

Consultation Document Proposal for an Initiative on Sustainable Corporate Governance

Fields marked with * are mandatory.

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

Introduction

Political context

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

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

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

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

Strategy.

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

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

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

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

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

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

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

measures for SMEs also require careful consideration.

Results of two studies conducted for the Commission

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

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

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

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

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

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

Objectives of this public consultation

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

About you

* Language of my contribution

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

* Surname

Kultalahti

* I am giving my contribution as

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

* First name

Anu

* Email (this won't be published)

anu.kultalahti@finnwatch.org

* Organisation name

255 character(s) maximum

Finnwatch

* Organisation size

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

Transparency register number

255 character(s) maximum

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

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* Country of origin

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

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* Publication privacy settings

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

Anonymous

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

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

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

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

Consultation questions

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

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

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

- Yes, in the EU
- Yes, outside the EU

- Yes, both in and outside the EU
- No

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

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

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

- Yes
- No

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

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

- Yes
- No

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

- Yes
- No

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

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

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

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

Please provide reasons for your answer:

As evident from the unanimous endorsement of the UN Guiding Principles on Business and Human Rights (UNGPs), there is no disagreement about whether companies should be responsible for addressing their global impacts on human rights.

In addition, tackling the global climate crisis and biodiversity crisis requires companies to take action and bear responsibility for their environmental impacts in line with the OECD Guidelines for Multinational Enterprises and the Due Diligence Guidance for Responsible Business Conduct (DD for RBC guidance).

However, despite growing awareness of the elements of responsible business conduct, companies have not fundamentally changed the way they do business. This is evident from the widespread abuse of human rights and environmental harm in the global value chains of European companies, and the results of various studies that have sought to benchmark corporate performance in this regard. See also Q2.

The question that now needs to be resolved is how the corporate responsibility for their global impacts on human rights and the environment should be reflected in law. To address this, we believe that the Commission should now prepare a stand-alone legislative proposal on human rights and environmental due diligence (HREDD). Questions related to directors' duties beyond what is currently required by EU law should be considered separately from the responsibility of companies to respect human rights and the environment, and the question whether expanded directors' duties are the best way to ensure that companies maximize their social and environmental performance also requires further debate.

Well-designed HREDD legislation would in itself compel companies to take into account sustainability matters and stakeholders' interest, and to avoid, prevent, mitigate, account for and remedy their adverse impacts on human rights and the environment.

Question 2: Human rights, social and environmental due diligence requires companies to put in place continuous processes to identify risks and adverse impacts on human rights, health and safety and environment and prevent, mitigate

and account for such risks and impacts in their operations and through their value chain.

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

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

- Yes, an EU legal framework is needed.
- No, it should be enough to focus on asking companies to follow existing guidelines and standards.
- No action is necessary.
- Do not know.

Please explain:

Voluntary measures on human rights due diligence have failed to significantly change the way companies manage their impacts and provide remedy to victims.

In the EC study on due diligence requirements through the supply chain (<https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>), only a minority of business respondents stated they conducted some form of due diligence.

A recent study commissioned by the Finnish government reached the same conclusion of low uptake of due diligence by companies when done on a voluntary basis: <https://julkaisut.valtioneuvosto.fi/handle/10024/162648>. The results of the study show that although Finnish companies are, at least at a general level, committed to respecting human rights, the practical integration of the responsibility to respect human rights and the related due diligence processes into their core activities, is still largely at an early stage. The results of the study were weakest on performance areas related to remedy and transparency. The study concludes that the state of implementation of human rights responsibilities by Finnish companies is largely at the same level as found in the Corporate Human Rights Benchmark's global assessments.

A growing number of EU Member States are making progress in developing legally binding corporate human rights due diligence frameworks based on international standards. The Finnish government has conducted a judicial analysis that outlines options for the introduction of national human rights and environmental due diligence legislation. A legal framework for environmental and human rights due diligence at the EU level would ensure that the same rules apply to all companies and a coherent legal framework within the EU.

