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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	ANNEX to the proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

Delegations will find attached document COM(2022) 71 final - annex.

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EUROPEAN
COMMISSION

Brussels, 23.2.2022
COM(2022) 71 final

ANNEX

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to the proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

{SEC(2022) 95 final} - {SWD(2022) 38 final} - {SWD(2022) 39 final} -
{SWD(2022) 42 final} - {SWD(2022) 43 final}

ANNEX

PART I

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

1. Violation of the people's right to dispose of a land's natural resources and to not be deprived of means of subsistence in accordance with Article 1 of the International Covenant on Civil and Political Rights;
2. Violation of the right to life and security in accordance with Article 3 of the Universal Declaration on Human rights;
3. Violation of the prohibition of torture, cruel, inhuman or degrading treatment in accordance with Article 5 of the Universal Declaration of Human Rights;
4. Violation of the right to liberty and security in accordance with Article 9 of the Universal Declaration of Human Rights;
5. Violation of the prohibition of arbitrary or unlawful interference with a person's privacy, family, home or correspondence and attacks on their reputation, in accordance with Article 17 of the Universal Declaration of Human Rights;
6. Violation of the prohibition of interference with the freedom of thought, conscience and religion in accordance with Article 18 of the Universal Declaration of Human Rights;
7. Violation of the right to enjoy just and favourable conditions of work including a fair wage, a decent living, safe and healthy working conditions and reasonable limitation of working hours in accordance with Article 7 of the International Covenant on Economic, Social and Cultural Rights;
8. Violation of the prohibition to restrict workers' access to adequate housing, if the workforce is housed in accommodation provided by the company, and to restrict workers' access to adequate food, clothing, and water and sanitation in the work place in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights;
9. Violation of the right of the child to have his or her best interests given primary consideration in all decisions and actions that affect children in accordance with Article 3 of the Convention of the Rights of the Child; violation of the right of the child to develop to his or her full potential in accordance with Article 6 of the Convention of the Rights of the Child; violation of the right of the child to the highest attainable standard of health in accordance with Article 24 of the Convention on the Rights of the Child; violation of the right to social security and an adequate standard of living in accordance with Article 26 and 27 of the Convention on the Rights of the Child; violation of the right to education in accordance with Article 28 of the Convention on the Rights of the Child; violation of the right of the child to be protected from all forms of sexual exploitation and sexual abuse and to be protected from being abducted, sold or moved illegally to a different place in or outside their country for the purpose of exploitation, in accordance with Articles 34 and 35 of the Convention of the Rights of the Child;

10. Violation of the prohibition of the employment of a child under the age at which compulsory schooling is completed and, in any case, is not less than 15 years, except where the law of the place of employment so provides in accordance with Article 2 (4) and Articles 4 to 8 of the International Labour Organization Minimum Age Convention, 1973 (No. 138);
11. Violation of the prohibition of child labour pursuant to Article 32 of the Convention on the Rights of the Child, including the worst forms of child labour for children (persons below the age of 18 years) in accordance with Article 3 of the of the International Labour Organization Worst Forms of Child Labour Convention, 1999 (No. 182). This includes:
 - (a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, as well as forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflicts,
 - (b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances,
 - (c) The use, procuring or offering of a child for illicit activities, in particular for the production of or trafficking in drugs,
 - (d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children;
12. Violation of the prohibition of forced labour; this includes all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily, for example as a result of debt bondage or trafficking in human beings; excluded from forced labour are any work or services that comply with Article 2 (2) of International Labour Organization Forced Labour Convention, 1930 (No. 29) or with Article 8 (3) (b) and (c) of the International Covenant on Civil and Political Rights;
13. Violation of the prohibition of all forms of slavery, practices akin to slavery, serfdom or other forms of domination or oppression in the workplace, such as extreme economic or sexual exploitation and humiliation in accordance with Article 4 of the Universal Declaration of Human Rights and Art. 8 of the International Covenant on Civil and Political Rights;
14. Violation of the prohibition of human trafficking in accordance with Article 3 of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
15. Violation of the right to freedom of association, assembly, the rights to organise and collective bargaining in accordance with Article 20 of the Universal Declaration of Human Rights, Articles 21 and 22 of the International Covenant on Civil and Political Rights Article 8 of the International Covenant on Economic, Social and Cultural Rights, the International Labour Organization Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the International Labour Organization Right to Organise and Collective Bargaining Convention, 1949 (No. 98), including the following rights:
 - (a) workers are free to form or join trade unions,

