

Consultation for an Initiative on Sustainable Corporate Governance – Citizen tool response template

Section I: Need and objectives for EU intervention on 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?

X 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:

- Companies and their directors should be required to take potential and actual adverse human rights impacts, including environmental harms and climate change into account in corporate decisions beyond what is currently required by EU law.
- The abuse of human rights in the pursuit of profit by powerful corporations is a critical injustice of the 21st century, one with a decades if not centuries old history. Globalization has created governance gaps that make it impossible to ensure respect to human rights and the environment in the context of corporate activities, by relying solely on the capacity of local societies and public authorities. This is evident in the context of widespread abuse of human rights and environmental harm in the global value chains of European companies.
- The Irish Coalition on Business and Human Rights are deeply concerned about the actions of irresponsible businesses that are having devastating impacts across the world. These include violent evictions and displacement of communities from their land; environmental degradation and pollution causing the destruction of livelihoods; and the exploitation and sexual harassment of low paid workers. Projects carried out in the name of economic development, including by extractive industries and agribusiness, have resulted in high levels of human rights abuses, violence and environmental damage. Such projects often marginalize, impoverish and fragment communities and families.
- From 2015 to 2019, the Business & Human Rights Resource Centre has documented more than 2,000 attacks on HRDs raising concerns about business-related human rights abuses - from frivolous lawsuits, arbitrary arrests and detentions to death threats, beatings and even killings. There were [572 attacks in 2019](#) alone.

- Women are less likely to be included in decisions about corporate developments and experience additional barriers in seeking access to effective remedies for business-related human rights abuses. There is a major gap in access to remedy for affected communities that needs to be addressed, along with prevention of abuses in the first instance.
- For too long corporations have operated without adequate accountability with respect to human rights and the environment.
- Despite growing awareness of the elements of responsible business conduct, companies have not fundamentally changed the way they do business. As documented by the endorsement of the UN Guiding Principles (UNGPs), there is no disagreement about whether companies should be responsible for addressing their global impacts on people and the planet. The question that needs to be resolved is rather how such responsibility should be reflected in law.
- On the other hand, the question whether companies should maximise their social and environmental performance should also be considered. The impact of sustainability matters and stakeholders' interests on the company is difficult to capture in short-term metrics, which complicates their integration in governance processes and engagements.
- Voluntary implementation by states and by business is insufficient, and there is no general international legal regime concerning corporate liability for human rights abuses, leaving protection and prevention unaddressed in practice. We believe the EU should take responsibility to ensure a meaningful change in business conduct with ambitious legislation. The EU legal framework should clarify the responsibilities of directors to oversee and ensure the quality of the implementation of the due diligence and materiality determination processes, to adopt, disclose and ensure implementation of a forward-looking sustainability strategy, and its effective implementation.
- The EU legal framework should promote **sustainable development and social dialogue**. 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.
- Significant changes to the dominant economic and business model, based on infinite growth and prioritizing short-term profits and shareholder value, are urgently needed. Companies need to elevate and protect the interests of all stakeholders to develop a more balanced approach where the interests of key groups - including employees, supply chain workers, affected communities, indigenous peoples and human rights defenders including environmental and land defenders - are meaningfully taken into account.

Max. 5,000 characters.

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:

To achieve respect for internationally recognized human rights and environmental standards, and counteract the existing lack of accountability and remedy, an EU legal framework including a legal obligation to do so is required.

Gaps in the current framework enable human rights abuses and environmental harm to occur and recur. Voluntary implementation has proven inadequate to effect change. Maintaining the *status quo* fails rights holders, workers, society, and business, yet best serves entities content to continue to avoid accountability.

Voluntary measures on human rights, social and environmental due diligence have led to some progress and show that it is possible. However, they remain partial and only implemented by willing companies. This cannot lead to a significant change in the way companies manage their impacts and provide remedy to victims. It cannot replace companies' own responsibilities.

After a decade, it is evident that voluntary implementation by states and businesses has been neither widespread nor effective in delivering impact, even amongst large, sophisticated companies established and operating within the EU.

- In the [EC study on due diligence requirements through the supply chain](#), only a minority of business respondents stated they conducted some form of due diligence.
- Studies commissioned by the [German](#) and Dutch governments, and by the [Danish Institute for Human Rights](#) also concluded there is low uptake of due diligence processes on a voluntary basis.
- Assessments and benchmarks of the implementation of due diligence by companies point consistently to the fact that only 20% of companies (typically, large companies required to conduct limited reporting under to the EU NFRD) claim to carry out due diligence. The number of companies that meet basic quality criteria for due diligence is even lower (e.g. only 3.6% companies report any information on the effectiveness of policies adopted to address their identified human rights risk) ([Alliance for Corporate Transparency](#)).
- In 2019, 49% of the 200 companies assessed scored 0 against every human right due diligence indicator ([Corporate Human Rights Benchmark](#)). Analysis of 60 of the largest firms operating in Ireland found 34% scored zero against every due diligence indicator, with 72% failing to disclose whether they assess salient risks and impacts ([Trinity College Dublin](#)).
- In the absence of enforcement mechanisms, even the few companies that undertake adequate due diligence have no obligation to take sufficient steps to address the problems identified.

- A comprehensive mandatory framework placing an obligation to respect internationally recognized human rights and environmental standards is required. Experience with single issue legislation & ‘reporting’ style measures, e.g. UK Modern Slavery Act, indicate significant issues in their operation ([NYU Stern](#)). Enforcement may relate only to compliance with reporting itself. Coverage from existing reporting/disclosure style initiatives is fragmented, with regulation varying in application to rights such as modern slavery or child labour, sectors, or certain sized companies.
- A growing number of Member States are making progress in developing legally binding corporate human rights due diligence frameworks based on international standards.
- EU-wide legislation would respond to increasing demands for corporate accountability from citizens, consumers, shareholders, investors, and civil society.
- EU-wide legislation applicable to all business enterprises domiciled or based in the EU, or active on the EU market, will help prevent and mitigate human rights abuses and environmental harms while ensuring a level playing field and a coherent legal framework within the EU.
- A legal framework for human rights and environmental due diligence must be established at the EU level to ensure a common framework applies to all business enterprises domiciled or based in the EU, or active on the EU market.
- Action at EU level is necessary to ensure the contribution of business to the Treaty objectives of sustainability (Article 3(5) and Article 21(2)(d) & (f) TEU) and to promote a high level of environmental protection. The principles of environmental integration (Article 11 TFEU) and of consistency (Article 7 TFEU) also reinforce the necessity of EU action.
- The mandatory EU legal framework should establish a robust, enforceable due diligence standard for businesses to prevent and address their negative human rights and environmental impacts in their operations and global value chains. This framework would provide needed legal certainty and legal predictability for rights holders, workers, investors, and business.
- To achieve these aims, it should establish legal accountability and access to remedy for the harms to people and the planet.
- **The EU should lead** in establishing mandatory rights respect in order to drive positive systemic changes in responsible business conduct both in the EU and around the world.

Max. 5,000 characters.

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)?

☒ 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.

☒ Contribute effectively to a more sustainable development, including in non-EU countries.

☒ Levelling the playing field, avoiding that some companies freeride on the efforts of others.

☒ Increasing legal certainty about how companies should tackle their impacts, including in their value chain.

☒ A non-negotiable standard would help companies increase their leverage in the value chain.

☒ 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.

☐ Other

Other, please specify:

- In addition to the above, a key benefit of an EU due diligence duty would be **to enable and support remedy** for victims of human rights abuses or environmental harm in and outside the EU.
- An EU due diligence duty should require active engagement in remediation of adverse impacts where business enterprises cause or contribute to harm by way of actions or omissions. If harm is prevented, rights holders would not be forced to engage hugely challenging litigation in attempts to access remedy. A real risk of denial of justice for those adversely impacted has been stressed in civil litigation in courts within the EU.
- Due diligence legislation should allow victims, in and outside the EU, to hold enterprises civilly liable for harm before EU courts. As it stands, despite a multitude of barriers rendering civil litigation excessively difficult, it is increasing. While cases have rarely resulted in compensation or remediation for those who have been adversely affected, settlements are occurring when litigation is taken (*Vedanta*).
- A real risk of total denial of justice for those adversely impacted has been stressed in civil litigation in courts within the EU. Due diligence legislation should address the barriers of jurisdiction and applicable law specifically for business-related adverse human rights claims.
- Such legal liability provisions should be coupled with effective enforcement mechanisms to create a much needed and important opportunity for victims and affected communities to realise their right to remedy, address the existing lack of accountability, and ensure companies can be appropriately held to account.
- Consultation (including where applicable, consent) and disclosure provisions within an EU Due Diligence duty will **enhance transparency and promote social dialogue**.
- It is an important opportunity to ensure respect for indigenous peoples' rights, by ensuring that engagement with indigenous peoples is 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.
- Support for workers' and trade union rights, including women workers and their representatives, for example Freedom of Association and Collective Bargaining
- Gender responsive due diligence to counteract well documented impacts upon women and the intersectional nature of discrimination faced by women. It provides an opportunity for gender transformative justice, including by ensuring that due diligence processes are informed by gender experts and the direct experiences of women, the use of gender-disaggregated data, stakeholder consultations with women, gaining the consent of women, and the provision of gender responsive reparations.

