

Submitted Via [Online Feedback Form](#)

22 March 2022

Re: The Importance of Effective Grievance Redress Mechanisms for Corporate Sustainability Due Diligence.

To the European Commission:

Thank you for the opportunity to inform consideration of the proposed Corporate Sustainability Due Diligence Directive. We comment as an international non-profit organization that amplifies the voices of people adversely impacted by internationally financed projects. We are encouraged by the development of this directive as a tool to ensure that communities are not negatively impacted by corporate activities and are afforded remedy if harm does occur. We particularly appreciate that the directive covers impacts across the full value chain.

In response to the 2021 public consultation considering this legislative initiative, we [urged](#) requiring individual or shared grievance redress mechanisms (GRMs) to ascertain and respond to any environmental and social risks and harm of business activities as a baseline due diligence requirement. In our experience, effective GRMs are essential tools for identifying sustainability risk, mitigating and preventing harm that can compromise sustainability goals, and providing cost- and time-effective recourse for harm through non-adversarial means.

We therefore recommend the following improvements to the directive: **(1) Articulating internationally-recognized baseline requirements for effective GRMs**; and **(2) Equipping and resourcing Supervisory Authorities with the appropriate tools to effectively review compliance with the legislation and facilitate remedy for non-compliance.**

Recommendation 1: Requirements for Complaints Procedures Should Reference International Guidelines and Standards for Ensuring Effectiveness.

While we commend recognizing the need for “complaints procedures” under Article 9 of the proposed legislation, we write to urge requirements for effective grievance redress mechanisms that align with international standards, guidelines, and practices. Failing to set baseline expectations as to the design and function of complaints procedures leaves the due diligence requirement open for interpretation and risks proliferating complaints procedures that function as mere public relations tools ill-equipped to remedy actual or potential environmental and social risks and harm.

[Principle 31](#) of the UN Guiding Principles on Business and Human Rights (UNGPs) sets forth clear criteria that GRMs must meet to be considered effective for the purpose of underpinning human rights commitments (i.e., legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, a source of continuous learning, and based on engagement and dialogue). The same principled criteria can be applied more broadly to corporate sustainability obligations. In fact, the [UNDP SDG Impact Standards](#) for private equity funds, bond issuers, and enterprises ask organizations to embed the UNGPs into their respective policies and practices,

including by ensuring that GRMs are indeed effective for affected stakeholders. As another example, the Green Climate Fund requires GRMs aligned with the UNGPs effectiveness criteria as a condition to project and program partnership, with the rationale that effective GRMs are integral to achieving sustainable outcomes for its climate-focused initiatives.

As to how regulated companies should report effective GRM due diligence obligations, the newly updated [Universal Standards of the Global Reporting Initiative \(GRI\)](#) provide an excellent template. Beyond general reporting on the availability of grievance redress processes, the standards require reporting on the effectiveness of GRMs as set forth by UNGPs. Specifically, [GRI Disclosure 2-25](#) instructs that an organization shall describe the following:

- commitments to provide for or cooperate in the remediation of negative impacts that the organization identifies it has caused or contributed to;
- approaches to identify and address grievances, including the grievance mechanisms that the organization has established or participates in;
- other processes by which the organization provides for or cooperates in the remediation of negative impacts that it identifies it has caused or contributed to;
- the method for involving stakeholders who are the intended users of the grievance mechanisms in the design, review, operation, and improvement of the mechanisms; and
- the methods for tracking the effectiveness of grievance mechanisms and other remediation processes, and for reporting examples of their effectiveness, including stakeholder feedback.

Further, GRI's guidance for Disclosure 2-25 details specific ways to describe how mechanisms have been designed and whether they are designed to meet the effectiveness criteria outlined by the UNGPs. In good detail, the guidance advises organizations to work through important baseline considerations related to the inclusive design, purpose, operation, administration, perceived legitimacy, and actual use of grievance mechanisms, as well as the delivery of remedy through grievance redress processes.

