Sustainability due diligence require a cross border approach

Sustainability due diligence has long been part of companies’ CSR approach. ING consistently applies an Environmental and Social Risks (ESR) framework that aims to ensure that risks are properly identified, assessed and mitigated in line with regulatory requirements and our own principles, risk appetite and commitments.

Until recently, regulatory guidance and societal expectations were mainly captured in open norms and voluntary standards developed by, or in cooperation with, the industry. The Equator Principles set out a tailored framework for financial services, whilst the OECD has developed broader corporate due diligence standards. These standards have strengthened over time.

In the past years, several countries introduced specific sustainability due diligence legislation into their national laws. Some jurisdictions codified existing international standards, others also introduced new and additional requirements.

A fragmented framework jeopardises real impact

The European Commission proposed an EU-wide regime in 2022. We support this, as a fragmented approach across EU countries is suboptimal. A EU approach will not only have more impact on improving business practices, which is the goal of due diligence legislation, it will also avoid an unlevel playing field.

Box 1 illustrates regulatory fragmentation is a real risk. Without overarching EU rules, companies and financial institutions will have to comply with different due diligence obligations and liability regimes.

On the next page, we outline some considerations for EU policy makers.

“Our biggest impact on the world comes through our financing.

With this influence comes responsibility, including in terms of sustainability due diligence. We want to make transparent choices about how, why and with whom we do business.

We are guided by our environmental and social risk policy, which we update regularly to reflect changing social norms, regulations. And we challenge our own commitment to human rights and the environment.

Sustainability due diligence legislation is being implemented in various jurisdictions, which risks a fragmented approach.

An EU-wide due diligence framework would be a welcome counterbalance to this trend and could set the standard for due diligence across sectors. An EU-wide regime should be designed to have strong impact, and should allow business to focus their efforts on high-risk areas.”

Steven van Rijswijk
CEO ING Group

Current (upcoming) regulatory environment on due diligence in the EU
It is key for a specific project than when banks process payments much more deep interaction when structuring funding transactions and client’s activities. For example, there is engagement with the client differ depending on the advisory and financial markets transactions. The level of finance to general lending, payments, custodian services, financial institutions serve the needs of their corporate responsibilities should reflect the type of activity...

Roles and responsibilities should shape and clarify norms is needed. An open dialogue with regulators to inadvertently overlook something or omitted to take appropriate action. An open dialogue to further shape and clarify norms is needed.

A risk based approach will lead to more impact

The aim of both voluntary and mandatory due diligence practices is to identify, mitigate and terminate bad business practices in relation to human rights and the environment. Such a gatekeeper function is resource intensive for companies. The framework would benefit from a targeted approach on the most salient risks in global supply chains. This is also acknowledged by the longstanding OECD guidelines for multinational enterprises on responsible business conduct. It is key that there is close alignment and an open dialogue between public and private actors to determine these high risk areas. It is not necessary nor feasible to apply the entire range of obligations to each and every single business transaction or financial service.

For ING the following principles are key pillars of a sound EU due diligence framework:

- We support a uniform legal framework for sustainability due diligence in the EU that is closely aligned with adjacent sustainable finance legislation, particularly for reporting and transition planning. Reliance on mandatory data sources and re-use of due diligence performed according to the same set of rules should be allowed.
- Banks and other financial services providers should be in scope of the EU due diligence framework. This will ensure a consistent approach by the financial sector towards their clients (that often make use of multiple financiers at the same time), and minimise the burden for clients having to respond to multiple data requests for the same projects. For banking activities, the due diligence obligations should be limited to lending and underwriting, i.e. those financial services where financial institutions have the greatest impact.
- Companies need to be allowed to apply a risk-based approach, prioritising the most salient risks. This would be in line with existing international standards. This will allow resources to be used most effectively.
- Legal liability provisions need to be clear whereby the framework should not shift legal liability to companies for damage they have not caused nor directly contributed to. An open dialogue to further shape and provide guidance on the normative framework is necessary to achieve a mature and workable set of rules.

A harmonised EU framework for sustainability due diligence, where financial institutions are in scope for specific services on a risk sensitive basis, will deliver the most impact on value chains across the globe.