

OFF THE HOOK?

How business lobbies against liability for human rights and environmental abuses



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Corporate lobbyists are fighting a proposed EU law that seeks to hold companies accountable for human rights abuses and environmental destruction. While some employ outright hostility and are clear that they don't want the law in the first place, more insidious are those companies that while appearing cooperative, seek to fatally weaken the rules. We reveal the tactics used to undermine this law that seeks to stop corporate impunity and would require companies to exercise 'due diligence' along their global supply chains.

Introduction

Whether it's deforestation through the use of palm oil, child labour in cocoa plantations, accelerating climate change from industrial processes, or abusive working conditions of textile suppliers to the fashion industry, multinational corporations are responsible for – and profit from – egregious human rights and environmental [abuses in their global value chains](#).

In April 2020, Justice Commissioner Reynders committed to an EU legislative initiative which will require European companies to comply with mandatory human rights and environmental 'due diligence'. In other words, they will have to effectively identify, prevent, mitigate, and account for the negative impacts of their activities or those of their subsidiaries, subcontractors, and suppliers. The announcement followed a European Commission study that concluded that many years of voluntary 'Corporate Social Responsibility' (CSR) measures by companies have failed to protect the environment and human rights.

EU mandatory due diligence legislation could drastically improve the environmental and human rights impacts of EU-based corporations across the world, and provide strong tools for victims of abuses to hold them accountable. To do so however, it is essential that the law covers companies' entire supply chains, makes companies liable for harm (through civil, administrative, and criminal liability), gives victims access to courts in multinationals' home countries, reverses the burden of proof of harm from victims to companies, includes strong sanctions, [and much more](#). Not surprisingly, companies have been lobbying hard to prevent this from happening.

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In March 2021, the European Parliament adopted a [report](#) calling for legislation that requires all companies to analyse environmental and human rights risks across their entire global value chains, take actions to “cease, mitigate and prevent” them, and face civil liability for harms when they fail to do so. A legislative proposal is expected from the European Commission’s Directorate-General (DG) Justice in late 2021. The stakes for people and planet are high, but since business’ ability to profit with impunity is also on the line, the lobbying on the file has been intense. Over three months after making freedom of information (FOI) requests to the Commission, we finally got hold of dozens of internal lobbying documents from DG Justice – reported on for the first time here – which, along with the lobbying towards the European Parliament, reveal the tactics and arguments these companies are using, both publicly and behind the scenes. The findings are vital reading for the policy-makers and politicians with a chance to stop corporate impunity.

There are plenty of big business lobbies that make no secret of their wish to obstruct the law, but these are perhaps less dangerous than those that present themselves as allies whilst at the same time lobbying to weaken and shape this proposal in their own interests. Despite lip service in support of a mandatory due diligence law, then, many corporations and their lobby groups seek to make it toothless by restricting or even banning strong liability provisions and access to courts for victims. Instead they focus on “positive incentives” for companies to do the right thing, and emphasize avoiding a “punitive” approach, ie one with serious consequences for companies involved in human rights violations. They keep using practical and reasonable-sounding terminology to disguise these efforts: fears of “increased risk of litigation”, “frivolous claims”, and “legal uncertainty” are just different ways of saying they don’t want victims to have the right and the tools to hold them accountable in front of the courts.

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Any company trying to deny or limit this fundamental right is clearly not serious about addressing its social and environmental impacts.

Corporate lobbyists' invocation of 'pragmatic' and 'feasible' measures are often euphemisms for limiting the due diligence law to 'tier one' (ie direct suppliers to a company) in global value chains – which would leave most harms unabated, and the most vulnerable without recourse. Pushing voluntary industry-led CSR models – which have been shown to be historically ineffective, leading to the very reason for this proposed law in the first place – or for recognition of existing CSR schemes in the law is another common tactic. Meanwhile, calls to 'level the playing field' too often are geared towards the lowest possible level: French industry wants it lower than France's national due diligence law, while in Germany and the Netherlands, big business' goal has been to play a double game by scuppering ambitious national legislation by arguing for European rules, then fighting to weaken and undermine those too.

