

European Commission Public Consultation on Sustainable Corporate Governance

IPC's membership spans a broad array of companies from printed circuit board (PCB) designers and fabricators to electronics assembly (EMS) and final equipment manufacturers (OEMs) including both large companies and a majority of SMEs. With value chains that span countries and regions, the electronics manufacturing sector is conscious of its responsibilities and of the need for companies to take account of interests such as human rights violations, environmental pollution and climate change as well as to build on existing rules and industry practices to this end.

In our response to this questionnaire, IPC will focus primarily on the questions and areas related to due diligence. In this context, IPC and its members have long been advocates for responsible business conduct through industry supply chains. At the same time, requirements and solutions put forward must be balanced and workable for the all companies concerned. IPC's Conflict Minerals Data Exchange Standard developed together with RMI and JEITA facilitates and improves data transfers related to the due diligence of responsible mineral sourcing along the entire supply chain.

Question 2:

Human rights, social and environmental due diligence requires companies to put in place continuous processes to identify risks and adverse impacts on human rights, health and safety and environment and prevent, mitigate and account for such risks and impacts in their operations and through their value chain. In the survey conducted in the context of the study on due diligence requirements through the supply chain, a broad range of respondents expressed their preference for a policy change, with an overall preference for establishing a mandatory duty at EU level.

Do you think that an EU legal framework for supply chain due diligence to address adverse impacts on human rights and environmental issues should be developed?

- **Yes, an EU legal framework is needed.**
- No, it should be enough to focus on asking companies to follow existing guidelines and standards.
- No action is necessary.
- Do not know.

Please explain :

- IPC supports European and international efforts by public and private stakeholders to reduce human rights violations, violence, and environmental damage across the supply chain. We recognize the objectives behind the initiative and see a clear need to avoid a potential fragmented approach across Europe as individual Member States draft

legislation. At the same time, IPC would wish to build upon our and our industry's experience on responsible minerals and work with the European Commission to ensure that any new rules are both carefully designed to meet the intended objective and workable for the companies involved. The following caveats therefore apply :

- Electronics manufacturers have existing experience with due diligence in the area of conflict minerals & a history of committed involvement in industry schemes & partnerships that make a difference on the ground (for example the European Partnership for Responsible Minerals (EPRM) as well as the involvement of many companies in the Responsible Business Alliance (RBA)). In order to ensure that policy meets its intended goal, it is important that any new legal framework should also reflect and promote the role of existing industry partnerships and schemes & build on existing due diligence tools and best practices.
- Electronics involves a complex and multilayered supply chain. Our industry is also made up of many SMEs and larger but still medium sized businesses. Hence there it is of primary importance to ensure that rules are proportionate, do not create excessive administrative burden & do not create liability where liability cannot be assumed
- There is a need to ensure clarity in definitions and scope and to base rules on internationally agreed frameworks (E.g OECD, ILO). As a matter of priority, IPC would welcome a multi-stakeholder dialogue on the definition and scope of environmental due diligence.

Question 3:

If you think that an EU legal framework should be developed, please indicate which among the following possible benefits of an EU due diligence duty is important for you (tick the box/multiple choice)?

- Ensuring that the company is aware of its adverse human rights, social and environmental impacts and risks related to human rights violations other social issues and the environment and that it is in a better position to mitigate these risks and impacts
- Contribute effectively to a more sustainable development, including in non- EU countries
- Levelling the playing field, avoiding that some companies freeride on the efforts of others
- Increasing legal certainty about how companies should tackle their impacts, including in their value chain
- A non-negotiable standard would help companies increase their leverage in the value chain
- Harmonisation to avoid fragmentation in the EU, as emerging national laws are different

- SMEs would have better chances to be part of EU supply chains
- Other, please specify:

Please explain :

All are potential benefits. An important aspect is harmonization to avoid fragmentation in the EU as initiatives for national legislation are increasing. The potential for increased awareness and ability to mitigate risks and impacts could also be a possible benefit, depending on clarity in definitions and scope.

Question 3a. Drawbacks

Please indicate which among the following possible risks/drawbacks linked to the introduction of an EU due diligence duty are more important for you (tick the box /multiple choice)?

