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To:	Delegations
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 - Presidency text

In view of the Company Law Working Party meeting of 18-19 October 2022, delegations will find attached a Presidency compromise text on the above-mentioned Proposal.

Changes in comparison to doc. 12486/22 are marked in **bold underline** for additions and in ~~strikethrough~~ for deletions.

General scrutiny reservation: All delegations.

2022/0051 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) and (2)(g) and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Union is founded on the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights as enshrined in the EU Charter of Fundamental Rights. Those core values that have inspired the Union's own creation, as well as the universality and indivisibility of human rights, and respect for the principles of the United Nations Charter and international law, should guide the Union's action on the international scene. Such action includes fostering the sustainable economic, social and environmental development of developing countries.

[1] OJ C , , p. .

(2) A high level of protection and improvement of the quality of the environment and promoting European core values are among the priorities of the Union, as set out in the Commission's Communication on A European Green Deal[2]. These objectives require the involvement not only of the public authorities but also of private actors, in particular companies.

(3) In its Communication on a Strong Social Europe for Just Transition[3], the Commission committed to upgrading Europe's social market economy to achieve a just transition to sustainability. This Directive will also contribute to the European Pillar of Social Rights, which promotes rights ensuring fair working conditions. It forms part of the EU policies and strategies relating to the promotion of decent work worldwide, including in global value chains, as referred to in the Commission Communication on decent work worldwide[4].

(4) The behaviour of companies across all sectors of the economy is key to success in the Union's sustainability objectives as Union companies, especially large ones, rely on global value chains. It is also in the interest of companies to protect human rights and the environment, in particular given the rising concern of consumers and investors regarding these topics. Several initiatives fostering enterprises which support value-oriented transformation already exist on Union[5], as well as national[6] level.

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2 Communication from the Commission to the European Parliament the European Council, the Council, the European Economic and Social Committee and the Committee of the Region "The European Green Deal" (COM/2019/640 final).

3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Strong Social Europe for Just Transitions (COM/2020/14 final).

4 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on decent work worldwide for a global just transition and a sustainable recovery, COM(2022) 66 final.

5 'Enterprise Models and the EU agenda', *CEPS Policy Insights*, No PI2021-02/ January 2021.

6 E.g. https://www.economie.gouv.fr/entreprises/societe-mission

(5) Existing international standards on responsible business conduct specify that companies should protect human rights and set out how they should address the protection of the environment across their operations and value chains. The United Nations Guiding Principles on Business and Human Rights[7] recognise the responsibility of companies to exercise human rights due diligence by identifying, preventing and mitigating the adverse impacts of their operations on human rights and by accounting for how they address those impacts. Those Guiding Principles state that businesses should avoid infringing human rights and should address adverse human rights impacts that they have caused, contributed to or are linked with in their own operations, subsidiaries and through their direct and indirect business relationships.

(6) The concept of human rights due diligence was specified and further developed in the OECD Guidelines for Multinational Enterprises[8] which extended the application of due diligence to environmental and governance topics. The OECD Guidance on Responsible Business Conduct and sectoral guidance[9] are internationally recognised frameworks setting out practical due diligence steps to help companies identify, prevent, mitigate and account for how they address actual and potential impacts in their operations, value chains and other business relationships. The concept of due diligence is also embedded in the recommendations of the International Labour Organisation (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.[10]

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7 United Nations' "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", 2011, available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

8 OECD Guidelines for Multinational Enterprises, 2011 updated edition, available at http://mneguidelines.oecd.org/guidelines/.https://mneguidelines.oecd.org/mneguidelines/

9 OECD Guidance on Responsible Business Conduct, 2018, and sector-specific guidance, available at https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm.

10 The International Labour Organisation's "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, Fifth Edition, 2017, available at: https://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm.

(7) The United Nations' Sustainable Development Goals[11], adopted by all United Nations Member States in 2015, include the objectives to promote sustained, inclusive and sustainable economic growth. The Union has set itself the objective to deliver on the UN Sustainable Development Goals. The private sector contributes to those aims.

(8) International agreements under the United Nations Framework Convention on Climate Change, to which the Union and the Member States are parties, such as the Paris Agreement[12] and the recent Glasgow Climate Pact[13], set out precise avenues to address climate change and keep global warming within 1.5 C degrees. Besides specific actions being expected from all signatory Parties, the role of the private sector, in particular its investment strategies, is considered central to achieve these objectives.

(9) In the European Climate Law[14], the Union also legally committed to becoming climate-neutral by 2050 and to reducing emissions by at least 55% by 2030. Both these commitments require changing the way in which companies produce and procure. The Commission's 2030 Climate Target Plan[15] models various degrees of emission reductions required from different economic sectors, though all need to see considerable reductions under all scenarios for the Union to meet its climate objectives. The Plan also underlines that "changes in corporate governance rules and practices, including on sustainable finance, will make company owners and managers prioritise sustainability objectives in their actions and strategies." The 2019 Communication on the European Green Deal[16] sets out that all Union actions and policies should pull together to help the Union achieve a successful and just transition towards a

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11 https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

12 https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

13 Glasgow Climate Pact, adopted on 13 November 2021 at COP26 in Glasgow, https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf.https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf.

14 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') PE/27/2021/REV/1 (OJ L 243, 9.7.2021, p. 1).

15 SWD/2020/176 final.

16 COM/2019/640 final.

sustainable future. It also sets out that sustainability should be further embedded into the corporate governance framework.

(10) According to the Commission Communication on forging a climate-resilient Europe[17] presenting the Union Strategy on Adaptation to climate change, new investment and policy decisions should be climate-informed and future-proof, including for larger businesses managing value chains. This Directive should be consistent with that Strategy. Similarly, there should be consistency with the Commission Directive […] amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (Capital Requirements Directive)[18], which sets out clear requirements for banks' governance rules including knowledge about environmental, social and governance risks at board of directors level.

17 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Forging a climate-resilient Europe – the new EU Strategy on Adaptation to Climate Change (COM/2021/82 final), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:82:FIN.

18 OJ C […], […], p. […].

(11) The Action Plan on a Circular Economy[19], the Biodiversity strategy[20], the Farm to Fork strategy[21] and the Chemicals strategy[22] and Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery[23], Industry 5.0[24] and the European Pillar of Social Rights Action Plan[25] and the 2021 Trade Policy Review[26] list an initiative on sustainable corporate governance among their elements.

(12) This Directive is in coherence with the EU Action Plan on Human Rights and Democracy 2020-2024[27]. This Action Plan defines as a priority to strengthen the Union's engagement to actively promote the global implementation of the United Nations Guiding Principles on Business and Human Rights and other relevant international guidelines such as the OECD

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19 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on A new Circular Economy Action Plan For a cleaner and more competitive Europe (COM/2020/98 final).

20 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380 final).

21 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final).

22 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Chemicals Strategy for Sustainability Towards a Toxic-Free Environment (COM/2020/667 final).

23 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery (COM/2021/350 final).

24 Industry 5.0; https://ec.europa.eu/info/research-and-innovation/research-area/industrial-research-and-innovation/industry-50_en

25 https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/

26 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Trade Policy Review – An Open, Sustainable and Assertive Trade Policy (COM/2021/66/final).

27 Joint Communication to the European Parliament and the Council on the EU Action Plan on Human Rights and Democracy 2020-2024 (JOIN/2020/5 final).

Guidelines for Multinational Enterprises, including by advancing relevant due diligence standards.

(13) The European Parliament, in its resolution of 10 March 2021 calls upon the Commission to propose Union rules for a comprehensive corporate due diligence obligation[28]. The Council Conclusions on Human Rights and Decent Work in Global Supply Chains of 1 December 2020 called upon the Commission to table a proposal for a Union legal framework on sustainable corporate governance, including cross-sector corporate due diligence obligations along global supply chains.[29] The European Parliament also calls for clarifying directors` duties in its own initiative report adopted on 2 December 2020 on sustainable corporate governance. In their Joint Declaration on EU Legislative Priorities for 2022[30], the European Parliament, the Council of the European Union and the Commission have committed, to deliver on an economy that works for people, and to improve the regulatory framework on sustainable corporate governance.

(14) This Directive aims to ensure that companies active in the internal market contribute to sustainable development and the sustainability transition of economies and societies through the identification, prevention and mitigation, bringing to an end and minimisation of potential or actual adverse human rights and environmental impacts connected with companies' own operations, subsidiaries and value chains. **This Directive is without prejudice to the responsibility of Member States to respect and protect human rights and the environment under international law.**

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28 European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), P9_TA(2021)0073, available at https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2129(INL).

29 Council Conclusions on Human Rights and Decent Work in Global Supply Chains, 1 December 2020 (13512/20).

30 Joint declaration of the European Parliament, the Council of the European Union and the European Commission on EU Legislative Priorities for 2022, available at https://ec.europa.eu/info/sites/default/files/joint_declaration_2022.pdf.

(14a) This Directive is without prejudice to obligations in the areas of human rights, protection of the environment and climate change under other Union legislative acts. If the provisions of this Directive conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act should prevail to the extent of the conflict and should apply to those specific obligations. Examples of these obligations in Union legislative acts include obligations in the Conflict Minerals Regulation[31], [the proposal for a Batteries Regulation[32]] or [the proposal for a Regulation on deforestation-free supply chains[33]].

(15) Companies should take appropriate steps to set up and carry out due diligence measures, with respect to their own operations, their subsidiaries, as well as their established direct and indirect business ~~relationships~~ **partners** throughout their value chains in accordance with the provisions of this Directive. This Directive should not require companies to guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped. For example with respect to business ~~relationships~~ **partners** where the adverse impact results from State intervention, the company might not be in a position to arrive at such results. Therefore, the main obligations in this Directive should be 'obligations of means'. The company should take the appropriate measures which can reasonably be expected to result in prevention or minimisation of the adverse impact under the circumstances of the specific case. Account should be taken of the specificities of the company's value chain, sector or geographical area in which its ~~value chain~~ **business** partners operate, the company's power to influence its direct and indirect business ~~relationships~~ **partners**, and whether the company could increase its power of influence.

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31 **Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (OJ L 130, 19.5.2017, p. 1–20).**

32 **Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (COM/2020/798 final).**

33 **Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM(2021) 706 final).**

(16) The due diligence process set out in this Directive should cover the six steps defined by the OECD Due Diligence Guidance for Responsible Business Conduct, which include due diligence measures for companies to identify and address adverse human rights and environmental impacts. This encompasses the following steps: (1) integrating due diligence into policies and management systems, (2) identifying and assessing adverse human rights and environmental impacts, (3) preventing, ceasing or minimising actual and potential adverse human rights, and environmental impacts, (4) assessing the effectiveness of measures, (5) communicating, (6) providing remediation.

(16a) In order to make due diligence more effective and reduce the burden on companies, they should be entitled to share resources and information within their respective groups of companies and with other legal entities, in compliance with existing national and Union law. In addition, the parent company falling under the scope of this Directive should be allowed to fulfil some of the due diligence obligations also on behalf of its subsidiaries that are falling under the scope of this Directive. Since the parent company would be fulfilling these due diligence obligations on behalf of subsidiaries, the subsidiaries should only be required to fulfil the obligations that need to be performed at subsidiary level due to their nature. The possibility to fulfil the obligations on a group level should be limited to parent companies and subsidiaries both falling under the scope of this Directive. This limitation is necessary for the purposes of administrative enforcement where, apart from the obligations staying with the subsidiaries, the parent company should be responsible for fulfilling the due diligence obligations. The supervisory authority of the parent company should be competent to monitor and assess the fulfilment of due diligence obligations of the whole group, apart from the obligations staying with the subsidiaries where the competent supervisory authority should be the one of the relevant subsidiary. If the subsidiary does not fall under the scope of this Directive, the parent company cannot fulfil due diligence on behalf of the subsidiary since the subsidiary is not obliged to carry out due diligence. In that case, the parent company should cover operations of the subsidiary as part of its own due diligence obligations. If the subsidiaries fall under the scope of this Directive, but the parent company does not, they still should be allowed to share resources and information within the group of companies. Nevertheless, the subsidiaries would be responsible for fulfilling due diligence obligations under this Directive.

(16b) The fulfilment of due diligence obligations on a group level should be without prejudice to the civil liability of subsidiaries. If the conditions for civil liability are met, the subsidiary should be held liable for damage occurred, irrespective of whether the due diligence obligations were carried out by the subsidiary or by the parent company on behalf of the subsidiary.

(16c) In line with existing Union law, when sharing information to comply with the obligations resulting from this Directive, companies or legal entities should not be required to disclose to its business partner information that is deemed to be a trade secret as defined in the Directive 2016/943/EU.

(17) Adverse human rights and environmental impact**s** **might** occur in companies' own operations, **operations of their** subsidiaries, ~~products,~~ and **their established business partners** in their value chains, in particular at the level of raw material sourcing, manufacturing, or at the level of product or waste disposal. In order for the due diligence to have a meaningful impact, it should cover human rights and environmental adverse impacts generated throughout the life-cycle of production and use and disposal of product or provision of services, at the level of **companies'** own operations, **operations of their** subsidiaries and **their established business partners** in **their** value chains.

(18) The value chain should cover activities related to the production of ~~a~~ good**s** or 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 established business ~~relationships~~ **partners** of the company. It should encompass upstream established direct and indirect business ~~relationships~~ **partners** that design, extract, manufacture, transport, store and supply raw material, products, parts of products, or provide services to the company that are necessary to carry out the company's activities, and also downstream ~~relationships~~ **partners**, ~~including~~ **such as** established direct and indirect business ~~relationships~~ **partners**, that use or receive products, parts of products or services from the company **in accordance with the intended and reasonably foreseeable use of the product** up to the end of life of the product, including inter alia the distribution of the product to retailers, the transport and storage of the product, dismantling of the product, its recycling, composting or landfilling. **The intended use of the product should be understood as either the use for which a product is intended in accordance with the information provided by the company, subsidiary or business partner placing it on the market, or the ordinary use as determined by the design and construction of the product. The reasonably foreseeable use of the product should mean a possible use of the product that could result from lawful and readily predictable human behaviour. The use and disposal of the product by consumers and the provision of services to consumers should be excluded in order to ensure the feasibility of due diligence obligations.**

(19) As regards regulated financial undertakings providing loan**s**, credit**, financing, investment, insurance, reinsurance**, or other financial services, "value chain" with respect to the provision of such services should be limited to the activities of the clients receiving such services, and the subsidiaries thereof whose activities are linked to the contract in question. **The activities of the business partners in the value chains of those clients should not be covered.** Clients that are households and natural persons not acting in a professional or business capacity, as well as small and medium sized **entreprises** ~~undertakings~~, should not be considered to be part of the value chain **of the financial undertaking**. ~~The activities of the companies or other legal entities that are included in the value chain of that client should not be covered.~~

(20) In order to allow companies to properly identify the adverse impacts in their value chain and to make it possible for them to exercise appropriate leverage, the due diligence obligations should be limited in this Directive to established business ~~relationships~~ **partners**. For the purpose of this Directive, established business ~~relationships~~ **partner** should mean **a** ~~such~~ direct and indirect business **partner** ~~relationships which are, or which are expected to be lasting, in view of their intensity and duration and~~ **with** which **the company has a relationship that does** ~~do~~ not represent a negligible or ancillary part of the value chain **and which, taking into account the circumstances of the specific company and the sector in which the company conducts its business, fulfils one of the criteria related to duration, intensity or significance as defined in this Directive. The duration criterion should mean that the relationship is or is expected to be lasting for a period of time allowing for an effective identification and prevention of actual or potential adverse impacts in the value chain. The intensity criterion should mean that the relationship is or is expected to be repeated for a number of times, allowing for an effective identification and prevention of actual or potential adverse impacts in the value chain. The significance criterion should mean that the relationship is or is expected to be significant for the company's operations or net turnover. A negligible or merely ancillary part of the value chain should be understood as a part of the company's value chain that is only of a marginal importance for its operations and everyday affairs that it would be unreasonable to require the company to conduct due diligence in relation to this part of the value chain.** The nature of **a relationship with a** business ~~relationships~~ **partner** as "established" should be reassessed ~~periodically~~ **without undue delay after a significant change occurs**, ~~and~~ **but** at least every ~~12~~ **24** months. **A significant change should be understood as such a change to the *status quo* of the company's own operations, the operations of its subsidiaries or business partners, the legal or business environment or any other substantial shift from the situation of the company that the company could be reasonably expected to react to it and reassess the relationship.** If the **relationship with the** direct business ~~relationship~~ **partner** of a company is established, then all linked indirect business ~~relationships~~ **partners** should also be considered as established regarding that company.

