

# Living Income Community of Practice

## Topic Specific 2021 webinar series

### The Living Income Community of Practice



Photo © tea field Kenya Rainforest Alliance RA

**Due Diligence for Living Income: how to address poverty and prosperity in supply chains in light of new EU legislation**

22 April 2021  
14:00-15:30 BST (GMT +1)



# Today's Facilitators



**Sheila Senathirajah**  
Senior Manager, Innovations  
ISEAL



**Anja Norwig**  
Assistant, Impacts  
ISEAL



# Housekeeping Rules

## THIS SESSION IS BEING RECORDED

- A link will be shared post this webinar
- A copy of the slide deck and recording will be available on our website within 2 weeks.

## HOW CAN I ASK A QUESTIONS/COMMENT?

You will be kept muted throughout main session so,

- Raise your virtual hand (organizers shall unmute you)
- Type your question on the question box

**TECHNICAL DIFFICULTIES ?** Reach out to [anja@isealalliance.org](mailto:anja@isealalliance.org)

# Anti Trust Statement

As participants in this group, we need to be mindful of constraints of antitrust laws. During both the formal and informal parts of this meeting, participants shall not enter into discussions, agreements or concerted action that may have as their object or effect the restriction of competition. This prohibition covers the exchange of competitively sensitive information including, but not limited to, information concerning individual prices, production, sales, capacities, costs, rates, coverages, market practices, claims settlement practices, company level investments, or any other competitive aspect of an individual company's operation.

Each participant is obliged to speak up immediately for the purpose of preventing any discussion falling outside these bounds.

Thank you!

# Today's guest speakers



**Matthias Altmann**

Policy Officer, Corporate Sustainability  
EU Commission,  
Directorate-General for International  
Partnerships



**Duncan Brack**

Independent environmental  
Policy analyst and Adviser

*(Author, Enforcing due diligence  
legislation 'plus')*



**Fabienne Yver**

Project Coordinator,  
Fairtrade Advocacy Office

*(Commissioned paper on 'Making  
human rights due diligence  
frameworks work for small farmers  
and workers')*



**Moses Djan Asiedu**

Ghana Civil Society, World  
Cocoa Farmers Organization

# Main Discussion Agenda

- Panel Presentation
  - **Sustainable Corporate Governance Initiative-Overview**
  - **Due Diligence and Living Incomes:** *What is emerging at EU level, how Living income can be incorporated.*
  - **How to address poverty in light on new EU legislation-** *Challenges, Unintended consequences and Role of Sustainability Systems*
  - **Critical considerations for companies to help farmers improve their living standards**
- Panel discussion and Q&A
- LiCoP updates and news

