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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	6533/24
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 - Analysis of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 23 February 2022, the Commission submitted to the European Parliament and to the Council a proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937[1].

2. The proposed Directive, based on Article 50 and Article 114 of the TFEU, lays down rules on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with whom the company has an established business relationship. It also lays down rules on liability for violations of these obligations.

[1] 6533/22 + ADD 1

3. The proposal aims to set out a horizontal framework to foster the contribution of businesses operating in the single market towards the achievement of the Union's transition to a climate-neutral and green economy in line with the European Green Deal and the UN Sustainable Development Goals.

4. At its meeting of 1 December 2022, the Council (Competitiveness) adopted a General Approach on the proposal.[2]

5. The European Parliament's Committee on Legal Affairs (JURI) appointed Ms Lara WOLTERS (S&D, NL) as rapporteur on the proposal. The Parliament voted on its report at Plenary session on 1 June 2023.

6. The opinion of the European Economic and Social Committee was adopted on 14 July 2022[3].

7. Five political trilogues were held on 8 June, 11 July, 7 September, 22 November, and 13 December 2023. The Permanent Representative Committee was debriefed on 16 June, 14 July, 13 September, and 15 December 2023 respectively.

8. At the last trilogue, the co-legislators reached a provisional political agreement on an overall compromise text.

9. Nine technical meetings have taken place after the trilogue in order to finalise the text in line with the provisional political agreement. The full compromise text, as set out in the Annex to this Note, was presented to the Company Law Working Party on 29 January 2024.

10. The main elements of this compromise text are set out in Section II below. The Presidency considers that the overall compromise reached with the European Parliament is balanced and in line with the granted mandate.

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2 15024/1/22.
3 11489/22.

II. MAIN ELEMENTS OF THE COMPROMISE

A. Scope - Article 2

11. The Council's overall approach to determine which companies would have to carry out due diligence was kept. The criteria are based on the number of employees and the net worldwide turnover for EU companies, and on the net turnover generated in the Union for non-EU companies. The compromise incorporates some anti-circumvention measures , namely (1) the calculation of the thresholds at group level, ensuring that thresholds apply to the consolidated annual statements in the EU, while avoiding capturing companies at group level not engaged in management or operational decisions of the subsidiaries; and (2) the inclusion of franchises, individually or at a group level, on the basis of a specific threshold for the royalties of more than EUR 7.5 million and a net turnover of more than EUR 40 million in the EU.

    The thresholds applicable to companies active in high-risk sectors was maintained as in the approach of the Council, with the addition of the construction sector to the list of high risk sectors in Article 2(1)(bb) and Article 2(2)(bb).

    The corresponding Recitals (21) to (24) were adjusted accordingly.

B. Regulated financial undertakings - Article 3, point (a) and (g) and Article 29(1)

12. The definition of 'chain of activities' implies, for regulated financial undertakings, that only the upstream part of the activities of the financial sector would be covered by the definition. All references to financial activities in the downstream part of the chain of activities, as well as references to the specificities of the financial sector in the due diligence procedure have been deleted.

13. The financial sector is also covered by specific provisions in Article 29 – Review and reporting - whereby the Commission is to submit a report to the European Parliament and the Council, on the need for additional due diligence requirements tailored to the financial sector, as well as their impacts, no later than two years after the entry into force of the Directive.

14. In addition, an agreement was reached on a joint political statement in which the European Parliament and the Council agree on the necessity to develop legal requirements laying down additional appropriate sustainability due diligence requirements for regulated financial undertakings, without prejudging its content, extent or form.

C. Combating climate change - Article 15

15. At the last trilogue on 13 December 2023, it was agreed to strengthen the provisions related to the obligation for companies to adopt and put into effect a climate transition plan for climate change mitigation in line with the Paris agreement, by the inclusion of an obligation of means, rather than results. The contents of the plans would be aligned with the Corporate Sustainability Reporting Directive (CSRD) and, to avoid duplicating reporting obligations, companies complying with the CSRD would be exempted from the obligation to adopt a climate transition plan. The financial sector is also covered by the provisions this Article.

16. For companies with more than 1000 employees, the agreed text also includes the provision, among other elements, of financial incentives, to members of the company's administrative, management or supervisory bodies, for the promotion of the climate change plan's implementation.

    The corresponding Recitals (50) and (51) were adjusted accordingly.

D. Civil liability of companies and a right to full compensation - Article 22

17. The main elements of the Council's mandate have been preserved as regards the conditions that have to be met in order for a company to be held liable, while several elements on access to justice for persons affected have been included to meet the concerns of the European Parliament. The text establishes a period of minimum five years to bring claims by those concerned by adverse impacts, including, under certain conditions, from trade unions or non-governmental organisations, without prejudice to national rules of civil procedure. The compromise also includes elements on disclosure of evidence, injunctive measures, and a reference to the cost of the proceedings for claimants.

    The corresponding Recitals (56) to (62) were adjusted accordingly.

E. Annex I

18. The logic of the Annex I of the Directive has been maintained. The annex lists specific rights and prohibitions, the abuse or violation of which constitutes an adverse human rights impact (defined in Article 3(c)), or adverse environmental impacts (defined in Article 3(b)). The agreed text adds new elements to the obligations and instruments listed in the annex on human rights as regards vulnerable groups and core International Labour Organisation (ILO) Conventions, the latter through delegated acts when these are fully ratified by all the Member States. In addition, the environmental impacts definition has been adapted to include deforestation and ecosystem services.

    The related Recitals (25) to (25d) were adjusted accordingly.

F. Other issues

19. As regards the issue of **termination and responsible disengagement in Articles 7 and 8**, the agreement provides that termination will be a last resort solution, where the company itself would set an appropriate timeframe in its prevention or corrective action plan and where the termination is assessed as to whether there would be manifestly more severe adverse impacts of doing so. Recitals (36) and (41) have been adjusted accordingly.

20. The agreement adds a new **Article 8d on meaningful engagement with stakeholders**, which incorporates the time and manner in which consultations take place in the due diligence process, allowing companies to fulfil this obligation through industry or multi-stakeholder initiatives, as appropriate. 'Stakeholders' are defined in Article 3, point (n). Recital (44c) was adjusted accordingly.

21. **Articles 25 on Directors' duty of care and Article 26 on Setting up and overseeing due diligence** were deleted, as per the Council's mandate.

III. CONCLUSION

22. In the light of the above, the Permanent Representatives Committee is invited:

- to give its approval to the compromise text set out in the Annex to this Note and the joint statement set out in the Addendum 1 to this Note; and

- to mandate the Presidency to send a letter to inform the Chair of the Committee on Legal Affairs (JURI) that, should the Parliament adopt its position at first reading in accordance with Article 294(3) TFEU and in the exact form set out in the Annex to this Note, subject to legal-linguistic revision, the Council would, in accordance with Article 294(4) TFEU, approve the European Parliament's position and the act would be adopted in the wording which corresponds to the European Parliament's position.

ANNEX

2022/0051 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 *and Regulation (EU) 2023/2859*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[4],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) ***As stated in Article 2 of the Treaty on the European Union,*** the Union is founded on the ***values of*** respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights as enshrined in the EU Charter of Fundamental Rights. Those core values***,*** that have inspired the Union's own creation, as well as the universality and indivisibility of human rights, and respect for the principles of the United Nations Charter and international law, should guide the Union's action on the international scene. Such

[4] OJ C , , p. .

action includes fostering the sustainable economic, social and environmental development of developing countries.

(2) ***In line with Article 191 of the Treaty on the Functioning of the European Union (TFEU),*** a high level of protection and improvement of the quality of the environment and promoting European core values are among the priorities of the Union, as set out in the Commission's Communication on A European Green Deal[5] . These objectives require the involvement not only of the public authorities but also of private actors, in particular companies.

(3) In its Communication on a Strong Social Europe for Just Transition[6] , the Commission committed to upgrading Europe's social market economy to achieve a just transition to sustainability***, ensuring that no-one is left behind***. This Directive will also contribute to the European Pillar of Social Rights, which promotes rights ensuring fair working conditions. It forms part of the EU policies and strategies relating to the promotion of decent work worldwide, including in global value chains, as referred to in the Commission Communication on decent work worldwide[7].

(4) The behaviour of companies across all sectors of the economy is key to success in the Union's sustainability objectives as Union companies, especially large ones, rely on global value chains. It is also in the interest of companies to protect human rights and the environment, in particular given the rising concern of consumers and investors regarding these topics. Several initiatives fostering enterprises which support value-oriented transformation already exist on Union[8], as well as national[9] level.

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

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

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

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

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

(5) Existing international standards on responsible business conduct specify that companies should protect human rights and set out how they should address the protection of the environment across their operations and value chains. The United Nations Guiding Principles on Business and Human Rights[10] recognise the responsibility of companies to exercise human rights due diligence by identifying, preventing and mitigating the adverse impacts of their operations on human rights and by accounting for how they address those impacts. Those Guiding Principles state that businesses should avoid infringing human rights and should address adverse human rights impacts that they have caused, contributed to or are linked with in their own operations, subsidiaries and through their direct and indirect business relationships.

(6) The concept of human rights due diligence was specified and further developed in the OECD Guidelines for Multinational Enterprises[11] which extended the application of due diligence to environmental and governance topics. The OECD Guidance on Responsible Business Conduct and sectoral guidance[12] are internationally recognised frameworks setting out practical due diligence steps to help companies identify, prevent, mitigate and account for how they address actual and potential impacts in their operations, ***supply*** chains and other business relationships. The concept of due diligence is also embedded in the recommendations of the International Labour Organisation (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.[13]

(6a) All businesses have a responsibility to respect human rights, which are universal, indivisible, interdependent and interrelated.

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

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

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

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

(7) The United Nations' Sustainable Development Goals[14], adopted by all United Nations Member States in 2015, include the objectives to promote sustained, inclusive and sustainable economic growth. The Union has set itself the objective to deliver on the UN Sustainable Development Goals. The private sector contributes to those aims.

(7a) Global value chains, and in particular critical raw materials value chains, are impacted by detrimental effects of natural or man-made hazards. The frequency and impact of shocks involving risks to critical value chains are likely to increase in the future. The private sector could play an important role in promoting sustained, inclusive and sustainable economic growth, while avoiding the creation of imbalances on the internal market, underlining the importance of strengthening the resilience of companies to adverse scenarios related to their value chains, taking into account externalities as well as social, environmental and governance risks.

(8) International agreements under the United Nations Framework Convention on Climate Change, to which the Union and the Member States are parties, such as the Paris Agreement ***under the United Nations Framework Convention on Climate Change adopted on 12 December 2015 (the 'Paris Agreement')***[15] and the recent Glasgow Climate Pact[16], set out precise avenues to address climate change and keep global warming within 1.5 ℃ degrees. Besides specific actions being expected from all signatory Parties, the role of the private sector, in particular its investment strategies, is ***also*** considered central to achieve these objectives.

(9) In ***Regulation (EU) 2021/1119 of*** the European ***Parliament and of the Council***[17], the Union also legally committed to becoming climate-neutral by 2050 and to reducing emissions by at least 55% by 2030. Both these commitments require changing the way in which companies produce and procure. The Commission's 2030 Climate Target Plan[18] models various degrees of emission reductions required from different economic sectors,

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

15 ***OJ L 282, 19.10.2016, p. 4***.

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

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

18 SWD/2020/176 final.

though all need to see considerable reductions under all scenarios for the Union to meet its climate objectives. The Plan also underlines that "changes in corporate governance rules and practices, including on sustainable finance, will make company owners and managers prioritise sustainability objectives in their actions and strategies." The 2019 Communication on the European Green Deal[19] sets out that all Union actions and policies should pull together to help the Union achieve a successful and just transition towards a sustainable future. It also sets out that sustainability should be further embedded into the corporate governance framework. ***The General Union Environmental Action Programme to 2030[20] ('8th EAP'), the framework for Union action in the field of the environment and climate, aims to accelerate the green transition to a climate-neutral, sustainable, non-toxic, resource-efficient, renewable energy-based, resilient and competitive circular economy in a just, equitable and inclusive way, and to protect, restore and improve the state of the environment by, inter alia, halting and reversing biodiversity loss.***

(10) According to the Commission Communication on forging a climate-resilient Europe[21] presenting the Union Strategy on Adaptation to climate change, new investment and policy decisions should be climate-informed and future-proof, including for larger businesses managing value chains. This Directive should be consistent with that Strategy. Similarly, there should be consistency with the Commission Directive […] amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (Capital Requirements Directive)[22], which sets out clear requirements for banks' governance rules including knowledge about environmental, social and governance risks at board of directors level.

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19 COM/2019/640 final.

20 ***Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030 (OJ L 114, 12.4.2022, p. 22).***

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

22 OJ C […], […], p. […].

(11) The Action Plan on a Circular Economy[23], the Biodiversity strategy[24], the Farm to Fork strategy[25] and the Chemicals strategy[26]***, the 2021 EU Action Plan Towards Zero Pollution for Air, Water and Soil,*** and Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery[27], Industry 5.0[28] and the European Pillar of Social Rights Action Plan[29] and the 2021 Trade Policy Review[30] list an initiative on sustainable corporate governance among their elements. ***Due diligence requirements under this Directive should contribute to the objectives of the EU Action Plan Towards Zero Pollution for Air, Water and Soil of creating a toxic-free environment and protecting the health and well-being of people, animals and ecosystems from environment-related risks and negative impacts.***

(12) This Directive is in coherence with the EU Action Plan on Human Rights and Democracy 2020-2024[31]. This Action Plan defines as a priority to strengthen the Union's engagement to actively promote the global implementation of the United Nations Guiding Principles on Business and Human Rights and other relevant international guidelines such as the OECD

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

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

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

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

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

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

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

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

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

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

(13) The European Parliament, in its resolution of 10 March 2021 calls upon the Commission to propose Union rules for ▌ comprehensive corporate due diligence ***obligations, with consequences including civil liability for those companies that cause or jointly cause harm by failing to carry out due diligence***[32]. The Council Conclusions on Human Rights and Decent Work in Global Supply Chains of 1 December 2020 called upon the Commission to table a proposal for a Union legal framework on sustainable corporate governance, including cross-sector corporate due diligence obligations along global supply chains.[33] The European Parliament also calls for clarifying directors' duties in its own initiative report adopted on 2 December 2020 on sustainable corporate governance. In their Joint Declaration on EU Legislative Priorities for 2022[34], the European Parliament, the Council of the European Union and the Commission have committed, to deliver on an economy that works for people, and to improve the regulatory framework on sustainable corporate governance.

(14) This Directive aims to ensure that companies active in the internal market contribute to sustainable development and the sustainability transition of economies and societies through the identification, ***and where necessary, prioritisation,*** prevention and mitigation, bringing to an end***,*** minimisation ***and remediation*** of potential or actual adverse human rights and environmental impacts connected with companies' own operations, ***operations of their*** subsidiaries and ***their business partners in the companies'*** chains ***of activities, and ensuring that those affected by a failure to respect this duty have access to justice and legal remedies. This Directive is without prejudice to the responsibility of Member States to respect and protect human rights and the environment under international law***.

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

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

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

(14a) This Directive is without prejudice to obligations in the areas of human, employment and social rights, protection of the environment and climate change under other Union legislative acts. If the provisions of this Directive conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act should prevail to the extent of the conflict and should apply to those specific obligations. Examples of these obligations in Union legislative acts include obligations in the Regulation (EU) 2017/821 of the European Parliament and of the Council (Conflict Minerals Regulation)[35], Regulation (EU) 2023/1542 of the European Parliament and of the Council (Batteries Regulation)[36] or Regulation (EU) 2023/1115 of the European Parliament and of the Council (Regulation on deforestation-free supply chains)[37].

(14b) This Directive does not apply to pension institutions operating social security systems under applicable Union law. Where a Member State has chosen not to apply Directive (EU) 2016/2341 in whole or in parts to an institution for occupational retirement in accordance with Article 5 of that Directive, this Directive does not apply to those institutions.

(15) Companies should take appropriate steps to set up and carry out due diligence measures, with respect to their own operations, ***those of*** their subsidiaries, as well as their direct and indirect business ***partners*** throughout their ***chains of activities*** in accordance with the provisions of this Directive. This Directive should not require companies to guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped. For example***,*** with respect to business ***partners*** where the adverse impact results from State intervention, the company might not be in a position to arrive at such results. Therefore,

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

36 Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, (OJ L 191, 28.7.2023, p. 1).

37 Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, (OJ L 150, 9.6.2023, p. 206).

the main obligations in this Directive should be 'obligations of means'. The company should take the appropriate measures which ***are capable of achieving the objectives of due diligence by effectively addressing adverse impacts, in a manner commensurate to the degree of severity and the likelihood*** of the adverse impact***. Account should be taken of*** the circumstances of the specific case***, the nature and extent*** of the ***adverse impact and relevant risk factors, including, in preventing and minimising adverse impacts, the*** specificities of the company's ***business operations and its*** chain ***of activities***, sector or geographical area in which its ***business*** partners operate, the company's power to influence its direct and indirect business ***partners***, and whether the company could increase its power of influence.

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

(16a) In order to make due diligence more effective and reduce the burden on companies, they should be entitled to share resources and information within their respective groups of companies and with other legal entities. The parent company falling under the scope of this Directive should be allowed to fulfil some of the due diligence obligations also on behalf of its subsidiaries that are falling under the scope of this Directive, if this ensures effective compliance. This should be without prejudice to the subsidiaries being subject to the exercise of the supervisory authority's powers and to their civil liability under this Directive. When the parent company fulfils the obligations on combatting climate change on behalf of the subsidiary, the subsidiary should comply with those obligations in accordance with the parent company's climate change mitigation plan accordingly adapted to its business model and strategy. If the subsidiary does not fall under the scope of this Directive, since the subsidiary is not obliged to carry out due diligence, the parent company should cover operations of the subsidiary as part of its own due diligence obligations. If the subsidiaries fall under the scope of this Directive, but the parent company does not, they still should be allowed to share resources and information within

the group of companies. Nevertheless, the subsidiaries would be responsible for fulfilling due diligence obligations under this Directive.

(16b) The fulfilment of some of the due diligence obligations at a group level should be without prejudice to the civil liability of subsidiaries under this Directive in respect to victims to whom the damage is caused. If the conditions for civil liability are met, the subsidiary might be held liable for damage occurred, irrespective of whether the due diligence obligations were carried out by the subsidiary or by the parent company on behalf of the subsidiary.

(16c) Business partners should not be obliged to disclose to a company which is complying with the obligations resulting from this Directive, information that is a trade secret as defined in the Directive 2016/943/EU of the European Parliament and of the Council[38] without prejudice to the disclosure of the identity of direct and indirect business partners, or essential information needed to identify potential or actual adverse impacts, where necessary and duly justified for the company's compliance with due diligence obligations. This should be without prejudice to the possibility for the business partners to protect their trade secrets through the mechanisms established in Directive (EU) 2016/943 of the European Parliament and of the Council. Business partners should never be obliged to disclose classified information or other information the disclosure of which would cause a risk to the essential interests of a state's security.

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

▌

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

(18) The ***chain of activities*** should cover activities ***of a company's upstream business partners*** related to the production of ***goods or the*** provision of services by ***the*** company, including the ***design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and*** development of the product or the service***, and activities of a company's downstream business partners related to the distribution, transport, storage*** and disposal of the product***, including the dismantling, recycling, composting or landfilling, where the business partners carry out those*** activities ***directly or indirectly for the company or on behalf*** of the company. ***This Directive*** should ***not cover the disposal of the product by consumers. Also, under this Directive the chain of activities should not*** encompass ***the distribution, transport, storage and disposal of a product that is subject to export control of a Member State, meaning either the export control under the Regulation (EU) 2021/821 of the European Parliament and of the Council[39] or the export control of weapons, munition or war material under national export controls, after the export of the product is authorised. This Directive is complemented by these and other legislative acts, which also address negative adverse impacts in the field of human rights or environmental protection. In particular, Regulation (EU) 2021/821 of the European Parliament and of the Council sets up a regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items, covering inter alia software and technologies that can be used for cyber- surveillance purposes. Under this regime, Member States should consider in particular the risk of such goods being used in connection with internal repression or the commission of serious violations of human rights and international humanitarian law. Also, Regulation (EU) 2019/125 of the European Parliament and the Council prohibits or regulates, as the case may be, export of goods such as chemical substances that are used or could be used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, several other legislative initiatives aim at mitigating environmental impacts of products during their whole lifecycle***, including ***by setting ecodesign requirements based on the sustainability and circularity aspects of products. Compliance with this Directive should facilitate compliance with the provisions and objectives of these other legislative acts,***

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[39] Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (OJ L 206, 11.6.2021, p. 1).

and with the terms and conditions of the ***applicable authorisations implemented thereunder. Exporters should take into account the results of their due diligence findings under this Directive in their compliance with these other legislative acts. The term "chain of activities" as defined in this directive is without prejudice to the terms "value chain" or "supply chain" as defined in or within the meaning of other EU legislation***.

