural environment, including climate	◉	○	○
the likely consequences of any decision in the long term (beyond 3-5 years)	◉	○	○
the interests of society, please specify	◉	○	○
other interests, please specify	◉	○	○

the interests of society, please specify:

The emerging international consensus on Business and Human Rights makes it clear that the mere pursuit of shareholders' interests is not a sustainable model for corporate governance. The Covid-19 pandemics also highlighted the importance for business activities to prioritise resilience and to increase protection for

workers in times of crisis. For these reasons, it is essential that the interests of the environment, workers, local communities and other stakeholders affected by corporate activities are taken into account throughout the value chain and within corporate governance. As Pope Francis reminds us, "[e]conomic life cannot be absolutized. Economic activities must be pursued within a broader context of human development, [...] respecting labor, social and environmental standards".

The study recently carried out by the Commission on the requirements for due diligence found that short-termism, and a narrow focus on shareholder interests, are linked to inaction to address negative environmental and human rights impacts.

Considering the interests of a wide range of stakeholders leads to long-term sustainable corporate governance, to a climate of trust with affected individuals and communities, and it can prevent costs, both in terms of financial means and reputation. Taking into account broad stakeholder concerns is also an effective means to conflict prevention. This can only be achieved if, when operating across borders, businesses consult stakeholders that are impacted by their activities meaningfully, prior, during and after conducting their operations. This should include an assessment of environmental risks, remediation of actual adverse impact and compensation of communities who have been victimised.

An example from Peru illustrates the need both for effective risk assessment and access the remedy. The organisation Human Rights and Environment (DHUMA), supported by CIDSE-member Maryknoll and member of Pax Christi Peru, works with indigenous communities in Puno in Peru. The organisation has helped building dialogue between a mining company and an Aymara community that were in conflict over the contamination of the community's river, Condoraque. DHUMA assisted the Aymara community in informing them about their rights as indigenous people and nonviolent resistance tools, and helped them with legal actions and attention for their case at UN level. It provided the necessary pressure for the mining company to accept its responsibilities, and to recognise the adverse impact of its activities on the local community and environment.

As a result of various meetings, the company launched a plan to restore the Condoraque River back to a healthy state. This included the establishment of a water quality monitoring commission including 3 members of the Condoraque community, representatives from the mining company, the local Water Authority Office, the municipal government and communities located downstream from the river of Condoraque. In 2017, the mining company also constructed a new Meeting Hall for the Condoraque Community, installed solar heaters for hot showers and gave each family baby alpacas to replenish their herds. The mining company also sought to improve the relationship with the Condoraque community and DHUMA by offering guided tours in their facilities to see progress with regard to environmental liabilities. The community in Puno was able to claim restoration of their rights and local environment from the private company with the support of DHUMA, which has support from international partners.

Had the company carried out effective human rights and environmental due diligence and consulted relevant stakeholders during the process, the negative impact caused by its activities could have been prevented, together with the costs it had generated.

In view of establishing the European Union as a global leader in reaching global climate targets, enhancing biodiversity, and fostering sustainable products, as outlined in the Commission's communication on the European Green Deal, EU companies must integrate environmental and human rights concerns in their business strategies and procedures.

other interests, please specify:

Finally, the broad range of affected stakeholders and their interests cannot be exhaustively summarised in a list. For this reason, we suggest that any upcoming legislation takes an open stance towards the range of interests and stakeholders to included.

Question 6. Do you consider that corporate directors should be required by law to (1) identify the company´s stakeholders and their interests, (2) to manage the risks for the company in relation to stakeholders and their interests, including on the long run (3) and to identify the opportunities arising from promoting stakeholders' interests?

	I strongly agree	I agree to some extent	I disagree to some extent	I strongly disagree	I do not know	I do not take position
Identification of the company´s stakeholders and their interests	◉	○	○	○	○	○
Management of the risks for the company in relation to stakeholders and their interests, including on the long run	◉	○	○	○	○	○
Identification of the opportunities arising from promoting stakeholders' interests	◉	○	○	○	○	○

Please explain:

The existing duty of care that directors owe to the company already requires them to address the interests of stakeholders at large. However, this has not resulted in a clear integration of environmental and human rights impacts of corporate activities in business strategies. The lack of a clear legal framework identifying the responsibility of directors and company management to take into account the broader interests of stakeholders, opens a way to abuse and adverse impacts.

In the performance of their duties, and in the best interests of the company, directors must be required to consider any damage to the environment and human rights. Directors should also be required to monitor the quality and the effectiveness of the due diligence strategy.

While welcoming the Commission's intention to proposes legislation determining directors' duties with regard to corporate accountability and due diligence, we believe such issues would be better addressed in a separate proposal from the one detailing due diligence obligations and providing for liability for harm.

Question 7. Do you believe that corporate directors should be required by law to set up adequate procedures and where relevant, measurable (science –based)

targets to ensure that possible risks and adverse impacts on stakeholders, ie. human rights, social, health and environmental impacts are identified, prevented and addressed?

- (●) I strongly agree
- ( ) I agree to some extent
- ( ) I disagree to some extent
- ( ) I strongly disagree
- ( ) I do not know
- ( ) I do not take position

Please explain:

For companies to effectively identify, assess, prevent, mitigate, remediate harm to people and the planet, it is necessary that directors identify clear measures of risks and impacts, and set out strategies to address them. This means allocating resources to integrate such indicators in the overall companies' business strategy and procedures.

The establishments of targets should be compliant with international standards according to the types of risks and impacts identified, including international agreements and national initiatives on corporate governance and accountability with regard to internationally recognised human rights and the environment.

Taking into account the interests of stakeholders in the long-run will increase sustainability, and it is the Director's duty to ensure that the long term financial and governance strategy of the company considers stakeholders' interests through meaningful consultation.

The upcoming initiative should consider how boards can address impacts and risks on a regular basis, supported by relevant committees (sustainability, audit, risk, remuneration), as well as the need for relevant expertise within and outside the board, thanks to ad hoc nominations of external board advisers or non-executive board members, regular updates from relevant senior management and training for board members and company executives.

