

<u>ANNEX to the proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937</u>	
	Comments and drafting suggestions received from AT-BE- DE-DK-EE-FI-FR-HU-MT-NL-PL-PT-SE
	<u>General comments</u>
<u>General comments</u>	<p><u>AT:</u></p> <ol style="list-style-type: none"> 1. Believes that the Annex needs to be discussed in detail in order to provide clarity, practicability and legal certainty. 2. 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. 3. Agrees that term “instruments” is most appropriate to refer to the legislation listed in the Annex. 4. Annex, Part II, exclusively refers to internationally binding conventions, which is why AT prefers the original version of “conventions”. 5. 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? 6. 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? 7. What do the possible violations of human rights conventions relate to; does this also include the respective interpretation by international bodies/courts of justice? 8. How is the principle of legality guaranteed when non-binding

	<p>instruments apply directly to companies?</p> <p>9. 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?</p> <p>10. 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.</p> <p><u>BE:</u></p> <p>11. As there exists a Part 1. section 2 Human rights and fundamental freedoms conventions, providing a general framework which the Due Diligence directive should take into account, why does the same not go for the environment section?</p> <p><u>DE:</u></p> <p>12. <u>Annex on international human rights instruments:</u> Specific corporate obligations must be derived from the instruments contained in the annex. A general obligation for governments to reach certain goals cannot simply be turned into a binding prohibition for companies. Only those prohibitions that are associated in a special, risk-typical way with the actions of companies in value chains should be included as specific prohibitions that apply without the qualified prerequisites defined in the catch-all clause. In doing so, the protection of vulnerable groups must be secured. Germany is working on amendment proposals to this effect. The Commission is requested to make a proposal for the definition of living wages and incomes.</p>
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13. Annex on international environmental instruments: With a view to the annex on environmental instruments, DE calls for a stringent and appropriate selection of the instruments to be referred to. Criteria for the instruments to be referred to should include:

- the specialist policy importance of the respective instruments,
- the state of ratification, i.e. the number of countries that have joined,
- the proximity to the risk domain of companies in terms of typical relevance in the corporate context and
- the feasibility of the instruments in sufficiently concrete and specific management duties of care so that the companies can easily and clearly identify which requirements they are subject to.

DE doubts whether all 12 of the instruments envisaged by the EU Commission meet these requirements.

In particular, general obligations for governments to reach certain goals cannot simply be turned into a binding prohibition for companies. Germany has some experience with the obligations defined in its Act on Corporate Due Diligence in Supply Chains and encourages technical dialogue.

The EU Commission is requested to set out in more detail how the corporate obligations derived from the environmental instruments proposed so far for Annex II can be shaped in a sufficiently workable manner. Instruments for which it is not possible to state precisely which specific obligations transferable to companies can be derived with sufficient certainty from them are unsuitable for inclusion in the annex. However, there are other environmental instruments in various areas whose inclusion in the annex should be discussed.

Germany will shortly present a list with further instruments here

	<p>and requests that their inclusion in the annex be discussed.</p> <p>14. Did all Member States ratify the international treaties listed in the annex?</p> <p>15. According to which decision criteria was the Annex Part 2 prepared? (List of articles of various international environmental agreements).</p> <p>16. Why does the directive not include a provision that allows annex II of the directive to be extended by delegated acts?</p> <p>17. How does the EU Commission proceed if the provisions of international conventions mentioned in the annexes are amended before the review scheduled after 7 years or if new, possibly relevant conventions enter into force? Do existing regulations in Annex Part II then become inapplicable in the case of static references? What happens if important new agreements are concluded or amended after the review cycle in Annex 7?</p> <p>18. To facilitate implementation for companies, with regard to the requirements that refer to national laws, a recital should clearly state that the Commission will, as far as possible, include information in the guidelines pursuant to Article 13 CSDDD regarding a) which obligations are usually relevant for which sectors subject to the directive, b) how companies can discern when national laws serve the purpose of the respective provisions of a particular agreement and c) where companies can obtain information about protected areas and the respective legal requirements of the country in question. Recital 46* should be supplemented as follows: "Regarding Annex Part II practical information should include for example further guidance on national legislation that the companies concerned need to observe, especially how these companies can discern when national laws serve the purpose of the respective</p>
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provisions of a particular agreement. The information should also contain, as far as possible, explanations on which obligations are usually relevant for which sectors and where companies can obtain information relevant for complying with their due diligence obligations. With regard to environmental protection this could be information about relevant protected areas and the respective legal requirements of the country in question.”

*In order to provide support and practical tools to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, using relevant international guidelines and standards as a reference, and in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, should have the possibility to issue guidelines, including for specific sectors or specific adverse impacts.

EE:

19. The transposition, implementation and interpretation of the Annex are our main concern regarding this Directive and still raise a number of questions.
20. Does 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.
21. Expressed 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.

FI:

22. Regarding Annex and recital 25, does the Commission see that even non-binding declarations can be referred to in company law?
23. How can companies have legal clarity, if the list of the Annex is not exhaustive?

