DIGITALEUROPE's initial views on sustainable corporate governance

Introduction

DIGITALEUROPE welcomes the opportunity to comment on the Inception Impact Assessment in advance of broader public consultation and publication by the European Commission of legislative proposals in 2021. DIGITALEUROPE supports the objectives of the Union to introduce a global level playing field on this important topic and looks forward to bringing our sector's experience on responsible business conduct to the table and to facilitate and contribute constructively to the ongoing multi-stakeholder dialogue.

The digital technology industry provides the backbone for the future of the EU. Our sector will help the Von der Leyen Commission to deliver on each of its six core priorities. As the coronavirus (COVID-19) remains with us, technology continues to play a crucial role. For example, artificial intelligence and high performance computing are expediting scientific research, robotics are helping medical professionals care for patients while keeping them safe from infection, and ICT-enabled teleworking continues to play an important role in our society and will be fundamental to sustainable economic recovery.

In the early 2000s, our sector identified the need to create an industry-wide standard on social, environmental, and ethical issues in the supply chain. The founding members of what is now the multi-sector Responsible Business Alliance (RBA) saw an opportunity to drive positive change and increase efficiency across the industry with a unified approach, holding suppliers accountable to a common standard. This coordinated, collaborative approach has helped our industry proactively address significant challenges such as conflict minerals and modern slavery. We recognise the importance of integrating environmental social governance and due diligence (DD) into corporate decision-making in order to ensure

the long-term sustainability of enterprises, to address significant societal challenges and the need to engage with and solicit input from all relevant stakeholders involved in company ecosystems.

Recommendations

DIGITALEUROPE supports a common approach at European level that supports the political and strategic objectives of the Union, at the same time replacing a patchwork of different national rules and requirements. An EU-wide common standard will result in uniformity and legal certainty in the quest to level the playing field. In order that a European regulatory framework is efficient, effective and becomes a global reference point, DIGITALEUROPE would like to put forward the following recommendations:

1. A European DD legal framework should ensure a harmonised and global level playing field with particular attention given to support SMEs.

2. The obligation to conduct DD should be risk-based according to the UN Guiding Principles on Business & Human Rights (UNGPs).

3. Human rights and environmental due diligence should be complementary. Human rights in scope should include those covered by the International Bill of Human Rights, as well as the principles concerning fundamental rights set out in ILO's Declaration on Fundamental Principles and Rights at Work. If the DD covers all types of human rights violations, it should align with UNGP24 (prioritisation). As far as environmental DD is concerned, there should be alignment with Chapter VI (Environment) of the OECD Guidelines for Multi-National Enterprises [2011] (OECD MNE Guidelines).

4. Concerning the reach of DD obligations to third parties, we prefer a UNGP risk-based approach considering business relationship direct linkage. Value chain complexity (UNGP17) should be recognised, and the OECD DD Guidance for Responsible Business Conduct should be applied. It is common for companies in our industry to have long and complex value chains comprising 10,000+ direct suppliers and customers. It must be recognised that large brands alone cannot control, police, audit the entire value chain especially where multiple tiers exist. In addition, intellectual property concerns create legal barriers to engage suppliers with whom they do not have a direct business relationship.

5. European DD legislation must be aligned with existing EU legal frameworks such as the Non-Financial Reporting Directive, Responsible Minerals Regulation, and sustainable finance taxonomy. DD legislation should build on lessons learned from existing mandatory reporting and DD requirements around the world.

6. European DD legislation should be consistent with international frameworks (UNGPs, OECD MNE Guidelines, the OECD DD Guidance for Responsible Business Conduct, relevant sector-specific OECD guidance instruments and the ILO Tri-partite Declaration of Principles concerning Multinational Enterprises and Social Policy). There should be a mechanism to recognise existing industry schemes and sectoral guidance (see Recommendation 11).

7. An approach to remediation in line with the UNGPs & grievance mechanisms is preferred (UNGP31), including protection from retaliation and with best efforts recognised. Such an approach has been used in existing DD systems.

8. Regarding disclosure and the obligation to communicate, companies should be given flexibility to report (separate report, CSR, financial, management, modern slavery, Global Compact, etc.) according to their specifics as well as on timing. National reporting requirements with different obligations, formats, timings are not efficient and burdensome. A consistent approach is preferred.

