

FIEC-EIC Amendments

Proposed EU Directive on Corporate Sustainability Due Diligence

COM (2022) 71 final

(26 September 2022)

FIEC and EIC call upon the EU legislator to establish a level playing field between EU and non-EU construction companies for compliance with Corporate Sustainability Due Diligence obligations

Through its 32 national member federations in 27 European countries (24 EU & Norway, Switzerland, Ukraine), FIEC represents construction enterprises of all sizes (from one person craftsmen and SMEs through to large international firms), from all building and civil engineering specialties, engaged in all kinds of working methods.

EIC has as its members construction industry trade associations from fifteen European countries and represents the interests of the European construction industry in all questions related to its international construction activities. The international turnover of companies associated with EIC's Member Federations amounts to around 200 billion € per year.

FIEC and EIC support the introduction of an EU legal framework for Corporate Sustainability Due Diligence under the condition and to the extent that such **legal act is strictly confined to promoting an effective and uniform EU-wide application of the UNGP and the OECD MNE Guidelines** as the international established and recognised reference instruments for responsible business conduct. Furthermore, the corresponding obligations must provide a **level playing field between EU and non-EU construction companies**. The amendments suggested hereafter attempt to translate into the Directive's provisions the proposals set out in the FIEC-EIC position paper of 08 July 2022, mainly:

- To ensure a **level playing field between EU and non-EU construction companies** - whilst avoiding disproportional obligations for SMEs – by extending the personal scope of the proposed Directive (amendments 1 to 4);
- In order to **avoid too much new red tape**, the **CSDD Directive must be aligned with the internationally recognised concept and approach of the UNGP and the OECD MNE Guidelines** and existing legislations (amendments 5 to 7 and 9 to 14);
- To **avoid** the proliferation of **complaints** (amendments 8 and 15).

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Priority amendments

Amendment 1

Proposal for a directive

Article 2 – paragraph 1 – point a

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(a) the company had more than 500 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared;	(a) the company had more than 1000 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared;

Justification

The low thresholds and cascading effects of the due diligence and liability scheme are likely to put a disproportionately heavy administrative burden on the numerous SMEs active in the construction industry. The employment threshold in this Directive should be aligned on those stipulated by existing national legislations on the same subject-matter. The German ‘Act on Corporate Due Diligence in Supply Chains’ is a good reference, providing for a threshold of 1,000 workers from 2024 onwards.

Amendment 2

Proposal for a directive

Article 2 – paragraph 1 – point c (new)

Text proposed by the Commission

Amendment

- (c) ***the company does not meet the above-mentioned criteria (a) and (b) itself but is part of a third country group of companies which had more than 1000 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared.***

Justification

EU subsidiaries belonging to globally operating third country groups of companies would be generally allowed to escape from the due diligence obligations if their field of operation is limited to the EU Internal Market only, even though their third country parent company would be in-scope if they were based in the EU. In fact, EU subsidiaries belonging to globally operating third country groups of companies only fall under the scope of the Directive, if they individually reach more than 500 employees and a net turnover of more than EUR 150 million. As a consequence, EU subsidiaries belonging to globally operating third country groups of companies would obtain an undue advantage in terms of corporate sustainability due diligence vis-à-vis their EU competitors fulfilling the conditions of Article 1 sub-paragraphs (a) and (b), in particular in the area of public procurement procedures.

For instance, in 2021, the Chinese state-owned enterprise China Communication Construction Company (CCCC), with a worldwide turnover of approximately 98bn EUR, participated via its German subsidiary in a tender for maintenance dredging of a part of the Lower and Outer Elbe in Hamburg, Germany. According to Article 1 paragraph 1, this Chinese EU subsidiary would NOT be obliged to comply with the Draft Directive as its scope of operation is limited to Germany, without a large ‘world-wide net turnover’ (nor might it have a local workforce of 500 employees or more).

Therefore, in order to establish a genuine level playing field the relevant conditions for EU subsidiaries of globally operating third country groups of companies should be assessed in the context of the group level (parent company plus subsidiaries).

Amendment 3

Proposal for a directive

Article 2 – paragraph 2 – subparagraph 2 (new)

Text proposed by the Commission

Amendment

In case the company is a parent company, the above-mentioned conditions (a) and (b) shall be calculated on the basis of the consolidated net turnover of all the subsidiaries it controls.

Justification

A parent company from a third country would escape from the due diligence obligations if it artificially splits its operations within the EU Internal Market between its non-EU and EU subsidiaries in order to remain under the thresholds set in Article 1 paragraphs 1 and 2. As a consequence, it would obtain an undue advantage in terms of corporate sustainability due diligence vis-à-vis its EU competitors.