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1. Obstruct, fearmonger, and if all else fails, render useless

BusinessEurope has made no pretence of its antipathy towards the mandatory due diligence agenda. In July 2020, it warned the Commission that a new law “could have negative and unwanted impacts” like “jeopardising meaningful and successful company practices” and “dampening investment in third countries”. It even used supply chain disruption from COVID-19 as a justification *not* to introduce legislation to protect communities and workers’ human rights from corporate impunity – because it “could make it harder for companies” to secure, redesign, or rebuild their supply chains.¹ Later in 2020, BusinessEurope wrote to Commissioner Reynders stressing that a “clear majority” of businesses “share strong concerns” about a mandatory EU law,² but also issued demands to render it weak and toothless.

BusinessEurope issued demands to make a mandatory EU law rendered weak and toothless.

Notes released under FOI law from a meeting with BusinessEurope’s corporate advisory group reveal that it told DG Justice due diligence requirements “should be limited to the means and not cover the results” – ie companies’ obligations should stop at a due diligence *process*, regardless whether that process succeeds in preventing harmful impacts. BusinessEurope also asked if it “would include a safe harbour clause for existing sectoral due diligence rules as it is proposed in the leaked draft German due diligence (supply chain) law”.³

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1. Letter from BusinessEurope to European Commission Vice-President Jourová, July 24 2020. Document 6 in [zip folder](#)
 2. Letter from BusinessEurope to European Commissioner Reynders, October 13 2020. Document 11 in [zip folder](#)
 3. Report from meeting of Head of Cabinet Ms Tuts with BusinessEurope, November 19 2020. Document 12 in [zip folder](#)

A 'safe harbour' clause refers to an exemption from liability, in this case one that analysts say would "be linked to officially recognised multi-stakeholder industry standards": in other words, voluntary CSR standards – shown to be ineffective at preventing harms – would be used to shield companies from liability for the harms they cause! Such a provision would completely undermine the EU due diligence law – and its existence in the German proposal is thanks to the business lobby offensive in Germany to weaken their own national law (see part 4).

BusinessEurope also made clear in its [reply to the Commission's public consultation](#) that it wants companies to have 'safe harbour' – ie protection from lawsuits – if they already conducted a due diligence process, or if they are not *directly* responsible for harm in their supply chain. Additionally, it wants the law to be limited to tier one, not cover climate change, "push" but not punish companies, and contain "no reversal" of the burden of proof from victims to companies. On this latter point, [BusinessEurope wrote to the European Parliament's JURI Committee in January 2021](#) (just before a vote on its draft due diligence report) arguing that it would "open the door to frivolous claims and abusive litigation" – a dramatic way of saying victims should not have the tools needed to take companies that violate human rights to court.

BusinessEurope argued the due diligence proposal would "open the door to frivolous claims and abusive litigation" ie victims should not have the tools needed to take companies that violate human rights to court.

There can be no doubt that BusinessEurope and its members are against strong legislation on due diligence, and their reaction to civil society campaigning for an ambitious law shows they see it as a threat. According to sources, at the start of February 2021 FEDIL (the Federation of Luxembourgish Industrials), a national member association of BusinessEurope, warned its company members that a civil society petition [‘Raise your voice to hold business accountable’](#) had collected tens of thousands of consultation replies, and encouraged “as many members as possible to reply to the public consultation to counterbalance the initiative of the trade unions and NGOs.” Companies were encouraged to reply negatively to the question of whether an EU legal framework for corporate due diligence should be developed. Like the civil society campaign, a template of answers was provided – but rather than being centred on protecting people and planet from corporate impunity, theirs was “worked out together with BusinessEurope” with the same demands: limit it to tier one only, include safe harbour, etc.

