Consultation response

AmCham EU response to the European Commission's public consultation on Sustainable Corporate Governance

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2018, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

American Chamber of Commerce to the European Union
Speaking for American business in Europe

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Consultation Document Proposal for an Initiative on Sustainable Corporate Governance

Fields marked with * are mandatory.

Disclaimer
This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.
The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.
Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

Introduction

Political context

The Commission's political guidelines set the ambition of Europe becoming the world's first climate-neutral continent by 2050 and foresee strong focus on delivering on the UN Sustainable Development Goals[1], which requires changing the way in which we produce and consume. Building on the political guidelines, in its Communication on the European Green Deal[2] (adopted in December 2019) and on A Strong Social Europe for Just Transition[3] (adopted in January 2020) the Commission committed to tackling climate and environmental-related challenges and set the ambition to upgrade Europe's social market economy.

The European Green Deal sets out that "sustainability should be further embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects."

Sustainability in corporate governance encompasses encouraging businesses to frame decisions in terms of their environmental (including climate, biodiversity), social, human and economic impact, as well as in terms of the company's development in the longer term (beyond 3-5 years), rather than focusing on short-term gains.

As a follow-up to the European Green Deal, the Commission has announced a sustainable corporate governance initiative for 2021, and the initiative was listed among the deliverables of the Action Plan on a Circular Economy[4], the Biodiversity strategy[5] and the Farm to Fork strategy[6]. This initiative would build on the results of the analytical and consultative work carried out under Action 10 of the Commission's 2018 Action Plan on Financing Sustainable Growth and would also be part of the Renewed Sustainable Finance

Strategy.

The recent Communication “Europe's moment: Repair and Prepare for the Next Generation” (Recovery Plan)[7] (adopted in May 2020) also confirms the Commission’s intention to put forward such an initiative with the objective to “ensure environmental and social interests are fully embedded into business strategies”. This stands in the context of competitive sustainability contributing to the COVID-19 recovery and to the long-term development of companies. Relevant objectives are strengthening corporate resilience, improving predictability and management of risks, dependencies and disruptions including in the supply chains, with the ultimate aim for the EU economy to build back stronger.

This initiative is listed in the Commission Work program for 2021 [8].

EU action in the area of sustainable corporate governance will complement the objectives of the upcoming Action Plan for the implementation of the European Pillar of Social Rights, to ensure that the transitions towards climate-neutrality and digitalisation are socially sustainable. It will also strengthen the EU’s voice at the global scene and would contribute to the respect of human rights, including labour rights– and corporate social responsibility criteria throughout the value chains of European companies – an objective identified in the joint Communication of the Commission and the High Representative on the Global EU response to COVID-19[9].

This initiative is complementary to the review of the Non-Financial Reporting Directive (NFRD, Directive 2014/95/EU[10]) which currently requires large public-interest companies to disclose to the public certain information on how they are affected by non-financial issues, as well as on the company’s own impacts on society and the environment. The NFRD also requires companies to report on their social and environmental policies and due diligence processes if they have them, or otherwise explain why they do not have any (comply or explain approach). Whilst the NFRD is based on incentives “to report”, the sustainable corporate governance initiative aims to introduce duties “to do”. Such concrete actions would therefore contribute to avoiding “greenwashing” and reaching the objectives of the on-going review of the NFRD too, in particular the aim of enhancing the reliability of information disclosed under the NFRD by ensuring that the reporting obligation is underpinned by adequate corporate and director duties, and the aim of mitigating systemic risks in the financial sector. Reporting to the public on the application of sustainability in corporate governance and on the fulfilment of directors’ and corporate duties would enable stakeholders to monitor compliance with these duties, thereby helping ensure that companies are accountable for how they mitigate their adverse environmental and social impacts.

The initiative would build upon relevant international standards on business and human rights and responsible business conduct, such as the United Nations’ Guiding Principles on Businesses and Human Rights and the OECD Guidelines for Multinational Enterprises and its Due Diligence Guidance for Responsible Business Conduct.

As regards environmental harm linked to deforestation, the Commission is also conducting a fitness check of the EU Timber Regulation and an impact assessment.

Finally, Covid-19 has put small and medium sized companies under financial pressure, partly due to increased delay in the payments from their larger clients. This raises the importance of the role of board members of companies to duly take into account the interests of employees, including those in the supply chains as well as the interests of persons and suppliers affected by their operations. Further support measures for SMEs also require careful consideration.

Results of two studies conducted for the Commission

To integrate properly sustainability within corporate strategies and decisions, the High-Level Expert Group on Sustainable Finance[11] recommended in 2018 that the EU clarifies corporate board members´ duties so that stakeholder interests are properly considered. Furthermore, they recommended for the EU to require that directors adopt a sustainability strategy with proper targets, have sufficient expertise in sustainability, and to improve regulation on remuneration.

In its 2018 Action Plan on Financing Sustainable Growth[12] the Commission announced that it would carry out analytical and consultative work on the possible need to legislate in this area.

The Commission has been looking at further obstacles that hinder the transition to an environmentally and socially sustainable economy, and at the possible root causes thereof in corporate governance regulation and practices. As part of this work, two studies have been conducted which show market failures and favour acting at the EU level.

The *study on directors' duties and sustainable corporate governance* [13] evidences that there is a trend in the last 30 years for listed companies within the EU to focus on short-term benefits of shareholders rather than on the long-term interests of the company. Data indicate an upward trend in shareholder pay-outs, which increased from 20% to 60% of net income while the ratio of investment (capital expenditure) and R&D spending to net income has declined by 45% and 38% respectively. The study argues that sustainability is too often overlooked by short-term financial motives and that to some extent, corporate short-termism finds its root causes in regulatory frameworks and market practices. Against these findings, the study argues that EU policy intervention is required to lengthen the time horizon in corporate decision-making and promote a corporate governance more conducive to sustainability. To achieve this, it spells out three specific objectives of any future EU intervention: strengthening the role of directors in pursuing their company's long-term interest by dispelling current misconceptions in relation to their duties, which lead them to prioritise short-term financial performance over the long-term interest of the company; improving directors' accountability towards integrating sustainability into corporate strategy and decision-making; and promoting corporate governance practices that contribute to company sustainability, by addressing relevant unfavourable practices (e.g. in the area of board remuneration, board composition, stakeholder involvement).

The *study on due diligence requirements* through the supply chain[14] focuses on due diligence processes to address adverse sustainability impacts, such as climate change, environmental, human rights (including labour rights) harm in companies' own operations and in their value chain, by identifying and preventing relevant risks and mitigating negative impacts. The study shows that in a large sample of mostly big companies participating in the study survey, only one in three businesses claim to undertake due diligence which takes into account all human rights and environmental impacts. Therefore voluntary initiatives, even when backed by transparency do not sufficiently incentivise good practice. The study shows wide stakeholder support, including from frontrunner businesses, for mandatory EU due diligence. 70% of businesses responding to the survey conducted for the study agreed that EU regulation might provide benefits for business, including legal certainty, level playing field and protection in case of litigation. The study shows that a number of EU Member States have adopted legislation or are considering action in this field. A potential patchwork of national legislation may jeopardise the single market and increase costs for businesses. A cross-sectoral regulatory measure, at EU level, was preferred to sector specific frameworks.

Objectives of this public consultation

This public consultation aims to collect the views of stakeholders with regard to a possible Sustainable Corporate Governance Initiative. It builds on data collected in particular in the two studies mentioned above and on their conclusions, as well as on the feedback received in the public consultation on the Renewed Sustainable Finance Strategy[15]. It includes questions to allow the widest possible range of stakeholders to provide their views on relevant aspects of sustainable corporate governance.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- (x) English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* Surname

Bartolini

* I am giving my contribution as

- Academic/research institution
- Business association
- (selected) Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Emilie

* Email (this won't be published)

eba@amchameu.eu

* Organisation name

255 character(s) maximum

American Chamber of Commerce to the European Union (AmCham EU)

* Organisation size

- Micro (1 to 9 employees)
- (selected) Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

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Check if your organisation is on the [transparency register](). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

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- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh

- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
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- Fiji
- Finland
- France
- French Guiana
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- Libya
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- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova

- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South

	French Southern and Antarctic Lands		Sandwich Islands
Barbados	Gabon	Monaco	South Korea
Belarus	Georgia	Mongolia	South Sudan
Belgium	Germany	Montenegro	Spain
Belize	Ghana	Montserrat	Sri Lanka
Benin	Gibraltar	Morocco	Sudan
Bermuda	Greece	Mozambique	Suriname
Bhutan	Greenland	Myanmar /Burma	Svalbard and Jan Mayen
Bolivia	Grenada	Namibia	Sweden
Bonaire Saint Eustatius and Saba	Guadeloupe	Nauru	Switzerland
Bosnia and Herzegovina	Guam	Nepal	Syria
Botswana	Guatemala	Netherlands	Taiwan
Bouvet Island	Guernsey	New Caledonia	Tajikistan
Brazil	Guinea	New Zealand	Tanzania
British Indian Ocean Territory	Guinea-Bissau	Nicaragua	Thailand
British Virgin Islands	Guyana	Niger	The Gambia
Brunei	Haiti	Nigeria	Timor-Leste
Bulgaria	Heard Island and McDonald Islands	Niue	Togo
Burkina Faso	Honduras	Norfolk Island	Tokelau
Burundi	Hong Kong	Northern Mariana Islands	Tonga
Cambodia	Hungary	North Korea	Trinidad and Tobago
Cameroon	Iceland	North Macedonia	Tunisia

