July 2021

Close the loop

Addressing businesses' adverse environmental impacts

ClientEarth

1. Introduction

There has been growing pressure from various stakeholders asking the EU to establish mandatory due diligence rules for companies that are based in the EU or that provide goods or services in the EU. This pressure comes not only from civil society organisations,[1] but also from businesses themselves.[2]

One of the 10 actions in the Action Plan on Sustainable Finance that the Commission adopted in March 2018 is to foster sustainable corporate governance and attenuate short-termism in capital markets. This action led to a study on human rights and environmental due diligence commissioned by the Directorate-General for Justice and Consumers. This study has been followed by the launch of a legislative initiative on sustainable corporate governance. A legislative proposal on due diligence duties for companies was expected to be published in June 2021 but has now been postponed until autumn.

Corporate due diligence is a concept that has been developed in particular by the UN Guiding Principles on Business and Human Rights as well as the OECD Guidelines for Multinational Enterprises. It should be understood as a bundle of interrelated responsibilities and processes for identifying, preventing, mitigating adverse impacts as well as account for them, tracking the implementation and results of these processes and communicating about how adverse impacts are addressed with respect to the enterprises' own operations, their value chains and other business relationships.

The Commissioner for Justice and Consumers, Didier Reynders, has reiterated the ambit of the impacts that will be covered by the upcoming legislation: It will cover both human rights and the environment.

Many EU companies are causing or contributing to environmental damage through their own operations or global value chains. But business as usual is no longer tenable. As one of the largest trading blocs in the world, the EU has a responsibility to take action to tackle its environmental footprint. A holistic approach at EU level is needed to shape business conduct in order to ensure businesses do not undermine the EU's sustainability goals, but instead contribute effectively to achieving them. This is ultimately in their best interests.

The scope of the proposed legislation (expected to be in the form of a directive) must include the environment if it is to contribute effectively to the EU's sustainability objectives and the EU Green Deal.

It will be essential to ensure that the legislative proposal offers a sufficient and comprehensive definition of what constitutes an adverse environmental impact. In this regard, we recommend that the legislative proposal adopt a "non-exhaustive list" approach, with references to international environmental standards as well as to specific environmental matters for defining environmental impacts.[3] This list should include but not be limited to: climate change (including greenhouse gas emissions); air, soil, water and noise pollution (including through disposal of chemicals); hazardous substances and production of waste; loss of and damage to forests and natural ecosystems; loss of biodiversity; and loss of habitats and species.

1 https://corporatejustice.org/news/civil-society-calls-for-human-rights-and-environmental-due-diligence-legislation/
2 https://www.business-humanrights.org/en/latest-news/list-of-large-businesses-associations-investors-with-public-statements-endorsements-in-support-of-mandatory-due-diligence-regulation/
3 https://www.clientearth.org/latest/documents/putting-the-environment-in-human-rights-and-environmental-due-diligence/

When it comes to **the identification, assessment and necessary mitigation measures to be taken** with respect to actual or potential adverse environmental impacts, these **need to cover the entire value chain of the company, regardless of sector or size**. This briefing provides a review of environmental impacts which demonstrates the need for the future due diligence legislation to: (1) cover as many companies as possible; (2) cover entire value chains; and (3) ensure transparency and reporting.

2. Cover as many companies as possible to avoid fragmentation of responsibility and loopholes

At first glance, it seems tempting to apply due diligence legislation only to larger companies. In reality – as the seafood industry shows – it is entirely possible for small and medium enterprises (SMEs) to do significant environmental damage.

Just like EU law requires fishing nets to have the right-sized mesh to target the right fish, the due diligence legislation must be carefully calibrated not to let important environmental impacts slip through. As regulation of the EU timber industry shows in our second example below, imposing due diligence obligations on companies of all sizes and throughout the supply chain is feasible.

If the legislation is designed to prevent environmental harm and human rights abuses, it should ultimately cover operators in all sectors and of all sizes. This would align it with the United Nations Guiding Principles on Business and Human Rights, which highlight that all businesses have a responsibility to respect human rights. Thresholds create loopholes, undermining the effectiveness of the legislation. Thresholds can be too high and thus leave out a considerable amount of companies, including smaller companies with riskier value chains. Finally, thresholds can also take away opportunities to facilitate SMEs' transition to sustainability, potentially putting them at a commercial and competitive disadvantage.[4]

What is needed is a proportionate approach to due diligence. This would mean that companies do not face unnecessary additional burdens. Risk evaluation and mitigation measures should be proportional to the context and associated risk of the company's value chain. **In practice this means that the exact scope of the due diligence to be carried out by a company depends on the 'risks and impacts' associated with its value chain**.