(20a) **The concept of company's involvement in an adverse impact should clarify that the actions to be taken to address potential or actual adverse impacts and the existence of civil liability depend on the level of involvement of a company in an adverse impact. The company's involvement in an adverse impact should be in the form of the company causing the adverse impact, contributing to the adverse impact as defined in this Directive, or the company being linked to the adverse impact caused by its established business partner in the company's value chain without the company causing or contributing to the adverse impact. Although the concepts of the company's involvement in an adverse impact of 'contributing to' and 'being directly linked to' also exist in international standards, they should receive an autonomous definition or meaning in the present Directive. The implication of the company in a form of 'being directly linked' to an adverse impact should be understood as requiring the adverse impact to be related to the operations, products or services of the company, due to the definition of 'business partner' and 'value chain' as put forward in this Directive. With a view to ensure an effective protection of human rights and the environment, 'causing and contributing to' should be understood as encompassing situations where actual and potential adverse impacts occur at the level of the company, its subsidiary or its direct and indirect business partners.**

(20b) Under the present Directive, while the concept of a company causing the adverse impact should be triggered by the sole act or omission of the company, in the case of the company's contribution to an adverse impact the intervention of another legal entity should be needed. This should mean that the company causes the adverse impact in combination with its subsidiary or established business partner, either by act or omission, provided that the contribution is not minor or trivial. For example, the company would contribute to the contamination of drinking water by applying a toxic chemical to land near the water, while its subsidiary would do the same further down. The contribution of the company could entail also cases where the company contributes to an adverse impact by exercising substantial effect on its subsidiary or established business partner that causes the adverse impact in the company's value chain. The substantial effect could, for example, take the form of facilitating, incentivising, aiding, or abetting the subsidiary or established business partner to cause the adverse impact. This would be the case, for example, when setting purchasing conditions that leave no other choice to the established business partner but to impose a wage which is inadequate as a living wage (where such consequence was known or could have been known) or the failure to take appropriate control measures in line with this Directive which would have been sufficient to prevent the continuation of child labour in the factory of the business partner.

(21) Under this Directive, ~~EU~~ companies **established in the Union** with more than 500 employees on average and a worldwide net turnover exceeding EUR 150 million in the financial year preceding the last financial year should be required to comply with due diligence. As regards companies which do not fulfil those criteria, but which had more than 250 employees on average and more than EUR 40 million worldwide net turnover in the financial year preceding the last financial year and which operate in one or more high-impact sectors, due diligence should apply 2 years after the end of the transposition period of this ~~d~~**D**irective, in order to provide for a longer adaptation period. In order to ensure a proportionate burden, companies operating in such high-impact sectors should be required to comply with more targeted due diligence ~~focusing on severe adverse impacts~~. Temporary agency workers, including those posted under Article 1(3), point (c), of Directive 96/71/EC, as amended by Directive 2018/957/EU of the European Parliament and of the Council[34], should be included in the calculation of the number of employees in the user company. Posted workers under Article 1(3), points (a) and (b), of Directive 96/71/EC, as amended by Directive 2018/957/EU, should only be included in the calculation of the number of employees of the sending company.

34 Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 173, 9.7.2018, p. 16).

(22) 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. The following sectors should be regarded as high-impact for the purposes of this Directive: the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear; agriculture, forestry, fisheries (including aquaculture), the manufacture of food products **and beverages**, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages; the extraction of mineral resources regardless of where they are extracted from (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products). **These sectors should be understood as covering the related sectors of economic activities associated with the applicable statistical classification of economic activities established by Regulation (EC) No 1893/2006 of the European Parliament and the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2[35].** As regards the financial sector, due to its specificities, in particular as regards the value chain and the services offered, even if it is covered by sector-specific OECD guidance, it should not form part of the high-impact sectors covered by this Directive. At the same time, in this sector, the broader coverage of actual and potential adverse impacts should be ensured by also including very large companies in the scope that are regulated financial undertakings, even if they do not have a legal form with limited liability.

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35 Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains, OJ L 393, 30.12.2006, p. 1.

(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**, as of 2 years after the end of the transposition period of this Directive,** to third-country companies which generated a net **worldwide** turnover of at least EUR 150 million**, provided that at least 50 % of this net turnover, i.e. EUR 75 million, was generated** in the Union in the financial year preceding the last financial year**,** or a net **worldwide** turnover of more than EUR 40 million but less than EUR 150 million in the financial year preceding the last financial year**, provided that at least 50 % of this net turnover, i.e. EUR 20 million, was generated in the Union and at least EUR 20 million of net worldwide turnover** in one or more of the high-impact sectors~~, as of 2 years after the end of the transposition period of this Directive~~.

(24) For defining the scope of application in relation to ~~non-EU~~ **third-country** companies the described turnover criterion should be chosen as it creates a territorial connection between the third-country companies and the Union territory. Turnover is a proxy for the effects that the activities of those companies could have on the internal market. In accordance with international law, such effects justify the application of Union law to third-country companies. **The same threshold should be used for companies established in the Union and third-country companies, i.e. the same amount of net worldwide turnover. The connection between the third-country companies and the Union territory should be ensured by a requirement of at least 50 % of the net turnover to be generated in the Union.** To ensure identification of the relevant turnover of companies concerned, the methods for calculating net turnover for ~~non-EU~~ **third-country** companies as laid down in Directive (EU) 2013/34 ~~as amended by Directive (EU) 2021/2101~~ should be used. To ensure effective enforcement of this Directive, an employee threshold should, in turn, not be applied to determine which third-country companies fall under this Directive, as the notion of "employees" retained for the purposes of this Directive is based on Union law and could not be easily transposed outside of the Union. In the absence of a clear and consistent methodology, including in accounting frameworks, to determine the employees of third-country companies, such employee threshold would therefore create legal uncertainty and would be difficult to apply for supervisory authorities. The definition of turnover should be based on Directive 2013/34/EU which has already established the methods for calculating net turnover for non-Union companies, as turnover and revenue definitions are similar in international accounting frameworks too. With a view to ensuring that the supervisory authority knows which third country companies generate the required turnover in the Union to fall under the scope of this Directive, this Directive should require that a supervisory authority in the Member State where the third country company's authorised representative is domiciled or established and, where it is different, a supervisory authority in the Member State in which the company generated most of its net turnover in the Union in the financial year preceding the last financial year are informed that the company is a company falling under the scope of this Directive.

(25) In order to achieve a meaningful contribution to the sustainability transition, due diligence under this Directive should be carried out with respect to adverse human rights impact on ~~protected~~ persons resulting from the violation of one of the rights and prohibitions as enshrined in the international **instruments** ~~conventions~~ as listed in the Annex **I** to this Directive. In order to ensure a comprehensive coverage of human rights, a violation of a prohibition or right not specifically listed in that Annex **I** which directly impairs a legal interest protected in those **instruments** ~~conventions~~ should also form part of the adverse human rights impact covered by this Directive, provided that the company concerned could have reasonably established the risk of such impairment and any appropriate measures to be taken in order to comply with the due diligence obligations under this Directive, taking into account all relevant circumstances of their operations, such as the sector and operational context. Due diligence should further encompass adverse environmental impacts resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental **instruments** ~~conventions~~ listed in the Annex **I** to this Directive.

(26) **When assessing the adverse human rights impacts, companies** ~~Companies~~ have guidance at their disposal that illustrates how their activities may impact human rights and which corporate behaviour is prohibited in accordance with internationally recognised human rights. Such guidance is included for instance in ~~T~~the United Nations Guiding Principles Reporting Framework[36] and the United Nations Guiding Principles Interpretative Guide[37]. ~~Using relevant international guidelines and standards as a reference, the Commission should be able to issue additional guidance that will serve as a practical tool for companies.~~

(27) In order to conduct appropriate human rights, and environmental due diligence with respect to their operations, their subsidiaries, and their value chains, companies covered by this Directive should integrate due diligence into corporate **strategy,** policies **and management systems**, identify, prevent and mitigate as well as bring to an end and minimise the extent of potential and actual adverse human rights and environmental impacts, establish and maintain a complaints procedure, monitor the effectiveness of the taken measures in accordance with

36 https://www.ungpreporting.org/wp-content/uploads/UNGPReportingFramework_withguidance2017.pdf.

37 https://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf.

the requirements that are set up in this Directive and communicate publicly on their due diligence.

In order to ensure clarity for companies, in particular the steps of preventing and mitigating potential adverse impacts and of bringing to an end, or when this is not possible, minimising actual adverse impacts should be clearly distinguished in this Directive.

(28) In order to ensure that due diligence forms part of companies' corporate **strategy,** policies **and management systems**, and in line with the relevant international framework, companies should integrate due diligence into ~~all their~~ corporate **strategy,** policies **and management systems,** and have in place a due diligence policy. The due diligence policy should contain a description of the company's approach, including in the long term, to due diligence, a code of conduct describing the rules and principles to be followed by the company's employees and subsidiaries**, and, where relevant, the company's direct or indirect business partners and**~~;~~ a description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business ~~relationships~~ **partners**. The code of conduct should apply in all relevant corporate functions and operations, including procurement and purchasing decisions. Companies should also update their due diligence policy **without undue delay after a significant change occurs, but at least every 24 months** ~~annually~~. **A significant change should be understood as such a change to the *status quo* of the company's own operations, the operations of its subsidiaries or business partners, the legal or business environment or any other substantial shift from the situation of the company that the company could be reasonably expected to react to it and update the policy. Examples of a significant change could be the cases when the company operates in a new economic sector or geographical area, starts producing new products or changes the way of producing the existing products using technology with potentially higher adverse impact, or changes its corporate structure via restructuring or mergers or acquisitions. Incorporating due diligence into management systems should be understood in line with the relevant international framework, for example setting up a risk management system of the company or creating a human rights and environment officer. In all cases, administrative, management or supervisory bodies of companies established in the Union should put in place and oversee due diligence actions, in accordance with national corporate governance systems, so the fulfilement and overseeing of the due diligence requirements need to be anchored on the most senior management level.**

(29) To comply with due diligence obligations, companies need to take appropriate measures with respect to identification, prevention and bringing to an end adverse impacts. An 'appropriate measure' should mean a measure that is capable of achieving the objectives of due diligence, commensurate with the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including characteristics of the economic sector and of the specific business ~~relationship~~ **partner** and the company's influence thereof, and the need to ensure prioritisation of action. In this context, in line with international frameworks, the company's influence ~~over~~ **on** a business ~~relationship~~ **partner** should include, on the one hand its ability to persuade the business ~~relationship~~ **partner** to take action to bring to an end or prevent adverse impacts (for example through ownership or factual control, market power, pre-qualification requirements, linking business incentives to human rights and environmental performance, etc.) and, on the other hand, the degree of influence or leverage that the company could reasonably exercise, for example through cooperation with the business partner in question or engagement with another company which is the direct business partner of the business ~~relationship~~ **partner** associated with adverse impact.

(30) Under the due diligence obligations set out by this Directive, a company should identify actual or potential adverse human rights and environmental impacts. In order to allow for a comprehensive identification of adverse impacts, such identification should be based on quantitative and qualitative information. For instance, as regards adverse environmental impacts, the company should obtain information about baseline conditions at higher risk sites or facilities in value chains. **When identifying adverse impacts, the company should be able to first map all areas of their operations, the operations of their subsidiaries and, where related to their value chains, their established business partners, and based on the results, carry out an in-depth assessment focusing on the areas where the adverse impacts are most likely to be present or most significant.** Identification of adverse impacts should include assessing the human rights, and environmental context in a dynamic way and in regular intervals: ~~prior to a new activity or relationship, prior to major decisions or changes in the operation; in response to or anticipation of changes in the operating environment; and periodically, at least every 12 months,~~ **without undue delay after a significant change occurs, but at least every 24 months,** throughout the life of an activity or relationship. **A significant change should be understood as such a change to the *status quo* of the company's own operations, operations of its subsidiaries or business partners, the legal or business environment or any other substantial shift from the situation of the company that the company could be reasonably expected to react to it and identify the adverse impacts, possibly prioritise them and prevent or mitigate them or bring them to an end or minimise their extent. Examples of a significant change could be the cases when the company operates in a new economic sector or geographical area, starts producing new products or changes the way of producing the existing products using technology with potentially higher adverse impact, or changes its corporate structure via restructuring or mergers or acquisitions.** Regulated financial undertakings providing loan**s**, credit, **financing, investment, insurance, reinsurance,** or other financial services should identify the adverse impacts only at the inception of the contract **and they should not be required to assess the adverse impacts in a dynamic way or at regular intervals**.

When identifying adverse impacts, companies should also identify and assess the impact of a business ~~relationship's~~ **partner's** business model and strategies, including trading, procurement and pricing practices. ~~Where the company cannot prevent, bring to an end or minimize all its adverse impacts at the same time, it should be able to prioritize its action, provided it takes the measures reasonably available to the company, taking into account the specific circumstances.~~

(31) In order to avoid undue burden on the smaller companies operating in high-impact sectors which are covered by this Directive, those companies should only be obliged to identify those actual or potential ~~severe~~ adverse impacts that are relevant to the respective sector.

