EIC Submission

EU Consultation on Sustainable Corporate Governance

(08 February 2021)

About EIC

European International Contractors (EIC) is a European industry federation with the mandate to promote the interests of the European construction industry in relation to its *international* business activities. EIC has as its members national construction associations from fifteen European countries, to which the internationally active European contractors are affiliated, as well as several associated member companies from construction-related industries and professions. The annual turnover of internationally active European contractors associated with EIC's Member Federations outside their respective home countries amounts to some €170 billion representing an international market share of around 50%.

Introductory Remarks

The European Commission published on 26 October 2020 a consultation in aiming at collecting feedback regarding a possible initiative on sustainable corporate governance. As we have emphasised already in our EIC Corporate Responsibility Report, European international contractors have come to believe that technical expertise, economic success and good corporate citizenship are inseparable objectives of our company strategies. Whilst recognising that responsible business conduct towards employees, business partners, society and the environment is an integral part of the value system of our member companies, EIC calls upon EU policymakers not to confuse the role of private companies with the responsibilities of states as regards the protection of human rights and guaranteeing the implementation of international conventions on social and environmental duties.

EIC is surprised that the EU consultation in large parts is biased and tendentious and fails to make reference to already existing EU legislation concerning the protection of the environment, payment of employees, social security, occupational health and safety, etc. which European business complies with even today. We, therefore, call on EU lawmakers to recognise that excessive regulatory will lead to additional cost burden for European business at a time where they are facing the challenges of a unique pandemic and may result in higher risk aversion and less entrepreneurship, ultimately reducing EU growth, employment and competitiveness.

Before proceeding with this legislative matter, EIC asks the European Commission to conduct and present a thorough Impact Assessment that analyses the commercial and economic effects of the proposed EU legislation with respect to the competitiveness of the EU industry compared to third-country competitors, both on the EU Internal Market as well as on international (third country) markets, bearing in mind that EU legislation on sustainable corporate governance might not be applicable to third-country competitors.

EIC Response to the EU Survey

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

Questions 1 and 2 below which seek views on the need and objectives for EU action have already largely been included in the public consultation on the Renewed Sustainable Finance Strategy earlier in 2020. The Commission is currently analysing those replies. In order to reach the broadest range of stakeholders possible, those questions are now again included in the present consultation also taking into account the two studies on due diligence requirements through the supply chain as well as directors' duties and 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?**

- x **Yes, a more holistic approach should favour the maximisation of social, environmental, as well as economic/financial performance.**
- o Yes, as these issues are relevant to the financial performance of the company in the long term.
- o No, companies and their directors should not take account of these sorts of interests
- o Do not know.

Please provide reasons for your answer:

EIC agrees that due regard for stakeholder interests and Corporate Responsibility (CR) has become an integral element in the global business landscape and EIC observes a growing demand from policymakers, global investors and civil society that global businesses engage in the control of the supply chain in areas such as human rights violations, environmental pollution and climate change. Thus, Responsible Business Conduct (RBC) towards employees, business partners, society and the environment is today an integral part of the value system and social consciousness of European international contractors which apply due diligence in their daily business operations based on internal risk management systems. They look at CR obligations not just from a risk perspective, but also from a business opportunity perspective and, therefore, advocate the idea that compliance with CR aspects must serve as a precondition for the disbursement of EU taxpayer's money as well as selection criteria for EU-financed projects.

The adaptation of the concept of Responsible Business Conduct (RBC) as set out in the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises (MNE Guidelines) into EU legislation would promote the spread of good practices in the protection of human and labour rights, environmental standards, and consumer interests as well as in combating corruption and financial crime. By doing so, the EU would require companies, including from third countries, operating in the EU Internal Market to align their business activities with current RBC best practice which, in turn, would incentivise these companies to benchmark themselves in this field of activities.

Conversely, EIC insists that Due Diligence remains in its totality an RBC process and that the lines between a non-judicial and a judicial process should not be blurred. The UNGP and the MNE Guidelines are recommendations and provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The character of the two processes – RBC and legal judicial process – is tremendously different and EIC opposes any attempt to link the RBC process with any new and/or additional legal sanctions. Such proposal would be in conflict with EU legislative initiatives in other policy areas, pursuing the same objectives, and with adopted legislation that has not yet had time to mature (e.g. shareholders' rights directive). Such proposal interferes unnecessarily with core elements of the corporate governance systems of Member States. In the private sector, the owners are the ultimate decision makers, and the internal governance structure of companies must remain internal. If the EU sets these fundamental mechanisms aside the very foundation of the private sector will be undermined.

