

JBCE response to the European Commission Public Consultation on Sustainable Corporate Governance

Date on 8th February 2021

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?

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

Please provide reasons for your answer:

Today, companies acknowledge that issues regarding human rights, environment and climate change affect their sustainable growth and many of these companies already take into account these issues into their decision making. Furthermore, corporate governance codes, defined in each country, focus on important human rights and environmental issues. Secondly, an understanding of how and what should be included and prioritized in corporate decision-making heavily depends on each companies' business and management structure. For these reasons, to incentivise better conduct, JBCE would favour a precise and comprehensive corporate governance code rather than a strict law.

Moreover, companies' decision making nowadays are to a certain extent driven by investor's interests. In the context of several recent EU sustainable and ESG financial policies, JBCE strongly believes that the financial sector will contribute in its own right to press companies' to prioritise sustainable growth. In the same vein, JBCE believes that the non-financial aspects of companies' activities, such as environmental or human rights matters, are important "pre-financial" considerations that will increasingly impact a companies' financial situation. To accelerate this movement, JBCE calls upon the Commission to push for the integration and convergence of financial and non-financial information disclosure processes at the international level.

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

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

Please explain:

JBCE believes that it is necessary to define certain frameworks for supply chain due diligence in order to secure a level playing field among industries. However, it is critical that these frameworks be underpinned by international standards.

Firstly, the complex and global nature of supply chains mean that an EU legal framework could lead to potential important competition disadvantages for companies operating in the EU. Secondly, international standards are key to ensure smooth harmonisation within the single market and avoid a damaging situation for EU companies where the proposed directive would lead to a patchwork of rules in each member states. In light of this, we call upon the Commission to consider the importance of an international level playing field, based on the UNGP and OECD guidelines. We would also like to highlight to the Commission that there are many sectors and companies that already conduct supply chain due diligence, based on their own initiatives and international standards. The commission should therefore look to build upon these existing guidelines and standards, which many industries already implement.

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)?

- 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
- Contribute effectively to a more sustainable development, including in non-EU countries
- Levelling the playing field, avoiding that some companies freeride on the efforts of others
- Increasing legal certainty about how companies should tackle their impacts, including in their value chain

- A non-negotiable standard would help companies increase their leverage in the value chain
- Harmonisation to avoid fragmentation in the EU, as emerging national laws are different
- SMEs would have better chances to be part of EU supply chains
- Other

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)?

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

Other, please specify:

Today, many companies conduct due diligence as a risk management tool to improve their business practices and achieve more sustainable growth. There is a risk that a new framework would transform the supply chain due diligence duty into a compliance tool where meeting the minimum requirement will be the focus, rather than a risk management tool where creativity and positive management would bring more conclusive improvements.

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

other interests, please specify:

JBCE believes that the interests suggested in Q5 are all important and relevant for the long-term success and the resilience of a company. However, it is important to note that the level of relevance and importance varies in context from and within company to company.

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Management of the risks for the company in relation to stakeholders and their interests, including on the long run	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identification of the opportunities arising from promoting stakeholders' interests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain:

JBCE believes these suggestions should not be required by law as there are already several non-legal binding guidelines, such as corporate governance codes in each country. We call upon the Commission to focus on increasing the application of corporate governance codes by companies rather than establishing a new, potentially burdensome and uncompetitive regulation.

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, ie. human rights, social, health and environmental impacts are identified, prevented and addressed?

- 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

Please explain:

JBCE believes these procedures should not be required by law as companies (such as JBCE members) proactively conduct their strategies, tailored to their situation, that maximise their sustainable corporate governance output. Setting such requirements in law could transform internal sustainable strategies into a compliance/ tick box process, which would not effectively contribute to companies' long-term and sustainable growth. Instead of setting requirements, the Commission should support measures that encourage and incentivise companies to engage more effectively and rapidly with the adverse impacts. For instance, in the Climate-related Financial Disclosures (TCFD) – which many companies support – companies are required to identify their own opportunities and risks arising from climate change and transpose these into their corporate management. Nowadays, there are more than 1068 companies (a third of which are Japanese companies), representing a market capitalization of over \$12 trillion, who voluntarily disclose and account for climate change in their management practices. ◆

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?