An EU-wide legislation applicable to all business enterprises domiciled or based in the EU, or active on the EU market, would help to prevent and mitigate human rights abuses and environmental harms while ensuring a level playing field. In a recent survey of 45 major Finnish companies, only 6 percent of respondents thought that voluntary measures were enough and 94 percent thought that companies' efforts to ensure respect of human rights should be regulated at international level: <https://www.fibsry.fi/ajankohtaista/finnish-corporate-responsibility-meter-major-finnish-companies-support-international-regulation-on-the-implementation-of-human-rights/>

The mandatory EU legal framework should be based on the UNGPs and complementary guidance (e.g. OECD DD for RBC guidance), and the definition and description of human rights due diligence therein. In our view, human rights due diligence in itself would cover human rights impacts of environmental harm. Therefore, in regard to environmental due diligence, it will be necessary to clarify what are the adverse environmental impacts that the legislation seeks to prevent as well as the types of remediation obligations that should apply to environmental impacts.

In addition, in view of the failure of voluntary initiatives, the legislative framework should create effective accountability for the harms to people and the planet in order to drive positive systemic changes around the world.

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

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

Other, please specify:

In addition to the above, an important benefit of an EU due diligence duty would be that it would enable and support remedy for victims of human rights abuses in and outside the EU.

An EU due diligence duty should require active engagement in remediation of adverse impacts where companies cause or contribute to harm by way of actions or omissions.

Moreover, a due diligence legislation should allow victims, in and outside the EU, to hold companies civilly liable for harm before EU courts.

Such legal liability provisions coupled with effective enforcement mechanisms will create an important opportunity for access to remedy for victims and affected communities, and make sure that companies can be properly held to account.

Other potential benefits of an EU due diligence duty may include:

- the EU setting a strong example to other markets and regulators;
- improved resilience of companies and economies in the face of crises, particularly, in the face of supply chain shocks (the OECD for example, has stressed the need for improved supply chain due diligence as a response to the COVID-19 crisis, which would contribute to “a faster and stronger recovery while making the economy more resilient to future crises”, <http://www.oecd.org/coronavirus/policy-responses/covid-19-and-responsible-business-conduct-02150b06/>);
- first-mover advantage for EU companies, being the first to start adapting to due diligence requirements that are beginning to be discussed in other parts of the world;
- alleviation of pressure on governments in production countries to deregulate in order to attract foreign companies and investors;
- an incentive for governments in production countries to raise the bar in regard to human rights and environmental protections afforded in national law and to ensure their better implementation in order to attract foreign companies and investors.

Question 3a. Drawbacks

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

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

Other, please specify:

We believe many of the above-mentioned risks are common yet unfounded claims against due diligence legislation, rarely supported by evidence. Well-designed due diligence legislation, with requirements in line with the UNGPs and complementary guidance (e.g. OECD DD for RBC guidance), could successfully mitigate any of these risks.

Regarding the alleged risk of penalization of smaller companies with fewer resources, it is worth noting that, as stressed by international standards on HR(E)DD, the means through which SMEs will be expected to meet their responsibility to respect human rights and the environment would be proportional to human rights and environmental risk, but also among other factors, their size. For SMEs, the type of policies and processes expected would be according to their capacity, following the Commentary to Principle 14 of the UNGPs. Studies of the compliance costs of a variety of due diligence regimes do not identify a disproportionate economic burden for SMEs. In fact, the cost of compliance is typically related to the size of the enterprise. Moreover, the above-mentioned Commission's study on due diligence requirements through the supply chain shows that, even for SMEs, the costs of carrying out mandatory supply chain due diligence appears to be relatively low compared to the company's revenue. However, such risk of penalization of SMEs would materialize if the EU legal framework introduces a rigid, procedural obligation based on a misunderstanding that such an approach would be beneficial to companies, or with the intention to shield companies from any liability.

It should also be noted that in Finland, a number of SMEs were part of the national campaign calling for mandatory human rights due diligence law, demonstrating that there is support among SMEs themselves for their inclusion in the scope of the legislative framework.

With regard to the alleged risk of responsibility for damages that the EU company cannot control, it must be said that under well-established legal principles governing civil liability, generally, liability would only apply if a link between the harm and the company's actions or omissions could be established. Therefore, liability would normally be determined in accordance with the level of (ability to) control or influence of the company over the relevant subsidiary or business partner.

