



European Commission consultation for an initiative on sustainable corporate governance

Anti-Slavery International response

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

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

Yes, a more holistic approach should favour the maximisation of social, environmental, as well as economic/financial performance.

Yes, as these issues are relevant to the financial performance of the company in the long term.

No, companies and their directors should not take account of these sorts of interests.

Do not know.

Please provide reasons for your answer:

Anti-Slavery International is the world's oldest human rights organisation. Founded in 1839, our heritage spreads back to British abolitionists. Today, we draw on our experience to work to end all forms of slavery and slavery like practices throughout the world, including forced labour, debt bondage, human trafficking, descent-based slavery, the worst forms of child labour and forced marriage.

In 2017, the International Labour Organisation (ILO) estimated that 25 million people are in forced labour across the world at any given time, including children (see below). This forced labour is likely linked to the supply chains of international businesses with jurisdiction in, or providing goods to, countries in the northern hemisphere, including the EU. Numerous [sectors](#) are extremely high risk for forced labour, including agriculture, construction, manufacturing (for example, garment and electronics), mining and metals, hospitality and cleaning, as well as key industries crucial to value chains such as shipping, delivery services and warehousing, among many others. For example, exploitation and forced labour is rife in products and services linked to EU companies' operations or supply chains including [seafood](#) from Thailand, [minerals](#) for technology from the Democratic Republic of Congo,

[cotton](#) from Turkmenistan and the Xinjiang [Uyghur Autonomous Region](#), China, and [construction](#) in Qatar and the United Arab Emirates.

Furthermore, in 2017 the ILO estimated there were 152 million child labourers in the world, with almost half still in 'worst forms' and more than four million reported in forced labour. The ILO has [stated](#) that the Covid-19 crisis is likely to push millions of vulnerable children into child labour, reversing years of progress in reducing child labour.

Many of the [root causes](#) of forced and child labour are linked to systemic poverty, discrimination, social exclusion, weak labour rights protections and restrictive migration regimes. Yet corporate business models and practices, such as concentrated corporate power, purchasing practices reliant on quick turnaround goods at low cost, subcontracting, and ongoing restrictions to freedom of association create a demand for forced labour or enable conditions where exploitation thrives.

Voluntary measures to prevent forced labour in supply chains have been proven wholly inadequate, as we elaborate upon in Question 2. During the Covid-19 pandemic, as we outline in Question 3, many industries reacted wholly irresponsibly. The global fashion industry cancelled billions of dollars of contracts with suppliers, placing workers in these supply chains at severe risk of heightened vulnerability to forced labour, including debt bondage. In industries with increased demand, such as PPE, workers have been exposed to the risk of contracting Covid-19, with numerous [reports](#) of exploitation and forced labour. In response, in May 2020 a UN Human Rights Experts' statement [stated](#), *"forcing vulnerable workers with little choice but to endure conditions that put them at risk, including by dismantling previously established labour rights, can constitute a form of forced labour, according to the ILO"*. Responsible business should not exist only when the prevailing trading conditions allow. While the events in early 2020 were unprecedented, the kneejerk response and human cost demonstrate that companies must not play lip service to operating responsibly, and that legal obligations are necessary.

The endorsement of the UN Guiding Principles on Business and Human Rights (UNGPs) shows that there is no disagreement about whether companies should be responsible for addressing their global impacts on people and the planet. Companies and their directors should take environmental, social and governance issues into account and it is critical that EU legislative and regulatory provisions require this.

The law should clarify the responsibilities of directors to oversee and ensure quality of the implementation of the due diligence and materiality determination processes, and to adopt, disclose and ensure implementation of forward-looking human rights and sustainability strategies and targets based on the findings of these processes.

Significant reform to the dominant economic and business model, which is based on infinite growth and prioritising short-term profits and shareholder value, is urgently needed. Companies need to elevate and protect the interests of all stakeholders to develop a more balanced approach where the interests and needs of all key groups are meaningfully taken into account, including employees; all workers in supply chains – such as permanent workers, temporary and agency workers, migrant workers, lower-caste workers, seasonal workers and homeworkers; affected communities; indigenous peoples; and human rights, environmental and land defenders.

Max. 5,000 characters.

Question 2: Human rights, social and environmental due diligence requires companies to put in place continuous processes to identify risks and adverse impacts on human rights, health and safety and environment and prevent, mitigate and account for such risks and impacts in their operations and through their value chain.

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

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

Yes, an EU legal framework is needed.

No, it should be enough to focus on asking companies to follow existing guidelines and standards.

No action is necessary.

Do not know.

Please explain:

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

In the [EC study on due diligence requirements through the supply chain](#), only a minority of business respondents stated they conducted some form of due diligence. Furthermore, according to [KnowTheChain \(2018, All Sectors\)](#), over 60% of leading EU-based companies are failing to take adequate steps to address forced labour and almost three-quarters of them fail to provide adequate remedy to victims of forced labour.

The assessments and benchmarks of the implementation of due diligence by companies point consistently to the fact that only 20% of companies claim to carry out due diligence ([Alliance for Corporate Transparency](#), [Corporate Human Rights Benchmark](#)).

The number of companies that meet basic quality criteria for due diligence is even lower. According to the [EC study](#), the majority of business respondents (52%) conducted due diligence at Tier 1 only, thus failing to identify and address risks in lower tiers of supply chains, where forced labour risks are highly prevalent. Only 16% of business respondents to the EC study stated their due diligence covered the entire value chain.

For forced labour, under current voluntary standards, a majority of businesses focus on the use of social auditing or certifications in order to address the risk of forced labour in their supply chains.

Audits are not a reliable approach to identify the risks of forced labour in supply chains.

Vulnerabilities faced by workers in forced and child labour and exploitation are often hidden and cannot be uncovered by audits, which provide only a “snapshot” in time and do not take into account the complexities of forced and child labour. For example, Clean Clothes Campaign has documented numerous [examples](#) of audits failing to identify forced labour, including in the infamous example of Top Glove, Malaysia. This includes cases whereby the reliance on audits has actually proven deadly to workers - due to facilities being certified as safe through audits before deadly events that caused preventable loss of lives, such as Rana Plaza. The inadequacy of audits has been particularly exposed in the Xinjiang Uyghur Autonomous Region (Uyghur Region). Recognising the impossibility of

credible audits, in September 2020 a number of global auditing firms often used by EU brands and retailers [announced](#) that they will no longer conduct audits in the Uyghur Region.

Further, certifications are not sufficient to guarantee the prevention of forced or child labour. A [study](#) found that in India's major tea producing regions, tea plantation workers all lived below the poverty line, with workers on certified farms often treated worse, facing beatings and sexual violence and having wages and benefits withheld. Cocoa production in Brazil is another example. A recent study from Reporter Brasil [shows](#) how two multinational companies purchased cocoa beans from farms that used slave labour, despite these farms being certified by UTZ, a label and program for sustainable farming of coffee, cocoa, tea and hazelnuts.

A legal framework for environmental and human rights due diligence must be established at the EU level to ensure that the same rules apply to all companies domiciled or based in the EU, or active on the EU market. This will ensure a level playing field and a coherent legal framework within the EU. It should ensure that business enterprises taking appropriate steps to respect the human rights of their workers do not face disadvantages if their competitors profit from lower costs gained through the exploitation of workers.

The mandatory EU legal framework should establish a robust, enforceable due diligence standard for businesses to prevent and address their negative human rights and environmental impacts in their operations and global value chains. In contrast to audits and certification, it must require business enterprises to undertake an ongoing process of due diligence, including through continuous stakeholder engagement.

The legal framework should create much needed accountability for the harms to people and the planet, ensuring access to remedy and justice for victims of corporate harm including victims of forced labour, in order to drive positive systemic changes around the world.

Action at EU level is necessary to ensure the contribution of business to the Treaty objectives of sustainability (Article 3(5) and Article 21(2)(d) and (f) TEU) and to promote a high level of environmental protection.

Max. 5,000 characters.

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

Ensuring that the company is aware of its adverse human rights, social and environmental impacts and risks related to human rights violations other social issues and the environment and that it is in a better position to mitigate these risks and impacts

Contribute effectively to a more sustainable development, including in non-EU countries

Levelling the playing field, avoiding that some companies freeride on the efforts of others

Increasing legal certainty about how companies should tackle their impacts, including in their value chain

A non-negotiable standard would help companies increase their leverage in the value chain

Harmonisation to avoid fragmentation in the EU, as emerging national laws are different

SMEs would have better chances to be part of EU supply chains

Other

Other, please specify:

At the current rate of progress, the world is not on track to achieve Sustainable Development Goal 8.7: the eradication of modern slavery by 2030. Covid-19 has further threatened progress, exacerbating risks of exploitation in all tiers of global supply chains. In particular, women, children, groups in vulnerable situations, including migrant workers, are experiencing disproportionate abuses.