(19) ***The definition of 'chain of activities' should not include the activities of a company's downstream business partners related*** to the ***services*** of the ***company. For regulated financial undertakings, the definition of the term 'chain of activities' should not include downstream business partners that are receiving their services and products. Therefore, as regards regulated financial*** undertakings, ***only the upstream but not the downstream part of their*** chain of ***activities is covered by this Directive***.

(21) Under this Directive, ***companies formed in accordance with the legislation of a Member State should be subject to due diligence requirements when they meet certain conditions, including turnover and, in certain cases, employee thresholds. While these conditions are expressed with regard to single financial years, this Directive should only apply if the company has met them for each of the last two consecutive financial years and should no longer apply where they cease to be met for each of*** the last ***two relevant*** financial ***years. This is also true for companies formed in accordance with the law of a third country which*** should ***fulfil the relevant EU turnover criterion for each of the last two financial*** years***. For the sake of clarity, and taking the staggered application of the*** Directive ***into account, the scope criteria need to be fulfilled for two consecutive financial years by both EU and non-EU*** companies ***preceding the relevant application dates established according to the rules on the transposition of this Directive. As regards the employee thresholds,*** temporary agency workers, ***and workers*** posted under Article

1(3), point (c), of Directive 96/71/EC ***of the European Parliament and of the Council***[40], as amended by Directive 2018/957/EU of the European Parliament and of the Council[41], should be included in the calculation of the number of employees in the user company. Posted workers under Article 1(3), points (a) and (b), of Directive 96/71/EC, as amended by Directive 2018/957/EU, should only be included in the calculation of the number of employees of the sending company. ***Other workers in non-standard forms of employment should also be included in the calculation of the number of employees insofar as they meet the criteria for determining the status of a worker established by the Court of Justice of the European Union. Seasonal workers should be included in the calculation of the number of employees proportionally to the number of months that they are employed for. The calculation of the thresholds should include the number of employees and the turnover of a company's branches, which are places of business other than the head office that are legally dependent on it, and therefore considered as part of the company, in accordance with EU and national legislation. This also applies for the group companies in case the thresholds are calculated on a consolidated basis. Where this is not specified otherwise, the thresholds mentioned in order for a company to be covered by this directive should be understood as thresholds calculated on an individual basis.***

(22) ***Companies established in the Union with more than 500 employees on average and a net worldwide turnover exceeding EUR 150 million in the last financial year for which annual financial statements have been or should have been adopted, should be required to comply with due diligence. As regards companies which do not reach these thresholds but are the ultimate parent company of a corporate group which on a consolidated basis does reach these thresholds, the obligations of this Directive should be met by the ultimate parent company or, in case the latter has as its main activity the holding of shares in operational subsidiaries, in its stead by the operational subsidiary closest in the chain of control to the ultimate parent company. If there is more than one such subsidiary, they should all meet the obligations of this Directive. Companies having***

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[40] ***Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).***

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

entered into franchising or licensing agreements in the Union in return for royalties with independent third-party companies, where these agreements ensure a common identity, a common business concept and the application of uniform business methods, and where these royalties amount to more than EUR 7.5 million in the last financial year for which annual financial statements have been or should have been adopted, and provided that the company had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been or should have been adopted should also meet the obligations of this Directive. The same applies to ultimate parent companies of groups of companies that taken together fulfil these conditions. As regards companies which do not fulfil any of the aforementioned criteria, but which had more than 250 employees on average and more than EUR 40 million worldwide net turnover in the last financial year for which annual financial statements have been or should have been adopted and which operate in one or more of certain listed high-impact sectors***, due diligence should apply 3 years after the end of the transposition period*** of this Directive***, in order to provide for a longer adaptation period. In order to ensure a proportionate burden, companies operating in such high-impact sectors*** should be ***required to comply with more targeted*** due diligence ▌. The following sectors should be regarded as high-impact for the purposes of this Directive: the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear; agriculture, forestry, fisheries (including aquaculture), the manufacture of food products ***and beverages***, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages; the extraction of mineral resources regardless of where they are extracted from (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products)***; construction. These sectors should be understood as covering the related sectors of economic activities associated with the applicable statistical classification of economic activities established by Regulation (EC) No 1893/2006*** of the ***European***

Parliament and the Council[42]. The Commission should ***develop sector-specific guidelines for these sectors***.

(23) In order to achieve fully the objectives of this Directive addressing ***adverse*** human rights and ▌ environmental impacts with respect to companies' operations, ***operations of their*** subsidiaries and ***their business partners in companies'*** chains ***of activities***, third-country companies with significant operations in the EU should also be covered. More specifically, the Directive should apply to third-country companies which generated a net turnover of at least EUR 150 million in the Union in the financial year preceding the last financial year**.** ***As regards companies which do not reach these thresholds but are the ultimate parent company of a corporate group which on a consolidated basis does reach these thresholds, the obligations of this Directive should be met by the ultimate parent company, or, in case the latter has as its main activity the holding of shares in operational subsidiaries, in its stead by the operational subsidiary closest in the chain of control to the ultimate parent company. If there is more than one such subsidiary, they should all meet the obligations of this Directive. Companies having entered into franchising or licensing agreements in the Union in return for royalties with independent third-party companies, where these agreements ensure a common identity, a common business concept and the application of uniform business methods, and where these royalties amount to more than EUR 7.5 million in the Union in the financial year preceding the last financial year, and provided that the company had a net turnover of more than EUR 40 million in the Union in the financial year preceding the last financial year should also meet the obligations of this Directive. The same applies to ultimate parent companies of groups of companies that taken together fulfil these conditions. As regards companies which do not fulfil any of the aforementioned criteria, but which generated*** a net turnover of more than EUR 40 million but less than EUR 150 million ***in the Union*** in the financial year preceding the last financial year***, provided that at least EUR 20 million was generated*** in one or more of ***certain listed*** high-impact sectors, ***due diligence should apply 3*** years after the end of the transposition period of this Directive***, in order to provide for a longer adaptation period***. ***In order to ensure a proportionate***

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

burden, companies operating in such high-impact sectors should be required to comply with more targeted due diligence.

(24) For defining the scope of application in relation to ***third-country*** companies***,*** the described turnover criterion should be chosen as it creates a territorial connection between the third-country companies and the Union territory. Turnover is a proxy for the effects that the activities of those companies could have on the internal market. In accordance with international law, such effects justify the application of Union law to third-country companies. To ensure identification of the relevant turnover of companies concerned, the methods for calculating net turnover for ***third-country*** companies as laid down in Directive (EU) 2013/34 ***of the European Parliament and of the Council***[43] should be used. To ensure effective enforcement of this Directive, an employee threshold should, in turn, not be applied to determine which third-country companies fall under this Directive, as the notion of "employees" retained for the purposes of this Directive is based on Union law and could not be easily transposed outside of the Union. In the absence of a clear and consistent methodology, including in accounting frameworks, to determine the employees of third-country companies, such employee threshold would therefore create legal uncertainty and would be difficult to apply for supervisory authorities. The definition of turnover should be based on Directive 2013/34/EU which has already established the methods for calculating net turnover for non-Union companies, as turnover and revenue definitions are similar in international accounting frameworks too. With a view to ensuring that the supervisory authority knows which third country companies generate the required turnover in the Union to fall under the scope of this Directive, this Directive should require that ***the third-country company's authorised representative or the company itself informs*** a supervisory authority in the Member State where the third country company's authorised representative is domiciled or established and, where it is different, a supervisory authority in the Member State in which the company generated most of its net turnover in the Union in the financial year preceding the last financial year ▌ that the company is a company falling under the scope of this Directive. ***If necessary for determination in which Member***

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43 ***Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).***

State the third-country company generated most of its net turnover in the Union, the Member State can request the Commission to inform the Member State about the net turnover of the third-country company generated in the Union. The Commission should set up a system to ensure such an exchange of information.

(24a) It is essential to establish a European framework for a responsible and sustainable approach to global value chains, given the importance of companies as a pillar in the construction of a sustainable society and economy. The emergence of binding legislation in several Member States has given rise to the need for a level playing field for companies in order to avoid fragmentation and to provide legal certainty for businesses operating in the internal market. Nonetheless, this Directive should not preclude Member States from introducing more stringent national provisions diverging from those laid down in Articles other than Articles 6(1), 6(1a), 7(1) and 8(1), including where such provisions may indirectly raise the level of protection of those Articles 6(1), 6(1a), 7(1) and 8(1), such as the provisions on the scope, on the definitions, on the appropriate measures for the remediation of actual adverse impacts, on the carrying out of meaningful engagement with stakeholders and on the civil liability; or from introducing national provisions that are more specific in terms of their objective or the field covered, such as national provisions regulating specific adverse impacts or specific sectors of activity, in order to achieve a different level of protection of human, employment and social rights, the environment or the climate.

(25) ***This Directive aims to comprehensively cover human rights, including all five fundamental principles and rights at work as defined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work[44] .*** In order to achieve a meaningful contribution to the sustainability transition, due diligence under this Directive should be carried out with respect to adverse human rights ***impacts on*** persons resulting from the ***abuse*** of one of the rights ▌ as enshrined in the international ***instruments*** listed in the Annex ***I, Part I Section 1*** to this Directive. ***The term "abuse" should be interpreted in line with international human rights law.*** In order to ensure a comprehensive coverage of human rights, ***an abuse of a human*** right not specifically listed in ***Annex I, Part I Section***

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[44] Adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022). Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf

1 which can be abused by a company or legal entity, and which directly impairs a legal interest protected in ***the human rights instruments listed in Annex I, Part I Section 2*** should also form part of the adverse human rights ***impacts*** covered by this Directive, provided that the company concerned could have reasonably ***foreseen*** the risk of ***such human right abuse, taking into account all relevant circumstances of the specific case, including the nature and extent of the company's business operations and its chain of activities, economic sector and geographical*** and operational context. Due diligence should further encompass adverse environmental impacts resulting from the violation of one of the prohibitions and obligations ***listed in the Annex I, Part II to this Directive, as well as adverse impacts resulting from the breach of one of the prohibitions listed in the Annex I, Part I, points 18 and 19, taking into account national legislation linked*** to the ***provisions of the instruments listed therein. These prohibitions and obligations should be interpreted and applied in line with*** international ***and Union general principles of*** environmental ***law, as set out in Article 191 of TFEU. These prohibitions include the prohibition of causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions, excessive water consumption, degradation of land, or other impact on natural resources, such as deforestation, that substantially impairs the natural bases for the preservation and production of food, or that denies a person access to safe and clean drinking water, or that makes it difficult for a person to access sanitary facilities or destroys them, or that harms the health, safety, the normal use of land or lawfully acquired possessions of a person, or that substantially adversely affects ecosystem services through which an ecosystem contributes directly or indirectly to human wellbeing. In order to assess whether the damage to ecosystem services is substantial, the following elements should be taken into account where relevant: the baseline condition of the affected environment, whether the damage is long-lasting, medium term or short term, the spread of the damage, and the reversibility of the damage. Due diligence requirements under this Directive should therefore contribute to preserving and restoring biodiversity and improving the state of the environment, in particular the air, water and soil, including to better protect human rights. The Commission should be empowered to adopt delegated acts in order to amend*** Annex ***I*** to this Directive ***for the purposes laid down in Article 3(2), including by adding the reference, once ratified by all EU Member States, to the ILO Occupational Safety and Health Convention, 1981 (No. 155), and the ILO Promotional Framework for***

Occupational Safety and Health, 2006 (No 187), which form part of the ILO fundamental instruments.

(25a) Depending on circumstances, companies may need to consider additional standards. For instance, taking account of specific contexts or intersecting factors, including among others, gender, age, race, ethnicity, class, caste, education, migration status, disability, as well as social and economic status, as part of a gender- and culturally responsive approach to due diligence, companies should pay special attention to any particular adverse impacts on individuals who may be at heightened risk due to marginalisation, vulnerability or other circumstances, individually or as members of certain groups or communities, including Indigenous Peoples, as protected under the United Nations Declaration on the Rights of Indigenous Peoples, including in relation to Free, Prior and Informed Consent (FPIC). In doing so, companies may need to take into consideration, where relevant, international instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities.

(25b) Companies should also be responsible for using their influence to contribute to an adequate standard of living in chains of activities. This is understood as a living wage for employees and a living income for self-employed workers and smallholders, which they earn in return from their work and production.

(25c) This Directive acknowledges the 'One Health' approach as recognised by the World Health Organization, an integrated and unifying approach that aims to sustainably balance and optimise the health of people, animals and ecosystems. The 'One Health' approach recognises that the health of humans, domestic and wild animals, plants, and the wider environment, including ecosystems, are closely interlinked and interdependent. It is therefore appropriate to lay down that environmental due diligence should encompass avoiding environmental degradation that results in adverse health effects such as epidemics, and to respect the right to a clean, healthy and sustainable environment.

(25d) Adverse human rights and environmental impacts can be intertwined with or underpinned by factors such as corruption and bribery. It therefore may be necessary for

companies to take into account these factors when carrying out human rights and environmental due diligence, consistently with the United Nations Convention against Corruption.

(26) ***When assessing the adverse human rights impacts,*** companies have guidance at their disposal that illustrates how their activities may impact human rights and which corporate behaviour is prohibited in accordance with internationally recognised human rights. Such guidance is included for instance in the United Nations Guiding Principles Reporting Framework[45]**,** and the United Nations Guiding Principles Interpretative Guide[46]. ▌

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(27) In order to conduct appropriate human rights ▌ and environmental due diligence with respect to their operations, ***operations of*** their subsidiaries, and ***operations of*** their ***business partners in companies'*** chains ***of activities***, companies covered by this Directive should integrate due diligence into ***company's*** policies ***and risk management systems***, identify ***and assess, where necessary prioritise***, prevent and mitigate as well as bring to an end and minimise the extent of potential and actual adverse human rights and environmental impacts, ***provide remediation to actual adverse impacts, carry out meaningful engagement with stakeholders,*** establish and maintain a ***notification mechanism and*** complaints procedure, monitor the effectiveness of the taken measures in accordance with the requirements that are set up in this Directive and communicate publicly on their due diligence. In order to ensure clarity for companies, in particular the steps of preventing and mitigating potential adverse impacts and of bringing to an end, or when this is not possible, minimising ***the extent of*** actual adverse impacts**,** should be clearly distinguished in this Directive.

(28) In order to ensure that due diligence forms part of companies' ***policies and risk management systems***, and in line with the relevant international framework, companies should integrate due diligence into ***their relevant policies and risk management systems and at all relevant levels of operation*** and have in place a due diligence policy. The due diligence policy should ***be developed in prior consultation with the company's employees***

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

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

and their representatives and should contain a description of the company's approach, including in the long term, to due diligence, a code of conduct describing the rules and principles to be followed ***throughout the company and its subsidiaries, and, where relevant,*** the company's ***direct or indirect business partners and*** a description of the processes put in place to ***integrate due diligence into the relevant policies and to*** implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to ***business partners. The due diligence policy should ensure a risk-based due diligence***. The code of conduct should apply in all relevant corporate functions and operations, including procurement***, employment and***purchasing decisions. ***For the purposes of this Directive, employees*** should ***be understood as including temporary agency workers, and other workers in non-standard forms of employment provided that they fulfil the criteria for determining the status of a worker established by the Court of Justice***.

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(29) To comply with due diligence obligations, companies need to take appropriate measures with respect to ***the*** identification, prevention***,*** bringing to an end***, minimisation and remediation of*** adverse impacts***, and the carrying out of meaningful engagement with stakeholders throughout the due diligence process***.▌ 'Appropriate ***measures***' should mean ***measures that are*** capable of achieving the objectives of due diligence, ***by effectively addressing adverse impacts in a manner*** commensurate ***to*** the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including ***the nature and extent*** of the ***adverse impact and relevant risk factors. If necessary information, including information that is deemed to be a trade secret, cannot be reasonably obtained due to factual or legal obstacles, for instance because a business partner refuses to provide information and there are no legal grounds to enforce this, such circumstances cannot be held against*** the company***, but companies should be able to explain why this information could not be obtained and should take the necessary and reasonable steps to obtain it as soon as possible***.

(30) Under the due diligence obligations set out by this Directive, a company should identify ***and assess*** actual or potential adverse human rights and environmental impacts. In order to allow for a comprehensive identification ***and assessment*** of adverse impacts, such identification ***and assessment*** should be based on quantitative and qualitative information***, including the relevant disaggregated data that can be reasonably obtained by a company. Companies should make use of appropriate methods and resources, including public reports***. For instance, as regards adverse environmental impacts, the company should obtain information about baseline conditions at higher risk sites or facilities in ***its*** chains ***of activities. As part of the obligation to identify*** adverse impacts***, companies*** should ***take appropriate measures to map their own operations***, ***those of their subsidiaries and, where related to their chains of activities, those of their business partners, in order to identify general areas where adverse impacts are most likely to occur and to be most severe. Based on the results of that mapping, companies should carry out an in-depth assessment of their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners,*** in the ***areas where adverse impacts were identified to be most likely to occur and most severe. When identifying, and assessing the adverse impacts, the company should take into account, based on an overall assessment, possible relevant risk factors, including company-level risk factors, such as whether the business partner is not a company covered by this Directive; business operations risk factors; geographic and contextual risk factors, such as the level of law enforcement with respect to the type of*** adverse impacts***; product and service risk factors; and sectoral risk factors***. When identifying ***and assessing*** adverse impacts, companies should also identify and assess the impact of a business ***partner***'s business model and strategies, including trading, procurement and pricing practices. ***With a view to limiting the burden on smaller companies created by requests for information,*** where ***information necessary for the identification of adverse impacts can be obtained from business partners at different levels of the chain of activities, companies should exercise restraint with regard to business partners that do not themselves present risks of adverse impacts and privilege reaching out, where reasonable, directly for more detailed information to business partners at levels in the chain of activities where, based on the mapping, potential or actual adverse impacts are most likely to occur. Identification of*** adverse impacts ***should include assessing the human rights, and environmental context in a dynamic way and in regular intervals: without undue delay after a significant change occurs, but at least every 12 months, throughout the life cycle of an activity or***

relationship, and whenever there are reasonable grounds to believe that new risks may arise. A significant change should be ***understood as a change to the status quo of the company's own operations, operations of its subsidiaries or business partners, the legal or business environment or any other substantial shift from the situation of the company or its operating context. Examples of a significant change could be the cases when the company starts to operate in a new economic sector or geographical area, starts producing new products or changes the way of producing the existing products using technology with potentially higher adverse impacts, or changes its corporate structure via restructuring or mergers or acquisitions. Reasonable grounds to believe that there are new risks may arise in different ways, including learning about the adverse impact from publicly*** available ***information, through stakeholder engagement, or through notifications. If, despite having taken appropriate measures to identify, companies do not have all the necessary information regarding their chain of activities, they should be able to explain why this information could not be obtained and should take the necessary and reasonable steps to obtain it as soon as possible***.

▌

(30b) In conflict-affected and high-risk areas, as defined in accordance with Regulation (EU) 2017/821, human rights' abuses are more likely to occur and to be severe. Companies should take this into account when integrating due diligence into their policies and risk management systems to ensure that codes of conduct and processes put in place to implement due diligence are adapted to conflict-affected and high-risk areas, consistently with International Humanitarian Law, as laid out in the Geneva Conventions and additional protocols. Companies should take into account that these situations constitute particular geographic and contextual risk factors when performing in-depth assessments as part of the identification and assessing process, when taking appropriate measures to prevent, mitigate, bring to an end and minimise identified adverse impacts, and when engaging with stakeholders. For this purpose, companies may rely on the Commission's guidance on the assessment of risk factors associated with conflict-affected and high-risk areas, which should take into account the UNDP Guidance on "Heightened Human Rights Due Diligence for Business in Conflict Affected Contexts".

