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DRAFT REPORT

with recommendations to the Commission on corporate due diligence and corporate accountability
(2020/2129(INL))

Committee on Legal Affairs

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(Initiative – Rule 47 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to its resolutions of 25 October 2016 on corporate liability for serious human rights abuses in third countries (2015/2315(INI))¹, of 27 April 2017 on the EU flagship initiative on the garment sector (2016/2140(INI))² and of 29 May 2018 on sustainable finance (2018/2007(INI))³,
- having regard to the United Nations 2030 Agenda for Sustainable Development, adopted in 2015, in particular the 17 Sustainable Development Goals (SDGs),
- having regard to the 2008 United Nations "Protect, Respect and Remedy" Framework for Business and Human Rights,
- having regard to the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs)⁴,
- having regard to the OECD Guidelines for Multinational Enterprises⁵,
- having regard to the OECD Due Diligence Guidance for Responsible Business Conduct⁶,
- having regard to the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector⁷,
- having regard to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals for Conflict-Affected and High-Risk Areas⁸,
- having regard to the OECD-FAO Guidance for Responsible Agricultural Supply Chains⁹,

¹ P8_TA(2016)0405.

² P8_TA(2017)0196.

³ P8_TA(2018)0215.

⁴ https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf.

⁵ <http://mneguidelines.oecd.org/guidelines>.

⁶ <https://www.oecd.org/investment/inv/mne/responsible-supply-chains-textile-garment-sector.htm>.

⁷ <http://www.oecd.org/industry/inv/mne/responsible-supply-chains-textile-garment-sector.htm>.

⁸ <https://www.oecd.org/corporate/oecd-due-diligence-guidance-for-responsible-supply-chains-of-minerals-from-conflict-affected-and-high-risk-areas-9789264252479-en.htm>.

⁹ <https://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm>.

- having regards to the OECD Due Diligence Guidance for Responsible business conduct for institutional investors¹⁰,
- having regard to the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up¹¹,
- having regard to the 2017 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy¹²,
- having regard to the UN booklet “Gender Dimensions of the Guiding Principles on Business and Human Rights”¹³,
- having regard to the Paris Agreement adopted on 12 December 2015 (‘The Paris Agreement’),
- having regard to the EU Action Plan: Financing Sustainable Growth¹⁴,
- having regard to The European Green Deal¹⁵,
- having regard to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC¹⁶ (‘the Accounting Directive’),
- having regard to 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 groups¹⁷ (‘the Non-Financial Reporting Directive’);
- having regard to Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement¹⁸ (‘The Shareholders’ Rights Directive),
- having regard to 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 law¹⁹ (‘the Whistleblower Directive’),
- having regard to Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial

¹⁰ <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>.

¹¹ <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

¹² https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf.

¹³ https://www.ohchr.org/Documents/Issues/Business/Gender_Booklet_Final.pdf.

¹⁴ COM(2018) 097 final.

¹⁵ COM(2019) 640 final.

¹⁶ OJ L 182, 29.6.2013, p. 19.

¹⁷ OJ L 330, 15.11.2014, p. 1.

¹⁸ OJ L 132, 20.5.2017, p. 1.

¹⁹ OJ L 305, 26.11.2019, p. 17.

services sector²⁰ ('the Disclosure Regulation'),

- having regard to Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088²¹ ('The Taxonomy Regulation'),
- having regard to the Commission Guidelines on non-financial reporting (methodology for reporting non-financial information)²² and to the Commission Guidelines on non-financial reporting: *Supplement on reporting climate-related information*²³,
- having regard to the Regulation (EU) 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-risk areas²⁴ ('The Conflict Minerals Regulation),
- having regard to Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market²⁵ ('the Timber Regulation'),
- having regard to the French Law no. 2017-399 on a duty of vigilance of parent and ordering undertakings²⁶,
- having regard to the Dutch law on the introduction of a duty of care to prevent the supply of goods and services produced using child labour²⁷,
- having regard to the study of the Directorate General for External Policies of the Union of February 2019 entitled 'Access to legal remedies for victims of corporate human rights abuses in third countries'²⁸,
- having regard to the study prepared for the European Commission on 'Due Diligence requirements through the supply chain'²⁹,
- having regard to the study prepared for the European Commission on 'Directors' duties and sustainable corporate governance'³⁰,
- having regard to the briefings of the Directorate General for External Policies of the Union of June 2020 entitled 'EU Human Rights Due Diligence Legislation: Monitoring,

²⁰ OJ L 317, 9.12. 2019, p. 1.

²¹ OJ L 198, 22.6.2020, p. 13.

²² OJ C 215, 5.7.2017, p. 1.

²³ OJ C 209, 20.6.2019, p. 1.

²⁴ OJ L 130, 19.5.2017, p. 1.

²⁵ OJ L 295, 12.11.2010, p. 23.

²⁶ Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, JORF n°0074 du 28 mars 2017.

²⁷ Wet van 24 oktober 2019 n. 401 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).

²⁸ EP Policy Department for External Relations, PE 603.475 - February 2019.

²⁹ Directorate General for Justice and Consumers, January 2020.

³⁰ Directorate General for Justice and Consumers, July 2020.

Enforcement and Access to Justice for Victims'³¹ and 'Substantive Elements of Potential Legislation on Human Rights Due Diligence'³²,

- having regard to Rules 47 and 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A9-0000/2020),
- A. Whereas the globalisation of economic activity has in many instances given rise to and aggravated adverse impacts on human rights, including social and labour rights, the environment and the good governance of states;
 - B. Whereas companies should respect human rights, the environment and good governance and should not cause or contribute to causing any adverse impacts in this regard;
 - C. Whereas the Covid-19 crisis has exposed some of the severe drawbacks of global supply chains and the ease with which certain undertakings are able to shift negative impacts on their business activities to other jurisdictions;
 - D. Whereas according to ILO statistics around the globe there are around 25 million victims of forced labour, 152 million victims of child labour, 2,78 million deaths due to work-related diseases per year and 374 million non-fatal work-related injuries per year; whereas the ILO has developed several conventions to protect workers, but their enforcement is still lacking, especially with reference to the labour markets of developing countries;
 - E. Whereas this alarming situation has prompted a debate as to how to make businesses more responsive to the adverse impacts they cause or contribute to;
 - F. Whereas that debate has led, among other things, to the adoption of due diligence frameworks and standards within the UN, the OECD and the ILO; whereas these standards are however voluntary and, consequently, their uptake has been limited;
 - G. Whereas, according to a Commission study, only 37% of business respondents currently conduct environmental and human rights due diligence, and only 16% cover the entire supply chain;
 - H. Whereas some Member States, such as France and the Netherlands, have adopted legislation to enhance corporate accountability and have introduced mandatory due diligence frameworks;
 - I. Whereas the Union has already adopted legislation that pertains to due diligence, such as the Conflict Minerals Regulation and the Timber Regulation;
1. Considers that voluntary due diligence standards have severe limitations and that the Union should urgently adopt minimum requirements for undertakings to identify, prevent, cease, mitigate, monitor, disclose, account, address and remediate human rights, environmental and governance risks in their entire value chain; believes that this would be beneficial for stakeholders, as well as for businesses in terms of

³¹ EP Policy Department for External Relations, PE 603.505 - June 2020.

