GO BEYOND BETTER INFORMATION

When faced with the problem of social, economic and environmental due diligence, many decision-makers tend to think that the solution is to better inform consumers, for instance through the establishment of new labels. While better consumer information is a no-brainer, it is far from being enough. Furthermore, information currently provided to consumers about the social and environmental impacts of products is often not trustworthy. Therefore, the objective should not be to give consumers the choice between sustainably and unsustainably manufactured products, but to make sure that all companies apply basic environmental and social standards throughout their value chain. Consumers alone do not have the power to rectify, through their purchasing decisions, abuses that companies are responsible for through their choice of production. Sustainability starts at the beginning of the value chain and cannot be corrected by consumption alone.

SET LEGALLY BINDING DUE DILIGENCE REQUIREMENTS THAT COVER HUMAN RIGHTS, ENVIRONMENTAL AND CLIMATE IMPACTS OF CORPORATE ACTIVITIES

The upcoming EU legislative initiative should introduce mandatory due diligence requirements for all companies operating or placing products and services on the EU market, including for financial institutions. The requirements must be applicable throughout the entire value chains of products and services and be therefore applicable to business operations inside and outside the EU. Particular attention should also be paid to environmental and climate change impacts, for instance by stipulating that companies’ strategies are in line with the Paris climate objective of limiting temperature increase to 1.5 degrees Celsius.

1 For instance, the EU timber regulation (Regulation No 995/2010) requires EU importers and operators placing timber on the EU market to exercise due diligence checks.
REQUIRE COMPANIES TO ESTABLISH AND ROLL OUT THOROUGH AND DYNAMIC DUE DILLIGENCE STRATEGIES

The new rules should require companies to take steps to identify/address/prevent/mitigate any adverse impacts in their own operations or of a third-party business relationship and to report on these actions. This assessment should comprise a context-specific risk-based approach. It means that companies should carefully assess whether their individual corporate activities, and those of their suppliers, pose human rights and environmental risks and, if so, what measures can be taken to prevent or mitigate them. This due diligence assessment should cover the whole supply chain and be regularly updated to make sure new emerging risks do not remain unanswered. Companies must also integrate human rights and environmental due diligence requirements in contractual relationships.

ENSURE TRANSPARENCY AND ACCOUNTABILITY

Companies should make their due diligence reports publicly available, for instance through a public database, to ensure proper scrutiny. These reports should be communicated in their entirety, meaning they should include the above-mentioned specific risk-based analysis as well as the responding strategy. A future EU regulation should set out the governance for reporting to make sure that companies’ disclosure is based on common standards. Procedures of consulting and considering comments from stakeholders should be foreseen.

PROPERLY ENFORCE DUE DILLIGENCE RULES AND GUARANTEE EASY ACCESS TO JUSTICE

Companies should be held liable for harm arising out of their operations. Future EU legislation must therefore foresee a civil liability for companies failing their due diligence obligations, as well as effective administrative fines imposed by public authorities. Victims must have access to justice before courts of the member states and to receive remedy. Additionally, public authorities need to be properly staffed and trained to detect and sanction violations of due diligence obligations, such as the failure to identify/address/prevent/mitigate any adverse impacts in a companies’ own operations or of a third-party business relationship.

ALWAYS TAKE INTO ACCOUNT THE BROADER ‘SUSTAINABILITY PUZZLE’ BEYOND DUE DILIGENCE

The future EU legislative initiative on due diligence will be a part of the European Commission’s European Green Deal action plan. Although it cannot be the panacea to all human rights and environmental issues in production chains, it has significant potential to bring about improvements compared to today’s situation. However, new rules on due diligence will only be one piece of the puzzle and need to be complemented by other ambitious regulations in the field of sustainable products, sustainable food policies, sustainable energy production, sustainable finance, competition law or better consideration of environment and human rights in EU trade negotiations. We need a strong policy mix to achieve the needed systemic change and make sure consumers have access to – and can afford – products and services that are sustainable by design.