Canada
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Cayman Islands
Central African Republic
Chad
Chile
China
Christmas Island
Clipperton
Cocos (Keeling) Islands
Colombia
Comoros
Congo
Cook Islands
Costa Rica
Côte d’Ivoire
Croatia
Cuba
Curaçao
Cyprus
Czechia

India
Indonesia
Iran
Iraq
Ireland
Isle of Man
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Italy
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Paraguay
Peru
Philippines
Pitcairn Islands
Poland
Portugal
Puerto Rico
Qatar
Réunion
Romania
Russia
Rwanda
Saint Barthélemy
Saint Helena Ascension and Tristan da Cunha

Turkey
Turkmenistan
Turks and Caicos Islands
Tuvalu
Uganda
Ukraine
United Arab Emirates
United Kingdom
United States
United States Minor Outlying Islands
Uruguay
US Virgin Islands
Uzbekistan
Vanuatu
Vatican City
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Vietnam
Wallis and Futuna
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Yemen
Zambia
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- Denmark
- Liberia
- Saint Kitts and Nevis
- Saint Lucia

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- **Anonymous**
  Only your contribution, country of origin and the respondent type profile that you selected will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- **Public**
  Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☑ I agree with the personal data protection provisions

If you replied that you answer on behalf of a business, please specify the type of business:

- institutional investor, asset manager
- other financial sector player (e.g. an analyst, rating agency, data and research provider)
- auditor
- other

Consultation questions

If you are responding on behalf of a large company, please indicate how large is the company:

- Large company with 1000 or more people employed
- Large company with less than 1000 but at least 250 people employed

If you are responding on behalf of a company, is your company listed on the stock-exchange?

- Yes, in the EU
- Yes, outside the EU

- Yes, both in and outside the EU
- No

If you are responding on behalf of a company, does your company have experience in implementing due diligence systems?

- Yes, as legal obligation
- Yes, as voluntary measure
- No

If resident or established/registered in an EU Member State, do you carry out (part of) your activity in several EU Member States?

- Yes
- No

If resident or established/ registered in a third country (i.e. in a country that is not a member of the European Union), please specify your country:

If resident or established registered in a third country, do you carry out (part of) your activity in the EU?

- Yes
- No

If resident or established registered in a third country, are you part of the supply chain of an EU company?

- Yes
- No

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

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

Question 1: Due regard for stakeholder interests', such as the interests of employees, customers, etc., is expected of companies. In recent years, interests have expanded to include issues such as human rights violations, environmental pollution and climate change. Do you think companies and their directors should take account of these interests in corporate decisions alongside financial interests of shareholders, beyond what is currently required by EU law?

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

Please provide reasons for your answer:

AmCham EU member companies already do this today working under existing international frameworks such as the UN Guiding Principles on Business and Human Rights (UNGPs). Adhering to these standards is fundamental for companies, their reputation and for attracting Environment, Social Governance (ESG) investment. We recognise the need to take these aspects into account, however there are drawbacks and/or risks in setting one-size-fits-all legal requirements that may not be appropriate for certain sectors and/or companies.

ESG issues have a direct impact on the long-term value of companies. AmCham EU is supportive of efforts to better integrate these aspects into companies' strategic decision-making and long-term planning. Social and environmental issues are important for companies' external stakeholders, including customers, investors, shareholders, civil society and justice organisations, local communities, etc. A principles-based approach and/or framework to identify these risks and impacts would be preferrable. AmCham EU member companies also support the development of due diligence and reporting schemes that build on existing international frameworks such as the UNGPs and OECD guidelines for multinational enterprises and responsible business conduct. Our member companies also promote the elaboration of industry standards such as those of the Responsible Business Alliance (RBA) which is multi-sectoral and was established in the early 2000s as there was a clear opportunity to drive positive change and increase efficiency across industry with a unified approach, holding suppliers accountable to a common standard. This common approach has helped companies to confront challenges we faced over the past decade such as conflict minerals and modern slavery. Other examples include the OECD-FAO Guidance for Responsible Agricultural Supply Chains and the International Forum on Business Ethical Conduct for the AeroSpace and Defence Industry (IFBEC) that recognise existing frameworks and best practices.

Any reporting due diligence scheme must take into consideration new reporting requirements and allow for harmonised reporting standards. Clarity on due diligence processes will be important in order for companies to maximise their efforts on advancing human rights, environmental, social and economic impacts and minimise work to discern and meet requirements set out by the European Commission.

US-headquartered AmCham EU member companies already have engagement and risk management strategies in place. Many companies already have due diligence processes in place and many already exist under US law (eg, boards and committees already play a role in risk oversight for US companies).

Question 2: Human rights, social and environmental due diligence requires companies to put in place continuous processes to identify risks and adverse impacts on human rights, health and safety and environment and prevent, mitigate and account for such risks and impacts in their operations and through their value chain.
In the survey conducted in the context of the study on due diligence requirements through the supply chain, a broad range of respondents expressed their preference for a policy change, with an overall preference for establishing a mandatory duty at EU level.
Do you think that an EU legal framework for supply chain due diligence to address adverse impacts on human rights and environmental issues should be developed?

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

Please explain:

In order to avoid a growing number of different national laws and requirements, it is necessary to develop a harmonised approach at EU level that creates a level playing field. AmCham EU member companies already embed ESG in their due diligence activities via initiatives such as the UNGPs as well as mandatory regimes such as the UK and Australian Modern Slavery Acts, Canada's ESTMA requirements and the CA Transparency in Supply Chains Act, Section 1502 of the US Dodd Frank Act (conflict minerals), the EU Responsible (so-called 'Conflict') Minerals Regulation (CMR) and Non-Financial Reporting Directive. Should a legal framework be put in place, consistent rules, harmonisation and industry standards are required to ensure that ESG is addressed by due diligence principles to reduce administrative burden and effectively identify risks and adverse impacts. An EU legal framework is needed. This framework should be proportionate and complementary to existing international principles without an additional layer of reporting and administrative burden that could negatively impinge a company's efforts to address and mitigate ESG risks. Alternatively, an overly prescriptive due diligence framework may result in managing specific compliance requirements.

Moreover, a common EU framework should be aligned with Single Market principles, avoiding internal barriers to trade. On top of a common EU framework, strong enforcement mechanisms are essential to assure a level playing field and avoid non-compliance.

As distinct from the human rights due diligence regulation, the EU regulation of environmental due diligence should be aligned with Chapter VI of the OECD Guidelines for Multi-National Enterprises.

Finally, it is worth clarifying the definitions of 'supply chain' and 'value chain' which are both used in the question, as these also mean different things for different industries; some members have argued that the scope of the counterparties included in the ‘value chain’ definition should be restricted to the first tier of counterparties, as this level of relationship can be realistically controlled.

Question 3: If you think that an EU legal framework should be developed, please indicate which among the following possible benefits of an EU due diligence duty is important for you (tick the box/multiple choice)?

- ☑ Ensuring that the company is aware of its adverse human rights, social and environmental impacts and risks related to human rights violations other social issues and the environment and that it is in a better position to mitigate these risks and impacts
- ☑ Contribute effectively to a more sustainable development, including in non-EU countries
- ☑ Levelling the playing field, avoiding that some companies freeride on the efforts of others
- ☑ Increasing legal certainty about how companies should tackle their impacts, including in their value chain
- ☑ A non-negotiable standard would help companies increase their leverage in the value chain
- ☑ Harmonisation to avoid fragmentation in the EU, as emerging national laws are different
- ☑ SMEs would have better chances to be part of EU supply chains
- ☑ Other

Other, please specify:

Comment on question 3:

Consistent rules, a level playing field between EU-based companies and importers operating in the EU market, harmonised legal frameworks and industry standards are required to ensure that ESG is addressed by due diligence principles to reduce administrative burden and effectively identify and mitigate risks and adverse impacts. Any EU legal framework should be based on and complement existing international principles without adding an additional layer of reporting and administrative burden that could negatively impinge a company’s efforts to address and mitigate ESG risks. Such a system should in addition help create the environment for collaborative efforts to address underlying and long-standing social and economic issues in the local context. Also, proper enforcement is just as important as proportionate and efficient rules.

Question 3a. Drawbacks

Please indicate which among the following possible risks/drawbacks linked to the introduction of an EU due diligence duty are more important for you (tick the box /multiple choice)?