For instance, the Pelješac Bridge, the largest ever EU investment in infrastructure in Croatia which benefited from a contribution of €357 million from Cohesion Policy funds as of July 2022, was built by a consortium consisting of China Road and Bridge Corporation and its parent company China Communication Construction Company (CCCC). Since the relationship between the consortium partners is purely internal and generally unknown to third parties, it will be difficult, if not impossible, to establish which ‘company’ of the joint venture has ‘generated a net turnover of more than EUR 150 million in the Union’ and is in-scope of the proposed Directive. Moreover, this criterion only applies ‘in the financial year preceding the last financial year’. Thus, Chinese state-owned enterprises might fall out of the scope of Article 1 paragraph 2 of the Draft Directive, as it might not have fulfilled the criterion of generating ‘a net turnover of more than EUR 150 million in the Union in the financial year preceding the last financial year’ due to the fact that its modus operandi for the most part by way of EU subsidiaries.

Therefore, in order to establish a genuine level playing field, the criteria for non-EU parent companies should be assessed including their controlled subsidiaries.

Amendment 4

Proposal for a directive

Article 3 – point da (new)

Text proposed by the Commission

Amendment

(da) ‘group of companies’ means a parent company and all its subsidiaries;

Justification

See Amendment 2.

Amendment 5

Proposal for a directive

Article 3 – point e

Text proposed by the Commission

Amendment

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| <p>(e) ‘business relationship’ means a relationship with a contractor, subcontractor or any other legal entities (‘partner’)</p> <p>(i) with whom the company has a commercial agreement or to whom the company provides financing, insurance or reinsurance, or</p> <p>(ii) that performs business operations related to the products or services of the company for or on behalf of the company;</p> | <p>(e) ‘business relationship’ means a relationship with a contractor, subcontractor or any other legal entities (‘partner’)</p> <p>(i) with whom the company has a commercial agreement, and</p> <p>(ii) that performs business operations directly related to the products or services of the company for or on behalf of the company;</p> |
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Justification

The due diligence requirements should be limited to direct (‘tier-1’) subcontractors and suppliers in the supply chain, as for instance in the German ‘Act on Corporate Due Diligence in Supply Chains’. In industries characterised by a multitude of intervening subcontractors and suppliers, whose composition and combination changes with each project, companies can only control their direct suppliers and subcontractors in a meaningful way. Nor do they have much leverage downstream on their clients, even less when it goes over public authorities, which make a sizeable part of the client base in many sectors. Specific provisions applicable to financing institutions and insurance companies may be useful but should be taken separately.

Amendment 6

Proposal for a directive

Article 3 – point (f)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(f) ‘established business relationship’ means a business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain;</p>	<p>(f) ‘established business relationship’ means a direct business relationship which is, or which is expected to have a share of more than 10% in the net turnover of the company or a duration of more than 12 months;</p>

Justification

The definition of ‘established business relationship’ at Article 3 (f) is central in determining the extent of the due diligence process. It is subject to interpretation and difficult to apply operationally, in particular to project-based activities. The ‘intensity’ criterion, together with the last part of the definition (i.e. ‘which does not represent a negligible or merely ancillary part of the value chain’), could be clarified by setting a nominal threshold to be considered.

Amendment 7

Proposal for a directive

Article 3 – point g

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(g) ‘value chain’ means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company. As regards companies within the meaning of point (a)(iv), ‘value chain’ with respect to the provision of these specific services shall only include the activities of the clients receiving such loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;</p>	<p>(g) ‘value chain’ means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream established business relationships of the company;</p>

Justification

See Amendment 5. The due diligence requirements should be limited to direct (‘tier-1’) subcontractors and suppliers in the supply chain, as for instance in the German ‘Act on Corporate Due Diligence in Supply Chains’. Specific provisions applicable to financing institutions and insurance companies may be useful but should be taken separately.

Amendment 8

Proposal for a directive

Article 3 – point n

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(n) ‘stakeholders’ means the company’s employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships;</p>	<p>(n) ‘stakeholders’ means the company’s employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are affected by the products, services and operations of that company, its subsidiaries and its business relationships;</p>

Justification

Engagement with stakeholders is important but cannot be unlimited. The proposed definition would allow anybody to allege being potentially affected by any operation. A stakeholder's interest in the cause should have a minimum of materiality in order to entail obligations of companies towards them.