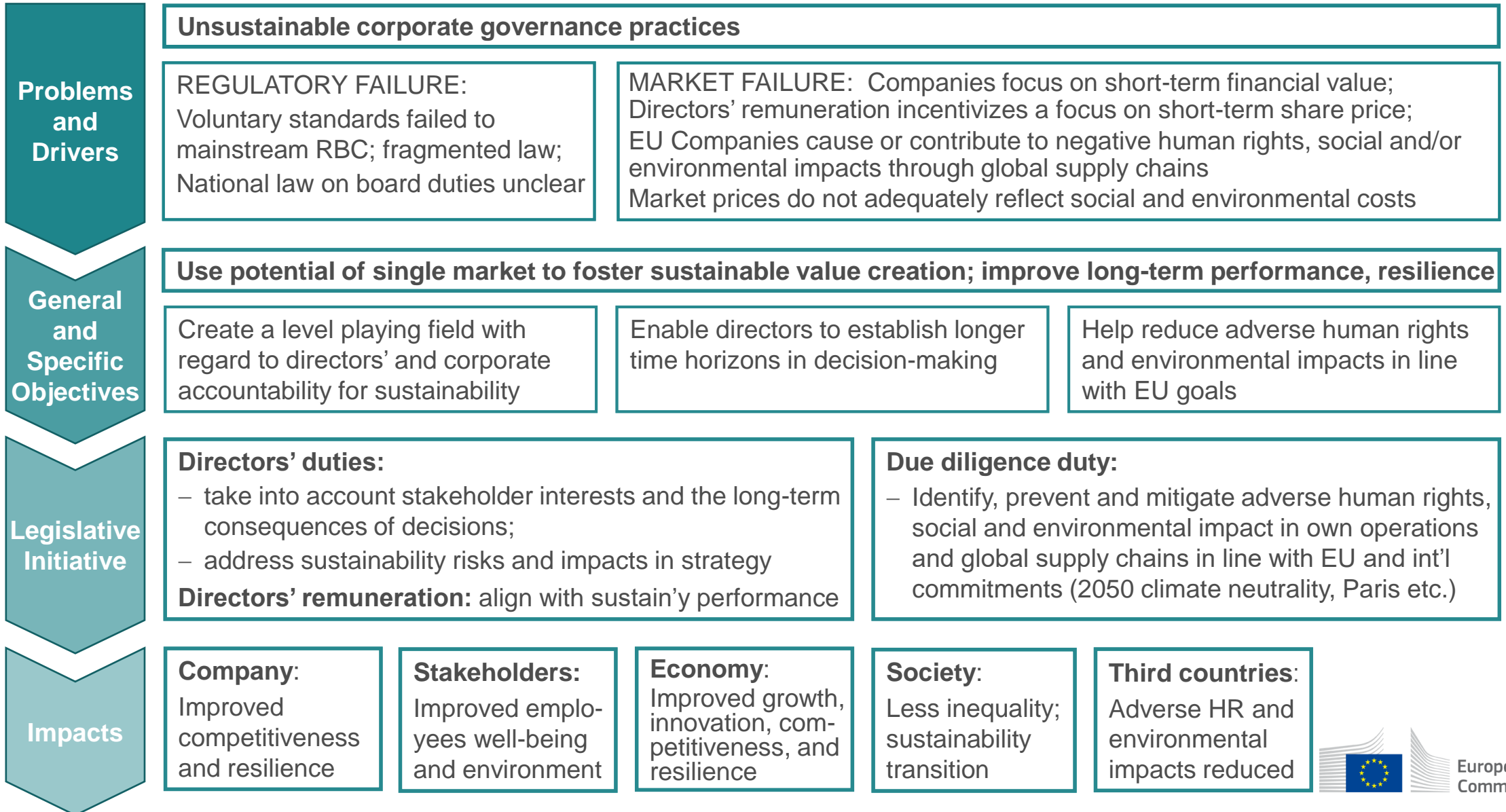


# EU Sustainable Corporate Governance Initiative: An Overview

22 April 2021

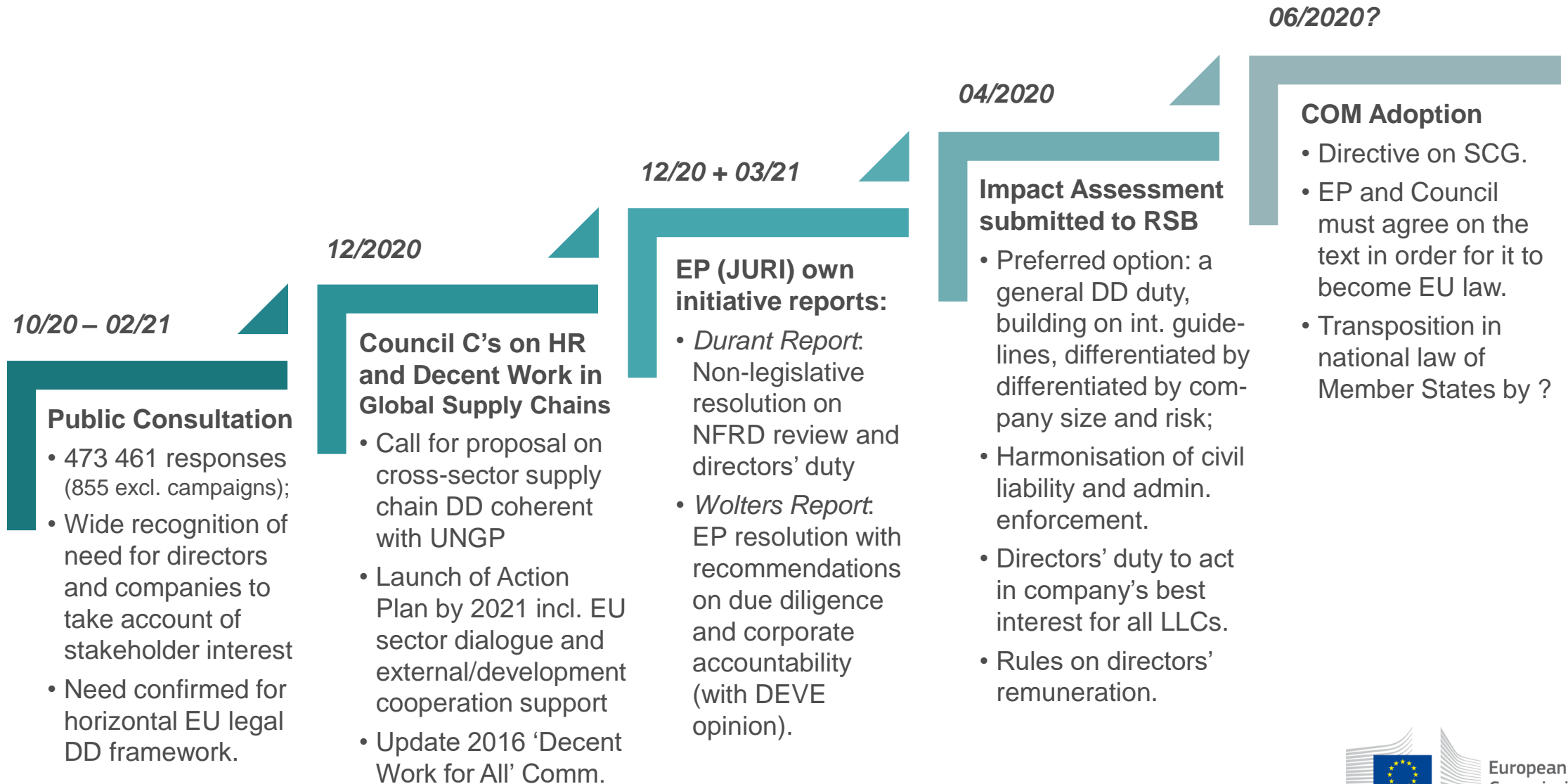
Matthias Altmann  
Policy Officer Corporate Sustainability  
European Commission | INTPA.E2

# Sustainable Corporate Governance Initiative: Intervention Logic





# Sustainable Corporate Governance Initiative: Timeline



# Accompanying Support

A smart mix  
of mutually  
reinforcing  
measures





# Thank you!



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An aerial photograph of a dense, lush green forest with many trees visible from above. The foliage is thick and vibrant green, with some darker patches where the canopy is deeper.

Duncan Brack