³² EP Policy Department for External Relations, PE 603.504 - June 2020.

harmonization, legal certainty and a level playing field; stresses that this would enhance the reputation of EU undertakings and of the Union as a standard setter;

2. Recalls that due diligence is primarily a preventative mechanism and that companies should be first and foremost required to identify risks or adverse impacts and adopt policies and measures to address them; highlights that if an undertaking causes or contributes to an adverse impact it should provide for a remedy;
3. Stresses that human rights abuses and breaches of social and environmental standards can be the result of a company's own activities or of those of its business relationships; underlines therefore that due diligence should encompass the entire value chain;
4. Considers that the scope of any future mandatory EU due diligence framework should be broad and cover all undertakings governed by the law of a Member State or established in the territory of the Union, including those providing financial products and services, regardless of their size or sector of activity and of whether they are publicly owned or controlled undertakings;
5. Considers that small, medium-sized and micro-enterprises may need less extensive and formalised due diligence processes, and that a proportional approach could take into account, amongst other elements, the sector of activity, the size of the undertaking, the context of its operations, its business model, its position in value chains and the nature of its products and services;
6. Underlines that due diligence strategies should be aligned with the Sustainable Development Goals and EU policy objectives in the field of human rights and the environment, including the European Green Deal, and EU international policy;
7. Stresses that due diligence should not be a 'box-ticking exercise' and that due diligence strategies should be in line with the dynamic nature of risks; considers that those strategies should cover every actual or potential adverse impact although the severity of the risk should be considered in the context of a prioritisation policy;
8. Highlights that sound due diligence requires that all stakeholders be involved and consulted effectively and meaningfully;
9. Notes that coordination at sectoral level could enhance the consistency and effectiveness of due diligence efforts;
10. Considers that, to enforce due diligence, Member States should designate national authorities to share best practices as well as to supervise and impose sanctions, including criminal sanctions in severe cases;
11. Considers that company-level grievance mechanisms can provide effective early-stage recourse, provided they are legitimate, accessible, predictable, equitable, transparent and human rights-compatible;
12. Further considers that in order to enable victims to obtain remedy, undertakings should be held liable for the damage the undertakings under their control have caused or contributed to where the latter have, in the course of their business relationships with

the former, committed violations of internationally recognized human rights or have caused environmental harm;

13. Considers that conducting due diligence should not absolve undertakings from liability for the harm they have caused or have contributed to; further considers, however, that having a robust due diligence process in place may help undertakings to avoid causing harm;
14. Considers that, in line with the UN 'Protect, Respect and Remedy' Framework considerations on the rights of victims to a remedy, the jurisdiction of EU courts should be extended to business-related civil claims brought against EU undertakings on account of harm caused within their value chain on account of human rights violations; further considers necessary the introduction into EU law of a *forum necessitatis* to give access to a court to victims who risk being denied justice;
15. Stresses that victims of business-related adverse impacts are often not sufficiently protected by the law of the country where the harm has been caused; considers, in this regard, that victims of human rights abuses committed by EU undertakings should be allowed to choose the law of a legal system with high human rights standards, which could be that of the place where the defendant undertaking is domiciled;
16. Requests that the Commission submit without undue delay a legislative proposal on mandatory supply chain due diligence, following the recommendations set out in the Annex hereto; considers that, without prejudice to detailed aspects of the future legislative proposal, Articles 50, 83(2) and 114 TFEU should be chosen as legal bases for the proposal;
17. Considers that the requested proposal does not have financial implications for the EU budget;
18. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council, and to the Governments and national parliaments of Member States.

**ANNEX TO THE MOTION FOR A RESOLUTION:
RECOMMENDATIONS AS TO THE CONTENT
OF THE PROPOSALS REQUESTED**

**I. RECOMMENDATIONS FOR DRAWING UP A EUROPEAN PARLIAMENT AND
COUNCIL DIRECTIVE ON CORPORATE DUE DILIGENCE AND CORPORATE
ACCOUNTABILITY**

TEXT OF THE PROPOSAL REQUESTED

Directive of the European Parliament and of the Council on Corporate Due Diligence and
Corporate Accountability

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Articles 50, 83(2) and 114 thereof,

Having regard to the European Parliament's request to the European Commission¹,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²,
Acting in accordance with the ordinary legislative procedure,

Whereas:

1. The debate on the responsibilities of business in relation to human rights became prominent in the 1990s, when new offshoring practices in clothing and footwear production drew attention to the poor labour conditions that many workers in global value chains faced. At the same time, many oil, gas, and mining companies pushed into increasingly remote areas, often displacing indigenous communities without adequate consultation or compensation.
2. Within a context of mounting evidence of human rights violations and environmental degradation, concern grew about ensuring businesses respected human rights, in particular when operating in countries with weak legal systems and enforcement, and holding them accountable for causing or contributing to harm. In this light, the UN Human Rights Council in 2008 unanimously welcomed the "Protect, Respect and Remedy" Framework. This framework rests on three pillars: the state duty to protect against human rights abuses by third parties, including businesses, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means acting with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur, and greater access by victims to

¹ OJ ...

² OJ ...

effective remedy, both judicial and non-judicial.