- [x] Increased administrative costs and procedural burden
- [x] Penalisation of smaller companies with fewer resources
- [x] Competitive disadvantage vis-à-vis third country companies not subject to a similar duty
- [x] Responsibility for damages that the EU company cannot control
- [x] Decreased attention to core corporate activities which might lead to increased turnover of employees and negative stock performance
- [x] Difficulty for buyers to find suitable suppliers which may cause lock-in effects (e.g. exclusivity period/no shop clause) and have also negative impact on business performance of suppliers
- [x] Disengagement from risky markets, which might be detrimental for local economies
- [x] Other

Other, please specify:

Comment on question 3a:

It is not realistic to identify all risks. A risk-based approach should be applied, otherwise the requirements may have the adverse effect of triggering superficial and inefficient due diligence. Without being privy to the precise legal details of the forthcoming EU legal framework, it is difficult to predict possible risks and/or drawbacks.

However, legally requiring companies to allocate resources to broaden and deepen due diligence (for example throughout multiple supply chain tiers), would entail that resources are spread thin and become inadequate to address risks in areas where the company has most influence through direct business relationships.

AmCham would also like to highlight that the Commission should focus on due diligence processes and the potential identification of risks and potential harmful impacts. The Commission should not extend its legislative proposal to the outcomes of due diligence and dictate a company’s risk appetite or force companies to terminate counterparty relationships.

Furthermore, companies should not become legally liable for damages outside their control. The UNGP’s ‘cause, contribute and directly-linked’ framework highlights that corporate responsibility varies depending on the level of control.
On responsible supply chains, AmCham EU endorsed the approach in the CMR of encouraging investment to stay in conflict affected and high-risk areas (CAHRAs) to improve the livelihoods of local communities instead of retracting investment and moving it to other countries.

Consistent rules, harmonised frameworks such as the UNGPs and OECD guidelines coupled with industry standards (eg, RBA and IFBEC) would promote ESG approaches that adhere to due diligence principles in a way that reduces administrative and reporting burden, at the same time effectively addressing risks and impacts.

Legislation which is well thought through could avoid most if not all possible unintended consequences.

At the same time, EU legislation will be effective only if discussed with producing countries via partnership agreements in order to facilitate and ensure consistency in legislation and standards.

It is critical that the proposed legislation addresses the specific issues and is correctly aimed to achieve the proposed objectives while minimising risks. In this sense, clear definitions and streamlined procedures will be essential to assure compliance.

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

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

Question 5. Which of the following interests do you see as relevant for the long-term success and resilience of the company?

	Relevant	Not relevant	I do not know/I do not take position
the interests of shareholders	X		
the interests of employees	X		
the interests of employees in the company's supply chain	X		
the interests of customers	X		
the interests of persons and communities affected by the operations of the company	X		
the interests of persons and communities affected by the company's supply chain	X		
the interests of local and global natural environment, including climate	X		
the likely consequences of any decision in the long term (beyond 3-5 years)	X		
the interests of society, please specify	X		
other interests, please specify			

the interests of society, please specify:

- It is part of a director's fiduciary duty to promote the company's success which is regarded as its long-term increase in value. For this long-term success, directors must act in good faith and consider many factors including the interests of as many stakeholders possible.
- Since the primary interest of the company is to create long-term value, while taking into account ESG issues, board members are the most well-placed to define the relevant interests of a company at that specific point in time. Directors focus on the interests that are important and relevant for the long-term health of a business by conducting a case-by-case assessment of what impacts its value. This assessment can rapidly fluctuate so that flexibility to decide upon the relevant interests is important. Responsible business conduct must be a fundamental principle for directors to adhere.

Question 6. Do you consider that corporate directors should be required by law to (1) identify the company´s stakeholders and their interests, (2) to manage the risks for the company in relation to stakeholders and their interests, including on the long run (3) and to identify the opportunities arising from promoting stakeholders' interests?

	I strongly agree	I agree to some extent	I disagree to some extent	I strongly disagree	I do not know	I do not take position
Identification of the company´s stakeholders and their interests	○	○	●	○	○	○
Management of the risks for the company in relation to stakeholders and their interests, including on the long run	○	○	●	○	○	○
Identification of the opportunities arising from promoting stakeholders' interests	○	○	●	○	○	○

Please explain:

- In order to act in the best interests of the company, directors should consider and identify the long-term risks of a company's interests. However, it should be noted that, directors are limited to identifying their most relevant stakeholders and prioritise their actions to mitigate those risks. Therefore, regulating actions to be taken by corporate directors would remove their ability to prioritise and focus on the corporate activities most appropriate for the long-term interests of the company and its stakeholders.
- In addition, the list of stakeholders should not be prescriptive and should take into consideration commercial sensitives and privacy concerns around their identification.
- Furthermore, directors take an overall approach considering the resources that a company requires to thrive in the long-term. In fact, directors are best positioned to consider how an appropriate assessment of materiality would take into account different factors for their company and identify the opportunities that arise from promoting stakeholders' interests.

• Liability of directors is an effective tool when directors have control and decision-making power on these matters. In case of directors of companies that are fully owned and fully controlled by other entities (such as subsidiaries of multinationals), this power is often limited for directors. As a consequence, full application of the proposed director liability standards would be less effective and balanced for those cases. Therefore, AmCham EU argues that directors should not be held liable for their decision-making. The fundamental issue arising is how to balance conflicting interests; for example, an investment decision that has positive environmental impacts versus one that has positive social impacts.
• Currently, international standards already exist alongside EU legislation requiring the consideration of ESG factors. Such international standards include the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises which require companies, in a soft-law context, to address risks that are connected to the company by its business relationships, and relevant definitions could be drawn from there. At EU level, the EU Non-Financial Reporting Directive also requires large listed public-interest companies with more than 500 employees to disclose their analysis of risks of severe impacts.
• As a result, the impact of new and binding provisions applicable to directors will add to already existing requirements on business and create confusion rather than clarity. We do not see a need for any additional legal requirements in this context. However, should the Commission decide to move forward with mandatory requirements, these must ensure that directors have enough flexibility to react adequately to the particular situation of their company. AmCham EU recommends that the Commission looks at already existing international standards in order to determine the most appropriate level at which these types of responsibilities should be handled within a given organisation.
• Additionally, companies are also responsive to investors who are increasingly interested in companies' ESG priorities. This issue is already subject to soft law, however some additional guidelines for harmonisation at EU level could be raised to the level of directors' duties. It is more favourable to ensure that the existing guidelines are correctly implemented rather than putting forward additional legislative and/or regulatory measures.

Question 7. Do you believe that corporate directors should be required by law to set up adequate procedures and where relevant, measurable (science –based) targets to ensure that possible risks and adverse impacts on stakeholders, ie. human rights, social, health and environmental impacts are identified, prevented and addressed?

- ( ) I strongly agree
- ( ) I agree to some extent
- (•) I disagree to some extent
- ( ) I strongly disagree
- ( ) I do not know
- ( ) I do not take position

Please explain:

• As a general principle, it should be required to set up adequate procedures to ensure that possible risks are identified. In order for boards to evaluate the progress their companies are making when it comes to sustainability, they need suitable metrics to compare social and environmental performance.
• However, extending these procedures to preventing and addressing potential impacts is a step too far.

We need to remain cautious of the fact that companies lack control of preventing or addressing potentially identified risks. It should further be noted that risks identified should not determine whether a company will form partnerships or continue existing relationships with counterparties. Additionally, mandatory legal requirements setting up specific targets may not be in line with each company's individual situation and therefore negatively impact the necessary discretion and flexibility of directors. The relevant targets should be considered on a case-by-case basis depending on the company's specificities and its overall best interests.

• The Commission could provide guidance taking into account a general framework of suggested, but not exhaustive, risks assessed by the director of each company on a case-by-case basis. It should focus on a principle-based rather than a rules-based approach which would avoid restriction of the risks' scope and limit directors' flexibility to act. In that way, companies will have both the necessary legal certainty and flexibility to identify in the present and in the long term which of the stakeholder interests they should consider in accordance with their activity, nature and size. The prerequisite for this is that metrics applicable to all contexts are identified and recognised (also by investors) and that they are easy to apply by all types of businesses.

• Today, there is no single sustainability standard but a number of initiatives or companies' best practices, that have been taken in order to advance greater standardisation and transparency of sustainability targets. Those targets are personal to each company's sector based on a series of factors (e.g. size). Corporate governance mechanisms including strong processes and controls within the company have already been established to some extent, by most companies, through appropriate processes and governance arrangements.

• The Commission could look into industry-driven frameworks that have proven their worth in the past, such as that of the Responsible Business Alliance (RBA) that created new metrics to measure and demonstrate long-term value to financial markets. Any EU measure should be aligned with well-regarded industry frameworks, which also have the advantage of being global by design. Industry standards such as those of the RBA recognise existing frameworks and best practices. Corporate directors have already been looking beyond business' boundaries because they understand that, by incorporating sustainability dimensions within corporate strategy, they create a competitive advantage that promotes the company's long-term sustainability value.

• In addition, sustainability standards are already embedded in national company law within the EU. It is not for EU law to determine which specific interests should be taken into account, but instead, to provide sufficient guidance to help directors better identify and factor stakeholder interests into the strategies and decisions of companies.