Although an EU legal framework on a due diligence duty cannot, alone, eradicate forced and child labour globally, Anti-Slavery International believes that - if an effective legal framework is introduced and implemented - it would drive significant progress towards this goal. It would reduce ongoing violations of fundamental rights at work caused by, contributed to, or directly linked to EU business enterprises' operations and supply chains, and would mandate business enterprises to take steps to address exploitative practices in their supply chains. This includes through greater respect and upholding of fundamental rights including fair and living wages, freedom of association and collective bargaining, freedom from discrimination, and decent working conditions, and addressing business practices linked to a high risk of exploitation such as purchasing practices, the use of labour brokers, intermediaries, and subcontracting.

It would drive business enterprises to take steps to protect workers in vulnerable situations who face a higher risk of exploitation - including inter- and intra-state migrant workers; casual, temporary and seasonal workers; homeworkers; workers from marginalised groups such as indigenous peoples, people of lower-castes or ethnic minorities; illiterate workers; and women and children.

Crucially, this progress towards the achievement of decent work will only be achievable if the proposed due diligence duty explicitly addresses issues such as **purchasing practices, living wages, freedom of association, and the heightened risks of exploitation faced by groups in vulnerable situations**. The due diligence duty must also be introduced in parallel to **other complementary measures in EU trade and development policy - including to support producing government countries to ratify and enforce labour rights**. This is further detailed in responses to other questions.

In addition to the above, an important benefit of an EU due diligence duty would be that **it would enable and support remedy for victims of forced labour in and outside the EU, overcoming the significant challenges to date for victims to access remedy both through judicial and non-judicial mechanisms**. An EU due diligence duty requires active engagement in remediation of adverse impacts where business enterprises cause or contribute to harm by way of actions or omissions. Such legal liability provisions coupled with effective enforcement mechanisms will create an important opportunity for access to remedy for victims and affected communities.

As outlined above, according to [to Know the Chain. \(All Sectors. 2018\)](#), almost three-quarters of EU headquartered companies fail to provide adequate remedy to victims of forced labour. **To better enable this, it is also essential that companies are mandated to map and disclose the details of their whole supply chain, with key information provided, in order to enable victims to identify business relationships across supply chains**, and challenges to access to remedy and justice for particular groups in vulnerable situations, such as migrant workers, must be addressed.

An EU legal framework may also lead to improved resilience of companies and economies in the face of crises, particularly, in the face of supply chain shocks ([the OECD has stressed](#) the need for improved supply chain due diligence as a response to the COVID-19 crisis, which would contribute to “a faster and stronger recovery while making the economy more resilient to future crises”). Covid-19 exposed the fragility of supply chains, in particular the garment industry, in which brands and retailers [cancelled](#) billions of dollars of contracts with suppliers. The knock-on effect of these actions has put millions of workers, particularly in the South Asian and Southeast Asian garment producing countries, at extremely high risk of a heightened [vulnerability to modern slavery](#), including debt bondage and human trafficking. Unemployment, even if temporary, and delayed or lost wages, leads to an increase in household debt, particularly in places where debt is already endemic, due to poverty, and where social security nets are inadequate. Had a due diligence duty been in place prior to the pandemic, brands [should have had stronger foundations](#) in place to address the human rights risks inherent to the garment industry (lack of social protections, wage protection etc) which led to the breakdown of supply chains in Spring 2020. Further, brands would have been mandated to consider the human rights implications on workers of mass cancellations or delayed payments to suppliers.

Max. 5,000 characters.

Question 3a. Drawbacks

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

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

Other, please specify:

We believe many of the above-mentioned risks **are unfounded claims** against due diligence legislation, rarely supported by evidence. Well-designed due diligence legislation, with requirements in line with the UNGPs and complementary approaches, could mitigate these risks.

We believe the main risk associated with the due diligence framework is the risk that if designed, implemented and enforced ineffectively, it will fail to drive sustainable change, and could – in fact – become a further tick-box measure of corporate compliance. To avoid such an unintended

consequence, it is crucial that the proposed framework includes all the factors described in our answers to this consultation, including relating to access to justice and liability.

A specific potential risk is that, if the framework is poorly designed and implemented, **parent and lead companies will end up passing the additional costs of compliance with due diligence requirements to their suppliers and subcontractors**, without adapting their own business models and purchasing practices. Power relations between multinational buyers/retailers and suppliers/producers in production countries are asymmetric and characterised by downward pressures on prices, and in a number of industries, a demand for quick turnaround of goods. These power imbalances are likely to influence who bears the cost of compliance with due diligence requirements. Suppliers are often pressured to produce cheaply and quickly - without additional resources, and thus struggle to meet social and requirements. In many industries, this pressure also leads to unauthorised subcontracting, which increases the risk of exploitation and forced labour. Complementary action is therefore required to ensure a more equitable distribution of costs and benefits in global value chains (see [FTAO report on Making Human Rights Due Diligence Frameworks Work for Small Farmers and Workers](#), 2020).

This speaks to the **need for the proposed framework to explicitly require companies to identify, assess and address the potential negative impact of their purchasing practices**. In addition, we underline that the due diligence framework should also include **criteria relating to living incomes and wages, freedom of association, and the risks and impacts to groups in vulnerable situations**.

Further, as described in Question 2 and Question 19, the **due diligence duty must not lead to a further reliance by companies on audits, certifications or participation in industry associations or multi-stakeholder initiatives**, and these must not be considered evidence of due diligence or absolve a company from liability.

Regarding **the alleged risk of disengagement from risky markets**, disengagement should only be considered as a last resort as outlined in UNGP19, which notes that business enterprises should only consider ceasing relationships where options for leverage to prevent or mitigate negative impacts have been exhausted or leverage is insufficient. A similar approach is elaborated upon in the OECD Due Diligence Guidance (3.2.h). **A hands-off approach where a company simply disengages without taking further measures would not be in line with these standards** (see SOMO papers on responsible disengagement, [2016](#), [2020](#)).

Due diligence legislation would, therefore, prevent irresponsible disengagement from happening by compelling companies to evaluate all possible options for alternatives, to consider the potential adverse impact associated with a decision to disengage, and by holding them liable in case of irresponsible disengagement. Therefore, due diligence should, in fact, encourage more meaningful collaboration with suppliers through long-term sourcing relationships to address harms on the ground and systemic causes of abuses (for forced labour, for example, land poverty, discrimination and marginalisation, weak labour rights enforcement, corruption, lack of access to education) leading to positive and more sustainable outcomes.

The fear of EU companies withdrawing from production countries, rather than addressing adverse impacts, is unjustified. As stated in the [EC study](#), in practice, **it is unlikely that companies would be in a position to restructure their global business model in such a significant way for this purpose**.

Similarly, evidence shows that companies rarely terminate their business relationships based exclusively on social or human rights-related concerns.

Exceptions include, for example, companies' disengagement from contexts with state-imposed forced labour (e.g. [Turkmenistan, Uzbekistan](#) and the [Xinjiang Uyghur Autonomous Region](#)). In these contexts, the lack of leverage to change the practice due to state drivers of forced labour, the severe restrictions on freedoms and the severity of the abuses, compels companies to disengage, in line with the UNGPs. Notably, these are contexts whereby representative groups of the victim populations have called for, and supported, disengagement by EU companies and investors.

Max. 5,000 characters.

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

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

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

the interests of society, please specify:

- There is historical evidence that an excessive focus on the short-term interests of shareholders, has had detrimental effects on the ways in which companies approach and integrate the interests of other stakeholders as well as focus on the company's long-term success. The EC study outlined that while shareholders pay-outs in Europe were rapidly increasing over the period 1992-2018, these strategic choices were made at the expense of funding investment in climate transition and closing pay gaps. The report also highlights the connections between shareholder primacy, corporate short-termism and lack of actions towards more environmentally sustainable companies – a conclusion that finds an echo in a recent report by the Alliance for Corporate Transparency analysing the non-financial reporting of 1,000 EU companies, as less than 5% of the companies had a climate target aligned with the objectives of the Paris Agreement.

- Companies and markets in general thrive in prosperous and cohesive societies. There are numerous societal interests that have a profound effect on the company and the risks it is facing, including social conflict (which in extreme can take the form of a war), corruption, poverty, systemic abuse of human and labour rights, shrinking space for civil society to operate, the ability of people to pursue their happiness, political persecution, and general societal infrastructure. It is further noted that these interests may be also affected by the company's actions.
- The collective interests of the company's stakeholders are also relevant as part of the 'interests of society'. However, efforts to enumerate the types of interests that company directors need to take into consideration have had little impact because the issues of concern depend on the business, societal and environmental context in which the company operates. However, companies' long-term resilience cannot be dissociated from the interests of a range of stakeholders and the natural environment, including climate.

Max. 5,000 characters.

other interests, please specify:

- **The interests of suppliers:** for supply chains to be fair, resilient and sustainable, companies need to develop partnerships with suppliers, based on long-term commitments and on a mutual benefit approach, and taking into account the constraints and needs of suppliers. In that context, companies can develop with their suppliers long-term improvement processes and include related costs linked to the prevention of human and labour rights abuses in their buying prices. These improvements would cover, among others, providing safe and hygienic working and housing conditions, providing permanent contracts, paying living wages, enabling social benefits, and ensuring that working hours are not excessive.
- **The ability of the market to internalise the costs** of social and environmental impacts.
- **The ability of the business actors in a given area to take collective action** to address systemic problems.

Max. 5,000 characters.