Another BusinessEurope member tried a different lobby technique: one of its [partner companies](#), agrichemical giant Bayer, [sponsored a Politico debate](#) on the topic in October 2020. At the event Bayer’s boss emphasised “tier one suppliers” as the level where companies have influence, and argued the EU should not make the framework too broad, but remain focused on human rights “rather than fiddling about” and putting other things in. Other things... like the environment? Bayer’s voluntary CSR commitments might promise to promote “a responsible use of resources to help people and planet thrive”, but as the [producer of herbicide-dependent GMOs and pesticides responsible for the large-scale death of pollinators](#), it is no wonder that the company does not want mandatory *environmental* due diligence.

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2. Carrots not sticks: how 'constructive' corporates try to dilute the law

Unlike outright obstructive groups like BusinessEurope, some corporate lobbies have presented themselves as the forward-thinking end of business that supports mandatory due diligence legislation. However, their lobbying reveals that the devil is, as always, in the details. Diluting, defanging, and enshrining their continued influence – there's a lot of damage they could do to the ambitious due diligence law that is needed. Take corporate lobby groups [AIM](#) and [Amfori](#), which each spent up to €400,000 lobbying the EU in 2019:

- **AIM**, the European Brands Association, has a [membership list](#) of the biggest brands, including Coca-Cola, Danone, Mars, Mondelez, Nestlé, Nike, and Unilever. In November 2020 AIM lobbied DG Justice for policy tools that “incentivise” businesses to respect human rights (like being rewarded with “trade preferences and development policies”). As if citizens are ever ‘rewarded’ for not polluting their neighbours’ garden or not beating them up. What’s more, they wanted the responsibility to respect human rights to “be distinct from the scope of legal liability”.⁴ However, if liability is included, AIM wants it limited to “severe human rights harm” caused only by the company’s own activities or those of “controlled companies” that could have been prevented had it carried out a “reasonable” human rights due diligence process – all terms that should be defined “following constructive dialogue among all relevant stakeholders” ie in consultation with big business.

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4. AIM position paper, October 2020. Document 28 in [zip folder](#)

Let's unpack that a bit: AIM's *first* preference would be for the law *not* to hold its members legally liable for failing to respect human rights. Its *second* preference, however, if liability is included in the proposal, is for it *not* to cover companies' entire value chains. And for companies to escape liability for harms if they ticked all the boxes in a due diligence process (or as AIM recently put it, conducting due diligence should be a "defence" that companies can use), an approach which risks creating immunity from liability rather than strengthening it. Limiting liability to "severe human rights harms", meanwhile, would *de facto* make most other harms legally permissible – and what would a "non severe" human rights harm be anyway?

- **Amfori**, the business association with "trade for a purpose" as its tagline, wrote [an open letter](#) after the European Parliament adopted [the report on corporate due diligence and corporate accountability in March 2021](#), pushing for a "pragmatic" approach, in which "legal liability should not be regarded as a silver bullet" but instead includes "positive incentives" (ie favourable treatment through, for example, "public procurement incentives"). As an advisory member of the Responsible Business Conduct Working Group of the European Parliament, Amfori has an influential position in the debate. At a webinar of the working group in March 2021 – which featured two Commissioners and multiple MEPs, as well as industry and NGOs – Amfori reiterated these messages, and emphasised how "challenging" it would be for companies "to have full oversight all along the supply chain". Amfori also argued it is "important to capitalise on existing collaborative due diligence efforts" – ie voluntary industry CSR initiatives – which are "powerful tools" – even offering Commissioner Reynders Amfori's "expertise" regarding "the role of these existing schemes in future EU legislation".

Limiting liability to "severe human rights harms", meanwhile, would de facto make most other harms legally permissible.

Limiting liability and pushing incentives not sanctions are themes that echo the more openly obstructive business lobby groups. The picture is similar with individual companies that present themselves as supportive. H&M told DG Justice it favours a “pragmatic and feasible” framework with the “right incentives” and recognition of existing (voluntary) industry schemes.⁵ **The fast fashion firm, however, has made many worthy promises** that have not yet been fulfilled, while abuses in its value chain continue, with female workers in its supply factories **reportedly facing sexual and physical abuse to meet unrealistic targets.**