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

- as per international due diligence standards, disengagement should only be considered as a last resort after all other steps have been exhausted, as outlined in Principle 19 of the UNGPs, which notes that business enterprises should only consider ceasing relationships where options for leverage to prevent or mitigate negative impacts have been exhausted or leverage is insufficient (despite attempts to increase it). A similar approach is elaborated upon in the OECD DD for RBC guidance (3.2.h). A hands-off approach where a company simply disengages without taking further measures would not be in line with these standards.
- due diligence legislation would therefore prevent irresponsible disengagement from happening by compelling companies to evaluate all possible options for alternatives to disengagement, to consider the potential adverse impact associated with a decision to disengage, and by holding them liable in case of irresponsible disengagement.
- exceptions include, for example, companies' disengagement from contexts with state-imposed forced labour (e.g. Uzbekistan and the Xinjiang Uyghur Autonomous Region), in which disengagement would be in line with the UNGPs because of the lack of leverage to change the practice, the severity of the abuses, and the inability to provide or participate in the provision of an effective remedy.

A potential other drawback is the risk that, if poorly implemented, parent and lead companies end up passing the additional costs of compliance with due diligence requirements to their suppliers and subcontractors, and ultimately to the most vulnerable parts of the value chains, without adapting their own purchasing practices. This potential drawback should be explicitly addressed in the legislation.

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

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

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

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

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

	I strongly agree	I agree to some extent	I disagree to some extent	I strongly disagree	I do not know	I do not take position
Identification of the company's stakeholders and their interests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Please explain:

Question 7. Do you believe that corporate directors should be required by law to set up adequate procedures and where relevant, measurable (science –based) targets to ensure that possible risks and adverse impacts on stakeholders, ie. human rights, social, health and environmental impacts are identified, prevented and addressed?

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

Please explain:

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

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

Please provide an explanation or comment:

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

How could these possible risks be mitigated? Please explain.

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

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

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

Please explain:

Enforcement of directors' duty of care

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

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

Please describe examples:

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

Please describe:

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

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

Please explain your answer:

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

Section III: Due diligence duty

For the purposes of this consultation, "due diligence duty" refers to a legal requirement for companies to establish and implement adequate processes with a view to prevent, mitigate and account for human rights

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

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

We only partly agree with this definition.

Firstly, it should be clarified that the due diligence duty's ultimate goal must be to prevent adverse human rights and the environmental impacts in a company's own operations and its global value chains.

It is also worth stressing the definition should align its wording with international due diligence standards, primarily the UNGPs and complementary guidance (e.g. OECD DD for RBC guidance):

- prior to ceasing, preventing, mitigating and accounting for adverse human rights and environmental impacts, companies should first be obliged to effectively identify and assess any actual or potential adverse human rights and environmental impacts which they may cause, contribute to or be directly linked to both through their own activities and as a result of their business relationships.

- companies should also track and monitor the implementation and effectiveness of the adopted measures. The results of tracking and monitoring must also be acted upon, i.e they must inform possible changes to the company's operations and its due diligence process.

We agree due diligence must be a risk based and proportionate approach. Companies should take proportionate and commensurate measures to the severity of the risks and the specific circumstances, particularly their sector of activity, the size and length of their supply chain, and the size of the undertaking. Prioritization of preventative and mitigating measures should be permissible only when all adverse impacts cannot be addressed at the same time. In such situation, prioritization must be done on the basis of the severity of risks.

Moreover, the "due diligence duty" should cover the company's global value chain, which includes entities with which it has a direct or indirect business relationship (understood as all types of business relationships of the enterprise – suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers, and any other non-State or State entities linked to its business operations, products or services; as per the OECD DD for RBC guidance, p.10) and which either (a) supply products or services that contribute to the company's own products or services, or (b) receive products or services from the company.

It is also worth noting that, while due diligence legislation should obviously cover foreign subsidiaries, these are technically not part of the "business relationships" of a company, as suggested in the proposed definition, but rather part of a company's "own activities", as clarified by the UN (see <https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDDueDiligence.aspx>).

At the end of the definition, it could be clarified that, in all instances, due diligence is a continuous and gradual process and companies should exercise their leverage and meaningfully engage with their suppliers and business partners to support them in improving their practices.