FR:

24. General scrutiny reservation

HU:

25. Can the material scope of the due diligence obligations of companies established in a third country extend to such international labour standards whose ratification is the competence of the Member States according to the statutes of the international organisation concerned?
26. Is the chosen legal basis appropriate for sanctions related to the non-compliance with international labour law provisions which are not part of the law of the country of establishment of the company due to lack of ratification of certain conventions?
27. What is the added value for a due diligence obligation relating to international labor law standards for EU based companies while existing directives on this subject matter are in force and transposed by the Mamber States in their legislation? (i.e. directives 2000/78/EC on equal treatment in employment,

	<p>2006/54/EC on equal opportunities and equal treatment of men and women in matters of employment).</p> <p>28. Agrees 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.</p> <p><u>FI:</u></p> <p>29. As regard part I in the Annex, FI generally considers all the agreements listed in Part I of the Annex to be important. However, we are now making regulation for companies, so FI believes that the instruments to be included in the annex should be assessed against this objective.</p> <p>30. As a preliminary view, we see the risk that, if the list is as broad as in the Commission's proposal, it may undermine the enforcement of the rights protected by the most relevant instruments in our view. To conclude, the list should be assessed in the light that it actually contributes to achieve the objectives of the Directive and that companies can comply with the instruments listed therein.</p> <p>31. As regards Part II in the Annex, environmental instruments, we reiterate the importance of issues related to the fight against climate change and the position taken in the meetings that we want to raise these elements in the Directive by adding the <u>Paris Agreement</u> on climate change. However keeping in mind that the companies must be able to comply with the instruments listed in the Annex, we also note that including the Paris Agreement must be done on a business-friendly way meaning that the companies must be able to comply with regulation. We come back with more detailed reasoning in this regard as soon as possible.</p>
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MT:

- 32. 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.
- 33. The annex needs to be clear and specific: rule of law requires that legislation is intelligible, clear, and predictable.
- 34. 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 jeopardize European competitiveness.

NL:

- 35. International developments that must be incorporated in the annex.
- 36. Missing a reference to the Paris agreement on climate change in Annex II/supports such inclusion.

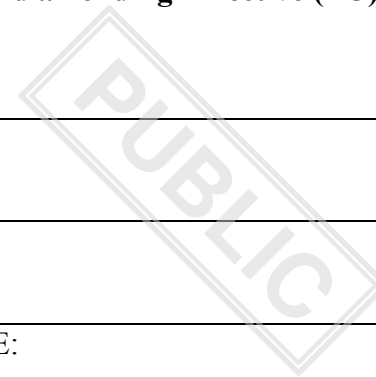
PL:

	<p>37. In addition to international agreements, the Annex also lists declarations that are not international agreements:</p> <ul style="list-style-type: none"> • 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. <p><u>PT:</u></p> <p>38. 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 agree 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 customary international law?</p> <p>39. Utmost importance to insert paragraphs in the annex, which highlight the importance of social protection for the realization of human rights.</p> <p><u>SE:</u></p> <p>40. Declarations, resolutions and conventions are mixed in the annex. States are only legally bound by conventions.</p>
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Tuesday, 11 October 2022

	Resolutions / declarations will have a legally binding effect that does not exist for states. How has the Commission reasoned when creating the Annex?
	MS drafting suggestions and comments (AT-BE- DE-DK-EE-FI-HU-MT-NL-PL-PT-SE)



PART 1	
1. VIOLATIONS OF RIGHTS AND PROHIBITIONS INCLUDED IN INTERNATIONAL HUMAN RIGHTS AGREEMENTS	<p>DE:</p> <p><u>I. Conventions</u></p> <p>The draft directive should be limited to the following (generally protective, universal and binding) conventions:</p> <ol style="list-style-type: none"> 1. Convention No. 29 of the International Labour Organisation of 28 June 1930 on Forced or Compulsory Labour (ILO Convention No. 29) 2. Protocol of 11 June 2014 to Convention No. 29 of the International Labour Organisation of 28 June 1930 on Forced or Compulsory Labour 3. Convention No. 87 of the International Labour Organisation of 9 July 1948 on Freedom of Association and Protection of the Right to Organise amended by the Convention of 26 June 1961 (ILO Convention No. 87) 4. Convention No. 98 of the International Labour Organisation of 1 July 1949 on the Right to Organise and Collective Bargaining amended by the Convention of 26 June 1961 (ILO Convention No. 98) 5. Convention No. 100 of the International Labour Organisation of 29 June 1951 on the Principle of Equal Remuneration for Men and Women Workers for Work of Equal Value (ILO Convention No. 100)

	<p>6. Convention No. 105 of the International Labour Organisation of 25 June 1957 on the Abolition of Forced Labour (ILO Convention No. 105)</p> <p>7. Convention No. 111 of the International Labour Organisation of 25 June 1958 on Discrimination (Employment and Occupation) (ILO Convention No. 111)</p> <p>8. Convention No. 138 of the International Labour Organisation of 26 June 1973 on the Minimum Age for Admission to Employment (ILO Convention No. 138)</p> <p>9. Convention No. 182 of the International Labour Organisation of 17 June 1999 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182)</p> <p>10. International Covenant of 19 December 1966 on Civil and Political Rights</p> <p>11. International Covenant of 19 December 1966 on Economic, Social and Cultural Rights</p> <p><u>DE:</u></p> <p><u>Substantiations of inferable prohibitions</u></p> <p>Prohibitions 1, 3, 4, 5, 9, 14 and 20 should be deleted. Specific corporate obligations must be derived from the instruments contained in the annex. Substantiations are therefore proposed for prohibitions 2, 6, 7, 16, 17 and 18. Prohibitions 8, 10, 11, 12, 13, 15, 18 and 19 are already sufficiently specified in the draft directive.</p>
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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;	<p><u>BE</u>: Does this include resolutions of the human rights council?</p> <p><u>DE</u> Delete</p> <p><u>SE</u>: 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?</p> <p><u>HU</u>: In case of ILO conventions where specific provisions on due diligence are not specified in the Annex, Part I./1., does the Directive require the verification of compliance with the Conventions as a whole? Is such an obligation considered to be proportionate in terms of the Treaties?</p>
2. Violation of the right to life and security in accordance with Article 3 of the Universal Declaration on Human rights;	<p><u>DE</u>:</p> <p>2. Violation of the right to life and security in accordance with Article 3 of the Universal Declaration on Human rights <u>6 of the International</u></p>