• Nonetheless, AmCham EU would welcome a set of ambitious, non-binding sustainability goals that are relevant at all levels, across all sectors for companies to take further initiatives to set specific measurable targets. Measuring effective progress would require analysis from directors of the impacts that business activities generate in their own operations and throughout the entire supply chain. Such common objectives would help the already existing target measures and procedures that have been put in place by companies, to achieve harmonised sustainable goals across the EU while granting the level of discretion required for directors to make the decisions that would best ensure their company's long-term value.

Question 8. Do you believe that corporate directors should balance the interests of all stakeholders, instead of focusing on the short-term financial interests of shareholders, and that this should be clarified in legislation as part of directors' duty of care?

- I strongly agree
-

I agree to some extent
- [x] I disagree to some extent
- [ ] I strongly disagree
- [ ] I do not know
- [ ] I do not take position

Please provide an explanation or comment:

• Directors' duties are owed to the company, rather than to any particular stakeholders as the primary objective of every company is its long-term longevity and prosperity. The duty of care requires a director to make careful and informed decisions throughout the decision-making process. Directors can exercise the flexibility and independent judgment required to consider the relevant issue, which would be hampered by legislation with specific indicators. Such legislation could also put directors at risk of personal liability, even if they have acted in accordance with the existing guidelines.
• This requires to set first and foremost the priority of long-term viability of the company, while also taking into account the relevant stakeholders' interests. As it has been stated above, companies have already been taking stakeholders' interests into account within their business strategy and decision-making process. However, in order to achieve long-term success it is not practically possible to satisfy all stakeholders equally. Some interests such as the respect of human rights cannot be balanced since they are of primordial importance and need to be addressed regardless of other interests. These are always 'relevant' interests for the board.
• In order to act in the interests of the company, directors need to identify the long-term risks to a company's interests and take steps to mitigate them. Directors already often consult with stakeholders for the execution of their business strategies because they recognise that the long-term success of a company strongly depends on its ability to consider their interests. Therefore, companies increasingly establish such mechanisms within their structure.
• In that regard, since initiatives are already in place, it would be desirable for the Commission to prioritise harmonization at the EU level in order for directors to identify and mitigate a minimum number of economic, social and environmental factors, as a baseline, that materially affect the long-term prospects of a company and the attainment of a specific social and environmental objective, in addition to addressing immediate risks that hamper its financial health. In that way, a level playing field would be ensured.

Question 9. Which risks do you see, if any, should the directors' duty of care be spelled out in law as described in question 8?

The comments below apply to the two subsequent questions as well:

• Directors are charged with overseeing a broad range of risks, including financial, social, environmental and how they interconnect. ESG risks can be unpredictable, and some, such as risks associated with climate change (eg, extreme weather events) can fall outside the entity's control. Directors cannot take into account every stakeholder's interest, they must mediate between, at times, divergent interests and levels of urgency. Therefore, it is up to the company and management, with engagement from the board of directors, to determine which risks are relevant for the director of each company on a case-by-case basis and which ones should be mitigated.

• There is also an increasing trend for boards to designate a specific committee for oversight of ESG and sustainability risks as a strong current mechanism for addressing key issues as well. The Commission could agree on a series of risks that underline its general objectives (e.g. respect of human rights, climate) and adopt a horizontal approach that would ensure a fair balance between different sectors.

• An exhaustive list of risks could negatively affect the viability and longevity of the company since the potential risk may be too remote to calculate as material to the longevity of the company, at a particular point in time. An exhaustive list also risks taking resources away from the highest priority issues with highest likelihood for positive impact. Instead, directors could operate within general social and environmental parameters that prevent the company from hampering its long-term value.

• In addition, by setting out mandatory list of interests to be taken into account, there is a risk to create unrealistic stakeholder expectations. Directors must consider the interest of their company, while, in addition to that, take into account stakeholder interests' that contribute to a more sustainable long-term value creation of the company. It should also be noted that spelling out directors' duty of care in law, could have unintended consequences where any party that considers themselves as a relevant stakeholder might be able to initiate a legal claim against the company and its management

• Balancing interests is a complex, subjective process. There is a high degree of ambiguity on how directors should approach conflicting interests (for example, deciding between a positive environmental impact against a negative social impact). This limitation of ESG factors needs to be considered in the context of imposing liability to directors for their decision making and enforcing director's duty of care.

• Over-regulation could limit the directors' duty to take decisions that best fit the company. For instance, a company might take a decision that would best benefit the labour market but less the environment, while a different sector could contribute more to reducing its environmental impact. Flexibility is key for directors to unlock the full potential of their company and being limited by an exhaustive list of risks to be taken into account could hamper the long-term longevity and value of a company. This is especially the case for small and medium-sized enterprises (SMEs) which currently face the biggest financial challenge because of the COVID-19 pandemic. The burden of being pressured to comply with additional legal measures would be an additional challenge. They would face increased liability risks which could negatively impact their willingness to join boards. An agreement on general principles would render the company more efficient in achieving both its sustainability and profit goals.

• AmCham EU members recognise the importance of a harmonised approach. However, due to the unstable nature of ESG risks, hard law could increase uncertainty and become an obstacle to the flexibility directors need to adapt their business model. This calls for an approach that recognises the globalised nature of businesses nowadays, with companies operating both in national and international settings. Competitiveness and the need for a level playing field should be taken into account when setting out any new rules and frameworks .

How could these possible risks be mitigated? Please explain.

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

Question 10. As companies often do not have a strategic orientation on sustainability risks, impacts and opportunities, as referred to in question 6 and 7, do you believe that such considerations should be integrated into the company's strategy, decisions and oversight within the company?

- I strongly agree
- I agree to some extent
- **(selected)** I disagree to some extent
- I strongly disagree
- I do not know
- I do not take position

Please explain:

- Sustainability risks, impacts and opportunities play an integral part of a company's business model. In addition, stakeholders influence companies in all sectors to demonstrate that they deliver benefits to society and the environment, not just financial bottom line. Therefore, despite certain companies lacking a clear action plan when it comes to assessing and addressing their sustainability risks, sustainability objectives drive and shape the strategic orientation of most or all companies. Directors' decisions to adopt those recommendations or guidelines may however vary based on the company's sector and business model, which should be taken into consideration.
- For large companies and multinationals, such considerations have already been integrated into the company's strategy. Sustainability at large (e.g. employee wellbeing, reduced environmental impact, human rights respect, etc.) is an integrated part of the business strategy driven by its long-term value, often in the form of a marketing strategy, a long-term energy efficiency plan or even an increased productivity strategy for its employees. It is embedded in corporate culture. Culture and values are a major source of continuity especially in the face of uncertainty and change. Sustainability is a concept which drives corporate purpose, decisions and actions.
- The Commission could recognise the efforts companies have already made and leave them a margin of appreciation to decide how to include additional considerations. Once again, general principles that include a level of flexibility to directors' decisions on how to implement and include sustainability targets within their companies would be preferable.
- However, giving the legislator (EU or national) a say on how strategies should be defined would be inefficient since only the directors of each company have the expertise to assess their business model in relevant markets, and to balance the maximisation of financial benefits and the adoption of long-term sustainability targets. Such a legally binding obligation of prescriptive requirements on directors would therefore be disproportionate as companies already include ESG issues within their strategy. It would also create additional confusion and administrative burden.
- The Commission could set ambitious sustainability goals for companies based on which the directors, after assessment and evaluation, will select specific targets with regards to their company's specificities (eg, size, sector, etc.) such an approach would be consistent with United Nation's SDGs. In that way, the Commission will ensure that all companies are heading towards the same direction for achieving those goals, while directors have the flexibility and expertise to set the targets that best fit the company's strategy, without hampering the company's long-term success.

Enforcement of directors' duty of care

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

Question 11. Are you aware of cases where certain stakeholders or groups (such as shareholders representing a certain percentage of voting rights, employees, civil society organisations or others) acted to enforce the directors' duty of care on behalf of the company? How many cases? In which Member States? Which stakeholders? What was the outcome?

Please describe examples:

N/A . Please see the separately submitted Annex for examples of successful industry schemes.

Question 12. What was the effect of such enforcement rights/actions? Did it give rise to case law/ was it followed by other cases? If not, why?

Please describe:

N/A . Please see the separately submitted Annex for examples of successful industry schemes.

Question 13. Do you consider that stakeholders, such as for example employees, the environment or people affected by the operations of the company as represented by civil society organisations should be given a role in the enforcement of directors' duty of care?

- ○ I strongly agree
- ○ I agree to some extent
- ○ I disagree to some extent
- ● I strongly disagree
- ○ I do not know
- ○ I do not take position

Please explain your answer:

• Companies are already subject, from within their organisation, to sufficient and appropriate enforcement and AmCham EU member companies' boards have a series of formal responsibilities for which they can face legal consequences. Companies are already subject to pressure from stakeholders such as NGOs, employees, collective labour unions, customers and investors. There is a constant need to demonstrate that they deliver benefits to society and the environment. Providing the possibility for anyone to have a role in the enforcement of Directors' duty of care will open the door to abuses and put unnecessary pressure on courts. Therefore, we would see an increase in litigation (or threats of litigation) as a means for trying to influence the company.

