

DG GROW
Meeting between Commissioner Breton, [REDACTED]
(BusinessEurope)
Brussels, 9/11/2021
Sustainable Corporate Governance – Mandatory due diligence

BRIEFING NOTE *(Commission Internal)*

Scene setter/Context of the meeting:

Exception of Article 4(2) first indent of Regulation 1049/2001

Objective of the meeting:

- Exchange views on the Sustainable Corporate Governance initiative including mandatory due diligence legislation [adoption: planned in early 2022].

KEY messages

- We believe that the new legislation has to be implementable. We are looking for effective, efficient and feasible solutions.
- We are trying to achieve an EU harmonised approach that is balanced, pragmatic and proportionate (i.e. SMEs) taking into

account the situation of EU industry post-COVID and avoiding to harm EU global competitiveness.

- It must also work for SMEs that might become subject to the obligation throughout global supply chains.
- Our initiative is building upon existing UN and OECD standards and guidelines.

Key questions to the interlocutor

Exception of Article 4(2) first indent of Regulation 1049/2001

On Sustainable corporate governance:

Regarding due diligence, what proportionality measures could be put in place for SMEs whether they fall under the scope of the new legislation or indirectly affected through the trickle-down effect in the supply chain? And what type of supporting measures?

How do you see an effective regime for liability for harm caused in the supply chain?

Defensives / Q&A

How will the Commission ensure that the new legislation is in line with existing standards?

- Our initiative is looking into building upon existing UN and OECD standards and guidelines (the United Nations' Guiding Principles on Businesses and Human Rights, as well as on the OECD Guidelines for Multinational Enterprises and the related Due Diligence Guidance for Responsible Business Conduct). According to these, due diligence is inherently risk based and requires to deploy reasonable efforts.

Will the due diligence legislation extend beyond Tier 1 in the supply chain?

- Our objective is to ensure that the rules are **effectively applied** and **cannot be circumvented**.

- We are exploring to what extent obligations and civil liability should extend beyond tier 1 as human rights, social and environmental **harm occurs more often beyond tier one** of the supply chains.
- A balance needs to be struck, considering for instance whether harm was foreseeable to the company and to which extent it can exert leverage over its suppliers.

How will the EU ensure that the rules apply also to third country companies?

- We are looking into possible ways to cover some third-country companies operating in the EU and generating important turnover on the EU market to ensure level playing field for EU companies.
- There is also an ongoing reflection on how to ensure that trade agreements support the transition better.

In light of the announcement of banning products made with forced labour from the EU markets, will the SCG initiative focus on fighting forced labour?

- President von der Leyen reiterated in the State of the Union speech the **strong commitment to tackle forced labour in global value chains**.
- The **Trade Policy Review Communication** of 18 February 2021 makes clear that forced labour should not find a place in the value chains of EU companies.
- The proposal on sustainable corporate governance will include **a horizontal and mandatory due diligence duty** requiring EU companies to identify, prevent, mitigate and account for sustainability impacts in their own operations and value chains, including as regards forced labour.

- The Commission is looking at feasible ways to translate this commitment into concrete action.

Background information

Name of Cabinet Member: Skonieczna Agnieszka

Name of the Director who has cleared the briefing: Superti Valentina

BASIS request ID: CAB BRETON/1268

Room, time: 9/11/2021, 19:00-20:00

Participants: Commissioner Breton, [REDACTED]

Name of main contact person: [REDACTED]

Telephone number: [REDACTED]
[REDACTED]

Precision regarding “Tier 1”: Tier 1 refers to direct suppliers/subcontractors in the supply chain.

BusinessEurope’s position:

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CVs of the interlocutors