3. This framework was followed by the UN Human Rights Council's endorsement in 2011 of the "Guiding Principles on Business and Human Rights" (UNGPs). The UNGPs introduced the first global standard for "due diligence" and enabled companies to put their responsibility to respect human rights into practice. Subsequently, other international organisations developed due diligence standards based on the UNGPs. The 2011 OECD Guidelines for Multinational Enterprises refer extensively to due diligence and the OECD has developed guidance to help enterprises carry out due diligence in specific sectors and supply chains. In 2018, the OECD adopted general Due Diligence Guidance for Responsible Business Conduct. Similarly, the International Labour Organisation (ILO) adopted in 2017 the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, which encourages enterprises to put in place due diligence mechanisms to identify, prevent, mitigate and account for the manner in which they address their business's actual and potential adverse impacts as regards internationally recognized human rights.
4. Businesses thus currently have at their disposal an important number of international due diligence instruments that can help them fulfil their responsibility to respect human rights. While it is difficult to overstate the importance of these instruments for businesses that take their duty to respect human rights seriously, their voluntary nature hampers their effectiveness and their effect has indeed proved limited, with a restricted number of businesses voluntarily implementing human rights due diligence in relation to their activities and those of their business relationships. Respect for human rights continues to play a marginal role in undertakings' policies and strategies. This is exacerbated by many undertakings' excessive focus on short-term profit maximisation.
5. In light of the limitations of voluntary due diligence, the Union has adopted mandatory due diligence frameworks in specific areas with the aim of combating the financing of terrorism, and deforestation. In 2010, the Union adopted the Timber Regulation³, which subjects operators that place timber and timber products on the internal market to due diligence requirements and requires traders in the supply chain to provide basic information on their suppliers and buyers to improve the traceability of timber and timber products. The 2017 Conflict Minerals Regulation⁴ establishes a Union system for supply chain due diligence in order to curtail opportunities for armed groups and security forces to trade in tin, tantalum and tungsten, their ores, and gold.
6. A more general approach was taken by the Non-Financial Reporting Directive⁵, which imposes on some large undertakings the obligation to report on the policies they pursue in relation to environmental, social and employee matters, respect for human

³ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23).

⁴ Regulation (EU) 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-risk areas (OJ L 130, 19.5.2017, p. 1).

⁵ 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, 15.11.2014, p. 1).

rights, anti-corruption and bribery matters, including due diligence. However, the scope of that directive is limited and the obligation is based on a comply-or-explain principle.

7. In some Member States the need to make businesses more responsive to human rights and to environmental and governance concerns has led to the adoption of national due diligence legislation. In the Netherlands, the Child Labour Due Diligence Act requires undertakings operating in the Dutch market to investigate whether there is a reasonable suspicion that the goods or services supplied have been produced using child labour and, in the event of reasonable suspicion, to adopt and implement an action plan. In France, the Law on a duty of vigilance of parent and ordering companies requires from some large companies the adoption of a due diligence plan to identify and prevent human rights, health and safety and environmental risks caused by the undertaking, its subsidiaries or suppliers. In many other Member States, debate is ongoing as to the introduction of mandatory due diligence requirements for undertakings.
8. In order to ensure a level playing field the responsibility for companies to respect human rights under international standards should be transformed into a legal duty at Union level. By coordinating safeguards for the protection of human rights, the environment and good governance, this Directive will ensure that all undertakings operating in the internal market are subject to harmonised minimum due diligence obligations, which will improve the functioning of that market.
9. The establishment of mandatory due diligence requirements at EU level will be beneficial to businesses in terms of harmonization, legal certainty and the securing of a level playing field, and will give companies subject to them a competitive advantage inasmuch as societies are increasingly demanding from undertakings that they become more ethical and sustainable. This Directive, by setting a European due diligence standard, could help foster the emergence of a global standard for responsible business conduct.
10. This Directive is aimed at preventing and mitigating adverse human rights, governance and environmental impacts throughout the value chain, as well as ensuring that undertakings can be held accountable for these risks and that anyone who has suffered harm in this regard can effectively exercise the right to obtain remedy.
11. This Directive should not prevent Member States from maintaining or introducing further general or sector-specific due diligence requirements, provided that they do not hamper the effective application of the due diligence requirements as provided for in this directive. This Directive is not aimed at replacing EU due diligence legislation already in force or preclude further sector-specific EU legislation from being introduced, and, consequently, it should apply without prejudice to further due diligence requirements established in Union sector-specific legislation, in particular

Regulation (EU) No 995/2010⁶ and Regulation (EU) 2017/821⁷. This Directive establishes in this regard a conflict of norms rule. In case of insurmountable incompatibility, the sector-specific legislation should apply.

12. The implementation of this directive should in no way constitute grounds for justifying a reduction in the general level of protection of human rights or the environment. In particular, it should not affect other existing subcontracting, posting or supply chain liability frameworks. The fact that an undertaking has carried out its due diligence obligations under this Directive does not exempt it from its obligations under other existing liability frameworks and therefore any legal proceedings brought against it based on other existing liability frameworks should not be dismissed on account of that circumstance.
13. The Directive applies to all undertakings governed by the law of a Member State or established in the territory of the Union regardless of their size, sector, and whether they are private or state-owned. All economic sectors, including the financial sector, are covered by this Directive.
14. A degree of proportionality is built into the due diligence process, as this process is contingent on the risks a company is exposed to. This would imply that many small and medium-size undertakings and micro-enterprises may need less extensive and formalised due diligence processes. An undertaking that, after carrying out a risk assessment, concludes that it does not identify any risks in its business relationships, would only need to fill in and communicate a statement, which should in any case be reviewed in case of changes to the undertakings' operations or operating context. Micro-enterprises in most sectors tend to encounter low risks in their business relationships and, consequently, it is considered appropriate to allow Member States to decide whether micro-enterprises should be exempted from the application of the requirements in this Directive.
15. For undertakings owned or controlled by the State, the fulfilment of their due diligence obligations should require that they procure services from undertakings which have complied with due diligence obligations. Member States are encouraged not to provide extraordinary state support to companies that do not comply with the objectives of this Directive.
16. Due diligence is defined in this Directive as the process put in place by an undertaking in order to identify, cease, prevent, mitigate, monitor, disclose, account for, address and remedy the risks posed to human rights, including social and labour rights, the environment, including climate change, and to governance, both by its own operations and its business relationships.
17. In relation to human rights risks, this Directive lists a number of instruments undertakings should take into consideration when assessing their potential risks. The

⁶ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance (OJ L 295, 12.11.2010, p. 23).

⁷ Regulation (EU) 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-risk areas (OJ L 130, 19.5.2017, p. 1).

list is conceived as non-exhaustive, undertakings being strongly encouraged to take into consideration other human rights instruments that would enable them to carry out a complete due diligence process to prevent any risk for human rights.

