**Mandatory Due Diligence on Human Rights and Environmental Impacts**

**(Stakeholder Survey)**

Human rights and environmental due diligence is a process whereby a business identifies, prevents, mitigates and accounts for adverse human rights impacts and environmental damage. A number of governments have introduced legislation or have announced their intention to consider the introduction of laws that require companies to conduct human rights and environmental due diligence, inter alia, through their supply chain. In April 2020, the European Commissioner for Justice expressed the intention of the European Commission to introduce a legislative initiative on mandatory corporate human rights and environmental due diligence by 2021.

In Luxembourg, the Government’s Coalition Agreement of 2018 includes a commitment to “study the possibility to introduce legislation on mandatory due diligence for companies domiciled in Luxembourg, in so far that such due diligence will allow to guarantee the respect of human rights and the environment all along their value chain and would be a complementary measure to the National Action Plan on business and human rights stressing the importance of due diligence in order to prevent human rights violations and environmental damages caused by business activities”.[[1]](#footnote-1) This commitment was reiterated in the second National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights that was adopted in December 2019.[[2]](#footnote-2)

The present survey is a part of that study. It will explore, among others, the “advantages and disadvantages [of such a legislation] in terms of costs and benefits for companies and in terms of the competitiveness of Luxembourg companies and the Luxembourg economy”.[[3]](#footnote-3) It aims to collect feedback from stakeholders (a separate survey will be sent to companies) on the perceived social, environmental and human rights impacts of the legislation; the potential costs of enforcing such a legislation for public authorities and the judicial system; and costs and benefits for the Luxembourg’s economy. The questions are based on the survey prepared by the British Institute of International and Comparative Law (BIICL survey) and published by the European Commission in January 2020, but are adapted to fit the national context when necessary.[[4]](#footnote-4)

The scope of the present survey is limited to “mandatory human rights and environmental due diligence” which is distinguishable from voluntary guidelines and corporate human rights reporting regimes. Mandatory due diligence for human rights impacts and environmental damage through the supply chain refers to explicit legal duties to undertake due diligence activities *and/or* to prevent harm through the exercise of due diligence.[[5]](#footnote-5)

The survey questionnaire contains 20 questions that take approximately 15 minutes to complete. Your participation is entirely voluntary. All responses will be compiled, anonymized and analysed collectively.

The Ministry of Foreign and European Affairs encourages stakeholders to participate in this study, so that the government can obtain as complete a picture as possible of the preferences and concerns of all stakeholders concerned.

Please return the completed survey to **biz.hrs.lu@gmail.com** by **4 January 2021** with the subject line **“Stakeholder Survey”**.

Thank you for your time and feedback.

**Questionnaire on Mandatory Due Diligence on Human Rights and Environmental Impacts: Stakeholder Survey**

1. **What is the nature of your organization?**

|  |  |
| --- | --- |
| Civil society / NGO  |  |
| Legal practice: corporate advisers  |  |
| Legal practice: claimant advisers  |  |
| Trade union / worker representation  |  |
| Industry organisation  |  |
| National Human Rights Institution |  |
| OECD National Contact Point  |  |
| Child protection authority  |  |
| Labour inspectorate  |  |
| Environmental inspectorate  |  |
| Ombudsperson  |  |
| Public authority / Government department (please specify below)  |  |
| Other (please specify below)  |  |

1. **On which sector(s) does your work on due diligence, i.a. through the supply chain, focus if any? (Please select more than one if relevant)**

|  |  |
| --- | --- |
| Agriculture and agribusiness |  |
| Automotive |  |
| Chemicals |  |
| Construction and real estate |  |
| Consulting, auditing and legal |  |
| Consumer goods |  |
| Education |  |
| Energy production and utilities |  |
| Mining and quarrying |  |
| Entertainment, media and publishing |  |
| Financial services |  |
| Government/Public sector |  |
| Healthcare, pharmaceuticals and biotechnology |  |
| IT and Technology |  |
| Logistics and distribution |  |
| Manufacturing |  |
| Professional services |  |
| Retailing |  |
| Telecoms |  |
| Transportation, travel and tourism |  |
| Waste disposal |  |
| Other [please specify] |  |