Mars, meanwhile, pointed out to the Commission how much it is already doing to “put words into action” by voluntarily disclosing more details about its tier two (further down the supply chain) cocoa suppliers.⁶ The chocolate industry is a case in point: for years, it’s faced mounting pressure for mandatory regulation of its value chains, following decades of **voluntary programs** that brought little progress on deforestation and child labour. Some companies saw which way the wind was blowing: back in 2019, Mars and Mondelez came out in favour of EU due diligence rules, since it’s better to be **“at the table than on the menu”** shaping the rules rather than being subject to ones they don’t like. Hence, Mondelez’ ‘support’ came **with caveats**: policy-makers must “create incentives for businesses to do their due diligence”, and companies must be able to “be transparent about risks in their supply chains without fearing that they will be exposed to increased risk of litigation” – it’s “essential” the law provides “that safe harbour”. Similarly, the European Cocoa Association told DG Justice in June 2020 that it’s “crucial” that due diligence legislation does not “expose companies to excessive risk”.⁷ Put plainly, they don’t want to make it easier for victims of abuse to seek justice, like the **eight former child slaves** suing Mars, Mondelez, Nestlé, and other chocolate companies for “aiding and abetting the illegal enslavement of ‘thousands’ of children on cocoa farms in their supply chains”.

The European Cocoa Association said it’s “crucial” the law doesn’t “expose companies to excessive risk”. They don’t want to make it easier for victims of abuse to seek justice, like the eight former child slaves suing chocolate companies.

5. H&M Group’s position on mandatory due diligence, October 2020. Document 13 in [zip folder](#)

6. Email from Mars to DG JUST, September 9 2020. Document 9 in [zip folder](#)

7. European Commission Flash Report from meeting with the European Cocoa Association, June 2 2020. Document 26 in [zip folder](#)

Lobby firm hired by world's largest fashion retailer warns against red tape and 'strict liability'

In the run up to and during the Commission's [public consultation](#) (October 2020 – February 2021), [freedom of information](#) requests reveal that DG Justice had a fairly consistent approach to corporate lobbyists: they were concentrating their resources on the consultation and limiting participation in stakeholder meetings “at this stage”. One such lobby firm that received this response was Hanover Communications, who had invited DG Justice to speak at a Chatham house rule webinar on sustainable corporate governance and due diligence, planned for early November 2020.⁸ Its invitation-only audience would, the lobby firm promised, consist of “15-20 senior representatives from various corporations, trade associations and other interested organizations” – industry, Hanover said, agreed with mandatory rules but “calls for a more pragmatic approach, based on improving existing practices” (read: modelled on ineffective industry-led CSR measures).

It is notable, therefore, that “[a Hanover 360° webinar](#)” discussing the topic was reportedly held in January 2021 with “Lucrezia Busa (Cabinet Justice Commissioner Didier Reynders), Jose M. Álvarez Gallego (Inditex) and Jan Tytgat (Umicore).” The Justice Commissioner's cabinet, it is clear, was still having meetings during the consultation period. For clues about what the webinar discussed, the [Hanover article](#) that refers to it says that “reporting fatigue among suppliers” means “administrative burden and red tape are absolutely to be avoided” (ie avoiding admin for corporations is more important than preventing and rectifying abuses), and that an approach where companies develop “processes to identify and mitigate risks” in their value chains is preferable to one that imposes “strict liability regimes” (ie don't hold us legally liable, we'll do it anyway... promise!)

The other speakers at the webinar included Spanish multinational Inditex (whose brands include Zara), the [world's largest fashion retailer by sales](#) and a client of Hanover ([paying the lobby firm](#) up to €50,000 in 2020). Inditex has [recently come under pressure](#) for removing a statement opposing forced labour in Xinjiang, China's cotton producing region, where systematic [human rights abuses against the Uyghur population](#) have been documented. The company has also faced accusations of failing to protect workers from a crackdown on their rights during the COVID-19 pandemic, as garment workers in its supply factories were fired for union activity. Metal and mining trader Umicore – which [has been alleged](#) to have bought cobalt from Congolese mines where child workers have died – is not a client of Hanover, but the Nickel Institute, of which it is a member, [paid the firm](#) up to €200,000 in 2020.

