

Commission proposal on corporate sustainability due diligence: analysis from a human rights perspective



Authors:

Claire METHVEN O'BRIEN, Olga MARTIN-ORTEGA

European Parliament coordinator:

Policy Department for External Relations
Directorate General for External Policies of the Union
PE 702.560 - May 2022



IN-DEPTH ANALYSIS

Commission proposal on corporate sustainability due diligence: analysis from a human rights perspective

ABSTRACT

On 23 February 2022, the European Commission (EC) published its proposal for a corporate sustainability due diligence directive. This In-depth Analysis for the European Parliament Sub-Committee on Human Rights (DROI) initially presents the EC proposal and its main features, contextualising these against broader European and international developments in business and human rights regulations. It then undertakes an in-depth comparative analysis of the EC's 2022 draft Directive against (i) the position adopted by the Foreign Affairs Committee (AFET/DROI) in its opinion for the Legal Affairs Committee of 25 November 2020; (ii) the final EP position as adopted in March 2021. This is followed by evaluation of the EC draft Directive's approach on key elements relating to human rights and environmental due diligence from the point of view of human rights standards and in light of the rationale presented in the EC's Impact Assessment Report (23 February 2022) and Annexes (29 March 2022). Overall, the analysis provides an assessment of the extent to which key positions of AFET/DROI and the Parliament regarding human rights due diligence, as well as relevant international and regional legal standards, policies and guidance, are either reflected in the EC draft Directive or might be better reflected in it.

AUTHORS

- Claire METHVEN O'BRIEN, Senior Researcher, The Danish Institute for Human Rights, Denmark, and Lecturer, University of Dundee, UK;
- Olga MARTIN-ORTEGA, Professor of International Law, University of Greenwich, United Kingdom.

PROJECT COORDINATOR (CONTRACTOR)

- Trans European Policy Studies Association (TEPSA)

This paper was requested by the European Parliament's Subcommittee on Human Rights.

The content of this document is the sole responsibility of the authors, and any opinions expressed herein do not necessarily represent the official position of the European Parliament.

CONTACTS IN THE EUROPEAN PARLIAMENT

Coordination: Marika LERCH, Policy Department for External Relations

Editorial assistant: Daniela ADORNA DIAZ

Feedback is welcome. Please write to marika.lerch@europarl.europa.eu

To obtain copies, please send a request to poldep-expo@europarl.europa.eu

VERSION

English-language manuscript completed on 30 May 2022.

COPYRIGHT

Brussels © European Union, 2022

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

©Image on coverage used under licence from Adobe Stock.

This paper will be published on the European Parliament's online database, '[Think Tank](#)'

Table of contents

1	Introduction	1
	1.1 Purpose and Scope	2
	1.2 Methodology	2
2	EC Draft Directive, legal and policy context	2
3	Comparative analysis	4
	3.1 Type of legal act and legal basis	4
	3.2 Objective and subject matter	4
	3.3 Scope of human rights and environmental standards	5
	3.4 Scope of companies covered by due diligence duty	7
	3.5 Corporate due diligence duty and process	8
	3.5.1 Due diligence definition	8
	3.5.3 Depth of due diligence requirement	11
	3.5.4 Company remediation	12
	3.5.5 Sectoral due diligence	12
	3.6 Right to an effective remedy	13
	3.7 Engagement with stakeholders and rightsholders	13
	3.8 Protection of whistle-blowers and defenders	14
	3.9 Transparency and reporting	15
	3.10 Monitoring, enforcement and sanctions	15
	3.11 Civil liability	16
	3.12 Directors' duties	17
4	Assessment	17
	4.1 Objective and subject matter	17
	4.2 Scope of human rights and environmental standards	18
	4.3 Scope of companies covered by due diligence duty	19
	4.4 Corporate due diligence duty and process	20
	4.5 Right to effective remedy	22
	4.6 Engagement with stakeholders and rights-holders	23
	4.7 Protection of whistle-blowers and defenders	23
	4.8 Transparency and reporting	24
	4.9 Monitoring, enforcement and sanctions	24
	4.10 Civil liability	25
	4.11 Directors' duties	26
5	Conclusion	27
	Bibliography	28
	Annex – Comparative Tables	34

List of abbreviations

AFET	Committee on Foreign Affairs
CFR	Charter of Fundamental Rights of the European Union
CSO	Civil society organisation
DROI	Subcommittee on Human Rights
EC	European Commission
ECHR	European Convention on Human Rights
EP	European Parliament
ESC	European Social Charter
EU	European Union
IAR	Impact Assessment Report
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
NFRD	Non-Financial Reporting Directive
OECD	Organisation for Economic Co-operation and Development
RSB	Regulatory Scrutiny Board
SME	small and medium-sized enterprise
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGPs	UN Guiding Principles on Business and Human Rights
UN DRIP	UN Declaration on the Rights of Indigenous Peoples

1 Introduction

In line with evolving international and regional human rights norms, the European Union (EU) has increasingly acknowledged that all businesses should respect human rights. Exercising human rights due diligence is key in complying with the corporate responsibility to respect human rights, as reflected in the adoption of horizontal due diligence laws enacted in France (République Française, 2017) and Germany (Deutscher Bundestag, 2021); sector-specific and thematic due diligence legislation such as EU Regulation 2017/821 on conflict minerals; laws intended to combat modern slavery (United Kingdom Parliament, 2015; Parliament of Australia, 2018; United States Congress, 2021); as well as non-financial reporting requirements addressing human rights (EU Directive 2014/95/EU).

Companies, as well as society and the wider economy, can in the long-term benefit from responsible business conduct and a global level-playing field that requires and rewards sustainable production and consumption. Despite the legislative efforts noted, research however suggests that business implementation of due diligence has not progressed extensively or quickly enough to address pressing human rights and sustainable development challenges, or adequately capture its potential benefits, in Europe or beyond (EC, 2020).

Consequently, in April 2020 the European Commissioner for Justice Didier Reynders announced that the European Commission (EC) would introduce a legislative initiative on mandatory corporate human rights and environmental due diligence (Reynders, 2020). On 3 December 2020, the European Council issued conclusions calling on the EC to present a proposal for an EU legal framework on sustainable corporate governance, including cross-sector corporate due diligence and global value chains (Council of the European Union, 2020). Thereafter, on 10 March 2021 the European Parliament (EP) adopted an own-initiative report on corporate due diligence and corporate accountability, prepared by the Legal Affairs Committee, with the Human Rights Subcommittee (DROI) and the International Trade Committee being associated and the Development Committee delivering a regular opinion (European Parliament, 2021b). AFET/DROI contributed to this process with an Opinion adopted on 25 November 2020 (European Parliament, 2020b).

On 23 February 2022, the EC published its proposal for a Corporate Sustainability Due Diligence Directive (EC 2022a). In tandem, the EC published an Impact Assessment Report and Annexes (hereinafter 'EC IAR' and 'IAR Annexes') (EC 2022b), presenting the EC's rationales for its proposal with reference to EU political priorities and other factors¹. The proposed Directive would establish a corporate sustainability due diligence duty to address adverse human rights and environmental impacts. This duty would apply to EU companies over a certain threshold in terms of size and business volume, as well as other EU limited liability companies operating in defined high-impact sectors, together with non-EU companies active in the EU, on a similar basis. To comply with the Directive, EU Member States would need to ensure that companies within the scope of the corporate due diligence duty: (i) integrate due diligence into their company policies; (ii) identify actual or potential adverse human rights and environmental impacts; (iii) prevent or mitigate potential impacts; (iv) bring to an end or minimise actual impacts; (v) establish and maintain a complaints procedure; (vi) monitor the effectiveness of the due diligence policy and measures; and (vii) publicly communicate on due diligence. The due diligence duty envisaged by the draft Directive extends not only to the operations of companies within its scope, but also to their subsidiaries and value chains, to the extent of their established business relationships. Furthermore, the draft Directive makes provision for the monitoring and enforcement of the corporate human rights and environmental due diligence duties to be established via a range of mechanisms including company-level complaints procedures, action by

¹ The EC's 2022 IAR was preceded by two negative opinions from the EU Regulatory Scrutiny Board, delivered following submission to it by the EC of two earlier impact assessments reports (RSB, Second Opinion, 24 February 2022).

national supervisory authorities and civil liability of companies for harm to human rights and/or the environment caused by due diligence failures.

1.1 Purpose and Scope

This In-Depth Analysis first presents the EC proposal and its main features, contextualising them against broader European and international developments in business and human rights regulation. Next, it presents the results of an in-depth comparative analysis of the EC proposed Draft Directive of 23 February 2022 against key recommendations made in: (i) the AFET/DROI opinion (PE655.782) of 25 November 2020; and (ii) the final EP position as presented in its Resolution T9-0073/2021 adopted on 10 March 2021.

In line with its Terms of Reference, the Analysis further evaluates the approach proposed by the EC on key elements relating to human rights and environmental due diligence from the perspective of the AFET/DROI opinion and in light of rationales presented in the EC's Impact Assessment Report (23 February 2022) and related Annexes (29 March 2022). The Assessment (Section 4) provides an overall evaluation of the extent to which key positions of AFET/DROI and the Parliament, as well as relevant international and regional legal standards, policies and guidance regarding human rights due diligence are reflected in the EC proposal, or might be given greater effect in it, to support Members in upcoming discussions and inter-institutional negotiations.

1.2 Methodology

Following its remit, this In-depth Analysis is focused on three source documents: (i) the AFET/DROI Opinion (PE655.782) of 25 November 2020 (hereinafter AFET/DROI opinion); (ii) the Resolution of the European Parliament (hereinafter the final EP position) T9-0073/2021 adopted 10 March 2021; and (iii) the Commission Draft Directive of 23 February 2022 (hereinafter EC Draft Directive). Annex I presents a tabulated comparative analysis of these three texts.

The comparative analysis of the three legislative proposals identified is informed by: relevant international and regional human rights laws (including United Nations (UN), Council of Europe and EU human rights treaties and instruments, as well as national human rights legislation); other normative frameworks including the UN Guiding Principles on Business and Human Rights (UNGPs), Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and Guidance on Responsible Business Conduct; EU and national due diligence regulations (EU Conflict Minerals Regulation, national due diligence laws); and other relevant policies and commitments at European and Member State levels. Also taken into consideration are: the EC Impact Assessment Report of 23 February 2022 and Annexes of 28 March 2022; relevant studies undertaken for the EP and EC; judicial decisions and interpretations of relevant concepts and terms; expert, institutional and civil society reports and proposals; as well as other scholarly material. A full list is included in the Bibliography.

2 EC Draft Directive, legal and policy context

The EC Draft Directive would establish a corporate due diligence duty in relation to companies' human rights and environmental impacts. This due diligence duty would apply to EU limited liability companies over a certain threshold in terms of size and volume of business and other EU limited liability companies operating in defined high-impact sectors, as well as non-EU companies active in the EU on a similar basis.

To comply with the Directive, EU Member States would need to ensure that companies within its scope: (i) conduct and integrate human rights and environmental due diligence into their company policies; (ii) identify actual or potential adverse human rights and environmental impacts; (iii) prevent or mitigate potential impacts; (iv) bring to an end or minimise actual impacts; (v) establish and maintain a complaints procedure; (vi) monitor the effectiveness of the due diligence policy and measures; and (vii) publicly communicate on due diligence (Arts. 4-8). The due diligence duty envisaged by the EC draft Directive

extends not only to companies' own operations within its scope, but also to their subsidiaries and their 'value chain operations' to the extent of their 'established business relationships' (Art. 1).

Furthermore, the EC draft Directive provides for the monitoring (Art 10), reporting (Art 11) and enforcement of the corporate human rights and environmental due diligence duties envisaged *inter alia* through: company-level complaints procedures (Art 9); action by national supervisory authorities (Art 16-21) and civil liability of companies for harm to human rights and/or the environment caused by due diligence failures (Art 22). Further supporting measures include: protection of whistle-blowers (Art 23); provision for the development of due diligence guidelines (Art 13) and model contractual clauses (Art 12); and restrictions on 'public support' for companies sanctioned for due diligence failures (Art 24). Provisions concerning the integration of human rights into company directors' fiduciary duties are also featured (Arts 25-26). Large companies covered by the draft law are further required to have a plan to combat climate change (Art 15).

Based on the above elements, the EC draft Directive outlines a process to be undertaken by companies that, at least in its main steps, generally mirrors corporate human rights due diligence as envisaged by the UNGPs. However, in relation to some parameters, such as the depth of due diligence across value chains and the range of companies covered, the EC draft Directive does not appear fully aligned with the UNGPs, related guidance (OECD; 2018) or with the AFET/DROI and EP final positions. In other areas, the EC draft Directive's objectives and scope exceed the UNGPs, which do not, for example, focus directly on the environment or climate change. Likewise, the EC Draft Directive enters into greater detail in some respects than the UNGPs do (e.g. civil liability and mechanisms by which it may be avoided), as analysed further in Sections 3 and 4 below.

The enactment of corporate due diligence laws, as already recommended by some human rights bodies (CESCR, 2017; CRC, 2013), should be consistent with and advance the fulfilment of states' duties under human rights treaties. The ongoing process to develop a UN treaty on business and human rights likewise contemplates national due diligence laws (UN HRC, 2021). Even so, in assessing the draft Directive's overall consistency with the UNGPs as well as other EU human rights obligations and commitments, it is important to recall that the UNGPs and the human rights treaties from which they were derived do not as such legally oblige or explicitly prescribe the adoption of corporate human rights due diligence laws. Nor do they mandate the choice of one specific legislative scheme: the UNGPs were not developed as a template for due diligence laws, as reflected for instance in their generally broad formulations and coverage of issues ranging far beyond corporate due diligence. To date, few national jurisdictions have adopted horizontal corporate due diligence laws (République Française, 2017; Deutscher Bundestag, 2021; Norwegian Storting, 2021) and these, as well as sector specific or thematic due diligence laws (EU Regulation 2017/821, Swiss Confederation, 2021; UK Parliament, 2015; Parliament of Australia, 2018; Securities and Exchange Commission, 2012; United States Congress, 2021), display significant variations in approach (Methven O'Brien, 2021). Likewise, cross-jurisdictional studies on the impact and effectiveness of specific due diligence schemes are lacking, even if some studies indicate benefits for workers and communities (EC, 2020; Nelson et al., 2010) and companies (MacPhail and Adams, 2016; McCorquodale et al 2017).

Taking such factors into account, an EU Directive would represent a significant step forward globally in the legal regulation of corporate human rights and environmental due diligence, given its binding character, its geographical scope and the economic significance of activities covered, whether directly or via business relationships and value chains, as well as the various monitoring, enforcement and remediation mechanisms envisaged. Conversely, as identified via the following analysis, the current EC draft Directive falls short of the UNGPs' expectations in certain respects; it also fails to carry forward elements of the AFET/DROI opinion and EP final position that could plausibly strengthen its effectiveness and impact, directly and indirectly, in relation to EU human rights and sustainable development commitments. Finally, the EC proposal embodies some features that may entail complexity and uncertainties for Member States,

companies, monitoring and enforcement bodies, as well as for victims, while others raise challenges in terms of coherence with human rights standards at European and international levels. This analysis elaborates on these issues in greater detail in the following sections.

3 Comparative analysis

3.1 Type of legal act and legal basis

The **EP final position** and the **EC draft Directive** take the form of a Directive rather than Regulation. In terms of its legal basis, the **EP final position** refers to Articles 50, 83(2) and 114 TFEU. The **EC draft Directive** refers to Article 50(1), 50(2)(g) and Article 114 TFEU. The **AFET/DROI Opinion** refers to Article 21 of the Treaty on European Union, the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the EU (the Charter, CFR). The EP final position also mentions Article 21, as well as Articles 3 and 208, in its Preamble. The **EC draft Directive** does not explicitly refer to Article 21, albeit there is mention of the Union being founded on respect for human rights as enshrined in the EU Charter of Fundamental Rights (the international instruments referred to in the Annex to the EC draft Directive are analysed in section 3.3 below). Art 83(2) TFEU, as mentioned in the **EP final position**, but not in the other two texts, concerns the approximation of Member States' criminal law regimes, where necessary to ensure effective implementation of an area otherwise regulated by EU law. The omission of reference to Art 83(2) in the **EC draft Directive** can be seen to align with its omission of provisions requiring Member States to implement criminal sanctions regimes for due diligence failures, or other references to corporate abuses amounting to criminal conduct. As noted in section 3.3, the **EP final position** by contrast defines its subject matter scope as also extending to international humanitarian law.

3.2 Objective and subject matter

The **EP final position** and the **EC draft Directive** define their objectives through slightly different formulations, albeit with a broad common purpose. The **EP final position** seeks to fulfil what it refers to as an existing corporate 'duty to respect human rights, the environment and good governance' and not 'cause or contribute to potential or actual adverse impacts [...] through their own activities or those directly linked to their operations, products or services by a business relationship or in their value chain [...]' (Art 1(1)). It also refers to the objectives of ensuring corporate accountability, liability and access to legal remedies, 'in accordance with national law' (Art 1(3)).

The **EC draft Directive**, in conjunction with a similar expression contained in Art 1(1)(a), specifies an objective to lay down rules 'on liability for violations [of corporate due diligence obligations]' (Art 1(1)(b)). Both the **AFET/DROI Opinion** and the **EC draft Directive** refer to human rights and environmental due diligence, whereas the **EP final position** also refers explicitly to a corporate duty to respect 'good governance' (Art 1). In terms of subject matter, differences regarding entities included in the legislation's scope as well as the depth and extent of due diligence duties established for companies are analysed below in sections 3.4 and 3.5.

The **EC draft Directive** and **EP final position** include statements concerning non-regression of human rights protection. The draft Directive indicates that it should not 'constitute grounds for reducing the level of protection' concerning protections of the human rights, environment or climate as applied by Member States (Art 1(2)) or at EU level through other legislation (Art 1(3)); non-regression is addressed in Art 1(5) of the EP final position.

3.3 Scope of human rights and environmental standards

The **AFET/DROI position** refers to ‘full respect for all internationally-recognised human rights, including, as a minimum, those encompassed by the UDHR [Universal Declaration of Human Rights], the nine “core” international human rights treaties, the ILO [International Labour Organization] Declaration on Fundamental Principles and Rights at Work and all fundamental ILO conventions, including the Indigenous and Tribal Peoples Convention, as well as the European Social Charter [ESC] and ECHR’ (para 24). The last two instruments are noted as ‘binding on Member States as a result of Union law and the common constitutional traditions of the Member States’. In supplement, the AFET/DROI opinion connects the scope of due diligence to the human rights of vulnerable groups (para. 26), *inter alia* with reference to: the UN Declaration on the Rights of Indigenous Peoples (UN DRIP); principles of the UN Charter, including ‘the fundamental principles of equality, non-discrimination and self-determination of peoples’; the UN Convention against Corruption; as well as relevant international criminal law and humanitarian law standards².

The **EP final position**’s approach to defining the scope of human rights to which due diligence processes should refer, like Germany’s Act on Corporate Due Diligence Obligations in Supply Chains (Deutscher Bundestag, 2021), is to include an Annex of instruments pertaining to ‘human rights, including social, worker and trade union rights’ to be reviewed on a regular basis and ‘consistent with the Union’s objectives on human rights’ (Art 3(6)). The EP final position thus references ‘international human rights conventions that are binding upon the Union or the Member States, the International Bill of Human Rights, International Humanitarian Law, the United Nations human rights instruments on the rights of persons belonging to particularly vulnerable groups or communities [...] [ILO core conventions] and the rights recognised in the Convention on the Rights of the Child, 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.’ Specific mention is made in addition of international and European standards on the right to collective bargaining (Art 5(4)).

The **EC draft Directive** also adopts the technique of using an Annex, albeit this is embedded in the overall scheme of the draft Directive in a different way than envisaged in the EP final position. Primarily, rather than enumerating international instruments by reference to which corporations should conduct due diligence, the EC draft Directive lists in its Annex the human rights by which its definition of ‘adverse human rights impact’ (Art 3(c)) takes effect. Companies are then to be legally bound by Member States to prevent (Art 7) and terminate (Art 8) adverse impacts ‘resulting from the violation of the rights or prohibitions enumerated in the Annex, while they also potentially bear civil liability for associated damage (Art 22).

