

Reflection Paper
November 2020



**For a Coherent and Integrated
EU Approach to Due Diligence**
An Invitation for Dialogue and Action

The Purpose of Due Diligence is Positive Change and Impact

CSR Europe – within its programme [“Beyond Due Diligence”](#) – wants to promote an in-depth conversation and dialogue on the topic of Environmental and Human Rights Due Diligence, involving a wide range of stakeholders. As COVID-19 has painfully demonstrated, supply chain sustainability is a key challenge to well-functioning economies and societies, and the real name of the game is positive impact and change: supply chain sustainability is about the environment and climate, as well as the respect for human rights, decent work and the advancement of livelihoods of people and communities.

This is why in July 2020 we published the [first version of this Paper](#) that was used extensively in a series of webinars and High Level sessions aimed at consulting and dialogue with a large number of companies, policy makers, supply chain initiatives and civil society actors.

These events allowed us all to learn about and understand different perspectives and to identify the main challenges and opportunities that lie ahead of supply chain sustainability.

This final version captures the main elements of those exchanges, highlighting the need for collaborative action and the adoption of a smart mix of approaches. This is the only way forward to achieve more responsible supply chains and a positive impact on the environment, people and communities.

This Reflection Paper is [CSR Europe’s contribution to the European Commission’s consultation on Sustainable Corporate Governance](#).



The Dramatic Learnings from COVID-19: What is Really at Stake

Within an estimated population of 450 million people working in global supply chains, the number of those facing reduced income or job loss are dramatically increasing as a result of the COVID-19 pandemic. This unprecedented situation is only adding to the already growing expectations faced world-wide by policymakers and companies concerning the creation of mandatory laws about environmental and human rights due diligence. New legal steps are seen by many as necessary to make the UN Guiding Principles on Business and Human Rights (UNGPs) more actionable.

It is, however, imperative to distinguish how the UNGPs are envisaged:

- The challenge of due diligence with the UNGPs could be seen as merely a compliance mechanism (“you are in or you are out”) - where a company is punished if they do not comply with the law- or
- It can be seen as a mechanism to trigger action and search for practical solutions, as favoured by John Ruggie (author of the UNGP).

As outlined by Mrs. Dao Gabala, *Chairperson of the International Supervisory Board and President of the Coalition of Female Leaders of Code d’Ivoire*, at CSR Europe’ SDG Summit in October 2020:

“Instead of only raising the bar, we need to raise the floor too. In an in-depth inclusive process including unreached farmers and unreached miners. [...] we need an effective interplay between the EU, supply chain partners, producers and consumers. Let’s work together to ensure that due diligence does what it is supposed to do in the first place: provide a better future for the producers of our daily food and other products we consume”.

It is this option that should be the real meaning behind any mechanism to increase due diligence by companies. **This is the real Litmus test for any new legislative or voluntary initiative.**

It is in this context and following the examples of the [French Duty of Vigilance Law](#) and the [Child Labour Due Diligence](#) in the Netherlands, that on 29 April 2020, the European Commissioner for Justice, Didier Reynders, announced that the Commission commits to introducing rules for **mandatory corporate environmental and human rights due diligence**. Following this announcement, the European Commission has [already launched the legislative process that will lead to the publication of new mandatory rules on due diligence in Q2 2021](#).

CSR Europe’s initial reaction was to welcome the European Commission’s announcement as long as any future supply chain law will be **coherent with other forthcoming EU policies AND coupled with equally ambitious supportive incentives and capacity building measures within one EU Integrated approach**.

From our experience on the ground, **we strongly believe that a wider smart policy mix of national and European measures is needed** (including bilateral agreements, aligned public procurement practices, changes in the competition law, etc.).

Indeed, recovering fully from the effects of the pandemic will require a **deeper change**, towards a value chain that safeguards the environment, human rights and is inclusive towards local communities. To achieve this, **it is important to create a level playing field AND foster impact-oriented actions**.

