



VICE PRESIDENT VĚRA JOUROVÁ

**MEETING WITH CONFEDERATION OF INDUSTRY OF THE
CZECH REPUBLIC**

LOCATION: ZOOM

DATE AND TIME: 28 MAY 2021 14H30 – 15H30

MEMBERS RESPONSIBLE: DANIEL BRAUN/MONIKA LADMANOVÁ

STEERING BRIEF

Scene setter

You will meet the top representatives of the Confederation of Industry of the Czech Republic on 28 May 2021 to discuss various topics of importance to Czech industry.

The delegation:



The Confederation of Industry of the Czech Republic is the leading business lobbying organisation in the Czech Republic providing a voice for employers at the national and international level in order to ensure the competitiveness of the business sector in the country. With the total number of members reaching over 11 000, the Confederation of Industry acts as an umbrella for 32 associations together with around 150 Direct Members. Its priorities include, among others, the fields of digital economy, digital transformation and digitalization and new technologies (AI, blockchain, cloud, etc.).

Transatlantic relations

The Confederation welcomed the inauguration of Joe Biden, expecting him and his administration to be more willing to engage in dialogue and multilateral sustainable solutions, among other things, WTO reform. The bilateral relations between the Czech Republic and the USA are good and it can be expected that this will not change significantly. However, as an export-oriented and economically open country, barriers to global trade should be minimised, especially between the EU and the US.

From the point of view of the Confederation, the EU-US Trade and Technology Council (TTC) has great potential. Companies are cooperating anyway, so it is advisable that governments also coordinate. It would also be good for the European Commission to support this, for example in the G7.

Technological sovereignty and secure data transfer

The Confederation has been following the efforts to achieve EU technological sovereignty for a long time. It now sees a positive direction of the new industrial strategy, which uses the term open strategic autonomy, which is also the focus of the common position of the EU business associations. The Confederation considers it good that data in the strategy show that Europe's dependence is not critical or threatening.

The Confederation calls on the Commission to maintain the direction of open strategic autonomy. Europe should cooperate with reliable partners who share the same democratic values, so that consumers can choose the best supplier, product or service, regardless of where it comes from. Diversification of resources will ensure immunity to economic pressure from third countries and the right of choice for both consumers and businesses. Therefore not self-sufficiency and restraint, but, on the contrary, openness and cooperation towards autonomy.

Equal pay and transparency of remuneration

The Confederation generally supports the objectives of the directive, but considers it necessary to monitor the choice of instruments and implementation at the national level to prevent gold-plating. The Confederation is concerned about broadening the scope of the directive and overly complicated measures at national level. Employers are involved in this process and will continue to actively participate in all phases of the negotiations.

The Confederation is aware that the Czech Republic is one of the worst in the gender pay gap in the EU and that this leads to poverty of elderly women, among others.

The Confederation cooperates with the Government Office and will strive to reduce the administrative burden for companies, in line with the principle of better regulation. It fully supports the principle of equal pay and is fundamentally against any discrimination, whether on the basis of gender or any other principle.

Due diligence

The Confederation participated in the entry of BusinessEurope into the public consultation of the Commission regarding CG and DD (February 2021). Its main points were:

- Corporate governance and Due diligence need to be distinguished and the proposals separated.
- The EU corporate governance framework has demonstrated that it is still balanced, functional and adaptable. It is complemented by national systems, due diligence, reporting, and employee information and consultation
- Businesses share the goals of sustainability, but are concerned whether such a revolutionary approach based on negative "short-termism" (Ernst & Young) will lead to the goal.
- Businesses take into account long-term and different interests of stakeholders alongside shareholders' financial interests, but need flexibility to determine which stakeholders are relevant to their business, how to communicate with them, and whether those interests are conflicting.
- The need for a legislative intervention is not justified. Such an intervention would be disproportionate and would have a negative impact on a number of basic principles of the market economy system.
- The principle of due diligence is becoming the norm in corporate sustainability strategies. A legally binding due diligence initiative will have a critical impact on businesses, their operations and relationships within subcontracting chains.

