



FESI response to Inception Impact Assessment on Sustainable Corporate Governance

Brussels, 5 October 2020

The Federation of the European Sporting Goods Industry (FESI) welcomes the opportunity to comment on the European Commission's Inception Impact Assessment "Sustainable corporate governance".

Among its membership, FESI counts a large number of companies that have been operating supply chain compliance management systems for several years. This contributed to significant improvements in their supply chains, whose complexity requires a large amount of time and effort in order to establish a consensus with numerous actors.

Drawing from this long-standing experience, FESI wishes to share key learnings on due diligence and global value chains and looks forward to an open dialogue and collaboration with the policy-makers and other relevant stakeholders in order to contribute constructively to further discussions on a comprehensive European wide approach on due diligence.

Any EU initiative shall:

1. make strong reference to and be based on existing and recognised global standards, namely UN Guiding Principles on Business and Human Rights, the OECD guidelines for Multinational Enterprises and ILO norms. Any initiative shall also include the possibility of recognising the compliance of supply chain due diligence industry schemes. This will contribute to addressing audit fatigue and will offer an instrument to support SMEs.
2. be flexible enough to avoid a "box ticking" mentality and stifling innovative processes and sound industrial relationships that have proven their benefits.
3. be reasonable in scope and results in a sufficiently clear and practically feasible EU-wide framework, with precise and defined responsibilities. Legal certainty is crucial for economic operators.
4. be founded on business enterprises' own activities and activities directly linked to their operations, products or services by their business relationships, i.e. where companies can have the greatest leverage. The latter is considered to exist where an enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm. Leverage is among the factors that need to be considered when determining the appropriate action in a case where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity.
5. keep the focus on human rights. Subject matters such as Circular Economy shall be excluded from the scope of any due diligence initiative because they pose different

challenges and the skill sets to tackle them are different. Trying to solve both matters in a single policy discussion is expected to complicate the conversation and create unnecessary delays in arriving to positive and scalable results.

6. have a horizontal approach.

Additionally, FESI calls for the EU to:

7. work on the adoption of a common language and definitions;
8. take SMEs' specificity into account: special incentives and capacity building are always beneficial;
9. continue and even strengthen its engagement, including an open consultation process with international organisations and governments of sourcing countries, for the purpose of building the required infrastructures and capacities;
10. promote continuous improvements and effective collaboration along the value chains.

In addition, in light of the current policy discussions, FESI would like to underline the following points:

The need for in depth collaboration and dialogue with the private sector to build on their experience: FESI members are proactively engaging in a large number of public and private initiatives focused on improving supply chain conditions. Already today, the majority of FESI members and suppliers are committed to external review and verification exercises that add credibility to their efforts and programmes. Furthermore, sporting goods companies have a long-standing experience of being involved with and in global multi-stakeholder platforms such as ILO and OECD. FESI and its member are eager to share this on-the-ground experience and knowledge with EU decision makers to ensure that the forthcoming legislation sustainably improves the management of global supply chains.

The need for realistic accountability: due diligence is a continuous, preventive, risk-based process, whose goal is to protect and improve human rights in value chains. FESI does not believe that either civil or criminal liability would be effective instruments to encourage companies to perform due diligence, but on the other hand would have a punitive approach and disincentivize investments.

The need for clearly defined roles and responsibilities: FESI strongly believes, in accordance with the UN Guiding principles, that the state has a duty to protect human rights. This needs to be emphasized in the future EU legislation as enterprises cannot be put in charge of fully compensating lapses in governmental action. The risk of privatising human rights shall be avoided. Especially in view of the situation in countries with a weak governance structure and difficult political framework conditions, companies must not be made liable to compensate state failure. The UN Guiding Principles clearly state that it is first and foremost the state's responsibility to protect human rights. FESI therefore urges that companies shall not be liable if the appropriate structures, procedures and measures had been taken within the framework of factual and legal possibilities and damage has nevertheless occurred (duty of effort). Proximity to the supplier and the ability to influence his behavior are decisive to assess the appropriateness of such measures and steps.

The need for further capacity building: FESI calls for the EU and Member States governments to continue and even strengthen their engagement with developing countries, for the purpose of

building the required infrastructures and capacities. Academic research has shown, for example, that social audits can be a helpful complement to national labour inspections, but never a complete replacement for them. The latter underscores the importance of capacity building for national labour inspection systems as a top priority, especially as this enables to address deficits in all production sites within an entire economy and not just those connected to global supply chains and the sporting goods industry.

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About FESI

Founded in 1960 FESI - the Federation of the European Sporting Goods Industry represents the interests of approximately 1.800 sporting goods manufacturers (85% of the European market) through its National Sporting Goods Industry Federations and its directly affiliated member companies. 70-75% of FESI's membership is made up of Small and Medium Sized Enterprises. In total, the European Sporting Goods Industry employs over 700.000 EU citizens and has an annual turnover of some 81 billion euro.
