

**POLITICAL OPINION ON THE
PROPOSAL FOR A DIRECTIVE OF THE
EUROPEAN PARLIAMENT AND OF
THE COUNCIL ON CORPORATE DUE
DILIGENCE WITH REGARD TO
SUSTAINABILITY**

The Committee on European Affairs,

Having regard to Article 88-4 of the Constitution,

Having regard to Articles 6, 50 and 114 of the Treaty
on the Functioning of the European Union,

Having regard to the Charter of Fundamental Rights
of the European Union,

Having regard to Regulation (EU) 2023/1115 of the
European Parliament and of the Council of 31 May
2023 on making certain commodities and products
associated with deforestation and forest degradation
available on the EU market and for export from the
EU, and repealing Regulation (EU) No. 995/2010,

Having regard to Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for EU importers importing tin, tantalum and tungsten, their minerals and gold from conflict zones or high-risk areas,

Having regard to Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) 401/2009 and (EU) 2018/1999 (“European Climate Law”),

Having regard to the Guiding Principles on Business and Human Rights approved by the United Nations Human Rights Council in its resolution 17/4 of 16 June 2011 entitled “Human rights and transnational corporations and other business enterprises”,

Having regard to the OECD (Organisation for Economic Cooperation and Development) Guidelines for Multinational Enterprises (updated in 2023), the Recommendations on Responsible Business Conduct, the Due Diligence Guide for Responsible Business Conduct (2018) and the sector guides,

Having regard to Law No. 2017-399 of 27 March 2017 on the duty of vigilance of parent and ordering undertakings,

Having regard to the proposal for a Regulation of the European Parliament and of the Council on the prohibition of products of forced labour on the EU market (COM[2022]453 final),

Having regard to the European Parliament resolution of 10 March 2021 containing recommendations to the Commission on corporate due diligence and responsibility,

Having regard to the proposal for a Directive of the European Parliament and of the Council on corporate due diligence on sustainability and amending Directive (EU) 2019/1937 (COM[2022] 71 final),

Considering that French experience, arising from the application of the aforementioned Law No. 2017-399 of 27 March 2017, teaches that the main difficulties encountered by companies in implementing due diligence result from the insufficient precision of the concepts that determine its reach and the scope of duty of vigilance, as well as from the absence of an administrative authority in charge of its control;

Noting that other Member States of the European Union, following the example of Germany and the Netherlands, have subsequently adopted general or more targeted legislation on corporate due diligence, or are in the process of drawing up such legislation;

Considering therefore the need to prevent any risk of fragmentation of the internal market and of social or environmental disadvantage between Member States;

Considering that the effective application of due diligence contributes to the protection of the human rights of employees and stakeholders throughout value chains;

Whereas the adoption of ambitious legislation on corporate due diligence will contribute to the achievement of the EU's climate change mitigation and adaptation objectives;

Considering the virtuous long-term effects for companies of identifying and preventing social and environmental risks throughout their value chain;

Considering the leading role to be played by the European Union in promoting the principles of corporate due diligence, in particular within the UN Human Rights Council;

- ***On the agenda for negotiations***

1. Calls on the European Parliament and the Council of the European Union to reach an ambitious agreement on the proposal for a directive COM(2022) 71 final before the next European elections scheduled for the spring of 2024;

- ***On the scope of companies covered by due diligence obligations***

2. Fully supports the European Parliament's decision, in its position adopted on the 1st of June 2023, to extend the scope of due diligence obligations to ultimate parent companies, in accordance with a consolidated approach reflecting the real influence of economic players;

3. Welcomes the European Parliament's ambitious position of extending the scope of the proposal for a directive COM(2022) 71 final to companies with 250 employees or more, while ensuring a proportionate burden, in line with the European nomenclature resulting from the Commission's updated recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC);

4. Welcomes the strengthening of the conditions for the extraterritorial application of the Directive for all foreign companies with a turnover of more than 150 million euros, including 40 million euros on European soil, whether by themselves or through their subsidiaries;

5. Stresses, in accordance with the position of the European Parliament of the 1st of June 2023, the importance of evaluating, no later than six years after the date of entry into force of the Directive on Corporate Sustainability Due Diligence, its effectiveness in achieving its objectives, in particular with regard to the thresholds adopted concerning the number of employees and the net turnover above which companies are subject to sustainability due diligence obligations;

- ***On the application of due diligence according to sectors of activity***

6. Calls, in line with the sectoral guidelines of the OECD's Due Diligence Guidance, for particular attention to be paid to the application of due diligence obligations to the supply chains of activities identified as having a “high impact” on human rights and the environment, in particular the extractive and minerals industries, clothing and footwear, and agricultural products sectors;

7. Acknowledges the relevance of the principle laid down by the European Parliament that financial institutions, which are also covered by the sectoral guidelines of the OECD, should endeavour to the best of their ability to identify, measure and prevent the risks associated with their direct customers, but is surprised that these obligations do not apply in the same way to pension funds;

8. Hopes that the arms industries will not be excluded from due diligence in the same way as other companies, while ensuring that they do not infringe the unique nature of the sovereignty of States in matters of defence and security policy;