- Early alerts and protection for human rights defenders. Early alerts and prevent impacts upon rights, lands, cultures, and resources of local and indigenous communities.
- Prevent revictimization of those adversely affected.
- Promote justice, including intergenerational justice regarding the effects of environmental harms and climate change.
- Widespread problems indicate reporting / disclosure style legislation is not effective, whereas legislation which is 'stringent', including defined standards and sanctions appears to underpin changes in corporate practice.
- Other potential benefits of an EU due diligence duty may include:
 - the EU setting a strong example to other markets and regulators;
 - improved resilience of companies and economies in the face of crises, particularly, in the face of supply chain shocks ([the OECD has stressed](#) the need for improved supply chain due diligence as a response to the COVID-19 crisis, which would contribute to "a faster and stronger recovery while making the economy more resilient to future crises");
 - first-mover advantage for EU companies, to start adapting to due diligence requirements that are beginning to be discussed in other parts of the world;
 - benefits to business in the EU in reputation, attracting talent, investors, and capital (<https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/why-esg-is-here-to-stay>) (OECD study "Quantifying the Costs, Benefits and Risks of Due Diligence for Responsible Business Conduct" (June 2016));
 - alleviation of downside risks to business of adverse human rights, social and environmental impacts and risks related to human rights violations;
 - alleviation of pressure on governments in production countries to deregulate in order to attract foreign companies and investors;
 - increased power and leverage of companies and stakeholders throughout the value chain;
 - allowing shareholders, investors and business partners to have confidence in due diligence implementation, and reflect it in their economic decisions;
 - improved implementation of the European Green Deal, which, without due diligence legislation, may incentivise outsourcing and externalising adverse impacts to third countries.
- **Max. 5,000 characters.**

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:

Well-designed legislation, with requirements in line with the UNGPs and complementary approaches, could successfully mitigate any risks that arise.

- Regarding **the alleged risk of penalisation of smaller companies with fewer resources**, as stressed by international standards, **the means through which SMEs are expected to meet their obligations would be proportional to risk, but also among other factors, to their size.** For SMEs, the processes expected would be according to capacity (Commentary, UNGP 14)
- An [ILO survey from 2017](#) found that 39% of suppliers accept a price below production costs. The legislation should explicitly mention that ensuring adequate purchasing practices and sharing costs of compliance should be part of the due diligence process of companies. Complementary action is required to address power imbalances and ensure a more equitable distribution of costs and benefits in global value chains, including by reforming corporate governance and ensuring transparency (see [FTAO report on Making Human Rights Due Diligence Frameworks Work for Small Farmers and Workers](#), 2020)
- Studies of the compliance costs of due diligence regimes do not identify a disproportionate economic burden, including for SMEs. In fact, the cost of compliance is typically related to the size of the enterprise. The [EC study on due diligence requirements through the supply chain](#) shows costs appear to be relatively low compared to the company's revenue. The additional recurrent company-level costs, as a percentage of companies' revenues, amount to less than 0.14% for SMEs. Smaller companies would therefore not be penalised, once the legal framework follows established international standards. However, such risk would materialise if the EU framework instead introduces a rigid, procedural obligation based on a failure to appreciate proportionality and risk, or with the intention to shield companies from any liability.
- Regarding **the alleged risk of responsibility for damages that the EU company cannot control**, under well-established legal principles governing civil liability, generally, liability would only apply if a sufficient link between the harm and the company's actions or omissions could be established. Therefore, **liability would normally be determined in accordance with the level of control or influence of the company over the relevant subsidiary or business partner.** Moreover, 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 that they took all due care and exercised due diligence to avoid the harm, or that the harm would have occurred even if all due care had been taken.

- Concerning **the alleged risk of decreased attention to core corporate activities with detrimental effects, available evidence indicates otherwise**. The OECD study “Quantifying the Costs, Benefits and Risks of Due Diligence for Responsible Business Conduct” (June 2016), which analysed compliance costs of due diligence mechanisms and the economic benefits for businesses of responsible business conduct, found comprehensive due diligence correlates to **many positive key findings including**: outperformance in stock price, increased shareholder returns, reduced volatility, improved investor satisfaction and increased ability to attract and retain talent, recruitment and training costs, and improved reputation.
- Regarding **the alleged risk of disengagement** as potentially detrimental for local economies:
 - Under international standards, disengagement should only be considered once all other steps are exhausted or leverage is insufficient, per UNGP 19 and OECD Due Diligence Guidance (3.2.h). **A hands-off approach where a company simply disengages without taking appropriate measures would not be consistent with these standards** (SOMO on responsible disengagement [2016](#), [2020](#)). Due diligence legislation would therefore prevent irresponsible disengagement by compelling companies to evaluate all possible alternatives, consider the potential adverse impacts, and holding them liable for irresponsible disengagement.
 - per the [EC study on due diligence through the supply chain](#), in practice **it is unlikely that companies would restructure their global business model in such a significant way to withdraw from production countries**. Similarly, the literature shows companies rarely terminate business relationships based exclusively on social or human rights-related concerns, apart exceptions such as contexts with state-imposed forced labour.
- A potential drawback (if not explicitly addressed) is the risk that, if poorly implemented, **parent/ lead companies pass the compliance costs to suppliers and subcontractors** and ultimately to the most vulnerable parts of value chains without adapting their purchasing practices.
- Third countries not subject to a similar duty are nonetheless present in the value chains of companies within the EU or place products or services within the EU.

Max. 5,000 characters.

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

[OPTIONAL] Question 5. Which of the following interests do you see as relevant for the longterm success and resilience of the company?

	Relevant	Not relevant	I do not know/I do not take position
the interests of shareholders	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
the interests of employees	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
the interests of employees in the company’s supply chain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
the interests of customers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

the interests of persons and communities affected by the operations of the company	X	<input type="checkbox"/>	<input type="checkbox"/>
the interests of persons and communities affected by the company's supply chain	X	<input type="checkbox"/>	<input type="checkbox"/>
the interests of local and global natural environment, including climate	X	<input type="checkbox"/>	<input type="checkbox"/>
the likely consequences of any decision in the long term (beyond 3-5 years)	X	<input type="checkbox"/>	<input type="checkbox"/>
the interests of society, please specify	X	<input type="checkbox"/>	<input type="checkbox"/>
other interests, please specify	X	<input type="checkbox"/>	<input type="checkbox"/>

the interests of society, please specify:
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- There is historical evidence that an excessive focus on the short-term interests of shareholders, has had detrimental effects on the ways in which companies approach and integrate the interests of other stakeholders as well as focus on the company's long-term success. As the EC study outlined: while shareholders pay-outs in Europe were rapidly increasing over the period 1992-2018, these strategic choices were made at the expense of funding investment in climate transition and closing pay gaps. The report also highlights the connections between shareholder primacy, corporate short-termism and lack of actions towards more environmentally sustainable companies – a conclusion that finds an echo in a recent report by the Alliance for Corporate Transparency analysing the non-financial reporting of 1,000 EU companies, as less than 5% of the companies had a climate target aligned with the objectives of the Paris Agreement.
- Companies and markets in general thrive in prosperous and cohesive societies. There are numerous societal interests that have a profound effect on the company and the risks it is facing, including social conflict (which in extreme can take the form of a war), corruption, poverty, systemic abuse of human rights, shrinking space for civil society to operate, the ability of people to pursue their happiness, political persecution, and general societal infrastructure. It is further noted that these interests may be also affected by the company's actions.
- The collective interests of the company's stakeholders are also relevant as part of the 'interests of society'. However, efforts to enumerate the types of interests that company directors need to take into consideration have had little impact, if any in India, Brazil and the UK Companies Acts where such an approach has been tried and found wanting.
- This is because these are often too vague to provide any meaningful guidance or ensure accountability, and because the issues of concern depend on the business, societal and environmental context in which the company operates. However, companies' long-term resilience cannot be dissociated from the interests of a range of stakeholders and the natural environment, including climate.

- In general, as experiences in Brazil, India and the UK highlight, it is difficult to codify different and often competing stakeholder interests. More importantly, core human rights and environmental protections represent minimum thresholds that must be respected, as opposed to being ‘balanced’ against sets of competing interests. On this basis, while a general duty of care for stakeholders’ interests is welcome, a new EU regulatory framework should first and foremost be firmly rooted in clear corporate due diligence obligations and associated liability, over which the directors should exercise oversight, as outlined in answers to the previous sections.

Max. 5,000 characters.

other interests, please specify:

- **The interests of suppliers:** for supply chains to be fair, resilient and sustainable, companies need to develop partnerships with suppliers, based on long-term commitments, based on a mutual benefit approach, and taking into account the constraints and needs of suppliers.
- **The ability of the market to internalise the costs** of social and environmental impacts. As it stands, the costs and performance measures of companies’ activities are not reflecting their negative impacts.
- **The ability of the business actors in a given area to take collective action** to address systemic problems
- Gender responsive due diligence to counteract well documented impacts upon women and the intersectional nature of discrimination faced by women.
- Early alerts for potential reprisals against human rights defenders and the protection of human rights defenders
- Early alerts and prevent impacts upon rights, lands, cultures, and resources of local and indigenous communities.
- Prevent revictimization of those adversely affected.
- **Justice, including intergenerational justice** regarding the effects of environmental harms and climate change.

Max. 5,000 characters.