It also means a company operating with higher risks or with longer or more complex value chains would have proportionately higher due diligence obligations.

That is not to say that SMEs can be exempt from the due diligence obligation, or do no more than gather documents provided by suppliers. Compliance must be measured by the extent to which the measures taken are informed by sufficient and reasonable information and provide an adequate response to the risks identified in the context of each particular case.

4 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3595048 (page 46 & 47)

Example 1

The seafood supply chain – how even the smallest companies can do harm

The seafood sector is illustrative of why all companies should be covered by the future legislation.

The environmental damage inflicted by fishing activities, whether industrial or small scale,[5] is broad and well documented, and varies largely depending on the intensity of fishing pressure, the fishing gear type used and the ecosystems with which that gear interacts.

Source: FishWise, 2018[6]

5 While it is clear that large industrial fishing boats employing harmful gear can be damaging to marine ecosystems, there is often an assumption that small-scale fisheries employ passive gear. But this is not always the case – they may adopt mobile gear such as trawl nets. Regardless of gear type, they might still be overfishing if they are targeting vulnerable stocks. See http://www.oceansatlas.org/subtopic/en/c/1421/

6 FishWise (2018) Advancing Traceability in the Seafood Industry: Assessing Challenges and Opportunities. February 2018. See https://fishwise.org/traceability/advancing-traceability-in-theseafood- industry-assessing-challenges-and-opportunities/

Example 1 continued

Types of damage can include direct impact on the seabed and habitat disturbance (in general when bottom-trawling or similar gear is used), and high levels of bycatch (i.e. unintended catch) of species such as dolphins, sharks and turtles. The sustainability of the targeted fish species can also be under threat when it is overfished, threatening the status of that species and also the long-term economic interests of those who depend on it for their livelihoods.

As demonstrated in the figure above, the seafood supply chain is composed of a web of companies that interact at various stages and throughout the journey of the fish from net to plate. Upstream companies engage in fishing activities with large industrial fishing boats or smaller artisanal fishers. At the middle of the supply chain, buyers include large companies as well as SMEs that trade seafood, either to be sold fresh to end consumers or processed by companies that add value to the product. It is then sold at foodservice and retail level by a range of businesses, from typical, well-established large retailers to smaller local markets and restaurants.

Buyers at all stages of the supply chain will implement decision-making processes governing their seafood purchases. The nature of these purchasing criteria will be decided by the company itself, irrespective of its size, but the source fishery from which the product comes will supply both large businesses and SMEs alike. That source can be overexploited, creating significant adverse environmental impacts, whether fished to supply large or small mid-supply chain actors, and in turn large or small retailers. Indeed, the cumulative impact of a dozen SMEs sourcing fish from a poorly managed fishery can have the same impact as a large business sourcing from that same fishery. As a result, general patterns of business behaviour matter as much as the size of each business under consideration.

The responsibility to undertake thorough due diligence – through sourcing/buying practices that are responsible, and where each source is risk-assessed to make sure it complies with legal requirements and are assessed against sustainability criteria – is as important for large businesses as for SMEs. For the effective environmental protection of the ocean, EU due diligence legislation should apply to companies of all sizes.

Example 2

Illegal logging – how due diligence for companies of all sizes works

Forests provide important ecosystem services to society, such as clean air, water-flow regulation, carbon reduction, protection against water and wind erosion, habitats for animals and plants, restoration of degraded land and resilience to climate change.

Illegal logging undermines these services. More specifically, illegal logging's adverse environmental impacts include loss and damage to forest resources which subsequently puts further pressure on remaining intact forests, loss of biodiversity, soil erosion, degradation of land and water resources, the reduction of carbon stocks and the emission of greenhouse gases, thereby negatively impacting on climate change.

Additionally, illegal logging, by its very nature, leads to the conversion of forest areas, generally into agricultural lands, and even the development of illegal wildlife trade following the construction of new (illegal) roads.