(32) ~~In line with international standards, prevention and mitigation as well as bringing to an end and minimisation of adverse impacts should take into account the interests of those adversely impacted. In order to enable continuous engagement with the value chain business partner instead of termination of business relations (disengagement) and possibly exacerbating adverse impacts, this Directive should ensure that disengagement is a last-resort action, in line with the Union`s policy of zero-tolerance on child labour. Terminating a business relationship in which child labour was found could expose the child to even more severe adverse human rights impacts. This should therefore be taken into account when deciding on the appropriate action to take.~~

Where the company cannot prevent, mitigate, bring to an end or minimise all the identified actual and potential adverse impacts at the same time to the full extent, it should be allowed to prioritise them based on the severity and likelihood of the adverse impact. In line with the relevant international framework, the severity of an adverse impact should be assessed based on its gravity (scale of the adverse impact), the number of persons or the extent of the environment affected (scope of the adverse impact), its irreversibility, and difficulty to restore the situation prevailing prior to the impact (irremediable character of the adverse impact). On the other hand, actual or potential influence of the company on its business partners, the level of involvement of the company in the adverse impact, the proximity to the subsidiary or the business partner, or its potential liability are not relevant factors in the prioritisation of adverse impacts. As a result of the prioritisation, after addressing the most significant adverse impacts in reasonable time, the company should be obliged to address less significant adverse impacts. When assessing reasonable time, due account should be taken of the circumstances of the specific case, including the company's resources and the economic sector in which the company operates, the severity of the prioritised adverse impact that the company addresses in a given time, and the scale of the prioritised adverse impact at one point in time.

(33) Under the due diligence obligations set out by this Directive, if a company identifies potential adverse human rights or environmental impacts, it should take appropriate measures to prevent ~~and~~ **or** adequately mitigate them. To provide companies with legal clarity and certainty, this Directive should set out **all** the actions companies should be expected to take for prevention and mitigation of potential adverse impacts**,** where relevant depending on the circumstances. **Companies should be obliged to prevent or mitigate the adverse impacts that they cause or to which they contribute. When companies are not causing nor contributing to the adverse impacts occurring in their value chain (so called 'being directly linked to' the adverse impact), they should be obliged to use their influence to prevent or mitigate the adverse impact caused by their subsidiaries or established business partners or to increase their influence to do so.**

(34) So as to comply with the prevention and mitigation obligation under this Directive, companies should be required to take **all** the following actions, where relevant **depending on the circumstances**. Where necessary due to the complexity of prevention measures, companies should develop and implement a prevention action plan. Companies should seek to obtain contractual assurances from a direct **business** partner ~~with whom they have an established business relationship~~ that it will ensure compliance with the code of conduct or the prevention action plan, including by seeking corresponding contractual assurances from its partners to the extent that their activities are part of the companies' value chain. The contractual assurances should be accompanied by appropriate measures to verify compliance. **However, the company should only be obliged to seek the contractual assurances, as obtaining them may depend on the circumstances.** To ensure comprehensive prevention of ~~actual and~~ potential adverse impacts, companies should also make **financial or non-financial** investments which aim to prevent adverse impacts, **and collaborate with other companies. Companies should also** provide targeted and proportionate support for an SME ~~with~~ which ~~they have~~ **is** an established business ~~relationship~~ **partner of the company, where the viability of the SME could be jeopardised,** such as financing, for example, through direct financing, low-interest loans, guarantees of continued sourcing, and assistance in securing financing, to help implement the code of conduct or prevention action plan, or technical guidance such as in the form of training, management systems upgrading~~, and collaborate with other companies~~. **Jeopardising the viability of an SME should be interpreted as possibly causing a bankruptcy of the SME or putting the SME in a situation where bankruptcy is imminent.**

(35) In order to reflect the full range of options for the company in cases where potential impacts could not be addressed by the described prevention or minimisation measures, this Directive should also refer to the possibility for the company to seek to conclude a contract with the indirect business partner, with a view to achieving compliance with the company's code of conduct or a prevention action plan, and conduct appropriate measures to verify compliance of the indirect business ~~relationship~~ **partner** with the contract.

(35a) It is possible that prevention of adverse impacts requires collaboration with another company, for example, at the level of indirect business partner with a company, which has a direct contractual relationship with the indirect business partner in question. In some instances, a collaboration with other entities could be the only realistic way of preventing adverse impacts caused even by direct business partners if the influence of the company is not sufficient. The company should collaborate with the entity which can most effectively prevent or mitigate adverse impacts solely or in jointly with the company, or other legal entities, while respecting applicable law, in particular competition law.

(36) In order to ensure that prevention and mitigation of potential adverse impacts is effective, companies should prioritize engagement with business ~~relationships~~ **partners** in the value chain, instead of terminating the business relationship, as a last resort action after attempting ~~at preventing and mitigating adverse~~ **to prevent and mitigate** potential **adverse** impacts without success. However, the Directive should also, for cases where potential adverse impacts could not be addressed by the described prevention or mitigation measures, refer to the obligation for companies to refrain from entering into new or extending existing relations with the **business** partner in question and, where the law governing their relations so entitles them to, to either temporarily suspend ~~commercial~~ **business** relationships with **respect to the activities concerned** ~~the partner in question~~, while pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts are to succeed in the short-term; or to terminate the business relationship with respect to the activities concerned ~~if the potential adverse impact is severe~~. In order to allow companies to fulfil that obligation, Member States should provide for the availability of an option to **temporarily suspend and** terminate the business relationship in contracts governed by their laws**, except for cases where the parties are obliged by law to enter into them, such as is the case of mandatory insurance**. ~~It is possible that prevention of adverse impacts at the level of indirect business relationships requires collaboration with another company, for example a company which has a direct contractual relationship with the supplier. In some instances, such collaboration could be the only realistic way of preventing adverse impacts, in particular, where the indirect business relationship is not ready to enter into a contract with the company. In these instances, the company should collaborate with the entity which can most effectively prevent or mitigate adverse impacts at the level of the indirect business relationship while respecting competition law.~~

(36a) In some cases companies should not be obliged to terminate the business relationship. Financial undertakings should not be required to terminate the business relationship with their client, if the termination could be reasonably expected to cause substantial prejudice to the client. Substantial prejudice should be interpreted as a negative and significant effect on the company's legal, financial or economic situation or its production capacity, including in the long term perspective, such as an effect giving rise to the likelihood of insolvency. Also, companies should not be required to terminate the business relationship if there is a reasonable expectation that the termination could result in a more severe adverse impact. This is in line with the international framework, the interests of those adversely impacted should be taken into account. For example, terminating a business relationship in which potential adverse impact due to child labour was found could expose the child to even more severe adverse human rights impacts. Similarly, a more severe adverse impact could occur if workers are deprived of living wage by the termination of the business relationship with their employer in order to bring to an end a potential adverse impact consisting of breaching the right to collective bargaining. Lastly, the company should not be required to terminate the business relationship with its crucial business partner that provides raw material, product or service essential to the company's business, if the termination would cause substantial prejudice to the company. In order not to undermine the aims of this Directive, the decision not to terminate the business relationship should be subject to subsequent conditions. The company should be required to report itself to the supervisory authority and duly justify the reasons for not terminating the business relationship and keep monitoring the potential adverse impact with potential actions to be taken to prevent or mitigate the adverse impact, periodically reassess the decision not to terminate the business relationship and seek alternative business relationships. To enhance legal certainty, the provisions of this Directive on terminating the business relationship should apply only to commercial agreements concluded by the company after the expiry of the transposition period for implementing this Directive.

(37) As regards direct and indirect business **partners** ~~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, **should** ~~may~~ issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.

(38) Under the due diligence obligations set out by this Directive, if a company identifies actual human rights or environmental adverse impacts, it should take appropriate measures to bring those to an end. It can be expected that a company is able to bring to an end actual adverse impacts in ~~their~~ **its** own operations and ~~in~~ **those of its** subsidiaries. However, it should be clarified that, as regards established business ~~relationships~~ **partners**, where adverse impacts cannot be brought to an end, companies should minimise the extent of such impacts. Minimisation of the extent of adverse impacts should require an outcome that is the closest possible to bringing the adverse impact to an end. To provide companies with legal clarity and certainty, this Directive should define which actions companies should be required to take for bringing actual human rights and environmental adverse impacts to an end and minimisation of their extent, where relevant depending on the circumstances. **Companies should be obliged to bring to an end or minimise the extent of the adverse impacts that they cause or to which they contribute. When companies are not causing nor contributing to the adverse impacts occurring in their value chain (so called 'being directly linked to' the adverse impact), they should be obliged to use their influence to bring to an end or minimise the extent of the adverse impact caused by their subsidiaries or established business partners or to increase their influence to do so.**

(39) So as to comply with the obligation of bringing to an end and minimising the extent of actual adverse impacts under this Directive, companies should be required to take **all** the following actions, where relevant **depending on the circumstances**. They should neutralise the adverse impact or minimise its extent, with an action proportionate to the significance and ~~scale~~ **scope** of the adverse impact and to the ~~contribution of the~~ company's ~~conduct to~~ **involvement in** the adverse impact. Where necessary due to the fact that the adverse impact cannot be immediately brought to an end, companies should develop and implement a corrective action plan with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. Companies should also seek to obtain contractual assurances from a direct business partner ~~with whom they have an established business relationship~~ that they 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. The contractual assurances should be accompanied by the appropriate measures to verify compliance. **However, the company should only be obliged to seek the contractual assurances, as obtaining them may depend on the circumstances.** ~~Finally, companies~~ **Companies** should also make **financial or non-financial** investments aiming at ceasing or minimising the extent of **the** adverse impact, provide targeted and proportionate support for ~~an~~ SMEs ~~with~~ which ~~they have~~ **are** established business ~~relationship~~ **partners of the company, where the viability of the SME could be jeopardised,** and collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end. **Jeopardising the viability of an SME should be interpreted as possibly causing a bankruptcy of the SME or putting the SME in a situation where bankruptcy is imminent. Finally, companies should provide remediation to the affected persons and communities that should consist of financial or non-financial compensation that should be proportionate to the significance (scale of the adverse impact, the gravity) and scope (number of persons or the extent of the environment affected) of the adverse impact and the company's involvement in the adverse impact. The financial or non-financial compensation might consist of restitution of the affected person or persons to the situation in which they would have been if the actual adverse impact had not occurred.**

(40) In order to reflect the full range of options for the company in cases where actual impacts could not be addressed by the described measures, this Directive should also refer to the possibility for the company to seek to conclude a contract with the indirect business partner, with a view to achieving compliance with the company's code of conduct or a corrective action plan, and conduct appropriate measures to verify compliance of the indirect business ~~relationship~~ **partner** with the contract.

(41) In order to ensure that bringing actual adverse impacts to an end or minimising them is effective, companies should prioritize engagement with business ~~relationships~~ **partners** in the value chain, instead of terminating the business relationship, as a last resort action after attempting ~~at bringing~~ **to bring** actual adverse impacts to an end or ~~minimising~~ **minimise** them without success. However, this Directive should also, for cases where actual adverse impacts could not be brought to an end or adequately mitigated by the described measures, refer to the obligation for companies to refrain from entering into new or extending existing relations with the **business** partner in question and, where the law governing their relations so entitles them to, to either temporarily suspend ~~commercial~~ **business** relationships with **respect to the activities concerned** ~~the partner in question~~, while pursuing efforts to bring to an end or minimise the extent of the adverse impact, **if there is reasonable expectation that these efforts are to succeed in the short-term,** or terminate the business relationship with respect to the activities concerned~~, if the adverse impact is considered severe~~. In order to allow companies to fulfil that obligation, Member States should provide for the availability of an option to **temporarily suspend and** terminate the business relationship in contracts governed by their laws**, except for cases where the parties are obliged by law to enter into them, such as is the case of mandatory insurance**.

(41a) In some cases companies should not be obliged to terminate the business relationship. Financial undertakings should not be required to terminate the business relationship with their client, if the termination could be reasonably expected to cause substantial prejudice to the client. Substantial prejudice should be interpreted as a negative and significant effect on the company's legal or financial situation or its production capacity, including in the long term perspective, such as an effect giving rise to the likelihood of insolvency. Also, companies should not be required to terminate the business relationship if there is a reasonable expectation that the termination could result in a more severe adverse impact. This is in line with the international framework, the interests of those adversely impacted should be taken into account. For example, terminating a business relationship in which child labour was found could expose the child to even more severe adverse human rights impacts. Similarly, a more severe adverse impact could occur if workers are deprived of living wage by the termination of the business relationship with their employer in order to bring to an end an adverse impact consisting of breaching the right to collective bargaining. Lastly, the company should not be required to terminate the business relationship with its crucial business partner that provides raw material, product or service essential to the company's business, if the termination would cause substantial prejudice to the company. In order not to undermine the aims of this Directive, the decision not to terminate the business relationship, should be subject to subsequent conditions. The company should be required to report itself to the supervisory authority and duly justify the reasons for not terminating the business relationship and keep monitoring the actual adverse impact with potential actions to be taken to bring to an end or minimise the extent of the adverse impact, periodically reassess the decision not to terminate the business relationship and seek alternative business relationships. To enhance legal certainty, the provisions of this Directive on terminating the business relationship, should apply only to commercial agreements concluded by the company after the expiry of the transposition period for implementing this Directive.

(42) Companies should provide the possibility for persons and organisations to submit complaints directly to them in case of legitimate concerns regarding actual or potential human rights and environmental adverse impacts. **In order to reduce the burden on companies, they should be able to participate in a collaborative complaints procedure, such as those established jointly by companies (for example, by a group of companies), through industry associations or multi-stakeholders initiatives, instead of setting up the complaints procedure on their own.** Organisations who could submit such complaints should include trade unions and other workers' representatives representing individuals working in the value chain concerned and civil society organisations active in the areas related to the value chain concerned where they have knowledge about a potential or actual adverse impact. Companies should establish a **fair, accessible and transparent** procedure for dealing with those complaints and inform workers, trade unions and other workers' representatives, where relevant, about such ~~processes~~ **procedures**. **The term 'fair, accessible and transparent' should be understood in line with principle 31 of the United Nations Guiding Principles on Business and Human Rights requiring procedures to be legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning. The procedure should ensure the confidentiality of the identity of the complainant, and the necessary measures to prevent any form of retaliation from the company and its subsidiaries. Retaliation should be understood as any direct or indirect act or omission which is prompted by the submission of a complaint and which causes or may cause unjustified detriment to the complainant.** Recourse to the complaints and remediation mechanism should not prevent the complainant from having recourse to judicial remedies **or submitting substantiated concerns to supervisory authorities**. In accordance with international standards, complain**an**ts should be entitled to request from the company appropriate follow-up on the complaint and to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint. This access should not lead to unreasonable solicitations of companies.