[OPTIONAL] 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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Management of the risks for the company in relation to stakeholders and their interests, including on the long run	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Identification of the opportunities arising from promoting stakeholders' interests	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain:

- The current duty of care that directors have has not led to proper corporate identification and due consideration of impacts on people and the planet and related risk management. Therefore, there is an urgent need to clarify that directors should, as part of their duties, align the overarching duty of care with the requirement for the company to respect human rights and the environment.
- As it stands, directors may erroneously consider that philanthropic or outreach activities, perhaps conducted under corporate social responsibility policies are appropriate, and fail to appreciate or act upon the responsibility of business to respect human rights and the environment.
- To ensure that this aspect of their duty of care is implemented by corporate boards, the law must clarify **how the stakeholders' interests should be considered**, both from the perspective of **respect to legitimate interests** of stakeholders, as well as from the perspective of the **management of risks** and opportunities. In this regard, it must be clarified the level at which the responsibility to take into account stakeholder's interests is placed. In particular the responsibility to consult and engage with stakeholders must be embedded throughout the corporate structure, and not rest solely with the board of directors. Indeed, the responsibility to consult and engage with stakeholders will form part of the corporate's due diligence duty and operational responsibilities. In this regard, in addition and to support such corporate duty, it should be clarified that directors are responsible, as part of their duties, to provide oversight over the quality of the company's due diligence, ensure that its results are integrated in the corporate strategy, and that it is effectively implemented.
- The purpose of such clarification is to ensure that sustainability matters are duly considered at a strategic level, and that there is a transparency concerning their integration in the company's overall strategy that facilitates meaningful engagement of investors and stakeholders.

Max. 5,000 characters.

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:

An EU mandatory framework should include a set of obligations to:

Identify **actual and potential** human rights and environmental impacts; assess and act on the findings; engage in tracking responses; and communicate how impacts are addressed.

Develop, publish, and implement a Due Diligence Strategy to prevent and address adverse impacts in their activities, business relationships and value chain. The Strategy should include concrete actions with specific objectives and timetables and early alerts mechanisms.

Monitor implementation and effectiveness. The Directive should require companies to conduct effective and transparent tracking and monitoring of the implementation of their Due Diligence Strategy, based on qualitative and quantitative indicators as well as internal and external feedback. Entities should communicate on the actions undertaken, any negative impacts which have materialized, and review annually or more frequently as required. A Due Diligence Report should be provided to the oversight authority responsible for monitoring respect of the obligations. The Report should enable objective oversight of the quality and effectiveness of implementation under the Directive and provisions to give effect to it in national law.

Require entities to publish an annual, specific, and comprehensive Report on the verifiable progress of their Strategy, actions undertaken regarding both their operations and business relationships, and negative impacts which have materialised. The Report should provide sufficient comparable information and metrics to evaluate the adequacy of plans and actions compared to the actual and potential negative impacts of their operations. Reporting should be proportionate to companies' activities' potential and actual risks and impacts and corresponding due diligence. An identified duty bearer for disclosure would facilitate accountability.

In designing the reporting framework, consider revision of the limited provisions for reporting of non-financial information with the existing legal framework.

In order for entities to do so we consider the following is required:

- Undertaking comprehensive contextual analysis to identify clear measures of risks and impacts and set out strategies to address them requires allocating appropriate resources to integrate such indicators in their business strategy and procedures.
- Targets should be compliant with international standards relevant to the types of risks and impacts, including international agreements and national initiatives on corporate governance and accountability regarding human rights and the environment. The principle of non-regression is assumed.

- Taking into account the interests of stakeholders will increase sustainability, and it is the Director's duty to ensure that the long term financial, operational, and governance strategy of the company does so through relevant, regular and meaningful consultation.
- The EU initiative should consider how boards provide for addressing risks and impacts on a regular basis, supported by relevant sub-committees, ensuring relevant expertise at board level including external advisers, and training for board members and executives.
- Boards should be rendered responsible for overseeing and ensuring the quality of the materiality determination and due diligence processes.
- Directors should be required to develop, disclose and implement a forward-looking Strategy providing measurable, specific, verifiable, time-defined targets, plans and milestones to achieve them, where appropriate based on science-based methodology.
- It should effectively address material environmental and social risks and impacts to the company's business model, operations, and supply chain, and material impacts to people and the planet identified by due diligence, including through stakeholder engagement, in accordance with legal obligations.
- Targets must align with the EU's and Member States' international commitments on human rights and environmental standards.

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

Targets and KPIs are indispensable for management of risks and impacts. If potential or actual risks or impacts meet the threshold of materiality or severity, they should be recognized as such and addressed.

The board must set such targets, particularly where effective management of risks and impacts have implications for the company's strategy, business model and financial planning. That means, the bigger potential risks and impacts upon rights holders, the greater the need for Board level involvement.

Targets ensure transparency concerning the effectiveness of the company's management of risks and impacts and are critical for engagement by investors and other stakeholders. Companies should set and report upon overarching targets and translate these into concrete intermediary targets, enabling stakeholders to understand and assess how effectively companies are progressing.

Max. 5,000 characters.

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:

- It is imperative to distinguish between the due diligence duty that the company has to the respect human rights and the environment, and the duty of care that the directors have to the company itself. It should be clarified and reaffirmed in legislation that, in doing so, directors should balance the interests of all stakeholders, ensuring that no stakeholders are harmed, at least in accordance with the due diligence obligations of the company.
- As explained in a statement on corporate governance drafted by a group of senior academics as a guidance for the European Commission on this very matter: “The underlying idea is that directors could potentially use their discretion under (some variant of) the business judgement rule that exists in every major jurisdiction, and that gives directors discretion to act in what they believe to be in the best interests of the company as a separate entity. In principle, this rule can accommodate either a long- or short-term approach. Hence, where directors pursue the goal of maximising short-term shareholder value, it is a product not of legal obligation, but of the pressures imposed on them by financial markets, activist shareholders, the threat of hostile takeover and/or stock-based compensation schemes. These strong pressures from outside company law mean the problem of short-termism cannot be solved simply by requiring or permitting directors to have regard to sustainability and the company’s long-term interest.”
- A further problem is that while short-term financial performance is expressed in clear numbers, the interests of other stakeholders and their effects on the company cannot be expressed in a similar quantifiable manner. In other words, these potentially conflicting interests are of a different fundamental quality, and therefore they cannot be simply balanced or easily compared. The experience with the company law reforms in Brazil, India and the UK, which attempted by various means to codify the obligation of directors to balance multiple interests, shows that such an approach is not effective. **Therefore, the obligation concerning respect for stakeholders’ interests must be firmly rooted in corporate due diligence obligations and associated liability, over which the directors should exercise oversight, as explained in our answers to the previous questions.**
- It should be clarified in legislation that directors should balance the interests of all stakeholders, ensuring no stakeholders are harmed, consistent with the due diligence obligations of the company.
- It should be clarified in legislation that by balancing the interests of all stakeholders, directors are not exposed to potential conflicts within their existing duties.
- Deliberate failure to implement the due diligence strategy should be considered as breach of the compliance duty.

Max. 5,000 characters.

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?

Instead of a broad mandate to balance the interests of stakeholders, the legal definition of duty of care should:

- Confirm that its primary objective is to ensure long-term success of the company, which takes into consideration its impact on people and the environment including the climate, and that in doing so directors must take into consideration all legitimate stakeholders' interests and needs; and
- Specify that it is an obligation of directors to ensure that the company implements a robust due diligence process to identify and address adverse impacts to people and the planet linked to the company's business model, including its operations throughout its value chain; and to put in place a strategy supported by targets to address such impacts, and public reporting thereon in accordance with the company's legal obligations.
- There is a growing movement of investors that are highly supportive of companies' engagement with stakeholders' interests, as well as of stronger public policies in this regard. This includes for example the UN Principles for Responsible Investment, or the Investors Alliance for Human Rights, as well as, broadly speaking the Sustainable Investors Forum(s).
- It would be important that legislation clarify that, by balancing the interests of all stakeholders, directors are not exposed to potential conflicts within their existing duties.
- **A directors' duty of care is one helpful measure for mitigating short-termism, however, this measure alone is not sufficient. The key risk is that legislative action will not go further than defining directors' duties to stakeholders but will not address other causes of short-termism.**

Max. 5,000 characters.

How could these possible risks be mitigated? Please explain.

Legislative action should not stop with defining directors' duties to shareholders, but rather should address other causes of short-termism. As recommended by ETUC, this could include: a financial transactions tax and 'loyalty shares' to discourage short-term speculative trading by investors such as activist and high-frequency hedge funds; strengthening of workers' rights to information, consultation and participation; disincentives for equity-oriented and incentives for sustainability-oriented remuneration of top management; and an improvement in transparency and sustainability through a revision of the Non-financial Reporting Directive.

Max. 5,000 characters.

