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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 – table of MS comments on doc. 11566/1/22

Delegations will find attached the consolidated table containing the comments sent by Member States on doc. 11566/1/22 (Presidency text on the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937).

Table for comments on doc. 11566/1/22 REV1 (**Articles and Annex** of the Proposal for a **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937)** (838 rows)

deadline for comments**:** ***02/09/2022 cob***

Presidency text (doc. 11566/1/22 REV1)	**MS drafting suggestions and comments (PL - HU - LV - AT - SE - IT - FI - PT - DK - MT - EE – ES - NL)**
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 (ARTICLES and ANNEX)**	AT (Comments): General comments: We appreciate the work put into this version of the draft and for the duely consideration of our comments. From our point of view, the directive is moving into the right direction, espescially regarding the risk based approach and the allignment with the UN Guiding Principles and the OECD Guidelines for MNE as well as the OECD Due Diligence Guidances. Further discussion will be needed inter alia with regard to the supervisory authority, the liability regime, the annex and the remaining unclear provisions with regard to the due diligence process. In general, we appreciate the special attention to SMEs througout the text. The previous AT comments remain valid.

	SE (Comments): It should be stated in the preamble that the directive does not in any way reduce or redefine the responsibility that already lies on member states according to international law, **for example: this Directive shall be without prejudice to the responsibility of states to respect, protect and fulfill human rights under international law.** CSDDD links to other financial market regulations and this needs to be clarified and ensured that operability is provided for. I.e. “due diligence” appears in SFDR, NFRD/CSDR and Taxonomy. Any connection to the requirements for publication of the sustainability report (Directive 2013/34 in its proposed wording and the Transparency Directive) should be explicitly regulated in the CSDDD. Unclear references to other regulations can have practical consequences in implementation, create coordination problems and make supervision more difficult in cross-border situations. Potential links between CSDDD and the regulations on international sanctions should be specified. It should be clarified whether and how companies listed on the EU’s or an international sanctions list should be assessed from a due diligence and sustainability perspective.

HAVE ADOPTED THIS DIRECTIVE:	
Article 1	
Subject matter	
1. This Directive lays down rules	
(a) 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 and	PL (Comments): AT (Drafting):

	(a) on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts as well as climate aspects, 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 a business relationship and AT (Comments): The novel and untested concept of an "established business relationship" remains highly questionable and unclear. As already mentioned in previous AT comments, it clearly diverges from existing international standards (UN Guiding Principles and OECD Guidelines), which are risk-based and allow for prioritisation based on severity and likelihood of the adverse impact. The UN Guiding Principles deliberately did not adopt such a limitation. The OECD Due Diligence Framework focuses on adverse impacts associated with a company's operation, its supply chain and other business relationship. It is risk-based and can involve prioritisation in order to limit the scope of a company's due diligence activity in an appropriate manner. However, combining this concept with the notion "established business relationship" could lead to confusion and ultimately hamper the effectiveness of human rights due diligence, thus reducing the potential and objective of the Directive. Such a limitation should be deleted.

	Deleting the concept of "established business relationship" must be seen together with the clarification in Article 6 for "mapping" and "in depth assessment" and the introduction of Article 6a for "prioritisation" and the concept of "company's involvement in the adverse impact, which are welcomed by AT. This brings the text more in line with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines. Including "as well as climate aspects" refers to Art 15. IT (Drafting): IT – (drafting) (a) on obligations for companies regarding **eithe**r actual **or** potential **damages stemming from** 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 and IT (Comments):

	IT – (Comments) - It would be helpful to draw a clear-cut distinction between actual and potential damages (by terms of the effects of one's misconduct) and adverse impact (by terms of misconducts that cause an adverse impact), because civil and criminal/administrative liability stem from purported actual or potential damages (see articles 20-22) DK (Comments): DK: We prefer deleting the term "established business relationship" throughout the entire directive and instead use the "involvement framework" (cause/contribute/directly linked to potential or actual adverse impact) in line with the OECD guidelines. NL (Comments): Refer to our previously shared comments for criticism on the definition "established business relationships".

(b) on liability for violations of the obligations mentioned above.	
	PL (Drafting): HU (Drafting): LV (Drafting): AT (Drafting):

	SE (Drafting): IT (Drafting): FI (Drafting): PT (Drafting):

	DK (Drafting): EE (Drafting): ES (Drafting): NL (Drafting):

The nature of business relationships as 'established' shall be reassessed ~~periodically~~ **without undue delay after a significant change occurs**, ~~and~~ **but** at least every ~~12~~ **24** months.	HU (Comments): HU supports the amendment. LV (Comments): We support this drafting suggestion. AT (Drafting): AT (Comments): ATs position on the concept of "established business relationship"

	remains the same. Please see comment on Art 1 para 1 lit a for more information. IT (Comments): IT – (Comments) -It might not be the right place for this paragraph, that could be better placed in the definition of "business relationship," considering that this article is about the subject matter. FI (Comments): We have some scrutiny here on why established business relationship is mentioned here. What comes to the new wording by the chair, preliminary it looks acceptable for us. But pushing the time scope even further we would not be so much in favour of. PT

	(Drafting): PT (Comments): PT welcomes the addition of "significant change" to this provision. However, in article 3, suggests the addition of a definition for it (based on the OECD one). PT supports a 24 month reassessment period. DK (Comments): DK: We prefer deleting the term "established business relationship" throughout the entire directive and instead use the "involvement framework" (cause/contribute/directly linked to potential or actual adverse impact) in line with the OECD guidelines. NL

	(Comments): Refer to our previously shared comments for criticism on the definition "established business relationships". NL proposed to integrate the *causing/contributing to/directly linked to-framework* into the entire proposal.
2. This Directive shall not constitute grounds for reducing the level of protection of human rights or of protection of the environment or the protection of the climate provided for by the law of Member States at the time of the adoption of this Directive.	
3. This Directive shall be without prejudice to obligations in the areas of human 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.	FI (Comments): How to clarify with other legislative acts with dd-aspects, such as batteries act, CSRD, conflict minerals, deforestation regulation... Maybe relevant legislative acts could be mentioned somewhere in the recitals?
Article 2	

Scope	SE (Comments): Strive for coherence and interoperability with other EU regulations to simplify reporting requirements. PT (Comments): Thresholds for net turnover and for the number of employees should be defined at group level (group of companies). This will ensure that non-EU companies will not circumvent this Directive by desfragmenting it into EU-based subsidiaries. It is important to keep in mind that one of the main objectives to be achieved is to create a level playing field between EU and non-EU companies.
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:	AT

	(Drafting): 1. This Directive shall apply to companies which are constituted in accordance with the legislation of a Member State and which fulfil one of the following conditions: AT (Comments): “constituted” would be more common, also in other Investment protection agreement. NL (Drafting): 1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State and which fulfil for each of the last consecutive financial years one of the following conditions: NL

	(Comments): Please refer to our previously shared comments on the importance of coherence between scope of the CSDDD and CSRD.
(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 prepared;	HU (Drafting): (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 prepared**; SE (Comments): How come there is a difference between EU and non-EU companies as regards to turnover (worldwide turnover vs turnover in the EU)? MT

	(Drafting): (a) the company had more than ~~500~~ 1,500 employees on average and had a net worldwide turnover of more than EUR ~~150~~ 250 million in the last financial year for which annual financial statements have been prepared; MT (Comments): Malta would like to increase the limit of the number of employees to 1,500 thereby covering mid-cap operations. The calculation on the number of employees needs to be done at a Member State level and not at a global level or pan-European level. Currently, EU Member States have a minimum threshold of 1,000 employees. Malta would like to increase the current turnover limit from EUR150 million to EUR250 million based on world-wide turnover. Malta believes that a higher threshold is needed to be really effective and focus on the key multinationals. Malta would consider lowering this threshold over a four-year period. Malta believes that having CSRD and CSDDD run in

	parallel places too much administrative burden on the medium size enterprises in the initial stages. NL (Drafting): (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 published;
(b) 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 prepared, provided that at least 50% of this net turnover was generated in one or more of the following sectors:	SE (Comments): The proposal lacks a clear definition of high-risk sectors and solid arguments for the limited sectors chosen. Text should be clarified and developed. PT (Comments):

	This percentage and net turnover threshold should be revised considering the examples presented at the last meeting, as they can lead to serious situations of inequality. DK (Drafting): (b) 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 prepared, provided that at least **EUR 20 million** ~~50% of this net turnover~~ was generated in one or more of the following sectors: DK (Comments): DK: We would like to clarify in the text that the 50 % is counted starting from EUR 40 million.

	MT (Drafting): (b) the company did not reach the thresholds under point (a), but had more than ~~250~~ 500 employees on average and had a net worldwide turnover of more than EUR ~~40~~ 80 million in the last financial year for which annual financial statements have been prepared, provided that at least 50% of this net turnover was generated in one or more of the following sectors: MT (Comments): Malta would like to increase the current number of 250 employees to 500 employees whilst the turnover would increase from EUR 40 million to EUR 80 million. Malta believes that a higher threshold is needed to be really effective and focus on the key multinationals. Malta would consider lowering this threshold over a four-year period. Malta believes that having CSRD and CSDDD run in parallel places too much administrative burden

	on the medium size enterprises in the initial stages. ES (Comments): For legal certainty, we would like to include explicitly that financial companies that make investment, grant loans and soon with businesses of the high impact sector are not included in the second threshold (250+ employees and net EUR 40+ million turnover worldwide, and operating in defined high impact sectors). NL (Comments): Aligning the scope of the CSDDD and CSRD would provide the added benefit of preventing confusion regarding whether businesses are within the scope of high impact sectors.
	PT (Comments):

	It is of the utmost importance to better define the activities in these sectors that really have high impact. In this way, it will be possible to avoid the impact of this directive on many SMEs.
(i) the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear;	SE (Comments): Is the manufacturing of clothes included in the present provision? If yes, it should be clarified in the preamble. If no, it should be added in the article.
(ii) agriculture, forestry, fisheries (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages;	HU (Comments): Considering the relevant developments on food markets caused by Russia's war in Ukraine, we are cautious about including the agriculture and food among high-impact sectors. We propose to cancel this sector from the list at this stage and possibly introduce it in a later amendment. MT

	(Drafting): (ii) agriculture, forestry, fisheries (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages. Enterprises that employ under 49 full-time equivalent employees shall be exempted from such requirements. Provided that this exemption will not apply if the same shareholders form part of a group of companies which on a consolidated basis would exceed the thresholds mentioned in Article 2(1). MT (Comments): Malta would like to ensure that there is a clear exemption to the reporting requirements for Enterprises that employ 49 persons (full-time equivalent) or less independently if they are linked to a larger enterprise in terms of shareholding that operate within agriculture, forestry (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages. Malta is clearly against placing such an administrative burden on such Enterprises. Reasoning for proviso: Malta wants to ensure that there is an exemption

	for enterprises that employ less than 49 persons in terms of full-time equivalent, but it wants to ensure that no circumvention can take place. Malta has provided the necessary safeguards in the text in this regards.
(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).	MT (Drafting): (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). <u>This shall not apply for the quarrying of Globigerina Limestone done by Enterprises.</u> MT (Comments): Most of the extraction of Globigerina Limestone used for the construction of traditional houses in Malta is done by traditional Small and Medium Sized Enterprises. This is very particular to the Maltese Islands. Malta

	would like to ensure that there is a clear exemption for traditional Maltese SMEs. The islands' size is a mere 316km2, where 30 aggregate quarries and some 60-dimension stone quarries presently supply the local burgeoning construction industry with quarry products. Malta bans the export of quarried stone, thereby restricting further expansion of stone quarries.
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:	AT (Comments): With regards to para 2, a few questions of international law are raised: Does the current connecting factor of turnover for third-country companies provide a sufficient connection under international law to exercise jurisdiction? Are the current rules on jurisdiction over third-country companies sufficient to avoid conflicts of jurisdiction between member states?
(a) generated a net turnover of more than EUR 150 million in the Union in the financial year preceding the last financial year;	HU

	(Drafting): (a) generated a net turnover of more than EUR 150 million in the Union **in the financial year preceding the last financial year**; HU (Comments): In defining the scope, the concept of the last financial year is used in two ways which raise questions. In the case of the last financial year in point 2, it is not clear whether we mean the last financial year for which the financial statements have been prepared or we mean the reference year. We would like to request the use of consistent and clear wording. MT (Drafting): (a) generated a net turnover of more than EUR ~~150~~ 200 million in the Union in the financial year preceding the last financial year MT

	(Comments): Malta agrees that this provision applies to third country operators that service EU Markets. It is essential that there is a level playing field between EU and non-EU operators, but one needs to be practical. Having a turnover of EUR 150 million throughout all 27 Members States generates low amount of sales per MS. Malta believes that this should be increased to EUR 200 million which is a more realistic figure in terms of application and proportionate in terms of administrative burden. Within an international trade context, Malta understands that the obligations placed by the EU on third countries can be reciprocated (ie: what the EU applies to third-countries when they operate within the Internal Market, would involve third countries placing / drafting similar measures for EU Companies operating within the domestic market of third countries.) By increasing the threshold to EUR 200 million, Malta believes that there is a window that would still facilitate the exporting of EU products and services to third countries. This means that when a third country applies equivalency trade measures it would not create an artificial non-tariff barrier for European micro-enterprises exporting lower volumes of products and services.
(b) 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 50% of its net worldwide turnover	HU

was generated in one or more of the sectors listed in paragraph 1, point (b).	(Drafting): (b) 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 50% of its net worldwide turnover was generated in one or more of the sectors listed in paragraph 1, point (b). HU (Comments): In defining the scope, the concept of the last financial year is used in two ways which raise questions. In the case of the last financial year in point 2, it is not clear whether we mean the last financial year for which the financial statements have been prepared or we mean the reference year. We would like to request the use of consistent and clear wording. PT (Comments): This percentage and net turnover threshold should be revised considering the examples presented at the last meeting, as they can lead to serious

	situations of inequality. MT (Drafting): (b) generated a net turnover of more than EUR 40 million but not more than EUR ~~150~~ 200 million in the Union in the financial year preceding the last financial year, provided that at least 50% of its net worldwide turnover was generated in one or more of the sectors listed in paragraph 1, point (b). MT (Comments): Same reasoning as above
	NL (Drafting): Add new paragraph: The Directive shall apply to the company after the company has met

	during two consecutive financial years the conditions mentioned in the first and second paragraph. The Directive shall no longer apply when the company has not met for two consecutive years the conditions mentioned in the first and second paragraph. NL (Comments): This is in line with the Annual Financial Accounting Directive 2013/34/EU
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 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.	
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.	AT (Comments): See comment to para 2

Article 3	PT (Comments): As has been said, the definition of "significant change" as per the OECD definition should be added.
Definitions	
For the purpose of this Directive, the following definitions shall apply:	
(a) 'company' means any of the following:	AT (Comments): There seems to be an incoherent definition of "company". Legal persons constituted outside the EU also contain companies if they have a natural person as a personally liable partner.

(i) a legal person constituted as one of the legal forms listed in Annex I to Directive 2013/34/EU of the European Parliament and of the Council[1];	PL (Comments): **PL** Article 1(1) of the Directive 2013/34/EU refers to undertakings (not necessarily being legal persons). Some Polish businesses listed in Annex I to Directive 2013/34/EU do not have the status of legal person under national law (i.e. *spółka komandytowo-akcyjna*). As a result it should be confirmed that the proposed Directive will concern only such undertakings listed in Annex I to Directive 2013/34/EU which have the status of legal person under national law (i.e. in case of Poland only *spółka akcyjna* and *spółka z ograniczoną odpowiedzialnością*). Should the proposed provision be understood as that the proposed Directive will concern only such undertakings fulfilling both criteria: those that are included in Annex I to Directive 2013/34/EU and are also a legal person?

[1] 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).

	DK (Comments): DK: Does this exclude company forms such as commercial foundations, cooperatives etc. that are not explicitly listed in Annex I or II of Directive 2023/34/EU?
(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 ~~that~~ Directive **2013/34/EU**;	PL (Comments): **PL** Deciding whether two types of businesses are comparable quite often requires some challenging comparative law studies which may be too difficult for Member States' administrations. Therefore, it would worth considering the creation of a catalog of comparability criteria, e.g. in the guidelines prepared by the Commission. HU (Comments):

	HU supports the amendment SE (Comments): **To be further analysed.** PT (Comments): DK (Comments):
(iii) a legal person constituted as one of the legal forms listed in Annex II to Directive 2013/34/EU **or in accordance with the law of a third country in a form comparable to those listed in Annex II of that Directive, when such a legal person is** composed entirely of	PL

undertakings organised in one of the legal forms falling within points (i) and (ii);	(Comments): **PL** See comment on Article 3 (i) concerning the definition of 'legal person'. HU (Comments): HU supports the amendment AT (Comments): Seems logical to establish rules of equivalence for third country companies. SE (Comments): **To be further analysed.**

(iv) a regulated financial undertaking, regardless of its legal form, which is	DK (Comments): DK: As a general comment, DK believes that it is crucial to clarify specifically how the different types of financial undertakings shall comply with the obligations of the directive (including an exhaustive list of the specific financial services that are covered), since the activities of financial undertakings are substantially different from the activities of nonfinancial undertakings. ES (Comments): We understand some undertakings such as UCTIS, AIFs.. are financial vehicles use by the management companies, without employess. We do not undertanst why these instruments are included in the list of article 3 (a) (iv), because it is hard to imagine how these vehicles can be included in the scope of the proposal.

- a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 the European Parliament and of the Council[2];	
- an investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU the European Parliament and of the Council[3];	
- 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 (2), including a manager of Euveca under Regulation (EU) No 345/2013 of the European Parliament and of the Council[4], a manager of EuSEF under Regulation (EU) No 346/2013 of the European Parliament and of the Council[5] and a manager of ELTIF under	

[2] 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).

[3] 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).

[4] 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).

[5] 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).

Regulation (EU) 2015/760 of the European Parliament and of the Council[6];	
- 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[7];	
- an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council[8];	
- a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;	
- an institution for occupational retirement provision as defined in Article 1, point (6) of Directive 2016/2341 of the European Parliament and of the Council[9];	AT

6 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).

7 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).

8 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).

	(Comments): Institutions for occupational retirement are not considered companys within the meaning of EU competition law according to the case law of the ECJ. The nomination of these institutions could be missleading. Is it clear that this provision is not intended to broaden the notion of "company" with regards to the EU competition law and instititions for occupational retirement?
- pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council[10] and Regulation (EC) No 987/2009 of the European Parliament and of the Council[11] as well as any legal entity set up for the purpose of investment of such schemes;	FI (Comments): To the extent that the operations of pension institutions covered by the EU Social Security Coordination Regulations are not investment activities, it should be assessed whether the operations of these institutions should be

9 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).

10 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

11 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

	brought within the scope of application of the Directive. In Finland, these pension institutions are strictly regulated in national legislation and the institutions have little flexibility, as insuring and benefits are defined in legislation. The application of the Directive on these institutions may result in unnecessary administrative burden. At least, the Directive should be clearer on what the obligations under the Directive are for pension institutions operating social security schemes. Further, pension institutions covered by the EU Social Security Coordination Regulations are not usually considered as financial undertakings.
- an alternative investment fund (AIF) managed by an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU or an AIF supervised under the applicable national law;	FI (Drafting): ~~an alternative investment fund (AIF) managed by an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU or an AIF supervised under the applicable national law;~~ FI (Comments): FI supports the option B of Presidency Flash point 1.1. (leave out AIF and UCITS from the scope of the proposed Directive)

	In our opinion, it might be a good idea to ask DG FISMA to check these definitions (Art. 3(a)(iv) and 3(g)) if it has not already done so.
- UCITS in the meaning of Article 1(2) of Directive 2009/65/EC;	FI (Drafting): ~~UCITS in the meaning of Article 1(2) of Directive 2009/65/EC;~~ FI (Comments): FI supports the option B of Presidency Flash point 1.1. (leave out AIF and UCITS from the scope of the proposed 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[12];	
- 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[13];	
- an insurance or reinsurance special purpose vehicle authorised in accordance with Article 211 of Directive 2009/138/EC;	
- '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[14];	

12 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).

13 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).

14 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).

- 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[15];	
- 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[16];	
- 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[17];	

[15] 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).

[16] 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).

- 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[18]] 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];	
(b) 'adverse environmental impact' means an ~~adverse~~ impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental **instruments** ~~conventions~~ listed in the Annex, Part II;[19]	HU (Comments): HU supports the amendment LV

[17] 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).

[18] COM/2020/593 final.

[19] **Definition of 'adverse impact' consisting of 'adverse human rights impact' and 'adverse environmental impact' could be added at a later stage. If not, the text of the proposed Directive will be checked so that where the term 'adverse impact' is used, both 'adverse human rights impact' and 'adverse environmental impact' are covered.**

	(Comments): We agree that term "*instruments*" is most appropriate to refer to the legislation listed in the Annex AT (Drafting): (b) 'adverse environmental impact' means an ~~adverse~~ impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental **conventions** listed in the Annex, Part II; AT (Comments): Annex, Part II, exclusively refers to internationally binding conventions, which is why we prefer the original version of "conventions".

	SE (Comments): **To be further analysed.** PT (Comments): Though the inclusion of «instruments» allows to encompass both binding texts and non-binding texts mentioned in the Annex (Part I and II), in our view the problem remains: regarding the Declarations (with the exception of the Universal Declaration of Human Rights that as a status of ius cogens) MS will be forced to abide by rules that they did not agreed and do not want be bound. By accepting this type of provision, MS will give their indirect consent to the content of those Declarations, which is unprecedented in a Public International Law perspective and unsuitable. Are we willing to include costumary international law? DK (Comments):

	DK: DK supports this amendment. MT (Drafting): (b) 'adverse environmental impact' means an ~~adverse~~ adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental **instruments** ~~conventions~~ listed in the Annex, Part II;[20] MT (Comments): Malta does not agree with the deletion of the word **"adverse"** because it is broadening the scope and any impact, even if not adverse, will be in scope.

[20] **Definition of 'adverse impact' consisting of 'adverse human rights impact' and 'adverse environmental impact' could be added at a later stage. If not, the text of the proposed Directive will be checked so that where the term 'adverse impact' is used, both 'adverse human rights impact' and 'adverse environmental impact' are covered.**

(c) 'adverse human rights impact' means an ~~adverse~~ impact on ~~protected~~ persons resulting from the violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international **instruments** ~~conventions~~ listed in the Annex, Part I Section 2;	HU (Comments): HU supports the amendment AT (Comments): Changes seems coherent with the directive. In general, there needs to be an in depth discussion on the annex and its content. SE (Comments): **To be further analysed.** IT (Comments): IT – (Comments) - The inclusion of the definition of "adverse impact"

	might be appropriate. FI (Comments): We have reservations about this change. The annexes to the Directive also contain declarations which are not legally binding in the same way as multilateral treaties. We would not equate declarations with contractual instruments, so the original wording "conventions" seems more appropriate here. PT (Comments): Idem DK (Comments):

	DK: DK supports this amendment. MT (Drafting): (c) 'adverse human rights impact' means an ~~adverse~~ adverse impact on ~~protected~~ protected persons resulting from the violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international **instruments** MT (Comments): Malta does not agree with the deletion of the word **"adverse"** because it is broadening the scope and any impact, even if not adverse, will be in scope. The same reasoning applies for the deletion of the word **"protected".**

(d) 'subsidiary' means 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[21] is exercised;	NL (Drafting): (d) 'subsidiary' means a company controlled by a parent undertaking'. NL (Comments): This is in line with the definitions used in other EU-instruments.
(e) 'business relationship' means a relationship with a ~~contractor, subcontractor or any other~~ legal entit**y**~~ies~~ ('partner')	PL (Comments): **PL** We consider the relationship of the letter (e) definition ('business relationship') to the letter (f) definition ('established business relationship') unclear.