- Increased administrative costs and procedural burden
- Penalisation of smaller companies with fewer resources
- Competitive disadvantage vis-à-vis third country companies not subject to a similar duty
- Responsibility for damages that the EU company cannot control
- Decreased attention to core corporate activities which might lead to increased turnover of employees and negative stock performance
- Difficulty for buyers to find suitable suppliers which may cause lock-in effects (e.g. exclusivity period/no shop clause) and have also negative impact on business performance of suppliers
- Disengagement from risky markets, which might be detrimental for local economies
- Other, please specify:

Please explain :

- All of the above could be potential risks and drawbacks depending on how the legislation is implemented
- Amongst these, the potential for increased administrative costs and burdens is key and most frequently highlighted along with penalisation of smaller companies with fewer resources and competitive disadvantage vis-à-vis third country companies not subject to a similar duty. While recognising the importance of the objective, it is important to note that data and information requirements are exponentially increasing in Europe for companies including electronics manufacturers primarily linked to environmental legislation. Such requirements taken collectively can constitute an immense administrative task for companies. In the field of electronics manufacturing many companies are SMEs and smaller companies operating on very slender margins. At the same time, these companies are the enablers for many other industrial sectors and the engine for Europe's digital transition. It is essential to ensure that the collective effect of such requirements is proportionate and does not undercut the competitiveness of

Europe's industries or place them at a disadvantage vis-a vis manufacturers in other regions.

- It is imperative that upcoming legislation take into consideration the economic realities of SMEs and also Midcaps. Capacity-building and other support measures are important.
- Not all companies in Europe will be ready to cover the costs, resources and capacity needed to deploy due diligence systems from the on-set. It is thus essential that Europe employs a step-by-step approach to give industry the time and incentives needed to implement due diligence effectively
- To ensure a level playing field in Europe, it is important to ensure that all products placed on the EU market and companies placing products on the EU market are subject to the same requirements
- Finally, Electronics manufacturing operates on the basis of a multi-layered supply chain, hence mitigating the risk of responsibility for damages that an EU company cannot control is an essential criterion.

Section III: Due Diligence Duty

For the purposes of this consultation, “due diligence duty” refers to a legal requirement for companies to establish and implement adequate processes with a view to prevent, mitigate and account for human rights (including labour rights and working conditions), health and environmental impacts, including relating to climate change, both in the company’s own operations and in the company’s the supply chain. “Supply chain” is understood within the broad definition of a company’s “business relationships” and includes subsidiaries as well as suppliers and subcontractors. The company is expected to make reasonable efforts for example with respect to identifying suppliers and subcontractors. Furthermore, due diligence is inherently risk-based, proportionate and context specific. This implies that the extent of implementing actions should depend on the risks of adverse impacts the company is possibly causing, contributing to or should foresee.

Question 14: Please explain whether you agree with this definition and provide reasons for your answer.

- IPC underlines that it is important to define the scope of the requirements.
- In this regard, we would welcome a multistakeholder dialogue on the definition of and expectations for environmental due diligence.
- The rules should acknowledge supply chain complexity and follow UNGP17 in that they cover the company’s own operations and those which may be directly linked to its operations, products or services by its business relationships. For companies within complex supply chains, such as the electronics manufacturing supply chains, due diligence requirements beyond close business links will become difficult to manage.

- We would welcome a tightening of the definition, at least for smaller companies, to limit due diligence to tier 1 suppliers.
- IPC stresses that the obligation to conduct due diligence should be risk-based, proportionate and context-specific according to and aligned with the UNGPs.

Question 15: Please indicate your preference as regards the content of such possible corporate due diligence duty (tick the box, only one answer possible). Please note that all approaches are meant to rely on existing due diligence standards, such as the OECD guidance on due diligence or the UNGPs. Please note that Option 1, 2 and 3 are horizontal i. e. cross-sectorial and cross thematic, covering human rights, social and environmental matters. They are mutually exclusive. Option 4 and 5 are not horizontal, but theme or sector-specific approaches. Such theme specific or sectorial approaches can be combined with a horizontal approach (see question 15a). If you are in favour of a combination of a horizontal approach with a theme or sector specific approach, you are requested to choose one horizontal approach (Option 1, 2 or 3) in this question.

- Option 1. “Principles-based approach”: A general due diligence duty based on key process requirements (such as for example identification and assessment of risks, evaluation of the operations and of the supply chain, risk and impact mitigation actions, alert mechanism, evaluation of the effectiveness of measures, grievance mechanism, etc.) should be defined at EU level regarding identification, prevention and mitigation of relevant human rights, social and environmental risks and negative impact. These should be applicable across all sectors. This could be complemented by EU level general or sector specific guidance or rules, where necessary.
- Option 2. “Minimum process and definitions approach”: The EU should define a minimum set of requirements with regard to the necessary processes (see in option 1) which should be applicable across all sectors. Furthermore, this approach would provide harmonised definitions for example as regards the coverage of adverse impacts that should be the subject of the due diligence obligation and could rely on EU and international human rights conventions, including ILO labour conventions, or other conventions, where relevant. Minimum requirements could be complemented by sector specific guidance or further rules, where necessary.
- Option 3. “Minimum process and definitions approach as presented in Option 2 complemented with further requirements in particular for environmental issues”. This approach would largely encompass what is included in option 2 but would complement it as regards, in particular, environmental issues. It could require alignment with the goals of international treaties and conventions based on the agreement of scientific communities, where relevant and where they exist, on certain key environmental sustainability matters, such as for example the 2050 climate neutrality objective, or the

net zero biodiversity loss objective and could reflect also EU goals. Further guidance and sector specific rules could complement the due diligence duty, where necessary.