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

- There is a growing movement of investors that are highly supportive of companies' engagement with stakeholders' interests, as well as of stronger public policies in this regard. This includes for example the UN Principles for Responsible Investment, or the Investors Alliance for Human Rights, as well as, broadly speaking the Sustainable Investors Forum(s).
- A considerable body of research on Board-Level Employee Representation (BLER) shows that the integration of workers' interests in corporate governance does not have an overall negative impact on share value and has positive effects on both operative and sustainability performance. [Scholz/Vitols \(2019\)](#) review the literature on German co-determination and show that companies with co-determination have better sustainability practices. A study by [Rapp/Wolff](#)

[\(2019\)](#) shows that the share price of co-determined companies in Germany was less volatile during and that the investment rates of these companies recovered more quickly after the financial crisis of 2008/9 than was the case for companies without co-determination. Various years of [ETUC/ETUI's annual Benchmarking Working Europe](#) reports on research by the European Trade Union Institute, which shows that European companies with workers in the board have better performance along a range of sustainability indicators, including not only 'people' but also 'planet' (i.e. environmental) dimensions. Companies with co-determination are also less likely to follow 'aggressive' tax practices than companies without co-determination ([Eulerich/Fligge 2020](#)).

Max. 5,000 characters.

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?

X 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:

- Addressing the sustainability challenges may require changes to the company's business model, strategy and financial planning. To be achieved, it is critical that the company's strategy and targets with respect to such risks, impacts and opportunities are considered as part of the overall corporate strategy and is decided on and monitored by the governing body of the company. Some companies already implement such an approach.
- Consistent with the UN Guiding Principles on Business and Human Rights, respect for human rights must be 'embedded in the values of the enterprise' (OHCHR: Accountability and Remedy Project). For this process to occur such that rights respect, sustainability, and consideration of risks and impacts upon stakeholders to take root in the enterprise, they must be integrated into the company's strategy, decisions, and oversight within the company.
- An understanding of the sustainability risks, impacts and opportunities companies face and the development of a sustainability strategy with clear targets is key both to the long-term survival of companies and to the achievement of European and international targets and commitments, such as the Paris Agreement and the EU Green New Deal. The EU goal carbon neutrality by 2050 will require a massive transformation of production, service delivery, transportation, housing and many other facets of the economy and society. Companies will not be able to succeed and these international targets will not be met if sustainability strategies are not integrated into the core of businesses' overall strategies and business models.

- Companies may erroneously consider that philanthropic or outreach activities, perhaps conducted under corporate social responsibility policies are appropriate, and fail to appreciate or act upon the responsibility of business to respect human rights and the environment.

Max. 5,000 characters.

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:

N/A

Max. 5,000 characters.

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:

N/A

Max. 5,000 characters.

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?

X 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, employee 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 accounts 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 raising breaches of the duty of care.

There are several mechanisms which should be provided for within the EU legal framework to enable stakeholder engagement and enforcement including: consultation, public disclosure, and standing for civil society and representative associations in civil proceedings.

- Stakeholder engagement is supported in international initiatives including the UNGPs, ILO Tripartite Declaration and OECD Guidelines. Both internal and external stakeholder engagement should be transparent. In particular, provision should be made for open and on-going consultation with those who may be disproportionately affected by risks and impacts, including workers, local communities, women, representatives of women workers, human rights defenders, and indigenous peoples.
- To enable third-party monitoring of the company's provision and implementation, it should be supported by additional mechanisms public registers, and a right to know/information procedure.
- Civil society organisations serve a crucial role in promoting protection of rights and rights holders, raising awareness of adverse impacts, and supporting access to remedy. They provide a crucial bridge to rights holders, supporting their issues, and providing expert analyses to policy makers and legislators. This may also include test cases. Therefore, standing in civil proceedings should be widely conceived and include representative groups and associations (where applicable with consent).
- Although fully agreeing with the necessity of giving a role to stakeholders in the enforcement, it must be stressed that it will also be necessary to ensure that this role is given to genuine representatives of workers, environment or people affected by the operations of the company and not to so-called "yellow" organisations/representatives set up and/or financed by the companies thereby undermining the prerogatives of trade unions/recognized organisations/representatives. As for the representation of workers this means that such role is only for genuine trade unions and cannot be given to yellow trade unions and/or so-called associations of persons/employees.
- More broadly, it's important to clarify that while civil society organisations and trade unions have an important oversight role and should have a clear and prominent role in due diligence processes, states must ensure that ultimate responsibility lies with the Directors.

Max. 5,000 characters.

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.

As above, the other stakeholders which should be involved in the enforcement duty are:

- Shareholders
- Potentially impacted stakeholders and their representatives (where applicable with consent) including but not limited to local communities, women, representatives of women workers, youth workers, human rights defenders, and indigenous peoples. Language, geographical distance, legal title and the effects of marginalization are amongst the impediments which are faced and which necessitate special provision being made to ensure meaningful consultation is engaged.

Involvement of potentially impacted rights-holders should be ensured at the earliest possible stage of the process. Stakeholder engagement should be designed so that they are accessible and do not put rights-holders, particularly human rights defenders who already face a high level of risk, at further risk by participating (see question 20 for more detail).

An early warning system which identifies potential risks to human rights defenders should be implemented including establishing a safe and effective feedback loop between rights-holders and the company so that concerns can be raised directly.

- Civil society organisations (where applicable with consent) representing the above regarding enforcement of the duty.
- Trade unions, workers and their legitimate representatives. The relevant international (UN, ILO) and European (Council of Europe, OECD, etc) human rights/ due diligence instruments recognise the necessary role that, should play in the definition and implementation of companies' due diligence initiatives. The directive should fully recognise the role of workers as the most central actors in companies. Without prejudice to existing information, consultation and participation legislation, but building on strong collective rights of workers, the directive should include the following elements:

a) The right for trade unions at the relevant level, as defined by trade unions, to negotiate with the company the due diligence process that should be introduced.

b) Mandatory involvement of trade unions and workers' representatives should be guaranteed in an effective manner and at an early stage in the identification of the actual and potential adverse impacts, as well as in the elaboration of the due diligence plan, in its implementation and enforcement, its periodic assessment and review.

c) An early alert mechanism should be developed and managed in partnership with the trade union organisations in the companies concerned.

d) Mandatory workers' information and consultation rights should be fully respected regarding the definition of the due diligence plan and its implementation, at national, European and global level, including through the involvement of the European Works Councils. The information should be timely and sufficient to support the active and efficient involvement in the process. Workers' representatives in company boards should be fully involved as well in the different steps of the due diligence process.

e) The directive should ensure that trade unions and workers' representatives of companies in the supply and subcontracting chains are also involved in the identification and assessment of the actual and potential negative impacts, in the definition and implementation of the due diligence plan and in the early alert mechanism. It is imperative that the directive provides trade unions with the resources and capacity to intervene and act on all stages of the process.

f) Social dialogue practices, and trade union rights, notably the right to organise, to bargain collectively and the right to strike, must be protected and enforced also in the supply chain or subcontracting chains, including for non-standard employment relations.

Max. 5,000 characters.

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 consider that it could be materially improved.

It should be clarified that **the due diligence duty’s ultimate goal must be to respect human rights, the environment, and good governance in a company’s own operations, global value chain and business relationships** (due diligence is the strategy mandated to achieve that goal).

The formulation of processes **‘with a view’** to prevent should be strengthened to make clear it is a duty to act to prevent harm occurring.

The definition should align its wording with international due diligence standards, referring to impacts the business **may cause or contribute to through its own activities, or are directly linked to its operations, products, or services by its business relationships**.

- Prior to ceasing, preventing, mitigating and accounting for human rights, health and environmental impacts, **companies should first be obliged to effectively identify and assess any actual or potential adverse human rights, environmental and governance impacts** which they may cause, contribute to or be directly linked to both through their own activities and as a result of their business relationships.
- Companies should **track and monitor** the implementation and effectiveness of the measures adopted. This includes the collection of data specific to the risk(s), such as data disaggregated by supplier and 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 process.
- Moreover, **the due diligence duty should cover the company’s’ global value chain**, which includes entities with which it has a direct or indirect business relationship (understood as all types of business relationships of the enterprise – suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers, and any other non-State or State entities linked to its business operations, products or services, per the OECD Due Diligence Guidance for Responsible Business Conduct p.10, and which either (a) supply products or services that contribute to the company’s own products or services, or (b) receive products or services from the company. Supply chains and value chains are similar terms that refer to the entire production chain. However, **while “supply chain” may be used to specifically refer to the production and distribution of a commodity, whereas “value**

chain” includes the set of interrelated activities by which a company adds value to an article.

We agree that due diligence should be a risk based and proportionate approach. Companies should map out their global value chain, the human rights and environmental risks at each level of their value chain and prioritize due diligence processes depending on the risks. Companies should take **measures proportionate and commensurate to the severity of the risks and the specific circumstances**, particularly their sector of activity, the size and length of their supply chain, and the size of the undertaking. This is a particularly important point for SMEs, whose financial and administrative burden will be commensurate to these factors, amongst others. At the end of the definition, it could be clarified that, in all instances, due diligence is a **continuous and gradual process** and companies should exercise their leverage and meaningfully engage with their suppliers and business partners to support them in improving their practices. It should be integrated across all business practices and decisions of the company, including for instance their purchasing practices and in the establishment of new projects.

While not strictly part of the definition, it could be clarified that **due diligence must enable and support remedy**. The obligation to respect human rights and the environment requires active engagement in the remediation of adverse impacts where companies cause or contribute to harm by way of actions or omissions. Where a company has not caused or contributed to the harm but its operations, products or services are directly linked to it, the obligation to exercise or increase its leverage over those responsible helps ensure that remediation is provided.