[21] 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).

	We note that, according to Article 1(1)(a), the Directive covers *'operations carried out by entities with whom the company has an established business relationship'* i.e. a qualified, not any, business relationship. We also note that the Directive uses (in some cases seemingly) interchangeably the the following terms: – *'business relationship'*, – *'established business relationship'*, – (direct/indirect) *'business partner'* (e.g. Article 5(1)(b) or Article 7(2)(b)) – *'established business partner'* (which in fact remains undefined). We consider it important to clarify which of the provisions (if any) refer to any (i.e. an unqualified/unestablished) business partner. AT (Comments): The changes to this provisions are welcomed since they provide a higher level of detail. More detail, however, may be necessary. SE

	(Comments): **A new term has been implemented in the proposal "direct/indirect business partner". The meaning and consequences of the new term is unclear.** NL (Drafting): (e) 'business relationship' means a relationship with a ~~contractor, subcontractor or any other~~ legal entit**y**~~ies~~ ('partner') in the value chain.
(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 **credit, loans,** financing, **investment,** insurance**,** ~~or~~ reinsurance, or **other financial services ('direct business partner'), or**	SE (Comments): **See 3.e** FI (Comments): What kind of investment activities are included in the definition? Does the

	definition and the term "investment" included in it cover a company's own investment activities (for example, all the investments of an incurance company)? Or does the definition only cover financial services provided to a third party (i.e. investment services in accordance with the MiFID II Directive)? PT (Comments): PT supports the distinction between "direct business partner" and "indirect business partner". ***Relativamente à dimensão financeira, remetemos para o MF.*** NOTA: a nova redação é apoiada pelos representantes das empresas. DK (Comments): DK: We would welcome clarification as to what is to be comprised by "other financial services", as there is no definition included as such.

	MT (Comments): Malta would like to highlight that one needs to be very careful when it comes to the area of access to finance for SMEs. The inclusion of the words **"credit"** and **"loans"** needs to be carefully analyzed and assessed. Malta would like to ask the Commission if the inclusion of credits and loans was covered by the Impact Assessment. EE (Comments): EE: the scope of the financial business partners is very broad, as it seems to comprise all kind of financial services. For example, if a company buys only a couple of another company's stocks, it could be seen as an investment and thereof the relationship would fall under this definition. It might need to be further considered, whether it is or should be the actual purpose of this definition.

	ES (Comments): A definition of financial services would be welcome NL (Comments): NL asks what is meant by "other financial services" and wonders whether the granting of loans, credits, etc. under 3i can also apply to contracts between group companies (the companies that belong together in a group).
(ii) ~~that performs business operations related to the products or services of the company for or on behalf of the company~~ **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')**;	PL (Comments): **PL** The definition of 'indirect business partner' is not clear enough, especially in the compilation with the definition of 'direct business partner'. Doubts arise with regard to the issue of a commercial agreement. Due to new

	definition, having the commercial agreement is necessary to qualify as 'direct business partner' which means that entity, even if performs business operations related to the operations, products or services of the company, but without the commercial agreement, will be qualified as 'indirect business partner'. It means that the 'commercial agreement' is treated as a distinctive factor, which seems to be questionable. SE (Comments): **See 3.e** PT (Comments): PT believes that the presentation of some examples will contribute to the clarity of this definition. Despite that fact, PT considers that the aplicability of this provision will be difficult – namely at the monitorization and control stages. DK

	(Comments): DK: The definition of an indirect business partner should be clarified further.
OPTION A	AT (Comments): AT continious to support the elimination of the concept of established business relationship troughout the text. At the same time, the concept of prioritisation and involvment of the company in the adverse impact has to be maintained.
~~(f) 'established business relationship' means a business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain;~~	SE (Comments): **SE finds it difficult to choose between option A and B.** **It is unclear which consequences a deletion of the term "established**

	business relationship" throughout the directive would have. Amendments should be made throughout the directive showing how a deletion of mentioned term would impact relevant provisions, before a choice between the two options can be made. FI (Comments): We support the Presidency's efforts to increase the risk-based approach and coherence with the OECD Guidelines. We therefore support the aim of moving away from the concept of an established business relationship (Option A) and adding elements of company´s involvement and contribution. Bearing in mind, however, that the proportionality of regulation is important and that the impact should not be over-reflected in the SME direction and in this respect still needs to be analysed. As regards option B, we believe it is clearer than in the original proposal. PT (Comments):

	PT supports option B, as it is more accurate. DK (Comments): DK: DK supports option A. We prefer deleting the term "established business relationship" throughout the entire directive and instead use the "involvement framework" (cause/contribute/directly linked to potential or actual adverse impact) in line with the OECD guidelines. NL (Comments): NL supports option A, referring to our earlier comments on established business relationships. It is important that this notion is updated throughout the whole directive.

OPTION B	HU (Comments): HU supports option B. Keeping this definition seems practical because it reduces the burden on companies. LV (Comments): We support OPTION B AT (Comments): AT prefers Option A (See comment to Art 1)
(f) 'established business relationship' means a business relationship, whether direct or indirect, which ~~is, or which is expected to be lasting, in view of its intensity or duration and which~~ does not represent a negligible or merely ancillary part of the value chain~~;~~ **and which, taking into account the circumstances of the specific company and the sector in which the company conducts its business, fulfils one of the following**	PL (Comments): **PL** We deem it extremely important to clarify what constitutes 'a negligible

criteria:	or merely ancillary part of the value chain'? E.g. would a software licence agreement or a cloud computing service agreement be considered a 'merely ancillary part of the value chain' (and under what circumstances, e.g. what in case of a company subject to the Directive that provides its service by means of a third party cloud? Would the cloud agreement be considered to form the value chain of the product in question?). LV (Drafting): (f) 'established business relationship' means a business relationship, which ~~is, or which is expected to be lasting, in view of its intensity or duration and which~~ does not represent a negligible or merely ancillary part of the value chain~~;~~ **and which, taking into account the circumstances of the specific company and the sector in which the company conducts its business, fulfils one of the following criteria**: LV

	(Comments): We think that it is already clear from the definition of business relationship, that established business relationship includes both – direct or indirect business relationships. AT (Drafting): SE (Comments): **See our comment on option A.** IT (Comments): IT – (Comments) – We still have a scrutiny reservation among the two options. In any case, if the concept of EBR will be maintained, the concepts of "negligible" and “significant” (ii) could be specified, to avoid discretionary interpretations. We would support an option that narrows

	down the concept of EBR, also through qualitative criteria. PT (Comments): No definition of direct or indirect relationship MT (Comments): Malta would like to thank the Presidency for the update on this area.
(i) it is, or it is expected to be lasting for a period of time or to be repeated for a number of times allowing for an effective identification and prevention of actual or potential adverse impacts in the value chain; or	LV (Drafting): **it is, or it is expected to be lasting for a period of time or to be repeated for a number of times; or** LV (Comments):

	In our opinion it is not clear, why should this be a specific criterion (allowing for an effective identification and prevention of actual or potential adverse impacts in the value chain) only for a point (f)(i). AT (Drafting): PT (Comments): PT considers that the expressions "time period" and "repeated several times" should be more precise.
(ii) it is, or it is expected to be significant for the company's operations or net turnover; ~~-~~	AT (Drafting):

	PT (Comments): PT believes that, in order to be significant, a minimum threshold shoud be defined.
(g) 'value chain' means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company. As regards companies within the meaning of point (a)(iv), 'value chain' with respect to the provision of these specific services shall only include the activities of the clients receiving such loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;	PL (Comments): **PL** 1. In the context of the Article 1(1) regarding subject matter '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' and taking into account of 'value chain' definition relating to companies within the meaning of point (a)(iv) in particular – an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council, there is need to be accurate and to supplement meaning of 'the same group whose activities are linked to the contract' as to the Article 3 does not

	contain specific definition this term, which may cause ambiguities and be open to misinterpretation. The precise definition of 'the same group whose activities are linked to the contract' is necessary for correct implementation this provision into national law and finally into operations of regulated financial undertakings espacially that in the Article 3 (u) indicates definition of 'group of companies'. Additionally we note that there is no definition of **'client'** which is essential to appropriate application of this provision by regulated financial undertakings, (for instance insurance undertakings) which usually conclude outsourcing contracts regarding insurance activities, which may be element of 'value chain' under CSDDD provisions. 2. Regarding the following part of the definition: *'value chain' with respect to the provision of these specific services shall only include the activities of the clients receivingsuch loan, credit, and other financial services* (...) – does the words 'shall only' mean that, in case of regulated financial undertakings, non-client business partners (such as IT service/infrastructure providers, members of a banking syndicate, manufactures of financial instruments that are to be distributed) shall be excluded from the notion of a value chain. We further deem, that in the context of financial services it will be important to claryfiy the scope/meaning of part of the definition: *'other*

	companies belonging to the same group whose activities are linked to the contract in question'. Specifically, what 'link' would be material for the purpose of the value chain definition? AT (Drafting): (g) 'value chain' means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream business relationships of the company. As regards companies within the meaning of point (a)(iv), 'value chain' with respect to the provision of these specific services shall only include the activities of the clients receiving such loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;

	SE (Comments): The definition of the term value chain does not reflect all the different activities conducted by regulated financial undertakings. The list over what constitutes a regulated financial undertaking in accordance with Article 3 (a) (iv) needs to be reflected in how those undertakings are to interpret the concept of value chain in accordance with Article 3 (g). As insurance companies are covered by the directive, certain problems can arise due to the fact that there are compulsory insurances which cannot be terminated, collectively agreed insurances signed by employers, traffic insurances etc, where a rejected request to sign an insurance will lead to negative effects for the injured party. Have these issues been considered? FI (Comments): FI finds the wording “other financial services” problematic. We understand that “other financial services” has not been defined anywhere in the financial regulation and as such it would be too vague. We would

	also like to point out that due to the broad scope of financial undertakings it might be difficult to find reference base for the common definition of "other financial services" (cf. option A) We support the option C in Presidency Flash of 9/22 point 1.2 (clarify which members of the client's group are part of the value chain) As mentioned above, we think it might be a good idea to ask DG FISMA to check these definitions (Art. 3(a)(iv) and 3(g)) if it has not already done so. In the Presidency Flash WK 11198/2022, the word "investment" is proposed to be added to the definition. Please see the question concerning Article 3 (i) about investment activities. It is necessary to clarify what value chains with respect to insurance undertakings mean. Could the obligations under the Directive lead to that insurance would not be granted to certain companies? Insurance has an important risk management function in the society and protects also third parties in certain situations. Further, in Finland, when an insurance company is providing statutory insurance, it cannot determine to whom the insurance is granted (obligation to insure). The statutory insurance lines provided by Finnish non-life insurance companies are motor liability insurance, workers'

	compensation insurance against accidents at work and occupational diseases as well as patient insurance. The statutory insurance lines are a part of the social security system. This is particularly problematic with respect to the obligations laid down in Article 7 and 8, as insurance companies providing statutory insurance cannot choose to whom they grant insurance or to end an insurance contract if the other party otherwise fulfils the conditions for insurance. This also applies to pension institutions (please see the comment concerning pension institutions in Article 3 (a) (iv)). PT (Comments): PT considers that this definition should be clearer in the sense that it does not include the "end-user purchase". PT asks for clarification on whether this definition includes "end-of-life activities" (e.g., waste management). If these activities are contemplated, PT believes that it will be difficult to implement due diligence procedures in that respective part of the value chain. DK (Comments):

	DK: We would welcome further clarification on the use of this concept. In relation to financial undertakings, we would ask how it would apply in the relationship between a developer and a distributor of a financial product. EE (Comments): EE: The definition of the value chain is rather broad for effective fulfilment of the DD obligations. While the purpose of such broad scope is understandable, we still find that it might become difficult to understand in practice what kind of obligations companies would have regarding for example the downstream chain of the value chain. Such obligations might be difficult to identify, depending on the area of industry. NL (Drafting): (g) 'value chain' means the undertakings carrying out activities related to the production of goods or the provision of services by a company …"

	NL (Comments): NL is of the opinion that by limiting the definition of value chain for the financial sector we do not make use of the full potential leverage of the sector. NL is wondering to what extent minority investments fall within the scope of the CSDDD's due diligence requirements.
(h) 'independent third-party verification' means verification of the compliance by a company, or parts of its value chain, with human rights and environmental requirements resulting from the provisions of this Directive by an **expert** ~~auditor~~ which is independent from the company, free from any conflicts of interests, has experience and competence in environmental and human rights matters and is accountable for the quality and reliability of the **verification** ~~audit~~;	PL (Comments): **PL** Adoption of such an approach raises questions about the scope of experience and competence of the experts, therefore, it seems that it would be possible to use the existing verification systems, e.g. EMAS, and for those areas for which there are no such systems, at the level of the provisions of the directive, the boundary conditions / criteria for meeting being an expert should be specified that will ensure a level playing field for businesses. Below, we provide possible explanations and scope indications for environmental experts. However, we are unable to identify similar expectations for experts in human rights field. Verification of the compliance by a company, or parts of its value chain,

	with environmental requirements resulting from the provisions of this Directive shall be anchored in existing EU legislation. Creating a new definition makes impossible to use previously adopted (and efficiently functioning) institutional solutions currently existing in member states. That may generate additional costs for member states of creating a new, separate verification standard. Legal framework of environmental verification according to EMAS regulation guarantees that verification will be carried out by a conformity assessment body as defined in Regulation (EC) No 765/2008 or any association or group of such bodies or any natural or legal person, or any association or group of such persons that are: - independent from the company - free from any conflicts of interests - have experience and competence in environmental matters and are - accountable for the quality and reliability of the verification. HU (Comments): HU supports the amendment. In our view the expert and the auditor can't be the same person so as to avoid conflicts of interest. AT

	(Comments): More information and detail is still needed, but the changes already move into the right direction. A verification per se should not free the company from its responsibility to carry out due diligence. There should be a stronger alignment with the CSRD. We, however, welcome the changes. FI (Comments): FI supports this change, there's a worldwide lack of auditors as it is and we see an expert sufficient to do this kind of verification. PT (Comments): PT does not disagree with the use of "expert" (and consequently "verification") instead of the current wording – "auditor" (and consequently "audit"). Nevertheless, PT welcomes examples and additional information on the

	criteria of eligibility to become an "expert" and on the type of procedures to be performed in the "verification". DK (Comments): DK: We support this clarification EE (Comments): EE: We support the deletion of the term "auditor", but it seems that using the term "expert" does not significantly simplify the application of the provision. It is still unclear, who exactly would be the "expert" in this context. Given that the criteria of the "expert" has remained the same, the wording of the provision seem to correspond strongly to the features of an auditor. Therefore, in essence, the term still seems to be referring to an "auditor". NL

	(Drafting): (h) 'independent third-party verification' means verification by an **expert** ~~auditor~~ which is independent from the company, free from any conflicts of interests, has experience and competence in environmental and human rights matters and is accountable for the quality and reliability of the **verification** ~~audit~~;
(i) 'SME' means a micro, small or a medium-sized enterprise, 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;	PL (Comments): **PL** We would like to draw the attention to the fact that the proposed definition contains two conditions which are not part of the definitions of micro, small and medium-sized entities in the Directive 2013/34/EU: – 'irrespective of its legal form', – 'that is not part of a large group'. Firstly only entities having certain legal forms are in the scope of the Directive2013/34/EU. Secondly under the Directive 2013/34/EU the SMEs can be part of any group (small, medium or large) and this fact does not have any impact on their definitions.

	Therefore the two additional conditions included in the SME definition in the CSDDD should not be understood as stemming from the Directive 2013/34/EU and the wording should be modified in a way that the references to the Directive 2013/34/EU would be only with regard to the size-criteria set out in Article 3(1), (2), (3) and (7) of Directive 2013/34/EU. NL (Drafting): (i) 'SME' means a micro, small or a medium-sized company, as those terms are defined in Article 3(1), (2), (3) and (7) of Directive 2013/34/EU; NL (Comments): If the directive would only apply to SME's not being part of a large group, a lot of SME's would fall outside the scope of the relevant articles (e.g. art. 7.2.d and art. 14.1 and 2).

(j) 'industry initiative' means a combination of voluntary value chain due diligence procedures, tools and mechanisms, including independent third-party verifications, developed and overseen by governments, industry associations or groupings of interested organisations;	
(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 environmental impact or an adverse human rights impact that is especially significant by its nature, or affects a large number of persons or a large area of the environment, or which is irreversible, or is particularly difficult to remedy ~~as a result of~~ **considering** the measures necessary to restore the situation prevailing prior to the impact;	HU (Comments): HU supports the amendment. AT (Comments): Change seems logical, but there might be a necessity to further define this

	provision, especially with regards to the prioritisation provision. SE (Comments): Important to keep the reference to "a large number of persons" since discrimination of women always affects a large number of persons. PT (Comments): PT prefers the new wording as it enables an easier interpretation. NOTA: os representantes das empresas apoiam esta redação. EE (Comments): EE: As a remark: the term "severe adverse impact" differs from the corresponding terms used in the CSRD ("principal adverse impact") and ESRS (variety of different terms referring to the "severe adverse impact"). If there is no specific reason for that, it might be better to even up the

	terms.
(m) ‘net turnover’ means	
(i) the ‘net turnover’ as defined in Article 2, point (5), of Directive 2013/34/EU; ~~or,~~	HU (Comments): Article 2 point (5) of Directive 2013/34/EU was amended by the CSRD as follows: *„(5) ‘net turnover’ means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover; for credit institutions referred to in point (b) of Article 1(3) of this Directive ‘net turnover’ shall be defined according to point (c) of Article 43(2) of Directive 1986/635 of the Council; for insurance undertakings referred to in point (a) of Article 1(3) of this Directive, ‘net turnover’ shall be defined according to Article 35 of Directive 1991/674 of the Council’; where the undertaking is an undertaking as defined in Article 19aa(1), the revenue as defined by or within the meaning of the financial reporting framework on the basis of which the financial statements of the undertaking are prepared;”* This definition already includes the proposed addition under points (iii)

	and (iv), so they should be deleted.
(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[23] 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;	NL (Comments):
(iii) for credit institutions referred to in point (a)(iv), 'net turnover' shall be defined according to point (c) of Article 43(2) of Directive 1986/635 of the Council;	HU (Drafting): **~~(iii) for credit institutions referred to in point (a)(iv), 'net turnover' shall be defined according to point (c) of Article 43(2) of Directive 1986/635 of the Council;~~** SE

[23] 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).

	(Comments): **To be further analysed.** EE (Comments): EE: The point (c) of Article 43(2) of Directive 86/635 changes the art 9 (2) of the Directive 83/349/EEC. The Directive 83/349/EEC is no longer in force. The separate question arising here would be that what exactly is meant by the "net turnover" in case where the company drafts its accounting reports based on the accounting standards (IFRS)? NL (Drafting): **(iii) for credit institutions referred to in point (a)(iv), 'net turnover' as defined according to point (c) of Article 43(2) of Directive 1986/635 of the Council;**

	NL (Comments): Sub m) mentions 'net turnover means' and sub m-iii) mentions 'net turnover shall be defined'. Suggested change for textual clarity
(iv) for insurance undertakings referred to in point (a)(iv), 'net turnover' shall be defined according to Article 35 of Directive 1991/674 of the Council;	HU (Drafting): ~~**(iv) for insurance undertakings referred to in point (a)(iv), 'net turnover' shall be defined according to Article 35 of Directive 1991/674 of the Council;**~~ SE (Comments): **To be further analysed.** EE

	(Comments): EE: What would be meant by the "net turnover" in case where the company drafts its accounting reports based on the accounting standards (IFRS)? NL (Drafting): **(iv) for insurance undertakings referred to in point (a)(iv), 'net turnover' as defined according to Article 35 of Directive 1991/674 of the Council;** NL (Comments): Sub m) mentions 'net turnover means' and sub m-iv) mentions 'net turnover shall be defined'. Suggested change for textual clarity

(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 relationships, **including civil society organisations, national human rights institutions, and human rights defenders**;	HU (Comments): HU supports the amendment. AT (Comments): We appreciate the change to this provision and support it. However, there should still be an own definition of "meaningful stakeholder engagement" (see below). SE (Comments): **SE supports text proposal.** FI (Comments):

	FI supports this change. PT (Drafting): (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 relationships, **including civil society organisations, national human rights institutions, ~~and~~ human rights defenders and environmental rights defenders**; PT (Comments): PT agrees with the inclusion of "trade unions", "workers' representatives" and "consumers". PT also agrees with the addition of "civil society organisations" and "human rights defenders".

	PT supports the changes introduced in the text, but questions the reason for addressing "human rights organisations" as "national". DK (Drafting): (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 relationships, **including indigenous peoples, civil society organisations, national human rights institutions, and human rights defenders**; DK (Comments): DK: DK supports this amendment, but suggests adding indigenous peoples to the list.

	NL (Drafting): (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 relationships, **including civil society organisations, national human rights institutions, and human rights defenders representing the aforementioned stakeholders**;
(o) 'director' means:	DK (Drafting): ~~(o) 'director' means:~~ DK (Comments): DK: We suggest deleting "director" and "board of directors". This is a

	consequence of our recommendation to delete article 15 (3), 25 and 26, where these definitions are used. ES (Comments): The concept of director seems too broad NL (Drafting): NL (Comments): Referring to our proposed amendments of Article 5.
(i) any member of the administrative, management or supervisory bodies of a company;	DK

	(Drafting): ~~(i) any member of the administrative, management or supervisory bodies of a company;~~ NL (Drafting):
(ii) where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officer;	PL (Comments): **PL** In some jurisdictions chief executive officer is not legally recognized position in a company. This expression may be applied to denote person who presides the management board (as it happens in Poland) however introducing this notion may cause some problems e.g. at the stage of translating the proposed Directive into Polish. Therefore this provision should be redrafted by replacing a notion of chief executive officer by more general expression.

	DK (Drafting): ~~(ii) where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officer;~~ NL (Drafting):
(iii) other persons who perform functions similar to those performed under point (i) or (ii);	DK (Drafting): ~~(iii) other persons who perform functions similar to those performed under point (i) or (ii);~~ NL (Drafting):

(p) 'board of directors' means the administrative or supervisory body responsible for supervising the executive management of the company, or, if no such body exists, the person or persons performing equivalent functions;	DK (Drafting): ~~(p) 'board of directors' means the administrative or supervisory body responsible for supervising the executive management of the company, or, if no such body exists, the person or persons performing equivalent functions;~~ NL (Drafting): (
(q) 'appropriate measure' means a measure that is capable of achieving the objectives of due diligence, commensurate with 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 characteristics of the economic sector and of the specific business relationship and the company's influence thereof, and the need to ensure prioritisation of action**:** ~~;~~	NL (Drafting): (q) 'appropriate measure' means a measure that is capable of achieving the objectives of due diligence, commensurate with 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 characteristics of the economic sector and of the specific business relationship and the company's influence thereof, and the need to ensure prioritisation of action. The measure should be focused on improved outcomes for affected stakeholders and/or the environment with reasonable an d clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement;~~;~~ NL (Comments): It could be considered to move this definition to articles 7 and 8 as it describes substantive objectives rather than merely a definition.
	NL (Drafting): (r) 'remediation' means seeking to restore the affected person or persons to the situation they would be in had the actual adverse impact not occurred,where possible, and enable remediation that is proportionate to the signficance and scale of the adverse impact and may include apologies, restitution or rehabilitation, financial or non-financial compensation, punitive sanctions and), taking measures to prevent future adverse impacts.

