

26 May 2020

## Follow up to Responsible Business Conduct Working Group webinar on due diligence

Dear Commissioner Reynders,

On behalf of the members of the Responsible Business Conduct Working Group, we would like to sincerely thank you for taking the time to present during our online event on 29 March 2020. We found your presentation extremely interesting and we greatly welcome your public commitment to introduce a legislative initiative next year on mandatory human rights and environmental due diligence for businesses.

We agree with the assessment outlined in the European Commission Study on due diligence requirements through the supply chain<sup>1</sup> that voluntary measures have proved to be totally insufficient to guarantee corporate responsibility to respect human rights and the environment. Indeed, as the study as well as other existing reports such as the Corporate Human Rights Benchmark<sup>2</sup> outline, only few companies have a due diligence process in place that thoroughly embeds human rights and environmental considerations. Therefore, we agree that introducing mandatory human rights and environmental due diligence legislation is the most effective means among the options examined, in order to ensure that companies, and those who finance them, take actions to tackle human and labour rights abuses and environmental harm.

As both you and MEPs raised during the event, the Covid-19 crisis has highlighted the precarious nature of global value chains; whilst the subsequent health, economic and social crises have reinforced the need to ensure their resilience and sustainability. To this end, the European Parliament has recently voted in its Resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences: ‘that corporate human rights and environmental due diligence are necessary conditions in order to prevent and mitigate future crises and ensure sustainable value chains’<sup>3</sup>.

During this period of uncertainty and economic turbulence, strong EU rules would help to ensure robust, resilient and sustainable value chains by requiring that companies address the environmental, social and governance risks they cause, contribute or are directly linked to.

The Responsible Business Conduct Working Group wishes to reiterate its call for EU-level horizontal and mandatory legislation on due diligence, with effective enforcement measures and access to remedy for victims and affected communities through liability for harms caused or contributed to by businesses.

In order to deliver on this commitment, we urge the Commission to develop this initiative in an inclusive process with input from business community, civil society organisations, including women’s groups, trade unions and affected communities (such as human rights

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<sup>1</sup> <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>

<sup>2</sup> <https://www.corporatebenchmark.org/>

<sup>3</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054_EN.pdf)

defenders and indigenous peoples), and to ensure that the following key principles are included when drafting the legislative proposal:

1. Applies to undertakings (i.e. business enterprises, including financial institutions) of all sizes and across all sectors, which are domiciled or based in, operating, or offering a product or service, within the EU; taking a risk based approach that would allow SMEs that are not engaged in risky activities to take a simplified approach; allows application that is reasonable and commensurate to the capacity, resources and leverage of a given business, particularly in the case for SMEs.
2. Includes the obligation to respect human rights and the environment in their own domestic and international activities, and to ensure such respect throughout their global value chains, products, services and business relationships;
3. Ensures that business enterprises have an obligation to identify, prevent, mitigate, monitor and account for potential and actual human rights abuses and environmental harm in their entire global value chains through ongoing due diligence processes, and to publicly report on such processes, their effectiveness and results; taking into account the different impacts of business operations on particular right holders and vulnerabilities, such as women, children, migrants, indigenous people, etc.”;
4. Is supplemented by more specific standards and guidance that provide clarity and certainty to business and stakeholders about the processes and topics expected to be covered.
5. Establishes civil liability for human rights abuses and environmental harm to ensure compliance with these obligations and provide much needed access to remedy for victims by removing any barriers to justice (e.g., burden of the proof, time limitations), and by ensuring that this legislation will be mandatory.
6. Provides authorities with effective instruments, standards and guidelines to monitor compliance and ensure enforcement, including through penalties and sanctions.

Due consideration also needs to be given to “accompanying measures” to the legislation, which would serve the purpose of supporting companies to comply with the requirements, such as training and tools. The EU should provide the right level of guidance and support to businesses of all sizes, especially to SMEs, throughout the process.

We support your commitment to draft this legislation using internationally recognised standards on how businesses can identify, prevent and mitigate and account for their risks, namely the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises (OECD MNE Guidelines) and its Due Diligence Guidance for Responsible Business Conduct; the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO Tripartite Declaration); and the OECD-FAO Guidance for Responsible Agricultural Supply Chains (OECD-FAO Guidance). Aligning new regulation with existing recognized standards avoids confusion for business implementing due diligence and creates an important level playing field.

In these times of uncertainty, the European Union must show leadership and introduce legislation that ensures robust, resilient and sustainable value chains and mandate companies address the environmental, social and governance issues they face. We are very confident that this legislation will represent a historic and meaningful contribution to the European Green Deal and sustainable economic recovery. We believe that such a legislation should form the cornerstone of a broader EU-wide action on responsible business conduct and therefore hope this will be accompanied by an Action Plan on Business and Human Rights to ensure coherence (e.g. responsible business conduct in public procurement, improved procedural access for victims, sustainable trade). We therefore expect the European Commission to take this leadership forward at the international level by constructively engaging in the negotiations for an ambitious UN Binding Treaty on Business and Human Rights.

We very much look forward to the next steps on these issues and, as always, we remain, together with our advisory group, at your disposal and we look forward to maintaining a constructive dialogue going forward.

Kind regards,

On behalf of the Responsible Business Conduct Working Group

Heidi Hautala, chair, Greens/EFA

Maria Arena, S&D

Delara Burkhardt, S&D

Anna Cavazzini, Greens/EFA

Aurore Lalucq, S&D

Sirpa Pietikäinen, EPP

Svenja Hahn, Renew