The duty should apply to state owned or controlled entities consistent with UNGP 4. Further, consider the public sector. State agencies and public procurement processes should have a supporting role. Concerning the value chain, it should provide for relationships which are long-term, of a level of intensity and expected to continue, but not require a formal commercial contract, to counteract extension of suppliers not within contracts adding further layers of vulnerability for workers.

Consistent with international standards the definition could benefit from clear reference to ‘internationally recognized human rights’. Reference should be elaborated upon and include international environmental standards.

Max. 5,000 characters.

[OPTIONAL] 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 also reflect 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

Please specify:

Max. 5,000 characters.

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 EU directive should apply to all businesses, including multinational enterprises, regardless of their legal form, size, and sector. Limitations in the scope of the EU directive would exclude many companies whose operations have significant actual or potential adverse impacts in the areas covered by due diligence obligations.

- However, it should allow for additional measures or specifications for specific sectors, products or activities, especially when they pose high human rights and environmental risk. Any sector-specific legislation should supplement, but not limit, the development and implementation of the proposed general legislation. Analogy can be found in the OECD system, where both a general guidance and sector specific guidance complement each other. Sector specific guidance helps companies with tailored and relevant guidance for responsible business conduct
- Companies undertaking activities with high environmental, human, social and governance risks, as well as those operating in high-risk sectors or contexts including where there is a high risk of conflict, corruption or organised crime should be required to take additional steps, proportionate to those risks. 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.

- Further, the risk of adverse impacts is heightened in certain contexts including, political instability, weak governance or uncertain application of the rule of law; conflict, occupation, and issues of self-determination; locations involving indigenous lands, culture, and resources with implications of Free Prior and Informed Consent
- For higher risks, companies should therefore be given further guidance on the implementation of the due diligence duty, including on additional requirements, criteria and definitions.
- Guidance for companies should be developed in consultation with stakeholders.
- Guidance should be developed specifically to support and assist SMEs.
- 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 Commission shall ensure that it meets at least the standards of the upcoming legislation.
- Include additional guidance on gender responsive due diligence, for example, conducting human rights-based gender impact analyses, including appropriate consultation with rights holders, before the implementation of a new project, and on an ongoing basis.

Max. 5,000 characters.

[OPTIONAL] 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. Regarding complimentary guidance, see above.

For further explanation:

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. Environmental impacts cause damage to health, property, livelihoods and the planet. It is therefore crucial that internationally recognized 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.

EU law must clearly establish that due diligence is a continuous, preventative, risk-based process through which all business enterprises must effectively identify and assess; cease, prevent and mitigate; track and monitor; and communicate and account for specific risks and actual and potential adverse impacts in their operations and along their global value chains and business relationships.

The due diligence duty must be focused on the risks and harms not to the enterprise itself but to rights holders and the environment, and its extent must be determined by the likelihood and severity of the adverse impacts and should be regularly re-assessed and adapted to ensure appropriateness and effectiveness. **The effectiveness of due diligence is measured by the extent to which actual and potential harm is prevented and mitigated.**

A rich body of legally binding international human rights and labour standards has long been developed, leaving no room for legal uncertainties. Although not as straight-forward as human rights standards, environmental standards - often addressed to states - can also be translated into concrete obligations for companies. When laying down due diligence requirements and stipulating corporate liability for harm, EU law should specify the protected environmental goods and the expected standard of business conduct in this regard. This would guide companies when they conduct due diligence, and administrative and judicial authorities when determining liability. Existing international due diligence standards already constitute a useful reference in this regard.

Max. 5,000 characters.

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)

☒ **Human rights, including fundamental labour rights and working conditions (such as occupational health and safety, decent wages and working hours)**

☒ **Interests of local communities, indigenous peoples' rights, and rights of vulnerable groups**

☒ **Climate change mitigation**

☒ **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**

☐ 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. As per the UN Guiding Principles on Business and Human Rights, this should be understood, at a minimum, as those expressed within the International Bill of Human Rights (The Universal Declaration, ICCPR & ICESCR), as well as the ILO Declaration on Fundamental Principles and Rights at Work. This includes, amongst others, freedom of association and the right to collective bargaining and collective action, information, consultation and board-level representation rights, decent working conditions, occupational health and safety, fair wages, and social security coverage.

Recognising the distinct, disproportionate human rights impacts faced by particular groups, including indigenous peoples, migrants, LGBTQI+ peoples and women, it should include all rights outlined in the UN's nine core international human rights instruments (and Optional Protocols) and the ILO's eight fundamental conventions, as well as customary international law. It should reflect that human rights are universal, indivisible, interdependent and inalienable, and clearly assert the primacy of human rights over all international agreements, including those related to trade, investment, finance, taxation, security and development.

Due diligence must be gender responsive taking into account the structural discrimination faced by differently situated women, so that the specific harms and challenges that they face can be addressed. Gender responsive due diligence requires that attention be paid to specificity in relation to women's experiences, informed by gender disaggregated data (along with other factors such as ethnicity, ability, age) and that business enterprises ensure meaningful participation of potentially

affected women, women's organisations, women human rights defenders and gender experts in all stages of human rights due diligence.

Due diligence measures should recognise the heightened risk of abuse in certain sectors, such as extractives, garment industries and agribusiness, and the inherent risk in certain contexts, such as operating in a conflict-affected area or in occupied territory.

Due diligence obligations should also cover social, health and environmental impacts, as well as anti-corruption, corporate governance and tax matters.

Max. 5,000 characters.

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?

N/A

Max. 5,000 characters.

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?

- The effectiveness of the due diligence duty will very much depend on the robustness of the criteria and 'performance standards' against which the due diligence should be conducted.
- Regarding human and labour rights, due diligence legislation should at least cover all **internationally recognized standards**, understood, at a minimum, as those expressed in
 - the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural 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 recognised in the ILO Convention on freedom of association and the effective recognition of the right to collective bargaining,

the ILO Convention on forced labour, the ILO Convention on the abolition of forced labour, the ILO Convention on the worst forms of child labour, the ILO Convention on the elimination of discrimination in respect of employment and occupation and ILO Convention on equal remuneration; 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' rights, including free, prior 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.
- EU regulation should be gender responsive. Due diligence legislation should take into account the fact that human rights, environmental and governance risks and impacts are not gender neutral. **Companies should be encouraged to integrate the gender perspective 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 gender, ethnicity, race, caste, sexual orientation, 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. While it would still be convenient to include a reference to those in place (following the same logic as for internationally recognized human and labour rights), environmental impacts must be defined in a broad manner so as to fill the big gaps in international and European environmental law. "Environmental impacts" should thus cover any violation of internationally recognized environmental standards, as well as any adverse impact on the environment or on the right to a healthy environment. Environmental impacts should include, 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 (i.e. (a) climate change mitigation; (b) climate change adaptation; (c) the sustainable use and protection of water and marine resources; (d) the transition to a circular economy; (e) pollution prevention and control; (f) the protection and restoration of biodiversity and ecosystems. The principle of non-regression, and strict liability under existing provisions is assumed.
- Even when addressed to states, environmental standards can be translated into concrete obligations for companies. There are two important principle of international and national environmental law that should serve as a basis: the principles of prevention and precaution. The steps of the OECD Guidelines Chapter VI provide a useful basis.

Max. 5,000 characters.

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

N/A.

Max. 5,000 characters.

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

N/A.

Max. 5,000 characters.

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 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

- **From international standards (UNGPs, OECD Guidelines for Multinational Enterprises), it is very clear that due diligence is the obligation of all companies.** All business enterprises, regardless of size, should conduct human rights and environmental due diligence. SMEs, too, can cause, contribute to, and be directly linked to severe human rights and environmental impacts. While their operations are smaller, SMEs also have a direct responsibility to respect human rights and the environment.
- However, as stressed by the international standards, **the means through which companies will be expected to meet their responsibility to respect human rights and the environment should be commensurate to the severity of the risks.** For SMEs, the type of policies and processes expected would be according to their capacity, following the Commentary to Principle 14 of the UNGPs. Their degree of leverage over their business relationships would also be considered in determining their responsibility (although it should not be relevant to considering whether they should identify all risks, carry out due diligence and exercise any leverage they may have). Furthermore, if deemed necessary to guarantee a satisfactory uptake of due diligence obligations by SMEs, a “phase-in” approach for SMEs could be developed. Such additional period for compliance should be as limited as possible though to avoid a weakening of the legislation and its company scope.
- **Studies of the compliance costs of a variety of due diligence regimes do not identify a disproportionate economic burden for SMEs.** Rather 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.
- Many SMEs active in the garment or food sectors for instance are already conducting due diligence, evidence to the fact that companies of all sizes can conduct it.
- SMEs may depending on the nature of their business not generate and encounter as many risks to human rights and the environment as larger businesses do, by virtue of the simple fact that their value chains are smaller. SMEs tend to have fewer suppliers and customers, which enables deeper and better-quality relationships. For this reason, **not only is it often more feasible for SMEs to map the businesses in their supply chains, it is also easier and more desirable to get to know them.** SMEs also tend to spend more time selecting business partners that share their values and match their standards and have a preference for longer-term relationships. These stronger relationships allow greater scope to integrate human rights and environmental issues.
- Increasingly, empirical evidence is revealing that companies with responsible business conduct policies and practices, such as due diligence, are more resilient, stronger and better performing businesses. **Companies that know their supply chains and actively identify and mitigate their risks generally perform better overall.** Therefore, **while capacity building support, including funding, could be considered as a way to foster compliance with due diligence standards, it is however incorrect to only conceptualize due diligence as a burden on companies,** as the evidence reveals its potential as a beneficial and valuable standard of conduct.