Covenant on Civil and Political Rights or of the prohibition of torture, cruel, inhuman or degrading treatment or punishment in accordance with Article 7 of the International Covenant on Civil and Political Rights by

(a) hiring or employing private or public security guards to protect the company's resources, facilities or personnel if, as a result of the employment of the security guards and due to a lack of instruction or control on the part of the company, a

Owing to the comparable company-specific risks, no. 2 and 3 of Annex I Part 1 Division 1 of the CSDD draft directive have been merged.

The UDHR is not legally binding – non-binding legal texts should not be made the subject of binding corporate obligations here. The focus has therefore been placed instead on Art. 6 and 7 of the additional protocol.

The prohibition has been supplemented with typical risks of corporate activity in the protective scope of Art. 6 and 7 of the additional protocol, based on section 2 (2) no. 11 and 5 of the Act on Corporate Due Diligence in Supply Chains. In order to protected person, in particular a member of an indigenous people or a human rights defender, is killed or subjected to torture, cruel, inhuman or degrading treatment or punishment, or

(b) disregarding the operational and production safety obligations under the law of the place of operation if this results in the injury of a

protected person's life outside the workplace through the company's operation, in particular due to

(i) obviously insufficient safety standards as regards the maintenance of the production facility, or

(ii) the absence of appropriate protective measures to avoid exposure to chemical, physical or biological substances;

Explanation: *Owing to the comparable company-specific risks, no. 2 and 3 of Annex I Part 1 Division 1 of the CSDD draft directive have been merged.*

The UDHR is not legally binding – non-binding legal texts should not be made the subject of binding corporate obligations here. The focus has therefore been placed instead on Art. 6 and 7 of the additional protocol.

The prohibition has been supplemented with typical risks of corporate activity in the protective scope of Art. 6 and 7 of the additional protocol, based on section 2 (2) no. 11 and 5 of the Act on Corporate Due Diligence in Supply Chains. In order to substantiate the prohibition, the wording “by” has been chosen in order to make clear that the list is exhaustive. This is the only way of ensuring sufficient precision of the prohibition and thus foreseeability for the companies affected. In order conversely to make clear that violations of Art. 6 and 7 of the additional protocol due to other actions or omissions can also fall under the CSDD Directive – as long as they fulfil the prerequisites of a catch-all provision – corresponding clarification in the catch-all clause is necessary (see below). Campaigners and members of indigenous peoples are particularly

	<p><i>affected by the risks cited. These have been included in the prohibition as particularly vulnerable groups. This in turn renders the listing of special human rights instruments for the protection of vulnerable groups in Annex I Part 1 Division 2 of the CSDD draft directive superfluous.</i></p> <p><u>PL:</u></p> <p>2. Violation of the right to life and security in accordance with Article 3 of the Universal Declaration on Human rights <u>and Articles 6 and 9 of the International Covenant on Civil and Political Rights;</u></p> <p><i>Comments: In PL 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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>
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3. Violation of the prohibition of torture, cruel, inhuman or degrading treatment in accordance with Article 5 of the Universal Declaration of Human Rights;	<p><u>DE:</u></p> <p>Delete</p> <p><u>PL:</u></p> <p>3. Violation of the prohibition of torture, cruel, inhuman or degrading treatment in accordance with Article 5 of the Universal Declaration of Human Rights <u>and Article 7 of the International Covenant on Civil and Political Rights;</u></p>
4. Violation of the right to liberty and security in accordance with Article 9 of the Universal Declaration of Human Rights;	<p><u>DE:</u></p> <p>Delete</p> <p><u>PL:</u></p> <p>4. Violation of the right to liberty and security in accordance with Article 9 of the Universal Declaration of Human Rights Rights <u>and Articles 9 and 10 of the International Covenant on Civil and Political Rights;</u></p>
5. Violation of the prohibition of arbitrary or unlawful interference	<p><u>DE:</u></p>