▌

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

(31a) This Directive should be without prejudice to the rules on professional secrecy applicable to lawyers or to other certified professionals who are authorised to represent their clients in judicial proceedings, in accordance with Union and national law.

(32) ***Where the company cannot prevent, mitigate, bring to an end or minimise the extent of all the identified actual and potential adverse impacts at the same time to the full extent, it should prioritise the adverse impacts based on their severity and likelihood. The severity of an*** adverse ***impact*** should ***be assessed based on the scale, scope or irremediable character of the adverse impact, taking*** into account the ***gravity of the impact, including the number of individuals that are or will be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact within a reasonable period of time***. ***Once the most severe and likely adverse impacts are addressed in reasonable time, the company should address less*** severe ***and less likely adverse*** impacts. ***On the other hand, actual or potential influence of the company on its business partners, the level of involvement of the company in the adverse impact, the proximity to the subsidiary or the business partner, or its potential liability are not relevant factors in the prioritisation of adverse impacts***.

(33) Under the due diligence obligations set out by this Directive, if a company identifies potential adverse human rights or environmental impacts, it should take appropriate measures to prevent ***or*** adequately mitigate them. To provide companies with legal clarity and certainty, this Directive should set out the actions companies should be expected to take for prevention and mitigation of potential adverse impacts**,** where relevant depending on the circumstances. ***When assessing the appropriate measures to prevent or adequately mitigate adverse impacts, due account should be taken of the so-called 'level of involvement of the company in an adverse impact' in line with the international frameworks and the company's ability to influence the business partner causing or jointly causing the adverse impact. Companies should take appropriate measures to***

prevent or mitigate the adverse impacts that they cause by themselves (so called 'causing' the adverse impact as referred to in the international framework) or jointly with their subsidiaries or business partners (so called 'contributing' to the adverse impact as referred to in the international framework), This applies irrespective of whether third entities outside of the company's chain of activities are also causing the adverse impact. Jointly causing the adverse impact is not limited to equal implication of the company and its subsidiary or business partner in the adverse impact, but should cover all cases of the company's acts or omissions, causing the adverse impact in combination with the acts or omissions of subsidiaries or business partners, including where the company substantially facilitates or incentivises a business partner to cause an adverse impact, that is, excluding minor or trivial contributions. When companies are not causing the adverse impacts occurring in their chain of activities themselves or jointly with other legal entities, but the adverse impact is caused only by their business partner in the companies' chains of activities (so called 'being directly linked to' the adverse impact as referred to in the international framework), they should still aim to use their influence to prevent or mitigate the adverse impact caused by their business partners or to increase their influence to do so. Using only the notion of 'causing' the adverse impact instead of the aforementioned terms used in the international frameworks avoids confusion with existing legal terms in national legal systems while covering the same causal relations as described in these frameworks. In this context, in line with the international frameworks, the company's influence on a business partner should include on the one hand its ability to persuade the business partner to prevent adverse impacts (for example through market power, pre-qualification requirements or linking business incentives to human rights and environmental performance) and, on the other hand, the degree of influence or leverage that the company could reasonably exercise, for example through cooperation with the business partner in question or engagement with another company which is the direct business partner of the business partner associated with the adverse impact.

(34) So as to comply with the prevention and mitigation obligation under this Directive, companies should be required to take the following ***appropriate measures***, where relevant. Where necessary due to the complexity of prevention measures, companies should develop and implement a prevention action plan. Companies should seek to obtain contractual assurances from a direct ▌ business ***partner*** that it will ensure compliance with the code of

conduct ***and, as necessary,*** the prevention action plan, including by seeking corresponding contractual assurances from its partners to the extent that their activities are part of the companies' ***chain of activities. Contractual assurances should be designed to ensure that responsibilities are shared appropriately by the company and the business partners***. The contractual assurances should be accompanied by appropriate measures to verify compliance. ***However, the company should only be obliged to seek the contractual assurances, as obtaining them may depend on the circumstances.*** To ensure comprehensive prevention of ▌ potential adverse impacts, companies should also make ***financial or non-financial*** investments***, adjustment or upgrades,*** which aim to prevent adverse impacts, ***and collaborate with other companies, in compliance with Union law. Where relevant, companies should adapt business plans, overall strategies and operations, including purchasing practices, and develop and use purchase policies that contribute to living wages and incomes for their suppliers, and that do not encourage potential adverse impacts on human rights or the environment. To conduct their due diligence in an effective and efficient manner, companies should also make necessary modifications of, or improvements to, their design and distribution practices, to address adverse impacts arising both in the upstream part and the downstream part of their chain of activities, before and after the product has been made. Adopting and adapting such practices, as necessary, could be particularly relevant for the company, to avoid an adverse impact in the first instance. Such measures could also be relevant to address adverse impacts that are jointly caused by the company and its business partner, for instance due to the deadlines or specifications imposed on it by the company. Also, by better sharing the value along the chain of activities, responsible purchasing or distribution practices contribute to fighting against child labour, which often arises in countries or territories with high poverty levels. Companies should also provide targeted and proportionate support for an SME which is a business partner of the company, where necessary in light of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems, and, where compliance with*** the code of conduct or ***the*** prevention action plan ***would jeopardise the viability of the SME, providing targeted and proportionate financial support,*** such as ***direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing. Jeopardising the viability of an SME should be interpreted as possibly causing a bankruptcy of the SME or putting the SME in a situation where bankruptcy is imminent***.

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

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

(36) In order to ensure that ***appropriate measures for the*** prevention and mitigation of potential adverse impacts ***are*** effective, companies should prioritize engagement with business ***partners in their*** chain ***of activities***, instead of terminating the business relationship, as a last resort action after attempting at preventing and mitigating adverse potential impacts without success. However, the Directive should also, for cases where potential adverse impacts could not be addressed by ***such appropriate*** measures, refer to the obligation for companies***, as a last resort,*** to refrain from entering into new or extending existing relations with the partner in question and, where ***there is a reasonable prospect of change, by using or increasing the company's leverage through the temporary suspension of the business relationship with respect to the activities concerned, adopt and implement an enhanced prevention action plan for the specific adverse impact without undue delay including a specific and appropriate timeline for the adoption and implementation of all actions therein, during which the company may also seek alternative business partners. Factors determining the appropriateness of the timeline for adoption and implementation of these actions could include the severity of the adverse impact, the***

need to identify and take steps to prevent or mitigate any additional adverse impacts, as well as impacts on SMEs or smallholders. Companies should suspend ***their business*** relationships with the ***business partner, which increases their leverage and increases the chances that the impact is addressed. Where*** there is ***no*** reasonable expectation that these efforts ***would succeed, for instance, in situations of state-imposed forced labour, or where the implementation of the enhanced prevention action plan failed to prevent or mitigate the adverse impact, the company should be required*** to terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe. In order to allow companies to fulfil that obligation, Member States should provide for the availability of an option to terminate the business relationship in contracts governed by their laws. ***In deciding to terminate or suspend a business relationship, the company should assess whether the*** adverse impacts ***of doing so could be reasonably expected to be manifestly more severe than the adverse impact that could not be prevented or adequately mitigated. Where companies do temporarily suspend or terminate the business*** relationship***, they should take steps to prevent, mitigate, or bring to an end the impacts of suspension or termination, provide reasonable notice to the*** business ***partner and keep that decision under review. It is possible that prevention of adverse impacts at the level of indirect business relationships requires collaboration with another entity. In some*** instances, ***collaboration with another company could be the only realistic way of preventing*** adverse impacts at the level of ***indirect business relationships, in particular, where*** the indirect business ***partner is not ready to enter into a contract with the company***.

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(36b) Although regulated financial undertakings are only subject to due diligence obligations for the upstream part of their chain of activities, the specificities of financial services as well as the OECD Guidelines for Multinational Enterprises provide indications of the types of measures that are appropriate and effective for financial undertakings to take in due diligence processes. As it is highlighted also in the OECD Guidelines for Multinational Enterprises, the specificities of financial services need to be acknowledged. Regulated financial undertakings are expected to consider adverse impacts and to use their so-called 'leverage' to influence companies. The exercise of shareholders' rights can be a way to exercise leverage.

(37) As regards direct and indirect business ***partners***, industry ▌ and multi-stakeholder initiatives can help create additional leverage to identify, mitigate, and prevent adverse impacts. Therefore it should be possible for companies to ***participate in*** such initiatives to support the implementation of ▌ obligations laid down in ***Articles 5 to 11 of*** this Directive to the extent that such schemes and initiatives are appropriate to support the fulfilment of those obligations. ***The meaning of initiatives is broad and includes a combination of voluntary due diligence procedures, tools and mechanisms, developed and overseen by governments, industry associations, interested organisations, including civil society organisations, or groupings or combinations thereof, that*** companies could ***participate in in order to support the implementation of due diligence obligations. Companies could, after having assessed*** their ***appropriateness, make use of or join relevant risk analysis carried out by industry or multi-stakeholder initiatives or by members of those initiatives and could take or join effective appropriate measures through such initiatives. When doing so, companies should monitor the effectiveness of such measures and, continue to take appropriate measures where necessary to ensure the fulfilment of their obligations***. In order to ensure full information on such initiatives, the Directive should also refer to the possibility for the Commission and the Member States to facilitate the dissemination of information on such schemes or initiatives and their outcomes. The Commission, in collaboration with Member States, ***should*** issue guidance ***setting out fitness criteria and a methodology for companies to assess*** the fitness of industry ***and multi-stakeholder initiatives. Companies could also use independent third-party verification on and from companies in their chain of activities to support the implementation of due diligence obligations to the extent that such verification is appropriate to support the fulfilment of the relevant obligations. Third-party verification could be carried out by other companies or by an industry or multi-stakeholder initiative. Independent third-party verifiers should act with objectivity and complete independence from the company, be free from any conflict of interests, remain free from external influence, whether direct or indirect, and should refrain from any action incompatible with their independence. According to the nature of the adverse impact, they should have experience and competence in environmental or human rights matters and should be accountable for the quality and reliability of the verification. The Commission, in collaboration with Member States, should issue guidance setting out fitness criteria and a methodology for companies to assess the fitness of third party verifiers, and guidance for monitoring the accuracy, effectiveness and integrity of third-party verification. This guidance is***

essential to address the shortcomings of ineffective audits. Companies participating in industry or multi-stakeholder initiatives ***or using third party verification or contractual clauses to support the implementation of due diligence obligations should still be able to be sanctioned or found liable for violations of this Directive and damage suffered by victims as a result***.

(38) Under the due diligence obligations set out by this Directive, if a company identifies actual ***adverse*** human rights or environmental ▌ impacts, it should take appropriate measures to bring those to an end. It can be expected that a company is able to bring to an end actual adverse impacts in ***its*** own operations and ***those of its*** subsidiaries. However, it should be clarified that ▌ where adverse impacts cannot be brought to an end, companies should minimise the extent of such impacts. Minimisation of the extent of adverse impacts should require an outcome that is the closest possible to bringing the adverse impact to an end. ***In this line, the company should periodically reassess the circumstances that made it not possible to bring the adverse impact to an end, and whether the adverse impact can be brought to an end.*** To provide companies with legal clarity and certainty, this Directive should define which actions companies should be required to take for bringing actual human rights and environmental adverse impacts to an end and minimisation of their extent, where relevant depending on the circumstances. ***When assessing the appropriate measures to bring to an end or minimise the extent of the adverse impacts, due account should be taken of the so-called 'level of involvement of the company in an adverse impact' in line with the international frameworks and the company's ability to influence the business partner causing or jointly causing the adverse impact. Companies should take appropriate measures to bring to an end or minimise the extent of the adverse impacts that they cause by themselves (so called 'causing' the adverse impact as referred to in the international framework) or jointly with their subsidiaries or business partners (so called 'contributing' to the adverse impact as referred to in the international framework). This applies irrespective of whether third entities outside of the company's chain of activities are also causing the adverse impact. Jointly causing the adverse impact is not limited to equal implication of the company and its subsidiary or business partner in the adverse impact, but should cover all cases of the company's acts or omissions, causing the adverse impact in combination with the acts or omissions of subsidiaries or business partners, including where the company substantially facilitates or incentivises a business partner to cause an adverse impact, that is, excluding minor or***

trivial contributions. When companies are not causing the adverse impacts occurring in their chain of activities themselves or jointly with other legal entities, but the adverse impact is caused only by their business partner in the companies' chains of activities (so called 'being directly linked to' the adverse impact as referred to in the international framework), they should still aim to use their influence to bring to an end or minimise the extent of the adverse impact caused by their business partners or to increase their influence to do so. Using only the notion of 'causing' the adverse impact instead of the aforementioned terms used in the international frameworks avoids confusion with existing legal terms in national legal systems while covering the same causal relations as described in these frameworks. In this context, in line with the international frameworks, the company's influence on a business partner should include on the one hand its ability to persuade the business partner to bring to an end or minimise the extent of the adverse impacts (for example through market power, pre-qualification requirements or linking business incentives to human rights and environmental performance) and, on the other hand, the degree of influence or leverage that the company could reasonably exercise, for example through cooperation with the business partner in question or engagement with another company which is the direct business partner of the business partner associated with the adverse impact.

(39) So as to comply with the obligation of bringing to an end and minimising the extent of actual adverse impacts under this Directive, companies should be required to take the following ***appropriate measures***, where relevant. ***Where necessary due to the fact that*** the adverse impact ***cannot be immediately brought to an end, companies should develop and implement a corrective*** action ***plan. Companies should seek to obtain contractual assurances from a direct business partner that it will ensure compliance with the code of conduct and, as necessary, the corrective action plan, including by seeking corresponding contractual assurances from its partners*** to the ***extent that their activities are part*** of the ***companies' chain of activities. Contractual assurances should be designed to ensure that responsibilities are shared appropriately by the company and the business partners. The contractual assurances should be accompanied by appropriate measures to verify compliance. However, the company should only be obliged to seek the contractual assurances, as obtaining them may depend on the circumstances.*** Companies should ***also make financial or non-financial investments, adjustment or upgrades, aiming at ceasing or minimising the extent of adverse impacts, and collaborate with***

other companies, in compliance with Union law. ***Where relevant,*** companies should ***adapt business plans, overall strategies and operations, including purchasing practices, and develop and use purchase policies that contribute to living wages and incomes for their suppliers, and that do not encourage actual adverse impacts on human rights or the environment. To conduct their due diligence in an effective and efficient manner, companies should also make*** necessary ***modifications of, or improvements to, their design and distribution practices, to address adverse impacts arising both in the upstream part and the downstream part of*** their ***chain of*** activities***, before and after the product has been made. Adopting and adapting such practices, as necessary, could be particularly relevant for the company, to avoid an adverse impact in the first instance. Such measures could also be relevant to address adverse impacts that are jointly caused*** by the ***company and its business partner, for instance due to the deadlines or specifications imposed on it by the company. Also, by better sharing the value along the chain of activities, responsible purchasing or distribution practices contribute to fighting against child labour, which often arises in countries or territories with high poverty levels. Companies should also*** provide targeted and proportionate support for an ***SME which is a business partner of the company, where necessary in light of the resources, knowledge and constraints of the SME***, including ***by providing or enabling access to capacity-building, training or upgrading management systems, and***, where ***compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME, providing targeted and proportionate financial support, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing. Jeopardising the viability of an SME should be interpreted as possibly causing a bankruptcy of the SME or putting the SME in a situation where bankruptcy is imminent***.

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

(40a) When contractual assurances are obtained from an SME that is an indirect business partner, companies should assess whether the contractual assurances should be

accompanied by appropriate measures for SMEs. When the SMEs requests to pay part of the cost, or in agreement with the company, the SME should be able to share the results of verification with other companies.

(41) In order to ensure that ***appropriate measures for the bringing*** to an end or minimising ***of actual adverse impacts are*** effective, companies should prioritize engagement with business ***partners in their*** chain ***of activities***, instead of terminating the business relationship, as a last resort action after attempting ***to bring*** actual adverse impacts to an end or ***minimise their extent*** without success. However, ***the*** Directive should also, for cases where actual adverse impacts could not be brought to an end or ***the extent*** adequately ***minimised by such appropriate*** measures, refer to the obligation for companies***, as a last resort,*** to refrain from entering into new or extending existing relations with the partner in question and, where ***there is a reasonable prospect of change, by using or increasing the company's leverage through the temporary suspension of the business relationship with respect to the activities concerned, adopt and implement an enhanced corrective action plan for the specific adverse impact without undue delay including a specific and appropriate timeline for the adoption and implementation of all actions therein, during which the company may also seek alternative business partners. Factors determining the appropriateness of the timeline for adoption and implementation of these actions could include the severity of the adverse impact, the need to identify and take steps to bring to an end or minimise the extent of any additional adverse impacts, as well as impacts on SMEs or smallholders. Companies should*** suspend ***their business*** relationships with the ***business*** partner***, which increases their leverage and increases the chances that the impact is addressed. Where there is no reasonable expectation that these efforts would succeed, for instance, in situations of state-imposed forced labour, or where the implementation of the enhanced corrective action plan failed*** to bring to an end or minimise the extent of the adverse impact, ***the company should be required to*** terminate the business relationship with respect to the activities concerned ▌ if the ***actual*** adverse impact is ▌ severe. In order to allow companies to fulfil that obligation, Member States should provide for the availability of an option to terminate the business relationship in contracts governed by their laws. ***In deciding to terminate or suspend a business relationship, the company should assess whether the adverse impacts of doing so could be reasonably expected to be manifestly more severe than the adverse impact that could not be brought to an end or the extent of which could not be adequately minimised.***

Where companies do temporarily suspend or terminate the business relationship, they should take steps to prevent, mitigate, or bring to an end the impacts of suspension or termination, provide reasonable notice to the business partner and keep that decision under review. It is possible that bringing to an end adverse impacts at the level of indirect business relationships requires collaboration with another entity. In some instances, collaboration with another company could be the only realistic way of bringing to an end actual adverse impacts at the level of indirect business relationships, in particular, where the indirect business partner is not ready to enter into a contract with the company.

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(41a) ***Where a company has caused or jointly caused an actual adverse impact, the company should provide remediation. Remediation means restitution of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would be in had the actual adverse impact not occurred, proportionate to the company's implication in the adverse impact, including financial or non-financial compensation provided by the company to a person or persons affected by the actual adverse impact and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures. Member States should ensure that stakeholders affected by an adverse impact should not be required to seek remediation prior to filing claims in court. Member States should ensure that, where the company fails to provide remediation in case it has caused or jointly caused the actual adverse impact, the competent supervisory authority has the power, on its own motion or as a result of substantiated concerns communicated to it in accordance with this Directive, to order the company to provide appropriate remediation. This is without prejudice in such situation to the imposition of penalties for the infringement of national provisions adopted pursuant to this Directive and to the civil liability being sought before a national court. Where the actual adverse impact is caused only by the company's business partner, voluntary remediation may be provided by the company. The company may also use its ability to influence the business partner causing or jointly causing the adverse impact to enable remediation.***

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(42) Companies should provide the possibility for persons and organisations to submit complaints directly to them in case of legitimate concerns regarding actual or potential human rights and environmental adverse impacts. ***Persons and*** organisations who could submit such complaints should include ***persons who are affected or have reasonable grounds to believe that they might be affected and the legitimate representatives of such persons on behalf of them, such as civil society organisations and human rights defenders;*** trade unions and other workers' representatives representing individuals working in the ***chain of activities*** concerned***;*** and civil society organisations active ***and experienced*** in the areas related to the ***environmental adverse impact that is the subject matter of the complaint***. Companies should establish a ***fair, publicly available, accessible, predictable and transparent*** procedure for dealing with those complaints and inform ***the relevant*** workers, trade unions and other workers' representatives ***about such procedures. Companies should also establish an accessible mechanism for the submission of notifications by persons and organisations*** where ***they have information or concerns regarding actual or potential adverse impacts***. ***In order to reduce the burden on companies, they should be able to participate in collaborative*** complaints ***procedures and notification mechanisms, such as those established jointly by companies (for example, by a group of companies), through industry associations, multi-stakeholders' initiatives or global framework agreements. The submission of a notification or complaint*** should not ***be a prerequisite nor preclude the person submitting them*** from having ***access to the substantiated concerns procedure nor*** to judicial ***or other non-judicial mechanisms, such as the OECD national contact points where they exist***. ***The provisions on the complaints procedure and notification mechanism under this Directive should avoid that this access to a company's representatives leads to unreasonable solicitation.*** In accordance with international standards, ***persons submitting*** complaints***, where they do not submit them anonymously,*** should be entitled to request from the company ***timely and appropriate follow-up*** and to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint ***and potential remediation, to be provided with the reasoning as to whether a complaint has been considered founded or unfounded and, where founded, to be provided with information on the steps and actions taken or to be taken***. ***Companies should also take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organisation submitting the complaint or notification, in accordance with national law. The terms 'fair, publicly available,***

accessible, predictable and transparent' should ***be understood in line with principle 31 of the United Nations Guiding Principles on Business and Human Rights requiring procedures to be legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning, as also referred to in the United Nations Committee on the Rights of the Child General Comment No 16. Workers and their representatives should also be properly protected, and any non-judicial remediation efforts should be without prejudice to encouraging collective bargaining and recognition of trade unions and should by no means undermine the role of legitimate trade unions or workers' representatives in addressing labour-related disputes.*** Companies ***should ensure accessibility of the notification mechanisms and complaint procedures for stakeholders, taking due account of relevant barriers***.