Most importantly, the boards should be responsible for overseeing and ensuring the quality of the materiality determination and due diligence processes. As part of their duty of care, directors should be required to integrate sustainability matters in corporate strategy and business model where necessary, and make sufficient resources available to management. As part of this integration, directors should be required to develop, disclose and implement, on behalf of the company, a forward-looking sustainability strategy and set measurable, specific, verifiable, time-bound targets and plans and milestones to achieve them based where appropriate on science-based methodology, that effectively addresses:

material environmental and social risks and impacts to the company's business model, operations and supply chain, and

severe impacts to people and the planet identified by the company's environmental and human rights due diligence, including through stakeholder engagement, in accordance with its legal obligations.

Whenever applicable, those targets need to be aligned with the EU's and Member States' international

commitments, such as the Paris Agreement.

Measurable targets for the mitigation of such risks and impacts are critical from several perspectives:

Targets and KPIs are indispensable for management of risks and impacts. If the risks or impacts meet the threshold of materiality or severity, they ought to be managed.

The board must set such targets, in particular, where effective management of risks and impacts have implications for the company's overall strategy, business model and financial planning. That means, the bigger risks and impacts are, the greater is the need for Board's level decision on strategies and targets.

The targets are necessary to ensure transparency concerning effectiveness of the company's management of the identified risks and impacts, and as such they are critical for engagement by investors and other stakeholders. This further requires that company sets and reports not only on overarching targets (such as ambition to meet the Paris Agreement goals), but also on transition plans and milestones (intermediary targets) to reach such overarching targets, to enable interested stakeholders to understand whether and how companies are progressing towards those targets.

Question 8. Do you believe that corporate directors should balance the interests of all stakeholders, instead of focusing on the short-term financial interests of shareholders, and that this should be clarified in legislation as part of directors' duty of care?

- (●) I strongly agree
- ( ) I agree to some extent
- ( ) I disagree to some extent
- ( ) I strongly disagree
- ( ) I do not know
- ( ) I do not take position

Please provide an explanation or comment:

Exclusively considering the need of capital-holders results in short-termism, which can damage companies' activities in the long-run and fails to take into account the broader interests of stakeholders that might be affected by companies' activities. In order for businesses to integrate human rights and environmental concerns into their governance and strategy, directors must ensure that all necessary measures, including the implementation of a due diligence strategy and the adoption of clear targets and indicators, are put in place by the company.

It is also important to highlight that such issues already fall under the larger issue of directors' duty of care. Deliberate failure to implement the due diligence strategy should be considered as a breach of the duty of care. While the duty of directors is owed to the company as itself and so is distinguished from the due diligence duty to respect human rights and the environment, it should be clarified and reaffirmed in legislation that in doing so, directors should balance the interests of all stakeholders, in accordance with the due diligence obligations of the company.

Company law reforms in Brazil, India and the UK, which attempted by various means to codify the obligation of directors to balance multiple interests, have been ineffective. For instance, in the UK, the Companies Act 2006 requires directors to 'have regard to' the impact of the company's operations on human rights and the environment. This enables directors to take into account these issues, and highlights the important link between responsible business behaviour and business success. However, it is a broad and vague mandate that does not provide meaningful guidance nor displace the primacy of shareholder profits above human rights and the environment. There are no significant examples of a director being held to account for their failure to 'have regard' for their wider stakeholders. This experience demonstrates that stronger rules with accountability provisions are necessary in order to ensure that directors take into consideration all legitimate stakeholders' interests and needs instead of prioritising the interests of providers of financial capital.

We are therefore of the view that the obligation concerning respect for stakeholders' interests must be firmly rooted in corporate due diligence obligations, over which the directors should exercise oversight.

Question 9. Which risks do you see, if any, should the directors' duty of care be spelled out in law as described in question 8?

How could these possible risks be mitigated? Please explain.

Where directors widely integrate stakeholder interest into their decisions already today, did this gather support from shareholders as well? Please explain.

Question 10. As companies often do not have a strategic orientation on sustainability risks, impacts and opportunities, as referred to in question 6 and 7, do you believe that such considerations should be integrated into the company's strategy, decisions and oversight within the company?

- (●) I strongly agree
- ( ) I agree to some extent
- ( ) I disagree to some extent
- ( ) I strongly disagree
- ( ) I do not know
- ( ) I do not take position

Please explain:

Enforcement of directors' duty of care

Today, enforcement of directors' duty of care is largely limited to possible intervention by the board of directors, the supervisory board (where such a separate board exists) and the general meeting of shareholders. This has arguably contributed to a narrow understanding of the duty of care according to which directors are required to act predominantly in the short-term financial interests of shareholders. In addition, currently, action to enforce directors' duties is rare in all Member States.

Question 11. Are you aware of cases where certain stakeholders or groups (such as shareholders representing a certain percentage of voting rights, employees, civil society organisations or others) acted to enforce the directors' duty of care on behalf of the company? How many cases? In which Member States? Which stakeholders? What was the outcome?
Please describe examples:

Question 12. What was the effect of such enforcement rights/actions? Did it give rise to case law/ was it followed by other cases? If not, why?
Please describe:

Question 13. Do you consider that stakeholders, such as for example employees, the environment or people affected by the operations of the company as represented by civil society organisations should be given a role in the enforcement of directors' duty of care?

- (●) I strongly agree
- ( ) I agree to some extent
- ( ) I disagree to some extent
- ( ) I strongly disagree
- ( ) I do not know
- ( ) I do not take position

Please explain your answer:

Stakeholders both from within and outside the company should be involved in the enforcement of the directors' duty of care. Internally, employees and shareholders might consider that the directors' failure to uphold their duty of care might cause harm to the company. In this case, shareholders and administrators should be empowered to enforce such duty of care. Workers and employees might also consider that failure to take into account broader stakeholder interests might cause harm to the company, and should be involved in the enforcement of the duty of care.

Moreover, if the directors' duty of care is considered to also include their responsibility to oversight on the company's due diligence, stakeholders affected by the company's failure to identify, prevent and mitigate risks to human rights and environment shall also be involved in involving the duty of care.

