FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

A HUMAN RIGHTS APPROACH TO DUE DILIGENCE: REFLECTIONS ON KEY PRINCIPLES

FOCUS PAPER

Contents

Executive summary

This focus paper looks at business' responsibility to respect human rights and explores the critical importance and benefits of effective human rights due diligence (HRDD) frameworks. It stems from the European Union Agency for Fundamental Rights' (FRA) ongoing project on fundamental rights in corporate sustainabilityand due diligence offering preliminary reflections on HRDD that are emerging from the desk research. A key overarching theme of that research and this paper underscores the enduring need to bridge the gap between voluntary international frameworks set out in United Nations Guiding Principles on Business and Human Rights (UNGPs) and Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines), and enforceable legal obligations, such as the Directive (EU) 2024/1760 (the Corporate Sustainability Due Diligence Directive, or CSDDD), to ensure that businesses fulfil their responsibility to respect human rights.

The paper adopts a human-rights-based approach to due diligence and recalls the following foundational elements of an HRDD process.

- The HRDD process should be risk-based and proactive, i.e. focus on preventing and addressing the most severe and the most likely adverse impacts to human rights. Limiting in-depth assessments of impacts to predominantly direct business partners could severely weaken the effectiveness of the due diligence process – it would redirect companies' limited resources and the focus of the required due diligence away from the lower tiers, where salient adverse impacts occur most often. It could result in severe human rights risks across the value chains remaining unidentified and unaddressed.
- HRDD is an ongoing process: companies must monitor impacts regularly and adjust their processes to ensure that they identify and address adverse human rights impacts in a timely manner.
- Meaningful stakeholder engagement throughout the HRDD process should be ensured, as it helps companies identify risks and develop targeted mitigation measures. Rights holders on the ground can provide valuable insights and propose relevant solutions, building trust and credibility while reducing business risks.
- Establishing clear liability standards and harmonised civil liability regimes across the EU is essential for providing effective access to remedies. It enhances legal certainty for both companies and rights holders by providing clarity on obligations and on the consequences of failing to meet due diligence standards.
- Supervisory authorities play a vital role in guiding and enforcing the application of HRDD. They should be equipped with the necessary mandate and adequate tools and resources to conduct investigations, require information, conduct inspections, order remedial actions and impose penalties. Such penalties should be effective, proportionate and dissuasive, providing a real incentive for companies to invest in preventive measures.
- New and emerging HRDD frameworks, including mandatory HRDD laws, should, as far as possible, align with existing international standards to promote international policy coherence and the highest possible standard of human rights protection in the area of business

regulation.

Introduction

HRDD is a key means by which businesses uphold their responsibilities. HRDD is an ongoing process, which entails, among other things, commitment to a human rights norms or standards, assessing actual and potential human rights impacts against that norm, integrating and acting upon the findings, tracking results and communicating how impacts are addressed [1] . It requires meaningful consultation with stakeholders such as employees, affected communities, supply chain workers or human rights defenders. Moreover, HRDD applies a risk-based approach while recognising that risks to human rights change over time as company's activities and operating context evolve [2] . This entails prioritising the most serious risks and impacts [3] and adapting due diligence to the specific risks that businesses face [4] .

Mandatory HRDD measures are essential to bridge the normative aspirations of voluntary international frameworks with enforceable legal obligations. They place sustainability and human rights obligations at the heart of businesses strategy, not merely to advance effective risk management, but to uphold substantive obligations through regulatory oversight and civil liability.

A number of legislative frameworks have been developed to oblige or incentivise companies to conduct HRDD, including in the EU. Adopting a human-rights-based approach, this paper focuses on the foundational elements stemming from international frameworks (UNGPs, OECD Guidelines) that are judged to be central to mandatory HRDD and without which it cannot be effective. They build on recommendations [5] of the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued in 2021, which outlines crucial considerations for robust HRDD legislation aligned with the UNGPs [6] . These recommendations include ensuring a risk-based approach and scope of due diligence encompassing the entire value chain. They recall thatthe structure, sequencing and logic of HRDD should be in line with the UNGPs. They recommend proactive and meaningful stakeholder engagement and the use of leverage to prevent and mitigate adverse impacts. They note that such legislation should include corporate accountability and legal liability along with effective regulation of non-State-based grievance mechanisms. In this context, CSDDD represents a historic advance in terms of human rights protection, with the EU in a global leadership role promulgating law. In this it recalls that the CSDDD,is grounded in and advances goals relating to the functioning of the internal market and goals relating to the protection of human rights.

This paper, based on desk research of the business and human rights framework, is primarily focusing on the UNGPs and OCED's Guidelines with some examples of applying mandatory HRDD legislation in countries such as France and Germany. It presents initial reflections from FRA's wider project started in 2024, which analyses the legal and policy frameworks governing corporate sustainability in the EU, selected EU Member States and FRA observer countries. A comparative analysis of this empirical data will be published in 2026.