**3. What are the current practices that companies relevant to your work use for due diligence in their operations?**[Please select all that apply]

|  |  |
| --- | --- |
| Training on human rights / environmental impacts  |  |
| Contractual clauses & Codes of Conduct  |  |
| Audits |  |
| Internal / external investigations |  |
| Engagement / leverage with suppliers  |  |
| Engagement / leverage with other third parties  |  |
| Additional staff for human rights / environmental measures  |  |
| Working with local partners |  |
| Working with human rights & environmental experts  |  |
| Divestment  |  |
| Termination of relationships (for non-compliance with standards)  |  |
| Refusal to renew / enter into new contracts (due to non- compliance with standards)  |  |
| Other [please specify]  |  |

**4. What action, if any, do companies take to prevent, mitigate or remedy the adverse human rights and environmental impacts of third parties in their upstream and downstream supply chain?**

**“Upstream”** activities include operations that relate to the initial stages of producing a good or service, including material sourcing, material processing, and supplier activities.

**"Downstream"** activities include operations that relate to processing the materials into a finished product and delivering it to the end user, including transportation, distribution, consumption and disposal/recycling.
[Please select all that apply]

|  |  |  |
| --- | --- | --- |
|  | Upstream | Downstream |
| Training on human rights / environmental impacts  |  |  |
| Contractual clauses & Codes of conduct  |  |  |
| Audits  |  |  |
| Internal / external investigations  |  |  |
| Engagement / leverage with suppliers  |  |  |
| Engagement / leverage with other third parties  |  |  |
| Additional staff for human rights & environmental measures  |  |  |
| Working with local partners  |  |  |
| Working with human rights & environmental experts  |  |  |
| Divestment  |  |  |
| Termination of relationships (for non- compliance with standards)  |  |  |
| Refusal to renew / enter into contracts (due to non-compliance with standards)  |  |  |
| Other [please specify]  |  |  |

**5. What language do companies use to describe their due diligence processes for human rights and/or environmental impacts? (Please select all that you have come across in your work).**

|  |  |
| --- | --- |
| “Human rights due diligence” |  |
| “Human rights due diligence including environmental aspects”  |  |
| “Sustainability due diligence” |  |
| “Climate change due diligence”  |  |
| “Social, environmental and human rights due diligence” |  |
| “Due diligence for human rights and/or environmental impacts”  |  |
| “Due diligence for sustainability impacts”  |  |
| “Due diligence for social, labour, environmental and /or other specific human rights impacts” [Please specify below which specific impacts]  |  |
| Other [please specify]  |  |

**6. Do you foresee that the introduction of new regulation requiring mandatory due diligence, i.a. through the supply chain, would have *social impacts* (including in relation to labour rights, employment, wages, gender-related issues, income equality)?**

|  |  |
| --- | --- |
| Yes, it is likely to have social impacts  |  |
| No, it is unlikely to have social impacts  |  |
| Do not know / No opinion  |  |

**7. Please specify the impacts that new regulation requiring mandatory due diligence is likely to have on the following areas along global value chains.**

*Note: A positive impact refers to a change due to the benefits accrued in terms of sustainability, e.g. improved quality of jobs, reduced poverty, etc.*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Very positive impact | Slightly positive impact | Neutral | Slightly negative impact | Very negative impact | No opinion/ Do not know |
| SocialEmployment (number of jobs) |  |  |  |  |  |  |
| Employment (quality of jobs) |  |  |  |  |  |  |
| Wages |  |  |  |  |  |  |
| Household income |  |  |  |  |  |  |
| Transition from informal to formal employment |  |  |  |  |  |  |
| Greater leverage over suppliers |  |  |  |  |  |  |
| Freedom of association and effective recognition of the right to collective bargaining |  |  |  |  |  |  |
| The elimination of all forms of forced or compulsory labour |  |  |  |  |  |  |
| The effective abolition of child labour |  |  |  |  |  |  |
| The elimination of discrimination in respect of employment and occupation |  |  |  |  |  |  |
| Social protection |  |  |  |  |  |  |
| Social dialogue |  |  |  |  |  |  |
| Poverty reduction |  |  |  |  |  |  |
| Income equality |  |  |  |  |  |  |
| Equality in the benefit distribution along the supply chain |  |  |  |  |  |  |
| Gender-related issues |  |  |  |  |  |  |