	NL (Comments): It could be considered to move this definition to articles 7 and 8 as it describes substantive objectives rather than merely a definition.
(r) 'company's involvement in an adverse impact' means a link of the company to the adverse impact that can be in a form of:	HU (Comments): HU supports the new definition. LV (Comments): We support the proposed definition of *'company's involvement in an adverse impact*' AT (Comments): We welcome the inclusion of this provision in the directive and support it.

	SE (Comments): **SE welcomes that a more risk based approach has been implemented. The term „established business partners“ must however be reassessed, see article 3 e.** FI (Comments): FI: Please see comment on 3 (f). We support adding the elements of company´s involvement and contribution. PT (Comments): Paragraphs (r) and (s) are very confusing as the criteria are intermingled without being possible to understand what specifically constitutes involvement: can the cause be direct or indirect? Can the contribution be direct or indirect or is it always indirect?

	Can the causes not be the result of an omission? Do all the previsions cover situations of holdings and of partners? NL (Drafting): **(r) 'company's involvement in an adverse impact' means involvement of the company to the adverse impact that can be in a form of:** NL (Comments): NL wonders if this should be moved, as it seems to the a description of substantive objectives rather than a definition. The actual phrase between quotation marks is currently not featured in the text.

(i) the company causing the actual or potential adverse impact; or	PT (Comments): PT supports the introduction of this provision.
(ii) the company contributing to the actual or potential adverse impact; or	PT (Comments): Taking in account that this situation is treated in paragraph (s), PT considers that the provision (ii) doesn't contribute to the clarity of the text. PT suggests the removal of this provision.
(iii) the established business partner in the company's value chain causing the actual or potential adverse impact without the company causing or contributing to the actual or potential adverse impact;	PL (Drafting): **the established business partner in the company's value chain causing**

	the actual or potential adverse impact without the company directly causing or contributing to the actual or potential adverse impact; PL (Comments): **PL** Technical comment AT (Drafting): **(iii) the business partner in the company's value chain causing the actual or potential adverse impact without the company causing or contributing to the actual or potential adverse impact;** AT (Comments): This provision seems a bit unclear. Does it mean direct and indirect business partners? Since AT is in opposition to the concept of "established

	business relationship" and proposes to delete it throughout the text. There must be more focus on an alignment with the UNGP and the OECD Guidelines. The concept of "directly linked" should be included and discussed in the working party. SE (Comments): **A link to the company's operations etc – as stated in article 3 e – is necessary as the company otherwise would be responsible for any impact the established business partner has (regardless of if there is a link to the company or not)** PT (Comments): PT asks for clarification on the legal scope of a company's liability when it has not contributed in any way to the adverse impact.

	DK (Drafting): ~~(iv) the established business partner in the company's value chain causing the actual or potential adverse impact without the company causing or contributing to the actual or potential adverse impact;~~ the company being directly linked to the actual or potential adverse impact through its operations, products or services by their business relationships, even if the company has not caused or contributed to those impacts; DK (Comments): DK: We note that there is no definition of "established business partner" in the compromise text, even though this concept is used several times in the text. It is unclear whether "established business partner" is different from "established business relationship" and how it is linked to the definitions of "direct business partner" and "indirect business partner". We prefer deleting the term "established business relationship" throughout the entire directive and instead use the "involvement framework"

	(cause/contribute/directly linked to potential or actual adverse impact) in line with the OECD guidelines. NL (Drafting): **the business partner in the company's value chain causing the actual or potential adverse impact without the company causing or contributing to the actual or potential adverse impact;** NL (Comments): The notion "established business partner" has not been introduced in the text. NL fears the accumulation of various concepts that could make it confusing to companies.
(s) 'contribution of a company to an adverse impact' means the act or omission of:	HU

	(Comments): HU supports the amendment. LV (Comments): We think that it would be very important that this definition of what contribution of a company means regarding this Directive is explained in more detail and with examples in the recitals (e.g. what are the situations when company causes adverse impact in combination with its subsidiary or its business partner or how the acts or omissions regarding to established business partners in point (i) are different than acts or omissions recited in point (iii)). AT (Comments): We welcome the inclusion of this provision. SE

	(Comments): **SE welcomes that a more risk based approach has been implemented. The term „established business partners“ must however be reassessed, see article 3 e.** PT (Comments): PT would appreciate some examples regarding the “act of omission” and eventually a definition for it, in the context of contributing to an adverse impact. DK (Comments): DK: DK supports the addition. MT

	(Comments): Malta would like to highlight the point that one needs to rein in on the responsibility of the Enterprise from the point of sourcing raw materials or work in progress operations till the end of the provision of the product/service by the entity itself. This means that the enterprise only controls what its suppliers give and the value added it contributes to its product or service. When an enterprise product or service are used further up the value chain by a third company, it would be beyond the control of the original company and the responsibility needs to be proportionalitly framed. NL (Comments): The actual phrase between quotation marks is currently not featured in the text.
(i) <u>the company that in combination with the act or omission of its subsidiary, or its established business partner causes the actual or</u>	AT

potential adverse impact; or	(Drafting): **(i) the company that in combination with the act or omission of its subsidiary, or its business partner causes the actual or potential adverse impact; or** AT (Comments): More discussion the alignment with the UNGP and the OECD Guidelines is need, e.g. with regards to "Cause" and "Contribute".
(ii) the subsidiary of the company that causes the actual or potential adverse impact in its own operation; or	LV (Comments): We believe that a parent company should not be held liable for a subsidiary's adverse impact only based on the fact, that it is the subsidiary's parent company. PT

	(Comments): PT supports the introduction of this provision. NL (Comments):
(iii) the company that has a substantial effect on the act or omission of its established business partner in the company's value chain, including facilitating, incentivising, aiding, or abetting the established business partner to cause the actual or potential adverse impact;	AT (Drafting): **(iii) the company that has a substantial on the act or omission of its business partner in the company's value chain, including facilitating, incentivising, aiding, or abetting the business partner to cause the actual or potential adverse impact;** AT (Comments): What does "effect" in this context mean? Would "influence" also be

	possible? PT (Comments): PT supports the introduction of this provision.
(t) 'parent company' means a company which controls one or more subsidiaries;	PL (Comments): **PL** Should the term 'control' ('*a company which controls'*) be interpreted as in Article 3(d)? Clarification might be worth considering in this regard. HU (Comments): HU supports the amendment.

	AT (Comments): Which defintion of "control" and "group" is used? SE (Comments): **SE welcomes that a group level approach has been implemented in the directive. The text must however be further analyzed.** PT (Drafting): **According to art.º 2- 14º EU Regulation 2015/848 on insolvency proceedings 'parent undertaking' means an undertaking which controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which prepares consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council (15) shall be deemed to be a parent**

	undertaking. PT (Comments): We suggest to align this definition to the one included in art.º 2- 13º EU Regulation 2015/848 on insolvency proceedings
(u) 'group of companies' means a parent company and all its subsidiaries.	HU (Comments): HU supports the amendment. SE (Comments): **SE welcomes that a group level approach has been implemented in the directive. The text must however be further analyzed.** PT

	(Comments): PT agrees with the wording.
	AT (Drafting): (v) 'Meaningful stakeholder engagement' means an interactive, responsive and ongoing process of engagement with relevant stakeholders throughout all phases of the due diligence process. AT (Comments): Meaningful engagement with relevant stakeholders or their legitimate representatives throughout the due diligence process is a key component of due diligence as recognized in existing international standards, such as the OECD due diligence guidance for responsible business conduct. Its objective is for companies to understand and identify effective ways to respond to affected stakeholder's needs and concerns, particularly of those who are likely to be the most vulnerable. Meaningful stakeholder engagement should thus be embedded thought the due diligence obligations of companies to ensure effective and high-quality risk assessment, risk mitigation measures, ongoing monitoring, and grievance

	mechanisms.
Article 4	
Due diligence	
1. Member States shall ensure that companies conduct 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 in accordance with Article 5;	IT (Comments): IT – (Comments) - The reasons for not including the "due diligence" among the "Definitions" are not clear, since a definition of due diligence could be found in the UN and OECD instruments.
(b) identifying actual or potential adverse impacts in accordance with Article 6;	

(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;	
(d) establishing and maintaining a complaints procedure in accordance with Article 9;	IT (Comments): IT – (Comments) - The complaints procedure under this point could overlap with other existing instruments at international level. For this purpose, it could be specified whether or how this complaint procedure could be integrated with existing ones. NL (Drafting): "(d) establishing and maintaining a complaints procedure and providing or contributing to remedy in accordance with Article 9; NL (Comments):

	Refer to our comment on article 9.
(e) monitoring the effectiveness of their due diligence policy and measures in accordance with Article 10;	IT (Comments): IT – (Comments) - In addition to monitoring, a system of corrective actions could be introduced if necessary in light of the monitoring.
(f) publicly communicating on due diligence in accordance with Article 11.	
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 ~~in compliance with applicable competition law~~.	HU (Comments): HU supports the amendment. AT

	(Comments): Why is "in compliance with applicable competition law" deleted? DK (Drafting): 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 **in compliance with applicable competition law.** DK (Comments): DK cannot support this change. It is important that the competition law is respected
3. Member States shall ensure that a company or other legal entity shall not be obliged to disclose to its business partner which is complying with the obligations resulting from this Directive, information that is deemed to be a trade secret as defined in Article 2(1) of Directive (EU) 2016/943 of the European Parliament and of the Council.	PL (Comments): **PL**

	It should be noted that the proposed wording may pose a risk of not providing any information. The definition of a trade secret is very broad, which in consequence may prevent the fulfillment of obligations by companies that need such information. HU (Comments): We can accept this change, however our main objective is to give exemption to SME's. AT (Comments): We support this clarification. It would be further helpful to have information provided by public authorities (See comment on "helpdesk" below). SE (Comments):

	To be further analysed. FI (Comments): FI : We wonder is this addition necessary. PT (Drafting): **- In exceptional cases, information concerning imminent events or matters being negotiated may be omitted if there is a duly substantiated opinion of the members of the administrative, management and supervisory body signed, considering that the disclosure of such information is likely to seriously harm the company's business position and provided that such omission does not constitute an obstacle to a correct and balanced understanding of the evolution, performance, position and impact of the company's activities** **.** PT

	(Comments): PT supports the introduction of this provision. Yet it would be preferable to enlarge it as proposed in the column
Article 4a	AT (Comments): AT welcomes this provision. However, further discussion is still needed (e.g. on the supervisory authority and implication on obligations of this directive). A few questions are: How is a group defined? Is a subsidiary automatically covered under the due diligence of the parent company, even if it doesn't fall within the scope? Is the group accountable for the oversight of the subsidiary's due diligence efforts? How do the supervisory authorities work together if the groups' subsidiaries are active in different member states? How can we make sure that the due diligence on a group level leads to synergies for companies and supervisory authorities?

	PT (Comments): PT agrees with the introduction of this article as it provides specific guidance for a group level scenario. NL (Comments): - In principle, NL supports the inclusion of article 4a. Recognition of due diligence at a group level is important and considered in line with step 1 of the OECD guidelines. This approach is also consistent with the CSRD. It allows companies to organize their due diligence proces in an efficient manner. However, subsidiaries also have a role to play in the due diligence process, for example when concluding new contracts.
Due diligence on a group level	HU (Comments):

	HU can agree with the proposed addendum. SE (Comments): **SE welcomes that a group level approach has been implemented in the directive. The text must however be further analyzed.** **In many groups, "established business relationships" are mostly intra-group relations. In order to simplify the administrative procedure for these companies, an exception for concerning intra-group companies could be made**. FI (Comments): FI supports the whole new article 4a as a concept in the interests of proportionality and coherence of regulation.
	FI

	(Comments): **s**
1. Member States shall ensure that companies which are subsidiaries may decide that the obligations set out in Articles 5 to 11 and Article 15(1) and (2) shall be fulfilled by their respective parent companies falling under the scope of this Directive also with respect to these subsidiaries. This is without prejudice to civil liability of subsidiaries in accordance with Article 22.	PL (Comments): **PL** Article 4a in comparison with Article 17(3a) may raise some doubts in interpretation. Article 4a says about the fulfilment of due diligence obligations by a parent company **with respect to subsidiaries** while Article 17(3a) says about the fulfilment of the obligations by the parent company '**on behalf of its subsidiaries in accordance with Article 4a**'. Clarification might be worth considering to ensure the coherence of Article 4a with Article 17(3a). HU (Comments): According to the wording, the subsidiary decides whether the obligations are fulfilled by the respective parent company. It is unclear who should be

	included in the consolidation if not all subsidiaries request it? LV (Comments): We support the approach set out in the Article 4a. IT (Comments): IT - (Comments) – We welcome the introduction of the article 4a in the text, as we support the possibility of a subsidiary to require the parent company to fulfil the obligations set out in Articles 5 to 11 and 15(1) and 15(2). PT (Comments): PT agrees with the wording.

	DK (Comments): DK: DK supports due diligence on a group level, in order to align further with the corresponding reporting requirements under the CSRD. While we support the substance of article 4a, we note that it has been phrased differently than the parallel text in the CSRD. For reference, see the CSRD text below: *"An undertaking ('the exempted subsidiary undertaking') which is a subsidiary undertaking shall be exempted from the obligations set out in paragraphs 1 to 4 if that undertaking and its subsidiary undertakings are included in the consolidated management report of a parent undertaking, drawn up in accordance with Articles 29 and 29a."* NL (Drafting): **1. Member States shall ensure that a parent company may decide that the obligations set out in Articles 5 to 11 and Article 15(1) and (2) to be fulfilled by that parent company and its subsidiaries, shall be fulfilled by the parent company exclusively. This is without prejudice**

	to civil liability of subsidiaries in accordance with Article 22. NL (Comments): Subsidiaries do not have the power to decide what the parent company has to do. The only way is that the parent company decides to fulfil some of the obligations of the subsidiaries.
2. The fulfilment of due diligence obligations by a parent company in accordance with the first paragraph is subject to all the following conditions:	FI (Comments): The criteria in Para 2 is essential part of the application, it should not undermine the effectiveness of regulation from a human rights perspective. This aspect must be further analysed, but we do not have any further comments at this stage. PT (Comments): PT agrees with the wording.

(a) the subsidiary provides all the necessary information to and cooperates with its parent company to fulfil the obligations resulting from this Directive;	PT (Comments): PT agrees with the wording. NL (Drafting): **(a) the subsidiary which is subject to the criteria of article 2 of this directive provides all the necessary information to and cooperates with its parent company to fulfil the obligations resulting from this Directive;**
(b) the subsidiary must abide 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;	PT (Comments):

	PT agrees with the wording. NL (Drafting): **(b) the subsidiary which is subject to the criteria of article 2 of this directive must abide 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 corporate policies in accordance with Article 5;	PT (Comments): PT agrees with the wording. NL (Drafting): **(c) the subsidiary which is subject to the criteria of article 2 of this directive integrates due diligence into all its corporate policies in accordance with Article 5;**

(d) where relevant, the subsidiary seeks the contractual assurances in accordance with Articles 7(2), point (b), or 8(3), point (c);	PT (Comments): PT agrees with the wording.
(e) where relevant, the subsidiary seeks to conclude a contract with an indirect business partner in accordance with Articles 7(3) or 8(4);	PT (Comments): PT agrees with the wording.
(f) where relevant, the subsidiary temporarily suspends or terminates the business relationship in accordance with Articles 7(5) or 8(6).	PT (Comments): PT requests clarification on the applicability of this provision. PT considers that it is only applicable to direct business partners.

Article 5	
Integrating due diligence into companies' policies	NL (Drafting): **Integrating due diligence into companies' policies and management systems**
1. Member States shall ensure that companies integrate due diligence into all their corporate policies and have in place a due diligence policy. The due diligence policy shall contain all of the following:	NL (Drafting): 1. Member States shall ensure that companies integrate due diligence into all their corporate policies and management systems and have in place a due diligence policy. The due diligence policy shall contain at least the following:
(a) a description of the company's approach, including in the long term, to due diligence;	NL

	(Drafting): (a) a description of the company's approach, including in the long term, and the oversight of the company's approach to due diligence;
(b) a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries**, and the company's business partners should it be followed by them in accordance with Articles 7 or 8**;	PL (Drafting): a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries**, and the company's business partners ~~should it be followed by them~~, established in accordance with Articles 7 or 8**; PL (Comments): **PL** Technical comment The new wording requires also clarification whether business partners are to implement all the elements of Articles 7 and 8? If this is the intention, then we perceive it as an extension of the directive's obligations to all entities, including SMEs, then we cannot agree to such a provision.

	HU (Comments): HU supports the amendment. SE (Comments): **To be further analysed.** FI (Drafting): (b) a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries**, and the company's business partners as described in Articles 7 or 8.** FI (Comments):

	FI supports the proposal, but we think the language could be streamlined a bit, proposal attached. PT (Comments): PT believes that this provision will impact contracts between business partners. PT believes that this provision is only applicable to direct business partners. DK (Comments): DK: DK supports this amendment. MT (Drafting): (b) a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries **when** ~~**and the company's business partners should it be followed by them in accordance with**~~ **Articles 7 or 8 are applicable**;

(c) a description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business relationships.	AT (Drafting): (c) a description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to business relationships.
	AT (Drafting): (1a) The description in lit para 1 lit a and c may include considerations on the company's size, context of its operations, its business model including its purchasing practices, its position in the value chain, the nature of its products or services and the characteristics of the economic sector. AT (Comments): In order to duely take into account the flexibility of due diligence.

2. Member States shall ensure that the companies update their due diligence policy ~~annually~~ **without undue delay after a significant change occurs, but at least every 24 months**.	HU (Comments): HU supports the amendment. LV (Comments): We support the drafting suggestion in Paragraph 2. SE (Comments): **SE accepts the proposal**. PT (Comments): PT welcomes the addition of "significant change" to this provision. However, in article 3, suggests the addition of a definition for it (based on

	the OECD one). PT supports a 24 month reassessment period. DK (Drafting): 2. Member States shall ensure that **the due diligence policy is approved at the most senior level in the company and that** the companies update their due diligence policy ~~annually~~ **without undue delay after a significant change occurs, but at least every 24 months**. DK (Comments): DK: DK does not object to this amendment. We initially suggested that significant changes should lead to an update in company policy. However, we do agree that revisiting the policies at least every 24 months is a way of ensuring that all companies continue to focus on the due diligence obligation. In relation to the proposed deletion of article 26, we have suggested to incorporate article 26 in article 5 (2) to ensure that the due diligence policy is approved at the most senior level in the company. We prefer this drafting suggestion instead of the proposed amendments in article 5 (3)-(5).

	NL (Drafting): 2. Member States shall ensure that the administrative, management and supervisory bodies of the company shall put in place, oversee and approve the due diligence actions referred to in Article 4, and that the companies update their due diligence policy ~~annually~~ **without undue delay after a significant change occurs that has or should have an important impact on the due diligence policy, but at least every 24 months**. NL (Comments): NL recognizes the importance of integrating and embedding responsible business conduct into policies and management systems, in line with the OECD Guidelines. It ensures that companies are able to take the necessary strategic decisions with regard to the management and oversight of sustainability risks and impacts. Therefore, NL thinks this should have a more prominent role in the proposal.

3. Member States shall lay down rules to ensure that companies referred to in Article 2(1) put in place and oversee the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in this Article, with due consideration for relevant input from stakeholders on the most senior management level.	PL (Drafting): **3. Member States shall lay down rules to ensure that companies referred to in Article 2(1) put in place and oversee the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in this Article~~, with due consideration for relevant input from stakeholders on the most senior management level~~.** PL (Comments): **PL** Proposed new wording is unclear. We support returning to the Commission wording of Article 26 (see the relevant note on this Article). In this situation (when Article 26 as originally proposed by the Commission will be reinstated), the end of Article 5 (3) should be deleted. HU (Comments): HU supports the amendment. The change to the “obligation of means” can be also agreed.

	LV (Comments): In our opinion the definition of "senior management level" should be included in Article 3. SE (Comments): **On the proposed amendments to art 5 (5.3-5.5) SE has a preliminary positive view but still has a scrutiny reservation. See also our comment on art 26.** **Ensure that "most senior management" refers to companies and not stakeholders.** PT (Drafting):

	PT (Comments): PT agrees with the wording. DK (Drafting): **3. ~~Member States shall lay down rules to ensure that companies referred to in Article 2(1) put in place and oversee the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in this Article, with due consideration for relevant input from stakeholders on the most senior management level.~~** DK (Comments): DK: We do not support this amendment. We instead refer to our suggestion to amend article 5 (2). NL

	(Comments): NL is still considering this proposal. The paragraph appears mostly redundant if our desired changes to article 5(2) are taken on board, with the exception of stakeholder inputs.
4. Member States shall lay down rules to ensure that companies referred to in Article 2(1) take steps to adapt their corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9.	SE (Comments): **On the proposed amendments to art 5 (5.3-5.5) SE has a preliminary positive view but still has a scrutiny reservation. See also our comment on art 26.** PT (Comments): PT requests orientations on how these rules will be implemented at EU and MS level.

	DK (Drafting): **~~4.~~ ~~Member States shall lay down rules to ensure that companies referred to in Article 2(1) take steps to adapt their corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9.~~** DK (Comments): DK: We do not support this amendment. We instead refer to our suggestion to amend article 5 (2). NL (Comments): NL is still considering this proposal. It appears to be rather prescriptive. NL may revert with drafting suggestions.

