The 2021 ECCJ General Meeting took place via Zoom due to restrictions related to Covid-19.

The General Meeting is an opportunity for our members to come together to look back at what we have achieved and decide on the way forward for the coming year. Every year, these insightful discussions help us strengthen the civil society movement for corporate accountability.

It is also an opportunity to bring together a broader network of partners and allies to exchange expertise and perspectives on specific topics. Up to 90 participants joined the public sessions this year.

← The ice-breaker during the internal session helped to connect participants, strengthening the network, which works as one large ‘organism’ where every individual contributes to positive change in their own way.
Internal Sessions

Introduction
The internal sessions provide an opportunity for our members to look back at the past year’s successes and challenges, and to look ahead and define priorities for the year ahead.

Report back from the Secretariat
This past year, the Secretariat doubled in size. It is now composed of the Director General, three Policy Officers, one Communications Officer, an Operations and Finance Manager, and a Project Assistant.

ECCJ celebrated multiple advocacy successes over the past year. These include a sustainable corporate governance proposal scheduled for release in June 2021, following the adoption of the European Parliament’s report on corporate due diligence and corporate accountability in March 2021, alongside committee reports, which include civil liability provisions. [Editor’s note: the proposal has since been delayed to October 2021.]

While the French duty of vigilance law continues to be the only law in force at the member state level, Germany expressed its support for an EU-level sustainable corporate governance law in the December 2020 Council conclusions and announced a national supply chain law to be adopted before September 2021. [Editor’s note: The Bundestag adopted the Supply Chain Act on 11 June 2021. The bill will enter into force in 2023.]

The European Commission has reviewed the Non-Financial Reporting Directive and proposed some amendments to corporate sustainability reporting. Although this new proposal is a positive step towards better transparency, gaps remain. ECCJ continues to support the work of the Alliance for Corporate Transparency.

ECCJ is monitoring developments concerning the United Nations Binding Treaty on Business and Human Rights and advocates for a complementary process to the EU sustainable corporate governance initiative. In 2020, ECCJ participated at the sixth session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights by providing oral and written input on the second revised draft.

In the first four months of 2021, ECCJ doubled its media coverage in a variety of European and national media compared to 2020. Over the past year, engagement and the number of followers on Twitter continued to grow steadily, while on LinkedIn it more than doubled.

Other successes include the launch of ECCJ’s new website and a campaign with Friends of the Earth Europe and trade unions asking citizens to raise their voice to hold business accountable (#HoldBizAccountable) by participating in the European Commission’s public consultation process, which gathered over 145,000 responses.

New strategic framework
ECCJ members were asked to vote on a new strategic framework for the period of 2021 to 2024, which was unanimously adopted. It is based on three main goals:

1. Strengthen companies’ liability for human rights and environmental abuses along their value chains;
2. Improve access to European courts for victims of environmental and human rights abuses;
3. Build a robust movement and a sustainable organisation.

ECCJ will remain attentive to the sustainable corporate governance file, while also prioritising other corporate accountability and access to justice topics as explained below.
Learning from national campaigns and looking ahead at the challenges to come

ECCJ members from Switzerland and Germany shared experiences and lessons learned from their campaigns for a national human rights and environmental due diligence law.

ECCJ members appreciated the exchange and reconfirmed ECCJ’s important role as a facilitator between members but also as their “ears and voice” in Brussels.

Thinking strategically about what ECCJ needs to pursue beyond and in addition to, corporate due diligence, three topics emerged in a poll conducted during the meeting:

1. A greater focus on judicial remedy;
2. Environmental due diligence and liability;
3. The role and responsibilities of companies in a just transition.

Public sessions

Public session 1: From gaps to opportunities

The public sessions kicked off with a deep dive into the forthcoming sustainable corporate governance initiative, which has the potential to address, prevent and remedy abuses, such as child and forced labour, poor and unsafe working conditions, and environmental damage and climate-related impacts.

ECCJ invited members and partner civil society groups to present some of the parallel dossiers and key topics related to human rights and environmental due diligence. The aim of this session was to understand the bigger picture, where due diligence is a significant but not the only piece of the corporate accountability puzzle, and to identify gaps and opportunities for regulatory frameworks.

Sustainable corporate governance

Filip Gregor of Frank Bold focused on director’s duties which could be part of a single package together with human rights and environmental due diligence legislation. Business opposition, especially from Nordic business associations, likely stems from a fear that director’s duties would have a negative impact on returns and the interests of their shareholders. Nordic countries seem to support corporate human rights and environmental due diligence, but not a reform to director’s duties.

Three issues remain to be resolved: (1) board obligations - either as a new director’s duty related to sustainability...
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or new procedural obligations for directors (rather than a reform to corporate law) to provide oversight over human rights and environmental due diligence; (2) incentives and remuneration, which could deliver shareholder payouts on the condition of meeting sustainability targets; and (3) board composition and stakeholder involvement, where progress can be made on representation of workers and diversity in boards.