The EU Timber Regulation (EUTR) makes it illegal to place on the EU market timber that has been logged in violation of the laws of the country of origin. It engages economic operators throughout the supply chain and obliges those operators who first place timber on the EU market to take active steps to assess and mitigate the risk that the timber they sell has been logged illegally (due diligence obligation). The due diligence obligation of the EUTR applies to all companies, irrespective of their size.

There are no clear indications that being a smaller business is a barrier to applying an effective due diligence system.[7] A survey conducted among SMEs did show that some of them consider compliance with the EUTR to be a challenge, due notably to difficulties in understanding the technical requirements of the due diligence system, lack of experience in exercising due diligence and/or limited financial resources to update their existing control systems.

The potential challenges faced by some SMEs cannot be overlooked but they can be overcome. It is important to note that competent authorities and government organisations are actively tackling these challenges by providing operators (mostly SMEs) with technical assistance and capacity-building trainings. According to the official data,[8] the number of operators receiving assistance or training to facilitate compliance with the EUTR requirements varies across Member States, from 7 (Cyprus) to 4,000 operators (Germany) in 2019.

7 Report from the Commission to the European Parliament and the Council (European Commission, 2016), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0074 (page 7)

8 Background analysis of the 2017-2019 national biennial reports on the implementation of the European Union's Timber Regulation (European Commission, 2019), available at https://ec.europa.eu/environment/forests/pdf/EUTR%20Analysis%202017-2019.pdf

3. Cover the entire value chain in order to address all actual or potential adverse impacts

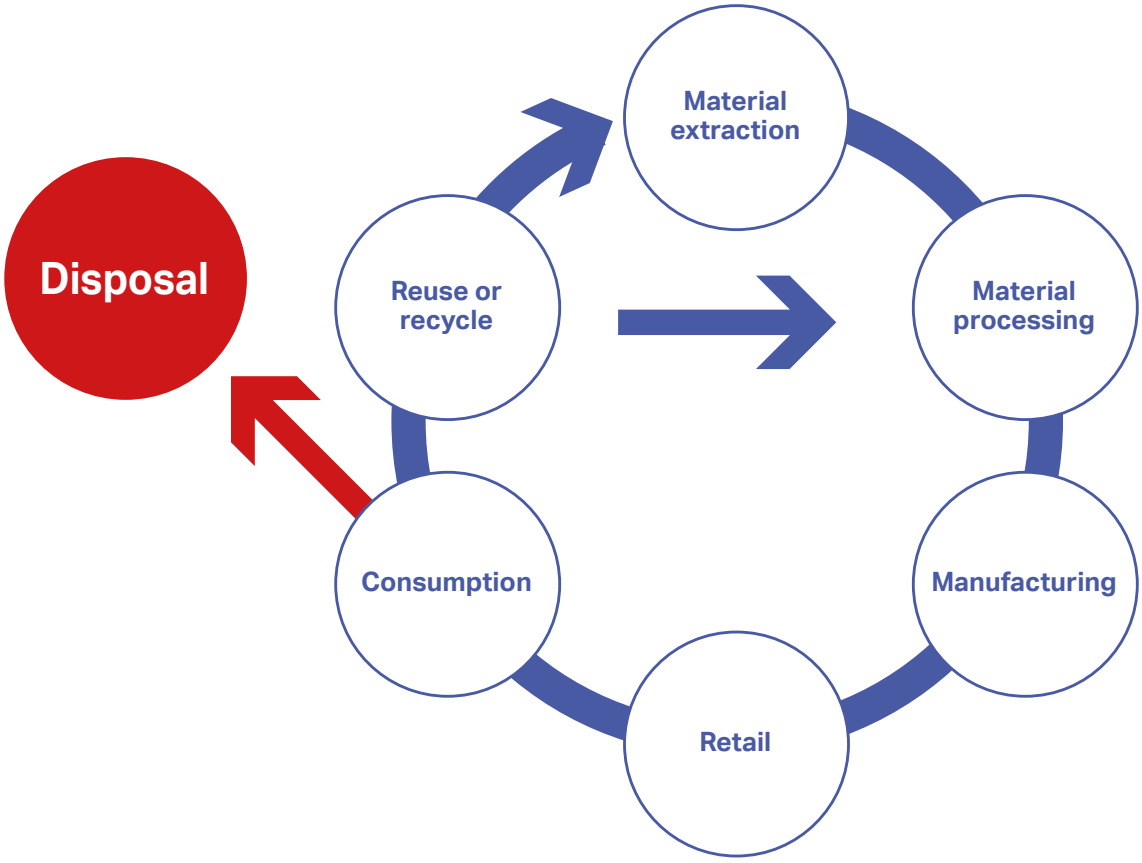
Due diligence should cover the whole value chain because limiting due diligence requirements to tier 1 (i.e. a company's own operations and its direct suppliers) will not cover some of the most severe impacts.