5. Member States shall specify the duties of directors and boards of directors when fulfilling the obligations under paragraphs 3 and 4 according to their national law.	HU (Comments): HU supports the amendment. LV (Comments): We support the draft suggestion in Paragraph 5. SE (Comments): **On the proposed amendments to art 5 (5.3-5.5) SE has a preliminary positive view but still has a scrutiny reservation. See also our comment on art 26.** IT (Comments):

	IT – (Comments) - This provision should be obviously well analysed in order to avoid fragmentation of directors' liability between the rules of corporate and civil law, the rules on the administrative liability for offences committed by entities, and the new Due Diligence provisions. PT (Comments): PT requests orientations on how will be avoided the legal fragmentation between MS. DK (Drafting): ~~**5.**~~ ~~**Member States shall specify the duties of directors and boards of directors when fulfilling the obligations under paragraphs 3 and 4 according to their national law.**~~ DK (Comments):

	DK: We do not support this amendment, as we do not support a general regulation of corporate governance. MT (Drafting): **~~5. Member States shall specify the duties of directors and boards of directors when fulfilling the obligations under paragraphs 3 and 4 according to their national law.~~** MT (Comments): Malta would like this to be deleted because the duties of Directors and Boards of Directors are already amply regulated by national legislation. Please refer to Malta's comments on Article 25. EE (Comments):

	EE: We do not support the added provision and consider it unnecessary. There is no need to set directors' obligations separately from the obligations of the company. Especially if both obligations are similar. For example, if there is a tax obligation stipulated in the tax law, the company is responsible for fulfilling the tax obligation and directors are responsible for making sure the company fulfils its tax obligation. There is no need to stipulate the same tax obligation also as a directors' duty. ES (Comments): The introduction of this provision and the deletion of Art. 26 should be positively assessed. NL (Drafting):

	NL (Comments): This paragraph is redundant if due diligence obligations for companies are included in Article 5.2.
Article 6	
Identifying actual and potential adverse impacts	
1. Member States shall ensure that companies take appropriate measures to identify actual and potential adverse human rights impacts and adverse environmental impacts arising from their own operations or those of their subsidiaries and, where related to their value chains, from their established business relationships, in accordance with paragraph 2, 3 and 4.	AT (Drafting): 1. Member States shall ensure that companies take appropriate measures to identify actual and potential adverse human rights impacts and adverse environmental impacts arising from their own operations or those of their subsidiaries and, where related to their value chains, from their business relationships, in accordance with paragraph 2, 3 and 4.

	SE (Drafting): Member States shall ensure that companies take appropriate measures to identify actual and potential adverse human rights impacts and adverse environmental impacts arising **within or** from their own operations or those of their subsidiaries and, where related to their value chains, from their established business relationships, in accordance with paragraph 2, 3 and 4. SE (Comments): Important to include human rights violations which arise **within** the company itself (unequal remuneration for work of equal value, sexual harassment at work etc). IT (Comments): . MT

	(Comments): In principle, Malta agrees with Article 6 (1). However, Malta is concerned that this provision will be difficult to enforce the more one goes down the value chain, particularly when there are a significant number of intermediaries involved. NL (Drafting): Member States shall ensure that companies take appropriate measures to identify actual and potential adverse human rights impacts with which the company is or may be involved, as defined in Art 3(r), in accordance with paragraphs 2, 3 and 4. NL (Comments): Simplification in line with the newly proposed definition 3(r).

1a. For the purpose of fulfilling the obligation in paragraph 1, companies may map all areas of their own operations, those of their subsidiaries and, where related to their value chains, those of their established business partners. Based on the results of that mapping, companies may carry out an in-depth assessment of the areas where adverse human rights impacts and adverse environmental impacts were identified to be most likely to be present or most significant.	LV (Comments): Latvia supports mapping and in-depth assessment based on the results of that mapping. That way companies will be able to predict any expected risks faster, identify them, evaluate them, as well as coordinate their resources in order to avoid, reduce or control any potential and actual adverse impact. AT (Drafting): **1a. For the purpose of fulfilling the obligation in paragraph 1, companies may map all areas of their own operations, those of their subsidiaries and, where related to their value chains, those of their business partners. Based on the results of that mapping, companies may carry out an in-depth assessment of the areas where adverse human rights impacts and adverse environmental impacts were identified to be most likely to be present or most significant.**

	AT (Comments): We welcome the inclusion of this provision. This is a necessary clarification that due diligence is risk-based (see UNGPs, the OHCHR, The Corporate Responsibility to Respect Human Rights: An interpretative guide, 201, as well as OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, p. 61, 65). However, we would prefer to have more alignment with our proposal. According to the OECD Guidelines, the scoping exercise should be broad and serve as an initial exercise to enable prioritisation. Assessment, on the other hand, refers to a more in-depth process that seeks to identify and evaluate prioritised risks related to a specific business activity or relationship. SE (Comments): **SE welcomes that a more risk based approach has been implemented. The text must however be further analysed.** PT (Comments):

	PT supports the introduction of this provision. NOTA: os representantes das empresas apoiam a inclusão deste novo paragrafo. DK (Drafting): **1a. For the purpose of fulfilling the obligation in paragraph 1, companies ~~may map~~ should explore ~~all areas of~~ their own operations, those of their subsidiaries and, where related to their value chains, those of their established business partners. Based on the results ~~of that mapping~~, companies ~~may~~ should carry out an in-depth assessment of the areas where adverse human rights impacts and adverse environmental impacts were identified to be most likely to be present or most significant.** DK

	(Comments): DK: DK supports this addition of an article 1(a) to clarify the two phases of risk assessments that ultimately result in a prioritization of risks. This two-phase approach should also apply to high-impact sectors, which is why we suggest deleting article 6(2). However, we do suggest changing the text in order to emphasise that the company's impact assessment is not optional, but that it is not required to map/document the entire value chain. The obligation to report and document only falls upon identified adverse impacts. DK: We note that there is no definition of "established business partner" in the compromise text, even though this concept is used several times in the text. It is unclear whether "established business partner" is different from "established business relationship" and how it is linked to the definitions of "direct business partner" and "indirect business partner". We prefer deleting the term "established business relationship" throughout the entire directive and instead use the "involvement framework" (cause/contribute/directly linked to potential or actual adverse impact) in line with the OECD guidelines. MT

	(Comments): Same comment as above. NL (Drafting): **1a. For the purpose of fulfilling the obligation in paragraph 1, companies may map all areas of their own operations, those of their subsidiaries andrelated to their value chains. Based on the results of that mapping, companies may carry out an in-depth assessment of the areas where adverse human rights impacts and adverse environmental impacts were identified to be most likely to be present or most significant. In so doing, companies shall take into account impacts that may emerge from their procurement policy or corporate strategy.** NL (Comments):

	Alignment with defition 3(f) option A, and inclusion of the notion that companies‘ own business models may be inherently giving rise to negative impacts, for instance in “fast fashion”.
2. By way of derogation from paragraph 1, companies referred to in Article 2(1), point (b), and Article 2(2), point (b), shall only be required to identify actual and potential ~~severe~~ adverse impacts relevant to the respective sector mentioned in Article 2(1), point (b).	AT (Comments): In the light of the new article to prioritisation, the proposed change is coherent with the UNGP and OECD-Guidelines since severity is a criterion for prioritisation. DK (Drafting): ~~2. By way of derogation from paragraph 1, companies referred to in Article 2(1), point (b), and Article 2(2), point (b), shall only be required to identify actual and potential severe adverse impacts relevant to the respective sector mentioned in Article 2(1), point (b).~~ DK

	(Comments): DK: We suggest deleting article 6(2) altogether. MT (Drafting): 2. By way of derogation from paragraph 1, companies referred to in Article 2(1), point (b), and Article 2(2), point (b), shall only be required to identify actual and potential **severe** adverse impacts relevant to the respective sector mentioned in Article 2(1), point (b). MT (Comments): Malta wants to reinstate the word 'severe' as this strengthens the concept of proportionality. Malta believes that the principle of proportionality is important in order to ensure that the balance between competitiveness and administrative burdens are kept in check.

3. When companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, identification of actual and potential adverse human rights impacts and adverse environmental impacts shall be carried out only before providing that service.	PL (Drafting): 3. When companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, identification of actual and potential adverse human rights impacts and adverse environmental impacts shall be carried out before providing that service. PL (Comments): PL The word 'only' is inconsistent with the Article 10, according to which: '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 value chains of the company, those of their established business relationships, to monitor the effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of human rights and environmental 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 24 months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise'.

	In any case, we deem it extremely important to clarify what constitutes a case of the provision of financial service for the purpose of Article 6(3); in other words, what specifically triggers the obligation to carry out the identification process? Would that be a single case of the provision of a financial service under an established business relationship? E.g. in case of an investment services agreement, would a single order to buy a financial instrument (e.g. for hedging purposes) trigger the necessity for the investment firm to carry out the identification of the client? Similarly, how would Article 6(3) apply to financial services such as a credit/guarantee renewal, opening a FX deposit or a payment order? MT (Comments): Malta fully agrees that this Provision should apply solely prior to the provision of service. This is important to ensure legal certainty and not hamper the access to finance for enterprises. Malta will certainly not agree should this be extended to after the service has been granted. This potential would have created a significant amount of uncertainty and reduce the flow of access to finance. Financiers and credit institutions would take a risk averse approach should the provision apply to post-service granting.

4. Member States shall ensure that, for the purposes of identifying 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 complaints procedure provided for in Article 9. Companies shall, where relevant, also carry out consultations with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts.	AT (Drafting): 4. Member States shall ensure that, for the purposes of identifying 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 complaints procedure provided for in Article 9. Companies shall also carry out meaningful stakeholder engagement with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts. AT (Comments): Meaningful stakeholder engagement is key throughout the due diligence process and must meet international standards. It involves interactive processes with relevant stakeholders or their legitimate representatives, is characterised by two-way communication and depends on the good faith of the participants on both sides. A definition of “meaningful stakeholder engagement” should be included and reference should be made in the relevant articles (Art 5-11). PT

	(Comments): PT asks for a clarification on the meaning of "adequate resources". PT suggests removing "when relevant" to encourage stakeholder consultation. DK (Drafting): 4. Member States shall ensure that, for the purposes of identifying 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 complaints procedure provided for in Article 9. Companies shall~~, where relevant,~~ also carry out consultations with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts. DK (Comments):

	DK: According to the UNGPs and the OECD's Guidelines, companies should *always* engage with stakeholders. It is important not to confuse the term "relevant stakeholders" with "where relevant." NL (Drafting): 4. Member States shall ensure that, for the purposes of identifying 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 complaints procedure provided for in Article 9. Companies shall, where necessary, also carry out consultations with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts. NL (Comments): NL would like the proposal to align the notion of stakeholder consultation

	with the OECD guidelines and UNGPs.
***Article* 6a**	FI (Comments): FI supports this new added 6a. Underlining that in prioritization also the less significant impacts are addressed by the companies and in the scope of the regulation. PT (Comments): PT supports the insertion of this article. Sem prejuízo do eventual comentário do MJ, sobre uma possível conexão com o artigo 22.º, transmite-se que os representantes das empresas apoiam a inclusão deste novo artigo. NL (Comments): NL very pleased to see the inclusion of the concept of the involvement framework and risk prioritization in the text. However, NL notes that conformity with the OECD guidelines could still be strengthened, for

	example by: - Focus more on risks, rather than on (established) business relationships. - Provide clarity on how companies should prioritize risks and account for their prioritization. - Focus on what companies may do to address identified risks, rather than on plans, codes of conduct and contractual clauses. Acknowledge a shared responsibility for companies, instead of pass on their responsibility to supply chain partners.
Prioritisation of identified actual and potential adverse impacts	SE (Comments): **SE welcomes that a more risk based approach has been implemented. Guidance on how a valid risk prioritization is made is however necessary in order for the companies to be able to comply with the rules and for the supervisory authorities to perform their supervision.** DK (Comments):

	DK supports the addition of an article 6(a) to expressly provide for the prioritisation of identified adverse impacts, in line with the OECD guidelines' risk-based approach.
1. Member States shall ensure that companies are allowed to prioritise adverse human rights impacts and adverse environmental impacts arising from their own operations,-those of their subsidiaries or those of their established business partners identified pursuant to Article 6 for fulfilling the obligations laid down in Articles 7 or 8, where it is not feasible to address all identified adverse impacts at the same time to the full extent.	LV (Drafting): **Member States shall ensure that companies are allowed to prioritise adverse human rights impacts and adverse environmental impacts arising from their own operations, those of their subsidiaries or those of their established business partners identified pursuant to Article 6 for fulfilling the obligations laid down in Articles 7 or 8,** LV (Comments): Although we support the idea of prioritization of identified actual and potential adverse impacts, we are not sure that it will it really be possible to evaluate if it was or was not feasible to address all identified adverse impacts at the same time to the full extent? AT

	(Drafting): **1. Member States shall ensure that companies are allowed to prioritise adverse human rights impacts and adverse environmental impacts arising from their own operations, those of their subsidiaries or those of their business partners identified pursuant to Article 6 for fulfilling the obligations laid down in Articles 7 or 8, where it is not feasible to address all identified adverse impacts at the same time to the full extent.** AT (Comments): We welcome the inclusion of this provision. However, some changes for a higher level of detail may still be required. Enterprises may prioritise operations or business relationships for assessment where the risk of adverse impacts is most significant. Furthermore, when deciding on appropriate measures to take, companies should be able to choose a measure in the light of the company's involvement in the adverse impact.

	This system should not lead to a potential loophole for companies to avoid the responsibilities and obligations of this directive, but provide more clarity on the possible steps and measures reasonably available to the companies without lowering the goals of this directive. PT (Comments): PT agrees with this new article. DK (Comments): DK supports this addition. NL (Drafting): **1. Member States shall ensure that companies are allowed to prioritise adverse human rights impacts and adverse environmental impacts identified pursuant to Article 6 for fulfilling the obligations**

	laid down in Articles 7 or 8, where it is not feasible to address all identified adverse impacts at the same time to the full extent.
2. The prioritisation of adverse impacts shall be based on severity and likelihood of the adverse impact. Severity of an adverse impact shall be assessed based on its gravity, the number of persons or the extent of the environment affected, its irreversibility, and difficulty to provide remedy considering the measures necessary to restore the situation prevailing prior to the impact.	AT (Comments): We welcome the alignment with the OECD Guidelines. PT (Comments): PT agrees with this new article. DK (Comments): DK supports this addition. MT (Drafting):

	2. The prioritisation of adverse impacts shall be based on severity and likelihood of the adverse impact. Severity of an adverse impact shall be assessed based on its gravity, ~~the number of~~ person or persons or the extent of the environment affected, its irreversibility, and difficulty to provide remedy considering the measures necessary to restore the situation prevailing prior to the impact. MT (Comments): Malta believes that when applying human rights concepts, it is important to highlight that every person is important, and it is not an issue of critical mass or numbers. NL (Drafting): **2. The prioritisation of adverse impacts shall be based on severity and likelihood of the adverse impact, informed by stakeholder**

	consultation. Severity of an adverse impact shall be assessed based on its scale (gravity of the adverse impact), scope (reach of the impact) and irremediable character (any limits on the ability to restore the individuals or environment affected to a situation equivalent to their situation before the adverse impact). Companies shall take into account that their actual or potential leverage or exposure to liability are not relevant factors in the prioritisation of adverse impacts. NL (Comments): Severity is not an absolute concept and it is context specific. It is not necessary for an impact to have more than one of these characteristics (scale, scope and irremediable character) to be considered 'severe', although it is often the case that the greater the scale or the scope of an impact, the less it is 'remediable'. Where the risk of adverse impacts is most significant will be specific to the enterprise, its sector and its business relationships. In some instances this may be a judgement call. Therefore enterprises may wish to consult with relevant stakeholders on how to prioritise and communicate their rationale through their RBC policies. In addition, adverse impacts should not be prioritised based on whether a company has control or leverage over the impact.

3. Once the most significant adverse impacts are addressed in accordance with Articles 7 or 8 in a reasonable time, the company shall address less significant adverse impacts.	AT (Comments): We support this provision. It is clear that the responsibility of the company to address all adverse impacts remains the same and not that the company can choose which adverse impact to address or not. However, we should further discuss what "a reasonable time" means. PT (Comments): PT agrees with this new article. DK (Comments): DK supports this addition. NL

	(Comments): NL asks what would be 'a reasonable time'. This paragraph could become a challenge for enforcement agencies.
Article 7	NL (Comments):
Preventing potential adverse impacts	FI (Comments): As in para 6 and 6 a we support the efforts increasing prioritisation and risk-based analysis. As a general consideration, it is important that the regulation directs the companies to also other activities than the seeking for contractual insurance and the contractual cascading.

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 human rights impacts and adverse environmental impacts that have been, or should have been, identified pursuant to Article 6 **and, where necessary, prioritised pursuant to Article 6a**, in accordance with paragraphs 2, 3, 4 and 5 of this Article, **taking into account the level of companies' involvement in the potential adverse impacts**[24].	HU (Comments): HU supports the amendments. LV (Comments): In our oppinion it is important that the suggested Recital is added to claritfy this provision. AT (Comments): We appreciate the changes which reflect prioritisation and the companies'

[24] **A recital will be added to clarify this provision along the following lines: "Companies should be obliged to prevent or mitigate the adverse impacts that they cause or to which they contribute. When companies are not causing nor contributing to the adverse impacts occurring in their value chain, they should be obliged to use their influence to prevent or mitigate the adverse impact caused by their subsidiaries or established business partners or to increase their influence to do so."**

	involvement in the potential adverse impact. However, Art 7 and Art 8 further need clarifications and improval. SE (Comments): **SE welcomes that a more risk based approach has been implemented. The text must however be further analysed.** **Regarding the footnote: would the second part, regarding the companies' obligation to use their influence, mean that responsibility would occur even when there is no link between the company an the adverse impact (see our comment on 3 r iii)? Also, what more exactly would be required of companies to fulfill the obligation to "use their influence"?** PT (Drafting): "Companies should be obliged to prevent or mitigate the adverse impacts that they cause or to which they contribute. When the companies are not

	causing nor contributing to the adverse impacts occurring in their value chain, companies should be obliged to use their influence to prevent or mitigate the adverse impact caused by their subsidiaries or established business partners or to increase their influence to do so." PT (Comments): We have strong reservations regarding the second part of the text of the recital. The first part its stems from all the Directive: this legal instrument indeed establishes a set of obligations for companies. However, regarding the second part («When companies are not…they should be obliged»), under the Directive, companies are not obliged to adopt a conduct, to do something, etc. There is no obligation. The use of «should» combined with «be obliged» only contributes also to reinforce the ideia that there is a duty/commitement. Thus, the recital creates a duty for companies that it is not set up in the text. Lastly, and if we understood correctly «to increase their influence to do so», it seems that companies are bound to expand their influence in order to have an effect on their subsidiaries or established business partners, which we do not see how can this be done (increase of net turnover? Increase of period of time of the relationship between the company and the subsidiary?). As an alternative we propose the text on the left column. The aim is to express that due to their relationship, companies should encourage subsidiaries or established business partners to prevent or mitigate adverse impacts.

	This comment and proposal is also valid for foot note 60 (23 on this document). DK (Comments): DK: DK supports this addition. However, we suggest that clarification of the provision should be added to the article and not only as a recital. MT (Comments): Within the recital note 23 that the Presidency was referring to, Malta would like to ensure that there is a reference to the fact that no complex corporate structure should be used involving third countries to circumvent the obligations arising from this Directive. Where possible within the recital it is important that the beneficial owners of third country corporate structures are disclosed to the reporting entity that falls within the scope of this Directive. NL

	(Drafting): 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 human rights impacts and potential adverse environmental impacts that have been, or should have been, identified pursuant to Article 6 **and, where necessary, prioritised pursuant to Article 6a**, in accordance with paragraphs 1(a), (b) and (c), 2, 3, 4 and 5 of this Article, **taking into account the level of companies' involvement in the potential adverse impacts**[25]. NL (Comments): NL supports this addition.

[25] **A recital will be added to clarify this provision along the following lines: "Companies should be obliged to prevent or mitigate the adverse impacts that they cause or to which they contribute. When companies are not causing nor contributing to the adverse impacts occurring in their value chain, they should be obliged to use their influence to prevent or mitigate the adverse impact caused by their subsidiaries or established business partners or to increase their influence to do so."**

	NL (Drafting): (a) In case of a company's involvement in an adverse impact in accordance with article 3(r)(i), appropriate measures shall include taking the necessary steps on its own initiative to prevent or mitigate the adverse impact. (b) In case of a company's involvement in an adverse impact in accordance with article 3(r)(ii), appropriate measures shall include (i) taking the necessary steps to prevent its contribution, and (ii) using or taking reasonable steps to increase its leverage with other responsible parties to prevent the remaining risk. In case of a company's involvement in an adverse impact in accordance with article 3(r)(iii), appropriate measures shall include using leverage or taking reasonable steps to increase its leverage with relevant entities to seek to prevent or mitigate the impact. NL (Comments): Here, NL proposes 3 new paragraphs that spell out what is expected according to the specific levels of involvement, instead of simply presuming (a) that all problems rest with third parties (vs the company's own conduct) and should be managed through contractual measures and/or (b) that everything requires a formal 'prevention plan'.

2. Companies shall be required to take the following actions, where relevant:	AT (Comments): There should be clear, realistic and concrete measures for companies and no exhaustive list. Due Diligence from the international guidelines is a dynamic process, which is context specific. Companies must be encouraged to take *any* measures that can help them fulfil their obligation to respect human rights, the climate and the environment. However, there should be more clarity on possible measures to be taken by companies. The appropriate measure depends on the company's involvement in the adverse impact (causing, contributing, or being directly linked to it). We welcome that this concept is now integrated in the directive. The directive should also clarify what an appropriate measure looks like when the company is confronted with systemic issues (Systemic issues refer to problems or challenges that are prevalent within a context and are driven by root causes outside of the enterprise's immediate control, but that nonetheless increase the risk of adverse impacts within the enterprise's own operations or supply chain. Systemic risks may arise from governance failures and the failure of governments to fulfil their duty to enforce the laws and protect human rights; OECD (2018), OECD

	Due Diligence Guidance for Responsible Business Conduct, P. 76). NL (Drafting): 2. Companies shall be required to take appropriate measures including, where relevant: NL (Comments): This list should not be exhaustive, and should refer back to the definition of "appropriate measures".
(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 action and qualitative and quantitative indicators for measuring improvement. The prevention action plan shall be developed in consultation with affected stakeholders;	HU (Comments): HU supports the amendment.

	AT (Drafting): (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 action and qualitative and quantitative indicators for measuring improvement. The prevention action plan shall be developed through meaningful stakeholder engagement with affected stakeholders; AT (Comments): Meaningful engagement with relevant stakeholders or their legitimate representatives throughout the due diligence process is a key component of due diligence as recognized in existing international standards, such as the OECD due diligence guidance for responsible business conduct. Its objective is for companies to understand and identify effective ways to respond to affected stakeholder's needs and concerns, particularly of those

	who are likely to be the most vulnerable. Meaningful stakeholder engagement should thus be embedded thought the due diligence obligations of companies to ensure effective and high-quality risk assessment, risk mitigation measures, ongoing monitoring, and grievance mechanisms. PT (Comments): PT does not object. DK (Comments): DK supports this addition.
(b) seek contractual assurances from a **direct** business partner ~~with whom it has a direct business relationship~~ that it will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by seeking corresponding contractual assurances from its partners, to the extent that their activities are part of the company's value	PL (Comments):

chain (contractual cascading). When such contractual assurances are obtained, paragraph 4 shall apply;	**PL** We would like to stress that, in case of certain established business partners (e.g. non-EU large IT service providers), entities subject to the Directive may encounter difficulties in collecting all the necessary data and/or introducing 'contractual assurances' into their contracts due to a stronger market position of the business partner. We see it important to clarify what approach would be deemed appropriate in such a situation. HU (Comments): HU supports the amendments. LV (Comments): Considering the significance of Article 7 for the implementation of Article 22 in our opinion it is very important that Article 7 is very clear regarding to obligations that are laid down in this Article. In our opinion it is still not clear what are the conditions that needs to be met to conclude that company has complied with this obligations – is it only in cases where the

	contractual assurances are obtained or it is enough that company proves that it has acted on it and tried to obtain them. Maybe the word "*obtain*" instead of "*seek*" could be used. It would be useful if this aspect would be explained in Recitals. AT (Comments): Seeking contractual assurances could have negative impacts on a business partner, esp. SMEs, and should not be used to transfer the companies responsibility to conduct due diligence. This point needs further discussion. SE (Comments): Contractual assurance is one measure but not the only measure and cascading can potentially undermine the due diligence process. The pro-active process should be based on severity of risk and dialogue with business partners as well as stakeholders. Important to avoid simple box-ticking exercises and transferring responsibility and costs to SMEs.