Objectives of the meeting

- What we want:
 - Inquire on the Confederation of Industry's views on their priorities for engagement with the US.
 - Reassure that digital sovereignty is not a protectionist move, it is about putting forward European values and rules.
 - Reassure that employers' concerns have been taken into account in the pay transparency proposal.
 - Highlight that the Commission is looking for effective, efficient, proportionate and feasible solutions for sustainable corporate governance.

Key messages

Transatlantic relations

- We are ready to deepen our engagement with the new US leadership.
- We want to move forward on a positive bilateral trade agenda, strengthen EU and US technological leadership, including through setting up an EU-US Trade and Technology Council, join forces on multilateral issues such as WTO reform, and manage some of the bilateral trade irritants through negotiated solutions.
- However, we need to remain realistic.
- President Biden's focus is on domestic challenges, and his foreign policy is "for the American middle class". US trade policy will remain focused on US jobs.
- Importantly, many US positions and trans-Atlantic tensions are deeply entrenched and/or of a bi-partisan nature.

- Our Joint Communication and Council Conclusions of December 2020 outlined several trade policy topics with opportunities for renewed transatlantic engagement:
 - the possibility to form a transatlantic green tech alliance;
 - a transatlantic dialogue on the responsibility of online platforms and Big Tech;
 - work towards a common transatlantic approach to protecting critical technologies in light of global economic and security concerns;
 - work on an Artificial Intelligence Agreement;
 - intensified cooperation to facilitate free data flow with trust.
- In this context, I would like to know your views on these areas and your priorities for engagement with the US.

Technological sovereignty and secure data transfer

- The COVID-19 crisis underlined that we need to accelerate the digital transformation. Digital technologies are the key differentiating factor in a successful transition to a sustainable, post-pandemic economy and society.
- At the same time, the crisis has also exposed Europe's vulnerabilities and strategic dependencies on non-EU actors for critical technologies.
- We aim to ensure that the digital transformation is coherent with our values and our economic interests, addressing the risks and strategic dependencies for critical technologies and inputs.
- This is the rationale behind the concept of digital sovereignty. Becoming the digital leaders of the future means that we need to be digitally autonomous.
- I am very well aware of concerns regarding the risk of protectionism. Let me reassure you that the European idea of digital sovereignty is not a protectionist move, it is about putting forward our values and European rules.

- Digital sovereignty is a positive agenda. It means that we will focus on enhancing our capacities in key technological areas, notably connectivity, data, cloud and microelectronics, and addressing our weaknesses. This is essential in order to emerge stronger from this crisis.
- Europe is committed to free and fair trade with well-functioning and sustainable global value chains. European values, such as privacy, rule of law and trust, will be our compass.
- For cross-border data transfers, the EU follows an open but assertive approach, based on European values and interests, as announced in the February 2020 European Data Strategy.
- In practice, this means that we work to ensure that, when data is transferred abroad, the protection travels with the data.

- In addition, the Commission is actively promoting international cooperation to foster a global culture of respect for privacy and enhancing the ongoing international convergence amongst domestic privacy regimes for the benefit of citizens and businesses.
- We also work in international fora such as the G7, G20 of OECD, towards ensuring the free flow of data with trust.

Equal pay and transparency of remuneration

- The gender pay gap (EU average cca. 14%) is a fundamental problem for women's economic empowerment.
- Pay transparency is the first step to uncover gender bias and discrimination in pay structures and to enable victims of discrimination to seek redress.
- The success of this proposal relies on a strong buy-in from employers.
- It is an opportunity to reflect on gender equality at employer level.

- One of the findings of the preparatory work for the directive is that employers are often surprised to find gender bias in the salaries they are paying.
- The proposal does not prevent employers from paying differently workers doing the same work or work of equal value.
- But if they do, such differences must be based on objective, gender-neutral and bias-free criteria, such as performance and competence.
- Moreover, what will be made public are averages or gaps, not actual salaries, and the proposal contains appropriate safeguards to this effect.
- As for the costs, according to our estimates the annual costs of pay reporting for employers with 250+ employees are between 400 and 900 EUR. After all, the measures are based on information that is readily available in any organisation.
- Finally, as for concerns of possible conflicts among workers arising from the initiative, I strongly believe that the result will be the opposite.