# **Due diligence and living incomes**

Living Income Community of Practice, 22 April 2021

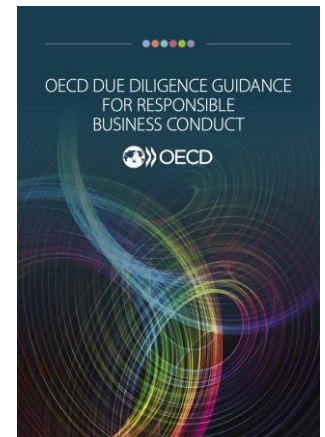
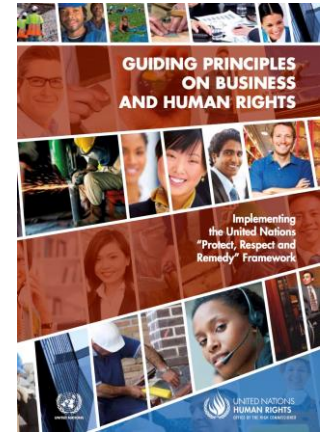


- Due diligence process = scrutiny of supply chains, analysis of risk, risk mitigation, remediation, communication
- Two types of due diligence approach, both may emerge in EU:
  - Broad corporate due diligence requirement ('continuous process of improvement')
  - Market-related due diligence – requirements for placing specified products on the market
- See *Enforcing Due Diligence Legislation 'Plus'* (Fern, 2020)
- Due diligence legislation unlikely to work well in isolation; both types would benefit from enabling environment in producer countries – role for partnership agreements?