18. Environmental risks are often closely linked to human rights risks. The United Nations Special Rapporteur on human rights and the environment has stated that 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; furthermore, the United Nations General Assembly has recognised, in Resolution 64/292, the right to safe and clean drinking water and sanitation as a human right. The covid-19 pandemic has underlined not only the importance of safe and healthy working environments, but also that of undertakings ensuring they do not cause or contribute to health risks in their value chains. Consequently, those rights should be covered by the legislation.
19. This Directive establishes a non-exhaustive list of environmental risks. To contribute to the internal coherence of EU legislation and to provide legal certainty, this list is based on Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment in which undertakings may find guidance for assessing their risks.
20. This Directive also requires undertakings to carry out due diligence in order to prevent any adverse impact on the good governance of the countries, regions or territories in which they carry out their business activities. In particular, undertakings should comply with the OECD anti-bribery convention and take measures to prevent any undue influence being exercised on public officials with a view to obtaining privileges or unfair favourable treatment that is in breach of the law. Undertakings should also abstain from improperly influencing local political activities and should strictly comply with the applicable tax legislation.
21. Environmental, governance and human right risks are not gender-neutral. Undertakings should be encouraged to integrate the gender perspective into their due diligence processes. They can find guidance in the UN booklet Gender Dimensions of the Guiding Principles on Business and Human Rights.
22. Adverse impacts or violations of human rights and social and environmental standards by undertakings can be the result of their own activities or of those of their business relationships, in particular suppliers, sub-contractors and investee undertakings. In order to be effective, undertakings' due diligence should encompass the entire value chain.
23. Due diligence is primarily a preventative mechanism that requires companies to identify potential or actual adverse impacts and to adopt policies and measures to cease, prevent, mitigate, monitor, disclose, address, remediate them, and account for how they address those impacts. Undertakings should be required to produce a document in which they make explicit their due diligence strategy with reference to each of those stages. This due diligence strategy should be duly integrated into the company's overall business strategy.
24. Due diligence should not be a 'box-ticking' exercise but should consist of an ongoing assessment of risks, which are dynamic and may change on account of new business

relationships or contextual developments. Undertakings should therefore in an ongoing manner monitor and adapt their due diligence strategies accordingly. Those strategies should cover every actual or potential adverse impact, although the severity of the risk should be considered if the establishment of a prioritisation policy is required.

25. Undertakings should first try to address and solve a potential or actual risk in consultation with stakeholders. Should this attempt be unsuccessful, and the company's responsible disengagement becomes an option, the company should also consider the potential adverse impacts of that decision and take appropriate measures to address them.
26. Sound due diligence requires that all stakeholders be consulted effectively and meaningfully, and that trade unions in particular be appropriately involved. The consultation and involvement of stakeholders can help companies to identify risks more precisely and to set up a more effective due diligence strategy. This Directive therefore requires the consultation and involvement of stakeholders in all stages of the due diligence process. Furthermore, their involvement and consultation may help to push back against pressure from financial markets and short-term investors and give voice to those with a strong interest in the long-term sustainability of the company. Stakeholder participation may help improve the long-term performance and profitability of companies, as their increased sustainability would have positive aggregate economic effects.
27. The concept of stakeholder should be broadly interpreted and include all persons whose rights and interests may be affected by the decisions of the company, which includes, but is not limited to, workers, local communities, indigenous peoples, citizens' associations and shareholders, and organisations whose statutory purpose is to ensure that human and social rights, environmental and good governance standards are respected, such as trade unions and civil society organisations.
28. To avoid the risk of critical stakeholder voices remaining unheard or marginalised in the due diligence process, the Directive grants stakeholders the right to safe and meaningful consultation as regards the company's due diligence strategy, and ensure the appropriate involvement of trade unions.
29. Complaint procedures should ensure that the anonymity, safety, physical and legal integrity of whistle-blowers is protected, in line with Directive (EU) 2019/1937 of the European Parliament and of the Council.
30. This Directive requires undertakings to make all necessary efforts to identify all their suppliers. In order to be fully effective, due diligence should not be limited to the first tier downstream and upstream in the supply chain but should encompass all suppliers and sub-contractors, particularly those that, during the due diligence process, might have been identified by the undertaking as posing major risks. This Directive, however, recognises that not all undertakings have the same resources or capabilities to identify all their suppliers and therefore makes that obligation subject to the principles of reasonableness and proportionality, which in no case should be interpreted by undertakings as a pretext not to comply with their obligation to make all necessary efforts in that regard.

31. For due diligence to be embedded in the culture and structure of a company, it is necessary that the members of the administrative, management and supervisory bodies of the company be responsible for the adoption and implementation of the due diligence strategy. The board of directors should have the appropriate knowledge, training and experience in due diligence matters. The Directive requires that large companies have an advisory committee from whose expertise on due diligence matters the undertaking should benefit. This Directive also requires that remuneration policies be brought in line with the objectives of this Directive.
32. Coordination of undertakings' due diligence efforts at sectoral level could enhance the consistency and effectiveness of their due diligence strategies. To this end, this Directive provides that Member States could encourage the adoption of due diligence action plans at sectoral level. To avoid stakeholders' views being ignored, the Directive requires that stakeholders participate in the definition of these plans.
33. In order to be effective, a due diligence framework should include grievance mechanisms at company or sector level and in order to ensure that such mechanisms are effective the participation of stakeholders should be ensured. . Those mechanisms should allow stakeholders to raise concerns and should function as early-warning risk-awareness systems. Grievance mechanisms should be entitled to make suggestions as to how risks should be addressed by the undertaking. They should also be entitled to propose an appropriate remedy when it is brought to their attention that the undertaking has caused or contributed to harm.
34. Member States should designate one or more national authorities to supervise the correct implementation by undertakings of their due diligence obligations and ensure the proper enforcement of this Directive. Those national authorities should be entitled to carry out appropriate checks, on their own initiative or based on complaints received from stakeholders and third parties, and impose penalties, in order to ensure that undertakings comply with the obligations set out in the legislation; at Union level, a European committee of competent authorities should be set up by the European Commission.
35. Repeated infringement by an undertaking of the national provisions adopted in accordance with this Directive, intentionally or with serious negligence, should constitute a criminal offence.
36. The national authorities are encouraged to cooperate and share information with the OECD National Contact Points (NCP) available in their country.
37. In line with the UNGPs, conducting human rights due diligence should not absolve undertakings per se from liability for causing or contributing to human rights abuses or environmental damage. However, having a robust due diligence process in place may help undertakings to avoid causing or contributing to harm.
38. The right to an effective remedy is an internationally recognised human right, enshrined in Article 8 UDHR and in Article 2(3) ICCPR, and is also a Union fundamental right (Article 47 of the Charter). As recalled by the UNGPs, states have the duty to ensure, through judicial, administrative, legislative or other appropriate means, that those affected by business-related human rights abuses have access to an effective remedy. Therefore, this Directive 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.