- The application of the equal pay right will foster trust and respect and can only help to attract and retain the best talent.
- Tomorrow's workforce is expecting more from employers in terms of inclusion and fairness – and women are half of that workforce.

Sustainable corporate governance

- Momentum is building up for EU-level horizontal rules in sustainable corporate governance.
- We are looking for effective, efficient, proportionate and feasible solutions and hope that the Confederation of Industry of the Czech Republic will be able to support this initiative.
- Our aim is to foster sustainability and resilience in corporate decision-making and in particular to help companies become environmentally and socially sustainable.
- Embedding sustainability into corporate governance would also be an important catalyst for a sustainable recovery after the COVID crisis.

- Commission staff is working on an Impact Assessment which will inform our decision on the proposal which we plan to submit later this year.
- The impact assessment is looking into three main elements:
 - possible EU-wide rules on corporate due diligence, to mitigate or prevent adverse impacts in the company's own operations and its value chains.
 - How to clarify that directors have a duty to pursue long-term value creation and a sustainable strategy for their company and manage sustainability risks.
 - reflections on aligning directors' remuneration schemes to ensure that incentives support long term sustainability .
- We are exploring how civil liability can play a role and whether obligations would apply beyond direct suppliers, as important risks to the environment as well as regards human rights (e.g. forced labour) tend to materialise in supply chains beyond tier one suppliers.

- We are also looking into the potential role of public authorities and whether due diligence rules would cover third-country companies to level the playing field.
- In this analysis, we are paying particular attention that obligations would be proportionate, both to the size of the company and to the risk of adverse impacts in the various economic sectors.
- We also pay particular attention to mitigating the burden on SMEs and to the need to provide them with additional support so that they can also reap the benefits.
- Finally, this initiative does not stand on its own. We also aim at ensuring consistency, in particular with the recently proposed new Corporate Sustainability Reporting Directive, which already imposes quite a number of substantial obligations in this field

Czech recovery and resilience plan

- The Commission has a constructive dialogue with the Czech Republic aimed at presenting a high quality final plan.

- The Commission is not yet at the stage of undertaking formal assessments of the final version of the plan.
- Once we receive the final plan, we will start its in-depth assessment.
- The Regulation envisages two months for the assessment and for the translation of its contents into legally binding acts.
- Our assessment will be published as a proposal for a council implementing decision, accompanied by a staff working document explaining the Commission views on the plan.

TRANSATLANTIC RELATIONS

Due to the importance of US exports and investments in the economy of the Czech Republic, representatives of the Confederation of Industries might be interested to discuss recent developments in the EU-US relationship with a particular focus on trade. They might also want to enquire about the EU vision for cooperation with the US on post-pandemic recovery and the green agenda.

The US is one of Czechia's top non-EU trading partners, ranking 11th in 2020 in exports (USD 4.4 billion, 2.3% of total exports). The US and Czechia have a bilateral investment treaty, signed in 1991. Leading sectors for US exports and investments include automotive parts and equipment, education, energy, franchising, information technology, medical equipment, scientific equipment, and agriculture.

In the EU, Czechia is an US ally on cybersecurity (2019 Prague 5G Security Conference and 2020 US-Czech Joint Declaration on 5G) and energy security, including in the Three Seas Initiative. Energy security is a major bilateral topic, with US lobbying for Prague to diversify away from oil and gas dependence on Russia. US investment in the Czech nuclear power sector is a long-standing ask.

On 2 May 2021, US Secretary of State Antony Blinken expressed support for Czechia's "strong and courageous response" in its diplomatic conflict with Russia after Prime Minister Babiš identified Russian secret service involvement in an explosion in a CZ ammunition depot in Vrbětice in 2014. Russia subsequently announced its decision to designate the US and Czechia as "unfriendly states."