Question 13a: In case you consider that stakeholders should be involved in the enforcement of the duty of care, please explain which stakeholders should play a role in your view and how.

Section III: Due diligence duty

For the purposes of this consultation, "due diligence duty" refers to a legal requirement for companies to establish and implement adequate processes with a view to prevent, mitigate and account for human rights (including labour rights and working conditions), health and environmental impacts, including relating to climate change, both in the company's own operations and in the company's the supply chain. "Supply chain" is understood within the broad definition of a company's "business relationships" and includes subsidiaries as well as suppliers and subcontractors. The company is expected to make reasonable efforts for example with respect to identifying suppliers and subcontractors. Furthermore, due diligence is inherently risk-based, proportionate and context specific. This implies that the extent of implementing actions should depend on the risks of adverse impacts the company is possibly causing, contributing to or should foresee.

Question 14: Please explain whether you agree with this definition and provide reasons for your answer.

We partly agree with this definition, but also consider that it could be improved to provide more effective protection of human rights and the environment. The definition should start by stating that the ultimate objective of due diligence is to avoid human rights violations and harm to the environment, with a scope covering individual companies and the global value chains in which they operate. While risk-assessment, mitigation and prevention are essential components of the due diligence process, they are the means through which the objective of protection of human rights and the environment is achieved, they are not the ultimate goal.

Moreover, the definition could benefit from alignment to international standards. Preventing and mitigating risk should only come as the result of thorough identification and assessment of potential and actual negative impacts, including the mapping of risks throughout the entire value chain and in business relationships in general. Moreover, remediation should be an essential element of the definition of due diligence, in line with the UNGPs. Companies should also track and monitor the implementation and effectiveness of the adopted measures. This includes the collection of relevant data specific to the risk(s), such as data disaggregated by supplier and including impacts on a series of metrics, including gender. The results of these tracking and monitoring processes must be used to inform possible changes to the global business operations and human rights and environmental due diligence processes.

The definition should also specify that the scope of the due diligence duty covers global value chains. In view of effectively covering the broad range of contractual and non-contractual business relationships that

companies might engage in, the definition should also favour the use of “value chains’ instead of “supply chains”, the latter referring exclusively to suppliers. Exports, imports, investment and services along the value chain should be explicitly covered.

We positively note that the definition highlights the proportionate nature of the due diligence process, which varies in scope and nature according to a business’ nature of operations, size, the geography and the sector of its operations. This is a particularly important point for SMEs, whose financial and administrative burden will be commensurate to these factors, amongst others.

Importantly, while not strictly part of the definition of due diligence, it would be useful for the EU Commission to clarify in their proposal that due diligence must, in any case, enable the provision of remedy for victims, and that the legislation provides a clear path to access to justice for victims.

Question 15: Please indicate your preference as regards the content of such possible corporate due diligence duty (tick the box, only one answer possible). Please note that all approaches are meant to rely on existing due diligence standards, such as the OECD guidance on due diligence or the UNGPs. Please note that Option 1, 2 and 3 are horizontal i. e. cross-sectorial and cross thematic, covering human rights, social and environmental matters. They are mutually exclusive. Option 4 and 5 are not horizontal, but theme or sector-specific approaches. Such theme specific or sectorial approaches can be combined with a horizontal approach (see question 15a). If you are in favour of a combination of a horizontal approach with a theme or sector specific approach, you are requested to choose one horizontal approach (Option 1, 2 or 3) in this question.

- Option 1. “Principles-based approach”: A general due diligence duty based on key process requirements (such as for example identification and assessment of risks, evaluation of the operations and of the supply chain, risk and impact mitigation actions, alert mechanism, evaluation of the effectiveness of measures, grievance mechanism, etc.) should be defined at EU level regarding identification, prevention and mitigation of relevant human rights, social and environmental risks and negative impact. These should be applicable across all sectors. This could be complemented by EU-level general or sector specific guidance or rules, where necessary
- Option 2. “Minimum process and definitions approach”: The EU should define a minimum set of requirements with regard to the necessary processes (see in option 1) which should be applicable across all sectors. Furthermore, this approach would provide harmonised definitions for example as regards the coverage of adverse impacts that should be the subject of the due diligence obligation and could rely on EU and international human rights conventions, including ILO labour conventions, or other

conventions, where relevant. Minimum requirements could be complemented by sector specific guidance or further rules, where necessary.

- (●) Option 3. “Minimum process and definitions approach as presented in Option 2 complemented with further requirements in particular for environmental issues”. This approach would largely encompass what is included in option 2 but would complement it as regards, in particular, environmental issues. It could require alignment with the goals of international treaties and conventions based on the agreement of scientific communities, where relevant and where they exist, on certain key environmental sustainability matters, such as for example the 2050 climate neutrality objective, or the net zero biodiversity loss objective and could reflect also EU goals. Further guidance and sector specific rules could complement the due diligence duty, where necessary.
- ( ) Option 4 “Sector-specific approach”: The EU should continue focusing on adopting due diligence requirements for key sectors only.
- ( ) Option 5 "Thematic approach": The EU should focus on certain key themes only, such as for example slavery or child labour.
- ( ) None of the above, please specify

Question 15a: If you have chosen option 1, 2 or 3 in Question 15 and you are in favour of combining a horizontal approach with a theme or sector specific approach, please explain which horizontal approach should be combined with regulation of which theme or sector?

The legislation should apply to all businesses regardless of the sector they operate in, but specific sectors might require ad-hoc guidelines and legislations. This is the case, for example, of the extractive industries in conflict-affected and high risk-areas, or of economic activities that, because of their nature or geographical location, risk posing a significant risk to the environment or to protected natural areas.

Sectoral due diligence legislation is already in place in a few specific sectors, and specific sectorial needs might require in the future the adoption of further sectorial legislation. When further sectorial legislation is required, the EU Commission shall ensure that it meets at least the standards of the upcoming legislation.