FRA activity: Fundamental rights in corporate sustainability and due diligence

FRA's project 'Fundamental rights in corporate sustainability and due diligence' aims to provide a thorough understanding of the current state of due diligence legislation and practice in selected Member States, to identify pathways towards achieving effective human rights protection under the new EU corporate sustainability and due diligence framework. It encompasses an in-depth legal analysis of the applicable legal framework, and fieldwork research in 11 Member States. The collected data and legal analysis can be used to identify gaps, inconsistencies, ways to address them or areas for potential harmonisation or improvement in the regulatory landscape. The report with key findings will be published in early 2026.
Source: FRA, 'FRA single programming document – 2025–2027', p. 32.

This focus paper discusses a human-rights-based approach to due diligence, reflecting on key elements emanating from international standards of the mandatory corporate due diligence that addresses both human rights and environmental risks (although the term 'HRDD' is used throughout). It recalls principial elements of risk-based approach and normative standards Member States should introduce to enforce corporate responsibility. It will discuss these points in following sections:

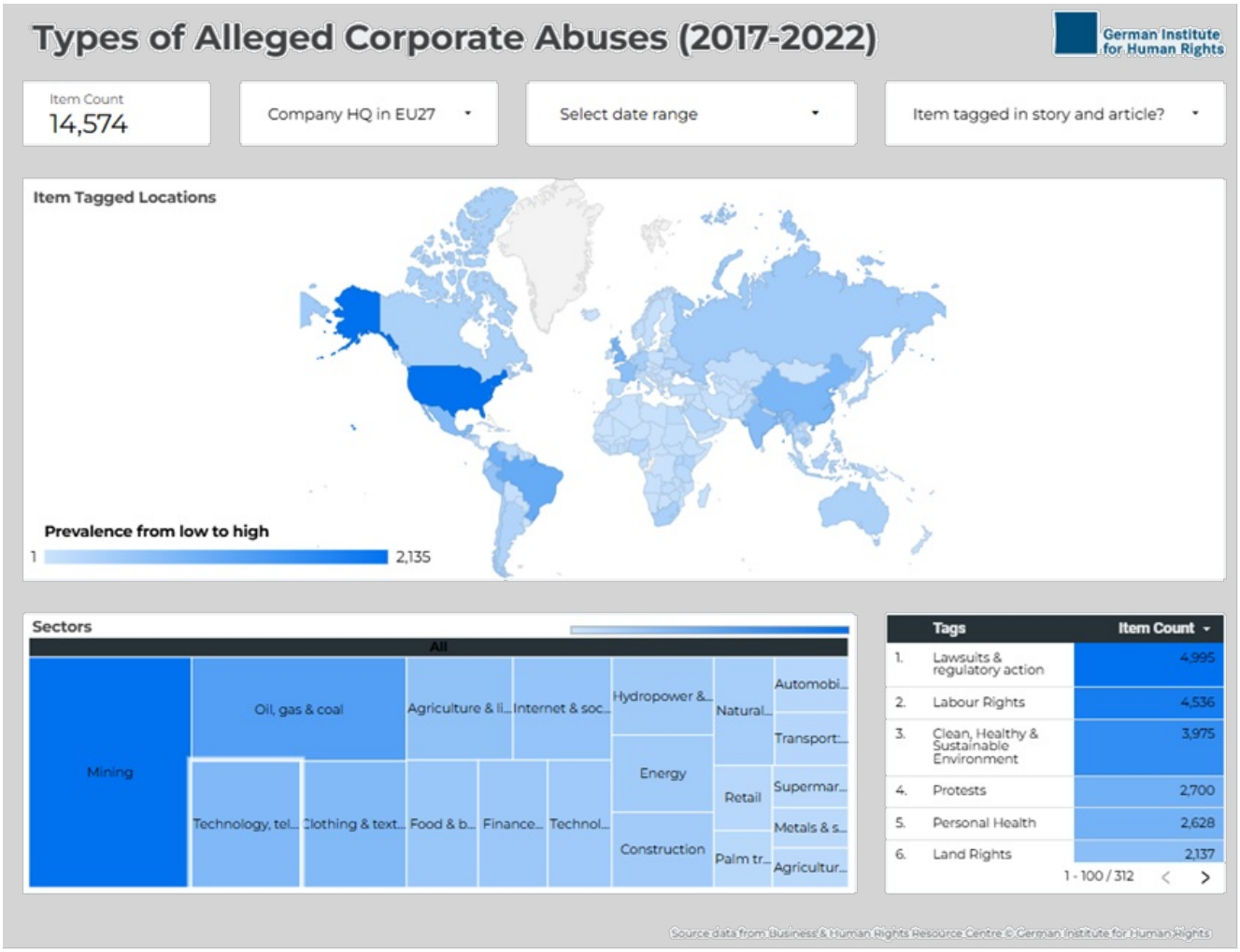
1. why mandatory HRDD is needed,
2. a risk-based approach within HRDD,
3. stakeholders engagement,
4. access to effective remedies and civil liability, and
5. oversight and enforcement mechanisms.

While the analysis set forth in this paper will focus on human rights risks and impacts, this paper also considers both normative and market rationales driving the policy developments. It does not, however, discuss any specific legislative proposals. It is addressed to EU institutions, policymakers in Member States and other stakeholders who are concerned with responsible business conduct. While raising awareness of necessity and added-value of holding companies accountable for their adverse impacts on people and environment, it advocates for a "smart-mix" of soft and hard measures anchored in a risk-based approach.