To specify what is meant by ‘adverse human rights impact’, the EC draft Directive’s Annex includes three main provisions. Firstly, there is a list of ‘Specific Violations of Rights and Prohibitions included in International Human Rights Agreements’, namely a selection of specific rights mentioned in international instruments. This selection spans human rights, both civil and political, individual and group rights, as well as rights protected under international labour law. Secondly, the Annex includes a list of ‘Human Rights and Fundamental Freedoms Conventions’, including those of the International Bill of Rights, seven of the nine UN core human rights conventions (all except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance), instruments of international humanitarian and

² Here the AFET/DROI opinion refers to the Geneva Conventions and two additional protocols, the Hague Regulations and the Rome Statute of the International Criminal Court.

labour law together with certain other instruments³. Thirdly, the EC draft Directive's Annex also includes a semi-open-ended clause that defines, as an adverse human rights impact, the 'violation of a prohibition or right' not specified in the first list included in the Annex, but 'which directly impairs a legal interest protected in those agreements, provided that the company concerned could have reasonably established the risk of such impairment and any appropriate measures to be taken in order to comply with the obligations referred to in Article 4 of this Directive taking into account all relevant circumstances of their operations, such as the sector and operational context'⁴.

Notably, the list of human rights instruments included in the **EC draft Directive's** Annex is in some areas more directive and comprehensive than the list mentioned in the **AFET/DROI opinion**. Yet, some instruments included (e.g. UDHR, UN DRIP) are not actually legally binding 'Conventions', even if some elements of them may be binding on states. There are also some specific omissions when compared with the **EP final position's** annexed list. Significantly, for instance, the EC draft Directive's Annex does not refer to EU and European regional human rights instruments such as the ECHR and ESC, and Charter of Fundamental Rights of the European Union, as mentioned in the AFET/DROI opinion at various points and in the EP final position. Excepting a reference to the Convention on the Elimination of All Forms of Discrimination Against Women, gender is not referenced in the EC draft Directive, while the AFET/DROI opinion refers to the need for due diligence to cover 'actual and potential impacts on women's rights' (para. 28) and treat 'gender equality as a cross-cutting issue' with reference to the UN Working Group on Business and Human Rights' Gender Guidance on the UNGPs (para. 36). The EC draft Directive does not mention either regional standards from outside the EU or national standards that may be equally relevant in determining standards of protection owed to individuals or communities by companies in those operating contexts, as noted in the AFET/DROI (para. 37) and EP (Recital para. 21) positions. Finally, though it includes the Genocide Convention, other norms of international criminal law are not covered.

References to the environment and climate change

All three texts include environmental issues in the scope of due diligence required of companies. The **AFET/DROI opinion** refers to 'environmental rights' (para.35). Though this term is not as such defined, the opinion implies that it relates to human rights that are interrelated with the environment, for example, 'the rights to life, health, food, water and development, as well as the right to a safe, clean, healthy and sustainable environment' as well as biodiversity (para.29). By contrast, the **EP final position** treats environmental degradation as a discrete harm to be avoided by due diligence. In line with its approach to defining the scope of human rights, it defines 'potential or actual adverse impact on the environment' as 'any violation of internationally recognised and Union environmental standards' to be set out in an Annex (Art 3(7)).

Somewhat mirroring its scheme for defining the scope of human rights, as discussed above, the **EC draft Directive** reflects two potential avenues for establishing the scope of environmental harm to be addressed by due diligence. Firstly, Art 3(b) defines 'adverse environmental impact' with reference to 'violations' of 'prohibitions and obligations' contained in a list of 'international environmental conventions' included in Part II of the Annex to the draft Directive. The Conventions listed in Part II of the Annex to the EC draft

³ Section 2 also references The Convention on the Prevention and Punishment of the Crime of Genocide, 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 United Nations Convention against Transnational Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Section 2 further includes the International Labour Organization's Declaration on Fundamental Principles and Rights at Work; Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; and core/fundamental conventions. While all the core ILO conventions, defined to include the 2014 Protocol to the Forced Labour Convention, 1930 (No. 29) are also listed in Section 2, the Commission has not elected to include other relevant Conventions, including the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Violence and Harassment Convention, 2019 (No. 190).

⁴ Annex to the proposal, Part I, Section 1, para. 20.

Directive include those related to the protection of biodiversity, hazardous chemicals and waste. Secondly, some 'environmental rights' violations are included in the scope of 'adverse human rights impact' under Art 3(c) of the draft Directive, via Part I of the Annex (para 19), in particular environmental damage affecting rights protected by Art 5 of the International Covenant on Civil and Political Rights (ICCPR), Art 12 of the International Covenant on Economic, Social and Cultural Rights and Art 3 UDHR.

Regarding climate change, the **AFET/DROI opinion** states that 'climate change mitigation and adaptation in line with the Paris Agreement's temperature goals must form part of businesses' human rights and environmental due diligence obligations' (para 22). The **EP final position** includes climate change among the likely business impacts which affect human rights but does not specifically refer to climate mitigation as an obligation under due diligence. The **EC draft Directive**, as noted earlier, includes a free-standing obligation on large companies to adopt climate change plans, with further duties to reduce emissions for high-risk companies and tie Directors' remuneration to the achievement of climate plans.

3.4 Scope of companies covered by due diligence duty

The AFET/DROI opinion, EP final position and EC draft Directive display some similarities but also divergences regarding the scope of companies covered by the proposed due diligence duties (personal scope or scope *rationae personae*).

The **AFET/DROI opinion** recommended that a due diligence duty should apply to 'all companies and all sectors, including state-owned enterprises', albeit at the same time indicating that EU due diligence legislation should 'follow a proportionate approach, taking into account the risk to human rights, based on elements such as the sector of activity, the size of the undertaking, the context of its operations in its supply chain' (para. 21).

By contrast, the **EP final position** addresses 'large undertakings governed by the law of a Member State or established in the territory of the Union' (Art 2(1)), 'publicly listed small and medium-sized undertakings', as well as 'high-risk small and medium-sized undertakings' (Art 2(2)). Also covered are the same three kinds of companies 'governed by the law of a third country[...] when they operate in the territory of the Union or when they operate in the internal market selling good or providing services (Art 2(3)).

The **EC draft Directive** addresses large undertakings with more than 500 employees and net worldwide annual turnover or more than EUR 150 million (Art 2(1)(a)). However, it also applies a due diligence requirement to large undertakings with more than 250 employees and net worldwide turnover of over EUR 40 million, if the business has generated at least 50 % of its net turnover in one of a set of identified sectors (Art (2)(b))⁵. Similarly, the EC draft Directive would apply to large undertakings established in a third country where such undertakings generate annual net turnover inside the EU in excess of the earlier stated thresholds.

With regard to small and medium-sized enterprises (SMEs), while the **AFET/DROI opinion**, as noted, recommends that due diligence requirements should apply to all companies, it also requests that 'special exemptions be provided to SMEs in order to avoid disproportionate administrative and regulatory burdens on those small businesses' (para.21). The **EP final position** includes all publicly listed and high-risk SMEs (Art 2(2)). Insofar as SMEs are concerned, the EC draft Directive hence presents a reduced scope compared to the AFET/DROI opinion and EP final position.

The **AFET/DROI opinion** also calls for 'financial institutions, including the European Investment Bank and European Bank for Reconstruction and Development [to] be bound by the future due diligence

⁵ Textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear; agriculture, forestry, fisheries (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages; as well as companies involved in extraction, processing and manufacture of mineral and metal and derivative products (Art 2 (1) (b) (i)-(iii).

requirements' (para. 22). Whereas financial sector actors are implicitly addressed by the general scope defined under the **EP final position** and they are explicitly addressed by the **EC draft Directive** (Art 3(iv)), neither addresses either the above named international financial institutions or state-owned enterprises as contemplated by the AFET/DROI opinion. Due diligence requirements for public bodies in the context of public procurement are not addressed by any of the three texts considered.

3.5 Corporate due diligence duty and process

3.5.1 Due diligence definition

The AFET/DROI opinion, the EP final position and the EC draft Directive refer and seek to align to the UN Guiding Principles and other relevant instruments, including the OECD Guidelines for Multinational Enterprises, albeit reflecting their due diligence recommendations to varying extents.

The **AFET/DROI opinion** recommends that 'requirements for corporate mandatory human rights and environmental due diligence be grounded in the principle of corporate responsibility to respect human rights, as articulated by the UNGPs' (Art 34). Accordingly, in describing the due diligence process to be undertaken by businesses, the AFET/DROI opinion states that businesses 'in practice [...] should have in place an embedded human rights policy and a human rights due diligence process and adequate measures in order to facilitate access to effective remedies for business-related human rights abuses, without risks of retaliation', adding that such remedies 'should be gender responsive' (para.34). Elsewhere the AFET/DROI opinion refers to the need for companies, via due diligence, to 'identify and address their impacts to ensure full respect for all internationally-recognised human rights' as noted above (para.24); and that 'the scope of due diligence obligations must be based on the risk of violations', as well as linked to 'severity of business impacts on human rights', hence the 'scale of the impact, the scope of the impact and whether the impact is irremediable' (para. 37).

Under Art 4 *Due diligence strategy* the **EP final position** specifies that businesses 'shall in an ongoing manner make all efforts within their means to identify and assess, by means of a risk-based monitoring methodology that takes into account the likelihood, severity and urgency of potential or actual impacts on human rights, the environment or good governance', as well as 'the nature and context of their operations, including geographic'. Further, risk-based monitoring should report whether the business' 'operations and business relationships cause or contribute to or are directly linked to any of those potential or actual adverse impacts'.

Unless such risk-based monitoring reveals there to be no nexus between the business and any actual or potential risks to human rights, environment or good governance, the business is further required, according to the EP final position, to 'establish and effectively implement a due diligence strategy' (Art 4(4))⁶. The EP final position further specifies that this due diligence strategy should incorporate a 'prioritisation strategy' based on UNGP 17 – where not all adverse impacts can be addressed at once – which should be defined with reference to factors including 'severity, likelihood and urgency [...], the nature and context of their operations, including geographic, the scope of the risks, their scale and [irremediability]' (Art 4(4)).

The **EC draft Directive** is more detailed and prescriptive in its definition of the due diligence process required of companies (Articles 4-11) than the AFET/DROI opinion or the final EP position. Firstly, the EC draft Directive specifies six 'actions' comprising due diligence to be implemented by companies within its scope: (a) integrating due diligence into company policies; (b) identifying actual or adverse impacts; (c) preventing and mitigating impacts; (d) establishing and maintaining a complaints procedure; (e)

⁶ In this aspect of its anticipated scheme (i.e. establishment of a due diligence strategy following a positive risk identification) the EP final position thus resembles the Dutch Child Labour Due Diligence Law; risk identification and due diligence are not so separated under the German or French laws.

monitoring the effectiveness of due diligence measures; and (f) publicly communicating on due diligence. Although they are configured slightly differently, these steps align with the requirements of due diligence expressed by the UNGPs. However, each step is subject to further elaboration by the EC Draft Directive in subsequent provisions. While this section considers elements (a) to (d), elements (e) and (f) are considered below in Section 3.6. Notably, each due diligence step extends in the EC draft Directive explicitly or by implication to environmental as well as human rights impacts.

Integrating due diligence into companies' policies

Art 5 of the **EC draft Directive** requires that companies 'integrate due diligence into all their corporate policies' while also establishing a dedicated 'due diligence policy' (Art 5(1)). It is specified that the latter must contain: a description of the company's overall due diligence approach (Art 5(1)(a)); 'a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries' (Art. 5(1)(b)); and a description of processes deployed by the company to implement due diligence including 'to verify compliance with the code of conduct' and to apply it to 'established business relationships' (Art 5(1)(c)), while companies are also required to update the entire due diligence policy annually (Art. 5 (2)).

Identifying actual and potential adverse impacts

Under Art 6, the **EC draft Directive** specifies how companies should identify actual and potential adverse impacts on human rights and the environment, that '[aris[e] from' impacts in their own or subsidiaries' operations, or established value chain relationships (Art 6(1)). Notably, the formulation 'arising from' deployed in Art 6(1) deviates from the UNGPs, which rather refer to impacts that enterprises have caused, contributed to, or to which they are directly linked (UNGP 19, 22). The EC draft Directive's formulation in Art 6(1) therefore appears to elide three categories of corporate involvement which are distinguished by the UNGPs and which, in their scheme, carry different consequences for companies, particularly in relation to their responsibilities for remediation. This elision is carried forward in the EC draft Directive *inter alia* into Artt 7 and 8, and thereby Art 22. On the one hand, this might appear to entail civil liability for a broader category of harms (i.e. those to which the business is associated via direct linkage) than currently generally entertained under civil law. On the other hand, liability for harms to which a company is only directly linked appears restricted under Art 22(2), at least where reasonable due diligence has been exercised by the originating company. Overall, then, the proposed scope of liability in this area under the EC draft Directive may appear ambiguous. Art 6(4) requires companies, for instance, to consult with 'potentially affected groups' to gather information on possible impacts. Generally, companies are required to 'take appropriate measures' to this end.

Art 6's general duty to identify actual and potential adverse impacts is limited in certain ways. Art 6(2) clarifies that companies included in the Directive's scope by virtue of their sector (Art 2(1)(b)) only need to identify 'severe adverse impacts [emphasis added] that are relevant to [their] respective sector', although it seems unclear how such a demarcation might be achieved (e.g. because any risk eventuating in relation to a company in the sector might arguably be evaluated as 'relevant' to that sector). Likewise, under Art 6(3), financial sector companies are required to conduct only *ex ante* rather than ongoing risk identification in relation to financial activities, a restriction that does not align with the UNGPs or related guidance.

In addition, the reliance of the EC draft Directive here as elsewhere on qualifying terms such as 'appropriate' and 'relevant' to condition the scope of the duty of risk identification established is noteworthy. While this provides context-specificity, consistently with the UNGPs, it also implies uncertainty, in that it may not always be clear in advance how such terms should be interpreted. Given that failure to comply with Art 6 provides one basis for liability, this may pose challenges in the context of enforcement and remediation.

Preventing adverse potential impacts

Art 7 of the **EC draft Directive** would establish a duty for Member States to ensure that companies take specific actions in preventing or mitigating actual or potential adverse human rights and environmental

impacts that 'have been or should have been identified' under Art 6. Under Art 7(2)(a) companies are required, 'where relevant' (Art 7(2)) and 'where necessary due to the nature or complexity of the measures required for prevention' (Art 7(2)(a)), to 'develop and implement a prevention action plan, with reasonable and clearly defined timelines for action and qualitative and quantitative indicators', in consultation with stakeholders. However, the incorporation of qualifying terms such as 'relevant' and clauses such as 'necessary due to the nature or complexity of the measures required', while consistent with the UNGPs' approach for defining due diligence, again entails that the exact legal effect of this provision appears uncertain. Ultimately, for this reason, Art 7(2) may embody a similar standard to the AFET/DROI opinion, albeit the latter is expressed in more concise terms.

Art 7(2)(b) requires covered companies to 'seek contractual assurances' from business partners in direct business relationships that they will comply with the originating company's (due diligence) code of conduct, as well as any prevention action plan devised by the originating company, including by cascading requests for 'contractual assurances' to other businesses in the value chain. Under Art 7(4), where such contractual assurances are obtained, compliance with them must be verified 'by the appropriate measures', which may include reliance on 'industry initiatives or independent third party-verification'. Yet, in line with the reasoning indicated above in relation to Art 7(2)(a), it is not specified in the EC draft Directive how the 'relevance' of this approach will be determined, or what measures may be seen as 'appropriate' to verify compliance.

Additional provisions of Article 7 in the EC draft Directive foresee similar, apparently mandatory, yet qualified duties to 'make necessary investments', which are needed to: prevent or adequately mitigate adverse impacts (Art 7(2)(c)); provide 'targeted and proportionate' support to SMEs where needed to facilitate implementation of a code of conduct or prevention action plan (Art 7(2)(d)); and 'collaborate with other entities' so as to increase leverage in terminating abuses (a provision which might notably be better located under Art 8). Art 7(3) encourages companies to enter contractual relationships with suppliers with whom they have only indirect relationships to seek assurances of compliance codes of conducts and prevention plans, where direct business partners are not amenable. This appears intended to allow companies to have tighter control over the standards in the supply chain. Yet, its non-mandatory character again renders its exact legal impact uncertain.

Article 7(5) of the EC draft Directive appears to exceed measures envisaged by the AFET/DROI opinion and the EP final opinion. This provision mandates Member States to ensure that companies covered by the due diligence requirement do not extend existing business relations or enter new business relations with second entities where the covered company's 'appropriate measures' as defined in Art 7(2)-7(4) have not been able to prevent or 'adequately mitigate' potential adverse impacts. Furthermore, Art 7(5) demands that covered companies in this situation, where otherwise legally permitted, must 'temporarily suspend commercial relations' (Art 7(5)(a)) and 'terminate the business relationship' where a potential adverse impact is severe (Art 7(5)(b)), noting that Member States may need to legislate to cover these eventualities.

Art 7(6) provides an exemption from Art 7(5)(b) for financial services companies, where a termination of loans, credits or other financial services could cause 'substantial prejudice'. Here the EC draft Directive's logic is unclear given that suspensions or terminations of commercial relationships under other provisions of Art 7 might have the same practical consequence.

Bringing actual adverse impacts to an end

Art 8 of the **EC draft Directive** mirrors Art 7 in elaborating a somewhat complex, apparently mandatory, yet qualified scheme determining how Member States and companies should respond to actual adverse impacts that have been, or 'should have been' identified in line with Art 6. Art 8(1) requires that companies 'bring to an end' (Art 8(1)) such adverse impacts arising from, per Art 6(1), their own operations, those of

subsidiaries and established business relationships linked to their value chains. Where this is not possible, they should minimise their extent (Art 8(2)).

Where 'relevant', Art 8(3) further requires that companies 'neutralise' or 'minimise' the extent of adverse impacts, which may require 'payment of damages to affected persons and of financial compensation to affected communities' (Art 8(3)(a)) on a basis that should be 'proportionate' to the 'significance and scale' of the impact as well as the company's contribution. Under Art 8(3)(b), corrective action plans, including indicators for 'improvement', which are to be developed in consultation with stakeholders, are mandatory in the event that adverse impacts cannot be 'immediately brought to an end'. The various devices described above in relation to Articles 7(2) and (3) are mirrored in Art 8 concerning termination of impacts 'where relevant'; in other words: contractual assurances (Art 8(3)(c)); investments (Art 8(3)(d)); support for SMEs (Art 8(3)(e)); collaboration to increase leverage (Art 8(3)(f)); and prohibitions of continued or new business relations with companies where adverse impacts have not been addressed (Arts 8(4)-(7)). As with Article 7 of the EC draft Directive, Art 8 appears to go beyond, in its detail and prescriptive character, the due diligence measures envisaged by the AFET/DROI opinion and the EP final opinion. Finally, with regard to Article 8, it can be said that the relationship between its provision for payment of 'damages' and 'financial compensation' and Art 22's provisions on civil liability appears unclear.

Guidance on due diligence

Though the **AFET/DROI opinion** envisages guidance on operational grievance mechanisms (para. 51), it does not mandate the development of EU guidance on due diligence in general. Both the **EC draft Directive** (Art 13) and the **EP final position** (Art 14) foresee the development, in conjunction with stakeholders, of non-binding guidelines on fulfilment of due diligence obligations by companies within the legislation's scope, to be reviewed and updated on a periodic basis. The **EP final position** suggests such guidance should address specific 'impacts, sectors and geographical areas'.

3.5.3 Depth of due diligence requirement

An important consideration is how far beyond a company's own immediate activities the duty to undertake due diligence extends. The UNGPs, it will be recalled, envisage due diligence that extends, in principle, to the entire value chain, albeit recognising the possibility that companies may need to derogate from this position in some circumstances (UNGP 17).

The **AFET/DROI opinion** mentions the need to extend due diligence to violations or adverse impacts 'caused' by a company or 'with which it may be linked throughout its supply chain' (para.20). The **EP final position** instead relies on the terminology of 'value chains'. In defining its objective, the EP final position refers to companies' duty to respect human rights in the context of 'their own activities or those directly linked to their operations, products or services by a business relationship or in their value chains' (Art 1), a term defined in Art 3(5) of the EP final position, as extending, *inter alia*, to 'all activities, operations, business relationships and investment chains of an undertaking' that include 'entities with which the undertaking has a direct or indirect business relationship, upstream and downstream'.

The **EC draft Directive** does not directly define the depth of due diligence that companies are generally expected to undertake. Rather, via Art 1(1) and Artt 6-8, in line with the due diligence requirement, it defines specific steps for identification, prevention and cessation of adverse impacts, which are identified to extend to a company's own operations, those of subsidiaries and 'value chain operations carried out by entities with whom the company has an *established business relationship*' (emphasis added). This general duty is limited, as noted above, for companies included in the Directive's scope by virtue of their sector under Art 6(2) and for financial sector companies under Art 6(3).