(42a) Due to a broader list of persons or organisations entitled to submit a complaint and a broader scope of subject-matters of complaints, the complaints procedure is understood as a separate mechanism to the internal reporting procedure set up by companies in accordance with the Directive 2019/1937 on the protection of whistleblowers. If the breach of Union or national law included in the material scope of that Directive can be considered as an adverse impact and the reporting person is an employee of the company that is directly affected by the adverse impact, then the person could use both procedures – complaints mechanism in accordance with this Directive or an internal reporting procedure set out in accordance with that Directive. Nevertheless, if one of the conditions above is not met, then the person could proceed only via one of the procedures.

(43) Companies should monitor the implementation and effectiveness of their due diligence measures**, with due consideration of relevant information from stakeholders**. They should carry out periodic assessments of their own operations, those of their subsidiaries and, where related to the value chains of the company, those of their established business ~~relationships~~ **partners**, to monitor the effectiveness of the identification, prevention, minimisation, bringing to an end and mitigation of human rights and environmental adverse impacts. Such assessments should verify that adverse impacts are properly identified, due diligence measures are implemented and adverse impacts have actually been prevented or brought to an end. In order to ensure that such assessments are up-to-date, they should be carried out **without undue delay after a significant change occurs, but** at least every ~~12~~ **24** months and be revised in-between if there are reasonable grounds to believe that significant new risks of adverse impact could have arisen. **A significant change should be understood as such a change to the *status quo* of the company's own operations, operations of its subsidiaries or business ~~relationships~~ partners, the legal or business environment or any other substantial shift from the situation of the company that the company could be reasonably expected to react to it and assess. Examples of a significant change could be the cases when the company operates in a new economic sector or geographical area, starts producing new products or changes the way of producing the existing products using technology with potentially higher adverse impact, or changes its corporate structure via restructuring or mergers or acquisitions. Financial undertakings should carry out periodic assessment only of their own operations and those of their subsidiaries. As regards established business partners (clients) of financial undertakings, they should carry out periodic assessments only to monitor the effectiveness of measures taken to prevent or mitigate the potential adverse impact or bring to an end or minimise the actual adverse impact that was identified before providing the financial service to the business partner in question. No further assessments should be required from financial undertakings as regards their established business partners throughout the existence of the relationship with the established business partner.**

(44) Like in the existing international standards set by the United Nations Guiding Principles on Business and Human Rights and the OECD framework, it forms part of the due diligence requirement to communicate externally relevant information on due diligence policies, processes and activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities. The ~~proposal to amend~~ Directive 2013/34/EU ~~as regards corporate sustainability reporting~~ sets out relevant reporting obligations **as regards corporate sustainability** for the companies covered by this **D**~~d~~irective. In order to avoid duplicating reporting obligations, this Directive should therefore not introduce any new reporting obligations in addition to those under Directive 2013/34/EU for the companies covered by that Directive as well as the reporting standards that should be developed under it. As regards companies that are within the scope of this Directive, but do not fall under Directive 2013/34/EU, in order to comply with their obligation of communicating as part of the due diligence under this Directive, they should publish on their website an annual statement in a language customary in the sphere of international business.

(45) In order to facilitate companies' compliance with their due diligence requirements through their value chain and limiting shifting compliance burden on SME business partners, the Commission should provide guidance on model contractual clauses**, after having consulted with Member States and relevant stakeholders**.

(46) In order to provide support and practical tools to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, using relevant international guidelines and standards as a reference, and 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, should ~~have the possibility to~~ issue guidelines, including for specific sectors or specific adverse impacts.

(47) Although SMEs are not included in the scope of this Directive, they could be impacted by its provisions as contractors or subcontractors **(direct or indirect business partners)** to the companies which are in the scope. The aim is nevertheless to mitigate financial or administrative burden on SMEs, many of which are already struggling in the context of the global economic and sanitary crisis. In order to support SMEs, Member States should set up and operate, either individually or jointly, dedicated websites, portals or platforms, **to provide information and support to companies,** and Member States could also financially support SMEs and help them build capacity. ~~Such support should also be made accessible, and where necessary adapted and extended to upstream economic operators in third countries.~~ Companies whose business partner is an SME~~,~~ are also encouraged to support them to comply with due diligence measures, in case such requirements would jeopardi**s**~~z~~e the viability of the SME and use fair, reasonable, non-discriminatory and proportionate requirements vis-a-vis the SMEs.

(48) In order to complement Member State support to SMEs, the Commission may build on existing EU tools, projects and other actions helping with the due diligence implementation in the EU and in third countries. It may set up new support measures that provide help to companies, including SMEs on due diligence requirements, including an observatory for value chain transparency and the facilitation of joint stakeholder initiatives.

(49) The Commission ~~and~~ **could complement** Member States**'** ~~should continue to work in partnership with third countries to~~ **support measures building on existing Union action to** support upstream economic operators build the capacity to effectively prevent and mitigate adverse human rights and environmental impacts of their operations and business relationships, paying specific attention to the challenges faced by smallholders. ~~They~~ **The Union and Member States within their respective competences** ~~should~~ **are encouraged to** use their neighbourhood, development and international cooperation instruments to support third country governments and upstream economic operators in third countries addressing adverse human rights and environmental impacts of their operations and upstream business relationships. This could include working with partner country governments, the local private sector and stakeholders on addressing the root causes of adverse human rights and environmental impacts.

(50) In order to ensure that this Directive effectively contributes to combating climate change, companies should adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. In case climate is or should have been identified as a principal risk for or a principal impact of the company's operations, the company should include **greenhouse gas** emissions reduction objectives in its plan.

~~(51) With a view to ensure that such emission reduction plan is properly implemented and embedded in the financial incentives of directors, the plan should be duly taken into account when setting directors' variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.~~

(52) In order to allow for the effective oversight of and, where necessary, enforcement of this Directive in relation to those companies that are not governed by the law of a Member State, those companies should designate a sufficiently mandated authorised representative in the Union and provide information relating to their authorised representatives. It should be possible for the authorised representative to also function as point of contact, provided the relevant requirements of this Directive are complied with.

(53) In order to ensure the monitoring of the correct implementation of companies' due diligence obligations and ensure the proper enforcement of this Directive, Member States should designate one or more national supervisory authorities. These supervisory authorities should be of a public nature, independent from the companies falling within the scope of this Directive or other market interests, and free of conflicts of interest. In accordance with national law, Member States should ensure appropriate financing of the competent authority. They should be entitled to carry out investigations, on their own initiative or based on ~~complaints or~~ substantiated concerns raised under this Directive. Where competent authorities under sectoral legislation exist, Member States could identify those as responsible for the application of this Directive in their areas of competence. They could designate authorities for the supervision of regulated financial undertaking also as supervisory authorities for the purposes of this Directive.

(54) In order to ensure effective enforcement of national measures implementing this Directive, Member States should provide for dissuasive, proportionate and effective sanctions for infringements of those measures. In order for such sanction regime to be effective, administrative sanctions to be imposed by the national supervisory authorities should include pecuniary sanctions. Where the legal system of a Member State does not provide for administrative sanctions as foreseen in this Directive, the rules on administrative sanctions should be applied in such a way that the sanction is initiated by the competent supervisory authority and imposed by the judicial authority. Therefore, it is necessary that those Member States ensure that the application of the rules and sanctions has an equivalent effect to the administrative sanctions imposed by the competent supervisory authorities.

(55) In order to ensure consistent application and enforcement of national provisions adopted pursuant to this Directive, national supervisory authorities should cooperate and coordinate their action. For that purpose a European Network of Supervisory Authorities should be set up by the Commission and the supervisory authorities should assist each other in performing their tasks and provide mutual assistance.

(56) In order to ensure effective compensation of victims of adverse impacts, Member States should be required to lay down rules governing the civil liability of companies for damages ~~arising due to~~ **that the company intentionally or negligently caused (solely the acts or omissions of the company) or contributed to (acts or omissions of the company in combination with the acts or omissions of another legal entity, i.e. a subsidiary or business partner) by** its failure ~~to comply with the due diligence process. The company should be liable for damages if they failed to comply with the obligations~~ to prevent and mitigate potential adverse impacts or to bring actual impacts to an end and minimise their extent~~, and 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 occurred and led to damage~~. **The victims should have the right to full compensation for the damage occurred. Deterrence through damages (i.e. punitive damages) or any other form of overcompensation should be prohibited.**

(57) ~~As regards damages occurring at the level of established indirect business relationships, the liability of the company should be subject to specific conditions. The company should not be liable if it carried out specific due diligence measures. However, it should not be exonerated from liability through implementing such measures in case it was unreasonable 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 adverse impact. In addition, in the assessment of the existence and extent of liability, due account is to be taken of the company's efforts, insofar as they relate directly to the damage in question, to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided as well as any collaboration with other entities to address adverse impacts in its value chains.~~

A company should not be liable for the damage that would have occurred to the same extent even if the company had taken action in accordance with this Directive. Also, as the adverse impacts can be prioritised according to their severity and likelihood and addressed gradually, a company should not be liable for any damage stemming from any less significant adverse impacts that were not yet addressed. The correctness of the company's prioritisation of adverse impacts should, however, be assessed when determining whether the conditions for company's liability were met. A company should be liable for an adverse impact that was not addressed as a result of the prioritisation, if it was done in such a way, that it was unreasonable for the company to expect that the prioritisation would be adequate to the circumstances of the case.

(58) The liability regime does not regulate who should prove that the company's action was reasonably adequate under the circumstances of the case, therefore this question is left to national law.

(59) As regards civil liability rules, the civil liability of a company for damages arising due to its failure to carry out adequate due diligence should be without prejudice to civil liability of its subsidiaries or the respective civil liability of direct and indirect business partners in the value chain. **When the company contributed to the damage, it should be jointly and severally liable with the respective subsidiary or business partner, the acts or omissions of which, in combination with the acts or omissions of the company, caused the damage. This is without prejudice to any national law on the conditions of joint and several liability and on rights of recourse for the full compensation paid by one jointly and severally liable party.** ~~Also, the civil liability rules under this Directive should be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.~~

(59a) The civil liability rules under this Directive should be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive. A stricter liability regime should also be understood as a national civil liability regime that does not provide for exemptions as provided by this Directive, such as the prioritisation of adverse impacts.

(60) As regards civil liability arising from adverse environmental impacts, persons who suffer damage can claim compensation under this Directive even where they overlap with human rights claims.

(61) In order to ensure that victims of human rights and environmental harms can bring an action for damages and claim compensation for damages ~~arising due to a company's~~ **that the company intentionally or negligently caused or contributed to by** failure to comply with the due diligence obligations stemming from this Directive, even where the law applicable to such claims is not the law of a Member State, as could ~~be~~ for instance be the case in accordance with international private law rules when the damage occurs in a third country, this Directive should require Member States to ensure that the **civil** liability **regime** provided for in provisions of national law transposing this **Directive** ~~Article~~ **and all related national rules to the extent necessary to ensure the protection of victims, including the requirements as regards which natural or legal person can bring the claim, the statute of limitations, objections and defences, and calculation of compensation, are** ~~is~~ of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State

(62) The civil liability regime under this Directive should be without prejudice to the Environmental Liability Directive 2004/35/EC. This Directive should not prevent Member States from imposing further, more stringent obligations on companies or from otherwise taking further measures having the same objectives as that Directive.

~~(63) In all Member States' national laws, directors owe a duty of care to the company. In order to ensure that this general duty is understood and applied in a manner which is coherent and consistent with the due diligence obligations introduced by this Directive and that directors systematically take into account sustainability matters in their decisions, this Directive should clarify, in a harmonised manner, the general duty of care of directors to act in the best interest of the company, by laying down that directors take into account the sustainability~~ matters ~~as referred to in Directive 2013/34/EU, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term horizons. Such clarification does not require changing existing national corporate structures.~~

~~(64) Responsibility for due diligence should be assigned to the company's directors, in line with the international due diligence frameworks. Directors should therefore be responsible for putting in place and overseeing the due diligence actions as laid down in this Directive and for adopting the company's due diligence policy, taking into account the input of stakeholders and civil society organisations and integrating due diligence into corporate management systems. Directors should also adapt the corporate strategy to actual and potential impacts identified and any due diligence measures taken.~~

(65) Persons who work for companies subject to due diligence obligations under this Directive or who are in contact with such companies in the context of their work-related activities can play a key role in exposing breaches of the rules of this Directive. They can thus contribute to preventing and deterring such breaches and strengthening the enforcement of this Directive. Directive (EU) 2019/1937 of the European Parliament and of the Council[38] should therefore apply to the reporting of all breaches of this Directive and to the protection of persons reporting such breaches.

(66) In order to specify the information that companies not subject to reporting requirements under the provisions on corporate sustainability reporting under Directive 2013/34/EU should be communicating on the matters covered by this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of determining additional rules concerning the content and criteria of such reporting, specifying information on the description of due diligence, potential and actual impacts and actions taken on those. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[39].

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38 Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

39 OJ L 123, 12.5.2016, p. 1.

In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(67) This Directive should be applied in compliance with Union data protection law and the right to the protection of privacy and personal data as enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. Any processing of personal data under this Directive is to be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council[40], including the requirements of purpose limitation, data minimisation and storage limitation.

(68) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[41] and delivered an opinion on … 2022.

~~(69) This Directive is without prejudice to obligations in the areas of human rights, protection of the environment and climate change under other Union legislative acts. If the provisions of this Directive conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act should prevail to the extent of the conflict and shall apply to those specific obligations.~~

40 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119, 4.5.2016, p. 1–88.

41 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295, 21.11.2018, p. 39).

(70) The Commission should assess and report whether new sectors should be added to the list of high-impact sectors covered by this Directive, in order to align it to guidance from the Organisation for Economic Cooperation and Development or in light of clear evidence on labour exploitation, human rights violations or newly emerging environmental threats, whether the list of relevant international conventions referred to in this Directive should be amended, in particular in the light of international developments, or whether the provisions on due diligence under this Directive should be extended to adverse climate impacts.

(71) The objective of this Directive, namely better exploiting the potential of the single market to contribute to the transition to a sustainable economy and contributing to sustainable development through the prevention and mitigation of potential or actual human rights and environmental adverse impacts in companies' value chains, cannot be sufficiently achieved by the Member States acting individually or in an uncoordinated manner, but can rather, by reason of the scale and effects of the actions, be better achieved at Union level. In particular, addressed problems and their causes are of a transnational dimension, as many companies are operating Union wide or globally and value chains expand to other Member States and to third countries. Moreover, individual Member States' measures risk being ineffective and lead to fragmentation of the internal market. Therefore, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. This Directive lays down rules

   (a) on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by ~~entities with whom the company has an~~ **their** established business ~~relationship~~ **partners** and

   (b) on liability for violations of the obligations mentioned above.

   The nature of **a relationship with a** business **partner** ~~relationships~~ as 'established' shall be reassessed without undue delay after a significant change occurs, but at least every 24 months.