1. Why is mandatory human rights due diligence needed?

Companies can contribute to advancing human rights and environmental protection, providing employment, livelihood stability and innovation. However, their activities can also result in interference with human rights, even leading to human rights violations such as modern-day slavery. Business activities can negatively affect the entire spectrum of internationally recognised human rights: civil and political rights and economic, social and cultural rights. See the global heat map of the German Institute for Human Rights (GIHR) (Figure 1).

Figure 1 – Corporate human rights abuses, 2017–2022



Source: GIHR, 'New research tool - "Global Heat Map of Alleged Corporate Abuses"', GIHR website.

Human rights impacts and environmental degradation that companies or their subsidiaries may cause or contribute to can be prevented and mitigated through human rights and environmental due diligence processes [7] .

Although international voluntary frameworks have helped companies understand their responsibility to respect human rights, many still do not adequately integrate sustainability aspects into their operations [8] .

1.1 The EU context

In line with the UNGPs [9] , the EU has adopted a comprehensive approach to human rights, sustainability and responsible business through a 'smart mix' [10] of policy measures and legislation. Collectively, these aim to improve business practices, prevent harm and ensure effective access to remedy for affected individuals and communities. Through these measures, the EU has taken significant steps to incorporate international human rights treaties and international voluntary frameworks on business and human rights into its legal order. That includes adopting legal standards and requirements aligned with the principles and expectations

laid down in the UNGPs and OECD Guidelines [11] .

Relevant measures include those adopted under, or implementing the objective of, the European Green Deal [12] . They enhance corporate accountability for adverse human rights and environmental impacts, including horizonal regulatory frameworks such as the CSDDD, the Corporate Sustainability Reporting Directive, the Taxonomy Regulation and the Sustainable Finance Disclosure Regulation [13] , along with sector-specific requirements such as the Conflict Minerals Regulation [14] , the Dual-Use Exports Control Regulation [15] , the Critical Raw Materials Act [16] , and the Forced Labour Regulation [17] .Among these, the CSDDD [18] is the landmark law introducing mandatory HRDD across various stages of a company's 'chain of activities' [19] and requiring large companies operating in the EU to adopt and put into effect climate change mitigation plans.

These laws aim to ensure accountability for adverse impacts on people and the environment. Some of these laws are now subject to revision. In such recast process, it is important that the essence of these laws is preserved so that the EU can deliver on the Green Deal in a way that advances a just transition that serves the EU internal market and its people.

In the EU, companies encounter legal uncertainty and unnecessary administrative burdens due to an unclear and fragmented legal landscape across the internal market. Several Member States have adopted their own due diligence laws, while others have not and some still are considering it [20] .

The CSDDD represents a clear step towards necessary legal harmonisation within the EU internal market, replacing a fragmented landscape of national due diligence regimes – such as those already enacted in France (*Devoir de vigilance*), Germany (*Lieferkettengesetz*), and adopted in the Netherlands (*Wet zorgplicht kinderarbeid*) – with a coherent and uniform EU-wide standard [21] . This uniformity reduces compliance burdens for multinational corporations while setting a baseline level of protection for rights holders across jurisdictions.

2. A risk-based approach within human rights due diligence

2.1. Business responsibility to respect human rights

Business responsibility to respect human rights is an emerging global standard of conduct for all companies irrespective of their geographical location, size, sector or type of economic activity. It does not replace or diminish states' obligations to uphold human rights: it is complementary to those obligations. The responsibility also goes beyond adherence to national human rights laws and regulations [22] . It requires that businesses take adequate measures to identify, prevent, mitigate and, where appropriate, remedy actual and potential adverse human rights impacts that they may cause or contribute to through their own activities or as a result of their business relationships with other parties [23] .

This responsibility is outlined in international frameworks like the UNGPs [24] and OECD Guidelines [25] . It applies to all internationally recognised human rights [26] including those expressed in the International Covenant on Economic Social and Cultural Rights, the International Covenant on Civil and Political Rights [27] and International Labour Organization (ILO) core conventions, as well as the ILO Declaration on Fundamental Principles and Rights at Work amended in 2022 [28] . New and emerging HRDD frameworks, including mandatory legislation, should, wherever possible, align with established international standards. This alignment helps ensure policy coherence and the uniform and predictable regulation across jurisdictions.

To promote international policy coherence and ensure effective human rights protection, mandatory HRDD laws should be consistent with international standards. Article 8 of the CSDDD provides a promising example of such consistency. It enshrines a substantive obligation for in-scope companies to identify and assess their adverse human rights and environmental impacts throughout their chains of activities, building on international standards and largely reflecting a risk-based approach.

Companies can negatively impact the full spectrum of fundamental rights. While Member States have an obligation to protect these human rights, businesses have a responsibility to respect them: implementing appropriate HRDD by applying a human rights risk-based approach is the key means of discharging that responsibility. It helps companies to reduce legal and regulatory risks by identifying potential human rights abuses early and across the entire value chain, enabling them to mitigate potential harm before it materialises and potentially leads to liability. It increases stakeholder trust in companies and gives them a social license to operate, particularly in environments characterised by heightened risks. Finally, it increases the resilience of their suppliers, preventing crises and disruptions.

