

**Comments and proposal for amendments –
COM (2022) 0071
Committee draft report PE738.450**

General remarks

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.

FIEC and EIC understand that the EU co-legislators would like to proceed swiftly on this dossier. However, before taking any final decisions, the European Council and the European Parliament should conduct 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. We deem this even more necessary in the light of the decision of the European Commission to put forward a proposal despite **two negative opinions of its Regulatory Scrutiny Board**.

Furthermore, the corresponding obligations must provide a **level playing field between EU and non-EU construction companies and their subsidiaries active in the EU Internal Market**. 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;
- 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;
- To avoid the proliferation of complaints.

For comments/amendments on the JURI draft European Parliament legislative resolution, the number of the amendment is indicated for each comment. **FIEC/EIC comments or amendments are marked in blue**. The text from the Parliament is marked in **red**, the text proposed by the Commission in **grey**.

Detailed Comments and Proposals

Amendment 58 ITRE Draft Report

Recital 23

Text proposed by the Commission	Text proposed by rapporteur in the ITRE Committee	FIEC/EIC comment/amendment
<p>(23) In order to achieve fully the objectives of this Directive addressing human rights and adverse environmental impacts with respect to companies' operations, subsidiaries and value chains, third-country companies with significant operations in the EU should also be covered. More specifically, the Directive should apply to third-country companies which generated a net turnover of at least EUR 150 million in the Union in the financial year preceding the last financial year or a net turnover of more than EUR 40 million but less than EUR 150 million in the financial year preceding the last financial year in one or more of the high-impact sectors, as of 2 years after the end of the transposition period of this Directive.</p>	<p>23) In order to achieve fully the objectives of this Directive addressing human rights and adverse environmental impacts with respect to companies' operations, subsidiaries and supply chains, third-country companies with significant operations in the EU should also be covered. More specifically, the Directive should apply to third-country companies which generated a net worldwide turnover of at least EUR 150 million in the financial year preceding the last financial year of which at least EUR 50 million was generated in the Union or a net turnover of more than EUR 40 million but less than EUR 150 million of which at least EUR 50 million was generated in the Union in the financial year preceding the last financial year in one or more of the high-impact sectors, as of 2 years after the end of the transposition period of this Directive. <i>This Directive should also apply to those companies which do not meet the criteria mentioned above if that company is part of a group of companies whose parent company is registered in a third country, and which has more than 5000 employees on average or had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial</i></p>	<p>FIEC and EIC support the Amendment 58 proposed by the ITRE Rapporteur. 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.</p> <p>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.</p> <p>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).</p>

	<i>statements have been prepared. A group of companies refers to a parent company and all its subsidiaries.</i>	
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Amendment 25 JURI Draft Report

Recital 37

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
<p>(37) As regards direct and indirect business relationships, industry cooperation, industry schemes and multi-stakeholder initiatives can help create additional leverage to identify, mitigate, and prevent adverse impacts. Therefore, it should be possible for companies to rely on such initiatives to support the implementation of their due diligence obligations laid down in this Directive to the extent that such schemes and initiatives are appropriate to support the fulfilment of those obligations. Companies could assess, at their own initiative, the alignment of these schemes and initiatives with the obligations under this Directive. In order to ensure full information on such initiatives, the Directive should also refer to the possibility for the Commission and the Member States to facilitate the dissemination of information on such schemes or initiatives and their outcomes. The Commission, in collaboration with Member States,</p>	<p>(37) As regards direct and indirect business relationships, industry cooperation, industry schemes and multi-stakeholder initiatives can help create additional leverage to identify, mitigate, and prevent adverse impacts. Therefore it should be possible for companies to use such initiatives to support the implementation of their due diligence obligations laid down in this Directive to the extent that such schemes and initiatives are appropriate to support the fulfilment of those obligations. Companies could assess, at their own initiative, the alignment of these schemes and initiatives with the obligations under this Directive. In order to ensure full information on such initiatives, the Directive should also refer to the possibility for the Commission and the Member States to facilitate the dissemination of information on such schemes or initiatives and their outcomes. The Commission, in collaboration with Member States, may issue guidance for assessing the scope,</p>	<p>FIEC and EIC reject the Amendment 25 proposed by the JURI Rapporteur. As the Directive would usefully refer to third-party verifications (and certifications), “rely on” is more appropriate than “use”: it should remain a valid compliance test for a company, without the over-prescriptive amendment proposal.</p>