• Increased enforcement would result in uncertainty, confusion and diverging interpretations of obligations and violations. Especially as different stakeholders have diverging or contradictory interests (e.g. customers vs. workers/suppliers on the debate of 'costs'), enforcement would likely lead to inextricable situations where no satisfactory solution can be found for all stakeholders. This could completely paralyse the company's ability to continue business, especially in the same constellation. Moreover, local enforcement actions involving stakeholders would likely even further jeopardise a level playing field at EU level. Enforcement would exist even without a 'duty of care' and be sufficient if liability was already adequately triggered during the due diligence process and its implementation. Regardless of how the 'duty of care' would be defined under national laws, enforcement actions can only be based on clear legal grounds.

• The focus should be on making sure that the existing measures are correctly implemented. Companies have adopted a culture of dialogue and open communication where stakeholders can engage and share their thoughts, proposals and/or recommendations also in advance of launching sustainability strategies. The discussion is also open between directors and the national supervisory authorities through a culture of cooperation that ensures efficient implementation of the existing rules.

• The Commission should focus on highlighting principles that prioritise communication rather than legal actions and promote transparency and access to information by the public. This would facilitate effective enforcement and create incentives to conform with existing rules. Directors also have an opportunity to use transparency for more effective engagement with their stakeholders.

Question 13a: In case you consider that stakeholders should be involved in the enforcement of the duty of care, please explain which stakeholders should play a role in your view and how.

See question above

Section III: Due diligence duty

For the purposes of this consultation, "due diligence duty" refers to a legal requirement for companies to establish and implement adequate processes with a view to prevent, mitigate and account for human rights (including labour rights and working conditions), health and environmental impacts, including relating to climate change, both in the company's own operations and in the company's the supply chain. "Supply chain" is understood within the broad definition of a company's "business relationships" and includes subsidiaries as well as suppliers and subcontractors. The company is expected to make reasonable efforts for example with respect to identifying suppliers and subcontractors. Furthermore, due diligence is inherently risk-based, proportionate and context specific. This implies that the extent of implementing actions should depend on the risks of adverse impacts the company is possibly causing, contributing to or should foresee.

Question 14: Please explain whether you agree with this definition and provide reasons for your answer.

• We generally agree with the above definition and support the intention of the EU to promote human rights and the safety of workers in global supply chains, as well as certain environmental impacts. However, it is important not to confuse the roles of companies and that of states. In the area of human rights, the division of responsibilities between the state responsibility to protect and the business responsibility to respect must be embedded in any legislative initiative.

• We believe that any due diligence duty should be consistent with existing international frameworks such as the United Nations Guiding Principles on Business and Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work and the OECD Guidance for Responsible Business Conduct which have guided implemented existing robust due diligence schemes.

• It is yet important to highlight that the nature of global supply chains operating across a range of operational, trading, market and regulatory imperatives often require regular risk mitigation, in some cases when the issue has already arisen or when the company, despite due diligence practices, cannot identify and address a risk further upstream or downstream at the cadence required.

• For regulations to concretely address these issues, a clear definition of 'business relationships' is required, preferably consistent with the cause-contribute framework outlined in the UNGPs. We believe that only direct contractual business relations within the supply chain, targeted to a level in which the company is directly connected should be covered by the legislation. This would be most likely through a contractual relationship, usually accompanied by some intellectual property (IP)/data link, with links to causing or contributing to an impact, with associated level of responsibility for correction and remedy. But we are also aware that, in practice, suppliers and subcontractors positioned at the very end of the value chain are very hard to identify and therefore the company has no leverage, influence or control over them.

• Companies should therefore not be held liable for entities they may not even know exist, much less influence or control. We therefore see as problematic and potentially impractical the inclusion of suppliers and subcontractors that are indirectly linked to the undertaking or placed at the very end of its value chain – including for IP/data limitations as noted in the previous point.

• In line with what is expressed above, we point out that both the UN Guiding Principles and the OECD Guidance are understood to include among 'business relationships' relations of the enterprise with business partners, suppliers, contractors and entities in its value chain directly linked to its business operations, products or services, recommending companies to obtain relevant information about business relationships beyond contractual relationships only 'when appropriate and feasible', ie, in exceptional and well-motivated circumstances.

• Along the same lines, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals (3rd edition, 2016) is an effective international framework identifying the due diligence responsibilities for companies with suppliers with whom a direct relationship exists (p.39, 40) and highlighting the role of collaboration/associations to build capacity, due diligence and standards further upstream in the supply chain (p. 42, 45).

• Similarly, the OECD-FAO Guidance for Responsible Agricultural Supply Chains delineate a scope for due diligence obligations, depending on the type of enterprise and position in the value chain (p. 36), and recommending that when enterprises have large numbers of suppliers, they are encouraged to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritise suppliers for due diligence (p. 22).

• Furthermore, we agree that due diligence is inherently risk-based, proportionate and context-specific. For this reason, many industrial sectors have already deployed robust harmonised standards and due diligence schemes based on international frameworks and the specific nature of each sector to provide assurance to customers and stakeholders: supply chain risk assessment, onsite externally verified audit, specific social and environmental monitoring and reporting programs, self-assessment questionnaires, capability-building, engagement and dialogue tools, quarterly business reviews are among the mechanisms already implemented by numerous companies.

• As a result, we recommend the upcoming legislation to grant a minimum level of flexibility to companies on how to implement their due diligence strategies and to recognise existing effective harmonised industry schemes (Please see the separately submitted Annex for examples of successful industry schemes).

Question 15: Please indicate your preference as regards the content of such possible corporate due diligence duty (tick the box, only one answer possible). Please note that all approaches are meant to rely on existing due diligence standards, such as the OECD guidance on due diligence or the UNGPs. Please note that Option 1, 2 and 3 are horizontal i. e. cross-sectorial and cross thematic, covering human rights, social and environmental matters. They are mutually exclusive. Option 4 and 5 are not horizontal, but theme or sector-specific approaches. Such theme specific or sectorial approaches can be combined with a horizontal approach (see question 15a). If you are in favour of a combination of a horizontal approach with a theme or sector specific approach, you are requested to choose one horizontal approach (Option 1, 2 or 3) in this question.

- ○ Option 1. “Principles-based approach”: A general due diligence duty based on key process requirements (such as for example identification and assessment of risks, evaluation of the operations and of the supply chain, risk and impact mitigation actions, alert mechanism, evaluation of the effectiveness of measures, grievance mechanism, etc.) should be defined at EU level regarding identification, prevention and mitigation of relevant human rights, social and environmental risks and negative impact. These should be applicable across all sectors. This could be complemented by EU-level general or sector specific guidance or rules, where necessary
- ◉ Option 2. “Minimum process and definitions approach”: The EU should define a minimum set of requirements with regard to the necessary processes (see in option 1) which should be applicable across all sectors. Furthermore, this approach would provide harmonised definitions for example as regards the coverage of adverse impacts that should be the subject of the due diligence obligation and could rely on EU and international human rights conventions, including ILO labour conventions, or other conventions, where relevant. Minimum requirements could be complemented by sector specific guidance or further rules, where necessary.
- ○ Option 3. “Minimum process and definitions approach as presented in Option 2 complemented with further requirements in particular for environmental issues”. This approach would largely encompass what is included in option 2 but would complement it as regards, in particular, environmental issues. It could require alignment with the goals of international treaties and conventions based on the agreement of scientific communities, where relevant and where they exist, on certain key environmental sustainability matters, such as for example the 2050 climate

neutrality objective, or the net zero biodiversity loss objective and could reflect also EU goals. Further guidance and sector specific rules could complement the due diligence duty, where necessary.

- Option 4 “Sector-specific approach”: The EU should continue focusing on adopting due diligence requirements for key sectors only.
- Option 5 "Thematic approach": The EU should focus on certain key themes only, such as for example slavery or child labour.
- None of the above, please specify

Question 15a: If you have chosen option 1, 2 or 3 in Question 15 and you are in favour of combining a horizontal approach with a theme or sector specific approach, please explain which horizontal approach should be combined with regulation of which theme or sector?

We are not in favour of a combination of the horizontal approach with sectoral or thematic at this stage as this could compromise the overarching goal of having uniform rules applicable to all companies across all Member States. In line with the UN Principles on Business and Human Rights, we believe that human rights risks are not limited to certain sectors or industries and therefore the upcoming legislation should be applicable to all companies. However, we do not exclude that accompanying guidelines could be introduced at a later stage, if needed.

Question 15b: Please provide explanations as regards your preferred option, including whether it would bring the necessary legal certainty and whether complementary guidance would also be necessary.

• Option 2 is the most effective in recognising existing social and environmental assurance and ensuring alignment with the UN Guiding Principles and OECD Guidance. The minimum set of requirements applicable to all sectors and companies would create a level playing field and legal certainty for all undertakings operating or placing products and services on the European market, thus avoiding a patchwork of different regulatory environments.