8. Email from DG JUST to Hanover Communications, October 19 2020. Document 39 in [zip folder](#)

3. CSR Europe: take the pressure off companies, give them the pen instead

Voluntary, industry-led schemes have long been used to deflect the need for binding laws – and there is [conclusive evidence](#) that these kinds of multi-stakeholder initiatives should not “be used as tools for accountability, remedy or human rights protection”. Business lobby group CSR Europe’s whole *raison d’être* has been to use voluntary initiatives as a smokescreen – and many of its [members](#) are no stranger to human rights and environmental scandals, like Volkswagen (remember [Dieselgate?](#)) and oil giant Total (see part 4). Documents released under FOI law reveal that CSR Europe has not given up its mission, despite the mounting evidence against industry-led initiatives: it lobbied [DG Trade](#) in December 2020 about the need “to take account of the existing (sectorial) work already done by many companies”, the “relevance of developing standards ‘bottom up’” and the industry’s impression “that the Commission lacks trust [in] industry led (‘bottom up’) standardisation”. What’s more, released minutes from a meeting with [DG Grow](#) in October 2020 also reveal that “CSR Europe criticised the focus of CSOs ([ECCJ](#) in particular) on regulatory measures only, leaving aside capacity building”,⁹ while the “importance of partnerships and the existence of NGOs/CSOs with a broad mandate that includes collaborating with companies on sustainability issues” was emphasised. This seems to imply a right and wrong kind of civil society: and the groups that criticise corporate impunity, refuse to partner with human rights abusers, and campaign for binding rules are the wrong kind.

Business lobby group CSR Europe’s whole *raison d’être* has been to use voluntary initiatives as a smokescreen – and many of its members are no stranger to human rights and environmental scandals.

9. Full disclosure: European Coalition for Corporate Justice (ECCJ) is a co-publisher of this report.

Publicly, CSR Europe has warned that the adoption of a mandatory EU due diligence law might actually “[harm local communities](#)” – even though this conclusion patently does not follow from the example it provides. To avoid this strangely convenient and utterly unsubstantiated consequence of a law designed to help *protect* local communities, [CSR Europe proposes](#) “supportive incentives” for companies and new European Sector Dialogues & Alliances. Because, it claims, success “will depend, to a large extent, on the buy-in of the European private sector”. The multi-stakeholder [sector dialogues](#) would, CSR Europe says, add “a ‘duty to collaborate’ to the ‘duty of care,’” prioritising “impact oriented collaborative action above individual company behaviour” and creating a forum in which “policy measures, civil society actions and stakeholder interventions should be discussed together with the company actions”. In other words, it wants to shift the focus from company abuses to the actions of other stakeholders, and ensure that multinationals are in a position to influence the details.

4. France's big businesses want to level the playing field... by lowering it

Many businesses, policy-makers, and NGOs have said the benefit of an EU mandatory due diligence law is to level the playing field across Europe, so companies don't have to deal with a patchwork of [new national supply chain laws](#). Too often, what's missing is the question of *at what level* that playing field will be – lower or higher? In France, the Duty of Vigilance law was adopted after long campaigning by human rights organisations, trade unions, and MPs, and faced [fierce opposition from big business](#). The French Association of Large Companies (AFEP) for example, [wrote to Emmanuel Macron](#), then Minister for the Economy, saying that “companies are totally opposed to this bill”. They argued it was “based on a logic of punishment”, would create legal uncertainty, and put French companies at a competitive disadvantage. AFEP, along with employers federation MEDEF, [was successful in delaying the process and watering the bill down](#) (eg reversing the burden of proof from victims to companies did not make the cut), but eventually the law was passed in 2017.