2. This Directive shall not constitute grounds for reducing the level of protection of human rights or of protection of the environment or the protection of the climate provided for by the law of Member States at the time of the adoption of this Directive.

3. This Directive shall be without prejudice to obligations in the areas of human rights, protection of the environment and climate change under other Union legislative acts. If the provisions of this Directive conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act shall prevail to the extent of the conflict and shall apply to those specific obligations.

OPTION A (individual approach)

Article 2

Scope

1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State and which fulfil one of the following conditions:

   (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 or should have been adopted;

   (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 or should have been adopted, provided that at least **EUR 20 million** ~~50% of this net turnover~~ was generated in one or more of the following sectors **associated with the applicable statistical classification of economic activities established by Regulation (EC) No 1893/2006 and listed in Annex II**:

      (i) the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear;

      (ii) agriculture, forestry, fisheries (including aquaculture), the manufacture of food products **and beverages**, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages;

      (iii) the extraction of mineral resources regardless from where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).

2. This Directive shall also apply to companies which are formed in accordance with the legislation of a third country, and fulfil one of the following conditions:

(a) generated a net **worldwide** turnover of more than EUR 150 million**, provided that at least EUR 75 million was generated** in the Union in the financial year preceding the last financial year;

(b) generated a net **worldwide** turnover of more than EUR 40 million but not more than EUR 150 million ~~in the Union~~ in the financial year preceding the last financial year, provided that at least **EUR 20 million** ~~50% of its net worldwide turnover~~ was generated in **the Union and at least EUR 20 million of the net worldwide turnover was generated in** one or more of the sectors listed in paragraph 1, point (b).

3. For the purposes of paragraph 1, the number of part-time employees shall be calculated on a full-time equivalent basis. Temporary agency workers shall be included in the calculation of the number of employees in the same way as if they were workers employed directly for the same period of time by the company.

4. As regards the companies referred to in paragraph 1, the Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has its registered office.

OPTION B (consolidated approach)[42]

Article 2

Scope

1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State and which fulfil one of the following conditions:

   (a) the company had more than ~~500~~ **1000**[43] employees on average and had a net worldwide turnover of more than EUR ~~150~~ **300** million in the last financial year for which annual financial statements have been or should have been adopted;

   (b) the company did not reach the thresholds under point (a), but had more than ~~250~~ **500** employees on average and had a net worldwide turnover of more than EUR ~~40~~ **80** million in the last financial year for which annual financial statements have been or should have been adopted, provided that at least **EUR 40 million** ~~50% of this net turnover~~ was generated in one or more of the following sectors **associated with the applicable statistical classification of economic activities established by Regulation (EC) No 1893/2006 and listed in Annex II**:

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[42] **The Presidency notes that there are at least three possible approaches to consolidated approach. First, the thresholds are counted on the group level with the consequence that the whole group would fall into the scope of the proposed Directive. Second, the thresholds are counted on the group level but only parent company falls into the scope of the proposed Directive. This would mean that even very large subsidiaries would not fall into the scope. Third, taking into account the subsidiaries without covering them into the scope, except for when the subsidiaries with their subsidiaries also meet the thresholds, etc. The Presidency proposes for the time being the third approach as a compromise between the first and second approach. The corresponding recital will be amended in the later stage, if the consolidated approach is supported.**

[43] **The thresholds put forward by the Presidency are only illustrational; they will be subject to further discussions.**

(i) the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear;

(ii) agriculture, forestry, fisheries (including aquaculture), the manufacture of food products **and beverages**, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages;

(iii) the extraction of mineral resources regardless from where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).

2. This Directive shall also apply to companies which are formed in accordance with the legislation of a third country, and fulfil one of the following conditions:

(a) generated a net **worldwide** turnover of more than EUR ~~150~~ **300** million**, provided that at least EUR 150 million was generated** in the Union in the financial year preceding the last financial year;

(b) generated a net **worldwide** turnover of more than EUR ~~40~~ **80** million but not more than EUR ~~150~~ **300** million ~~in the Union~~ in the financial year preceding the last financial year, provided that at least **EUR 40 million** ~~50% of its net worldwide turnover~~ was generated in **the Union and at least 40 million of the net worldwide turnover was generated in** one or more of the sectors listed in paragraph 1, point (b).

3. For the purposes of paragraph 1, the number of part-time employees shall be calculated on a full-time equivalent basis. Temporary agency workers shall be included in the calculation of the number of employees in the same way as if they were workers employed directly for the same period of time by the company.

3a. **For the purposes of paragraph 1, the number of employees and net worldwide turnover of all the subsidiaries of the company shall be included in the calculation of the number of employees and net worldwide turnover of the company.**

For the purposes of paragraph 1, point (b), and paragraph 2, point (b), only the net worldwide turnover generated by subsidiaries in the same sector as the company shall be included in the calculation of EUR 40 million generated in one or more of the economic sectors listed in paragraph 1, point (b).

For the purposes of paragraph 2, the net worldwide turnover of all the subsidiaries of the company shall be included in the calculation of worldwide turnover of the company and only the net turnover generated by subsidiaries in the Union shall be be included in the calculation of the net turnover generated in the Union.

4. As regards the companies referred to in paragraph 1, the Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has its registered office.

Article 3

Definitions

For the purpose of this Directive, the following definitions shall apply:

(a) 'company' means any of the following:

(i) a legal person constituted as one of the legal forms listed in Annex I to Directive 2013/34/EU of the European Parliament and of the Council[44];

(ii) a legal person constituted in accordance with the law of a third country in a form comparable to those listed in Annex I of Directive 2013/34/EU;

(iii) a legal person constituted as one of the legal forms listed in Annex II to Directive 2013/34/EU or in accordance with the law of a third country in a form comparable to those listed in Annex II of that Directive, when such a legal person is composed entirely of undertakings organised in one of the legal forms falling within points (i) and (ii);

44 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (OJ L 182, 29.6.2013, p. 19).

(iv) a regulated financial undertaking, regardless of its legal form, which is

– a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 the European Parliament and of the Council[45];

– an investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU the European Parliament and of the Council[46];

– an alternative investment fund manager (AIFM) as defined in Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council (2), including a manager of Euveca under Regulation (EU) No 345/2013 of the European Parliament and of the Council[47], a manager of EuSEF under Regulation (EU) No 346/2013 of the European Parliament and of the Council[48] and a manager of ELTIF under Regulation (EU) 2015/760 of the European Parliament and of the Council[49];

– an undertaking for collective investment in transferable securities (UCITS) management company as defined Article 2(1), point (b), of Directive 2009/65/EC of the European Parliament and of the Council[50];

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45 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

46 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

47 Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

48 Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

49 Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

50 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

– an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council[51];

[51] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

- a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;
- an institution for occupational retirement provision as defined in Article 1, point (6) of Directive 2016/2341 of the European Parliament and of the Council[52];
- pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council[53] and Regulation (EC) No 987/2009 of the European Parliament and of the Council[54] as well as any legal entity set up for the purpose of investment of such schemes;
- ~~an alternative investment fund (AIF) managed by an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU or an AIF supervised under the applicable national law;~~
- ~~UCITS in the meaning of Article 1(2) of Directive 2009/65/EC;~~
- a central counterparty as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council[55];

52 Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

53 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

54 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

55 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

- a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council[56];
- an insurance or reinsurance special purpose vehicle authorised in accordance with Article 211 of Directive 2009/138/EC;
- 'securitisation special purpose entity' as defined in Article 2, point (2), of Regulation (EU) No 2017/2402 of the European Parliament and of the Council[57];
- an insurance holding company as defined in Article 212(1), point (f), of Directive 2009/138/EC or a mixed financial holding company as defined in Article 212(1), point (h), of Directive 2009/138/EC, which is part of an insurance group that is subject to supervision at the level of the group pursuant to Article 213 of that Directive and which is not exempted from group supervision pursuant to Article 214(2) of Directive 2009/138/EC;
- a payment institution as defined in point (d) of Article 1(1) of Directive (EU) 2015/2366 of the European Parliament and of the Council[58];

56 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

57 Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

58 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

- an electronic money institution as defined in point (1) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council[59];
- a crowdfunding service provider as defined in point (e) Article 2(1) of Regulation (EU) 2020/1503 of the European Parliament and of the Council[60];
- a crypto-asset service provider as defined in Article 3(1), point (8), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937[61]] where performing one or more crypto-asset services as defined in Article 3(1), point (9), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937];

(b) 'adverse environmental impact' means an impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental instruments listed in the Annex **I**, Part II;~~[62]~~

(c) 'adverse human rights impact' means an impact on persons resulting from the violation of one of the rights or prohibitions listed in the Annex **I**, Part I Section 1, as enshrined in the international instruments listed in the Annex **I**, Part I Section 2;

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59 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

60 Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

61 COM/2020/593 final.

~~62 Definition of 'adverse impact' consisting of 'adverse human rights impact' and 'adverse environmental impact' could be added at a later stage. If not, the text of the proposed Directive will be checked so that where the term 'adverse impact' is used, both 'adverse human rights impact' and 'adverse environmental impact' are covered.~~

(ca) **‘adverse impact’ means adverse environmental impact and adverse human rights impact;**

(d) ‘subsidiary’ means a legal person through which the activity of a ‘controlled undertaking’ as defined in Article 2(1), point (f), of Directive 2004/109/EC of the European Parliament and of the Council[63] is exercised;

(e) ‘business ~~relationship~~**partner**’ means a ~~relationship with a~~ legal entity ~~(‘business partner’)~~

(i) with whom the company has a commercial agreement related to the operations, products or services of the company or to whom the company provides credit, loans, financing, investment, insurance**,** reinsurance, or other financial services (‘direct business partner’), or

(ii) which is not a direct business partner but which performs business operations related to the operations, products or services of the company (‘indirect business partner’);

63 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

OPTION A

~~(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;~~

OPTION B

(f) 'established business ~~relationship~~ **partner**' means a business ~~relationship with a legal entity ('established business partner')~~ **partner**, whether direct or indirect, **with** which **the company has a relationship that** does not represent a negligible or merely ancillary part of the value chain and which, taking into account the circumstances of the specific company and the sector in which the company conducts its business, fulfils one of the following criteria:

(i) it is, or it is expected to be lasting for a period of time or to be repeated for a number of times allowing for an effective identification and prevention of actual or potential adverse impacts in the value chain; or

(ii) it is, or it is expected to be significant for the company's operations or net turnover;

(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 **intended and reasonably foreseeable** use and disposal of the product**, excluding the use and disposal of the product by or provison of services to consumers,** as well as the related activities of upstream and downstream established business ~~relationships~~ **partners** 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 loans, credit, financing, investment, insurance, reinsurance, or other financial services and their subsidiaries whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loans, credit, financing, investment, insurance, reinsurance, or other financial services of such entities;

(h) ‘independent third-party verification’ means verification of the compliance by a company, or parts of its value chain, with human rights and environmental requirements resulting from the provisions of this Directive by an expert which is independent from the company, free from any conflicts of interests, has experience and competence in environmental and human rights matters and is accountable for the quality and reliability of the verification;

(i) ‘SME’ means a micro, small or a medium-sized enterprise, irrespective of its legal form, that is not part of a large group, as those terms are defined in Article 3(1), (2), (3) and (7) of Directive 2013/34/EU;

(j) ‘industry initiative’ means a combination of voluntary value chain due diligence procedures, tools and mechanisms, including independent third-party verifications, developed and overseen by governments, industry associations or groupings of interested organisations;

(k) ‘authorised representative’ means a natural or legal person resident or established in the Union who has a mandate from a company within the meaning of point (a)(ii) to act on its behalf in relation to compliance with that company’s obligations pursuant to this Directive;

(l) ‘severe adverse impact’ means an adverse ~~environmental impact or an adverse human rights~~ impact that is especially significant by its nature, or affects a large number of persons or a large area of the environment, or which is irreversible, or **where it** is particularly difficult to ~~remedy considering the measures necessary to~~ restore the situation prevailing prior to the impact;

(m) ‘net turnover’ means

(i) the ‘net turnover’ as defined in Article 2, point (5), of Directive 2013/34/EU; or

(ii) where the company applies international accounting standards adopted on the basis of Regulation (EC) No 1606/2002 of the European Parliament and of the Council[64] or is a company within the meaning of point (a)(ii), the revenue as defined by or within the meaning of the financial reporting framework on the basis of which the financial statements of the company are prepared;

(n) ‘stakeholders’ means the company’s employees, the employees of its subsidiaries, trade unions and workers’ representatives, consumers, 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 **partners** ~~relationships~~, including civil society organisations, national human rights institutions, and human rights and environmental defenders;

(o) […]

(p) […]

(q) ‘appropriate measure’ means a measure that is capable of achieving the objectives of due diligence, commensurate with the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including characteristics of the economic sector and of the specific business ~~relationship~~ **partner** and the company’s influence thereof, and the need to ensure prioritisation of action;

64 Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p.1).

(r) ‘company’s involvement in an adverse impact’ means the implication of the company in the adverse impact that can be in a form of:

(i) the company itself causing the actual or potential adverse impact; or

(ii) the company contributing to the actual or potential adverse impact within the meaning of point (s); or

(iii) the established business partner in the company’s value chain causing the actual or potential adverse impact without the company causing or contributing to the actual or potential adverse impact within the meaning of point (i) or (ii);[65]

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65 ~~A recital will be added to clarify the concept of company’s involvement in an adverse impact along the following lines: “The concept of company’s involvement in an adverse impact should clarify that the actions to be taken to address potential or actual adverse impacts and the existence of civil liability depend on the level of involvement of a company in an adverse impact. The company’s involvement in an adverse impact should be in a form of the company causing the adverse impact, contributing to an the adverse impact as defined in this Directive, or the company being linked to the adverse impact caused by its established business partner in the company’s value chain without the company causing or contributing to the adverse impact. Although the concepts of company’s involvement in an adverse impact, s of “contributing to” and “being directly linked to” also exist in international standards, they should receive an autonomous definition or understanding in the present Directive. The link implication of the company in a form of “being directly linked” to an adverse impact should not encompass the situation where an adverse impact has been solely caused by a business partner of the company. Due to the definition of “business partner” and “value chain” as put forward in this Directive, the adverse impact should be related to the operations, products, or services of the company. Under general tort law it is not excluded that a company could be held liable if the company created the conditions for the damage to occur while another party exploited those conditions, if the company was aware of such risks. With a view to ensure an effective protection of human rights and the environment, “causing and contributing to” should be understood as encompassing situations where damage occurs at the level of direct and indirect business partners.”.~~

(s) ‘a company contributing to an adverse impact’ means the act or omission of~~:~~

~~(i)~~ the company that in combination with the act or omission of its subsidiary, or its established business partner causes the actual or potential adverse impact; ~~or~~

~~(ii) the subsidiary of the company that causes the actual or potential adverse impact in its own operation; or~~

~~(iii) the company that has a substantial effect on the act or omission of its established business partner in the company’s value chain, including facilitating, incentivising, aiding, or abetting the established business partner to cause the actual or potential adverse impact;~~[66]

(t) ‘parent company’ means a company which controls one or more subsidiaries within the meaning of point (d);

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

~~66 A recital will be added to clarify the concept of company contributing to an adverse impact along the following lines: “Under the present Directive, while the concept of a company causing the adverse impact should be triggered by the sole act or omission of the company, in the case of the company’s contribution to an adverse impact the intervention of another legal entity should be needed. This should entail situations in which, firstly, the company causes the adverse impact in combination with another legal entity (subsidiary or established business partner), either through active or passive participation (act or omission). For example, the company would contribute to the contamination of drinking water by applying a toxic chemical to land near the water, while its subsidiary would do the same further down. Secondly, it should entail situations when the company contributes to an adverse impact by controlling the subsidiary and exercising decisive influence. Thirdly, it should refer to situations where the company contributes to an adverse impact by exercising substantial effect on its established business partner that causes the adverse impact in the company’ value chain. Due to the definition of “business partner” and the company’s “value chain”, the adverse impact should be linked to the operations, products, or services of the company. The substantial effect should, for example, take the form of facilitating, incentivising, aiding, or abetting the established business partner to cause the adverse impact. This would be the case, for example, when setting purchasing conditions that leave no other choice to the established business partner but to impose a wage which is inadequate as a living wage (where such consequence was known or could have been known) or the failure to take appropriate control measures in line with the Directive which would have been sufficient to prevent the continuation of child labour in the factory of the business partner.”.~~

(v) 'remediation' means financial or non-financial compensation provided by the company to person or persons affected by the actual adverse impact, including restitution ~~or rehabilitation~~ of the affected person or persons **or environment** to the situation they would be in, had the actual adverse impact not occurred, that shall be proportionate to the significance and ~~scale~~ **scope** of the adverse impact and the company's involvement in the adverse impact.