• Keeping in mind that the overarching goal is to have a uniform framework with clear minimum requirements for all sectors across the whole Union, we believe that an EU Regulation, rather than a Directive, can better achieve such goal. We are also conscious of the fact that due diligence is inherently risk-based, proportionate and context-specific and that some industrial sectors already have in place robust harmonised standards and due diligence schemes, based on international frameworks.

• We therefore believe that the upcoming legislation should also grant a minimum level of flexibility to companies on how to implement a due diligence strategy and recognise certain existing successful industry schemes.

• Generally, the new European framework should enhance due diligence processes that are already embedded in company governance and build on existing schemes established by certain sectors that have demonstrated to be mature and successful in delivering an appropriate level of transparency, reliability and protection and tried-and-tested for identifying, resolving and providing remedy for impacts.

• These frameworks help ensure the principles of international human rights standards are respected across multiple different national legal frameworks – while not disincentivising the companies involved to drive responsible operations.

Question 15c: If you ticked options 2) or 3) in Question 15 please indicate which areas should be covered in a possible due diligence requirement (tick the box, multiple choice)

- [x] Human rights, including fundamental labour rights and working conditions (such as occupational health and safety, decent wages and working hours)
- [ ] Interests of local communities, indigenous peoples' rights, and rights of vulnerable groups
- [x] Climate change mitigation
- [ ] Natural capital, including biodiversity loss; land degradation; ecosystems degradation, air, soil and water pollution (including through disposal of chemicals); efficient use of resources and raw materials; hazardous substances and waste
- [x] Other, please specify

Other, please specify:

AmCham EU comment on question 15c:

• The importance of the different issues listed above depends on the nature of the operations, the linkage with the business in question and the degree to which the business may have caused or contributed to a potential impact.
• It is undeniable that all the above-mentioned areas require particular attention, however, in view of other initiatives already underway at EU level (such as biodiversity, climate legislation, deforestation, etc.), we recommend avoiding overlapping measures and therefore prioritising human rights and climate mitigation aspects.
• However, we would like to point out that while there is a certain level of clarity with regard to companies' duties to carry out due diligence against human rights impacts, the scope of environmental due diligence is still vague. In addition, there needs to be due consideration for potential risks of duplication or contradiction with existing and upcoming environmental and climate-related EU legislation and international standards, including clarification of which environmental standards companies should be held to. We therefore urge the Commission to provide a clear and univocal definition of environmental due diligence and to precisely determine its scope prior to imposing obligations on businesses in this sense.

Question 15d: If you ticked option 2) in Question 15 and with a view to creating legal certainty, clarity and ensuring a level playing field, what definitions regarding adverse impacts should be set at EU level?

Question 15e: If you ticked option 3) in Question 15, and with a view to creating legal certainty, clarity and ensuring a level playing field, what substantial requirements regarding human rights, social and environmental performance (e.g. prohibited conducts, requirement of achieving a certain performance/target by a certain date for specific environmental issues, where relevant, etc.) should be set at EU level with respect to the issues mentioned in 15c?

- The definition of the impacts should be aligned with the UN Guiding Principles.
- We believe that legislation should cover both potential and actual adverse impacts, to establish proper due diligence strategies capable of identifying, preventing and mitigating potential risks, while including the possibility to seek a remediation for harm caused by the company or its direct business relationships intentionally or with gross negligence.
- Given that many impacts are strictly linked to the nature of company's operations, impacts can also be identified building off existing robust harmonised industry schemes using consistent standards and due diligence schemes, based on international frameworks.
- Existing schemes validate the value of harmonised standards (notwithstanding varying degrees of integration within sector) to enable sustained progress demonstrated via measurable mechanisms including: increased compliance to standards (aligned to international frameworks), verified improvements in audit performance, reporting and monitoring programs, reduction in the severity of the findings identified and accelerated timeframes to complete any necessary remedial actions.

Please see the separately submitted Annex for examples of successful industry schemes.

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

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

Question 16: How could companies'- in particular smaller ones'- burden be reduced with respect to due diligence? Please indicate the most effective options (tick the box, multiple choice possible)
This question is being asked in addition to question 48 of the Consultation on the Renewed Sustainable Finance Strategy, the answers to which the Commission is currently analysing.

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

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

Please explain your choice, if necessary

• In any event, SMEs would be impacted by a due diligence duty, whether directly or indirectly (through their ‘customers’).
• As a result, we recommend that SMEs are explicitly included in the requirements with expectations scaled according to the size of the company (burden and/or expectation could be scalable – the vast majority of SMEs would be indirectly affected by any legislation in any event, as harmonised standards would be driven across sectors).
• We believe that the speed and effectiveness of this piece of legislation would be compromised if SMEs were excluded or subject to non-binding requirements. As a result, we agree that the expectation on SMEs should be proportional to its size as well as the severity of risks it faces across social and environmental requirements.
• Alongside harmonized, proportionate standards, there remains a key need for capacity-building and dedicated resources.
• These dedicated resources should not be limited to SMEs and made available to a range of stakeholders, including regulators, customers and companies undertaking due diligence, to promote consistency of understanding and compliance.

Please see the separately submitted Annex for examples of successful industry schemes.

Question 17: In your view, should the due diligence rules apply also to certain third-country companies which are not established in the EU but carry out (certain) activities in the EU?

- (•) Yes
- ( ) No
- ( ) I do not know

Question 17a: What link should be required to make these companies subject to those obligations and how (e.g. what activities should be in the EU, could it be linked to certain turnover generated in the EU, other)? Please specify.

Comment on question 17 on behalf of AmCham EU:

• We believe that due diligence requirements can be extended to third-country companies while ensuring that obligations are inherently risk-based, proportionate and context-specific. If third-country companies were to be exempted from such duty, this might create distortion to the internal market and unfair competition.

• However, the issues of jurisdiction and sovereignty makes deploying such programmes across national jurisdictions very difficult. EU-based competent authorities cannot enforce across borders. At same time, local legal entities rely on efforts made in third countries and recognition is required for due diligence carried out outside of the EU.

• The application of due diligence rules to certain third-country companies must take into account existing rules at sectoral level across the EU. The financial services sector, for instance, notably has already a high number of regulation stemming from sector legislation (e.g. under MiFID and CRD). Should the EC propose regulation on due diligence requirements, we understand rules will apply to all EU legal entities. Many financial services firms that are non-EU headquartered have established subsidiaries in the EU, to provide services to EU and non-EU clients, and will already be subject to due diligence rules for corporate governance. Thus, we believe the scope of such due diligence practices / liabilities should cover EU legal entities and not be extended to branches operating in the EU in order to reflect the different nature of branches which are extensions of the non-EU legal entity. Any extraterritorial application to branches or other parts of a global group would create conflict between home and host governance regimes. We would also note that extraterritorial provision of rules could be extremely disruptive where an EU legal entity is part of a global group (EU or non-EU headquartered) which may provide services or receive services to other parts of the global group. Concerns around developing a wider and more international approach to due diligence rules could be addressed at the International Platform on Sustainable Finance which could be, for example, used as a body to address those at an international level.

Comment on question 17 (a):

• It is not always easy to identify specific measures that can provide an accurate measure on responsibilities of third-country companies.
• Different possible measures considered (e.g. turnover, number of people, placement in market) do not always offer any clarity in setting a relevant and appropriate parameter. However, having operations in the Union or placing products or services (both physically and digitally, as outlined in the Digital Services Act) on the Single Market can be seen as a minimum link to subject third-country companies to due diligence obligations.

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

• Enforcement should be fair and equitable across participating companies (whether based inside or

outside the EU). Third-country companies should be subject to the same level of obligations as those based within the EU (taking the same proportionality for SMEs).
• From our experience, these obligations should include existing effective industry schemes that lessen the overall burden and drive the effectiveness of the efforts in addressing outcomes (rather than additional standards operating in parallel).
• Nonetheless, enforcement of obligations established for third-country companies might not be easy. But, given the overall current review of the EU trade policy, we believe that concrete application must be enhanced. In this regard, we welcome the appointment of a Chief Trade Enforcement Officer, tasked with the supervision of trade agreements, the enforcement of trade rules with European trading partners and, specifically, the assurance that third countries comply with workers' rights and environment commitments.
• Enforcement should be focused on remediation on the identified issue, without civil liability.

Question 18: Should the EU due diligence duty be accompanied by other measures to foster more level playing field between EU and third country companies?