(42a) Due to a broader list of persons or organisations entitled to submit a complaint and a broader scope of subject-matters of complaints, the complaints procedure is legally understood as a separate mechanism to the internal reporting procedure set up by companies in accordance with the Directive (EU) 2019/1937 of the European Parliament and of the Council[47]. If the breach of Union or national law included in the material scope of that Directive can be considered as an adverse impact and the reporting person is a company's employee that is directly affected by the adverse impact, then the person could use both procedures – complaints mechanism in accordance with this Directive or an internal reporting procedure set out in accordance with that Directive. Nevertheless, if one of the conditions above is not met, then the person could proceed only via one of the procedures.

(43) Companies should monitor the implementation and effectiveness of their due diligence measures. They should carry out periodic assessments of their own operations, those of their subsidiaries and, where related to the ***chains of activities*** of the company, those of their ▌ business ***partners, to assess the implementation and to*** monitor the ***adequacy and*** effectiveness of the identification, prevention, minimisation, bringing to an end and mitigation of ▌ adverse impacts. Such assessments should verify that adverse impacts are properly identified, due diligence measures are implemented and adverse impacts have

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

actually been prevented or brought to an end. In order to ensure that such assessments are up-to-date, they should be carried out ***without undue delay after a significant change occurs, but*** at least every 12 months and be revised in-between if there are reasonable grounds to believe that ▌ new risks of adverse impact could have arisen. ***A significant change should be understood as a change to the status quo of the company's own operations, operations of its subsidiaries or business partners, the legal or business environment or any other substantial shift from the situation of the company or its operating context. Examples of a significant change could be the cases when the company starts to operate in a new economic sector or geographical area, starts producing new products or changes the way of producing the existing products using technology with potentially higher adverse impact, or changes its corporate structure via restructuring or mergers or acquisitions. Reasonable grounds to believe that there are new risks may arise in different ways, including learning about the adverse impact from publicly available information, through stakeholder engagement, or through notifications. Companies should retain documentation demonstrating their compliance with this requirement for at least 5 years. Such documentation should at least include, where relevant, the identified impacts and in-depth assessments pursuant to Article 6, the prevention and/or corrective action plan pursuant to Articles 7(2)(a) and 8(3)(b), contractual provisions obtained or contracts concluded pursuant to Articles 7(2)(b),(3) and 8(3)(c),(4), verifications pursuant to Articles 7(4) and 8(5), remediation measures, periodic assessments as part of the company's monitoring obligation, as well as notifications and complaints. Financial undertakings should carry out periodic assessment only of their own operations, those of their subsidiaries and of their upstream business partners.***

(44) Like in the existing international standards set by the United Nations Guiding Principles on Business and Human Rights and the OECD framework, it forms part of the due diligence requirement to communicate externally relevant information on due diligence policies, processes and activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities. ***Directive 2013/34/EU sets out relevant reporting obligations for the companies covered by this*** directive***. In addition Regulation (EU) 2019/2088*** sets out ***further*** reporting obligations ***on sustainability-related disclosures in the financial services sector, for financial undertakings***. In order to avoid duplicating reporting obligations, this Directive should

therefore not introduce any new reporting obligations in addition to those under Directive 2013/34/EU for the companies covered by that Directive as well as the reporting standards that should be developed under it. ***In order to comply with their obligation of communicating as part of the due diligence under this Directive,*** companies ***should publish on their website an annual statement in at least one of the official languages of the Union,*** within ***a reasonable period of time, but no later than 12 months after the balance sheet date of the financial year for which the statement is drawn up, unless the company is subject to the sustainability reporting requirements of*** Directive ***2013/34/EU. In cases where a company is not required to report in accordance with articles 19a or 29a of the*** Directive 2013/34/EU, ***the statement should be published by the date of publication of the annual financial statements. The annual statement should be submitted to the designated collection body for the purpose of making it accessible on the European Single Access Point (ESAP) as established by Regulation (EU) 2023/2859. In order to ensure uniform conditions for the implementation*** of the ***rules on accessibility of information on the ESAP, implementing powers*** should ***be conferred on the Commission. To enhance legal certainty, the Annex to Regulation (EU) 2023/2859 should be amended by introducing the reference to this Directive***.

(44a) The requirement on companies which are under the scope of this Directive and at the same time are subject to reporting requirements under Articles 19a, 29a and 40a of Directive 2013/34/EU to report on their due diligence process as stipulated in Articles 19a, 29a and 40a of Directive 2013/34/EU should be understood as a requirement for companies to describe how they implement due diligence as provided for in this Directive.

(44b) It is not the objective of this Directive to require companies to publicly disclose intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in Directive (EU) 2016/943 of the European Parliament and of the Council. Reporting requirements provided for in this Directive should therefore be without prejudice to Directive (EU) 2016/943. This Directive should also apply without prejudice to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

(44c) In order to conduct meaningful human rights and environmental due diligence, companies should take appropriate measures to carry out effective engagement with stakeholders, for the process of carrying out the due diligence actions. Without prejudice to Directive (EU) 2016/943, effective engagement should cover providing consulted stakeholders with relevant and comprehensive information, as well as ongoing consultation that allows for genuine interaction and dialogue at the appropriate level, such as project or site level and with appropriate periodicity. Meaningful engagement with consulted stakeholders should take due account of barriers to engagement, ensure that stakeholders are free from retaliation and retribution, including by maintaining confidentiality and anonymity, and particular attention should be paid to the needs of vulnerable stakeholders, and to overlapping vulnerabilities and intersecting factors, including by taking into account potentially affected groups or communities, for example those protected under the United Nations Declaration on the Rights of Indigenous People and those covered in the United Nations Declaration on Human Rights Defenders. There are situations in which it will not be possible to carry out meaningful engagement with consulted stakeholders, or where engagement with additional expert perspectives is useful to allow the company to comply fully with the requirements of this Directive. In these cases, companies should additionally consult with experts, such as civil society organisations or legal or natural persons defending human rights or the environment in order to gain credible insights into potential or actual adverse impacts. The consultation of employees and their representatives should be conducted in accordance with relevant EU law, where applicable, national law and collective agreements and without prejudice to their applicable rights to information, consultation and participation, and in particular those covered by relevant EU legislation in the field of employment and social rights, including Directive 2002/14/EC, Directive 2009/38/EC and Directive 2001/86/EC. For the purposes of this Directive, employees should be understood as including temporary agency workers, and other workers in non-standard forms of employment provided that they fulfil the criteria for determining the status of a worker established by the Court of Justice. When carrying out consultations, it should be possible for companies to rely on industry initiatives to the extent that such schemes are appropriate to support effective engagement. The use of industry and multi-stakeholder initiatives is not in itself sufficient to fulfil the obligation to consult workers and their representatives.

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(45) In order to ***give*** companies ***tools to help them comply*** with their due diligence requirements through their ▌ chain ***of activities the Commission, in consultation with Member States and stakeholders,*** should provide guidance on model contractual clauses***, which can be used voluntarily by companies as a tool to help fulfil their obligations in Articles 7 and 8. The guidance should aim to facilitate a clear allocation of tasks between contracting parties and ongoing cooperation, in a way that avoids the transfer of the obligations of this Directive to a business partner and automatically rendering the contract void in case of a breach. The guidance should reflect the principle that the mere use of contractual assurances cannot, on its own, satisfy the due diligence standards of this Directive***.

(46) In order to provide support and practical tools to companies or to Member State authorities on how companies should fulfil their due diligence obligations ***in a practical manner, and to provide support to stakeholders***, the Commission, using relevant international guidelines and standards as a reference, and in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, ***the European Labour Authority,*** and where appropriate with international ***organisations and other*** bodies having expertise in due diligence, should ▌ issue guidelines, including ***general guidelines and*** for specific sectors or specific adverse impacts ***and the interplay of this Directive and other Union legislative acts pursuing the same objectives and providing for more extensive or more specific obligations***.

(46a) Digital tools and technologies, such as those used for tracking, surveillance or tracing raw materials, goods and products throughout value chains (for instance satellites, drones, radars, or platform-based solutions) could support and reduce the cost of data gathering for value chain management, including the identification and assessment of adverse impacts, prevention and mitigation, and monitoring of the effectiveness of due diligence measures. In order to help companies fulfilling their due diligence obligations along their value chain, the use of such tools and technologies should be encouraged and promoted. To this end, the Commission should issue guidelines with useful information and references to appropriate resources. When using digital tools and technologies, companies should take into account and appropriately address possible risks associated therewith, and put in place mechanisms to verify the appropriateness of the information obtained.

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

(47a) The Commission should establish a single helpdesk on corporate sustainability due diligence. This single helpdesk should be able to collaborate and request information from relevant national authorities in each Member State, including national helpdesks where they exist, for instance to assist in tailoring the information and guidance to national contexts and its dissemination, without prejudice to the allocation of functions and powers among the authorities within national systems. The Single helpdesk and relevant national authorities should also liaise with each other to ensure cross-border cooperation.

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

(49) The Commission ***could complement*** Member States***' support measures building on existing Union action*** to support upstream economic operators build the capacity to effectively prevent and mitigate adverse human rights and environmental impacts of their operations and business relationships, paying specific attention to the challenges faced by smallholders. ***The Union and Member States within their respective competences are encouraged to*** use their neighbourhood, development and international cooperation

instruments***, including trade agreements,*** to support third country governments and upstream economic operators in third countries addressing adverse human rights and environmental impacts of their operations and upstream business relationships. This could include working with partner country governments, the local private sector and stakeholders on addressing the root causes of adverse human rights and environmental impacts.

(50) ***This Directive is an important legislative tool to ensure corporate transition to a sustainable economy, including to reduce the existential harms and costs of climate change, to ensure alignment with global net zero by 2050, to avoid any misleading claims regarding such alignment and to stop greenwashing, disinformation and fossil fuels expansion worldwide*** in order to ***achieve international and European climate objectives. In order to*** ensure that this Directive effectively contributes to combating climate change, companies should adopt ***and put into effect a transition plan for climate change mitigation which aims*** to ensure***, through best efforts,*** that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement ***and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119, including its intermediate and 2050*** climate ***neutrality targets. The plan*** should ***address, where relevant, the exposure of the undertaking to coal-, oil- and gas- related activities. Such requirements should be understood as an obligation of means and not of results. Being an obligation of means, due account should be given to the progress companies make, and the complexity and evolving nature of climate transitioning. While companies should strive to achieve the GHG emission reduction targets contained in their plans, specific circumstances may lead to companies not being able to reach these targets, where this is no longer reasonable. The plan should include time-bound targets related to their climate objectives for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and where appropriate, absolute emission reduction targets for greenhouse gas for scope 1, scope 2 and scope 3. The plans should develop implementing actions to achieve*** the company's ***climate targets and be based on conclusive scientific evidence, meaning evidence with independent scientific validation that is consistent with the limiting of global warming to 1.5°C as defined by the Intergovernmental Panel on Climate Change (IPCC) and taking into account the recommendations of the European Scientific Advisory Board on Climate Change.***

Supervisory authorities should ***be required to at least supervise the adoption and design of the plan and the updates thereof, in accordance with the requirements laid down in this Directive. Since the content of the transition plan for climate change mitigation should be in line with the reporting requirements under Directive 2013/34/EU as regards corporate sustainability reporting, companies that report such a plan under Directive 2013/34/EU should be deemed to have complied with the specific obligation to adopt a plan under this Directive. While the adoption obligation will be considered to have been met, companies still have to abide by their obligation to put this transition plan into effect and to update it every 12 months to assess progress towards its the targets***.

(51) With a view to ensure that such emission reduction plan is properly implemented and embedded in the financial incentives of directors, ***companies with more than 1000 employees on average, calculated within the reference period relevant for the scope of application of this Directive, should have an appropriate policy in order to promote the implementation of the transition plan for climate change mitigation including through, among others, financial incentives to members of the administrative, management or supervisory bodies concerned***.

(52) In order to allow for the effective oversight of and, where necessary, enforcement of this Directive in relation to ***third-country*** companies ▌, those companies should designate a sufficiently mandated authorised representative in the Union and provide information relating to their authorised representatives. It should be possible for the authorised representative to also function as ***a*** point of contact, provided the relevant requirements of this Directive are complied with. ***If the third-country company does not designate the authorised representative, all Member States in which the company operates should be competent to enforce the fulfilment of this obligation, especially to designate a legal or natural person in one of the Member States where it operates, in accordance with the enforcement framework set in national law. The Member States initiating such an enforcement should inform supervisory authorities of other Member States through the European Network of Supervisory Authorities so that other Member States do not enforce them.***

(53) In order to ensure the monitoring of the correct implementation of companies' due diligence obligations and ensure the proper enforcement of this Directive, Member States should designate one or more national supervisory authorities. These supervisory

authorities should be of a public nature, independent from the companies falling within the scope of this Directive or other market interests, and free ***from*** conflicts of interest ***and external influence, whether direct or indirect. In order to exercise their powers impartially, these supervisory authorities should neither seek nor take instructions from anybody***. In accordance with national law, Member States should ensure ***that each supervisory authority is provided with the human and financial resources necessary for the effective performance of its tasks and exercise of its powers***. They should be entitled to carry out investigations, on their own initiative or based on substantiated concerns raised under this Directive. ***These investigations can include, where appropriate, on site inspections and the hearing of relevant stakeholders.*** Where competent authorities under sectoral legislation exist, Member States could identify those as responsible for the application of this Directive in their areas of competence. ***Supervisory authorities should publish and make available on a website an annual report on their past activities, including the most serious breaches identified. Member States should establish an accessible mechanism for receiving substantiated concerns, free of charge or with a fee limited to covering administrative costs only, and ensure that practical information is made available to the public on how to exercise this right***.

(54) In order to ensure effective enforcement of national measures implementing this Directive, Member States should provide for dissuasive, proportionate and effective ***penalties*** for infringements of those measures. In order for such ***penalties*** regime to be effective, ***penalties*** to be imposed by the national supervisory authorities should include pecuniary ***penalties and a public statement indicating the company responsible and the nature of the infringement if the company fails to comply with decision imposing a pecuniary penalty within the applicable timeframe. This penalties regime is without prejudice to the power to withdraw and to prohibit the placing, making available on the market and export of products under other Union legislative acts providing for more extensive or more specific due diligence obligations, such as the Deforestation Regulation. Member States should ensure*** that the ***pecuniary penalty is commensurate to the company's worldwide net turnover when being*** imposed***. However, this should not oblige the Member States to base the pecuniary penalty solely on the net turnover of the company in every case. The Member States should decide in accordance with the national law, whether the penalties should be imposed directly by supervisory authorities, in collaboration with other authorities or by application to the competent judicial***

authorities. In order to ensure ***public oversight of*** the application of the rules ***set out in this Directive, the decisions of the supervisory authorities containing penalties imposed on companies due to failure to comply with the provisions of national law implementing this Directive should be published, sent to the European Network of*** Supervisory Authorities ***and remain publicly available for at least 3 years***. ***The published decision should not contain any personal data in accordance with the Regulation (EU) 2016/679 of the European Parliament and of the Council[1]. The publication of the company's name is allowed even if it contains a name of a natural person.***

(54a) In order to prevent an artificial reduction of potential administrative fines, Member States should ensure that, when imposing a pecuniary penalty to a company belonging to a group, pecuniary penalties are calculated taking into account the consolidated turnover calculated at the level of the ultimate parent company.

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

(56) In order to ensure ***that*** victims of adverse impacts ***have effective access to justice and compensation***, Member States should be required to lay down rules governing the civil liability of companies for damages ***caused to a natural or legal person, under the condition that*** the company ***intentionally or negligently*** failed to ▌ prevent and mitigate potential adverse impacts or to bring actual impacts to an end and minimise their extent ▌ and as a result of ***such a*** failure ***a damage was caused to the natural or legal person. Damage caused to a person's protected legal interests should be understood in line with the national law, for example death, physical or psychological injury, deprivation of personal liberty, loss of human dignity, or damage to a person's property. The condition that the damage has to be caused to a person as a result of the company's failure to comply with the obligation to address the adverse impact, when the right, prohibition or obligation listed in Annex I, the abuse or violation of which is resulting in the*** adverse impact that should have been ***addressed, is aimed to protect the natural or legal person to***

which the damage is caused, should be understood as that a derivative damage (caused indirectly to other persons who are not the victims of adverse impacts and who are not protected by the rights, prohibitions or obligations listed in Annex I) is not covered. For example, if an employee of a company suffered damage due to the company's violation of safety standards in the workplace, the landlord of such an employee should not be allowed to bring a claim against the company for an economic loss caused by the employee not being able to pay the rent. Causality within the meaning of civil liability is not regulated by this Directive, with the exception that the companies should not be held liable under this Directive if the damage is caused only by the business partners in the companies' chains of activities (so called 'being directly linked to'). Victims should have the right to full compensation for the damage occurred ***in accordance with national law and in line with such common principle. Deterrence through damages (i. e. punitive damages) or any other form of overcompensation should be prohibited***.

(57) As ***the adverse impacts*** should be ***prioritised according to their severity and likelihood and addressed gradually,*** if it ***is not possible to address all identified adverse impacts at the same time to the full extent, a company should not be liable under this Directive for any damage stemming from any less significant adverse impacts that were not yet addressed. The correctness*** of the company's ***prioritisation of adverse impacts should, however, be assessed when determining whether the conditions for company's liability were met as part of the assessment of whether the company breached its obligation to adequately address the identified*** adverse impacts***.***

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(58) The liability regime does not regulate who should prove ***the fulfilment of the conditions for liability*** under the circumstances of the case, ***or under which conditions the civil proceeding can be initiated,*** therefore ***these questions are*** left to national law.

(58a) In order to ensure the right to an effective remedy, as enshrined in Article 2(3) of the International Covenant on Civil and Political Rights, Article 8 of the Universal Declaration of Human Rights and Article 9(3) of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, this Directive addresses some practical and procedural barriers to justice for victims of adverse impacts, including difficulties in accessing evidence,

limited duration of limitation periods, the absence of adequate mechanisms for representative actions, and prohibitive costs of civil liability proceedings.

(58b) When a claimant presents a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of its claim for damage and indicate that additional evidence lies in the control of the company, Member States should ensure that courts can order that such evidence be disclosed by the company in accordance with national procedural law, while limiting such disclosure to that which is necessary and proportionate. For this purpose, national courts should consider the extent to which the claim or defence is supported by available facts and evidence justifying the disclosure request; the scope and cost of disclosure as well as the legitimate interests of all parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure. Where such evidence contains confidential information, national courts should be able to order its disclosure only where they consider it relevant to the action for damages and put in place effective measures to protect such information.

(58c) Member States should provide for the reasonable conditions under which any alleged injured party should be able to authorise a trade union, a non-governmental human rights or environmental organisation or other non-governmental organisation, and, according to national law, national human rights' institutions, based in any Member State to bring civil liability actions to enforce victims' rights in its own capacity, where such entities comply with the requirements laid down in national law, for instance, where they maintain a permanent presence of their own and, in accordance with their statutes, are not engaged commercially and not only temporarily in the realisation of rights protected under this Directive or the corresponding rights in national law.

