

Upcoming Mandatory Human Rights and Environmental Supply Chain Due Diligence Requirements Announced

In brief

On Wednesday 29 April 2020, European Commissioner for Justice, Didier Reynders, announced that next year the European Commission ("EC") will introduce ground-breaking new EU legislation on mandatory human rights and environmental due diligence for companies. The proposed new legislation will form part of the EC's 2021 Work Plan and its strategy to achieve carbon neutrality under the [European Green Deal](#). The EC is expected to launch a public consultation on the initiative this Autumn, with legislation planned for the first quarter of 2021.

In depth

EC Supply Chain Due Diligence Study

The Commissioner committed to the new legislation during a [webinar](#), hosted by the European Parliament Working Group on Responsible Business Conduct, in which he outlined his vision for "sustainable corporate governance" and presented the findings of the [EC study on options for regulating due diligence requirements through the supply chain](#), published on 20 February 2020.

The EC study incorporated submissions from 631 stakeholders, including 334 business respondents that it stated ranged from all sectors, represented enterprises of all sizes and operated across the world. The study highlighted that the view of the majority of respondents is that the current voluntary regimes across Europe have failed to change the way in which businesses manage their social and environmental corporate governance responsibilities. Only one in three business respondents indicated that they currently undertake some form of due diligence that takes into account all human rights and environmental impacts. The study's respondents are largely in favour of mandatory and enforceable EU due diligence laws with a cross-sectoral approach to ensure legal certainty and a single harmonised standard for business relationships throughout the supply chain, as opposed to a mosaic of different measures at domestic and industry level. Stakeholders also indicated that the introduction of a non-negotiable standard would increase leverage with third parties in the value chain, without harming competition or innovation.

New EU-Level Due Diligence Requirements for Businesses

During the webinar, the Commissioner acknowledged the existing Member State due diligence laws, in particular the "most advanced framework in the EU", the 2017 French 'Duty of Vigilance' Law, but indicated that the new EU law will not "copy" any domestic laws and its details will only be determined following a full consultation process. That said, the Commissioner confirmed, the new law will be mandatory, inter-sectoral, and enforceable, with relevant sanctions for non-compliance. He indicated however, that the administrative costs and burdens on SMEs will need to be alleviated under the legislation.

The current global COVID-19 pandemic has strengthened calls for businesses to become more sustainable, socially responsible and environmentally-friendly and not to lower standards as Europe emerges from the situation. The Commissioner highlighted that the crisis is likely to compound existing economic inequalities, especially in developing nations, as poorer members of society struggle to fulfil their basic human needs and remain prone to exploitation. The EC clearly envisages sustainable corporate governance and due diligence as being an essential part of the EU's recovery package and growth plan, in the context of the COVID-19 crisis, as well as the rapidly developing climate emergency, sustainability crisis and widespread global biodiversity loss. Indeed, the Commissioner stressed the importance of making sure that "responsible business conduct and

sustainable supply chain(s) become the norm". He indicated that this initiative is the first of two tracks that the EC is pursuing, the second focusing on affecting change from short-term to medium- and long-term board-level strategic planning.

This is not the EU's first foray into legislating on environmental, social and corporate governance; its 2014 Non-Financial Reporting Directive requires large scale public interest companies (approximately 6000 in the EU) to disclose their policies in relation to environmental protection, social and employee matters, respect for human rights, anti-corruption and bribery, and diversity on company boards. This proposed due diligence legislation however, has the potential to have a more transformative impact. Companies across all industries will have to step up and adapt accordingly.

The UK would not be subject to the new EU legislation as it will be introduced after the current Brexit transition period has ended on 31 December 2020 (at which point the UK has also indicated it will withdraw from the EU Charter of Fundamental Rights). While the UK has disclosure requirements in place in relation to forced labour under the UK Modern Slavery Act and is currently considering recommendations made by the Field Review to heighten the legal scope of that legislation, it is likely to face pressure to pass domestic legislation similar to the proposed EU law.

Adapting to the Changing Regulatory Landscape to Manage Supply Chain Risk

It appears certain that the forthcoming EU legislation will impose new mandatory supply chain due diligence requirements on all EU businesses in the coming years. This fits with a broader trend toward purpose-led corporate governance that takes into account environmental, social and governance concerns as a matter of transparency and diligence. In Europe, the UK and French legislation mentioned above are examples of a number of national laws that specifically focus on human rights and ethics concerns. These sit alongside similar statutes in other regions, such as the California Transparency in Supply Chains Act, US Tariff Act 1930, US Fair Labor Standards Act 1948, and the Australian Modern Slavery Act 2018. Similar action is expected in Hong Kong (Modern Slavery Bill) and Switzerland (Initiative for Responsible Business Conduct). Alongside the growing number of these focused laws, there has been a shift in corporate governance standards mandated by company law to account for matters of corporate social responsibility.

Many companies already see value in a purpose-led approach because it delivers growth, lower costs, boosts consumer engagement, supports consistency in demand and price, reduces risk in the supply chain, and builds trust with employees, consumers, investors, regulators and other stakeholders. Nonetheless the expectation, as indicated by the proposed EU legislation, is that states will move from voluntary adherence to mandatory compliance and, from there, to the potential for enforcement either by regulators or in civil litigation. Those companies that have not already made the shift and incorporated these considerations to their systems, controls, compliance and diligence should now consider the drivers to do so as the market moves toward wholesale change. Useful resources to introduce the topic to teams include:

- [United Nations Guiding Principles on Business and Human Rights](#);
- [Organisation for Economic Co-operation and Development \(OECD\) Guidelines for Multinational Enterprises](#); and
- [GRI Standards](#).

We will continue to monitor and provide further analysis relating to the development of the EC's new legislation. If you have any questions, please do not hesitate to contact us.

Authors



Francesca Richmond
Partner
+ 442079191621
francesca.richmond@
bakermckenzie.com



Graham Stuart
Partner
+ 442079191977
graham.stuart@
bakermckenzie.com



Aurella Smith-Anthony
Senior Associate
+ 442079191747
aurella.smith-anthony@
bakermckenzie.com



Adeel Haque
Associate
+ 442079191037
adeel.haque@
bakermckenzie.com