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## REPORT

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

Committee on Legal Affairs

Rapporteur: Lara Wolters

(Initiative – Rule 47 of the Rules of Procedure)

Rapporteurs for the opinion (\*):  
Raphaël Glucksmann, Committee on Foreign Affairs  
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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 the Charter of Fundamental Rights of the European Union (‘the Charter’),
- 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 market<sup>1</sup> (‘the Timber Regulation’),
- 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/EEC<sup>2</sup> (‘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 groups<sup>3</sup> (‘the Non-Financial Reporting Directive’),
- 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 areas<sup>4</sup> (‘The Conflict Minerals Regulation’),
- 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 engagement<sup>5</sup> (‘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 law<sup>6</sup> (‘the Whistleblower Directive’),
- having regard to Regulation (EU) 2019/2088 of the European Parliament and of the

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<sup>1</sup> OJ L 295, 12.11.2010, p. 23.

<sup>2</sup> OJ L 182, 29.6.2013, p. 19.

<sup>3</sup> OJ L 330, 15.11.2014, p. 1.

<sup>4</sup> OJ L 130, 19.5.2017, p. 1.

<sup>5</sup> OJ L 132, 20.5.2017, p. 1.

<sup>6</sup> OJ L 305, 26.11.2019, p. 17.

Council of 27 November 2019 on sustainability-related disclosures in the financial services sector<sup>7</sup> ('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) 2019/2088<sup>8</sup> ('The Taxonomy Regulation'),
- having regard to the EU Action Plan: Financing Sustainable Growth<sup>9</sup>,
- having regard to The European Green Deal<sup>10</sup>,
- having regard to the Commission Guidelines on non-financial reporting (methodology for reporting non-financial information)<sup>11</sup> and to the Commission Guidelines on non-financial reporting: *Supplement on reporting climate-related information*<sup>12</sup>,
- having regard to its resolutions of 25 October 2016 on corporate liability for serious human rights abuses in third countries<sup>13</sup>, of 27 April 2017 on the EU flagship initiative on the garment sector<sup>14</sup> and of 29 May 2018 on sustainable finance<sup>15</sup>,
- having regard to the Paris Agreement adopted on 12 December 2015 ('The Paris Agreement'),
- 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<sup>16</sup> (UNGPs),
- having regard to the OECD Guidelines for Multinational Enterprises<sup>17</sup>,
- having regard to the OECD Due Diligence Guidance for Responsible Business Conduct<sup>18</sup>,
- having regard to the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector<sup>19</sup>,

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<sup>7</sup> OJ L 317, 9.12. 2019, p. 1.

<sup>8</sup> OJ L 198, 22.6.2020, p. 13.

<sup>9</sup> COM(2018)0097 final.

<sup>10</sup> COM(2019)0640 final.

<sup>11</sup> OJ C 215, 5.7.2017, p. 1.

<sup>12</sup> OJ C 209, 20.6.2019, p. 1.

<sup>13</sup> OJ C 215, 19.6.2018, p. 125.

<sup>14</sup> OJ C 298, 23.8.2018, p. 100.

<sup>15</sup> OJ C 76, 9.3.2020, p. 23.

<sup>16</sup> [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf).

<sup>17</sup> <http://mneguidelines.oecd.org/guidelines>.

<sup>18</sup> <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>.

<sup>19</sup> <http://www.oecd.org/industry/inv/mne/responsible-supply-chains-textile-garment-sector.htm>.

- having regard to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals for Conflict-Affected and High-Risk Areas<sup>20</sup>,
- having regard to the OECD-FAO Guidance for Responsible Agricultural Supply Chains<sup>21</sup>,
- having regards to the OECD Due Diligence Guidance for Responsible business conduct for institutional investors<sup>22</sup>,
- having regard to the OECD Due Diligence Guidance for Responsible Corporate Lending and Securities Underwriting<sup>23</sup>,
- having regard to the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up<sup>24</sup>,
- having regard to the 2017 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy<sup>25</sup>,
- having regard to the UN booklet “Gender Dimensions of the Guiding Principles on Business and Human Rights”<sup>26</sup>,
- having regard to the French Law no. 2017-399 on a duty of vigilance of parent and ordering undertakings<sup>27</sup>,
- 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 labour<sup>28</sup>,
- having regard to recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business adopted by the Committee of Ministers on 2 March 2016,
- 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’<sup>29</sup>,
- having regard to the briefings of the Directorate General for External Policies of the

<sup>20</sup> <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>.

<sup>21</sup> <https://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm>.

<sup>22</sup> <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>.

<sup>23</sup> <https://www.oecd.org/investment/due-diligence-for-responsible-corporate-lending-and-securities-underwriting.htm#:~:text=Due%20Diligence%20for%20Responsible%20Corporate%20Lending%20and%20Securities%20Underwriting%20provides,risks%20associated%20with%20their%20clients.>

<sup>24</sup> <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

<sup>25</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

<sup>26</sup> [https://www.ohchr.org/Documents/Issues/Business/Gender\\_Booklet\\_Final.pdf](https://www.ohchr.org/Documents/Issues/Business/Gender_Booklet_Final.pdf).

<sup>27</sup> 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.

<sup>28</sup> 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).

<sup>29</sup> EP Policy Department for External Relations, PE 603.475 - February 2019.

Union of June 2020 entitled ‘EU Human Rights Due Diligence Legislation: Monitoring, Enforcement and Access to Justice for Victims’<sup>30</sup> and ‘Substantive Elements of Potential Legislation on Human Rights Due Diligence’,

- having regard to the study prepared for the European Commission on ‘Due Diligence requirements through the supply chain’<sup>31</sup>,
  - having regard to the study prepared for the European Commission on ‘Directors’ duties and sustainable corporate governance’<sup>32</sup>,
  - having regard to the Children’s Rights and Business Principles, developed by UNICEF, the UN Global Compact and Save the Children<sup>33</sup>,
  - having regard to the Commission’s Capital Markets Union Action Plan (COM(2020)0590),
  - having regard to the opinion of the European Economic and Social Committee on “Mandatory due diligence”,
  - having regard to Rules 47 and 54 of its Rules of Procedure,
  - having regard to the opinions of the Committee on Foreign Affairs, the Committee on International Trade and the Committee on Development,
  - having regard to the report of the Committee on Legal Affairs (A9-0018/2021),
- A. Whereas Articles 3 and 21 of the Treaty on European Union (TEU) state that the Union, in its relations with the wider world, is to uphold and promote its values and principles, namely the rule of law and respect and protection of human rights, and contribute to the sustainable development of the Earth, solidarity, free and fair trade as well as to the strict observance and the development of international law; whereas more specifically, the Union is to foster the sustainable economic, social and environmental development of developing countries with the primary aim of eradicating poverty; whereas the Union is to respect those principles and pursue those objectives in the development and implementation of the external aspects of its other policies;
- B. Whereas Article 208(1) of the Treaty on the Functioning of the European Union (TFEU) provides that the Union is to take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries;
- C. Whereas the globalisation of economic activity has aggravated adverse impacts of business activities on human rights, including social and labour rights, the environment and the good governance of states; whereas human rights violations often occur at primary production level, in particular when sourcing raw material and manufacturing

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<sup>30</sup> EP Policy Department for External Relations, PE 603.505 - June 2020.

<sup>31</sup> Directorate General for Justice and Consumers, January 2020.

<sup>32</sup> Directorate General for Justice and Consumers, July 2020.

<sup>33</sup> <http://childrenandbusiness.org/>

products;

- D. Whereas the Charter applies to all Union legislation and to national authorities when implementing Union law both in the Union and in third countries;
- E. Whereas if due diligence is implemented comprehensively, undertakings will in the long term benefit from better business conduct with a focus on prevention rather than on remediation of harm;
- F. Whereas given that future legislation on corporate due diligence and corporate accountability for European undertakings would be expected to have extraterritorial effects it would affect the social, economic and environmental development of developing countries and their prospects of achieving their SDGs; whereas this significant impact could contribute to the Union's policy objectives concerning development;
- G. Whereas undertakings should respect human rights, including international binding rights and the fundamental rights enshrined in the Charter, the environment and good governance and should not cause or contribute to any adverse impacts in this regard; whereas due diligence should be based on the 'do no harm' principle; whereas Article 21 TEU requires the Union to promote and consolidate the universality and indivisibility of human rights and fundamental freedoms, as protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Charter, to ensure sustainable development and consistency between its external action and other policies; whereas the Council of the European Union has recognised that corporate respect for human rights in corporate operations and supply chains is important to achieve the UN SDGs;
- H. Whereas democracy, which protects human rights and fundamental freedoms, is the only form of government compatible with sustainable development; whereas corruption and lack of transparency greatly undermine human rights;
- I. Whereas the rights to an effective remedy and fair trial are basic human rights enshrined in Article 8 Universal Declaration of Human Rights, Article 2(3) of the International Covenant on Civil and Political Rights, as well as in Articles 6 and 13 of the ECHR and Article 47 of the Charter; whereas the Union, as part of its commitment to promote, protect and fulfil human rights worldwide, should help to promote the rights of victims of business-related human rights violations and abuses that amount to criminal offences in third countries, in line with Directives 2011/36/EU<sup>34</sup> and 2012/29/EU<sup>35</sup> of the European Parliament and of the Council;
- J. Whereas corruption in the context of judicial proceedings can have a devastating effect on the lawful administration of justice and judicial integrity, and intrinsically violate the right to a fair trial, the right to due process and the right to effective redress; whereas

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<sup>34</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

<sup>35</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

corruption can lead to cases of systematic violation of human rights in the business context, for example, by preventing individuals from accessing goods and services that States are obliged to provide to meet their human rights obligations or by increasing the price of such goods and services, by encouraging wrongful acquisition or appropriation by business of land, or facilitating money laundering, or by granting unlawful licences or concessions to businesses in the extractive sector;

- K. Whereas the Covid-19 crisis has exposed some of the severe drawbacks of global value chains and the ease with which certain undertakings are able to shift, both directly and indirectly, negative impacts of their business activities to other jurisdictions, in particular outside the Union, without being held accountable; whereas the Organisation for Economic Co-operation and Development (OECD) has shown that undertakings that have taken proactive steps to address the risks related to the COVID-19 crisis in a way that mitigates adverse impacts on workers and supply chains, develop a more long-term value and resilience, improving their viability in the short term and their prospects for recovery in the medium to long term;
- L. Whereas the importance of freedom of expression, of freedoms of association and of peaceful assembly, including the right to form and join trade unions, the right to collective bargaining and action, as well as the right to fair remuneration and to decent working conditions, including health and safety in the workplace should be underlined;
- M. 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;
- N. Whereas the persistent exploitation and degradation of human beings through forced labour and slave-like practices affecting millions of people and from which certain undertakings, public or private entities or persons have benefitted globally in 2019; whereas the situation of an estimated 152 million children in child labour, 72 million of whom work in hazardous conditions, many of them being forced to work through violence, blackmail and other unlawful means is unacceptable and particularly worrying; whereas undertakings have the special responsibility of protecting children, in particular, and prevent any form of child labour;
- O. Whereas fundamental labour, social and economic rights are enshrined in several international human rights treaties and conventions, including the International Covenant on Economic, Social and Cultural Rights, the ILO's Core Labour Standards, the European Social Charter as well as in the Charter; whereas the right to work, free choice of employment and remuneration that ensures for employees and their families an existence worthy of human dignity are basic human rights enshrined in Article 23 of the Universal Declaration of Human Rights; whereas inadequate state labour inspection, limited right to redress, excessive working hours, poverty-level wages, the gender pay gap and other forms of discrimination remain of serious concern in an increasing number of countries, notably in Export Processing Zones;

- P. Whereas the United Nations Working Group on Business and Human Rights highlighted the differentiated and disproportionate impact of business activities on women and girls and has stated that human rights due diligence should cover both actual and potential impacts on women's rights;
- Q. Whereas 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; whereas the Special Rapporteur has also stressed that the loss of biodiversity undermines the full enjoyment of human rights and that states should regulate harm to biodiversity caused by private actors as well as government agencies; whereas the United Nations General Assembly recognised, in its Resolution 64/292, the right to safe and clean drinking water and sanitation as a human right; whereas those rights should be covered by any possible legislation;
- R. Whereas undertakings have in general limited awareness of the range of impacts they have on children's rights in their operations and supply chains and the potentially life-changing consequences these can have for children;
- S. Whereas the United Nations High Commissioner for Human Rights and the United Nations Human Rights Council have stated that climate change has an adverse impact on the full and effective enjoyment of human rights; whereas states have an obligation to respect human rights when addressing adverse impacts caused by climate change; whereas any corporate due diligence legislation must be in line with the Paris Agreement;
- T. Whereas systemic corruption violates the principles of transparency, accountability and non-discrimination, with severe implications for the effective enjoyment of human rights; whereas the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption oblige Member States to implement effective practices aimed at the prevention of corruption; whereas provisions of the United Nations Convention against Corruption should form part of due diligence obligations in legislation;
- U. Whereas this alarming situation has highlighted the urgency regarding making businesses more responsive to, responsible and accountable for the adverse impacts they cause or contribute or are directly linked to and prompted a debate as to how to do so, while underlining the need for a proportionate and harmonised Union-wide approach to these matters, which is also necessary to be able to achieve the United Nations (UN) SDGs;
- V. Whereas, according to the United Nations High Commissioner for Human Rights, a large number of human rights defenders are under threat because they raise concerns about adverse human rights impacts of business operations;
- W. Whereas that debate has led, among other things, to the adoption of due diligence frameworks and standards within the United Nations, the Council of Europe, the OECD and the ILO; whereas those standards are, however, voluntary and, consequently, their uptake has been limited; whereas Union legislation should progressively and constructively build on these frameworks and standards; whereas the Union and

Member States should support and engage in the ongoing negotiations to create a legally binding UN instrument on Transnational Corporations and Other Business Enterprises with respect to human rights and the Council should give a mandate to the Commission to be actively involved in those ongoing negotiations;

- X. Whereas, according to a Commission study, only 37% of business respondents currently conduct environmental and human rights due diligence;
- Y. Whereas some Member States, such as France, and the Netherlands, have adopted legislation to enhance corporate accountability and have introduced mandatory due diligence frameworks; whereas other Member States are currently considering the adoption of such legislation, including Germany, Austria, Sweden, Finland, Denmark and Luxembourg; whereas the lack of joint Union-wide approach in this matter may lead to less legal certainty when it comes to business prerogatives and to imbalances in fair competition which would in turn disadvantage undertakings that are proactive regarding social and environmental matters; whereas the lack of harmonised corporate due diligence legislation jeopardises the level playing field of undertakings operating in the Union;
- Z. Whereas the Union has already adopted due diligence legislation for specific sectors, such as the Conflict Minerals Regulation, the Timber Regulation, the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation and the Anti-Torture Regulation; whereas those pieces of legislation have become a benchmark for targeted binding supply chain due diligence legislation; whereas the future Union legislation should support undertakings in managing and living up to their corporate responsibilities and be fully aligned with all existing sectoral due diligence and reporting obligations, such as the Non-Financial Reporting Directive, and coherent with relevant national legislation, to avoid duplications;
- AA. Whereas the Commission has proposed to develop a comprehensive strategy for the garment sector as part of the new Circular Economy Action Plan, that, by including a uniform set of standards regarding due diligence and social responsibility, could be another example of integrating a more detailed approach for a specific sector; whereas the Commission should propose further sector-specific Union legislation on mandatory due diligence, for example for sectors such as forest and ecosystem risk commodities and the garment sector;
- 1. Considers that voluntary due diligence standards have limitations and have not achieved significant progress in preventing human rights and environmental harm and in enabling access to justice; considers that the Union should urgently adopt binding requirements for undertakings to identify, assess, prevent, cease, mitigate, monitor, communicate, account for, address and remediate potential and/or actual adverse impacts on human rights, the environment and good governance in their value chain; believes that this would be beneficial for stakeholders, as well as for businesses in terms of harmonisation, legal certainty, a level playing field and mitigating unfair competitive advantages of third countries that result from lower protection standards as well as social and environmental dumping in international trade; stresses that this would enhance the reputation of Union undertakings and of the Union as a standard setter; stresses the proven benefits for undertakings of having effective responsible business

conduct practices in place, which include better risk-management, a lower cost of capital, overall better financial performance, and enhanced competitiveness; is convinced that due diligence increases certainty and transparency as regards the supply practices of undertakings sourcing from countries outside the Union and will help protect consumer interests by ensuring the quality and reliability of products, and should lead to more responsible purchasing practices and long-term supplier relationships of undertakings; stresses that the framework should be based on an obligation for undertakings to take all proportionate and commensurate measures and make efforts within their means;