Question 15b: Please provide explanations as regards your preferred option, including whether it would bring the necessary legal certainty and whether complementary guidance would also be necessary.

Option 3 is our preferred option as this would create legal certainty and a level playing field for companies as to the necessary processes to be put in place and impacts to be covered by the due diligence duty.

Human rights and the environment are deeply linked and interconnected. Human rights cannot be enjoyed

without a safe, clean and healthy environment, and sustainable environmental governance cannot exist without the establishment of and respect for human rights. It is therefore crucial that internationally recognised human rights are covered by the future legislation. But environmental damage can also occur without it also constituting a clear violation of human rights, or without entailing direct harm to human beings. It is important that the due diligence obligations also cover all potential or actual adverse impacts on the environment.

Question 15c: If you ticked options 2) or 3) in Question 15 please indicate which areas should be covered in a possible due diligence requirement (tick the box, multiple choice)

- [x] Human rights, including fundamental labour rights and working conditions (such as occupational health and safety, decent wages and working hours)
- [x] Interests of local communities, indigenous peoples' rights, and rights of vulnerable groups
- [x] Climate change mitigation
- [x] Natural capital, including biodiversity loss; land degradation; ecosystems degradation, air, soil and water pollution (including through disposal of chemicals); efficient use of resources and raw materials; hazardous substances and waste
- [x] Other, please specify

Other, please specify:

The material scope of the EU directive should cover all internationally recognised human rights, including workers' and trade union rights; social, health and environmental standards; as well as good governance international standards.

Interests of local communities should include the particular interests of those communities living in conflict-affected and high-risk areas, with particular attention to enhanced due diligence requirements (see question below).

Question 15d: If you ticked option 2) in Question 15 and with a view to creating legal certainty, clarity and ensuring a level playing field, what definitions regarding adverse impacts should be set at EU level?

Question 15e: If you ticked option 3) in Question 15, and with a view to creating legal certainty, clarity and ensuring a level playing field, what substantial requirements regarding human rights, social and environmental performance (e.g. prohibited conducts, requirement of achieving a certain performance/target by a

certain date for specific environmental issues, where relevant, etc.) should be set at EU level with respect to the issues mentioned in 15c?

In order to be effective, the upcoming legislation should be aligned with internationally recognised standards on human rights and the environment, including:
o the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights ,customary international law, International Humanitarian Law, international human rights instruments on the rights of persons belonging to particularly vulnerable groups or communities (including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities, the United Nations Declaration on the Rights of Indigenous Peoples, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities) and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work, and other rights recognised in a number of ILO Conventions, such as freedom of association, minimum age, occupational safety and health, living wages, indigenous and tribal peoples' free and informed consent (ILO Convention on indigenous and tribal peoples), and the rights recognised in the African Charter of Human and Peoples' Rights, the American Convention on Human Rights, the European Convention on Human Rights, the European Social Charter, the Charter of Fundamental Rights of the European Union, and national constitutions and laws recognising or implementing human rights.

Due diligence legislation should also consider the fact that human rights, environmental and governance risks do not equally impact men and women. Companies should be encouraged to integrate this aspect into their due diligence processes, as well as other factors of discrimination: many rights-holders face additional risks due to intersecting factors of discrimination based on their sex, ethnicity, race, caste, religion, disability, age, social status, migrant or refugee status, informal employment status, union involvement, exposure to conflict or violence, poverty, or other factors.
With regard to environmental due diligence, there is no comprehensive body of internationally recognised agreements that regulate the protection of the environment comprehensively. This is despite the fact that, in an increasingly interconnected economy and society, companies operate in various countries and jurisdictions, under different regulations or voluntary principles. Climate change is often not considered a risk when performing due diligence, resulting in climate change to be treated separately and ineffectively (although closely related to the environmental issues).
"Environmental impacts" should thus cover any violation of internationally recognised environmental standards including, but not be limited to, climate change, air, soil and water pollution, production of waste, deforestation, loss in biodiversity, and greenhouse emissions. At a bare minimum, environmental due diligence should be conducted against explicit criteria that should be based on the environmental objectives mentioned in article 9 of the Taxonomy Regulation.
In relation to conflict-affected areas and situations of occupation, the EU legislative proposal should require mandatory enhanced human rights due diligence for businesses operating or planning to operate.
In 2014, the UN Working Group on Business and Human Rights listed practical examples of what enhanced human rights due diligence comprises, which the EU legislative proposal should consider. For example, the corporation should seek advice from its home State, as well as credible international organizations and mechanisms, and ensure that its management and operational-level personnel have full understanding of the applicable international human and humanitarian law standards.
- A requirement to operate in line with the responsibilities under international humanitarian law and international human rights law on business enterprises, and other relevant laws, throughout the assessment process.
- A requirement not to pursue operations in situations in which due diligence cannot be conducted and/or

guarantee that there will not be complicity or contribution to violations that may amount to grave breaches of international law and internationally recognised crimes.
- Plan and allow for urgent and immediate preventive measures, divestment and disengagement policies, to avoid corporate involvement in and/or contribution to human rights violations in their activities and relationships.

Question 15f: If you ticked option 4) in question 15, which sectors do you think the EU should focus on?

Question 15g: If you ticked option 5) in question 15, which themes do you think the EU should focus on?

Question 16: How could companies'- in particular smaller ones'- burden be reduced with respect to due diligence? Please indicate the most effective options (tick the box, multiple choice possible)
This question is being asked in addition to question 48 of the Consultation on the Renewed Sustainable Finance Strategy, the answers to which the Commission is currently analysing.