A 'business relationship' is defined, in Art 3(e) of the EC draft Directive, as referring to a relationship with a contractor, subcontractor or any other legal entities, either: '(i) with whom the company has a commercial

agreement or to whom the company provides financing, insurance or reinsurance'; or '(ii) that performs business operations related to the products or services of the company for or on behalf of the company'. An *established* business relationship, according to Art 3(f), is a business relationship, direct or indirect, 'which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain'. Article 1(1) provides that '[t]he nature of a business relationship as established shall be reassessed periodically, and at least every 12 months.' Hence, overall, the due diligence duty provided for by the EC draft Directive is more limited, in terms of depth, than that foreseen by either the AFET/DROI opinion or EP final position.

3.5.4 Company remediation

According to the UNGPs, businesses that 'have caused or contributed to adverse impacts' should provide for or cooperate in their remediation through legitimate processes' (UNGP 22). By contrast, 'Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations products or services by a business relationship', a company is not itself required to provide for remediation, 'though it may take a role in doing so' (UNGP 22 Commentary).

In its opinion, following this approach, **AFET/DROI** urges companies, 'as part of due diligence', to put in place processes to enable remediation of impacts they 'cause or to which they contribute'. In this context, the AFET/DROI opinion further refers to the need for operational level grievance mechanisms, in line with UNGP 31 (para 48). This element is reinforced by a call for guidance on such grievance mechanisms (para 51), as noted earlier, and by the suggestion that companies establish early-warning 'alert' mechanisms (para 44).

The **EP final position** reflects similar views. Art 9 requires companies to maintain grievance mechanisms 'as an early-warning mechanism for risk-awareness and as a mediation system'. Such mechanisms may be provided by companies individually, via collaborative arrangements or under Global Framework Agreements (Art 9(1)). These mechanisms should be aligned to UNGP 31 and permit anonymous or confidential complaints (Art 9(2)). Moreover, under Art 10 the EP final position further introduces the terms of UNGP 22 noted above, elaborating additional requirements in this regard *inter alia* for stakeholder involvement (Art 10(3)) and guarantees of non-repetition (Art 10(4)).

Turning to the **EC draft Directive**, company-level remediation is approached via two mechanisms. Firstly, there is a requirement for companies covered by the legislation to establish a 'complaints procedure' (Art 9(3)). This must allow individuals, trade unions and workers' representatives as well as civil society organisations (CSOs) to submit complaints based on 'legitimate concerns regarding actual or potential adverse human rights impacts [...] with respect to their own operations, the operations of their subsidiaries and their value chains' (Art 9(1)). If the procedure finds a complaint to be 'well-founded', the relevant impact is deemed to be 'identified' for the purposes of Art 6 (Art 9(3)), as it will also trigger measures to terminate adverse impacts under Art 8 (see above Section 3.5.1). Secondly, the EC draft Directive (as already discussed in Section 3.5.2) demands that Member States ensure that companies in general 'take appropriate measures to bring actual adverse impacts' identified to an end (Art 8(1)), through the suite of measures enumerated under Art 8(3)-(7), including: payment of damages and financial compensation (Art 8(3)(a)); development of corrective action plans (Art 8(3)(b)); seeking contractual assurances from direct partners (Art 8(3)(c)); and suspending or terminating relevant business relationships (Art 8(6)). These steps may, depending on the circumstances, directly or indirectly contribute to remediation of harms suffered by victims.

3.5.5 Sectoral due diligence

The **AFET/DROI opinion** mentions the need for 'specific procedures and obligations' in relation to 'high-risk sectors', including 'guidelines in line with the OECD's approach' (para 10); it also indicates a need for the consideration of proportionality to account industry sector as a factor (para 21). The **EP final position**

provides for development of ‘voluntary sectoral or cross-sectoral due diligence action plans at national or Union level aimed at coordinating the due diligence strategies of undertakings’, with a right for stakeholders to participate in the process (Art 11). It also provides for the establishment of joint grievance mechanisms via such plans (Art 11(3)).

One aspect of the **EC draft Directive**’s personal scope refers to certain industry sectors (Art 2(1)(b)(i)-(iii)). The draft Directive does not provide for sector action plans or grievance mechanisms as such, unlike those in the other two texts considered. The EC draft Directive would though allow companies to ‘rely on industry schemes to support the implementation of their obligations’ to conduct due diligence (Art 14(4)). The EC draft Directive also permits, albeit does not require, the development of guidance by the Commission and Member states to allow assessment of the ‘fitness of industry schemes and multi-stakeholder initiatives (Art 14(4)).

3.6 Right to an effective remedy

The **AFET/DROI opinion** highlights the right to remedy and recommends that EU due diligence legislation should ‘require states to ensure that victims of business-related violations are remedied and redress is provided for the harm suffered’ (para.47). The AFET/DROI opinion refers in this context to the ECHR and CFR as well as international standards, including the *UN Basic Principles and Guidelines on the Rights to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*⁷, that call for reparation for ‘victims of gross violations of international human rights law and serious violations of international humanitarian law’. The **EP final position**, in its recitals, similarly mentions the right to remedy under the ICCPR, ECHR and the Charter, as well as the rights of victims of trafficking and crimes under EU legislation⁸. The **EC draft Directive** lacks explicit commitment to the right to remedy. Nevertheless, the right to remedy is encompassed in the various instruments included in the Annex to the EC draft Directive (Part I, 2). The EC draft Directive also refers to the UNGPs in its recitals, albeit without direct reference to the right to effective remedy in that context (para 5).

3.7 Engagement with stakeholders and rightsholders

The **AFET/DROI opinion** recommends that businesses be encouraged to engage timely and meaningfully with affected stakeholders at all stages of the due diligence process (para 43), as essential to accurate risk assessment (paras 38, 39). Similarly, the **EP final position** refers to ‘good faith effective, meaningful and informed discussions with relevant stakeholders’ in the establishment and implementation of due diligence strategies, emphasising in particular the right of trade unions and workers’ representatives to be involved in the development of due diligence strategies (Art 5(1)). Under the EP final position, all stakeholders would be entitled to request a discussion of actual or potential adverse impacts (Art 5(2)), while companies would be obliged (Art 5(3)) to ensure that they were not put at risk as a result of such engagement.

The **EC draft Directive** provides for stakeholder engagement across the due diligence process, albeit in a less precise manner and without prescribing when, specifically, stakeholders should be engaged. Art 6, hence, provides that ‘[w]here relevant’, companies shall carry out ‘consultations with potentially affected

⁷ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Part VIII (GA Res 60/147, 16 Dec 2005).

⁸ European Parliament and Council of the European Union, [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), OJ L 101, *Official Journal of the European Union*, 15 April 2011; European Parliament and Council of the European Union, [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#), OJ L 315, *Official Journal of the European Union*, 14 November 2012.

groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts'. Preventive (Art 7) and corrective (Art 8) action plans should, according to the draft Directive, likewise be developed in consultation with affected stakeholders.

Definition of stakeholders

The definition of stakeholders varies across the three documents. The **AFET/DROI opinion** refers to stakeholders and their representatives, but without a comprehensive definition (para 43 mentions only indigenous peoples, farmers' and workers' representatives). In the context of alert mechanisms (see below in Section 3.8), the opinion refers to interested parties as including 'trade unions, consumers, journalists, civil society organisations, lawyers and human rights and environmental defenders, or members of the public' (para 44).

The **EP final position** applies a non-exhaustive definition of stakeholder which refers to affected individuals and groups, 'as well as organisations whose statutory purpose is the defence of human rights, including social and labour rights, the environment and good governance. These can include workers and their representatives, local communities, children, indigenous peoples, citizens' associations, trade unions, civil society organisations and the undertakings' shareholders' (Art 3).

The **EC draft Directive** defines stakeholders as 'the company's employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships' (Art 3). Parties who may access the complaints procedure, required of companies under Art 9, include: affected or potentially affected persons; 'trade unions and other workers' representatives representing individuals working in the value chain concerned'; and 'civil society organisations active in the areas related to the value chain concerned'.

A significant divergence across the documents relates to their treatment of trade unions. Trade unions are addressed directly by both the **AFET/DROI and EP final position** as stakeholders and interested parties. As such, they are entitled to be involved not only in development of the due diligence strategy, but also as its recipients, *inter alia*, to raise complaints. In the **EC draft Directive**, trade unions can submit complaints only 'where they have legitimate concerns regarding actual or potential adverse human rights impacts and adverse environmental impacts with respect to their own operations, the operations of their subsidiaries and their value chains' (Art 9(2)).

3.8 Protection of whistle-blowers and defenders

Protection of human rights and environmental defenders is prominent in the **AFET/DROI opinion**. This calls on the EC to consider establishing a protection mechanism, with reference to the United Nations Declaration on Human Rights Defenders (para 46), as well as incorporating safeguards into company disclosure and complaint procedures (para 45), along with urging early warning mechanisms open to any interested party to 'warn the company of adverse impacts and human rights violations' (para 44). The **EP final position** likewise highlights threats not only to defenders themselves, but also their role in publicising adverse human rights impacts of business operations (Preamble V). It seeks to establish preventive or alert mechanisms and furthermore, as noted above, requires a grievance mechanism which would be open to stakeholders, based on the position's narrower definition discussed in Section 3.7 above. The **EC draft Directive** does not refer to human rights and environmental defenders as such, although the 'complaints procedure' envisaged under Art 9 might be open to them as affected or potentially affected persons, along with CSOs (Art 9(2)).

All three documents considered refer to the EU Whistle-blower Directive (Directive (EU) 2019/1937). The **AFET/DROI opinion** and the **EP final position** specifically refer to the requirement that company

complaints procedures ensure the anonymity, safety, physical and legal integrity of whistle-blowers. The **EC draft Directive** would extend the Whistle-blower Directive to complaints raised under it.

3.9 Transparency and reporting

The AFET/DROI opinion and the EP final position highlight the importance of transparency. For the **AFET/DROI opinion**, transparency based on the ‘right to know’ of workers and other stakeholders (para 42) is a prerequisite to meaningful cooperation with affected rights-holders and communities to assess the risks and prevent, mitigate and remedy human rights violations accurately (para 38). This entails the need for publication of standardised and accessible (para 40) due diligence and evaluation reports via online public repositories, accessible on a centralised single platform (para 41). However, this opinion also signals that disclosure requirements should not be disproportionate or pose a ‘financial burden’ for companies (para 40), with reference made to a right to appeal for companies (para 41).

Similarly emphasising transparency’s importance (Recital 24), the **EP final position** expects publication of companies’ due diligence strategies (Art 6(1)) via their websites as well as a single European access point (Art 6(3)). Corporate due diligence strategies should also be communicated to workers, other stakeholders and national authorities (Art 6(2)), along with ‘relevant information’ upon request. Significantly, the EP final position would further require companies to map, with due regard for commercial confidentiality, their value chains and ‘publicly disclose relevant information’ including ‘names, locations, types of products and services supplied and other relevant information’ on ‘subsidiaries, suppliers and business partners’ (Art 4(4)(2)). Under this position, grievance mechanisms are also required to be transparent (Art 9(2)): companies should report on reasonable concerns raised and provide regular updates on progress.

For companies not already covered by EU non-financial reporting legislation (Articles 19a and 29a of Directive 2013/34/EU), the **EC draft Directive** would require Member States to enact duties to report on due diligence via annual statements published on company websites (Art 11). The EC would be obliged to define reporting standards in this regard (Art 11). The EC draft Directive does not refer though to supply chain mapping and transparency, or any transparency connected to company complaints procedures (Art 9) and the handling of substantiated concerns (Art 19).

3.10 Monitoring, enforcement and sanctions

The **AFET/DROI opinion** underlines the need for adequate monitoring and enforcement of EU due diligence legislation at Member State and EU levels, by appropriately resourced competent judicial and administrative authorities (para 54). Enforcement should proceed through ‘effective, proportionate and dissuasive legal consequences, including sanctions’ established in national law and based on the severity of misconduct for non-compliance with due diligence obligation (para 55). The exclusion of non-compliant companies from public procurement and public funding are contemplated as sanction mechanisms. The EC, according to the AFET/DROI opinion, should develop guidance on national enforcement action as well as an EU Action Plan, tools and training (para 54).

The **EP final position** adopts a similar approach, though elaborating its various proposed measures in greater detail, through: separate clauses on supervision by national competent authorities (Art 12); investigations on undertakings (Art 13); guidelines (Art 14); and sanctions (Art 18). Regarding sanctions, these should, as in the AFET/DROI opinion, be effective, proportionate and dissuasive, taking severity and repetition of infringements into account; sanctions may further involve exclusion from procurement or other state aids (Art 18(2)). A European network of supervisory authorities is envisaged (Art 16).

The **EC Draft Directive** frames an enforcement scheme in broadly similar terms (Arts 17, 18, 20, 21). Specifically, it provides *inter alia* for: inspections Art 18(3), 18(4); and supervisory authorities empowered to make binding orders on companies (Art 18(5)(a)), to impose fines (Art 18(5)(b)) and interim measures (Art 18(5)(c)). Due process rights of companies are recognised in this context (Art 18(7)). The EC draft

Directive further mandates that Member State authorities take into account the conduct of any company in question (Art 20(2)), as well as its turnover (Art 20(3)) in determining fines. Moreover, enforcement decisions must be published (Art 20(4)). The EC draft Directive does not refer to exclusion from public procurement or public support specifically as a sanction to be applied by national supervisory authorities. However, it does require Member States 'to certify that no sanctions have been imposed on [companies applying for public support] for a failure to comply' with due diligence obligations under the Directive (Art 24).

Some additional measures indicated by the **AFET/DROI opinion** to support enforcement are not specifically highlighted by the **EC draft Directive**, namely: the publication of guidance on effective enforcement action at Member State level; development of an EU Action Plan on Business and Human Rights; as well as tools and training on due diligence (para 54). However, development of such measures might reasonably be implied as falling within the functions of the European Network of Supervisory Authorities that is envisaged (Art 21). Additionally, the EC draft Directive sets out detailed provisions on modalities for cross-border coordination amongst national supervisory authorities (Art 21).

3.11 Civil liability

Though not approaching the matter in extensive detail, the **AFET/DROI opinion** nevertheless welcomes the prospect of companies' civil liability. Companies should be potentially jointly liable, it is indicated, for 'human rights violations and damage to the environment' that are 'directly linked to their products, services or their operations', 'unless the companies acted with due care and took all reasonable measures that could have prevented the harm' (para 56). Elsewhere it is stated that 'conducting due diligence should not by itself absolve companies from liability for causing or contributing to human rights abuses' (para 48); and that 'once a claimant establishes an initial case, the responding company should show it had met its due diligence obligations, and that the damage and violations, if any, are not the result of a failure to effectively conduct due diligence' (para 49). Moreover, the AFET/DROI opinion calls for exploration of criminal liability for the 'most severe violations' (para 56).

Art 19 of the **EP final position** equally envisages civil liability for due diligence failures in certain circumstances. Member States should have a liability regime 'under which, undertakings can, in accordance with national law, be held liable [...] for any harm arising out of potential or actual adverse impacts on human rights [...] that they, or undertakings under their control, have caused or contributed to by acts or omissions' (Art 19(2)). In contrast to the AFET/DROI opinion, the EP final position would permit the performance of due diligence to serve as a defence to statutory liability for human rights and environmental harms to be established under the Directive (Art 19(3)). Nevertheless, performing due diligence should not absolve companies from other liabilities under national law (Art 19(1)). The EP final position holds that limitation periods should be reasonable (Art 19(4)).

For its part, the **EC draft Directive** ties civil liability to the requirements it establishes for companies in terms of preventing potential (Art 7) and terminating actual (Art 8) adverse impacts. Where a company fails to fulfil duties under both of these articles and, because of this, an adverse impact 'occurred and led to damage', Member States must ensure that the company is found 'liable for damages' (Art 22(1)). Conversely, where companies fulfil duties under Art 7 and 8, this operates as a partial shield to civil liability as provided for under Art 22(2). Art 22(2) excludes liability for companies in relation to harms caused by indirect business partners in certain circumstances. Article 22(3) of the EC draft Directive provides that civil liability of a company for damages 'shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the value chain'. No provision is made regarding criminal liability.

The **AFET/DROI opinion** recommends that, once a claimant 'establishes an initial case', the burden of proof should lie with a company to 'show it had met its due diligence obligations and that the damage and

violations, if any, are not the result of a failure to effectively conduct due diligence' (para 49). The allocation of any burden of proof, though, is not considered in the **EP final position** or the **EC draft Directive**. Similarly, while the **AFET/DROI opinion** highlights the importance of disclosure of information to interested parties in connection with judicial proceedings and access remedies' (para 44), the **EC draft Directive** and **EP final position** do not.

3.12 Directors' duties

Neither the **AFET/DROI opinion** nor the **EP final position** address directors' duties, as this subject was addressed under a separate EP procedure⁹. The **EC draft Directive** though provides that directors of EU companies within its scope shall 'take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term' when fulfilling their duty to act in the best interest of the company (Art 25). Directors of such companies would also be responsible for 'putting in place and overseeing the due diligence actions' of the company, 'with due consideration for relevant input from stakeholders and civil society organisations' (Art 26(1)). Finally, directors shall 'take steps to adapt the corporate strategy to take into account the actual and potential adverse impacts identified [...] and any measures taken' (Art 26(2)).

4 Assessment

This section analyses the positions taken in the AFET/DROI opinion, EP final position and EC draft Directive from the standpoint of formal as well as likely practical consistency (to the extent that this may be estimated *ex ante*) with general and European regional human rights principles and laws together with business and human rights-specific norms. It aims to highlight significant gaps, convergences and divergences between these, and in some instances indicates avenues for their possible resolution.

4.1 Objective and subject matter

Enacting corporate human rights and environmental due diligence laws that not only establish due diligence duties for companies, along with measures for their promotion and enforcement, but also facilitate effective remedies for victims should give effect to states' established human rights duties under Union and international law. This may be the case even if such laws in some ways depart from guidance provided by the UNGPs, given that the UNGPs were not devised as a legislative template and because states enjoy a measure of discretion regarding the means they adopt to fulfil their human rights duties.

Despite variations in content and scheme, in their overall objectives all three texts are broadly aligned with human rights standards on this basis, albeit subject to qualifications registered in the following sections. Some features of the EC draft Directive's scheme, as related below, may pose doctrinal, policy and practical challenges, given, for example, current unclarity associated with the designation of corporate human rights 'violations' as a basis for civil liability, since breaches of human rights as such are typically litigated through public law proceedings. Generally, from a human rights standpoint, legislation should of course *inter alia* be public, sufficiently foreseeable, certain, precise, non-discriminatory as well as proportionate and rational in relation to any restrictions on established human rights that it entails. In line with EU general human rights as well as sustainable development duties and policy commitments, within the legislative scheme steps should also be taken to prevent and mitigate any adverse impacts on human rights, particularly socio-economic rights, foreseen as potentially resulting from the application of an EU due diligence law, inside Europe or beyond, including via supporting measures.

⁹ European Parliament, Resolution of 17 December 2020 on sustainable corporate governance, 2020c, (2020/2137(INI)).

4.2 Scope of human rights and environmental standards

As the UNGPs recognise, business enterprises can ‘impact virtually the entire spectrum of internationally recognized human rights’ (UNGP 12 Commentary). Whereas ‘in practice, some human rights may be at greater risk than others in particular industries or contexts’, ‘situations may change, so all human rights should be the subject of periodic review’ by companies. This provides essential context for interpreting the UNGPs’ statement that the corporate responsibility to respect human rights refers ‘at a minimum’ to the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work (UNGP 12); as well as for the UNGPs’ encouragement that companies refer to other human rights standards where relevant.

As with the other two texts considered, the EC draft Directive ostensibly appears intended to align with this position, given the extensive lists of rights and instruments included in its Annex. However, for companies covered by virtue of their sector, the scope of impact identification is limited *ex ante* (Art 6(2)). The EC draft Directive further omits instruments and rights referred to by the AFET/DROI opinion (e.g. UN Conference on Environment and Development, UN Convention on Migrant Workers, UN Declaration on Human Rights Defenders, UN Convention Against Corruption and humanitarian law), which are mostly also referred to by the EP final position. The draft Directive also includes some rights or instruments not mentioned by the AFET/DROI opinion which might arguably not qualify as ‘internationally-recognised’, in the terminology of the UNGPs.