(58d) Limitation periods for bringing civil liability claims for damages should be at least five years and, in any case, not lower than the limitation period laid down under general civil liability national regimes. National rules on the beginning, duration, suspension or interruption of limitation periods should not unduly hamper the bringing of actions for damages and, in any case, should not be less than the rules on general civil liability national regimes.

(58e) Moreover, in order to ensure legal remedies, claimants should be able to seek injunctive measures in the form of a definitive or provisional measure to cease infringements of the national provisions adopted pursuant to this Directive by performing an action or ceasing a conduct.

(59) As regards civil liability rules, the civil liability of a company for damages arising due to its failure to carry out adequate due diligence should be without prejudice to civil liability of its subsidiaries or the respective civil liability of direct and indirect business partners in the ***chain of activities. When the company caused the damage jointly with its subsidiary or business partner, it*** should be ***jointly and severally liable with this respective subsidiary or business partner. This should be in accordance with*** national ***law on the conditions of joint and several liability, and without prejudice to any Union or national law on joint and several liability, and on rights of recourse for the full compensation paid by one jointly and severally liable party***.

(59a) The civil liability rules under this Directive should be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.
A stricter liability regime should also be understood as a civil liability regime that provides for liability also in cases where the application of the liability rules under this Directive would not result in the liability of the company.

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

(61) In order to ensure that victims of human rights and environmental harms can bring an action for damages and claim compensation for ***damage caused when the company intentionally or negligently failed*** to comply with the due diligence obligations stemming from this Directive, ***this Directive should require Member States to ensure that the***

provisions of national law transposing the civil liability regime provided for in this Directive are of overriding mandatory application in cases where the law applicable to ▌ claims ***to that effect*** is not the law of a Member State, as could ▌ for instance be the case in accordance with international private law rules when the damage occurs in a third country***. This means that the*** Member States ***should also*** ensure that the ***requirements as regards which natural or legal person can bring the claim, the statute of limitations and the disclosure of evidence are*** of overriding mandatory application***. When transposing the civil liability regime provided for in this Directive and choosing the methods to achieve such results, Member States can also take into account all related national rules to the extent they are necessary to ensure the protection of victims and crucial for safeguarding the*** Member ***States' public interests, such as its political, social or economic organisation***.

(62) The civil liability regime under this Directive should be without prejudice to the ***Directive 2004/35/EC of the European Parliament and of the Council***[48]. This Directive should not prevent Member States from imposing further, more stringent obligations on companies or from otherwise taking further measures having the same objectives as ▌ Directive ***2004/35/EC***.

(63) ***Member States should ensure that compliance with the obligations resulting from the*** national ***measures transposing this Directive, or their voluntary implementation, qualifies as an environmental and/or social aspect or element that contracting authorities may, in accordance with the Directive 2014/24/EU of the European Parliament and of the Council***[49]***, Directive 2014/25/EU of the European Parliament and of the Council***[50] ***and*** Directive ***2014/23/EU of the European Parliament and of the Council***[51]***,*** take into account ***as part of the award criteria for public and concession***

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[48] ***Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143; 30.4.2004, p. 56).***

[49] ***Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).***

[50] ***Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).***

[51] ***Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).***

contracts or lay down in relation to the performance of such contracts. Contracting authorities and contracting entities may exclude or may be required by Member States to exclude from participation in a procurement procedure, including a concession award procedure, where applicable, any economic operator where they can demonstrate by any appropriate means a violation of applicable obligations in the ***fields of environmental, social and labour law, including those stemming from certain international agreements ratified by all Member States and listed in those Directives, or that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable. To ensure coherence within EU legislation and support implementation, the Commission should consider whether it is relevant to update any of these directives, in particular with regards to the requirements and measures Member States are to adopt to ensure compliance with the sustainability and due diligence obligations throughout procurement and concession processes***.

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

(65a) To enhance legal certainty, the applicability, pursuant to this Directive, of Directive (EU) 2019/1937 to reports of breaches of the national measures transposing this Directive and to the protection of persons reporting such breaches, should be reflected in that Directive (EU) 2019/1937. The Annex to Directive (EU) 2019/1937 should therefore be amended accordingly. It is for the Member States to ensure that that amendment is reflected in their transposition measures adopted in accordance with Directive (EU) 2019/1937.

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(66) In order to specify the information that companies not subject to reporting requirements under the provisions on corporate sustainability reporting under Directive 2013/34/EU

should be communicating on the matters covered by this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of determining additional rules concerning the content and criteria of such reporting, specifying information on the description of due diligence, potential and actual impacts and actions taken on those. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[50]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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

(68) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[52] and delivered an opinion on … 2022.

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(70) The Commission should ***periodically report to the European Parliament and to the Council on the implementation of the Directive and its effectiveness in reaching its objectives, in particular in addressing adverse impacts. The first report*** should ***cover, among others, the impacts of the Directive on SMEs, the scope of application of this Directive in terms of the companies*** covered***, whether it is necessary to change the list of***

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50 OJ L 123, 12.5.2016, p. 1.

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

high-impact sectors, including in order to align it to guidance from the Organisation for Economic Cooperation and Development ***and*** in light of clear evidence on labour exploitation, human rights violations or newly emerging environmental ***and climate*** threats, whether the ***definition of 'chain of activities' needs to be revised, whether Annex I needs to be modified and the***list of relevant international conventions referred to in this Directive should be amended, in particular in the light of international developments, ***whether the rules on combatting climate change and the powers of supervisory authorities related to these rules need to be revised, the effectiveness of the enforcement mechanisms put in place at national level, of the penalties and the rules on civil liability, and*** whether ***changes to the level of harmonisation of this Directive are required to ensure a level-playing field for companies in the internal market. At the earliest possible opportunity after the date of entry into force of this Directive, but no later than two years after that date, the Commission should also submit a report to the European Parliament and to the Council on the necessity to lay down additional sustainability*** due diligence ***requirements tailored to regulated financial undertakings with respect to the provision of financial services and investment activities, and the options for such due diligence requirements as well as their impacts, in line with the objectives of this Directive, while taking into account other Union legislative acts that apply to regulated financial undertakings. It*** should be ***accompanied, if appropriate, by a legislative proposal***.

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. This Directive lays down rules ***on***

   (a) ▌ obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the ▌ operations carried out by ***their business partners in companies' chains of activities;***

   (b) ▌ liability for violations of the obligations mentioned above***; and***

   (c) obligation to adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through best efforts, compatibility of the business model and strategy of the company with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C.

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2. This Directive shall not constitute grounds for reducing the level of protection of human***, employment and social*** rights***,*** or of protection of the environment or the protection of the climate provided for by the law of Member States***, or applicable collective agreements*** at the time of the adoption of this Directive.

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

Article 2

Scope

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

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

   (b) the company did not reach the thresholds under ***(a) but is the ultimate parent company of a group that reaches the thresholds*** in the last financial year for which ***consolidated*** annual financial statements have been ***or should have been adopted;***

   (ba) the company entered into or is the ultimate parent company of a group that entered into franchising or licensing agreements in the Union in return for royalties with independent third-party companies, where these agreements ensure a common identity, a common business concept and the application of uniform business methods, and where these royalties amount to more than EUR 7.5 million in the last financial year for which annual financial statements have been or should have been adopted, and provided that the company had or is the ultimate parent company of a group that had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been or should have been adopted;

   (bb) the company did not reach the thresholds under point (a), but had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been or should have been adopted, provided that at least EUR 20 million was generated in one or more of the following sectors associated with the applicable statistical classification of economic activities established by Regulation (EC) No 1893/2006 and listed in Annex II:

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

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

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

(iiia) construction.

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

(a) generated a net turnover of more than EUR 150 million in the Union in the financial year preceding the last financial year;

(b) ***the company did not reach the thresholds under point (a) but is the ultimate parent company of a group that on a consolidated basis reaches the thresholds under (a) in the financial year preceding the last financial year;***

(ba) the company entered into or is the ultimate parent company of a group that entered into franchising or licensing agreements in the Union in return for royalties with independent third-party companies, where these agreements ensure a common identity, a common business concept and the application of uniform business methods, and where these royalties amount to more than EUR 7.5 million in the Union in the financial year preceding the last financial year; and provided that the company generated or is the ultimate parent company of a group that generated a net turnover of more than EUR 40 million in the Union in the financial year preceding the last financial year;

(bb) generated a net turnover of more than EUR 40 million but not more than EUR 150 million in the Union in the financial year preceding the last financial year,

provided that at least EUR 20 million was generated in one or more of the sectors listed in paragraph 1, point (b).

2a. Where the conditions under paragraph 1, points (b) or (ba), or paragraph 2, points (b) or (ba), are met and the ultimate parent company of the group has as its main activity the holding of shares in operational subsidiaries, the obligations under this Directive shall be met by the subsidiary closest to the ultimate parent company in the chain of control that is not a company having as its main activity the holding of shares in operational subsidiaries. In case there is more than one such company, they shall all meet the obligations under this Directive.

3. For the purposes of paragraph 1, the number of part-time employees shall be calculated on a full-time equivalent basis. Temporary agency workers ***and other workers in non-standard forms of employment, provided that they fulfil the criteria for determining the status of a worker established by the Court of Justice,*** shall be included in the calculation of the number of employees in the same way as if they were workers employed directly for the same period of time by the company.

3a. Where a company has met the conditions laid down in paragraphs 1 or 2, the Directive shall only apply if this occurs in two consecutive financial years. This Directive shall no longer apply to a company referred to in paragraphs 1 or 2 where the conditions laid down in paragraphs 1 or 2 cease to be met for each of the last two relevant financial years.

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

5. As regards the companies referred to in paragraph 2, the Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has a branch. If the company does not have a branch in any Member State, or has branches located in different Member States, the Member State competent to regulate matters covered in this Directive shall be that in which the company generated the highest net turnover in the Union in the financial year preceding the last financial year.

7. This Directive shall not apply to AIFs as defined in point (a) of Article 4(1) of Directive 2011/61/EU[53] or to UCITS authorised in accordance with Article 1(2) of Directive 2009/65/EC[54].

Article 3

Definitions

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

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

(i) a legal person constituted as one of the legal forms listed in Annex I ***and Annex II*** to Directive 2013/34/EU of the European Parliament and of the Council [55];

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

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[53] ***Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1)***

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

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

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

- a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 the European Parliament and of the Council[56];

- an investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU the European Parliament and of the Council[57];

- an alternative investment fund manager (AIFM) as defined in Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council[58], including a manager of Euveca under Regulation (EU) No 345/2013 of the European Parliament and of the Council[59], a manager of EuSEF under Regulation (EU) No 346/2013 of the European Parliament and of the Council[60] and a manager of ELTIF under Regulation (EU) 2015/760 of the European Parliament and of the Council[61];

- an undertaking for collective investment in transferable securities (UCITS) management company as defined Article 2(1), point (b), of Directive 2009/65/EC of the European Parliament and of the Council[62];

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

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

58 ***Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).***

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

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

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

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

- an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council[63];

- a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;

- an institution for occupational retirement provision ***within the scope*** of Directive ***(EU)*** 2016/2341 of the European Parliament and of the Council[64] ***in accordance with Article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive***;

- a central counterparty as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council[67];

- a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council[68];

- an insurance or reinsurance special purpose vehicle authorised in accordance with Article 211 of Directive 2009/138/EC;

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

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

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

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

- ‘securitisation special purpose entity’ as defined in Article 2, point (2), of Regulation (EU) No 2017/2402 of the European Parliament and of the Council[69];

- ***a financial holding company as defined in article 4, paragraph 1, point (21) of Regulation (EU) 575/2013,*** an insurance holding company as defined in Article 212(1), point (f), of Directive 2009/138/EC or a mixed financial holding company as defined in Article 212(1), point (h), of Directive 2009/138/EC, which is part of an insurance group that is subject to supervision at the level of the group pursuant to Article 213 of that Directive and which is not exempted from group supervision pursuant to Article 214(2) of Directive 2009/138/EC;

- a payment institution as defined in point (d) of Article 1(1) of Directive (EU) 2015/2366 of the European Parliament and of the Council[70];

- an electronic money institution as defined in point (1) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council[71];

- a crowdfunding service provider as defined in point (e) Article 2(1) of Regulation (EU) 2020/1503 of the European Parliament and of the Council[72];

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

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

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

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

- a crypto-asset service provider as defined in Article 3(1), point (8), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937[73]] where performing one or more crypto-asset services as defined in Article 3(1), point (9), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937];

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(b) 'adverse environmental impact' means an adverse impact on the environment resulting from the ***breach*** of the prohibitions and obligations ***listed in Part I, points 18 and 19, and Part II of*** Annex ***I, taking into account national legislation linked to the provisions of the instruments listed therein***;

(c) 'adverse human rights impact' means an▌ impact on▌ persons resulting from***:***

(i) an abuse of one of the human rights listed in the Annex I, Part I Section 1, as those human rights are enshrined in the international instruments listed in Annex I, Part I Section 2;

(ii) an abuse of a human right not listed in the Annex I, Part I Section 1, but included in the human rights instruments listed in the Annex I, Part I Section 2, provided that:

- the human right can be abused by a company or legal entity;

- the human right abuse directly impairs a legal interest protected in the human rights instruments listed in the Annex I, Part I Section 2; and

- the company could have reasonably foreseen the risk that such human right may be affected, taking into account the circumstances of the specific case,

[73] COM/2020/593 final.

including the nature and extent of the company's business operations and its chain of activities, characteristics of the economic sector and geographical and operational context;

(ca) 'adverse impact' means adverse environmental impact and adverse human rights impact;

(d) 'subsidiary' means a legal person ***as defined in Article 2, point (10), of Directive 2013/34/EU and a legal person*** through which the activity of a 'controlled undertaking' as defined in Article 2(1), point (f), of Directive 2004/109/EC of the European Parliament and of the Council [74] is exercised;

(e) 'business ***partner***' means ***an entity***

(i) with whom the company has a commercial agreement ***related to the operations, products or services of the company*** or to whom the company provides ***services pursuant to point (g) ('direct business partner')***, or

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

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(g) '▌ chain ***of*** activities***' means:***

(i) activities of a company's upstream business partners related to the production of goods or the provision of services by the company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and development of the product or the service, and

(ii) activities of a company's downstream business partners related to the distribution, transport, storage and disposal of the product, including the

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

dismantling, recycling, composting or landfilling, where the business partners carry out those activities directly or indirectly for the company or on behalf of the company, excluding the disposal of the product by consumers and distribution, transport, storage and disposal of the product being subject to the export control under the Regulation (EU) 2021/821 of the European Parliament and of the Council or the export control relating to weapons, munition or war materials, after the export of the product is authorised.

(h) 'independent third-party verification' means verification of the compliance by a company, or parts of its ***chain of activities***, with human rights and environmental requirements resulting from the provisions of this Directive by an ***expert*** which is ***objective, completely*** independent from the company, free from any conflicts of interests ***and from external influence***, has experience and competence in environmental ***or*** human rights matters***, according to the nature of the adverse impact,*** and is accountable for the quality and reliability of the ***verification***;

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

(j) 'industry ***or multi-stakeholder*** initiative' means a combination of voluntary ▌ due diligence procedures, tools and mechanisms ▌, developed and overseen by governments, industry associations***, interested organisations, including civil society organisations,*** or groupings ***or combinations thereof, that companies may participate in in order to support the implementation of due diligence obligations***;

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

(l) 'severe adverse impact' means an adverse ▌ impact ***that is especially significant by its nature, such as an*** impact that ***entails harm to human life, health and liberty, or*** by its ***scale***, ***scope or irremediable character, taking into account its gravity, including the*** number of ***individuals that are or may be affected, the extent to*** which ***the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability*** to restore ***affected individuals or the environment to a*** situation ***equivalent to their situation*** prior to the impact ***within a reasonable period of time***;

(m) 'net turnover' means***:***

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

(ii) where the company applies international accounting standards adopted on the basis of Regulation (EC) No 1606/2002 of the European Parliament and of the Council[75] or is a company within the meaning of point (a)(ii), the revenue as defined by or within the meaning of the financial reporting framework on the basis of which the financial statements of the company are prepared;

(n) 'stakeholders' means the company's employees, the employees of its subsidiaries, ***trade unions and workers' representatives, consumers;*** and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business ***partners, including the employees of the company's business partners, trade unions and workers' representatives, national human rights and environmental institutions, civil society organisations whose purpose includes the***

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

protection of the environment, and the legitimate representatives of those individuals, groups, communities or entities;

[redacted]

(q) 'appropriate ***measures***' means ***measures that are*** capable of achieving the objectives of due diligence ***by effectively addressing adverse impacts in a manner*** commensurate ***to*** the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including ***the nature and extent*** of the ***adverse impact and relevant risk factors***.

(qa) 'business relationship' means a relationship of the company with its business partner;

(r) 'parent company' means a company which controls one or more subsidiaries within the meaning of point (d);

(ra) 'ultimate parent company' means a parent company which controls, either directly or indirectly in accordance with the criteria set out in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council, one or more subsidiary companies and is not controlled by another company;

(s) 'group of companies' means a parent company and all its subsidiaries;

(qe) 'remediation' means restitution of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would be in had the actual adverse impact not occurred, proportionate to the company's implication in the adverse impact, including financial or non-financial

compensation provided by the company to a person or persons affected by the actual adverse impact and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures;

(qe) 'risk factors' means facts, situations or circumstances that relate to the severity and likelihood of an adverse impact, including company-level, business operations, geographic and contextual, product and service, and sectoral risk factors;

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(qg) 'severity of an adverse impact' means the scale, scope or irremediable character of the adverse impact, taking into account the gravity of an adverse impact, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact within a reasonable period of time.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 28 in order to amend Annex I to this Directive by: (a) Adding the reference to articles of international instruments ratified by all Member States and falling within the scope of a specific right, prohibition or obligation related to the protection of human rights, fundamental freedoms and of the environment listed in Annex I; (b) Modifying, as appropriate, the reference to international instruments referred to in Annex I, in view of the modification, supersession or abrogation of such instruments; (c) In accordance with developments within the relevant international fora concerning the instruments listed in Annex I, Part 1, Section 2, (i) replacing the reference to the listed instruments, by the reference to new instruments covering the same subject matter and ratified by all Member States, or (ii) adding the reference to new instruments covering the same subject matter as the listed instruments and ratified by all Member States.

Article 3a

Level of harmonisation

1. Member States shall not introduce, in their national law, provisions within the field covered by this Directive, laying down human rights and environmental due diligence

obligations diverging from those laid down in Articles 6(1), 6(1a), 7(1) and 8(1), without prejudice to Article 1(2) and (3).

2. Notwithstanding paragraph 1, this Directive shall not preclude Member States from introducing, in their national law, more stringent provisions, diverging from those laid down in Articles other than Articles 6(1), 6(1a), 7(1) and 8(1), or provisions that are more specific in terms of the objective or the field covered, in order to achieve a different level of protection of human, employment and social rights, the environment or the climate.

Article 4

Due diligence

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

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

(b) identifying ***and assessing*** actual or potential adverse impacts in accordance with Article 6 ***and, where necessary, prioritising potential and actual adverse impacts in accordance with Article 6a***;

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

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(cb) providing remediation to actual adverse impacts in accordance with Article 8c;

(cc) carrying out meaningful engagement with stakeholders in accordance with Article 8d;

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

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

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

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2. Member States shall ensure that, for the purposes of due diligence, companies are entitled to share resources and information within their respective groups of companies and with other legal entities.

3. Member States shall ensure that a business partner shall not be obliged to disclose to a company which is complying with the obligations resulting from this Directive, information that is a trade secret as defined in Article 2(1) of Directive (EU) 2016/943 of the European Parliament and of the Council[76], without prejudice to the disclosure of the identity of direct and indirect business partners, or essential information needed to identify potential or actual adverse impacts, where necessary and duly justified for the company's compliance with due diligence obligations. This shall be without prejudice to the possibility for the business partners to protect their trade secrets through the mechanisms established in Directive (EU) 2016/943 of the European Parliament and of the Council. Business partners shall never be obliged to disclose classified information or other information the disclosure of which would cause a risk to the essential interests of a state's security.