Importantly, while not strictly part of the definition, it should be clarified that due diligence must enable and support the provision of remedy. The legal framework should also include a separate obligation to provide or participate in the provision of effective remedy for harms that companies' have caused or contributed to.

It should also be noted that stakeholder engagement is critical for ensuring effective due diligence. Specifically, companies should consult affected stakeholders for the purpose of identifying and assessing human rights and environmental impacts, determining appropriate prevention, mitigation and remediation actions and evaluating their effectiveness.

To ensure that stakeholder engagement is meaningful, it must involve all relevant stakeholders. Where there are existing channels and structures for engagement, these could be used, providing they are efficient and representative. Effective identification of and engagement with stakeholders better prepares businesses to avoid conflicts with local communities, and provide effective remedy for harms, when required.

All mechanisms for stakeholder engagement must seek to address the power imbalance between the company and the affected persons or groups and between affected groups themselves. Businesses should also be forthcoming with information whenever possible. Information shared by the business should include its plans, details on how it is managing potential and actual negative impacts and reporting on the outcomes of its efforts.

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

- Option 1. “Principles-based approach”: A general due diligence duty based on key process requirements (such as for example identification and assessment of risks, evaluation of the operations and of the supply chain, risk and impact mitigation actions, alert mechanism, evaluation of the effectiveness of measures, grievance mechanism, etc.) should be defined at EU level regarding identification, prevention and mitigation of relevant human rights, social and environmental risks and negative impact. These should be applicable across all sectors. This could be complemented by EU-level general or sector specific guidance or rules, where necessary
-

Option 2. “Minimum process and definitions approach”: The EU should define a minimum set of requirements with regard to the necessary processes (see in option 1) which should be applicable across all sectors. Furthermore, this approach would provide harmonised definitions for example as regards the coverage of adverse impacts that should be the subject of the due diligence obligation and could rely on EU and international human rights conventions, including ILO labour conventions, or other conventions, where relevant. Minimum requirements could be complemented by sector specific guidance or further rules, where necessary.

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

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

The legislation should be applied broadly to all companies active on the European Single Market across all sectors and cover all human rights, including labour rights, and environmental issues, including climate change. As already mentioned, in regard to environmental issues and climate change, it will be necessary to clarify what are the adverse environmental impacts that the legislation seeks to prevent as well as the types of remediation obligations that should apply to environmental impacts.

However, it should allow for additional measures or specifications for specific sectors, products or activities, especially when they pose high human rights and environmental risk. Any sector-specific legislation should supplement, but not limit, the development and implementation of the proposed general legislation. Analogy

can be found in the OECD system, where both a general guidance and sector specific guidances complement each other. Sector specific guidances help companies with tailored and relevant guidance for responsible business conduct.

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

A rich body of legally binding international human rights and labour standards has long been developed, leaving no room for legal uncertainties.

Human rights and the environment are deeply linked and interconnected. In our view, situations in which environmental harm leads to human rights violations would be covered by human rights due diligence.

In regard to situations where environmental harm does not lead to human rights violations, however, it will be necessary to clarify what are the adverse environmental impacts that the legislation seeks to prevent as well as the types of remediation obligations that should apply to environmental impacts.

As such, although it might be necessary to apply minimum processes and definitions approach for legal certainty and in order to include environmental issues within the scope of the legal framework, the legal framework should not introduce a rigid, procedural and formalistic obligation that risks becoming a tick-box exercise based on a misunderstanding that such an approach would be beneficial to companies, or with the intention to shield companies from any liability. In order for HREDD to be effective, companies must have flexibility to tailor their HREDD processes to meet the needs of e.g. their industry, size and operating environment at the same time as meeting the key elements of HREDD (see Q14). This flexibility also means, however, that effective enforcement of such due diligence duty requires judicial enforcement and liability. See also Q19.

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

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

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

Question 15e: If you ticked option 3) in Question 15, and with a view to creating legal certainty, clarity and ensuring a level playing field, what substantial requirements regarding human rights, social and environmental performance (e.g. prohibited conducts, requirement of achieving a certain performance/target by a certain date for specific environmental issues, where relevant, etc.) should be set at EU level with respect to the issues mentioned in 15c?