Despite an explicit commitment to non-regression (Art 1(2)), and saving clause (Art 1(3)), the EC draft Directive’s omission of regional and national human rights standards, referred to by both the EP final position and AFET/DROI opinion appears retrogressive, particularly regarding human rights that are already binding on EU institutions and Member States (e.g. under ECHR, CFR, ESC). These standards contain many protections that are relevant in a business context (COE, 2016) and that may not be addressed to the same extent by the other instruments referred to. Evidence of corporate human rights abuses inside the EU and challenges for their victims in accessing effective remedy are well documented (FRA 2018, 2019, 2020, 2021). Yet, no justification is advanced by the EC for the approach taken in this regard, in the IAR or elsewhere. Some standards relating to gender, such as the ILO Convention on Sexual Harassment, are missing, while, based on EU legal and policy commitments, gender might reasonably be expected to be emphasised to a greater extent.

The EC draft Directive also identifies specific rights whose violation should be avoided (Annex, Part I, 1). The conjunction of a non-exhaustive (Annex, Part I, 1., para.21) list of rights with a list of instruments (Part I, 2), some of which are not anyway fully binding on states, in the EC draft Directive’s Annex is a rather complex scheme that may pose challenges of interpretation and clarity. The selective approach taken may also appear in tension with human rights’ interdependence and indivisibility, as well as the UNGPs’ vision of context-specific due diligence, where scope is driven by relevant human rights risks, rather than pre-set in advance. Conversely, thematic or narrow-spectrum due diligence laws are clearly permissible, while laws that ‘signpost’ potentially relevant instruments and rights may be useful for companies, and a list-based approach was adopted in the Germany due diligence law (Deutscher Bundestag, 2021, Annex). Notably, the EC’s IAR documentation does not provide a rationale for either the EC draft Directive’s general approach in relation to the definition of the scope of human rights applicable, or its selection of violations and instruments to be included (EC 2022b, Annex 17), in contrast to extensive rationalisation provided in relation to other elements of its proposed scheme.

From a human rights standpoint, environmental protection and regulation by states is required to the extent that environmental harms, including climate change, threaten human rights recognised by established instruments, taking into account that some activities with environmental consequences may also bring economic and social benefits that in turn may foster human rights fulfilment. There is no general

obstacle, from a human rights standpoint, in legislating to require companies to observe higher standards of environmental protection. As the EC IAR observes, environmental due diligence can be shown to reduce the incidence of adverse environmental impacts, particularly in areas with low environmental standards. In turn, this may entail indirect benefits for human rights (Annex 4, pp104-6). A scope of due diligence extending to environmental harms and climate change as well as human rights is hence *prima facie* consistent with human rights standards.

4.3 Scope of companies covered by due diligence duty

Under the UNGPs, '[t]he responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate' (UNGP 11). This broad personal scope is feasible, in the UNGPs, due to the deliberately and inevitably flexible character of the due diligence process envisaged, given its intention to accommodate 'all enterprises regardless of their size, sector, operational context, ownership and structure' (UNGP 14). On one view, to align with the UNGPs, legislators should extend statutory due diligence duties to all companies without exception. On the other hand, it likewise appears consistent with the UNGPs' flexible conception of due diligence that such legislation may adopt a differentiated approach to reflect the varying risks, resources and capacities of different companies.

The latter is the view that is largely reflected by the AFET/DROI opinion, which seeks to extend 'proportionate' due diligence requirements to all companies in all sectors, albeit entertaining special considerations for SMEs. Likewise, the EP final position addressed large companies as well as publicly-listed and high-risk SMEs. The EC draft Directive focuses on the largest companies, but 'completely' excludes SMEs (p 21); companies included by virtue of their sector are limited by size and in accordance with a restricted set of high-impact sectors listed in the legislative text (Art 2(1)(b)). The EC's exclusion of small and micro companies from all policy options analysed (EC 2022b, p. 69) in its latest IAR responded to positions expressed earlier by the Regulatory Scrutiny Board (RSB).

Given that the EC draft Directive already describes a differentiated scheme of duties for companies of different sizes and characteristics, it would seem possible to integrate at least some smaller enterprises within its framework. As the IAR points out, 98 % of EU limited liability companies are small and micro-companies. From the perspective of the intra-EU workforce and communities, as well as those affected by value chain operations, promoting progress towards greater respect for human rights amongst this category of businesses would, given this figure, appear important.

The reasoning advanced in the EC IAR-related documents in justifying a total exclusion of all SMEs does not however appear complete or adequate and it does not address the possibility of a differentiated approach per class of company¹⁰. The EC IAR analysis regarding the effectiveness, for example, of first-tier based due diligence regimes is not disaggregated with reference to company size (Annex 13). Moreover, 'targeted and simplified' due diligence duties are envisaged for other classes of company within the EC draft Directive's scheme (p 43), begging the question why SMEs, or at least an SME sub-class defined by size or sector, could not also be subject to 'lighter-touch' statutory requirements.

Similarly, regarding the definition of 'high-impact' sectors, the approach taken by the EC draft Directive is to define as high-risk sectors those for which OECD guidance exists (European Commission, 2022, p 15). This approach appears arbitrary and not sufficiently justified with reference to the range of options earlier identified by the EC in terms of the approach to be taken in the Directive regarding sector selection (EC, 2022b, Annex 11). Some sectors that pose high risks for vulnerable rights-holders inside Europe (social care, healthcare, hospitality and entertainment, construction, tech and cleaning; see UNODC, nd; EP, 2021) and beyond, for example, are likely not to be covered under this approach. Further, one option that does not

¹⁰ Non-regulatory options, mandatory due diligence without civil liability and limitation of due diligence obligations to direct suppliers are analysed and discarded, but on the basis that these would apply across the board to all companies rather than different classes of company: EC, 2022b, pp39-40.

appear to have been considered is the designation of high-risk sectors via, for instance, EC delegated acts, which might permit better alignment to dynamic social and market conditions, as well as inputs from EU and third country stakeholders. Designation at the level of the legislation itself, by contrast, appears to render the list of high-risk sectors relatively immutable, with limited scope for review and amendment (Art 29). While it is understandable that OECD guidance highlights sectors posing risks to human rights by virtue of transnational supply chains, given the OECD Guidelines' focus on multinational enterprises, it is important to recall that for the UNGPs, due diligence should follow the severity of actual or potential impacts (UNGP 14), and focus first on impacts entailed by companies' own activities, before turning to those to which it is directly linked through business relationships (UNGP 13). Moreover, as legislators, the EU and Member States already bear concrete and immediate duties, for instance under the ECHR, to protect rights-holders within their jurisdiction, particularly those belonging to vulnerable groups or otherwise known to be at risk of violations.

Whether state-owned enterprises and European development finance institutions should be included within the Directive's personal scope is not addressed in the EC's documentation or arguments, despite being contemplated by EP texts considered, as well as by the UNGPs, and EU policy commitments.

4.4 Corporate due diligence duty and process

Broadly aligning with the due diligence process outlined by the UNGPs, the AFET/DROI opinion and EP final position envisage ongoing, risk-based, proportionate and flexible due diligence processes in relation to all actual or potential business-related human rights abuses caused by or linked to the company in question throughout supply or value chains. The EC draft Directive likewise mirrors the step-by-step cycle of due diligence described by the UNGPs. In some places it ventures into greater detail than the other two texts and the UNGPs in describing these steps, while in others it diverges from them.

Risk identification and depth of due diligence requirement

Under the UNGPs, due diligence '[s]hould cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships' (UNGP 17). At the same time, the UNGPs do not articulate specific actions and consequences in terms of impact identification, prevention and cessation with the same level of detail as the EC draft Directive. The UNGPs' more open-ended approach is reflected in the Commentary to UNGP 17, which elaborates:

'Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.'

The EC draft Directive purports to establish a due diligence duty extending across the value chain (Recitals, 17; Art 3(f)). The IAR explicitly claims this (p 44) and rejects the approach of limiting due diligence obligations to direct suppliers (Annex 13, p 189). However, the EC draft Directive restricts the scope of risk identification required (Art 6) to companies' own operations, subsidiaries and 'value chain operations carried out by entities with whom the company has an established business relationship'. As noted earlier, the term 'established business relationship' is defined at Art 3(f) as meaning a 'business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration

and which does not represent a negligible or merely ancillary part of the value chain¹¹. ‘Business relationship’, as defined at Art 3(e) refers to a relationship with any legal entity (‘partner’) with whom a company has a commercial agreement or provides ‘financing, insurance or reinsurance’ (Art 3(e)(1)); or that ‘performs business operations related to the products or services of the company for or on behalf of the company’ (Art 3(e)(2)).

Whereas it can be understood that this approach is intended to avoid unreasonable burdens of due diligence for companies, as contemplated by UNGP 17, it also potentially undermines its relevance, in terms of detecting salient risks, particularly given the likelihood that covered companies may lack business relationships, or that such relationships are not ‘established’, at lower tiers of the supply chain, while they many nonetheless be integral to a company’s business activity or model. Further, as the IAR itself notes, severe abuses are frequent in the earlier stages of production; ‘most of the companies have tools at their disposal to create visibility and exert leverage beyond direct their suppliers [...]’; and a duty restricted to specific levels of the supply chain may be open to gaming (p 40). In any event, the risk identification measures under Art 6(1) are qualified by the restriction that these need only be ‘appropriate’, so that it can also be questioned why the limitation to established business relationships is needed to maintain proportionality.

Other restrictions of concern also affect this area, as noted above. These are: the limitation, under Art 6(2) for companies included by virtue of their sector (Art 2(1)(b)) that they need only identify ‘severe adverse impacts [emphasis added] that are relevant to [their] respective sector’; and under Art 6(3), that financial sector companies are required to conduct only *ex ante* rather than ongoing risk identification. Neither of these provisions appears to align with UNGPs guidance or seems adequately justified in the EC IAR materials.

Preventing and bringing adverse impacts to an end

The EC draft Directive’s focus on prevention is positive as prevention of human rights abuses is preferable to remediation in all instances. In principle, devices such as prevention action plans (Art 7(1)(2)), investments (Art 7(2)(c) and SME support (Art 7(2)(d)), as well as a clear indication that companies should prevent, or alternatively mitigate abuses where prevention is not possible, are hence welcome. The UNGPs (UNGP 19 Commentary) highlight that sectoral collaboration may permit companies to increase leverage and thus prevent, address and remediate corporate harms to human rights. Likewise, the OECD Due Diligence Guidance notes that sector collaboration can help share costs and ‘pool knowledge, increase leverage and scale-up effective measures’¹². Accordingly, requiring companies to collaborate to increase leverage (Art 7(3)) has merit.

At the same time, in adopting this approach certain elements may attract concern. Firstly, the role afforded to contractual assurances (Art 7(2)(b), Art 8(4)-(5)) may be viewed as problematic, given: the risks of burden-shifting by lead companies onto suppliers; the possibilities of superficial legal compliance measures substituting for authentic risk management; and well-documented limitations of currently prevailing approaches to third-party compliance verification via ‘social audit’.

This connects with the role provided, under Artt 7 and 8 of the EC draft Directive, for industry initiatives as a mechanism that companies may rely on to verify compliance of the contractual assurances they are required to seek from business partners. It is unclear, from the EC draft Directive, exactly how the

¹¹ The French due diligence law applies to companies’ own operations and those of the companies it controls, as well as the activities of subcontractors or suppliers with whom an established business relationship is maintained in connection with the relationship (French Duty of Vigilance Law, Article L225-102-4); the concept of ‘established business relationship’ was a pre-existing concept in French law, requiring the regularity, stability and volume of business involved to be taken into account Bright, C., *Creating a Legislative Level-Playing Field in Business and Human Rights at the European Level: Is the French Law on the Duty of Vigilance the Way Forward?*, 2018, EUI Working Paper MWP 2020/01.

¹² OECD (2018), *OECD Due Diligence Guidance for Responsible Business Conduct*, p. 19.

mechanisms envisaged under Art 7(2)(b) and Art 7(4) would work in practice. As formulated, they may be exposed to potential conflicts of interests. Developing fitness criteria for multi-stakeholder initiatives, as the EC draft Directive proposes, would in this regard seem to be an important safeguard, albeit not a sufficient one.

Secondly, justification is apparently lacking for the general exemption of financial services companies under Art 7(6) from the duties specified under Art 7(5) relating to refraining from entering new or extending existing relations where adverse impacts cannot be prevented or mitigated in the context of providing credit, loan or other financial services.

Thirdly, while in general terms the EC draft Directive advances what appear to be more detailed mandatory due diligence steps, its reliance on qualifying terms such as 'appropriate', 'reasonable' and 'relevant' throughout entails some uncertainty over their ultimate legal consequence. Given that failure to comply with Art 7 and 8 (and implicitly Art 6) provides a potential basis for liability under Art 22, this may pose challenges *inter alia* in the context of this form of remediation.

Company remediation

The UNGPs indicate that companies are required to remediate harms they have caused or contributed to; where adverse impacts are directly linked to their operations, they may remediate them, but are not required to do so (UNGP 22). On this basis, the EC Draft Directive's provisions under Art 8 may be viewed as presenting a more specific and demanding articulation of company-level remedial action than that expressed explicitly by the UNGPs. However, this depends on exactly how the terms 'arising from' (Art 6), 'direct linkage' (UNGP 22) and 'established business relationships' (Art 6(1)) are respectively interpreted. Since the scope of the duty to remediate corporate harms in Art 8 is conditioned by the duty of risk identification in Art 6 of the EC draft Directive, the derogations from Art 6 discussed above acquire greater importance. Overall, it can be stated that Art 8's scheme, while ambitious, nevertheless has limits. Furthermore, how it would be applied, for instance where ongoing abuses are entailed by a third country's legal regime, is not entirely clear. Provision for stakeholder involvement in measures that may contribute to remediation under Art 8 could also be strengthened.

A second aspect of company remediation envisaged by the UNGPs is company or 'operational-level' grievance mechanisms (UNGP 22, 29-31). In line with this, the EC draft Directive (Art 9) would require companies to establish a complaints procedure, available to CSOs as well as trade unions and individuals, which can address actual or potential impacts across the value chain. This feature is positive as such procedures may serve as an early warning or alert mechanism, as well as providing a pathway to remediation in some cases. By contrast, procedural safeguards as well as the manner of complainants' involvement and entitlement to information on their complaints are less clear than provisions contained in other due diligence laws (Deutscher Bundestag, 2021; Norwegian Storting 2021). Moreover, the potential role of collaborative corporate remedy mechanisms highlighted in the EP final position does not find expression in the EC draft Directive.

4.5 Right to effective remedy

The AFET/DROI opinion expresses a general commitment to remediation and redress for victims, as recognised by European regional as well as international human rights standards. Though extensively referred to in its IAR documentation, the EC does not give clear or direct expression to this goal in the EC draft Directive, despite its focus on the responsibility of companies to cease, 'neutralise' or 'minimise' adverse impacts (Art 8), and establishment of civil liability for damage caused by due diligence failures. While both of the last two aspects should contribute to remediation for victims in practice, they may not be fully equivalent to effective remediation and reparation, so that explicit clarification may be thought warranted. For example, financial compensation may not be sufficient to redress harm to human rights, while collective reparations may be needed for remediating harms to impacted communities, beyond

damages payable to individual victims. The appropriate place for such a reference would appear to be in the EC draft Directive's recitals or objectives, rather than in the Annexes, given that fulfilment of the right to remedy under human rights treaties typically lies in the state's domain. Substantively, given the broad definition of forms of remedy in human rights law (DIHR, 2021), it is clear that various provisions of the EC draft Directive stand to contribute directly or indirectly to supporting the right to effective remediation and access to justice as protected by international and regional human rights standards. These include those relating to: enforcement and sanctions; monitoring and reporting; complaints based on substantiated concerns; and civil liability.

4.6 Engagement with stakeholders and rights-holders

The UNGPs provide for 'meaningful consultation with potentially affected groups and other relevant stakeholders' in the context of due diligence (UNGP 18), seeing such consultation as integral to the intended function of due diligence as an aid for companies 'to understand the specific impacts on specific people, given a specific context of operations'. To this end, companies should consult stakeholders 'directly in a manner that takes into account language and other potential barriers to effective engagement' (UNGP 18). According to the OECD Responsible Business Conduct Due Diligence Guidance, due diligence should likewise be informed by engagement with stakeholders at different stages of the due diligence process. From a human rights law standpoint, evidently, these general principles may require more specific interpretation in different contexts, in line with substantive and procedural dimensions of internationally recognised rights applicable to specific groups (e.g. trade unions, indigenous peoples, children, persons with disabilities) and in specific factual situations (e.g. in connection with forced relocations).

The EP texts considered here align with the UNGPs' approach, indicating general requirements while also specifying additional stakeholder involvement measures across the due diligence process and in connection with grievance mechanisms. The EC draft Directive qualifies the role of stakeholders in identification, prevention, mitigation and cessation of harm ('where relevant' and 'where necessary'), leaving the identity and manner of stakeholder involvement largely to the discretion of undertakings. Such gaps might be redressed in subsequent horizontal EU due diligence guidance as well as any sector-specific or thematic directions.

Additionally, the role afforded to trade unions in the EC draft Directive is restricted by contrast with the EP final position. Here the EC draft Directive departs from OECD Guidance for Responsible Business Conduct and may raise doubts in terms of its consistency with international labour standards that establish the right of unions to be consulted. In the EC draft Directive, trade unions' explicit role is limited to participation in complaints procedures, curtailing their participation in the due diligence process overall. Moreover, the EP final position's reference to Global Framework Agreements is absent from the EC draft Directive, which as it stands recognises the right of trade unions to be informed but fails to recognise the binding character of labour consultations and social dialogue.

Finally, the central role afforded in the EC draft Directive to industry associations regarding monitoring of compliance and verification is noteworthy. Whilst industry associations are important stakeholders in any corporate process, until now they have not been given a formal certification role in due diligence norms or mechanisms. This approach would appear exposed to conflicts of interests, as noted earlier.

4.7 Protection of whistle-blowers and defenders

The EP texts and EC draft Directive reference the Whistle-blowers Directive. This articulation of standards promotes coherence and integrates significant advances in human rights protection that the latter embodies. However, the Whistle-blowers Directive applies only to persons who have a direct or indirect working relationship with a private or public sector entity, be this through the status of worker, self-employed, shareholder and person belonging to the administrative, management or supervisory body of

such company, including non-executive members, as well as volunteers and paid or unpaid trainees, as well as any persons working under the supervision and direction of contractors, subcontractors and suppliers (Art 4). It leaves unprotected any other individual and organisation which highlight abuses in the supply chain not directly covered by such definition of whistle-blower.

Given that human rights defenders may fall within the latter category, the EC Directive's approach may leave an important group of individuals unprotected. The AFET/DROI and EP final position by contrast address the need for protection of human rights defenders directly, which aligns with international developments (UN Declaration on Human Rights Defenders, UN Working Group on Business and Human Rights).

4.8 Transparency and reporting

Tracking the effectiveness of a company's due diligence measures and reporting externally on them based on standard indicators are envisaged by the UNGPs (UNGP 20, 21). This can serve multiple important functions by providing data to facilitate: the assessment and reward of performance, along with internal as well as cross-company and cross-sectoral learning; accountability to stakeholders; access to remedy; and ultimately a level playing field. The AFET/DROI opinion refers to the 'right to know'. This exists both in the context of access to environmental information from public bodies (see Aarhus Convention, UNECE, 1998) and international labour standards, including those regarding safe and healthy working conditions (UN HRC, 2018). The Norwegian Transparency Act (Norwegian Storting 2021) includes a right to information for any person from an enterprise on how it addresses actual and potential adverse impacts on fundamental human rights and decent working conditions. This includes both general information and any details of a specific product or service offered by that enterprise. In not recognising such a right of access to information for workers and their representatives the EC Directive fails to mirror these international advances. Furthermore, the EP position requires companies to 'map their value chain and, with due regard for commercial confidentiality, publicly disclose relevant information about the undertaking's value chain, which may include names, locations, types of products and services supplied, and other relevant information concerning subsidiaries, suppliers and business partners in its value chain' (Art. 4(4)(ii)). This represents an advanced transparency requirement that is not mirrored in the EC draft proposal.