As the OECD Guidelines state, "Enterprises should (3) Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them".[9]

Due diligence should cover the material sourcing and production as well as the end of life of the product, i.e. waste, reuse, recycling, recovery or disposal.

Indeed, the term "life cycle" has already been defined in EU legislation: "life cycle means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, **from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation**."[10]

The environmental impact of the goods and services we use every day can only be captured if it is assessed at every stage of their life cycle. Fossil fuels and plastics demonstrate why.



9 OECD Guidelines for Multinational Enterprises, Part 1, Chapter VI Environment
10 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 094 28.3.2014, p. 65), Art. 2 para. 1 no. (20) Directive 2014/24/EU, emphasis added

Example 3

The fossil fuel value chain – how a selective approach to overall life cycle emissions risks undermining the transition to net zero

Companies engaged in the business of exploration, production, refinement, and distribution of coal, oil or gas often take an inconsistent approach to the full life cycle of the fossil fuel value chain.

The examples below show the risks of the selective approach adopted by fossil fuel companies to overall life cycle emissions across their value chains, which imperils the transition to net zero. This underscores the need for due diligence to address environmental impacts across the entire value chain.

The vast majority of greenhouse gas (GHG) emissions from fossil fuels are produced by their use, when they are burned, for example to produce heat or electricity or in transport vehicles (these are called "Scope 3" emissions).[11] Scope 3 emissions form significant parts of many companies' climate impacts, but for fossil fuel companies, Scope 3 emissions form the large majority of their climate impact – around 60-90% of their overall GHG emission footprint. However, companies, even those with "net zero" targets and plans, often reject full responsibility for addressing the Scope 3 emissions produced by their products and accordingly deprioritise these in initiatives to address their climate impact. Due diligence, which looks at companies' entire value chain, must take proper account of Scope 3 emissions.

These issues were highlighted in the landmark May 2021 judgment by the Hague District Court against Shell. The Court turned to climate science to reject Shell's "transition" strategy and targets as falling short of its legal obligations to reduce its emissions in line with the Paris Agreement's goal of limiting global temperature rise to 1.5ºC above pre-industrial temperatures.[12]

11 "[R]oughly 70 to 90 per cent of lifecycle emissions from oil products and 60 to 85 per cent of those from natural gas". See https://www.lse.ac.uk/granthaminstitute/news/emissions-targets-in-the-oil-and-gas-sector-how-do-they-stack-up/
12 http://climatecasechart.com/climate-change-litigation/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/

Example 3 continued

Despite Shell's attempts to argue otherwise, the Court's order for the company to reduce its net emissions by 45% by 2030 applies to all of Shell's direct and indirect emissions throughout its value chain (including Scope 3 emissions). The Court found that Shell controls and influences the Scope 3 emissions of end-users by the products that it sells. It is therefore **responsible for these emissions, and can reduce them through changes to its business. The Court also emphasised that Scope 3 emissions are a particularly key consideration for companies that produce and sell fossil fuels, as they comprise the majority of their emissions**.[13]

