



**2020/2129(INL)**

17.9.2020

# **DRAFT 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

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## 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 the 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 Charter of Fundamental Rights of the European Union (the ‘Charter’), to ensure sustainable development and consistency between its external action and other policies;
  2. Notes that globalisation has created interdependencies between societies, where any product results from complex transnational supply and value chains and where decisions taken by European firms impact on peoples’ ability to enjoy human rights and fundamental freedoms worldwide;
  3. Regrets that many businesses’ decisions are primarily guided by lower costs and higher profits with inadequate consideration of adverse impacts on human rights and the environment down their global value chains, while severe human rights violations often occur at primary production level, in particular when sourcing raw material and manufacturing products;
  4. Is gravely concerned by the persistent exploitation and degradation of human beings through forced labour systems affecting 25 million people and from which the private economy extracted profits of 150 billion dollars globally in 2019; Notes with concern that there are currently an estimated 152 million children in child labour, 72 million of whom work in hazardous conditions;
  5. 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 (ICESCR), the ILO’s Core Labour Standards, the European Social Charter as well as in the Charter;
  6. Stresses that the rights to an effective remedy and fair trial are basic human rights enshrined in Article 8 of the Universal Declaration of Human Rights (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, must 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;

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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

7. Stresses that the United Nations Guiding Principles on Business and Human Rights (UNGPs) highlight the duty of states to protect against human rights abuses within their territories, jurisdictions, or both, by third parties, including businesses; further emphasises that, independently of the ability and willingness of states to fulfil their human rights obligations, 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 enabling providing remedies to victims;
8. 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, human rights, the environment, corruption, consumers 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;
9. 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;
10. 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 fundamental right to a fair trial, the right to due process and the victim's right to effective redress; stresses that corruption generally leads to systematic abuse 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, by encouraging wrongful acquisition or appropriation by businesses of land, or by granting licences or concessions to businesses in the extractive sector;
11. Regrets that despite attempts by European companies to implement their corporate responsibility policies to respect human rights, and various policies and laws in place to encourage or require due diligence across different Member States, only 37% of businesses are currently undertaking due diligence in their supply chains and only 16% cover the entire value chain; stresses that protection of human rights and prevention of business-related abuses and violations cannot be achieved with current policies and that binding Union legislation is necessary to bridge this gap;
12. Notes that corporations and investors are calling for mandatory human rights due diligence at Union level, to harmonise standards, and secure a global level playing field and greater legal and business certainty;
  - to incorporate the following recommendations into the annex to its motion for a resolution:
13. Urges the Commission to propose Union mandatory human rights and environmental due diligence legislation imposing legal obligations on Union companies and companies

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Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

domiciled or operating in the Union internal market and establishing effective monitoring, enforcement and remedy mechanisms;

14. Recommends that due diligence as required by Union legislation be extended to all potential or actual adverse impacts which the company has or may have caused, contributed to or with which it may be directly linked; this extends to, but is not limited to, abuses across the entire value chain, including the parent undertaking, all subsidiaries, direct and indirect suppliers and subcontractors or other business partners;
15. Recommends that Union legislation cover all companies and all sectors, including state-owned enterprises, the banking sector and financial institutions, including the European Investment Bank;

### **Scope of human rights**

16. Stresses that all human rights are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner; recommends that due diligence obligations should apply to all business-related human rights abuses;
17. Recommends that Union mandatory due diligence legislation be adopted to require companies to identify and address their impacts with reference to 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, as well as the ECHR and ICESCR, which are binding on Council of Europe member states and also bind Member States as a result of Union law and the common constitutional traditions of the Member States;
18. Notes that Charter applies to all Union legislation and to national authorities when implementing Union law both in the Union and in third countries;
19. Notes that the human rights of groups at risk of vulnerability and marginalisation are disproportionately impacted by businesses' activities; insists therefore that Union mandatory due diligence legislation should refer to group-specific instruments in defining the scope of corporate human rights due diligence; stresses, in this regard, that all rights guaranteed to those 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;
20. 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;
21. 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; 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 consequently that those rights be covered by the legislation;

22. Notes that the United Nations High Commissioner for Human Rights and Human Rights Council have stated that climate change has an adverse impact on the full and effective enjoyment of human rights; underlines that the member states of the United Nations have an obligation to respect human rights when addressing adverse impacts of climate change; points out that the Supreme Court of the Netherlands has confirmed that Articles 2 and 8 of the ECHR impose a positive obligation for State Parties to take appropriate measures to prevent dangerous climate change; insists that climate change mitigation and adaptation in line with the Paris Agreement's temperature goals must form part of businesses' human rights and environmental due diligence obligations under the legislation;
23. Notes that some corporations unlawfully exploit natural resources, which not only constitutes a major sustainability and environmental challenge but also results in severe adverse impacts on the social, economic, cultural, civil and political rights of local communities; such business practices violate the fundamental 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 legislation requires 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;
24. 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 Anti-Bribery Convention and 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;
25. Notes that some businesses are accused of profiting from or even complicity 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 under Union legislation be extended to breaches of international criminal law and international humanitarian law in which businesses may be implicated;

## **Key recommendations**

### *Due diligence process and obligations*

26. 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; businesses should avoid infringing human rights and address adverse human rights impacts with which they are directly or indirectly connected, entailing in practice that they should have in place an embedded human rights policy, a human rights due diligence process and appropriate and adequate measures to facilitate access to effective remedies for business-related human rights abuses, including at company level, and other grievance mechanisms;

