

Position Paper

Sustainable businesses demand mandatory due diligence on human rights and environment for all companies

Brussels, 23 May 2022

This position paper provides feedback to a public consultation¹ by the European Commission about sustainable corporate governance and the Corporate Sustainability Due Diligence Directive proposal² published on 23 February 2022.

Ecopreneur.eu - the European Sustainable Business Federation - and its seven member organisations urge the EU to strengthen the recent European Commission's proposals for sustainable corporate governance and mandatory human rights and environmental due diligence, which do not go far enough, and adopt them without further delay.

After already being delayed significantly, Ecopreneur.eu welcomes the proposal for mandatory human rights and environmental due diligence as a long-overdue **step forward**, including the large number of support measures for companies. We encourage the Commission to **create synergies** with other legislative initiatives.

However, the proposal **still falls short** in many ways. The legislation should apply to **all businesses** regardless of size, **across the full value chain**, and **inform all stages** of the due diligence process. A **tick-box approach should be avoided**. The regulation should be brought **in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and OECD guidelines** and extend to **all business relations**, including spot markets. It should also be extended to **governance risks**, with a focus on **anti-bribery and corruption**, and provide for **strong enough legal sanctions** at the level of **individual companies**. The **administrative burden of due diligence should be minimised**, especially for SMEs, that also need more support at the **regional level**. Finally, any corporate directors' variable remuneration incentives should be linked to their contributions to companies' sustainability efforts ("**green bonuses**").

Overall, Ecopreneur.eu sees the proposal as a **step forward**. We encourage the Commission to **create synergies with other legislative initiatives related to increased transparency and reporting**, such as the Corporate Sustainability Reporting Directive (CSRD), the Sustainable Products Initiative (SPI) with the Digital Products Passport (DPP), the Sustainable Finance Disclosure Regulation (SFDR) or the EU's Sustainable Finance Taxonomy to empower stakeholders in making sustainable choices. In addition, we emphasise that even the most ambitious legislation will have the desired impact only if the sustainability performance of products can be measured, evaluated, compared, and communicated **in a standardised manner** – including the social aspect.

We also welcome the large number of support measures for companies such as **manuals, toolkits, and a support centre** at EU level. We call on the EU to **make use of**

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0071&from=EN>

implementers at the national and regional level, such as our Dutch member MVO Nederland, with hand-on experience in effectively supporting companies with the transition to a sustainable economy. In this respect, we urge the EU and Member States to **fund the establishment and strengthening of circularity and digital hubs in all EU regions**.

Ecopreneur.eu wants a **level playing field for sustainable frontrunners** – including SMEs that are already way ahead of the current proposal. By consequence, **all companies** should be subject to the due diligence obligations, **regardless of size, including SMEs** – as in the OECD guidelines. We do, however, want to take proportionality into account: the means through which a company meets the standard will vary according to its size and the severity of its impacts, among other factors. The **administrative burden of due diligence should be minimised, especially for SMEs**, which also deserve active government support, to increase their positive impact and influence.

Ecopreneur.eu wants the Directive to be **brought in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and OECD guidelines** as much as possible. In our opinion, the current EU proposal would undermine the OECD guidelines:

Firstly, because the emphasis on established business relationships means that companies that build good, long-term relationships with suppliers will be scrutinised even more, while this is precisely an element of doing sustainable business. It would also let companies that purchase from a spot market³ disrespect their due diligence obligations - despite these markets being ideal for non-transparent, unsustainable, unfair and non-circular business transactions. To avoid these perverse incentives, **the Directive should extend to all business relations, including spot markets**.

Secondly, **the emphasis on contractual business relations should be lifted** because they can be used by multinationals to shift responsibility for due diligence onto suppliers and SMEs. Due diligence should in fact be a collaboration between all partners in a value chain.

Third, due diligence also should extend from human rights and environmental risks to **governance risks**, with a focus on **anti-bribery** and **corruption**. It should be conducted **on the entire value chain**, including both direct and indirect business relationships, both upstream (e.g., with producers of raw material inputs such as minerals, water, or cotton) and downstream (e.g., with users of products such as cameras and algorithms).

Fourth, to level and harmonise the playing field in practice, **credible accountability mechanisms** are needed. Without an adequate “stick” – encompassing administrative penalties, effective sanctions and provisions for civil liability –, laggards will not be sufficiently encouraged to carry out HREDD to a high standard. In addition, those that are harmed need access to remedy. Ecopreneur.eu therefore calls on the EU and its Member States governments to implement a **wide range of enforcement instruments**, with criminal law as last resort. In addition, due diligence requirements need to be enforced at the level of **individual companies** and **include companies participating in sectoral collaboration**. Ecopreneur.eu is not in favour of a light regime: while sectoral

³ a market for commodities in which they are sold and given to the buyer immediately

collaboration enables companies to jointly tackle risks, improve investigate their value chains and create new business opportunities, it does not nearly offer the same quality guarantee as legislation.

Last but not least, to accelerate the transition, Ecopreneur.eu is a proponent of the mandate to link corporate directors' variable remuneration incentives to their contributions to companies' sustainability efforts ("**green bonuses**").

About Ecopreneur.eu

Ecopreneur.eu is the European Sustainable Business Federation of currently seven national associations representing about 3000 sustainable companies - mostly SMEs. A member of the Coordination Group of the European Circular Economy Stakeholder Platform, Ecopreneur.eu is the *only* cross-sectoral EU business organisation committed to ambitious measures, rules and regulations for a low-carbon circular economy. We advocate a new economic framework in which sustainability is promoted, the environment respected, and ecological principles are followed. Ecopreneur.eu and our members bring concrete experience from pioneering companies into the political debate, show best practice examples and represent the needs of green SMEs in a credible way.

Contact information

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