Article 4

Due diligence

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:

   (a) integrating due diligence into their strategy, policies and management systems in accordance with Article 5;

   (b) identifying actual or potential adverse impacts in accordance with Article 6;

   (c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8;

   (d) establishing and maintaining a complaints procedure in accordance with Article 9;

   (e) monitoring the effectiveness of their due diligence policy and measures in accordance with Article 10;

   (f) publicly communicating on due diligence in accordance with Article 11.

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.

3. Member States shall ensure that a company or other legal entity shall not be obliged to disclose to its business partner which is complying with the obligations resulting from this Directive, information that is deemed to be a trade secret as defined in Article 2(1) of Directive (EU) 2016/943 of the European Parliament and of the Council.[67]

Article 4a

Due diligence on a group level

1. Member States shall ensure that parent companies falling under the scope of this Directive may fulfil the obligations set out in Articles 5 to 11 and Article 15~~(1) and (2)~~ on behalf of companies which are their subsidiaries falling under the scope of this Directive. This is without prejudice to civil liability of subsidiaries in accordance with Article 22.

2. The fulfilment of due diligence obligations by a parent company in accordance with the first paragraph is subject to all the following conditions:

   (a) the subsidiary provides all the necessary information to and cooperates with its parent company to fulfil the obligations resulting from this Directive;

   (b) the subsidiary must abide by its parent company's due diligence policy accordingly adapted to ensure that the obligations laid down in Article 5(1) are fulfilled with respect to the subsidiary;

   (c) the subsidiary integrates due diligence into all its corporate policies in accordance with Article 5;

   (d) where relevant, the subsidiary seeks the contractual assurances in accordance with Articles 7(2), point (b), or 8(3), point (c);

67 Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

(e) where relevant, the subsidiary seeks to conclude a contract with an indirect business partner in accordance with Articles 7(3) or 8(4);

(f) where relevant, the subsidiary temporarily suspends or terminates the business relationship in accordance with Articles 7(5) or 8(6).

Article 5

Integrating due diligence into corporate strategy, policies and management systems

1. Member States shall ensure that companies integrate due diligence into all their corporate strategy, policies and management systems and have in place a due diligence policy.

1a. The due diligence policy shall contain all of the following:

(a) a description of the company's approach, including in the long term, to due diligence;

(b) a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries, and the company's direct or indirect business partners, where relevant in accordance with Articles 7(2), point (b), 7(3), 8(3), point (c), or 8(4);

(c) a description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business ~~relationships~~ **partners**.

2. Member States shall ensure that the companies update their due diligence policy without undue delay after a significant change occurs, but at least every 24 months.

3. Member States shall lay down rules to ensure that administrative, management or supervisory bodies of the companies referred to in Article 2(1) put in place and oversee the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in this Article, with due consideration for relevant input from stakeholders.

Article 6

Identifying actual and potential adverse impacts

1. Member States shall ensure that companies take appropriate measures to identify actual and potential adverse ~~human rights impacts and adverse environmental~~ impacts arising from their own operations or those of their subsidiaries and, where related to their value chains, ~~from~~ **those of** their established business ~~relationships~~**partners**, in accordance with paragraph 2, 3 and 4.

1a. For the purpose of fulfilling the obligation in paragraph 1, companies may map all areas of their own operations, those of their subsidiaries and, where related to their value chains, those of their established business partners. Based on the results of that mapping, companies may carry out an in-depth assessment of the areas where adverse ~~human rights impacts and adverse environmental~~ impacts were identified to be most likely to be present or most significant.

2. By way of derogation from paragraph 1, companies referred to in Article 2(1), point (b), and Article 2(2), point (b), shall only be required to identify actual and potential adverse impacts relevant to the respective sector mentioned in Article 2(1), point (b).

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.

4. Member States shall ensure that, for the purposes of identifying the adverse impacts referred to in paragraph 1 based on, where appropriate, quantitative and qualitative information, companies are entitled to make use of appropriate resources, including independent reports and information gathered through the complaints procedure provided for in Article 9. Companies shall, where relevant, also carry out consultations with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts.

Article 6a

Prioritisation of identified actual and potential adverse impacts

1. Member States shall ensure that companies are allowed to prioritise adverse ~~human rights impacts and adverse environmental~~ impacts arising from their own operations, ~~-~~those of their subsidiaries or those of their established business partners identified pursuant to Article 6 for fulfilling the obligations laid down in Articles 7 or 8, where it is not feasible to address all identified adverse impacts at the same time to the full extent.

2. The prioritisation of adverse impacts shall be based on severity and likelihood of the adverse impact. Severity of an adverse impact shall be assessed based on its gravity, the number of persons or the extent of the environment affected, its irreversibility, and difficulty to ~~provide remedy considering the measures necessary to~~ restore the situation prevailing prior to the impact.

3. Once the most significant adverse impacts are addressed in accordance with Articles 7 or 8 in a reasonable time, the company shall address less significant adverse impacts.

Article 7

Preventing potential adverse impacts

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 and, where necessary, prioritised pursuant to Article 6a, in accordance with paragraphs 2, 3, 4 and 5 of this Article, taking into account the level of companies' involvement in the potential adverse impacts[68].

2. Companies shall be required to take the following actions, where relevant:

   (a) where necessary due to the nature or complexity of the measures required for prevention, without undue delay 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 potentially affected stakeholders;

   (b) seek contractual assurances from a direct business partner 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;

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68 ~~A recital will be added to clarify this provision along the following lines: "Companies should be obliged to prevent or mitigate the adverse impacts that they cause or to which they contribute. When companies are not causing nor contributing to the adverse impacts occurring in their value chain, they should be obliged to use their influence to prevent or mitigate the adverse impact caused by their subsidiaries or established business partners or to increase their influence to do so.".~~

(c) make necessary **financial or non-financial** investments, such as into management or production processes and infrastructures;

(d) provide targeted and proportionate support for an SME ~~with~~ which **is** ~~the company has~~ an established business ~~relationship~~ **partner of the company**, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME.[69] The targeted and proportionate support may take the form of financing, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing, or guidance, such as training or upgrading management systems;

(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.

3. As regards potential adverse impacts that could not be prevented or adequately mitigated by the measures in paragraph 2, the company may seek to conclude a contract with an indirect business partner, with a view to achieving compliance with the company's code of conduct or a prevention action plan. When such a contract is concluded, paragraph 4 shall apply.

~~69 A recital will be added to clarify the term jeopardise the viability of an SME along the following lines: "Jeopardising the viability of an SME should be interpreted as possibly causing a bankruptcy of the SME or putting the SME in a situation where bankruptcy is imminent.".~~

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.

When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.

5. As regards potential adverse impacts within the meaning of paragraph 1 that could not be prevented or adequately mitigated by the measures in paragraphs 2, 3 and 4, the company shall be required as a last resort to refrain from entering into new or extending existing relations with the **business** partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions:

(a) temporarily suspend the business relationship with respect to the activities concerned, while pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts will succeed in the short-term. If there is no such reasonable expectation or the efforts did not succeed in the short-term, the company shall terminate the business relationship;

(b) terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.

Member States shall provide for the availability of an option to temporarily suspend and terminate the business relationship in contracts governed by their laws in accordance with the first subparagraph, except for contracts where the parties are obliged by law to enter into them.

6. By way of derogation from paragraph 5, 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[70] to the entity to whom that service is being provided.

7. By way of derogation from paragraph 5, the company shall not be required to terminate the business relationship in case where:

(a) there is a reasonable expectation that the termination would result in an adverse impact that is more severe than the potential adverse impact that could not be prevented or adequately mitigated, or

(b) no available alternative to that business relationship, that provides a raw material, product or service essential to the company's production of goods or provision of services, exists and the termination would cause substantial prejudice to the company.

Where the company decides not to terminate the business relationship in accordance with subparagraph 1, it shall report to the competent supervisory authority about the duly justified reasons of this decision.

The company shall monitor the potential adverse impact, periodically reassess its decision not to terminate the business relationship and seek alternative business relationships.

[70] ~~A recital will be added to clarify the term substantial prejudice along the following lines: "Substantial prejudice should be interpreted as a negative and significant effect on the company's legal or financial situation or its production capacity, including in the long term perspective, such as effect giving rise to the likelihood of insolvency.".~~

8. The obligation to temporarily suspend or terminate the business relationship pursuant to paragraph 5 shall not apply to commercial agreements concluded by the company before the expiry of the transposition period in accordance with Article 30 of this Directive.

Article 8

Bringing actual adverse impacts to an end

1. Member States shall ensure that companies take appropriate measures to bring actual adverse impacts that have been, or should have been, identified pursuant to Article 6 and, where necessary, prioritised pursuant to Article 6a to an end, in accordance with paragraphs 2 to 6 of this Article, taking into account the level of companies' involvement in the actual adverse impacts~~71~~.

2. Where the adverse impact cannot be brought to an end, Member States shall ensure that companies minimise the extent of such an impact.

3. Companies shall be required to take the following actions, where relevant:

   (a) neutralise the adverse impact or minimise its extent. The action shall be proportionate to the significance and ~~scale~~ **scope** of the adverse impact and to the company's involvement in the adverse impact;

   (b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, without undue delay develop and implement a corrective action plan with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. The corrective action plan shall be developed in consultation with stakeholders;

~~71~~ ~~A recital will be added to clarify this provision along the following lines: "Companies should be obliged to bring to an end or minimise the extent of the adverse impacts that they cause or to which they contribute. When companies are not causing nor contributing to the adverse impacts occurring in their value chain, they should be obliged to use their influence to bring to an end or minimise the extent of the adverse impact caused by their subsidiaries or established business partners or to increase their influence to do so.".~~

(c) seek contractual assurances from a direct business partner that it will ensure compliance with the code of conduct and, as necessary, a corrective action plan, including by seeking corresponding contractual assurances from its partners, to the extent that they are part of the value chain (contractual cascading). When such contractual assurances are obtained, paragraph 5 shall apply;

(d) make necessary **financial or non-financial** investments, such as into management or production processes and infrastructures;

(e) provide targeted and proportionate support for an SME ~~with~~ which ~~the company has~~**is** an established business ~~relationship~~ **partner of the company**, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME.[72] The targeted and proportionate support may take the form of financing, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing, or guidance, such as training or upgrading management systems;

(f) 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 or minimise the extent of such impact, in particular where no other action is suitable or effective;

(g) provide remediation to the affected persons and communities.

~~[72] A recital will be added to clarify the term jeopardise the viability of an SME, as mentioned in footnote 63.~~

4. As regards actual adverse impacts that could not be brought to an end or adequately mitigated by the measures in paragraph 3, the company may seek to conclude a contract with an indirect business partner, with a view to achieving compliance with the company's code of conduct or a corrective action plan. When such a contract is concluded, paragraph 5 shall apply.

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.

When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.

6. As regards actual adverse impacts within the meaning of paragraph 1 that could not be brought to an end or the extent of which could not be minimised by the measures provided for in paragraphs 3, 4 and 5, the company shall be required as a last resort to refrain from entering into new or extending existing relations with the **business** partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions:

(a) temporarily suspend the business relationship with respect to the activities concerned, while pursuing efforts to bring to an end or minimise the extent of the adverse impact, if there is reasonable expectation that these efforts will succeed in the short-term. If there is no such reasonable expectation or the efforts did not succeed in the short-term, the company shall terminate the business relationship;

(b) terminate the business relationship with respect to the activities concerned, if the adverse impact is considered severe.

Member States shall provide for the availability of an option to temporarily suspend and terminate the business relationship in contracts governed by their laws in accordance with the first subparagraph, except for contracts where the parties are obliged by law to enter into them.

7. By way of derogation from paragraph 6, 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[73] to the entity to whom that service is being provided.

8. By way of derogation from paragraph 6, the company shall not be required to terminate the business relationship in case where:

(a) there is a reasonable expectation that the termination would result in an adverse impact that is more severe than the actual adverse impact that could not be brought to an end or minimised, or

(b) no available alternative to that business relationship, that provides a raw material, product or service essential to the company's production of goods or provision of services, exists and the termination would cause substantial prejudice to the company.

Where the company decides not to terminate the business relationship in accordance with subparagraph 1, it shall report to the competent supervisory authority about the duly justified reasons of this decision.

The company shall monitor the actual adverse impact, periodically reassess its decision not to terminate the business relationship and seek alternative business relationships.

~~[73] A recital will be added to clarify the term substantial prejudice, as mentioned in footnote 64.~~

9. The obligation to temporarily suspend or terminate the business relationship pursuant to paragraph 6 shall not apply to commercial agreements concluded by the company before the expiry of the transposition period in accordance with Article 30 of this Directive.

Article 9

Complaints procedure

1. Member States shall ensure that companies provide the possibility for persons and organisations listed in paragraph 2 to submit complaints to them where they have legitimate concerns regarding actual or potential adverse ~~human rights impacts and adverse environmental~~ impacts with respect to their own operations, the operations of their subsidiaries and their value chains.