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

	I strongly agree	I agree to some extent	I disagree to some extent	I strongly disagree	I do not know	I do not take position
Identification of the company's	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

Please explain:

- It is imperative to clarify between the due diligence duty that the company has to respect human rights and the environment and the duty of care that the directors have to the company itself.
- The current duty of care that directors have has not led to proper identification and due consideration by companies of impacts on people and the planet and related risk management. Therefore, there is an urgent need to clarify that directors should, as part of their duties, align the overarching duty of care with the requirement for the company to respect human rights and the environment.
- To ensure that this aspect of their duty of care is implemented by corporate boards, the law must clarify **how the stakeholders' interests should be considered**, both from the perspective of **respect to legitimate interests** of stakeholders, as well as from the perspective of the **management of risks** and opportunities. In this regard, it must be clarified the level at which the responsibility to take into account stakeholder's interests is placed. In particular, the responsibility to consult and engage with stakeholders must be embedded throughout the corporate structure, and not rest solely with the board of directors. Indeed, the responsibility to consult and engage with stakeholders will form part of the corporate's due diligence duty and operational responsibilities. In this regard, in addition and to support such corporate duty, it should be clarified that directors are responsible, as part of their duties, to provide oversight over the quality of the company's due diligence and ensure that its results are integrated in the corporate strategy.
- The purpose of such clarification is to ensure that the sustainability matters are duly considered at a strategic level, and that there is a transparency concerning their integration in

the company's overall strategy that facilitates meaningful engagement of investors and stakeholders.

Max. 5,000 characters.

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

I strongly agree

I agree to some extent

I disagree to some extent

I strongly disagree

I do not know

I do not take position

Please explain:

- The upcoming initiative should consider the role that directors must play to ensure that the corporate due diligence obligations are embedded throughout the corporate operations and strategies. This will allow companies to address impacts and risks on a regular basis.
- Therefore, it should be clarified that the company is responsible for carrying out due diligence, as part of its operations, throughout the value chain and that directors should be responsible for overseeing the implementation of the due diligence processes by the company and for ensuring that the company takes appropriate actions.
- As part of their duty of care, directors should be required to develop, disclose and implement, on behalf of the company, a forward-looking corporate strategy that integrates human rights and sustainability matters, and set measurable, specific, verifiable, time-bound targets and plans and milestones to achieve them based where appropriate on science-based methodology. Directors must set such targets, in particular, where effective management of risks and impacts have implications for the company's overall strategy, business model and financial planning. That means, the bigger risks and impacts are, the greater is the need for directors' level decision on strategies and targets.

Max. 5,000 characters.

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

I strongly agree

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

Please provide an explanation or comment:

- It is imperative to distinguish the due diligence duty that the company has to the respect human rights and the environment and the duty of care that the directors have to the company itself. The directors' duty of care is owed to the company as a separate legal entity. Therefore, in principle, it already includes an obligation for directors to consider all matters and stakeholders interests. It should be clarified and reaffirmed in legislation that, in doing so, directors should balance the interests of all stakeholders, ensuring that no stakeholders are harmed, at least in accordance with the due diligence obligations of the company.
- As explained in a statement on corporate governance drafted by a group of senior academics as a guidance for the European Commission on this very matter: "The underlying idea is that directors could potentially use their discretion under (some variant of) the business judgement rule that exists in every major jurisdiction, and that gives directors discretion to act in what they believe to be in the best interests of the company as a separate entity. In principle, this rule can accommodate either a long- or short-term approach. Hence, where directors pursue the goal of maximising short-term shareholder value, it is a product not of legal obligation, but of the pressures imposed on them by financial markets, activist shareholders, the threat of hostile takeover and/or stock-based compensation schemes. These strong pressures from outside company law mean the problem of short-termism cannot be solved simply by requiring or permitting directors to have regard to sustainability and the company's long-term interest."
- A further problem is that while short-term financial performance is expressed in clear numbers, the interests of other stakeholders and their effects on the company cannot be expressed in a similar quantifiable manner. In other words, these potentially conflicting interests are of a different fundamental quality, and therefore they cannot be simply balanced. Therefore, the obligation concerning respect for stakeholders' interests must be firmly rooted in corporate due diligence obligations, over which the directors should exercise oversight, as explained in our answers to the previous questions.

Max. 5,000 characters.

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

Max. 5,000 characters.

How could these possible risks be mitigated? Please explain.

Instead of a broad mandate to balance the interests of stakeholders, the legal definition of duty of care should:

- Confirm that its primary objective is to ensure long-term success of the company, taking into account its impact on people and the environment including the climate, and that in doing so directors must take into consideration all legitimate stakeholders' interests and needs instead of prioritising the interests of providers of financial capital; and
- Specify that it is an obligation of directors to ensure that the company implements a robust due diligence to identify and address adverse impacts to people and the planet linked to the company's business model, including its operations throughout its value chain; and to put in place a strategy supported by targets to address such impacts in accordance with the company's legal obligations.

Max. 5,000 characters.

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

- There is a growing movement of investors that are highly supportive of companies' engagement with stakeholders' interests, as well as of stronger public policies in this regard. This includes for example the UN Principles for Responsible Investment, or the Investor Alliance for Human Rights, as well as, broadly speaking the Sustainable Investors Forum(s). In the United Kingdom, there has been notable [engagement](#) by investors in their assets' compliance with the UK Modern Slavery Act.

Max. 5,000 characters.

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

I strongly agree

I agree to some extent

I disagree to some extent

I strongly disagree

I do not know

I do not take position

Please explain:

- Addressing the sustainability challenges may require changes to the company's business model, strategy and financial planning. Therefore, it is critical that the company's strategy and targets with respect to such risks, impacts and opportunities is considered as part of the overall corporate strategy and is decided on and monitored by the governing body of the company. Some companies already implement such an approach.

Max. 5,000 characters.

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

Please describe examples:

Max. 5,000 characters.

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

Please describe:

Max. 5,000 characters.

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

I strongly agree

I agree to some extent

I disagree to some extent

I strongly disagree

I do not know

I do not take position

Please explain your answer:

Max. 5,000 characters.

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

Max. 5,000 characters.

Section III: Due diligence duty

For the purposes of this consultation, “due diligence duty” refers to a legal requirement for companies to establish and implement adequate processes with a view to prevent, mitigate and account for human rights (including labour rights and working conditions), health and environmental impacts, including relating to climate change, both in the company’s own operations and in the company’s the supply chain. “Supply chain” is understood within the broad definition of a company’s “business relationships” and includes subsidiaries as well as suppliers and subcontractors. The company is expected to make reasonable efforts for example with respect to identifying suppliers and subcontractors. Furthermore, due diligence is inherently risk-based, proportionate and context specific. This implies that the extent of implementing actions should depend on the risks of adverse impacts the company is possibly causing, contributing to or should foresee.

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

ASI partly agree with this definition. Firstly, **the due diligence duty’s ultimate goal must be to respect human rights, the environment and good governance in a company’s operations, global value chains and within their business relationships.**

The definition should align its wording with international due diligence standards as defined by the OECD and UNGPs. Prior to ceasing, preventing, mitigating and accounting for impacts, **companies must first be obliged to effectively identify and assess any actual or potential adverse human rights, environmental and governance impacts** which they may cause, contribute to or be directly linked to, both through their own activities and as a result of their business relationships. This should be defined to include identifying and assessing **the risks caused, contributed or linked to as a result of business models and strategies. This would therefore require companies to assess the impact of purchasing and recruitment practices** in their value chains and identifying those which lead to exploitation and forced labour.

Due diligence should be undertaken through a risk-based approach, with **measures taken proportionate to the severity of the risks, and the specific circumstances, particularly their sector of activity, the size and length of their supply chain, and the size of the undertaking.** In identifying and assessing the severity of risks, stakeholders must be consulted, and systemic issues across supply chains which create an ongoing risk of exploitation (such as an absence of living wages, restrictions on freedom of association, or caste-based discrimination) should be considered salient risks. We also caution against an approach which encourages businesses to solely limit due diligence to high-risk geographical areas, and thus fail to address systemic issues across their value chains, and to respect the rights of vulnerable people in all contexts.

Regarding the definition of “supply chain”, we recommend instead the term “value chain” which is used by the UNGPs. A company’s value chain includes entities with which it has a direct or indirect business relationship understood as all types of business relationships – suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers -- and any other non-State or State entities linked to its business operations, products or services, as per the OECD Guidance. EU companies are not only linked to forced labour through

sourcing and operations, but also exports – for example, Amnesty International has [documented](#) EU companies exporting surveillance technologies to the Uyghur Region.

In line with this, the due diligence duty must extend throughout entire value chains. **In order to effectively address the prevalence of forced labour in EU supply chains, EU companies must undertake due diligence across all tiers of supply chains, across all types of contractual relationships, including agencies, labour brokers and informal relationships, and include within the due diligence process all types of workers including those in the lowest tiers of supply chains, such as homeworkers, farmworkers and workers in other raw materials.**

Furthermore, **due diligence must enable and support the provision of remedy.** To achieve the objective of human rights and environmental due diligence to reduce harms in supply chains, workers and affected communities must be able to access effective remedy for harm. The EU legal framework must include clear requirements on access to remedy for rights holders, both non-judicial and judicial.