	Text should be developed. PT (Comments): PT supports the new wording.
(c) make necessary investments, such as into management or production processes and infrastructures, to comply with paragraph 1;	NL (Drafting): (c) make necessary investments or improvements, such as into management or production processes and infrastructures, to comply with paragraph 1;
(d) provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME;	AT (Drafting): (d) provide targeted and proportionate support for an SME with which the company has an business relationship, where compliance with the

	code of conduct or the prevention action plan would jeopardise the viability of the SME; SE (Comments): Which kind of support is intended? The meaning of this article should be further elaborated. IT (Comments): IT – (Comments) – we would like to stress the importance of this provision, also in light of the European and particularly Italian business system characterized by the prevalence of small and medium-sized enterprises. FI (Drafting): (d) provide targeted and proportionate support for an SME with which

	the company has an established business relationship, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME; the targeted and proportionate support may take the form of financing, such as low-interest loans, guarantees of continued sourcing, or assistance in securing financing, or guidance, such as in the form of training or the upgrading of management systems FI (Comments): FI here we find the proposed addition in Presidency Flash 30.8.22 point 2.3. option A going into the right direction, but still some reservation remain on the fact if the SMEs would be taken out from the value chain of a company, hence we propose to take out the "direct financing" mention. MT (Comments): Malta would like to enquire regarding the types of potential incentives that

	can be put forward in order to facilitate this "forward-looking" provision. NL (Drafting): (d) provide targeted and proportionate support for an SME who is a direct business partner, where the contractual assurances or the compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME;
(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** ~~bring the adverse impact to an end~~, in particular where no other action is suitable or effective.	HU (Comments): HU supports the amendments. PT (Comments): PT supports the new wording.

	NL (Drafting): (f) Where another entity's actions or omissions pursuant to article 3(r)(i) or 3(r)(ii) may play a role in a potential adverse impact, appropriate measures shall include: a) establishing the company's expectations of its business partners with regard to preventing and mitigating the impact, including through the use of contractual assurances from direct business partners after evaluating the partner's capacity to meet those expectations. When such contractual assurances are obtained, paragraph 4 shall apply; b) providing or enabling access to capacity-building for business partners. Where the relevant business partner is an SME, providing targeted and proportionate support where meeting the company's expectations would jeopardise the viability of the SME; c) in compliance with Union law including competition law, collaborate collaborating with other entities, including, where relevant, to increase the feasibility of preventing or mitigating company's ability to prevent or mitigate the adverse impact whether bilaterally or through multistakeholder collective action; NL

	(Comments): These factors are specific to contribution/linkage situations where another entity is involved and leverage becomes relevant.
3. As regards potential adverse impacts that could not be prevented or adequately mitigated by the measures in paragraph 2, the company may seek to conclude a contract with a**n indirect business** partner ~~with whom it has an indirect relationship~~, with a view to achieving compliance with the company's code of conduct or a prevention action plan. When such a contract is concluded, paragraph 4 shall apply.	HU (Comments): HU supports the amendments. LV (Comments): Still it is not clear how this provision needs to be understood, because of the use of the words "**may** seek" as opposed to Paragraph 2 point (b) where it is clear that seeking contractual assurances is more as an obligation, not a choice. Maybe it could be explained in the Recital. SE (Comments): **A new term has been implemented in the proposal "direct/indirect**

	business partner". The meaning and consequences of the new term is unclear. See comment 3 e. PT (Drafting): PT (Comments): PT agrees with the change performed in the text as it becomes clearer. NL (Comments): NL questions this paragraph, as it suggests that companies who are not able to conclude a contract with their business relation, are forced to conclude a contract with the suppliers of their business relation.
4. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of	AT

verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification.	(Comments): Suitable industry initiative or independent third-party verifications, but also other legally binding initiatives like the Accord (Former Bangladesh Accord) can have positive effects on the due diligence of companies. However, we need to make sure that such initiatives do not lead to green washing. Also, independent third-party verification needs clear and practical standards. NL (Drafting): 4. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer **to industry initiatives that demonstrably align with international standards** or independent third-party verification by appropriately qualified providers. NL (Comments): This provides clearer parameters than just “suitable”.

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. Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.	NL (Drafting): The contractual assurances shall be fair, reasonable and non-discriminatory. Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification. NL (Comments): NL suggests that contractual assurances should be fair, reasonable, and non-discriminatory for all companies, not just SMEs.
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, the company shall be required **as a last resort** to refrain from entering into new or extending existing relations with the partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions:	HU (Comments): HU supports the proposed addendum since it makes the text more powerful.

	LV (Comments): The purpose of the remark "*where the law governing their relations so entitles them to*" is not clear, because it raises a question, which could be the situations where the law governing company's relations could not entitle business partners to terminate (and temporarily suspend) the business relationships, if in this Paragraph below is an obligation for Member States to provide for the availability of an option to terminate (temporarily suspend) the business relationship in contracts governed by their laws. AT (Drafting): 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 the partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions: AT (Comments): It is difficult to decide on whether to continue with the business relationship or end it as a last resort. It is very case specific and there is a need for flexibility. In general, Due Diligence as a risk-based management system goes beyond procedural provisions (no "tick the box" exercise). However, this requires clarity on effectiveness and practicability. It should be made clear that from the company a bona fide effort is expected and not the success to produce a certain condition. We welcome the clarification that the suspension or termination of the business relation has to be done as a last resort. Our changes would help clarify that "as a last resort" does not only mean to refrain from entering into new or extending existing relations, but stands for the whole paragraph. FI (Comments):

	We believe that article 5 should be the last resort. In this sense addition is ok. However, we would like to note that any withdrawal from a business relationship should also seek to exercise due diligence and would like to see more this kind if elements in the text. PT (Comments): PT agrees with the addition as it aims at securing companies' business stability. DK (Comments): DK supports this addition. NL (Drafting): 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 and 4, the company shall be required to seek to increase its leverage, e.g. through suitable industry initiatives, to influence the entity causing the adverse impact to prevent or mitigate the impact. As regards potential adverse impacts within the meaning of paragraph 1 that could not be prevented or adequately mitigated by the measures of paragraphs 2, 4 and 5, the company may consider , where the law governing their relations so entitles them to, taking the following actions: NL (Comments): NL considers the following important when addressing disengagement, and suggests to add to this paragraph: Any plans for disengagement should also take into account how crucial the supplier or business relationship is to the enterprise, the legal implications of remaining in or ending the relationship, how disengagement might change impacts on the ground, as well as credible information about the potential social and economic adverse impacts related to the decision to disengage.

(a) temporarily suspend ~~commercial relations~~ **the business relationship** with ~~the partner in question~~ **respect to the activities concerned**, while pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts will succeed in the short-term;	HU (Comments): HU supports the amendments. SE (Comments): Why only short term? Some efforts might require a longer perspective depending on risk, impact and business climate and context, especially in complex markets. Text should be further clarified and developed. PT (Comments): PT agrees with the change performed in the text as it becomes clearer. PT has concerns about the impact of this provision on the regulation of the contractual relationships of companies. MT

	(Drafting): a) **where possible,** temporarily suspend ~~commercial relations~~ **the business relationship** with ~~the partner in question~~ **respect to the activities concerned**, while pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts will succeed in the short-term; MT (Comments): Malta would like to write the word 'where possible' in order to have a workable draft NL (Drafting): (a) temporarily suspend commercial relations with the direct business relationship in question, while pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts will succeed in

	the short-term;
(b) terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.	MT (Drafting): (b) **where possible,** terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe. MT (Comments): Malta would like to write the word 'where possible' in order to have a workable draft NL (Drafting): (b) disengage from a business relationship, taking into account potential social and economic adverse impacts, with respect to the activities concerned, only after failed attempts of preventing or mitigating the adverse impact, when adverse impacts are irremediable, or when there is

	no reasonable prospect of change.
Member States shall provide for the availability of an option to terminate the business relationship in contracts governed by their laws.	LV (Drafting): Member States shall provide for the availability of an option to temporarily suspend or terminate the business relationship in contracts governed by their laws. MT (Comments): Malta believes that the law of contracts and the legal principle of "pacta sunt servanda", which is an essential foundation of contract law, will be significantly weakened by this provision and it may also impact negatively the civil/common law concept of contract law. This provision will also give rise to substantial increase in litigation and corporate costs, apart from potentially giving rise to the possibility of abuse. Malta would like the legislator to ensure that the necessary legal safeguards are put in place in order to ensure that potential abuses are kept to a minimum. Allowing parties to depart from their contractual ties and invoke a

	legislative provision will destabilize the strength and stability that a contract provides in a given relationship. NL (Comments):
6. By way of derogation from paragraph 5, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.	PL (Comments): **PL** We propose to define 'substantial prejudice' as this rule may work to the detriment of the directive provisions. DK (Drafting): By way of derogation from paragraph 5, point (b), when companies

	referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract ~~when this can be reasonably expected to cause substantial prejudice~~ to the entity to whom that service is being provided. DK (Comments): DK: DK does not find it appropriate to require a company to terminate a credit, loan or other financial services contract by law. This would require an extensive impact assessment on the implications for companies that will lose access to financial services incl. lending, insurance, etc. The derogations in paragraph 7 will require extensive assessments of each identified adverse impact and therefore it should be reconsidered to demand the termination of a financial service by law. MT (Comments): Malta agrees with this provision. However, with regard to banks and financial institutions, the concept of terminating a loan agreement prior to

	its expiry, will significantly increase the banks risks, the number of recovery situations and provision for doubtful and bad debts.
7. By way of derogation from paragraph 5, point (b), the company shall not be required to terminate the business relationship in case where:	AT (Comments): We appreciate the changes to the text. However, some further clarifications seem necessary. SE (Comments): **SE welcomes the adjusted text on responsible exit.** FI (Comments): Overall FI supports the new additions to art 7 paras 7 and 8 in terms of clarifying the situations where termination is not a possible solution.

	PT (Comments): PT supports the introduction of this new provision. NOTA: os representantes das empresas apoiam a inclusão deste paragrafo. NL (Comments): NL suggests to add in this paragraph (in line with the OECD guidance0: *It may also be in the enterprise's interest to explain the decision not to end the business relationship, how this decision aligns with their policies and priorities, what actions are being taken to attempt to apply leverage to mitigate the impacts, and how the business relationship will continue to be monitored in the future.*
(a) there is a reasonable expectation that the termination would result in an adverse impact that is more severe than the potential adverse impact that could not be prevented or adequately mitigated, or	PT (Comments): PT supports the introduction of this new provision, nevertheless we would welcome some examples of these situations.

	DK (Comments): DK: DK supports this addition.
(b) no available alternative to that business relationship exists and the termination would cause substantial prejudice to the company.	HU (Comments): This exemption is too general, it could easily undermine the main objectives of the Directive. We could support an exemption in case the contracting partner is an SME. In their case, temporary suspension or the non-renewal of contracts should be sufficient. (kerpol) AT (Comments): The notion “substantial prejudice” seems unclear at the moment. This should not become a loophole for companies to continue a business relationship where it is impossible to mitigate or prevent adverse impacts. According to OECD Due Diligence Guidance, to end a business

	relationship may not be possible or practicable when the supplier is a crucial business relationship. A business relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists (OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, p. 81). It is necessary to further explain "substantial prejudice". FI (Comments): We suggest clarifying the terms "no available alternative" and "substantial prejudice" – looking at this from human rights protection perspective we note here the possibility of circumvention. We would like to avoid situations where under this sub-paragraph companies intentionally would continue practises, which have an adverse impact. PT (Comments): PT supports this provision.

	DK (Comments): DK: We suggest clarifying the terms “no available alternative” and “substantial prejudice”.
	AT (Drafting): **Substantial prejudice means that the business relationship provides an essential product or service to the company.** AT (Comments): This formulation may help to clarify “substantial prejudice”, which is based on the OECD Due Diligence Guidance for Responsible Business Conduct, P. 81. MT (Drafting): **or (c) National security, defence and national critical supplies may be**

	significantly jeopardized. MT (Comments): Within the current geopolitical situation, Malta believes that it is essential to have the necessary safeguards in place such as in the provision of energy (for example the current situation we have in the provision of gas) products, food, industrial supplies, critical raw materials or products or services impacting the national security and defence.
Where the company decides not to terminate the business relationship in accordance with subparagraph 1, it shall report to the competent supervisory authority about the duly justified reasons of this decision.	LV (Comments): What is the purpose of this provision? SE (Comments): **How should the reporting be performed? SE prefers that the reporting should be made on request by the competent supervisory**

	authority. NL (Drafting): Where the company decides not to terminate the business relationship in accordance with subparagraph 1, it shall report to the competent supervisory authority about the duly justified reasons of this decision and **what actions are being taken to attempt to apply leverage to mitigate the impacts.**
The company shall monitor the potential adverse impact, periodically reassess its decision not to terminate the business relationship and seek alternative business relationships.	AT (Comments): What does “periodically reassess” mean? What timeframe is acceptable? DK (Comments): DK: DK supports this addition.

8. The obligation to temporarily suspend or terminate the business relationship pursuant to paragraph 5 shall not apply to commercial agreements concluded by the company before the expiry of the transposition period in accordance with Article 30 of this Directive.	LV (Comments): We support this drafting suggestion. We would only like to mention, that preferably same kind of indication is included in the recitals regarding to all the other obligations - that obligations of this Directive shall not apply to commercial agreements concluded by the company before the expiry of the transposition period in accordance with Article 30 of this Directive, thus it has no influence on contracts that has been concluded before aforementioned date. PT (Comments): PT supports this new provision. DK

	(Comments): DK supports this addition. We would also like to suggest that text should be added that whenever companies enter into new contracts or extend existing ones, companies must include the possibility of temporarily suspending or terminating contracts. Otherwise this article could provide a loophole that could inspire companies to keep extending old contracts.
Article 8	NL (Comments): Same comments as with article 7 apply.
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 **and, where necessary, prioritised pursuant to Article 6a** to an end, in accordance with paragraphs 2 to 6 of	HU

this Article, **taking into account the level of companies' involvement in the actual adverse impacts**[26].	(Comments): HU supports the amendments. LV (Comments): In our oppinion it is important that the suggested Recital is added to claritfy this provision. AT (Comments): We appreciate the changes which reflect prioritisation and the companies' involvement in the potential adverse impact. However, Art 7 and Art 8 further need clarifications and improval.

[26] **A recital will be added to clarify this provision along the following lines: "Companies should be obliged to bring to an end or mitigate the adverse impacts that they cause or to which they contribute. When companies are not causing nor contributing to the adverse impacts occurring in their value chain, they should be obliged to use their influence to bring to an end or minimise the adverse impact caused by their subsidiaries or established business partners or to increase their influence to do so."**

	SE (Comments): **SE welcomes that a more risk based approach has been implemented. The text must however be further analysed.** **Regarding the footnote: would the second part, regarding the companies' obligation to use their influence, mean that responsibility would occur even when there is no link between the company an the adverse impact (see our comment on 3 r iii)? Also, what more exactly would be required of companies to fulfill the obligation to "use their influence"?** PT (Comments): PT agrees with the changes performed. NOTA: os representantes das empresas apoiam esta nova redação. DK (Comments): DK supports this addition. However, we suggest that clarification of the

	provision should be added to the article and not only as a recital.
2. Where the adverse impact cannot be brought to an end, Member States shall ensure that companies minimise the extent of such an impact.	AT (Comments): There should be clear, realistic and concrete measures for companies and no exhaustive list. Due Diligence from the international guidelines is a dynamic process, which is context specific. Companies must be encouraged to take *any* measures that can help them fulfil their obligation to respect human rights, the climate and the environment. However, there should be more clarity on possible measures to be taken by companies. The appropriate measure depends on the company's involvement in the adverse impact (causing, contributing, or being directly linked to it). We welcome that this concept is now integrated in the directive. The directive should also clarify what an appropriate measure looks like when the company is confronted with systemic issues (Systemic issues refer to problems or challenges that are prevalent within a context and are driven by root causes outside of the enterprise's immediate control, but that nonetheless increase the risk of adverse impacts within the enterprise's own operations or supply chain. Systemic risks may arise from governance failures and the failure of governments to fulfil their

	duty to enforce the laws and protect human rights; OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, P. 76).
3. Companies shall be required to take the following actions, where relevant:	FI (Drafting): Companies shall be required to take the following actions, FI (Comments): FI supports the proposal to delete "where relevant"
(a) neutralise the adverse impact or minimise its extent, including by the payment of damages to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the ~~contribution of the~~ company's ~~conduct to~~ **participation in** the adverse impact;	HU (Comments): HU supports the amendment. AT

	(Drafting): (a) neutralise the adverse impact or minimise its extent, including by the payment of damages to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the ~~contribution of the~~ company's ~~conduct to~~ **involvement in** the adverse impact; AT (Comments): "Involvement" seems more adequat in the light of Art 3 r. SE (Drafting): neutralise the adverse impact or minimise its extent, including by the payment of damages to the affected persons and of financial **and/or non-financial** compensation to the affected communities. The action shall be

	proportionate to the significance and scale of the adverse impact and to the contribution of the company's conduct to the adverse impact; SE (Comments): According to which principles should the damages be calculated? UNGP 25 (ie UN Guiding Principle 25) also includes broader possibilities of remedy actions including non-financial compensation. PT (Drafting): **"Company's type/mode of participation "** PT (Comments): PT supports the new wording as the interpretation of the text becomes easier.

	Because it be be causing, participating , direct or indirect) a DK (Comments): DK: Denmark has previously raised the concern that even though this is not a prioritised list, putting payment of damages and financial compensation as a first solution is not entirely in line with internationale guidelines and might incentivise companies to pay damages instead of correcting the adverse impact. Denmark suggests that (a) be divided into two new paragraphs: 1: Neutralise the impact or minimise its extend, 2: Payment of damages or financial compensation if deemed beneficiary for the affected persons. NL (Drafting): mitigate the adverse impact or minimise its extent, including by the payment of damages to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the ~~contribution of the~~

	company's ~~conduct to~~ **participation in** the adverse impact; NL (Comments): Mitigate is language found in the OECD-GL and UNGPs. NL suggests to clarify that 'participation in the adverse impact' refers to the level of involvement of a company (i.e. cause, contribute or linked to), according to the involvement framework.
(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 action and qualitative and quantitative indicators for measuring improvement. Where relevant, the corrective action plan shall be developed in consultation with stakeholders;	HU (Comments): HU supports the amendment. AT (Drafting): (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 action and qualitative and quantitative indicators for measuring improvement. Where relevant, the corrective action plan shall be developed through meaningful stakeholder engagement with stakeholders; AT (Comments): Meaningful engagement with relevant stakeholders or their legitimate representatives throughout the due diligence process is a key component of due diligence as recognized in existing international standards, such as the OECD due diligence guidance for responsible business conduct. Its objective is for companies to understand and identify effective ways to respond to affected stakeholder's needs and concerns, particularly of those who are likely to be the most vulnerable. Meaningful stakeholder engagement should thus be embedded thought the due diligence obligations of companies to ensure effective and high-quality risk

	assessment, risk mitigation measures, ongoing monitoring, and grievance mechanisms. SE (Comments): Don't envisage cases where stakeholder consultations wouldn't be relevant. Can the Commission give examples? PT (Comments): PT agrees with the new wording. PT suggests the remotion of "where relevant" to promote the stakeholders consultation. DK (Comments): DK: The international guidelines are very clear on the importance of

	stakeholders and their involvement, especially when handling actual adverse impacts. Thus Denmark suggest to delete 'where relevant' in the last sentence. NL (Drafting): (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 action and qualitative and quantitative indicators for measuring improvement., the corrective action plan shall be developed in consultation with stakeholders;
(c) seek contractual assurances from a direct **business** partner ~~with whom it has an established business relationship~~ that it will ensure compliance with the code of conduct and, as necessary, a corrective action plan, including by seeking corresponding contractual assurances from its partners, to the extent that they are part of the value chain (contractual cascading). When such contractual assurances are obtained, paragraph 5 shall apply.	HU (Comments): HU supports the amendment. AT

	(Comments): Seeking contractual assurances could have negative impacts on a business partner, esp. SMEs, and should not be used to transfer the companies responsibility to conduct due diligence. This point needs further discussion. SE (Comments): **A new term has been implemented in the proposal "direct/indirect business partner". The meaning and consequences of the new term is unclear. See comment 3 e.** PT (Comments): PT agrees with the changes. NL (Comments):

(d) make necessary investments, such as into management or production processes and infrastructures to comply with paragraphs 1, 2 and 3;	
(e) provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME;	IT (Comments): IT – (Comments) - It is advisable to provide support to SMEs regardless of the risk of profitability. There may be other issues unrelated to profitability that would put the life of an SME at risk. FI (Drafting): (d) provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the prevention action plan would jeopardise

	the viability of the SME; the targeted and proportionate support may take the form of financing, such as low-interest loans, guarantees of continued sourcing, or assistance in securing financing, or guidance, such as in the form of training or the upgrading of management systems FI (Comments): FI here we find the proposed addition in Presidency Flash 30.8.22 point 2.3. option A going into the right direction, but still some reservation remain on the fact if the SMEs would be taken out from the value chain of a company, hence we propose to take out the "direct financing" mention.
(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 action is suitable or effective.	HU (Comments): HU supports the proposed addendum. PT

	(Comments): PT agrees with the changes. Coherence.
4. As regards actual adverse impacts that could not be brought to an end or adequately mitigated by the measures in paragraph 3, the company may seek to conclude a contract with a**n indirect business** partner ~~with whom it has an indirect relationship~~, with a view to achieving compliance with the company's code of conduct or a corrective action plan. When such a contract is concluded, paragraph 5 shall apply.	HU (Comments): HU supports the amendment. AT (Comments): Suitable industry initiative or independent third-party verifications, but also other legally binding initiatives like the Accord (Former Bangladesh Accord) can have positive effects on the due diligence of companies. However, we need to make sure that such initiatives do not lead to green washing. Also, independent third-party verification needs clear and practical standards. SE (Comments):

	A new term has been implemented in the proposal "direct/indirect business partner". The meaning and consequences of the new term is unclear. See comment 3 e. PT (Comments): PT agrees with the changes. The text becomes clearer.
5. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification.	
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. Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.	
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 provided for in paragraphs 3, 4 and 5, the company shall be required **as a last resort** to refrain from entering into	HU (Comments):

new or extending existing relations with the partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions:	HU supports the proposed addendum. AT (Drafting): 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 provided for 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 the partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions: AT (Comments): It is difficult to decide on whether to continue with the business relationship or end it as a last resort. It is very case specific and there is a need for flexibility. In general, Due Diligence as a risk-based management system goes beyond procedural provisions (no "tick the box" exercise). However, this requires clarity on effectiveness and practicability. It should be made clear that from the company a bona fide effort is expected and

	not the success to produce a certain condition. We welcome the clarification that the suspension or termination of the business relation has to be done as a last resort. Our changes would help clarify that "as a last resort" does not only mean to refrain from entering into new or extending existing relations, but stands for the whole paragraph. PT (Comments): PT agrees with the changes as they aim at providing stability to companies.
(a) temporarily suspend ~~commercial relations~~ **the business relationship** with ~~the partner in question~~ **respect to the activities concerned**, while pursuing efforts to bring to an end or minimise the extent of the adverse impact, or	HU (Comments): HU supports the amendments. PT

	(Comments): PT agrees with the changes as they contemplate more business scenarios.
(b) terminate the business relationship with respect to the activities concerned, if the adverse impact is considered severe.	
Member States shall provide for the availability of an option to terminate the business relationship in contracts governed by their laws.	LV (Drafting): Member States shall provide for the availability of an option to temporarily suspend or terminate the business relationship in contracts governed by their laws. MT (Comments): Malta believes that the law of contracts and the legal principle of "pacta sunt servanda" will be significantly weakened by this provision and it may

	also impact negatively the civil/common law concept of contract law. This provision will also give rise to substantial increase in litigation and corporate costs, apart from potentially giving rise to the possibility of abuse. Malta would like the legislator to ensure that the necessary legal safeguards are put in place in order to ensure that potential abuses are kept to a minimum.
7. By way of derogation from paragraph 6, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract, when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.	DK (Drafting): By way of derogation from paragraph 6, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract, ~~when this can be reasonably expected to cause substantial prejudice~~ to the entity to whom that service is being provided. DK (Comments): DK: DK does not find it appropriate to require a company to terminate a credit, loan or other financial services contract by law. This would require an extensive impact assessment on the implications for companies that will lose access to financial services incl. lending, insurance, etc.