- Option 4 “Sector-specific approach”: The EU should continue focusing on adopting due diligence requirements for key sectors only.
- Option 5 "Thematic approach": The EU should focus on certain key themes only, such as for example slavery or child labour.
- None of the above, please specify

Please explain :

In general, IPC supports a horizontal approach of minimum requirements, coupled with sector-specific guidance to help companies address sector specific risks and give them the tools to implement due diligence systems that are fit for purpose. However, at this stage, IPC cannot take a position on any of the options outlined in this question subject to further clarity around the scope of environmental due diligence. While there are already legal precedents of human rights due diligence legislation in several EU Member States as well as internationally agreed standards, the notion of environmental due diligence is much less clear – both in terms of what is considered an adverse impact as well as how it would be measured. Given the urgency of this legal uncertainty, IPC would welcome a multi-stakeholder dialogue on what environmental due diligence constitutes before taking a position on this important aspect.

Question 15a: If you have chosen option 1, 2 or 3 in Question 15 and you are in favour of combining a horizontal approach with a theme or sector specific approach, please explain which horizontal approach should be combined with regulation of which theme or sector?

Question 15b: Please provide explanations as regards your preferred option, including whether it would bring the necessary legal certainty and whether complementary guidance would also be necessary.

- We believe that mandatory minimum requirements can and should effectively be supplemented by sector-specific non-legislative measures, such as public private partnerships, industry-standards and guidance. There are already many industry-led, highly effective due diligence standards and best practices in place. To avoid duplication, EU efforts should build on these efforts and promote existing industry schemes, as is the case with the EU Conflict Minerals Regulation. Such initiatives help to address sector-specific realities and risks.
- In addition, public private partnerships, such as the European Partnership for Responsible Minerals (EPRM), are a great source of knowledge and support, in

particular for SMEs. Similar solutions are needed to facilitate SMEs' compliance with due diligence requirements through the supply chains.

Question 16: How could companies'- in particular smaller ones'- burden be reduced with respect to due diligence? Please indicate the most effective options (tick the box, multiple choice possible). This question is being asked in addition to question 48 of the Consultation on the Renewed Sustainable Finance Strategy, the answers to which the Commission is currently analysing.

- All SMEs[16] should be excluded
- SMEs should be excluded with some exceptions (e.g. most risky sectors or other)
- Micro and small sized enterprises (less than 50 people employed) should be excluded
- Micro-enterprises (less than 10 people employed) should be excluded
- SMEs should be subject to lighter requirements ("principles-based" or "minimum process and definitions" approaches as indicated in Question 15)
- SMEs should have lighter reporting requirements
- Capacity building support, including funding
- Detailed non-binding guidelines catering for the needs of SMEs in particular Toolbox/dedicated national helpdesk for companies to translate due diligence criteria into business practices
- Other option, please specify
- None of these options should be pursued

Question 17: In your view, should the due diligence rules apply also to certain third- country companies which are not established in the EU but carry out (certain) activities in the EU?

- Yes, to ensure a level playing field, it is important that all companies that operate on the EU market are subject to the same rules.

Question 17a: What link should be required to make these companies subject to those obligations and how (e.g. what activities should be in the EU, could it be linked to certain turnover generated in the EU, other)? Please specify.

- Placing onto the EU market, turnover, number of people, etc.

Question 17b: Please also explain what kind of obligations could be imposed on these companies and how they would be enforced.

- Fulfil due diligence requirement and be able to present the same proof as European companies or meet trusted supplier criteria

Question 19a: If a mandatory due diligence duty is to be introduced, it should be accompanied by an enforcement mechanism to make it effective. In your view,

which of the following mechanisms would be the most appropriate one(s) to enforce the possible obligation (tick the box, multiple choice)?

- Judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations
- Supervision by competent national authorities based on complaints (and/or reporting, where relevant) about non-compliance with setting up and implementing due diligence measures, etc. with effective sanctions (such as for example fines)
- Supervision by competent national authorities (option 2) with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU
- Other, please specify

Please provide explanation:

- It is imperative that harmonization is ensured. Enforcement should thus either be concentrated on EU level in an EU body or on national level coupled with harmonized rules and coordination.

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