Regarding human and labour rights, due diligence legislation should at least cover all internationally recognized standards, understood, at a minimum, as those expressed in

- the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,
- customary international law,
- International Humanitarian Law,
- international human rights instruments on the rights of persons belonging to particularly vulnerable groups or communities (including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities, the United Nations Declaration on the Rights of Indigenous Peoples, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities),
- the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work, as well as those recognized in the ILO Convention on freedom of association and the effective recognition of the right to collective bargaining, the ILO Convention on forced labour, the ILO Convention on the abolition of forced labour, the ILO Convention on the worst forms of child labour, the ILO Convention on the elimination of discrimination in respect of employment and occupation and ILO Convention on equal remuneration; and other rights recognized in a number of ILO Conventions, such as freedom of association, minimum age, occupational safety and health, living wages, indigenous and tribal peoples' rights, including free, prior and informed consent (ILO Convention on indigenous and tribal peoples), and
- the European Convention on Human Rights, the European Social Charter, and the Charter of Fundamental Rights of the European Union.

With regard to environmental due diligence, there is no comprehensive body of internationally recognised

agreements that regulate the protection of the environment. As such, it will be necessary to clarify what are the adverse environmental impacts that the legislation seeks to prevent as well as the types of remediation obligations that should apply to environmental impacts.

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

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

Question 16: How could companies' - in particular smaller ones' - burden be reduced with respect to due diligence? Please indicate the most effective options (tick the box, multiple choice possible)

This question is being asked in addition to question 48 of the Consultation on the Renewed Sustainable Finance Strategy, the answers to which the Commission is currently analysing.

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

Please explain your choice, if necessary

Companies that know their supply chains and actively identify and mitigate their risks generally perform better overall. Therefore, it is incorrect to only conceptualize due diligence as a burden on companies, as the evidence reveals its potential as a beneficial and valuable standard of conduct.

From international standards (UNGPs and complementary approaches, such as OECD guidelines and guidance), it is very clear that due diligence is the obligation of all companies. All business enterprises, regardless of size, should conduct human rights and environmental due diligence. SMEs, too, can cause, contribute to and be directly linked to severe human rights and environmental impacts. While their operations are smaller, SMEs also have a direct responsibility to respect human rights and the environment. See also Q3a.

However, as stressed by the aforementioned international standards, the means through which companies will be expected to meet their responsibility to respect human rights and the environment should be commensurate to the severity of the risks. For SMEs, the type of policies and processes expected would be according to their capacity, following the Commentary to Principle 14 of the UNGPs. Their degree of leverage over their business relationships would also be considered in determining their responsibility (although it should not be relevant to considering whether they should identify all risks, carry out due diligence and exercise any leverage they may have). Furthermore, if deemed necessary to guarantee a satisfactory uptake of due diligence obligations by SMEs, a “phase-in” approach for SMEs could be developed. Such additional time period for compliance should be as limited as possible though to avoid a weakening of the legislation and its company scope.

In our view, SMEs that following a robust and comprehensive risk assessment conclude, that they do not have human rights or environmental risks, would not have to follow through with further steps of due diligence process – namely prevention and mitigation of the (non-existing) risks, and monitoring, tracking and accounting for their (non-existing adverse) impacts. In such situations, SMEs should, however, be required to publish the data and methodology of their risk assessment that led to such a “non-risk” conclusion. The risk assessment would need to be reviewed e.g. in the event that new risks emerge or in the event of that SME entering into new business relationships. Such “non-risk statement” should not insulate the company from e.g. investigation by supervisory authorities or provide a safe harbor for administrative, civil or criminal liability.

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

- Yes
- No
- I do not know

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

The obligation should apply to companies operating in the internal market (selling products or services, conducting activities). The link could therefore be the presence on the internal market for products or services.

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

These companies must also be obliged to respect human rights and the environment, in their own operations, subsidiaries, business relationships and global value chains, and to undertake human rights and environmental due diligence for the products, services and activities that are placed or undertaken in the EU internal market.

Governments must set up robust enforcement mechanisms, with effective sanctions, to ensure that these companies also obey the law.

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

- Yes
- No
- I do not know

Please explain:

To create a level playing field globally, the EU should step up its efforts for the adoption of a UN binding treaty to regulate the activities of transnational corporations and other business enterprises and ask for a dedicated mandate to negotiate this treaty.