2.2. Risk-based approach to identification and assessment of adverse

impacts

A risk-based approach is inherent to HRDD, as emphasised in the UNGPs and OECD Guidelines. UNGP 17 provides that:

'In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.'

Consistent with established international law, due diligence embodies a principle of responsibility and enshrines an obligation not to harm a legally protected right or interest: in the case of HRDD, the rights are those protected under human rights law. The relevant due diligence therefore relates directly to the risk of harm to, or abuse of, such rights. Due diligence cannot be separated from that risk because it is anchored in those rights and not in contractual or business relationships. It requires focusing on the risks to rights holders, meaning the potential adverse human rights impacts that a company should prevent and mitigate, as explained in the UNGP Guidelines [29] . In other words, it goes beyond material risks to the company to include risks to rights holders [30] . Thus, these risks are primarily the 'outward risks' that the company may cause or contribute to, rather than risks that company itself faces, such as financial or reputational risks although the two are linked and HRDD should be integrated in risk-management processes [31] .

A risk-based approach is also proportional under the OECD Guidelines. A risk-based approach implements the general principle that companies' risk management should '… a) target those areas of the business where risks are greatest and, on that basis, prioritise the highest risk business partners, [and] b) be proportionate and tailored to the degree and nature of risk that individual companies face.' (p. 4). HRDD is carried out with due regard to the size of an enterprise, the nature and context of its operations and the severity of the risks of adverse human rights impacts (p. 25).

In EU context, CSDDD reflects a risk-based approach [32] by establishing a core substantive obligation for companies to take appropriate measures to identify and assess actual and potential adverse impacts arising from their own operations or those of their subsidiaries. Companies should consider factors like company level, operations, location, products and sector. They should use established criteria of severity and likelihood to assess potential or actual human rights and environmental adverse impacts and to prioritise responses if necessary. The directive requires companies to integrate due diligence in their policies and risk management and highlights the need to consider the specific nature of the company's operations and value chain. In keeping with a risk-based approach, the CSDDD also asks for proportionate responses: Article 9 requires that companies prioritise adverse impacts identified pursuant to Article 8, and that such prioritisation is based on the severity and likelihood of the adverse impacts. Once the most severe and most likely adverse impacts are addressed within a reasonable time, the company must address less severe and less likely adverse impacts. CSDDD requires companies to take appropriate measures to identify and address their potential and actual adverse impacts –

meaning measures ‘capable of achieving the objectives of due diligence ’within the circumstances, as outlined in the definition [33] . It is an obligation of conduct: the directive acknowledges that addressing adverse impacts by a company across its value chains may not be always possible and depends on many factors [34] , although companies should aim to prevent and mitigate human rights risks and end actual adverse impacts effectively [35] .

In practical terms, a key first step of the HRDD process is the identification and assessment of potential and actual adverse impacts. In line with the UNGPs, this encompasses the key steps of mapping supply chains and assessing risks, as it is essential that companies ‘understand the specific impacts on specific people, given a specific context of operations’ in order to be able to prevent, mitigate and address them [36] . According to the UNGPs, this should involve ‘assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified’ [37] .

According to applicable international frameworks, businesses are expected to implement a risk-based [38] approach to HRDD, prioritising the most severe and probable impacts they might be connected to, no matter where these impacts occur within the value chain. This approach is well established and already widely used by companies worldwide. Limiting the scope of the in-depth assessment to a company’s own operations and direct business partners only – unless companies have substantiated knowledge that suggests potential or actual adverse impacts in indirect business partners’ operations – as for example in the German Supply Chain Act [39] – could render HRDD reactive rather than proactive, thereby severely undermining its effectiveness.

Shifts away from a risk-based approach artificially direct the focus of companies’ due diligence to direct business relationships instead of the entire chain of activities, thereby misunderstanding both the nature and the locus of human rights risks that business may cause or contribute to. It also contradicts the UNGPs that require companies to address impacts throughout their entire value chain, leaving many workers and communities vulnerable to unaddressed human rights abuses. UNGP 24 specifies that in their prioritisation efforts, ‘enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable’ [40] . Thus, a risk-based approach mandates that it is the nature and scale of the risk, not its occurrence in the value chain, that should determine a company’s approach.

Many severe human rights abuses and impacts occur at lower tiers of the value chain across many sectors, both downstream and upstream. Examples include deaths and injuries caused by hazardous working conditions in factories within the garment sector supply chain; the torture and killing of individuals by security forces hired by companies to help resolve disputes related to business operations, especially in the forestry and mining sectors; the killing of human rights and environmental defenders; and child labour on farms from which European agrifood companies source their products (e.g. cocoa) [41] .