39. Member States should introduce further legislation to ensure that undertakings can be held liable for damage caused by undertakings under their control where they have, in the course of business, committed violations of internationally recognized human rights or international environmental standards. They should not be held liable however if they can prove that they took all due care to avoid the loss or damage, or that the damage would have occurred even if all due care had been taken. When introducing liability regimes, Member States should consider adopting appropriate limitation periods and introducing the loser pays principle.
40. In order to create clarity and certainty and consistency among the practices of undertakings, in particular small, medium-sized and micro-enterprises, this Directive requires the Commission to prepare guidelines in consultation with Member States and the OECD and with the assistance of a number of specialised agencies. A number of guidelines on due diligence produced by international organisations already exist which could be used as a reference for the Commission when developing guidelines under this Directive specifically for EU companies. In addition to general guidelines which could guide SMEs in the application of due diligence in their operations, the Commission should envisage producing sector-specific guidelines and provide a regularly updated list of country fact-sheets in order to help companies assess the risks of their business operations in a given area. Those fact-sheets should indicate in particular which list of Conventions and Treaties among those listed in Article 3 of the Directive have been ratified by a given country.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and objective

1. This Directive is aimed at ensuring that undertakings operating in the internal market fulfil their duty to respect human rights, the environment and good governance and do not cause or contribute to risks to human rights, the environment and good governance in their activities and those of their business relationships.

To this end, it establishes minimum requirements for undertakings to identify, prevent, cease, mitigate, monitor, disclose, account, address and remediate the human rights, environmental and governance risks that those activities may pose. By coordinating safeguards for the protection of human rights, the environment and good governance, those due diligence requirements are aimed at improving the functioning of the internal market.

2. This Directive further aims to ensure that undertakings can be held accountable for their adverse human rights, environmental and governance impacts throughout their value chain.

3. This Directive shall apply without prejudice to further due diligence requirements established in Union sector-specific legislation, in particular Regulation (EU) No 995/2010⁸ and Regulation (EU) 2017/821⁹.

In case of insurmountable incompatibility, the sector-specific legislation shall apply.

4. This Directive shall not prevent Member States from maintaining or introducing further general or sector-specific due diligence requirements, provided that they do not hamper the effective application of the due diligence requirements as provided for in this Directive.

5. The implementation of this Directive shall in no way constitute grounds for justifying a reduction in the general level of protection of human rights or the environment. In particular, it shall be applied without prejudice to other existing subcontracting, posting or chain liability frameworks.

Article 2

Scope

1. This Directive shall apply to all undertakings governed by the law of a Member State or established in the territory of the Union.

2. It shall also apply to limited liability undertakings governed by the law of a non-Member State and not established in the territory of the Union when they operate in the internal market selling goods or providing services. An undertaking governed by the law of a non-Member State and not established in the territory of the Union shall be considered in compliance with this Directive if it fulfils the due diligence requirements established in this Directive as transposed in the legislation of the Member State in which it operates.

3. Member States may exempt micro-undertakings as defined in Directive 2013/34/EU from the application of the obligations set up in this Directive.

Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

- 'due diligence' means the process put in place by an undertaking aimed at identifying, ceasing, preventing, mitigating, monitoring, disclosing, accounting for, addressing, and remediating the risks posed to human rights, including social and labour rights, the environment, including through climate change, and to governance, both by its own operations and by those of its business relationships.

⁸ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance (OJ L 295, 12.11.2010, p. 23).

⁹ Regulation (EU) 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-risk areas (OJ L 130, 19.5.2017, p. 1).

- ‘stakeholders’ means individuals and groups of individuals whose rights or interests may be affected by the human rights, environmental and good governance risks 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, and includes but is not limited to workers and their representatives, local communities, indigenous peoples, citizens’ associations, trade unions, civil society organisations and the undertakings’ shareholders.

- ‘business relationships’ means the network of relationships of an undertaking with business partners and other entities along its entire value chain, and any other non-State or State entity directly linked to the undertaking’s business operations, products or services.

- ‘supplier’ means all business relationships that provide a product or service to an undertaking, either directly or indirectly.

- ‘sub-contractor’ means all business relationships that perform a service or an activity necessary for the completion of another undertaking’s operations.

- ‘value chain’ means all activities, operations, business relationships and investment chains of an undertaking inside or outside the EU. Value chain includes entities with which the undertaking has a direct or indirect business relationship, upstream and downstream, and which either (a) supply products or services that contribute to the undertaking’s own products or services, or (b) receive products or services from the undertaking.

- ‘risk’ means a potential or actual adverse impact on individuals, groups of individuals and other organisations in relation to human rights, including social and labour rights, the environment, and good governance;

- ‘human rights risk’ 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 internationally recognized human rights, understood, at a minimum, as those expressed in the International Bill of Human Rights, the United Nations human rights instruments on the rights of persons belonging to particularly vulnerable groups or communities, and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work, as well as those recognised in the ILO Convention on freedom of association and the effective recognition of the right to collective bargaining, the ILO Convention on the elimination of all forms of forced or compulsory labour, the ILO Convention on the effective abolition of child labour, and the ILO Convention on the elimination of discrimination in respect of employment and occupation. They further include, but are not restricted to, adverse impacts in relation to other rights recognised in a number of ILO Conventions, such as freedom of association, minimum age, occupational safety and health, and equal remuneration, 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.

- ‘environmental risk’ means any potential or actual adverse impact that may impair the right to a healthy environment, whether temporarily or permanently, and of whatever magnitude,

duration or frequency. These include, but are not limited to, adverse impacts on the climate, the sustainable use of natural resources, and biodiversity and ecosystems. These risks include climate change, air and water pollution, deforestation, loss in biodiversity, and greenhouse emissions.