## Two concepts of due diligence

- Based on UN Guiding Principles, OECD DD Guidance
  - French Devoir de Vigilance law, German legislation in parliament
  - 'Horizontal' – not specific to any sector or product, applies across a company's entire operations and supply chains (may be threshold by company size)
  - Companies take risk-based approach to problems in their supply chains
  - Not expected to solve all problems instantly – stimulate a continuous process of improvement, work with suppliers to resolve problems, only abandon suppliers as a last resort
  - Makes judging a company's performance in exercising due diligence difficult



# Broad corporate obligation of due diligence: principles



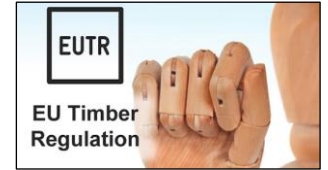
- Exercise due diligence for the risk of human rights and environmental harms throughout company's operations and supply chains (not product-specific but could have sectoral guidance)
- Criteria must be carefully defined (e.g. 'environmental harm')
- Have in place a due diligence system to a specified standard, possibly third-party-audited
- Publish report on company's due diligence system and activities in implementing it
- Create grievance/early alert, complaints and remediation systems
- Provisions for civil liability
- Activities to be monitored by a government enforcement agency – should demonstrate progress (benchmarks system?) in addressing risks – otherwise potential for inaction / box-ticking

Directive from:



## Broad corporate due diligence: potential obligations

- Examples: EU Timber Regulation, Conflict Minerals Regulation
  - EUTR criteria based on legality
- EUTR has had positive impacts:
  - More scrutiny of supply chains, far more information collected, more purchasing of certified timber (and higher prices) and FLEGT timber, changes of source countries, suppliers, timber species to avoid high risk
- Challenges:
  - Obtaining reliable evidence of breaches of due diligence, or proof of legality or sustainability, always likely to be difficult
  - Particularly true for prohibition – no enforcement cases
  - Lots of documentation collected, not clear how reliable; independently verifiable evidence ideal
- Substantial variation in EUTR enforcement efforts between member states is key weakness



## Market-related due diligence: lessons

- DG Environment focusing on deforestation; options include due diligence regulation with requirements for placing on the market – could include:
  - Similar requirements for possession of due diligence system and reporting obligation
  - Prohibition should be limited to criteria that can be credibly verified
  - Wider range of criteria possible in due diligence obligation – framework to address criteria and reduce risk rather than assuming every product can be free of problems
  - Due diligence as defence against liability? But simple possession of due diligence system could be used as excuse for inaction

Possible regulation



## Market-related due diligence: potential obligations



- Obligations and criteria must be very clearly defined
- Due diligence obligations should extend throughout the supply chain
- Certification helpful; by itself not proof of compliance, but perhaps adequate for low-risk sources? (implies need for risk rating)
- Enforcement should be a task primarily for government agencies
- To enforce the law effectively needs:
  - Systematic monitoring of companies' performance based on reports, investigations and other sources of information, including 'substantiated concerns'
  - Adequate resources, powers and penalties
  - Ability to bring cases before specialist courts familiar with and trained in human rights and environmental cases

Relevant to:



**Both approaches: enforcement practicalities**

- Three levels of intervention:
  1. Prohibition – excludes products, must be able to verify compliance with criteria (DG Env)
  2. Market-related due diligence – company must have systems in place to minimise chance of placing undesirable products on market (DG Env)
  3. Broad corporate due diligence – continuous process of improvement over time (DG Just)
- Living income probably best suited to no. 3
  - Fits principle of progressive realisation (International Covenant on Economic, Social, and Cultural Rights)



## Due diligence and living income: approaches

- Criteria: 'human rights' may encompass right to living income, but better to list it explicitly
- Sector-specific guidance could identify examples of what companies can do to operationalise living incomes:
  - Policies on contracts, pricing, provision of support to farmers, etc.
  - Respect for national laws, land tenure rights, etc.
- Monitoring progress will be challenging
- Need to avoid negative consequences, e.g.;
  - Companies abandoning high-risk sources
  - EU-based companies losing market share to non-EU competitors
- Enabling conditions critical – due diligence in isolation less effective



## Due diligence and living income: issues



An aerial photograph of a dense forest with a variety of green trees, creating a textured canopy. A dark grey rectangular box is centered over the image, containing white text.