We support guidance, and capacity building initiatives for SMEs at EU and at Member State level

- Companies and especially SMEs need access to information in order to implement EU mandatory due diligence legislation. We recommend States actively reaching out to companies to inform them about the new legislation and provide advice and support for its implementation. It could also share best practices of companies who are already rightly implementing the legislation.
- A company Statement on the basis of ‘no risks’ in its activities and value chain would be a significant assertion. Further, this formulation recalls negative issues in the operation of the measures such as the UK Modern Slavery Act
- Ultimate responsibility remains with companies, although external certification could be considered in mitigation.

Max. 5,000 characters.

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 obligation should apply to companies operating in the internal market (selling products or services, conducting activities). The link could therefore be **the presence on the internal market for products or services**.
- Useful definitions of scope can be found in:
 - Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (**Timber Regulation**):
 - 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’.”
 - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (**General Data Protection Regulation**):

- Article 3: “(1) This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not. (2) This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to: (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or (b) the monitoring of their behaviour as far as their behaviour takes place within the Union. (3) This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.”
- Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain is also a 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.
- A formulation including entities ‘carrying on a business in the country’ is present in the French law which applies to subsidiaries of foreign groups in France, and in the UK Modern Slavery Act 2015, and Dutch Child Labour Law.

Max. 5,000 characters.

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

- These companies must also be obliged to respect human rights and the environment, in their own operations, subsidiaries, business relationships and global value chains, and **to undertake human rights and environmental due diligence for the products, services and activities that are placed or undertaken in the EU internal market.**
- These companies must also be liable for any human rights abuses and environmental harm in their operations or value chains (without prejudice to other subcontracting and supply chain liability frameworks).
- Governments must set up robust enforcement mechanisms, with effective sanctions, to ensure that these companies also obey the law.

Max. 5,000 characters.

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 create a level playing field globally, the EU should strengthen its efforts for the adoption of a **UN binding treaty to regulate the activities of transnational corporations and other**

business enterprises and ask for a dedicated mandate to negotiate this treaty, **which should reaffirm the primacy of international human rights law over other international legal instruments**, outline human rights and environmental due diligence obligations for businesses and ensure the provision of effective and fair access to justice for **affected individuals and communities**.

- Establish a tracing mechanism for goods produced through severe human rights abuses, including inter alia forced or child labour, and examine options to prevent **the import and placing onto the market of these goods** in scenarios where such measures are evaluated to be in the interest of the affected workers. Such measures should be viewed as complementary to due diligence and should not replace, or distract from, the responsibility of businesses to conduct due diligence throughout their value chain.
- **Amend the Union Customs Code and the Trade Secrets 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.
- Generalising the banning and regulation of unfair trading practices, as well as taking additional steps to regulate purchasing practices of companies. The Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain could provide with a useful starting point.
- When conducting commercial transactions with businesses or providing supportive services to businesses such as export credits, the EU and Member States must ensure that businesses are respecting human rights and the environment, for example through their **procurement criteria**.
- Ensure **trade defence instruments and screening of foreign direct investment (FDI)** encompass human rights considerations.
- Ensure that the review of the **Generalised Scheme of Preferences (GSP)** rules contribute to improving the monitoring processes, enhance transparency and provide for a formal enforcement and compliance mechanism.
- Ensure **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.
- **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 **ensuring 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 reaffirming the obligations of States parties to protect human rights, as provided in international law, and including by regulating businesses and by providing effective access to remedy and justice.
- TSD chapters should recognise the obligations of States and the responsibilities of corporations and investors under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, **requiring the provisions of the agreement to be read in consistency with these instruments.**
- IPAs should provide that investors must respect international human rights standards and national law in conformity with international human rights law for the full duration of the investment.
- **Victims of human rights abuses and environmental harm must have access to remedy.**
- The due diligence duty should be accompanied by broadening jurisdiction of Member States courts specifically for business-related harms. Revision should include a *forum necessitatis* providing a basis for exceptional jurisdiction in civil claims risking a denial of justice when there is a sufficiently close connection to the forum.
- The due diligence duty should be accompanied by revision of provisions concerning applicable law, allowing for choice of law, concerning Member States courts specifically for business-related harms.
- The EU framework should make clear that all provisions, procedural and substantial, are overriding mandatory provisions and apply irrespective of the law otherwise applicable to the non-contractual obligation.

Max. 5,000 characters.

Question 19: Enforcement of the due diligence duty

[OPTIONAL] 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)?

☒ **Judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations**

☒ **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)**

☒ **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 twofold enforcement regime:

Legal liability, **at minimum**, for human rights and environmental harms that a business enterprise, or any company they control or have ability to control has caused or contributed to. 'Control' should be determined according to the factual circumstances and may also result

through the exercise of power in a business relationship and include a situation of economic dependence

Equally, grounds for liability must be established based on failure to carry out adequate due diligence (compliance duty)

Due diligence should not automatically absolve a company (as implied in the first of the three options offered as a response to this question) from liability for causing, contributing to or failing to prevent human rights abuses or environmental harm.

Judicial enforcement of DD standards and adjudication following allegations of harm is essential for accountability and ensuring effective remedy.

To ensure access to remedy burden of proof should be reversed in proceedings against business enterprises.

Limitation periods for legal actions must be reasonable and sufficient, considering the particularities and challenges of transnational litigation. Standing should be widely conceived and include representative groups and trade unions.

The EU framework should oblige national Governments to maintain robust enforcement mechanisms, with effective administrative sanctions to ensure that companies obey the law.

Complementing judicial enforcement, competent authorities (CAs) should be established in Member States. CAs to be empowered to both monitor DD disclosure and performance and initiate investigations upon reason to believe a company has breached its DD obligations. CAs should instigate investigations both on their own initiative and based on complaints by affected parties. Organizations with a legitimate interest to have the right to submit complaints in the interest of victims.

Breach of the compliance duty to carry out adequate due diligence should give rise to administrative liability. CAs should be empowered to impose proportionate and dissuasive sanctions (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 within GDPR). CAs should be empowered to place non-compliant companies on Disqualification lists, precluding participation in public procurement and receipt of trade related state supports. **Any** provision to declare ‘no risks’ should be narrow and narrowly interpreted. However, administrative liability, while a necessary complement, in no way substitutes for civil and criminal liability mechanisms.

A legal duty of care should give rise to a cause of action for breach of it. It is appropriate that the DD duty refers to ‘potential’ and ‘actual’ abuses, envisaging the possibility of preventative or injunctive relief.

The severity of well documented harms supports criminal liability for failure to prevent foreseeable avoidable harm occurring.

Victims of corporate abuses must have access to courts - in their country and the country where the parent or lead company is based or operates. The framework should place an obligation on Member States to reduce legal, procedural, and financial barriers to remedy.

Recognizing the vulnerability of victims, power imbalances, and risk of denial of justice, EU Regulations on jurisdiction and applicable law should be altered specifically for business-related

human rights claims. The EU framework should render all provisions, procedural and substantial, 'overriding mandatory provisions' irrespective of the law otherwise applicable to the non-contractual obligation.

Require companies to disclose information on subsidiaries, suppliers and business partners supporting transparency and victims' ability to access remedy.

CAs should be independent from government ministries to ensure impartiality and prevent conflicts of interest. CAs must be adequately resourced, including funding and staff with appropriate training and expertise.

Establish an EU-level body with monitoring, advisory, capacity-building and standard-setting functions. It should monitor CAs ensuring consistent, robust practices across Member States, support greater harmonization of approaches, develop standards and guidance to assist CAs in evaluation and investigation and guidance for companies to conduct due diligence.

Monitoring bodies established, whether judicial and non-judicial should have clear mechanisms for stakeholders' involvement.

Non-judicial mechanisms should be consistent with standards in UNGP 31. Mediation and remediation should be facilitated by company grievance mechanisms and human rights institutions in Member States.

Any new enforcement and liability measures introduced to be without prejudice to other liability regimes imposing stricter or alternative grounds of liability.

Max. 5,000 characters.

[OPTIONAL] 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:

Victims of corporate abuse frequently face many obstacles (legal, procedural and practical) in attempting to hold European companies liable for the harm caused by their subsidiaries or supply chain partners located in a third country. Cases in the courts clearly illustrate that seeking remedy is excessively long, costly, and arduous.

Firstly, actions in civil law are operating as a 'proxy' as human rights-based causes of action are unavailable.

Further, there are well-documented issues with remedies for business-related harms within criminal law at international and at national levels. For example, criminal proceedings against Riwal (Holland), Danzer (Germany), Argor-Heraeus (Switzerland) (Baughen 2013), and Lafarge-Holcim (France) all foundered.

In civil proceedings, claimants face barriers of funding, legal and technical expertise, deciphering the structure of corporate groups and accessing information held within them. In addition, language, and distance complicate case management. The real risk of denial of justice in their own country, and in the country where the parent/lead company is established is clear within cases in the courts of EU Member States (*Vedanta*).

Members of the Irish Coalition for Business and Human Rights (ICBHR), many of whom are development and humanitarian aid organisations, have regularly encountered these issues in their work. For example, communities impacted by serious environmental and human rights abuses associated with the Cerrejón mine in the La Guajira region, Northern Colombia, have found it extremely difficult to access justice and hold the companies involved to account.