2. Member States shall ensure that the complaints may be submitted by:

   (a) persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact,

   (b) trade unions and other workers' representatives representing individuals working in the value chain concerned,

   (c) civil society organisations active in the areas related to the value chain concerned;

3. Member States shall ensure that the companies establish a fair, accessible, and transparent[74] procedure for dealing with complaints referred to in paragraph 1, including a procedure when the company considers the complaint to be unfounded, and inform the relevant workers and trade unions of those procedures. **The procedure shall ensure the confidentiality of the identity of the person or organisation submitting the complaint, and the necessary measures to prevent any form of retaliation from the company and its subsidiaries.**

Member States shall ensure that where the complaint is well-founded, the adverse impact that is the subject matter of the complaint is deemed to be identified within the meaning of Article 6 and the company shall take appropriate measures in accordance with Articles 7 and 8, including providing remediation where relevant.

4. Member States shall ensure that complainants are entitled

(a) to request appropriate follow-up on the complaint from the company with which they have filed a complaint pursuant to paragraph 1, and

(b) to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint.

5. Member States shall ensure that companies are allowed to fulfill the obligations laid down in paragraphs 1 and 3, first subparagraph, by participation in collaborative complaints procedures, including those established jointly by companies, through industry associations or multi-stakeholders initiatives, provided that the collective procedures meet the requirements set out in this Article.

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74 ~~A recital 42 will be amended to clarify the relationship with grievance mechanisms under the UN Guiding Principles. Third sentence could be amended along the following lines: "Companies should establish a fair, accessible and transparent procedure for dealing with those complaints and inform workers, trade unions and other workers' representatives, where relevant, about such procedures, which should be understood in line with principle 31 of United Nations Guiding Principles on Business and Human Rights.".~~

Article 10

Monitoring

1. Member States shall ensure that companies carry out periodic assessments of their own operations and measures, those of their subsidiaries and, where related to the value chains of the company, those of their established business ~~relationships~~ **partners**, to monitor the effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of ~~human rights and environmental~~ adverse impacts. Such assessments shall be based, where appropriate, on qualitative and quantitative indicators and be carried out without undue delay after a significant change occurs, but at least every 24 months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise. The due diligence policy shall be updated in accordance with the outcome of those assessments and with due consideration of relevant information from stakeholders.

2. By way of derogation from paragraph 1, companies referred to in Article 3, point (a)(iv) shall in respect to established business ~~relationships~~ **partners**, where related to their value chain, carry out periodic assessments only to monitor the effectiveness of the prevention, mitigation, bringing to an end and minimisation of the extent of ~~human rights and environmental~~ adverse impacts identified in accordance with Article 6(3).

Article 11

Communicating

1. Member States shall ensure that companies that are not subject to reporting requirements under Articles 19a and 29a of Directive 2013/34/EU report on the matters covered by this Directive by publishing on their website an annual statement in a language customary in the sphere of international business. The statement shall be published within a reasonable period of time which shall not exceed 12 months after the balance sheet date of the financial year for which the statement is drawn up.

Companies that are included in consolidated management report in accordance with Articles 19a(7) and 29a(7) of Directive 2013/34/EU shall be deemed to have fulfilled the obligation under this Article.

2. The Commission shall adopt delegated acts in accordance with Article 28 concerning the content and criteria for such reporting under paragraph 1, specifying information on the description of due diligence, potential and actual adverse impacts and actions taken on those.

Article 12

Model contractual clauses

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, in consultation with Member States and stakeholders, shall adopt guidance about voluntary model contract clauses.

Article 13

Guidelines

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.

Article 14

Accompanying measures

1. Member States shall, in order to provide information and support to companies and the **established business** partners ~~with whom they have established business relationships~~ in their value chains in their efforts to fulfil the obligations resulting from this Directive, set up and operate individually or jointly dedicated websites, platforms or portals. Specific consideration shall be given, in that respect, to the SMEs that are present in the value chains of companies.

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

3. The Commission may complement Member States' support measures building on existing Union action to support due diligence in the Union and in third countries and may devise new measures, including facilitation of joint stakeholder initiatives to help companies fulfil their obligations.

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**.**

Article 15

Combating climate change

1. Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan**,** including implementing actions and related financial and investments plans, to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 (European Climate Law), and where relevant, the exposure of the undertaking to coal, oil and gas-related activities. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations.

2. Member States shall ensure that, in case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company includes greenhouse gas emission reduction objectives in its plan.

3 […]

Article 16

Authorised representative

1. Member States shall ensure that each company referred to in Article 2(2) designates a legal or natural person as its authorised representative, established or domiciled in one of the Member States where it operates. The designation shall be valid when confirmed as accepted by the authorised representative.

2. Member States shall ensure that the name, address, electronic mail address and telephone number of the authorised representative is notified to a supervisory authority in the Member State where the authorised representative is domiciled or established. Member States shall ensure that the authorised representative is obliged to provide, upon request, a copy of the designation in an official language of a Member State to any of the supervisory authorities.

3. Member States shall ensure that a supervisory authority in the Member State where the authorised representative is domiciled or established and, where it is different, a supervisory authority in the Member State in which the company generated most of its net turnover in the Union in the financial year preceding the last financial year are informed that the company is a company within the meaning of Article 2(2).

4. Member States shall ensure that each company empowers its authorised representative to receive communications from supervisory authorities on all matters necessary for compliance with and enforcement of national provisions transposing this Directive. Companies shall be required to provide their authorised representative with the necessary powers and resources to cooperate with supervisory authorities.

Article 17

Supervisory Authorities

1. Each Member State shall designate one or more supervisory authorities to supervise compliance with the obligations laid down in national provisions adopted pursuant to Articles 6 to 11 and Article 15 (‘supervisory authority’).

2. As regards the companies referred to in Article 2(1), the competent supervisory authority shall be that of the Member State in which the company has its registered office.

3. As regards companies referred to in Article 2(2), the competent supervisory authority shall be that of the Member State in which the company has a branch. If the company does not have a branch in any Member State, or has branches located in different Member States, the competent supervisory authority shall be the supervisory authority of the Member State in which the company generated most of its net turnover in the Union in the financial year preceding the last financial year before the date indicated in Article 30 or the date on which the company first fulfils the criteria laid down in Article 2(2), whichever comes last.

Companies referred to in Article 2(2) may, on the basis of a change in circumstances leading to it generating most of its turnover in the Union in a different Member State, make a duly reasoned request to change the supervisory authority that is competent to regulate matters covered in this Directive in respect of that company.

3a. Where the parent company fulfils the obligations resulting from this Directive on behalf of its subsidiaries in accordance with Article 4a, the competent supervisory authority for the parent company and its subsidiaries shall be that of the parent company pursuant to paragraphs 2 or 3, first subparagraph.

When the supervisory authority under the first subparagraph identifies a failure of the subsidiary to comply with the obligations provided for in Article 4a(2), it shall notify the supervisory authority that would be competent in respect of that subsidiary in accordance with paragraphs 2 or 3, first subparagraph, to carry out the powers in respect of that subsidiary in accordance with Articles 18 and 20.

4. Where a Member State designates more than one supervisory authority, it shall ensure that the respective competences of those authorities are clearly defined and that they cooperate closely and effectively with each other.

5. Member States may designate the authorities for the supervision of regulated financial undertakings also as supervisory authorities for the purposes of this Directive.

6. By the date indicated in Article 30(1), point (a), Member States shall inform the Commission of the names and contact details of the supervisory authorities designated pursuant to this Article, as well as of their respective competence where there are several designated supervisory authorities. They shall inform the Commission of any changes thereto.

7. The Commission shall make publicly available, including on its website, a list of the supervisory authorities. The Commission shall regularly update the list on the basis of the information received from the Member States.

8. Member States shall guarantee the independence of the supervisory authorities and shall ensure that they, and all persons working for or who have worked for them and auditors or experts acting on their behalf, exercise their powers impartially, transparently and with due respect for obligations of professional secrecy. In particular, Member States shall ensure that the authority is legally and functionally independent from the companies falling within the scope of this Directive or other market interests, that its staff and the persons responsible for its management are free of conflicts of interest, subject to confidentiality requirements, and that they refrain from any action incompatible with their duties.

Article 18

Powers of supervisory authorities

1. Member States shall ensure that the supervisory authorities have adequate powers and resources to carry out the tasks assigned to them under this Directive, including the power to request information and carry out investigations related to compliance with the obligations set out in this Directive.

2. A supervisory authority may initiate an investigation on its own motion or as a result of substantiated concerns communicated to it pursuant to Article 19, where it considers that it has sufficient information indicating a possible breach by a company of the obligations provided for in the national provisions adopted pursuant to this Directive.

3. Inspections shall be conducted in compliance with the national law of the Member State in which the inspection is carried out and with prior warning to the company, except where prior notification hinders the effectiveness of the inspection. Where, as part of its investigation, a supervisory authority wishes to carry out an inspection on the territory of a Member State other than its own, it shall seek assistance from the supervisory authority in that Member State pursuant to Article 21(2).

4. If, as a result of the actions taken pursuant to paragraphs 1 and 2, a supervisory authority identifies a failure to comply with national provisions adopted pursuant to this Directive, it shall grant the company concerned an appropriate period of time to take remedial action, if such action is possible.

   Taking remedial action does not preclude the imposition of administrative sanctions or the triggering of civil liability in case of damages, in accordance with Articles 20 and 22, respectively.

5. When carrying out their tasks, supervisory authorities shall have at least the following powers:

   (a) to order the cessation of infringements of the national provisions adopted pursuant to this Directive, abstention from any repetition of the relevant conduct and, where appropriate, remedial action proportionate to the infringement and necessary to bring it to an end;

   (b) to impose pecuniary sanctions in accordance with Article 20;

   (c) to adopt interim measures to avoid the risk of severe and irreparable harm.

6. Where the legal system of the Member State does not provide for administrative sanctions, this Article and Article 20 may be implemented in such a manner that the sanction is initiated by the competent supervisory authority and imposed by the competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative sanctions imposed by supervisory authorities.

7. Member States shall ensure that each natural or legal person has the right to an effective judicial remedy against a legally binding decision by a supervisory authority concerning them.

Article 19

Substantiated concerns

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').

2. Where the substantiated concern falls under the competence of another supervisory authority, the authority receiving the concern shall transmit it to that authority.

3. Member States shall ensure that supervisory authorities assess the substantiated concerns and, where appropriate, exercise their powers as referred to in Article 18.

4. The supervisory authority shall, as soon as possible and in accordance with the relevant provisions of national law and in compliance with Union law, inform the person referred to in paragraph 1 of the result of the assessment of their substantiated concern and shall provide the reasoning for it.

5. Member States shall ensure that the persons submitting the substantiated concern according to this Article and having, in accordance with national law, a legitimate interest in the matter 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.

Article 20

Sanctions

1. Member States shall lay down the rules on sanctions applicable to infringements of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive.

2. In deciding whether to impose sanctions and, if so, in determining their nature and appropriate level, due account shall be taken of the company's efforts to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as collaboration with other entities to address adverse impacts in its value chain, as the case may be.

3. When pecuniary sanctions are imposed, they shall be based on the company's turnover.

4. Member States shall ensure that any decision of the supervisory authorities containing sanctions related to the breach of the provisions of this directive is published.

Article 21

European Network of Supervisory Authorities

1. The Commission shall set up a European Network of Supervisory Authorities, composed of representatives of the supervisory authorities. The Network shall facilitate the cooperation of the supervisory authorities and the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, sharing of information among them.

   The Commission may invite Union agencies with relevant expertise in the areas covered by this Directive to join the European Network of Supervisory Authorities.

2. Supervisory authorities shall provide each other with relevant information and mutual assistance in carrying out their duties and shall put in place measures for effective cooperation with each other. Mutual assistance shall include collaboration with a view to the exercise of the powers referred to in Article 18, including in relation to inspections and information requests.

3. Supervisory authorities shall take all appropriate steps needed to reply to a request for assistance by another supervisory authority without undue delay and no later than 1 month after receiving the request. Such steps may include, in particular, the transmission of relevant information on the conduct of an investigation.

4. Requests for assistance shall contain all the necessary information, including the purpose of and reasons for the request. Supervisory authorities shall only use the information received through a request for assistance for the purpose for which it was requested.

5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress regarding the measures to be taken in order to respond to the request for assistance.

6. Supervisory authorities shall not charge each other fees for actions and measures taken pursuant to a request for assistance.

However, supervisory authorities may agree on rules to indemnify each other for specific expenditure arising from the provision of assistance in exceptional cases.

7. The supervisory authority that is competent pursuant to Article 17(3) shall inform the European Network of Supervisory Authorities of that fact and of any request to change the competent supervisory authority.

8. When doubts exist as to the attribution of competence, the information on which that attribution is based will be shared with the European Network of Supervisory Authorities, which may coordinate efforts to find a solution.

Article 22

Civil liability of companies and a right to full compensation

1. Member States shall ensure that companies ~~are~~ **can be held** liable for damages stemming from the adverse impact that was or should have been identified pursuant to Article 6 and that companies **intentionally or negligently** caused or contributed to by failing to comply with the obligations laid down in Articles 7 and 8.~~75,76~~ **Where the company was held liable in accordance with this paragraph, a natural or legal person shall have the right to full compensation for the damage occurred.**

Full compensation under this Directive shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages.

~~75~~ ~~A corresponding recital will be added as follows: "A company should not be liable for the damage that would have occurred to the same extent even if the company had taken action in accordance with this Directive.".~~

~~76~~ ~~The Presidency tries to further clarify the text as regards the three constitutive elements: damage, a breach of duty and causal link. Damage stems from adverse impact that was or should have been identified. The breach of duty is expressed by a failure to comply with Articles 7 and 8. The causal link between the damage and the breach of duty is limited only to two potential levels of involvement of the company in the adverse impact (as defined in Article 3, point (r)) – company causing or contributing to the adverse impact. This does not entail the liability of the company for every damage that occurs in their value chain (a strict liability). When the existence of civil liability will be assessed by the courts, it will be assessed whether the company took all the appropriate measures in the circumstances of the case (see definition in Article 3, point (q)) and whether there is a causal link ("cause and contribute to") between the damage and the breach of duty. If the company has complied with the due diligence duty, the company would not be held liable for the damage occurred. The fault (in the form of intention or negligence) is not a constitutive element of civil liability under the proposed Directive. This is due to the fact that the due diligence duty is an obligation of means (see also an explanation in recital 15).~~

2. Member States shall ensure that where a company prioritised adverse impacts in accordance with Article 6a and the damage stems from the less significant adverse impact that was not yet adressed, it shall not be **held** liable for the damage occurred[~~77~~], unless the company prioritised the identified actual and potential adverse impacts in a way that it was unreasonable to expect that the prioritisation would be adequate to the circumstances of the case.

3. The civil liability of a company for damages arising under this provision shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the value chain.

When the company contributed to the damage in accordance with paragraph 1, it shall be liable jointly and severally with any subsidiary, direct or indirect business partner contributing to the damage, without prejudice to the provisions of national law concerning the conditions of joint and several liability and the rights of recourse.