Specificity is needed to avoid variable and loose interpretations of the requirement for complaints procedures. True due diligence requires *effective* GRMs to ascertain and remedy adverse environmental, social, and human rights impacts that threaten corporate sustainability.

Recommendation 2: Member State Supervisory Authority Offices Should Equally Demonstrate Effectiveness as According to the UNGPs.

[Principle 27](#) of the UNGPs calls on States to provide effective non-judicial grievance mechanisms as part of a comprehensive State-based system for the remedy of business-related human rights abuse. To the extent that Articles 17 and 18 of the directive would require Member States to designate Supervisory Authorities to ensure sustainability due diligence, such offices should not rely solely on the self-reporting of regulated entities. We agree that Supervisory Authorities should be equipped to investigate substantiated concerns raised by whistleblowers and other stakeholders, and we urge that the procedures for doing so adhere to the effectiveness criteria of the UNGPs. With some improvements, the National Contact Point (NCP) system of

the OECD Due Diligence Guidelines for Multinational Enterprises provides a good framework for structuring Supervisory Authority investigation procedures.¹

Unfortunately, the failure of the OECD Guidelines for Multinational Enterprises and its accompanying Procedural Guidance to outline good practice and baseline expectations for NCP structure and function has resulted in wide discrepancies in the effectiveness of NCP offices, and many NCPs fall short of the criteria for effective non-judicial grievance mechanisms articulated by Principle 31 of the UNGPs. To avoid the same dilemma with respect to the expectations of handling substantiated concerns, we urge specificity in the following ways:

Legitimacy. Supervisory Authorities should have access to (a) expertise on human rights and the UN Sustainable Development Goals, (b) input from stakeholder advisors, and (c) adequate resources to investigate substantiated concerns. They should be placed within institutions that do not have countervailing mandates or agendas or can be perceived as compromising their ability to perform investigations fairly. They should be resourced and equipped to offer a variety of approaches to remedy issues of non-compliance and resultant harm.

Accessibility. The mandates and procedures of Supervisory Authorities should be readily discoverable on institutional websites, and all procedures should provide easy-to-understand options for filing concerns. The procedures should address accessibility for persons with disabilities and eliminate potential language or cultural barriers, and Supervisory Authorities should undertake promotional activities to heighten their profile amongst stakeholder groups.

Predictability. Supervisory Authorities should develop their respective procedures in consultation with stakeholder groups. Procedures should set forth clear timelines, describe the approaches and potential outcomes available, and detail how the Supervisory Authority will monitor remedies for non-compliance and resultant harm.

Equitability. Supervisory Authorities should issue and disclose reports and findings with an even hand.

Transparency. Supervisory Authorities should publish their procedures, and maintain an easily searchable database containing information on the registration, status, and outcomes of all substantiated concerns and compliance investigations.

Rights-compatibility. Supervisory Authorities procedures should align with internationally recognized human rights, detail precautions for protecting confidentiality requested by complainants, and outline anti-reprisal commitments.

A Source for Continuous Learning. Supervisory Authorities should be equipped to publish targeted and sectoral advice to regulated entities based on substantiated concerns received and investigations managed by their offices.

¹ Arguably, a Member State's Supervisory Authority and NCP Office could work in tandem or as one body to fulfill the mandates and obligations of both the Corporate Sustainability Due Diligence Directive and the OECD Due Diligence Guidelines.

For in-depth guidance on designing Supervisory Authority offices to effectively hold regulated entities accountable for due diligence requirements, we reference you to the December 2021 [Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms](#). The guidance culminates decades of learning with respect to investigating compliance issues against the environmental and social policies of major development finance institutions, and remediating harm.

Conclusion

Effective GRMs are incredibly important governance and accountability tools to underpin all other due diligence obligations. It is nonetheless critical to specify how such tools should be designed and implemented to ensure their effectiveness.

Sincerely,



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