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Defensives

TECHNOLOGICAL SOVEREIGNTY AND SECURE DATA TRANSFER

The Confederation of Industry of the Czech Republic has emphasised that digital sovereignty should focus primarily on strengthening competitiveness; supporting innovation and ensuring the secure and free flow of data at European and international level. They strongly caution against the risk of protectionism, which could restrict the EU's internal market and international trade and prevent European companies and consumers from gaining access to markets outside the EU. International cooperation is a crucial element for Europe's recovery and this should be taken into consideration in the context of the debate regarding the creation of EU digital champions. The Confederation of Industry expresses the view that the term 'technological autonomy' could replace the term 'technological sovereignty' in the European debate, denoting, in a more clear manner, the effort to ensure immunity to economic pressure from third countries, and to safeguard the right of choice for consumers and companies.

Furthermore, the Prime Minister of the Czech Republic, along with the leaders of Belgium, Ireland, Latvia, Lithuania, Luxembourg, Poland and Sweden sent a letter to

President Ursula von der Leyen on 8 March 2021 on the topic of digital sovereignty, urging her to keep the European economy open as it seeks to reduce dependence on foreign technologies. The letter also calls for a Digital Single Market for innovation, elimination of barriers to cross-border online services, and ensuring free data flows. On the international front, the EU should continue to seek cooperation with the like-minded countries and where needed develop new partnerships. The leaders stress that EU should become a leader in responsible digital transformation based on trust and innovation.

The Confederation of Industry of the Czech Republic is a member of BusinessEurope, which has a strong interest in data flows to third countries, including to the US. In December 2020, BusinessEurope published a position paper on “Safeguarding data flows”, in which it highlighted the importance of data flows for European consumers and businesses.

Defensives

Isn't technological sovereignty protectionism by another name?

- Digital sovereignty means that Europe needs to define its own rules and make autonomous technological choices, without turning into a digital fortress. Europe cannot rely exclusively on non-European sources for critical technologies.
- The first step is to identify these critical technologies and strategic dependencies.
- The next step is to enable Europe to develop competitive European solutions, to enrich the technological alternatives available worldwide and to diversify sources of supply.

- It is also important that Europe develop technologies that are in line with its principles, values and socio-economic model.
- To achieve this, Europe needs to invest in a number of key projects (data & cloud, microelectronics, connectivity, batteries, clean hydrogen) to develop digital and industrial capacities and infrastructures that will reduce the risks of dependency on third countries (e.g. disruptions in the supply chain, entrance of compromised equipment, concentration of European data in non-European hands).
- Europe must also be able to assert itself in defending its economic interests vis-à-vis partners who do not hesitate to favour their national businesses.
- This means that we must protect ourselves from unfair and abusive trading practices, tackle the distortive effects of foreign subsidies in our single market and modernise the European competition framework to address the challenges of the dual digital and green transition.

- This also means that Europe must develop alliances with countries that share its values and objectives, and shape the system of global governance on the basis of multilateralism.
- Our objective is to promote a human-centred digital agenda on the global stage and to promote the alignment of our partners or convergence with EU standards and rules. By ensuring the security and resilience of its digital supply chains, the EU will be able to provide solutions to global challenges.

Should users be systematically in control of their data and decide what to share and what to keep private?

- Data sovereignty, promoted in Europe, is about allowing users (individuals and companies) to be systematically in control of their data and deciding what to share and what to keep private. Data sovereignty is about reinforcing the rights of the individuals and companies to whom the data pertains and preventing unauthorized access and misuse of data for purposes contrary to their wishes or intentions.

How can the principle of free flow of data be reconciled with the growing demand for data sovereignty?

- Sovereignty in strategic areas means that the EU must be able to define its own rules, make autonomous technological choices, and develop and deploy strategic digital infrastructures. However, the EU will remain open to all businesses that comply with European rules and standards.
- Specifically for data, the data strategy presents data governance “in the European way”, i.e. which will guarantee that individuals and companies keep control over their data, thus guaranteeing an increased level of sovereignty data in Europe.
- Thanks to the strategy, more data will be available for the EU economy and society, while individuals and businesses will retain full control over the data they generate.

We are concerned about calls for data localisation.

- We have repeatedly confirmed the Commission’s commitment to facilitate data flows.