# Thank you

[dbrack@dbrack.org.uk](mailto:dbrack@dbrack.org.uk)

# Due diligence for living incomes: How to address poverty in light on new EU legislation

22 April 2021

# THE FAIR TRADE ADVOCACY OFFICE

A joint initiative of:

- Fairtrade International,
- the World Fair Trade Organization
- the World Fair Trade Organization-Europe



Europe



Our mission is to promote Fair Trade and Trade Justice with the aim to improve the livelihoods of marginalised producers and workers in the South.





# WHY IS THE HRDD LEGISLATION RELEVANT FOR LIVING INCOMES

## Universal declaration of Human Rights:

UDHR Article 23: Everyone who works has the **right to just and favourable remuneration** ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

UDHR Article 25: Everyone has the **right to a standard of living adequate** for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services

- **A living income is a Human right and a pre-condition for the fulfilment of other human rights.**
- **Poverty is a root cause of Human Rights violations**
- **Living incomes are part of the Human Rights Due Diligence process.**

# SOME CHALLENGES FROM THE LATIN-AMERICAN CONTEXTS AND PERSPECTIVES OF SMALL FARMER COOPERATIVES

AGRICULTURAL PRODUCTION HAPPENS MOSTLY WITHIN THE INFORMAL SECTOR = structural causes behind labor law breaches.

Farmer organizations operate within CONTEXTS OF POVERTY, INEQUALITIES, LACK OF FULFILMENT OF other HR = fundamental causes behind human rights violations

LOW PROFITABILITY/INCOME = many FARMER ORGANISATIONS STRUGGLING TO SURVIVE and to cover the costs of a sustainable production.

LIMITED CAPACITY and EXPERTISE to COPE WITH the HR EXTERNALITIES which are time and resource consuming

INCREASING DEMANDS around SOCIAL SUSTAINABILITY should be matched with FINANCIAL SUSTAINABILITY of farmer organisations = access to markets, reach LI/LW.



# WHAT WE WANT TO AVOID: POSSIBLE UNINTENDED CONSEQUENCES OF AN INADEQUATE DUE DILIGENCE PROCESS

- A tick-box exercise with a focus on reporting
- A selective approach to human rights issues easiest to address and not what is most salient
- Costs of compliance pushed to producers
- Focus on the human rights violations that are symptomatic and not the root causes such as poverty
- ‘Cut and run’
- Potentially shift from small producers to large plantations





# OUR VISION FOR A HRDD LEGISLATION

- **ensures the root causes of human rights and environmental violations are addressed,**
- **requires a real shift in business practices,**
- **leading to better livelihoods for small farmers, workers, and artisans.**

# WHAT SHOULD COMPANIES DO AS PART OF THEIR DUE DILIGENCE PROCESS

- Supply chain transparency
- Align their sustainability strategies with their procurement strategies
- Improve their purchasing practices
- Avoid shifting the burden of compliance to producers without covering the costs.
- Avoid disengagement from vulnerable suppliers
- Engage on long-term partnerships with producer organisations both at commercial level and in addressing Human Rights issues.
- Engage with rightsholders at each stage of the due diligence process

# WHAT ROLE FOR VOLUNTARY SUSTAINABILITY SCHEMES

Voluntary sustainability schemes alone cannot solve human rights violations, a mandatory legislation is needed.

Ambitious, credible and reliable sustainability schemes can offer valuable support for HRDD work by companies, workers and small farmer cooperatives.

But they cannot exempt companies from their human rights due diligence responsibilities.

There is a large variety of standards, certifications and labels. Companies have the responsibility to choose the ones that can help them fulfill their due diligence obligations.

# EXAMPLE OF FAIRTRADE

## FAIRTRADE CAN SUPPORT FARMERS AND COMPANIES AT EACH STEP OF THE HREDD PROCESS



*OECD Due Diligence Guidance: The HRDD process*





# PIECES OF THE PUZZLE: WHAT IS NEEDED BEYOND THE LEGISLATION

- Partnerships with producer countries to support them in establishing an enabling policy environment and addressing structural issues.
- Capacity building support to producers.