	The derogations in paragraph 7 will require extensive assessments of each identified adverse impact and therefore it should be reconsidered to demand the termination of a financial service by law. MT (Comments): Malta firmly agrees with this.
8. By way of derogation from paragraph 6, point (b), the company shall not be required to terminate the business relationship in case where:	AT (Comments): We appreciate the changes to the text. However, some further clarifications seem necessary. SE (Comments): **SE welcomes the adjusted text on responsible exit.** FI

	(Comments): Same comments as above on the matter PT (Comments): PT agrees with the addition of this provision.
(a) there is a reasonable expectation that the termination would result in an adverse impact that is more severe than the actual adverse impact that could not be brought to an end or minimised, or	
(b) no available alternative to that business relationship exists and the termination would cause substantial prejudice to the company.	HU (Comments): This exemption is too general, it could easily undermine the main objectives of the Directive. We could support an exemption in case the contracting partner is an SME. In their case, temporary suspension or the

	non-renewal of contracts should be sufficient. AT (Comments): The notion "substantial prejudice" seems unclear at the moment. This should not become a loophole for companies to continue a business relationship where it is impossible to mitigate or prevent adverse impacts. According to OECD Due Diligence Guidance, to end a business relationship may not be possible or practicable when the supplier is a crucial business relationship. A business relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists (OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, p. 81). It is necessary to further explain "substantial prejudice". DK (Comments): DK: We suggest clarifying the terms "no available alternative" and "substantial prejudice".
	AT

	(Drafting): **Substantial prejudice means that the business relationship provides an essential product or service to the company.** AT (Comments): This formulation may help to clarify "substantial prejudice", which is based on the OECD Due Diligence Guidance for Responsible Business Conduct, P. 81. MT (Drafting): **Or (c) National security, defence and national critical supplies may be significantly jeopardized.** MT (Comments): Within the current geopolitical situation, Malta believes that it is essential to have the necessary safeguards in place such as in the provision of energy (for example the current situation we have in the provision of gas)

	products, food, industrial supplies, critical raw materials or products or services impacting the national security and defence.
Where the company decides not to terminate the business relationship in accordance with subparagraph 1, it shall report to the competent supervisory authority about the duly justified reasons of this decision.	SE (Comments): **How should the reporting be performed? SE prefers that the reporting should be made on request by the competent supervisory authority.**
The company shall monitor the actual adverse impact, periodically reassess its decision not to terminate the business relationship and seek alternative business relationships.	AT (Comments): What does “periodically reassess” mean? What timeframe is acceptable?
9. The obligation to temporarily suspend or terminate the business relationship pursuant to paragraph 6 shall not apply to commercial agreements concluded by the company before the expiry of the transposition period in accordance with Article 30 of this Directive.	PT (Comments): PT supports the insertion of this new provision.

	DK (Comments): DK: DK supports this addition. We would also like to suggest that text should be added that whenever companies enter into new contracts or extend existing ones, companies must include the possibility of temporarily suspend or terminate contracts. Otherwise this article could provide a loophole that could inspire companies to keep extending old contracts.
Article 9	
Complaints procedure	SE (Comments): Is this procedure aligned with UNGP31 (principle 31) that contains criteria for non-judicial grievance mechanisms?

	NL (Drafting): **Complaints and grievances 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 they have legitimate concerns regarding actual or potential adverse human rights impacts and adverse environmental impacts with respect to their own operations, the operations of their subsidiaries and their value chains.	AT (Drafting): 1. Member States shall ensure that companies provide the possibility for persons and organisations listed in paragraph 2 to submit complaints to them where they have legitimate concerns regarding actual or potential adverse human rights impacts and adverse environmental impacts with respect to their own operations, the operations of their subsidiaries and their value chains. Member States shall ensure that companies can provide such a mechanism through collaborative arrangements with other companies or organisations or by participating in multi-stakeholder grievance mechanisms. AT (Comments): The appropriate response to a complaint depends on the circumstances of

	the specific case. A complaint can mean that there is indeed a problem which requires actions under Art 6, but sometimes it means that the grievance mechanism works and adverse impacts are being handled accordingly. In general, complaints procedures are a tool to provide effective remedy to victims or people affected by a company's activity. Effective remedy does not always mean the financial compensation of damage; it could also lead to the adaption of a company's activity in order to prevent further adverse impacts. This article should contain flexibility for companies and focus more on criteria which an effective complaints procedure should fulfil (e.g. UN Guiding Principles Nr. 31: legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, based on engagement and dialogue). There should be a possibility to establish and institutionalise cross-company grievance and complaints procedures. A complaint procedure is on non-judicial basis and often works on an informal basis. The OHCHR and the OECD significant guidance on the role of complaints procedures. Inspiration could also be drawn from the NCP-Network for the OECD-Guidelines for multinational Enterprises and could lead to synergies. Art 9 should be more in line with international standards. Cross-company or multi-stakeholder complaint procedures could be beneficial in terms of higher independence from single company mechanism, higher efficiency and effectiveness, continuous regional availability of the procedure. Collaboration can also lead to synergies.

	DK (Comments): DK: DK would welcome clarification as to what a "legitimate" concern would comprise and who is to assess whether it may be legitimate or not. NL (Drafting): 1. Member States shall ensure that companies provide, **or cooperate in providing,** the possibility for persons and organisations listed in paragraph 2 to submit complaints **and grievances** to them where they have legitimate concerns regarding actual or potential adverse human rights impacts and adverse environmental impacts with respect to their own operations, the operations of their subsidiaries and their value chains. NL (Comments): Please refer to our previous comments on strengthening the complaint

	procedure.
	AT (Drafting): 1b. Member States shall ensure that the complaints procedure, as referred to in paragraph 1, are legitimate, accessible, predictable, safe, equitable, transparent, rights-compatible and adaptable as set out in the effectiveness criteria for non-judicial grievance mechanisms in Principle 31 of the United Nations Guiding Principles on Business and Human Rights. AT (Comments): See comment above.
2. Member States shall ensure that the complaints may be submitted by:	
(a) persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact,	

(b) trade unions and other workers' representatives representing individuals working in the value chain concerned,	SE (Comments): Which organisations are included when referring to "other workers representatives"?
(c) civil society organisations active in the areas related to the value chain concerned.	SE (Comments): What does "active in the areas" mean?
	PT (Comments): PT suggests the insertion of two new paragraphs: (d) to identify Human rights institutions and human rights defenders and (e) to identify environmental rights defenders.
3. Member States shall ensure that the companies establish a procedure for dealing with complaints referred to in paragraph 1, including a procedure when the company considers the complaint to be unfounded,	SE

and inform the relevant workers and trade unions of those procedures. 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.	(Comments): The article should contain an opportunity for companies in a group to refer to a specific company within that group responsible for handling complaints, in order to reduce the administrative burden for such companies. NL (Drafting): 3. Member States shall ensure that the companies establish a procedure for dealing with complaints and grievances referred to in paragraph 1, including a procedure to object to the decision of ~~when~~ the company ~~considers~~ that the complaint is considered to be unfounded, and inform the relevant workers and trade unions of those procedures. Such procedures should be legitimate, accessible, predictable, equitable, transparent and dialogue-based. 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. Companies can also fulfil this requirement by establishing or joining a collective grievance mechanism through an industry association or multi-stakeholder group, as long as the company complies to all other obligations of article 9.

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	AT (Comments): It remains unclear what exactly "appropriate follow-up" means. Does it imply "remediation" as in the UNGP and OECD-Guidelines? NL (Drafting): (a) to request appropriate follow-up on the complaint from the company with which they have filed a complaint or grievance 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.	NL (Drafting): (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 or grievance.
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 value chains of the company, those of their established business relationships, to monitor the effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of human rights and environmental 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~~ **24** months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise. The due diligence policy shall be updated in accordance with the outcome of those assessments.	HU (Comments): HU supports the amendments. LV (Comments): We support the drafting suggestion in Article 10. AT

	(Drafting): 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 value chains of the company, those of their business relationships, to monitor the effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of human rights and environmental 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~~ **24** months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise. The due diligence policy shall be updated in accordance with the outcome of those assessments and through meaningful stakeholder engagement. AT (Comments): With regards to “established” see comment on Art 3 f.

	Meaningful stakeholder engagement should also be provided for in this article. FI (Comments): PT (Comments): PT welcomes the addition of "significant change" to this provision. However, in article 3, suggests the addition of a definition for it (based on the OECD one). PT supports a 24 month reassessment period. NL (Drafting): Member States shall ensure that companies carry out periodic assessments, with due consideration of relevant input from stakeholders,

	of their own operations and measures, those of their subsidiaries and, where related to the value chains of the company, those of their established business relationships, to monitor the effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of human rights and environmental 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~~ **24** months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise. The due diligence policy and the list of prioritised adverse impacts pursuant to article 6(a) shall be updated in accordance with the outcome of those assessments. NL (Comments): In addition, updating the list of prioritised risks and making reference to relevant input from stakeholders may be as relevant as (or more relevant than) updating the due diligence policy.

Article 11	
Communicating	
Member States shall ensure that companies that are not subject to reporting requirements under Articles 19a and 29a of Directive 2013/34/EU report on the matters covered by this Directive by publishing on their website an annual statement in a language customary in the sphere of international business. The statement shall be published **within 4 months after the end of the financial year** ~~by 30 April each year~~, covering the previous calendar year.	PL (Drafting): Member States shall ensure that companies that are not subject to reporting requirements under Articles 19a and 29a of Directive 2013/34/EU report on the matters covered by this Directive by publishing on their website an annual statement in a language customary in the sphere of international business. The statement shall be published **within 12 months after the balance sheet date of the financial year** ~~by 30 April each year~~ **for which the satement is drawn up**. Companies required to report sustainability information which have used the exemption in par. 7 of Article 19a or par. 7 of Article 29a of Directive 2013/34/EU shall be deemed to have fulfilled the due dilligence reporting obligations under this Directive.

	PL (Comments): **PL** We would like to point out that under the CSRD Directive the sustainability information including due dillgence disclosures will be a part of the management report which has to be published 'within a reasonable period of time, which shall not exceed 12 months after the balance sheet date' – in this case the Member States set out the exact timelimit for publication. Therefore we have concerns that it might be discriminatory to require from some of the companies under CSDD Directive the publication under Article 11 within much shorter deadline of 4 months. We suggest to consider the publication on the website within 12 months. Such an approach would be in line with the publication deadline on the website in case of public tax CBCR reports (tax CBCR Directive amending the Directive 2013/34/EU). Generally the publication deadline of only 4 months after the balance sheet date is envisaged in the publication regime for issuers only, other entities have in many Member States longer publication deadlines. As regards the reference to "calendar year" we are of the opinion that we should refer only to financial year as this might not be the same as the calendar year.

	Morover PL suggests to add an additional subparagprah in Article 11 in order to clarify the legal situation of subsidiaires being subject to CSRD Directive but using the reporting exemption set out in par. 7 of Article 19a and par. 7 of Article 29a of CSRD which will amend the Directive 2013/34/EU (the exemption in the current Directive 2013/34/EU is in the Article 19a par. 3 and Article 29a par.3). This additional provision would clarify that in such cases the consoldiated sustainability information (containing disclosures on due dilligence) drawn up and published by a parent company subsititues the induvidual reporting on due dilligence by a subsidiary. This would correspond to the new Article 4a concerning due dilligence on a group level. HU (Comments): HU agrees with the proposed addendum. The words "*covering the previous calendar year*" , is now not necessary in our view. If it remains, we suggest instead of "*calendar year*" using the word "*financial year*" which aligns with the the wording of CSRD.

	AT (Comments): There should be coherence and a clear relation with the CSRD. The wording "report on the matters covered by this directive" also includes the reporting obligation on the complaints mechanisms (Art. 9) and the monitoring measures (Art. 10), for which there is no direct equivalent in the CSRD. The changes regarding the timeframe are acceptable. PT (Drafting): “will make available to the public, on the company's website, within a **period not exceeding six months** after the closing date of the balance sheet ...". PT (Comments):

	a priori, PT considers this change beneficial for companies under the scope of this proposal.
The Commission shall adopt delegated acts in accordance with Article 28 concerning the content and criteria for such reporting under paragraph 1, specifying information on the description of due diligence, potential and actual adverse impacts and actions taken on those.	AT (Comments): This must be alligned with the CSRD delegated act.
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 contract clauses.	PL (Drafting): Model contractual clauses should be drafted in compliance with the Draft Common Frame of Reference (DCFR).

	PL (Comments): **PL** We support the proposal for new wording. The inclusion of stakeholders and Member States will allow for a compromise form of contractual clauses. However model contractual clauses should be drafted in compliance with the Draft Common Frame of Reference (DCFR). DCFR is an academic text that expresses principles common for all the Member States. Moreover, it is a ready document which can be accessed by all the interested stakeholders. Its authors present it 'as a legislator's guide or toolbox' which -when applied – coould enable the meaning of European legislation to be clear to people from diverse legal backgrounds' (DCFR, p. 16). HU (Comments): HU supports the amendment. LV (Comments):

	Inclusion of consultations with Member States and stakeholders will guarantee that the specific circumstances of each Member States will be considered and the best possible solution will be reached together. Therefore, we support the drafting suggestion in Article 12. AT (Drafting): 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 contract clauses. The Commission shall issue the guidelines, as referred to in subparagraph 1, no later than 2 years after the date of entry into force of this Directive. AT (Comments): There needs to be consultation with relevant stakeholders (as in Art 3 n) and a clear timeframe.

	SE (Comments): Guidance on these model contract clauses should be prepared in consultation with companies of all sizes. PT (Comments): PT supports the new wording, but it is important that these models are publicly available before the date of entry into application. We welcome this new drafting, Yet wethink that it will be difficult to make it feasibile tdue to the ammendtemnt of the definition of stakeholders that also include national and international institution.
Article 13	

Guidelines	
In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, **shall** ~~may~~ issue guidelines, including for specific sectors or specific adverse impacts.	HU (Comments): HU supports the amendment. AT (Drafting): In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, **shall** ~~may~~ issue guidelines, including for specific sectors or specific adverse impacts. The Commission shall issue the guidelines, as referred to in subparagraph 1, no later than 2 years after the date of entry into force of this Directive.

	AT (Comments): We appreciate the change to the text. There still needs to be a clear timeframe and the participation of relevant stakeholders (as in Art 3 n) in the process. SE (Drafting): In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, **the European Institute for Gender Equality** and where appropriate with international bodies having expertise in due diligence, may issue guidelines, including for specific sectors or specific adverse impacts. SE (Comments): The European Institute of Gender Equality should be also be consulted, due to the large number of employees affected by discrimination of

	women in a worklife context. FI (Comments): FI supports this change PT (Comments): PT supports the new wording, but it is important that these guidelines are publicly available before the date of entry into application. DK (Comments): DK: DK supports this amendment. MT

	(Drafting): In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, **shall** ~~may~~ issue guidelines, including for specific sectors or specific adverse impacts. **The Commission shall publish the first set of Guidelines six months prior to the entry into force of this Directive** MT (Comments): Malta believes that guidelines are published prior to the entry into force so that Member States competent authorities and Enterprises would have better understanding of strategic and operation requirements in order to become compliant with this Dossier. NL

	(Drafting): In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and with international bodies having expertise in due diligence, **shall** ~~may~~ issue guidelines, including for specific sectors or specific adverse impacts. NL (Comments): NL deems it important that these Guidelines will not conflict with the OECD Guidance and the existing sectoral guidances. Therefore it is important to consult with international bodies having expertise on due diligence.

Article 14	
Accompanying measures	
1. Member States shall, in order to provide information and support to companies and the partners with whom they have established business relationships in their value chains in their efforts to fulfil the obligations resulting from this Directive, 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 value chains of companies.	AT (Drafting): 1. Member States shall, in order to provide information and support to companies and the partners with whom they have business relationships in their value chains in their efforts to fulfil the obligations resulting from this Directive, 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 value chains of companies. AT (Comments): Accompanying measures are seen very positive in order help companies, especially SMEs, who are indirectly affected by this directive. However, much more details on the measures must be elaborated.

	There should be high precaution with regards to impacts on SMEs. Appropriate measures should also include access to information and guidance, for example in form of the National Contact Points for the OECD-Guidelines for Multinational Enterprises. With regards to "established" see comment on Art 3 f. SE (Comments): Member States should be able to build on existing solutions, rather than limiting to to dedicated websites, platforms or portals. Also it would be preferable to state that information should be available digitally, without locking into certain formats.
2. Without prejudice to applicable State aid rules, Member States may financially support SMEs.	IT (Comments): IT – (Comments) - The purpose of this financing should be specified, whether it is for the purpose of the indirect participation expected by this Directive or for the purpose of a future direct participation in the due diligence obligation.

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.	AT (Drafting): 3. The Commission shall 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 and establishing a Business and Human Rights Helpdesk on EU-level to help companies fulfil their obligations. AT (Comments): A Helpdesk for companies on a EU-level which helps companies to verify and gahter information about aspects of their value chain as well as information on fullfilling their due diligence obligations would be highly appreciated. Inspiration can be drawn from the German Business and Human Rights Helpdesk or the promotional work of the NCP system.
4. Companies may rely on industry schemes and multi-stakeholder initiatives to support the implementation of their obligations referred to in Articles 5 to 11 of this Directive to the extent that such schemes and	HU

initiatives are appropriate to support the fulfilment of those obligations. The Commission and the Member States may facilitate the dissemination of information on such schemes or initiatives and their outcome. The Commission, in collaboration with Member States, **shall** ~~may~~ issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.	(Comments): HU supports the amendment. AT (Comments): Art. 8 of the Conflict Minerals Regulation (EU) 2017/821 provides for a recognition of supply chain due diligence schemes by delegated acts. This could be a useful tool under this Directive as well. We appreciate the changes to the text. It must be clear that the overall responsibility for due diligence remains with the company. PT (Comments): PT supports the new wording, but it is important that the description of these guidance steps will be available to the public before the date of entry into application.

	DK (Comments): DK: DK supports this amendment.
rticle 15	
Combating climate change	NL (Comments): NL would also like to see a reference to the Paris Agreement Under the United Nations Framework Convention on Climate Change in the Annex.
1. Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan**, <u>including implementing actions and related financial and investments plans,</u>** to ensure that the business model and strategy of the company are	PL (Drafting):

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 by 2050 as established in Regulation (EU) 2021/1119 (European Climate Law), and where relevant, the exposure of the undertaking to coal, oil and gas-related activities**. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations.	1. Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan to ensure 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. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations. PL (Comments): **PL** In our opinion the original wording of the Art. 15 should be restored. We consider the proposed provisions to be too detailed. Moreover we call for the provision of an adequate possibility to exclude selected sectors of the economy, particularly those dependent on access to gas, oil and coal. An example of such a sector is fertiliser production, which is in turn critical for food production. The same applies to livestock production, which will find it difficult to cope with adapting to climate regulations in such a short space of time. This, in turn, could result in the abandonment of this type of production, adding to the food crisis. We also propose to exclude defence sector, which undisturbed production is essential for the security interest of MS. HU

	(Comments): HU agrees with the proposed addendum since it aligns with CSRD. AT (Comments): AT is committed to achieve climate neutrality earlier than 2050. Therefore, Article 15 should be more aligned with the general goals of this directive. It should more precisely address the aspects of climate change mitigation and environmental protection. To achieve this aim there should be a high level of detail in Article 15. In the current version, it is too general and unclear, e.g. the companies included in the scope the type of reporting as well as the implementation. This could lead to problems in the transposition into national law and hamper a coherent application of this directive. Furthermore, it should be explained why not all companies are within the scope of Art 15. With regards to the content of these plans required by companies, the content and level of detail of such plans should be clarified in the directive. It should be clear, that companies should adopt plans based on scientific evidence with short-, medium- and long-term goals.

	This article needs further discussion. IT (Comments): IT – (Comments) – We support modifications introduced in the article. FI (Comments): PT (Comments): PT considers that Article 15 should be removed. In case the Article is maintained, PT welcomes the insertion of the climate neutrality objective and the reference to the European Climate Law. Additionally, in case the Article is maintained, PT is receptive to the reference to the exposure to fossil fuels, especially in the current

	international context. DK (Comments): DK: DK would welcome further clarification on how Member States are expected to enforce compliance with the obligation to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with limiting the global warming goal. NL (Drafting): 1. Member States shall ensure that companies referred to in Article 2(1)and Article 2(2)shall adopt and implement a plan**, in accordance with Article 19a (2) (a) (iii) in line with the requirements in Article 19a (2) (b) and Article 29b (2) (a) (i) (ii) of Directive 2013/34/EU, amended by Directive […],** to ensure 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 by 2050 as established in Regulation (EU) 2021/1119 (European Climate Law), and where relevant, the exposure of the undertaking to coal, oil and gas-related activities**. This plan shall, in particular, identify, on the basis of **scientific insights and other** information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations, **including scope-3 emissions** NL (Comments): NL considers climate change to be an issue for all companies within the scope of the Directive as risk and/or impact. NL supports the addition of achieving climate neutrality by 2050 as it is in line with the CSRD, but misses a reference to Art. 19b (2) (b) about time-bound reduction targets and Art. 29b (2) (a) (i), (ii) CSRD about scope 3 and adaptation.