2. Stresses that while it is the duty of undertakings to respect human rights and the environment, it is the responsibility of states and governments to protect human rights and the environment, and this responsibility should not be transferred to private actors; recalls that due diligence is primarily a preventative mechanism and that undertakings should be first and foremost required to take all proportionate and commensurate measures and to make efforts within their means to identify potential or actual adverse impacts and adopt policies and measures to address them;
3. Calls on the Commission to always include, in the external policy activities, including in trade and investment agreements, provisions and discussions on the protection of human rights;
4. Asks the Commission to conduct a thorough review of undertakings based in Xinjiang that export products to the Union in order to identify potential breaches of human rights, especially those related to the repression of Uighurs;
5. Recalls that the full enjoyment of human rights, including the right to life, health, food and water, depends on the preservation of biodiversity, which is the foundation of ecosystem services to which human well-being is intrinsically linked;
6. Notes that due to the COVID-19 pandemic small and medium-sized undertakings face a challenging situation; believes that providing them with support and the creation of a favourable market environment are crucial objectives of the Union;
7. Stresses that human rights violations and breaches of social and environmental standards can be the result of an undertaking's own activities or of those of its business relationships under their control and along their value chain; underlines therefore that due diligence should encompass the entire value chain, but should also involve having a prioritisation policy; recalls that all human rights are universal, indivisible, interdependent and interrelated and should be promoted and respected in a fair, equitable and non-discriminatory manner;
8. Calls for supply chain traceability to be strengthened, based on the rules of origin of the Union Customs Code; notes that the Union's human rights policy and future corporate due diligence requirements adopted as a result of a legislative proposal from the Commission should be taken into account in the conduct of Union trade policy, including in relation to the ratification of trade and investment agreements and should cover trade with all trading partners, not just those with whom the Union has concluded a free trade agreement; stresses that Union trade instruments should include strong enforcement mechanisms such as withdrawal from preferential access in the event of

non-compliance;

9. Considers that the scope of any future mandatory Union due diligence framework should be broad and cover all large 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 sector of activity and of whether they are publicly owned or publicly controlled undertakings, as well as all publicly listed small and medium-sized undertakings and high-risk small and medium-sized undertakings; considers that the framework should also cover undertakings which are established outside the Union, but are active on the internal market;
10. Is convinced that compliance with the due diligence obligations should be a condition for access to the internal market and that operators should be required to establish and provide evidence, through the exercise of due diligence, that the products that they place on the internal market are in conformity with the environmental and human rights criteria set out in the future due diligence legislation; calls for complementary measures such as the prohibition of the importation of products related to severe human rights violations such as forced labour or child labour; stresses the importance of including the objective of combating forced labour and child labour in Trade and Sustainable Development chapters of Union trade agreements;
11. Considers that some undertakings, and particularly publicly listed small and medium-sized undertakings and high-risk small and medium-sized undertakings may need less extensive and formalised due diligence processes, and that a proportionate approach should take into account, amongst other elements, the sector of activity, the size of the undertaking, the severity and likelihood of risks related to the respect of human rights, governance and environmental intrinsic to its operations and to the context of its operations, including geographic, its business model, its position in value chains and the nature of its products and services; calls for specific technical assistance to be provided to Union undertakings, especially to small and medium-sized undertakings, so that they can comply with due diligence requirements;
12. Underlines that due diligence strategies should be aligned with the SDGs and Union policy objectives in the field of human rights and the environment, including the European Green Deal, and the commitment to reduce greenhouse gas emissions by at least 55% by 2030, and Union international policy, especially the Convention on Biological Diversity and the Paris Agreement and its goals to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1,5°C above pre-industrial levels; asks the Commission to develop with the meaningful participation of relevant Union bodies, offices and agencies, a set of due diligence guidelines, including sector-specific guidelines, on how to comply with existing and future Union and international mandatory legal instruments and be in line with voluntary due diligence frameworks, including coherent methodologies and clear metrics to measure impacts and progress, in the areas of human rights, the environment and good governance, reiterates that such guidelines would be especially useful for small and medium-sized undertakings;
13. Notes that certified industry schemes offer small and medium-sized undertakings opportunities to efficiently pool and share responsibilities; underlines however that

relying on certified industry schemes does not exclude the possibility for an undertaking to be in breach of its due diligence obligations, nor to be held liable in accordance with national law; notes that certified industry schemes must be assessed, recognised and overseen by the Commission;

14. Calls on the Commission to honour the principle of policy coherence for development, enshrined in Article 208 TFEU, in future legislation; stresses that it is important to minimise the possible contradictions and build synergies with development cooperation policy to the benefit of developing countries and to increase the effectiveness of development cooperation; considers that, in practical terms, this means actively involving the Commission's Directorate-General for International Cooperation and Development in the ongoing legislative work and conducting a thorough assessment of the impact of the relevant future Union legislation on developing countries from an economic, social, human rights and environmental perspective, in line with the Better Regulation Guidelines<sup>36</sup> and Tool 34 of the Better Regulation Toolbox<sup>37</sup>; notes that the results of that assessment should inform the future legislative proposal;
15. Stresses that complementarity and coordination with development cooperation policy, instruments and actors is decisive and that the future Union legislation should therefore provide for some provisions in this regard;
16. Stresses that due diligence obligations should be carefully designed to be an ongoing and dynamic process instead of a 'box-ticking exercise' and that due diligence strategies should be in line with the dynamic nature of adverse impacts; considers that those strategies should cover every actual or potential adverse impact on human rights, the environment or good governance, although the severity and likelihood of the adverse impact should be considered in the context of a prioritisation policy; believes that in line with the principle of proportionality it is important to align existing tools and frameworks as much as possible; emphasises the need for the Commission to carry out a robust, impact assessment in order to identify types of potential or actual adverse impacts, to investigate the consequences on the European and global level playing field, including the administrative burden on businesses and the positive consequences on human rights, the environment and good governance, and to design rules that enhance competitiveness, the protection of stakeholders and of the environment, and are functional and applicable to all actors on the internal market, including high risk and publicly listed small and medium-sized undertakings;
17. Highlights that comprehensive transparency requirements are a crucial element of legislation on mandatory due diligence; notes that enhanced information and transparency give suppliers and manufacturers better oversight control and understanding of their supply chains and improve stakeholders and consumers monitoring capacity as well as public confidence in production; stresses in this regard that the future due diligence legislation should take into consideration digital solutions to facilitate the public access to information and to minimise bureaucratic burdens;
18. Notes that due diligence also necessitates measuring the effectiveness of processes and measures through adequate audits and communicating the results, including periodically

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<sup>36</sup> [SWD\(2017\)0350](#).

<sup>37</sup> [https://ec.europa.eu/info/files/better-regulation-toolbox-34\\_en](https://ec.europa.eu/info/files/better-regulation-toolbox-34_en)

producing public evaluation reports on the due diligence processes of an undertaking and its results in a standardised format based on an adequate and coherent reporting framework; recommends that the reports be easily accessible and available, especially to those affected and potentially affected; states that disclosure requirements should take into account competition policy and the legitimate interest to protect internal business know-how and should not lead to disproportionate obstacles or a financial burden for undertakings;

19. Highlights that effective due diligence requires that undertakings carry out in good faith effective, meaningful and informed discussions with relevant stakeholders; stresses that a Union due diligence framework should ensure the involvement of trade unions and workers' representatives, at national, Union and global levels, in the establishment and implementation of the due diligence strategy; stresses that procedures for stakeholders' engagement must ensure safety and protection of physical and legal integrity of stakeholders;
20. Emphasises that engagement with trade partners, in a spirit of reciprocity, is important for ensuring due diligence effects change; underlines the importance of accompanying measures and projects to facilitate the implementation of Union free trade agreements and calls for a strong link between such measures and horizontal due diligence legislation; requests therefore that financial instruments, such as 'Aid for Trade', are used to promote and support the uptake of responsible business conduct in partner countries, including technical support on due diligence training, traceability mechanisms and embedding export-led reforms in partner countries; emphasises in this regard the need to promote good governance;
21. Requests that trade instruments be linked to, and Union Delegations be actively involved in, the monitoring of the application of the future due diligence legislation by Union undertakings operating outside the Union, including by convening meaningful exchanges of views with and supporting rights holders, local communities, chambers of commerce and national human rights institutions, civil society actors and trade unions; calls on the Commission to cooperate with Member States' chambers of commerce and national human rights institutions in providing online tools and information to support implementation of the future due diligence legislation;
22. Notes that coordination at sectoral level could enhance the consistency and effectiveness of due diligence efforts, allow for the sharing of best practices and contribute to levelling the playing field;
23. Considers that, to enforce due diligence, Member States should set up or designate national authorities to share best practices, carry out investigations, supervise and impose sanctions, taking into account the severity and repeated nature of the infringements; underlines that such authorities should be provided with sufficient resources and powers to realise their mission; considers that the Commission should set up a European due diligence network to be responsible for, together with the national competent authorities, the coordination and convergence of regulatory, investigative, enforcement and supervisory practices, and the sharing of information and to monitor the performance of national competent authorities; considers that the Member States and the Commission should ensure that undertakings publish their due diligence

strategies on a publicly accessible and centralised platform, supervised by the national competent authorities;

24. Highlights that comprehensive transparency requirements are a crucial element of legislation on mandatory due diligence; notes that enhanced information and transparency give suppliers and manufacturers better control and understanding of their supply chains and improve public confidence in production; stresses in this regard that the future due diligence legislation should focus on digital solutions to minimise bureaucratic burdens and calls on the Commission to investigate new technological solutions supportive of establishing and improving traceability in global supply chains; recalls that sustainable blockchain technology can contribute to this goal;
25. Considers that a grievance mechanism at the level of an undertaking can provide effective early-stage recourse, provided they are legitimate, accessible, predictable, equitable, transparent, human rights-compatible, based on engagement and dialogue, and protect against retaliation; considers that such private mechanisms must be properly articulated with judicial mechanisms in order to guarantee the highest protection of fundamental rights, including the right to a fair trial; stresses that such mechanisms should never undermine the right of a victim to file a complaint before competent authorities or to seek justice before a court; suggests that judicial authorities should be able to act on a complaint by third parties through safe and accessible channels without threat of reprisals;
26. Welcomes the announcement that the Commission proposal will include a liability regime and considers that in order to enable victims to obtain an effective remedy, undertakings should be held liable in accordance with national law for the harm the undertakings under their control have caused or contributed to by acts or omissions, where the latter have committed violations of human rights or have caused environmental harm, unless the undertaking can prove that it acted with due care in line with its due diligence obligations and took all reasonable measures to prevent such harm; underlines that time limitations, difficulties to access to evidence, as well as gender inequality, vulnerabilities and marginalisation can be major practical and procedural barriers faced by victims of human rights violations in third countries, obstructing their access to effective legal remedy; stresses the importance of effective access to remedies without fear of retaliation and in a gender-responsive manner, and for persons in situations of vulnerability, as enshrined in Article 13 of the Convention on the Rights of Persons with Disabilities; recalls that Article 47 of the Charter requires the Member States to provide legal aid to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice;
27. Notes that the traceability of undertakings in the value chain can be difficult; calls on the Commission to evaluate and propose tools in order to help undertakings with the traceability of their value chains; stresses that digital technologies could assist undertakings with their value chain due diligence and reduce costs; considers that the innovation objective of the Union should be linked to promoting human rights and sustainable governance under the future due diligence requirements;
28. Considers that conducting due diligence should not automatically absolve undertakings from liability for the harm they have caused or have contributed to; further considers,

however, that having a robust and effective due diligence process in place can help undertakings to avoid causing harm; further consider that due diligence legislation should apply without prejudice to other applicable subcontracting, posting or supply chain liability frameworks established at national, European and international level, including joint and several liability in subcontracting chains;

29. Considers that, in line with the UN ‘Protect, Respect and Remedy’ Framework considerations on the rights of victims to a remedy, the jurisdiction of Union courts should be extended to business-related civil claims brought against Union undertakings on account of harm caused within their value chain on account of human rights violations; further considers necessary the introduction into Union law of a *forum necessitatis* to give access to a court to victims who risk being denied justice;
30. 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 Union undertakings should be allowed to choose the law of the legal system with high human rights standards, which could be that of the place where the defendant undertaking is domiciled;
31. Calls on the Commission to propose a negotiating mandate for the Union to constructively engage in the negotiation of a UN international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other businesses;
32. Recommends that the Commission’s support in relation to the rule of law, good governance and access to justice in third countries prioritise the capacity-building of local authorities in the areas addressed by the future legislation, where appropriate;
33. 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;
34. Considers that the requested proposal does not have financial implications for the general budget of the Union;
35. 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 DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 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 Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

1. The awareness of the responsibilities of businesses with regard to the adverse impact of their value chains on 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, including children, faced. At the same time, many oil, gas, mining and food industry undertakings 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 that businesses respected human rights and about ensuring that victims had access to justice, in particular when the value chains of some businesses extended into countries with weak legal systems and law enforcement, and holding them accountable in accordance with national law for causing or contributing to harm. In this light, the United Nations (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

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<sup>1</sup> OJ ...

with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access by victims to effective remedies, both judicial and non-judicial.

3. That 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 provided a non-binding framework for undertakings to put their responsibility to respect human rights into practice. Subsequently, other international organisations developed due diligence standards based on the UNGPs. The 2011 Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises refer extensively to due diligence and the OECD has developed guidance to help undertakings carry out due diligence in specific sectors and supply chains. In 2016, the Committee of Ministers of the Council of Europe adopted a recommendation addressed to Member States on human rights and business calling on its Member States to adopt legislative and other measures to ensure that human rights violations in an undertaking's value chain give rise to civil, administrative and criminal liability before European courts. 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 undertakings 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. The 2012 United Nations Global Compact, Save the Children and UNICEF Children's Rights and Business Principles identify key children's rights considerations relating to adverse business impact and UNICEF has developed a series of guidance documents supporting business due diligence and children. The 2013 UN Committee on the Rights of the Child General Comment No. 16 identifies a comprehensive range of State obligations regarding the impact of the business sector on children's rights, including States requiring businesses to undertake child-rights due diligence.
4. Undertakings 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 undertakings that take their duty to respect human rights seriously, their voluntary nature can hamper their effectiveness and their effect has proved limited, with a restricted number of undertakings voluntarily implementing human rights due diligence in relation to their activities and those of their business relationships. This is exacerbated by many undertakings' excessive focus on short-term profit maximisation.
5. Existing international due diligence instruments have failed to provide victims of human rights and environmental adverse impacts with access to justice and remedies because of their non-judicial and voluntary nature. The primary duty to protect human rights and provide access to justice lies with States, and the lack of public judicial mechanisms to hold undertakings liable for damages occurring in their value chains should not and cannot adequately be compensated by the development of private operational grievance mechanisms. Whereas such mechanisms are useful in providing emergency relief and fast compensation for small damages, they should be closely regulated by public authorities and should not undermine the right of victims to access justice and the right

to a fair trial before public courts.

6. The Union has adopted mandatory due diligence frameworks in very specific areas with the aim of combating sectors that harm the interests of the Union or its Member States, such as the financing of terrorism or deforestation. In 2010, the Union adopted Regulation (EU) No 995/2010 of the European Parliament and of the Council<sup>2</sup>, 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. Regulation (EU) 2017/821 of the European Parliament and of the Council<sup>3</sup> establishes a Union system for supply chain due diligence in order to curtail opportunities for armed groups, terrorist groups and/or security forces to trade in tin, tantalum and tungsten, their ores, and gold.
7. A different, more general and complementary approach based on transparency and sustainability was taken by Directive 2014/95/EU of the European Parliament and of the Council<sup>4</sup>, which imposes on undertakings with more than 500 employees the obligation to report on the policies they pursue in relation to environmental, social, employee-related, and anti-corruption and bribery matters and respect for human rights, including due diligence.
8. In some Member States the need to make undertakings more responsive to human rights and to environmental and good 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 undertakings requires some large undertakings to adopt, publish and implement a due diligence plan to identify and prevent human rights, health and safety and environmental risks caused by the undertaking, its subsidiaries, sub-contractors or suppliers. The French law establishes an administrative liability for the failure to abide by its due diligence requirements, and a civil liability for the undertaking to provide remedies for harm caused. In many other Member States, debate is ongoing as to the introduction of mandatory due diligence requirements for undertakings and some Member States are currently considering the adoption of such legislation, including Germany, Sweden, Austria, Finland, Denmark, and Luxembourg.

