



Public Consultation on the “Sustainable Corporate Governance” Initiative by European Commission DG JUSTICE, published on 30 July 2020, closing date of public consultation 8 February 2020

Views of the European Business Council for Africa (EBCAM)

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The European Commission introduced in July 2020 the initiative that aims to improve the EU regulatory framework on company law and corporate governance to enable companies to focus on long-term sustainable value creation rather than short-term benefits. In response to this initiative and the call for public consultation, the **European Business Council for Africa (EBCAM)** presents its contribution on aspects of EU laws and policies against the backdrop of the pandemic.

EBCAM was founded in 1973, representing investors and operators in Africa as a registered international non-profit organization (AISBL) based in Brussels. Through its members, EBCAM today represents some 4,000 European companies with interests in the African continent and hundreds of thousands of employees. Their activities cover the complete range of commerce and industry, including agriculture, mining, transport, banking and the service sectors. EBCAM is the only organization that comprehensively represents the range of business activities undertaken in Africa by European companies.

The views of the European Business Council for Africa are given below:

The European public policy should provide encouragement, not regulation

The UN Guiding Principles on Business and Human Rights were adopted as early as 2011. So far, however, only 24 countries in the world have developed national implementation plans, 19 of these from Europe. This explains that there is a reluctance to implement human rights and environmental standards which were multilaterally agreed upon on a national level. The important assignment of safeguarding these standards can now not be left to companies alone.

What are the concerns of companies that trade with and invest in development and emerging economies, where state structures are partly weak or fragile, and where there are sometimes considerable differences in the implementation of human rights and social and environmental standards?

The European public policy for industrial competitiveness should not add a further disadvantage for European companies in international competition

If a due diligence law comes into force in the way currently planned, many European companies operating in third countries will have to provide comprehensive information on whether their activities have an adverse effect on internationally recognised human rights. This includes the prohibition on forced and child labour, as well as taking into account



labour protection, land rights, and damage to health. Companies will need to analyse, identify, and evaluate these risks. The focus is not only on their own behaviour, but also on the behaviour of third parties along the entire value and supply chains. Fines and liability to injured parties can apply in the case of violations.

Firstly, companies undergo high risks when doing business and investing in challenging markets. The complexity of supply chains is often overlooked in this context. A “simple” male shirt made of cotton requires 140 steps in the supply chain. A CPAP ventilator has several hundred components. One can imagine how much more complex the value chain of a gas power plant or a state-of-the-art water turbine must be. Even SMEs with a few hundred employees have hundreds of suppliers, who, in turn, purchase their inputs from wholesalers and countless other producers. It is obvious that large parts of the economy face considerable bureaucracy and costs if they are to monitor these multi-stage processes through to the end product to see whether standards are being undermined somewhere in the world.

Secondly, SMEs in particular would face a new competitive disadvantage. They are more sensitive to bureaucracy and less able to diversify risks. Above all – due their lack of comparable market and purchasing power – they can exert much less influence on their suppliers. According to Eurostat, European SMEs which in 2015 made up over 99 % of all enterprises in all EU countries, Norway and Switzerland and which contributed about 56 % of the total turnover in the EU are already facing a difficult financial situation due the current pandemic crisis. Also, SMEs in particular (as opposed to multinational companies) have little market power to alter behaviour of suppliers in third countries. If the due diligence law comes into force without necessary adaptations, the SMEs will be subjected to additional burdens making their existence even more doubtful.

Supply chain bureaucracy harms the realisation of human rights and the fight against child labour

The driving forces behind the new supply chain bureaucracy justify this by the intended improvement in the human rights situation and the fight against abuses such as child labour. These are without doubt important goals. Human rights apply universally, and children belong in schools, not in factories. Unfortunately, it is to be feared that the planned law will have the opposite effect to that intended. The increasing bureaucratic burdens, the associated costs, and, most importantly, the risk of sanctions, particularly affect companies that are active in relatively fragile countries. The possible consequence is that, in future, SMEs will deliberate even more carefully about whether they can afford to go to a Central African country, for example, to trade there, purchase intermediate products, or even to invest and produce there. And what African markets need is business and investments. The reluctance of many companies to take the step to Africa would increase with a forceful European Due Diligence law. Even larger companies would reconsider their involvement in Africa – their business units in Africa often make only a small contribution to profits, and the risk of suddenly being excluded from public contracts in the European market because of challenges in an African country could put a swift end to many European projects in Africa.



Investments overcome child labour

According to figures from the International Labour Organization (ILO), a fifth of all African children are affected by child labour. Some 85 percent work in subsistence agriculture, 11 percent in the service sector, and four percent in the industrial sector.

It is clear that neither European consumers nor European companies want child labour in their supply chains or products. It is also clear that the most effective measure against child labour is and remains the creation of sustainable jobs, so that families can get out of subsistence farming and parents can earn enough income to send their children to school. Throughout the world, and especially in Africa, European companies are particularly appreciated for creating good jobs, training and employing local workers, and promoting their social environment. The European governments are aware of this and solicit corresponding commitments from the business community. What companies in challenging markets need is encouragement and support, not additional bureaucratic hurdles.

Companies undoubtedly need to respect human rights and comply with the applicable laws. Where they cause harm to people, they should be liable. Those responsible should be punished if they act culpably and disregard laws. It is also acceptable for the state to set high standards where it is itself involved with the provision of financial assistance or guarantees. It should also be kept in mind that companies have been pursuing their own initiatives in this context for quite some time. With respect to compliance and corruption, for example, European companies have been gradually pursuing a zero-tolerance policy. However, companies also need competitive conditions, and, when weighing up the benefits and risks, they are more likely to disregard challenging markets. Governments should always consider the repercussions of their actions and words in order to avert unintended consequences.

The European policymakers should also give some thought to the signals they send out to partner countries, which are primarily responsible for the local working conditions. Is it really in the spirit of the often strained “partnership of equals” that the alleged market power of European companies should be instrumentalised to enforce standards in Africa? Standards that, in part, do not reflect fundamental human rights but, like some of the ILO core labour standards, have often not been adopted into national law by less developed countries deliberately in order to protect the jobs of low-valued-added workers. We need a global level playing field, also considering the behaviour of other investors from nations with a different understanding of multilateral agreements.

Reconsider the supply chain law

The European initiative should reconsider the plans for a due diligence law. The business community is ready to cooperate and involve itself in this issue – good and sustainable standards in international trade and investment are in everyone’s interest. These must be achieved while maintaining fair competitive conditions for our companies and in cooperation with our partner countries. So initially, a **dialogue** on this matter **with our**



African partner countries needs to be established and a common solution needs to be found.

To do this, the protagonists need to abandon the thesis that the principle of voluntary participation has “failed”. Too much has developed in recent years, for example, in the area of voluntary certification and cooperation among companies.

Also, sector-specific certification systems should be expanded, such as already implemented in the commodities and textiles sectors, or through initiatives by individual companies. The advisory and support structures for companies, especially for SMEs, could be further enhanced. Contact points could be established for companies that feel disadvantaged by competitors who, for example, tolerate child labour or other problematic working conditions in their supply chains (“blacklist”). Countries in which there are obvious problems in enforcing fundamental human rights in mines, on plantations, or in factories should be offered more support. In addition, critical dialogue with countries that give little thought to human rights and working conditions at home or abroad should be intensified.

The willingness of European companies to get involved in difficult environments, create jobs, and improve people’s living conditions should not be wilfully jeopardised by regulation addressed to them as a substitute for **the lack of progress in other policy areas in the multilateral system and in the bilateral EU -third country relations.**