Companies should also **track and monitor** the implementation and effectiveness of the adopted measures. This includes the collection of relevant data specific to the risk(s), such as data disaggregated by supplier and gender. The results of tracking and monitoring processes must be used to inform possible changes to the global business operations and human rights and environmental due diligence process.

The due diligence duty should mandate **full transparency and disclosure of information** on all stages of the due diligence process as defined above (identification, prevention, mitigation, accounting for risks and impacts, tracking and monitoring, and remediation), requiring that such information be regularly updated and that clear **forward-looking plans with targets** are disclosed. **Disclosure must include transparency of supply chain mapping and information across all tiers.** Relevant and detailed information must be accessible to all types of workers. Numerous brands already have such transparency in place to some extent, for example in the [garment sector](#), but this has failed to become the norm across companies/industries.

In all instances, **due diligence is a continuous and gradual process** and companies should exercise their leverage and meaningfully engage with their suppliers and business partners to support them in improving their practices.

Max. 5,000 characters.

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

Option 1. “Principles-based approach”: A general due diligence duty based on key process requirements (such as for example identification and assessment of risks, evaluation of the operations and of the supply chain, risk and impact mitigation actions, alert mechanism, evaluation of

the effectiveness of measures, grievance mechanism, etc.) should be defined at EU level regarding identification, prevention and mitigation of relevant human rights, social and environmental risks and negative impact. These should be applicable across all sectors. This could be complemented by EU level general or sector specific guidance or rules, where necessary

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

Option 3. "Minimum process and definitions approach as presented in Option 2 complemented with further requirements in particular for environmental issues". This approach would largely encompass what is included in option 2 but would complement it as regards, in particular, environmental issues. It could require alignment with the goals of international treaties and conventions based on the agreement of scientific communities, where relevant and where they exist, on certain key environmental sustainability matters, such as for example the 2050 climate neutrality objective, or the net zero biodiversity loss objective and could reflect also EU goals. Further guidance and sector specific rules could complement the due diligence duty, where necessary.

Option 4 "Sector-specific approach": The EU should continue focusing on adopting due diligence requirements for key sectors only.

Option 5 "Thematic approach": The EU should focus on certain key themes only, such as for example slavery or child labour.

None of the above, please specify

Please specify:

Max. 5,000 characters.

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

The legislation should be applied broadly to all business entities, including financial institutions, active on the European Single Market across all sectors and cover human rights, including labour rights, and environmental issues, including climate change.

However, it should allow for additional measures or specifications for specific sectors, products or activities, especially when they pose high human rights and environmental risks, including a high risk of forced labour and child labour (a non-exhaustive list of sector examples includes garment, electronics, agriculture, construction, mining, hospitality and cleaning services, among numerous

others). **Any subsequent sector-specific legislation should supplement, but not limit, the development and implementation of the proposed general legislation.** Analogy can be found in the OECD system, where both general guidance and sector specific guidance complement each other. Sector specific guidance helps companies with tailored and relevant guidance for responsible business conduct.

Max. 5,000 characters.

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

- Option 3 is our preferred option as this would create legal certainty and a level playing field for companies as to the necessary processes to be put in place and impacts to be covered by the due diligence duty.
- A rich body of legally binding international human rights and labour standards has long been developed, leaving no room for legal uncertainties.
- Human rights and the environment are deeply linked and interconnected. Forced and child labour in global supply chains does not occur in a vacuum, and [research](#) has shown that the wider impact of many industries, including environmental damage and climate change impacts can make people more vulnerable to exploitation and modern slavery. The displacement caused by environmental destruction and climate change increases the risk of certain forms of modern slavery, including human trafficking, forced labour and debt bondage. In a forthcoming policy paper on the links between climate change, environmental destruction and contemporary slavery, Dr Christopher O'Connell, IRC/MSCA Caroline Fellow at Dublin City University's School of Law and Government notes that the combination of the destruction caused by the extractive and agricultural industries and climate change is aggravating people's economic vulnerabilities, which in turn drives the migration of communities.
- Limiting global warming to 1.5°C rather than 2°C could reduce the number of people exposed to climate-related risks and susceptible to poverty by up to several hundred million by 2050. Keeping the world to 1.5°C average global warming means reducing greenhouse gas emissions 45% below their 2010 levels by 2030 and reaching 'net zero' emissions by 2050. These transitions also need to be fair, to be "just". That means that transitions need to respect the fundamental rights of all those involved, in particular the most vulnerable. This "Just Transition" is articulated in the Paris Agreement, which clearly states that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity".
- But environmental damage can also occur without it also constituting a clear violation of human rights, or without entailing direct harm to human beings. It is important that the due

diligence obligations also cover all potential or actual adverse impacts on the environment, including those that do not directly affect humans or human rights [see below question 15e].

Max. 5,000 characters.

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

Human rights, including fundamental labour rights and working conditions (such as occupational health and safety, decent wages and working hours)

Interests of local communities, indigenous peoples' rights, and rights of vulnerable groups

Climate change mitigation

Natural capital, including biodiversity loss; land degradation; ecosystems degradation, air, soil and water pollution (including through disposal of chemicals); efficient use of resources and raw materials; hazardous substances and waste

Other, please specify

Other, please specify:

The material scope of the EU directive should cover all human rights, including workers' and trade union rights; social, health and environmental standards; as well as good governance international standards. It must also refer specifically to business models, practices and strategies, such as purchasing and recruitment practices, which lead to a heightened risk of exploitation.

Max. 5,000 characters.

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

N/A

Max. 5,000 characters.

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

- The effectiveness of the due diligence duty will very much depend on the robustness of the criteria and 'performance standards' against which the due diligence should be conducted.

- Regarding human and labour rights, due diligence legislation should at least cover all **internationally recognised standards**, understood, at a minimum, as those expressed in
 - the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights
 - customary international law,
 - International Humanitarian Law,
 - international human rights instruments on the rights of persons belonging to particularly vulnerable groups or communities (including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities, the United Nations Declaration on the Rights of Indigenous Peoples, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities) 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 forced labour, including the Protocol of 2014 to the Forced Labour Convention, the ILO Convention on the abolition of forced labour, the ILO Convention on the worst forms of child labour, the ILO Convention on the elimination of discrimination in respect of employment and occupation and ILO Convention on equal remuneration; and other rights recognised in a number of ILO Conventions, such as freedom of association, minimum age, occupational safety and health, living wages, indigenous and tribal peoples' free and informed consent (ILO Convention on indigenous and tribal peoples), and
 - the rights recognised in 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.
- Due diligence legislation should also take into account the fact that human rights, environmental and governance risks and impacts are not gender neutral. **Companies should be encouraged to integrate the gender perspective into their due diligence processes.**
- **Due diligence must also take into account other forms of discrimination:** many rights-holders face additional risks due to intersecting factors of discrimination based on their gender, ethnicity, race, caste, sexual orientation, disability, age, social status, migrant or refugee status, informal employment status, union involvement, exposure to conflict or violence, poverty, or other factors.
- For example, [caste discrimination](#) contributes to the vulnerability of those in the lowest castes, known as Dalits, in Pakistan, India, Bangladesh and Nepal. 80% of bonded labourers in these countries are Dalits or from indigenous communities. Many Dalits live in poverty and

spend most of their low wages earned in paying off debt, for example in many industries linked to [European fashion brands](#) supply chains. **Migrant workers** are also at particular risk of being exploited. Workers reliant on their employer for the “leave to remain” in a country are particularly vulnerable, but also internal migrants (i.e., people migrating within one country). This is particularly linked to recruitment practices; whereby deceptive and unregulated labour intermediaries abuse the vulnerability of prospective workers. Debt bondage, through advances and fees, and document retention to maintain control over workers are particularly high risks. **This therefore underscores the need for business enterprises to specifically identify the risks to groups in vulnerable situations in the due diligence process and include such groups in stakeholder engagement.** This is expanded upon in other questions.

- Environmental impacts must be defined in a broad manner to fill the gaps in international and European environmental law. “Environmental impacts” should cover any violation of internationally recognised environmental standards, as well as any adverse impact on the environment or on the right to a healthy environment. Environmental impacts should include, but not be limited to, climate change, air, soil and water pollution, production of waste, deforestation, loss in biodiversity, and greenhouse emissions.

Max. 5,000 characters.

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

Max. 5,000 characters.

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

Max. 5,000 characters.

