

# Workshop - EU Due Diligence Legislation: Accompanying measures

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## *Report*

Tuesday, 18 May 2021, 10:00-12:30 CEST

Organised by:





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*Disclaimer: On 18<sup>th</sup> May the Responsible Business Conduct Working Group of the European Parliament and CSR Europe organised an online workshop on the future EU Due Diligence Legislation and the possibility for accompanying measures. The meeting was held under Chatham House Rules and, therefore, in this report the content is not associated to a particular speaker. This report has been published with the feedback of the participants on the content and their agreement to be mentioned.*

## Three key takeaways:

Decades of *voluntary* standards, industry investment and sustainability programmes have not brought the sustainable production and market access we anticipated. To be credible in its efforts to enhance the livelihoods of farmers, miners and workers, the EU must strive for an integrated, inclusive, and progressive European approach on due diligence, that includes:

1. A new EU regulation that puts the ultimate responsibility for due diligence on each individual company, while **equipping victims of abuses** and their representatives to hold companies accountable
2. **Ambitious accompanying measures** to support the **involvement of producers** at all levels, the engagement with governments in the global south and interaction with all markets' actors
3. The support to **existing and new European sector alliances on due diligence without creating "safe harbours" to legal liability**:
  - For all stakeholders to benefit from open-source risks analysis
  - To reinforce the future European horizontal law with sector guidelines
  - To engage in a broader dialogue that touches on all due diligence related issues, including purchase practices.
  - To develop sector and cross-sector projects for impact

## Introduction

On May 18, CSR Europe and the European Parliament's Responsible Business Conduct working group (RBC wg) hosted a meeting to discuss with EU policymakers, business networks and civil society organisations how to effectively shape an EU integrated approach on due diligence that brings positive change on the ground.

Decades of *voluntary* standards, industry investment and sustainability programmes have not brought the sustainable production and market access we anticipated. A new legislation alone, focused only on individual company behaviour, risks to overestimate the level of factual influence and leverage of companies.

That is why we need an inclusive and progressive EU legislative process:

- 1. Inclusive: without producers directly involved, our efforts will not enhance the livelihoods of farmers, workers, and miners.**
- 2. Progressive: not all producers have the same capacity and ability to adjust at the same time with a new EU legislation.**

## The agenda

The workshop welcomed a rich discussion between representatives of the European and national institutions, civil society and business.

Under the moderation of Heidi Hautala MEP (Vice President, European Parliament and Chair of the RBC Working Group), Stefan Crets (Executive Director, CSR Europe), and Estelle Levin-Nally (Founder and CEO, Levin Sources), representatives of the following organisations contributed to the debate: European Parliament, European Commission, Solidaridad, the Social and Economic Council of the Netherlands (SER), Volvo Group, Drive Sustainability, the German Federal Ministry for Economic Cooperation and Development, Amfori, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the European Brands Association (AIM), the Fruit Juice Association, FERN, OECD, the Responsible Business Alliance.

See Annex for the full agenda of the event.

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The rich and thought-provoking discussion highlighted some key elements on the position of stakeholders and policymakers in the debate over a future EU Law on Due Diligence:

- 1. Consensus on the need of accompanying measures**

The importance of accompanying measures has to do with reaching the ambition that the European Commission, the Parliament, and the Council will set for Europe in the future EU legislation on due diligence. All the actors involved in companies' due diligence processes need to be equipped with the right set of means and instruments that go beyond and accompany regulations. The legislation alone risks not being able to identify and address the set of risks connected with supply chains. For this reason, a set of measures need to accompany the future law to address all the actors in the supply chains.

Four complementary actions are necessary to raise the floor:

1. Actions to promote continuous improvement in production practices at the **national and local level**
2. Engagement with **governments** in the global South, which need to model their own processes to be responsive to the new EU Law
3. **International market actors** to co-invest and participate in the efforts of international legislation requirements
4. **Support towards producers** to avoid exclusion and marginalisation

Accompanying measures include tools falling into various categories, including:

1. obtaining Information on the risk, origin, and **performing traceability of goods**

This applies to all companies, but a special mention goes to SMEs, that face important obstacles in their sustainability journey as well as a heavier burden of post-covid recovery.

2. **provision of Efficient funding and investments** towards high-risk countries as well as clear and equal access to finance and competitive rates for producers
3. **Cooperation** is another staple element of functioning supply chains

Workers, communities, and businesses need to interact. Stakeholder engagement is necessary in order to induce a sustainable change on the ground. The future EU law on Human Rights and Environmental Due Diligence will need to be reinforced by sectoral cooperation and platforms with specific conditions in place, and structural support from governments and supranational organisations.

## 2. Strong hopes towards accompanying measures from the European Commission and European Parliament

A functioning future EU due diligence legislation will cut across policy areas and adopt a **horizontal approach**, linking the internal and the external dimension. It will need to be **harmonised** with already existing legislation, which include the EU Timber Regulation, the Conflict Minerals Regulation and the Battery Regulation.

The proposal, which will come out later in 2021, will need to combine the **political ambition** to meet the overarching objectives of the European Green Deal with **pragmatism**. Initiatives at the EU level on due diligence are expected to bring about operational results while keeping in mind the three core elements of sustainability, namely environment, social and economic, without undermining global competitiveness of EU industry and SMEs.

The European Commission sees support to companies as a key element of the accompanying measures to the future EU law on due diligence. This support should include **capacity building activities** such as training, guidance, sectoral tools, cooperation with NGOs, research, and innovation support for the use of new technologies and stakeholders' alliances. One existing example is *the Due Diligence Ready portal*, that is part of the Conflict Minerals Regulation and can be adapted and applied to different sectors as well.