<p>with a person's privacy, family, home or correspondence and attacks on their reputation, in accordance with Article 17 of the Universal Declaration of Human Rights;</p>	<p>Delete</p> <p><u>PL:</u></p> <p>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 <u>and Article 17 of the International Covenant on Civil and Political Rights;</u></p>
<p>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;</p>	<p><u>BE:</u></p> <p>Could the Commission explain in how far inadequate data protection protocols that allow companies accurately to monitor the purposes for which data is being shared in accordance with the GDPR and that lead to data being shared or leaked to political regimes that use such data for repressive purposes to interfere with freedom of thought, conscience and religion expose companies to liability under the CSDDD?</p> <p><u>DE:</u></p> <p>6. Violation of the right to freedom of expression prohibition of interference with the freedom of thought, conscience and religion in accordance with Article 18 of the Universal Declaration of Human Rights <u>19 of the International Covenant on Civil and Political Rights by sanctioning in any way a worker who discloses his or her legitimate concerns as regards the company, individual workers thereof or its operations and those of its subsidiaries and its value chain to a</u></p>

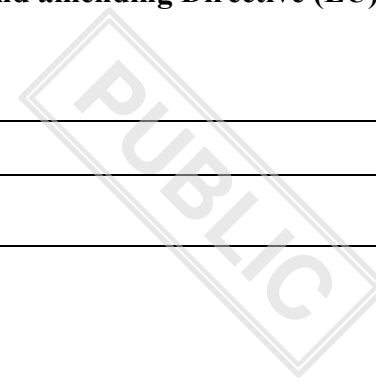
	<p><u>competent authority or body within the company;</u></p> <p><u>Explanation:</u></p> <p><i>The UDHR is deleted (see above). The focus has therefore been placed instead on Art. 19 of the additional protocol. Owing to the significant potential for conflict with national regulations, freedom of thought, conscience and religion should not be enforced by companies here and has been removed from the prohibition. “Religion” (according to the regulation proposal here) is in any case covered by the general prohibition of unequal treatment in employment pursuant to no. 16. On the other hand, impairments to freedom of opinion in operations are typical risks for the corporate activity and also manageable by the companies. The prohibition also strengthens the complaints procedure pursuant to Art. 9 of the CSDD draft directive and provides protection against reprisal. With a view to the diverging national regulations, “whistle blowing” has not been included in the prohibition, which is instead limited to internal criticism.</i></p> <p><u>PL:</u></p> <p>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 <u>and Article 18 of the International Covenant on Civil and Political Rights;</u></p>
<p>7. Violation of the right to enjoy just and favourable conditions of</p>	<p><u>BE:</u></p>

<p>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;</p>	<p>Could the Commission explain why it opted for the concept of a fair wage here and not the more ambitious concept of a living wage which is used infra at point 17 (violation of the prohibition on withholding an adequate living wage) ?</p> <p><u>DE:</u></p> <p>7. Violation of the right to enjoy just and favourable conditions of work including, <u>namely</u>, 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 <u>by disregarding the occupational safety and health obligations under the law of the place of employment if this gives rise to the risk of accidents at work or work-related health hazards, in particular due to</u> <u>(a) obviously insufficient safety standards in the provision and maintenance of the workplace, workstation and work equipment,</u> <u>(b) the absence of appropriate protective measures to avoid exposure to chemical, physical or biological substances,</u> <u>(c) the lack of measures to prevent excessive physical and mental fatigue, in particular through inappropriate work organisation in terms of working hours and rest breaks, or</u> <u>(d) the inadequate training and instruction of employees;</u></p> <p><u>Explanation:</u> <i>As the legal positions protected here are also covered by no. 16 (equal remuneration) and no. 17 (adequate living wage), “a fair wage” and “a decent living” have been removed from the list. The vague legal concepts “safe and healthy working conditions” and “reasonable limitation of working hours” are retained as topics but have been specified more precisely through the addition of typical risks of</i></p>
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	<i>corporate activity based on section 2 (2) no. 5 of the Act on Corporate Due Diligence in Supply Chains. In order to avoid overlaps with no. 16 and no. 17, “including” has been replaced by “namely”.</i>
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	<u>DE:</u> Delete



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:	<p><u>DE:</u></p> <p>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:</p> <p>Explanation: <i>The UDHR is deleted (see above).</i></p>
(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,	

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(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	<u>DE:</u> 13. Violation of the prohibition of all forms of slavery, practices akin to slavery, serfdom or other forms of domination or oppression in the

Human Rights and Art. 8 of the International Covenant on Civil and Political Rights;	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; <u>Explanation:</u> <i>The UDHR is deleted (see above).</i>
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;	<u>DE:</u> Delete
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:	<u>DE:</u> 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: <u>Explanation:</u> <i>The UDHR is deleted (see above).</i>

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(a) workers are free to form or join trade unions,	<p><u>BE:</u></p> <p>Does the Commission plan to address the case of yellow unions in the Directive?</p> <p><u>SE:</u></p> <p>This is not a correct description of the rights stated in ILO convention 87 and 98. The Freedom of association and bargaining also includes employers and employers' organizations</p>
(b) the formation, joining and membership of a trade union must not be used as a reason for unjustified discrimination or retaliation,	
(c) workers' organisations are free to operate in accordance with applicable in line with their constitutions and rules without interference from the authorities;	
(d) the right to strike and the right to collective bargaining;	
	<u>SE:</u>