# THANK YOU!



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# ADDRESSING POVERTY AND PROSPERITY IN SUPPLY CHAINS IN THE LIGHT OF NEW EU LEGISLATION

Critical considerations for companies to help farmers improve their living standards



**Moses Djan Asiedu**  
Ghana Civil Society, World  
Cocoa Farmers Organization

# Introduction

The pervading poverty conditions among smallholder cocoa farmers and farm workers is and must be a source of concern to all stakeholders in our talk on sustainability of the industry. Increasing due diligence on issues of Child Labour, Deforestation and Poverty has implications for the smallholder farmers and workers particularly with regard to deforestation as they have to manage existing farm size that has decreasing soil fertility, low yield per hectare and increasing high cost of production.



# Achieving Living Income

As we engage in fruitful dialogue aimed at securing measures or interventions that will improve productivity and incomes to improve the living standards of cocoa farmers, the following two critical issues should be taken up urgently by companies in the value chain.

**1. Companies must critically consider and demonstrate readiness to invest in productivity programmes targeted at addressing:**

- the prevailing low yield per hectare
- the decreasing soil fertility
- rehabilitation of disease infested farms such as CSSVD
- increasing high cost of production

**2. Companies must commit to the payment of Fair Price**

- Payment of farmgate price that takes account of cost of production
- Eliminating the present inefficiencies of the Terminal Market that fails to take account of the cost of production.
- The fears being expressed that higher prices will trigger higher supplies that will disturb the market equilibrium cannot be entirely true.
- Farmers, as rational beings, will use the improved incomes to better their lot through decent housing, educate their children and possibly invest in other sources of income.

# Recommendations

- The absence of a **common voice of cocoa farmers** in the industry or the value chain should be a matter of concern to all stakeholders and should also be given due diligence. It is a fact that compliance to standards involving child labour and deforestation among organized cooperatives remains higher. Same cannot be said among on-organized smallholder farmers and farm workers.
- A common voice of the farmers is critical and needs to be heard by
  - Industry
  - Policy makers in Ghana and in all cocoa producing countries
  - The EU and all consumers
- To provide the needed support for the farmers strive for a common voice.
- Specifically, we would like to appeal the Governments of the EU to make available budgetary support for the mobilization and organization of smallholder cocoa farmers into cooperatives and for them to come under the common platform.

# Discussion and Q&A



Federal Ministry  
for Economic Cooperation  
and Development

**giz**

Deutsche Gesellschaft  
für internationale  
Zusammenarbeit (GIZ) GmbH

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SUSTAINABLE FOOD LAB

# Questions

*(The following are written questions arising from the webinar which were not able to be addressed on the day due to time limitation. Our panelists have provided responses below)*

**Q** *What role will data protection principles and antitrust regulations play in this context? Do the speakers see a risk that the effectiveness of the objectives of EU legislation on mandatory due diligence might be limited or even hampered by the current competition law and data protection regulatory framework in the EU?*

**Matthias Altmann:** In the legislative process of a forthcoming EU due diligence duty, (European) data protection rules or antitrust regulations are not currently considered an issue.

**Fabienne Yver:** In the context of the implementation of the HRDD legislation, competition law does not necessarily have to be a problem, since information disclosure would be made mandatory through the legislation. However, it is true that a clarification of the current EU competition law framework that is more sensitive to sustainability concerns would accelerate the progress towards our policy objectives. Currently there is not enough clarity regarding the extent to which cooperation among competitors for a sustainability goal has any impact on their likeliness to be pursued under EU's competition law. It is urgent that in the upcoming review of the guidelines on horizontal cooperation agreements there is a section related to sustainability agreements, and that this section does not focus mainly on environmental agreements, but looks at sustainable development in a broad way.



# Questions

*(The following are written questions arising from the webinar which were not able to be addressed on the day due to time limitation. Our panelists have provided responses below)*

***Q: : Is there a risk of divergence between the national legislations on due diligence and EU legislation?***

***Matthias Altmann:*** The EU Sustainable Corporate Governance initiative will result in a Directive that Member States will have to transpose into National Law. The Directive will describe a minimum standard that MSs can complement with more ambitious rules. MSs who already have a due diligence legislation in place will have to review it to make it compatible with the EU Directive. There will hence be convergence between national on due diligence legislations across the EU. The risk of divergence with legislation of non-EU countries is limited to the extent that national legislations are aligned with the UNGP and OECD Guidelines.