- [ ] All SMEs[16] should be excluded
- [ ] SMEs should be excluded with some exceptions (e.g. most risky sectors or other)
- [ ] Micro and small sized enterprises (less than 50 people employed) should be excluded
- [ ] Micro-enterprises (less than 10 people employed) should be excluded
- [ ] SMEs should be subject to lighter requirements ("principles-based" or "minimum process and definitions" approaches as indicated in Question 15)
- [ ] SMEs should have lighter reporting requirements
- [ ] Capacity building support, including funding
- [ ] Detailed non-binding guidelines catering for the needs of SMEs in particular
- [ ] Toolbox/dedicated national helpdesk for companies to translate due diligence criteria into business practices
- [ ] Other option, please specify
- [x] None of these options should be pursued

Please explain your choice, if necessary

Companies, and especially SMEs, need access to information and support in order to implement EU mandatory due diligence legislation. We recommend a One-Stop-Shop to be put in place per EU Member State actively reaching out to companies in its territory to inform them about the new legislation and help for its implementation. It could also share best practices of companies who are already rightly implementing the legislation.

Question 17: In your view, should the due diligence rules apply also to certain third-country companies which are not established in the EU but carry out (certain) activities in the EU?

- (●) Yes
- ( ) No
- ( ) I do not know

Question 17a: What link should be required to make these companies subject to those obligations and how (e.g. what activities should be in the EU, could it be linked to certain turnover generated in the EU, other)? Please specify.

The EU already imposes obligations on companies that are not based in the EU. This is the case in Regulation 2010/990, which forbids the sale on the common market of goods made with materials produced through illegal logging and deforestation. Article 2(b) of such legislation recites:

Article 2(b): "'placing on the market' means the supply by any means, irrespective of the selling technique used, of timber or timber products 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. It also includes the supply by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts. The supply on the internal market of timber products derived from timber or timber products already placed on the internal market shall not constitute 'placing on the market'."

A similar approach should be used, where companies placing goods or services in the EU market are subjected to the due diligence obligations provided for in the legislation. This will ensure a level playing field for all companies operating in the EU market. The legislation should also apply to companies who receive funding for their activities by European institutions, including the European Commission and the European Investment Banks.

Question 17b: Please also explain what kind of obligations could be imposed on these companies and how they would be enforced.

These companies should be subjected to the same due diligence obligations as companies based in the EU, as long as they are offering goods or services in the territory of the Union. This should include extending the scope of their due diligence to all business relations. This means that they should be obliged to map their value chain, identify, assess, prevent cease and mitigate risks related to human rights and the environment throughout their supply chain.

Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain is another strong precedent for extra-territorial obligations for companies based outside of the EU. It shows it is possible to impose and enforce obligations irrespective of whether a company is established inside or outside of the single market.

Enforcement should be ensured Member States' competent authorities aptly defined by the legislation.

Question 18: Should the EU due diligence duty be accompanied by other measures to foster more level playing field between EU and third country companies?

- Yes
- No
- I do not know

Please explain:

To ensure a level playing field, the European Commission should have an active and constructive mandate in the negotiations for a UN binding instrument on Business and Human Rights. Only binding international law can ensure that the legal void allowing for corporate human rights abuse across borders is closed, and companies see human rights due diligence and the provision of remedy for harm caused as common-sense principles that should be integral part of their corporate strategy and behaviour.

We also strongly suggest amending the Union Customs Code and the Trade Secret Directive so that customs data and supply chain information are not considered confidential and should be publicly disclosed and amend customs-related regulations to ensure that all companies that import goods into the EU disclose to EU customs authorities' relevant information, including the name and address of the manufacturer.

It should be ensured that EU development policy aims to strengthen capacities to establish and effectively implement due diligence requirements, including through donor funding for producer governments, and to NGOs, trade unions and other groups to use due diligence legislation to hold companies to account, and to develop grassroots and worker-driven models.

We also recommend to enhance the human rights protection, monitoring and enforcement, in free trade agreements (FTAs) and investment protection agreements (IPAs) having specific regard to State obligations to protect human rights including against irresponsible conduct of businesses, tools to ensure the investors respect human rights, enforcement mechanisms and access to remedy.

FTAs should contribute to ensure that effective due diligence policies are implemented by businesses and that comparable legislation on due diligence and access to remedy is introduced in third countries.

A comprehensive chapter on human rights should be inserted in Trade and Sustainable Development (TSD) chapters including clauses that reaffirm the obligations of States parties to protect human rights, as part of a General Exception Clause, in accordance with international law and the EU Lisbon Treaty, and this including by regulating businesses and by providing effective access to remedy and justice.

The provisions for mandatory EU due diligence should also be overriding free trade agreements and other stipulations between the EU and third parties in order to ensure that no disadvantages are created for EU-

based companies. The stipulation of any new trade agreements should clearly include reference to the legislation. The EU Commission should use its political dialogue with third countries to foster the adoption of similar measures to prevent and remediate human rights abuse and environmental damage.

Question 19: Enforcement of the due diligence duty

Question 19a: If a mandatory due diligence duty is to be introduced, it should be accompanied by an enforcement mechanism to make it effective. In your view, which of the following mechanisms would be the most appropriate one(s) to enforce the possible obligation (tick the box, multiple choice)?

- [x] Judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations
- [x] Supervision by competent national authorities based on complaints (and/or reporting, where relevant) about non-compliance with setting up and implementing due diligence measures, etc. with effective sanctions (such as for example fines)
- [x] Supervision by competent national authorities (option 2) with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU
- [ ] Other, please specify

Please provide explanation:

Due diligence legislation should introduce a threefold enforcement regime:

Legal liability at least for human rights and environmental harms that a business enterprise, or any company that they control or have the ability to control, has caused or contributed to. ‘Control’ should be determined according to the factual circumstances. It may also result through the exercise of power in a business relationship. It may include a situation of economic dependence. Equally, grounds for liability must be established on the basis of failure to carry out adequate due diligence.

Judicial enforcement of due diligence standards and adjudication following allegations of harm is essential for holding companies accountable and ensuring that victims have access to an effective remedy for these harms. Due diligence legislation should give effect to the internationally recognised right to effective remedy. To ensure that victims have meaningful access to remedy, the burden of proof should be reversed in proceedings against business enterprises. The limitation period for bringing legal actions must also be adapted to be reasonable and sufficient, taking into account the particularities of transnational litigation.

In addition to civil liability and accompanying access to remedy, the legislation should foresee administrative sanctions, such as fines and the temporary exclusion from public procurement and external trade promotion, whenever a company fails to adequately implement human rights and environmental due diligence as required under the legislation.