	<p>Insert a quotation of Art 11 of CEDAW, establishing the elimination of discrimination against women in the field of employment, i.a. the right to promotion, job security and the right to receive vocational training and retraining, as well as the right to equal remuneration etc in respect of work of equal value</p> <p><u>SE:</u> (Comments):</p> <p><i>The rights in art 11 of CEDAW are related to employment, thus highly relevant to the investing companies.</i></p>
<p>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;</p>	<p><u>DE:</u></p> <p>16. Violation of the prohibition of unequal treatment in employment, <u>for example on grounds of national and ethnic origin, social origin, health status, disability, sexual orientation, age, gender, political opinion, religion or belief</u>, 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;</p> <p><u>Explanation:</u> <i>The discrimination grounds set out in section 2 (2) no. 7 of the Act on Corporate Due Diligence in Supply Chains have been included. This in turn renders the listing of special human rights instruments for the protection of vulnerable groups in Annex I Part 1 Division 2 of the CSDD</i></p>

	<i>draft directive superfluous.</i>
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;	<p><u>BE:</u></p> <p>Regarding the right to a living wage included in Annex I, how can the protection of this right be guaranteed in the Directive when the wage level to reach the threshold of a living wage is often unknown? And what about purchasing practices that reduce the potential to pay living wages in the value chain?</p> <p><u>DE:</u></p> <p>The Commission is requested to make a proposal for the definition of living wages and incomes.</p>
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	<p><u>BE:</u></p> <p>Taking into account the complexity and systemic nature of the risk related to eco-system effects and biodiversity loss, is the term “measurable” the appropriate term?</p> <p><u>DE:</u></p> <p>Whistleblower protection under Directive (EU) 2019/1937 exists for persons who have obtained information about violations in a professional</p>

	<p>or work-related context (see article 2 para 1 of that directive). What protection does the draft CSDD Directive offer to whistleblowers who do not come from the professional context (relevant e.g. in the cases of Annex Part 1 No. 18)?</p> <p>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</p> <p><u>Explanation:</u> <i>The supplements exceeding the Act on Corporate Due Diligence in Supply Chains have been deleted as they are characterized by significant additional vagueness. Moreover, the effects are partially covered by other EU instruments such as the Deforestation Regulation.</i></p>
(a) impairs the natural bases for the preservation and production of food or	<p><u>DE:</u></p> <p>a) <u>substantially</u> impairs the natural bases for the preservation and production of food or</p>
(b) denies a person access to safe and clean drinking water or	
(c) makes it difficult for a person to access sanitary facilities or	

destroys them or	
(d) harms the health, safety, the normal use of property or land or the normal conduct of economic activity of a person or	<u>DE:</u> d) harms the health, safety, the normal use of property or land or the normal conduct of economic activity of a person; or
(e) affects ecological integrity, such as deforestation,	<u>DE:</u> Delete
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;	<u>DE:</u> 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;	

<p>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;</p>	<p><u>DE:</u></p> <p>Delete</p> <p>What is the effect of the fact that some of the declarations mentioned in Annex Part 2 are not legally binding (e.g. Declaration on the Rights of Indigenous Peoples, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities)?</p> <p><u>DK:</u></p> <p>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 10, 25, 26 (1) and (2), 27, 28 (1) and (2), and 29 (2) of the United Nations Declaration on the Rights of Indigenous Peoples;</p> <p><u>DK:</u> (Comment): <i>articles from the UNDRIP referring to FPIC should be included.</i></p> <p><i>Two drafting suggestions:</i></p> <p>20. Violation of the indigenous peoples' rights <u>as set out in the United Nations Declaration on the Rights of Indigenous Peoples.</u></p> <p><u>Or</u></p> <p>20. Violation of the indigenous peoples' right to the lands, territories and</p>

	<p>resources which they have traditionally owned, occupied or otherwise used or acquired in accordance with Article 10, 25, 26 (1) and (2), 27, 28(1) and (2) and 29 (2) of the United Nations Declaration on the Rights of Indigenous Peoples;</p> <p><u>Explanation:</u> <i>DK suggests that reference is made to the entire UNDRIP, as all articles are deemed relevant for the directive. As a minimum, articles from the UNDRIP referring to FPIC should be included (second suggestion), but we would prefer that reference is made to the entire declaration (first suggestion).</i></p>
<p>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.</p>	<p><u>AT:</u></p> <p>The general clause in No. 21 might be unclear and should be clarified in the light of the principle of legality.</p> <p><u>DE:</u></p> <p>What is the relationship between the requirements "could have reasonably established the risk" in Nr. 21 Annex Part 1 with "human rights impacts and adverse environmental impacts that have been, or should have been, identified" in Article 7 para 1, Article 8 para 1 and "adverse impact that should have been identified" in Article 22 para 1 (b)? What is the connection between "could have reasonably established" and Article 3 lit.</p>