3a. Member States shall require companies to retain documentation regarding the actions adopted to fulfil their due diligence obligations for the purpose of demonstrating compliance, including supporting evidence, for at least 5 years from the moment when such documentation was produced or obtained.
Where, upon expiry of the applicable period, there is an ongoing judicial or administrative proceeding under this Directive, the retention period shall be extended until the final conclusion of the matter.

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

Article 4a

Due diligence support at a group level

1. Member States shall ensure that parent companies falling under the scope of this Directive may fulfil the obligations set out in Articles 5 to 11 and Article 15 on behalf of companies which are their subsidiaries falling under the scope of this Directive, if this ensures effective compliance. This is without prejudice to the subsidiaries being subject to the exercise of the supervisory authority's powers in accordance with Article 18 and to their civil liability in accordance with Article 22.

2. The fulfilment of due diligence obligations set out in Articles 5 to 11 by a parent company in accordance with paragraph 1 of this Article is subject to all the following conditions:

(a) the subsidiary and parent company provide each other with all the necessary information and cooperate to fulfil the obligations resulting from this Directive;

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

(c) the subsidiary integrates due diligence into all its policies and risk management systems in accordance with Article 5, clearly describing which obligations are to be fulfilled by the parent company, and, where necessary, communicating so to relevant stakeholders;

(d) where necessary, the subsidiary continues to take appropriate measures in accordance with Articles 7and 8 and to fulfil its obligations under Articles 8c and 8d;

(e) where relevant, the subsidiary fulfils the obligation to seek the contractual assurances in accordance with Article 7(2), point (b), or Article 8(3), point (c); to seek contractual assurances with an indirect business partner in accordance with Articles 7(3) or 8(4); and to temporarily suspend or terminate the business relationship in accordance with Articles 7(5) or 8(6);

3. When the parent company fulfils the obligation set out in Article 15 on behalf of the subsidiary in accordance with paragraph 1 of this Article, the subsidiary shall comply with the obligations laid down in Article 15 in accordance with the parent company's transition plan for climate change mitigation accordingly adapted to its business model and strategy.

Article 5

Integrating due diligence into *company's* policies *and risk management systems*

1. Member States shall ensure that companies integrate due diligence into all their ***relevant*** policies and ***risk management systems and*** have in place a due diligence policy ***that ensures a risk-based due diligence.***

1a. The due diligence policy shall be developed in prior consultation with the company's employees and their representatives, and contain all of the following:

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

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

(c) a description of the processes put in place to integrate due diligence into the relevant policies and to implement due diligence, including the measures taken to

verify compliance with the code of conduct and to extend its application to business partners.

2. Member States shall ensure that the companies update their due diligence policy ***without undue delay after a significant change occurs, and review and, where necessary, update it at least every 24 months.***
For this purpose, companies shall take into account the adverse impacts already identified according to Article 6, as well as the appropriate measures taken to address such adverse impacts in line with Articles 7 and 8 and the outcome of the assessments carried out in accordance with Article 10.

Article 6

Identifying *and assessing* actual and potential adverse impacts

1. Member States shall ensure that companies take appropriate measures to identify ***and assess*** actual and potential adverse impacts arising from their own operations or those of their subsidiaries and, where related to their ***chains of activities, those of their*** business ***partners***, in accordance with ***this Article***.

1a. As part of the obligation in paragraph 1, taking into account relevant risk factors, companies shall take appropriate measures to:
(a) map their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in order to identify general areas where adverse impacts are most likely to occur and to be most severe;
(b) based on the results of that mapping, carry out an in-depth assessment of the own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in the areas where adverse impacts were identified to be most likely to occur and most severe.

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

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4. Member States shall ensure that, for the purposes of identifying ***and assessing*** the adverse impacts referred to in paragraph 1 based on, where appropriate, quantitative and qualitative information, companies are entitled to make use of appropriate resources, including independent reports and information gathered through the ***notification mechanism and*** complaints procedure provided for in Article 9. ▌

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4b. Where information necessary for the in-depth assessment according to paragraph (1a), point (b) can be obtained from business partners at different levels of the chain of activities, the company shall prioritise requesting such information, where reasonable, directly from business partners where the adverse impacts are most likely to occur.

Article 6a

Prioritisation of identified actual and potential adverse impacts

1. Member States shall ensure that, where it is not feasible to prevent, mitigate, bring to an end or minimise all identified adverse impacts at the same time to their full extent, companies prioritise adverse impacts identified pursuant to Article 6 for fulfilling the obligations laid down in Article 7 or 8.

2. The prioritisation shall be based on the severity and likelihood of the adverse impacts.

3. Once the most severe and most likely adverse impacts are addressed in accordance with Article 7 or 8 in a reasonable time, the company shall address less severe and less likely adverse impacts.

Article 7

Preventing potential adverse impacts

1. Member States shall ensure that companies take appropriate measures to prevent, or where prevention is not possible or not immediately possible, adequately mitigate potential adverse ▌ impacts that have been, or should have been, identified pursuant to Article 6, in accordance with ***Article 6a and with*** this Article.

To determine the appropriate measures referred to in the first subparagraph, due account shall be taken of:

(a) whether the potential adverse impact may be caused only by the company; whether it may be caused jointly by the company and its subsidiary or business partner, through acts or omissions; or whether it may be caused only by the company's business partner in the chain of activities;

(b) whether the potential adverse impact may occur in the operations of the subsidiary, direct business partner or indirect business partner; and

(c) the ability of the company to influence the business partner that may cause or jointly cause the potential adverse impact

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2. Companies shall be required to take the following ***appropriate measures***, where relevant:

(a) where necessary**,** due to the nature or complexity of the measures required for prevention, ***without undue delay*** develop and implement a prevention action plan, with reasonable and clearly defined timelines for ***the implementation of appropriate measures*** and qualitative and quantitative indicators for measuring improvement. ***Companies may develop their action plans in cooperation with industry or multi-***

stakeholder initiatives. The prevention action plan shall be ***adapted to companies' operations and chain of activities***;

(b) seek contractual assurances from a ▌ direct business ***partner*** that it will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by ***establishing*** corresponding contractual assurances from its partners, to the extent that their activities are part of the company's ▌ chain ***of activities***. When such contractual assurances are obtained, paragraph 4 shall apply;

(c) make necessary ***financial or non-financial*** investments, ***adjustments or upgrades,*** such as into ***facilities, production or other operational*** processes and infrastructures ▌ ;

(ca) make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations, including purchasing practices, design and distribution practices;

(d) provide targeted and proportionate support for an SME ***which is a business partner of*** the company***, where necessary in light of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems, and***, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME***, providing targeted and proportionate financial support, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing***;

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

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2a. Companies may take, where relevant, appropriate measures in addition to the measures included in paragraph 2, such as engaging with a business partner about the company's expectations with regard to preventing and mitigating the potential adverse impacts, or providing or enabling access to capacity-building, guidance, administrative and financial support such as loans or financing, taking into consideration the resources, knowledge and constraints of the business partner.

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

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

When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. ***The company shall also assess whether the contractual assurances with an SME should be accompanied by some of the appropriate measures for SMEs included in paragraph 2, point (d).*** Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.
In case the SME requests to pay at least a part of the cost, or in agreement with the company, the SME shall be able to share the results of verifications with other companies.

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

(a) ***adopt and implement an enhanced prevention action plan for the specific adverse impact without undue delay***, ***by using or increasing the company's leverage***

through the temporary suspension of business relationships with respect to the activities concerned, as long as there is reasonable expectation that these efforts will succeed***. The action plan shall include a specific and appropriate timeline for the adoption and implementation of all actions therein, during which the company may also seek alternative business partners***;

(b) ***if there is no reasonable expectation that these efforts would succeed, or if the implementation of the enhanced prevention action plan failed to prevent or mitigate the adverse impact,*** terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.

Prior to temporarily suspending or terminating the business relationship, the company shall assess whether the adverse impacts of doing so can be reasonably expected to be manifestly more severe than the adverse impact that could not be prevented or adequately mitigated. Should that be the case, the company shall not be required to suspend or to terminate the business relationship, and shall be in a position to report to the competent supervisory authority about the duly justified reasons of such decision.

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

Where the company decides to temporarily suspend or terminate the business relationship, the company shall take steps to prevent, mitigate or bring to an end the

impacts of suspension or termination, provide reasonable notice to the business partner and keep that decision under review.

Where the company decides not to temporarily suspend or terminate the business relationship in line with this article, the company shall monitor the potential adverse impact and periodically reassess its decision and whether further appropriate measures are available.

Article 8

Bringing actual adverse impacts to an end

1. Member States shall ensure that companies take appropriate measures to bring actual adverse impacts that have been, or should have been, identified pursuant to Article 6 to an end, in accordance with ***Article 6a and with*** this Article.

To determine the appropriate measures referred to in the first subparagraph, due account shall be taken of:

(a) whether the actual adverse impact is caused only by the company; whether it is caused jointly by the company and its subsidiary or business partner, through acts or omissions; or whether it is caused only by the company's business partner in the chain of activities;

(b) whether the actual adverse impact occurred in the operations of the subsidiary, direct business partner or indirect business partner; and

(c) the ability of the company to influence the business partner causing or jointly causing the actual adverse impact.

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

3. Companies shall be required to take the following ***appropriate measures***, where relevant:

(a) neutralise the adverse impact or minimise its extent ▌. The action shall be proportionate to the ***severity*** of the adverse impact and to the ▌ company's ***implication in*** the adverse impact;

(b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, ***without undue delay*** develop and implement a corrective action plan with reasonable and clearly defined timelines for ***the implementation of appropriate measures*** and qualitative and quantitative indicators for measuring improvement. ***Companies may develop their action plans in cooperation with industry or multi-stakeholder initiatives.*** The corrective action plan shall be ***adapted to companies' operations and chain of activities***;

(c) seek contractual assurances from a direct ▌ business ***partner*** that it will ensure compliance with the ***company's*** code of conduct and, as necessary, a corrective action plan, including by ***establishing*** corresponding contractual assurances from its partners, to the extent that ***their activities*** are part of the ***company's*** chain ***of activities***. When such contractual assurances are obtained, paragraph 5 shall apply***;***

(d) make necessary ***financial or non-financial*** investments, ***adjustments or upgrades,*** such as into ***facilities, production or other operational*** processes and infrastructures ▌;

(da) make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations, including purchasing practices, design and distribution practices;

(e) provide targeted and proportionate support for an SME ▌ which ***is a business partner of*** the company***, where necessary in light of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems, and***, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME***, providing targeted and proportionate financial support, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing.***

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(f) in compliance with Union law**,** including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end ***or minimise the extent of such impact***, in particular where no other ***measure*** is suitable or effective.

(g) provide remediation in accordance with Article 8c.

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3a. Companies may carry out, where relevant, appropriate measures in addition to the measures included in paragraph 3, such as engaging with a business partner about the company's expectations with regard to bringing adverse impacts to an end or minimise the extent of such impacts, or providing or enabling access to capacity-building, guidance, administrative and financial support such as loans or financing, taking into consideration the resources, knowledge and constraints of the business partner.

4. As regards actual adverse impacts that could not be brought to an end or ***the extent of which could not be*** adequately ***minimised*** by the ***appropriate*** measures ***listed*** in paragraph 3, the company may seek ***contractual assurances with*** an indirect ***business partner***, with a view to achieving compliance with the company's code of conduct or a corrective action plan. When such ***contractual assurances are sought***, paragraph 5 shall apply.

5. The contractual assurances ▌ shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to ***independent third-party verification, including through industry or multi-stakeholder initiatives***.

When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. ***The company shall also assess whether the contractual assurances with an SME should be accompanied by some of the appropriate measures for SMEs included in paragraph 3, point (e).*** Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.

In case the SME requests to pay at least a part of the cost, or in agreement with the company, the SME shall be able to share the results of verifications with other companies.

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

(a) ***adopt and implement an enhanced corrective action plan for the specific adverse impact without undue delay, including by using or increasing the company's leverage through the temporary suspension of business*** relationships with ***respect to the activities concerned, as long as there is reasonable expectation that these*** efforts ***will succeed. The action plan shall include a specific and appropriate timeline for the adoption and implementation of all actions therein, during which the company may also seek alternative business partners;***

(b) ***if there is no reasonable expectation that these efforts would succeed, or if the implementation of the enhanced corrective action plan failed to bring to an end or minimise the extent of the adverse impact,*** terminate the business relationship with respect to the activities concerned if the ***actual*** adverse impact is severe.

Prior to temporarily suspending or terminating the business relationship, the company shall assess whether the adverse impacts of doing so can be reasonably expected to be manifestly more severe than the adverse impact that could not be brought to an end or the extent of which could not be adequately minimised. Should that be the case, the company shall not be required to suspend or to terminate the business relationship, and shall be in a position to report to the competent supervisory authority about the duly justified reasons of such decision.

Member States shall provide for the availability of an option to ***temporarily suspend or*** terminate the business relationship in contracts governed by their laws ***in accordance with the***

first subparagraph, except for contracts where the parties are obliged by law to enter into them.

Where the company decides to temporarily suspend or terminate the business relationship, the company shall take steps to prevent, mitigate or bring to an end the impacts of suspension or termination, provide reasonable notice to the business partner and keep that decision under review.

Where the company decides not to temporarily suspend or terminate the business relationship in line with this article, the company shall monitor the actual adverse impact and periodically reassess its decision and whether further appropriate measures are available.

Article 8c

Remediation of actual adverse impacts

1. Member States shall ensure that where a company has caused or jointly caused an actual adverse impact, that company shall provide remediation.

2. Where the actual adverse impact is caused only by the company's business partner, voluntary remediation may be provided by the company. The company may also use its ability to influence the business partner causing the adverse impact to enable remediation.

Article 8d

Carrying out meaningful engagement with stakeholders

1. Member States shall ensure that companies take appropriate measures to carry out effective engagement with stakeholders, in accordance with this article.

2. Without prejudice to Directive (EU) 2016/943, when consulting with stakeholders, companies shall, as appropriate, provide relevant and comprehensive information to stakeholders, in order to carry out effective and transparent consultations. Without prejudice to Directive (EU) 2016/943, consulted stakeholders shall be allowed to make a reasoned request for relevant additional information, which shall be provided by the company within a reasonable period of time and in an appropriate and comprehensible

format. If the company refuses a request for additional information, the consulted stakeholder shall be entitled to written justification for that refusal.

2a. Consultation of stakeholders shall take place, in the following steps of the due diligence process:

(a) to gather the necessary information on actual or potential adverse impacts, in order to identify, assess and prioritise adverse impacts pursuant to Articles 6 and 6a;

(b) the development of prevention and corrective action plans pursuant to Article 7(2) and Article 8(3), and the development of enhanced prevention and corrective action plans pursuant to Article 7(5) and Article 8(6);

(c) the decision to terminate or suspend a business relationship pursuant to Article 7(5) and Article 8(6);

(d) the adoption of appropriate measures to remediate adverse impacts pursuant to Article 8c.

(e) as appropriate, when developing qualitative and quantitative indicators for the monitoring pursuant to Article 10.

3. Where it is not reasonably possible to carry out effective engagement with stakeholders to the extent necessary to comply with the requirements of this Directive, companies shall consult additionally with experts who can provide credible insights into potential or actual adverse impacts.

4. In consulting stakeholders, companies shall identify and address barriers to engagement and shall ensure that participants are not the subject of retaliation or retribution, including by maintaining confidentiality or anonymity.

5. Member States shall ensure that companies are allowed to fulfil the obligations laid down in this Article through industry or multi-stakeholder initiatives, as appropriate, provided that the consultations procedures meet the requirements set out in this Article. The use of industry and multi-stakeholder initiatives shall not be sufficient to fulfil the obligation to consult the company's own employees and their representatives.

6. Engagement with employees and their representatives shall be without prejudice to relevant EU and national legislation in the field of employment and social rights as well as collective agreements applicable.

Article 9

Notification mechanism and **complaints procedure**

1. Member States shall ensure that companies provide the possibility for persons and organisations listed in paragraph 2 to submit complaints to them where ***these persons or organisations*** have legitimate concerns regarding actual or potential adverse impacts with respect to ***the companies'*** own operations, the operations of their subsidiaries ***or the operations of*** their ***business partners in the companies'*** chains ***of activities***.

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

   (a) ***natural or legal*** persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact, ***and the legitimate representatives of such persons on behalf of them, such as civil society organisations and human rights defenders;***

   (b) trade unions and other workers' representatives representing individuals working in the ***chain of activities*** concerned***; and***

   (c) civil society organisations active ***and experienced*** in the areas related to the ***environmental adverse impact that is the subject matter of the complaint***.

3. Member States shall ensure that companies establish a ***fair, publicly available, accessible, predictable and transparent*** procedure for dealing with complaints referred to in paragraph 1, including a procedure when the company considers the complaint to be unfounded, and inform the relevant workers ***representatives*** and trade unions of ***that procedure. Companies*** shall ***take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity*** of the ***person or organisation submitting the*** complaint***, in accordance with national law. Where information needs*** to be ***shared, it shall be in a manner that does not endanger the complainant's safety, including by not disclosing their identity***.

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

4. Member States shall ensure that complainants are entitled***:***

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

(b) to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint***, and potential remediation in line with Article 8c;***

(ba) to be provided with the reasoning as to whether a complaint has been considered founded or unfounded and, where founded, to be provided with information on the steps and actions taken or to be taken.

5. Member States shall ensure that companies establish an accessible mechanism for the submission of notifications by persons and organisations where they have information or concerns regarding actual or potential adverse impacts with respect to their own operations, the operations of their subsidiaries and the operations of their business partners in the companies' chains of activities.
The mechanism shall ensure that notifications can be made either anonymously or confidentially in accordance with national law. Companies shall take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organisation submitting the notification, in accordance with national law. The company may inform the persons submitting notifications about steps and actions taken or to be taken, where relevant.

6. Member States shall ensure that companies are allowed to fulfil the obligations laid down in paragraphs 1, 3, first subparagraph, and 5, by participation in collaborative

complaints' procedures and notification mechanisms, including those established jointly by companies, through industry associations, multi-stakeholder initiatives or global framework agreements, provided that the collaborative procedures and mechanisms meet the requirements set out in this Article.

7. ***The submission of a notification or complaint under this Article shall not be a prerequisite for or preclude the persons submitting them from having access to the procedures under Article 19 and 22 or to other non-judicial mechanisms.***

Article 10

Monitoring ▌

Member States shall ensure that companies carry out periodic assessments of their own operations and measures, those of their subsidiaries and, where related to the ***chains of activities*** of the company, those of their ▌ business ***partners, to assess the implementation and to*** monitor the ***adequacy and*** effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of ▌ adverse impacts. Such assessments shall be based, where appropriate, on qualitative and quantitative indicators and be carried out ***without undue delay after a significant change occurs, but*** at least every 12 months and whenever there are reasonable grounds to believe that ▌ new risks of the occurrence of those adverse impacts may arise. ***Where appropriate,*** the due diligence policy***, the identified adverse impacts and the derived appropriate measures*** shall be updated in accordance with the outcome of those assessments ***and with due consideration of relevant information from stakeholders***.

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Article 11

Communicating

1. ***Without prejudice to the exemption in paragraph 2 of this Article, Member States shall ensure that companies*** report on the matters covered by this Directive by publishing on

their website an annual statement***. This annual statement shall be published:***
(a) in at least one of the official languages of the Union of the Member State of the supervisory authority designated pursuant to Article 17 and, where different, in a language customary in the sphere of international business***;***
(b) within a reasonable period of time, but no later than 12 months after the balance sheet date of the financial year for which the statement ***is drawn up, or, for companies voluntarily reporting in accordance with Directive 2013/34/EU, by the date of publication of the annual financial statements.***
In the case of a company formed in accordance with the legislation of a third country, the statement shall also include the information pursuant to Article 16(2) regarding the company's authorised representative.

2. Paragraph 1 shall not apply to companies that are subject to sustainability reporting requirements in accordance with Articles 19a, 29a or 40a of Directive 2013/34/EU, including those that are exempted in accordance with Articles 19a(9) or 29a(8) of that Directive.