***Q: Voluntary Standards Systems don't ensure a living income at the moment. Are you suggesting that they should up their game and ensure a Living Income for farmers?***

***Matthias Altmann:*** Private standard schemes will remain important in an area of mandatory due diligence but will have to evolve with the changing needs that come with a mandatory regime. This includes measures to ensure a living income as an effective strategy to mitigate and prevent human rights risks that are caused by poverty.

# Questions

*(The following are written questions arising from the webinar which were not able to be addressed on the day due to time limitation. Our panelists have provided responses below)*

**Q: Why can DD not be linked to outcomes?**

**Duncan Brack:** The general approach of due diligence, as expressed in the UN Guiding Principles on Business and Human Rights and the OECD guidance, is that due diligence is a dynamic, ongoing process. Companies are not expected to be able to solve all the problems immediately; they should prioritise the risks they address, deal with the highest risks and the most severe impacts first and steadily improve their performance. So, while at some point in the future one could expect all the problems to have been resolved, it's not clear where that point is, and in the interim one could not reasonably expect the company to have resolved them all. Certainly, they should be addressing them, but judging whether they are genuinely addressing them and whether they are making enough efforts to address them properly, is quite tricky. Similarly, for due diligence linked to a market obligation, companies are expected to have in place a due diligence system that minimises, but does not necessarily completely eliminate, the problems the system is focused on. If you want a specific outcome, and you think you can credibly achieve it, then legislate for that outcome, don't insert a due diligence framework in between.

**Q: What is administrative enforcement?**

**Matthias Altmann :** It specifically refers to the use of fines or other sanctions by a competent Member States public body in case a company fails, for example, to comply with its reporting obligations under the new legislation or does not implement any other obligations required by it. It is different, and additional to liabilities vis-à-vis victims that companies may face if they fail, for instance, to adequately mitigate or provide remediation for harm caused through their operations.

# Questions

***Q:** The Circle recently published a [proposal for EU legislation](#) to ensure garment workers in global supply chains are paid a living wage. They propose additional due diligence requirements, import verifications and transparency expectations for importers and traders that source from “high risk low wage countries”. What do you think of this proposal?*

***Fabienne Yver:*** It is an interesting proposal. An advantage of this proposal is that instead of imposing obligations related to human rights due diligence in general and hoping for that to trigger all the way down to the root cause of many of them (lack of living wage); it looks directly at that root cause and sets clear expectations on what companies must do to firstly estimate what is the living wage and then evaluate to what extent it is reached by the workers in their supply chain, and finally to progressively close the gap.

Also, this proposal could help tackle another risk that I did not mention, which is the opposite of cut and run: the risk that companies might run away from countries where working conditions improve (and become more expensive as a result), and look for cheaper origins. This is already happening, it is a race to the bottom, which may discourage producer countries to increase the labour standards, the minimum wages, and improve regulatory frameworks to protect farmers, workers and artisans.

Such a proposal would help reduce this trend, as it would create a disincentive for companies to turn to cheaper countries that have lower standards. An example of this risk is the cocoa sector, where the 2 main producer countries, Cote d’Ivoire and Ghana, have introduced a “living income differential” to be paid on top of the market price of cocoa, in order to guarantee a higher farmgate price to farmers and thereby increase their income. However, in spite of chocolate companies’ commitment to living incomes, there has been a decrease of purchase contracts from these countries in the past few months. It is not clear whether companies intentionally reduced their sourcing from Cote d’Ivoire and Ghana to avoid paying the LID, or whether it was just due to a decrease of market demand combined with overproduction. The lack of transparency of supply chains does not allow making firm conclusions on that, but there are suspicions that it could be the case that companies tried to source cocoa from cheaper origins. If companies had stricter due diligence obligations in terms of contribution to living incomes if they bought from countries that do not have a pricing mechanism in place, it may disincentivise them from doing this type of sourcing shift.

# Questions

***Q: All the examples we've heard today are about the cocoa sector which is relatively small, easy to trace and concentrated with few companies. What about more complicated sectors such as the cotton sector?***

**Fabienne Yver:** The fact that they are complex makes due diligence obligations yet more important. The complexity of the supply chain makes it so that voluntary social responsibility initiatives have a more limited potential, and only by setting clear obligations (and those obligations including the root cause of the problem such as purchasing practices and living wages/incomes) real change can be triggered. Indeed, a complex sector such as textile will require specific guidelines and secondary legislation that clarifies the responsibilities of each actor.