Question 2: Human rights, social and environmental due diligence requires companies to put in place continuous pro-cesses 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?

- x **Yes, an EU legal framework is needed.**
- o No, it should be enough to focus on asking companies to follow existing guidelines and standards.
- o No action is necessary.
- o Do not know.

Please explain:

EIC concurs that an EU legal framework has added value to the extent that it is strictly confined to promoting an effective and uniform EU-wide application of the UNGP and the MNE Guidelines, as both are widely recognised international reference instruments for RBC. EIC holds that an EU legal framework should focus on strengthening the due diligence process throughout the EU and could as such support responsible behaviour of EU companies across the board. In that sense, EU regulation would guarantee a bigger impact on the international effort to promote RBC, because more companies would be bound by identical rules and because the leverage of the EU itself could then be instrumental to contribute to the promotion of RBC standards. Respective EU regulation should provide a level playing field, among EU enterprises as well as between EU enterprises and enterprises from third countries operating on the EU internal market and would also be instrumental in preventing a multitude of possibly diverging or even contradictory regulation on Member State level. EU legislation. An EU Directive should therefore limit as much as possible the room for individual Member States to interpret the directive or add specific national provisions.

By contrast, EIC strictly rejects a mandatory duty on EU level regulating supply chain due diligence is established for the reason that the EU has already extensive environmental laws addressing social and Human Rights aspects as well as environmental issues, such as climate change, that helps business to move towards a sustainable economy. For instance, the EU Non-Financial Reporting Directive requires publicly listed companies to disclose information on the policies they implement in relation to their Corporate Responsibility activities. Within this existing legal framework, companies and their directors take the necessary measures to prevent human rights violations, environmental pollution and climate change. EIC does not see any necessity to burden companies and directors with responsibilities and liabilities beyond what is currently required by EU legislation bearing in mind that companies and directors need to retain the flexibility to balance individual stakeholders' interests as, depending on the situation, they can often not be put on the same level. Legal requirements would potentially disrupt decision-making in boards given that not all the interests of stakeholders of companies are fully compatible with each other.

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).

- o 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
- x **Contribute effectively to a more sustainable development, including in non-EU countries**
- x **Levelling the playing field, avoiding that some companies freeride on the efforts of others**
- o Increasing legal certainty about how companies should tackle their impacts, including in their value chain
- o A non-negotiable standard would help companies increase their leverage in the value chain
- x **Harmonisation to avoid fragmentation in the EU, as emerging national laws are different**
- o SMEs would have better chances to be part of the EU supply chains
- x **Other**

Other, please specify:

An EU framework should support a sustainable and responsible procurement and prevent social dumping. Any EU legal framework for supply chain due diligence should be reflected also in the EU Procurement Directives to the extent that only businesses which have verifiably committed to the UNGP and the MNE Guidelines are allowed to participate in public tenders in the EU market, in particular if such projects are financed or co-financed with EU taxpayers' money.

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)?

- x **Increased administrative costs and procedural burden**
- x **Penalisation of smaller companies with fewer resources**
- x **Competitive disadvantage vis-à-vis third country companies not subject to a similar duty**
- x **Responsibility for damages that the EU company cannot control**
- o Decreased attention to core corporate activities which might lead to increased turnover of employees and negative stock performance
- x **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**
- x **Disengagement from risky markets, which might be detrimental for local economies**
- x **Other**

Other, please specify:

The protection of Human Rights is in the first place an obligation on states and their Governments. Therefore, any EU legislation that would shift responsibility of the due diligence process towards the private sector would discourage or would be regarded as a disincentive by public clients, contracting authorities, etc. to develop their own systems.
Construction products, like houses, bridges, railways, etc., cannot be shipped across borders but they constitute a local service implying a local supply chain. Bearing in mind local content rules in many developing countries, the competitive position of European international contractors could aggravate given that in their international business outside of the EU, they would face a more difficult business environment since third-country competitors, both international and local, would not be bound by the same EU rules.
Therefore, EIC asks the European Commission to conduct and present with the publication of its legislative proposal a thorough Impact Assessment that analyses the effects of its legislative proposal with respect to the international competitiveness of the EU industry on third-country markets, based on the assumption that EU legislation on sustainable corporate governance would not apply to third-country competitors. Any excessive responsibilities burdened unilaterally upon EU companies would be disproportionate, and ultimately counterproductive with regards to the goal of the European Union to strengthen the engagement of the European economy in developing countries - and especially in Africa.