- This is notably reflected in our approach to the digital provision in trade negotiations, consisting in preserving our regulatory autonomy in the area of data protection while prohibiting data localisation measures. In other words, not confusing data protection with digital protectionism. This is what has been agreed in the EU-UK Trade and Cooperation Agreement, the first trade agreement that contains a straightforward prohibition of data localisation requirements, while stressing the importance of data flows.
- That is also what we continue to pursue in our engagement with international partners in different fora, including the WTO e-commerce negotiations, to promote safe and free data flows. This includes for instance the very promising work at the OECD, which builds on the Japanese “Data Free Flow with Trust” initiative, or the conclusion of our adequacy talks with South Korea.

The Commission and the US should agree on a new framework as soon as possible, to ensure continuity of transatlantic data transfers

- As you may have seen we have intensified our talks on a possible successor to the Privacy Shield. Developing a solution is certainly a priority.
- What is at stake are complex and sensitive issues, for the US as for Europe, that relate to the delicate balance between national security and privacy. But I believe that, as like-minded partners, we should be able to find appropriate solutions on principles that are cherished on both sides of the Atlantic: access to court, enforceable individual rights and limitations against excessive interferences with privacy.
- What matters for us is that any possible solution is in full compliance with the Court's case law. This is a question of respect for the rule of law and it is an essential condition to create legal certainty for companies transferring data to the US.

Background

EU-work on secure international data flows

- The EU is working together with third countries - mostly bilaterally, but also in the context e.g. of the G7, G20, OECD, or in WTO e-commerce negotiations - to open up data flows as much as possible.

- This is happening through
 - Adequacy decisions, only for personal data, and
 - Trade negotiations, by deploying as EU position in bilateral trade negotiations “horizontal data flows provisions” approved by the College, covering data across all sectors of the economy. These provisions include a list of prohibited data localisation requirements, combined with an exception allowing for the protection of personal data. Until now, these clauses have only been agreed in the EU-UK Trade and Cooperation Agreement (TCA). They are also proposed by the EU in ongoing trade negotiations e.g. with Australia, New Zealand, Indonesia and Chile.
- The EU proposed an approach consistent with these horizontal clauses in ongoing plurilateral negotiations with presently 86 WTO Members on establishing a rulebook for e-Commerce / digital trade.
- Data flows is one of the most difficult issues in this context, with China not willing to compromise its approach of data localisation, and other WTO Member States disagreeing with the EU’s position of a strong personal data protection exception and a list of data localisation requirements to be prohibited (but no outright prohibition of data localisation requirements).
- In the context of the G7, G20 and in the OECD, the EU supports “Data Free Flow with Trust”, the key underlying concept of the “Osaka Track”, launched by heads of governments under Japan’s G20 leadership in 2019.
- It maps a multi-dimensional architecture for international cooperation on data flows between governments, as well as involving business, with recommendations to increase levels of governance trust and build openness through trade rules and other tools.

EQUAL PAY AND PAY TRANSPARENCY

The Commission adopted on 4 March 2021 its proposal for a “Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms”. The proposal was discussed at the Working Party on Social Questions on 22 March, 13 and 20 April, and 17 May (First reading of first two chapters). The Portuguese presidency might organise one additional meeting. The Slovenian presidency is also favourable on the file.

Employers associations are very much against the proposal. BusinessEurope, of which the Confederation of Industry of the Czech Republic is a member, recently released a critical position paper reiterating that the directive introduces “heavy and disproportionate obligations for companies”, which will “create huge administrative burdens and costs for employers, possibly with little effect”. Moreover, “it does not leave adequate possibilities for member states to tailor implementation to their national context, including existing wage systems and the different size of enterprises. Finally, “the proposed directive promotes litigation and is likely to increase court cases, regardless of whether or not discrimination exists in that case. This could potentially create an adversary culture at workplaces”.

They are likely to ask the “EU institutions to amend the proposal to ensure that it is proportionate and reasonable”.

Defensives

Why do you want to impose burdensome requirement in this area for which you do not even have strong evidence?

- Pay transparency alone cannot close the gender pay gap and broader policy actions are needed, namely to tackle horizontal and vertical segregation and work life balance to name a few. We consider the respect of the equal pay principle a basic pre-requisite for gender equality on the labour market.