	<p>q?</p> <p>21. Violation of a prohibition or right included in the human rights agreements listed in Section 2 of this Part in such a manner not covered by points 1 to 20 above but included in the human rights agreements listed in Section 2 of this Part, only where the respective violation 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.</p> <p>a) is directly caused by the own operations of the company, the operations of its subsidiaries, or the value chain operations carried out by entities with whom the company has a business relationship,</p> <p>(b) is severe within the meaning of article 3 lit. l, and</p> <p>(c) is obvious upon reasonable assessment of all the circumstances in question, including the type and extent of the operations of the company, its sector, geographical and operational context and the extend of its cooperation with state actors that manifestly commit such violations or are widely known to commit such violations.</p> <p><u>Explanation:</u> <i>The phrase “in such a manner not covered ...” makes clear that violations of the human rights listed in no. 1 – 20 can also fall under the CSDD Directive due to other acts or omissions than those specifically mentioned there as long as they fulfil the prerequisites of a catch-all provision.</i></p> <p><i>The obligations that can arise from the catch-all clause must be clear and limitable for companies. Qualifying characteristics are required in order to make the scope of the catch-all clause manageable (material limitation</i></p>
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	<p><i>with qualitative constituent elements). The wording proposal comprises the prerequisites of section 1 (2) no. 12 of the Act on Corporate Due Diligence in Supply Chains and for additional clarity adds relevant circumstances for a reasonable assessment by the company.</i></p> <p><u>SE:</u></p> <p>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?</p>
	<p><u>DE:</u></p> <p>What is the effect of the fact that some of the declarations mentioned in Annex Part 2 are not legally binding (e.g. Declaration on the Rights of Indigenous Peoples, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities)?</p>

<p>2. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONVENTIONS</p>	<p><u>DK</u></p> <p>2. Human rights and fundamental freedoms <u>instruments</u> conventions</p> <p><u>PL:</u></p> <p>2. Human rights and fundamental freedoms conventions <u>and declarations of the un and ilo regarding human rights and fundamental freedoms</u></p>
<ul style="list-style-type: none"> The Universal Declaration of Human Rights; 	
<ul style="list-style-type: none"> The International Covenant on Civil and Political Rights; 	
<ul style="list-style-type: none"> The International Covenant on Economic, Social and Cultural Rights; 	
<ul style="list-style-type: none"> The Convention on the Prevention and Punishment of the Crime of Genocide; 	
<ul style="list-style-type: none"> The Convention against Torture and other Cruel, Inhuman or 	

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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;	

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PUBLIC

<ul style="list-style-type: none"> 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; 	
<ul style="list-style-type: none"> The International Labour Organization's Declaration on Fundamental Principles and Rights at Work; 	
<ul style="list-style-type: none"> The International Labour Organization's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; 	
<ul style="list-style-type: none"> The International Labour Organization's core/fundamental conventions: 	
<ul style="list-style-type: none"> Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) 	
<ul style="list-style-type: none"> Right to Organise and Collective Bargaining Convention, 1949 (No. 98) 	

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• 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)	
	<u>FR:</u> <ul style="list-style-type: none"> • <u>Occupational Safety and Health Convention, 1981 (No. 155)</u>

PART II	
	<p><u>DK:</u></p> <p>Comments to CSDDD, Annex part II General questions/comments; Several important environmental conventions are not mentioned in the annex, such as the Aarhus Convention¹, the ESPOO Convention², the Water Course Conventions³, the Air Convention⁴ and the Industrial Accidents Convention⁵. These conventions are crucial in order to support a general minimum environmental standard. It should also be mentioned that there is a reference to EU legislation in relation to the Stockholm Convention and the Basel Convention but not in relation to all of the mentioned conventions (for example the Minamata convention). Thus the list should be updated, including a reference to the Mercury Regulation 2017/852 of 17 May 2017 (OJ L 137 of 24 May 2017)</p> <p>1 Aarhus Convention; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 2 EPSOO Convention; Convention on Environmental Impact Assessment in a Transboundary Context 3 Including; Convention on the Protection and Use of Transboundary Watercourses and International Lakes 4 Air Convention; Convention on Long-range Transboundary Air Pollution 5 Industrial Accidents Convention; Convention on the Transboundary Effects of Industrial Accidents</p> <p><u>FR:</u></p>

	Scrutiny reservation. As for Human Rights, France supports referring to international instruments in the field of environment. However, it is still assessing references proposed by the Commission.
VIOLATIONS OF INTERNATIONALLY RECOGNIZED OBJECTIVES AND PROHIBITIONS INCLUDED IN ENVIRONMENTAL CONVENTIONS	
1. Violation of the obligation to take the necessary measures related to the use of biological resources in order to avoid or minimize adverse impacts on biological diversity, in line with Article 10 (b) of the 1992 Convention on Biological Diversity and [taking into account possible amendments following the post 2020 UN Convention on Biological Diversity], including the obligations of the Cartagena Protocol on the development, handling, transport, use, transfer and release of living modified organisms and of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 12 October 2014;	<p><u>BE:</u></p> <p>Why are the Paris Agreement not included here? How has this list been established? Does the Commission plan to modify this list, and if so, how, when and to what extend?</p> <p><u>DE:</u></p>

	<p>Violation of the obligation to take the <u>regulations in force in the applicable jurisdiction that a) are</u> 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) or <u>b) protect areas or take special measures in areas to conserve biological diversity under the provision of Article 8 a)</u></p> <p><u>Explanation:</u> <i>The additions serve to specify the Commission proposal. This is a special form of the principle of legality with regard to national regulations that serve the purpose of Article 10 (b) of the CBD or of implements protected areas within the meaning of Article 8 (a) of the CBD. This link to national (environmental) law ensures that agreements are transposed into sufficiently concrete and specific provisions on due diligence and makes it easier for companies to comply with the provisions stipulated in the directive.</i> <i>A recital should clarify that the Commission will, as far as possible, include the following information in the guidelines pursuant to Article 13 CSDDD: a) Which obligations are usually relevant for which sectors subject to the directive (non-exhaustive)</i> <i>b) How companies can discern if national regulations serve the purpose of Article 10 (b) of the CBD and c) Where companies can obtain information about protected areas and the respective legal requirements of the country in question (for protected areas in general e.g.: https://www.protectedplanet.net/en).</i> <i>The Commission is also asked to analyse why, in deviation from the wording of Article 10 (b) of the CBD, the term “necessary” was added to the text and whether the term still needs to be included with a view to the change proposed here.</i> <i>Concerning the inclusion of the Cartagena and Nagoya Protocols, the</i></p>
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Commission should be tasked to analyse the reason for the inclusion as well as its significance and benefit.