- ‘governance risk’ means any potential or actual adverse impact on the good governance of a country, region or territory. These include, but are not limited to, non-compliance with OECD Guidelines for Multinational Enterprises, Chapter VII on Combatting Bribery, Bribe Solicitation and Extortion and the principles of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and situations of corruption and bribery where an undertaking exercises undue influence on, or channels undue pecuniary advantages to, public officials to obtain privileges or unfair favourable treatment in breach of the law, and including situations in which an undertaking becomes improperly involved in local political activities, makes illegal campaign contributions or fails to comply with the applicable tax legislation.

Article 4 **Due diligence strategy**

1. Member States shall lay down rules to ensure that undertakings carry out due diligence with respect to human rights, environmental and governance risks in their operations and business relationships.

2. Undertakings shall in an ongoing manner identify and assess by means of an appropriate monitoring methodology whether their operations and business relationships cause or contribute to any human rights, environmental or governance risks.

3. If an undertaking concludes that it does not cause or contribute to risks, it shall publish a statement in that sense, including its risk assessment, which shall be reviewed in the event that new risks emerge or in the event of the undertaking entering into new business relationships that can pose risks.

4. If an undertaking identifies risks, it shall establish a due diligence strategy. The due diligence strategy shall:

(i) specify the risks that the undertaking has identified as likely to be present in its operations and business relationships and the level of severity and urgency thereof.

(ii) publicly disclose detailed, relevant and meaningful information about the undertaking’s value chain, including names, locations, and other relevant information concerning subsidiaries, suppliers and business partners in its value chain;

(iii) indicate the policies and measures that the undertaking intends to adopt with a view to ceasing, preventing or mitigating those risks;

(iv) set up a prioritisation policy for cases in which the undertaking is not in a position to deal with all the risks at the same time. Undertakings shall consider the level of severity and urgency of the different risks present, the scope of the risks, their scale and how irremediable they might be, and if necessary, use the prioritisation policy in dealing with these;

(v) indicate the methodology followed for the definition of the strategy, including the stakeholders consulted;

5. Undertakings shall make all reasonable efforts to identify subcontractors and suppliers in their entire value chain.

6. Undertakings shall indicate how their due diligence strategy relates to and integrates with their business strategy, their policies, including purchase policies, and procedures.

7. The subsidiaries of an undertaking or the companies controlled by an undertaking shall be deemed in compliance with the obligation to establish a due diligence strategy if their parent or controlling company includes them in their due diligence strategy.

8. Undertakings shall carry out value chain due diligence which is proportionate and commensurate to their specific circumstances, particularly their sector of activity, the size and length of their supply chain, the size of the undertaking, its capacity, resources and leverage.

9. Undertakings shall ensure by means of contractual clauses and the adoption of codes of conduct that their business relationships put in place and carry out human rights, environmental and governance policies that are in line with their due diligence strategy.

10. Undertakings shall regularly verify that subcontractors and suppliers comply with their obligations under paragraph 9.

Article 5

Involvement of trade unions and consultation of stakeholders

1. Member States shall ensure that undertakings carry out in good faith effective, meaningful and informed consultations with stakeholders when establishing and implementing their due diligence strategy in a manner that is appropriate to their size and the nature and context of their operations, and shall guarantee, in particular, the right for trade unions at the relevant level to be involved in the establishment and implementation of the due diligence strategy in good faith with their undertaking.

2. Member States shall ensure that stakeholders are entitled to request from the undertaking that they are consulted within the terms of paragraph 1.

3. Effective protection mechanisms and measures shall be put in place by the undertaking to ensure that affected or potentially affected stakeholders are not put at risk due to participating in the consultations referred to in paragraph 1.

4. Consultations with indigenous peoples shall be undertaken in accordance with international human rights standards, including the standard of free, prior and informed consent and respecting indigenous peoples' right to self-determination.

5. Workers or their representatives shall be informed and consulted on the due diligence strategy of their undertaking in accordance with Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, Directive 2009/38/EC on the establishment of a European Works Council and Council Directive 2001/86/EC

supplementing the Statute for a European undertaking with regard to the involvement of employees.

6. Member States shall ensure that where an undertaking refuses to carry out consultations with stakeholders, fails to involve trade unions in good faith, or does not adequately inform and consult workers or their representatives, stakeholders and trade unions may refer the matter to the competent national authority

Article 6

Publication and communication of the due diligence strategy

1. Member States shall ensure that undertakings make their due diligence strategy publicly available, accessible and free of charge, especially on the undertakings' websites.
2. Undertakings shall communicate their due diligence strategy to their workers and business relationships and to one of the national competent authorities designated pursuant to Article 14.
3. Member States shall establish a centralised platform and ensure that undertakings upload on that platform their due diligence strategies or the statement referred to in Article 4.

Article 7

Disclosure of non-financial and diversity information

This Directive is without prejudice to the obligations imposed on certain undertakings by Directive 2013/34/EU to include in their management report a non-financial statement including a description of the policies pursued by the undertaking in relation to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, and the due diligence processes implemented.

Article 8

Evaluation and review of the due diligence strategy

1. Undertakings shall evaluate the effectiveness and appropriateness of their due diligence strategy at least once a year, and review it accordingly when necessary.
2. The evaluation and review of the due diligence strategy shall be carried out in consultation with stakeholders and the involvement of trade unions in the same manner as when establishing the due diligence strategy.
3. In large companies, the advisory committee referred to in Article 12 shall be consulted in the evaluation and review of the due diligence strategy.

Article 9
Grievance mechanisms

1. Undertakings shall establish a grievance mechanism, both as an early-warning risk-awareness and as a remediation system, allowing any stakeholder to voice concerns regarding the existence of a human rights, environmental or governance risks. Member States shall ensure that undertakings are enabled to provide for such a mechanism through collaborative arrangements with other undertakings or organisations.
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. They shall provide for anonymous complaints.
3. The grievance mechanism shall provide for timely and effective responses to stakeholders, both in instances of warnings and complaints and in instances of remediation.
4. Undertakings shall publish concerns raised via their grievance mechanisms as well as remediation efforts and regularly report on progress made in those instances.
5. Grievance mechanisms shall be entitled to make proposals to the undertaking on how risks should be addressed.
6. Grievance mechanisms shall be developed in partnership with stakeholders, in particular workers representatives, and be managed in cooperation with them. Workers representatives shall be given the necessary resources to carry out their responsibilities in this area, including in order to establish connections with trade unions and workers in the undertakings with which the main undertaking has business relationships.