Amendment 9

Proposal for a directive

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that companies conduct human rights and environmental due diligence as laid down in Articles 5 to 11 ('due diligence') by carrying out the following actions:

Amendment

1. Member States shall ensure that companies conduct **risk-based** human rights and environmental due diligence as laid down in Articles 5 to 11 ('due diligence') by carrying out the following actions:

Justification

This Directive should rely on the well-established concepts and approach of the OECD Guidelines for Multinational Enterprises (MNE) and the UN Guiding Principles on Business and Human Rights. Those frameworks resulted from a long and inclusive process, in which all main stakeholders were involved. The OECD Guidelines stipulates responsibilities and course of action that are clear, tested, and workable by companies. The risk-based approach underpinning OECD MNE Guidelines and UNGP ought to be preserved, to effectively tackle serious negative effects and not drown companies in sterile bureaucracy.

Amendment 10

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that companies integrate due diligence into all their corporate policies and have in place a due diligence policy. The due diligence policy shall contain all of the following:

Amendment

1. Member States shall ensure that companies integrate due diligence into all their corporate policies and have in place a **risk-based** due diligence policy. The due diligence policy shall contain all of the following:

Justification

See Amendment 9. The risk-based approach underpinning OECD MNE Guidelines and UNGP ought to be preserved, to effectively tackle serious negative effects and not drown companies in sterile bureaucracy.

Amendment 11

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. When companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, identification of actual and potential adverse human rights impacts and adverse environmental impacts shall be carried out only before providing that service. **deleted**

Justification

See Amendment 5. The due diligence requirements should be limited to direct ('tier-1') subcontractors and suppliers in the supply chain, as for instance in the German 'Act on Corporate Due Diligence in Supply Chains'. Specific provisions applicable to financing institutions and insurance companies may be useful but should be taken separately.

Amendment 12

Proposal for a directive Article 7 – paragraph 6

Text proposed by the Commission

Amendment

6. By way of derogation from paragraph 5, **deleted** point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.

Justification

See Amendment 5. The due diligence requirements should be limited to direct ('tier-1') subcontractors and suppliers in the supply chain, as for instance in the German 'Act on Corporate Due Diligence in Supply Chains'. Specific provisions applicable to financing institutions and insurance companies may be useful but should be taken separately.

Amendment 13

Proposal for a directive Article 8 – paragraph 1

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>1. Member States shall ensure that companies take appropriate measures to bring actual adverse impacts that <i>have been, or should have been, identified pursuant to Article 6 to an end</i>, in accordance with paragraphs 2 to 6 of this Article.</p>	<p>1. Member States shall ensure that companies take appropriate measures to bring <i>to an end</i> actual adverse impacts that <i>they have caused or contributed to and seek to bring to an end actual adverse impacts they have not contributed to, where the impact is directly linked to their operations, products or services by a business relationship</i>, in accordance with paragraphs 2 to 6 of this Article.</p>

Justification

See Amendment 9. The OECD MNE Guidelines differentiate the responsibility of companies with regard to the adverse impacts resulting from their own actions and those resulting from the actions of their business relationships, upon which they may have leverage but not control. The proposed text is extracted from the General policies, paragraph A.12, of the Guidelines, which specifies that “*this provision is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship*”.

Amendment 14

Proposal for a directive Article 8 – paragraph 7

Text proposed by the Commission

Amendment

7. By way of derogation from paragraph 5, **deleted** point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.

Justification

See Amendment 5. The due diligence requirements should be limited to direct ('tier-1') subcontractors and suppliers in the supply chain, as for instance in the German 'Act on Corporate Due Diligence in Supply Chains'. Specific provisions applicable to financing institutions and insurance companies may be useful but should be taken separately.

Amendment 15

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that natural and legal persons are entitled to submit substantiated concerns to any supervisory authority **when they have reasons to believe**, on the basis of **objective circumstances**, that a company is failing to comply with the national provisions adopted pursuant to this Directive ('substantiated concerns').

Amendment

1. Member States shall ensure that natural and legal persons **having a legitimate interest in the matter** are entitled to submit substantiated concerns to any supervisory authority on the basis of **reasonable evidence**, that a company is failing to comply with the national provisions adopted pursuant to this Directive ('substantiated concerns').

Justification

The current wording of Article 19 needs further clarification as its paragraph 1 basically allows any person to bring a case before a supervisory authority about all possible breaches of the proposed provisions of the Directive. This creates a huge risk of forum shopping and proliferation of complaints. Paragraph 1 should be aligned on paragraph 5 which stipulates the requirement of having a legitimate interest in the matter.