- Member States vary in the relevance of the so-called adjusted gender pay gap (i.e. the taking into account objective factors such as age, occupation, education, etc.) In the EU, around 2/3 of the pay gap is “unexplained” by those factors. Gender pay discrimination is among the factors influencing this unexplained part.
- By its very nature, discrimination is almost impossible to measure, but we have sufficient indications to believe that the issue exists and it is not negligible.

Your proposal replaces social partners’ autonomy on pay setting with court decisions.

- The proposal fully respects social partners’ autonomy and national models.
- The proposal does not affect pay setting as such (i.e. it is different e.g. from the minimum wage proposal), it merely requires that pay setting be gender-neutral. This requirement comes from the law and social partners are in any case constraint by the respect of the law.

- A court decision will only be necessary when a possible difference in pay for same work or work of equal value is discriminatory (i.e. based on gender instead of on objective and justified criteria).
- Courts will then not set the pay as such but ensure that differences are gender neutral and respect the equal pay principle. Employers' discretion in rewarding merit or a specific position based on explicit gender-neutral criteria is and will be allowed. If companies respect the equal pay principle there will not be more court cases.

The proposal does not allow taking into account individual performance. What will happen to workers' motivation?

- Differences in pay are allowed if they are objectively justified and not gender biased. In particular, if part of the salary is linked to merit/performance, it is perfectly legitimate to award it based on gender-neutral criteria. If this was not the case, it is possible that corrections to the pay structure will have to be applied.

Why do you want to impose mandatory gender-neutral job evaluation systems? How will a company be able to maintain flexibility?

- The evaluation of work of equal value must be carried out at company level. Updating a job description (in a gender neutral way) is something that would in any case be done when a new position (i.e. a new set of tasks/requiring different skills) is needed or its content changes. Companies routinely do this as basis for pay setting.
- Member States will introduce system for the neutral job classification.
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How can you measure “work of equal value”?

- This concept has been introduced in the Treaty over 60 years ago. The objective criteria to define what is work of equal value since developed by the ECJ are simply recalled in the Directive. These are educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved.

Member States will set the criteria for the neutral job classification. **Is the concept of “work of equal value” to be applied across sectors?**

- Following the Court definition of the criteria to assess work of equal value (see above), and the fact that employers must define these criteria, they can only apply to their own workers and not across sectors or to different employers.

Background

The gender pay gap in Czechia was at 18.9% in 2019, higher than the EU-28 average of 14.1% with only four countries (EE, LV, AT and DE) having a higher gap.

A digital tool called Wage and Salary Calculator was developed which calculates average earnings for individuals with given characteristics and the percentage difference in earnings between women and men based on these parameters. The project also included an in-depth study of the causes of gender wage gap (public opinion research, analysis of linked employer/employee data, qualitative research in companies); Methodologies for various stakeholders (Labour Inspectors, Labour offices); Action plan for equal remuneration of women and men and a Public awareness campaign

SUSTAINABLE CORPORATE GOVERNANCE

The Confederation of Industry of the Czech Republic attended the dedicated hearing of social partners on the sustainable corporate governance initiative on 22 February 2021, but it did not submit a contribution there, nor did it participate in the Commission's open public consultation on sustainable corporate governance (between 26 October 2020 and 8 February 2021). Only 5 out of 855 contributions (not counting the replies through NGO campaigns) originated from Czechia, including one of the 12 contributions from Member States' public authorities.

The Czech Ministry of Justice agreed that there is a need for directors to take into account all stakeholder interests in corporate decisions and supported the law requiring directors to set science based targets. The Ministry also agreed on the need for an EU legal framework for supply chain due diligence to address adverse impacts and favoured the most ambitious and most preferred option of overall respondents, namely a horizontal minimum process and definitions approach complemented with further requirements in particular for environmental issues. As regards scope, the Ministry expressed support for excluding SMEs (except for the riskiest sectors) from some of the proposed (stricter) obligations and advocated for finding additional means to reduce the burden for SMEs through e.g. less reporting, guidance, etc.

In comparison, EuroChambres, as the umbrella organisation of the Czech Chamber of Commerce - the largest and the most representative business association in the Czech Republic - which you met on 29 April 2021, expressed scepticism about need to regulate directors' duties by EU law, while supporting harmonisation of certain corporate due diligence practices.