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

In all Member States the current legal framework provides that a company director is required to act in the interest of the company (duty of care). However, in most Member States the law does not clearly define what this means. Lack of clarity arguably contributes to short-termism and to a narrow interpretation of the duty of care as requiring a focus predominantly on shareholders' financial interests. It may also lead to a disregard of stakeholders' interests, despite the fact that those stakeholders may also contribute to the long- term success, resilience and viability of the company.

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		
the interests of employees	X		
the interests of employees in the company's supply chain			X
the interests of customers	X		
the interests of persons and communities affected by the operations of the company	X		
the interests of persons and communities affected by the company's supply chain			X
the interests of local and global natural environment, including climate			X
the likely consequences of any decision in the long term (beyond 3-5 years)			X
the interests of society, please specify			X
other interests, please specify			

The interests of society, please specify:

All interests are relevant for the operation of internationally active European contractors, also those of local stakeholders. However, European companies have little to no leverage to influence and manage the behaviour of local stakeholders, except for those business partners with whom they have a direct business relationship (so-called 'tier-1' business partners). Hence any new Due Diligence duty must be limited to direct suppliers and subcontractors.

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 stakeholders and their interests		**X**				
Management of the risks for the company in relation to stakeholders and their interests, including on the long run			**X**			
Identification of the opportunities arising from promoting stakeholders' interests			**X**			

Please explain:

The individual company laws in EU Member States oblige Corporate Directors already to exercise the care of a prudent and conscientious manager in daily management operations and such obligation encompasses the duty to identify the company´s stakeholders and their interests, to manage related risks for the company accordingly.
EIC opposes the introduction of any additional legal obligations because the questionnaire does not give a legal definition of the term 'stakeholder' and, bearing in mind the specificity of each company's scope of activities, structure, nature and size, directors' related duties can only be described in very general terms. Hence, any legal duty would be highly problematic and hazardous for companies and EIC recommends refraining from legalising the 'stakeholder' concept and instead to pursue the voluntary Responsible Business Conduct approach by requiring companies to publish Code of Conducts in which Corporate Directors set up related policies and procedures. They can then utilise their audit committee, internal control, internal audit functions, outside experts and/or corporate governance ranking institutions to monitor the required implementations and compliances within the organisation. Alternatively, the "Comply or justify" approach could be used.

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?**

- o I strongly agree,
- o I agree to some extent
- **x I disagree to some extent**
- o I strongly disagree
- o I do not know
- o I do not take position

Please explain:

EIC believes that a regulatory change from a shareholder approach to a stakeholder approach, as advocated e.g. by the European Parliament in the "Wolters Report", would constitute a counter-productive regulatory excess of EU legislation. Sustainability is already embedded in the corporate governance systems of the Member States but through broad principles that take into account the fact that companies face uncertainty, but still need to be able to take decisions. As residual owners, shareholders as a group have the long-term interests of the company as their self-interest. The postulate that shareholders are not fit to be the ultimate decision-makers in companies and should be replaced by a regulatory stakeholder perspective is highly controversial.
The proposals therefore lack fundamental understanding of how private companies work and how Member States' corporate governance systems work. They also ignore that European legislative initiatives in other policy areas, pursuing the same objectives, are under way as well as adopted legislation that have not yet had time to work (e.g. shareholders rights directive).

EIC is missing a definition as to what is meant by 'possible risks and adverse impacts on stakeholders'. EU business complies with relevant European and national legislation to protect the environment, payment of employees, social security, occupational health and safety, anti-corruption, taxes, etc. If the European Commission intends to cover activities outside the European Economic Ares, such EU proposal should be based both content-wise and in terms of their legal character on the UNGP and the MNE Guidelines.
According to the UNGP, the responsibility of businesses to respect human rights refers to existing legislation and — where applicable - internationally recognised human rights — understood as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work. The MNE Guidelines cover additional thematic areas of business responsibility, including labour rights and environmental management. However, both are legally non-binding and rather recommendatory in character, these generic recommendations should not be transformed for legal application or for use in a judicial process.
Any kind of EU legislative framework should thus abstain from introducing new duties and obligations for corporate directors, but instead focus on process rules related to awareness and management of risks as to human rights and environment. This would allow each corporate organisation to consider the specific environment of the country and the business opportunity. Such framework should include reference to ISO standards and guidance which are worldwide recognised and cope already with sustainable corporate governance (ISO 37000, ISO 26000, ISO 31000, etc.). This reference is essential and will allow multinational contractors to organise their corporate governance not only to comply with the EU legal context and environment but also regarding their worldwide activities and clients.