The Duty of Vigilance law [requires](#) the [very largest](#) French companies to publish annual vigilance plans that identify risks of, and set out measures to prevent, human rights and environmental violations resulting from their own activities and those of companies they control, or subcontractors/ suppliers they have “established commercial relationships” with. If these vigilance plans are not adequately and effectively implemented, the companies can be challenged in the courts. However, as French NGO [Sherpa has pointed out](#), “the law has been construed by many companies as a mere reporting exercise”, with many vigilance plans brief and vague, and a lack of government monitoring. Nonetheless it is a vital legal tool for victims to fight against corporate impunity, and a [number of court cases are ongoing](#). These include two against Total, one for [failing to include any reference to climate change in its first vigilance plan](#), and the other for its [failure to elaborate and implement its vigilance plan in Uganda](#), where its oil activities have dire social and environmental impacts.

Meanwhile in Brussels, French big business is lobbying to undermine an ambitious European law, pushing for it to be weaker than France's. In a meeting with DG Justice in July 2020, Total used its "experiences with the French duty of vigilance law" to argue that an EU law is "doable for first level suppliers" but warned that it would get "complicated" further down the supply chain. With respect to civil liability of the parent company, Total insisted the "extent of the duty" must be well defined.¹⁰ If this appears innocuous, context is everything: in Total's legal battles in the French courts, the oil giant is arguing that the duty of vigilance is merely a procedural obligation, which they complied with, and so should exempt them from liability. Getting the EU legislator to define due diligence as entailing no real preventive obligations would be great news for Total's lawyers.

What's more, French big business lobby AFEP, of which [Total is a board member, makes clear](#) that the EU definition of due diligence must *not* include climate change, claiming it's not possible to "attribute responsibility" or "define due diligence on climate change for a specific company". It's not hard to identify this demand as a response to the climate case against Total in France, but excluding climate impacts from environmental due diligence would be a betrayal of the urgency of the climate crisis. As the [UN High Commissioner for Human Rights has said](#), protecting against harm from climate change is part of the corporate responsibility to respect human rights.

AFEP's demands don't stop there though. It spent up to [€1.25 million lobbying the EU](#) in 2020 in February, [arguing that](#) "punitive legislation" was inappropriate and inefficient and that the "drawbacks" of the French law ("a mandatory due diligence obligation coupled with civil liability") "are clear". Namely, "considerable legal uncertainty" leading to "numerous, lengthy and costly judicial proceedings" which

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French big business lobby AFEP makes clear that the EU definition of due diligence must not include climate change.

10. European Commission Flash Report from meeting with Total, July 10 2020. Document 24 in [zip folder](#).

“create a climate of distrust”. All lobby speak for ‘we don’t want victims to have access to justice’. Finally, AFEP insisted that mandatory EU legislation was “premature”; instead, the Commission should “issue voluntary guidance... drafted collaboratively with EU companies”. Unfortunately for this outrageous demand, the Commission-BIICL study published in February 2020 – which formed part of the rationale for an EU law – found that the vast majority of companies were not bothering with voluntary processes, despite ten years of international guidance in the form of the UN Guiding Principles on Business and Human Rights.

Once the inevitability of a law **became clear**, AFEP’s position evolved, by December 2020 **claiming to be** “in favour” of a “pragmatic” EU due diligence law, which respects “business secrecy by avoiding excessive transparency on supply chains” and clearly defines due diligence requirements to apply only to “the first tier”. Both **AFEP** and **MEDEF** lobbied members of the European Parliament’s JURI committee on the file in the latter part of 2020, and in **its response** to the Commission’s consultation AFEP, which represents France’s largest companies, reiterated that a European law “must avoid the pitfall of legal uncertainty of the French law” by excluding climate change and not extending “to the entire value chain”. To illustrate why AFEP is so keen to limit the law to tier one of global value chains, consider the plight of its member, Casino Groupe: the retail giant is facing a lawsuit for deforestation and human rights violations in its value chain under the French Duty of Vigilance law. BusinessEurope, which MEDEF is a member of, **has also pushed** for member states not to be able to “further add to” the EU’s due diligence requirements to avoid “fragmentation of the internal market”: with a sufficiently weak EU law, they could neuter stronger national laws by preventing member states from being more ambitious.

With a sufficiently weak EU law, industry could neuter stronger national laws by preventing member states from being more ambitious.