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<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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).

9. In 2016, eight national parliaments expressed their support for a ‘Green Card Initiative’ calling on the Commission to bring forward legislation to ensure corporate accountability for human rights abuses, including the Parliaments of Estonia, Lithuania, Slovakia and Portugal, the House of Representatives in the Netherlands, the Senate of the Republic in Italy, and the National Assembly in France, as well as the UK House of Lords.
10. The insufficient harmonisation of laws can have an adverse impact on the freedom of establishment. Further harmonisation is therefore essential to prevent unfair competitive advantages being created. To create a level playing field, it is important that the rules apply to all undertakings – be they Union or non-Union – operating in the internal market.
11. There are significant differences between Member States’ legal and administrative provisions on due diligence, including as regards civil liability, that apply to Union undertakings. It is essential to prevent future barriers to trade stemming from the divergent development of such national laws.
12. In order to ensure a level playing field, the responsibility for undertakings 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 should ensure that all Union and non-Union large undertakings and high-risk or publicly listed small and medium-sized undertakings operating in the internal market are subject to harmonised due diligence obligations, which will prevent regulatory fragmentation and improve the functioning of the internal market.
13. The establishment of mandatory due diligence requirements at Union level would be beneficial to businesses in terms of harmonization, legal certainty and the securing of a level playing field and would give undertakings 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 Union due diligence standard, could help foster the emergence of a global standard for responsible business conduct.
14. This Directive aims to prevent and mitigate potential or actual adverse impacts on human rights, the environment and good governance in the value chain, as well as at ensuring that undertakings can be held accountable for such impacts, and that anyone who has suffered harm in this regard can effectively exercise the right to a fair trial before a court and the right to obtain remedies in accordance with national law.
15. This Directive is not aimed at replacing Union sector-specific due diligence legislation already in force or precluding further Union sector-specific legislation from being introduced. Consequently, it should apply without prejudice to other due diligence requirements established in Union sector-specific legislation, in particular Regulations (EU) No 995/2010 and (EU) 2017/821 of the European Parliament and of the Council, unless the due diligence requirements in this Directive provide for more thorough due diligence with regard to human rights, the environment or good governance.
16. 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 applicable subcontracting, posting or supply chain liability frameworks established at national, Union or international level. The fact that an undertaking has carried out its due diligence obligations under this Directive should not exonerate it from or weaken its obligations under other liability frameworks and therefore any legal proceedings brought against it based on other liability frameworks should not be dismissed on account of that circumstance.

17. This Directive should apply to all large undertakings governed by the law of a Member State, established in the territory of the Union or operating in the internal market, regardless of whether they are private or state-owned and of the economic sector they are active in, including the financial sector. This Directive should also apply to publicly listed and high-risk small and medium-sized undertakings\*.
18. Proportionality is built into the due diligence process, as this process is contingent on the severity and likelihood of adverse impacts that an undertaking might cause, contribute to or be directly linked to, its sector of activity, the size of the undertaking, the nature and context of its operations including geographic, its business model, its position in the value chain and the nature of its products and services. A large undertaking whose direct business relationships are all domiciled within the Union or a small or medium-sized undertaking that, after carrying out a risk assessment, concludes that it has not identified any potential or actual adverse impacts in its business relationships, could publish a statement to that effect, including its risk assessment containing the relevant data, information and methodology, which should in any case be reviewed in the event of changes to the undertakings' operations, business relationships or operating context.
19. 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 state support, including through state aid, public procurement, export credit agencies or government-backed loans, to undertakings that do not comply with the objectives of this Directive.
20. For the purposes of this Directive, due diligence should be understood as the obligation of an undertaking to take all proportionate and commensurate measures and make efforts within their means to prevent adverse impacts on human rights, the environment or good governance from occurring in their value chains, and to address such impacts when they occur. In practice, due diligence consists in a process put in place by an undertaking in order to identify, assess, prevent, mitigate, cease, monitor, communicate, account for, address and remedy the potential and/or actual adverse impacts on human rights, including social, trade union and labour rights, on the environment, including the contribution to climate change, and on good governance, in its own operations and its

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\* The Commission should identify high-risk sectors of economic activity with a significant impact on human rights, the environment and good governance in order to include the small and medium-sized undertakings operating in those sectors within the scope of this Directive. High-risk small and medium-sized undertakings should be defined by the Commission in this Directive. The definition should take into account the sector of the undertaking or its type of activities.

business relationships in the value chain.

21. Annex xx sets out a list of types of business-related adverse impacts on human rights. To the extent that they are relevant for undertakings, the Commission should include in that Annex the adverse impacts on human rights expressed in the international human rights conventions that are binding upon the Union or the Member States, the International Bill of Human Rights, International Humanitarian Law, the United Nations human rights instruments on the rights of persons belonging to particularly vulnerable groups or communities, 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 the Tripartite of principles concerning multinational enterprises and social policy (MNE declaration) and a number of ILO Conventions, such as those concerning freedom of association, collective bargaining, 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. The Commission should ensure that those types of impacts listed are reasonable and achievable.
22. Environmental adverse impacts are often closely linked to human rights adverse impacts. 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 this Directive.
23. Annex xxx sets out a list of types of business-related adverse impacts on the environment, whether temporary or permanent, that are relevant for undertakings. Such impacts should include, but should not be limited to, production of waste, diffuse pollution and greenhouse emissions that lead to a global warming of more than 1,5°C above pre-industrial levels, deforestation, and any other impact on the climate, air, soil and water quality, the sustainable use of natural resources, biodiversity and ecosystems. The Commission should ensure that those types of impacts listed are reasonable and achievable. To contribute to the internal coherence of Union legislation and to provide legal certainty, this list is drawn up in line with Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>5</sup>.

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<sup>5</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June

24. Annex xxxx sets out a list of types of business-related adverse impacts on good governance that are relevant for undertakings. They should include 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. The Commission should ensure that those types of impacts listed are reasonable and achievable.
25. Adverse impacts on human rights, the environment and good governance are not gender-neutral. Undertakings are 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.
26. Human rights, environmental and governance potential or actual adverse impacts can be specific and more salient in conflict-affected areas. In this regard, undertakings operating in conflict-affected areas should conduct appropriate human rights, environmental and governance due diligence, respect their international humanitarian law obligations, and refer to existing international standards and guidance including the Geneva Conventions and its additional protocols.
27. Member States are encouraged to monitor the undertakings under their jurisdictions with operations or business relationships in conflict-affected areas, and accordingly take the necessary actions to protect human rights, the environment and good governance in line with their legal obligations, with due consideration for the specific and salient risks present in those areas.
28. Business impacts on the full spectrum of rights defined in the UN Convention Rights of the Child and other relevant international standards. Childhood is a unique period of physical, mental, emotional and spiritual development and violations of children's rights, such as exposure to violence or abuse, child labour, inappropriate marketing, or unsafe products or environmental hazards, may have lifelong, irreversible and even transgenerational consequences. Mechanisms for corporate due diligence and corporate accountability designed without due attention being given to children's considerations risk being ineffective in protecting their rights.
29. Violations of or adverse impacts on human rights and social, environmental and climate 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 obligations should encompass the entire value chain, while taking a risk-based approach and setting up a prioritization strategy on the basis of Principle 17 of the UN Guiding Principles. However, tracing all undertakings intervening in the value chain can be difficult. The

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2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

Commission should evaluate and propose tools in order to help undertakings with the traceability of their value chains. This could include innovative information technologies, such as blockchain, that allow all data to be traced, the development of which should be encouraged in order to minimise administrative costs and avoid redundancies for undertakings performing due diligence.

30. Due diligence is primarily a preventative mechanism that requires undertakings to take all proportionate and commensurate measures and make efforts within their means to identify and assess potential or actual adverse impacts and to adopt policies and measures to cease, prevent, mitigate, monitor, communicate, address, remediate them, and account for how they address those impacts. Undertakings should be required to produce a document in which they publicly communicate, with due regard for commercial confidentiality, their due diligence strategy with reference to each of those stages. This due diligence strategy should be duly integrated into the undertaking's overall business strategy. It should be evaluated annually, and revised whenever this is considered necessary as a result of such evaluation.
31. Undertakings that publish no risk statements should not be exempt from possible checks or investigations by Member State competent authorities in order to ensure that they comply with the obligations provided for in this Directive, and they can be held liable in accordance with national law.
32. Undertakings should set up an internal value chain-mapping process that involves making all proportionate and commensurate efforts in order to identify their business relationships in their value chain.
33. Commercial confidentiality as referred to in this Directive should apply in respect of any information which meets of the requirements to be considered a 'trade secret' in accordance with the Directive (EU) 2016/943 of the European Parliament and of the Council<sup>6</sup>, namely information that is secret, in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known or readily accessible to persons within the circles that normally deal with the kind of information in question, that it has commercial value because it is secret, and that it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
34. Due diligence should not be a 'box-ticking' exercise but should consist of an ongoing process and assessment of risks and impacts, 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 strive to cover every actual or potential adverse impact, although the nature and context of their operations, including geographical, the severity and likelihood of the adverse impact should be considered if the establishment of a prioritisation policy is required. Third-party certification schemes can complement due diligence strategies, provided that they are adequate in terms of scope and meet appropriate levels of transparency, impartiality, accessibility and reliability. However,

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<sup>6</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

third-party certification should not constitute grounds for justifying a derogation from the obligations set out in this Directive or affect an undertaking's potential liability in any way.

35. In order for a subsidiary to be deemed in compliance with the obligation to establish a due diligence strategy, if the subsidiary is included in the due diligence strategy of its parent undertaking, the subsidiary should clearly state that that is the case in its annual reporting. Such a requirement is necessary to ensure that there is transparency for the public to enable national competent authorities to carry out the appropriate investigations. The subsidiary should ensure that the parent undertaking possesses sufficient, relevant information in order to perform due diligence on its behalf.
36. The appropriate frequency of verification in a given time period implied by the term 'regularly' should be determined in relation to the likelihood and severity of adverse impacts. The more likely and severe the impacts, the more regularly the verification of compliance should be carried out.
37. Undertakings should first try to address and solve a potential or actual impact on human rights, the environment or good governance in discussion with stakeholders. An undertaking which has leverage to prevent or mitigate the adverse impact should exercise it. An undertaking wishing to increase its leverage could, for example, offer capacity-building or other incentives to the related entity, or collaborate with other actors. Where an adverse impact cannot be prevented or mitigated and the leverage cannot be increased, a decision to disengage from a supplier or other business relationship could be a last resort and should be done in a responsible manner.
38. Sound due diligence requires that all relevant stakeholders be consulted effectively and meaningfully, and that trade unions in particular be appropriately involved. The consultation and involvement of stakeholders can help undertakings to identify potential and actual adverse impacts more precisely and to set up a more effective due diligence strategy. This Directive therefore requires the discussion with and involvement of stakeholders at all stages of the due diligence process. Furthermore, such discussion and involvement may give voice to those with a strong interest in the long-term sustainability of an undertaking. Stakeholder participation could help improve the long-term performance and profitability of undertakings, as their increased sustainability would have positive aggregate economic effects.
39. When carrying out discussions with stakeholders as provided for by this Directive, undertakings should ensure that where the stakeholders are indigenous peoples such discussions are conducted in accordance with international human rights standards, such as the United Nations Declaration on the Rights of Indigenous Peoples<sup>7</sup>, including free, prior and informed consent and indigenous peoples' right to self-determination.
40. The concept of stakeholder means persons whose rights and interests may be affected by the decisions of an undertaking. The term therefore includes workers, local communities, children, indigenous peoples, citizens' associations and shareholders, and organisations whose statutory purpose is to ensure that human and social rights, climate, environmental and good governance standards are respected, such as trade unions and

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<sup>7</sup> [https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

civil society organisations.

41. To avoid the risk of critical stakeholder's voices remaining unheard or marginalised in the due diligence process, this Directive should grant relevant stakeholders the right to safe and meaningful discussions as regards the undertaking's due diligence strategy, and should ensure the appropriate involvement of trade unions or of workers' representatives.
42. Relevant information on the due diligence strategy should be communicated to potentially affected stakeholders upon requests and in a manner appropriate to those stakeholder's context, for instance by taking into account the official language of the country of the stakeholders, their level of literacy and of access to the internet. However, there should be no obligation on undertakings to proactively disclose their entire due diligence strategy in a manner appropriate to the stakeholder's context, and the requirement to communicate relevant information should be proportionate to the nature, context and size of the undertaking.
43. Procedures to raise concerns should ensure that the anonymity or confidentiality of those concerns, as appropriate in accordance with national law, as well as the safety and physical and legal integrity of all complainants, including human rights and environmental defenders, is protected. In the event that such procedures concern whistleblowers, those procedures should be in line with Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>8</sup>.
44. Undertakings should be required to make all proportionate and commensurate efforts within their means to identify their suppliers and subcontractors and make relevant information accessible to the public, with due regard to commercial confidentiality. 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 those that, during the due diligence process, might have been identified by the undertaking as posing major risks. This Directive, however, should take account of the fact that not all undertakings have the same resources or capabilities to identify all their suppliers and subcontractors and therefore this obligation should be made 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.
45. For due diligence to be embedded in the culture and structure of an undertaking, the members of the administrative, management and supervisory bodies of the undertaking should be responsible for the adoption and implementation of its sustainability and due diligence strategies.
46. Coordination of undertakings' due diligence efforts and voluntary collaborative actions at sectoral or cross-sectoral level could enhance the consistency and effectiveness of their due diligence strategies. To this end, Member States could encourage the adoption of due diligence action plans at sectoral or cross-sectoral level. Stakeholders should

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<sup>8</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

participate in the definition of those plans. The development of such collective measures should in no way absolve the undertaking of its individual responsibility to perform due diligence or prevent it from being held liable for harm it caused or contributed to in accordance with national law.

47. In order to be effective, a due diligence framework should include grievance mechanisms at the level of the undertaking or at sectoral level, and, in order to ensure that such mechanisms are effective, undertakings should take decisions informed by the position of stakeholders, when developing grievance mechanisms. Those mechanisms should allow stakeholders to raise reasonable concerns and should function as an early-warning risk-awareness and mediation system. They should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and should be based on engagement and dialogue. Grievance mechanisms should be entitled to make suggestions as to how potential or actual adverse impacts could be addressed by the undertaking involved. They should also be able to propose an appropriate remedy when it is brought to their attention through mediation that an undertaking has caused or contributed to an adverse impact.
48. Grievance mechanisms should not discharge Member States from their primary duty to protect human rights and to provide access to justice and remedies.
49. Member States should designate one or more national authorities to monitor the correct implementation by undertakings of their due diligence obligations and ensure the proper enforcement of this Directive. These national authorities should be independent and should have the appropriate powers and resources to carry out their tasks. They should be entitled to carry out appropriate checks, on their own initiative or based on substantiated and reasonable concerns raised by stakeholders and third parties, and impose effective proportionate and dissuasive administrative sanctions, taking into account the severity and repetition of infringements, in order to ensure that undertakings comply with the obligations set out in the national law. At Union level, a European Due Diligence Network of competent authorities should be set up by the Commission to ensure cooperation.
50. The Commission and the Member States are encouraged to provide for administrative fines comparable in magnitude to fines currently provided for in competition law and data protection law.
51. The national authorities are encouraged to cooperate and share information with the OECD National Contact Points (NCP) and national human rights institutions available in their country.
52. In line with the UNGPs, conducting 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 and adequate due diligence process in place may help undertakings to prevent harm from occurring.
53. When introducing a liability regime, Member States should ensure a rebuttable presumption requiring a certain level of evidence. The burden of proof would be shifted from a victim to an undertaking to prove that an undertaking did not have control over a business entity involved in the human rights abuse.