In the EU, some companies that would be covered by the EC draft Directive are already subject to sustainability reporting duties under the non-financial reporting Directive (NFRD). Accordingly, the EC draft Directive establishes a reporting duty for those companies it covers which are not (Art 11(1)) covered by the NFRD and charges the EC with devising specific reporting requirements via delegated acts. Notably, given that the 'matters covered by' the EC draft Directive (Art 11) are potentially broader than those addressed by the NFRD, discrepancies in this context should be resolved in favour of enhancing rather than restricting corporate disclosures and avoiding arbitrary discrepancies between companies covered by the two measures. The centralisation of companies' published due diligence statements envisaged by the EC Draft Directive is an important element in terms of enhancing the practical accessibility of company information, which mirrors developments in some national jurisdictions (United Kingdom Parliament, 2015, and Australian Parliament, 2018).

4.9 Monitoring, enforcement and sanctions

Generally, the AFET/DROI opinion, EP final position and EC draft Directive appear relatively well aligned with each other in the approach they take towards monitoring, enforcement and sanctions. Likewise, they appear consistent with state duties to protect against business-related human rights abuses under international and European regional human rights instruments, as well as the right to effective remedy. Action is envisaged at both Member State and EU levels. Subject to their manner of eventual implementation in practice, the EC draft Directive's proposals for inspections, binding orders, fines, interim

measures, as well as due process rights for affected parties, in principle appear appropriate and adequate from a human rights standpoint.

One difference between the texts relates to the exclusion from public contracts of companies that fail to comply with due diligence obligations. The EC draft Directive would oblige Member States to ensure that companies applying for public support 'certify' that they are under no sanction for any failure to comply with their due diligence obligations (Art 24); it does not as such exclude non-compliant companies, though, from public procurement and public funding, as would the AFET/DROI and EP positions. Given that public procurement (UNGP 5, 6) and policy coherence (UNGP 8) are matters clearly addressed by the UNGPs and in the interests of fairness between companies that respectively supply the public and private sectors, rectification of the EC draft Directive should be considered in this regard. Germany's recent due diligence laws also provides for clear exclusions from participation in public tenders based on non-compliance with due diligence requirements (German Bundestag, 2021).

Guidance on due diligence

Whilst not stated in the AFET/DROI opinion, the EP and EC draft Directive recommend adoption of EU-level non-binding due diligence guidance. The proposal for such guidance, including sector guidance, can be welcomed as potentially supporting convergent implementation across EU Member States and, by contrast with OECD responsible business conduct guidance, should fully integrate existing European regional as well as international human rights standards, along with EU legal requirements and policy indications.

4.10 Civil liability

For the UNGPs, the corporate responsibility to respect human rights is 'distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions' (UNGP 12). At the same time, the UNGPs indicate that companies 'conducting [...] due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses', even if 'conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse' (UNGP 17). Wider international and regional human rights law recognises civil liability as one amongst a range of potential forms of remedy for human rights abuses, albeit civil liability may be neither necessary nor sufficient to achieve remediation in specific cases (Methven O'Brien, 2018; DIHR, 2021).

All three texts considered envisage civil liability for companies linked to due diligence failures as well as partial exclusions from liability based on performance of due diligence, albeit these are differently formulated, as detailed above in Section 3.11. Under the EC draft Directive, where a company complies with the requirements articulated under Articles 7 and 8 respectively to prevent and to terminate adverse human rights or environmental impacts, it will not be liable for 'damage' caused by its own or a direct business partner's activity, unless it would be so liable under other rules of national or EU law (Art 22(4)). Liability for harms caused by indirect business partners is foreseen only where the due diligence exercised by the lead company was flawed by unreasonableness (Art 22(2)). In addition, the scope for liability under Art 22 is implicitly limited by the restrictions on risk identification noted earlier, given that risk identification (Art 6) is a gateway to the duties of prevention (Art 7) and to bring adverse impacts to an end (Art 8); hence, it appears that liability in relation to harms in the value chain is also conditioned *inter alia* by the extent of covered businesses' established business relationships and the mechanism for seeking contractual assurances (Art 7(2)).

The EC draft Directive's overall liability scheme appears to embody a compromise between the goal of attaching liability to due diligence failures that cause harm, which is analysed by the EC in the IAR documentation as essential for effectiveness, and the objective of ensuring the reasonableness and

proportionality of such liability (Annex 13). Notably, the Regulatory Scrutiny Board preferred enforcement via administrative sanctions only, considering as inadequate the evidence that due diligence policy options which do not include civil liability regimes should be discarded (EC 2022b, C.3, p. 2). In any event, the EC Draft Directive's proposed formulations regarding liability are more expansive and technically complex than foreseen in national due diligence laws to date (République Française, 2017). At the same time, due to the use of qualifying language there is an apparent risk that they may not fulfil either the expectations of legal certainty for companies or of an expansion of access to remediation for victims associated with them. Qualification is, however, necessary in order to meet the EC's stated objective of avoiding the outcome that companies should, under due diligence legislation, be required to 'guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped' (Recital 15).

To illustrate further, the AFET/DROI opinion recommends that the burden of proof should lie with the company to 'show it had met its due diligence obligations and that the damage and violations, if any, are not the result of a failure to effectively conduct due diligence' (para 49). Under the EC draft Directive's scheme, if companies have secured contractual assurances from their business partners that they have complied with the company's code of conduct as verified by a third-party audit, claimants must then prove that the assurances were not 'appropriate'. Such requirements may undermine remediation by way of civil liability and continue to be significant obstacles to effective corporate accountability. Still, it may be considered that the extent to which such obstacles are resolved by the EC draft Directive remains unclear, despite argumentation advanced in the IAR documentation around this theme.

As noted above, Art 6(1) of the EC draft Directive applies a formulation that appears to elide three categories of corporate involvement (cause, contribute and direct linkage) which are by contrast distinguished by the UNGPs (UNGP 19) and which, in the UNGPs' scheme, carry different consequences for companies, particularly in relation to their responsibilities for addressing impacts and remediation (UNGP 22). Art 6(1)'s approach is carried forward in the EC draft Directive *inter alia* into Arts 7 and 8, and thereby into Art 22. On the one hand, this might appear to entail civil liability for a broader category of harms (i.e. those to which the business is associated via direct linkage, but which it does not cause or contribute to) than currently generally entertained under civil law. On the other hand, liability for harms to which a company is only directly linked appears restricted under Art 22(2), at least where reasonable due diligence has been exercised by the originating company. Overall, then, the proposed scope of liability in this area under the EC draft Directive appears ambiguous.

Finally, a remark is warranted regarding Art 8(3)'s provision for payments of 'damages' and 'financial compensation' to affected persons to neutralise or minimise the extent of adverse impacts. Initiatives to accelerate remediation for victims of corporate abuses are needed, and encouragement to companies on facilitating remediation for abuses is welcome, particularly given the typically long duration of civil proceedings, especially those of transnational character and involving complex matters of fact and law, such as those raised in the pursuit of parent company liability. As noted, however, the relationship between Art 8(3) and Art 22's provisions on civil liability for damages linked to due diligence failures appears unclear, as do Art 8(3)'s general legal consequences as well as the question of how it might be legally enforced in practice.

4.11 Directors' duties

The extension of company directors' duties to human rights is not explicitly addressed by the UNGPs. Yet, the UNGPs do foresee that a company's policy commitment to human rights should be 'approved at the most senior level of the business enterprise' and 'embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights' (UNGP 16). Whilst noting that this topic has attracted diverse views amongst stakeholders, as reflected in the IAR, the EC draft Directive's ambition (Arts 25, 26) to underpin corporate due diligence obligations by

integrating human rights into the definition of directors' duties to act in the best interest of the company thus appears consistent with human rights norms, albeit not automatically required by them. Support for this view may be drawn from the lack of efficacy of non-mandatory approaches in advancing corporate respect for human rights to date, in combination with the restriction of relevant provisions of the EC draft Directive to the largest EU companies (Art 25(1)). On the other hand, it can be recognised that the duties foreseen by Art 26 of the EC draft Directive might be established even in the absence of the provisions on fiduciary duties envisaged in Art 25.

5 Conclusion

The EC draft Directive embodies some steps forward in the legal regulation of corporate human rights and environmental due diligence that are of potentially global significance, given its establishment of binding legal due diligence duties for companies; its scope in terms of companies and geography; the economic significance of activities covered; and the robust provisions envisaged regarding prevention, monitoring, enforcement and remediation. However, as identified in the above analysis, on some important parameters the draft Directive falls short of the expectations of the UNGPs, and existing EU legal obligations as well as policy commitments, while aspects of its overall scheme may entail implementation and enforcement challenges. In certain other respects the draft Directive fails to carry forward elements of the AFET/DROI opinion and EP final position that could plausibly strengthen its effectiveness and impact, directly and indirectly, in relation to EU human rights and sustainable development commitments. While recognising the complexities of regulation in this area, the many merits of the EC draft Directive and the inevitability of certain trade-offs between policy objectives, further dialogue is now warranted to consider how such shortcomings can be addressed. To this end, the current analysis has highlighted areas of concerns as well as some avenues towards solutions for consideration by Members of the European Parliament and stakeholders.

Bibliography

- Alliance for Corporate Transparency, [An analysis of the Sustainability Reports of 1000 Companies Pursuant to the EU Non-financial Reporting Directive](#), Report, 2019.
- Amfori, [Human Rights Due Diligence. Recommendations for a European Approach, Taking into Account Key Principles of Due Diligence](#), 2020.
- Amnesty International France, Friends of the Earth France, CCFD-Terre Solidaire, Collectif Ethique sur l'étiquette, [Law on Duty of Vigilance of Parent and Outsourcing Companies - Year 1: Companies Must Do Better](#), 2019.
- B&L évolution and EDH, [Application of the Law on the Corporate Duty of Vigilance. Analysis of the First Published Plans](#), 2018.
- Beau de Loménie, T. and Cossart, T., '[Stakeholders and the Duty of Vigilance](#)', *Revue Internationale de la Compliance et de l'Éthique des Affaires*, No 50, 2017, pp. 1-6.
- Bonfanti, A. (ed.), *Business and Human Rights in Europe. International Law Challenges*, New York: Routledge, 2019.
- Brabant, S., Bright, C., Neitzel, N. and Schönfelder, D., '[Due Diligence Around the World: The Draft Directive on Corporate Sustainability Due Diligence \(Part 1\)](#)', *Verfassungs Blog*, 15 March 2022.
- Brabant, S., Bright, C., Neitzel, N. and Schönfelder, D., '[Enforcing Due Diligence Obligations: The Draft Directive on Corporate Sustainability Due Diligence \(Part 2\)](#)', *Verfassungs Blog*, 16 March 2022.
- Brabant, S. and Savourey, E., '[All Eyes on France – French Vigilance Law First Enforcement Cases](#)', *Cambridge Core*, 24 January 2020.
- Bright, C., [Creating a Legislative Level-Playing Field in Business and Human Rights at the European Level: Is the French Law on the Duty of Vigilance the Way Forward?](#), EUI Working Paper MWP 2020/01, 2018.
- Bright, C. and Smit, L., '[The new European Directive on Corporate Sustainability Due Diligence](#)', *British Institute of International and Comparative Law and NOVA School of Law*, 23 February 2022.
- British Institute of International and Comparative Law, Civic Consulting, Directorate-General for Justice and Consumers (European Commission) and LSE, [Study on Due Diligence Requirements Through the Supply Chain](#), 2020.
- Business & Sustainable Development Commission, [Better Business, Better World](#), 2017.
- Committee on Economic, Social and Cultural Rights, [General Comment No. 24](#), 2017.
- Committee on the Rights of the Child, [General Comment No. 16](#), 2013.
- Conseil Général de l'Économie de l'Industrie, de l'Énergie et des Technologies, [Evaluation de la mise en œuvre de la loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance de sociétés mères et des entreprises donneuses d'ordre](#), Rapport à M. le ministre de l'économie et des finances, 2020.
- Corporate Human Rights Benchmark (CHRB), [2019 Key Findings Report](#), 2019.
- Cossart, S., Chaplier, J., and Beau de Lomenie, T., '[The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All](#)', *Business and Human Rights Journal*, Vol 2, No 2, 2017, pp. 317–323.
- Cossart, S. and Chatelain, L., '[What lessons does France's Duty of Vigilance law have for other national initiatives?](#)', *Business and Human Rights Resource Centre*, 2019.
- Council of Europe, [Human Rights and business – Recommendation CM/Rec\(2016\)3 of the Committee of Ministers to Member States](#), 2016.
- Council of the European Union, [Proposal for a Regulation of the European Parliament and the Council on the Establishment of a Framework to Facilitate Sustainable Investment](#), Interinstitutional File, 2018/0178 (COD), 2019.

- Council of the European Union, [Council Conclusions on Human Rights and Decent Work in Global Supply Chains](#), Interinstitutional File, 13512/20, 2020.
- Croser, M., Day, M., Van Huijstee, M., and Samkalden, C., '[Vedanta v Lungowe and Kiobel v Shell: The Implications for Parent Company Accountability](#)', *Business and Human Rights Journal*, Vol 5, No 1, 2019, pp. 130-136.
- Danish Institute for Human Rights (Gabrielle Holly and Claire Methven O'Brien), '[Human rights due diligence laws: Key considerations. Briefing on Civil Liability for Due Diligence Failures](#)' 2021.
- Deutscher Bundestag, [Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten](#) (German Supply Chain Due Diligence Act), 2021.
- Deutsches Institut für Menschenrechte, [EU-Lieferkettengesetz: Menschenrechtsinstitut begrüßt Richtlinienentwurf der EU-Kommission](#), Press release, 2022.
- European Coalition for Corporate Justice (ECCJ), [EU Model Legislation on Corporate Responsibility to Respect Human Rights and the Environment](#), Legal Brief, 2020.
- European Coalition for Corporate Justice (ECCJ), [Evidence for Mandatory Human Rights Due Diligence \(HRDD\) Legislation](#), Background Note, 2019a.
- European Coalition for Corporate Justice (ECCJ), [Comparative Analysis of HRDD and Corporate Liability Laws in Europe](#), 2019b.
- European Coalition for Corporate Justice (ECCJ), [Key Features of Mandatory Human Rights Due Diligence Legislation](#), Position Paper, 2018.
- European Coalition for Corporate Justice (ECCJ), [The EU Competence and Duty to Regulate Corporate Responsibility to Respect Human Rights through Mandatory Human Rights Due Diligence](#), Briefing, 2017.
- European Commission, [Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937](#), Proposal for a Directive, COM(2022) 71 final, 2022a.
- European Commission, [Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937](#), Staff Working Document, SWD(2022) 42 final, 2022b.
- European Commission, Regulatory Scrutiny Board Opinion, Proposal for a Directive of the European Parliament and of the Council on Sustainable Corporate Due Diligence and amending Directive (EU) 2019/1937, SEC(2022) 95, 2021.
- European Commission, Torres-Cortés, F., Salinier, C., Deringer, H., et al., [Study on due diligence requirements through the supply chain : final report](#), 2020.
- European Commission, [The European Green Deal](#), Communication, COM(2019) 640 final, 2019.
- European Commission, [Action Plan: Financing Sustainable Growth](#), Communication, COM(2018) 97 final, 2018.
- European Commission, [Guidelines on Non-financial Reporting \(Methodology for Reporting Non-financial Information\)](#), Communication from the Commission, *Official Journal of the European Union*, C/2017/4234, 2017.
- European Commission, [Implementing the UN Guiding Principles on Business and Human Rights - State of Play](#), Staff Working Document, SWD(2015) 144 final, 2015.
- European Commission, [A renewed EU strategy 2011-14 for Corporate Social Responsibility](#), Communication, COM(2011) 681 final, 2011.
- European Economic and Social Committee, [Binding UN Treaty on Business and Human Rights](#), Own-Initiative Opinion, REX/518, 2019.
- European Parliament, [Report with recommendations to the Commission on corporate due diligence and corporate accountability](#), A9-0018/2021, 2021a.

European Parliament, [Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability](#), P9_TA(2021)0073, 2021b.

European Parliament, [Review of dual-use export controls](#), EU Legislation Briefing, PE 589.832, 2021c.

European Parliament, [Opinion of the Committee on Foreign Affairs for the Committee on Legal Affairs with recommendations to the Commission on corporate due diligence and corporate accountability](#), 2020/2129(INL), 2020b.

European Parliament, [Resolution of 17 December 2020 on sustainable corporate governance](#), P9_TA(2020)0372, 2020c.

European Parliament, [Resolution of 29 May 2018 on Sustainable Finance](#), P8_TA(2018)0215, 2018.

European Parliament, [Resolution of 12 September 2017 on the Impact of International Trade and the EU's Trade Policies on Global Value Chains](#), P8_TA(2017)0330, 2017.

European Parliament, [Resolution of 25 October 2016 on Corporate Liability for Serious Human Rights Abuses in Third Countries](#), P8_TA(2016)0405, 2016.

European Trade Union Confederation, [Commission delivers "bare minimum" on Corporate Sustainability Due Diligence](#), Press release, 2022.

European Union, [Delegated Regulation \(EU\) 2019/429 of 11 January 2019 Supplementing Regulation \(EU\) 2017/821 of the European Parliament and of the Council as regards the Methodology and Criteria for the Assessment and Recognition of Supply Chain Due Diligence Schemes Concerning Tin, Tantalum, Tungsten and Gold](#), C/2019/9, OJ L 75, *Official Journal of the European Union*, 19 March 2019.

European Union, [Regulation 2017/821 of the European Parliament and of the Council of 17 May 2017 Laying down Supply Chain Due Diligence Obligations for Union Importers of Tin, Tantalum and Tungsten, Their Ores, and Gold, Originating from Conflict-affected and High-risks Areas](#), OJ L130/1, *Official Journal of the European Union*, 19 May 2017.

European Union, [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), OJ L 101, *Official Journal of the European Union*, 15 April 2011.

European Union, [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#), OJ L 315, *Official Journal of the European Union*, 14 November 2012.

European Union, [Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards Disclosure of Non-financial and Diversity Information by Certain Large Undertakings and Groups](#), OJ L 330, *Official Journal of the European Union*, 15 November 2014.

European Union, [Regulation \(EU\) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters](#), OJ L 351, *Official Journal of the European Union*, 20 December 2012.

European Union, [Regulation 995/2010 of the European Parliament and the Council of 20 October 2010 Laying down the Obligations of Operators who Place Timber and Timber Products on the Market](#), OJ L295/23, *Official Journal of the European Union*, 12 November 2010.

European Union, [Regulation \(EU\) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on Sustainability-related Disclosures in the Financial Services Sector](#), OJ L317/1, *Official Journal of the European Union*, 9 December 2019.

Forde, C., et al., [The Social Protection of Workers in the Platform Economy](#), Study for the EMPL Committee, European Parliament, IP/A/EMPL/2016-11, 2017.

- FRA (European Union Agency for Fundamental Rights), [Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#), 2021.
- FRA (European Union Agency for Fundamental Rights), [Business and human rights – access to remedy](#), 2020.
- FRA (European Union Agency for Fundamental Rights), [Protecting Migrant Workers from Exploitation in the EU](#), 2019a.
- FRA (European Union Agency for Fundamental Rights), [Business-related Human Rights Abuses Reported in the EU and Available Remedies](#), 2019b.
- FRA (European Union Agency for Fundamental Rights), [Protecting migrant workers from exploitation in the EU: boosting workplace inspections](#), 2018.
- Frank Bold, [EU Commission’s new rules on sustainable value chains risk creating a tick-the-box exercise](#), Press release, 2022.
- Friends of the Earth Europe, [Due diligence law leaves affected people in the lurch](#), Press release, 2022.
- Gibbons, S., [‘Some initial thoughts on the proposed EU Due Diligence Directive’](#), Cambridge Core, 25 February 2022.
- Global Witness et al., [Ensuring the Proper Implementation of the EU Regulation on the Responsible Sourcing of Minerals from Conflict-affected and High-risk Areas](#), Joint Policy Note, 2019.
- Human Rights Watch, [EU: Disappointing Draft on Corporate Due Diligence](#), Press release, 2022.
- Huyse, H. and Verbrugge, B., [Belgium and the Sustainable Supply Chain Agenda: Leader or Laggard? Review of human right due diligence initiatives in the Netherlands, Germany, France and EU, and implications for policy work by Belgian civil society](#), KU Leuven HIVA Research Institute for Work and Society, 2018.
- ILA (International Law Association), [First Report](#), Study Group on Due Diligence in International Law, 2014.
- ILO (International Labour Organisation), [International Labour Conference. Decent work in global supply chains](#), 2016.
- ILO, OECD and OHCHR, [ILO OHCHR OECD Response to EU Commission Proposal](#), Joint Letter, 7 March 2022.
- Investor Alliance for Human Rights, [Investor Alliance for Human Rights Responds to EU Directive on Corporate Sustainability Due Diligence](#), Press release, 2022.
- Justice, E. C. f. C., [Dangerous gaps undermine EU Commission’s new legislation on sustainable supply chains](#), Press release, 2022.
- Krajewski, M., Faracik, B., Methven O’Brien, C., et al., [Human rights due diligence legislation: options for the EU: Briefings](#), Study requested by DROI Subcommittee, European Parliament, PE 603.495, 2020a.
- Kingdom of the Netherlands, [Wet van 24 oktober 2019 houdende de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen \(Wet zorgplicht kinderarbeid\)](#), 2019.
- LeBaron, G. and Rühmkorf, A., [Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance](#), *Global Policy. Special Issue: Public and Private Labor Standards Policy in the Global Economy*, Vol 8, No 53, 2017, pp. 15-28.
- Leigh Day, [The EU Human Rights Due Diligence Directive: a welcome step forward](#), Blog Post, 23 March 2022.
- Marx, A., Bright, C., Wouters, J., Pineau, N., Lein, B., Schiebe, T., Wagner, J. and Wauter, E., [Access to Legal Remedies for Victims of Corporate Human Rights Abuses in Third Countries](#), Study requested by DROI Subcommittee, European Parliament, PE 603.475, 2019.
- Martin-Ortega, O. and Hoekstra, J., [Reporting as a Means to Protect and Promote Human Rights? The EU Non- Financial Reporting Directive](#), *European Law Review*, Vol 44, No 5, 2019, pp. 622-644.