<p>may issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.</p>	<p>alignment and credibility of industry schemes and multi-stakeholder initiatives. The scope, alignment and credibility of an industry scheme or multi-stakeholder initiative should be assessed by taking into account, in particular, the inclusion of the perspectives of civil society in the process. The use of relevant and credible industry schemes and multi-stakeholder initiatives to support companies' due diligence should not absolve such companies of their individual responsibility to perform due diligence, and should not prevent them from being held liable.</p>	
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Amendment 50 JURI Draft Report

Article 1 – paragraph 1 – subparagraph 2

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
<p><i>The nature of business relationships as 'established' shall be reassessed periodically, and at least every 12 months.</i></p>	<p><i>deleted</i></p>	<p>FIEC and EIC reject the Amendment 50 proposed by the JURI Rapporteur because the definition of 'established business relationship' in Article 3 (f) is central in determining the extent of the due diligence process.</p>

Amendment 51 JURI Draft Report

Article 2 – paragraph 1 – point a

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
(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 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been prepared;	(a) the company had more than 1.000 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 and beyond. 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 52 of JURI Draft Report

Article 2 – paragraph 1 – point b – introductory part

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
(b) the company did not reach the thresholds under point (a), but had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been prepared,	(b) the company did not reach the thresholds under point (a), but had more than 50 employees on average and had a net worldwide turnover of more than EUR 8 million in the last financial year for which annual financial statements have been prepared,	FIEC and EIC reject the Amendment 52 proposed by the JURI Rapporteur. The proposal of the Commission is in line with the reasoning for sub-paragraph (a).

provided that at least 50% of this net turnover was generated in one or more of the following sectors	provided that at least 30% of this net turnover was generated in one or more of the following sectors:	
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Amendment 192 ITRE Draft Report

Article 2 – paragraph 1a (new)

Text proposed by the Commission	Text proposed by the rapporteur in the ITRE Committee	FIEC/EIC comment/amendment
	<p>1a. This Directive shall also apply to a company that does not meet the criteria set out in paragraph 1, points (a) and (b) if that company is part of a group of companies whose parent company is registered in a third country and which has more than 5000 employees on average or had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared.</p>	<p>FIEC and EIC support the Amendment 192 proposed by the ITRE Rapporteur. 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.</p> <p>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.</p> <p>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).</p>

Amendment 56 of JURI Draft Report

Article 2 – paragraph 1 – point b – introductory part

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
	(iiiia) <i>construction and related activities;</i>	<p>FIEC and EIC reject the Amendment 56 proposed by the JURI Rapporteur. In order to reflect the priority areas of international action aimed at tackling human rights and environmental issues, the selection of high-impact sectors for the purposes of this Directive should be based on existing sectoral OECD due diligence guidance.</p> <p>As far as the construction sector is concerned specifically, the inclusion as a high-risk sector would put a disproportional burden and costs on a huge number of construction SMEs even if they are active exclusively within the EU.</p> <p>FIEC and EIC would like to reiterate the requirement of a solid Impact Assessment to be carried out by the Council and the Parliament before adopting such far-reaching legislative act.</p>

Amendment 195 ITRE Draft Report

Article 2 – paragraph 2 – point a

Text proposed by the Commission	Text proposed by the rapporteur in the ITRE Committee	FIEC/EIC comment/amendment
(a) generated a net turnover of more than EUR 150 million <i>in the Union</i> in the financial year preceding the last financial year;	(a) generated a net <i>worldwide</i> turnover of more than EUR 150 million in the financial year preceding	FIEC and EIC support the Amendment 195 proposed by the ITRE Rapporteur. It is necessary to create a level playing field between EU companies and third country companies . FIEC and EIC believe that

	the last financial year of which at least 40 million was generated in the Union;	the threshold of EUR 150 million in the Union, as proposed by the Commission, is too high, specifically in the construction sector, where the provision of the service expands in the case of large construction projects over several years and an economic operator could split its turnover into various pieces to stay below the threshold. Therefore, the threshold of EUR 40 million is more adequate.
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Amendment 72 JURI Draft Report

Article 3 – paragraph 1 – point e

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
<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>(ii) that performs business operations related to the products or services of the company</p>	<p>'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 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>

Justification

FIEC and EIC reject the Amendment 72 proposed by the JURI Rapporteur and propose a modification of the text proposed by the European Commission to the extent that the due diligence requirements are 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 73 JURI Draft Report

Article 3 – paragraph 1 – point f

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
(f) <i>‘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;</i>	<i>deleted</i>	(f) <i>‘established business relationship’ means a direct business relationship, whether direct or indirect, 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 be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain;</i>

Justification

FIEC and EIC reject the Amendment 73 proposed by the JURI Rapporteur and propose a modification of the text proposed by the European Commission to the extent that 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’), should be **clarified** by setting a nominal threshold to be considered. As the definition of ‘established business relationship’ at Article 3 (f) is central in determining the extent of the due diligence process, it should not be subject to interpretation.