- (x) Yes
- ( ) No
- ( ) I do not know

Please explain:

• It is important to ensure the level of harmonisation sought through this development, that due diligence duties also address the patchwork of public procurement requirements as well as those developed at national level. Harmonised standards are demonstrated to drive sustained levels of assurance – the need to comply with multiple, non-aligned requirements will limit positive impacts for people and resources used as efforts are spread too broadly and less efficiently.
• Some elements are inherent in this proposed due diligence duty in clearly separating responsibilities for companies versus expectations/measures which foster more consistent standards between outside countries – and domiciled companies within those countries.
• This includes stronger advocacy from EU on ensuring third-countries fulfil their 'duty to protect' by ensuring relevant laws and policies are in place and implemented as well as align the use of EU international development funding to foster engagement and improvements.
• We believe that consistency is also fundamental with regard to other similar initiatives, such as the review of the Non-Financial Reporting Directive.
• It is also important to re-emphasise the importance to ensure consistency in approach between Member States, a pre-requisite for meeting the EU internal market rules.
• Ensure EU trade agreements are aligned with the standards identified in due diligence requirements to address human rights and environmental standards at Member State level.

Question 19: Enforcement of the due diligence duty

Question 19a: If a mandatory due diligence duty is to be introduced, it should be accompanied by an enforcement mechanism to make it effective. In your view, which of the following mechanisms would be the most appropriate one(s) to enforce the possible obligation (tick the box, multiple choice)?

- [ ]

Judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations

- [ ] Supervision by competent national authorities based on complaints (and/or reporting, where relevant) about non-compliance with setting up and implementing due diligence measures, etc. with effective sanctions (such as for example fines)
- [x] Supervision by competent national authorities (option 2) with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU
- [ ] Other, please specify

Please provide explanation:

- From the above considerations related to the difficulty – if not impossibility, in some cases - for companies to identify risks across their entire value chain, we believe that companies could be responsible for failing to maintain a reasonable due diligence process, or for providing inaccurate or deceptive statements about their process, and for harm as a result of lack of adequate measures. This should be supported by appropriate sanctions that could be used to provide remedy to those who have been affected.
- As a result, we align with definitions of liabilities that consider the quality of due diligence measures taken, company knowledge or expected anticipation of the impact itself, and extent to which a company may have contributed.
- If a company has caused or may cause an impact, it should be expected to prevent or mitigate the impact and remediate any harm if impact occurred.
- If a company has contributed or may contribute to an impact, it should be expected to prevent or mitigate its own contribution or use its leverage with other parties to prevent or mitigate it (contribute to remediating harm if impact has occurred, to the extent of its involvement)
- If a company has not caused or contributed to an impact, but may have operations, products or services linked to an impact through a business relationship, it should be expected to use its leverage with others, including suppliers, to prevent or mitigate this impact (with no responsibility to provide remedy but with the option to do so as chosen).
- We therefore believe that the most appropriate tool to enforce due diligence obligations might be the establishment of national competent authorities that would supervise the correct implementation of companies' due diligence strategies, both through their own checks and investigations or upon complaints. National effort should then be coordinated also at EU level.
- This demonstrates the value of business-to-business alignment through common reporting databases, allowing decisions to be made on disclosure and performance through incentives (race to the top rather than using slower, less effective judicial enforcement)
- This can be supported by ensuring expectations are harmonised at EU and national levels.

Question 19b: In case you have experience with cases or Court proceedings in which the liability of a European company was at stake with respect to human rights or environmental harm caused by its subsidiary or supply chain partner located in a third country, did you encounter or do you have information about difficulties to get access to remedy that have arisen?

Yes
No

In case you answered yes, please indicate what type of difficulties you have encountered or have information about:

N/A

If you encountered difficulties, how and in which context do you consider they could (should) be addressed?

N/A

Section IV: Other elements of sustainable corporate governance

Question 20: Stakeholder engagement

Better involvement of stakeholders (such as for example employees, civil society organisations representing the interests of the environment, affected people or communities) in defining how stakeholder interests and sustainability are included into the corporate strategy and in the implementation of the company's due diligence processes could contribute to boards and companies fulfilling these duties more effectively.

Question 20a: Do you believe that the EU should require directors to establish and apply mechanisms or, where they already exist for employees for example, use existing information and consultation channels for engaging with stakeholders in this area?

I strongly agree
I agree to some extent
I disagree to some extent
I strongly disagree
I do not know
I do not take position

Please explain.

It is the company that should be responsible for establishing protocols and/or processes for stakeholder engagement, not the Board of Directors. In order to operate effectively, businesses have to consult a broad range of stakeholders so that they can define and execute business strategy and have existing mechanisms in place to support this. It is already clear to businesses that balancing and embracing the interests of their stakeholders is key to securing their long-term sustainability. Civil society organisations are key interlocutors for companies, in particular with regard to dialogue on sustainable value chains, however, they should not be

formally included in corporate management and strategic decision-making. Due diligence stakeholder dialogue is imperative.
Additional requirements placed on Directors with regard to stakeholder engagement could add significant burden to business with little value added to business or stakeholders. Directors of EU legal entities are often subject to decisions made by parent companies outside the EU with little local decision-making powers. Requiring directors to implement specific mechanisms for engagement eliminates the ability of the board to prioritise and determine the appropriate engagement approach that might be best for the corporation under the circumstances.

There are a number of effective industry schemes such as RBA, IFBEC and the European Partnership for Responsible Minerals (EPRM) that encourage sharing best practices among peers on a wide range of sustainable corporate governance issues, including dialogue with stakeholders. Indeed, any legislation should be accompanied by collaborative partnerships that bring stakeholders together. The EPRM is an accompanying measure to the CMR bringing governments, industry and civil society together to help achieve the goals of the Regulation, namely to increase the demand for and supply of responsibly-sourced minerals from conflict-affected and high-risk areas (CAHRAs) improving the livelihood of often artisanal and small-scale mining communities. Legislation alone cannot solve often complex global societal and environmental challenges.

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

N/A

Question 20c: What are best practices for such mechanisms today? Which mechanisms should in your view be promoted at EU level? (tick the box, multiple choice)

	Is best practice	Should be promoted at EU level
Advisory body	●	○
Stakeholder general meeting	○	○
Complaint mechanism as part of due diligence	●	○
Other, please specify	●	○

Other, please specify:

In line with the approach recommended by the UNGPs, businesses should assess salient employee, environmental and human rights risks that are present in their value chains, put in place processes to mitigate those risks and to remediate them where applicable. Again, there are a number of mature industry schemes such as the RBA, IFBEC and EPRM that encourage the sharing of best practices in this area among peers.
Any EU Regulation should not have a negative impact on the flexibility of companies in this area. The complaint mechanism should be to alert companies about the situation without liability and not subject to judicial oversight.

Question 21: Remuneration of directors

Current executive remuneration schemes, in particular share-based remuneration and variable performance criteria, promote focus on short-term financial value maximisation [17] (Study on directors' duties and sustainable corporate governance).

Please rank the following options in terms of their effectiveness to contribute to countering remuneration incentivising short-term focus in your view.

This question is being asked in addition to questions 40 and 41 of the Consultation on the Renewed Sustainable Finance Strategy the answers to which the Commission is currently analysing.
Ranking 1-7 (1: least efficient, 7: most efficient)

Restricting executive directors' ability to sell the shares they receive as pay for a certain period (e.g. requiring shares to be held for a certain period after they were granted, after a share buy-back by the company)	
Regulating the maximum percentage of share-based remuneration in the total remuneration of directors	
Regulating or limiting possible types of variable remuneration of directors (e. g. only shares but not share options)	
Making compulsory the inclusion of sustainability metrics linked, for example, to the company's sustainability targets or performance in the variable remuneration	
Mandatory proportion of variable remuneration linked to non-financial performance criteria	

Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration	
Taking into account workforce remuneration and related policies when setting director remuneration	
Other option, please specify	
None of these options should be pursued, please explain	

Please explain:

Acting as an incentive to focus on the longer-term health of businesses, director remuneration should be strongly recommended but not required. Businesses operate in complex ecosystems with rapidly evolving circumstances, from shifting governance structures to increasing environmental challenges and unpredictable events such as the Covid-19 pandemic. It is not possible to build a long-term remuneration structure that can adequately and fairly address all factors.
Companies increasingly are held to account by their investors and shareholders for their ESG performance. Additionally, as mentioned above directors of EU legal entities often do not have local decision-making power and are subject to decisions of their parent companies, so EU requirements for directors' remuneration would be ineffective.

Question 22: Enhancing sustainability expertise in the board

Current level of expertise of boards of directors does not fully support a shift towards sustainability, so action to enhance directors' competence in this area could be envisaged [18] (Study on directors' duties and sustainable corporate governance).
Please indicate which of these options are in your view effective to achieve this objective (tick the box, multiple choice).

- [ ] Requirement for companies to consider environmental, social and/or human rights expertise in the directors' nomination and selection process
- [ ] Requirement for companies to have a certain number/percentage of directors with relevant environmental, social and/or human rights expertise
- [ ] Requirement for companies to have at least one director with relevant environmental, social and/or human rights expertise
- [x] Requirement for the board to regularly assess its level of expertise on environmental, social and/or human rights matters and take appropriate follow-up, including regular trainings
- [ ] Other option, please specify
- [ ] None of these are effective options

Please explain:

> This should not be regulated as part of directors' duty of care. However, it is important to ensure that the right expertise should be made available or accessible to boards. Social, human rights and environmental matters are complex and more often than not beyond boards' abilities. Any regulation should aim to facilitate the knowledge and understanding of boards so that they are able to assess their level of expertise on these matters and undertake appropriate additional steps such as training. Board members should have access to expertise within the company and via external advisers instead of being mandated to have this additional expertise by regulation.

