



Environment, Land Use & Natural Resources ADVISORY ■

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U.S. Companies Doing Business in the EU Should Participate in the ESG/ Supply Chain Due Diligence Consultation

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As we previously discussed [here](#) and [here](#), the EU is getting serious about human rights violations. The European Commission is now engaged in a [consultation](#) on sustainable corporate governance and supply chain issues that closes on February 8, 2021. *Some of the questions ask whether and how the EU regime should apply to non-EU companies doing business in the EU.* A draft legislative proposal is expected in Q2 2021.

Meanwhile, the European Council adopted a Magnitsky-style [decision](#) and [regulation](#) establishing the first EU human rights sanctions regime and separately called on the European Commission to come up with a framework on sustainable corporate governance and an action plan on sustainable supply chains in 2021.

Commission Consultation

The commission is currently in a consultation process to collect the views of stakeholders on sustainable corporate governance. The consultation covers environmental, social, and governance (ESG) topics, including directors' duty of care and the scope and basis of supply chain due diligence obligations.

Non-EU companies that do business in the EU should submit comments because the EU is considering not just the underlying obligations but also whether and how those obligations should apply to non-EU companies doing business in the EU. It also poses related questions like: "Should the EU due diligence duty be accompanied by other measures to foster a more-level playing field between EU and third country companies?"

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Council Decision and Regulation

The council's new decision and regulation establish a framework for a global sanctions regime that casts a wide net. As anticipated, the regime makes entities accountable for major human rights violations: genocide; crimes against humanity; torture; cruel, inhuman, or degrading treatment; slavery; and other widespread, systematic, and serious human rights abuses, including violations of freedom of expression and religion.

Sanctions under the regime include freezing the assets and economic resources of accountable entities, prohibiting provision of funds "directly or indirectly" to those entities, and travel bans.

Critically, the regime applies to natural or legal persons, entities, or bodies that:

- **Are responsible for** human rights violations or abuses.
- **Provide financial, technical, or material support for, or are otherwise involved in,** violations or abuses, "including by planning, directing, ordering, assisting, preparing, facilitating, or encouraging such acts."
- **Are associated with** such persons.

This comprehensive applicability demonstrates that the council is taking human rights seriously.

Of course, as the council notes, Member States "have primary responsibility to respect, protect and fulfil human rights, including ensuring compliance with international human rights law." To that end, Member States are called upon to promulgate "effective, proportionate and dissuasive" penalties for infringements of the provisions of the regulation—"and make sure that they are implemented."

This development comes right on the heels of the council's recent [Conclusions on Human Rights and Decent Work in Global Supply Chains](#), which *called on the European Commission* to introduce "a proposal for an EU legal framework on sustainable corporate governance, including cross-sector corporate due diligence obligations along global supply chains." The council also wants an "EU Action Plan by 2021 focusing on shaping global supply chains sustainably, promoting human rights, social and environmental due diligence standards and transparency and which takes the experiences and lessons learned from the COVID-19 pandemic into account." Meanwhile, the council *called on Member States* to "STEP UP their efforts to effectively implement the UN Guiding Principles on Business and Human Rights, including through new or updated National Action Plans containing a smart mix of voluntary and mandatory measures, where appropriate."

We anticipate that there will be significant movement in 2021 at the EU and national levels on all of these related fronts. For more information about the consultation or for a PDF of the complete consultation form, please email phil.sandick@alston.com.

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