Amendment 79 of JURI Draft Report

Article 3 – paragraph 1 – point n a (new)

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
	(na) <i>‘vulnerable stakeholders’ means affected stakeholders that find themselves in marginalised situations and situations of vulnerability, due to specific contexts or intersecting factors, including</i>	FIEC and EIC reject the Amendment 79 proposed by the JURI Rapporteur because it is too subjective and there are no legal criteria at hand to determine the precise meaning of ‘vulnerable’.

	<p><i>among others, sex, gender, age, race, ethnicity, class, education, indigenous identity, migration status, disability, as well as social and economic status, and includes stakeholders living in areas affected by conflict and occupation, which are the causes of diverse and often disproportionate adverse impacts, and create discrimination and additional barriers to participation and access to justice ;</i></p>	
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Amendment 82 of JURI Draft Report

Article 3 – paragraph 1 – point q a (new)

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
	<p><i>(qa) 'control' means the possibility for an undertaking to exercise decisive influence on another undertaking, in particular through ownership or the right to use all or part of the assets of the latter, or through rights or contracts or any other means, having regard to all factual considerations, which confer decisive influence on the composition, voting or decisions of the decision making bodies of an undertaking;</i></p>	<p>FIEC and EIC reject the Amendment 82 proposed by the JURI Rapporteur because the latest documents of the Council provide in Article 3 for a definition of a 'parent company' as 'a company which controls one or more subsidiaries within the meaning of point (d)' which again refers to a 'controlled undertaking' as defined by the EU <i>acquis communautaire</i>.</p>

Amendment 87 of JURI Draft Report

Article 4 – paragraph 1 – point f a (new)

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
	<i>(fa) consulting with affected stakeholders throughout the actions listed in points (a) to (f) of this Article in accordance with Article 11a ;</i>	FIEC and EIC reject the Amendment 87 proposed by the JURI Rapporteur because it is impossible and also impractical for economic operators to consult all the stakeholders in the due diligence process.

Amendment 88 of JURI Draft Report

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
. 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:	Member States shall ensure that companies integrate due diligence into all their corporate policies and have in place a due diligence policy, <i>developed in consultation with trade union and workers' representatives, and other stakeholders, with particular attention to be paid to the needs of vulnerable stakeholders.</i> The due diligence policy shall contain all of the following:	FIEC and EIC reject the Amendment 88 proposed by the JURI Rapporteur insofar as ' <i>other stakeholders, with particular attention to be paid to the needs of vulnerable stakeholders</i> ' are concerned. This term is again too subjective and there are no legal criteria to determine the precise meaning of the term.

Amendment 99 of JURI Draft Report

Article 7 – paragraph 1 a (new)

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
	<p>1a. <i>In cases where it is not possible to prevent and mitigate all identified potential impacts simultaneously, companies may prioritise the order in which they take appropriate measures. They shall do so on the basis of the severity and likelihood of impacts and in a manner informed by meaningful engagement with affected stakeholders. The severity of an adverse impact shall be determined based on its gravity, the number of individuals that are or will be affected, or the extent of the environment that is or may be damaged or otherwise affected, its irreversibility and any limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact. The company's degree of influence, leverage over or proximity to the subsidiaries or entities with which it has a business relationship is not relevant to its prioritisation decisions under this Directive.</i></p>	<p>FIEC and EIC welcome that the introduction of the Risk-based approach is supported by the Rapporteur which we believe is a real step forward. However, we reject the Amendment 99 proposed by the JURI Rapporteur because it is sufficient to lay out the principle of prioritisation of adverse impacts based on severity and likelihood (we refer also to the proposed new Article 6a by the Council). Additional wording would be over-prescriptive.</p>