Other amendments

Article 22

The civil liability provisions proposed by the Commission in Article 22 raises fundamental concerns about proportionality (including regarding the idea of a liability over the whole lifetime of an asset), legal certainty, and interference with international private law. Creating a civil liability of companies for the negligence or misconduct of independent third parties disregard the limits of companies' legal and practical means to exercise control over others. Companies should seek to prevent or mitigate an adverse impact caused by a business relationship, but as stated in the OECD MNE Guidelines, this should not have for consequence to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

Proportionality and legal certainty are essential, in particular for international construction companies. Otherwise, participating to construction projects overseas in some circumstances will become too risky for European contractors, or even impossible to finance. This would not improve the prevention of adverse impacts but simply leave an open field to competitors not subject to the same liabilities.

*As many other parties have expressed similar concerns, many proposals for amendment are to be expected. FIEC and EIC will not propose amendments but call for a **thorough review of the whole Article 22.***

Amendment 16

Proposal for a directive

Article 4 – paragraph 2

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>2. Member States shall ensure that, for the purposes of due diligence, companies are entitled to share resources and information within their respective groups of companies and with other legal entities in compliance with applicable competition law.</p>	<p>2. Member States shall ensure that, for the purposes of due diligence, companies are entitled and encouraged to share resources and information within their respective groups of companies and with other legal entities in compliance with applicable competition law.</p>

Justification

Sharing relevant information and risk analysis along the supply chain should be the rule to avoid bis in idem and redundant investigations.

Amendment 17

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that companies take appropriate measures to prevent, or where prevention is not possible or not immediately possible, adequately mitigate potential adverse human rights impacts and adverse environmental impacts that have been, **or should have been**, identified pursuant to Article 6, in accordance with paragraphs 2, 3, 4 and 5 of this Article.

Amendment

1. Member States shall ensure that companies take appropriate measures to prevent, or where prevention is not possible or not immediately possible, adequately mitigate potential adverse human rights impacts and adverse environmental impacts that have been identified pursuant to Article 6, in accordance with paragraphs 2, 3, 4 and 5 of this Article.

Justification

One cannot prevent impacts that haven't been identified.

Amendment 18

Proposal for a directive Article 7 – paragraph 2 – point a

Text proposed by the Commission

- (a) where necessary due to the nature or complexity of the measures required for prevention, develop and implement a prevention action plan, with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. **The prevention action plan shall be developed in consultation with affected stakeholders;**

Amendment

- (a) where necessary due to the nature or complexity of the measures required for prevention, develop and implement a prevention action plan, with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement;

Justification

Provision replaced by a specific point (f) relative to the engagement with stakeholders. See Amendment 20.

Amendment 19

Proposal for a directive

Article 7 – paragraph 2 – point e

Text proposed by the Commission

- (e) in compliance with Union law including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to **bring** the adverse impact **to an end**, in particular where no other action is suitable or effective.

Amendment

- (e) in compliance with Union law including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to **prevent or mitigate** the adverse impact, in particular where no other action is suitable or effective;

Justification

This article is about prevention and mitigation.

Amendment 20

Proposal for a directive

Article 7 – paragraph 2 – point f (new)

Text proposed by the Commission

Amendment

- (f) **engage with the affected stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to the envisaged preventive or mitigating measures.**

Justification

Specific subparagraph relative to the engagement with stakeholders, rather than a mention in point (a), based on OECD MNE Guidelines.

Amendment 21

Proposal for a directive

Article 7 – paragraph 4 –subparagraph 1

Text proposed by the Commission

4. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives **or** independent third-party verification.

Amendment

4. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives, independent third-party verification **or relevant certifications.**

Justification

If a certification scheme with third-party audits is observed, additional verifications are not needed.

Amendment No. 22

Proposal for a directive

Article 8 – paragraph 3 – point b

Text proposed by the Commission

- (b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, develop and implement a corrective action plan with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. **Where relevant, the corrective action plan shall be developed in consultation with stakeholders;**

Amendment

- (b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, develop and implement a corrective action plan with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement;

Justification

Provision replaced by a specific new point (g) relative to the engagement with stakeholders. See Amendment 23.

Amendment 23

Proposal for a directive

Article 8 – paragraph 3 – point g (new)

Text proposed by the Commission

Amendment

- (g) ***engage with the affected stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to the envisaged corrective measures.***

Justification

Specific subparagraph relative to the engagement with stakeholders, rather than a mention in subparagraph b, inspired by OECD Guidelines.

Amendment 24

Proposal for a directive

Article 8 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

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| <p>5. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification.</p> | <p>5. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives, independent third-party verification or relevant certifications.</p> |
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Justification

If a certification scheme with third-party audits is observed, additional verifications are not needed.

Amendment 25

Proposal for a directive

Article 12

Text proposed by the Commission

In order to provide support to companies to facilitate their compliance with Article 7(2), point (b), and Article 8(3), point (c), the Commission shall adopt **guidance about** voluntary model contract clauses.