As a complement to judicial enforcement mechanism, competent national authorities (CAs) should be established in Member States. CAs should be empowered to perform a dual function of monitoring disclosure and DD performance, and initiating investigations (both on their own initiative and on the basis of complaints by third parties) where there is reason to believe that a company has breached its DD obligations. Breaches should give rise to administrative liability and CAs should be empowered to impose proportionate and dissuasive sanctions in such cases (infringements shall be subject to administrative fines at least up to 4% of the total worldwide annual turnover of the preceding financial year, as provided for data protection infringements in the GDPR). However, administrative liability, while a necessary complement, in no way substitutes for civil and criminal liability mechanisms.

CAs should be independent from government ministries, particularly those that promote business interests in order to ensure their impartiality and prevent conflicts of interest. CAs must also be adequately resourced through financial support and staff with appropriate training and expertise.

The legislation should also establish an EU-level body with monitoring, advisory, capacity-building and standard-setting functions. This body should monitor CA performance to ensure consistent, robust practices across Member States. It should also support the greater harmonisation of approaches, including through the development of standards and guidance for CAs to help them in their evaluation and investigation tasks, and of guidance for companies to conduct due diligence.

Any monitoring bodies established - judicial and non-judicial - should have clear mechanisms for stakeholders' involvement.

Finally, to safeguard opportunities for access to remedy for victims, any new enforcement and liability measures should be introduced without prejudice to other liability regimes which impose stricter or alternative grounds of liability. This is to ensure that victims of corporate abuses have access to courts - in their own country and in the country where the parent or lead company is based or operates - and the rules of the (court) game must be made fairer for victims. Any upcoming legislation proposed by the EU Commission must require companies to disclose the names, locations, and other important information of their global subsidiaries, suppliers and business partners. Global supply chain transparency directly improves victims' ability to access remedy. The legislation must ensure that trade unions and NGOs can bring collective actions on behalf of affected people.

The important power imbalance that often exists between perpetrators and victims in cases of corporate abuse must also be addressed.

Question 19b: In case you have experience with cases or Court proceedings in which the liability of a European company was at stake with respect to human rights or environmental harm caused by its subsidiary or supply chain partner located in a third country, did you encounter or do you have information about difficulties to get access to remedy that have arisen?

- ○ Yes
- ◉ No

In case you answered yes, please indicate what type of difficulties you have encountered or have information about:

If you encountered difficulties, how and in which context do you consider they could (should) be addressed?

Section IV: Other elements of sustainable corporate governance

Question 20: Stakeholder engagement

Better involvement of stakeholders (such as for example employees, civil society organisations representing the interests of the environment, affected people or communities) in defining how stakeholder interests and sustainability are included into the corporate strategy and in the implementation of the company's due diligence processes could contribute to boards and companies fulfilling these duties more effectively.

Question 20a: Do you believe that the EU should require directors to establish and apply mechanisms or, where they already exist for employees for example, use existing information and consultation channels for engaging with stakeholders in this area?

- (●) I strongly agree
- ( ) I agree to some extent
- ( ) I disagree to some extent
- ( ) I strongly disagree
- ( ) I do not know
- ( ) I do not take position

Please explain.

Directors should be responsible for directing employees to engage stakeholders on impact relevant to their activities. This should be set out in the overall corporate strategy, with particular regards to the establishment and implementation of due diligence procedures. The UNGPs make it clear that meaningful stakeholder engagement is an essential part of the due diligence process.

Workers' representatives should be naturally involved in consultations with regard to human rights and environmental due diligence, but consultation should be carried out with all possible stakeholders affected by the company's activity. Stakeholder consultation should be the object of constant monitoring and evaluation as part and parcel of corporate due diligence strategy, with the ultimate responsibility for its implementation resting with the directors.

Stakeholder engagement is critical for ensuring effective due diligence. Companies should engage affected stakeholders in the implementation of the due diligence. Specifically, companies should be required to

consult affected stakeholders for the purpose of identifying and assessing human rights and environmental impacts, determining appropriate prevention, mitigation and remediation actions and evaluating their effectiveness. Effective identification of and engagement with stakeholders better prepares businesses to avoid conflicts with local communities, and provide effective remedy for harms, when required. To reflect the ongoing and continuous nature of corporate due diligence, there should be multiple opportunities for engagement on an ongoing basis, especially with key stakeholder groups.

Gender-sensitive assessments should be conducted with a meaningful participation of women from all affected communities, as well as relevant women's organisations and experts, and take into account, inter alia, impact of operations on the roles of men and women and discrimination based on sex, women's health, including prenatal care and maternal health, gender-based violence and sexual violence, division of labour on family and community levels, and access to and control of social and economic resources. In such assessment, intersecting forms of discrimination should be addressed. This information must be compiled in cooperation with those who may be impacted, and it must disaggregate information on impacts to show how women are affected.

Where indigenous peoples and communities may be affected, businesses must be required to adhere to international standards on principles of free, prior and informed consent (FPIC). FPIC requires that indigenous peoples and communities are given the opportunity to duly consider and approve or reject projects before they begin. They should also be required to publish their internal FPIC policy.

Question 20b: If you agree, which stakeholders should be represented? Please explain.

All stakeholders affected, or potentially affected, by the activities of a company should be consulted in the establishment and implementation of due diligence. This should involve proxy actors, such as civil society organisations, including NGOs and faith-based organisations, as well as Churches and religious communities or associations, representing the concerns of affected communities, or acting for the protection of natural environments.

Question 20c: What are best practices for such mechanisms today? Which mechanisms should in your view be promoted at EU level? (tick the box, multiple choice)

	Is best practice	Should be promoted at EU level
Advisory body	○	○
Stakeholder general meeting	○	○
Complaint mechanism as part of due diligence	○	○
Other, please specify	◉	○

Other, please specify:

Employees should be represented on the Board of directors of large companies directly, and partake in all strategic decisions. Furthermore, employees' representatives should be engaged in the process of development and monitoring of the company's sustainability strategy, including the due diligence process.