- 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

Please provide an explanation or comment:

We believe this question is asked based on the assumption that companies consistently fail to consider the interests of stakeholders. On the contrary, our members actively take the long-term interests of stakeholders into consideration. Indeed, continuous dialogue is the key to understand the interests of stakeholders. Such engagement with stakeholders will naturally be encouraged more by the implementation of a well-designed due diligence obligation for companies. Overall, setting such requirements in law could transform internal sustainable strategies into a compliance/ tick box process, which would not effectively contribute to companies' long-term and sustainable growth. Instead of setting requirements, the Commission should support measures that encourage and incentivise companies to engage more effectively and rapidly with the adverse impacts. ♦

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?

Setting such requirements in law could transform internal sustainable strategies into a compliance/ tick box process, which would not effectively contribute to companies' long-term and sustainable growth.

How could these possible risks be mitigated? Please explain.

JBCE agrees that considering non-financial aspects such as human rights, environment and climate change, in addition to financial aspects to take managerial decision is key. However, the most salient risks are already covered in due diligence requirements and it would be more effective to work on the good implementation of a well-designed due diligence requirements (as a company). Secondly, we would like to note that implementing a director's duty of care through a 'directive' could lead to a fragmented country by country regulatory landscape.

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

N/A for JBCE

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?

- 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

Please explain:

As highlighted above, it is important to consider non-financial aspects such as human rights, environment and climate change, in addition to financial aspects, but requirements related with corporate governance should not be uniformly regulated by law. As answered in Q9, it is more effective to work on the good implementation of due diligence requirements (as a company). Overall, it is critical that the company keeps the flexibility it needs to define and implement its own strategy. ♦

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:

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?

Please describe:

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?

- 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

Please explain your answer:

Dialogues with stakeholders are always essential, and especially so in regard to maximizing a company's sustainable growth – the latter is very specific to each company's eco-system. Nevertheless, the process to undertake this dialogue is also paramount. Each business has duly considered their uniqueness, and have established their own, different way to communicate and prioritise their engagement with respective stakeholders.

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.

JBCE believes that the most relevant stakeholders should be involved. However, the evaluation of 'relevance' should be determined depending on the type of supply chains, business relationships and sectors etc. Furthermore, even though they are not 'stakeholders', we also think that external experts can provide support as an intermediary to understand the different stakeholders.

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.

JBCE agrees to some extent with the proposed definition of "due diligence duty". It is important that the definition of "due diligence" be in line with the existing international frameworks, such as United Nations Guiding Principles and OECD Guidelines.

JBCE members fully recognise the interlink between human rights and environmental issues and share the EU's environmental goals. However, in practical terms, it is not clear for the JBCE how and what the due diligence duty for this risk would entail. We therefore call upon the European Commission to conduct, as early as possible, an impact assessment on how to integrate environmental due diligence in supply chains, and bring clarity to which environmental standards are relevant and how due diligence obligations would interrelate with existing environmental management approaches.

Furthermore, JBCE disagrees with the definition of "supply chain". In the proposed definition, subsidiaries are included whereas a subsidiary is not always a part of the supply chain. It is critical that the Commission undertakes individual and clear definitions of "subsidiary", "supplier" and "subcontractors".

Finally, the definition of "due diligence duty" and "supply chain" lack an appreciation of the supply chain market power structure between a downstream company and upstream company. It is critical, in the scenario where an EU framework is established, that due process is taken to evaluate market power structures. Indeed, the requirements should be fair and balanced for both actors, meaning that the burden is not solely imposed on downstream companies in the supply chain. It is very often the case that suppliers (such as monopolistic suppliers) have more market power than the downstream company.

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.

- 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

- Option 2. “Minimum process and definitions approach”: The EU should define a minimum set of requirements with regard 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.
- 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.
- Option 4 “Sector-specific approach”: The EU should continue focusing on adopting due diligence requirements for key sectors only.
- Option 5 “Thematic approach”: The EU should focus on certain key themes only, such as for example slavery or child labour.
- 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?

We are not in favour of combining a sector specific approach with a horizontal approach.

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.

Developing a “minimum process and definitions approach” will enable the European Union to lay the necessary and fundamental groundwork to supply chain due diligence. From this framework international harmonisation will be largely possible and successful – an essential precondition to ensure that this proposal, which is meant to have extra-EU effects, be enforced effectively and fruitfully.

Moreover, operationally patchwork requirements in national and regional level will bring additional burden to companies and will not result in improved supply chain due diligence, and this why multinational companies stress the importance of an international framework.

Lastly, JBCE believes that companies alone will struggle to take all the responsibilities in the supply chain vis-à-vis of new due diligence responsibilities. To enable companies to conduct an effective due diligence exercise, adequate tools, best practices and guidance, including an indicative list or information to facilitate due diligence and a network of experts who are aware of the risks in supply chain, are necessary before setting up a principle-based approach.