- Martin-Ortega, O. and Methven O'Brien, C., *Public Procurement and Human Rights: Opportunities, Risks and Dilemmas for the State as Buyer*, Cheltenham: Edward Elgar Publishing, 2019.
- Methven O'Brien, C., '[Business and Human Rights in Europe: A decade in review](#)', in Czech, P., Heschl, L., Lukas, K., Nowak, M. & Oberleitner, G. (eds.), *European Yearbook of Human Rights*, Intersentia, 2021.
- Methven O'Brien, C., [Business and human rights. A Handbook for Legal Practitioners](#), Strasbourg: Council of Europe, 2019.
- Methven O'Brien, C., '[The Home State Duty to Regulate the Human Rights Impacts of TNCs Abroad: A rebuttal](#)', *Business and Human Rights Journal*, Vol 3, No 1, 2018, pp. 47-73.
- Methven O'Brien, C. and Dhanarajan, S., '[The Corporate Responsibility to Respect Human Rights: A Status Review Accounting](#)', *Auditing and Accountability Journal*, Vol. 29, No 4, 2016, pp. 542-567.
- McCorquodale, R., Smit, L., Neely, S. and Brooks, R., '[Human rights due diligence in law and practice: good practices and challenges for business enterprises](#)', *Business and Human Rights Journal*, 2017, Vol 2, No 2, pp. 195-224.
- Nelson, V., Martin-Ortega, O. and Flint, M., [Making human rights due diligence frameworks work for small farmers and workers](#) (FTAO and Brot fur dei Welt), 2020.
- Norwegian Storting, [Stortinget, 'Lov om virksomheters åpenhet og arbeid med grunnleggende menneskerettigheter og anstendige arbeidsforhold \(åpenhetsloven\)'](#) (Norwegian Transparency Act), 2021.
- NYU Stern Centre for Business and Human Rights, [Assessing Legislation on Human Rights in Supply Chains: Varied Designs but Limited Compliance](#), Research Brief, 2019.
- OECD, [OECD Guidelines on Due Diligence for Responsible Business Conduct](#), 2018.
- Outhwaite, O. and Martin-Ortega, O., '[Worker-driven Monitoring – Redefining Supply Chain Monitoring to Improve Labour Rights in Global Supply Chains](#)', *Competition and Change*, Vol 23, No 4, 2019, pp. 378-396.
- Palombo, D., '[The Duty of Care of the Parent Company: A Comparison between French Law, UK Precedents and the Swiss Proposals](#)', *Business and Human Rights Journal*, Vol 4, No 2, 2019, pp. 265-286.
- Parliament of Australia, [Modern Slavery Act 2018 \(Cth\)](#), 2018.
- Ramasastri, A., [Keynote Remarks](#), UN Working Group on the issue of human rights and transnational corporations and other business enterprises: Implementing the 3 pillars of the UN Guiding Principles on Business and Human Rights EU Human Rights and Environmental Due Diligence in Global Value Chains, RBC Working Group of the European Parliament, 2022.
- République Française, [Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre](#), 2017.
- Reynders, D. [Speech by Commissioner Reynders in RBC Webinar on Due Diligence](#), Speech, 2020.
- Rubio, J.J.A. and Yiannibas, K., *Human Rights in Business. Removal of Barriers to Access to Justice in the European Union*, New York: Routledge, 2017.
- Savourey, E., '[All Eyes on France – French Vigilance Law First Enforcement Cases \(2/2\) The Challenges Ahead](#)', *Cambridge Core*, 24 January 2020.
- Securities and Exchange Commission [United States of America], [Dodd-Frank Wall Street Reform and Consumer Protection Act, s. 1502 Final Rule](#), 2012.
- ShareAction, [EU presents watered-down rules on Corporate Sustainability Due Diligence](#), Press release, 2022.
- Shift, '[EU Commission's Proposal for a Corporate Sustainability Due Diligence Directive](#)', Shift's Analysis, 2022.
- Swiss Coalition for Corporate Justice, [The Initiative Text with Explanations](#), n.d.

Swiss Confederation, [Code des obligations \(Contre-projet indirect à l'initiative populaire «Entreprises responsables – pour protéger l'être humain et l'environnement»\)](#), 2021.

Swiss Parliament, [Entreprises responsables – pour protéger l'être humain et l'environnement : contre-projet indirect](#), Propositions de la Commission des affaires juridiques du Conseil national (CAJ-N) Initiative populaire fédérale, 2018.

Turner, S.J., Shelton, D.L., Razzaque, J., McIntyre, O. and May, J.R., *Environmental Rights: The Development of Standards*, Cambridge: Cambridge University Press, 2019.

Turner, S.J., *A Substantive Environmental Right An Examination of the Legal Obligations of Decision-makers Towards the Environment*, Kluwer Law International, 2009.

United Kingdom Parliament, [Modern Slavery Act 2015](#), 2015.

United Nations Economic Commission for Europe (UNECE), [Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters \(Aarhus Convention\)](#), 28 June 1998.

United Nations General Assembly, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), A/RES/60/147, 2005.

United Nations Human Rights Council, [Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse](#), Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, A/HRC/32/19, 2016.

United Nations Human Rights Council, [Human Rights and Transnational Corporations and Other Business Enterprises](#), A/HRC/17/4, 2011a.

United Nations Human Rights Council, [Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework](#), A/HRC/17/31, 2011b.

United Nations Human Rights Council, [Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes](#), A/HRC/39/48, 3 August 2018.

United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, 2021.

United Nations Special Rapporteur on the situation of Human Rights Defenders, M. L., [EU Proposal on Corporate Due Diligence a Welcome Step Forward but Forgets Human Rights Defenders, says UN Special Rapporteur](#), Press release, 2022.

United States Congress, [An Act to ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China do not enter the United States market, and for other purposes](#), Public Law No: 117-78, 2021.

Villiers, C., *Corporate Transparency Requirements. An Inadequate Form of Regulation in Civil Society*, Stakeholders Reports and Papers, 2018.

Vogt, J., Subasinghe, R. and Danquah, P., ['A Missed Opportunity to Improve Workers' Rights in Global Supply Chains'](#), *Opinio Juris*, 18 March 2022.

World Benchmarking Alliance, (website, n.d.), available at: <https://www.worldbenchmarkingalliance.org/>.

Worker-Driven Social Responsibility Network, *Monitoring* (website, n.d.), available at: <https://wsr-network.org/tag/monitoring/>.

Annex – Comparative Tables

AFET/DROI opinion PE655.782 25.11.2020	European Parliament resolution T9-0073/2021 10.03.2021	European Commission proposal COM(2022)0071 23.02.2022
<i>Introductory recitals 1-19</i>		
Objective & personal scope		
<p>20. Recommends that due diligence, as required by Union legislation, be extended to potential or actual adverse impacts and violations which a company has caused, or with which it may be linked throughout its supply chain;</p>	<p>Article 1 Subject matter and objective</p> <p>1. This Directive is aimed at ensuring that undertakings under its scope operating in the internal market fulfil their duty to respect human rights, the environment and good governance and do not cause or contribute to potential or actual adverse impacts on human rights, the environment and good governance through their own activities or those directly linked to their operations, products or services by a business relationship or in their value chains, and that they prevent and mitigate those adverse impacts.</p>	<p>Article 1 Subject matter</p> <p>1. This Directive lays down rules</p> <p>(a) on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with whom the company has an established business relationship and</p> <p>(b) on liability for violations of the obligations mentioned above.</p> <p>The nature of business relationships as ‘established’ shall be reassessed periodically, and at least every 12 months.</p> <p>2. This Directive shall not constitute grounds for reducing the level of protection of human rights or of protection of the environment or the protection of the climate provided for by the law of Member States at the time of the adoption of this Directive.</p> <p>3. This Directive shall be without prejudice to obligations in the areas of human rights, protection of the environment and climate</p>

		<p>change under other Union legislative acts. If the provisions of this Directive conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act shall prevail to the extent of the conflict and shall apply to those specific obligations.</p>
<p>21. ... all companies and all sectors, including state-owned enterprises; recommends that the future mandatory Union due diligence requirements follow a proportionate approach, taking into account the risk to human rights, based on elements such as the sector of activity, the size of the undertaking, the context of its operations in its supply chain; ... special exemptions be provided to SMEs in order to avoid disproportionate administrative and regulatory burdens on those small businesses;</p>	<p>Article 2 Scope</p> <ol style="list-style-type: none"> 1. This Directive shall apply to large undertakings governed by the law of a Member State or established in the territory of the Union. 2. This Directive shall also apply to all publicly listed small and medium-sized undertakings, as well as high-risk small and medium-sized undertakings. 3. This Directive shall also apply to large undertakings, to publicly listed small and medium-sized undertakings and to small and medium-sized undertakings operating in high risk sectors, which are governed by the law of a third country and are not established in the territory of the Union when they operate in the internal market selling goods or providing services. Those undertakings shall fulfil the due diligence requirements established in this Directive as transposed into the legislation of the Member State in which they operate and be subject to the sanctions and liability regimes established by this Directive as transposed into the legislation of the Member State in which they 	<p>Article 2 Scope</p> <ol style="list-style-type: none"> 1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State and which fulfil one of the following conditions: <ol style="list-style-type: none"> (a) the company had more than 500 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared; (b) the company did not reach the thresholds under point (a), but had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been prepared, provided that at least 50% of this net turnover was generated in one or more of the following sectors: <ol style="list-style-type: none"> (i) the manufacture of textiles, leather and related products (including footwear), and the

operate.

wholesale trade of textiles, clothing and footwear;

(ii) agriculture, forestry, fisheries (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages;

(iii) the extraction of mineral resources regardless from where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).

2. This Directive shall also apply to companies which are formed in accordance with the legislation of a third country, and fulfil one of the following conditions:

(a) generated a net turnover of more than EUR 150 million in the Union in the

		<p>financial year preceding the last financial year;</p> <p>(b) generated a net turnover of more than EUR 40 million but not more than EUR 150 million in the Union in the financial year preceding the last financial year, provided that at least 50% of its net worldwide turnover was generated in one or more of the sectors listed in paragraph 1, point (b).</p> <p>3. For the purposes of paragraph 1, the number of part-time employees shall be calculated on a full-time equivalent basis. Temporary agency workers shall be included in the calculation of the number of employees in the same way as if they were workers employed directly for the same period of time by the company.</p> <p>4. As regards the companies referred to in paragraph 1, the Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has its registered office.</p>
<p>22. ... financial institutions,</p>	<p>(17) This Directive should apply to all large undertakings governed by the law of a Member State, established in the territory of the Union or operating in the internal market, regardless of whether they are private or state-owned and of the economic sector they are active in, including the financial sector. This Directive should also apply to publicly listed and high-risk small and medium-sized undertakings*.</p>	<p>Financial institutions are within scope (Article 3(a)(iv)), with the following exemptions:</p> <p><i>Article 6 Identifying actual and potential adverse impacts</i></p> <p>3. When [financial companies] provide credit, loan or other financial services, identification of actual and potential adverse human rights impacts and adverse environmental impacts shall be carried out only before providing that service.</p> <p><i>Article 7 Preventing potential adverse impacts</i></p>

<p>...including the European Investment Bank and European Bank for Reconstruction and Development, be bound by the future due diligence requirements;</p>	<p><i>Not covered.</i></p>	<p>6. By way of derogation from paragraph 5, point (b)[termination of the business relationship if the potential adverse impact is severe], when [financial companies], provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.</p> <p>Article 8 Bringing actual adverse impacts to an end</p> <p>7. [mirrors Article 7(6)]</p> <p><i>Not covered.</i></p>
<p>Scope of human rights</p>		
<p>23. ... due diligence obligations should apply to all business-related human rights abuses; ...</p>	<p>Article 3 Definitions</p> <p>(5) 'value chain' means all activities, operations, business relationships and investment chains of an undertaking and includes entities with which the undertaking has a direct or indirect business relationship, upstream and downstream, and which either:</p> <p>(a) supply products, parts of products or services that contribute to the undertaking's own products or services, or</p> <p>(b) receive products or services from the undertaking;</p> <p>Article 4 Due Diligence Strategy</p> <p>7. Undertakings shall carry out value chain due</p>	<p>Article 3 Definitions</p> <p>(e) 'business relationship' means a relationship with a contractor, subcontractor or any other legal entities ('partner')</p> <p>(i) with whom the company has a commercial agreement or to whom the company provides financing, insurance or reinsurance, or</p> <p>(ii) that performs business operations related to the products or services of the company for or on behalf of the company;</p> <p>(f) 'established business relationship' means a business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does</p>

diligence which is proportionate and commensurate to the likelihood and severity of their potential or actual adverse impacts and their specific circumstances, particularly their sector of activity, the size and length of their value chain, the size of the undertaking, its capacity, resources and leverage.

not represent a negligible or merely ancillary part of the value chain;

- (g) 'value chain' means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company. As regards companies within the meaning of point (a)(iv), 'value chain' with respect to the provision of these specific services shall only include the activities of the clients receiving such loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;

Article 6 Identifying actual and potential adverse impacts

1. Member States shall ensure that companies take appropriate measures to identify actual and potential adverse human rights impacts and adverse environmental impacts arising from their own operations or those of their subsidiaries and, where related to their value chains, from their established business relationships, in accordance with paragraph 2, 3 and 4.
2. By way of derogation from paragraph 1, companies referred to in Article

		<p>2(1), point (b), and Article 2(2), point (b), shall only be required to identify actual and potential severe adverse impacts relevant to the respective sector mentioned in Article 2(1), point (b).</p> <p>3. When companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, identification of actual and potential adverse human rights impacts and adverse environmental impacts shall be carried out only before providing that service.</p> <p>4. [...]</p>
<p>24. ...mandatory due diligence legislation for the internal market requires companies to identify and address their impacts to ensure full respect for all internationally recognised human rights including, as a minimum, those encompassed by the UDHR, all nine core international human rights treaties, the ILO Declaration on Fundamental Principles and Rights at Work and all fundamental ILO conventions, including the Indigenous and Tribal Peoples Convention, as well as the European Social Charter and ECHR, which are binding on Council of Europe member states and also binding on Member States as a result of Union law and the common constitutional traditions of the Member States;</p>	<p>Article 3 Definitions</p> <p>(6) 'potential or actual adverse impact on human rights' means any potential or actual adverse impact that may impair the full enjoyment of human rights by individuals or groups of individuals in relation to human rights, including social, worker and trade union rights, as set out in Annex xx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union's objectives on human rights. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xx;</p>	<p>Article 3 Definitions</p> <p>(b) 'adverse environmental impact' means an adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II;</p> <p>(c) 'adverse human rights impact' means an adverse impact on protected persons resulting from the violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in the Annex, Part I Section 2;</p> <p>See Annex for details of the treaties included.</p>
<p>25. ...</p>		
<p>26. ...human rights of vulnerable groups ...all</p>	<p>Article 3 Definitions</p>	<p>Article 3 Definitions</p>

<p>rights guaranteed to the most severely affected groups under local, national or international law must be covered, as enshrined in Article 5 of the United Nations Declaration on the Rights of Indigenous Peoples;</p>	<p>(6) 'potential or actual adverse impact on human rights' means any potential or actual adverse impact that may impair the full enjoyment of human rights by individuals or groups of individuals in relation to human rights, including social, worker and trade union rights, as set out in Annex xx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union's objectives on human rights. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xx;</p>	<p>(d) 'adverse environmental impact' means an adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II;</p> <p>(e) 'adverse human rights impact' means an adverse impact on protected persons resulting from the violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in the Annex, Part I Section 2;</p> <p>See Annex for details of the treaties included.</p>
<p>27. Asks in this regard that the Commission conduct a thorough review of Xinjiang-based companies that export products to the Union in order to identify potential breaches of human rights, especially those related to the repression of Uighurs;</p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>
<p>28. ...due diligence should cover both actual and potential impacts on women's rights;</p>	<p><i>Not identified.</i></p>	<p>Annex Part I(1)</p> <p>20. Violation of a prohibition or right not covered by points 1 to 20 above but included in the human rights agreements listed in Section 2 of this Part, which directly impairs a legal interest protected in those agreements, provided that the company concerned could have reasonably established the risk of such impairment and any appropriate measures to be taken in order to comply with the obligations referred to in Article 4 of this</p>

		<p>Directive taking into account all relevant circumstances of their operations, such as the sector and operational context.</p> <p>Annex Part I(2)</p> <ul style="list-style-type: none"> • ...The Convention on the Elimination of All Forms of Discrimination Against Women...
<p>29. ... the rights to life, health, food, water and development, as well as the right to a safe, clean, healthy and sustainable environment, are necessary for the full enjoyment of human rights; ... the loss of biodiversity undermines the full enjoyment of human rights ...the right to safe and clean drinking water and sanitation ... recommends that those rights be covered by any possible legislation;</p>	<p>Article 3 Definitions</p> <p>(6) 'potential or actual adverse impact on human rights' means any potential or actual adverse impact that may impair the full enjoyment of human rights by individuals or groups of individuals in relation to human rights, including social, worker and trade union rights, as set out in Annex xx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union's objectives on human rights. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xx;</p> <p>(7) 'potential or actual adverse impact on the environment' means any violation of internationally recognised and Union environmental standards, as set out in Annex xxx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union's objectives on environmental protection and climate change mitigation. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xxx;</p>	<p>Annex Part I(1)</p> <p>9. ...violation of the right of the child to the highest attainable standard of health in accordance with Article 24 of the Convention on the Rights of the Child;</p> <p>[...]</p> <p>18. Violation of the prohibition of causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions or excessive water consumption or other impact on natural resources, that</p> <ul style="list-style-type: none"> (a) impairs the natural bases for the preservation and production of food or (b) denies a person access to safe and clean drinking water or (c) makes it difficult for a person to access sanitary facilities or destroys them or (d) harms the health, safety, the normal use of property or land or the normal conduct of economic activity of a person or (e) affects ecological integrity, such as deforestation,

		<p>in accordance with Article 3 of the Universal Declaration of Human Rights, Article 5 of the International Covenant on Civil and Political Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights;</p> <p>Annex Part II</p> <p>1. Violation of the obligation to take the necessary measures related to the use of biological resources in order to avoid or minimize adverse impacts on biological diversity, in line with Article 10 (b) of the 1992 Convention on Biological Diversity and [taking into account possible amendments following the post 2020 UN Convention on Biological Diversity], including the obligations of the Cartagena Protocol on the development, handling, transport, use, transfer and release of living modified organisms and of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 12 October 2014;</p>
<p>30. ... any corporate due diligence legislation must be in line with the Paris Agreement;</p>	<p><i>Preamble</i></p> <p>12. Underlines that due diligence strategies should be aligned with ... Union international policy, especially the Convention on Biological Diversity and the Paris Agreement and its goals to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature</p>	<p><i>Article 15 Combating climate change</i></p> <p>1. Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. This plan shall, in particular, identify, on the basis of</p>