While these cases are well-known, systematic and complete data on human rights adverse

impacts across the value chains of companies are lacking and cases are vastly underreported, not least because of the lack of due diligence and monitoring frameworks until recently and limited access to justice in business and human rights cases, especially transnationally [42] . For example, a study using network model estimation indicates that 'about 8.5 % of EU companies are at risk of having child or forced labour in the first tier of their supply chains, about 82.4 % are likely to have such [abuses] at the second tier and more than 99.1 % have such [abuses] at the third tier'. Among the 285 allegations against German companies made between 2020 and 2021 (before the German Supply Act came into effect in 2023) according to the analysis of the Business & Human Rights Resource Centre, only 32 % pertained to company's own or first-tier operations [43] . As emphasised by the Tribunal de Paris in the context of risk mapping under the French Duty of Vigilance Law in the case of La Poste, the vigilance plan must precisely identify and rank risks at the subcontractor level, as without a specific assessment of subcontractors based on detailed risk mapping it cannot effectively address or mitigate serious risks [44] .

It is therefore vital to ensure that companies identify and assess adverse impacts across their entire value chains using a risk-based approach in order to be able to effectively address the most severe ones. To do this effectively, companies should have the flexibility to tailor their identification and assessment process to their specific sector, value chain and other circumstances, and should direct their attention and resources to where the human rights and environmental risks are most salient, irrespective of where they occur in the value chain.

In terms of the nature of the harm captured by HRDD, a comprehensive approach is necessary. HRDD has traditionally focused primarily on identifying and mitigating adverse human rights impacts. However, while the UNGPs do not explicitly specifically address the environment, they recognise that HRDD must encompass both actual and potential adverse impacts on all human rights, including those caused by environmental harm [45] . Environmental degradation and human rights violations are inextricably linked, as evidenced in recent international jurisprudence, confirming the importance of a holistic approach to corporate responsibility that encompasses both human rights and environmental risk [46] , with the OECD Guidelines [47] being a prime example.

2.3. Shared responsibility in implementing due diligence across the chain of activities

In line with international standards, a company's level of involvement in the adverse impact and its ability to influence the situation are relevant in determining appropriate measures in the due diligence process. At the same time, companies with sufficient leverage should use it to contribute to the fulfilment of human rights – whether by influencing their business partners or directly by their own actions, including purchasing practices.

The CSDDD enshrines a shared responsibility across the chain of activities [48] : it requires companies to cooperate and support their business partners when implementing due diligence and use leverage as appropriate [49] . Contracts are a vital governance tool in corporate value

chains that can be leveraged to ensure the timely identification and addressing of adverse impacts. According to the CSDDD, appropriate measures should be put in place to verify compliance with them [50] .

Contracts can and should be devised in a way that embeds shared responsibility among the company and its business partners [51] . However, contractual assurances alone are not sufficient to fully address the risks, and cannot replace effective risk-based HRDD process. Moreover, contractual cascading should not be used as a form of 'tick box' compliance, which would de facto result in the outsourcing of due diligence obligations to business partners [52] .

Companies should use contracting to leverage their potential to make positive contributions to the protection of human rights and identify effective pathways for achieving this goal. In this context, the improvement of purchasing practices is an important avenue, encompassing companies' impacts on living wages and employment practices, along with the environmental impacts of their operations and products in their value chains.

2.4. Ongoing monitoring in line with a risk-based approach

HRDD is a continuous process in which identification and assessment of adverse impacts, monitoring and timely adjustments are key.

For example, the CSDDD obliges companies to conduct a periodic assessment of the implementation of due diligence and monitor the adequacy and effectiveness of mitigation and remediation measures undertaken in their operations and throughout the chain of activities, at least every 12 months and every time a significant change occurs [53] .This assessment should be based on both qualitative and quantitative indicators and take into due consideration the information from stakeholders.

In a dynamic global business context, regular periodic and responsive ad hoc assessments are key to identifying risks in a timely manner and to reinforcing companies' capacity to prevent and mitigate adverse impacts.

2.5. A risk-based approach to responsible disengagement

The established international framework, including both the UNGPs and the OECD Guidelines, foresee responsible disengagement from business partners as a last resort [54] . This should only be considered in case of severe adverse impacts and subject to the appropriate safeguards: in line with a risk-based approach, preventing and mitigating adverse human rights should be a primary consideration.

The CSDDD establishes an obligation of responsible disengagement as a last resort: companies should terminate the relationship with the partner if severe impacts occur and if other measures failed to address these impacts, unless the consequences of withdrawal are likely to be more severe than the impacts related to continued activity.

The CSDDD outlines the steps that companies should take if adverse impacts could not be prevented or mitigated with other measures foreseen by the directive [55] . Companies should engage and prevent or mitigate adverse impacts whenever possible and use their leverage, including via enhanced, time-bound preventive and corrective action plans and temporary suspensions (with termination of existing relationships or refraining from entering new relationships considered a last-resort measure). Before suspending or terminating the business relationship, companies should also evaluate the potential negative consequences of doing so. If these consequences are likely to be significantly more severe than the initial adverse impact, companies are not obliged to end the relationship.

In considering responsible disengagement, companies may consider also other factors – for example, in situations where they do not have viable business alternatives. The international standards provide for such of circumstances: Where a relationship is 'crucial' to the enterprise, meaning it provides an essential product or service with no reasonable alternative, ending it becomes more complex. In line with the international standards, companies should prioritise using their leverage – increasing it as necessary – and only resort to ending the relationship if this is not possible and 'taking into account credible assessments of potential adverse human rights impacts of doing so' [56] . The severity of the human rights abuse must be considered: more severe impacts demand quicker action.