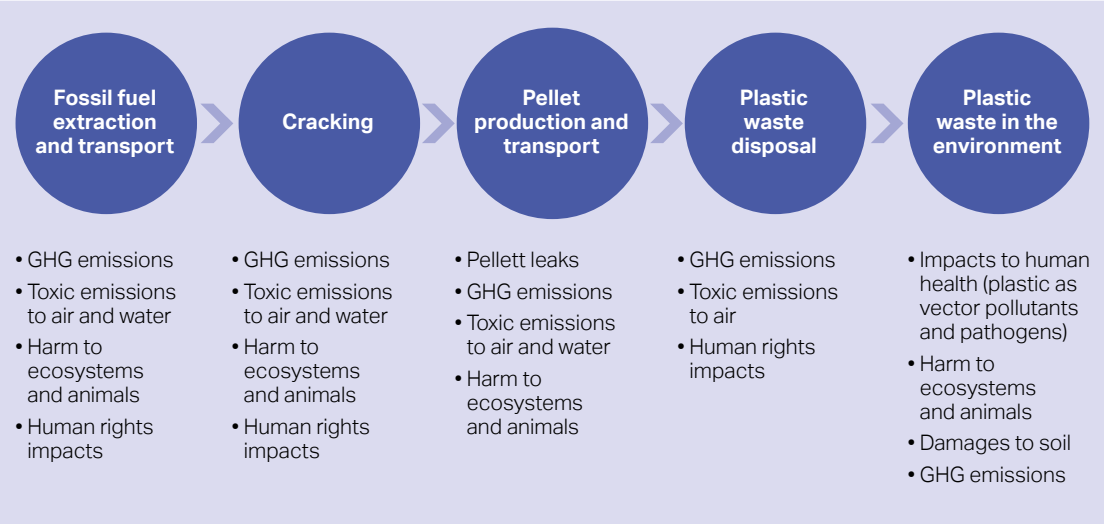
Another example concerns fossil fuel companies that seek to expand or promote gas operations on the basis that burning gas for energy or heat produces fewer GHG emissions than burning oil or coal. However, this claim ignores the impacts of leaked methane emissions from the extraction, storage and transport of gas – the other parts of the value chain. Methane is a very powerful GHG.[14] If leakage is not kept to low enough levels, the overall climate impact of gas can be worse than coal, which is the most carbon-intensive fossil fuel.[15] Accurately measuring methane leakage across extraction, storage, transport processes is difficult.[16] Fossil fuel companies engage with the impacts of methane leakage in a selective way by downplaying the unknown methane leakage across the supply chain and its potentially critical climate implications for their business strategy.

Finally, fossil fuel companies setting climate targets too often rely on "intensity" targets for GHG emission reductions, which look at the amount of emissions for each unit of energy produced by fossil fuels. This does not provide a real picture of climate impacts or of the company's plans to address them, because it avoids addressing the overall (or "absolute") levels of a company's emissions, which may not be reduced, and may even increase in direct conflict with international climate goals.[17] As BP recently recognised, "[i]f all companies in the O&G sector choose to set only intensity reduction targets, then the associated absolute emissions could grow even if all targets were met".[18] **Due diligence must address fossil fuel companies' overall (absolute) emissions, rather than rely on "intensity" metrics to avoid companies' overall climate impacts**.

13 See further detail on the judgment here: https://www.clientearth.org/media/y5ghrwcw/milleudefensie-et-al-v-royal-dutch-shell-six-takeaways-for-business-climate-plans.pdf
14 Over a 100-year timeframe, methane's warming potential is 28 times that of carbon dioxide. See Table 1 in Box 3.2 on p.87 of the IPCC's AR 5 Synthesis Report; https://ar5-syr.ipcc.ch/ipcc/ipcc/resources/pdf/IPCC_SynthesisReport.pdf
15 See https://www.pnas.org/content/109/17/6435
16 See https://www.e3g.org/publications/gas-climate-and-development/ and https://www.nature.com/articles/s41586-020-1991-8
17 https://www.accr.org.au/downloads/2021-04-30-accr-in-depth_-royal-dutch-shell-climate-plan-website.pdf
18 BP SustainabilityReport 2020, page 32. See https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-sustainability-report-2020.pdf

Example 4

The plastic value chain – how environmental impacts occur across the plastics value chain and why we need a life-cycle approach



While plastic is used intensively in many economic sectors, the following two sectors illustrate its environmental impacts across the plastics value chain and the need for a life cycle approach to due diligence.

a. Plastic converters.

In the EU, there are over 50,000 plastic converting companies (mainly SMEs) with a total turnover in excess of €260 billion per year.[19] Converters transform plastic as a raw material into semi-finished and finished products for a wide array of applications, including packaging, construction and consumer electronics.

One major environmental impact in the supply chain of plastics converters is plastic pellet pollution, which occurs in the production, transport and conversion of plastic. Up to 167,000 tonnes of plastic pellets are estimated to leak into the environment in Europe every year.[20] It is the second largest source of primary microplastic pollution.

Once leaked, pellets can "attract, absorb and transport toxic particles (persistent organic pollutants or POPs) that can be 1,000,000 times more concentrated on their surface compared to ambient water."[21] In addition to toxic chemicals, bacteria such as E.Coli also adhere to the pellets' surface.