2. Member States shall ensure that, in case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company includes **greenhouse gas** emission reduction objectives in its plan.	PL (Drafting): 2. Member States shall ensure that, in case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company includes emission reduction objectives in its plan. PL (Comments): **PL** Plans adopted by companies should mention all assumed emission reductions, not only greenhouse gas emissions. LV (Comments): AT (Drafting):

	2. Member States shall ensure that, in case climate change is or should have been identified as a risk for, or a impact of, the company's operations, the company includes **greenhouse gas** emission reduction objectives and compensatory measures in its plan, including short-, medium- and long-term-objectives to reach greenhouse-gas neutrality by 2050. AT (Comments): The word "principal" leads to confusion and could be deleted. A plan should also include compensatory measures. PT (Comments): In case the Article is maintained, PT agrees with such addition. DK

	(Comments): DK: DK supports this amendment. NL (Drafting): 2. Member States shall ensure that the company includes **greenhouse gas** emission reduction objectives in its plan in accordance with article 19b(2) of Directive 2013/34/EU, amended by Directive […].
OPTION A	
3. Member States shall ensure that companies **referred to in Article 2(1), point (a),** duly take into account the fulfilment of the obligations referred to in paragraphs 1 and 2 when setting variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.	PL (Drafting): ~~3. Member States shall ensure that companies referred to in Article 2(1), point (a), duly take into account the fulfilment of the obligations referred to in paragraphs 1 and 2 when setting variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.~~

	PL (Comments): **PL** We propose to depart from the provision contained in this paragraph. It should first be noted that variable remuneration is not used in many companies. At the same time, such a provision violates the principle of the freedom of the competent company bodies to shape company relations, including remuneration policy. It is also difficult to indicate what parameters in the remuneration policy of a particular board member would constitute fulfilment of the obligation under the provision in question. In addition, the term 'duly take into account' is a vague term that poses problems of proper interpretation. IT (Comments): IT – (Comments) – As for the obligations on the variable remuneration, we would support a distinction among obligations for listed and non-listed

	companies, providing more flexibility for this latter category. PT (Comments): PT supports Option B instead of Option A. MT (Comments): Malta agrees with Option A. However, Malta is concerned that this concept might cascade further down the line.
OPTION B	
~~3~~. ~~Member States shall ensure that companies duly take into account the fulfilment of the obligations referred to in paragraphs 1 and 2 when setting variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.~~	HU (Comments): HU supports deleting para3.

	LV (Comments): We support option B. SE (Comments): **SE supports option B (deletion).** PT (Comments): This deletion is in line with the PT position, so far. PT believes that establishing a link between the "contribution of a director to the company's business strategy and long-term interests and sustainability" and variable remuneration should be outside the scope of this directive. DK

	(Comments): DK: We strongly prefer to delete article 15 (3) (option B) as we cannot support a general regulation of corporate governance, including management remuneration. The remuneration obligation seems to go beyond the purpose of the directive. This view is supported by several member states (LV, BG, DK, HR, EE, MT, LT, IT, and CY), who preferred to delete article 15 (3) at the latest meeting in the working party (12.-13th July 2022). EE (Comments): EE: At the moment Estonia would prefer the option B. We feel that given the wording of this provision, the basis and principles of paying such remuneration remain unclear and therefore seem to be rather complicated to apply in practice. In case of keeping the provision in the Directive, the wording of the provision should be more specific regarding the basis of paying the remuneration. Additionally, it would be very relevant to issue more detailed guidelines about how such remuneration should be applied

	in practice. ES (Comments): Art. 15.3: As the provision is drafted, Option B would be preferable, unless the provision is understood as a non-binding programmatic principle. NL (Comments): NL suggests to delete paragraph 3 and therefore supports option B.
Article 16	
Authorised representative	
1. Member States shall ensure that each company referred to in Article 2(2) 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 ensure that the name, address, electronic mail address and telephone number of the authorised representative is notified to a supervisory authority in the Member State where the authorised representative is domiciled or established. 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.	PT (Drafting): 2. Member States shall ensure that the name, address, electronic mail address and telephone number of the authorised representative is notified to a supervisory authority in the Member State where the authorised representative is domiciled or established. 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~~ **in one of the official languages of the Member State of the supervisory authority that made the request.**
3. Member States shall ensure that a supervisory authority in the Member State where the 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 are informed that the company is a company within the meaning of Article 2(2).	

4. Member States shall ensure 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.	
Article 17	
Supervisory Authorities	IT (Comments): IT – (Comments) - The relationship between this body and other bodies and instruments currently in place on responsible business conduct should perhaps be clarified.
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 6 to 11 and Article 15(1) and (2) ('supervisory authority').	AT (Comments):

	This provision should be discussed in detail after the scope, rights and obligations of due diligences are clarified. It seems unclear which authority is competent for a company that is active in several member states. There should be a high level of harmonisation on the EU-level with regards to the supervisory authority (e.g. organisation, work, competence) in order to prevent obstacles in the single market.
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 for the parent company and its subsidiaries shall be that of the parent company pursuant to paragraphs 2 or 3, first subparagraph.	PL (Comments): **PL** We refer to our comments on Article 4a in which we indicated that Article 4a in comparison with Article 17(3a) may raise some doubts in interpretation. According to Article 17(3a), there are no grounds to act by the authority from subsidiary MS before notification by parent company supervisor. In our view, in any case, authority from subsidiary MS shall have powers to react where actions taken by parent company supervisor is inadequate or lacking, or actions are needed immediately. Article 17(3a) does not regulate what is a procedure in case where competent authority from subsidiary MS identifies any failure by the parent company (acting as a group compliance as reffered in Article 4a) or subsidiary company, but the responsibility was transferred in accordance to Article 4a.

	Moreover, there are no rules of cooperation and division of powers of authorities in case of cross-border activities by companies, both parent or subsidiary, excercised on freedom of service or freedom of establishment basis. HU (Comments): HU supports the proposed addendum. AT (Comments): We appreciate the clarification for groups, but it would be useful to have more information on the rationale behind this addition. SE (Comments): **SE welcomes that a group level approach has been implemented in the directive. The text must however be further analysed.** PT

	(Comments): Linked to 4a) under reservation DK (Comments): DK: DK supports the addition. NL (Comments): NL refers to our comments to article 4a.
When the supervisory authority under the first subparagraph identifies a failure of the subsidiary to comply with the obligations provided for in Article 4a(2), it shall notify the supervisory authority that would be competent in respect of that subsidiary in accordance with paragraphs 2 or 3, first subparagraph, to carry out the powers in respect of that subsidiary in accordance with Articles 18 and 20.	DK (Comments): DK: DK supports the addition.

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. 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 shall ensure that they, and all persons working for or who have worked for them and auditors or experts 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 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.	
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 request information and carry out investigations related to compliance with the obligations set out in this Directive.	
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.	PT (Comments): PT, in relation to the "appropriate period", suggests defining a range for what can be considered an "appropriate period".
Taking remedial action does not preclude the imposition of administrative sanctions 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 the cessation of infringements of the national provisions adopted pursuant to this Directive, abstention from any repetition of the relevant conduct and, where appropriate, remedial action proportionate to the infringement and necessary to bring it to an end;	
(b) to impose pecuniary sanctions in accordance with Article 20;	EE (Drafting): (b) to impose pecuniary sanctions, **either directly or by application to the competent judicial authorities**, in accordance with Article 20; EE (Comments): EE: Estonia would like to propose a specified wording of art 18 (5) in order to delete the art 18 (6) from the Directive. Please see the explanation below (next to the art 18 (6).
(c) to adopt interim measures to avoid the risk of severe and irreparable harm.	

6. Where the legal system of the Member State does not provide for administrative sanctions, this Article and Article 20 may be implemented in such a manner that the sanction is initiated by the competent supervisory authority and imposed by the competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative sanctions imposed by supervisory authorities.	EE (Drafting): ~~6. Where the legal system of the Member State does not provide for administrative sanctions, this Article and Article 20 may be implemented in such a manner that the sanction is initiated by the competent supervisory authority and imposed by the competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative sanctions imposed by supervisory authorities.~~ EE (Comments): EE: Estonia does not support the current wording of the art 18 (6) because it does not correspond to Estonian system of sanctions called misdemeanor procedure. In Estonia, the majority of misdemeanors are firstly adjudicated by the regulatory agencies themselves who have the authority to impose fines. Since the definition of an administrative sanction in EU law remains unclear, the current wording of art 18 (6) tend to create an impression that sanctions applied to such misdemeanors might not be recognized as administrative sanctions. Estonia would therefore propose an adjusted wording for art 18 (5) in order to delete the art 18 (6)

	from the Directive.
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.	
Article 19	NL (Comments): NL asks how do the complaints and concerns based on this article relate to the complaints and concerns that can be submitted to the company itself on the basis of art. 9? Can it all be done at the same time, or should the complainant first have to complain to the company itself before they can go to a supervisory authority?
Substantiated concerns	SE (Comments): Is this aligned with UNGP31 on effectiveness criteria for non-judicial

	grievance mechanisms?
1. Member States shall ensure that natural and legal persons are entitled to submit substantiated concerns 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').	IT (Comments): IT – (Comments) - Confidentiality should be taken into consideration until it is established that the concerns are well-founded.
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 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.	

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	
Sanctions	HU (Comments): HU supports a flexible system of sanctions.
1. Member States shall lay down the rules on sanctions applicable to infringements of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive.	LV (Comments): The range of possible administrative offences can be very broad and thus

	it could lead to different provisions in each Member State. We would prefer some examples of violations for which sanctions would be expected in Recitals. NL (Comments): NL considers uniform implementation of sanctioning important, would like to see coordination in this area in order to guarantee a level playing field for companies in the EU. NL would like the proposal to be as detailed as possible about the kind of sanctions that can be imposed and when these different sanctions are appropriate.
2. In deciding whether to impose sanctions and, if so, in determining their nature and appropriate level, due account shall be taken of the company's efforts to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as collaboration with other entities to address adverse impacts in its value chain~~s~~, as the case may be.	
3. When pecuniary sanctions are imposed, they shall be based on the company's turnover.	LV

	(Comments): Article 18 Paragraph 5 determines that supervisory authorities have the power to impose pecuniary sanctions in accordance with Article 20. On the other hand, in Article 20 of the proposal, the types of sanctions are not limited to pecuniary sanctions. Only Article 20, Paragraph 3 stipulates the limitation that the amount of pecuniary sanctions shall be based on the company's turnover. It is not clear: 1) whether the sanctions can be only pecuniary, 2) why the size of the sanctions must always be related to the turnover. Since the violations can be different, the sanctions should not be only pecuniary. There are doubts whether the amount of sanctions for less significant violations should be linked to the company's turnover. PT (Comments): PT suggests that, in addition to turnover, other relevant factors such as the "severity of the impact" and the "economic benefit" obtained from the illegal action should also be considered.

4. Member States shall ensure that any decision of the supervisory authorities containing sanctions related to the breach of the provisions of this directive is published.	LV (Comments): It is unclear whether the publication provided for in this paragraph is a sanction itself (administrative sanction of a criminal nature), a component of a sanction or another type of measure. Depending on the moment of publication (not specified in the proposal), it is also necessary to ensure that the presumption of innocence is not violated.
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.	
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. Such steps may include, in particular, the transmission of relevant information on the conduct of an investigation.	DK (Drafting): 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~~ **3** month**s** after receiving the request. Such steps may include, in particular, the transmission of relevant information on the conduct of an investigation. DK

	(Comments): DK believes that a period of one month is too short, particularly when indicating that information relevant to the conduct of an investigation should be included. It is necessary to allow for reasonable time for the authority to make a justified assessment of the issue.
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.	
Article 22[27]	
Civil liability	IT (Comments):

[27] **The Presidency would like to stress that the proposed changes in Article 22 are a mere outline of the main constitutive elements of the civil liability, including with an exemption reflecting the possibility to prioritise adverse impacts pursuant to newly proposed Article 6a. Further discussions and analysis are needed, including on the contractual clauses safeguards in respect to indirect business partners, the relationship with the national law, and the overriding mandatory application of the provisions.**

	IT – (Comments) - We still have a scrutiny reservation on this article FI (Comments): We refer to our previous comments and will return to the issue after having listened to the justifications for the proposed changes. EE (Comments): EE: Estonia is grateful for the clear efforts in revising and amending the art 22 as a whole. However, we are not convinced that proposed amendments would offer solutions to all concerns raised previously (our more thourough comments on art 22 were sent as written comments on the Presidency flash CZ in July 2022). In our opinion the basic problem regarding civil liability has remained the same – the liability would encompass not only the company's liability (which would be the usual civil liability) but the company's liability for all the companies throughout the value chain. Very broad scope of liability is unpredictable and creating several questions regarding how such liability would be put into practice, considering the very clear

	requirements and elements for the civil liability (damage, infringement, causal link of these two). We agree that the provision would need further discussions. ES (Comments): We positively assess the amendments proposed by the Presidency in relation to Art. 22. Not being a case of objective liability, for civil liability to arise it is necessary that its constituent elements concur: (i) Damage; (ii) Conduct of the company in which fault or negligence can be appreciated; (iii) causal relationship between the damage and the infringement imputable to the company. NL (Comments): NL considers it positive that adequate risk prioritization, rather than contractual clauses may lead to exemptions from civil liability. This is considered in line with the OECD guidelines and UN guiding principles on business and human rights and is also better aligned with exisiting tort

	law.
1. Member States shall ensure that companies are liable for damages **stemming from the adverse impact that was or should have been identified pursuant to Article 6 and that companies caused or contributed to by failing to comply with the obligations laid down in Articles 7 and 8.** [28] ~~if:~~	PL (Drafting): Member States shall ensure that companies are liable for damages if: PL (Comments): **PL** The previous wording of Article 22(1) was clearer, it emphasized the obligation to identify, prevent, mitigate and terminate adverse impacts resulting from the company's activities, and covered by the Directive. It more precisely indicated the obligations of the Member States, and the obligations for companies were defined more precisely.

[28] **A corresponding recital will be added as follows: "A company should not be liable for the damage that would have occurred to the same extent even if the company had taken action in accordance with this Directive."**

	SE (Comments): **SE considers the article concerning civil liability to be very problematic. The provisions in the current wording are too vague, which means that liability becomes unpredictable and legally uncertain.** **SE primarily advocates that the provisions on civil liability should be left to the member states to design, in line with how the provisions on sanctions are designed in art. 20. Also compare the liability in Art. 11.2 Prospectus Regulation (EU) 2017/1129.** **If the regulation is to be developed in more detail in the directive, it should be clearly stated as a first step that a liability for damages requires that the company has intentionally or negligently violated the rules in the directive and that there is a direct causal connection between the violation and the damage. SE assesses that the current regulation implies a strict responsibility for the companies, something that is usually reserved for particularly dangerous activities. If the regulations remain in their current state, SE advocates that the entire article should be removed.** PT (Comments):

	We have a scrutiny reservation regarding recital 62 (25 on this document). and article 22 DK (Comments): DK: Regarding the procedural preconditions for bringing such cases about damages claims before the courts, it does not seem clear which group of persons is intended to be able to raise the cases. Lawsuits in Danish courts presuppose a legal interest. This notion will have to be interpreted in accordance with the EU in the specific lawsuit, ie. in accordance with the Directive. Has it been considered whether both Danish and foreign private persons, associations and companies etc. must be able to raise cases before the courts, ie. who can the injured be? It could also be specified in the directive that it does not affect existing law as regards the conditions of civil procedure for bringing cases before the courts. MT (Drafting): ~~Member States shall ensure that companies are liable for damages~~

	~~stemming from the adverse impact that was or should have been identified pursuant to Article 6 and that companies caused or contributed to by failing to comply with the obligations laid down in Articles 7 and 8.~~[29] ~~if:~~ MT (Comments): Malta has noted the effort made by the Presidency in order to partially narrow down the current broad impact concerning civil liability. However, Malta is still not satisfied with the current text and would like to delete Article 22 for the following reasons: Civil liability in general should revolve around whether a party has directly caused or contributed to the damage or is otherwise directly associated with it, following the basic principle that all civil liability must end where the involvement of a legal distinct third party begins. Article 22 raises 3 fundamental concerns: a) It mixes up liability of companies for own acts and responsibility for the acts of others. b) It regulates liability without providing neither legal certainty nor real harmonization. c) It unjustifiably interferes with international private law.

[29] **A corresponding recital will be added as follows: "A company should not be liable for the damage that would have occurred to the same extent even if the company had taken action in accordance with this Directive."**

	Malta is concerned that Article 22 would effectively make companies liable for damages not caused by their own actions (that is indirect business relationships). A company does not control its indirect business relationships but neither it's contractual, business partners and the companies' degree of leverage along the chain of suppliers may vary widely. In fact, the current drafting suggestion will lead to significant difficulties in practice and create uncertainty for the business community. It would also have the effect of shifting liability away from the actual perpetrators of the damages, diminishing the deterrent effect of the damage not caused by their own actions. Furthermore, it does not indicate whether intentionality or gross negligence need to be part of the legal assessment. The current drafting does not clearly stipulate that civil liability should only apply if the usual rules of civil liability are satisfied. In fact, Article 22 introduces civil liability for companies even if a company would have identified the potential or adverse impact but could not have prevented the adverse impact or the damages resulting from it. This would go against the current EU knowledge in the area of civil law traditions.

	ES (Comments): We support the introduction of the recital mentioned in the footnote 25 NL (Comments): NL supports the modification as this is an operationalisation of the proposed involvement framework. It is positive that attempts to introduce contract clauses to value chain partners no longer exclude liability. Instead, liability can be excluded if a company can justify prioritizing and addressing the right risks.
~~(a) they failed to comply with the obligations laid down in Articles 7 and 8 and;~~	PL (Drafting): (a) they failed to comply with the obligations laid down in Articles 7 and 8 and;

	PT (Comments):
~~(b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage.~~	PL (Drafting): (b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage.
2. **Notwithstanding paragraph 1, Member States shall ensure that where a company proves that the failure to comply with the obligations laid down in Articles 7 and 8 is a result of its compliance with the provision on prioritisation as laid down in Article 6a, it shall not be liable for any damage occurred, unless the company prioritised the identified actual and potential adverse impacts**	PL (Comments): **PL**

	We oppose to the requests to change the wording of the original text proposed by the Commission. AT (Comments): The changes regarding prioritisation are welcomed, but there is still legal uncertainty and need for further clarification and discussion. There are many questions to address. For example, how would the attribution of damage in the case of several participants/causers work? PT (Comments): PT considers this new provision consistent with the changes to the text that guarantee the possibility for companies to prioritize their impacts. DK (Comments): DK: We look forward to discussing these new suggestions further in the working party. It will be necessary to clarify the provisions to create legal certainty.

	DK: It should be clarified how a company can prove that the failure to comply with the obligations laid down in Articles 7 and 8 is a result of its compliance with the provision on prioritization. What will be considered sufficient?
(a) with the intention to evade its liability, or	PT (Drafting): **We suggest deletion.** PT (Comments): PT is concerned with the way in which this assessment will be carried out. **This seems to be contradictory in its terms: how can a company, while fulfilling and respecting article 6a and therefore not be being pursued and liable for an infringement of articles 7 and 8, is now liable under this provision? Even if the company had the intention to evade its liability, in our view, this does not entails that the elements of civil**

	liability are met in order to trigger liability.
(b) in a way that it was unreasonable to expect that the prioritisation would be adequate to the circumstances of the case.	PT (Comments): PT is concerned with the way in which this assessment will be carried out. DK (Comments): DK: It should be clarified what "unreasonable" entails and what criteria should be central in the assessment hereof. NL (Comments): NL prefers the previous text (*any impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures*) as it better allows to determine whether or not measures by companies to address risks were adequate.

	LV (Drafting): **A company should not be liable for the damage that would have occurred to the same extent even if the company had taken action in accordance with this Directive.** LV (Comments): We think that this text should be included in the Article, not only in the Recital, because it is very important for the correct understanding of the Paragraph 1 of this Article - that not always a fail to comply with the obligations laid down in Articles 7 and 8 is automatically a reason to consider that a sufficient causal link between the damage and the fault is found.
~~Notwithstanding paragraph 1, Member States shall ensure that where a company has taken the actions referred to in Article 7(2), point (b) and Article 7(4), or Article 8(3), point (c), and Article 8(5), it shall not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying~~	PL (Drafting): Notwithstanding paragraph 1, Member States shall ensure that where a company:

~~compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact.~~	a) has taken the actions referred to in Article 7(2), point (b) and Article 7(4), or Article 8(3), point (c), and Article 8(5), it shall not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact. HU (Comments): According to Article 6a, prioritisation is a possibility. Exemption from civil liability - as laid down in Article 22(2) is - established only when the company prioritise which is a non-binding rule. Therefore, instead of deleting we suggest to reword this provision.
~~In the assessment of the existence and extent of liability under this paragraph, due account shall be taken of the company's efforts, insofar as they relate directly to the damage in question, to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as any collaboration with other entities to address adverse impacts in its value chains.~~	PL (Drafting): b) proves that the failure to comply with the obligations laid down in Articles 7 and 8 is a result of its compliance with the provision on prioritisation as laid down in Article 6a, it shall not be liable for any damage occurred, unless the company prioritised the identified actual and

	potential adverse impacts with the intention to evade its liability, or in a way that it was unreasonable to expect that the prioritisation would be adequate to the circumstances of the case. PL (Comments): **PL** When we the previous wording of Article 22 will be restored, there is a need to locate a reference to added to Article 6a (prioritisation), and exemption from liability in the situation, when company proceeds in accordance with the rule of Article 6a.
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 value chain.	
4. The civil liability rules under this Directive 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 liability provided for in provisions of national law transposing this Article is of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.	MT (Comments): Malta understands that Article 22(5), in terms of assessing liability, indicates that EU law could be extended to impacts occurred / taking place in third country operations even though these specific cases would not be covered by a Member State's tort legislation. Moreover, Malta understands that Article 22(5) is being included in order to be able to make use of Article 16 of the Rome II Regulation. Malta believes that this raises important questions in the area of private international law which could create a dangerous precedent. Further explanations on this point from the CION would, therefore, be appreciated. NL (Comments): NL would like more clarification on the relationship of this article to Rome II Regulation (EC) No 864/2007 regarding the conflict of laws on the law applicable to non-contractual obligations. Specifically, NL wonders if the "overriding mandatory application" from art. 22, paragraph

	5, is a further interpretation of the "mandatory character" of art. 16 Rome II?
Article 23	
Reporting of breaches and protection of reporting persons	
Directive (EU) 2019/1937 shall apply to the reporting of all breaches of this Directive and the protection of persons reporting such breaches.	SE (Comments): Is this aligned with UNGP31 on effectiveness criteria for non-judicial grievance mechanisms? NL (Comments): NL is wondering if one can apply Directive 2019/1937 on both the environment and human rights.