Amendment 102 of JURI Draft Report

Article 7 – paragraph 2 – point b

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
<p>(b) seek contractual assurances from a business partner with whom it has a direct business relationship that it will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by seeking corresponding contractual assurances from its partners, to the extent that their activities are part of the company's value chain (contractual cascading). When such contractual assurances are obtained, paragraph 4 shall apply;</p>	<p>(b) establish through reasonable and equitable contractual provisions with a partner with whom it has a business relationship that it will participate in carrying out due diligence as outlined in this Directive, and ensure it respects, as necessary, a prevention action plan. Partners with whom the company has a business relationship shall be asked to establish corresponding reasonable and equitable contractual provisions with their partners, to the extent that their activities are part of the company's value chain (contractual cascading). When such contractual assurances are obtained, paragraph 4 shall apply;</p>	<p>FIEC and EIC reject the Amendment 102 proposed by the JURI Rapporteur because the term proposed by the Rapporteur is again too subjective to be applied.</p> <p>The purpose of the Directive is to create an 'obligation of means' and the proposed text turns this due diligence duty into an 'obligation of result'. It should also be considered that most companies in the EU do not have sufficient leverage to impose such measures down their global supply chain.</p>

Amendment 109 of JURI Draft Report

Article 7 – paragraph 4 – subparagraph 1

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
<p>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</p>	<p>The contractual provisions or the contract shall be accompanied by measures to support carrying out due diligence. For the purposes of carrying out due diligence as provided for in this Directive, the</p>	<p>FIEC and EIC reject the Amendment 109 proposed by the JURI Rapporteur because the option of a standardised third-party verification, such as independent auditing, is a legitimate and</p>

<p>industry initiatives or independent third-party verification.</p>	<p>company may refer to suitable and credible industry initiatives or independent third-party verification. However the sole reference to such initiatives or verification shall not be sufficient to satisfy the due diligence requirements of this Directive.</p>	<p>practical way to ensure consistency with the due diligence obligations.</p>
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Amendment 114 of JURI Draft Report

Article 7 – paragraph 5 – subparagraph 2

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
<p>Member States shall provide for the availability of an option to terminate the business relationship in contracts governed by their laws.</p>	<p><i>Prior to temporarily suspending commercial relations or terminating the business relationship, companies shall first be required to assess, in consultation with relevant stakeholders, whether the adverse impacts of doing so would be greater than the adverse impact which is intended to be prevented or mitigated.</i> <i>Should that be the case, companies may refrain from temporarily suspending commercial relations or terminating the business relationship. Where companies do suspend commercial relations or terminate the business relationship, they shall take steps to prevent, mitigate, or bring to an end such impacts, provide reasonable notice to the business partner and keep that decision under review.</i> Member States shall provide for the availability of an option to suspend or terminate a business relationship in contracts governed by their laws.</p>	<p>FIEC and EIC welcome that the introduction of the Risk-based approach is supported by the Rapporteur which we believe is a real step forward. However, we reject the Amendment 114 proposed by the JURI Rapporteur because it is sufficient to lay out the principle of prioritisation of adverse impacts based on severity and likelihood (we refer also to the proposed new Article 6a by the Council). Additional wording would be over-prescriptive.</p>

Amendment 119 of JURI Draft Report

Article 8 – paragraph 2 a (new)

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
	<p>2a. Without prejudice to paragraph 2, in cases where it is not possible to bring to an end or mitigate all identified adverse impacts simultaneously, companies may prioritise the order in which they take appropriate measures. They shall do so on the basis of the severity and likelihood of impacts and in a manner informed by meaningful engagement with affected stakeholders. The severity of an adverse impact shall be determined based on its gravity, the number of individuals that are or will be affected, or the extent of the damage or potential damage to, or other effects on, the environment, whether the impact is irreversible and any limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact. The company's degree of influence, leverage over or proximity to the subsidiaries or entities with which it has a business relationship is not relevant to its prioritisation decisions under this Directive.</p>	<p>FIEC and EIC welcome that the introduction of the Risk-based approach is supported by the Rapporteur which we believe is a real step forward. However, we reject the Amendment 119 proposed by the JURI Rapporteur because it is sufficient to lay out the principle of prioritisation of adverse impacts based on severity and likelihood (we refer also to the proposed new Article 6a by the Council). Additional wording would be over-prescriptive.</p>