The possibility to temporarily suspend or terminate the business relationship as a last resort is important so that companies can exercise leverage over their business partners to address identified adverse impacts. Companies must have the option to terminate a business relationship.

International standards suggest that, as long as the abuse continues, the company must demonstrate ongoing efforts to mitigate harm and be prepared to face reputational, financial or legal consequences from maintaining the relationship. This encompasses providing remediation to the victims of abuse [57] .

3. Stakeholder engagement

Stakeholders are persons, groups or communities who have interests that are or could be impacted by a company's activities, including rights holders in particular [58] . Not all interests will be of equal importance and the level of stakeholder engagement should be proportional to the degree of the impact affecting them [59] . Examples of affected or potentially affected stakeholders include communities at the local, regional or national level; workers and employees including those under informal arrangements within supply chains and trade unions; children and other groups in vulnerable and marginalised situations; and consumers or end-users of products. Examples of other relevant stakeholders include non-governmental organisations (NGOs), local civil society organisations, national human rights institutions, community-based organisations and local human rights defenders, industry peers, host governments (local, regional and national), business partners and investors/shareholders.

In line with a risk-based approach, meaningful stakeholder engagement is indispensable to the HRDD process [60] . Effective and broad stakeholder involvement can help businesses assess human rights risks accurately, prioritise the risks identified and prevent, mitigate or address adverse effects [61] . It can provide a company with valuable, context-specific insights that cannot be found through desk-based research or internal assessments alone [62] . It can help reduce the likelihood of future complaints or business disturbances. It supports business in developing more sustainable and locally acceptable solutions. Omitting the views of relevant stakeholders can result in poor decisions that interrupt operations and lead to financial loss, reputational damage and costly liabilities [63] .

While certain policy approaches seek to substantially restrict the definition of a stakeholder, a rights-based approach to risk identification and management is context-specific and affords companies leeway in identifying which stakeholders (including rights holders) to engage with and how. Should a company be obliged to limit the scope of HRDD, and hence narrow engagement with stakeholders primarily to direct business relationships, this could prevent a deeper scrutiny of supply chains where many harmful impacts occur. This reduces meaningful engagement with indirect suppliers, communities and vulnerable groups, and may cause further marginalisation of vulnerable groups or communities and indigenous peoples. By focusing more on procedural compliance rather than substantive consultations, such an approach risks undermining the purpose of consultations and distorting already well-established, promising practices of more advanced companies. It also fails to fulfil the criteria of 'free, prior, and informed consent' processes anchored in international standards [64] .

3.1. Conditions and stages of effective stakeholder engagement

According to the OECD Guidelines and UNGPs [65] , effective stakeholder engagement requires an ongoing, two-way communication undertaken in good faith with the relevant stakeholders, particularly those of rights holders directly affected by business activities. This engagement must be timely, accessible, appropriate and safe, particularly for stakeholders in vulnerable or

marginalised positions. The OECD guidance [66] highlights the importance of prioritising those most severely impacted and ensuring that their views are taken seriously to inform corporate decision making and risk mitigation. Furthermore, the engagement process should reduce barriers to participation, ensure safe and culturally appropriate conditions for interaction and support the identification, prevention and remediation of adverse human rights impacts. The UNGPs stress that meaningful engagement strengthens legitimacy, accountability and access to remedy, aligning corporate conduct with international human rights standards.

In terms of its stipulation of the conditions of engagement, with which the CSDDD is broadly aligned, these inter alia require that consulted stakeholders receive relevant and comprehensive information. The consultation involves ongoing, regular and genuine interaction, and a dialogue held at the appropriate level of a business activity (such as the project or site level). It asks companies to take due account of barriers to engagement and ensure that stakeholders are free from retaliation and retribution, including by maintaining confidentiality and anonymity. It calls for the consideration of the needs of vulnerable rights holders and asks that attention is paid to overlapping vulnerabilities and intersecting factors, including by considering potentially affected groupings or communities, for example those protected under the UN Declaration on the Rights of Indigenous Peoples and those covered in the UN Declaration on Human Rights Defenders [67] .

Meaningful stakeholder engagement is a necessary feature of all stages of the HRDD process. Omitting consultation at any stage in the due diligence process may result in risks not being adequately mapped or prioritised, or in the inadequate or incorrect application of solutions to address shortcomings or mitigate potential adverse impacts.

4. Access to effective remedies and civil liability

Companies have a responsibility to respect human rights, and Member States have an obligation to protect human rights and ensure that business activities do not infringe on these rights. Member States must also take appropriate steps to ensure that when business-related human rights abuses occur in their territory or under their jurisdiction, they provide effective remedy through judicial, administrative, legislative or other appropriate means [68] .

The right to an effective remedy is enshrined in Article 47 of the Charter, and it is a general principle of EU law [69] . The EU and its Member States are bound to ensure that everyone in the EU can effectively enjoy this right. It is key to realising and protecting other fundamental rights: it provides that if a person's rights have been violated, that person can seek and obtain remedy in court.