**8. Do you foresee that the introduction of new regulation requiring mandatory due diligence, i.a. through the supply chain, would have *impacts on the environment*? (including on pollution, waste, natural resources, biodiversity, greenhouse gas emissions, climate change)?**

|  |  |
| --- | --- |
| Yes, it is likely to have impacts on the environment |  |
| No, it is unlikely to have impacts on the environment |  |
| Do not know / No opinion  |  |

**9. Please specify the impacts that new regulation requiring mandatory due diligence is likely to have on the following areas along global value chains.**

*Note: A positive impact refers to a change due to the benefits accrued in terms of sustainable development, e.g. improved quality of jobs, reduced poverty, etc.*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Very positive impact | Slightly positive impact | Neutral | Slightly negative impact | Very negative impact | No opinion/ Do not know |
| EnvironmentalAir pollution (emissions of greenhouse gases, of carbon dioxide (CO2), of sulphur oxides (SOx), of nitrogen oxides (NOx), and of particulates) |  |  |  |  |  |  |
| Waste production |  |  |  |  |  |  |
| Energy use and mix |  |  |  |  |  |  |
| Transport |  |  |  |  |  |  |
| Water resources |  |  |  |  |  |  |
| Biodiversity (including wildlife) |  |  |  |  |  |  |
| Forests/forest resources |  |  |  |  |  |  |
| Fisheries/fish resources |  |  |  |  |  |  |
| Greening of the economy (including trade in environmental goods and services) |  |  |  |  |  |  |
| Agricultural fertilisers, land use, soil, and livestock  |  |  |  |  |  |  |
| If previous line selected, please provide further detail with regard to the sectors of coffee, tea and cacoa. |  |  |  |  |  |  |

**10. Do you foresee that the introduction of new regulation requiring mandatory due diligence, i.a. through the supply chain, would have *impacts on human rights*?**

|  |  |
| --- | --- |
| Yes, it is likely to have impacts on human rights |  |
| No, it is unlikely to have impacts on human rights |  |
| Do not know / No opinion  |  |

**11. Please specify the impacts which new regulation requiring mandatory due diligence is likely to have on the following areas along global supply chain.**

*Note: A positive impact refers to a change due to the benefits accrued in terms of sustainable development, e.g. improved quality of jobs, reduced poverty, etc.*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Very positive impact | Slightly positive impact | Neutral | Slightly negative impact | Very negative impact | No opinion/ Do not know |
| Human RightsRight to life, liberty and security of person (including in this context, impacts on serious bodily injury) |  |  |  |  |  |  |
| Right to the enjoyment of the highest attainable standard of physical and mental health (including, in this context, health risks impacts of business) |  |  |  |  |  |  |
| Right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment |  |  |  |  |  |  |
| Right to freedom of opinion and expression |  |  |  |  |  |  |
| Right to non- discrimination and equality |  |  |  |  |  |  |
| Right to own property  |  |  |  |  |  |  |
| Right to freedom from slavery  |  |  |  |  |  |  |
| Right to freedom from arbitrary arrest  |  |  |  |  |  |  |
| Right to freedom from interference with privacy, family, home and correspondence  |  |  |  |  |  |  |
| Right to peaceful assembly and association  |  |  |  |  |  |  |
| Right to education  |  |  |  |  |  |  |
| Rights of the child  |  |  |  |  |  |  |
| Women’s rights  |  |  |  |  |  |  |
| Rights of indigenous people  |  |  |  |  |  |  |
| Rights of people with disabilities  |  |  |  |  |  |  |