To Achieve Impact, We Have a Duty to Collaborate

In an extensive [evaluation report by the Dutch government](#), it is stated that: “reporting requirements are relatively easy to enforce, but whether they lead to actual changes in company behaviour and impact in global value chains remains to be seen”. This statement again mirrors the earlier remarks made by Solidaridad.

To achieve impact at the local level, CSR Europe, together with other action-driven networks on Sustainable Supply Chains and Responsible Sourcing, believes that **a legislation alone would not be able to solve the complex human rights and environmental issues currently existing in many countries around the world**. This is why accompanying measures are needed to promote a “duty to collaborate” through a new generation of European Sector Dialogues & Alliances.

Sector Dialogues & Alliances can facilitate the dialogue, develop sector guidelines and organise peer-to-peer learnings within - or across - sectors. The Alliance element is a reference to incubate, within this dialogue, practical oriented actions between and across different groups of stakeholders. This can bring about the scale that is needed to go beyond the polarised “pilot-projects” approaches that we witness too often.

The purpose of such Sector Dialogues & Alliances is to encourage far more enterprises to collaborate in spaces where change can only happen through collective, coordinated action towards sustainable solutions that reach the expectations of national, European and international principles and norms. In other words, **a new generation of Sector Dialogues & Alliances would fortify a “duty to collaborate”** to support enterprises, government and civil society to better implement their respective “duty of care”.

In a [recent paper](#) developed for the German Presidency of the Council of the EU (October 2020), CSR Europe looked at how supply chain initiatives - developed over time by different actors (e.g. industry federations, stakeholder groups, governments) - are contributing to the delivery of better social and environmental outcomes. In such initiatives the overall principles and compliance mechanisms are established but the focus on change and impact (in companies, supply chains and local communities) is still a challenge due to weak capacity-building activities.

A mandatory due diligence law will increase awareness and the reach of principles and assurance mechanisms, but alone, it will not directly improve the actual supply chain conditions. There is a lack of practical, multi-stakeholder collaboration, and any further compliance mechanisms need to be elaborated within a more holistic ecosystem approach that includes a dynamic for change, involving local governance institutions, investment and finance mechanisms and adapted trade policies.



Key Elements for a European Sector Dialogue

GOVERNANCE AND FINANCE

- Selection of the sectors should be based on solid and evidence-based criteria.
- Multi-stakeholder approach in governance and actions.
- Facilitated by a neutral platform provider with adequate resources, staff and methodological knowledge.
- Governments and businesses should ensure adequate levels of funding in particular for a well-resourced secretariat to facilitate action-oriented engagement.
- Clear process to also involve local stakeholders (e.g. farmer or mining communities) is equally important.
- Covering direct issues (e.g. human rights infringements) and cross-cutting issues (e.g. living wages).
- Prioritisation of impact oriented collaborative action above individual company behaviour.

KEY FOCAL POINTS FOR DIALOGUE

- Impact and change: how to achieve and how to measure
- The effectiveness of different countermeasures: integration in company decision-making, funding for capacity-building, contractual arrangement, etc.
- Interlinkages of all value chain stages: up- to downstream.

SCOPE OF ACTIVITY

- All 5 core elements of Human Rights Due Diligence according to the United Nations Guiding Principles on Business and Human Rights (UNGPs): from policy statements to the effectiveness of grievance mechanisms.
- An agreed purpose, a clear roadmap and practical, achievable deliverables.
- Focus on impacts created by company actions but also by government policies and stakeholder interventions.
- Tailored towards the specific contributions that companies can make.



Let's Work Together Now for a Coherent and Integrated EU Approach

The new upcoming policy developments will substantially change how multinational companies address the impact of their value chain and its transparency. **More is needed if the new legislative proposal of the European Commission wants to achieve a wider level playing field.**

A regulatory framework on its own, focused on individual company behaviour, risks to overestimate the level of factual influence and leverage by a company. As a result, it might lead to several potential unintended consequences, as outlined by **Solidaridad** in their [position paper](#):

- The disengagement with high risk suppliers/ regions instead of proactive engagement along the supply chain.
- The implementation of new compliance and reporting rules as a tick box exercise for companies.
- The risk of transferring the costs of compliance and auditing to producers.