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?**

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

Please provide an explanation or comment:

Again, sadly, a tendentious question. EIC disagrees with the Commission's presumption that corporate directors do not balance the interests of all stakeholders and instead focus on the short-term financial interests of shareholders. The underlying EU study has found wide-spread critique by world leading academics calling it heavily biased and its recommendations unfounded. Compared with the - publicly available - track-record on due diligence of some globally active state-owned enterprises, it appears that private shareholders of stock-listed companies take corporate responsibility issues very seriously.
In any case, the consequences of the suggested regulatory changes would likely to be dramatic. Business decisions are taken in uncertain and quickly changing environments. There will therefore always be an element of uncertainty in any decision a company takes as well as doubt as to the consequences that will follow from the decision. Therefore, unlimited and diffuse director liability, as proposed by the Commission, in which directors are required to balance the interests of its stakeholders, will inevitably lead to stakeholder conflicts and deadlocks. Moreover, it will lead to risk aversion and less entrepreneurship ultimately reducing EU growth, employment, innovation and competitiveness.
Paradoxically, it will also reduce investors incentives to provide risk capital to companies, including first movers and others who need risk capital to invest in the sustainable transition. The proposals will therefore work against its very purpose of supporting a sustainable transition. The goals targeted with the corporate governance initiative are better pursued through other policy areas.
EU Member States' national laws on corporate directors' duties include a duty to take into consideration all foreseeable risks, including those pertaining to sustainability. Consequently, sustainability is already embedded in national company law. Directors are employed by their companies in order to manage the organisation, the financing and the operations of the company and to take the respective strategic decisions. In addition to the strategic decisions, directors need to comply with a large number of company- organisational tasks, such as: the duty to report to the supervisory board and the general meeting; preparing the meetings and assemblies of the Supervisory Board and shareholders; keeping the share register;

the establishment of a compliance system / risk management system and audit obligations related capital measures as well as periodic and aperiodic disclosure obligations. It would be a mistake to postmark these broad range of entrepreneurial duties as 'focusing on the short-term financial interests of shareholders'. EIC advises against overloading directors' duties with unspecified and very far-reaching general policy goals of all kind. It should not be for EU law to determine which interests should be taken into account and how to grade them.

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?**

Such proposal interferes unnecessarily with core elements of the corporate governance systems of the EU Member States. In the private sector, the owners are the ultimate decision makers, and the internal governance structure of companies must remain internal. In case that directors' duty of care is extended to balancing the interests of all 'stakeholders' with the interests of shareholders, directors would find themselves in a permanent conflict of interest between those of shareholders and stakeholders. As the legislator would be confronted with the same conflict of interest, the resulting law would be vague and suffering from uncertain and indistinct legal terms and concepts, the interpretation of which would most likely be very different across EU Member States. This law-making concept would be the cause for a large number of disputes. The underlying risks would hardly be insurable under a Directors-and-Officers insurance bearing in mind also that the 'duty of care' varies with the country of operation and the sector concerned.
The consequences of the suggested regulatory changes are likely to be dramatic. Business decisions are taken in uncertain and quickly changing environments. There will therefore always be an element of uncertainty in any decision a company takes as well as doubt as to the consequences that will follow from the decision. Therefore, unlimited and diffuse director liability, as proposed by the Commission, in which directors are required to balancing the interests of its stakeholders, will inevitably lead to stakeholder conflicts and deadlocks. Moreover, it will lead to a risk aversion and less entrepreneurship ultimately reducing EU growth, employment, innovation and competitiveness.
Paradoxically, it will also reduce investors incentives to provide risk capital to companies, including first movers and others who need risk capital to invest in the sustainable transition. The proposals will therefore work against its very purpose of supporting a sustainable transition.

How could these possible risks be mitigated? Please explain.

A legislative act should promote the due diligence process and should be limited to requiring companies to reflect corresponding rules in their Codes of Conduct. EIC opposes converting current 'soft law' from the UNGP or the MNE Guidelines into legal obligations to be tested in the courts. Rather than introducing new and untested indistinct legal terms and concepts, the EU should restrict itself to the current legislation, which clearly spells out directors' obligations.
Another alternative could be a proposal submitted by some MEPs to Commissioner Reynders which is based on the creation of practical instruments, such as 'positive lists' or 'negative lists', which enable companies to distinguish between those direct business partners that act in line with internationally recognised Human Rights standards and those which have attracted negative attention by not ensuring respect for human rights and human dignity. According to this proposal, the EU Commission might consider prohibiting business relations with companies and individuals that have demonstrably failed to comply with internationally recognised Human Rights standards and require European companies to check whether its direct business partners are either listed on the 'positive list' or not listed on a 'negative list'.