 **12. In your opinion, what are/will become companies' main incentives to conduct due diligence for human rights impacts, i.a. through the supply chain? [Please select all that apply]?**

|  |  |
| --- | --- |
| Mandatory reporting |  |
| Regulation which allows for judicial oversight over steps taken  |  |
| Regulation which allows for sanctions / fines |  |
| Standards required for export credit or procurement contracts  |  |
| Risk of litigation by those affected  |  |
| Reputational risks  |  |
| Operational risks |  |
| Financial risks |  |
| Investors requiring a high standard  |  |
| Employees requiring a high standard  |  |
| Consumers requiring a high standard  |  |
| Other [please specify]  |  |

**13. Do you agree with this statement? “Existing laws, regulations and policies provide business with legal certainty regarding their human rights and environmental due diligence obligations”**

|  |  |
| --- | --- |
| Agree |  |
| Disagree |  |
| Do not know  |  |

**14. If such a mandatory due diligence requirement would be introduced, please select your preference for the application of the regulation:**

|  |  |
| --- | --- |
| Industry-specific regulation, tailored for your company's sector only and applying only to companies operating within this sector. |  |
| Cross-sectoral regulation, applying to companies of a certain size regardless of their sector. |  |
| Cross-sectoral regulation, applying to all companies regardless of size or sector.  |  |
| Both industry-specific and cross-sectoral options have their benefits (Please elaborate below)  |  |
| No preference |  |

[Optional] Please elaborate on the reason for your preference:

|  |
| --- |
|  |

 **15. If such a mandatory requirement would be introduced, please select your preference for the content of the regulation:**

|  |  |
| --- | --- |
| Issue-specific regulation covering specific human rights or environmental issue (e.g. modern slavery) *[Please specify below which human rights or environmental issue]* |  |
| Regulation which covers all internationally recognized human rights and environmental impacts |  |
| Both issue-specific and broader human rights and environmental options have their benefits *[Please specify below]* |  |
| No preference |  |

[Optional] Please elaborate on the reason for your preference:

|  |
| --- |
|  |

**16. In your estimation, what would be the needs in additional staff time for public and judicial system to enforce the new mandatory due diligence requirements?**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| None | Low | Moderate | High | Very High |
|  |  |  |  |  |

**[Optional] Please insert an estimate of additional (8-hour) person-days per month or any other comments you may have.**

|  |
| --- |
|   |

**17. In your estimation, what would be the cost for public authorities and the judicial system in Luxembourg to enforce a new mandatory due diligence regulation annually?**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| None | Low | Moderate | High | Very High |
|  |  |  |  |  |

**[Optional] Please insert an estimate in Euros or any other comments.**

|  |
| --- |
|  |

**18. In your opinion, where do you see the greatest additional costs and benefits for companies that would result from a new regulation requiring mandatory due diligence compared to the current situation?**

|  |  |
| --- | --- |
| Costs | Benefits |
|  |  |

**19. In your opinion, how would a new regulation requiring mandatory due diligence impact (positive/negative) Luxembourg’s position as a host country for businesses, please comment?**

|  |
| --- |
|  |

**20. Do you have any further comments on a new regulation which requires business to under take mandatory due diligence for human rights and environmental impacts, including through the supply chain?**

|  |
| --- |
|  |

**Thank you very much for completing our survey.**

 **Please include your details below for our own information only.**

|  |  |
| --- | --- |
| Name |  |
| Email address |  |

1. <https://gouvernement.lu/en/publications/accord-coalition/2018-2023.html> at 218. [↑](#footnote-ref-1)
2. < <https://maee.gouvernement.lu/dam-assets/directions/d1/pan-entreprises-et-droits-de-l-homme/2020-2022/PAN-LU-entreprises-et-DH-2020-2022-FR.pdf>> at 27. [↑](#footnote-ref-2)
3. Terms of Reference. [↑](#footnote-ref-3)
4. <<https://op.europa.eu/en/publication-detail/-/publication/5bd8a55a-4c84-11ea-b8b7-01aa75ed71a1/language-en/format-PDF/source-147467650>> [↑](#footnote-ref-4)
5. <<https://www.ohchr.org/Documents/Issues/Business/MandatoryHR_Due_Diligence_Issues_Paper.pdf>> at 3. [↑](#footnote-ref-5)