54. Limitation periods should be deemed reasonable and appropriate if they do not restrict the right of victims to access justice, with due consideration for the practical challenges faced by potential claimants. Sufficient time should be given for victims of human rights, environmental and governance adverse impact to bring judicial claims, taking into account their geographical location, their means and the overall difficulty to raise admissible claims before Union courts.
55. The right to an effective remedy is an internationally recognised human right, enshrined in Article 8 Universal Declaration of Human Rights and in Article 2(3) International Covenant on Civil and Political Rights, 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.
56. Large undertakings are encouraged to set up advisory committees tasked with advising their governing bodies on due diligence matters, and including stakeholders in their composition.
57. Trade unions should be given the necessary resources to exercise their rights in relation to due diligence, including in order to establish connections with trade unions and workers in the undertakings with which the main undertaking has business relationships.
58. Member States should use existing liability regimes or, if necessary, introduce further legislation to ensure that undertakings can, in accordance with national law, be held liable for any harm arising out of adverse impacts on human rights, the environment and governance that they, or entities they control, have caused or contributed to by acts or omissions, unless the undertaking can prove it took all due care in line with this Directive to avoid the harm in question, or that the harm would have occurred even if all due care had been taken.
59. In order to create clarity and certainty and consistency among the practices of undertakings, the Commission should prepare guidelines in consultation with Member States and the OECD and with the assistance of a number of specialised agencies, in particular the EU Fundamental Rights Agency, the European Environment Agency and the European Agency for Small and Medium Sized Enterprises. A number of guidelines on due diligence produced by international organisations already exist and could be used as a reference for the Commission when developing guidelines under this Directive specifically for Union undertakings. This Directive should aim for full harmonization of standards among Member States. In addition to general guidelines which should guide all undertakings and in particular small and medium-sized undertakings 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 undertakings assess the potential and actual adverse impacts of their business operations on human rights, the environment and good governance in a given area. Those fact-sheets should indicate in particular which Conventions and Treaties among those listed in Annexes xx, xxx and xxxx to this

Directive have been ratified by a given country.

60. In order to update the types of adverse impacts, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Annexes xx, xxx and xxxx to this Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>9</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
61. Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Subject matter and objective**

1. This Directive is aimed at ensuring that undertakings under its scope operating in the internal market fulfil their duty to respect human rights, the environment and good governance and do not cause or contribute to potential or actual adverse impacts on human rights, the environment and good governance through their own activities or those directly linked to their operations, products or services by a business relationship or in their value chains, and that they prevent and mitigate those adverse impacts.
2. This Directive lays down the value chain due diligence obligations of undertakings under its scope, namely to take all proportionate and commensurate measures and make efforts within their means to prevent adverse impacts on human rights, the environment and good governance from occurring in their value chains, and to properly address such adverse impacts when they occur. The exercise of due diligence requires undertakings to identify, assess, prevent, cease, mitigate, monitor, communicate, account for, address and remediate the potential and/or actual adverse impacts on human rights, the environment and good governance that their own activities and those of their value chains and business relationships 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.

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<sup>9</sup> OJ L 123, 12.5.2016, p. 1.

3. This Directive further aims to ensure that undertakings can be held accountable and liable in accordance with national law for the adverse impacts on human rights, the environment and good governance that they cause or to which they contribute in their value chain, and aims to ensure that victims have access to legal remedies.
4. This Directive applies without prejudice to further due diligence requirements established in Union sector-specific legislation, in particular Regulation (EU) No 995/2010 and Regulation (EU) 2017/821, unless the due diligence requirements under this Directive provide for more thorough due diligence with regard to human rights, the environment or good governance.
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 applicable subcontracting, posting or value chain liability frameworks, established at national, Union or international level.

## *Article 2* **Scope**

1. This Directive shall apply to large undertakings governed by the law of a Member State or established in the territory of the Union.
2. This Directive shall also apply to all publicly listed small and medium-sized undertakings, as well as high-risk small and medium-sized undertakings.
3. This Directive shall also apply to large undertakings, to publicly listed small and medium-sized undertakings and to small and medium-sized undertakings operating in high risk sectors, which are governed by the law of a third country and are not established in the territory of the Union when they operate in the internal market selling goods or providing services. Those undertakings shall fulfil the due diligence requirements established in this Directive as transposed into the legislation of the Member State in which they operate and be subject to the sanctions and liability regimes established by this Directive as transposed into the legislation of the Member State in which they operate.
4. Member States may exempt micro-undertakings as defined in Directive 2013/34/EU of the European Parliament and of the Council<sup>10</sup> from the application of the obligations set up in this Directive.

## *Article 3* **Definitions**

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

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<sup>10</sup> 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/EEC (OJ L 182, 29.6.2013, p. 19).

- (1) ‘stakeholders’ means individuals, and groups of individuals whose rights or interests may be affected by the potential or actual adverse impacts on human rights, the environment and good governance posed by an undertaking or its business relationships, as well as organisations whose statutory purpose is the defence of human rights, including social and labour rights, the environment and good governance. These can include workers and their representatives, local communities, children, indigenous peoples, citizens’ associations, trade unions, civil society organisations and the undertakings’ shareholders;
- (2) ‘business relationships’ means subsidiaries and commercial relationships of an undertaking throughout its value chain, including suppliers and sub-contractors, which are directly linked to the undertaking’s business operations, products or services;
- (3) ‘supplier’ means any undertaking that provides a product, part of a product, or service to another undertaking, either directly or indirectly, in the context of a business relationship;
- (4) ‘sub-contractor’ means all business relationships that perform a service or an activity that contributes to the completion of an undertaking’s operations;
- (5) ‘value chain’ means all activities, operations, business relationships and investment chains of an undertaking and includes entities with which the undertaking has a direct or indirect business relationship, upstream and downstream, and which either:
  - (a) supply products, parts of products or services that contribute to the undertaking’s own products or services, or
  - (b) receive products or services from the undertaking;
- (6) ‘potential or actual adverse impact on human rights’ means any potential or actual adverse impact that may impair the full enjoyment of human rights by individuals or groups of individuals in relation to human rights, including social, worker and trade union rights, as set out in Annex xx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union’s objectives on human rights. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xx;
- (7) ‘potential or actual adverse impact on the environment’ means any violation of internationally recognised and Union environmental standards, as set out in Annex xxx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union’s objectives on environmental protection and climate change mitigation. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xxx;
- (8) ‘potential or actual adverse impact on good governance’ means any potential or actual adverse impact on the good governance of a country, region or territory, as set in Annex xxxx to this Directive. That Annex shall be reviewed on a regular basis and be consistent with the Union’s objectives on good governance. The Commission is empowered to adopt delegated acts in accordance with Article 17, to amend the list in Annex xxxx;

- (9) ‘control’ means the possibility for an undertaking to exercise decisive influence on another undertaking, in particular by ownership or the right to use all or part of the assets of the latter, or by rights or contracts or any other means, having regard to all factual considerations, which confer decisive influence on the composition, voting or decisions of the decision making bodies of an undertaking;
- (10) ‘contribute to’: means that an undertaking’s activities, in combination with the activities of other entities, cause an impact, or that the activities of the undertaking cause, facilitate or incentivise another entity to cause an adverse impact. The contribution has to be substantial, meaning that minor or trivial contributions are excluded. Assessing the substantial nature of the contribution and understanding when the actions of the undertaking may have caused, facilitated or incentivised another entity to cause an adverse impact can involve the consideration of multiple factors.

The following factors can be taken into account:

- the extent to which an undertaking may encourage or motivate an adverse impact by another entity, i.e. the degree to which the activity increased the risk of the impact occurring,
- the extent to which an undertaking could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability,
- the degree to which any of the undertaking’s activities actually mitigated the adverse impact or decreased the risk of the impact occurring.

The mere existence of a business relationship or activities which create the general conditions in which it is possible for adverse impacts to occur does not in itself constitute a relationship of contribution. The activity in question should substantially increase the risk of adverse impact.

#### *Article 4*

#### **Due diligence strategy**

1. Member States shall lay down rules to ensure that undertakings carry out effective due diligence with respect to potential or actual adverse impacts on human rights, the environment and good governance in their operations and business relationships.
2. Undertakings shall in an ongoing manner make all efforts within their means to identify and assess, by means of a risk based monitoring methodology that takes into account the likelihood, severity and urgency of potential or actual impacts on human rights, the environment or good governance, the nature and context of their operations, including geographic, and whether their operations and business relationships cause or contribute to or are directly linked to any of those potential or actual adverse impact.
3. If a large undertaking, whose direct business relationships are all domiciled within the Union, or a small or medium-sized undertaking concludes, in line with paragraph 2, that it does not cause, contribute to, or that it is not directly linked to any potential or actual adverse impact on human rights, the environment or good governance, it shall publish a

statement to that effect and shall include its risk assessment containing the relevant data, information and methodology that led to this conclusion. In particular, that undertaking may conclude that it has encountered no adverse impacts on human rights, the environment or good governance if its impacts identification and risk assessment analysis determines that all of its direct suppliers perform due diligence in line with this directive. That statement shall be reviewed in the event that new risks emerge or in the event of that undertaking entering into new business relationships that can pose risks.

4. Unless an undertaking concludes, in line with paragraphs 2 and 3 of this Article, that it does not cause or contribute to, or that it is not directly linked to any potential or actual adverse impact on human rights, the environment or good governance, it shall establish and effectively implement a due diligence strategy. As part of their due diligence strategy, undertakings shall:
  - (i) specify the potential or actual adverse impacts on human rights, the environment and good governance identified and assessed in conformity with paragraph 2 of this Article, that are likely to be present in its operations and business relationships, and the level of their severity, likelihood and urgency and the relevant data, information and methodology that led to these conclusions;
  - (ii) map their value chain and, with due regard for commercial confidentiality, publicly disclose relevant information about the undertaking's value chain, which may include names, locations, types of products and services supplied, and other relevant information concerning subsidiaries, suppliers and business partners in its value chain;
  - (iii) adopt and indicate all proportionate and commensurate policies and measures with a view to ceasing, preventing or mitigating potential or actual adverse impacts on human rights, the environment or good governance;
  - (iv) set up a prioritisation strategy on the basis of Principle 17 of the UN Guiding Principles on Business and Human Rights in the event that they are not in a position to deal with all the potential or actual adverse impacts at the same time. Undertakings shall consider the level of severity, likelihood and urgency of the different potential or actual adverse impacts on human rights, the environment or good governance, the nature and context of their operations, including geographic, the scope of the risks, their scale and how irremediable they might be, and if necessary, use the prioritisation policy in dealing with them.
5. Undertakings shall ensure that their business strategy and their policies are in line with their due diligence strategy. Undertakings shall include explanations in their due diligence strategies in that regard.
6. The subsidiaries of an undertaking shall be deemed in compliance with the obligation to establish a due diligence strategy if their parent undertaking includes them in their due diligence strategy.
7. Undertakings shall carry out value chain due diligence which is proportionate and commensurate to the likelihood and severity of their potential or actual adverse impacts

and their specific circumstances, particularly their sector of activity, the size and length of their value chain, the size of the undertaking, its capacity, resources and leverage.

8. Undertakings shall ensure that their business relationships put in place and carry out human rights, environmental and good governance policies that are in line with their due diligence strategy, including for instance by means of framework agreements, contractual clauses, the adoption of codes of conduct or by means of certified and independent audits. Undertakings shall ensure that their purchase policies do not cause or contribute to potential or actual adverse impacts on human rights, the environment or good governance.
9. Undertakings shall regularly verify that subcontractors and suppliers comply with their obligations under paragraph 8.

#### *Article 5*

### **Stakeholder engagement**

1. Member States shall ensure that undertakings carry out in good faith effective, meaningful and informed discussions with relevant stakeholders when establishing and implementing their due diligence strategy. Member States shall guarantee, in particular, the right for trade unions at the relevant level, including sectoral, national, European and global levels, and for workers' representatives to be involved in the establishment and implementation of the due diligence strategy in good faith with their undertaking. Undertakings may prioritise discussions with the most impacted stakeholders. Undertakings shall conduct discussions and involve trade unions and workers' representatives in a manner that is appropriate to their size and to the nature and context of their operations.
2. Member States shall ensure that stakeholders are entitled to request from the undertaking that they discuss potential or actual adverse impacts on human rights, the environment or good governance that are relevant to them within the terms of paragraph 1.
3. Undertakings shall ensure that affected or potentially affected stakeholders are not put at risk due to participating in the discussions referred to in paragraph 1.
4. Workers' representatives shall be informed by the undertaking on its due diligence strategy and on its implementation, to which they shall be able contribute, in accordance with Directives 2002/14/EC<sup>11</sup> and 2009/38/EC<sup>12</sup> of the European Parliament and of the Council and Council Directive 2001/86/EC<sup>13</sup>. In addition, the right to bargain

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

<sup>12</sup> Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28).

<sup>13</sup> Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European

collectively shall be fully respected, as recognised in particular by ILO Conventions 87 and 98, the Council of Europe European Convention of Human Rights and European Social Charter, as well as the decisions of the ILO Committee on Freedom of Association, the Committee of Experts on Application of Conventions and Recommendations (CEACR) and the Council of Europe European Committee of Social Rights (ECSR).

#### *Article 6*

### **Publication and communication of the due diligence strategy**

1. Member States shall ensure, with due regard for commercial confidentiality, that undertakings make their most up to date due diligence strategy, or the statement including the risk assessment, referred to in Article 4(3), publicly available, and accessible free of charge, especially on the undertakings' websites.
2. Undertakings shall communicate their due diligence strategy to their workers' representatives, trade unions, business relationships and, on request, to one of the national competent authorities designated pursuant to Article 12.

Undertakings shall communicate relevant information concerning their due diligence strategy to potentially affected stakeholders upon request and in a manner appropriate to those stakeholders' context, for example by taking into account the official language of the country of the stakeholders.

3. Member States and the Commission shall ensure that undertakings upload their due diligence strategy or the statement including the risk assessment, referred to in Article 4(3) on a European centralised platform, supervised by the national competent authorities. Such a platform could be the Single European Access Point mentioned by the Commission in its recent Capital Markets Union Action Plan (COM/2020/590). The Commission shall provide a standardised template for the purpose of uploading the due diligence strategies on the European centralised platform.

#### *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 and of its implementation at least once a year, and revise it accordingly whenever revision is considered necessary as a result of the evaluation.

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company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22).

2. The evaluation and revision of the due diligence strategy shall be carried out by discussing with stakeholders and with the involvement of trade unions and workers' representatives in the same manner as when establishing the due diligence strategy pursuant to Article 4.

#### *Article 9*

### **Grievance mechanisms**

1. Undertakings shall provide a grievance mechanism, both as an early-warning mechanism for risk-awareness and as a mediation system, allowing any stakeholder to voice reasonable concerns regarding the existence of a potential or actual adverse impact on human rights, the environment or good governance. Member States shall ensure that undertakings are enabled to provide such a mechanism through collaborative arrangements with other undertakings or organisations, by participating in multi-stakeholder grievance mechanisms or joining a Global Framework Agreement.
2. Grievance mechanisms shall be legitimate, accessible, predictable, safe, equitable, transparent, rights-compatible and adaptable as set out in the effectiveness criteria for non-judicial grievance mechanisms in Principle 31 of the United Nations Guiding Principles on Business and Human Rights and the United Nations Committee on the Rights of the Child General Comment No 16. Such mechanisms shall provide for the possibility to raise concerns either anonymously or confidentially, as appropriate in accordance with national law.
3. The grievance mechanism shall provide for timely and effective responses to stakeholders, both in instances of warnings and of expressions of concern.
4. Undertakings shall report on reasonable concerns raised via their grievance mechanisms and regularly report on progress made in those instances. All information shall be published in a manner that does not endanger the stakeholders' safety, including by not disclosing their identity.
5. Grievance mechanisms shall be entitled to make proposals to the undertaking on how potential or actual adverse impacts may be addressed.
6. Undertakings shall take decisions informed by the position of stakeholders, when developing grievance mechanisms.
7. Recourse to a grievance mechanism shall not preclude the claimants from having access to judicial mechanisms.

#### *Article 10*

### **Extra-judicial remedies**

1. Member States shall ensure that when an undertaking identifies that it has caused or contributed to an adverse impact, it provides for or cooperates with the remediation process. When an undertaking identifies that it is directly linked to an adverse impact on

human rights, the environment or good governance, it shall cooperate with the remediation process to the best of its abilities.

2. The remedy may be proposed as a result of mediation via the grievance mechanism laid down in Article 9.
3. The remedy shall be determined in consultation with the affected stakeholders and may consist of: financial or non-financial compensation, reinstatement, public apologies, restitution, rehabilitation or a contribution to an investigation.
4. Undertakings shall prevent additional harm being caused by providing guarantees that the harm in question will not be repeated.
5. Member States shall ensure that the remediation proposal by an undertaking does not prevent affected stakeholders from bringing civil proceedings in accordance with national law. In particular, victims shall not be required to seek extra-judicial remedies before filing a claim before a court, nor shall ongoing proceedings before a grievance mechanism impede victims' access to a court. Decisions issued by a grievance mechanism shall be duly considered by courts but shall not be binding upon them.