This is the last outcome we need in times of urgent recovery and continuous support needed by start-ups, Small and Medium Enterprises (SMEs) and suppliers. It is imperative that negative potential unintended consequences are taken into account and avoided, so that a regulatory framework does not deteriorate the already vulnerable situation of small farmers, artisanal miners and other marginalised groups in the Global South.

In order to achieve a strong level playing field, a future mandatory due diligence legislation must be embedded in an **ambitious, coherent and integrated EU approach** that includes various accompanying measures and incentives for the EU Member States, public and private investors alike. Such an EU approach should be in line with

the Organisation for Economic Co-operation and Development (OECD) and the International Labour Organization (ILO), to give greater trust and power to national and European collaborative partnership initiatives led or co-led by private, public and civil society organisations with proven methodologies and expertise. Together, with EU support, they have massive potential to contribute to the **bottom up standardization of best practice** in line with the EU, OECD, and ILO due diligence principles, guidelines and norms.

On a coherent policy approach: there is growing uncertainty among enterprises, even amongst the most pro-active ones, on how the EU institutions will build consistency among the following EU policies and forthcoming initiatives:

1. The supply chain law proposal led by DG Justice, the revision of the EUDNFI, the initiative on Sustainable Corporate Governance, the delegated acts of the EU Taxonomy
2. The policies on Trade, Development and International Partnerships, and Public Procurement
3. The mandate provided to all Commissioners to integrate the SDGs in all EU policies

National governments also need to fully realise their “duty to protect” by ensuring relevant laws and policies are in place and implemented.

On an EU Integrated approach: we would like to explore as soon as possible with the EU institutions and the EU Presidencies the feasibility of the following accompanying measures:

1. **The creation of European Sector Dialogues & Alliances.** European Sector Dialogues on HRDD have a key role to play in the implementation

of a mandatory horizontal legislation, not least because the combined market power of an entire European sector has the potential to bring about improvements that national dialogues alone would be unable to achieve.

The success of future EU initiatives will depend, to a large extent, on the buy-in of the European private sector, in particular of industry sectors representing enterprises with extensive and strategic supply chains. These actors need a European Union that is ready to give them due consideration and support in building Sector Dialogues & Alliances on Environment and HRDD to be able to:

- 1.1 Supplement a future horizontal legislation with **sector guidelines**, building on the examples of the EU published Guides in 2013 on implementing the UN Guiding Principles on Business and Human Rights in three business sectors, including the ICT and the oil and gas sector
 - 1.2 Provide **systematic monitoring** of the current risks and the Environment and HRDD performance by companies and stakeholders
 - 1.3 Offer a platform for genuine **solutions and collaboration-oriented dialogue and analysis** to address challenges like the loss of local livelihoods in settings where alternative employment opportunities are scarce or missing the link between resource extraction and conflict
 - 1.4. Explore and **advise on policy (coherence) improvements** to ensure environmental protection, human rights, decent work, and other related sustainability impacts
2. **The development and expansion of collaborative platforms** that engage companies and stakeholders **to boost local capacity-building and explore new financial incentives for measurable solutions**. Such platforms would have a comprehensive approach that addresses the root causes of the problem: conflict, weak governance, lack of education, skills and development, or companies pursuing a no-risk strategy. Platforms that have a special attention to

the role of civil society and that contribute to the empowerment of local communities.

3. **The access to existing and new mechanisms** - through for instance a European one-stop-shop - **to use public and private investments to scale up collaborative efforts in the supply chain**, with a specific focus on raw material sources and conflict minerals.

A longer-term approach will be required to strengthen the governance of global supply chains. A HRDD legislation holds significant value especially outside the EU, which would need to be locally-owned - and driven - to be successful, and which could benefit from a collaborative framework provided by the EU. Effective remediation measures (e.g. robust monitoring systems, effective and collective investments and collaborative actions) are needed. An HRDD legislation should address the responsibility of businesses to provide remedy where a business causes or contributes to human rights harm, while bearing in mind the role of the State in setting the foundations for effective remedy.