3. No later than 31 March 2027, the Commission shall adopt delegated acts in accordance with Article 28 concerning the content and criteria for ***the*** reporting under paragraph 1, specifying***, in particular, sufficiently detailed*** information on the description of due diligence, potential and actual adverse impacts ***identified and appropriate measures*** taken ***with respect to*** those ***impacts. In preparing these delegated acts, the Commission shall take due account of, and align them as appropriate with, the sustainability reporting standards adopted pursuant to Article 29b and 40b of Directive 2013/34/EU.***
When adopting delegated acts, the Commission shall ensure that there is no duplication in reporting requirements for companies referred to in Article 3, point (a)(iv) that are subject to reporting requirements under Article 4 of Regulation (EU) 2019/2088, while maintaining in full the minimum obligations stipulated in this Directive.

Article 11a

Accessibility of information on the European Single Access Point (ESAP)

1. From 1 January 2029, Member States shall ensure that, when making public the annual statement referred to in Article 11(1) of this Directive, companies submit that statement at the same time to the collection body referred to in paragraph 3 of this Article for the purpose of making it accessible on the European Single Access Point (ESAP), as established under Regulation (EU) 2023/2859 of the European Parliament and of the Council[77] .

Member States shall ensure that the information complies with the following requirements:

(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859 or, required by Union or national law, in a machine-readable format, as defined in Article 2, point (4), of that Regulation;

(b) be accompanied by the following metadata:

(i) all the names of the company to which the information relates;

(ii) the legal entity identifier of the company, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859 ;

(iii) the size of the company by category, as specified pursuant to Article 7(4), point (d), of that Regulation;

(iv) the industry sector(s) of the economic activities of the company, as specified pursuant to Article 7(4), point (e), of that Regulation;

(v) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(vi) an indication of whether the information includes personal data.

2. For the purposes of paragraph 1(b)(ii), Member States shall ensure that companies obtain a legal entity identifier.

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77 Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L, 2023/2859, 20.12.2023).

3. ***By 31 December 2028, for the purposes of making the information referred to in paragraph 1 of this Article accessible on ESAP, Member States shall designate at least one collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 and notify ESMA thereof.***

4. ***For the purposes of ensuring the efficient collection and management of information submitted in accordance with paragraph 1, the Commission shall be empowered to adopt implementing measures to specify:***
(a) any other metadata to accompany the information;
(b) the structuring of data in the information;
(c) for which information a machine-readable format is required and, in such cases, which machine-readable format is to be used.

Article 12

Model contractual clauses

In order to provide support to companies to facilitate their compliance with Article 7(2), point (b), and Article 8(3), point (c), the Commission***, in consultation with Member States and stakeholders,*** shall adopt guidance about voluntary model ***contractual*** clauses***, no later than after 30 months from the entry into force of this Directive***.

Article 13

Guidelines

1. In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations ***in a practical manner, and to provide support to stakeholders***, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, ***the European Labour Authority,*** and where appropriate with international ***organisations and***

other bodies having expertise in due diligence, ***shall*** issue guidelines, including ***general guidelines and*** for specific sectors or specific adverse impacts.

1a. These guidelines shall include:

(a) guidance and best practices on how to conduct due diligence in line with the obligations in Articles 4 to 11, particularly, the identification process pursuant to Article 6, the prioritisation of impacts pursuant to Articles 6a, appropriate measures to adapt purchasing practices pursuant to Articles 7(2) and 8(3), responsible disengagement pursuant to Articles 7(5) and 8(6), appropriate measures for remediation pursuant to Article 8c, and on how to identify and engage with stakeholders pursuant to Article 8d, including through the mechanism established in Article 9;

(b) practical guidance on plans pursuant to Article 15;

(c) sector specific guidance, in particular for the sectors listed in Article 2, paragraph 1, point (bb) and associated with the applicable statistical classification of economic activities established by Regulation (EC) No 1893/2006 and listed in Annex II;

(d) guidance on the assessment of company-level, business operations, geographic and contextual, product and service, and sectoral risk factors, including those associated with conflict-affected and high-risk areas;

(e) references to data and information sources available for the compliance with the obligations in this Directive, and to digital tools and technologies that could facilitate and support compliance;

(f) information on how to share resources and information among companies and other legal entities for the purpose of compliance with national provisions adopted pursuant to this Directive, in line with the protection of trade secrets pursuant to Article 4(3) and the protection from potential retaliation and retribution pursuant to Article 8d;

(g) information for stakeholders and their representatives on how to engage throughout the due diligence process.

1b. The guidelines in paragraph 1a, points (a), (d), and (e) shall be made available no later than 30 months after the entry into force of this Directive. The guidelines in paragraph 1a, points (b), (f) and (g) shall be made available no later than 36 months after the entry into force of this Directive. The guidelines in paragraph 1a, point (c) shall be made available no later than 54 months after the entry into force of this Directive.

1c. ***The guidelines shall be made available in all the official languages of the Union. The Commission shall periodically review the guidelines and adapt them where appropriate.***

Article 14

Accompanying measures

1. Member States shall, in order to provide information and support to companies***, their business*** partners ***and stakeholders***, set up and operate individually or jointly dedicated websites, platforms or portals. Specific consideration shall be given, in that respect, to the SMEs that are present in the ***chains of activities*** of companies. ***These websites, platforms or portals shall, in particular, give access to:***
(a) the content and criteria for reporting as defined by the Commission under Article 11;
(b) the Commission's guidance about voluntary model contractual clauses regulated in Article 12 and guidelines regulated in Article 13;
(c) the single helpdesk regulated in Article 14a; and
(d) information for stakeholders and their representatives on how to engage throughout the due diligence process.

2. Without prejudice to applicable State aid rules, Member States may financially support SMEs. ***Member States may also provide support to stakeholders for the purpose of facilitating the exercise of the rights laid down in this Directive.***

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

4. ***Without prejudice to Articles 18, 19 and 22,*** companies may ***participate in*** industry ▌ and multi-stakeholder initiatives to support the implementation of ▌ obligations referred to in Articles 5 to 11 ▌ to the extent that such ▌ initiatives are appropriate to support the fulfilment of those obligations. ***In particular, companies may, after having assessed their appropriateness, make use of or join relevant risk analysis carried out by industry or multi-stakeholder initiatives or by members of those initiatives and may take or join effective appropriate measures through such initiatives. When doing so, companies shall monitor the effectiveness of such measures and, continue to take appropriate measures where necessary to ensure the fulfilment of their obligations.***
The Commission and the Member States may facilitate the dissemination of information on such ▌ initiatives and their outcome. The Commission, in collaboration with Member States, ***shall*** issue guidance ***setting out fitness criteria and a methodology for companies to assess*** the fitness of industry schemes and multi-stakeholder initiatives.

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4a. Without prejudice to Articles 18, 19 and 22, companies may use independent third-party verification on and from companies in their chain of activities to support the implementation of due diligence obligations to the extent that such verification is appropriate to support the fulfilment of the relevant obligations. Third-party verification may be carried out by other companies or by an industry or multi-stakeholder initiative. Independent third-party verifiers shall act with objectivity and complete independence from the company, be free from any conflict of interests, remain free from external influence, whether direct or indirect, and shall refrain from any action incompatible with their independence. According to the nature of the adverse impact, they shall have experience and competence in environmental or human rights matters and shall be accountable for the quality and reliability of the verification.
The Commission, in collaboration with Member States, shall issue guidance setting out fitness criteria and a methodology for companies to assess the fitness of third party

verifiers, and guidance for monitoring the accuracy, effectiveness and integrity of third-party verification.

Article 14a

Single helpdesk

1. The Commission shall establish a single helpdesk through which companies may seek information, guidance and support about how to fulfil their obligations under this Directive.

2. Relevant national authorities in each Member State shall collaborate with the single helpdesk in order to assist in tailoring the information and guidance to national contexts and its dissemination.

Article 15

Combating climate change

1. Member States shall ensure that companies referred to in Article 2(1), ***points (a), (b) and (ba),*** and Article 2(2), ***points (a), (b) and (ba),*** adopt ***and put into effect a transition plan for climate change mitigation which aims*** to ensure***, through best efforts,*** that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement ***and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119, including its intermediate and 2050 climate neutrality targets, and where relevant, the exposure of the company to coal-, oil- and gas-related activities.***

The design of the transition plan referred to in the first subparagraph shall contain:

(a) time-bound targets related to climate change ***for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and including, where appropriate, absolute emission reduction targets for greenhouse gas for scope 1, scope 2 and scope 3 greenhouse gas emissions for each significant category;***

(b) a description of decarbonisation levers identified and key actions planned to reach targets referred to under point (a), including where appropriate changes in the undertaking's product and service portfolio and the adoption of new technologies;

(c) an explanation and quantification of the investments and funding supporting the implementation of the transition plan;

(d) a description of the role of the administrative, management and supervisory bodies with regard to the plan.

3. ***Companies that report a transition plan for climate change mitigation in accordance with Article 19a, 29a or 40a, as the case may be, of Directive 2013/34/EU of the European Parliament and*** of the ***Council shall be deemed to have complied with the adoption obligation set out in paragraph 1 of this Article.***

Companies that are included in the transition plan for climate change mitigation of their parent undertaking, reported in accordance with Article 29a or 40a, as the case may be, of Directive 2013/34/EU of the European Parliament and of the Council, shall be deemed to have complied with the adoption requirement set out in paragraph 1 of this Article.

3a. ***Member States shall ensure that the transition plan referred to in paragraph 1 is updated every 12 months and contains a description of the progress the company has made towards achieving the targets referred to under paragraph 1, point (a).***

3b. ***Member States shall ensure that companies with more than 1000 employees on average have an appropriate policy to promote the implementation of the plan referred to in this Article including through, among others, financial incentives to members of the administrative, management or supervisory bodies concerned.***
The first subparagraph is without prejudice to Directive 2007/36/EC of the European Parliament and of the Council.

Article 16

Authorised representative

1. Member States shall ***lay down rules to require that a*** company ***within the meaning of*** Article 2(2) ***operating in a Member State*** designates a legal or natural person as its authorised representative, established or domiciled in one of the Member States where it operates. The designation shall be valid when confirmed as accepted by the authorised representative.

2. Member States shall ***lay down rules to require*** that the ***authorised representative or the company notifies the*** name, address, electronic mail address and telephone number of the authorised representative ▌ to a supervisory authority in the Member State where the authorised representative is domiciled or established ***and, where it is different, the competent supervisory authority within the meaning of Article 17(3)***. Member States shall ensure that the authorised representative is obliged to provide, upon request, a copy of the designation in an official language of a Member State to any of the supervisory authorities.

3. Member States shall ***lay down rules to require that the authorised representative or the company informs*** a supervisory authority in the Member State where the authorised representative is domiciled or established and, where it is different, ***the competent*** supervisory authority ***within the meaning of Article 17(3)*** that the company is a company within the meaning of Article 2(2).

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

5. When the company within the meaning of Article 2(2) fails to comply with the obligations laid down in this Article, all Member States in which such company operates should be competent to enforce the fulfilment of such obligations in accordance with the national law. The Member State intending to enforce the obligations laid down in this Article notifies the supervisory authorities through the European Network of Supervisory Authorities in accordance with Article 21 so that other Member States do not enforce them.

Article 17

Supervisory Authorities

1. Each Member State shall designate one or more supervisory authorities to supervise compliance with the obligations laid down in national provisions adopted pursuant to Articles ***5*** to 11 and Article ***15*** ('supervisory authority').

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

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

Companies referred to in Article 2(2) may, on the basis of a change in circumstances leading to it generating most of its turnover in the Union in a different Member State, make a duly

reasoned request to change the supervisory authority that is competent to regulate matters covered in this Directive in respect of that company.

3a. Where the parent company fulfils the obligations resulting from this Directive on behalf of its subsidiaries in accordance with Article 4a, the competent supervisory authority of the parent company shall cooperate with the competent supervisory authority of the subsidiary, which will remain competent to ensure that the subsidiary is subject to the exercise of powers in accordance with Article 18. In this regard, the European Network of Supervisory Authorities shall facilitate the needed cooperation, coordination and mutual assistance according to Article 21.

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

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

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

7. The Commission shall make publicly available, including on its website, a list of the supervisory authorities***, and, when a Member State has several supervisory authorities, the respective competences of those authorities in relation to this Directive.*** The Commission shall regularly update the list on the basis of the information received from the Member States.

8. Member States shall guarantee the independence of the supervisory authorities and ensure that they, and all persons working for or who have worked for them and auditors***, experts and any other person*** acting on their behalf, exercise their powers impartially, transparently and with due respect for obligations of professional secrecy. In particular, Member States shall ensure that the authority is legally and functionally independent***, free***

from external influence whether direct or indirect, including from the companies falling within the scope of this Directive or other market interests, that its staff and the persons responsible for its management are free of conflicts of interest, subject to confidentiality requirements, and that they refrain from any action incompatible with their duties.

8a. Member States shall ensure that supervisory authorities publish and make accessible online an annual report on their activities under this Directive.

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Article 18

Powers of supervisory authorities

1. Member States shall ensure that the supervisory authorities have adequate powers and resources to carry out the tasks assigned to them under this Directive, including the power to ***require companies to provide*** information and carry out investigations related to compliance with the obligations set out in ***Articles 5 to 11. As regards Article 15, supervisory authorities shall be required to supervise the adoption and design of the plan in accordance with the requirements of Article 15(1)***.

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

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

4. If, as a result of the actions taken pursuant to paragraphs 1 and 2, a supervisory authority identifies a failure to comply with national provisions adopted pursuant to this Directive, it

shall grant the company concerned an appropriate period of time to take remedial action, if such action is possible.

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

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

(a) to order***:***

(i) the cessation of infringements of the national provisions adopted pursuant to this Directive by performing an action or ceasing a conduct;

(ii) the abstention from any repetition of the relevant conduct; and

(iii) where appropriate, to provide remediation proportionate to the infringement and necessary to bring it to an end;

(b) to impose ***penalties*** in accordance with Article 20; ***and***

(c) to adopt interim measures ***in case of imminent*** risk of severe and irreparable harm.

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6. ***Supervisory authorities shall exercise the powers referred to in*** this Article ***in accordance with*** national ***law:***

(a) directly;

(b) in cooperation with other authorities; or

(c) by application to the competent judicial authorities, which shall ensure that legal remedies are effective and have an equivalent effect to the penalties imposed directly by supervisory authorities.

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

7b. ***Member States shall ensure that the supervisory authorities keep records of the investigations referred to in paragraph 1, indicating, in particular, their nature and result, as well as records of any enforcement action taken under paragraph 5.***

7c. ***Decisions of supervisory authorities regarding a company's compliance with national provisions adopted pursuant to this Directive shall be without prejudice to the company's civil liability under Article 22.***

Article 19

Substantiated concerns

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

1a. ***Member States shall ensure that, where persons submitting substantiated concerns so request, the supervisory authority takes the necessary measures for the appropriate protection of the identity of that person and their personal information, which, if disclosed, would be harmful to that person.***

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

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

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

provide the reasoning for it. ***The supervisory authority shall also inform the persons submitting the substantiated concern who have, in accordance with national law, a legitimate interest in the matter, its decision to accept or refuse any request for action, as well as a description of the further steps and measures, and practical information on access to administrative and judicial review procedures.***

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5. Member States shall ensure that the persons submitting the substantiated concern according to this Article and having, in accordance with national law, a legitimate interest in the matter***,*** have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.

Article 20

Penalties

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

2. In deciding whether to impose ***penalties*** and, if so, in determining their nature and appropriate level, due account shall be taken of***:***

(a) the nature, gravity and duration of the infringement, and the severity of the impacts resulting from that infringement;

(b) any investments made and any targeted support provided pursuant to Articles 7 and 8;

(c) any collaboration with other entities to address the impacts concerned;

(d) where relevant, the extent to which prioritisation decisions were made in accordance with Article 6a;

(e) any relevant previous infringements by the company of national provisions adopted pursuant to this Directive found by a final decision;

(f) the extent to which the company carried out any remedial action with regard to the concerned subject-matter;

(g) the financial benefits gained from or losses avoided by the company due to the infringement;

(i) any other aggravating or mitigating factors applicable to the circumstances of the case.

2a. At least the following penalties shall be provided for:

(a) pecuniary penalties;

(b) if the company fails to comply with the decision imposing a pecuniary penalty within the applicable time-limit, a public statement indicating the company responsible and the nature of the infringement;

3. When pecuniary ***penalties*** are imposed, they shall be based on the company's ***net worldwide*** turnover. ***The maximum limit of pecuniary penalties shall be not less than 5% of the net worldwide turnover of the company in the financial year preceding the fining decision.***

Member States shall ensure that, with regards to companies referred to in Article 2(1), point (b) and Article 2(2), point (b), pecuniary penalties are calculated taking into account the consolidated turnover reported by the ultimate parent company.

4. Member States shall ensure that any decision of the supervisory authorities containing ***penalties*** related to the ***infringements*** of the ***national*** provisions ***adopted pursuant to*** this Directive is published***, publicly available for at least 5 years and sent to the European Network of Supervisory Authorities. The published decision shall not contain any personal data within the meaning of Article 4(1) of Regulation (EU) 2016/679***.

Article 21

European Network of Supervisory Authorities

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

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

1a. Member States shall cooperate with the Network in order to identify the companies within their jurisdiction, in particular by providing all necessary information in order to assess whether a third country company fulfils the criteria set in Article 2. The Commission shall set up a secured system of exchange of information regarding the net turnover generated in the Union by a company referred to in Article 2(2), that does not have a branch in any Member State or has branches located in different Member States where Member States shall regularly communicate information they have regarding the net turnover generated by those companies. The Commission shall analyse this information within a reasonable period of time and notify the Member State where the company generated most of its net turnover in the Union in the financial year preceding the last financial year, that the company is a company within the meaning of Article 2(2) and the supervisory authority of the Member State is competent in accordance with Article 17(3).

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

▌

3. Supervisory authorities shall take all appropriate steps needed to reply to a request for assistance by another supervisory authority without undue delay and no later than 1 month after receiving the request. ***Where necessary due to the circumstances of the case, the period may be extended by a maximum of two months based on a proper justification.*** Such steps may include, in particular, the transmission of relevant information on the conduct of an investigation.

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

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

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

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

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

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

9. The European Network of Supervisory Authorities shall publish: (i) the decisions of the supervisory authorities containing penalties as referred to in Article 20(4); and (ii) an indicative list of third country companies subject to this Directive.

▌

Article 22

Civil liability ***of companies and a right to full compensation***

1. Member States shall ensure that ***a company can be held*** liable for ***a damage caused to a natural or legal person, provided that***:

   (a) ***the company intentionally or negligently*** failed to comply with the obligations laid down in Articles 7 and 8***, when the right, prohibition or obligation listed in Annex I is aimed to protect the natural or legal person***; ***and***

   (b) as a result of ***a*** failure ***as referred to in point (a), a damage to the natural or legal person's legal interest protected under national law was caused***.

A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.

2. ▌Where ***the*** company ***was held liable in accordance with paragraph 1, a natural or legal person*** shall ***have the right to full compensation for the damage occurred in accordance with national law. Full compensation under this Directive shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages***.

▌

2a. Member States shall ensure that:

(a) national rules on the beginning, duration, suspension or interruption of limitation periods shall not unduly hamper the bringing of actions for damages and, in any case, shall not be more restrictive than the rules on general civil liability national regimes. The limitation period for bringing actions for damages under this Directive shall be at least 5 years and, in any case, not lower than the limitation period laid down under general civil liability national regimes.

Limitation periods shall not begin to run before the infringement has ceased and the claimant knows, or can reasonably be expected to know: (i) of the behaviour and the fact that it constitutes an infringement; (ii) of the fact that the infringement caused harm to them; and (iii) the identity of the infringer.

(b) cost of proceedings are not prohibitively expensive for claimants to seek justice.

(c) claimants are able to seek injunctive measures, including summary proceedings.

These shall be in the form of a definitive or provisional measure to cease infringements of the national provisions adopted pursuant to this Directive by performing an action or ceasing a conduct;

(d) Member States shall provide for the reasonable conditions under which any alleged injured party may authorise a trade union, non-governmental human rights or environmental organisation or other non-governmental organisation, and, according to national law, national human rights' institutions, based in a Member State to bring actions to enforce the rights of the alleged injured party in their own capacity, without prejudice to national rules of civil procedure.

A trade union or non-governmental organisation may be authorised under paragraph 1 if it complies with the requirements as laid down in national law. These requirements may include maintaining a permanent presence of its own and, in accordance with its statutes, not engaging commercially and not only temporarily in the realisation of rights protected under this Directive or the corresponding rights in national law.