Establish a tracing mechanism for goods produced through severe human rights abuses, and examine options to prevent the import and placing onto the market of these goods in scenarios where such measures are evaluated to be in the interest of the affected workers. Such measures should be viewed as complementary to due diligence and should not replace, or distract from, the responsibility of businesses to conduct due diligence throughout their value chain.

Amend the Union Customs Code and the Trade Secrets Directive so that customs data and supply chain information are not considered confidential and are publicly disclosed, and amend customs-related regulations to ensure that all companies that import goods into the EU disclose to EU customs authorities relevant information, including the name and address of the manufacturer.

Generalizing the banning and regulation of unfair trading practices, as well as taking additional steps to regulate purchasing practices of companies. The Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain could provide a useful starting point.

Include human rights due diligence requirements in EU and Member States public procurement, funding and credit systems. Companies failing to respect their due diligence obligations should be excluded from accessing such schemes.

Ensure trade defence instruments and screening of foreign direct investment (FDI) encompass human rights considerations.

Ensure that the review of the Generalised Scheme of Preferences (GSP) rules contribute to improving the monitoring processes, enhance transparency and provide for a formal enforcement and compliance

mechanism.

Ensure EU development policy aims to strengthen capacities to establish and effectively implement due diligence requirements, including through donor funding for producer governments.

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

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

- A comprehensive chapter on human rights should be inserted in Trade and Sustainable Development (TSD) chapters including clauses that reaffirm the obligations of States parties to protect human rights, as set in international law, and this including by regulating businesses and by providing effective access to remedy and justice.

- TSD chapters should recognize the obligations of States and the responsibilities of corporations and investors under the UNGPs and the OECD Guidelines for Multinational Enterprises, requiring the provisions of the agreement to be read in consistency with these instruments.

- IPAs should foresee that the investor must respect international human rights standards and national law as far as in conformity with international human rights law for the full duration of the investment. Victims of human rights and environmental harm must have access to remedy.

Question 19: Enforcement of the due diligence duty

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

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

Please provide explanation:

Judicial enforcement of due diligence standards and adjudication following allegations of harm is essential for holding companies accountable and ensuring that victims have access to an effective remedy. These also enable formulating HREDD obligations in such a way that they allow flexibility for companies to tailor their HREDD processes to meet their needs (see Q15). The legislation should thus introduce civil liability regime, including:

- Civil liability for human rights harm that a business enterprise, or any company that they control or have the ability to control, has caused (non-fault liability). 'Control' should be determined according to the factual circumstances. It may result through the exercise of power in a business relationship. It may also include a situation of economic dependence.

- Companies must also be made liable for the damages they, or companies that they control, have contributed to, or to which they are linked to through their business relationships, unless they can prove they acted with due care and took all reasonable measures that could have prevented the harm.

In situations of fault-based liability, mere formalistic compliance with HREDD obligations (identify, assess, avoid, prevent, mitigate, track, monitor, account) should not automatically absolve a company (as implied in the first of the three options offered as a response to this question) from liability for contributing to or failing to prevent human rights abuses. Such approach would incentivize companies to adopt a minimalistic approach to HREDD in order to shield themselves from legal liability whereas the exact opposite is needed.

To ensure that victims have meaningful access to remedy, the burden of proof should be reversed in proceedings against business enterprises.

The limitation period for bringing legal actions must also be adapted to be reasonable and sufficient, giving sufficient time for victims to bring judicial claims, taking into account particularities of transnational litigation (e.g. victims' geographical location, their means and the overall difficulty to raise admissible claims before EU courts).

In most severe cases, EU Member States should also ensure that criminal liability is an option.

Competent national authorities (CAs) should be established in Member States. CAs should be empowered to perform a dual function of monitoring the implementation of the directive at national level, and initiating investigations where there is reason to believe that a company has breached its HREDD obligations. CAs should initiate investigations both on their own initiative and on the basis of complaints by affected parties. Organisations with a legitimate interest in representing victims should also have the right to submit complaints in the interest of those victims.

Breaches of HREDD obligations should give rise to administrative liability and CAs should be empowered to impose proportionate, effective and dissuasive sanctions in such cases. However, administrative liability, while a necessary complement, in no way substitutes for civil and criminal liability mechanisms.