The EU deforestation directive
Clotilde Henriot of ClientEarth explained that the EU must play a major role in regulating company behaviour and supply chains of forest-risk commodities. ClientEarth is advocating for an EU regulation that applies to a comprehensive list of commodities, which should be identified according to objective and scientific criteria; covers financial institutions; and addresses human rights violations associated with ecosystem destruction. This regulation could address shortcomings in the enforcement of the EU timber regulation by providing a stronger penalty regime and access to remedy for victims. However, questions remain concerning enforcement mechanisms and access to justice.

The EU batteries directive
Nele Meyer of Amnesty International presented another sector-specific due diligence legislation. The EU batteries directive was proposed at the end of 2020 and aims to protect the environment by minimising the negative impact of batteries and waste batteries. Due diligence obligations within the directive exclude the automotive and mobile batteries, but include the electric industry, as well as supply chains on cobalt, natural graphite, lithium, and nickel. Some of the risk categories include air, water, social impacts, human rights, labour rights and health. What constitutes an adverse environmental impact still needs to be discussed and clarified.

Public session 2: Public enforcement of EU mandatory human rights and environmental due diligence
ECCJ invited members and allies to stimulate critical discussion around how due diligence legislation should be framed and enforced in order to bring effective change. Speakers also discussed trade restrictions, as well as climate and environmental due diligence – two hot topics in Brussels at the moment.

Public enforcement
Lucie Chatelain of SHERPA explained that using public enforcement instead of civil liability comes with the risk of superficial control. If a public authority is tasked with assessing whether due diligence measures are adequate, the risk is that enforcement could become formalistic. Instead, an effective civil liability regime shifts the burden of proof to companies. In ongoing court cases under the current French duty of vigilance law, companies have to bring evidence that they have a sufficient vigilance plan. The judge then has to compare their plans with their practice. In addition, there are also problems related to transparency and disclosure of information. In the case of the conflict minerals regulation, administrative bodies refused to share the list of companies that are subject to the regulation, as this was deemed to be a trade secret.

Miriam Saage-Maass of European Center for Constitutional and Human Rights (ECCHR) outlined how the draft of the new German supply chain law works through public enforcement. Companies need to document which risks were detected, which concrete steps were undertaken to prevent, mitigate and remediate these risks, and an assessment of the impact of these steps. This information needs to be reported to a government agency once a year. The authority responsible is to act ex officio as well as at the request of affected persons by monitoring company compliance with due diligence obligations. Violations are to be sanctioned by fines and exclusion from public procurement. The effectiveness of this law will depend on the government agency; its capacities and expertise to control compliance and to handle complaints by affected persons. [Editor’s note: The German supply chain law has since been adopted.]

Rachel Davis of Shift explained that preventing harm and solving grievances are two different things. When providing remedy for impacts, companies must go beyond measures to prevent the adverse impact. The future directive should include the following obligations: risk identification, taking action on identified risks,
monitoring and evaluating progress on identified risks, and providing and enabling remedy. When a company evaluates the effectiveness of remedy, it must look at effectiveness in delivering outcomes that are satisfactory to affected stakeholders. The responsibility must be with companies, and the focus should be on the outcomes of the remedy.

Public session 3: Fleshing out key elements for EU human rights and environmental due diligence

Due diligence and trade restrictions
Member of European Parliament Anna Cavazzini (Greens/EFA) shared her views about how to deal with the most severe forms of labour violations like forced and child labour. The US already has mechanisms in place to allow customs authorities to stop certain products at the border. In recent years, this has been applied to products coming from Xinjiang and Malaysia.

MEP Cavazzini tabled an amendment to Lara Wolters’ report on corporate due diligence and corporate accountability, calling for additional trade instruments to better enforce human rights standards. That amendment passed and can be found in the Parliament’s position on due diligence. This would not be a protectionist instrument directed against China – it would be an instrument that tries to tackle forced labour around the world and make sure that affected communities can access remedy.

[Editor’s note: ECCJ published a policy paper highlighting key considerations for an EU instrument to control the importation of forced labour products.]

Environmental due diligence
Johanna Sydow of Germanwatch explained that environmental due diligence could help enforce local environmental legislation and make it easier for local communities to access justice. Her presentation included two case studies (the Llurimagua copper mine and the Colombian extraction project of Cerro Matoso), which highlight some challenges in holding companies accountable for environmental harm. For example, it could be more difficult for local communities to show that there is environmental damage, to translate what they observe into technical or scientific language, and to bring this evidence to court in judicial/legal language.

Mind the Gap: Counter-strategies toolkit
SOMO presented the Mind the Gap project (which ECCJ is a part of), and consulted with the experts in the virtual room of our AGM. The session gathered valuable input for the further development of a toolkit on countering corporate strategies to avoid responsibility for human rights abuses and environmental harm.