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

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

All SMEs should be excluded

SMEs should be excluded with some exceptions (e.g., most risky sectors or other)

Micro and small sized enterprises (less than 50 people employed) should be excluded

Micro-enterprises (less than 10 people employed) should be excluded

SMEs should be subject to lighter requirements (“principles-based” or “minimum process and definitions” approaches as indicated in Question 15)

SMEs should have lighter reporting requirements

Capacity building support, including funding

Detailed non-binding guidelines catering for the needs of SMEs in particular

Toolbox/dedicated national helpdesk for companies to translate due diligence criteria into business practices

Other option, please specify

None of these options should be pursued

Please explain your choice, if necessary

- **The UNGP and OECD Guidance make it very clear that due diligence is the obligation of all companies.** All business enterprises, regardless of size, should conduct human rights and environmental due diligence. While their operations are smaller, SMEs also have a direct responsibility to respect human rights and the environment. SMEs account for about [90% of all business and contribute to 50% of total employment](#) in the world. SMEs, both in EU consumer countries and in countries producing for the EU market, are also active in numerous high-risk sectors for forced labour, such as construction, hospitality, agriculture or the garment sector. If legislation aims to drive positive outcomes for people and the planet, it must reach all the businesses.
- However, as stressed by the UNGPs and OECD Guidance, **the means through which companies will be expected to meet their responsibility to respect human rights and the environment should be commensurate to the severity of the risks, and responses proportionate to the risks.** For SMEs, the type of policies and processes expected would be according to their capacity, following the Commentary to Principle 14 of the UNGPs. Their degree of leverage over their business relationships would also be considered in determining their responsibility (although it should not be relevant to considering whether they should identify all risks, carry out due diligence and exercise any leverage they may have). Furthermore, if deemed necessary to guarantee a satisfactory uptake of due diligence obligations by SMEs, a “phase-in” approach for SMEs could be developed. Such an additional time period for compliance should be as limited as possible though to avoid a weakening of the legislation and its company scope.
- **Studies of the compliance costs of a variety of due diligence regimes do not identify a disproportionate economic burden for SMEs.** Rather the cost of compliance is typically related to the size of the enterprise. Moreover, the Commission’s study on due diligence requirements through the supply chain shows that, even for SMEs, the costs of carrying out mandatory supply chain due diligence appears to be relatively low compared to the company’s revenue. The additional recurrent company-level costs, as percentages of companies’ revenues, amount to less than 0.14% for SMEs.
- Many SMEs in the EU are already conducting due diligence, evidence to the fact that companies of all sizes can conduct it. For instance, [Shift Project](#) has been engaging with SMEs in the apparel, food, retail and cleaning sectors that, according to Shift, have made

progress by focusing on addressing the problem of low wages, believing this will have knock-on effects on a host of other rights. Furthermore, SMEs are already required to conduct due diligence if impacted by regulatory requirements, for example by the EU's ['conflict minerals' regulation](#). Through the European Commission's portal ['Due Diligence Ready!'](#) SMEs can access information, tools and training materials, proving the fact that SMEs are capable and expected to conduct due diligence.

- SMEs may, depending on the nature of their business, not generate and encounter as many risks to human rights and the environment as larger businesses do. SMEs tend to have fewer suppliers and customers, which enables deeper and better-quality relationships. For this reason, **not only is it often more feasible for SMEs to map the businesses in their supply chains, but it is also easier and more desirable to get to know them.** SMEs also tend to spend more time selecting business partners that share their values and match their standards, and have a preference for longer-term relationships. These stronger relationships allow greater scope to integrate human rights and environmental issues.
- Increasingly, empirical evidence is revealing that companies with responsible business conduct policies and practices, such as due diligence, are more resilient, stronger, and better performing businesses. **Companies that know their supply chains, and actively identify and mitigate their risks, generally perform better overall.** Therefore, **while capacity building support, including funding, should be considered as a way to foster compliance with due diligence standards, it is however incorrect to only conceptualise due diligence as a burden on companies,** as the evidence reveals its potential as a beneficial and valuable standard of conduct.
- In terms of **SMEs in producing countries, which may be in the value chains of EU business enterprises** which would fall under the scope of the proposed EU legal framework, the proposed duty **must ensure that EU business enterprises do not push the cost of compliance with due diligence requirements down the supply chain onto such SMEs,** including by potentially including references to the need for long-term buyer-supplier relationships and safeguarding measures to ensure cost sharing with small producers and suppliers.

Max. 5,000 characters.

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

Yes

No

I do not know

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

- The obligation should apply to companies operating in the internal market (selling products or services, conducting activities). The link could therefore be **the presence on the internal market for products or services**. Many non-EU companies, for example, export products to the EU internal market which have a high risk of forced labour or other forms of exploitation. Some of these examples include well-known brands such as:
 - Diageo, headquartered in the UK and the world's biggest spirits company, sold almost [3 billion EUR](#) worth of beverages to European countries in 2020. Diageo has faced [allegations](#) of poor working conditions causing diseases among workers in the Central American sugar industry supply chains.
 - Tesco, the UK supermarket, has over [20% of market](#) share in Ireland, as well as presence in other European countries including the Czech Republic, Hungary, Poland and Slovakia. Several human rights abuses have been alleged to be linked to Tesco's supply chains, such as victims of forced labour producing [prawns](#) and [canned tuna](#) in Thailand.
- Useful definitions of scope can be found in:
 - 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 (**Timber Regulation**):
 - Article 2(b): “‘placing on the market’ means the supply by any means, irrespective of the selling technique used, of timber or timber products for the first time on the internal market for distribution or use in the course of a commercial activity, whether in return for payment or free of charge. It also includes the supply by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts. The supply on the internal market of timber products derived from timber or timber products already placed on the internal market shall not constitute ‘placing on the market’.”
 - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (**General Data Protection Regulation**):
 - Article 3: “(1) This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not. (2) This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to: (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or (b) the monitoring of their behaviour as far as their behaviour takes place within the Union. (3) This Regulation applies to the processing of personal data by a controller not

established in the Union, but in a place where Member State law applies by virtue of public international law.”

- Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain is also a strong precedent for extra-territorial obligations for companies based outside of the EU. It shows it is possible to impose and enforce obligations irrespective of whether a company is established inside or outside of the single market.

Max. 5,000 characters.

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

- These companies must also be obliged to respect human rights and the environment, in their own operations, subsidiaries, business relationships and global value chains, and to undertake human rights due diligence for the products, services and activities that are placed or undertaken in the EU internal market.
- These companies must also be liable for any human rights abuses and environmental harm in their operations or value chains (without prejudice to other subcontracting and supply chain liability frameworks).
- Governments must set up robust enforcement mechanisms, with effective sanctions, to ensure that these companies also obey the law.

Max. 5,000 characters.

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

Yes

No

I do not know

Please explain:

Yes, the EU framework should be accompanied by a number of other complementary measures in order to further drive EU action to prevent and remedy forced labour in EU supply chains. Concretely, the EU should:

- Establish a tracing mechanism for goods produced through egregious human rights abuses, such as forced or child labour, and examine legislative options to **prevent the import and placing onto the EU market of these goods**. Such measures should be developed to establish maximum positive impact for affected workers, and should provide prompt remediation, prevent adverse impacts to workers, ensure supplier engagement, include sufficient enforcement mechanisms for such bans, and be complemented by trade, foreign and development policy to support workers and address the root causes of systemic abuses. If introduced, the rationale to levy such sanctions on any product must be transparent and disclosed, and the EU must ensure that such measures are employed solely in the interests of

upholding human rights. However, **these measures should be viewed as complementary to due diligence and should not replace, or distract from, the responsibility of businesses to conduct due diligence** throughout their value chain and to map and disclose suppliers in their supply chains.

- As an example, where import controls are necessary, the EU should move to ban the import of all cotton-based goods produced in whole or in part in Turkmenistan and the Uyghur Region. **Such measures are immediately necessary in response to state-imposed forced labour** and the impossibility of EU companies to prevent, mitigate or remedy abuses on the ground due to scale of abuses, the restrictions on freedoms and the role of the state. EU measures in this regard would follow the US Customs and Border Protection's regional bans on cotton from Turkmenistan and the Uyghur Region already in place.
- **Amend the Union Customs Code and the Trade Secrets Directive** so that customs data and supply chain information are not considered confidential and are publicly disclosed, **and amend customs-related regulations** to ensure that all companies that import goods into the EU disclose to EU customs authorities relevant information, including the name and address of the manufacturer. Currently, the lack of transparent customs data severely restricts the ability for workers, trade unions and civil society to hold EU companies accountable for abuses - for example in the cases of Turkmenistan and Uyghur Region, it is extremely difficult to identify concretely which companies may be importing goods directly from these locations.
- Create positive incentives for respecting human rights by **including due diligence implementation requirements in export credits and EU and Member States procurement criteria**. The EU public procurement Directive should include mandatory value chain transparency for business enterprises wishing to participate in tenders.
- **Review the [EU Directive on Non-Financial Reporting](#)** to: specify clear mandatory requirements for reporting on human rights risks, impacts, and their management; include key performance indicators; require value chain disclosure; expand the reporting requirements significantly beyond the current company threshold; and introduce penalties for non-compliance.
- Generalise the banning and regulation of unfair trading practices, as well as take additional steps to regulate purchasing practices of companies. The Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain is a useful starting point.
- Ensure **EU development policy** aims to strengthen capacities to establish and effectively implement due diligence requirements, including through **donor funding for producer governments to improve labour rights ratification and enforcement**. EU development policy must also support and provide funding to **NGOs, trade unions and other groups in producing countries** to use due diligence legislation to hold companies to account.
- Ensure EU human rights protection, monitoring and enforcement in EU trade policy, including **free trade agreements (FTAs), investment protection agreements (IPAs)** and the review of the **Generalised Scheme of Preferences (GSP)**. Trade policy should be utilised to support producer government countries to ratify and enforce labour rights protections, to introduce

comparable legislation on due diligence, and to ensure that enforcement, access to remedy and justice is introduced in third countries. Workers, their credible representatives, and affected communities must be consulted in the negotiation of trade agreements and the review of FTAs, IPAs and GSP.