Defensives

1. Due diligence:

Issues that are not directly influenced by companies should not be their responsibility. Due diligence duty should be limited to direct contractual partners (“first tier”). The responsibility for compliance with the legal framework of third countries must lie with the respective local companies.

- Due diligence means that companies have to take **all reasonable steps** that can be expected from them in the specific context. The expected standard of care would need to be **in line with the leverage** that a company, individually or jointly with others, can exercise over its suppliers including further down in the supply chain.
- Ideally, due diligence would cover the **entire value chain**, as human rights violations and environmental harm occurs more often beyond tier one. The French law in this area, for instance, goes beyond tier one. There is a balance to be struck here. Our aim is also to ensure that the **measure is effective, also to the benefit of the company.**

The EU should focus on well-targeted policies to ensure that local governments (in third countries)

protect human rights and social and environmental standards.

- Other policies, such as development cooperation, neighbourhood policy, trade and external relations contribute to reaching our ultimate goals with support, funding, dialogue, agreements.
- There is also an ongoing reflection about strengthening sustainability chapters in trade agreements to support the transition better and help levelling the playing field globally. These policies reinforce each other.
- At the same time, the experience with the French Duty of Vigilance Law shows that **a legal standard can contribute to changing the regulatory and behavioural environment in the third country** of the supply chain. Such positive impact of an EU standard would be even higher.

The impact on EU companies' global competitiveness should be considered.

- Evidence shows that **benefits of sustainable corporate behaviour outweigh the costs** on the short, medium, and long run. For instance, investments in low-carbon technologies can reduce operational costs significantly, to the extent that they pay back in a relatively short time. This **improves competitiveness**.
- 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), which are **global and apply to non-EU companies as well**.
- We are also reflecting on strengthening sustainability chapters in EU **trade agreements** to help level the playing field globally. These policies reinforce each other.

- We are also looking into covering third country companies, possibly linked to them having a significant turnover in the EU.

Due diligence should be limited to high-risk industries, at least in the case of SMEs.

- The Commission is **considering the possibility to identify sectors** which are more prone to human rights or environmental adverse impacts for the purposes of reducing the regulatory burden on SMEs that are not active in these sectors.

UN and OECD standards should be the basis of duties but SMEs' efforts should be supported by NGOs and with additional guidance.

- 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 deploying **reasonable efforts**. The expected standard of care is **in line with the leverage** that a company, individually or jointly with others, can exercise over its suppliers and further down in the supply chain.
- The Commission is considering whether it is useful to identify sectors which are more prone to human rights or environmental adverse impacts, for the purpose of reducing the regulatory burden on SMEs.
- However, the identification and assessment of actual and potential risks and impacts (**risk mapping**) is **best done by the company**. It is best placed to know its stakeholders and the related impacts/risks.
- Companies can also use guidance or participate in joint, e.g. sectorial initiatives, use modern technologies or trusted third parties. Sustainability reporting standards (e.g. the possible future EU standards) may also give some guidance for particular sectorial risks or impacts.

SMEs should be exempted from compliance and protected from being excluded from larger companies' supply chains during a transitional period.

- It is possible to envisage that low risk sector SMEs would only be covered by the **scope** of the new rules in a phase-in approach to make transition smoother and less burdensome. This is part of the ongoing analysis.

The applicable legal regimes across the EU allow directors to carefully consider all relevant stakeholder interests. A legal requirement to take all interests into account, combined with risk of personal liability would create legal uncertainty. Voluntary measures with targeted legislation (Corporate sustainability reporting Directive, Shareholder Rights Directive) are enough.

- **Our public consultation revealed some support** for clarifying the principle that corporate directors should balance the interests of a wide range of stakeholders – as opposed to a narrow focus only on the short-term financial interests of shareholders – as part of their duty of care for the long-term sustainability of their firm.
- **Companies and business associations supported** the need to **integrate sustainability** risks, impacts and opportunities **into a company's strategy**, decisions and oversight within the company.