Danone's push for a voluntary French law to be the EU's model

French food company Danone portrays itself as a sustainability champion, claiming that business and environmental goals are “one and the same” for the company (its Chief Executive Emmanuel Faber was even recently ousted by shareholders *ostensibly* for putting sustainability before profits). Privately, however, its lobbying (under the supposedly too-sustainable Faber) reveals the company is *against* mandatory environmental and human rights due diligence. The fact that the cost of environmental damage (greenhouse gases, air pollutants, water use, and waste) linked to the Danone's supply chain is estimated to have risen sharply between 2015 and 2018 gives a big clue as to why.

Danone spent up to **€500,000 lobbying** Brussels in 2019, and is a member of CSR Europe and AIM. The company urged DG Justice in August 2020 to consider a different French law – not the 2017 Duty of Vigilance law, but the 2019 Loi Pacte – as a “benchmark” for an EU framework “as it allows – on a voluntary basis – the companies to take greater consideration of social and environmental issues and can serve as a competitive advantage”.¹¹ Far from being a mandatory due diligence tool that can hold companies liable for their abuses, the Loi Pacte is a voluntary CSR-type measure allowing companies to decide if and how they'll contribute to society (by choosing to become ‘purpose-driven’ companies). What's more, in France Danone's (former) boss Faber actually used the creation of the Loi Pacte as a **justification for scrapping** the Duty of Vigilance law – which he described as mere “reporting requirements” – to avoid administrative “overload” for companies. No surprise then that **civil society analysis** of Danone's first vigilance plan found it to be short, vague, and evasive.

11. Email from Danone to DG JUST, August 31 2020. Document 7 in [zip folder](#)

5. National laws, misdirection and red herrings?

In the Netherlands, BusinessEurope's Dutch member VNO-NCW claims to be in favour of due diligence legislation *only at the EU level*, not at the national level. At the same time, **in Brussels it lobbies against** a robust mandatory EU law, **calling** the European Parliament's March 2021 report **'unworkable' and 'draconian'**. Similarly, in Germany industry succeeded in gutting the national supply chain law proposal, and it is trying to do the same in Brussels. Germany's supply chain law has been fatally watered down (**stopping at tier one and failing to include civil liability**) after **intense pressure from business organisations**, and the help of the Economics Minister, CDU politician Peter Altmaier. One **argument used by German businesses** – alongside their complaints about bureaucracy and costs to companies – was that if a supply chain law must happen, it should be at EU level to avoid **"distortions of competition"**. Meanwhile BusinessEurope member BDI – which **spent up to €3 million** lobbying the EU in 2019 – warned DG Justice in September 2020 of "the potential burden for companies" (though studies in fact calculate that the costs to business would be low). Notes from the meeting refer to limiting "due diligence beyond tier one" and providing "additional measures to help companies cope".¹² BDI also **cried out in horror** at the European Parliament's proposals for "very extensive due diligence obligations" that go far beyond those "debated at national level", by including parent company liability for harms by their partners or subsidiaries in third countries. This comparison with the national level is disingenuous given that BDI was actively involved in narrowing and weakening the law in Germany in the first place.

BusinessEurope member VNO-NCW claims to be in favour of due diligence legislation only at the EU level, not at the national level. At the same time, in Brussels it lobbies against a robust mandatory EU law.

12. Virtual meeting of Commissioner Reynders with German industry association BDI, September 29 2020. Document 22 in [zip folder](#)

Taking a different approach, German retail giant [REWE Group](#) sent DG Justice¹³ and DG Grow [its own “proactive proposal”](#). It takes the EU’s Illegal, Unreported and Unregulated (IUU) fishing Regulation as a model, which sees the Commission give states a red, yellow, or green card depending on their legal compliance with fishing rules (fish from ‘red card’ countries are banned from the EU market). REWE’s proposal would shift the focus of the due diligence law to states – incentivising “positive behaviour” by non-EU countries. The Commission would produce “commodity related risk analysis lists” for different regions, on which basis companies would have different due diligence requirements (none, medium, or high). This would slash the amount of due diligence companies would have to carry out – but allow human rights or environmental risks to be missed in supposedly ‘safe’ areas, stigmatise other regions, and potentially shift risks between them – not to mention create an unimplementable political nightmare for the Commission.