#### *Article 11*

#### **Sectoral due diligence action plans**

1. Member States may encourage the adoption of voluntary sectoral or cross-sectoral due diligence action plans at national or Union level aimed at coordinating the due diligence strategies of undertakings.

Undertakings participating in sectoral or cross-sectoral due diligence action plans shall not be exempt from the obligations provided for in this Directive.

2. Member States shall ensure that relevant stakeholders, particularly trade unions, workers' representatives, and civil society organisations, have the right to participate in the definition of sectoral due diligence action plans without prejudice to the obligation for each undertaking to comply with the requirements laid down in Article 5.
3. Sectoral due diligence actions plans may provide for a single joint grievance mechanism for the undertakings within their scope. The grievance mechanism shall be in line with Article 9 of this Directive.
4. The development of sectoral grievance mechanisms shall be informed by the position of stakeholders.

#### *Article 12*

#### **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 this 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 13*

#### **Investigations on undertakings**

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

Undertakings shall provide all the assistance necessary to facilitate the performance by the competent authorities of their investigations

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 regarding a suspected breach by an undertaking of the obligations provided for in this Directive, including on the basis of substantiated and reasonable concerns raised by any third party.
3. The Commission and Member States competent authorities referred to in Article 12 shall facilitate the submission by third parties of substantiated and reasonable concerns referred to in paragraph 2 of this Article by measures such as harmonised forms for the submission of concerns. The Commission and the competent authorities shall ensure that the complainant has the right to request that his or her concerns remain confidential or anonymous, in accordance with national law. Member States competent authorities referred to in Article 12 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, if such action is possible.
6. Member States shall ensure that if the failure to comply with this Directive could directly lead to irreparable harm, the adoption of interim measures by the undertaking concerned, or, in compliance with the principle of proportionality, the temporary suspension of activities may be ordered. In the case of undertakings governed by the law of a non-Member State that operate in the internal market, the temporary suspension of activities may imply a ban on operating in the internal market.
7. Member States shall provide for sanctions in accordance with Article 18 for undertakings that do not take remedial action within the period of time granted. Competent national authorities shall be empowered to impose administrative fines.
8. Member States shall ensure that the national competent authorities keep records of the investigations 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. Competent authorities shall publish an annual activity report with the most serious cases of non-compliance and how they were dealt with, with due regard to commercial confidentiality.

#### *Article 14* **Guidelines**

1. In order to create clarity and certainty for undertakings, as well as to ensure consistency among their practices, the Commission, in consultation with Member States and the OECD and with the assistance of the European Union 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 and prioritisation, in terms of impacts, sectors and geographical areas, may be applied to due diligence obligations depending on the size and sector of the undertaking. The guidelines shall be made available no later than ... [18 months after the date of entry into force of this Directive].
2. The Commission, in consultation with Member States and the OECD, and with the assistance of the 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, the OECD Due Diligence for Responsible Corporate Lending and Securities Underwriting and the OECD-FAO Guidance for Responsible Agricultural Supply Chains, the United Nations Committee on the Rights of the Child General Comment 16 on State obligations regarding the impact of the business sector on children's rights and the UNICEF Children's Rights and Business Principles. The Commission shall periodically review the relevance of its guidelines and adapt them to new best practices.

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

#### *Article 15*

##### **Specific measures in support of small and medium-sized undertakings**

1. Member States shall ensure that a specific portal for small and medium-sized undertakings is available where they may seek guidance and obtain further support and information about how best to fulfil their due diligence obligations.
2. Small and medium-sized undertakings shall be eligible for financial support to perform their due diligence obligations under the Union's programmes to support small and medium sized undertakings.

#### *Article 16*

##### **Cooperation at Union level**

1. The Commission shall set up a European Due Diligence Network of competent authorities to ensure, together with the national competent authorities referred to in Article 12, the coordination and convergence of regulatory, investigative and supervisory practices, the sharing of information, and monitor the performance of national competent authorities.

National competent authorities shall cooperate to enforce the obligations provided for in this Directive.

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 score-board.

#### *Article 17*

### **Exercise of delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3 shall be conferred on the Commission for a period of 5 years from ... [date of entry into force of this Directive].
3. The delegation of power referred to in Article 3 Article 3 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated act already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 3 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or, if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

### *Article 18*

#### **Sanctions**

1. Member States shall provide for proportionate sanctions applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that those sanctions are enforced. The sanctions provided for shall be effective, proportionate and dissuasive and shall take into account the severity of the infringements committed and whether or not the infringement has taken place repeatedly.
2. The competent national authorities may in particular impose proportionate fines calculated on the basis of an undertaking's turnover, temporarily or indefinitely exclude undertakings from public procurement, from state aid, from public support schemes including schemes relying on Export Credit Agencies and loans, resort to the seizure of commodities and other appropriate administrative sanctions.

### *Article 19*

#### **Civil liability**

1. The fact that an undertaking respects its due diligence obligations shall not absolve the undertaking of any liability which it may incur pursuant to national law.
2. Member States shall ensure that they have a liability regime in place under which undertakings can, in accordance with national law, be held liable and provide

remediation for any harm arising out of potential or actual adverse impacts on human rights, the environmental or good governance that they, or undertakings under their control, have caused or contributed to by acts or omissions.

3. Member States shall ensure that their liability regime as referred to in paragraph 2 is such that undertakings that prove that they took all due care in line with this Directive to avoid the harm in question, or that the harm would have occurred even if all due care had been taken, are not held liable for that harm.
4. Member States shall ensure that the limitation period for bringing civil liability claims concerning harm arising out of adverse impacts on human rights and the environment is reasonable.

#### *Article 20* **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [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 the 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 21* **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.

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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 matters<sup>14</sup> ('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)<sup>15</sup>, respectively, having regard to the following text suggested.

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<sup>14</sup> OJ L 351, 20.12.2012, p. 1.

<sup>15</sup> 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 Commission<sup>1</sup>,

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 Commission<sup>1</sup>,

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.

25.11.2020

## **OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS**

for the Committee on Legal Affairs

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

Rapporteur for opinion (\*): Raphaël Glucksmann

(Initiative – Rule 47 of the Rules of Procedure)

(\*) Associated committee – Rule 57 of the Rules of Procedure

### **SUGGESTIONS**

The Committee on Foreign Affairs calls on the Committee on Legal Affairs, as the committee responsible to incorporate the following into its motion for a resolution:

1. Notes that Article 21 of the Treaty on the European Union requires the Union to promote and consolidate the universality and indivisibility of human rights and fundamental freedoms, as protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Charter of Fundamental Rights of the European Union (the ‘Charter’), to ensure sustainable development and consistency between its external action and other policies; notes that the Council of the European Union has clearly recognised that corporate respect for human rights throughout corporate operations and supply chains is indispensable to achieving the UN Sustainable Development Goals; and recognises that European citizens are increasingly demanding that companies pursue an effective policy of corporate social responsibility;
2. Notes that globalisation creates opportunities for growth and development and has increased interdependencies between societies, as a result of which a growing number of products results from complex transnational supply chains and decisions taken by Union firms originating in or operating in the internal market may impact human rights, fundamental freedoms and the environment; notes that, as the world’s largest trading bloc, the Union should lead the global debate on corporate accountability;
3. Highlights the fact that democracy, which protects human rights and fundamental freedoms, is the only form of government compatible with sustainable development; points out that corruption and lack of transparency greatly undermines human rights; calls on the Commission to always include, in the external policy activities, including in trade and investment agreements, provisions and discussions on the protection of

human rights;

4. Recalls that in any market economy companies are driven by the motivation of making a profit, meaning reaching a situation whereby total revenues outnumber total costs; notes however that business decisions of certain companies might not pay adequate attention to the long term costs of their short term profit gathering, such as working conditions and environmental standards, which can impact human rights and the environment down their supply chains; whereas human rights violations often occur at primary production level, in particular when sourcing raw material and manufacturing products, in a wide range of industries, particularly in extractive industries and in the course of large-scale agri-business acquisitions and development projects, and particularly impact indigenous peoples, local communities and human rights and environmental defenders; stresses that the UN Special Rapporteur on the Rights of Indigenous Peoples recently noted that strengthening the regulation of private companies is essential;
5. Is gravely concerned by the persistent exploitation and degradation of human beings through forced labour and slave-like practices affecting millions of people and from which certain undertakings, public or private entities or persons have benefitted globally in 2019; is especially concerned by the unacceptable situation of an estimated 152 million children in child labour, 72 million of whom work in hazardous conditions and many of them are forced to work through violence, blackmail and other unlawful means; points to the special responsibility of companies to protect children, in particular, and prevent any form of child labour;
6. Notes that fundamental labour, social and economic rights are enshrined in several international human rights treaties and conventions, including the International Covenant on Economic, Social and Cultural Rights, the ILO's Core Labour Standards, the European Social Charter as well as in the Charter; stresses that the right to work, free choice of employment and remuneration ensuring for employees and their families an existence worthy of human dignity are basic human rights enshrined in Article 23 of the Universal Declaration of Human Rights (UDHR); stresses, however, that inadequate state labour inspection, limited right to redress, excessive working hours, poverty-level wages, the gender pay gap and other forms of discrimination remain of serious concern in an increasing number of countries, notably in Export Processing Zones;
7. In this context, underlines the importance of freedom of expression, of the freedoms of association and of peaceful assembly, including the right to form and join trade unions, the right to collective bargaining and action, as well as the right to fair remuneration and to decent working conditions, including health and safety in the workplace;
8. Stresses that the rights to an effective remedy and fair trial are basic human rights enshrined in Article 8 UDHR, Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), as well as in Articles 6 and 13 of the ECHR and Article 47 of the Charter; stresses that the Union, as part of its commitment to promote, protect and fulfil human rights worldwide, should help to promote the rights of victims of business-related human rights violations and abuses that amount to criminal offences in third

countries, in line with Directives 2011/36/EU<sup>1</sup> and 2012/29/EU<sup>2</sup> of the European Parliament and of the Council; suggests that judicial authorities should be able to act on a complaint by third parties through safe and accessible channels without threat of reprisals;

9. Stresses that the United Nations Guiding Principles on Business and Human Rights (UNGPs) highlight the duty of states to protect against human rights violations within their territories, jurisdictions, or both, by third parties, including businesses; regrets that some states have failed to fulfil their respective human rights obligations; further emphasises that businesses have the responsibility to respect human rights wherever they operate and to address adverse human rights impacts with which they are connected, including by making it possible to provide remedies to victims;
10. Points out that OECD Guidelines for Multinational Enterprises and Due Diligence Guidance for Responsible Business Conduct further describe how businesses can avoid and address adverse impacts related to workers' rights, human rights, the environment, corruption, consumers' rights and corporate governance that may be associated with their operations, supply chains and other business relationships; is of the view that Union legislation should progressively and constructively build on the UNGPs and that guidance; recalls that high-risk sectors will require specific procedures and obligations for specific sectorial guidelines in line with OECD's approach and calls for specific technical assistance to be provided to Union companies, especially small and medium-sized enterprises (SMEs), so that they can comply with due diligence requirements;
11. Expresses its support for the 2014 UNHCR resolution establishing an open-ended intergovernmental working group with the mandate to elaborate an international legally binding instrument on transnational corporations and other business enterprises to regulate their activities in international human rights law; welcomes the announcement by Commissioner for Trade, Valdis Dombrovskis, on 2 October 2020 that the Union will re-engage in the process; stresses the importance of pro-active and meaningful participation by the Commission and the Member States in the process, recalling the Union's commitment to multilateral solutions to common problems;
12. Notes that successive United Nations special reports on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment have recognised the direct link between the full enjoyment of human rights and biodiversity, making clear that biodiversity loss and degradation undermine the enjoyment of people's rights to life, health, food and water; notes that the Member States are parties to the Convention on Biological Diversity;
13. Points out that corruption in the context of judicial proceedings can have a devastating effect on the lawful administration of justice and judicial integrity, and intrinsically violate the human right to a fair trial, the right to due process and the victim's right to effective redress; stresses that corruption can lead to cases of systematic violation of

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<sup>1</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

<sup>2</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

human rights in the business context, for example, by preventing individuals from accessing goods and services that States are obliged to provide to meet their human rights obligations or by increasing the price of such goods and services, by encouraging wrongful acquisition or appropriation by business of land, or facilitating money laundering, or by granting unlawful licences or concessions to businesses in the extractive sector;

14. Welcomes the attempts taken by a number of Union companies, in particular the efforts made by SMEs, to implement due diligence processes and implement their corporate responsibility policies to respect human rights; welcomes these increased efforts and various policies and laws in place in the Member States to encourage or require due diligence; acknowledges that, in some sectors, programmes, standards and certification schemes are already implemented with the aim of fulfilling human rights obligations in supply chains and of helping to inform the consumers that make their purchase decisions based on companies' corporate social responsibility record and sustainability criteria; notes however that, while the human rights situation of some workers has improved, much needs to be done as only 37% of businesses are currently undertaking due diligence in their supply chains and only 16% cover the entire supply chain; stresses that the current policies have not always achieved the goal of protecting against and preventing business-related abuses and violations; calls on the Commission to propose a legislative proposal to bridge this gap;
15. Notes that the OECD has shown that companies that have taken proactive steps to address the risks related to the COVID-19 crisis in a way that mitigates adverse impacts on workers and supply chains, develop a more long-term value and resilience, improving their viability in the short term and their prospects for recovery in the medium to long term;
16. Notes that diverse groups of stakeholders, businesses, corporations and investors are calling for mandatory human rights due diligence legislation at Union level, to harmonise standards inside the internal market, and secure a global level playing field and greater legal and business certainty; stresses that any regulatory requirements need to be sufficiently clear for companies to be able to comply with those requirements; calls on the Commission to conduct a thorough impact assessment for the purposes of a detailed analysis and fitness check of additional costs and obligations and their impact on Union businesses, resulting from due diligence rules, in particular as regards SMEs and subsequently, together with the Member States, to provide them with additional support in implementing due diligence guidelines and relevant rules and regulations, notably through the drafting of sector-specific guidelines for companies by the Commission with the active and meaningful participation of the Union bodies, offices and agencies, relevant international organisations as well as civil society, trade unions, workers, communities, businesses, human rights and environmental defenders and indigenous peoples;
17. Stresses the importance of requiring third country companies operating in the Union to comply with the standards that the Union requires in terms of due diligence; and calls for complementary measures such as the prohibition of the importation of products related to severe human rights violations such as forced labour or child labour; calls, to this end, for supply chain traceability to be strengthened, based on the rules of origin of the Union Customs Code established by Regulation (EU) No 952/2013 of the European

Parliament and of the Council<sup>3</sup>;

18. Calls on the Commission to propose legislation for mandatory human rights and environmental due diligence for Union companies, companies domiciled or third-country companies operating in the internal market, imposing legal obligations to identify, cease, prevent and mitigate adverse impacts throughout their supply chains and establishing effective monitoring and enforcement mechanisms; recalls that due diligence obligations should aim to provide for effective remedies for victims of violations of human rights, including labour rights, and environmental standards violations, in an appropriate manner, including through improvements in the respect for such rights and standards;
19. Recalls the necessity of a single Union harmonised legal framework to ensure policy coherence and a level playing field for Union-based operators and stresses the importance of obliging Union businesses and competitors worldwide to respect equal standards, in order not to put companies to a competitive disadvantage for being responsible; recalls to this end the importance of Union's human rights policy and due diligence requirements being fully taken into account in the conduct of Union trade policy, including in relation to the ratification of trade and investment agreements; stresses in this regard the role of Union delegations in their engagement with the business sector and all other relevant stakeholders in third countries in implementing Union due diligence requirements and standards;
20. Recommends that due diligence, as required by Union legislation, be extended to potential or actual adverse impacts and violations which a company has caused, or with which it may be linked throughout its supply chain;
21. Recommends that Union legislation cover all companies and all sectors, including state-owned enterprises; recommends that the future mandatory Union due diligence requirements follow a proportionate approach, taking into account the risk to human rights, based on elements such as the sector of activity, the size of the undertaking, the context of its operations in its supply chain; requests that special exemptions be provided to SMEs in order to avoid disproportionate administrative and regulatory burdens on those small businesses;
22. Acknowledges that financial institutions equally have an impact on human rights and the environment globally through their investment decisions and activities; recommends therefore that financial institutions, including the European Investment Bank and European Bank for Reconstruction and Development, be bound by the future due diligence requirements;

### **Scope of human rights**

23. Recommends that due diligence obligations should apply to all business-related human rights abuses; recalls that all human rights are universal, indivisible, interdependent and interrelated and should be promoted and respected in a fair, equitable and non-discriminatory manner;