DK:

The text in the bracket should be changed to; “*taking into account the coming Post 2020 Global Biodiversity Framework*” since the reference is not to a change of the convention but the 10 year work program under the convention. ***We support a significant focus on chemicals and ask for the following text to be included;***

NL:

Would like to see a reference to the Paris Agreement Under the United Nations Framework Convention on Climate Change.

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2. Violation of the prohibition to import or export any specimen included in an Appendix of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973 without a permit, pursuant to Articles III, IV and V;	<u>DE:</u> As there is already a European regulation on the protection of species, the Commission should be tasked to analyse the benefit of including CITES.
3. Violation of the prohibition of the manufacture of mercury-added products pursuant to Article 4 (1) and Annex A Part I of the Minamata Convention on Mercury of 10 October 2013 (Minamata Convention);	<u>DK:</u> Violation of the restriction of the use of mercury and mercury compounds in processes listed in Annex B Part II of the Minamata Convention;
4. Violation of the prohibition of the use of mercury and mercury compounds in manufacturing processes within the meaning of Article 5 (2) and Annex B Part I of the Minamata Convention from the phase-out date specified in the Convention for the respective products and processes;	
5. Violation of the prohibition of the treatment of mercury waste contrary to the provisions of Article 11 (3) of the Minamata Convention;	
6. Violation of the prohibition of the production and use of chemicals pursuant to Article 3 (1) (a) (i) and Annex A of the Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants (POPs Convention), in the version of Regulation (EU) 2019/1021 of the European Parliament and	<u>DK:</u> Violation of the prohibition of the production and use of chemicals pursuant to Article 3 (1) (a) (i) and Annex A and restriction of the

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of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169 of 25 June 2019 pp. 45-77;	<u>production [and use of the chemicals listed in Annex B] of the Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants (POPs Convention)</u> , in the version of Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169 of 25 June 2019 pp. 45-77;
7. Violation of the prohibition of the handling, collection, storage and disposal of waste in a manner that is not environmentally sound in accordance with the regulations in force in the applicable jurisdiction under the provisions of Article 6 (1) (d) (i) and (ii) of the POPs Convention;	
8. Violation of the prohibition of importing a chemical listed in Annex III of the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO), adopted on 10 September 1998, as indicated by the importing Party to the Convention in line with the Prior Informed Consent (PIC) Procedure;	<u>BE:</u> Why does the Commission not make a reference to the EU Regulation, as the EU Regulation goes beyond the Convention on this matter?
9. Violation of the prohibition of the production and consumption of specific substances that deplete the ozone layer (i.e., CFCs, Halons, CTC, TCA, BCM, MB, HBFCs and HCFCs) after their phase-out pursuant to the Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;	<u>DE:</u> Violation of <u>the licensing obligations regulated in Article 4B of the Montreal Protocol on Substances that Deplete the Ozone Layer</u> 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

Explanation:

In contrast to the Montreal Protocol, the Vienna Convention itself does not contain any obligations that can be implemented directly by companies. The idea behind the proposed change is that otherwise economic actors do not have a precise understanding of the obligations they must observe, as regarding production and consumption

- the reduction targets (zero emissions) for some substances (HCFCs) have not been reached everywhere around the globe

- the Montreal Protocol allows exemptions for the major share of regulated substances even if reduction targets have been reached (basic domestic needs, essential uses)

- there is no phase-out envisaged for the HCFC group, only a phase-down.

DE would also request the Commission to analyse if the import and export provisions in Articles 4 and 4A of the Montreal Protocol can be directly transferred to companies and thus added.

DK:

Suggests adding reference to HFCs as a group of substances under the

	protocol.
10. Violation of the prohibition of exports of hazardous waste within the meaning of Article 1 (1) and other wastes within the meaning of Article 1 (2) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Basel Convention) and within the meaning of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190 of 12 July 2006 pp. 1-98) (Regulation (EC) No 1013/2006), as last amended by Commission Delegated Regulation (EU) 2020/2174 of 19 October 2020 (OJ L 433 of 22 December 2020 pp. 11-19)	
	<p><u>PL:</u></p> <p><u>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.</u></p>
(a) to a party that has prohibited the import of such hazardous and other wastes (Article 4 (1) (b) of the Basel Convention),	
(b) to a state of import as defined in Article 2 no. 11 of the Basel Convention that does not consent in writing to the specific import, in the	

case where that state of import has not prohibited the import of such hazardous wastes (Article 4 (1) (c) of the Basel Convention),	
(c) to a non-party to the Basel Convention (Article 4 (5) of the Basel Convention),	
(d) to a state of import if such hazardous wastes or other wastes are not managed in an environmentally sound manner in that state or elsewhere (Article 4 (8) sentence 1 of the Basel Convention);	
11. Violation of the prohibition of the export of hazardous wastes from countries listed in Annex VII to the Basel Convention to countries not listed in Annex VII (Article 4A of the Basel Convention, Article 36 of Regulation (EC) No 1013/2006);	
12. Violation of the prohibition of the import of hazardous wastes and other wastes from a non-party to the Basel Convention (Article 4 (5) of the Basel Convention).	
	DE: <u>13. Violation of regulations in force in the applicable jurisdiction that protect, conserve or rehabilitate listed properties of natural heritage in line with Art. 3 and Art. 5 (d) of the Convention concerning the protection of the world cultural and natural heritage (UNESCO)</u>