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

The consideration of the interests of relevant stakeholders, e.g. customers, is these days a requirement of institutional investors and thus, at least for stock-listed companies, a basic prerequisite for successful entrepreneurial action. The stock market will thus 'punish' companies with poor "good governance" performance anyway. Again, EIC would urge the Commission to check for comparison the CSR performance of some globally active state-owned enterprises.

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?**

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

Please explain:

This is yet another tendentious question because it is assumed that companies often do not have a strategic orientation on sustainability risks, impacts and opportunities, for which there is no evidence or proof. The EU Non-Financial Reporting Directive requires large companies to disclose certain information on the way they operate and manage social and environmental challenges and thus is integrated into the company's strategy, decisions and oversight. Companies to which this EU legislation applies can take advantage of publishing a CSR or Sustainability Report to present the organisation's values and governance model, and demonstrates the link between its strategy and its commitment to a sustainable global economy. This in turn helps investors, consumers, policy makers and other 'stakeholders' to evaluate the non-financial performance of large companies and encourages these companies to maintain their responsible approach to business.

More generally, there is a huge difference between (1) the company deciding itself to include such considerations into its strategy, decisions and oversight, and (2) introducing legislation requiring such integration. And if legislation is introduced whether this should be (2a) national legislation or (2b) EU legislation. Giving the legislator (EU or national) a say on how strategies should be defined would go against the EU's market economy model and the foundations of company law.

Many concerns are raised in this regard. How to define in this case the company (foundation) contract and the responsibilities of shareholders? Is the core of the limited liability company not being put into question? What would be the reasonable strategic orientation to follow by law? Where to draw the line between an orientation to serve a political ideology and sound economical and sustainable corporate decisions? Would it not be a risk that companies inadvertently become an extended arm of shifting political majorities? Where is the evidence for such a major intervention in national company law and corporate governance systems?

Any kind of EU legislative framework should abstain from introducing new obligations for corporate directors, but instead focus on process rules related to awareness and management of risks as to human rights and environment. This would allow each corporate organisation to consider the specific environment of the country and the business opportunity. Such framework should include reference to ISO standards and guidance which are worldwide recognized and cope already with sustainable corporate governance (ISO 37000, ISO 26000, ISO 31000, etc.). This reference is essential and will allow multinational contractors to organise their corporate governance not only to comply with the EU legal context and environment but also regarding their worldwide activities and clients.

Enforcement of directors' duty of care

Today, enforcement of directors' duty of care is largely limited to possible intervention by the board of directors, the supervisory board (where such a separate board exists) and the general meeting of shareholders. This has arguably contributed to a narrow understanding of the duty of care according to which directors are required to act predominantly in the short-term financial interests of shareholders. In addition, currently, action to enforce directors' duties is rare in all Member States.

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:

No. However, the fact that there is not much litigation should not be interpreted to mean that the law is not effective. On the contrary, it could mean that it is well respected.

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?**

Not applicable.

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?**

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

Please explain your answer:

Stakeholders already have mechanisms of involvement, for instance employee representatives in company supervisory boards, and can claim company's liability through traditional processes. European Workers Council have been organised for years in organisations developing cross-border activities. This framework which since even before the original directive is embedded in the EU organisations constitutes a well- organised platform for the representation of the employees that in the contracting sector represent for sure an essential stakeholder to secure a sustainable corporate organisation. There is no need to create additional mechanisms. Enforcement of corporate directors' duties is the privilege of either supervisory bodies or law enforcement bodies. Stakeholders will be contacted by them as they deem necessary or appropriate, there is no need for an institutionalised role. It should also be noted that the EU directive on whistleblowers' protection will help companies in preventing and mitigating the risks they undergo. The introduction of additional enforcement mechanisms would have a disruptive effect on the fine-tuned balance (built over decades) between boards, management and shareholders and could potentially create endless litigation.

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.

Not applicable.

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.**

As mentioned (in response to Questions 7), any EU legislative proposal should be based content-wise and in terms of legal character on the UNGP and the MNE Guidelines. Any definition of the 'due diligence duty' should be constrained to ‘internationally recognised’ human rights' — as defined in the UNGP Principle 12 — but not beyond to labour rights and working conditions, health and environmental impacts, including relating to climate change. According to Principle 12, the internationally recognised human rights are understood as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work. It is important that companies can focus on the biggest, most material risks, and where they leverage to influence the outcome. To go any further is not helpful because norms derived from international conventions are not fit for purpose for usage in a legal process.