***Q: If we can tax plastic bags in supermarkets or high sugar soft drink formulations - could we one day see a "Living Income in Supply Chains" tax such that consumers pay for and get what they want?***

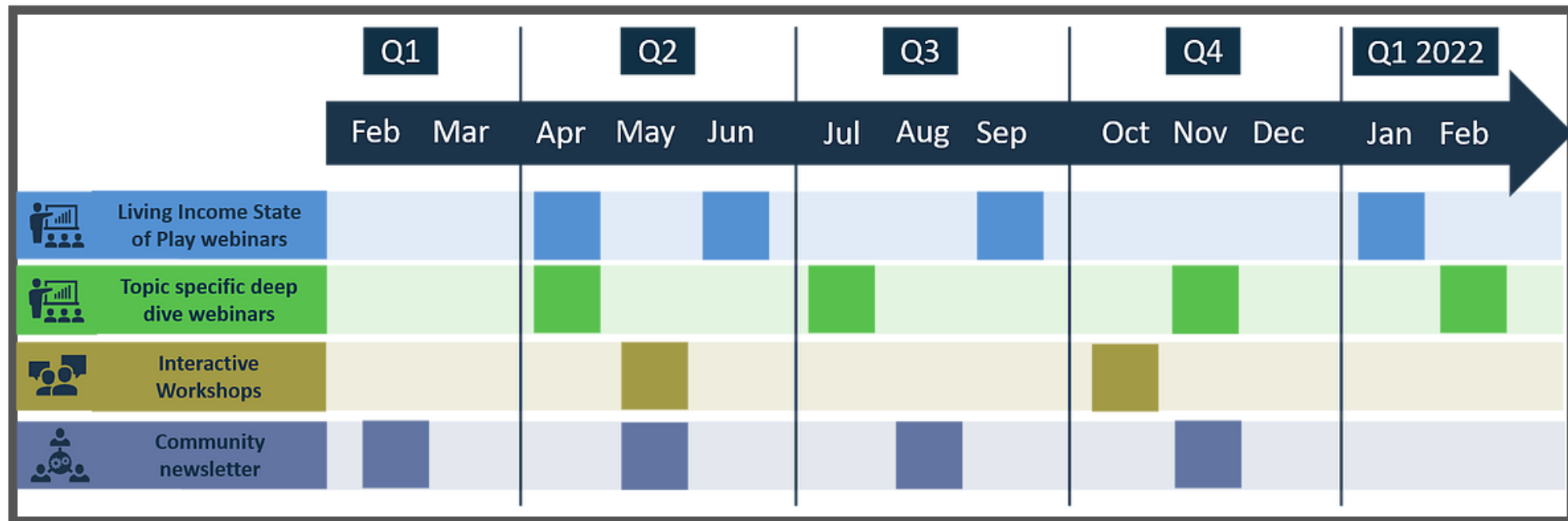
**Fabienne Yver:** It is an interesting concept, worth exploring.

Levying a small tax on all cocoa or on all cocoa-derived products would be a way of collecting funds that could be used to fund some investments in sustainability in producer countries. The governance for the management of such a fund would have to be worked out, but it would be a good way to secure money for investments in sustainability, without relying on development cooperation budgets.

Now, a slightly different concept could be to tax products that are not contributing to living incomes. It would take into account externality costs, a bit like the “polluter pays” concept. This would make “unsustainable” products more expensive than sustainable ones, and would be an incentive to buy the latter. While interesting in theory, I think that, in practice, it could be a bit difficult to implement. The importer country would need information about the contribution to living incomes for each product / company. It would be quite difficult to check. Or, if it is applied per producer country, it would be applied regardless of what individual companies pay. Also, the tax revenue would have to be redistributed to producers, in order to have an impact on their income in the end. But it is nevertheless an interesting concept, worth exploring further.



# Events calendar 2021





# Upcoming engagement opportunities

## LIVING INCOME INTERACTIVE WORKSHOP

**Empowering Action Towards Improving Living Income**

**19<sup>th</sup> May 2021 (1-4.30pm BST)**

**Now Open for Registration**

*(<https://www.living-income.com/springlivingincomeworkshop>)*



# Thank you!



Federal Ministry  
for Economic Cooperation  
and Development



Deutsche Gesellschaft  
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