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)

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

Other, please specify:

JBCE members fully recognise the interlink between human rights and environmental issues as well as share the EU’s environmental goals. However, in practical terms, we are concerned by the lack of clarity on how, what (etc...) due diligence duty for environmental and climate change risks would entail. Indeed, there needs to be cautious discussions and assessments to create common recognitions between policymakers and industries.

In addition, there are currently many different environmental legislations and management strategies which companies undertake. We urge the Commission to avoid duplicating requirements, that they be existing environmental legislations or future ones.

We therefore call upon the European Commission to conduct, as early as possible, an impact assessment on how to integrate environmental due diligence in supply chains, and bring clarity to which environmental standards are relevant and how due diligence obligations would interrelate with existing environmental management approaches.

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?

The definitions should be in line with international standards, such as the UNGP.

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 15f: If you ticked option 4) in question 15, which sectors do you think the EU should focus on?

Question 15g: If you ticked option 5) in question 15, which themes do you think the EU should focus on?

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)

This question is being asked in addition to question 48 of the Consultation on the Renewed Sustainable Finance Strategy, the answers to which the Commission is currently analysing.

- All SMEs[16] should be excluded
- SMEs should be excluded with some exceptions (e.g. most risky sectors or other)
-

Micro and small sized enterprises (less than 50 people employed) should be excluded

- Micro-enterprises (less than 10 people employed) should be excluded
- SMEs should be subject to lighter requirements (“principles-based” or “minimum process and definitions” approaches as indicated in Question 15)
- SMEs should have lighter reporting requirements
- Capacity building support, including funding
- Detailed non-binding guidelines catering for the needs of SMEs in particular
- Toolbox/dedicated national helpdesk for companies to translate due diligence criteria into business practices
- Other option, please specify
- None of these options should be pursued

Please explain your choice, if necessary

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?

- Yes
- No
- 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.

For this framework to be effective, the forthcoming proposal should ensure a level playing field between EU and non-EU companies. Consequently, we think that the obligations for third-country companies be limited specifically to their operations carried out in Europe.

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

The Commission should recognise that companies are not able to prevent all adverse impacts in their entire supply chain, and that the UNGP recognise the process of principled prioritization of efforts. Beyond a tier 2 supply chain relation, companies do not have any commercial or contractual leverage, making it difficult to effectively improve the adverse impacts. Since it is challenging to exercise leverage, the Commission should

thus incentivise efficient due diligence practices and processes . This makes liability a difficult concept to apply to these situations. Reinforced initiatives for support, including guidelines, best practices, financial support for SMEs, should rather be considered to implement better due diligence.

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?

- Yes
- No
- I do not know

Please explain:

The commission should push for stronger collaboration between public authorities, private stakeholders and between industries, to tackle issues within supply chains. As stated in Q17, companies are unable to prevent and address all impacts at once across the entire supply chain.

In practice, industry efforts must be coupled with good governance at both regional and national level. Government involvement is essential to address the issues within the supply chain at its core. For example, it holds dialogues, provides guidance for all stakeholders and understands what the main risks are in its territory.

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)?

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

Please provide explanation:

First of all, it is important to ensure that the due diligence duty focuses on the process and not on the result. Any enforcement mechanism envisaged by the Commission should in priority aim to incentivise and support companies in undertaking due diligence activities in proactive ways and to recognise such efforts.

Secondly, we believe that there should be a distinct nuance between the scope of “responsibility” and of “liability”. The scope of responsibility is broader than the scope of liability and this difference should be considered when considering the enforcement mechanism.

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?

- Yes
- 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?

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?

- 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

Please explain.

Stakeholder engagement is necessary for companies' sustainable growth, but it should not be required by law. Companies have to be encouraged to engage with stakeholders through incentives or other supporting measures. However, the decision-making should remain with the companies, as it depends on their own business structure.◆◆

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

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	<input type="radio"/>	<input type="radio"/>
Stakeholder general meeting	<input type="radio"/>	<input type="radio"/>
Complaint mechanism as part of due diligence	<input type="radio"/>	<input type="radio"/>
Other, please specify	<input type="radio"/>	<input type="radio"/>

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:

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).

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

Please explain:

It is not a necessity for boards of directors to have competence and expertise on sustainability issues if they are advised on these matters by other people. The important principle is not whether they are experts themselves, but whether they have access to people with that expertise.

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[19]. (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?

- 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

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

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:

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.

Table

	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
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 linked 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			

Please explain:

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).

Contact

just-cleg@ec.europa.eu