The MNE Guidelines cover additional thematic areas of business responsibility, including labour rights and environmental management. However, they are legally non-binding. As they do not provide precise and detailed direction, or legal liability and safeguards, these generic recommendations should not be transformed for legal application or for use in a judicial process. Rather, we propose to create reinforcement of the due diligence process in a practical manner, building as much as possible on existing foundations. EIC recommends in consideration of the specificities of the construction sector to adjust the definitions as follows: ‘Due diligence duty’ refers to a legal requirement for companies, in the context of their overall risk management and internal control framework, 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, in the company management, organisation and control and in the company’s own operations. 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.

The definition of the 'supply chain' must relate to companies' direct business relationships, including direct subsidiaries as well as direct suppliers and subcontractors. There should be no obligation beyond the so- called ‘tier-1’. See also Principle 17 of the UNGP: 'Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers’ or clients’ operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence'. Any further obligation would overburden European construction companies in the light of the complex and constantly changing supply chain in construction. The full supply chain for the production of complex products, such as in the construction industry, may cover a long chain of subsequent suppliers and globally operating construction companies are not able to check the entire supply chain, for example under what conditions a plastic spacer was manufactured specifically.

For example, according to Boeing‘s data, a 747 jumbo jet consists of 1 million components, which means that Boeing would have to monitor approx.1 million different subcontracted products if only one jumbo jet were manufactured. For a company at the end of such long supply chain it is impossible to ensure that the full supply chain is fully conform with RBC standards. EIC recommends in consideration of the specificities of the contracting sector to adjust the definitions as follows: ‘Supply chain’ is understood within the broad definition of a company’s direct ‘business relationships’ with its so-called 'tier-1' suppliers and subcontractors. Beyond 'tier-1', the company is expected to make reasonable efforts with respect to identifying suppliers and subcontractors and assessing them with reference to their business certifications (ISO standards and guidance).

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.

- o 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.
- **x Option 2. "Minimum process and definitions approach": The EU should define a minimum set of requirements regards 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.**
- o 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.
- o Option 4 "Sector-specific approach": The EU should continue focusing on adopting due diligence requirements for key sectors only.
- o Option 5 "Thematic approach": The EU should focus on certain key themes only, such as for example slavery or child labour.
- o None of the above, please specify

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?

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.

In order to avoid a fragmentation and to ensure a level playing field, EIC supports a minimum set of requirements as regards the content of a possible corporate due diligence duty. Given that such approach shall rely on the MNE Guidelines, on the UNGP and on EU and international human rights conventions, such minimum requirements would incentivise corporate good governance based on concepts that European international contractors are already familiar with. Furthermore, this variant offers some flexibility for complementary rules, when necessary.
EIC insists that the character of the existing due diligence standards, such as the OECD guidance on due diligence or the UNGP, is respected. Both have been conceived and drafted as RBC instruments, providing guidance in general terms in the form of recommendations. They do not provide precise and detailed direction, or legal liability and safeguards. The lines between a non-judicial and a judicial process should not be blurred. Rather than making these generic recommendations fit for legal application or use in a judicial process, we propose to create reinforcement of the due diligence process in a practical manner, building as much as possible on existing foundations.

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)**

- x **Human rights, including fundamental labour rights and working conditions (such as occupational health and safety, decent wages and working hours)**
- o Interests of local communities, indigenous peoples' rights, and rights of vulnerable groups
- x **Climate change mitigation**
- x **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**
- x **Other, please specify**

EIC would suggest adding the area of 'corruption prevention' to this list to align with relevant UN and OECD conventions. Conversely, EIC excludes the area of 'interests of local communities, indigenous peoples' rights, and rights of vulnerable groups' from the list of due diligence requirements, as, in the construction sector, these interests are typically analysed and managed by the 'demand side' of the construction project, i.e. the local government and/or contracting authorities as well as local or international financiers. Conversely, European international contractors become involved in infrastructure projects only at tender stage, when the interests of these stakeholders have already been dealt with.

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?**

EIC suggests a differentiation between external (harm to people, human rights abuses, etc.) and internal (reputational damage or legal liability for the company and its directors) adverse impacts and providing definitions for both cases at EU level. When defining 'adverse impacts', the EU should utilise as much as possible ISO references which take into account adverse impact and risk management. Thus, such definitions would be understood at EU and global level.

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?

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)

- o All SMEs should be excluded
- o SMEs should be excluded with some exceptions (e.g. most risky sectors or other)
- x **Micro and small sized enterprises (less than 50 people employed) should be excluded**
- o Micro-enterprises (less than 10 people employed) should be excluded
- o SMEs should be subject to lighter requirements ("principles-based" or "minimum process and definitions" approaches as indicated in Question 15)
- o SMEs should have lighter reporting requirements
- o Capacity building support, including funding
- o Detailed non-binding guidelines catering for the needs of SMEs in particular
- o Toolbox/dedicated national helpdesk for companies to translate due diligence criteria into business practices
- o Other option, please specify
- o None of these options should be pursued

Please explain your choice, if necessary.