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<sup>3</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

24. Recommends that Union mandatory due diligence legislation for the internal market requires companies to identify and address their impacts to ensure full respect for all internationally recognised human rights including, as a minimum, those encompassed by the UDHR, all nine core international human rights treaties, the ILO Declaration on Fundamental Principles and Rights at Work and all fundamental ILO conventions, including the Indigenous and Tribal Peoples Convention, as well as the European Social Charter and ECHR, which are binding on Council of Europe member states and also binding on Member States as a result of Union law and the common constitutional traditions of the Member States;
25. Notes that the Charter applies to all Union legislation and to national authorities when implementing Union law both in the Union and in third countries;
26. Notes that the human rights of vulnerable groups at risk of marginalisation are disproportionately impacted by businesses' activities; stresses, in this regard, that all rights guaranteed to the most severely affected groups under local, national or international law must be covered, as enshrined in Article 5 of the United Nations Declaration on the Rights of Indigenous Peoples;
27. Asks in this regard that the Commission conduct a thorough review of Xinjiang-based companies that export products to the Union in order to identify potential breaches of human rights, especially those related to the repression of Uighurs;
28. Recalls that the United Nations Working Group on Business and Human Rights highlighted the differentiated and disproportionate impact of business activities on women and girls and has stated that human rights due diligence should cover both actual and potential impacts on women's rights;
29. Recalls that 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; notes that the Special Rapporteur has also stressed that the loss of biodiversity undermines the full enjoyment of human rights and that states should regulate harm to biodiversity caused by private actors as well as government agencies; points out that the United Nations General Assembly recognised, in its Resolution 64/292, the right to safe and clean drinking water and sanitation as a human right; recommends that those rights be covered by any possible legislation;
30. Notes that the United Nations High Commissioner for Human Rights and the United Nations Human Rights Council have stated that climate change has an adverse impact on the full and effective enjoyment of human rights; underlines that States have an obligation to respect human rights when addressing adverse impacts of climate change; insists that any corporate due diligence legislation must be in line with the Paris Agreement;
31. Notes that some corporations exploit natural resources in a way which not only constitutes a major sustainability challenge and causes environmental degradation, but also results in severe adverse impacts on the social, economic, cultural, civil and political rights of local communities especially impacting indigenous people and minorities; notes that such business practices violate the right of peoples to self-determination and the principle of permanent sovereignty, access and control over their

natural resources, enshrined in UN General Assembly resolution 1803 (XVII); recommends that the future legislation require Member States to regulate businesses' activity in compliance with their commitment to the principles enshrined in the Charter of the United Nations, including the fundamental principles of equality, non-discrimination and self-determination of peoples;

32. Notes that systemic corruption violates the principles of transparency, accountability and non-discrimination, with severe implications for the effective enjoyment of human rights; recalls that the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption oblige Member States to implement effective practices aimed at the prevention of corruption; stresses that provisions of the United Nations Convention against Corruption should form part of due diligence obligations in the legislation;
33. Notes that some businesses are accused of profiting from or even complicit in war crimes and crimes against humanity due to their own activity or that of their business partners in conflict-affected areas or to their business relationships with state or non-state actors involved in conflicts globally; recommends that, in order to prevent substantial risks of grave human rights abuses and serious breaches of international law, the scope of due diligence legislation be extended to serious breaches of international criminal law and international humanitarian law for which businesses are directly responsible; stresses the need for enhanced due diligence for companies that have or are planning to have business activities or relationships in conflict-affected areas; calls on the Commission and Member States to closely monitor the companies operating in the internal market and those receiving Union funds that are listed in United Nations reports or databases on business activities related to situations of international concern, notably annexed or occupied territories, and calls for a Commission study to be carried out in this area; recommends that the future Union legislation should require companies to respect the Geneva Conventions and the two additional protocols, as clarified by the UNGPs, the Hague Regulations and the Rome Statute of the International Criminal Court;

## **Key recommendations**

### *Due diligence process and obligations*

34. Recommends that, requirements for corporate mandatory human rights and environmental due diligence be grounded in the principle of corporate responsibility to respect human rights as articulated by the UNGPs; considers that businesses must not infringe human rights but must ensure that they are respected and should address adverse human rights impacts with which they are connected, entailing, in practice, that they should have in place an embedded human rights policy and a human rights due diligence process and adequate measures in order to facilitate access to effective remedies for business-related human rights abuses, without risks of retaliation; such remedies should be gender responsive;
35. Is of the view that businesses have a responsibility to ensure that their activities and purchasing practices do not undermine the protection of human and environmental rights; insists that they must not promote, participate, induce, cover up or in any manner contribute to, or endorse policies and activities that could lead to human rights

violations; underlines that businesses must do everything within their capacities, to identify, cease, prevent, mitigate, monitor and remediate the effect of adverse impacts; recalls that the due diligence process is a continuous, preventive, and risk-based process;

36. Stresses that human rights impacts can be specific to certain rights-holders and vulnerable groups due to intersecting factors such as gender, age, ethnicity, religion, sexual orientation, disability, social and employment status, union involvement, migrant or refugee status, indigenous status, exposure to conflict or violence or other factors; recommends treating gender equality as a cross-cutting issue, ensuring that corporations take into account the potential differentiated impact of their activities, as recommended by the United Nations Working Group on Business and Human Rights in its Gender Guidance to the UNGPs; this must be reflected in the due diligence processes, including the human rights impact assessment phase and remedy procedures;
37. Insists that the scope of due diligence obligations must be based on the risk of violations and must be specific to the country, including an analysis of the regional and local human rights context, and sector of activity; recalls that according to the UNGPs, three factors should be taken into account in assessing the severity of business impacts on human rights: the scale of the impact, the scope of the impact and whether the impact is irremediable;

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

38. Notes that human rights risks and violations are context-specific and that, to accurately assess the risks and prevent, mitigate and remedy human rights violations, businesses should be informed by meaningful cooperation with affected rights-holders and communities and by reliable independent expert sources, for which transparency is key; stresses in this regard, the key role of national human rights institutions, trade unions, NGOs, human rights oversight bodies such as the United Nations, ILO and Council of Europe, OSCE supervisory mechanisms, and the European Union Agency for Fundamental Rights as relevant sources of information and reporting; suggests that the Union legislation facilitates the development of comprehensive and coherent methodologies for measuring human rights as well as environment and climate change impacts on the basis of existing international guiding frameworks (notably UNGPs, OECD Guidelines, international specialised agencies as well as tools from civil society) and the Union sustainable finance taxonomy;
39. Notes that in order to assess human rights risks, violations and environmental impacts, independent monitoring of human rights and environmental impacts and working conditions in supply chains is essential and should fully involve relevant stakeholders, including workers, trade unions, human rights defenders and affected communities; stresses that certain groups may face specific barriers for full involvement and participation; notes that businesses should address those barriers and ensure the safe participation of rights-holders without fear of reprisal;
40. Notes that due diligence also necessitates measuring the effectiveness of processes and measures through adequate audits and communicating the results, including periodically producing public evaluation reports on company due diligence processes and their results in a standardised format based on an adequate and coherent reporting

framework; recommends that the reports be easily accessible and available, especially to those affected and potentially affected; states that disclosure requirements should take into account competition policy and the legitimate interest to protect internal business know-how and should not lead to disproportionate obstacles or a financial burden for companies;

41. Stresses that transparency must be at the core of, and the overriding governing principle for, the tracking, monitoring and assessment process and that external participation, oversight and verification are key elements for robust and meaningful corporate human rights due diligence and its evaluation; calls for Union due diligence legislation to require periodic monitoring of procedural compliance and the publication of lists of companies within its scope, including the right to appeal for the companies concerned, the publication of due diligence reports and evaluation reports via online public repositories; considers that those reports must be accessible on a centralised single platform;
42. Is of the view that transparency should be based on the right to know of those who are impacted by commercial activities, including but not limited to workers, trade unions, civil society and women's organisations, human rights defenders and indigenous peoples communities, and consumers; stresses that that information must be made available to stakeholders in a comprehensive, timely and honest manner;

#### *Engagement with stakeholders and rights-holders*

43. Notes that rights-holders primarily affected by business-related human rights violations often lack adequate access to information about their rights and about how they are given effect in domestic legislative systems, and have difficulty accessing state agencies and organisations concerned with the protection and enforcement of their rights; recommends that the legislation encourage businesses to engage with all affected stakeholders, with their representatives, including indigenous peoples', farmers' and workers' representatives, at all stages of the due diligence process, from development to monitoring and evaluation, in a timely and meaningful manner;

#### *Protection of whistleblowers, human rights and environmental defenders and lawyers*

44. Suggests that companies establish effective alert mechanisms; is of the opinion that through recourse to such mechanisms any interested party, including trade unions, consumers, journalists, civil society organisations, lawyers and human rights and environmental defenders, or members of the public, should be able to warn the company of adverse impacts and human rights violations; calls on the Commission to consult the European Ombudsman on accompanying measures needed to support this role;
45. Stresses that disclosure and complaint procedures must ensure that the anonymity, safety, physical and legal integrity of whistleblowers are protected, in line with Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>4</sup>;
46. Deplores the increasing number of attacks on human rights and environmental defenders and notes that 572 attacks occurred in 2019 alone, some of which caused the

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<sup>4</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (*OJL 305, 26.11.2019, p. 17*).

death or serious harm to the health of environmental activists; stresses that Article 12 of the United Nations Declaration on Human Rights Defenders provides for the duty of States to ensure the protection of everyone against violence, threats, retaliation, discrimination or any other arbitrary action as a consequence of their legitimate right to promote human rights; recommends that the Commission investigate the possibility of establishing a protection mechanism in compliance with the Directive (EU) 2019/1937 and the United Nations Declaration on Human Rights Defenders, in order to protect stakeholders as well as lawyers representing plaintiffs from lawsuits, intimidation and attempts to silence their claims, and deter them from seeking justice;

*Right to an effective remedy and equal access to justice*

47. Notes that the right to an effective remedy is an internationally recognised human right, enshrined in Article 8 UDHR, Article 2(3) of the ICCPR as well as in Articles 6 and 13 of the ECHR and is also a Union fundamental right (Article 47 of the Charter); highlights the fact that, as recalled by the UNGPs, States and not companies have the duty to ensure, through judicial, administrative, legislative or other appropriate means, that those affected by business-related human rights violations for which the company is responsible have access to an effective remedy; recommends therefore that the legislation require states to ensure that victims of business-related violations are remedied and redress is provided for the harm suffered; stresses that the remedy should be provided by operators that have caused or contributed to the harm unless they can demonstrate that they acted with due care and took all reasonable measures, given the circumstances, to prevent the harm; recommends that the legislation makes specific reference to this obligation in line with the United Nations Basic Principles and Guidelines on the Rights to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law;
48. Stresses that as part of due diligence, as required by the corporate responsibility to respect human rights and the environment, companies should put in place processes to enable the adverse human rights and environmental impacts they cause or to which they contribute to, to be effectively remedied, based on mutually agreed parameters; recommends, accordingly, that operational level grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on engagement and dialogue and a source of continued learning as established in United Nations Guiding Principle 31; emphasises that such mechanisms should never be used to obstruct access to justice via state-based judicial or non-judicial grievance mechanisms, and that conducting due diligence should not by itself absolve companies from liability for causing or contributing to human rights abuses;
49. Insists that time limitations and access to evidence, as well as gender inequality, vulnerabilities and marginalisation can be major practical and procedural barriers faced by victims of human rights violations in third countries, obstructing their access to effective legal remedies; notes that it should be ensured that women benefit equitably from remedies provided for rights-holders; recommends that any legislation should facilitate adequate access to remedies for victims, meaning that once a claimant establishes an initial case, the responding company should show that it had met its due diligence obligations and that the damage and violations, if any, are not the result of a failure to effectively conduct due diligence;

50. Stresses the importance of effective access to remedies for persons in situations of vulnerability, as enshrined in Article 13 of the Convention on the Rights of Persons with Disabilities; recalls that Article 47 of the Charter requires the Member States to provide legal aid to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice;
51. Recommends that the legislation establishes guidance regarding the elements of an effective, fair and equitable operational grievance mechanism, with a view to defining appropriate measures for prevention, including providing adequate access to remedies; stresses that it is necessary to clarify the precise scope of the jurisdiction of the courts of the Member States regarding remedies;
52. Stresses that if due diligence is implemented comprehensively, companies will in the long term benefit from better business conduct with a focus on prevention rather than on remediation of harm;
53. Recommends that the Commission's support in relation to the rule of law, good governance and access to justice in third countries prioritise the capacity-building of local authorities in the areas addressed by the future legislation, where appropriate;

*Enforcement, civil and criminal liability*

54. Underlines that any due diligence legislation must be adequately monitored and enforced by national competent administrative and judicial authorities and Union bodies, offices and agencies with appropriate resources, expertise, duties and powers, including the power to investigate, in accordance with their respective competences; stresses that the Commission should publish guidance addressing effective enforcement action at Member State level, develop a Union Action Plan on Business and Human Rights and work on the development of tools and training materials on human rights due diligence for Union and national institutions as well as Union delegations, which should engage with businesses and relevant stakeholders in third countries, as well as third countries' authorities to raise awareness, share tools and promote similar legislation in the host countries;
55. Recommends that Union due diligence legislation require Member States to provide for effective, proportionate and dissuasive legal consequences, including sanctions, based on the severity of misconduct for non-compliance with due diligence obligations; underlines that mediation may constitute an effective and swift means to seek enforcement of due diligence obligations; recommends that the Union sanctions regime include exclusion from public procurement and public funding for non-compliant companies;
56. Welcomes the announcement that the Commission proposal will include a liability regime and recommends that the future legislation include provisions for joint liability of companies for human rights violations and damage to the environment, directly linked to their products, services or their operations, unless the companies acted with due care and took all reasonable measures that could have prevented the harm; stresses that criminal law and criminal justice are indispensable means of protecting human rights against severe violations; calls therefore on the Commission to consider exploring the possibility of including further types of liability, including criminal liability, for most severe violations.