Question 23: Share buybacks

Corporate pay-outs to shareholders (in the form of both dividends and share buybacks) compared to the company's net income have increased from 20 to 60 % in the last 30 years in listed companies as an indicator of corporate short-termism. This arguably reduces the company's resources to make longer-term investments including into new technologies, resilience, sustainable business models and supply chains[19]. (A share buyback means that the company buys back its own shares, either directly from the open market or by offering shareholders the option to sell their shares to the company at a fixed price, as a result of which the number of outstanding shares is reduced, making each share worth a greater percentage of the company, thereby increasing both the price of the shares and the earnings per share.) EU law regulates the use of share-buybacks [Regulation 596/2014 on market abuse and Directive 77/91, second company law Directive].
In your view, should the EU take further action in this area?

- ( ) I strongly agree
- ( ) I agree to some extent

- (selected) I disagree to some extent
- I strongly disagree
- I do not know
- I do not take position

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

Question 24: Do you consider that any other measure should be taken at EU level to foster more sustainable corporate governance?
If so, please specify:

As stated above, there are a number of industry groups such as RBA, with its flagship programmes such as the Responsible Minerals Initiative (RMI), the Responsible Labour Initiative (RLI) and the EPRM, that effectively help companies to share best practices on Sustainable Corporate Governance. EU support for such schemes would be of considerable value. AmCham EU considers that any regulation should be accompanied by measures that include collaborative partnerships and embrace multi-sector dialogue as well as incentives, guidance and support.

Section V: Impacts of possible measures

Question 25: Impact of the spelling out of the content of directors' duty of care and of the due diligence duty on the company
Please estimate the impacts of a possible spelling out of the content of directors' duty of care as well as a due diligence duty compared to the current situation. In your understanding and own assessment, to what extent will the impacts/effects increase on a scale from 0-10? In addition, please quantify/estimate in quantitative terms (ideally as percentage of annual revenues) the increase of costs and benefits, if possible, in particular if your company already complies with such possible requirements.

Table

	Non-binding guidance. Rating 0-10	Introduction of these duties in binding law, cost and benefits linked to setting up /improving external impacts' identification and mitigation processes Rating 0 (lowest impact)-10 (highest impact) and quantitative data	Introduction of these duties in binding law, annual cost linked to the fulfilment of possible requirements aligned with science based targets (such as for example climate neutrality by 2050, net zero biodiversity loss, etc.) and possible reorganisation of supply chains Rating 0 (lowest impact)-10 (highest impact) and quantitative data
Administrative costs including costs related to new staff required to deal with new obligations			
Litigation costs			
Other costs including potential indirect costs linked to higher prices in the supply chain, costs liked to drawbacks as explained in question 3, other than administrative and litigation costs, etc. Please specify.			
Better performance stemming from increased employee loyalty, better employee performance, resource efficiency			

Competitiveness advantages stemming from new customers, customer loyalty, sustainable technologies or other opportunities			
Better risk management and resilience			
Innovation and improved productivity			
Better environmental and social performance and more reliable reporting attracting investors			
Other impact, please specify			

Please explain:

Question 26: Estimation of impacts on stakeholders and the environment
A clarified duty of care and the due diligence duty would be expected to have positive impacts on stakeholders and the environment, including in the supply chain. According to your own understanding and assessment, if your company complies with such requirements or conducts due diligence already, please quantify / estimate in quantitative terms the positive or negative impact annually since the introduction of the policy, by using examples such as:
- Improvements on health and safety of workers in the supply chain, such as reduction of the number of accidents at work, other improvement on working conditions, better wages, eradicating child labour, etc.
- Benefits for the environment through more efficient use of resources, recycling of waste, reduction in greenhouse gas emissions, reduced pollution, reduction in the use of hazardous material, etc.
- Improvements in the respect of human rights, including those of local communities along the supply chain
- Positive/negative impact on consumers
- Positive/negative impact on trade
- Positive/negative impact on the economy (EU/third country).

Contact

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Annex I
Examples of successful industry schemes

Technology sector – Responsible Business Alliance [RBA]

Founded in 2004 by a group of leading electronics companies, the Responsible Business Alliance (RBA), formerly the Electronic Industry Citizenship Coalition (EICC), is a non-profit comprised of electronics, retail, auto and toy companies committed to supporting the rights and well-being of workers and communities worldwide affected by the global supply chain.

RBA members commit and are held accountable to a common Code of Conduct and utilize a range of RBA training and assessment tools to support continual improvement in the social, environmental and ethical responsibility of their supply chains.

Code of Conduct provides 40 Standards provisions across five areas of Standards (Social, Environment, Health & Safety, Management Systems and Ethics). Areas covered include ensuring no forced labour, individuals' working hours within sector-wide benchmark,

Results:

- 834 technology sector achieving benchmark score (160/200) demonstrating performance against 40 different Standards requirements across five standards.
- $40M management fees have been identified by RBA members through due diligence and reimbursed to people working in supply chains, including within countries where the charging of such fees by labour agents is a regular legally compliant practice.
- 687 "priority" findings closed by RBA members, representing non-compliance with key social, environmental and health and safety standards, harmonized across the sector.

Technology sector – European Partnership for Responsible Minerals [EPRM]

The EPRM accompanies the EU Conflict Minerals Regulation, establishing a public – private partnership focused on supporting mine sites in Conflict Affected and High-Risk Areas (CAHRAs) to enable them to meet OECD Due Diligence Guidance standards.

EPRM membership ranges from European governments, to supply chain actors and civil society organizations.

The EPRM finances proposed projects aimed at mine-level increasing awareness on responsible production and regulations; increasing the capacity of mines to operate more responsibly and develop access to formal markets.

Business members of EPRM benefit through improved due diligence at mid- and downstream actors (e.g. capacity building) to enhance availability of responsibly sourced 3TG through clearer linkages.

Chemical sector – Responsible Care

Through Responsible Care, the chemical industry is committed to continuously strengthen our environmental, health, safety and security (EHS&S) performance, thereby improving the safety of chemical industry workers.

As the industry's environmental, health, safety and security performance initiative, Responsible Care has helped the International Council of Chemical Associations (ICCA) associations and member companies to significantly enhance their performance and improve the health and safety of their employees, the communities in which they operate, and the environment as a whole. We are also committed to providing EHS&S information relevant to the safe management of chemicals along the supply chain and throughout their lifecycles. Under the Global Charter, global chemical manufacturers are actively working together to track and improve our performance while striving for transparency with stakeholders.

Since 2000, there has been a 60% reduction in lost-time injury rate among Responsible Care companies. In addition to employee safety, resource conservation and the safe transportation of our products are key components of the initiative.

There has been a 36% reduction in SOX/NOX emissions and a 45% reduction in distribution incidents since 2000.

In Europe, the European Chemical Industry Council (Cefic) has promoted Responsible Care® in the region and ensuring consistency of implementation by national member federations. Each Cefic member federation is responsible for developing and running its own national Responsible Care® programme with its member companies, and for overseeing implementation by those companies

Aerospace and Defence sector – International Forum on Business Ethical Conduct for the AeroSpace and Defence Industry [IFBEC]

The International Forum on Business Ethical Conduct (IFBEC) was created by member companies of the Aerospace Industries Association of America (AIA) and the AeroSpace and Defence Industries Association of Europe (ASD) in 2010. It provides an opportunity to exchange information on best practices in the area of ethical business practices and global trends among industry participants.

IFBEC members have developed a set of Global Principles of Business Ethics for the AeroSpace and Defence Industry, which were endorsed by AIA and ASD in October 2009. The Forum is open to all companies willing to share business practices for sustainable competitiveness. The purpose of IFBEC is to promote and foster through the Global Principles the development of global, industry-wide ethical standards for companies that are active in the aerospace and defence business sector. IFBEC also is focused on organizing opportunities for industry and relevant stakeholders to exchange information and best practices concerning ethical business challenges, practices and opportunities worldwide.

The IFBEC Global Principles affirm our industry's commitment to ethical business behaviour and a uniform set of standards. The Global Principles address business conduct as it relates to zero tolerance of corruption, use of advisors, management of conflicts of interest and respect for proprietary information. Companies that formally adhere to the principles commit to including programs and policies that foster ethical business conduct consistent with the Global Principles in their corporate business practices.

The DII is a nonpartisan and non-profit organization comprised of representatives from nearly 80 member companies, primarily from the aerospace and defence industry, that perform United States government contracting.

DII's mission is the continued promotion and advancement of a culture of ethical conduct in every company that provides products and services through government contracting.

DII member companies serve their government customers by meeting the highest standards of ethics. The CEOs of every DII member company have committed their organizations to abiding by DII's core principles. The DII member companies commit to honesty in all business dealings, protecting taxpayer resources, and providing high-quality products and services for the various U.S. government customers in which they serve.