Efforts to seek remedy from the three mining giants that own Cerrejón, BHP, Glencore and Anglo American (domiciled in Australia, Switzerland and the UK respectively), their European sales subsidiary CMC (domiciled in Ireland), or the various national energy providers which have purchased the coal have been frustrated by a series of legal, procedural, practical and financial obstacles. No substantive access to remedy has been possible for the impacted communities.

Within civil proceedings, **victims may take years or even decades to ground jurisdiction, including in the courts of EU Member States.** During the *forum non conveniens* dispute in *Lubbe v Cape plc*, 1,000 of the 7,500 claimants died (Meeran, 2013).

Seeking remedy is beset with barriers for victims, and additionally so for women, vulnerable or marginalised groups. For the indigenous communities in the *Aguinda v Chevron* cases, twenty-eight years of litigation, including judgment obtained in Ecuador and proceedings in EU Member States, failed to yield compensation or satisfactory remediation of the lands. Similarly, after more than thirty years of litigation, justice has been denied for the victims of the disastrous Union Carbide industrial gas leak in Bhopal in India.

In the 1980s, Boliden paid Promel to export industrial waste to Chile, where Promel disposed of it without removing the arsenic. This caused awful health effects, including cancers and neurological disorders for people living near the site. In 2013 victims took legal action against Boliden in the Swedish courts arguing that Boliden had breached a duty to ensure that the sludge was appropriately processed by Promel, but eventually lost their case. In March 2019, on appeal, the court decided to apply Swedish law and dismissed the appeal on the basis: that the claim for damages had been filed too late and the cause of action was time-barred. Boliden has not faced legal consequences for this negligence.

The *Jabir v KiK* case led to a similar outcome. In 2012, 258 workers died, and hundreds were seriously injured when a fire broke out in the Ali Enterprise factory in Karachi Pakistan. Due to lax fire safety measures, workers were at first unaware of and then trapped by the fire. The factory was producing jeans for its main client, German retailer KiK. Victims sought justice in the German courts. As evident in *KiK*, the operation of EU Regulations on applicable law may contribute to the lack of accountability. Hundreds of claimants were time barred under the applicable Pakistani statute of limitations from advancing proceedings in the German courts.

A judicial finding of corporate liability occurred in just 3 out of 40 related cases brought before European courts between 1990 and 2015 (Enneking, 2017)

Other examples in the courts of EU Member States include:

Yao Essaié Motto v Trafigura: toxic waste dumping.

Vedanta Resources Plc v Lungowe: environmental pollution causing damage to livelihoods and health.

The Shell cases in the Netherlands and English courts provide ample proof of barriers and obstacles. Pollution linked to the activities of its Nigerian subsidiary SPDC has had a devastating effect on both the ecosystem and people, yet victims have faced endless excessive legal barriers, challenges and uncertainty.

Bodo Community v Shell Petroleum Development Company

Okpabi v Royal Dutch Shell Plc

Max. 5,000 characters.

If you encountered difficulties, how and in which context do you consider they could (should) be addressed?
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- Barriers to justice have prevented victims, like those in the Boliden, KiK and Shell cases, from obtaining remedy.
- EU laws and rules on jurisdiction should allow for the liability of parent and lead companies in the EU for harm caused by their subsidiaries or value chain partners located in a third country. Recognizing the vulnerability of victims, power imbalances, and risk of denial of justice, EU Regulations on jurisdiction should be altered specifically for business-related human rights claims. Revision should include a *forum necessitatis* providing a basis for exceptional jurisdiction in civil claims risking a denial of justice when there is a sufficiently close connection to the forum.
- The obligations arising from the instrument on Sustainable Corporate Governance upon companies should be applicable in judicial proceedings, even in case the harm occurred in third states. The EU framework should make clear that all provisions, procedural and substantial, are overriding mandatory provisions and apply irrespective of the law otherwise applicable to the non-contractual obligation.
- The framework should place an obligation on Member States to reduce legal, procedural, and financial barriers to remedy. To include, removing bars on actions in tort and ensuring that robust mechanisms of collective redress to a harmonized EU standard are available in all EU Member States.
- Victims seeking justice have a limited ability to uncover the information that is necessary to establish a parent or lead company's liability. Victims should not have to take on the burden of proving the EU parent or lead company's alleged failure and its connection to the harm they suffered, but rather the EU parent or lead company should be required to prove it took all due care.
- EU legislation should also provide for reasonable time limitations for bringing legal actions in order to allow foreign victims sufficient time to file a lawsuit in EU courts.
- A legal duty of care should give rise to a cause of action for breach of it.
- It is appropriate that the DD duty refers to 'potential' and 'actual' abuses, envisaging the possibility of preventative or injunctive relief.

- The severity of well documented harms supports criminal liability for failure to prevent foreseeable avoidable harm occurring, potentially with a statutory defence of due diligence.
- EU law currently dictates that cases must be considered under the law of the country where the damage occurred. In seeking the right to claim compensation, victims should be able to rely on EU law. Recognizing the vulnerability of victims, power imbalances, and risk of denial of justice, EU Regulations on jurisdiction and applicable law should be altered specifically for business-related human rights claims. Revision should include a *forum necessitatis* providing a basis for exceptional jurisdiction in civil claims risking a denial of justice when there is a sufficiently close connection to the forum. Rome II should be altered to provide a choice of law provision allowing claimants to choose the law of the forum where a defendant, such as a parent company, is domiciled.
- 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.

Max. 5,000 characters.

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.

Meaningful stakeholder engagement must be integral to the development and implementation of corporate strategies; human rights due diligence processes, across all stages including identification and assessment of human rights risks, determination of the appropriate actions, monitoring and evaluation of their effectiveness, reflecting the ongoing and continuous nature of human rights and environmental due diligence; and adequate systems for enabling access to remedy, providing remedy and compensating for loss and damage.

Stakeholder engagement is critical for ensuring effective due diligence. **Companies should engage affected stakeholders in the implementation of due diligence.** Stakeholder engagement enables businesses to understand perspectives of those who may be affected by their decisions and

operations and ensure that victims of human rights abuses have the decisive voice in determining the appropriate response of a company which has discovered that it has caused or contributed to, or its activities are directly linked to, human rights abuses.

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 ensure that stakeholder engagement is meaningful, it must involve all relevant stakeholders. These should be identified through comprehensive analysis including public outreach, impact assessments and direct engagement with local actors. Where there are existing channels and structures for engagement, these could be used, providing they are effective, safe and representative.

Businesses should be forthcoming with information on plans, details on managing potential and actual negative impacts and reporting on outcomes, including during engagement with stakeholders. They should ensure relevant information is accessible and available to stakeholders in a context appropriate manner (language, literacy levels, cultural factors).

Stakeholder engagement plans should ensure participants, particularly human rights defenders who are already at risk, are not put at further risk for participating, recognising that the presence of local police and/or private security firms might put human rights defenders at risk. Human rights defenders should be consulted about how best to make the space safe for them.

All mechanisms for stakeholder engagement must seek to address the power imbalance between the company and the affected persons or groups and between affected groups themselves as well as the broader civic space in the location of the consultation. For example, meetings should be held in neutral spaces and participants should be allowed to be accompanied by supportive civil society and lawyers should they wish.

Engagement processes should aim to understand how existing contexts and/or vulnerabilities may create disproportionate impacts for different groups including indigenous peoples and local communities, coastal communities, lower-caste communities and other minority groups, migrant workers, homeworkers, temporary workers, LGBTQI+ people, women and children, among others. Any data collected should be disaggregated by gender and other categories to be properly integrated into the due diligence plan. Special attention should be paid to implementing a gender-based approach to ensure the safe and equal participation of women including using human rights-based gender impact analysis. It should be acknowledged that some of these groups, including women, might require separate spaces for consultations or ways to submit information anonymously. The company should be led by the rights-holders as to what is best.

To reflect the ongoing and continuous nature of human rights due diligence, companies provide multiple opportunities for engagement on an ongoing basis, especially with key stakeholder groups.

Where indigenous peoples and communities may be affected, businesses must be required to respect their customary rights to land, natural resources and their right to self-determination and ensure the state party in which the activity takes place ensured international standards on principles of free, prior and informed consent (FPIC). Companies should not undertake any project affecting lands customarily owned by indigenous peoples or communities with collective customary

rights without FPIC. Companies should be required to publish their policy on indigenous peoples and other communities including their approach to FPIC.

Max. 5,000 characters.

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

- All persons or groups that are affected and potentially affected stakeholders, in all stages of the due diligence process - from the identification of risks to determination of appropriate actions, to monitoring and evaluating the effectiveness of the company's actions to prevent, mitigate and remedy the impacts - should be represented.
- This includes a range of persons and other actors who are credible proxies, such as: workers; employees' representatives; trade unions; NGOs and grassroot organisations; community members; indigenous and tribal peoples; affected local communities; forest communities; human rights defenders including land and environmental defenders; women and women's organisations; community leaders; lower-caste representatives; migrant workers and representatives; faith-based organisations; and local authorities.
- The definition of human rights defenders should be broadly applied as in the UN declaration on human rights defenders, and any defenders not initially identified through the company's analysis who wish to be included in the process should be.
- Relevant experts on human rights, environment, climate, human rights defender safety or other subject matter areas should form part of the stakeholder engagement process.