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

Max. 5,000 characters.

Question 19: Enforcement of the due diligence duty

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

Judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations

Supervision by competent national authorities based on complaints (and/or reporting, where relevant) about non-compliance with setting up and implementing due diligence measures, etc. with effective sanctions (such as for example fines)

Supervision by competent national authorities (option 2) with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU

Other, please specify

Please provide explanation:

- Due Diligence (DD) legislation should introduce a twofold enforcement regime:
 - Legal liability at least for human rights and environmental harms that a business enterprise, or any company that they control or have the ability to control has caused or contributed to. 'Control' should be determined according to the factual circumstances. It may also result through the exercise of power in a business relationship. It may include a situation of economic dependence.
 - Equally, grounds for liability must be established on the basis of failure to carry out adequate due diligence.
- Due diligence should not automatically absolve a company (as implied in the first of the three options offered as a response to this question) from liability for causing, contributing to or failing to prevent human rights abuses or environmental harm.
- Equally, the use of **social auditing or certification schemes, or memberships in multi-stakeholder or sectoral initiatives or dialogues should not be recognised as proof of due diligence, nor absolve a company from liability for harm**. As outlined in Question 2, such approaches are insufficient to identify, prevent, mitigate or remedy exploitation or forced labour in supply chains, and this has been substantially evidenced by numerous case studies to date. In contrast to the use of audits, due diligence must be implemented as an ongoing

process of risk identification, prevention and mitigation, and meaningful stakeholder engagement on an ongoing basis. Similarly, membership of multi-stakeholder platforms, initiatives or sectoral dialogues can play an important role for the exchange of best practice on HREDD and to exert collective leverage. However, membership of such cannot be used as proof of HREDD, or to exonerate a business enterprise from liability for harm in its value chain.

- Judicial enforcement of DD standards and adjudication following allegations of harm is essential for holding companies accountable and ensuring that victims have access to an effective remedy for these harms.
- To ensure that victims have meaningful access to remedy, the burden of proof should be reversed in proceedings against business enterprises.
- The limitation period for bringing legal actions must also be adapted to be reasonable and sufficient, taking into account the particularities of transnational litigation.
- As a complement to judicial enforcement mechanism, Competent National Authorities (CNAs) should be established in Member States. CAs should be empowered to perform a dual function of monitoring disclosure and DD performance, and initiating investigations where there is reason to believe that a company has breached its DD obligations. CAs should initiate investigations both on their own initiative and on the basis of complaints by affected parties. Organisations with a legitimate interest in representing victims should also have the right to submit complaints in the interest of those victims.
- Breaches should give rise to administrative liability and CNAs should be empowered to impose proportionate and dissuasive sanctions in such cases (infringements shall be subject to administrative fines at least up to 4% of the total worldwide annual turnover of the preceding financial year, as provided for data protection infringements in the GDPR). However, administrative liability, while a necessary complement, in no way substitutes for civil and criminal liability mechanisms.
- CNAs should be independent from government ministries, particularly those that promote business interests in order to ensure their impartiality and prevent conflicts of interest. CNAs must also be adequately resourced through financial support and staff with appropriate training and expertise.
- The legislation should also establish an EU-level body with monitoring, advisory, capacity-building and standard-setting functions. This body should monitor CNA performance to ensure consistent, robust practices across Member States. It should also support the greater harmonisation of approaches, including through the development of standards and guidance for CNAs to help them in their evaluation and investigation tasks, and of guidance for companies to conduct due diligence.
- Any monitoring bodies established - judicial and non-judicial - should have clear mechanisms for stakeholders' involvement, ensuring accessibility for all affected stakeholders and their representatives, including trade unions and other credible representative groups. EU policies, including development policy, should support affected stakeholders to understand, access and use monitoring bodies, and protect workers and their representatives from retaliation for sharing information.

- Finally, to safeguard opportunities for access to remedy for victims, any new enforcement and liability measures should be introduced without prejudice to other liability regimes which impose stricter or alternative grounds of liability.

Max. 5,000 characters.

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

Yes

No

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

- Victims of corporate abuse frequently face many obstacles (legal, procedural and practical) in attempting to hold European companies liable for the harm caused by their subsidiaries or supply chain partners located in a third country.
 - The **Boliden case**, which is detailed in [the Anti-Slavery International/ European Coalition for Corporate Justice case study paper](#), is a good example of this. In the 1980s, Boliden paid Promel to export industrial waste to Chile, where Promel disposed of it without removing the arsenic. This led to negative health effects, including cancers and neurological disorders, for people living near the site. In 2013 victims took legal action against Boliden in the Swedish courts arguing that Boliden had breached a duty to ensure that the sludge was appropriately processed by Promel, but eventually lost their case. In March 2019, after the claimants appealed, the court decided to apply Swedish law and dismissed the appeal on the basis: that the claim for damages had been filed too late and the cause of action was time-barred. Boliden has not faced legal consequences.
 - The **KiK case** led to a similar outcome. On 11 September 2012, 258 workers died, and hundreds were seriously injured when a fire broke out in the Ali Enterprise garment factory in Karachi, Pakistan. Due to lax fire safety measures, workers were at first unaware of and then trapped by the fire. At the time, the factory was producing jeans for its main client, German retailer KiK. Victims sought justice in the German courts, but Pakistani law applied, as this was where the harm occurred, and dismissed the action, deciding that according to Pakistani law, the statute of limitation (one year - an impossible period for normal torts, let alone transnational tort cases) had expired and the claimants were too late to seek justice.
 - The **VEON case**, with its daughter company Banglalink, also shows the many obstacles victims of corporate harm face in attempting to hold European companies to account. In February 2016, Banglalink employees attempted to register the Banglalink Employees' Union (BLEU). VEON refused to enter into dialogue after workers claimed they had been harassed and their right to form a union suppressed.

The situation led UNI-Global to submit a Specific Instance to the Dutch National Contact Point regarding an alleged violation of the OECD Guidelines for Multinational Enterprises. The NCP confirmed that VEON had not been acting in line with what can be expected from it under due diligence standards. In response to this report, VEON denied any wrongdoing and only stated that it is studying the findings of the NCP, without any further action to remediate victims.

- As the world's [third largest seafood exporter](#) by value, products that have been caught or processed in Thailand can be found on shelves and plates around European countries. In 2019, the EU imported over [200 million EUR](#) in fishery products from Thailand. Yet, challenges in accessing remedy by migrant workers in Thailand are commonplace. A case of 15 migrant workers including a minor from Myanmar, known as the "[Kantang Case](#)", surfaced to the public in 2015 when the workers were rescued. They were subject to debt bondage which involved physical assault and restricted mobility. The court case ended in 2019 when the Supreme court reaffirmed the lower court decision to convict the ex-chair of Trang Provincial fishing association and 9 accomplices and award the victims with around 20-30 thousand baht (500-800 EUR) each. However, workers are yet to receive the money due to a lack of collaboration between the governments of Thailand and Myanmar to retrieve the workers.
- More generally, long and opaque supply chains obscure which companies have the responsibility and leverage to prevent, mitigate and remedy abuses in supply chains. As a result, access to justice and remedy is limited. This speaks to the need for the duty diligence duty to extend throughout the entire value chain, and to require transparency and disclosure of supply chain information, which is accessible to all types of workers in the value chain.

Max. 5,000 characters.

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

- Barriers to justice have prevented victims from obtaining remedy.
- EU laws and rules on jurisdiction should allow for the liability of parent and lead companies in the EU for harm caused by their subsidiaries or value chain partners located in a third country.
- The obligations arising from the instrument on mandatory human rights and environmental due diligence should be applicable in judicial proceedings, even in case the harm occurred in third states. The instrument should therefore be considered mandatorily overriding.
- Victims seeking justice have a limited ability to uncover the information that is necessary to establish a parent or lead company's liability. Victims should not have to take on the burden of proving the EU parent or lead company's alleged failure and its connection to the harm they suffered, but rather the EU parent or lead company should be required to prove it took all due care.

- Trade unions and other organisations credibly representing workers must be able to represent individual workers in accessing justice and providing evidence in court.
- Access to justice must be facilitated for all affected stakeholders, including those potentially in vulnerable situations or at risk of reprisal such as migrants, undocumented workers, and human rights and environmental defenders. Victims of forced labour, such as migrant workers, face significant obstacles to accessing justice, due to for example irregular immigration status, inadequate support from local authorities, fear of retaliation – including deportation. In numerous contexts around the world, migrant workers fear speaking out about abuse and exploitation due to the risk of being penalised for immigration offences. Access to justice frameworks must ensure that migrant workers who are victims of human trafficking or other forms of forced labour are recognised as such, and that immigration controls are decoupled from access to remedy and justice for forced labour or other forms of exploitation.
- EU law currently dictates that cases must be considered under the law of the country where the damage occurred. In seeking the right to claim compensation, victims should be able to rely on EU law.
- EU legislation should also provide for reasonable time limitations for bringing legal actions in order to allow foreign victims sufficient time to file a lawsuit in EU courts.
- Finally, to safeguard opportunities for access to remedy for victims, any new enforcement and liability measures should be introduced without prejudice to other liability regimes which impose stricter or alternative grounds of liability.