4. Campaigns to provide **visibility** to recognise the efforts of companies and sector and cross-sector initiatives with proven records on their investments and collaborations on sustainable supply chains.
5. A state of play on the implementation of **accompanying measures** decided by the European Parliament and European Commission on the EU Conflict Minerals Regulation that led, among other things, to the creation of the European Partnership for Responsible Minerals (EPRM), explicitly recognising that legislation alone is not enough to make a real change 'on the ground'.

Next Steps for a Coherent and Integrated EU Approach

Considering the urgency to act, we suggest to the European Commission and all stakeholders to explore more in depth:

1. The best options for a potential new law AND accompanying measures.
2. How to consolidate an action-oriented Coalition of European Stakeholders on Corporate Due Diligence.
3. The kick-off of a few pilots Sector Dialogues.
4. The acceleration of a strong and coherent EU raw materials diplomacy, integrating some of the above accompanying measures in the recently created European Raw Materials Alliance (ERMA).

DISCLAIMER

We would like to thank all the stakeholders that sent their feedback on the first version of our Discussion Paper.

Particular thanks go to the following for their contributions:

- Katrin Recke (Senior Sustainability, CSR & Supply Chain Manager) from AIM-Progress,
- Mitsuru Suzuki (Social and Environmental Policy Advisor) from Amfori,
- Adam McCarthy (Vice President Government & Public Affairs) from Cobalt Institute,
- Ferdinando Falcone (Human Rights Advisor) from Enel,
- Johannes Drielsma (Deputy Director) from Euromines,
- Michelle Nardella (Director of the Economics and Statistics Division) from International Cocoa Organization,
- Louise Assem PhD (Global Director of Material Stewardship) from International Copper Association,
- David D'Hollander (Associate Manager, Policy and Innovations) from ISEAL Alliance,
- Bart Devos (European Director) from Responsible Business Alliance,
- Iris van der Veken (Executive Director) from Responsible Jewellery Council,
- Alexandra Van Selm (Programme Director for International Responsible Business Conduct) from Social and Economic Council of the Netherlands (SER),
- Boukje Theeuwes (Head of Policy Influencing) from Solidaridad Europe,
- Claire Methven O'Brien (Strategic adviser, Human Rights and Business) from The Danish Institute for Human Rights.

However, please note that this document is the sole responsibility of CSR Europe and the content does not engage any other stakeholder involved in the consultation process.



OUR CONTINUOUS WORK TO ENHANCE SUSTAINABLE SUPPLY CHAINS

For many years now, CSR Europe is spearheading innovative responses in many different sectors, from automotive to tyre and logistics. In 2020, we kicked off the dialogue between a wide array of supply chain sector initiatives to explore common challenges and seek opportunities to leverage each other strengths and approaches.

To achieve real impact, we engaged companies in collaborative platforms, where they are working together with their sectors, value chain peers and other relevant stakeholders. Examples of our ongoing collaborative platforms are: [Drive Sustainability](#) and [Responsible Trucking](#). In the tyre industry we supported the creation of the [Global Platform for Sustainable Natural Rubber](#). CSR Europe is also involved in **cobalt and platinum mining sustainability efforts**, and started to roll out the [“Extractives and Development” project](#) in June 2020, with the support of the German development agency GIZ.

We further developed the [Grievance Management Assessment \(GMA\)](#), a benchmark tool to assess companies’ grievance mechanisms in line with the UN Guiding Principles on Business and Human Rights and OECD Guidance for Responsible Business Conduct.

We also collaborate with the European Commission and the German EU Presidency in their efforts to push for a thoughtful and integrated European policy on Human Rights Due Diligence.

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Responsible Business, Better Future.



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CSREurope is the leading European business network for Corporate Sustainability and Responsibility. With 40+ corporate members and National CSR organisations, we unite, inspire & support over 10,000 enterprises at local, European and global level. We serve businesses & industry sectors in their transformation and collaboration towards practical solutions and sustainable growth. We enable systemic change and follow the SDGs, we want to co-build with the European leaders and stakeholders an overarching strategy for a Sustainable Europe 2030.