Because of their resemblance to fish eggs, many animals ingest them, thus leading to the bioaccumulation of those toxic chemicals and pathogens in the food web. They can also make animals feel satiated and lead to starvation. More than 220 marine species have been shown to ingest plastic debris,[22] including pellets.

Good practices for handling pellets in the production, transport and conversion of plastic pellets can prevent leaks. Therefore those stages of plastic value chains must be covered by the due diligence requirement. The fact that most converters are SMEs is another reason that all companies – irrespective of their size – should carry out due diligence across their supply chain.

19 https://www.plasticsconverters.eu/post/plastics-value-chain-leading-the-way-towards-zero-pellet-loss
20 https://ec.europa.eu/environment/marine/good-environmental-status/descriptor-10/pdf/microplastics_final_report_v5_full.pdf
21 https://rethinkplasticalliance.eu/wp-content/uploads/2020/11/plastic_giants_polluting_through_the_backdoor.pdf
22 https://www.nurdlehunt.org.uk/the-problem.html

Example 4 continued

b. Fast moving consumer goods companies (FMCGs), including major retailers, and the food and hospitality industry, particularly fast food.

Packaging represents the largest end-use market for plastic production in Europe, amounting to 39.6% of demand.[23] FMCGs and outlets selling food in disposable receptacles, such as fast food restaurants, therefore have an outsized influence not only on the amount of single-use plastic placed on the market each year but also on the behaviour of other actors in the value chain.

The general public and policy makers have started to widen the scope of their concerns in relation to plastic, going beyond marine pollution to focus on impacts of plastic that happen upstream in the value chain. These include greenhouse gas emissions that take place in the processes to "crack" fossil fuels into the building blocks of plastic. The general public and policy makers are also increasingly concerned about what happens to plastic after it has been used – does it harm human health, for example, or will it contribute to the pollution of the ocean (driving the biodiversity crisis) or end up incinerated (exacerbating air quality problems)? That pressure gave rise, for example, to the Single Use Plastics Directive.

As the most visible link in the plastics value chain, FMCGs and food and hospitality companies are in an unusually powerful position to put in place the appropriate measures to assess and if needed mitigate the adverse environmental impacts associated with the use of plastics. **Limiting due diligence to part of the value chain – in particular allowing FMCGs' due diligence to begin after the plastic has been produced and end at the point of sale of single-use plastics – will do nothing to disrupt the processing of fossil oil and gas to feed climate change and a pollution crisis in our air, water, soil, and food**.

23 https://www.plasticseurope.org/en/resources/publications/4312-plastics-facts-2020

4. Ensure transparency and reporting to enhance accountability

Public disclosure of relevant and up-to-date policies and plans for implementing due diligence on a company's website, along with regular reporting on implementation of due diligence, will help ensure accountability.

Among other advantages, public reporting allows consumers to better understand a company's connection to actual and potential adverse environmental impacts. Transparency and regular public reporting can therefore help consumers make informed choices, which could itself drive up standards for reporting and due diligence.

In order to be effective, the future directive should require all companies to conduct, and report on, their due diligence. Reporting requirements should not include so-called "comply or explain" provisions.

The legislation should specify in detail the elements that should be included in reports, including the format of the report and its frequency, relevant policies, plans for implementation of due diligence, risks identified and measures taken to mitigate the risks, as well as sanctions for failing to publish reports.

Example 5

Air quality – how vehicles impact human health, the environment and climate and why transparency is needed

The quality of the environment, including air quality and climate stability, has a profound impact on human health and thus the protection of fundamental rights, such as the right to health, the right to respect for private and family life and in some instances right to life.

Below we demonstrate how due diligence requirements and associated public reporting could incentivise the automotive sector to identify, assess and mitigate its related environmental, climate and human rights impacts.

Road transport is responsible for air pollution known as NOx that includes toxic NO_2. Around 39% of Europe's NOx emissions originate from the road transport sector;[24] and diesel vehicles are responsible for around 80% of the NOx emissions from vehicles.[25] It is also one of Europe's biggest climate problems. CO_2 emissions from transport account for 21% of total GHG emissions. Road transport accounted for almost 72% of all CO_2 emissions in the transport sector in 2017. It is one of the major sectors in the EU where GHG emissions are still rising (+16% between 1990 and 2015, while total EU emissions went down by 23.6% in that period). The Dieselgate scandal that broke in September 2015 revealed that almost all car manufacturers have been using emission control strategies in their vehicles, which cause engines to behave differently during laboratory emission tests compared to real world driving conditions. The discrepancy between emissions measured during approval tests and in normal driving conditions is a major problem for EU air quality.