Max. 5,000 characters.

Section IV: Other elements of sustainable corporate governance

Question 20: Stakeholder engagement

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

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

I strongly agree

I agree to some extent

I disagree to some extent

I strongly disagree

I do not know

I do not take position

Please explain.

- Meaningful stakeholder engagement must be integral to the development, design and implementation of
 - corporate strategies;
 - human rights due diligence processes, across all stages of due diligence including identification and assessment of human rights risks, including the severity of risks, as well as determination of the appropriate actions and the monitoring and evaluation of their effectiveness, reflecting the ongoing and continuous nature of human rights and environmental due diligence; and
 - adequate systems for enabling access to remedy, providing remedy and compensating for loss and damages.
- Stakeholder engagement allows businesses to understand perspectives of those who may be affected by their decisions and operations.
- The process of corporate strategy development should create clear opportunities for stakeholders' participation in the design, implementation and monitoring of due diligence processes. This allows businesses to incorporate concerns and input from affected stakeholders into strategic planning and to improve performance on broader sustainability objectives.

- To ensure that stakeholder engagement is meaningful, it must involve all relevant stakeholders. These should be identified through public outreach, impact assessments and direct engagement with local actors. This must include legitimate trade unions, and all workers across value chains. Other avenues of stakeholder engagement must not undermine collective bargaining, recognition of trade unions, and mature industrial relations. However, other forms of stakeholder engagement may be required to access workers which face barriers to trade union membership - such as, for example, women, migrant workers and seasonal/ temporary workers - or in contexts where there are severe restrictions to legitimate trade unions' ability to exercise their rights, such as China.
- To reflect the ongoing and continuous nature of human rights due diligence, there must be multiple opportunities for engagement on an ongoing basis, especially with key stakeholder groups, including trade unions and other groups credibility representing workers and affected stakeholders.
- Transparency and access to information is required for meaningful consultation. Business enterprises must disclose information on their due diligence processes, across all stages and with all information relevant to workers. This will facilitate information sharing and gathering a range of input and perspectives. This should be done freely and without threats of reprisals or harm. Information shared by the business should include its plans, details on how it is managing potential and actual negative impacts and reporting on the outcomes of its efforts.
- Stakeholders engagement should provide affected - and potentially affected stakeholders with the opportunity to be actively involved in the design, implementation and evaluation of business projects and operations. It allows businesses to understand perspectives of those who may be affected by their decisions and activities and work towards the design of sustainable prevention and mitigation approaches. It also allows businesses to benefit from local knowledge and experience.
- All mechanisms for stakeholder engagement must seek to address the power imbalance between the company and the affected persons or groups and between affected groups themselves.
- Engagement processes should aim to understand how existing contexts and/or vulnerabilities may create disproportionate impacts for certain groups including lower-caste communities and other minority groups, migrant workers, homeworkers, temporary and agency workers, seasonal workers, women and children, indigenous peoples and communities, forest communities, and coastal communities, among others. Special attention should also be paid to implementing a gender-based approach to ensure the safe and equal participation of women in decision-making processes.
- Where indigenous peoples and communities may be affected, businesses must be required to ensure whether the state party in which the activity takes place fulfils its duty and ensured international standards on principles of free, prior and informed consent (FPIC). FPIC requires that indigenous peoples and communities be given the opportunity to duly consider and approve or reject projects before they begin as well during its execution. They should also be required to publish their internal FPIC policy.

Max. 5,000 characters.

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

- All persons or groups that are affected and potentially affected stakeholders, in all stages of the due diligence process - from the identification of risks to determination of appropriate actions, to monitoring and evaluating the effectiveness of the company’s actions to prevent, mitigate and remedy the impacts - should be represented.
- This includes a range of persons and other actors who are credible proxies, such as: workers; employees’ representatives; trade unions; NGOs and grassroots organisations; lower-caste representatives; homeworkers, migrant workers and representatives; women and women’s organisations; community members; indigenous peoples and communities; forest communities; human rights, land and environmental defenders; community leaders; faith-based organisations; and local authorities.
- As part of the due diligence process, businesses should actively work to promote and enable freedom of association across their value chains, including by establishing credible grievance mechanisms and access to remedy through mature systems of industrial relations. These should be the default choice of mechanism, and other alternative approaches should only be considered where approaches with democratic trade unions are precluded. The EU should promote approaches such as Global Framework Agreements between EU brands/retailers and global unions. During Covid-19, brands with ongoing dialogue with trade unions were more readily able to access and respond to information relating to crises within their supply chains.
- Special attention must be made to ensure engagement with workers which may be excluded from other representative groups. For example, this can include migrant workers, lower-caste workers, seasonal, temporary, agency and casual workers, homeworkers, and women and children. Such workers may face barriers or exclusion from participation in formal worker representation mechanisms, including trade unions. For example, victims of caste-based discrimination in South Asia tend to be excluded from trade unions, and in many contexts, there are significant barriers to traditional organising for seasonal workers in agriculture. As part of the due diligence process, businesses must identify such barriers, and ensure that stakeholder engagement includes all types of workers, including by engaging with their credible representatives. We underscore, however, that such engagement should work to promote and enable freedom of association for such workers, and no stakeholder engagement should undermine collective bargaining, recognition of trade unions, and mature industrial relations.
- Relevant experts on human rights, environment, climate or other subject matter areas should form part of the stakeholder engagement process.

Max. 5,000 characters.

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

	Is best practice	Should be promoted at EU level
Advisory body		X

Stakeholder general meeting	<input type="checkbox"/>	<input type="checkbox"/>
Complaint mechanism as part of due diligence	X	
Other, please specify	X	

Other, please specify:

- Employees should be represented in the Board of directors of large companies directly and partake in all strategic decisions. Furthermore, **employees’ representatives should be engaged in the process of development and monitoring of the company’s sustainability strategy, including the due diligence process.** To this end, a company’s formal non-financial reporting should include a statement from the employees’ representatives on their engagement, and their views on the quality and implementation of the strategy, including the targets. This engagement is separate from the engagement of employees as affected stakeholders.
- In addition, **affected stakeholders should be engaged at all stages of the due diligence process,** as explained in the answers to the questions above. This concerns the identification and assessment of human rights risks, as well as determination of the appropriate actions and the monitoring and evaluation of their effectiveness. The remedy/complaint mechanism may be one of the appropriate actions, depending on the circumstances. Stakeholder advisory bodies or general meetings can be a good practice, in particular in operational contexts, but not necessarily in all situations.
- **The due diligence process should be used to identify risks in stakeholder engagement for certain groups, and identify additional measures required to mitigate these risks.** Targeted meetings and engagement with specific groups of stakeholders may be appropriate to ensure meaningful engagement with those who are differently or disproportionately affected, or who may face barriers to involvement in other processes, for example women, people with disabilities, lower-caste communities, minorities and other groups potentially marginalised within the wider population. To be meaningful, engagement measures should be carried out in a manner appropriate to the context, for example by taking account of language, literacy levels, channels for communication, direct engagement with stakeholders, etc.
- For example, in cases where the local community is being divided among opponents to the company operations and supporters (often those having obtained employment from the same company), it is important to engage with both groups. In the same manner, workers’ representatives and trade unions may not always be willing to address caste-based discrimination if mostly managed and dominated by upper caste representatives. As such it is important to map any trade unions recognised in associated factories to determine their capacity and position on tackling caste discrimination, including how this can be translated into workplace education activities.
- Where on-the-ground engagement is credibly unfeasible, for example due to severe limitations on freedoms and security risks, companies should ensure that the views of local stakeholders are meaningfully captured through credible representatives and consultations with experts. This is extremely pertinent for state-imposed forced labour.

- **Where there are non-judicial grievance mechanisms, for example implemented by businesses or multi-stakeholder initiatives, businesses must meaningfully consult with affected and potentially affected stakeholders and their representatives, including trade unions, migrant workers representatives, lower-caste representatives, and women’s representatives,** in the design, monitoring and implementation of such mechanisms, ensuring they meet OECD criteria. Grievance mechanisms must be accessible to workers at all tiers of supply chains, be accessible at local levels with the ability to access prompt remediation, and workers must be able to complain without fear of retaliation or dismissal, including through anonymity. Grievance mechanisms must facilitate access to effective remedy. To date, significant focus has been put on best practices in ensuring access to remedy, with lesser focus on what constitutes effective remedy. It is crucial that remedy meets the needs and interests of the affected party, and in particular that it ensures effective remedy for groups which face barriers to both accessing and securing remedy such as migrant workers and women. For non-state judicial remedy procedures, brands must be required to disclose and ensure transparency of the outcomes of the grievance procedure, including the remedy provided and how this compares to the remedy requested. **Any non-judicial remediation efforts must be in parallel to encouraging collective bargaining and recognition of trade unions and should by no means undermine the role of legitimate trade unions in addressing labour-related disputes, nor preclude access to judicial or other forms of remediation.**

Max. 5,000 characters.