26.10.2020

## OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

for the Committee on Legal Affairs

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

Rapporteur for opinion (\*): Bernd Lange

(Initiative – Rule 47 of the Rules of Procedure)

(\*) Associated committee – Rule 57 of the Rules of Procedure

### SUGGESTIONS

The Committee on International Trade calls on the Committee on Legal Affairs, as the committee responsible:

- to incorporate the following suggestions into its motion for a resolution:
  1. Highlights that it is the duty of States to protect and safeguard human rights and the corporate sector has a responsibility to respect them; recognises the efforts made so far, including by globally active companies and acknowledges the increasing presence of voluntary due diligence initiatives as well as transparency and reporting requirements; regrets the current low implementation levels of supply chain social, environmental and human rights due diligence; notes that violations of human rights and environmental standards remain widespread and the clear evidence that a number of European companies are not carrying out any form of due diligence in their supply chains, as evidenced by the European Commission's "Study on due diligence requirements through the supply chain"; underlines that corporate due diligence has been increasingly incorporated into the laws of the Member States and notes that due diligence can boost competitiveness; welcomes in this regard the European Commission's public commitment to introduce a legislative initiative in 2021 and stresses that corporate due diligence should be part of the forthcoming EU Trade Policy Review;
  2. Is therefore convinced that legislation for mandatory EU-level horizontal due diligence throughout the supply chain for EU and foreign companies operating within the internal market is necessary to achieve the United Nations (UN) Sustainable Development Goals, to promote good governance and to increase traceability and accountability in global supply chains, strengthen EU's international competitiveness creating a level playing field and mitigate unfair competitive

advantages of third countries resulting from lower protection standards as well as social and environmental dumping in international trade; stresses the need to consider the risk of harm rather than the size of the company, while bearing in mind the principle of proportionality;

3. Calls on the Commission to make a robust impact assessment of the extent of the supply chain that the future due diligence regulation should apply to in order to have an actual impact on safeguarding human rights and the environment, while providing a detailed analysis of the administrative burden for businesses and specifically small and medium-sized enterprises (SMEs), the value added by EU companies, employment by EU companies and the engagement of EU companies in international markets;
4. Recalls that the EU economy is facing the biggest global economic crisis since the Great Depression of the 1930's with companies all over Europe hit especially hard; stresses that especially at this time no legislative initiatives of an economically inhibiting or damaging nature, such as those imposing higher administrative burdens or causing legal uncertainty, should be taken;
5. Recalls that due diligence obligations should aim to identify, prevent, mitigate and remedy violations of human and labour rights and of environmental standards through improvements in the respect for core labour rights and environmental standards, including the Paris climate commitments, throughout the supply chain and thereby making supply chains more robust and avoiding disruption of international trade; is convinced that due diligence increases certainty and transparency as regards the supply practices of companies sourcing from countries outside the European Union and will help protect consumer interests by ensuring the quality and reliability of products, and should lead to more responsible purchasing practices and long-term supplier relationships of companies; underlines that the UN Guiding Principles and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises state the need for access to justice and victim remediation; stresses that the future EU legislation should also include robust enforcement mechanisms and access to grievance mechanisms in the Union for victims; is convinced that human rights due diligence should be based on the 'do no harm' principle, add to existing self-regulatory and voluntary initiatives and be regarded as a dynamic process of continuous improvement; believes that the future EU regulation should support companies in managing and living up to their corporate responsibilities; and be fully aligned with all existing sectoral due diligence and reporting obligations, such as the non-financial reporting directive (NFRD), and coherent with relevant Member States' legislation; calls on the Commission to assess whether existing regulations could be updated or replaced; stresses that in the field of international trade, due diligence and responsible sourcing are to become the standard business conduct for operators of all sizes; acknowledges the differences in size and complexity of cross-border business operations and positions in the supply chains and the need to reflect this in any future due diligence requirements;
6. Welcomes the fact that sector-specific initiatives, such as the Timber Regulation, the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation, and the Anti-Torture Regulation and specifically the Conflict Minerals Regulation, have

become a benchmark for targeted binding due diligence legislation in supply chains, with obligations for European companies in relation to their management systems, risk management, independent third-party audits and disclosure of information;

7. Recalls that the Commission has proposed to develop a comprehensive strategy for the garment sector as part of the new Circular Economy Action Plan, that, by including a uniform set of standards regarding due diligence and social responsibility, could be another example of integrating a more detailed approach for a specific sector; calls on the Commission to further introduce sector-specific EU mandatory due diligence legislation, for example for sectors such as forest and ecosystem risk commodities and the garment sector;
8. Welcomes the work done so far at international level; is convinced that the future due diligence regulation should build upon UN Guiding Principles, the OECD Guidelines for Multinational Enterprises and accompanying OECD Due Diligence Guidance on Responsible Business Conduct, the standards set in core International Labour Organisation (ILO) conventions and Multilateral Environmental Agreements (such as the UN Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity) and other international standards which will facilitate future international convergence and should be developed in close collaboration with the corporate sector and all relevant stakeholders; notes that broadened European External Action Service (EEAS) reports could be used as an annual common base for self-assessment of companies; acknowledges the ongoing negotiations to create a legally binding UN instrument on Transnational Corporations and Other Business Enterprises with respect to human rights and calls on the Council to give a mandate to the Commission to be actively involved in those ongoing negotiations;
9. Notes that more than 95% of European companies are SMEs and they are disproportionately hit by the economic fallout of the ongoing Covid-19 pandemic; stresses that the principle of proportionality needs to be applied when analysing and assessing capacity constraints, administrative costs and burdens for SMEs in the future due diligence legislation, while reflecting that due diligence is risk-based; notes that certified industry schemes offer SMEs opportunities to efficiently pool and share responsibilities; notes that certified schemes must be assessed, recognised and overseen by the European Commission; stresses that social audits must be better regulated; stresses the importance of carrying out an impact assessment to design rules that enhance competitiveness, are functional and applicable to all actors on the internal market, including SMEs; calls on the Commission to avoid duplicating already existing reporting duties and underlines the importance of having common report criteria for all companies operating on the internal market; calls for specific technical assistance to be given to European companies, especially SMEs, in order for them to be able to comply with due diligence requirements;
10. Emphasises that engagement with trade partners, in a spirit of reciprocity, is important for ensuring due diligence effects change; underlines the importance of accompanying measures and projects to facilitate the implementation of EU Free Trade Agreements (FTAs) and calls for a strong link between such measures and horizontal due diligence legislation; requests therefore that financial instruments, such as Aid for Trade, are used to promote and support the uptake of responsible

business conduct in partner countries, including technical support on due diligence training, traceability mechanisms and embedding export-led reforms in partner countries; emphasises in this regard the need to promote good governance;

11. Notes that FTAs through their comprehensive and enforceable Trade and Sustainable Development (TSD) chapters promote supply chain due diligence; calls on the Commission to present proposals on how to strengthen the enforcement of the TSD chapters and to use all the existing and new instruments, such as the future Enforcement Regulation, FTAs, Economic Partnership Agreements (EPAs) and Generalised Scheme of Preferences (GSP), in order to ensure that the due diligence obligations are mainstreamed and enforced; underlines the crucial role of the newly appointed Chief Trade Enforcement Officer in the monitoring of the implementation of due diligence obligations; calls for supply chain traceability to be strengthened, based on the rules of origin of the EU Customs Code; notes that a legislative proposal from the Commission on due diligence will cover trade with all trading partners, not just those with whom the EU has concluded an FTA; stresses that such trade instruments should include strong enforcement mechanisms such as withdrawal from preferential access in the event of non-compliance;
12. Is convinced that compliance with the due diligence obligations should be a condition for access to the internal market and that operators should be required to establish and provide evidence, through the exercise of due diligence, that the products that they place on the internal market are in conformity with the environmental and human rights criteria set out in the future due diligence legislation; calls for complementary measures such as the prohibition of the importation of products related to severe human rights violations such as forced labour or child labour; stresses the importance of including the objective of combating forced labour and child labour in TSD chapters of EU trade agreements;
13. Requests that trade instruments and EU Delegations be linked to the monitoring of the application of the future due diligence regulation by European companies operating outside the EU, including by convening meaningful consultations with rights holders, local communities, chambers of commerce, civil society actors and trade unions; calls on the Commission to cooperate with Member States' chambers of commerce in providing online tools and information to support implementation of the future due diligence legislation;
14. Stresses that the business community and civil society actors, including trade unions, social partners, human rights and environmental organisations, women's organisations and indigenous communities should be part of a meaningful consultation on any due diligence policy and risk prevention and monitoring, and victims should be given the right to file a complaint in the event of infringements along the supply chain and have access to the grievance mechanism; underlines that the national contact point for the OECD guidelines for Multinational Enterprises could serve also as the point of contact for the purposes of future legislation, and notes that the OECD and domestic advisory groups monitoring the implementation of FTAs are a good example of inclusion of the third sector;
15. Highlights that comprehensive transparency requirements are a crucial element of mandatory due diligence legislation; notes that enhanced information and

transparency give suppliers and manufacturers better control and understanding of their supply chains and improve public confidence in production; stresses in this regard that the future due diligence regulation should focus on digital solutions to minimise bureaucratic burdens, and calls on the Commission to investigate new technological solutions supportive of establishing and improving traceability in global supply chains; recalls that sustainable blockchain technology can contribute to this goal;

16. Recalls that women constitute the majority of workers in sectors such as garment and textile manufacturing, telecommunication, tourism, the care economy and agriculture, in which they tend to be concentrated in more low-wage or low-status forms of formal and informal employment than men; calls therefore for rules that require companies to apply a gender-sensitive approach to due diligence, and to explicitly consider if and how women could be disproportionately impacted by their operations and activities.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	27.10.2020
<b>Result of final vote</b>	+: 34 -: 3 0: 6
<b>Members present for the final vote</b>	Barry Andrews, Anna-Michelle Asimakopoulou, Tiziana Beghin, Geert Bourgeois, Saskia Bricmont, Udo Bullmann, Jordi Cañas, Daniel Caspary, Miroslav Číž, Arnaud Danjean, Paolo De Castro, Emmanouil Fragkos, Raphaël Glucksmann, Markéta Gregorová, Enikő Győri, Roman Haider, Christophe Hansen, Heidi Hautala, Danuta Maria Hübner, Herve Juvin, Maximilian Krah, Danilo Oscar Lancini, Bernd Lange, Margarida Marques, Gabriel Mato, Sara Matthieu, Emmanuel Maurel, Carles Puigdemont i Casamajó, Samira Rafaela, Inma Rodríguez-Piñero, Massimiliano Salini, Helmut Scholz, Liesje Schreinemacher, Sven Simon, Dominik Tarczyński, Mihai Tudose, Kathleen Van Brempt, Marie-Pierre Vedrenne, Jörgen Warborn, Iuliu Winkler, Jan Zahradil
<b>Substitutes present for the final vote</b>	Svenja Hahn, Jean-Lin Lacapelle

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

34	+
ECR	Emmanouil Fragkos
GUE/NGL	Emmanuel Maurel, Helmut Scholz
NI	Tiziana Beghin, Carles Puigdemont i Casamajó
PPE	Anna-Michelle Asimakopoulou, Daniel Caspary, Arnaud Danjean, Christophe Hansen, Danuta Maria Hübner, Gabriel Mato, Massimiliano Salini, Sven Simon, Jörgen Warborn, Iuliu Winkler
RENEW	Barry Andrews, Jordi Cañas, Svenja Hahn, Samira Rafaela, Liesje Schreinemacher, Marie-Pierre Vedrenne
S&D	Udo Bullmann, Miroslav Číž, Paolo De Castro, Raphaël Glucksmann, Bernd Lange, Margarida Marques, Inma Rodríguez-Piñero, Mihai Tudose, Kathleen Van Brempt
VERTS/ALE	Saskia Bricmont, Markéta Gregorová, Heidi Hautala, Sara Matthieu

3	-
ID	Herve Juvin, Maximilian Krah
PPE	Enikő Győri

6	0
ECR	Geert Bourgeois, Dominik Tarczyński, Jan Zahradil
ID	Roman Haider, Danilo Oscar Lancini, Jean-Lin Lacapelle

### Key to symbols:

+ : in favour

- : against

0 : abstention

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	19.11.2020
<b>Result of final vote</b>	+: 57 -: 3 0: 8
<b>Members present for the final vote</b>	Alviina Alametsä, Alexander Alexandrov Yordanov, Maria Arena, Petras Auštrevičius, Traian Băsescu, Anna Bonfrisco, Reinhard Bütikofer, Fabio Massimo Castaldo, Susanna Ceccardi, Włodzimierz Cimoszewicz, Katalin Cseh, Tanja Fajon, Anna Fotyga, Michael Gahler, Kinga Gál, Giorgos Georgiou, Sunčana Glavak, Raphaël Glucksmann, Klemen Grošelj, Bernard Guetta, Márton Gyöngyösi, Sandra Kalniete, Dietmar Köster, Andrius Kubilius, Ilhan Kyuchyuk, David Lega, Miriam Lexmann, Nathalie Loiseau, Antonio López-Istúriz White, Claudiu Manda, Lukas Mandl, Thierry Mariani, David McAllister, Vangelis Meimarakis, Francisco José Millán Mon, Javier Nart, Gheorghe-Vlad Nistor, Urmas Paet, Demetris Papadakis, Kostas Papadakis, Tonino Picula, Manu Pineda, Kati Piri, Giuliano Pisapia, Jérôme Rivière, María Soraya Rodríguez Ramos, Nacho Sánchez Amor, Isabel Santos, Jacek Saryusz-Wolski, Andreas Schieder, Radosław Sikorski, Jordi Solé, Sergei Stanishev, Tineke Strik, Hermann Tertsch, Harald Vilimsky, Idoia Villanueva Ruiz, Viola Von Cramon-Taubadel, Witold Jan Waszczykowski, Charlie Weimers, Isabel Wiseler-Lima, Salima Yenbou, Željana Zovko
<b>Substitutes present for the final vote</b>	Assita Kanko
<b>Substitutes under Rule 209(7) present for the final vote</b>	Heidi Hautala, Karin Karlsbro, Ivan Štefanec, Miguel Urbán Crespo

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

57	+
ECR	Anna Fotyga, Assita Kanko, Jacek Saryusz-Wolski, Witold Jan Waszczykowski
GUE/NGL	Manu Pineda, Miguel Urbán Crespo, Idoia Villanueva Ruiz
NI	Fabio Massimo Castaldo, Márton Gyöngyösi
PPE	Alexander Alexandrov Yordanov, Traian Băsescu, Sunčana Glavak, Sandra Kalniete, Andrius Kubilius, David Lega, Miriam Lexmann, Antonio López-Istúriz White, Lukas Mandl, David McAllister, Vangelis Meimarakis, Francisco José Millán Mon, Gheorghe-Vlad Nistor, Radosław Sikorski, Ivan Štefanec, Isabel Wiseler-Lima, Željana Zovko
RENEW	Petras Auštrevičius, Katalin Cseh, Klemen Grošelj, Bernard Guetta, Karin Karlsbro, Ilhan Kyuchyuk, Nathalie Loiseau, Javier Nart, Urmas Paet, María Soraya Rodríguez Ramos
S&D	Maria Arena, Włodzimierz Cimoszewicz, Tanja Fajon, Raphaël Glucksmann, Dietmar Köster, Claudiu Manda, Demetris Papadakis, Tonino Picula, Kati Piri, Giuliano Pisapia, Nacho Sánchez Amor, Isabel Santos, Andreas Schieder, Sergei Stanishev
VERTS/ALE	Alviina Alametsä, Reinhard Bütikofer, Heidi Hautala, Jordi Solé, Tineke Strik, Viola Von Cramon-Taubadel, Salima Yenbou

3	-
ECR	Hermann Tertsch, Charlie Weimers
NI	Kostas Papadakis

8	0
GUE/NGL	Giorgos Georgiou
ID	Anna Bonfrisco, Susanna Ceccardi, Thierry Mariani, Jérôme Rivière, Harald Vilimsky
PPE	Michael Gahler, Kinga Gál

Key to symbols:

+ : in favour

- : against

0 : abstention

13.11.2020

## **OPINION OF THE COMMITTEE ON DEVELOPMENT**

for the Committee on Legal Affairs

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

Rapporteur for opinion: Marc Tarabella

(Initiative - Rule 47 of the Rules of Procedure)

### **SUGGESTIONS**

The Committee on Development calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. Whereas Articles 3 and 21 of the Treaty on European Union state that the Union, in its relations with the wider world, is to uphold and promote its values and principles, namely the rule of law and respect and protection of human rights, and contribute to the sustainable development of the Earth, solidarity, free and fair trade as well as to the strict observance and the development of international law; more specifically, the Union is to foster the sustainable economic, social and environmental development of developing countries with the primary aim of eradicating poverty; and whereas it is to respect those principles and pursue those objectives in the development and implementation of the external aspects of its other policies;
- B. Whereas Article 208(1) of the Treaty on the Functioning of the European Union (TFEU) provides that the Union is to take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries;

- C. Whereas future legislation on corporate due diligence and corporate accountability for European enterprises would have extraterritorial effects; it would affect the social, economic and environmental development of developing countries and their prospects of achieving their sustainable development goals; this significant impact could contribute to or undermine the Union's policy objectives concerning development;
- D. Whereas, in accordance with the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, companies have a responsibility to respect human rights, the environment and good governance and should not cause or contribute to causing any adverse impacts in this regard;
- E. Whereas, according to a Commission study on due diligence in the supply chain, only 37% of business respondents currently conduct environmental and human rights due diligence, and only 16% cover the entire supply chain;
- F. Whereas, according to the United Nations High Commissioner for Human Rights, a large number of human rights defenders are under threat because they raise concerns about adverse human rights impacts of business operations;
- G. Whereas due diligence is primarily a preventative mechanism and companies should be first and foremost required to identify risks or adverse impacts and adopt policies and measures to address them; whereas in situations where an undertaking causes or contributes to an adverse impact it should provide for a remedy and should be subject to corporate accountability for such impacts; whereas corporate accountability, including for harm linked to an undertaking's operations, is necessary to ensure that undertakings are incentivised to undertake due diligence and for due diligence to be effective;
- H. Whereas violations of human rights and environmental standards remain widespread in global supply and value chains; whereas voluntary measures have proven insufficient and therefore further measures are essential in order to increase levels of responsible business conduct and enhance confidence in the internal market, including amongst investors and consumers;
  - 1. 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 mitigate them;
  - 2. Highlights that there is sufficiently strong evidence that shows that the voluntary efforts of undertakings domiciled or operating in the Union to identify, prevent, mitigate and account for the impacts of their behaviour on developing countries have not been so far sufficient, as violations of the human rights of individuals, and in particular workers, women, children, and local communities, as well as activities that increase the effects of climate change, are still taking place throughout undertakings' supply chains, as are violations of environmental standards and corruption practices; acknowledges that there is growing political, public and private sector support for Union legislation on due diligence;
  - 3. Recalls that the full enjoyment of human rights, including the right to life, health, food and water, depend on biodiversity, which is the foundation of ecosystem services to which human well-being is intrinsically linked;