Amendment 130 of JURI Draft Report

Article 8 – paragraph 5 – subparagraph 1

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
<p>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>The contractual provisions or the contract shall be accompanied by measures to support carrying out due diligence. For the purposes of carrying out due diligence as outlined in this Directive, the company may refer to suitable and credible industry initiatives or independent third-party verification. However, the sole reference to such initiatives or verification shall not be sufficient to satisfy the due diligence requirements of this Directive.</p>	<p>FIEC and EIC reject the Amendment 130 proposed by the JURI Rapporteur in order to ensure to secure proper and objective (independent) verification.</p>

Amendment 176 of JURI Draft Report

Article 18 – paragraph 1a (new)

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
	<p>1a. Without prejudice to their independence, supervisory authorities may also provide assistance to companies seeking to effectively implement their due diligence plans, and issue guidance and information on due diligence best practices.</p>	<p>FIEC and EIC support the Amendment 176 proposed by the JURI Rapporteur and we would further suggest charging the supervising authority to organise, on a national basis of in collaboration with that of other Member States, a ruling mechanism and an institutional third-party verification mechanism.</p>

Amendment 189 of JURI Draft Report

Article 19 – paragraph 5

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
<p>5. Member States shall ensure that the persons submitting the substantiated concern according to this Article <i>and having, in accordance with national law, a legitimate interest in the matter</i> have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.</p>	<p>5. Member States shall ensure that the persons submitting the substantiated concern according to this Article have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.</p>	<p>FIEC and EIC reject the Amendment 189 proposed by the JURI Rapporteur because the concept of ‘legitimate interest’ is a general principle of law and provides the reason why affected parties can get access to courts of law. We take the position that the assessment of a ‘legitimate interest’ should remain the prerogative of the national courts and should not be dealt with in this Directive.</p>

Amendment 192 of JURI Draft Report

Article 20 – paragraph 3 a (new)

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
	<p>3a. Sanctions may also include the request to perform an action, exclusion from public procurement, from export credits, from trade missions and from advisory bodies to governments.</p>	<p>FIEC and EIC reject the Amendment 192 proposed by the JURI Rapporteur because the allowance of imposing any other sanction than fines would lead to a fragmentation between member states.</p> <p>In addition, sanctions such as denial of access to export credits or exclusion for public procurement, would lead to a distortion of competition across member states and even within sectors.</p>

Amendment 196 of JURI Draft Report

Article 22 – paragraph 1 – point a

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
(a) they failed to comply with the obligations laid down in Articles 7 and 8 and;	(a) they <i>or a company under their control</i> failed to comply with the obligations laid down in <i>this Directive</i> and;	FIEC and EIC reject the Amendment 196 proposed by the JURI Rapporteur because this proposal ignores the concept of ‘limited companies’.

Amendment 197 of JURI Draft Report

Article 22 – paragraph 1 – point b

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
(b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage.	(b) as a result of this failure <i>the company or a company under their control caused or contributed to</i> an adverse impact that should have been identified, prevented, mitigated, brought to an end, <i>remedied</i> or its extent minimised through the appropriate measures laid down in <i>this Directive</i> and led to damage.	FIEC and EIC welcome the introduction of the terms ‘ <i>caused or contributed</i> ’ which is in line with OECD Guidelines. However, we reject the Amendment 197 proposed by the JURI Rapporteur because this proposal ignores the concept of ‘limited companies’.

Amendment 198 of JURI Draft Report

Article 22 – paragraph 2 – subparagraph 1

Text proposed by the Commission	Text proposed by the rapporteur in the JURI Committee	FIEC/EIC comment/amendment
<p><i>Notwithstanding</i> paragraph 1, Member States shall ensure that where a company has taken the actions referred to in Article 7(2), point (b) and Article 7(4), or Article 8(3), point (c), and Article 8(5), it shall not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact.</p>	<p>Where there is a claim for damages in accordance with paragraph 1 and the claimant provides prima facie elements substantiating the likelihood of the defendant's liability, Member States shall ensure that where a company can demonstrate that it complied with its obligations under this Directive, it shall not be liable, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be an appropriate measure to prevent, mitigate, bring to an end or minimise the extent of the adverse impact.</p>	<p>FIEC and EIC reject the Amendment 198 proposed by the JURI Rapporteur because the principle of civil liability demands that, as a matter of principle, the claimant must prove its claim. There are no exceptional circumstances arising from the due diligence obligations which would justify a reversal of the 'burden of proof'.</p>