Article 10
Extra-judicial remedies

1. Member States shall ensure that when an undertaking identifies, in particular through its grievance mechanism, that it has caused or contributed to harm, it provides for or cooperates with- remediation.
2. The remedy may be proposed 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 one or more of the following non-exhaustive list of remedies: financial or non-financial compensation, reinstatement, public apologies, restitution, rehabilitation or contribution to investigation.
4. Undertakings shall prevent additional harm through guarantees of non-repetition.
5. Member States shall ensure that proposal of a remedy by an undertaking does not prevent affected stakeholders from bringing civil proceedings in accordance with national law.

Article 11

Responsibility with regards to the due diligence process

1. Member States shall ensure that the members of the administrative, management and supervisory bodies of an undertaking, acting within the competences assigned to them by national law, have collective responsibility for ensuring that the due diligence process and an the undertaking's business decisions, including remuneration policies, are consistent with this Directive.
2. Member States shall ensure that their laws, regulations and administrative provisions on liability, at least towards the undertaking, apply to the members of the administrative, management and supervisory bodies of the undertakings, as regards breach of the duties referred to in paragraph 1.

Article 12

Expertise on due diligence

1. Member States shall ensure that the governing body of the undertaking has the necessary qualifications, knowledge and expertise as regards due diligence.
2. Large undertakings shall set up an advisory committee tasked with advising the governing body of the undertakings on due diligence matters and propose measures to cease, monitor, disclose, address, prevent and mitigate risks. Advisory committees shall include stakeholders and experts in their composition.

Article 13

Sectoral due diligence action plans

1. Member States may encourage the adoption by undertakings of sectoral due diligence action plans aimed at coordinating the due diligence strategies of undertakings within an economic sector.
2. Member States shall ensure that stakeholders, particularly trade unions, have the right to participate in the definition of sectoral due diligence action plans.
3. Sectoral due diligence actions plans may provide for a single joint grievance mechanism for the undertakings within its scope. The grievance mechanism shall be in line with Article 9 of this Directive.
4. Sectoral grievance mechanisms shall be developed in partnership with stakeholders and be managed in cooperation with them.
5. Trade unions shall be given the necessary resources to carry out their responsibilities in this area, including in order to establish connections with trade unions and workers in the undertakings with which the main undertaking has business relationships.

Article 14

Supervision

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.
2. Member States shall ensure that the national competent authorities designated in 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.
3. Member States shall inform the Commission of the names and addresses of the competent authorities by [date of transposition of the directive]. Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.
4. The Commission shall make publicly available, including on the internet, a list of competent authorities. The Commission shall keep that list up to date.

Article 15

Investigations on undertakings

1. Member State competent authorities shall have the power to carry out investigations to ensure that undertakings comply with the obligations set out in this Directive. Competent authorities shall be authorised to carry out checks on undertakings and interviews with affected or potentially affected stakeholders or their representatives.
2. Investigations referred to in paragraph 1 shall either be conducted by taking a risk-based approach or in the event a competent authority is in possession of relevant information, including on the basis of substantiated complaints provided by any third party.
3. Member States shall facilitate the submission by third parties of complaints referred to in paragraph 2 by measures such as complaint submission forms and ensuring that complaints remain anonymous upon the request of the complainant. Member States shall ensure that that form can also be completed electronically.
4. The competent authority shall inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is needed.
5. If as a result of the actions taken pursuant to paragraph 1, a competent authority identifies a failure to comply with this Directive, it shall grant the undertaking concerned an appropriate period of time to take remedial action.
6. Member States shall ensure that if the failure to comply with this Directive could lead to irreparable harm, a competent authority may order the adoption of interim measures by the undertaking concerned, or order the temporary suspension of activities.
7. Member States shall provide for penalties in accordance with Article 19 in for undertakings that do not take remedial action within the period of time granted.
8. Member States shall ensure that the national competent authorities keep records of the checks

referred to in paragraph 1, indicating, in particular, their nature and result, as well as records of any notice of remedial action issued under paragraph 5.

9. Records of the checks referred to in paragraph 1 shall be kept for at least five years.

Article 16 **Guidelines**

1. In order to create clarity and certainty for undertakings, in particular small, medium-sized and micro undertakings, as well as ensure consistency among their practices, the Commission, in consultation with Member States and the OECD, and with the assistance of the Fundamental Rights Agency, the European Environment Agency and the European Agency for Small and Medium 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 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 Fundamental Rights Agency, the European Environment Agency and the European Agency for Small and Medium 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 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, and the OECD-FAO Guidance for Responsible Agricultural Supply Chains.

4. Country fact-sheets shall be updated regularly by the European 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.

Article 17 **Specific measures in support of small, medium-sized and micro enterprises**

1. Member States shall ensure that a specific portal for small, medium-sized and micro undertakings is available where they may seek guidance and obtain further support and information about how best fulfil their due diligence obligations.

2. Small, medium-sized and micro undertakings shall be eligible for financial support to perform their due diligence obligations under the Union's programmes to support small, medium sized and micro enterprises.

Article 18

Cooperation at EU level

1. The Commission shall set up a European committee of competent authorities to facilitate the coordination and convergence of regulatory and supervisory practices, and monitor the performance of national competent authorities.
2. The Commission, assisted by the European Union Agency for Fundamental Rights, the European Environmental Agency, and the European Agency for Small and Medium Enterprises shall publish, based on the information shared by national competent authorities and in cooperation with other public sector experts and stakeholders, an annual due diligence scoreboard.

Article 19

Penalties

1. Member States shall provide for penalties applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that those penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive.
2. Member States shall ensure that a repeated infringement by an undertaking of the national provisions adopted in accordance with this Directive constitutes a criminal offence, when committed intentionally or with serious negligence. Member States shall take the necessary measures to ensure that these offences are punishable by effective, proportionate and dissuasive criminal penalties.

Article 20

Civil liability

The fact that an undertaking has carried out due diligence in compliance with the requirements set out in this Directive shall not absolve the undertaking of any civil liability which it may incur pursuant to national law.

Article 21

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [within 24 months] after the entry into force of this Directive. They shall immediately inform the Commission thereof.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 22
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

In addition to the Proposal for a Directive on Corporate Due Diligence and Corporate Accountability, the Commission shall put forward two complementary proposals to amend 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 matters¹⁰ ('the Brussels I Regulation') and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)¹¹, respectively, having regard to the following text suggested.