24 2019 EEA Report, p24.
25 European Environment Agency, 'Air Quality in Europe – 2015 Report' (EEA Report, No 5/2015) ('2015 EEA Report'), p32.

Example 5 continued

Simultaneously we are observing the growing shift towards electric vehicles that are less polluting in terms of air quality and may be more climate friendly; but they raise other environmental concerns around the extraction of rare metals for batteries production, and around their life cycle and disposal.[26] Moreover, polluting vehicles that significantly contribute to NO_2 air pollution and to the climate crisis do not disappear when new electric vehicles are sold. The most polluting vehicles are being displaced to Central and Eastern Europe and further east to Russia or other continents such as Africa. Thus, unsolved problems are being exported and new problems arise.

Introducing new due diligence requirements for companies means not only that the automotive sector will have to identify, assess and mitigate their adverse environmental, climate and human rights impacts; they will also have to disclose those impacts and the measures taken to mitigate then.

That means in practice that **companies should have to disclose how much pollution their cars emit and what has been done to address the issue of polluting vehicles on our streets**. They should also have to disclose the issues around battery production and reveal their supply chain. Availability of information means that manufacturers should disclose specific data in relation to vehicle models that they have put on the market. This data should include emissions information (air pollutants and CO_2), emission control systems used in the vehicle (including the relevant system's EC type approval number and the whole vehicle EC type approval number), to allow consumers and civil society free access to relevant information. For electric vehicles this data should include the calculation of the CO_2 emissions of the whole production chain for the individual vehicle, of the vehicle's energy consumption, and of the supply chain for the battery production. This could help bring an end to a system cloaked in secrecy.

26 On the 10th of December 2020, the European Commission adopted a proposal for a regulation on batteries and waste batteries. The proposal includes due diligence obligations for economic operators with respect to the sourcing of raw materials

Conclusion

Calibrating the due diligence requirements appropriately during the design of the Sustainable Corporate Governance legislation is the upcoming challenge for decision makers.

To ensure that this piece of legislation becomes a key component of the success of the European Green Deal, we recommend, in particular:

- **A definition of adverse environmental impacts** that captures references to normative environmental standards as well as a non-exhaustive but indicative list of environmental matters. These are needed to (i) ensure a high level of protection for the environment throughout companies' value chains; (ii) offer clarity for companies when conducting environmental due diligence and (iii) avoid leaving too much discretion to business when it comes to deciding which aspects of the environment should be protected.
- **A broad scope of companies** in order not to leave outside of the remit of this legislation small and medium companies that can be responsible for deterioration of the environment through their value chain. Furthermore, integrating SMEs into the scope of the upcoming directive is key for their competitiveness as investors as well as other stakeholders, such as consumers, are paying greater attention to the impacts of companies on human rights and the environment. Finally, a number of SMEs are already, or will be soon, required to conduct due diligence in any case due to large companies' demands. By excluding them from a harmonised mandatory framework, SMEs that are part of global value chains may have to deal with a patchwork of standards, without any support measures.
- **Coverage of the whole value chain**. Limiting the ambit of the scope only to first-rank suppliers or sub-contractors would considerably limit the prevention and remediation of adverse environmental impacts throughout the value chain. It is undeniable that supply chains have became more global and sometimes more complex, but ensuring traceability and conducting due diligence throughout the life cycle of the product or service is the only way to limit the current environmental deterioration caused by businesses' activities.
- **Reporting and transparency**. The upcoming directive should specify in detail the elements that should be publicly disclosed. Public disclosure of relevant and up to date plans for implementing due diligence on a company's website will help ensure accountability. It should also enable third parties to test the effectiveness of the due diligence when issues arise in the supply chain.

It is important to note that there are other key components that should be covered by the upcoming legislative proposal that are not included within the scope of this briefing. These components include the need to (i) cover both human rights and environmental impacts, (ii) involve, notably through consultation, stakeholders in the due diligence process, and (iii) develop a strong penalty regime and enforcement mechanisms in case of breach of the legislation, as well as a functioning civil liability mechanism.

ClientEarth

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