To this end, a company's formal non-financial reporting should include a statement from the employees' representatives on their engagement, and their views on the quality and implementation of the strategy, including the targets. This engagement is separate from the engagement of employees as affected stakeholders.

Engagement of affected stakeholders in the design and evaluation of due diligence remedial (rather than complaint) mechanisms is considered as good practice by international standards developed to support implementation of the corporate responsibility to respect human rights outlined in the UN Guiding Principles on Business and Human Rights.

In addition, affected stakeholders should be engaged at all stages of the due diligence process, as explained in the answers to the questions above. This concerns the identification and assessment of human rights risks, as well as determination of the appropriate actions and the monitoring and evaluation of their effectiveness. The remedy/complaint mechanism may be one of the appropriate actions, depending on the circumstances. Stakeholder advisory bodies or general meetings can be a good practice, in particular, operational contexts, but not necessarily in all situations.

The due diligence process should be used to identify risks in stakeholder engagement for certain groups, and identify additional measures required to mitigate these risks. Targeted meetings with specific groups of stakeholders may be appropriate to ensure meaningful engagement with those who are differently or disproportionately affected, or who may face barriers to involvement in other processes, for example women, people with disabilities, lower-caste communities, minorities and other groups potentially marginalised within the wider population. Where on-the-ground engagement is credibly unfeasible, for example due to severe limitations on freedoms and security risks, companies should ensure that the views of local stakeholders are meaningfully captured through credible representatives and consultations with experts. To be meaningful, engagement measures should be carried out in a manner appropriate to the context, for example by taking account of language, literacy levels, channels for communication and direct engagement with stakeholders.

Question 21: Remuneration of directors

Current executive remuneration schemes, in particular share-based remuneration and variable performance criteria, promote focus on short-term financial value maximisation [17] (Study on directors' duties and sustainable corporate governance).

Please rank the following options in terms of their effectiveness to contribute to countering remuneration incentivising short-term focus in your view.

This question is being asked in addition to questions 40 and 41 of the Consultation on the Renewed Sustainable Finance Strategy the answers to which the Commission is currently analysing.
Ranking 1-7 (1: least efficient, 7: most efficient)

Restricting executive directors' ability to sell the shares they receive as pay for a certain period (e.g. requiring shares to be held for a certain period after they were granted, after a share buy-back by the company)	

Regulating the maximum percentage of share-based remuneration in the total remuneration of directors	
Regulating or limiting possible types of variable remuneration of directors (e. g. only shares but not share options)	
Making compulsory the inclusion of sustainability metrics linked, for example, to the company's sustainability targets or performance in the variable remuneration	
Mandatory proportion of variable remuneration linked to non-financial performance criteria	
Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration	
Taking into account workforce remuneration and related policies when setting director remuneration	
Other option, please specify	
	

None of these options should be pursued, please explain	

Please explain:

Question 22: Enhancing sustainability expertise in the board

Current level of expertise of boards of directors does not fully support a shift towards sustainability, so action to enhance directors' competence in this area could be envisaged [18] (Study on directors' duties and sustainable corporate governance).
Please indicate which of these options are in your view effective to achieve this objective (tick the box, multiple choice).

- [x] Requirement for companies to consider environmental, social and/or human rights expertise in the directors' nomination and selection process
- [x] Requirement for companies to have a certain number/percentage of directors with relevant environmental, social and/or human rights expertise
- [ ] Requirement for companies to have at least one director with relevant environmental, social and/or human rights expertise
- [x] Requirement for the board to regularly assess its level of expertise on environmental, social and/or human rights matters and take appropriate follow-up, including regular trainings
- [ ] Other option, please specify
- [ ] None of these are effective options

Please explain:

Question 23: Share buybacks

Corporate pay-outs to shareholders (in the form of both dividends and share buybacks) compared to the company's net income have increased from 20 to 60 % in the last 30 years in listed companies as an indicator of corporate short-termism. This arguably reduces the company's resources to make longer-term investments

including into new technologies, resilience, sustainable business models and supply chains[19]. (A share buyback means that the company buys back its own shares, either directly from the open market or by offering shareholders the option to sell their shares to the company at a fixed price, as a result of which the number of outstanding shares is reduced, making each share worth a greater percentage of the company, thereby increasing both the price of the shares and the earnings per share.) EU law regulates the use of share-buybacks [Regulation 596/2014 on market abuse and Directive 77/91, second company law Directive].
In your view, should the EU take further action in this area?

- (●) I strongly agree
- ( ) I agree to some extent
- ( ) I disagree to some extent
- ( ) I strongly disagree
- ( ) I do not know
- ( ) I do not take position

Question 23a: If you agree, what measure could be taken?

As already mentioned, a narrow focus on shareholder's interest is likely to lead to de-prioritising environmental and human rights impacts, with important consequences for people and the planet.

Rresearch from the TUC and High Pay Centre in the UK reveals the extent to which companies protect and increase payments to shareholders, even when they are struggling with their finances. Shareholder buyback are a way for companies to ensure returns without risk, only exacerbating the problems of short-termism. For example, in 2014-2018: Across the FTSE 100 as a whole, returns to shareholders increased by 56% (despite net incomes falling by 3% over the period). This resulted from a 45% increase in dividends, while share buybacks more than doubled.

Question 24: Do you consider that any other measure should be taken at EU level to foster more sustainable corporate governance?
If so, please specify:

Employees' representatives and long-term committed shareholders should be given stronger rights in the decisions concerning the takeover bids.

Employees' representatives in large public companies should be given voting rights at the company's AGM.

Parity between women and men on boards needs to be mandated: efforts to reform corporate governance by the European Commission cannot be dissociated from the necessity to put an end to this long-standing imbalance. Quotas introduced in France in 2011 have proven to be effective.