	<p>increase to 1,5°C above pre-industrial levels...</p>	<p>information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations.</p> <ol style="list-style-type: none"> 2. Member States shall ensure that, in case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company includes emission reduction objectives in its plan. 3. Member States shall ensure that companies duly take into account the fulfilment of the obligations referred to in paragraphs 1 and 2 when setting variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.
<p>31. ... require Member States to regulate businesses' activity in compliance with their commitment to the principles enshrined in the Charter of the United Nations, including the fundamental principles of equality, non-discrimination and self-determination of peoples;</p>	<p>Article 3 Definitions</p> <p>(6) 'potential or actual adverse impact on human rights' means any potential or actual adverse impact that may impair the full enjoyment of human rights by individuals or groups of individuals in relation to human rights, including social, worker and trade union rights, as set out in Annex xx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union's objectives on human rights. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xx;</p>	<p>Article 3 Definitions</p> <p>(f) 'adverse environmental impact' means an adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II;</p> <p>(g) 'adverse human rights impact' means an adverse impact on protected persons resulting from the violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in the Annex, Part I Section 2;</p>

		See Annex for details of the treaties included.
32. ... provisions of the United Nations Convention against Corruption should form part of due diligence obligations in the legislation;	<p>Article 3 Definitions</p> <p>(6) 'potential or actual adverse impact on human rights' means any potential or actual adverse impact that may impair the full enjoyment of human rights by individuals or groups of individuals in relation to human rights, including social, worker and trade union rights, as set out in Annex xx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union's objectives on human rights. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xx; [...]</p> <p>(8) 'potential or actual adverse impact on good governance' means any potential or actual adverse impact on the good governance of a country, region or territory, as set in Annex xxxx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union's objectives on good governance. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xxxx;</p>	<i>Not included.</i>
33. ... scope of due diligence legislation be extended to serious breaches of international criminal law and international humanitarian law for which businesses are directly responsible; stresses the need for enhanced due diligence for companies that have or are planning to have business activities or relationships in conflict-affected areas; ... legislation should require companies to	<i>Not identified.</i>	<i>Not included.</i>

respect the Geneva Conventions and the two additional protocols, as clarified by the UNGPs, the Hague Regulations and the Rome Statute of the International Criminal Court;

Key recommendations:

Due diligence process and obligations

34. ... requirements for corporate mandatory human rights and environmental due diligence be grounded in the principle of corporate responsibility to respect human rights as articulated by the UNGPs; considers that businesses must not infringe human rights but must ensure that they are respected and should address adverse human rights impacts with which they are connected, entailing, in practice, that they should have in place an embedded human rights policy and a human rights due diligence process and adequate measures in order to facilitate access to effective remedies for business-related human rights abuses, without risks of retaliation; such remedies should be gender responsive;

Article 4 Due Diligence Strategy
(See Article 4 Due Diligence Strategy. Not reproduced here for reasons of space)

Article 4 Due diligence

1. Member States shall ensure that companies conduct human rights and environmental due diligence as laid down in Articles 5 to 11 ('due diligence') by carrying out the following actions:
 - (a) integrating due diligence into their policies in accordance with Article 5;
 - (b) identifying actual or potential adverse impacts in accordance with Article 6;
 - (c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8;
 - (d) establishing and maintaining a complaints procedure in accordance with Article 9;
 - (e) monitoring the effectiveness of their due diligence policy and measures in accordance with Article 10;
 - (f) publicly communicating on due diligence in accordance with Article 11.

Gender responsiveness not identified.

35. ...	–	–
36. ... recommends treating gender equality as a cross-cutting issue, ensuring that corporations take into account the potential differentiated impact of their activities, as recommended by the United Nations Working Group on Business and Human Rights in its Gender Guidance to the UNGPs; this must be reflected in the due diligence processes, including the human rights impact assessment phase and remedy procedures;	<i>Not identified.</i>	<i>Not identified.</i>
37. Insists that the scope of due diligence obligations must be based on the risk of violations and must be specific to the country, including an analysis of the regional and local human rights context, and sector of activity; recalls that according to the UNGPs, three factors should be taken into account in assessing the severity of business impacts on human rights: the scale of the impact, the scope of the impact and whether the impact is irremediable;	<p>Article 4 Due Diligence Strategy</p> <p>[...]</p> <p>2. Undertakings shall in an ongoing manner make all efforts within their means to identify and assess, by means of a risk based monitoring methodology that takes into account the likelihood, severity and urgency of potential or actual impacts on human rights, the environment or good governance, the nature and context of their operations, including geographic, and whether their operations and business relationships cause or contribute to or are directly linked to any of those potential or actual adverse impact.</p> <p>[...]</p> <p>4. Unless an undertaking concludes, in line with paragraphs 2 and 3, that it does not cause or contribute to, or that it is not directly linked to any potential or actual adverse impact on human rights, the environment or good governance, it shall establish and effectively</p>	<p>See ‘Scope of human rights’ above. ‘High-impact’ sector companies will only be required to identify and address severe adverse impacts:</p> <p>(l) ‘severe adverse impact’ means an adverse environmental impact or an adverse human rights impact that is especially significant by its nature, or affects a large number of persons or a large area of the environment, or which is irreversible, or is particularly difficult to remedy as a result of the measures necessary to restore the situation prevailing prior to the impact;</p> <p>(q) ‘appropriate measure’ means a measure that is capable of achieving the objectives of due diligence, commensurate with the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including characteristics of the economic sector and of the specific business relationship and the</p>

	<p>implement a due diligence strategy. As part of their due diligence strategy, undertakings shall:</p> <p>[...]</p> <p>(iv) set up a prioritisation strategy on the basis of Principle 17 of the UN Guiding Principles on Business and Human Rights in the event that they are not in a position to deal with all the potential or actual adverse impacts at the same time. Undertakings shall consider the level of severity, likelihood and urgency of the different potential or actual adverse impacts on human rights, the environment or good governance, the nature and context of their operations, including geographic, the scope of the risks, their scale and how irremediable they might be, and if necessary, use the prioritisation policy in dealing with them.</p>	<p>company's influence thereof, and the need to ensure prioritisation of action.</p>
--	--	--

Transparency, reporting, monitoring, and evaluation against human rights benchmarks

<p>38. ...suggests that the Union legislation facilitates the development of comprehensive and coherent methodologies for measuring human rights as well as environment and climate change impacts on the basis of existing international guiding frameworks (notably UNGPs, OECD Guidelines, international specialised agencies as well as tools from civil society) and the Union sustainable finance taxonomy;</p>	<p>Article 14 Guidelines</p> <p><i>Note – no specific reference to measurement was identified.</i></p> <p>3. In preparing the non-binding guidelines referred to in paragraphs 1 and 2 above, due account shall be taken of the United Nations Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Due Diligence Guidance for Responsible Business Conduct, the OECD Guidelines for Multinational Enterprises, the OECD Guidance for Responsible Mineral Supply Chains, the</p>	<p><i>The proposal references the use of qualitative and quantitative indicators, however no specific reference is made to facilitating the development of comprehensive and coherent methodologies.</i></p>
---	---	--

	<p>OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear sector, the OECD guidance for Responsible Business Conduct for Institutional Investors, the OECD Due Diligence for Responsible Corporate Lending and Securities Underwriting and the OECD-FAO Guidance for Responsible Agricultural Supply Chains, the United Nations Committee on the Rights of the Child General Comment 16 on State obligations regarding the impact of the business sector on children’s rights and the UNICEF Children’s Rights and Business Principles. The Commission shall periodically review the relevance of its guidelines and adapt them to new best practices.</p>	
<p>39. Notes that in order to assess human rights risks, violations and environmental impacts, independent monitoring of human rights and environmental impacts and working conditions in supply chains is essential and should fully involve relevant stakeholders, including workers, trade unions, human rights defenders and affected communities; stresses that certain groups may face specific barriers for full involvement and participation; notes that businesses should address those barriers and ensure the safe participation of rights-holders without fear of reprisal;</p>	<p>Article 5 Stakeholder engagement</p> <p>1. Member States shall ensure that undertakings carry out in good faith effective, meaningful and informed discussions with relevant stakeholders when establishing and implementing their due diligence strategy. Member States shall guarantee, in particular, the right for trade unions at the relevant level, including sectoral, national, European and global levels, and for workers' representatives to be involved in the establishment and implementation of the due diligence strategy in good faith with their undertaking. Undertakings may prioritise discussions with the most impacted stakeholders. Undertakings shall conduct discussions and involve trade unions and workers' representatives in a manner that is appropriate to their size and to the nature and</p>	<p>Article 3 Definitions</p> <p>(n) ‘stakeholders’ means the company’s employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships;</p> <p>Article 6 Identifying actual and potential adverse impacts</p> <p>[...]</p> <p>4. Member States shall ensure that, for the purposes of identifying the adverse impacts referred to in paragraph 1 based on, where appropriate, quantitative and qualitative information, companies are entitled to make use of appropriate resources, including independent reports and information</p>

	<p>context of their operations.</p> <ol style="list-style-type: none"> 2. Member States shall ensure that stakeholders are entitled to request from the undertaking that they discuss potential or actual adverse impacts on human rights, the environment or good governance that are relevant to them within the terms of paragraph 1. 3. Undertakings shall ensure that affected or potentially affected stakeholders are not put at risk due to participating in the discussions referred to in paragraph 1. 	<p>gathered through the complaints procedure provided for in Article 9. Companies shall, where relevant, also carry out consultations with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts.</p>
<p>40. Notes that due diligence also necessitates measuring the effectiveness of processes and measures through adequate audits and communicating the results, including periodically producing public evaluation reports on company due diligence processes and their results in a standardised format based on an adequate and coherent reporting framework; recommends that the reports be easily accessible and available, especially to those affected and potentially affected; states that disclosure requirements should take into account competition policy and the legitimate interest to protect internal business know-how and should not lead to disproportionate obstacles or a financial burden for companies;</p>	<p>Article 6 Publication and communication of the due diligence strategy</p> <ol style="list-style-type: none"> 1. Member States shall ensure, with due regard for commercial confidentiality, that undertakings make their most up to date due diligence strategy, or the statement including the risk assessment, referred to in Article 4(3), publicly available, and accessible free of charge, especially on the undertakings' websites. 2. Undertakings shall communicate their due diligence strategy to their workers' representatives, trade unions, business relationships and, on request, to one of the national competent authorities designated pursuant to Article 12. <p>Undertakings shall communicate relevant information concerning their due diligence strategy to potentially affected stakeholders upon request and in a manner appropriate to those stakeholders' context, for example by taking into account the official language of</p>	<p>Article 11 Communicating</p> <p>Member States shall ensure that companies that are not subject to reporting requirements under Articles 19a and 29a of Directive 2013/34/EU report on the matters covered by this Directive by publishing on their website an annual statement in a language customary in the sphere of international business. The statement shall be published by 30 April each year, covering the previous calendar year. The Commission shall adopt delegated acts in accordance with Article 28 concerning the content and criteria for such reporting under paragraph 1, specifying information on the description of due diligence, potential and actual adverse impacts and actions taken on those.</p> <p>Article 10 Monitoring</p> <p>Member States shall ensure that companies carry out periodic assessments of their own operations and measures, those of their subsidiaries and, where related to the value chains of the company, those of their established business relationships, to monitor the effectiveness of the identification, prevention,</p>

	<p>the country of the stakeholders.</p> <p>Article 8 Evaluation and review of the due diligence strategy</p> <ol style="list-style-type: none"> 1. Undertakings shall evaluate the effectiveness and appropriateness of their due diligence strategy and of its implementation at least once a year, and revise it accordingly whenever revision is considered necessary as a result of the evaluation. 2. The evaluation and revision of the due diligence strategy shall be carried out by discussing with stakeholders and with the involvement of trade unions and workers' representatives in the same manner as when establishing the due diligence strategy pursuant to Article 4. 	<p>mitigation, bringing to an end and minimisation of the extent of human rights and environmental adverse impacts. Such assessments shall be based, where appropriate, on qualitative and quantitative indicators and be carried out at least every 12 months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise. The due diligence policy shall be updated in accordance with the outcome of those assessments.</p>
<p>41. Stresses that transparency must be at the core of, and the overriding governing principle for, the tracking, monitoring and assessment process and that external participation, oversight and verification are key elements for robust and meaningful corporate human rights due diligence and its evaluation; calls for Union due diligence legislation to require periodic monitoring of procedural compliance and the publication of lists of companies within its scope, including the right to appeal for the companies concerned, the publication of due diligence reports and evaluation reports via online public repositories; considers that those reports must be accessible on a centralised single platform;</p>	<p><i>Note – periodic monitoring of procedural compliance and the publication of lists of companies within its scope was not identified.</i></p> <p>Article 6 Publication and communication of the due diligence strategy</p> <ol style="list-style-type: none"> 1. Member States shall ensure, with due regard for commercial confidentiality, that undertakings make their most up to date due diligence strategy, or the statement including the risk assessment, referred to in Article 4(3), publicly available, and accessible free of charge, especially on the undertakings' websites. 3. Member States and the Commission shall ensure that undertakings upload their due diligence strategy or the statement including the risk assessment, referred to in Article 4(3) 	<p><i>Not identified – although the nature of Art 11 Communicating is to be expanded on by delegated legislation, and there are interactions with the proposal for a Corporate Sustainability Reporting Directive for relevant companies.</i></p>

	<p>on a European centralised platform, supervised by the national competent authorities. Such a platform could be the Single European Access Point mentioned by the Commission in its recent Capital Markets Union Action Plan (COM(2020)0590). The Commission shall provide a standardised template for the purpose of uploading the due diligence strategies on the European centralised platform.</p>	
<p>42. Is of the view that transparency should be based on the right to know of those who are impacted by commercial activities, including but not limited to workers, trade unions, civil society and women’s organisations, human rights defenders and indigenous peoples communities, and consumers; stresses that that information must be made available to stakeholders in a comprehensive, timely and honest manner;</p>	<p>Article 6 Publication and communication of the due diligence strategy</p> <p>2. Undertakings shall communicate their due diligence strategy to their workers’ representatives, trade unions, business relationships and, on request, to one of the national competent authorities designated pursuant to Article 12.</p>	<p><i>Specific communication to stakeholders not identified.</i></p>
<p>Engagement with stakeholders and rights-holders</p>		
<p>43. ...recommends that the legislation encourage businesses to engage with all affected stakeholders, with their representatives, including indigenous peoples’, farmers’ and workers’ representatives, at all stages of the due diligence process, from development to monitoring and evaluation, in a timely and meaningful manner;</p>	<p>Article 3 Definitions</p> <p>(1) ‘stakeholders’ means individuals, and groups of individuals whose rights or interests may be affected by the potential or actual adverse impacts on human rights, the environment and good governance posed by an undertaking or its business relationships, as well as organisations whose statutory purpose is the defence of human rights, including social and labour rights, the environment and good governance. These can include workers and their representatives, local communities, children,</p>	<p>Article 6 Identifying actual and potential adverse impacts</p> <p>[...]</p> <p>5. Member States shall ensure that, for the purposes of identifying the adverse impacts referred to in paragraph 1 based on, where appropriate, quantitative and qualitative information, companies are entitled to make use of appropriate resources, including independent reports and information gathered through the complaints procedure provided for in Article 9. Companies shall,</p>

indigenous peoples, citizens' associations, trade unions, civil society organisations and the undertakings' shareholders;

Article 5 Stakeholder engagement

1. Member States shall ensure that undertakings carry out in good faith effective, meaningful and informed discussions with relevant stakeholders when establishing and implementing their due diligence strategy. Member States shall guarantee, in particular, the right for trade unions at the relevant level, including sectoral, national, European and global levels, and for workers' representatives to be involved in the establishment and implementation of the due diligence strategy in good faith with their undertaking. Undertakings may prioritise discussions with the most impacted stakeholders. Undertakings shall conduct discussions and involve trade unions and workers' representatives in a manner that is appropriate to their size and to the nature and context of their operations.
2. Member States shall ensure that stakeholders are entitled to request from the undertaking that they discuss potential or actual adverse impacts on human rights, the environment or good governance that are relevant to them within the terms of paragraph 1.
3. Undertakings shall ensure that affected or potentially affected stakeholders are not put at risk due to participating in the discussions referred to in paragraph 1.

where relevant, also carry out consultations with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts.

As regards prevention (Art 7) and bringing to and end/minimising (Art 8), Companies shall be required to take the following actions, where relevant:

"where necessary due to the nature or complexity of the measures required for prevention, develop and implement a prevention action plan, with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. The prevention action plan shall be developed in consultation with affected stakeholders;"[...]

4. Workers' representatives shall be informed by the undertaking on its due diligence strategy and on its implementation, to which they shall be able contribute, in accordance with Directives 2002/14/EC¹³ and 2009/38/EC¹⁴ of the European Parliament and of the Council and Council Directive 2001/86/EC¹⁵. In addition, the right to bargain collectively shall be fully respected, as recognised in particular by ILO Conventions 87 and 98, the Council of Europe European Convention of Human Rights and European Social Charter, as well as the decisions of the ILO Committee on Freedom of Association, the Committee of Experts on Application of Conventions and Recommendations (CEACR) and the Council of Europe European Committee of Social Rights (ECSR).

Protection of whistleblowers, human rights and environmental defenders and lawyers

44. Suggests that companies establish effective alert mechanisms; is of the opinion that through recourse to such mechanisms any interested party, including trade unions, consumers, journalists, civil society organisations, lawyers and human rights and environmental defenders, or members of the

Article 9 Grievance mechanisms

1. Undertakings shall provide a grievance mechanism, both as an early-warning mechanism for risk-awareness and as a mediation system, allowing any stakeholder to voice reasonable concerns regarding the existence of a potential or actual adverse

Article 9 Complaints procedure

1. Member States shall ensure that companies provide the possibility for persons and organisations listed in paragraph 2 to submit complaints to them where they have legitimate concerns regarding actual or potential adverse human rights impacts and

¹³ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

¹⁴ Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28).

¹⁵ Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22).

public, should be able to warn the company of adverse impacts and human rights violations; calls on the Commission to consult the European Ombudsman on accompanying measures needed to support this role;

impact on human rights, the environment or good governance. Member States shall ensure that undertakings are enabled to provide such a mechanism through collaborative arrangements with other undertakings or organisations, by participating in multi-stakeholder grievance mechanisms or joining a Global Framework Agreement.

Article 3 Definitions

(1) 'stakeholders' means individuals, and groups of individuals whose rights or interests may be affected by the potential or actual adverse impacts on human rights, the environment and good governance posed by an undertaking or its business relationships, as well as organisations whose statutory purpose is the defence of human rights, including social and labour rights, the environment and good governance. These can include workers and their representatives, local communities, children, indigenous peoples, citizens' associations, trade unions, civil society organisations and the undertakings' shareholders;

adverse environmental impacts with respect to their own operations, the operations of their subsidiaries and their value chains.