- How to do this, is the subject of our analysis. In any case, directors should continue to **owe their duties to the company**, and we should **not aim at making a hierarchy** between the different interests. The so called “**business judgment rule**” should remain **applicable**.

Background

Last year, **two studies** were delivered to the Commission to underpin this initiative:

- Study on due diligence requirements in the supply chain (February 2020)
- Study on directors’ duties and sustainable corporate governance (July 2020)

First results from the **public consultation on the Renewed Sustainable Finance Strategy**, which contained some relevant questions, already showed strong overall support for directors to take stakeholder’s interests into account in their duty of care and mandatory EU due diligence rules.

In parallel, in the **European Parliament**, the own initiative legislative report on “**Corporate Due Diligence and Corporate accountability**” (rapporteur Lara Wolters, S&D/NL) was adopted in the March plenary. It requests the Commission to submit a legislative proposal on mandatory supply chain due diligence. It also suggests that compliance with mandatory due diligence provisions should be a condition for market access, i.e. products related to severe human rights violations (such as forced labour or child labour) should be banned.

This report is complemented by work led by the JURI Committee on an own-initiative report on “**Sustainable Corporate Governance**” (rapporteur Pascal Durand, Renew/FR). That report was adopted in the December 2020 plenary. It calls for a legislative proposal to ensure, among others, that directors’ duty of care must include the long-term interest of the company and wider societal interests, as well as that of employees and other relevant stakeholders, directors to adopt a sustainability strategy and science based targets.

The Employment, Social Policy, Health and Consumers Affairs (EPSCO) **Council Conclusions** of 3 December 2020 on Human Rights and Decent Work in Global supply chains call for a proposal from the Commission for an EU legal framework on sustainable corporate governance, including cross-sector corporate due diligence obligations along global supply chains.

Results of the open public consultation

A synopsis of all the Commission’s consultative initiatives will be **published as part of the impact assessment** (at the adoption of the proposal). In the meantime, the consultation responses will be published shortly as well as a factual summary.

As regards **directors' duties**, the majority of respondents across stakeholder groups recognized the need for companies and directors to take account of stakeholder interests in corporate decisions, with the largest support coming from NGOs, followed by individual companies and lastly business associations. Some business associations (and a few Member States) are critical of action on directors' duties.

As regards **due diligence**, all stakeholder groups confirm with vast majority (largest among NGOs, broad support as well from individual businesses and business associations) the need for developing a horizontal EU legal framework for due diligence. There is also support across stakeholder groups for an ambitious approach as regards the content of due diligence duties.

Remuneration seems to be recognized as an important element supporting the effort, in particular as regards making compulsory the inclusion of sustainability metrics in the variable remuneration, with however somewhat limited replies on this topic in the open public consultation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Recovery and Resilience Facility: Maximum grant allocations* (current prices)

	For 70% of the amount available	For 30% of the amount available	Total
 Belgium	3.6	2.3	5.9
 Bulgaria	4.6	1.6	6.3
 Czechia	3.5	3.5	7.1
 Denmark	1.3	0.2	1.6
 Germany	16.3	9.3	25.6
 Estonia	0.8	0.2	1.0
 Ireland	0.9	0.1	1.0
 Greece	13.5	4.3	17.8
 Spain	46.6	22.9	69.5
 France	24.3	15.0	39.4
 Croatia	4.6	1.7	6.3
 Italy	47.9	21.0	68.9
 Cyprus	0.8	0.2	1.0
 Latvia	1.6	0.3	2.0
 Lithuania	2.1	0.1	2.2
 Luxembourg	0.1	0.0	0.1
 Hungary	4.6	2.5	7.2
 Malta	0.2	0.1	0.3
 Netherlands	3.9	2.0	6.0
 Austria	2.2	1.2	3.5
 Poland	20.3	3.6	23.9
 Portugal	9.8	4.1	13.9
 Romania	10.2	4.0	14.2
 Slovenia	1.3	0.5	1.8
 Slovakia	4.6	1.7	6.3
 Finland	1.7	0.4	2.1
 Sweden	2.9	0.4	3.3
 EU 27	234.5	103.5	338.0

(in billion EUR, current prices)