Trade options should be examined to ban the import of goods produced using forced or child labour and other severe human rights abuses in scenarios where such measures are considered to be in the interest of

the affected workers and enable remediation for harm. Such trade options should be viewed as complementary to corporate due diligence and should not replace, or distract from, the responsibility over the buyers and importers of products to conduct due diligence to address risks and impacts - as would be imposed by the introduction of mandatory human rights and environmental due diligence legislation - working closely with suppliers to do so in contexts where this is credible and feasible, including to examine the impact of buyers' own purchasing practices on labour violations.

It should be ensured that EU development policy complements the positive impact of corporate due diligence, including considering donor funding for producer governments to encourage improved implementation and respect of human rights, environmental and good governance standards, and to NGOs, trade unions and other groups to use due diligence legislation to hold companies to account, including the development of grassroots and worker-driven models.

Corporate due diligence requirements should be included in EU public procurement, funding and credit systems. Companies failing to respect their due diligence obligations should be excluded from accessing such schemes

Section V: Impacts of possible measures

Question 25: Impact of the spelling out of the content of directors' duty of care and of the due diligence duty on the company

Please estimate the impacts of a possible spelling out of the content of directors' duty of care as well as a due diligence duty compared to the current situation. In your understanding and own assessment, to what extent will the impacts/effects increase on a scale from 0-10? In addition, please quantify/estimate in quantitative terms (ideally as percentage of annual revenues) the increase of costs and benefits, if possible, in particular if your company already complies with such possible requirements.

Table

	Non-binding guidance. Rating 0-10	Introduction of these duties in binding law, cost and benefits linked to setting up /improving external impacts' identification and mitigation processes Rating 0 (lowest impact)-10 (highest impact) and quantitative data	Introduction of these duties in binding law, annual cost linked to the fulfilment of possible requirements aligned with science based targets (such as for example climate neutrality by 2050, net zero biodiversity loss, etc.) and possible reorganisation of supply chains Rating 0 (lowest impact)-10 (highest impact) and quantitative data
Administrative costs including costs related to new staff required to deal with new obligations			
Litigation costs			
Other costs including potential indirect costs linked to higher prices in the supply chain, costs liked to drawbacks as explained in question 3, other than administrative and litigation costs, etc. Please specify.			
Better performance stemming from increased employee loyalty, better employee performance, resource efficiency			

Competitiveness advantages stemming from new customers, customer loyalty, sustainable technologies or other opportunities			
Better risk management and resilience			
Innovation and improved productivity			
Better environmental and social performance and more reliable reporting attracting investors			
Other impact, please specify			

Please explain:

Question 26: Estimation of impacts on stakeholders and the environment
A clarified duty of care and the due diligence duty would be expected to have positive impacts on stakeholders and the environment, including in the supply chain. According to your own understanding and assessment, if your company complies with such requirements or conducts due diligence already, please quantify / estimate in quantitative terms the positive or negative impact annually since the introduction of the policy, by using examples such as:
- Improvements on health and safety of workers in the supply chain, such as reduction of the number of accidents at work, other improvement on working conditions, better wages, eradicating child labour, etc.
- Benefits for the environment through more efficient use of resources, recycling of waste, reduction in greenhouse gas emissions, reduced pollution, reduction in the use of hazardous material, etc.
- Improvements in the respect of human rights, including those of local communities along the supply chain
- Positive/negative impact on consumers
- Positive/negative impact on trade
- Positive/negative impact on the economy (EU/third country).

Incorporating a mandatory duty of care and due diligence duty would have considerable potential positive effects. These include:

Reductions in harassment, threatening and killing of human rights, land and environmental defenders by holding companies accountable for the harms they caused or contributed to or are linked to, thus fighting impunity at local and international level.

Internationally-aligned mandatory due diligence would also contribute to tackling multiple and intersecting forms of discrimination, through measures including meaningful consultations with affected women and relevant experts, the collection of sex-disaggregated data, the protection of women human rights defenders, and addressing the particular barriers that women face in accessing remedy whilst providing gender-responsive reparations.

Long-term and trust relationships should be created through the use of meaningful stakeholder engagement processes and specific risk assessment and response methodologies. These should both form part of due diligence processes.

Safer and more decent working conditions for supply chain workers, including those in non-EU countries, should also comprise health and safety, living wages and decent terms of employment. In particular, due diligence would require companies to respond to sector specific risks, such as heavy use of toxic chemicals or dangerous working sites and risks facing vulnerable groups, such as migrant workers, lower-caste workers, homeworkers, temporary workers, illiterate workers, children and women.

This could lead to reductions in incidents of labour exploitation, worker-paid recruitment fees, debt bondage, human trafficking, other forms of forced labour, and child labour. Targeted interventions as part of due diligence to increase capacity and awareness along supply chains will improve respect for international human and labour rights standards and address root causes in affected communities (including poverty, sex and caste-discrimination and lack of education). Further, the due diligence process will drive companies to identify and address the impact of their own business models and practices - such as purchasing practices, short-lead times, unregulated subcontracting, and restrictions on freedom of association- in driving or enable negative impacts on human rights and the environment.

Furthermore, through appropriate implementation of free prior and informed consent principles, reductions in land grabs and violation of the rights of local communities in host countries, including indigenous peoples, forest and coastal communities, could be achieved. Improvements in environmental impact of business operations could be attained, including through the reduction of deforestation, use of pollutants and emission of greenhouse gases. This will follow assessments and action on the company's environmental and climate-related risks and impacts. Optimisation should include transitions to cleaner forms of energy, more sustainable materials, circular economy models and responsible waste disposal.

There is evidence of targeted action by businesses on each of these issues leading to some improvement in living and working conditions on the ground. Adherence to proposed due diligence requirements would have strong positive impacts on a range of stakeholders. These include workers in business operations and value chains, local communities in operating countries and human rights, land and environmental defenders. Such positive impacts would drive progress towards the achievement of the Sustainable Development Goals, including SDG 8.7 on Decent Work - progress on which has been severely threatened due to the impacts of Covid-19. It would also have a strong positive effect on the environment and climate at a time when urgent action is needed from all actors, including companies. The EU Commission is therefore urged to implement a strong due diligence duty to apply to companies across all sectors, in respect of negative human rights and environmental impacts.

Contact

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