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Due diligence: options for a future EU initiative

On April 29, 2020, the European Commissioner for Justice, Didier Reynders, announced that the European Union plans to develop a legislative proposal by 2021 requiring businesses to carry out due diligence in relation to the potential human rights and environmental impacts of their operations and supply chains. This Study examines the need for an EU-level regulation of corporate due diligence obligations aimed at identifying, preventing, mitigating and accounting for human rights abuse including the rights of the child and fundamental freedoms, serious bodily injury or health risks, environmental damage, including with respect to climate.

1. What are your opinions on these four options?

1.1 No policy and no regulatory change (no changes in regulation at EU level but member states can put in place their own legislation or voluntary market practices). Do you support this option? Answer (YES or NO and WHY):

1.2 New voluntary guidelines at EU level for companies undertaking due diligence through the supply and value chain. Do you support this option? Answer (YES or NO and WHY):

1.3 New EU regulation requiring due diligence reporting obligations (more detailed information on the identification, prevention and mitigation measures undertaken by companies respecting their own operations or third-party business relationships that will complete the EU Non-Financial Reporting Directive). Do you support this option? Answer (YES or NO and WHY):

1.4 New EU regulation requiring mandatory due diligence as a legal duty of care (this new regulation will require companies to carry out due diligence to identify, prevent, mitigate and account for actual and potential human rights and environmental impacts in their own operations and supply or value chain as a legal duty or standard of care). Do you support this option? Answer (YES or NO and WHY):

2. In regards to option 4 above, several sub-options have been identified to take into account the means of the companies and the magnitude of the risks. What are your opinions on these options?

2.1 New regulation only limited by sector (for example mining, clothing, agriculture, financial sector and so on). Do you support this sub-option? Answer (YES or NO and WHY):

2.2 New regulation applying horizontally across sectors. Do you support this sub-option for all companies? Answer (YES or NO and WHY):

Would you support this sub-option if it was applying only to large companies?

Answer (YES or NO and WHY):

2.3 General duty applying to all businesses plus specific obligations only applying to large companies. Do you support this sub-option? Answer (YES or NO and WHY):

3. Any new mandatory due diligence regulation will need to be accompanied by a statutory oversight and/or enforcement mechanism.

3.1 Do you support the introduction of a European or national mechanism for judicial and non-judicial remedies for those affected by the company’s failure to exercise due diligence? Answer (YES or NO and WHY

3.2 Do you support a European or national state-based oversight body and sanction for non-compliance? Answer (YES or NO and WHY

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