Amendment

In order to provide support to companies to facilitate their compliance with Article 7(2), point (b), and Article 8(3), point (c), the Commission shall adopt **and publish** voluntary model contract clauses **without delay and at the latest 2 years from the entry into force of this Directive.**

Justification

Model contract clauses are an avenue to be developed. Passing on liability back-to-back from upstream is often difficult if not impossible, as subcontractors / suppliers might be reluctant to accept such far-reaching due diligence clauses, in particular in countries where they are uncommon. The Directive ought to be more precise and stringent. It should be provided that the Commission shall publish more than a general guidance, useable model contract clauses - such as a 'suspend or justify' clause in case of non-compliance by the supplier or subcontractor - within a short timespan after the adoption of the Directive and prior to its implementation and entry into force for companies.

Amendment 26

Proposal for a directive Article 13

Text proposed by the Commission

In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, **may** issue guidelines, including for specific sectors or specific adverse impacts.

Amendment

In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, **shall** issue guidelines, including for specific sectors or specific adverse impacts.

Justification

In view of the increased obligations and responsibilities of companies, precise guidelines should be given to them, in the absence or pending of well-established standards.

Amendment 27

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

2. Without prejudice to applicable State aid rules, Member States may financially support SMEs.

Amendment

2. Without prejudice to applicable State aid rules, Member States may financially support SMEs, **industry schemes and multi-stakeholder initiatives.**

Justification

Accompanying measures and public support should not be limited to certain sizes of companies, as proposed in Art. 14 (2), but extend to thematic approaches, e.g. on condition of multipartite action.

Amendment 28

Proposal for a directive Article 14 – paragraph 4

Text proposed by the Commission

4. Companies may rely on industry schemes and multi-stakeholder initiatives to support the implementation of their obligations referred to in Articles 5 to 11 of this Directive to the extent that such schemes and initiatives are appropriate to support the fulfilment of those obligations. The Commission and the Member States may facilitate the dissemination of information on such schemes or initiatives and their outcome. The Commission, in collaboration with Member States, **may** issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.

Amendment

4. Companies may rely on industry schemes and multi-stakeholder initiatives to support the implementation of their obligations referred to in Articles 5 to 11 of this Directive to the extent that such schemes and initiatives are appropriate to support the fulfilment of those obligations. The Commission and the Member States may facilitate the dissemination of information on such schemes or initiatives and their outcome. The Commission, in collaboration with Member States, **shall** issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.

Justification

Standards and certification are key factors for making the due diligence requirements efficiently manageable. Being able to rely on standards (for the due diligence process) and recognised shared data sources and control systems provide various advantages, in terms of ease of implementation, reduction of the risk of non-compliance and economies of scale, etc. The Directive or Regulation should more precisely provide for the recognition of industry and multi-stakeholder schemes, beyond the mere possibility to issue guidance for assessing the fitness of such schemes, as provided in Art. 14 (4). For instance, standard ‘risk assessment checklists’ allowing to categorise subcontractors and suppliers involved in a project, standard ESG scorecards established by internal or external audits to assess specific key subcontractors or suppliers would be very useful to facilitate the implementation of efficient due diligence processes.

Amendment 29

Proposal for a directive Article 14 – paragraph 5 (new)

Text proposed by the Commission

Amendment

5. ***The Commission shall mandate the development of standards about corporate human rights and environmental due diligence procedures, the assessment of their effectiveness, and the performance of independent third-party verifications.***

Justification

See amendment 28. Beyond industry schemes and multi-stakeholder initiatives, European or international standards would dramatically streamline the due diligence process over the whole value chain.

Amendment 30

Proposal for a directive Article 15

Text proposed by the Commission

Amendment

[...]

deleted

Justification

The provisions relative to climate and directors' duties (Article 15, 25 and 26) are not related to due diligence but rather concern corporate governance questions which should be dealt with in other existing or proposed dedicated pieces of legislation.

Amendment 31

Proposal for a directive Article 25

Text proposed by the Commission

Amendment

[...]

deleted

Justification

The provisions relative to climate and directors' duties (Article 15, 25 and 26) are not related to due diligence but rather concern corporate governance questions which should be dealt with in other existing or proposed dedicated pieces of legislation.

Amendment 32

Proposal for a directive Article 26

Text proposed by the Commission

Amendment

[...]

deleted

Justification

The provisions relative to climate and directors' duties (Article 15, 25 and 26) are not related to due diligence but rather concern corporate governance questions which should be dealt with in other existing or proposed dedicated pieces of legislation.