Article 24	
Public support	
Member States shall ensure that companies applying for public support certify that no sanctions -**pursuant to Article 20** have been imposed on them for a failure to comply with the obligations of this Directive **in the 3 years prior to the application. This provision shall be without prejudice to any public support that has already been provided to the company in question prior to the expiry of the transposition period in accordance with Article 30 of this Directive**.	PL (Comments): **PL** The sanction of depriving the company of the possibility to apply for public support is too harsh. The financial sanctions provided for in this Directive appear to be sufficient punishment for infringement of the specified provisions. However, in the absence of a definition of the precise conditions for which infringements will result in an undertaking losing its right to apply for state aid, there is a risk that the undertaking will bear disproportionate responsibility in relation to the actual offence. We propose to abandon this provision as it would result in a third time penalty for the same act of the company. Additionally we propose to consider introduction (possible in Article 20) of a mechanism for clearing the company, similar to the mechanism used in the classic directive on public procurement (Directive 2014/24/EU) in

	Article 57. HU (Comments): We support the proposal of the CZ Presidency to add the time limit of 3 years. However this rule still imposes unnecessary administrative burden on companies applying for smaller-amount public support, so we propose to give exemption a company which applies for public support below a given threshold. LV (Comments): We believe that restrictions on receiving state aid are necessary, but the restrictions must be proportionate and time-bound, therefore 3-year term seems appropriate, therefore we support the drafting suggestion of Article 24. PT

	(Comments): PT has concerns about how the absence of sanctions will be verified. PT asks for clarification on the 3-year period, why is it this one and not another? MT (Comments): Malta would like to see more proprtionality and that there is no fragmentation. The following concerns need to be addressed: Malta takes good note of the improvemnets that the Presidency has made in the text particularly in the area of time limitation. However, Malta would like to have further improvements particularly in the following points: a) The provision might lead to double punishment for the same facts (*ne bis in idem)*. b) It does not make any distinction on severity nor the nature of the infringement.

	c) It gives rise to fragmented implementations by Member States who define public support differently and thus distorts the level playing field. By not being subject of appeal it violates basic standards of the rule of law. NL (Drafting): Member States shall ensure that companies applying for public support or public tenders, or benefitting from public procurement, certify that no sanctions -**pursuant to Article 20** have been imposed on them for a failure to comply with the obligations of this Directive **in the 3 years prior to the application. This provision shall be without prejudice to any public support that has already been provided to the company in question prior to the expiry of the transposition period in accordance with Article 30 of this Directive**. NL

	(Comments): NL welcomes this article and asks to add public procurement to this article as well. NL would like to see further clarifications to the concept of public support.
Article 25	FI (Comments): FI would still like to see the Article 25 deleted. See our previous comments for more details. DK (Drafting): ~~*Article 25*~~ MT

	(Drafting): ~~*Article 25*~~
Directors' duty of care	DK (Drafting): ~~**Directors' duty of care**~~ MT (Drafting): ~~**Directors' duty of care**~~
1. Member States shall ensure that, when fulfilling their duty to act in the ~~best~~ interest of the company **as laid down in national law**, directors of companies referred to in Article 2(1) take into ~~account~~ **consideration** the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.	HU (Comments): HU supports the amendments. LV

	(Comments): We would like to propose that this article would be deleted. SE (Drafting): ~~Member States shall ensure that, when fulfilling their duty to act in the best interest of the company, directors of companies referred to in Article 2(1) take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.~~ SE (Comments): **SE is of the opinion that this article goes far beyond the scope of the directive (due diligence). This directive is about due diligence, not about harmonizing corporate governance in general. Notwithstanding recital 63, article 25 deals with directors´ duties in general and not**

	just with directors´ duties in relation to due diligence. This becomes even clearer with the proposed amendments to art 5. Hence, the article must be deleted. **In detail the reference in art 25 to the ”interest of the company” is problematic. This concept does not exist in all MS and, where it exists, is interpreted differently. Again, the harmonization of this concept is totally outside the field of the directive.** IT (Comments): IT – (Comments) - We reiterate our concerns over this provision for the reasons previously share* and we would rather have art. 25 striked out. *In our opinion, the obligations provided by this article raise concerns as regards their possible impact on the application of core company law principles in the different MSs. Moreover, they can create undesirable consequences on the nature of directors' liability outside the CSDD scope. We believe that provisions on duty of care are too broad, and we are concerned for the following three reasons: a) it could generate a discrimination between companies inside and outside the scope of the

	directive, as for the obligations; b) it could generate issues on the exact goals that directors should pursue during their mandate; c) defining the interest of stakeholders, without identifying the prime interest of the society, could weigh on and condition managerial choices because of the increase in legal risks due to an unclear set of obligations. We also believe that the duty to act in the best interest of the company should apply to all the members of a board of directors and we do not deem appropriate distinguishing it according to directors' involvement in corporate decisions on sustainability matters and overall consideration of stakeholders interests. General legal principles on directors' liability and consistent case-law offer proper tools to take into account the different role of directors within the board PT (Comments): **Considera-se ser matéria do MF.** DK

	(Drafting): ~~1. Member States shall ensure that, when fulfilling their duty to act in the best interest of the company~~ **~~as laid down in national law~~**~~, directors of companies referred to in Article 2(1) take into account~~ **~~consideration~~** ~~the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.~~ DK (Comments): DK: We cannot support this amendment as we do not support a general regulation of corporate governance, and thus we prefer to delete article 25. These obligations seem to go beyond the purpose of the directive. Traditionally, when putting obligations on companies, one would not also directly regulate directors' duties. When a legal liability is placed on a company, it automatically (indirectly) becomes part of directors' duties. The wish to delete article 25 was also supported by several Member States at the latest meeting in the working party (MT, DK, EE, ES, LV, FI, IT and HR.) We believe that the views of these Member Sates have not been taken sufficient into account in this compromise text.

	The Commission has not been clear on or shown any proof of the necessity to legislate about directors' duties. MT (Drafting): ~~1. Member States shall ensure that, when fulfilling their duty to act in the best interest of the company~~ **~~as laid down in national law~~**~~, directors of companies referred to in Article 2(1) take into account~~ **~~consideration~~** ~~the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.~~ MT (Comments): Malta has concerns on how this Article has been formulated. Therefore, Malta is seeking the deletion of Article 25. Malta's rationale is based on the following points:

	• **Mixing of Corporate Governance and Due Diligence Principles:** The CSDDD proposal in Article 25 is blending both the principles of corporate governance and due diligence. • **Responsibilities and Independence of the Board of Directors:** Certainly, the essential role of the board of directors and its prerogative is performing a balancing act on the different elements and interests to consider that the corporate interest is not jeopardized at a high-level. • **Administrative Burden and Lack of a targeted approach:** Overloading directors' duties with unspecified and very far-reaching general policy goals of all kinds will be disruptive to companies' decision-making and is disproportionate. Malta calls for a more proportionate and targeted approach. In fact, Article 25 does not apply specifically to due diligence but to the general duty of care of directors. • **No justification in the Impact Assessment covering Duty of Care and possibility in creating legal uncertainty:** The Impact Assessment does not provide enough justification for this provision, also bearing in mind that the duty of care might replace – not complement – what national laws say about directors' duty of care. There is no convincing evidence that the corporate governance models of the Member States, which includes directors' general duty of care, stand in the way of the sustainable transition. Article 25 will therefore not result in clarification as argued by the Commission but will do the opposite – it will create

	legal uncertainty. • **Creating risk-aversion leading to the hampering of efficient decision-making:** There could be serious negative consequences attached to this unnecessary EU regulation of directors' duties because it would create legal uncertainty about when management decisions are lawful/unlawful. • **Problems in enforcement by Member State Authorities:** Also, it is not clear how authorities are supposed to enforce and verify directors' duties. By having the law determining that directors must take on board all stakeholders' expectations, there is also a risk of making directors (paradoxically) less accountable to anyone because these expectations would be vague, contradictory, and difficult to measure against any KPIs. **Conclusion:** Article 25 thus creates unnecessary legal uncertainty, violates the subsidiarity principle and – on top – has no direct connection with due diligence. EE (Comments): EE: Due diligence obligations are already covered by the directors' duty to act in the best interest of the company. Our position on this regard remains the same at the moment – the provision does not add any value

	but might cause misunderstandings regarding the directors' duty in general. The art 25 should be deleted. Also we would like to hear more about what could really be the actual added value of the art 25. ES (Comments): The current wording is preferable to the previous one. This would mean, in our case, a reference to the provisions of art. 225 LSC, which after the last amendment (carried out by Law 5/2021, of 12 April), incorporated a final clause stating that the director must act subjecting his or her particular interest to the "interest of the enterprise", a clause that seems to be advancing the debate on sustainability, as the concept of enterprise is broader than that of society and implies taking into account the interests of other stakeholders, not only those of the shareholders. NL (Drafting): NL

	(Comments): NL recognizes the importance of integrating and embedding responsible business conduct into policies and management systems, in line with the OECD Guidelines. It ensures that companies are able to make the necessary strategic decisions with regard to the management and oversight of sustainability risks and impacts. Therefore, NL would like to see this earlier in the proposal to provide more clarity for companies and suggests to move the crux of this article to Article 5 (see changes under Article 5), and subsequently delete article 25.
2. Member States shall ensure that their laws, regulations and administrative provisions providing for a breach of directors' duties apply also to the provisions of this Article.	PL (Comments): **PL** Referring to the definition of 'director' it is not clear under what circumstances the responsibility of other persons who perform functions similar to those performed under Article 3(o) point (i) or (ii) applies (for example, if there are no members of the administrative, management or supervisory bodies of a company?).

	SE (Drafting): ~~Member States shall ensure that their laws, regulations and administrative provisions providing for a breach of directors' duties apply also to the provisions of this Article~~ DK (Drafting): ~~2. Member States shall ensure that their laws, regulations and administrative provisions providing for a breach of directors' duties apply also to the provisions of this Article.~~ MT (Drafting): ~~2. Member States shall ensure that their laws, regulations and administrative provisions providing for a breach of directors' duties apply~~

	~~also to the provisions of this Article.~~ MT (Comments): Same reasoning as above NL (Drafting): NL (Comments): Refer to input Article 25.1
~~*Article 26*~~	SE

	(Comments): **SE supports the proposed deletion. On the proposed amendments to art 5 (5.3-5.5) SE has a preliminary positive view but still has a scrutiny reservation.** DK (Drafting): ~~Article 26~~ NL (Comments): NL supports deletion of this article
~~Setting up and overseeing due diligence~~	PL (Drafting):

	Setting up and overseeing due diligence DK (Drafting): ~~**Setting up and overseeing due diligence**~~ DK (Comments): DK: We strongly support this deletion, as these obligations seem to go beyond the purpose of the directive. However, as a compromise, we have suggested to include some elements from article 26 in article 5 in order to make it clear, that the obligation on management only relates to due diligence policy. We refer to our drafting suggestion in article 5 (2). In our view, this strikes a good balance between avoiding a general regulation of corporate governance but at the same time ensure that the due diligence process is anchored at the most senior level, in line with the OECD guidelines. EE (Comments):

	EE: Estonia approves the deletion of art 26.
~~1. Member States shall ensure that directors of companies referred to in Article 2(1) are responsible for putting in place and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organisations. The directors shall report to the board of directors in that respect.~~	PL (Drafting): 1. Member States shall ensure that directors of companies referred to in Article 2(1) are responsible for putting in place and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organisations. The directors shall report to the board of directors in that respect. PL (Comments): **PL** In our opinion the original wording of the Article 26 should be restored. This part of the legal act is an appropriate place to establish directors' duties. It specifies those duties in a clearer and more comprehensives way than the wording of newly proposed Article 5 (3), especially since it refers to overseeing the due diligence actions referred to in Article 4.

	LV (Comments): We support the deletion of Article 26. PT (Comments): PT agrees with this deletion. DK (Drafting): ~~1. Member States shall ensure that directors of companies referred to in Article 2(1) are responsible for putting in place and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organisations. The directors shall report to the board of directors in that respect.~~

	ES (Comments): We welcome the proposed deletion of Art. 26 and the inclusion of the provision 5.5. NL (Comments): Refer to input on art. 22.
~~2. Member States shall ensure that directors take steps to adapt the corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9.~~	PL (Drafting): 2. Member States shall ensure that directors take steps to adapt the corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9.

	PT (Comments): PT agrees with this deletion. DK (Drafting): ~~2. Member States shall ensure that directors take steps to adapt the corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9.~~
Article 27	
Amendment to Directive (EU) No 2019/1937	
In Point E.2 of Part I of the Annex to Directive (EU) No 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*+]'	
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 11 shall be conferred on the Commission for an indeterminate period of time.	NL (Drafting): 2. The power to adopt delegated acts referred to in Article 11 shall be conferred on the Commission for a a period of […] years from [date of

+ 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.

	entry into force of the basic legislative act or any other date set by the co-legislators]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the […]-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period. NL (Comments): NL prefers conference on the Commission for a definite period of time with the option of tacit renewal, whereby the delegation of power can be properly evaluated.
3. The delegation of power referred to in Article 11 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end 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 11 shall enter into force only if no objection has been expressed either by the European Parliament or 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 29	
Review	
No later than … [*OP please insert the date = 7 years after the date of entry into force of this Directive]*, the Commission shall submit a report to	AT

the European Parliament and to the Council on the implementation of this Directive. The report shall evaluate the effectiveness of this Directive in reaching its objectives and assess the following issues:	(Comments): There should be a fact based evaluation as soon as there is usable data with regards to the effectiveness of the implementation. The commission should deliver relevant data as soon as possible in order to start the evaluation process. The timeframe of 7 years seems too static. SE (Comments): Will effects on European competitiveness be evaluated? NL (Drafting): No later than … [*OP please insert the date = 4 years after the date of entry into force of this Directive]*, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive. It may submit a legislative proposal to the European Parliament and to the Council in this regard. The report shall evaluate the effectiveness of this Directive in reaching its objectives and assess, inter

	alia, the following issues: NL (Comments): - NL asks that the review take place after four years instead of seven, given the continuous development of risks to people and the environment (eg climate change and loss of biodiversity), the 2030 Agenda of the Sustainable Development Goals and further developments in the international standards on which this proposal is based. At the same time, it is also important to evaluate scope, practicality for business, and enforceability. More specifically, it is necessary to evaluate the indirect impact on SMEs and the impact on global value chains. - In addition, the Netherlands requests that the evaluations of the CSDD and the CSRD take place periodically and at the same time. This with the view to taking into account possible new international developments that must be incorporated in the annex. - In addition, the Netherlands would like to see that the revision is not limited to the parts referred to in the rest of this article, but is viewed in its entirety and expressly offers the possibility of making legislative amendments to the directive. - NL asks the Commission to include in the draft directive that a baseline assessment is performed before the directive comes into force. This is important in order to be able to properly measure the impact of the directive.

	With regard to the effects on third countries, NL asks the Commission to provide for a development cooperation-impact assessment and monitoring of the effects of the directive in third countries, also as a basis for any necessary accompanying measures from the Commission and member states.
(a) whether the thresholds regarding the number of employees and net turnover laid down in Article 2(1) need to be **revised** ~~lowered~~;	PT (Comments): PT agrees with such change as it provides broader possibilities.
(b) whether the list of sectors in Article 2(1), point (b), needs to be changed, including in order to align it to guidance from the Organisation for Economic Cooperation and Development;	SE (Comments): SE supports that COM should evaluate and assess the need to update the list of high-risk sectors as analysis and knowledge develops.
(c) whether the Annex needs to be modified, including in light of international developments**;**	

(d) whether Articles 4 to 14 should be extended to adverse climate impacts.	
	NL (Drafting): (e) whether the positive impact on global value chains is deemed sufficient
Article 30	
Transposition	
1. Member States shall adopt and publish, by … [*OJ to insert: 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… [OJ to insert: 2 years from the entry into force of this Directive] as regards companies referred to in Article 2(1), point (a), and Article 2(2), point (a);	AT (Drafting): (a) from… [OJ to insert: 3 years from the entry into force of this Directive]; AT (Comments): There needs to be a transition period for companys in order to adapt to the national laws. For example, a two-year implementation period and then a one-year legislative vacancy would be conceivable. It should apply to all companies within the scope.
(b) from … [OJ to insert: 4 years from the entry into force of this Directive] as regards companies referred to in Article 2(1), point (b), and Article 2(2), point (b).	AT (Drafting):

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*.	SE (Comments): If possible, it should be ensured that all relevant regulations enter into force at the same time.

Article 32	
Addressees	
This Directive is addressed to the Member States.	
ANNEX	HU (Comments): We agree with EE, it is still not understandable how the international instruments listed in the Annex can be applied directly to companies, and in particular how this can be done uniformly and in accordance with Union law. AT (Comments): In general, we believe that the Annex needs to be discussed in detail in

	order to provide clarity, practicability and legal certainty. Furthermore, the general clause in Annex Part I, No. 21 might be unclear and should be clarified in the light of the principle of legality. We'd like to ask the following questions: • The Annex mentions instruments that have a soft law character. Are these instruments declared legally binding for companies and are they therefore subject to the case law of both the national courts and the ECJ? • Several legal binding human rights instruments such as the European Convention on Human Rights have in turn not been included in the Annex: Why have they been omitted? • What do the possible violations of human rights conventions relate to; does this also include the respective interpretation by international bodies/courts of justice? • How is the principle of legality guaranteed when non-binding instruments apply directly to companies? • Will the instruments mentioned in the annex be used directly in court proceedings, although there may not be any national ratification or is it a political declaration or a soft law instrument without direct obligations? Furthermore, it must be clear which human rights and environmental standards have to be considered in the due diligence process, also with

	regards to possible penalties and civil liability. MT (Comments): The material norms listed in the Annex which make up a key element of the proposal, pose serious problems: they are numerous, mostly government-to-government standards and many of them are unclear and/or unfit for application by companies. Several of these rights are not even formulated in such a way that they can be invoked in a private-to-private relation posing additional problems regarding sufficient legal certainty. The annex needs to be clear and specific: rule of law requires that legislation is intelligible, clear, and predictable. The enumeration of the many norms / principles / treaties in the Annex risks mixing the role of states and companies. European companies are obliged to respect human rights, but do not have the mandate nor the ability to solve the problems arising in states with weak judicial systems. Those states have, in accordance with the UNGPs, a duty to uphold and protect human rights and environment. By self-imposing this wider obligation on companies, the EU would de facto force companies to decouple from many operations in third states and at the same time jeopardise European competitiveness. EE

	(Comments): EE: The transposition, implementation and interpretation of the Annex are our main concern regarding this Directive and still raise a number of questions. We do not understand how the international human rights agreements listed in the Annex can be applied directly to companies, and in particular how this can be done uniformly and in accordance with Union law, based on the current proposal. Similar problems might arise regarding the environmental agreements as well. We have expressed our concerns and questions regarding the Annex during the last WP in July 2022 and also more thoroughly in the respective written comments to the Presidency Flash CZ. In our point of view, these concerns and questions would still be very relevant regarding the implementation of the CSDDD
	SE (Comments): Declarations, resolutions and conventions are mixed in the annex. States are only legally bound by conventions. Resolutions / declarations will have a legally binding effect that does not exist for states. How has the

	Commission reasoned when creating the Annex? PT (Comments): PT considers that it will be of the utmost importance to insert paragraphs in the annex, which highlight the importance of social protection for the realization of human rights.

PART I	
	NL (Comments): NL misses the Paris Agreement under the United Nations Framework Convention on Climate Change in the Annex.
1. VIOLATIONS OF RIGHTS AND PROHIBITIONS INCLUDED IN INTERNATIONAL HUMAN RIGHTS AGREEMENTS	PL (Drafting): **1. VIOLATIONS OF RIGHTS AND PROHIBITIONS INCLUDED IN INTERNATIONAL HUMAN RIGHTS AGREEMENTS AS WELL AS IN DECLARATIONS OF THE UNITED NATIONS AND INTERNATIONAL LABOUR ORGANIZATION CONCERNING RESPECT OF HUMAN RIGHTS** PL (Comments): **PL** In addition to international agreements, the Annex also lists declarations that are not international agreements: • The Universal Declaration of Human Rights;

	• 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; • 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.
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;	SE (Comments): Should not violation of the right to non discrimination as recognized in the International Covenant on Civil and Political Rights (art.2.1) and the International Covenant on International Covenant on Economic, Social and Cultural Rights (art.2.2) be included?
2. Violation of the right to life and security in accordance with Article 3 of the Universal Declaration on Human rights;	PL

	(Drafting): 2. Violation of the right to life and security in accordance with Article 3 of the Universal Declaration on Human rights and Articles 6 and 9 of the International Covenant on Civil and Political Rights; PL (Comments): **PL** In our opinion, some norms of international human rights law have been referred to on a general level, which may cause problems in the process of transposition into national law. As we understand the selection of the sources of law in the draft Directive was mainly inspired by the recommendations of the UN Guiding Principles on Business and Human Rights, which prescribe the understanding of human rights in the context of internationally recognized human rights, as formulated in the International Charter of Human Rights, the eight main ILO conventions and detailed UN conventions relating to persons or groups particularly at risk of violating human rights. However, points 2-6 indicate rights, the violation of which is to be understood only as defined in the articles of the Universal Declaration of Human Rights. We propose to add details in points 2-6 referring to the articles of the International Covenant on Civil and Political 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;	PL (Drafting): 3. Violation of the prohibition of torture, cruel, inhuman or degrading treatment in accordance with Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights;
4.	Violation of the right to liberty and security in accordance with Article 9 of the Universal Declaration of Human Rights;	PL (Drafting): 4. Violation of the right to liberty and security in accordance with Article 9 of the Universal Declaration of Human Rights Rights and Articles 9 and 10 of the International Covenant on Civil and Political 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~~ **12** of	PL

the Universal Declaration of Human Rights;	(Drafting): 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~~ **12** of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political 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;	PL (Drafting): 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 and Article 18 of the International Covenant on Civil and Political 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:	
(e) workers are free to form or join trade unions,	SE (Comments): This is not a correct description of the rights stated in ILO convention 87 och 98. The Freedom of association and bargaining also includes employers and employers' organizations

(f) the formation, joining and membership of a trade union must not be used as a reason for unjustified discrimination or retaliation,	
(g) workers' organisations are free to operate in accordance with applicable in line with their constitutions and rules without interference from the authorities;	
(h) the right to strike and the right to collective bargaining;	SE (Drafting):
	SE (Drafting):

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	
(i) impairs the natural bases for the preservation and production of food or	

(j) denies a person access to safe and clean drinking water or	
(k) makes it difficult for a person to access sanitary facilities or destroys them or	
(l) harms the health, safety, the normal use of property or land or the normal conduct of economic activity of a person or	
(m) 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	PL (Drafting): 2. conventions and declarations of the un and ilo regarding human rights and fundamental freedoms
• 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	
	FI (Comments):

22.	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;	
23.	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;	
24.	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);	

25.	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;	
26.	Violation of the prohibition of the treatment of mercury waste contrary to the provisions of Article 11 (3) of the Minamata Convention;	
27.	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;	
28.	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;	

29.	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;	
30.	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;	
31.	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)	

(n) to a party that has prohibited the import of such hazardous and other wastes (Article 4 (1) (b) of the Basel Convention),	
(o) 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),	
(p) to a non-party to the Basel Convention (Article 4 (5) of the Basel Convention),	
(q) 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);	
32. 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);	
33. 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).	
	PL (Drafting): 34. Violation of the obligation to take the necessary measures to implement Article 3(1) of the Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention), i.e. wise use of all wetlands. PL (Comments):
	General comments
	AT (Comments): Austria is still examining the proposal in detail. Austria therefore expresses a general scrutiny reservation.
END	**END**

Table for comments on doc. 11566/1/22 REV1 (**Articles and Annex** of the Proposal for a **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937)** (838 rows)

deadline for comments**:** ***02/09/2022 cob***