Question 21: Remuneration of directors

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

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

This question is being asked in addition to questions 40 and 41 of the Consultation on the Renewed Sustainable Finance Strategy the answers to which the Commission is currently analysing.

Ranking 1-7 (1: least efficient, 7: most efficient)

Restricting executive directors’ ability to sell the shares they receive as pay for a certain period (e.g. requiring shares to be held for a certain period after they were granted, after a share buy-back by the company)	
Regulating the maximum percentage of share-based remuneration in the total remuneration of directors	
Regulating or limiting possible types of variable remuneration of directors (e.g. only shares but not share options)	
Making compulsory the inclusion of sustainability metrics linked, for example, to the company’s sustainability targets or performance in the variable remuneration	
Mandatory proportion of variable remuneration linked to non-financial performance criteria	

Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration	
Taking into account workforce remuneration and related policies when setting director remuneration	
Other option, please specify	
None of these options should be pursued, please explain	

Please explain:

Max. 5,000 characters.

Question 22: Enhancing sustainability expertise in the board.

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

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

Requirement for companies to consider environmental, social and/or human rights expertise in the directors' nomination and selection process

Requirement for companies to have a certain number/percentage of directors with relevant environmental, social and/or human rights expertise

Requirement for companies to have at least one director with relevant environmental, social and/or human rights expertise

Requirement for the board to regularly assess its level of expertise on environmental, social and/or human rights matters and take appropriate follow-up, including regular trainings

Other option, please specify

None of these are effective options

Please explain:

- The Board should **set up a non-executive committee, composed of a combination of independent experts and top managers, chaired by a designated non-executive director, and tasked with monitoring and reviewing the content and implementation of the company's human rights and sustainability strategy.** The experts should have expertise relevant to the main human rights and sustainability challenges facing the company. The managers involved in the committee should include CEO and CFO.
- The committee should transparently report on the matters discussed, and the recommendations.
- The purpose of the committee would be to provide critical input for both the non-executive and executive directors' duty of care with respect to sustainability matters.

- In addition, **the Board, as a collective organ, should have internal expertise on human rights and sustainability matters.** The number of directors and the types of the expertise should, however, be determined according to the nature and diversity of sustainability challenges facing the company, rather than the legislation. As part of their duty of care with regard to the oversight over the company's human rights and sustainability strategy and due diligence, as well as for the purpose of setting up and deciding on the composition of the sustainability committee (described above), the directors should evaluate the adequacy of their expertise. Diversity on boards, in terms of gender, race, experience, backgrounds and fields of expertise is needed. This must be achieved through policy interventions, requiring firms to increase diversity on boards and implementing a clear strategy how they will achieve that in an effective way.

Max. 5,000 characters.

Question 23: Share buybacks

Corporate pay-outs to shareholders (in the form of both dividends and share buybacks) compared to the company's net income have increased from 20 to 60 % in the last 30 years in listed companies as an indicator of corporate short-termism. This arguably reduces the company's resources to make longer-term investments including into new technologies, resilience, sustainable business models and supply chains. (A share buyback means that the company buys back its own shares, either directly from the open market or by offering shareholders the option to sell their shares to the company at a fixed price, as a result of which the number of outstanding shares is reduced, making each share worth a greater percentage of the company, thereby increasing both the price of the shares and the earnings per share.) EU law regulates the use of share-buybacks [Regulation 596/2014 on market abuse and Directive 77/91, second company law Directive].

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

I strongly agree

I agree to some extent

I disagree to some extent

I strongly disagree

I do not know

I do not take position

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

N/A

Max. 5,000 characters.

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

If so, please specify:

- Ensure that the review of the **Generalised Scheme of Preferences (GSP)** rules contribute to improving the monitoring processes, enhance transparency and provide for a formal enforcement and compliance mechanism.
- Enhance the human rights protection, monitoring and enforcement, in **free trade agreements (FTAs) and investment protection agreements (IPAs)** having specific regard to State obligations to protect human rights including against irresponsible conduct of businesses, tools to ensure the investors respect human rights, enforcement mechanisms and access to remedy.
 - o FTAs should contribute to ensure that effective due diligence policies are implemented by businesses and that comparable legislation on due diligence and access to remedy is introduced in third countries.

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

§ TSD chapters should recognise the obligations of States and the responsibilities of corporations and investors under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, requiring the provisions of the agreement to be read in consistency with these instruments.

- IPAs should foresee that the investor must respect international human rights standards and national law as far as in conformity with international human rights law for the full duration of the investment. Victims of human rights and environmental harm must have access to remedy.
- Establish a tracing mechanism for goods produced through egregious human rights abuses, such as forced or child labour, and examine legislative options to **prevent the import and placing onto the EU market of these goods**. Such measures should be developed to establish maximum positive impact for affected workers, and should provide prompt remediation, prevent adverse impacts to workers, ensure supplier engagement, include sufficient enforcement mechanisms for such bans, and be complemented by trade, foreign and development policy to support workers and address the root causes of systemic abuses. If introduced, the rationale to levy such sanctions on any product must be transparent and disclosed, and the EU must ensure that such measures are employed solely in the interests of upholding human rights. However, **these measures should be viewed as complementary to due diligence and should not replace, or distract from, the responsibility of businesses to**

conduct due diligence throughout their value chain and to map and disclose suppliers in their supply chains.

- As an example, where import controls are necessary, the EU should move to ban the import of all cotton-based goods produced in whole or in part in Turkmenistan and the Uyghur Region. **Such measures are immediately necessary in response to state-imposed forced labour** and the impossibility of EU companies to prevent, mitigate or remedy abuses on the ground due to scale of abuses, the restrictions on freedoms and the role of the state. EU measures in this regard would follow the US Customs and Border Protection's regional bans on cotton from Turkmenistan and the Uyghur Region already in place.
- **Amend the Union Customs Code and the Trade Secrets Directive** so that customs data and supply chain information are not considered confidential and are publicly disclosed, **and amend customs-related regulations** to ensure that all companies that import goods into the EU disclose to EU customs authorities relevant information, including the name and address of the manufacturer. Currently, the lack of transparent customs data severely restricts the ability for workers, trade unions and civil society to hold EU companies accountable for abuses - for example in the cases of Turkmenistan and Uyghur Region, it is extremely difficult to identify concretely which companies may be importing goods directly from these locations.
- Create positive incentives for respecting human rights by **including due diligence implementation requirements in export credits and EU and Member States procurement criteria**. The EU public procurement Directive should include mandatory value chain transparency for business enterprises wishing to participate in tenders.

Max. 5,000 characters.

Section V: Impacts of possible measures

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

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

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

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

Please explain:

Max. 5,000 characters.

Question 26: Estimation of impacts on stakeholders and the environment

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

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

- Incorporating a mandatory duty of care and due diligence duty would have considerable potential positive effects. These include:
 - Safer and more decent working conditions for supply chain workers including those in non-EU countries including health and safety, living wages and decent terms of employment. In particular, due diligence would require companies to respond to sector specific risks such as risks facing vulnerable groups, including migrant workers, lower-caste workers, homeworkers, temporary workers, illiterate workers, children and women.
 - Reductions in incidents of labour exploitation, worker-paid recruitment fees, debt bondage, human trafficking, other forms of forced labour, and child labour. Targeted interventions as part of due diligence to increase capacity and awareness along supply chains will improve respect for international human and labour rights standards and address root causes in affected communities (including poverty, gender and caste-discrimination and lack of education). Further, the due diligence process will drive companies to identify and address the impact of their own business models and practices - such as purchasing practices, short-lead times, unregulated subcontracting, and restrictions on freedom of association- in driving or enable negative impacts on human rights and the environment.
 - Reductions in harassment, threatening and killing of human rights, land and environmental defenders by holding companies accountable for the harms they caused or contributed to or are linked to, thus fighting impunity at local and international level.
 - Reductions in land grabs and violation of the rights of local communities in host countries, including indigenous peoples, forest communities, coastal communities through appropriate implementation of free prior and informed consent principles.
 - Improvements in environmental impact of business operations including through the reduction of deforestation, use of pollutants and emission of greenhouse gases. This will follow assessments and action on the company's environmental and climate-related risks and impacts. Addressing climate change, environmental destruction and vulnerability to modern slavery together will further reduce risks of labour exploitation and trafficking.
 - Alleviating the race to the bottom on human and labour rights that many governments of producing countries are carrying out in a bid to create jobs, raise export levels and boost GDP.
- There is evidence of targeted action by businesses on each of these issues leading to some improvement in living and working conditions on the ground. Adherence to proposed due diligence requirements would have strong positive impacts on a range of stakeholders. These include workers in business operations and value chains, local communities in operating countries and human rights, land and environmental defenders. Such positive impacts would drive progress towards the achievement of the Sustainable Development Goals, including SDG 8.7 on Decent Work - progress on which has been severely threatened due to the impacts of Covid-19. It would also have a strong positive effect on the environment and

climate at a time when urgent action is needed from all actors, including companies. The Commission is therefore urged to implement a strong due diligence duty to apply to companies across all sectors, in respect of negative human rights and environmental impacts.

Max. 5,000 characters.