	<p><u>adopted by the General Conference at its seventeenth session in Paris, 16 November 1972.</u></p> <p><u>Explanation:</u></p> <p><i>Companies need to take care that protected areas under the UNESCO World Heritage Convention are not harmed by their economic activities or through their supply and value chains. This proposal, too, is a special form of the principle of legality.</i></p> <p><i>A recital should make clear that the Commission will in their guidelines provide companies with information about protected areas (also see No. 1, e.g., to https://whc.unesco.org/en/natural-world-heritage/).</i></p>
	<p><u>DE:</u></p> <p><u>14. Violation of regulations in force in the applicable jurisdiction that promote the conservation of listed wetlands in line with Art. 2 (1), Art. 4 (1) of the Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971 (Ramsar Convention).</u></p> <p><u>Explanation:</u></p> <p><i>Like No. 13, with the difference that it refers to international wetlands listed in fulfilment of the Ramsar Convention (reference in guidelines e.g. to, https://www.ramsar.org/country-profiles).</i></p>
	<p><u>15. Violation of obligations related to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), namely of</u></p>

	<p><u>a) the prohibition of the discharge into the sea</u></p> <p><u>aa) of oil or oily mixtures in line with Regulations 9 - 11 of Annex I</u></p> <p><u>bb) of noxious liquid substances in line with Regulations 5 - 6 of Annex II</u></p> <p><u>cc) of sewage in line with Regulations 8 and 9 of Annex IV</u></p> <p><u>b) the requirements for oil tankers in Regulations 13 – 21, 24 – 25 A and 26 of Annex I</u></p> <p><u>c) the requirements for the prevention of pollution by harmful substances carried by sea in packaged form in Regulations 2 – 7 of Annex III</u></p> <p><u>d) the regulations for the prevention of pollution by garbage from ships in Regulations 3 – 6, 9 of Annex V and</u></p> <p><u>e) the requirements for the prevention of air pollution from ships in Regulations 3 and 12, 13, 14, 16, 18 and 19 of Annex VI.</u></p> <p><u>Explanation:</u></p> <p><i>MARPOL contains specific provisions to reduce marine pollution from ships. This includes only technical and thus concrete and specific obligations that companies are able to observe.</i></p>
	<p><u>DE:</u></p> <p><u>16. Violation of the prohibition to carry out activities in the Area</u></p>

	<p><u>without approval of the Council of the International Seabed Authority in Article 153 (3) in Part XI of the United Nations Convention on the Law of the Sea (UNCLOS) and the Implementing Agreement of 1994 as well with the rules, regulations and procedures as adopted by the International Seabed Authority; or non-compliance with an approval.</u></p> <p><u>Explanation:</u></p> <p><i>Referenced provisions in Part XI of UNCLOS and the corresponding implementing agreement regulate the exploration of the deep seabed and deep sea mining. Activities on the deep seabed beyond national territories require an approval by the International Seabed Authority. Even if deep sea mining is not being practised at this point, it will probably play an important role in the future. The demand for resources that are located in the deep seabed is constantly rising. Extraction techniques are already being tested.</i></p> <p><i>The provision contains a prohibition unless permission is granted. Such an obligation ensures that companies can easily comply with their due diligence obligations.</i></p>
	<p><u>DE:</u></p> <p><u>17. Violation of obligations related to the 1996 Protocol to the Convention on the prevention of marine pollution by Dumping of Wastes and Other Matter, 1972, as amended in 2006 (,London Protocol'), namely the prohibition of</u></p>

	<p><u>a) the dumping of any waste or other matter without a permit in line with Articles 4 (1), 8 and Annex I, or non-compliance with a permit</u></p> <p><u>b) the incineration at sea of wastes or other matter in line with Articles 5 and 8</u></p> <p><u>c) the export of wastes or other matter for dumping or incineration at sea in line with Article 6.</u></p> <p><u>Explanation:</u></p> <p><i>The London Protocol is a modernisation of the London Convention and closes major gaps in marine protection. In contrast to the referenced provisions of MARPOL, which refer to specific emissions and immissions from shipping, the referenced provisions of the London Protocol regulate the targeted input of substances or waste flows into the oceans. This includes dredging sludge, sewage sludge and other waste, for example the disposal of ships, platforms and other man-made structures at sea.</i></p> <p><i>The provisions contain a prohibition unless permission is granted. Such an obligation ensures that companies can easily comply with their due diligence obligations.</i></p>
END	END



Council of the European Union
General Secretariat

Brussels, 13 October 2022

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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 – Consolidated table of comments on the Annex

Delegations will find attached for their information the consolidated table containing all the comments sent by Member States on the 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.