As a matter of fact, construction activities both in EU Member States and internationally are carried out through a cooperation between large companies, often acting as general contractors, and smaller companies, often acting as specialised contractors. Since SMEs represent a very important and crucial part of the construction supply chain in construction, it is normal practice and necessary to establish of a back-to- back responsibility as a general principle in order to guaranteeing performance. It would be counter-productive if SMEs were left fully out of the picture.
However, EIC would agree that micro and small-sized enterprises are relieved from the corporate due diligence duties – even if they are a part of the supply chain – and that the burden for SMEs with more employees is proportionally relieved.

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?**

- x **Yes**
- o No
- o 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 link required should be either the local presence of a third-country company in the European Economic Area (EEA) by means of any locally registered permanent establishment, i.e. subsidiary, branch office or agency, or the participation of such company to public procurement opportunities in the EEA, whether funded by EU Institutions or not.

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

EIC considers this question as a key challenge of the envisaged concept because, on the one hand, providing a level playing-field in the area of sustainable corporate governance between EU-based companies and companies from outside Europe is a requirement to preserve the competitiveness of the EU industry as a whole, whilst, on the other hand, the EU is bound by international trade law not to discriminate against third-country companies. In other words: Whilst a level playing-field requires that third-country companies are subject to the same rules on sustainable corporate governance as companies from the EEA, the question is in how far such EU legislation can be applied to third-country companies. This creates a dilemma for the EU and the EU business: The stricter the CSR obligations are imposed solely on EU-based business, the higher will be the corresponding costs in the EU companies' administration and supply chains. In case third-country companies can enter the EU Internal Market on less stringent CSR terms and rules, the competitiveness of the EU industry would be threatened not only on third markets but also within the EU.
Hence, EIC calls on the EU to make future legislation on sustainable corporate governance compliant for any company, EU based or not, operating on the EU Internal Market. In case that this should not be possible because of WTO rules and other EU obligations, the EU must follow a similar approach as in the context of the 'Carbon Border Adjustment Mechanism' in order to ensure that the price of imports from companies which do not comply with respective EU rules is adequately adjusted.
EIC asks the European Commission to conduct and present a thorough Impact Assessment that analyses the effects of the proposed EU legislation in relation to the international competitiveness of the EU industry, both relating to the EU Internal Market and third-country markets, based on the assumption that such legislation does not apply to third-country competitors operating in the EU Internal Market.
As to sustainable corporate governance, EIC recommends that the obligations that would be imposed on third-country companies as on EU companies are aligned to the maximum extent on the reference to the worldwide ISO standards and guidance (ISO 37000, ISO 26000, ISO 31000, etc.).

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?**

- x **Yes**
- o No
- o I do not know

Please explain:

For the sake of policy coherency, before enacting new EU legislation on sustainable corporate governance, the EU should introduce corresponding legislation in the Regulations on the EU Structural Funds, the NDICI and all other Regulation under which EU taxpayer's money is disbursed as well as in the EU Procurement Directives that only businesses from EU- and third countries which have verifiably committed to the UNGP and the MNE Guidelines are allowed to participate in public tenders in the EU market, in particular if such projects are financed or co-financed with EU taxpayers' money. Commitment to the UNGP and the MNEs Guidelines could also become part of prequalification systems of EU Member States for businesses which are not established in the European Economic Area.
In public tenders, all contracting authorities in the EU should strictly apply the requirements of the EU's sustainable corporate governance legislation in their tenders, e.g. by giving preference to companies from within the EEA, who comply with the EU legislation, or bonus points for companies which perform well in terms of duty of care and sustainability, e.g. CO^2 performance ladder system (with different levels).

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)**?**

- o Judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations
- o 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 ex-ample fines)
  Supervision by competent national authorities (option 2) with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU
- x **Other, please specify**

Please provide explanation:

EIC recommends strengthening the role of National Contact Point (NCP) which are established by OECD member governments in line with the MNE Guidelines and who have the core duty is to advance the effectiveness of the OECD Guidelines. NCPs fulfil their mission by raising awareness among businesses and other stakeholders about the MNE Guidelines' standards and the NCP grievance mechanism and by handling 'specific instances' (grievances) against companies who allegedly have failed to meet the Guidelines' standards. NCPs are particularly well suited to handle specific instances, as they are organised in a plurilateral way and convene besides administrative staff also representatives from NGOs, employees and employers. This mechanism is already existing and could be utilised in the context of EU legislation on sustainable corporate governance.
In addition, EIC supports the change, on the short term, from some of the ISO guidance (ISO 26000, ISO 31000, ISO 37000) into ISO certification frameworks: This will allow all stakeholders of any corporate organisation to control and secure the compliance by that organisation with its legal due diligence duty mainly in the light of the third-party certifying body' assessment and report.