9. A single EU body or national bodies with strong alignment and harmonised guidance is preferred as opposed to non-harmonised and different national approaches, bodies, and courts. Forum shopping should be avoided.

10. The Australian Modern Slavery Act of 2018 incorporates a business to business obligation for company compliance and is preferred to liability, sanctions, and fines. If the EU considers such penalties, then a safe harbour for liability should be built into the system. Sanctions for non-compliance should primarily be civil/administrative. However, criminal sanctions could be considered for intentional, severe and/or repeated violations.

11. A European legal framework should recognise industry schemes and sectoral guidance. This is the case under the EU responsible minerals regulation. Industry schemes must apply for formal recognition by the Commission which assesses applications based on an OECD-based methodology.

12. Detailed guidance is essential to support any DD legal framework providing clarity to companies and other stakeholders. A benchmark is the guidance developed by Australia following the introduction of the Australian Modern Slavery Act in 2018.

13. A "smart mix" approach to regulation would set minimum due diligence obligations. DIGITALEUROPE supports the idea of accompanying any

legal framework with sectoral guidance that takes specificities of industries and their value chains into account as well as encouraging them to go over and beyond the minimum level of compliance. Sectoral guidance is important but there are also merits of exploring collaborative partnerships that effectuate change (SDG17). A blueprint for such partnerships is minerals supply chains. The EU responsible minerals regulation introduces specific requirements and obligations for importers of certain minerals and is accompanied by what has become a highly successful public-private partnership, the European Partnership for Responsible Minerals (EPRM) which assembles governments, supply chain actors [industry] and civil society to help achieve the objectives of the Regulation, namely to increase the demand for and supply of responsibly-sourced minerals from conflict-affected and high risk areas (CAHRAs). The EPRM is fully operational and improving conditions in local communities, from Columbia and Indonesia to the Democratic Republic of Congo and Rwanda. EPRM-funded projects are delivering concrete results, for example, giving women access to credit and savings and introducing sustainable mining practices.

14. DD requirements should encourage companies to collaborate and share best practices, and not have a chilling effect on disclosure.

15. Legislation should consider how to incentivise compliance for businesses through procurement or other financial incentives so that businesses benefit from incorporating robust DD practices.

FOR MORE INFORMATION, PLEASE CONTACT:

Raphaëlle Hennekinne

Senior Policy Manager, Sustainability

raphaelle.hennekinne@digitaleurope.org / +32 485 37 31 24

About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

Accenture, Airbus, Amazon, AMD, Apple, Arçelik, Bayer, Bidao, Bosch, Bose, Bristol-Myers Squibb, Brother, Canon, Cisco, DATEV, Dell, Dropbox, Eli Lilly and Company, Epson, Ericsson, Facebook, Fujitsu, Google, Graphcore, Hewlett Packard Enterprise, Hitachi, HP Inc., HSBC, Huawei, Intel, Johnson & Johnson, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Mastercard, METRO, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, MSD Europe Inc., NEC, Nokia, Nvidia Ltd., Oki, OPPO, Oracle, Palo Alto Networks, Panasonic Europe, Philips, Qualcomm, Red Hat, Ricoh, Roche, Rockwell Automation, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Siemens Healthineers, Sony, Swatch Group, Tata Consultancy Services, Technicolor, Texas Instruments, Toshiba, TP Vision, UnitedHealth Group, Visa, VMware, Xerox.

National Trade Associations

Austria: IOÖ
Belarus: INFOPARK
Belgium: AGORIA
Croatia: Croatian Chamber of Economy
Cyprus: CITEA
Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv
Estonia: ITL
Finland: TIF
France: AFNUM, Syntec Numérique, Tech in France

Germany: BITKOM, ZVEI
Greece: SEPE
Hungary: IVSZ
Ireland: Technology Ireland
Italy: Anitec-Assinform
Lithuania: INFOBALT
Luxembourg: APSI
Netherlands: NLdigital, FIAR
Norway: Abelia
Poland: KIGEIT, PIIT, ZIPSEE
Portugal: AGEFE
Romania: ANIS, APDETIC

Slovakia: ITAS
Slovenia: GZS
Spain: AMETIC
Sweden: Teknikföretagen, IT&Telekomföretagen
Switzerland: SWICO
Turkey: Digital Turkey Platform, ECID
Ukraine: IT UKRAINE
United Kingdom: techUK