

Dear Ministry of Foreign Affairs:

We write from the Cornell Global Labor Institute. Our work focuses on quantitative analyses of supply chain outcomes for workers. We have used recent findings to design policy tools for use in human rights due diligence regimes like the one under consideration here. A presentation of our approach and Labor Outcomes Metrics tool can be found on our website [<https://www.ilr.cornell.edu/global-labor-institute/research-0/measuring-supply-chain-due-diligence>]. We have used an automatic English translation of the proposed rule and some suggestions may reflect mis-translation of terms. Our comments are presented here by section in rough order of priority.

2.1.5 (Documentation). Wivo includes several important provisions for reporting by lead firms on their due diligence efforts and progress. The requirements for supporting evidence can be met in part with use of outcomes metrics for workers and climate-driven impacts on workers designed by Cornell GLI. We will be pleased to consult with the delegated authority (2.1.6) as it elaborates these reporting requirements. In general, reporting on compliance with process and input requirements tend to increase the burden for lead firms (an increasingly frequent criticism from business) and yet may not allow regulators to determine if risk and outcomes for upstream actors including workers are adequately addressed by lead firms. In elaborating and implementing this section and the requirements of Section 2.2.2 more generally, a small number of quantitative outcomes metrics can be used to screen for high-risk practices or harms. A ‘screen’ approach based on outcomes can allow regulators to efficiently separate or score firms based on outcomes as a prelude to more intense scrutiny. And outcomes metrics can improve significantly how firms themselves assess, prioritize and manage risk (Sec. 2.2.2.2, Prioritization).

Sec. 2.2.3 (Prevention). Requirements to identify sourcing and purchasing practices that drive or contribute to harms are important. Two in particular are worth emphasizing. First, decisions by lead firms to buy products from countries that prohibit worker organizing and bargaining or from countries in which meaningful social protections systems are weak or absent must be included in analyses by regulators of lead firm due diligence. These macro-level risks and harms should not be waived away and may be difficult or impossible to off-set at the workplace level. These sourcing risk measures are included among Cornell GLI’s outcome metrics. Second, lead firms paying prices that drive non-compliance (e.g. prices below production costs) with human rights and environmental standards are obviously in violation of the requirements of this act.

Sec. 2.1.4 (Cooperation) and Sec. 4.2.2 (Civil enforcement). The reliance of lead firms on multi-stakeholder initiatives (MSI) and third parties for due diligence services is at the lead firm’s risk. That is, participation in a MSI or use of a third party to collect information can support the firm’s due diligence efforts but it does not fulfill the lead firm’s obligations under the regulation. This principle is clear enough, we think, in 4.2.2 but should apply more generally to requirements in Sec. 2.2:

Sec. 2.5 (Climate-labor risk). There is no such section in the draft act but we propose a mention here of the climate-related impacts on workers—for example, health risks related to extreme heat or intense flooding—because they fall between firms’ workplace-level actions regarding human rights and their global responses to the climate crisis. Climate-related outcomes measures for workers are included in our GLI metrics.

Sec. 4.2.2.1 (Civil enforcement). Serious harms including forced labor and health safety issues that gestate over long periods or manifest later—e.g. exposure to asbestos or toxins used in production processes—warrant longer periods for claims.

Sec. 4.1.2 (Reasoned reporting). We propose that the regulator disclose publicly complaints (or summaries) made against lead firms and steps taken by regulators to allow those outside the parties and the European Network to follow progress on complaints.