4. Notes that due to the COVID-19 pandemic small and medium-sized enterprises (SMEs) face a challenging situation, and providing them with support and the creation of a favourable market environment are crucial objectives of the Union;
5. Strongly believes that future legislation should also mandate environmental due diligence, to ensure compliance with Union and internationally recognised environmental standards and rights, including on climate change and biodiversity; stresses the proven benefits for companies of having effective responsible business conduct practices in place, which include better risk-management, a lower cost of capital, overall better financial performance, and enhanced competitiveness; is concerned by the impact of COVID-19 crisis which has dramatically disrupted business and exposed major vulnerabilities in the economy and global supply chains linked to conditions of work and disaster preparedness as well as negatively impacted human rights, in particular workers' rights, with women and children often the most severely affected; highlights that the OECD has shown that companies which took proactive steps to address the risks related to the COVID-19 crisis in a way that mitigates adverse impacts on workers and supply chains are likely to build more long-term value and resilience, improving their viability in the short term and their prospects for recovery in the medium to long term;
6. Is of the opinion that the future legislation should build upon initiatives already introduced by some Member States; believes that there is a strong need for a mandatory, harmonised framework at Union level to contribute to the implementation of the United Nations Sustainable Development Goals and the Paris Agreement, and to ensure a level playing field for businesses; calls on the Commission to carry out an *ex ante* impact assessment on the scope of the legislation based on the risk of harm rather than the size of the undertaking; calls on the Commission to step up its ongoing work on legislation requiring that Union companies and companies operating from within the single market conduct due diligence on respect for human rights and environmental obligations, including related to biodiversity, throughout their supply chains, in accordance with existing international due diligence standards, in particular the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance For Responsible Business Conduct, relevant sector-specific OECD Due Diligence Guidance, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the UN Convention against Corruption;
7. Calls on the Commission to honour the principle of policy coherence for development, enshrined in Article 208 TFEU, in future legislation; stresses that it is important to minimise the possible contradictions and build synergies with development cooperation policy to the benefit of developing countries and to increase the effectiveness of development cooperation; considers that, in practical terms, this means actively involving the Commission's Directorate-General for International Cooperation and Development in the ongoing legislative work and conducting a thorough assessment of the impact of the future legislation on developing countries from an economic, social, human rights and environmental perspective, in line with the Better Regulation Guidelines<sup>1</sup> and Tool 34 of the Better Regulation Toolbox<sup>2</sup>; notes that the results of that

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<sup>1</sup> [SWD\(2017\)0350](#).

<sup>2</sup> [https://ec.europa.eu/info/files/better-regulation-toolbox-34\\_en](https://ec.europa.eu/info/files/better-regulation-toolbox-34_en)

assessment should inform the future legislative proposal;

8. Calls on the Commission to apply a human rights-based approach to the future legislation which should be designed, implemented, monitored and evaluated in a manner that respects the core human rights principles of transparency, access to information, participation and accountability, and inclusion and non-discrimination, with a special focus on the most vulnerable; notes that that approach should be guided by the overarching principle of “do no harm” as it is important to avoid unintended adverse effects; considers that the future legislation should be subject to a meaningful and inclusive consultation process on the ground with the relevant stakeholders including local governments and civil society organisations in both the Union and developing countries; believes that that process should be carried out in close cooperation with the Union delegations; stresses that the future legislation should be informed by a gender analysis and take into account the specific needs of women and girls; considers that undertakings should take into account the gender impact of their activities through a gender-responsive human rights due diligence process;
9. Calls on the Commission to embrace a holistic approach that considers the risk of corruption together with the risks to human rights and the environment; notes that the impact of corporate corruption on human rights and environmental damage in developing countries is well documented and that future Union legislation must ensure that businesses do not have an adverse impact on the rule of law and good governance of a country, region or territory, which includes, but is not limited to, non-compliance with the UN Convention against Corruption, Section VII of the OECD Guidelines for Multinational Enterprises 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 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;
10. Recalls that states have obligations to adopt legal and institutional frameworks that effectively protect against environmental harm that interferes with the enjoyment of human rights; highlights that those obligations apply to biodiversity, as an integral part of the environment; accordingly, calls on the Union and its Member States to regulate harm to biodiversity from private actors as well as government agencies; stresses that the future legislation should include obligations to protect the communal property rights of the indigenous peoples and local communities in their territories and the natural resources they have traditionally used; more broadly, is convinced that climate change mitigation and adaptation must form part of business due diligence obligations;
11. Expresses its deep concern regarding the human rights impact of certain business activities, in particular extractive industries and large-scale agribusiness acquisitions, in developing countries on indigenous peoples, local communities and human rights and environmental defenders; stresses that all human rights should be covered by the future legislation; considers that the rights of local communities, women, and vulnerable groups such as children, persons with disabilities, minorities, indigenous peoples and others who closely depend on nature for their material and cultural needs should receive special attention; emphasis should be also placed on workers and trade union rights ,the

rights of freedom of association, collective bargaining and the right to a living wage; stresses that any legislation should be based on existing legal obligations and standards at international and European level, including all ILO conventions, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child, as well as the right to free, prior and informed consent; is of the opinion that the future legislation should cover all types of human rights abuses, including the violation of the right to a healthy environment, as well as adverse impacts on the environment; calls for better legal frameworks and better implementation and monitoring of human rights and environmental standards and protection of human rights and environmental defenders in developing countries and affirms the Union's readiness to support developing countries in institution-building and training of legal and administrative experts through development aid as well as through political dialogue;

12. Is of the opinion that future due diligence legislation should apply to all sectors, all types of undertakings and institutions, whether public or private, at national and European level, including the European Investment Bank and the European Bank for Reconstruction and Development, and of all sizes, domiciled or operating in the Union; considers that the future legislation should uphold the principle of proportionality and guarantee a level playing field for Union companies, protecting their competitiveness, especially that of SMEs with the overarching goal of establishing sustainable, crisis-resilient, human rights and environment-respecting value chains; stresses the importance of carrying out an impact assessment to design rules that enhance competitiveness, that are functional and applicable to all actors on the market, including SMEs with a particular focus on the risk of divestment, and to ensure that such a framework be WTO compliant; calls for SMEs to receive adequate support and transition time in order to adapt their business operations to the new rules, implement the due diligence processes and avoid excessive burdens; considers that the focus should be on sectors that present heightened human rights risks; believes that this horizontal approach should be supplemented by more specific standards and guidance at sector level; stresses that, if necessary, undertakings should prioritise, but not limit, their due diligence strategies taking into consideration the severity and the likelihood of human rights, environmental and governance risks while remaining liable for all impacts that may occur; underlines the need for positive incentives for companies that can demonstrate high levels of compliance with the ambition of the future legislation; draws attention to the risk that companies might divest from third countries, which could result in job losses and in loss of cooperation partners for smallholders in developing countries if new requirements result in imposing an excessive administrative burden and uncontrollable risks;
13. Stresses that due diligence strategies should be aligned with the Sustainable Development Goals, the Paris Agreement and Union policy objectives in the field of human rights and the environment, including the European Green Deal, and the international policy of the Union;
14. Strongly believes that climate change mitigation and adaptation, in line with the goal of the Paris Agreement to hold the increase in the global average temperature to 1.5 degrees Celsius above pre-industrial levels, must form part of businesses' due diligence obligations under the future legislation; in addition, business enterprises should also address the climate change-related vulnerabilities of people impacted by their business operations;

15. Is of the opinion that the future legislation should establish mandatory and effective corporate due diligence processes covering all human rights violations, environmental damage and corruption practices linked to the activities of companies and financial institutions, including their supply and subcontracting chains; stresses that it should ensure the full and active involvement in the due diligence process of those affected, such as trade unions and workers' representatives but also local communities in the developing countries and, in particular, respect of indigenous people's right to free, prior and informed consent; notes that those processes should align with international and European obligations, guidelines and standards. stresses that the legislation should oblige companies to adopt a sound due diligence policy, which should include an inclusive monitoring and accountability mechanism; believes that support measures should be envisaged for certain companies, in particular, SMEs;
16. Expects the future legislation to create duties for financial institutions through the clarification of investor's duties as well as those of the company boards; stresses that the future legislation should also address the question of how to measure and report effectively;
17. Underlines the need to design a sound monitoring and accountability system and to provide competent authorities, both at Union and at national level, with harmonized and effective instruments to monitor and enforce compliance with such legislation to establish a level-playing field between Member States and, in particular, at local level; considers that a special effort has to be made to monitor business activities carried out in higher risk countries and regions, including in conflict-affected areas, having regard to international humanitarian law standards and taking into account the specific challenges posed by conflicts to guarantee accountability for companies and access to justice for victims;
18. Expresses the opinion that the future legislation should establish a comprehensive, transparent and coherent system of liability that should include administrative, civil and criminal liability, and a sanctioning mechanism to enforce compliance with the new legislation and ensure enforcement; stresses that where it is determined that sanctions are appropriate, they should be clear, effective, proportionate and dissuasive; recalls, in that regard, the wide and effective range of administrative sanctions existing under Union law, particularly in competition and data protection law; calls on the Commission to include sanctions such as significant fines, bans from public procurement and public support schemes and disqualification from acting as a director of an undertaking ; in addition, urges the Union and its Member States to make the fight against environmental crime a strategic political priority in international judicial cooperation and for institutions and the Conference of the Parties to the United Nations Framework Convention on Climate Change, notably by promoting compliance with multilateral environmental agreements through the adoption of criminal sanctions, exchange of best practices and by promoting the enlargement of the scope of the International Criminal Court to cover criminal acts that would amount to ecocide; underlines the crucial importance of civil liability mechanisms to provide access to remedies for victims before Union courts; stresses that barriers to access to remedies should be lifted, including through adequate statutes of limitation and support regarding legal costs;
19. Stresses that access to effective remedies is crucial; recalls that states have the primary duty to provide access to remedies; considers that the future legislation should oblige

companies to have an effective grievance mechanism that should be transparent, accessible, predictable, safe, trustworthy and accountable; underlines that corporate grievance mechanisms are only meant to work as early-warning systems, allow for emergency relief and remedies for insignificant damage; stresses that such mechanisms must be certified by public authorities and that they should never prevent a claimant from accessing courts; expresses that special attention should be paid to Export Processing Zones, which are often characterized by exemptions from labour law and taxes and face severe problems related to decent work conditions and trade union restrictions; is of the opinion that those mechanisms should be designed in consultation with workers and affected communities; considers, in addition, that the future legislation should provide for effective judicial remedies to victims of human rights violations, environmental damage and corruption practices individually and through collective actions; believes that special protection should be provided to human rights defenders and their lawyers; considers that other non-judicial remedies should also be provided for; believes in that regard, that the future legislation should further explore the role of Union delegations in the implementation of the future legislation, for example, by means of a complaint mechanism that would allow victims of abuses committed by undertakings domiciled or operating in the Union and their supply chains to file complaints;

20. Stresses that complementarity and coordination with development cooperation policy, instruments and actors is decisive and that the future legislation should therefore provide for some provisions in this regard;
21. Stresses that local civil society remains a key partner in implementation and monitoring of the future legislation; notes, therefore, that the future legislation should ensure that civil society mechanisms be provided with resources in a sustainable manner and create transparent and structured channels for civil society to interact with corporate and government entities;
22. Emphasises the importance of mainstreaming and enforcing social, environmental, human rights and good governance due diligence obligations within trade instruments such as free trade agreements, investment agreements, economic partnership agreements or generalised schemes of preferences; warns against developing a double-standard policy regarding the rights and obligations of corporations in investment and trade treaties; is convinced that it is crucial to make the sustainable development chapters of free trade agreements binding and enforceable; believes that this would also help to avoid distortion of competition with companies based outside the Union; strongly believes that a binding and enforceable UN treaty on business and human rights, which would ensure access to justice for victims of human rights violations and provide for mechanisms for redress and accountability for the communities affected, could address existing imbalances; reiterates once more the importance of the Union being actively involved in the discussions of the open-ended intergovernmental working group on transnational corporations and other business undertakings with respect to human rights; considers that, in parallel to its work on mandatory corporate due diligence legislation, the Union should adopt a mandate to actively and constructively engage in the negotiations for a UN binding treaty on business and human rights, with the aim of securing an ambitious global level playing field for human rights protection and business responsibilities; calls on the Commission to actively work within the WTO in order to promote multilateral rules for sustainable management of global value chains,

including mandatory supply chain due diligence, in the garment sector as a first step.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	13.11.2020
<b>Result of final vote</b>	+: 14 -: 2 0: 9
<b>Members present for the final vote</b>	Anna-Michelle Asimakopoulou, Hildegard Bentele, Dominique Bilde, Udo Bullmann, Catherine Chabaud, Antoni Comín i Oliveres, Ryszard Czarnecki, Gianna Gancia, Charles Goerens, Mónica Silvana González, Pierrette Herzberger-Fofana, György Hölvényi, Rasa Juknevičienė, Pierfrancesco Majorino, Erik Marquardt, Norbert Neuser, Jan Christoph Oetjen, Christian Sagartz, Marc Tarabella, Tomas Tobé, Miguel Urbán Crespo, Chrysoula Zacharopoulou, Bernhard Zimniok
<b>Substitutes present for the final vote</b>	Alviina Alametsä, Frances Fitzgerald

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

14	+
S&D	Udo Bullmann, Mónica Silvana González, Pierfrancesco Majorino, Norbert Neuser, Marc Tarabella,
RENEW	Catherine Chabaud, Charles Goerens, Jan-Christoph Oetjen, Chrysoula Zacharopoulou
GREENS/EFA	Alviina Alantesä , Pierrette Herzberger-Fofana, Erik Marquardt
GUE/NGL	Miguel Urbán Crespo
NA	Antoni Comín i Oliveres

2	-
ID	Gianna Gancia, Bernhard Zimniok

9	0
EPP	Anna-Michelle Asimakopoulou, Hildegard Bentele, Frances Fitzgerald, György Hölvényi, Rasa Juknevičienė, Christian Sagartz, Tomas Tobé
ID	Dominique Bilde
ECR	Ryszard Czarnecki,

Key to symbols:

+ : in favour

- : against

0 : abstention

**ANNEX: LIST OF ENTITIES OR PERSONS  
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

<b>Entity and/or person</b>
Anti-Slavery International
Amfori
Amnesty International
ASN Bank
BusinessEurope
CNV Internationaal
Cobalt Institute
EuroCommerce
European Chemical Employers Group
European Coalition for Corporate Justice
European Cocoa Association
European Parliament Working Group on Responsible Business Conduct
European Trade Union Confederation
Federation of German Consumer Organisations
Friends of the Earth Europe
German Retail Federation
Global Reporting Initiative
Global Witness
H&M Group
INretail
International Federation for Human Rights
MEDEF
MVO Nederland
Organisation for Economic Co-operation and Development
Sociaal-Economische Raad (Social and Economic Council)
Tony's Chocolonely
VNO-NCW

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	27.1.2021
<b>Result of final vote</b>	+: 21 -: 1 0: 1
<b>Members present for the final vote</b>	Manon Aubry, Geoffroy Didier, Pascal Durand, Ibán García Del Blanco, Jean-Paul Garraud, Esteban González Pons, Mislav Kolakušić, Sergey Lagodinsky, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Franco Roberti, Marcos Ros Sempere, Ernő Schaller-Baross, Stéphane Séjourné, Raffaele Stancanelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos
<b>Substitutes present for the final vote</b>	Caterina Chinnici, Heidi Hautala, Bettina Vollath

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

<b>21</b>	<b>+</b>
PPE	Geoffroy Didier, Esteban González Pons, Jiří Pospíšil, Axel Voss, Marion Walsmann, Javier Zarzalejos
S&D	Ibán García Del Blanco, Franco Roberti, Marcos Ros Sempere, Tiemo Wölken, Lara Wolters
Renew	Pascal Durand, Karen Melchior, Stéphane Séjourné, Adrián Vázquez Lázara
ID	Jean-Paul Garraud, Gilles Lebreton
Verts/ALE	Heidi Hautala, Marie Toussaint
The Left	Manon Aubry
NI	Mislav Kolakušić

<b>1</b>	<b>-</b>
ECR	Raffaele Stancanelli

<b>1</b>	<b>0</b>
PPE	Ernő Schaller-Baross

Key to symbols:

+ : in favour

- : against

0 : abstention