(e) when a claim is brought, and a claimant presents a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of their claim for damage and has indicated that additional evidence lies in the control of the company, courts are able to order that such evidence be disclosed by the company in accordance with national procedural law.

National courts shall limit the disclosure of the evidence sought to that which is necessary and proportionate to support a potential claim or a claim for damages and the preservation to that which is necessary and proportionate to support such a claim for damages. In determining whether an order for the disclosure or preservation of evidence is proportionate, national courts shall consider the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence; the scope and cost of disclosure as well as the legitimate interests of all parties, including third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure; whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information.

Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages. Member States shall ensure that, when ordering the disclosure of

such information, national courts have at their disposal effective measures to protect such information.

2b.

Companies that have participated in industry or multi-stakeholder initiatives, or used third-party verification or contractual clauses to support the implementation of due diligence obligations can still be held liable in accordance with this Article.

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

When the damage was caused jointly by the company and its subsidiary, direct or indirect business partner, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the conditions of joint and several liability and the rights of recourse.

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

5. Member States shall ensure that the ▌ provisions of national law transposing this Article ***are*** of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.

Article 23

Reporting of breaches and protection of reporting persons

Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937 ***applies*** to the reporting of ▌ breaches of ***the national measures transposing*** this Directive and the protection of persons reporting such breaches.

Article 24

Public support, ***public procurement and public concessions***

Member States shall ensure that ***compliance with the obligations resulting from the national measures transposing this Directive, or their voluntary implementation, qualifies as an environmental or social aspect that contracting authorities may, in accordance with Directive 2014/24/EU of the European Parliament and of the Council, Directive 2014/25/EU of the European Parliament and of the Council and Directive 2014/23/EU of the European Parliament and of the Council, take into account as part of the award criteria for public and concession contracts, and as an environmental or social condition that contracting authorities may, in accordance with those Directives, lay down in relation to the performance of public and concession contracts***.

Article 27

Amendment to Directive (EU) ***2019/1937***

In Point E.2 of Part I of the Annex to Directive (EU) ***2019/1937***, the following point is added:

‘(vi) Directive … of the European Parliament and of the Council of … on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 ***and Regulation (EU) 2023/2859 (OJ L ..., ...)*** [*1]***. _____ * Directive … of the European Parliament and of the Council of … on Corporate Sustainability***

Due Diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (OJ L ..., ...).'.

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

Article 27a

Amendment to Regulation (EU) 2023/2859

In Regulation (EU) 2023/2859, the following point is added to part B of the Annex:

"17. Directive … of the European Parliament and of the Council of … on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (OJ L ..., ...) [*78]. _____ * Directive … of the European Parliament and of the Council of … on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (OJ L ..., ...).'."

Article 28

Exercise of the delegation

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

2. The power to adopt delegated acts referred to in Article ***3(2) and Article*** 11 shall be conferred on the Commission for an indeterminate period of time ***from … [date of entry into force of this Directive]***.

3. The delegation of power referred to in Article ***3(2) and Article*** 11 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end

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

to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

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

6. A delegated act adopted pursuant to Article ***3(2) and Article*** 11 shall enter into force only if no objection has been expressed either by the European Parliament or ***by*** the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council. ▌

Article 28a

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 29

Review *and reporting*

1. The Commission shall submit a report to the European Parliament and to the Council on the necessity to lay down additional sustainability due diligence requirements tailored to regulated financial undertakings with respect to the provision of financial services

and investment activities, and the options for such due diligence requirements as well as their impacts, in line with the objectives of the Directive.
The report shall take into account other Union legislative acts that apply to regulated financial undertakings. It shall be published at the earliest possible opportunity after the date of entry into force of this Directive, but no later than two years after that date. It shall be accompanied, if appropriate, by a legislative proposal.

2. No later than ▌ [OP please insert the date = ***6*** years after the date of entry into force of this Directive**,**] ***and every three years thereafter***, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive ***and its effectiveness in reaching its objectives, in particular in addressing adverse impacts***. The report shall ***be accompanied, if appropriate, by a legislative proposal. The first report shall, inter alia,*** assess the following issues:

(-a) the impacts of the Directive on SMEs, together with an assessment of the effectiveness of the different measures and tools for support provided to SMEs by the Commission and the Member States;

▌

(-c) the scope of application of this Directive in terms of the companies covered, whether it ensures the effectiveness of this Directive in light of its objectives, a level playing field between entities covered and that companies cannot circumvent the application of the Directive, including: - whether Article 3(1), point (a), needs to be revised so that entities constituted as different legal forms than those listed in Annex I or Annex II of Directive 2013/34/EU are covered; - whether business models or forms of economic cooperation with third-party companies other than those covered by Article 2 need to be included in the scope of application; - whether the thresholds regarding the number of employees and net turnover laid down in Article 2 need to be revised; - whether the list of sectors in Article 2(1), point (bb), needs to be changed; - whether the criterion of net turnover generated in the Union laid down in Article 2(2) needs to be revised;

(-d) whether the definition of 'chain of activities' in Article 3(1), point (g), needs to be revised;

(a) whether the ***Annex I needs to be modified, including in light of international developments, and whether it should be extended to cover additional adverse impacts, in particular adverse impacts on good governance***;

(aa) whether the rules on combatting climate change, especially as regards the design of transition plans, their adoption and their putting into effect by companies, as well as the powers of supervisory authorities related to these rules, need to be revised;

(ab) the effectiveness of the enforcement mechanisms put in place at national level, of the penalties and the rules on civil liability;

(b) whether ***changes to the level of harmonisation of this Directive are required to ensure a level-playing field for companies in the internal market***, including ***the convergence and divergence between national laws of the Member States transposing this Directive.***

Article 30

Transposition

1. Member States shall adopt and publish, by … [***2 years from the entry into force of this Directive]*** at the latest, regulations and administrative provisions necessary to comply with

this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions as follows:

(a) from ***… [3*** years from the entry into force of this Directive] as regards companies referred to in Article 2(1), ***points (a) and (b), which are formed in accordance with the legislation of the Member State and that had more than 1000 employees on average and generated a net worldwide turnover of more than EUR 300 million in the last financial year preceding … [3 years from the entry into force of this Directive] for which annual financial statements have been or should have been adopted, with the exception of the measures necessary to comply with*** Article ***11, which Member States shall apply to these companies for financial years starting on or after 1 January 2028***;

(b) from … [***3*** years from the entry into force of this Directive] as regards companies referred to in Article ***2(2), points (a) and (b), which are formed in accordance with the legislation of a third country and that generated a net turnover of more than EUR 150 million in the Union, in the financial year preceding the last financial year preceding … [3 years from the entry into force of this Directive], with the exception of the measures necessary to comply with*** Article ***11, which Member States shall apply to these companies for financial years starting on or after 1 January 2028;***

(c) from… [4 years from the entry into force of this Directive] as regards all other companies referred to in Article 2(1), points (a) and (b), and Article 2(2), points (a) and (b), and companies referred to in Article 2(1), point (ba) and Article 2(2), point (ba), with the exception of the measures necessary to comply with Article 11, which Member States shall apply to these companies for financial years starting on or after 1 January 2029;

(d) from … [5 years from the entry into force of this Directive] as regards companies referred to in Article 2(1), point (bb), and Article 2(2), point (bb), with the exception of the measures necessary to comply with Article 11, which Member States shall apply to these companies for financial years starting on or after 1 January 2030.

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

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

Article 31

Entry into force

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

Article 32

Addressees

This Directive is addressed to the Member States.

Done at **…**,

For the European Parliament
The President

For the Council
The President

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ANNEX I

Part I

1. RIGHTS AND PROHIBITIONS INCLUDED IN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

2. The right to life***, interpreted in line*** with Article ***6(1)*** of the ***International Covenant on Civil and Political*** Rights***. This includes, but is not restricted to, private or public security guards protecting the company's resources, facilities or personnel causing death of a person due to a lack of instruction or control by the company***;

3. The prohibition of torture, cruel, inhuman or degrading treatment***, interpreted in line*** with Article ***7*** of the ***International Covenant on Civil and Political Rights. This includes, but is not restricted to, private or public security guards protecting the company's resources, facilities or personnel subjecting a person to torture or cruel, inhuman or degrading treatment due to a lack of instruction or control by the company***;

4. The right to liberty and security***, interpreted in line*** with Article ***9(1)*** of the ***International Covenant on Civil and Political*** Rights;

5. The prohibition of arbitrary or unlawful interference with a person's privacy, family, home or correspondence and ***unlawful*** attacks on their ***honour or*** reputation, ***interpreted in line*** with Article 17 of the ***International Covenant on Civil and Political*** Rights;

6. The prohibition of interference with the freedom of thought, conscience and religion***, interpreted in line*** with Article 18 of the ***International Covenant on Civil and Political*** Rights;

7. ▌The right to enjoy just and favourable conditions of work***,*** including a fair wage ***and an adequate living wage for employed workers and an adequate living income for self-employed workers and smallholders, which they earn in return from their work and production***, a decent living, safe and healthy working conditions and reasonable limitation of working hours***, interpreted in line*** with Article 7 ***and 11*** of the International Covenant on Economic, Social and Cultural Rights;

▌

8. ▌The prohibition to restrict workers' access to adequate housing, if the workforce is housed in accommodation provided by the company, and to restrict workers' access to adequate food, clothing, and water and sanitation in the ***workplace, interpreted in line*** with Article 11 of the International Covenant on Economic, Social and Cultural Rights;

9. ▌The right of the child to ***the highest attainable standard of health interpreted in line*** with Article ***24*** of the Convention ***on*** the Rights of the Child; ▌ the right ***to education interpreted in line*** with Article ***28*** of the Convention ***on*** the Rights of the Child; ▌ the right ***to an adequate*** standard of ***living interpreted in line*** with Article ***27*** of the Convention on the Rights of the Child; ***the right*** of the ***child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to*** the child***'s health or physical, mental, spiritual, moral or social development, interpreted in line with to*** Article ***32*** of the Convention on the Rights of the Child; the right of the child to be protected from all forms of sexual exploitation and sexual abuse and to be protected from being abducted, sold or moved illegally to a different place in or outside their country for the purpose of exploitation, ***interpreted in line*** with Articles 34 and 35 of the Convention of the Rights of the Child;

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

11. ▌The prohibition of▌ the worst forms of child labour▌ (persons below the age of 18 years)***, interpreted in line*** with Article 3▌ of the International Labour Organization Worst Forms of Child Labour Convention, 1999 (No. 182). This includes:

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

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

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

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

12. ▌The prohibition of forced ***or compulsory*** labour***, which means*** all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily, for example as a result of debt bondage or trafficking in human beings***, interpreted in line with Article 2(1) of the International Labour Organization Forced Labour Convention, 1930 (No. 29).*** Forced ***or compulsory*** labour ***shall not mean*** any work or services that comply with Article ***2(2)*** of International Labour Organization Forced Labour Convention, 1930 (No. 29) or with Article ***8(3)(b)*** and (c) of the International Covenant on Civil and Political Rights;

13. ▌The prohibition of all forms of slavery ***and slave-trade, including*** practices akin to slavery, serfdom or other forms of domination or oppression in the workplace, such as extreme economic or sexual exploitation and humiliation***, or human trafficking, interpreted in line with Article*** 8 of the International Covenant on Civil and Political Rights;

▌

15. ▌The right to freedom of association, assembly, the rights to organise and collective bargaining***, interpreted in line with*** Articles 21 and 22 of the International Covenant on

Civil and Political Rights***,*** Article 8 of the International Covenant on Economic, Social and Cultural Rights, the International Labour Organization Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)***,*** and the International Labour Organization Right to Organise and Collective Bargaining Convention, 1949 (No. 98)***. This includes*** the following rights:

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

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

(c) ***trade unions*** are free to operate in ▌ line with their constitutions and rules without interference from the authorities; ***and***

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

16. ▌ The prohibition of unequal treatment in employment, unless this is justified by the requirements of the employment***, interpreted in line with Articles*** 2 and ▌ 3 of the International Labour Organisation Equal Remuneration Convention, 1951 (No. 100), ***Articles*** 1 and ▌ 2 of the International Labour Organisation Discrimination (Employment and Occupation) Convention, 1958 (No. 111)***,*** and Article 7 of the International Covenant on Economic, Social and Cultural Rights***. This*** includes, in particular***:***

(a) the payment of unequal remuneration for work of equal value; and

(b) the discrimination on grounds of national extraction or social origin, race, colour, sex, religion, political opinion;

▌

18. ▌ The prohibition of causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions***,*** excessive water consumption***,*** ***degradation of land,*** or other impact on natural resources, ***such as deforestation, that:***

(a) ***substantially*** impairs the natural bases for the preservation and production of food***;***

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

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

(d) harms the health, safety, the normal use of land or ***lawfully acquired possessions*** of a person***;***

(e) ***substantially adversely*** affects ***ecosystem services through which an ecosystem contributes directly or indirectly to human wellbeing;***

interpreted in line with Article ***6(1)*** of the International Covenant on Civil and Political Rights and ***Articles 11 and*** 12 of the International Covenant on Economic, Social and Cultural Rights;

19. ***The right of individuals, groups and communities to lands and resources and to not be deprived of means of subsistence, which entails*** the prohibition to unlawfully evict or take land, forests and waters when acquiring, developing or otherwise ***using*** land, forests and waters, including by deforestation, the use of which secures the livelihood of a person ***interpreted in line*** with Article ***1 and 27 of the International Covenant on Civil and Political Rights and Article 1, 2 and*** 11 of the International Covenant on Economic, Social and Cultural Rights***.***

2. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS INSTRUMENTS

- The International Covenant on Civil and Political Rights;

- The International Covenant on Economic, Social and Cultural Rights;

- The Convention on the Rights of the Child;

- The International Labour Organization's core/fundamental conventions:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*;*

- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*;*

- Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol;

- Abolition of Forced Labour Convention, 1957 (No. 105)*;*

- Minimum Age Convention, 1973 (No. 138)*;*

- Worst Forms of Child Labour Convention, 1999 (No. 182)***;***

- Equal Remuneration Convention, 1951 (No. 100)***;***

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**.**

Part II

PROHIBITIONS AND OBLIGATIONS INCLUDED IN ENVIRONMENTAL INSTRUMENTS

1. The obligation to avoid or ***minimise*** adverse impacts on biological diversity, ***interpreted*** in line with Article ***10(b)*** of the 1992 Convention on Biological Diversity and ***applicable law in the relevant jurisdiction***, including the obligations of the Cartagena Protocol on the development, handling, transport, use, transfer and release of living modified organisms and of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 12 October 2014**.**

2. ▌ The prohibition to import***, export, re-export or introduce from the sea*** any specimen included in ***the Appendices I to III*** of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973 without a permit, ***interpreted in line with*** Articles III, IV and V ***of the Convention***;

3. ▌ The prohibition of the manufacture***, import and export*** of mercury-added products ***listed in*** Annex A Part I of the Minamata Convention on Mercury of 10 October 2013 (Minamata Convention)***, interpreted in line with Article 4(1) of the Convention***;

4. ▌ The prohibition of the use of mercury ***or*** mercury compounds in ***the*** manufacturing processes ***listed in*** Annex B Part I of the Minamata Convention ***after*** the phase-out date specified in the Convention for the ***individual processes, interpreted in line with Article 5(2) of the Convention***;

5. ▌ The prohibition of the ***unlawful*** treatment of mercury waste***, interpreted in line with Article 11(3) of the Minamata Convention and Article 13 of Regulation (EU) 2017/852*** of the ***European Parliament and of the Council***[1];

6. ▌ The prohibition of the production and use of chemicals ***listed in*** Annex A of the Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants (POPs Convention), ***interpreted in line with Article 3(1)(a), point (i) of the Convention and*** Regulation (EU) 2019/1021 of the European Parliament and of the Council[2];

7. ▌ The prohibition of the ***unlawful*** handling, collection, storage and disposal of waste***, interpreted in line with*** Article ***6(1)(d), points*** (i) and (ii) of the POPs Convention ***and Article 7 of Regulation (EU) 2019/1021***;

8. ▌ The prohibition of importing ***or exporting*** a chemical listed in Annex III of the ***Rotterdam*** Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) ***of*** 10 September 1998, ***interpreted in line with Articles 10(1), 11(1)(b) and 11(2) of the Convention and***

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1 ***Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 (OJ L 137, 24.5.2017, p. 1).***

2 ***Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).***

indication by the importing ***or exporting*** Party to the Convention in line with the Prior Informed Consent (PIC) Procedure;

9. ▌ The prohibition of the ***unlawful*** production***, consumption, import and export of controlled*** substances ***in Annexes A, B, C and E of the Montreal Protocol on substances that deplete the Ozone Layer*** to the Vienna Convention for the protection of the Ozone Layer***, interpreted in line with Article 4B of the*** Montreal Protocol ***and licensing provisions under applicable law in relevant jurisdiction***;

10. ▌ The prohibition of exports of hazardous ***or other*** waste***, interpreted in line with*** Article ***1(1) and*** (2) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Basel Convention) and ▌ Regulation (EC) No 1013/2006 of the European Parliament and of the Council[3]***:***

(a) to a party ***to the Convention*** that has prohibited the import of such hazardous and other wastes***, interpreted in line with Article 4(1)(b)*** of the Basel Convention***;***

(b) to a state of import ▌ that does not consent in writing to the specific import, in the case where that state of import has not prohibited the import of such hazardous wastes***, interpreted in line with Article 4(1)(c)*** of the Basel Convention***;***

(c) to a non-party to the Basel Convention***, interpreted in line with*** Article ***4(5)*** of the Basel Convention***;***

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

11. ▌ The prohibition of the export of hazardous wastes from countries listed in Annex VII to the Basel Convention to countries not listed in Annex VII ***for operations listed in Annex IV to the Basel Convention, interpreted in line with*** Article 4A of the Basel Convention ***and*** Article ***34 and*** 36 of Regulation (EC) No 1013/2006 ▌ ;

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3 ***Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).***

12. ▌The prohibition of the import of hazardous wastes and other wastes from a non-party ***that has not ratified*** to the Basel Convention***, interpreted in line with Article 4(5)*** of the Basel Convention***;***

▌

13. The obligation to avoid or minimise adverse impacts on the properties delineated as natural heritage as defined in Article 2 of the Convention Concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972 (the World Heritage Convention), interpreted in line with Article 5(d) of the World Heritage Convention and applicable law in the relevant jurisdiction;

▌

14. The obligation to avoid or minimise adverse impacts on wetlands as defined in Article 1 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat of 2 February 1971 (Ramsar Convention), interpreted in line with Article 4(1) of the Ramsar Convention and applicable law in the relevant jurisdiction;

▌

15. The obligation to prevent the pollution from ships, interpreted in line with the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as amended by the Protocol of 1978 (MARPOL 73/78). This includes:

(a) ***the prohibition to discharge into the sea:***

(i) oil or oily mixtures as defined in Regulation 1 of Annex I of MARPOL 73/78, interpreted in line with Regulations 9 to 11 of Annex I of MARPOL 73/78;

(ii) noxious liquid substances as defined in Regulation 1(6) of Annex II of MARPOL 73/78, interpreted in line with Regulations 5 and 6 of Annex II of MARPOL 73/78; and

(iii) sewage as defined in Regulation 1(3) of Annex IV of MARPOL 73/78, interpreted in line with Regulations 8 and 9 of Annex IV of MARPOL 73/78;

(b) the prohibition of unlawful pollution by harmful substances carried by sea in packaged form as defined in Regulation 1 of Annex III of MARPOL 73/78, interpreted in line with Regulations 1 to 7 of Annex III of MARPOL 73/78; and

(c) the prohibition of unlawful pollution by garbage from ships as defined in Regulation 1 of Annex V of MARPOL 73/78, interpreted in line with Regulations 3 to 6 of Annex V of MARPOL 73/78;

▌

16. The obligation to prevent, reduce and control pollution of the marine environment by dumping, interpreted in line with Article 210 of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and applicable law in the relevant jurisdiction.

ANNEX II

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

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

Article	*Sector*	*Corresponding NACE code*
	and quarry products)	
2(1)(b), point (iii)	***The manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment)***	***Section C, Division 23-25***
2(1)(b), point (iii)	***The wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products)***	***Section G, Division 46, Group 46.7, Class 46.71-73 and 46.75-76***
2(1)(b), point (iiia)	***Construction***	***Section F***