2. Member States shall ensure that the complaints may be submitted by:
 - (a) persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact,
 - (b) trade unions and other workers' representatives representing individuals working in the value chain concerned,
 - (c) civil society organisations active in the areas related to the value chain concerned.
3. Member States shall ensure that the companies establish a procedure for dealing with complaints referred to in paragraph 1, including a procedure when the company considers the complaint to be unfounded, and inform the relevant workers and trade unions of those procedures. Member States shall ensure that where the complaint is well-founded, the adverse impact that is the subject matter of the complaint is deemed to be identified within the meaning of Article 6.
4. Member States shall ensure that complainants are entitled
 - (a) to request appropriate follow-up on the complaint from the company with which they have filed a complaint pursuant to paragraph 1, and

		<p>(b) to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint.</p> <p>(c)</p>
<p>45. Stresses that disclosure and complaint procedures must ensure that the anonymity, safety, physical and legal integrity of whistleblowers are protected, in line with Directive (EU) 2019/1937 of the European Parliament and of the Council¹⁶;</p>	<p>Article 9 Grievance mechanisms</p> <p>2. Grievance mechanisms shall be legitimate, accessible, predictable, safe, equitable, transparent, rights-compatible and adaptable as set out in the effectiveness criteria for non-judicial grievance mechanisms in Principle 31 of the United Nations Guiding Principles on Business and Human Rights and the United Nations Committee on the Rights of the Child General Comment No 16. Such mechanisms shall provide for the possibility to raise concerns either anonymously or confidentially, as appropriate in accordance with national law.</p>	<p>Article 23 Reporting of breaches and protection of reporting persons</p> <p>Directive (EU) 2019/1937 shall apply to the reporting of all breaches of this Directive and the protection of persons reporting such breaches.</p>
<p>46. ... recommends that the Commission investigate the possibility of establishing a protection mechanism in compliance with the Directive (EU) 2019/1937 and the United Nations Declaration on Human Rights Defenders, in order to protect stakeholders as well as lawyers representing plaintiffs from lawsuits, intimidation and attempts to silence their claims, and deter them from seeking justice;</p>	<p><i>Not identified.</i></p>	<p><i>Not identified.</i></p>

¹⁶ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

Right to an effective remedy and equal access to justice

47. ... recommends ... that the legislation require states to ensure that victims of business-related violations are remedied and redress is provided for the harm suffered; stresses that the remedy should be provided by operators that have caused or contributed to the harm unless they can demonstrate that they acted with due care and took all reasonable measures, given the circumstances, to prevent the harm; recommends that the legislation makes specific reference to this obligation in line with the United Nations Basic Principles and Guidelines on the Rights to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law;

Article 10 Extra-judicial remedies

1. Member States shall ensure that when an undertaking identifies that it has caused or contributed to an adverse impact, it provides for or cooperates with the remediation process. When an undertaking identifies that it is directly linked to an adverse impact on human rights, the environment or good governance, it shall cooperate with the remediation process to the best of its abilities.
2. The remedy may be proposed as a result of mediation via the grievance mechanism laid down in Article 9.
3. The remedy shall be determined in consultation with the affected stakeholders and may consist of: financial or non-financial compensation, reinstatement, public apologies, restitution, rehabilitation or a contribution to an investigation.
4. Undertakings shall prevent additional harm being caused by providing guarantees that the harm in question will not be repeated.
5. Member States shall ensure that the remediation proposal by an undertaking does not prevent affected stakeholders from bringing civil proceedings in accordance with national law. In particular, victims shall not be required to seek extra-judicial remedies before filing a claim before a court, nor shall ongoing proceedings before a grievance mechanism impede victims' access to a court. Decisions issued by a grievance mechanism shall be duly considered by courts but shall

Article 8 Bringing actual adverse impacts to an end

1. [...]
2. [...]
3. Companies shall be required to take the following actions, where relevant:
 - (a) neutralise the adverse impact or minimise its extent, including by the payment of damages to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the contribution of the company's conduct to the adverse impact;

	<p>not be binding upon them.</p>	
<p>48. ...conducting due diligence should not by itself absolve companies from liability for causing or contributing to human rights abuses;</p>	<p>Article 19 Civil liability</p> <p>1. The fact that an undertaking respects its due diligence obligations shall not absolve the undertaking of any liability which it may incur pursuant to national law.</p>	<p>Article 22 Civil liability</p> <p>1. Member States shall ensure that companies are liable for damages if:</p> <p>(a) they failed to comply with the obligations laid down in Articles 7 and 8 and;</p> <p>(b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage.</p> <p>2. Notwithstanding paragraph 1, Member States shall ensure that where a company has taken the actions referred to in Article 7(2), point (b) and Article 7(4), or Article 8(3), point (c), and Article 8(5), it shall not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact.</p>

		<p>In the assessment of the existence and extent of liability under this paragraph, due account shall be taken of the company's efforts, insofar as they relate directly to the damage in question, to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as any collaboration with other entities to address adverse impacts in its value chains.</p> <p>3. The civil liability of a company for damages arising under this provision shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the value chain.</p> <p>4. The civil liability rules under this Directive shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.</p> <p>5. Member States shall ensure that the liability provided for in provisions of national law transposing this Article is of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.</p>
<p>49. ... recommends that any legislation should facilitate adequate access to remedies for</p>	<p>Article 19 Civil liability</p>	<p><i>Burden of proof not stipulated in proposal.</i></p>

<p>victims, meaning that once a claimant establishes an initial case, the responding company should show that it had met its due diligence obligations and that the damage and violations, if any, are not the result of a failure to effectively conduct due diligence;</p>	<ol style="list-style-type: none"> 2. Member States shall ensure that they have a liability regime in place under which undertakings can, in accordance with national law, be held liable and provide remediation for any harm arising out of potential or actual adverse impacts on human rights, the environment or good governance that they, or undertakings under their control, have caused or contributed to by acts or omissions. 3. Member States shall ensure that their liability regime as referred to in paragraph 2 is such that undertakings that prove that they took all due care in line with this Directive to avoid the harm in question, or that the harm would have occurred even if all due care had been taken, are not held liable for that harm. 	
<p>50. ...</p>	<p>–</p>	<p>–</p>
<p>51. Recommends that the legislation establishes guidance regarding the elements of an effective, fair and equitable operational grievance mechanism, with a view to defining appropriate measures for prevention, including providing adequate access to remedies; stresses that it is necessary to clarify the precise scope of the jurisdiction of the courts of the Member States regarding remedies;</p>	<p><i>Article 9</i> Grievance mechanisms</p> <ol style="list-style-type: none"> 2. Grievance mechanisms shall be legitimate, accessible, predictable, safe, equitable, transparent, rights-compatible and adaptable as set out in the effectiveness criteria for non-judicial grievance mechanisms in Principle 31 of the United Nations Guiding Principles on Business and Human Rights and the United Nations Committee on the Rights of the Child General Comment No 16. Such mechanisms shall provide for the possibility to raise concerns either anonymously or confidentially, as appropriate in accordance with national law. 7. Recourse to a grievance mechanism shall not preclude the claimants from having access to 	<p><i>Complaints mechanism provided for (Art 9) does not meet the criteria of a grievance mechanism within the meaning of Principle 31 of the United Nations Guiding Principles on Business and Human Rights.</i></p>

	<p>judicial mechanisms.</p> <p>Article 10 Extra-judicial remedies</p> <p>2. The remedy may be proposed as a result of mediation via the grievance mechanism laid down in Article 9.</p> <p>Article 19 Civil liability</p> <p>1. The fact that an undertaking respects its due diligence obligations shall not absolve the undertaking of any liability which it may incur pursuant to national law.</p>	
52. ...	–	–
53. Recommends that the Commission’s support in relation to the rule of law, good governance and access to justice in third countries prioritise the capacity-building of local authorities in the areas addressed by the future legislation, where appropriate;	<i>Not identified.</i>	Not identified.
Enforcement, civil and criminal liability		
54. Underlines that any due diligence legislation must be adequately monitored and enforced by national competent administrative and judicial authorities and Union bodies, offices and agencies with appropriate resources, expertise, duties and powers, including the power to investigate, in accordance with their respective competences; stresses that the Commission should publish guidance addressing effective enforcement action at	<p>Article 12 Supervision</p> <p>1. Each Member State shall designate one or more national competent authorities responsible for the supervision of the application of this Directive, as transposed into national law, and for the dissemination of due diligence best practices.</p> <p>2. Member States shall ensure that the national competent authorities designated in</p>	<p>Article 17 Supervisory Authorities</p> <p>1. Each Member State shall designate one or more supervisory authorities to supervise compliance with the obligations laid down in national provisions adopted pursuant to Articles 6 to 11 and Article 15(1) and (2) ('supervisory authority').</p> <p>[...]</p> <p>Article 18 Powers of supervisory authorities</p>

Member State level, develop a Union Action Plan on Business and Human Rights and work on the development of tools and training materials on human rights due diligence for Union and national institutions as well as Union delegations, which should engage with businesses and relevant stakeholders in third countries, as well as third countries' authorities to raise awareness, share tools and promote similar legislation in the host countries;

accordance with paragraph 1 are independent and have the necessary personal, technical and financial resources, premises, infrastructure, and expertise to carry out their duties effectively.

Article 13 Investigations on undertakings

1. Member State competent authorities referred to in Article 14 shall have the power to carry out investigations to ensure that undertakings comply with the obligations set out in this Directive, including undertakings which have stated that they have not encountered any potential or actual adverse impact on human rights, the environment or good governance. Those competent authorities shall be authorised to carry out checks on undertakings and interviews with affected or potentially affected stakeholders or their representatives. Such checks may include examination of the undertaking's due diligence strategy, of the functioning of the grievance mechanism, and on-the-spot checks.
Undertakings shall provide all the assistance necessary to facilitate the performance by the competent authorities of their investigations.

1. [...]
2. A supervisory authority may initiate an investigation on its own motion or as a result of substantiated concerns communicated to it pursuant to Article 19, where it considers that it has sufficient information indicating a possible breach by a company of the obligations provided for in the national provisions adopted pursuant to this Directive.
3. Inspections shall be conducted in compliance with the national law of the Member State in which the inspection is carried out and with prior warning to the company, except where prior notification hinders the effectiveness of the inspection. Where, as part of its investigation, a supervisory authority wishes to carry out an inspection on the territory of a Member State other than its own, it shall seek assistance from the supervisory authority in that Member State pursuant to Article 21(2).
4. If, as a result of the actions taken pursuant to paragraphs 1 and 2, a supervisory authority identifies a failure to comply with national provisions adopted pursuant to this Directive, it shall grant the company concerned an appropriate period of time to take remedial action, if such action is possible. Taking remedial action does not preclude the imposition of administrative sanctions or the triggering of civil liability in case of damages, in accordance with Articles 20 and 22, respectively.

Article 14 Guidelines

1. In order to create clarity and certainty for undertakings, as well as to ensure consistency among their practices, the Commission, in consultation with Member States and the OECD and with the assistance of the European Union Agency for Fundamental Rights, the European Environment Agency and the Executive Agency for Small and Medium-

5. When carrying out their tasks, supervisory authorities shall have at least the following powers:

(a) to order the cessation of infringements of the national provisions adopted pursuant to this Directive, abstention from any repetition of the relevant conduct and, where appropriate, remedial action proportionate to the infringement and necessary to bring it to an end;

(b) to impose pecuniary sanctions in accordance with Article 20;

(c) to adopt interim measures to avoid the risk of severe and irreparable harm.

6. [...]

7. Member States shall ensure that each natural or legal person has the right to an effective judicial remedy against a legally binding decision by a supervisory authority concerning them.

Article 13 Guidelines

In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, may

	<p>sized Enterprises, shall publish general non-binding guidelines for undertakings on how best to fulfil the due diligence obligations set out in this Directive. Those guidelines shall provide practical guidance on how proportionality and prioritisation, in terms of impacts, sectors and geographical areas, may be applied to due diligence obligations depending on the size and sector of the undertaking. The guidelines shall be made available no later than ... [18 months after the date of entry into force of this Directive].</p> <p>Article 16 Cooperation at Union level</p> <p>1. The Commission shall set up a European Due Diligence Network of competent authorities to ensure, together with the national competent authorities referred to in Article 12, the coordination and convergence of regulatory, investigative and supervisory practices, the sharing of information, and monitor the performance of national competent authorities.</p> <p>National competent authorities shall cooperate to enforce the obligations provided for in this Directive.</p>	<p>issue guidelines, including for specific sectors or specific adverse impacts.</p> <p>Article 21 European Network of Supervisory Authorities</p> <p>1. The Commission shall set up a European Network of Supervisory Authorities, composed of representatives of the supervisory authorities. The Network shall facilitate the cooperation of the supervisory authorities and the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, sharing of information among them.</p>
<p>55. Recommends that Union due diligence legislation require Member States to provide for effective, proportionate and dissuasive legal consequences, including sanctions, based on the severity of misconduct for non-compliance with due diligence obligations; underlines that mediation may constitute an</p>	<p>Article 18 Sanctions</p> <p>1. Member States shall provide for proportionate sanctions applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that those sanctions are enforced. The</p>	<p>Article 20 Sanctions</p> <p>1. Member States shall lay down the rules on sanctions applicable to infringements of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The sanctions provided for</p>

effective and swift means to seek enforcement of due diligence obligations; recommends that the Union sanctions regime include exclusion from public procurement and public funding for non-compliant companies;

sanctions provided for shall be effective, proportionate and dissuasive and shall take into account the severity of the infringements committed and whether or not the infringement has taken place repeatedly.

2. The competent national authorities may in particular impose proportionate fines calculated on the basis of an undertaking's turnover, temporarily or indefinitely exclude undertakings from public procurement, from state aid, from public support schemes including schemes relying on Export Credit Agencies and loans, resort to the seizure of commodities and other appropriate administrative sanctions.

Article 19 Civil liability

1. The fact that an undertaking respects its due diligence obligations shall not absolve the undertaking of any liability which it may incur pursuant to national law.
2. Member States shall ensure that they have a liability regime in place under which undertakings can, in accordance with national law, be held liable and provide remediation for any harm arising out of potential or actual adverse impacts on human rights, the environment or good governance that they, or undertakings under their control,

shall be effective, proportionate and dissuasive.

2. In deciding whether to impose sanctions and, if so, in determining their nature and appropriate level, due account shall be taken of the company's efforts to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as collaboration with other entities to address adverse impacts in its value chains, as the case may be.
3. When pecuniary sanctions are imposed, they shall be based on the company's turnover.
4. Member States shall ensure that any decision of the supervisory authorities containing sanctions related to the breach of the provisions of this directive is published.

Article 22 Civil liability

1. Member States shall ensure that companies are liable for damages if:
 - (a) they failed to comply with the obligations laid down in Articles 7 and 8 and;
 - (b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage.
2. Notwithstanding paragraph 1, Member States

	<p>have caused or contributed to by acts or omissions.</p> <ol style="list-style-type: none">3. Member States shall ensure that their liability regime as referred to in paragraph 2 is such that undertakings that prove that they took all due care in line with this Directive to avoid the harm in question, or that the harm would have occurred even if all due care had been taken, are not held liable for that harm.4. Member States shall ensure that the limitation period for bringing civil liability claims concerning harm arising out of adverse impacts on human rights and the environment is reasonable.	<p>shall ensure that where a company has taken the actions referred to in Article 7(2), point (b) and Article 7(4), or Article 8(3), point (c), and Article 8(5), it shall not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact. In the assessment of the existence and extent of liability under this paragraph, due account shall be taken of the company's efforts, insofar as they relate directly to the damage in question, to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as any collaboration with other entities to address adverse impacts in its value chains.</p> <ol style="list-style-type: none">3. The civil liability of a company for damages arising under this provision shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the value chain.4. The civil liability rules under this Directive shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or
--	--	---

		<p>providing for stricter liability than this Directive.</p> <p>5. Member States shall ensure that the liability provided for in provisions of national law transposing this Article is of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.</p>
<p>56. ... provisions for joint liability of companies for human rights violations and damage to the environment, directly linked to their products, services or their operations, unless the companies acted with due care and took all reasonable measures that could have prevented the harm; stresses that criminal law and criminal justice are indispensable means of protecting human rights against severe violations; calls therefore on the Commission to consider exploring the possibility of including further types of liability, including criminal liability, for most severe violations.</p>	<p><i>Not identified.</i></p>	<p>See Art 22(3): <i>The civil liability of a company for damages arising under this provision shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the value chain.</i></p> <p><i>Criminal liability is not provided for.</i></p>
<p>Supporting measures</p>		
<p>16. Notes that diverse groups of stakeholders, businesses, corporations and investors are calling for mandatory human rights due diligence legislation at Union level, to harmonise standards inside the internal market, and secure a global level playing field and greater legal and business certainty; stresses that any regulatory requirements need to be sufficiently clear for companies to be able to comply with those requirements; calls on the Commission to conduct a</p>	<p>Article 14 Guidelines</p> <p>1. In order to create clarity and certainty for undertakings, as well as to ensure consistency among their practices, the Commission, in consultation with Member States and the OECD and with the assistance of the European Union Agency for Fundamental Rights, the European Environment Agency and the Executive Agency for Small and Medium-sized</p>	<p>Article 12 Model contractual clauses</p> <p><i>In order to provide support to companies to facilitate their compliance with Article 7(2), point (b), and Article 8(3), point (c), the Commission shall adopt guidance about voluntary model contract clauses.</i></p> <p>Article 13 Guidelines</p> <p><i>In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence</i></p>

thorough impact assessment for the purposes of a detailed analysis and fitness check of additional costs and obligations and their impact on Union businesses, resulting from due diligence rules, in particular as regards SMEs and subsequently, together with the Member States, to provide them with additional support in implementing due diligence guidelines and relevant rules and regulations, notably through the drafting of sector-specific guidelines for companies by the Commission with the active and meaningful participation of the Union bodies, offices and agencies, relevant international organisations as well as civil society, trade unions, workers, communities, businesses, human rights and environmental defenders and indigenous peoples;

Enterprises, shall publish general non-binding guidelines for undertakings on how best to fulfil the due diligence obligations set out in this Directive. Those guidelines shall provide practical guidance on how proportionality and prioritisation, in terms of impacts, sectors and geographical areas, may be applied to due diligence obligations depending on the size and sector of the undertaking. The guidelines shall be made available no later than ... [18 months after the date of entry into force of this Directive].

2. The Commission, in consultation with Member States and the OECD, and with the assistance of the European Union Agency for Fundamental Rights, the European Environment Agency and the Executive Agency for Small and Medium-sized Enterprises, may prepare specific non-binding guidelines for undertakings operating in certain sectors.
3. In preparing the non-binding guidelines referred to in paragraphs 1 and 2 above, due account shall be taken of the United Nations Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Due Diligence Guidance for Responsible Business Conduct, the OECD Guidelines for Multinational Enterprises, the OECD Guidance for Responsible Mineral Supply

obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, may issue guidelines, including for specific sectors or specific adverse impacts.

Article 14 Accompanying measures

1. *Member States shall, in order to provide information and support to companies and the partners with whom they have established business relationships in their value chains in their efforts to fulfil the obligations resulting from this Directive, set up and operate individually or jointly dedicated websites, platforms or portals. Specific consideration shall be given, in that respect, to the SMEs that are present in the value chains of companies.*
2. *Without prejudice to applicable State aid rules, Member States may financially support SMEs.*
3. *The Commission may complement Member States' support measures building on existing Union action to support due diligence in the Union and in third countries and may devise new measures, including facilitation of joint stakeholder initiatives to help companies fulfil their obligations.*
4. *Companies may rely on industry schemes*

Chains, the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear sector, the OECD guidance for Responsible Business Conduct for Institutional Investors, the OECD Due Diligence for Responsible Corporate Lending and Securities Underwriting and the OECD-FAO Guidance for Responsible Agricultural Supply Chains, the United Nations Committee on the Rights of the Child General Comment 16 on State obligations regarding the impact of the business sector on children's rights and the UNICEF Children's Rights and Business Principles. The Commission shall periodically review the relevance of its guidelines and adapt them to new best practices.

4. Country fact-sheets shall be updated regularly by the Commission and made publicly available in order to provide up-to-date information on the international Conventions and Treaties ratified by each of the Union's trading partners. The Commission shall collect and publish trade and customs data on origins of raw materials, and intermediate and finished products, and publish information on human rights, environmental and governance potential or actual adverse impacts risks associated with certain countries or regions, sectors and sub-

and multi-stakeholder initiatives to support the implementation of their obligations referred to in Articles 5 to 11 of this Directive to the extent that such schemes and initiatives are appropriate to support the fulfilment of those obligations. The Commission and the Member States may facilitate the dissemination of information on such schemes or initiatives and their outcome. The Commission, in collaboration with Member States, may issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.

	<p>sectors, and products.</p> <p>Article 15 <i>Specific measures in support of small and medium-sized undertakings</i></p> <ol style="list-style-type: none"> 1. <i>Member States shall ensure that a specific portal for small and medium-sized undertakings is available where they may seek guidance and obtain further support and information about how best to fulfil their due diligence obligations.</i> 2. <i>Small and medium-sized undertakings shall be eligible for financial support to perform their due diligence obligations under the Union's programmes to support small and medium sized undertakings.</i> 	
Review of the directive		
<p><i>Not addressed.</i></p>	<p><i>Not addressed.</i></p>	<p>Article 29 <i>Review</i></p> <p>No later than ... [7 years after the date of entry into force of this Directive], the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive. The report shall evaluate the effectiveness of this Directive in reaching its objectives and assess the following issues:</p> <ol style="list-style-type: none"> (a) whether the thresholds regarding the number of employees and net turnover laid down in Article 2(1) need to be lowered; (b) whether the list of sectors in Article 2(1),

		<p>point (b), needs to be changed, including in order to align it to guidance from the Organisation for Economic Cooperation and Development;</p> <p>(c) whether the Annex needs to be modified, including in light of international developments</p> <p>(d) whether Articles 4 to 14 should be extended to adverse climate impacts.</p>
--	--	--

PE 702.560
EP/EXPO/DROI/FWC/2019-01/LOT6/1/C/16

Print ISBN 978-92-846-9510-2 | doi: 10.2861/811696 | QA-07-22-425-EN-C
PDF ISBN 978-92-846-9509-6 | doi: 10.2861/60402 | QA-07-22-425-EN-N