CAs should also play a role in supporting companies in meeting their due diligence obligations, e.g. by providing recommendations and advice in cases of particular societal importance, or by providing sectoral guidance. CAs could also provide legal aid to victims, and facilitate mediation/conciliation. The Finnish Non-Discrimination Ombudsman and National Non-Discrimination and Equality Tribunal could provide a useful model for the design of the role of the CA. For more on this, see e.g. <https://journals.sagepub.com/doi/full/10.1177/1023263X20981367>.

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

The legislation should also establish an EU-level body with monitoring, advisory, capacity-building and standard-setting functions. This body should monitor CA performance to ensure consistent, robust practices across EU Member States. It should also support the greater harmonization of approaches, including

through the development of guidance for CAs to help them in their evaluation and investigation tasks, and of guidance for companies to conduct due diligence.

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

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

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

- Yes
- No

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

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

Section IV: Other elements of sustainable corporate governance

Question 20: Stakeholder engagement

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

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

- I strongly agree
-

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

Please explain.

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

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

	Is best practice	Should be promoted at EU level
Advisory body	<input type="radio"/>	<input type="radio"/>
Stakeholder general meeting	<input type="radio"/>	<input type="radio"/>
Complaint mechanism as part of due diligence	<input type="radio"/>	<input type="radio"/>
Other, please specify	<input type="radio"/>	<input type="radio"/>

Question 21: Remuneration of directors

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

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

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

Restricting executive directors' ability to sell the shares they receive as pay for a certain period (e.g. requiring shares to be held for a certain period after	
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they were granted, after a share buy-back by the company)	
Regulating the maximum percentage of share-based remuneration in the total remuneration of directors	
Regulating or limiting possible types of variable remuneration of directors (e.g. only shares but not share options)	
Making compulsory the inclusion of sustainability metrics linked, for example, to the company's sustainability targets or performance in the variable remuneration	
Mandatory proportion of variable remuneration linked to non-financial performance criteria	
Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration	
Taking into account workforce remuneration and related policies when setting director remuneration	
Other option, please specify	

None of these options should be pursued, please explain



Please explain:

Question 22: Enhancing sustainability expertise in the board

Current level of expertise of boards of directors does not fully support a shift towards sustainability, so action to enhance directors' competence in this area could be envisaged [18] (Study on directors' duties and sustainable corporate governance).

Please indicate which of these options are in your view effective to achieve this objective (tick the box, multiple choice).

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

Please explain:

Question 23: Share buybacks

Corporate pay-outs to shareholders (in the form of both dividends and share buybacks) compared to the company's net income have increased from 20 to 60 %

in the last 30 years in listed companies as an indicator of corporate short-termism. This arguably reduces the company's resources to make longer-term investments including into new technologies, resilience, sustainable business models and supply chains[19]. (A share buyback means that the company buys back its own shares, either directly from the open market or by offering shareholders the option to sell their shares to the company at a fixed price, as a result of which the number of outstanding shares is reduced, making each share worth a greater percentage of the company, thereby increasing both the price of the shares and the earnings per share.) EU law regulates the use of share-buybacks [Regulation 596/2014 on market abuse and Directive 77/91, second company law Directive].

In your view, should the EU take further action in this area?

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

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

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

If so, please specify:

Section V: Impacts of possible measures

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

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

Table

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

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

Please explain:

Question 26: Estimation of impacts on stakeholders and the environment

A clarified duty of care and the due diligence duty would be expected to have positive impacts on stakeholders and the environment, including in the supply chain. According to your own understanding and assessment, if your company complies with such requirements or conducts due diligence already, please quantify / estimate in quantitative terms the positive or negative impact annually since the introduction of the policy, by using examples such as:

- Improvements on health and safety of workers in the supply chain, such as reduction of the number of accidents at work, other improvement on working conditions, better wages, eradicating child labour, etc.
- Benefits for the environment through more efficient use of resources, recycling of waste, reduction in greenhouse gas emissions, reduced pollution, reduction in the use of hazardous material, etc.
- Improvements in the respect of human rights, including those of local communities along the supply chain
- Positive/negative impact on consumers
- Positive/negative impact on trade
- Positive/negative impact on the economy (EU/third country).

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