Article 47 of the Charter of Fundamental Rights of the European Union: Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Remediation is also one of the three pillars of the UNGPs framework, which calls on businesses to remediate harms linked to their activities, and the states to ensure that victims of corporate human rights abuses can access justice. The commentary to Principle 26 UNGP recognises that *"[e]ffective judicial mechanisms are at the core of ensuring access to remedy"* [70] .

In practice, significant gaps exist in terms of remediation for business-related human rights abuses. The CSDDD civil liability provisions provide mechanisms to bridge some of these gaps to ensure an adequate level of protection for potential victims and better harmonisation across the EU.

4.1. Civil liability provisions and due diligence obligations

In general, civil liability refers to private law mechanisms through which persons can seek remedy for damage resulting from violations of their rights. It is an important avenue for victims of business human rights abuses to seek remedy. As underlined in the UN Human Rights Council report on the topic, legal liability mechanisms should support meaningful HRDD [71] .

In the context of the EU, Article 29 of the CSDDD introduces the civil liability regime. It does not introduce a fully harmonised civil liability regime across the EU, but includes important safeguards

aimed to address the specific context of HRDD in complex corporate value chains: civil liability is clearly linked to breach of the due diligence obligations under the directive, and thus to upholding accountability [72] and to increased legal certainty for both companies and potential victims.

Harmonising civil liability regimes across the EU would provide companies and rights holders with clarity on obligations and the consequences of failing to meet due diligence standards, thereby increasing legal certainty both for companies across the internal market and for potential victims.

Given the importance of legal certainty, it is essential that there be clarity about the conditions under which companies can be held liable, such as those outlined in Article 29(1) of the CSDDD. This provision establishes two criteria for civil liability rooted in HRDD obligations: (a) companies can be held liable if they intentionally or negligently failed to address adverse impacts in their due diligence process; (b) as a result of the failure referred to in point (a), damage was caused to the natural or legal person's legal interests that are protected under national law [73] . This minimum standard may address certain existing challenges facing victims of corporate human rights abuses. Although civil liability regimes exist in the legal systems of many Member States, they often differ not only in how they define the criteria for liability but also in the extent to which they hold companies liable for abuses across their corporate structures and value chains. Currently, interpretations of the required standard of behaviour of companies and the attribution of liability across corporate value chains are determined by existing national laws, in a legal landscape across the EU characterised by divergences and gaps [74] . Moreover, existing national frameworks often fail to adequately address the reality and complexity of disputes involving large corporations across intricate, global value chains. In clearly linking civil liability to due diligence obligations, the CSDDD bridges some of these gaps.

4.2. Overriding mandatory application

Overriding mandatory application ensures that the legal obligations and liability rules established by a Member State's national laws on HRDD apply regardless of which jurisdictions' law would otherwise govern a dispute under private international law. As a principle, it helps promote regulatory coherence by ensuring that Member States' HRDD regimes prevail in disputes and by discouraging regulatory arbitrage where companies may seek out jurisdictions with more lax rules [75] . It enhances corporate accountability and improves victims' access to remedies despite the cross-border complexities.

The CSDDD in Article 29(7) requires that national law implementing its civil liability provisions have overriding mandatory application whenever the law governing related claims is not that of a Member State. This means that courts that adjudicate civil liability cases will have to refer to the national law implementing the CSDDD civil liability rules – ensuring that companies will be held accountable in line with the standards set out by the CSDDD.

Such a provision is essential to ensuring legal certainty and predictability. Without this provision, the law of the Member State where the damage occurred is likely to be applied according to private international law rules for non-contractual obligations [76] . Consequently, EU national

courts may, following conflict-of-law rules and national discretion, apply the law of a non-EU country, which can differ in terms of human rights and environmental protection, scope of liability and other substantive law elements.

As the previous FRA report 'Business and human rights – access to remedy' (2020) found, applicable law presents a key legal obstacle for access to justice for victims of business-related human rights abuses. The absence of an overriding mandatory application has far-reaching consequences with respect to legal predictability for companies, the internal market, and rights holders. Regulation avoids unfairly penalising companies that carry out due diligence in line with the international standards by allowing their competitors to 'forum shop' and avoid accountability for profiting from activities that negatively impact human rights.

Additionally, the failure to regulate mandatory application risks prompting a race to the bottom among Member States, where companies might relocate to jurisdictions with more lenient civil liability rules or weaker enforcement, encouraging governments to follow suit in legal and regulatory terms, ultimately undermining human rights protection standards [77] .

4.3. Representation of victims in civil proceedings for effective access to justice

The FRA report 'Business and human rights – access to remedy' (2020) identified major obstacles for victims seeking justice in relation to business-related human rights abuses [78] . The effectiveness of judicial remedies is often hampered by restrictive rules on legal standing, evidence and disclosure barriers, high legal costs (combined with restrictive rules on legal aid) and the striking imbalance of arms in general. Accessing the courts in practice is very difficult, especially as victims of business-related human rights abuses are often already in vulnerable situations. This includes victims from outside the EU, where the most severe human rights violations occur [79] .