### 3. Support to existing and new sector alliances on due diligence

There is a growing consensus that the European Commission needs to learn from, capitalise on and support **European-made national and international collaborative alliances on due diligence** (such as the Dutch RBC sector agreements, Drive Sustainability, etc.), that help in the bottom-up standardisation of due diligence solutions, matching the goals of a new EU-level legislation.

Several actors urge the European Commission and other international institutions to support existing and to create European and international Sector Alliances on due diligence. Without being designated as "safe harbours" to legal liability for harm, such alliances should be able to:

- A. Lead to more **collaboration, pro-active investment** and **change** on the ground
- B. Forge a dialogue that touches on all due diligence related issues and on **purchase practices**
- C. Benefit from open-source risk analysis
- D. Grow into **agreements** between trade unions, Governments, companies, industry federations and civil society with firm **commitments** on RBC, **collective projects**, and **alignment with OECD guidelines** and UNGP's
- E. Include **joint implementation, accountability, independent monitoring, grievance mechanism** and enabling **remediation** for when harm has occurred, and **reporting** requirements against established assessment frameworks
- F. **Enable actors to work at their best** in case of complex supply chains, and where companies have to perform due diligence in supply chains with sometimes 10 layers of suppliers all the way to e.g. extraction
- G. Make sure that if companies cannot do everything for everyone, they **analyse and identify collaboratively** on where the negative impacts are most likely, severe and urgent in order to prioritise their efforts, access to data and **building of common business intelligence** on e.g. where the biggest risks are
- H. **Divide the task with other industry sectors** to reach the best effect.

### 4. Final considerations

Even if legislation and accompanying measures need to reinforce the role of good collaboration, **ultimate responsibility for due diligence lies with individual companies**. As much as sectorial collaboration is welcomed by stakeholders, it is highly important to avoid voluntary initiatives with no real impact and to ensure that collective initiatives are not considered as "safe harbours" to legal liability. It is also of key importance to ensure that **the pace of initiatives, federations, and dialogues' will not be determined by the slowest players**. Policy makers also need to take into account and involve in the conversation the whole producer community.

Collaborative platforms are very valuable to companies and actors who want, often with their competitors, to have a common voice and efficient approach towards their supply chain. However, such initiatives can take a lot of time to agree on common objectives, methodologies and actions and competitors do not always have a common agenda.

## Conclusion

Collaboration is a difficult task to perform along the whole supply chain and competition is an element to take into consideration when it comes to developing partnership and accompanying measures. That is why it is crucial that all players step out of their comfort zone to co-design the measures that will enable the future EU law and its accompanying measures to deliver on their full ambition: it is a **cultural shift** in the way we can protect life and earth through responsible sourcing, production, and engagement with consumers.

## Annex: Workshop Agenda

TIME (CET)	TOPIC	SPEAKER(s)
10:00-10:05 (5')	Welcome: Context and common ambitions	<ul style="list-style-type: none"> <li>Heidi Hautala MEP Vice-President, European Parliament</li> <li>Stefan Crets Executive Director, CSR Europe</li> </ul>
10:05-10:15 (10')	<p><b>Raising the floor, not just the bar: To reach impact, what do we need beyond a new EU legislation?</b></p> <p>A view from local players (Moderator: Stefan Crets)</p>	<ul style="list-style-type: none"> <li>Isaac Gyamfi Regional Director, Solidaridad West Africa</li> </ul>
10:15-10:45 (30')	<p><b>Measures to accelerate and empower industry federations and companies at European level: European Sector Dialogues &amp; Alliances.</b></p> <p>Focus on core elements that make a sector dialogue successful (e.g. see CSR Europe's paper on <a href="#">European Sector Dialogues</a>)</p> <p>(Moderator: Stefan Crets)</p>	<ul style="list-style-type: none"> <li>Alexandra van Selm Program Director International Responsible Business Conduct, Social and Economic Council of the Netherlands (SER)</li> <li>Eva Bennis Director Responsible Purchasing, Volvo Group &amp; Drive Sustainability representative</li> <li>Anna Athanosopoulou Head of Unit, DG GROW</li> </ul>
10:45-11:25 (40')	<p><b>Reaction from MEPs and open debate</b></p> <p>(Moderator: Estelle Levin-Nally, Founder and CEO Levin Sources)</p>	<ul style="list-style-type: none"> <li>All</li> </ul>
11:25-11:45 (20')	<p><b>Local sustainability projects and networks: to accelerate and empower enterprises and stakeholders to collaborate and bring change in local ecosystems.</b></p> <p>Moving towards supportive coalition of actors likely to have real impact on the ground. (Moderator: Stefan Crets)</p>	<ul style="list-style-type: none"> <li>Yannic Kiewitt Senior Policy Officer, German Federal Ministry for Economic Cooperation and Development (BMZ)</li> <li>Cécile Billaux Head of Unit, DG INTPA</li> </ul>
11:45-12:25 (40')	<p><b>Reaction from MEPs and open debate</b></p> <p>(Moderator: MEP Heidi Hautala)</p>	<ul style="list-style-type: none"> <li>Maria Arena MEP</li> <li>All</li> </ul>
12:25-12:30 (5')	Conclusions and Next Steps	<ul style="list-style-type: none"> <li>Heidi Hautala MEP Vice-President, European Parliament</li> <li>Stefan Crets Executive Director, CSR Europe</li> </ul>





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