

31 January 2022

**From:**

Steve Trent, CEO/Founder. Environmental Justice Foundation.  
Pascale Moehrle, Executive Director Europe. Oceana.

**To:**

Mr. Didier Reynders,  
European Commissioner for Justice.

**Re: Lessons learnt from the IUU fishing Regulation for an ambitious corporate governance legislation**

Dear Commissioner Reynders,

On behalf of the undersigned organisations, the Environmental Justice Foundation (EJF) and Oceana, we wish to express our gratitude that the College of Commissioners intends to propose a Sustainable Corporate Governance (SCG) directive. An ambitious proposal will be crucial to help protect people and the planet, achieve strategic EU autonomy and deliver on the European Green Deal.

We note with growing concern the multiple delays in the publication of the directive, and we encourage you to ensure that the additional time is used by your services to significantly strengthen the Commission's proposal. This letter outlines elements that would contribute to this strengthening, based on practical experience derived from the successful implementation of existing EU law.

To address outstanding questions on the legislative design (including the scope, liability, and implementation of the future directive), much can be learnt from the EU Regulation to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing<sup>1</sup>, which has been in force for more than ten years. The EU IUU Regulation has transformed the EU into a global leader in the fight against illegal fishing. It leverages the power of the EU as the largest seafood market in the world and enables the EU to secure positive change in

---

<sup>1</sup> Regulation 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

governance of marine resources worldwide. This has led to improved management of fisheries in multiple jurisdictions around the world.

The EU IUU Regulation introduces a requirement whereby only marine products validated as legal by a competent flag State or seafood exporting State can be brought to the EU market, so as to halt the flow of illegally-caught seafood reaching EU citizens' plates. This approach is supported by a system of warnings (known as 'yellow cards') and trade sanctions ('red cards') that have been successfully applied to non-EU countries which do not comply with international standards for fisheries management or do not cooperate in the fight against IUU fishing.

**Despite its unquestionable successes, the EU IUU Regulation does not ensure that the seafood available to EU consumers is fully sustainable or free from human rights abuses. Mandatory due diligence and corporate governance, however, can fill this gap.** Our organisations make six recommendations to this end in the briefing attached, but we will here highlight the need for a just and proportional distribution of the due diligence requirements.

**Drawing lessons from the European Commission's role under the EU IUU Regulation, we recommend the establishment of a three-tiered alert system whereby the European Commission would be:**

- 1. Empowered to analyse information about possible incidents** of non-compliance with environmental and human rights provisions that fall under the SCG directive, passing on its assessment to Member States and non-EU countries concerned, including recommendations for swift action.
- 2. Required to periodically assess the performance** of non-EU countries in tackling environmental and human rights abuses in high-risk sectors with global and complex value chains, including fisheries.
- 3. Empowered to create a delegated authority to establish which risks are structural,** whereby:
  - a.** after a notice period, companies that fail to take reasonable steps to mitigate and address a structural risk can be held liable;
  - b.** after a notice period, a country that has failed to address the conditions which are creating the structural risk, can be sanctioned by the Commission with a wholesale prohibition on the product (a 'red card').

Enshrining a three-tiered '**alert**' system in the SCG framework would be transformative in at least three ways:

- First, it would ensure that the due diligence requirements for businesses, especially SMEs, remain proportional. It would provide them with basic, yet authoritative

- information that they can use to estimate and decide the risk of potential (non)exposure to entities in source countries engaged in environmental and human rights abuse.
- Second, it would enable stakeholders to channel information about possible non-compliance to the European Commission, as is practice under the EU IUU Regulation. Since alert systems are open to grassroots level input, civil society can and will help channel information from 'on the ground' to companies and policymakers.
  - Finally, this tiered system would allow for the organic, yet managed, growth of the SCG Directive's liability regime. The liability regime would not be too open-ended, since companies could only be held liable if they fail to address a structural risk after due notification. As under the EU IUU Regulation, the possibility of being 'red-carded' by the Commission would encourage non-EU countries to address structural risks. This can help ensure that a company's exposure to structural risk and liability is effectively time-bound. Such a structural risk analysis should drive a country to reform the conditions on the ground, and failing that, a company will be given reasonable time to transition to a more environmentally friendly and sustainable supply chain.

These proposals are essential to protecting our most fundamental values: human rights and environmental sustainability. We urge you to ensure ambitious and timely action on these important initiatives. We would welcome the opportunity to discuss our recommendations in more depth.

Yours sincerely,



Steve Trent,  
CEO/Founder.  
Environmental Justice Foundation



Pascale Moehrle,  
Executive Director Europe.  
Oceana