¹⁰ OJ L 351, 20.12.2012, p. 1.

¹¹ OJ L 199, 31.7.2007, p. 40.

II. RECOMMENDATIONS FOR DRAWING UP A EUROPEAN PARLIAMENT AND COUNCIL REGULATION AMENDING 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 (BRUSSELS I)

TEXT OF THE PROPOSAL REQUESTED

Regulation of the European Parliament and of the Council amending 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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 67(4) and 81(2)(a)(c) and (e) thereof,

Having regard to the European Parliament's request to the European Commission¹,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

1. The 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs) constituted a new development in the debate on business and human rights,
2. The UNGPs are built on the 'Protect, Respect and Remedy' Framework and introduce three pillars in which action needs to be taken. The first pillar focuses on the State's duty to protect against human rights abuses, the second on the corporate responsibility to respect human rights and the third on the victim's right to access an effective remedy where their human rights are harmed,
3. The UNGPs extensively refer to due diligence as the mechanism to make operative the second pillar of the UN Framework and Directive xxx/xxxx on Corporate Due Diligence and Corporate Accountability has introduced mandatory due diligence requirements at Union level for undertakings under the scope of Directive 2013/34/EU,
4. In order to implement the third pillar of the UN Framework and facilitate access to effective judicial remedies for victims of human rights violations, Regulation (EU) No 1215/2012 needs to be amended,
5. The present Regulation introduces a new paragraph (5) in Article 8 of Regulation (EU) No 1215/2012 to ensure that EU undertakings can be held to account for their

role in human rights abuses in third countries. This new provision extends the jurisdiction of Member States' courts, which could be seized to decide on business-related civil cases against EU undertakings on account of violations of human rights caused by their subsidiaries or suppliers in third countries. In this latter case, the provision requires that the undertaking had a contractual relationship with the supplier,

6. The present Regulation further introduces a new Article 26a incorporating a *forum necessitatis* that should be conditional on two elements, namely a risk of denial of justice in the third country where a human rights violation has taken place and a sufficiently close connection to the Member State concerned. This kind of provision already exists in EU law, for example in Article 11 of Regulation 650/2012 on succession matters and in Article 7 of Regulation 4/2009 on maintenance obligations. This new provision exceptionally gives jurisdiction to Member States' courts, where they do not have jurisdiction pursuant to any other provision of Regulation (EU) No 1215/2012, to decide on business-related civil claims on human rights violations brought against undertakings located in third-countries, but within the supply chain of an EU undertaking, provided that proceedings cannot reasonably be brought or conducted or would be impossible in that third country with which the case is closely related. The provision further requires that the claim have a sufficient connection with the Member State of the court seized.

HAVE ADOPTED THIS REGULATION:

Amendments to 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

Regulation (EU) No 1215/2012 is amended as follows:

- (1) A new paragraph 5 is inserted in Article 8:
 - (5) In matters relating to business civil claims for human rights violations within the value chain within the scope of Directive xxx/xxxx on Corporate Due Diligence and Corporate Accountability, an undertaking domiciled in a Member State may also be sued in the Member State where it has its domicile or in which it operates when the damage caused in a third country can be imputed to a subsidiary or another undertaking with which the parent company has a business relationship within the meaning of Article 3 of Directive xxx/xxxx on Corporate Due Diligence and Corporate Accountability.
- (2) A new Article 26a is inserted:

Article 26a

Regarding business-related civil claims on human rights violations within the value chain of a company domiciled in the Union or operating in the Union within the scope of Directive xxx/xxxx on Corporate Due Diligence and Corporate Accountability, where no court of a Member State has jurisdiction under this Regulation, the courts of a Member State may, on an exceptional basis, hear the case if the right to a fair trial or the right to access to justice so requires, in particular: (a) if proceedings cannot

reasonably be brought or conducted or would be impossible in a third State with which the dispute is closely related; or (b) if a judgment given on the claim in a third State would not be entitled to recognition and enforcement in the Member State of the court seised under the law of that State and such recognition and enforcement is necessary to ensure that the rights of the claimant are satisfied; and the dispute has a sufficient connection with the Member State of the court seised.

III. RECOMMENDATIONS FOR DRAWING UP A EUROPEAN PARLIAMENT AND COUNCIL REGULATION AMENDING REGULATION (EC) NO 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 11 JULY 2007 ON THE LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS (ROME II)

TEXT OF THE PROPOSAL REQUESTED

Regulation of the European Parliament and of the Council amending Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 67(4) and 81(2)(a) and (c) thereof,

Having regard to the European Parliament's request to the European Commission¹,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

1. The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought,
2. To that purpose, the Union adopted Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II),
3. The Rome II Regulation establishes in Article 4(1) a general rule according to which the law applicable to non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the

event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur,

4. The application of the general rule in Article 4(1) of the Rome II Regulation can lead to significant problems for claimants who are victims of human rights abuses, particularly in cases where the companies are large multinationals operating in countries with low human rights standards, where it is almost impossible for them to obtain fair compensation. However, while the Rome II Regulation provides for special provisions in relation to certain sectors, including environmental damage, it does not include any special provision in relation to business-related human rights claims.
5. To remedy this situation, the Rome II Regulation should be modified to include a specific choice of law provision for civil claims relating to alleged business-related human rights abuses committed by EU companies in third countries, which would allow claimants who are victims of human rights abuses allegedly committed by undertakings operating in the Union to choose a law with high human rights standards. A new Article 26a should therefore be inserted in Regulation (EC) No 864/2007 so as to allow victims of business-related human rights violations to choose between the law of the country in which the damage occurred (*lex loci damni*), the law of the country in which the event giving rise to the damage occurred (*lex loci delicti commissi*) and the law of the place where the defendant undertaking is domiciled or, lacking a domicile in the Member State, where it operates.

HAVE ADOPTED THIS REGULATION:

Amendment to Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

Article 1

Regulation (EU) No 864/2007 is amended as follows:

- (1) The following Article is inserted:

Article 6a

Business-related human rights claims

In the context of business-related civil claims for human rights violations within the value chain of an undertaking domiciled in a Member State of the Union or operating in the Union within the scope of Directive xxx/xxxx on Corporate Due Diligence and Corporate Accountability, the law applicable to a non-contractual obligation arising out of the damage sustained shall be the law determined pursuant to Article 4(1), unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred or on the law of the country in which the parent company has its domicile or, where it does not have a domicile in a Member State, the law of the country where it operates.