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?

o Yes
x No

In case you answered yes, please indicate what type of difficulties you have encountered or have information about:
If you encountered difficulties, how and in which context do you consider they could (should) be addressed?

Not applicable.

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?**

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

Please explain.

EIC considers that the current level of Non-Financial Reporting (NFR) established under Directive 2014/95/EU, which, for instance, requires large companies to publish regular reports on the social and environmental impacts of their activities, facilitates the communication between business and stakeholders. No further regulation is needed, and it should not be agreed outside of the EU NFR Directive. In addition, there are already some voluntary partnerships between companies and NGOs on specific issues driven by the market and company objective. Any further regulation would interfere unnecessarily with core elements of the corporate governance systems of Member States. In the private sector, the owners are the ultimate decision makers, and the internal governance structure of companies must remain internal. If the EU sets these fundamental mechanisms aside the very foundation of the private sector will be undermined.

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

Communication between directors and employees required by existing legislation in the form of employee participation in company decision-making.

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		
Stakeholder general meeting		
Complaint mechanism as part of due diligence		
Other, please specify		

Other, please specify:

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 [17] (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:

EIC considers the remuneration of directors should not be part of the EU legislation on sustainable corporate governance. Again, the consultation interferes unnecessarily with core elements of the corporate governance systems of Member States. In the private sector, the owners are the ultimate decision makers, and the internal governance structure of companies must remain internal. If the EU sets these fundamental mechanisms aside the very foundation of the private sector will be undermined.

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 [18] (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).

- o Requirement for companies to consider environmental, social and/or human rights expertise in the directors' nomination and selection process
- o Requirement for companies to have a certain number/percentage of directors with relevant environmental, social and/or human rights expertise
- o Requirement for companies to have at least one director with relevant environmental, social and/or human rights expertise
- o 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
- o Other option, please specify
- **x** **None of these are effective options**

Please explain:

EIC notes that here, once again, the survey is biased by insinuating that current level of expertise of boards of directors does not fully support a shift towards sustainability. In any case, the right to select and appoint corporate directors is the privilege of the owners of the companies and there should not be any interference from EU legislation. It is then — and should remain - the duty of the Board of Directors to organise a sufficient expertise in the company, not necessarily organised within the Board itself, combined with the requirement for the Board to regularly assess the level of expertise in its organisation on environmental, social and/or human rights matters and take appropriate follow-up. For SME, EU advisory boards could be enhanced in order to enhance directors' competence in this area.

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?

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

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

Not applicable.

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.

EIC recalls to positive incentives are better suited to improve sustainable corporate governance than interventionist regulation.

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.

Please explain:

EIC recommends the EU Commission to refer to the impacts of such duty of care and due diligence duty as computed in other regulated sectors like bank and insurance institutions. The contracting sector operates with low profit margins in the EEA and is less and less competitive in the world compared to third-country companies. If legal requirements in compliance are imposed to the EU corporate entities in the contracting sector and probably also in other sectors, a financial incentivisation or funding framework should accompany the new rules.
EIC is available to share with the EU Commission the outcome of a specific survey where EU corporate organisation can witness on the cost impact of their QHSE internal and external organisation and constraints. As a matter of comparison, this would contribute to an objective assessment of the potential cost impact of any additional duties for directors and organisations that would undoubtedly and negatively impact the competitive strength of the EU corporate organiations.

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	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	Competitiveness advantages stemming from new customers, customer loyalty, sustainable technologies or other opportunities
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 liked 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				

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).

Whilst the purpose remains noble in terms of improving respect for Human Rights and Environment, one can fear that the impact will primarily be limited to documentation and reports of compliance without directly influencing the causes. Therefore and alternatively to a new legal framework on duty of care and due diligence duty for directors of EU corporate organisations, EIC recommends to consider using the criteria in EU public procurement rules and in EU funding programmes to expand the requirements regarding Human Rights and Environment, and to reward the EU corporate entities when they overperform in those areas: the model example of The Netherlands with their CO^2 performance ladder and its impact on competitive tenders and for public procurement could inspire in this respect.

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