9. Recalls, in view of the highly strategic leverage it represents and in order to avoid any distortion of competition within the European Union, that the inclusion of the financial sector in the obligations specific to due diligence can under no circumstances be optional;

- ***On the scope of due diligence obligations and the depth of the value chains concerned***

10. Calls on the European institutions to define precisely the obligations incumbent upon ordering companies, in order to guarantee the effectiveness of due diligence and in the interests of legal certainty;

11. Invites the European negotiators to specify that due diligence is a continuous process adapted to the context of companies, requiring them to identify, mitigate and, where appropriate, prevent actual or potential violations of human rights and the environment associated with all subcontractors and suppliers in their value chains, without limiting themselves to the top ranks of the latter;

12. Supports the position of the European Parliament adopted on the 1st of June 2023, consisting of applying due diligence, beyond supply chains alone, to all “*entities involved*” in the sale, distribution or supply of products and services, on the understanding that companies cannot be held liable for the use that may be made of goods or services supplied to the company's customers;

- ***On the need to provide for remedies involving the civil liability of companies***

13. Recalls that the obligation of due diligence, which implies effectively implementing appropriate measures to identify and mitigate risks and prevent harm, cannot be limited to a formal approach based on simple *reporting* obligations;

14. Insists on the fact that the existence of a legal remedy enabling any person with an interest in bringing an action to hold companies liable for failure to comply with their due diligence is a *sine qua non* condition for the effectiveness of due diligence;

15. Is concerned that the Council's approach of 30 November 2022 intends to reduce the civil liability of companies for damage caused to a natural person or legal entity to the condition that the said company has failed “*intentionally or negligently*” to fulfil its obligations of due diligence, and supports, on the contrary, the ambitious position of the European Parliament on Article 22 of the proposal for a directive, as adopted on the 1st of June 2023;

16. Welcomes the introduction into Article 22 of the proposal for a directive by the European Parliament, in its position of the 1st of June 2023, of the possibility for victims to be represented in litigation by authorised trade unions, civil society organisations or other relevant actors, provided that their non-profit-making nature and public interest can be verified by the judge;

17. Considers that the new wording of Article 22 of the proposal for a directive, as proposed by the European Parliament in its position of the 1st of June 2023, is likely to facilitate the effectiveness of justice by enabling the courts to order that evidence be disclosed by the company, in compliance with the rules on confidentiality and proportionality, where a claimant provides evidence supporting the likelihood of liability on the part of the company;

- ***On updating the scope of due diligence***

18. Recommends a mechanism for updating the annex to the future directive on corporate sustainability due diligence, to enable account to be taken of the impacts arising from the violation of new prohibitions and obligations linked to international environmental conventions, such as the obligations for the conservation and sustainable management of marine biodiversity which will arise, once ratified, from the treaty on the protection of the high seas adopted on 19 June 2023 under the United Nations Convention on the Law of the Sea;

19. Supports the amendments proposed by the European Parliament or the Council to add international texts missing from Annex I, in particular environmental conventions such as the Paris Agreement and the Aarhus Convention in Parliament's position and the Ramsar Convention, the MARPOL Convention and the Convention concerning the protection of the World Cultural and Natural Heritage in the Council's general approach;

20. Supports the position of the European Parliament proposing in the annex a general definition of environmental impacts based on the environmental categories developed by the OECD to compensate for the inadequacy of international conventions on the subject;

- ***On the need to implement climate transition plans***

21. Supports the position of the European Parliament adopted on the 1st of June 2023, consisting in amending Article 7 of the proposal for a Directive COM(2022) 71 final, in order to provide for the effective “implementation” of the climate transition plan provided for in Article 15 of that Directive, in accordance with the objectives of the transition of the European economy to a green and climate-neutral economy and to the Paris Agreement;

- ***On the establishment of supervisory authorities responsible for ensuring compliance with due diligence obligations***

22. Recalls that the power conferred on the independent administrative authorities of the Member States to guide and, where appropriate, penalise companies is a guarantee of the effectiveness of due diligence, on the sole condition that judicial remedies are preserved;

23. Supports the European Parliament's position setting a minimum ceiling of 5% of worldwide net turnover in the previous financial year for the financial penalties that may be imposed by national supervisory authorities, in order to guarantee the effectiveness of the latter and ensure harmonisation of the rules between Member States;

24. Insists on the need to ensure, once the directive has been transposed, that the national administrative authorities coordinate properly within the future European supervisory network, centralising and publishing information that can be used to map the risks of negative impacts, in order to prevent any risk of environmental and social underperformance;

- ***On the harmonisation and entry into force of the directive***

25. Insists that the directive should be a minimum harmonisation directive, in order to leave Member States sufficient room for manoeuvring in order to adopt, where necessary, rules that are more protective of human and environmental rights;

26. Calls on the European Commission, once the directive has been transposed, to publish dedicated guidelines to support companies upstream and enable them to fully assume their obligations;

- ***On the generalisation of due diligence principles on an international scale***

27. Reiterates its call on the European authorities to play a leading role in the negotiations underway within the United Nations Intergovernmental Working Group aimed at drawing up a legally binding international instrument on transnational corporations and other business enterprises with regard to human rights.