Max. 5,000 characters.

[OPTIONAL] 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	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Stakeholder general meeting	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Complaint mechanism as part of due diligence	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other, please specify	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Other, please specify:

- Employees should be represented in 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 and potentially 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 and potentially 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, direct engagement with stakeholders, etc.

Max. 5,000 characters.

[OPTIONAL] 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 (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)	2
Regulating the maximum percentage of share-based remuneration in the total remuneration of directors	3
Regulating or limiting possible types of variable remuneration of directors (e.g. only shares but not share options)	1
Making compulsory the inclusion of sustainability metrics linked, for example, to the company's sustainability targets or performance in the variable remuneration	4
Mandatory proportion of variable remuneration linked to non-financial performance criteria	5
Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration	6
Taking into account workforce remuneration and related policies when setting director remuneration	7

Other option, please specify	
None of these options should be pursued, please explain	

Please explain:

- CEO to worker wage gap, and its recent evolution, undermines social cohesion. A cap of 1:20, known as the Drucker principle, could have beneficial effects. It should also be noted that there is no empirical evidence that whenever and wherever this has been enacted (the French public sector is an example), it has had negative consequences on firms' performances.

Max. 5,000 characters.

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 (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).

☒ Requirement for companies to consider environmental, social and/or human rights expertise in the directors' nomination and selection process

☒ 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

☒ 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:

- The Board should **set up a non-executive committee, composed of a combination of independent experts and top managers, chaired by a designated non-executive director, and tasked with monitoring and reviewing the content and implementation of the company's sustainability strategy, including human rights and environmental due diligence.** The experts should have expertise relevant to the main sustainability challenges facing the company. The managers involved in the committee should include CEO and CFO.
- The committee should transparently report on the matters discussed, and the recommendations.
- The purpose of the committee would be to provide critical input for both the non-executive and executive directors' duty of care with respect to sustainability matters.
- In addition, **the Board, as a collective organ, should have internal expertise on sustainability matters.** The number of directors and the types of the expertise should,

however, be determined according to the nature and diversity of sustainability challenges facing the company, rather than the legislation. As part of their duty of care with regard to the oversight over the company's sustainability strategy including human rights and environmental due diligence, as well as for the purpose of setting up and deciding on the composition of the sustainability committee (described above), the directors should evaluate the adequacy of their expertise.

- There is historical evidence that a lack of diversity in boards can have detrimental effects: it has been identified as a major reason for the inadequate actions of financial institutions that led to the financial crisis of 2008. Homogeneity fostered “group thinking” where risks were not identified and managed adequately by boards. Analysing root causes and regulatory failures, many actors from industry associations to trade unions identified the need for greater diversity, not just in terms of gender or race but also in terms of experience and backgrounds. This was even [acknowledged in a parliamentary hearing by the Association of Financial Mutuals](#). In this respect, [the Walker Review officially commissioned by the UK government pointed out](#) that “the pressure for conformity on boards can be strong, generating corresponding difficulty for an individual board member who wishes to challenge group thinking”. Therefore, it is important to ensure that a significant share of board members have special expertise in social, environmental and human rights matters, including feminist and anti-racist approaches, in order to achieve real impact on companies’ decisions.
- Over ten years have passed since the crisis but diversity on boards has not reached adequate levels, neither in terms of background nor gender nor race nor expertise, although consensus on the urgency was high both in political and corporate circles. Voluntary approaches have failed. To avoid repeating the mistakes of the past, policy interventions are needed, requiring firms to increase diversity on boards in terms of gender, race, background and the above-mentioned fields of expertise, developing and implementing a clear strategy how they will achieve that in an effective way.
- The level of competence of company boards in environmental, social and human rights expertise needs to be strengthened. Moreover, knowledge of corporate social responsibility should not be mistaken for or confused with substantive expertise relevant to sustainability and including conducting human rights and environmental due diligence.
- It is apparent that certain initiatives which companies may take part in are well below the standard required, and further illustrate very little understanding of established and emerging international standards.
- Management of the adequacy board expertise and succession is part of best practice. In light of the EU legislative framework, a Board which is aware of gaps in substantive expertise relevant to sustainability including human rights and environmental due diligence, and fails to address this promptly and effectively, may be considered remiss. As it is unlikely that continuous development available to Directors could do so promptly and effectively, the Board may need to consider recruitment of external expertise until such time as a director with appropriate expertise is available.
- Research shows that companies with workers in the board perform better on all major sustainability dimensions (workforce development and health and safety, human rights, environment, etc.). The most effective measure to increase competence in social and human

rights matters is to expand worker participation, as worker representatives have a high level of competence in these matters. At a minimum, the competencies of boards on environmental matters should also be assessed, and where a deficit exists, the deficit should be addressed.

Max. 5,000 characters.

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. (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

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

Max. 5,000 characters.

[OPTIONAL] 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.
- Gender parity 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.
- Examine trade options to ban the import of goods produced through severe human rights abuses, including inter alia forced or child labour, or in situations of occupation, 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

human rights 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.

- Generalising the banning and regulation of unfair trading practices, as well as taking additional steps to regulate purchasing practices of companies. The Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain could provide with a useful starting point.
- Ensure EU development policy complements the positive impact of human rights 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.
- Include human rights due diligence requirements in EU public procurement, funding and credit systems. Companies failing to respect their due diligence obligations should be excluded from accessing such schemes.
- Available technology, for example geo-location technology in palm oil, is being employed in global value chains. Accompanying guidance could indicate options available to assist compliance with obligations.

Max. 5,000 characters.

Section V: Impacts of possible measures

[OPTIONAL] 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.

	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
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	(alone) 2	6	reorganisation of supply chains Rating 0 (lowest impact)-10 (highest impact) and quantitative data 8
Administrative costs including costs related to new staff required to deal with new obligations	No change	2	2
Litigation costs			
Other costs including potential indirect costs linked to higher prices in the supply chain, costs linked 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	No change	6	7
Competitiveness advantages stemming from new customers, customer loyalty, sustainable technologies or other opportunities	No change	6	7
Better risk management and resilience	No change	6	7
Innovation and improved productivity	No change	6	7
Better environmental and social performance and more reliable reporting attracting investors	No change	6	7
Other impact, please specify	No change		

Please explain:

The European Commission's study on due diligence requirements through the supply chain shows that the additional costs, as percentages of companies' revenues, would be relatively low, less than

1% for large companies and 0.14% for SMEs. As the definitive, EU Commission instigated study by experts, we refer to the body of its findings.

Non-binding guidance on these issues is of the same level as established and widely adopted international initiatives. As discussed above, after a decade, voluntary implementation is low and slow and insufficient.

Per responses in questions 2 and 3, *inter alia*:

- Multiple studies indicate benefits to business in the EU in reputation, attracting talent, investors, and capital (<https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/why-esg-is-here-to-stay>) (OECD study “Quantifying the Costs, Benefits and Risks of Due Diligence for Responsible Business Conduct” (June 2016);
- In the [EC study on due diligence requirements through the supply chain](#), only a minority of business respondents stated they conducted some form of due diligence.
- Studies commissioned by the [German](#) and Dutch governments, and by the [Danish Institute for Human Rights](#), reached the same conclusions – there is low uptake of due diligence processes by companies on a voluntary basis.
- Assessments and benchmarks of the implementation of due diligence by companies point consistently to the fact that only 20% of companies (typically, large companies that are required to conduct limited reporting under to the EU Non-Financial Reporting Directive) claim to carry out due diligence ([Alliance for Corporate Transparency](#)).
- The number of companies that meet basic quality criteria for due diligence is even lower (e.g. only 3.6% companies report any information on the effectiveness of the policies adopted to address their identified human rights risk, according to the [Alliance for Corporate Transparency research](#)).
- In 2019, 49% of the 200 companies assessed scored zero against every human right due diligence indicator ([Corporate Human Rights Benchmark](#)).
- In the absence of enforcement mechanisms, even those few companies that undertake adequate due diligence have no obligation to take sufficient steps to address the problems identified.
- A comprehensive mandatory framework placing an obligation to respect internationally recognized human rights and environmental standards is required. Experience with single issue legislation ‘reporting’ style measures, such as the UK Modern Slavery Act, indicate significant issues in their operation (NYU Stern) <https://bhr.stern.nyu.edu/blogs/2019/6/19/research-brief-assessing-legislation-on-human-rights-in-supply-chains>). Enforcement which may relate only to compliance with reporting itself. Coverage from existing reporting or disclosure style initiatives is fragmented, with regulation varying in application to rights such as modern slavery or child labour, sectors, or companies of a certain size.
- Even certain entities may already have supplier codes of practice in place, a clear and harmonized standard would assist and encourage all entities to engage with suppliers and subcontractors to sign up to and adhere to that standard.

Max. 5,000 characters.

Question 26: Estimation of impacts on stakeholders and the environment

- 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.
 - Creation of long-term and trust relationships 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 including 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.
 - 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, gender 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.
 - Reductions in land grabs and violation of the customary and other land rights of indigenous peoples and local communities in host countries, through recognition and respect for collective customary land rights collective and other legitimate tenure rights, including applying the principle of free prior and informed consent.
 - Improvements in environmental impact of business operations including inter alia 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 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.

Max. 5,000 characters.