- (b) the formation, joining and membership of a trade union must not be used as a reason for unjustified discrimination or retaliation,
 - (c) workers' organisations are free to operate in accordance with applicable in line with their constitutions and rules without interference from the authorities;
 - (d) the right to strike and the right to collective bargaining;
16. Violation of the prohibition of unequal treatment in employment, unless this is justified by the requirements of the employment in accordance with Article 2 and Article 3 of the International Labour Organisation Equal Remuneration Convention, 1951 (No. 100), Article 1 and Article 2 of the International Labour Organisation Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Article 7 of the International Covenant on Economic, Social and Cultural Rights; unequal treatment includes, in particular, the payment of unequal remuneration for work of equal value;
 17. Violation of the prohibition of withholding an adequate living wage in accordance with Article 7 of the International Covenant on Economic, Social and Cultural Rights;
 18. Violation of the prohibition of causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions or excessive water consumption or other impact on natural resources, that
 - (a) impairs the natural bases for the preservation and production of food or
 - (b) denies a person access to safe and clean drinking water or
 - (c) makes it difficult for a person to access sanitary facilities or destroys them or
 - (d) harms the health, safety, the normal use of property or land or the normal conduct of economic activity of a person or
 - (e) affects ecological integrity, such as deforestation,
 in accordance with Article 3 of the Universal Declaration of Human Rights, Article 5 of the International Covenant on Civil and Political Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights;
 19. Violation of the prohibition to unlawfully evict or take land, forests and waters when acquiring, developing or otherwise use land, forests and waters, including by deforestation, the use of which secures the livelihood of a person in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights;
 20. Violation of the indigenous peoples' right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired in accordance with Article 25, 26 (1) and (2), 27, and 29 (2) of the United Nations Declaration on the Rights of Indigenous Peoples;
 21. Violation of a prohibition or right not covered by points 1 to 20 above but included in the human rights agreements listed in Section 2 of this Part, which directly impairs a legal interest protected in those agreements, provided that the company concerned could have reasonably established the risk of such impairment and any appropriate measures to be taken in order to comply with the obligations referred to in Article 4 of this Directive taking into account all relevant circumstances of their operations, such as the sector and operational context.

2. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONVENTIONS

- The Universal Declaration of Human Rights;
- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Prevention and Punishment of the Crime of Genocide;
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination Against Women;
- The Convention on the Rights of the Child;
- The Convention on the Rights of Persons with Disabilities;
- The United Nations Declaration on the Rights of Indigenous Peoples;
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- United Nations Convention against Transnational Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- The International Labour Organization's Declaration on Fundamental Principles and Rights at Work;
- The International Labour Organization's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;
- The International Labour Organization's core/fundamental conventions:
 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
 - Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol;
 - Abolition of Forced Labour Convention, 1957 (No. 105)
 - Minimum Age Convention, 1973 (No. 138)
 - Worst Forms of Child Labour Convention, 1999 (No. 182)
 - Equal Remuneration Convention, 1951 (No. 100)
 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

PART II

VIOLATIONS OF INTERNATIONALLY RECOGNIZED OBJECTIVES AND PROHIBITIONS INCLUDED IN ENVIRONMENTAL CONVENTIONS

1. Violation of the obligation to take the necessary measures related to the use of biological resources in order to avoid or minimize adverse impacts on biological diversity, in line with Article 10 (b) of the 1992 Convention on Biological Diversity and [taking into account possible amendments following the post 2020 UN Convention on Biological Diversity], including the obligations of the Cartagena Protocol on the development, handling, transport, use, transfer and release of living modified organisms and of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 12 October 2014;
2. Violation of the prohibition to import or export any specimen included in an Appendix of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973 without a permit, pursuant to Articles III, IV and V;
3. Violation of the prohibition of the manufacture of mercury-added products pursuant to Article 4 (1) and Annex A Part I of the Minamata Convention on Mercury of 10 October 2013 (Minamata Convention);
4. Violation of the prohibition of the use of mercury and mercury compounds in manufacturing processes within the meaning of Article 5 (2) and Annex B Part I of the Minamata Convention from the phase-out date specified in the Convention for the respective products and processes;
5. Violation of the prohibition of the treatment of mercury waste contrary to the provisions of Article 11 (3) of the Minamata Convention;
6. Violation of the prohibition of the production and use of chemicals pursuant to Article 3 (1) (a) (i) and Annex A of the Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants (POPs Convention), in the version of Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169 of 25 June 2019 pp. 45-77);
7. Violation of the prohibition of the handling, collection, storage and disposal of waste in a manner that is not environmentally sound in accordance with the regulations in force in the applicable jurisdiction under the provisions of Article 6 (1) (d) (i) and (ii) of the POPs Convention;
8. Violation of the prohibition of importing a chemical listed in Annex III of the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO), adopted on 10 September 1998, as indicated by the importing Party to the Convention in line with the Prior Informed Consent (PIC) Procedure;
9. Violation of the prohibition of the production and consumption of specific substances that deplete the ozone layer (i.e., CFCs, Halons, CTC, TCA, BCM, MB, HBFCs and HCFCs) after their phase-out pursuant to the Vienna Convention for the protection of

the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;

10. Violation of the prohibition of exports of hazardous waste within the meaning of Article 1 (1) and other wastes within the meaning of Article 1 (2) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Basel Convention) and within the meaning of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190 of 12 July 2006 pp. 1-98) (Regulation (EC) No 1013/2006), as last amended by Commission Delegated Regulation (EU) 2020/2174 of 19 October 2020 (OJ L 433 of 22 December 2020 pp. 11-19)
 - (a) to a party that has prohibited the import of such hazardous and other wastes (Article 4 (1) (b) of the Basel Convention),
 - (b) to a state of import as defined in Article 2 no. 11 of the Basel Convention that does not consent in writing to the specific import, in the case where that state of import has not prohibited the import of such hazardous wastes (Article 4 (1) (c) of the Basel Convention),
 - (c) to a non-party to the Basel Convention (Article 4 (5) of the Basel Convention),
 - (d) to a state of import if such hazardous wastes or other wastes are not managed in an environmentally sound manner in that state or elsewhere (Article 4 (8) sentence 1 of the Basel Convention);
11. Violation of the prohibition of the export of hazardous wastes from countries listed in Annex VII to the Basel Convention to countries not listed in Annex VII (Article 4A of the Basel Convention, Article 36 of Regulation (EC) No 1013/2006);
12. Violation of the prohibition of the import of hazardous wastes and other wastes from a non-party to the Basel Convention (Article 4 (5) of the Basel Convention).