4. The civil liability rules under this Directive shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.

~~77 The Presidency proposes to change the legal approach. If the company prioritised adverse impact in line with Article 6a and fulfilled all the requirements, it did not fail to comply with any duty under the proposed Directive, hence this provision cannot be worded as an exemption from the liability. Instead, it should be made clear that the conditions giving rise to civil liability are not met. On the contrary, if the company carried out the prioritisation in an unreasonable way it breached Article 6a, thus other provisions under the proposed Directive. As a result, the conditions of civil liability have been met and the company should be held liable.~~

5. Member States shall ensure that the liability provided for in provisions of national law transposing this Article **and all related national rules to the extent necessary to ensure the protection of persons affected by adverse impacts, including the requirements as regards which natural or legal person can bring the claim, the statute of limitations, the conditions of liability, objections and defences, and the calculation of compensation, are** ~~is~~ of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.

Article 23

Reporting of breaches and protection of reporting persons

Directive (EU) 2019/1937 shall apply to the reporting of all breaches of this Directive and the protection of persons reporting such breaches.

Article 24

Public support

Member States shall ensure that companies applying for public support certify that no sanctions pursuant to Article 20 have been imposed on them for a failure to comply with the obligations of this Directive in the 3 years prior to the application. This provision shall be without prejudice to any public support that has already been provided to the company in question prior to the expiry of the transposition period in accordance with Article 30 of this Directive.

Article 25

[…]

Article 26

[…]

Article 27

Amendment to Directive (EU) No 2019/1937

In Point E.2 of Part I of the Annex to Directive (EU) No 2019/1937, the following point is added:

‘(vi) [Directive … of the European Parliament and of the Council of … on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937*+]’

Article 28

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 11 shall be conferred on the Commission for an indeterminate period of time.

+ OJ: Please insert in the text the number and the date of the Directive contained in document ... and insert the OJ reference of that Directive in the footnote.

3. The delegation of power referred to in Article 11 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 11 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."

Article 29

Review

No later than … [*OP please insert the date = 7 years after the date of entry into force of this Directive]*, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive. The report shall evaluate the effectiveness of this Directive in reaching its objectives and assess the following issues:

(a) whether the thresholds regarding the number of employees and net turnover laid down in Article 2(1) need to be revised;

(b) whether the list of sectors in Article 2(1), point (b), needs to be changed, including in order to align it to guidance from the Organisation for Economic Cooperation and Development;

(c) whether the Annex **I** needs to be modified, including in light of international developments**;**

(d) whether Articles 4 to 14 should be extended to adverse climate impacts.

Article 30

Transposition

1. Member States shall adopt and publish, by … [*OJ to insert: 2 years from the entry into force of this Directive]* at the latest, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions as follows:

(a) from… [OJ to insert: 2 years from the entry into force of this Directive] as regards companies referred to in Article 2(1), point (a), and Article 2(2), point (a);

(b) from … [OJ to insert: 4 years from the entry into force of this Directive] as regards companies referred to in Article 2(1), point (b), and Article 2(2), point (b).

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 31

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 32

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

PART I

1. VIOLATIONS OF RIGHTS AND PROHIBITIONS INCLUDED IN INTERNATIONAL HUMAN RIGHTS AGREEMENTS

1. Violation of the people's right to dispose of a land's natural resources and to not be deprived of means of subsistence in accordance with Article 1 of the International Covenant on Civil and Political Rights;

2. Violation of the right to life and security in accordance with Article 3 of the Universal Declaration on Human rights;

3. Violation of the prohibition of torture, cruel, inhuman or degrading treatment in accordance with Article 5 of the Universal Declaration of Human Rights;

4. Violation of the right to liberty and security in accordance with Article 9 of the Universal Declaration of Human Rights;

5. Violation of the prohibition of arbitrary or unlawful interference with a person's privacy, family, home or correspondence and attacks on their reputation, in accordance with Article 12 of the Universal Declaration of Human Rights;

6. Violation of the prohibition of interference with the freedom of thought, conscience and religion in accordance with Article 18 of the Universal Declaration of Human Rights;

7. Violation of the right to enjoy just and favourable conditions of work including a fair wage, a decent living, safe and healthy working conditions and reasonable limitation of working hours in accordance with Article 7 of the International Covenant on Economic, Social and Cultural Rights;

8. Violation of the prohibition to restrict workers' access to adequate housing, if the workforce is housed in accommodation provided by the company, and to restrict workers' access to adequate food, clothing, and water and sanitation in the work place in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights;

9. Violation of the right of the child to have his or her best interests given primary consideration in all decisions and actions that affect children in accordance with Article 3 of the Convention of the Rights of the Child; violation of the right of the child to develop to his or her full potential in accordance with Article 6 of the Convention of the Rights of the Child; violation of the right of the child to the highest attainable standard of health in accordance with Article 24 of the Convention on the Rights of the Child; violation of the right to social security and an adequate standard of living in accordance with Article 26 and 27 of the Convention on the Rights of the Child; violation of the right to education in accordance with Article 28 of the Convention on the Rights of the Child; violation of the right of the child to be protected from all forms of sexual exploitation and sexual abuse and to be protected from being abducted, sold or moved illegally to a different place in or outside their country for the purpose of exploitation, in accordance with Articles 34 and 35 of the Convention of the Rights of the Child;

10. Violation of the prohibition of the employment of a child under the age at which compulsory schooling is completed and, in any case, is not less than 15 years, except where the law of the place of employment so provides in accordance with Article 2 (4) and Articles 4 to 8 of the International Labour Organization Minimum Age Convention, 1973 (No. 138);

11. Violation of the prohibition of child labour pursuant to Article 32 of the Convention on the Rights of the Child, including the worst forms of child labour for children (persons below the age of 18 years) in accordance with Article 3 of the of the International Labour Organization Worst Forms of Child Labour Convention, 1999 (No. 182). This includes:

(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, as well as forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflicts,

(b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances,

(c) The use, procuring or offering of a child for illicit activities, in particular for the production of or trafficking in drugs,

(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children;

12. Violation of the prohibition of forced labour; this includes all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily, for example as a result of debt bondage or trafficking in human beings; excluded from forced labour are any work or services that comply with Article 2 (2) of International Labour Organization Forced Labour Convention, 1930 (No. 29) or with Article 8 (3) (b) and (c) of the International Covenant on Civil and Political Rights;

13. Violation of the prohibition of all forms of slavery, practices akin to slavery, serfdom or other forms of domination or oppression in the workplace, such as extreme economic or sexual exploitation and humiliation in accordance with Article 4 of the Universal Declaration of Human Rights and Art. 8 of the International Covenant on Civil and Political Rights;

14. Violation of the prohibition of human trafficking in accordance with Article 3 of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

15. Violation of the right to freedom of association, assembly, the rights to organise and collective bargaining in accordance with Article 20 of the Universal Declaration of Human Rights, Articles 21 and 22 of the International Covenant on Civil and Political Rights Article 8 of the International Covenant on Economic, Social and Cultural Rights, the International Labour Organization Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the International Labour Organization Right to Organise and Collective Bargaining Convention, 1949 (No. 98), including the following rights:

(a) workers are free to form or join trade unions,

(b) the formation, joining and membership of a trade union must not be used as a reason for unjustified discrimination or retaliation,

(c) workers' organisations are free to operate in accordance with applicable in line with their constitutions and rules without interference from the authorities;

(d) the right to strike and the right to collective bargaining;

16. Violation of the prohibition of unequal treatment in employment, unless this is justified by the requirements of the employment in accordance with Article 2 and Article 3 of the International Labour Organisation Equal Remuneration Convention, 1951 (No. 100), Article 1 and Article 2 of the International Labour Organisation Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Article 7 of the International Covenant on Economic, Social and Cultural Rights; unequal treatment includes, in particular, the payment of unequal remuneration for work of equal value;

17. Violation of the prohibition of withholding an adequate living wage in accordance with Article 7 of the International Covenant on Economic, Social and Cultural Rights;

18. Violation of the prohibition of causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions or excessive water consumption or other impact on natural resources, that

(a) impairs the natural bases for the preservation and production of food or

(b) denies a person access to safe and clean drinking water or

(c) makes it difficult for a person to access sanitary facilities or destroys them or

(d) harms the health, safety, the normal use of property or land or the normal conduct of economic activity of a person or

(e) affects ecological integrity, such as deforestation,

in accordance with Article 3 of the Universal Declaration of Human Rights, Article 5 of the International Covenant on Civil and Political Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights;

19. Violation of the prohibition to unlawfully evict or take land, forests and waters when acquiring, developing or otherwise use land, forests and waters, including by deforestation, the use of which secures the livelihood of a person in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights;

20. Violation of the indigenous peoples' right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired in accordance with Article 25, 26 (1) and (2), 27, and 29 (2) of the United Nations Declaration on the Rights of Indigenous Peoples;

21. Violation of a prohibition or right not covered by points 1 to 20 above but included in the human rights agreements listed in Section 2 of this Part, which directly impairs a legal interest protected in those agreements, provided that the company concerned could have reasonably established the risk of such impairment and any appropriate measures to be taken in order to comply with the obligations referred to in Article 4 of this Directive taking into account all relevant circumstances of their operations, such as the sector and operational context.

2. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONVENTIONS

- The Universal Declaration of Human Rights;
- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Prevention and Punishment of the Crime of Genocide;
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination Against Women;
- The Convention on the Rights of the Child;
- The Convention on the Rights of Persons with Disabilities;
- The United Nations Declaration on the Rights of Indigenous Peoples;
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

- United Nations Convention against Transnational Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- The International Labour Organization's Declaration on Fundamental Principles and Rights at Work;
- The International Labour Organization's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;
- The International Labour Organization's core/fundamental conventions:
    - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
    - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
    - Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol;
    - Abolition of Forced Labour Convention, 1957 (No. 105)
    - Minimum Age Convention, 1973 (No. 138)
    - Worst Forms of Child Labour Convention, 1999 (No. 182)
    - Equal Remuneration Convention, 1951 (No. 100)
    - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

PART II

VIOLATIONS OF INTERNATIONALLY RECOGNIZED OBJECTIVES AND PROHIBITIONS INCLUDED IN ENVIRONMENTAL CONVENTIONS

1. Violation of the obligation to take the necessary measures related to the use of biological resources in order to avoid or minimize adverse impacts on biological diversity, in line with Article 10 (b) of the 1992 Convention on Biological Diversity and [taking into account possible amendments following the post 2020 UN Convention on Biological Diversity], including the obligations of the Cartagena Protocol on the development, handling, transport, use, transfer and release of living modified organisms and of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 12 October 2014;

2 Violation of the prohibition to import or export any specimen included in an Appendix of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973 without a permit, pursuant to Articles III, IV and V;

3. Violation of the prohibition of the manufacture of mercury-added products pursuant to Article 4 (1) and Annex A Part I of the Minamata Convention on Mercury of 10 October 2013 (Minamata Convention);

4. Violation of the prohibition of the use of mercury and mercury compounds in manufacturing processes within the meaning of Article 5 (2) and Annex B Part I of the Minamata Convention from the phase-out date specified in the Convention for the respective products and processes;

5. Violation of the prohibition of the treatment of mercury waste contrary to the provisions of Article 11 (3) of the Minamata Convention;

6. Violation of the prohibition of the production and use of chemicals pursuant to Article 3 (1) (a) (i) and Annex A of the Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants (POPs Convention), in the version of Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169 of 25 June 2019 pp. 45-77;

7. Violation of the prohibition of the handling, collection, storage and disposal of waste in a manner that is not environmentally sound in accordance with the regulations in force in the applicable jurisdiction under the provisions of Article 6 (1) (d) (i) and (ii) of the POPs Convention;

8. Violation of the prohibition of importing a chemical listed in Annex III of the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO), adopted on 10 September 1998, as indicated by the importing Party to the Convention in line with the Prior Informed Consent (PIC) Procedure;

9. Violation of the prohibition of the production and consumption of specific substances that deplete the ozone layer (i.e., CFCs, Halons, CTC, TCA, BCM, MB, HBFCs and HCFCs) after their phase-out pursuant to the Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;

10. Violation of the prohibition of exports of hazardous waste within the meaning of Article 1 (1) and other wastes within the meaning of Article 1 (2) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Basel Convention) and within the meaning of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190 of 12 July 2006 pp. 1-98) (Regulation (EC) No 1013/2006), as last amended by Commission Delegated Regulation (EU) 2020/2174 of 19 October 2020 (OJ L 433 of 22 December 2020 pp. 11-19)

(a) to a party that has prohibited the import of such hazardous and other wastes (Article 4 (1) (b) of the Basel Convention),

(b) to a state of import as defined in Article 2 no. 11 of the Basel Convention that does not consent in writing to the specific import, in the case where that state of import has not prohibited the import of such hazardous wastes (Article 4 (1) (c) of the Basel Convention),

(c) to a non-party to the Basel Convention (Article 4 (5) of the Basel Convention),

(d) to a state of import if such hazardous wastes or other wastes are not managed in an environmentally sound manner in that state or elsewhere (Article 4 (8) sentence 1 of the Basel Convention);

11. Violation of the prohibition of the export of hazardous wastes from countries listed in Annex VII to the Basel Convention to countries not listed in Annex VII (Article 4A of the Basel Convention, Article 36 of Regulation (EC) No 1013/2006);

12. Violation of the prohibition of the import of hazardous wastes and other wastes from a non-party to the Basel Convention (Article 4 (5) of the Basel Convention).

ANNEX II

LIST OF STATISTICAL CLASSIFICATION OF ECONOMIC ACTIVITIES DEFINED IN ANNEX IV OF REGULATION (EC) No 1893/2006 REFERRED TO IN POINT (b) OF ARTICLE 2(1)

Article	Sector	Corresponding NACE code
2(1)(b), point (i)	Manufacture of textiles, leather and related products (including footwear)	Section C, Division 13-15
2(1)(b), point (i)	Wholesale trade of textiles, clothing and footwear	Section G, Division 46, Group 46.4, Class 46.41-46.42
2(1)(b), point (ii)	Agriculture, forestry, fisheries (including aquaculture)	Section A
2(1)(b), point (ii)	Manufacture of food products and beverages	Section C, Division 10-11
2(1)(b), point (ii)	Wholesale trade of agricultural raw materials, live animals, wood, food and beverages	Section G, Division 46, Group 46.1, Class 46.11-46.13 and 46.16-46.17
		Section G, Division 46, Group 46.2
		Section G, Division 46, Group 46.3
2(1)(b), point (iii)	The extraction of mineral resources regardless from where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products)	Section B
2(1)(b), point (iii)	The manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment)	Section C, Division 23-25
2(1)(b), point (iii)	The wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products)	Section G, Division 46, Group 46.7, Class 46.71-73 and 46.75-76