Regardless of its inappropriateness, the fishing regulation was also suggested as a model by a group of [German CDU/CSU MEPs, who wrote to Commissioner Reynders](#) in January 2021, proposing a digital ‘supply chain register’ modelled on the IUU fishing regulation. It would, they argued, be a “comparatively inexpensive option” that obliges “companies without overburdening them” while motivating states to “improve their human rights situation”. The right-wing MEPs condemned the “ideological trench warfare in the parliamentary committees” and said their proposal would apply only to companies with a net turnover of €20 million, and only to the textile industry to start with – leaving many companies and sectors uncovered. In both cases, the proposals modelled on the fishing regulation are far, far weaker than what’s needed to end environmental and human rights violations and provide justice to victims – little more than a red herring, designed to distract, delay, and weaken.

This would slash the amount of due diligence companies would have to carry out... not to mention create an unimplementable political nightmare for the Commission.

13. Email from REWE to DG JUST, November 10 2020, Document 14 in [zip folder](#)

Don't mess with corporate governance, says big business

As well as mandatory due diligence, the Commission plans to cover corporate governance issues (such as directors' duties and stakeholder representation on boards) in its upcoming legislative proposal. Intended to reduce companies' short-termism and contribute to sustainability, this part of the agenda has seen even fiercer opposition. [BusinessEurope](#), Swedish Enterprise,¹⁴ [AFEP](#), and the [European Capital Markets Institute](#) (an [industry-dominated](#) think tank) all attacked a study prepared for the Commission, which found that companies are focused on short-term financial benefits of shareholders. The study was not conducted by critics of the corporate capitalist model but rather, by professional services firm EY. Minutes from a meeting between EY and DG Justice in November 2020 note that the criticisms of the study "concern mainly the methodology" but that, "No-one seems to contest that short-termism exists".¹⁵ Even BusinessEurope has admitted to Commissioner Reynders that "Short-termism is a problem"! The ferocity of the opposition to the sustainable corporate governance agenda – along with the urgency of the crises we face, from climate change to biodiversity loss – shows, if anything, just how key it is.

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14. Swedish business brief on "Sustainable Corporate Governance", December 11 2020. Document 20 in [zip folder](#)
 15. European Commission Flash Report from meeting with EY, November 27 2020. Document 21 in [zip folder](#)

Conclusion

From the unabashed villains who still try to stop legislation, to those who've worked hard to present themselves as supportive of a new law, corporate lobbies are trying to shape the European Commission's upcoming mandatory due diligence proposal in their own interests. After two decades of business successfully forestalling legislation with meaningless voluntary commitments, industry is now trying to make the upcoming law as weak as possible. It argues that rather than covering global supply chains, the law should be limited to tier one (ie just the companies' immediate suppliers, rather than those further down the supply chain). It also lobbies for 'safe harbours' that strip away liability, rejecting measures that would improve access to justice for victims.

Policy-makers must not fall into the trap of identifying the acceptable middle ground as somewhere between the business laggards and the seemingly 'constructive' corporates. The bar for a new EU law should be set at a level that actually ends environmental and human rights violations, holds companies accountable if they do violate these rights, and brings justice to victims and the environment.

Complaints of 'litigation risks' or 'legal uncertainty' cannot be allowed to prevent victims' access to justice for human rights and environmental violations. Pleas for 'pragmatic' and 'feasible' rules must not be permitted to stunt the ambition of a law that needs to cover the *whole* of global value chains to be meaningful and effective. Demands for 'positive incentives' and complaints of 'punitive measures' must not distract from the fundamentals: companies shouldn't be rewarded for *not* abusing human beings or the environment we depend on – they should be sanctioned and held accountable for every single violation. An ambitious EU mandatory due diligence law that doesn't give in to pressure from industry would be a very important [step to doing just that.](#)

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