27. Is of the view that businesses have a responsibility to ensure that their activities do not undermine or harm the protection of human and environmental rights; insists they must not promote, participate or in any manner contribute to, or endorse policies and activities, which can lead to human rights violations; underlines that businesses must do everything possible, within their capacities, to prevent and mitigate the effect of adverse impacts;
28. Stresses that human rights impacts can be specific to certain rights holders and vulnerable groups due to intersecting factors such as gender, ethnicity, social and employment status, migrant or refugee status, exposure to conflict or violence or other factors; this must be reflected in the due diligence processes, including the human rights impact assessment phase and remedy procedures;
29. Notes that the risk of business-related human rights adverse impacts does not always depend on the size of the company; insists that the scope of due diligence obligations must be based on the risk of adverse impacts and must be specific to the country 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*

30. Notes that human right risks are context-specific and that, to accurately assess human rights risks, prevent, mitigate and remedy adverse impacts, businesses should include in their analysis, in addition to information from employees, right-holders, affected communities and workers' representatives, information from reliable independent expert sources, for which transparency is key; stresses in this regard, the key role of national human rights institutions, 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;
31. Notes that in order to assess human rights risks, independent monitoring of human rights impacts and working conditions in supply chains is essential, in particular by means of monitoring, which has workers and affected communities at its core and fully involves relevant stakeholders;
32. Notes that due diligence also necessitates measuring the effectiveness of processes and measures taken and communicating results, including periodically producing public evaluation reports;
33. Stresses that transparency must be at the core and the overriding principle of the 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, accordingly, for Union due diligence legislation to require the publication of lists of companies within its scope, the publication of due diligence reports via online public repositories, and the identification of companies that comply or have failed to comply with due diligence obligations;
34. Is of the view that transparency should not be corporate led but based on the right to know of those who are impacted by commercial activities, including workers,

communities and consumers; suggests that stakeholders have a right to know such information in a comprehensive, timely and honest manner; believes that enforcing the right to be informed allows for the clear establishment of duties and duty bearers and rights and right-holders;

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

35. Notes that rights holders primarily affected by business-related human rights abuses 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 protection and enforcement of their rights; recommends that the legislation encourage businesses to engage with all affected and potentially affected stakeholders, with their representatives, or both, including workers' representatives, at all stages of the due diligence process, from development to monitoring and evaluation, in a timely and meaningful manner;
36. In this context, underlines the importance of the freedom of association and right to collective bargaining, as well as free, prior and informed consent by indigenous communities;

#### *Protection of whistle-blowers, human rights and environmental defenders*

37. Suggests that the companies establish effective alert mechanisms; 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;
38. Stresses that disclosure and complaint procedures must ensure that the anonymity, safety, physical and legal integrity of whistle-blowers are protected, in line with Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>3</sup>;
39. Deplores that an increasing number of attacks are documented on human rights and environmental defenders and that 572 attacks occurred in 2019 alone; stresses that Article 12 of the United Nations Declaration on Human Rights Defenders imposes a duty on states to ensure the protection of everyone against violence, threats, retaliation, discrimination or any other arbitrary action as a consequence of his or her legitimate right to promote human rights;
40. Recommends that the legislation requires the establishment of a protection mechanism in compliance with Directive (EU) 2019/1937 and the United Nations Declaration on Human Rights Defenders, in order to protect stakeholders from lawsuits, attempts to silence their claims, intimidation and being otherwise deterred from seeking justice;

#### *Right of equal access to justice and to effective remedy*

41. Notes that the right to an effective remedy is an internationally recognised human right, enshrined by Article 8 UDHR and by Article 2(3) ICCPR, and is also a Union

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<sup>3</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).



fundamental right (Article 47 of the Charter);

42. Highlights the fact that, 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; 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;
43. Stresses that as part of due diligence, as required by the corporate responsibility to respect human rights, companies should put in place processes to enable the adverse human rights impacts they cause or to which they contribute to be remedied; accordingly, 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 and non-judicial, grievance mechanisms;
44. Insists that access to evidence and time limitations can be major practical and procedural barriers faced by victims of human rights abuses in third countries, obstructing their access to effective legal remedies; stresses that that the burden of proof should be shifted from the victims to the company and that the legislation must require companies to disclose all necessary information for interested parties to engage in judicial proceedings and for victims to access remedies;
45. 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 Member States to provide legal aid to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice;
46. 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 to prevent harm, including providing adequate access to remedies;

#### *Enforcement, civil and criminal liability*

47. Calls for measures to ensure that Union due diligence legislation is adequately monitored and enforced by national and Union bodies with appropriate duties and powers; such bodies should have competence to investigate abuses, initiate enforcement actions and to support victims, for instance through legal advice, technical support and representation;
48. Recommends that Union due diligence legislation require Member States to determine effective, proportionate and dissuasive penalties and sanctions for non-compliance by companies with due diligence obligations, including in relation to the making of false or misleading statements;
49. Stresses that criminal law and criminal justice are indispensable means of human rights protection against severe human rights violations;

50. Notes that the Union has legislated on corporate criminal liability related to human rights and that slavery and forced labour are criminalised under Union legislation, including in particular under Directive 2009/52/EC of the European Parliament and of the Council<sup>4</sup>, Article 9 of which obliges Member States to criminalise particularly severe forms of labour exploitation;
51. Recommends that the legislation include criminal liability provisions for companies and directors and management that are held responsible in the event of severe violations of human rights.

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<sup>4</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p.24).