Previous FRA opinion on ensuring access to justice for victims of business-related human rights abuses:

Previous FRA opinion on ensuring access to justice for victims of business-related human rights abuses: The EU and Member States should ensure that legislation providing for representative action on behalf of persons affected by the actions of a business allows for legal standing of civil society organisations acting in the public interest, as well as statutory human rights organisations, such as national human rights institutions, Ombuds institutions or equality bodies.
Source: FRA, 'Business and human rights – access to remedy' (2020), opinion 2.

Procedural safeguards are part of the effective regulation of businesses' responsibility to respect human rights. The CSDDD provides certain such safeguards, including provisions on the statute of limitations, the disclosure and costs of proceedings and victims' ability to authorise certain organisations to bring an action to enforce their rights – aimed at addressing persistent barriers to access to justice faced by victims of human rights abuse by businesses [80] .

Previous FRA research [81] shows that the rules on whether NGOs can take part in lawsuits about consumer and environmental rights differ between Member States, which can make cases against multinational companies more complicated. In some Member States, NGOs may bring a case even if their own rights or interests are not directly affected. In others, an NGO's action based on its goals, such as protecting the environment, may be rejected in consumer-related cases because the NGO does not have the required legal standing.

For victims, who are often those most vulnerable or marginalised, the possibility of such representation is vital to access justice. While some Member States allow for similar representation, this is not uniform across all EU jurisdictions.

Establishing clear liability frameworks and harmonised regimes that define and enforce the standard of conduct for HRDD is essential in ensuring effective access to remedies for potential victims of corporate abuse. This can improve accountability by providing courts with a firmer legal foundation to hold parent companies liable for harms linked to their business activity, while at the same time increasing legal certainty for these companies navigating the complex legal systems of the numerous jurisdictions in which they may operate. Clarity and harmonisation of access to justice provisions can help advance justice and accountability for victims and legal certainty and predictability for companies.

5. Oversight and enforcement

The effective implementation of HRDD hinges on establishing strong enforcement mechanisms such as administrative supervision, criminal sanctions, civil liability and company grievance mechanisms [82] .

The UNGPs set out complementarity [83] between administrative supervision and civil liability, which are both an expression of a Member State's duty to protect. While effective judicial mechanisms remain at the core of ensuring access to remedy [84] , administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms [85] . While civil liability provides judicial remedies to individuals or communities for harm suffered due to corporate actions or negligence, administrative oversight focuses on broader regulatory compliance by proactively monitoring companies, applying non-criminal sanctions or corrective orders, investigating suspected cases of corporate abuse, providing guidance on practical application of HRDD, etc.

Pairing a civil liability regime with administrative oversight by a supervisory authority, which can act autonomously and on its own initiative, can help ensure a comprehensive and proactive approach. HRDD laws should not preclude victims from resorting to both types of recourse simultaneously, allowing them to seek different types of remedy.

5.1. Supervisory authorities

Mandatory HRDD laws should establish or designate independent supervisory authorities with powers to investigate, enforce and sanction breaches, making them central actors in safeguarding fundamental rights. Their role is particularly important for high-risk sectors and contexts where victims – especially those in vulnerable situations – may lack effective domestic remedies.

A national supervisory authority should at least:

- be of a public nature, independent from the companies or other market interests;
- be free from conflicts of interest and external influence;
- should neither seek nor take instructions from any entity;
- have a separation of monitoring/sanctioning and advisory/educational functions;
- have expertise in business and human rights standards;
- have adequate resources (human and financial); and
- have powers to carry out the tasks [86] .

Such supervisory authorities would play a crucial role in ensuring compliance with mandatory HRDD by exercising powers to investigate companies, enforce compliance and issue sanctions. They should be able to request information from businesses, conduct investigations, order companies to cease non-compliant activities, impose penalties and adopt interim measures in cases of imminent severe harm. This enforcement framework, combined with supervisory authorities' ability to act on their own initiative or in response to reported concerns, should enable

them to effectively monitor and promote adherence to the mandatory HRDD requirements [87] .

Previous FRA opinion on non-judicial mechanisms:

Member States should consider strengthening the role of non-judicial mechanisms in the business and human rights field. They can achieve this by providing more awareness raising and training of legal professionals, as well as by improving compliance with the decisions of such mechanisms and enforcement in cases of noncompliance. Member States should also consider strengthening the role of national human rights institutions, Ombuds institutions and consumer protection ombudsmen by empowering them, as appropriate, to file claims to court on behalf of individuals or in the public interest. They can achieve this by providing such institutions with a legal mandate to perform these tasks, as well as with adequate financial and human resources. Their staff should be trained in third-party legal representation. The EU should support Member States to improve the effectiveness of their OECD National Contact Points, as required by the OECD Guidelines for Multinational Enterprises. This could be done by providing financial support and facilitating training and exchange of expertise.
Source: FRA, 'Business and human rights – access to remedy' (2020), opinion 2.

5.2. Dissuasive penalties and their uniform application

In the EU, the CSDDD introduces an administrative supervision mechanism that creates a structured, EU-wide system for overseeing corporate sustainability practices. It gives these authorities tools to address companies that fail to comply with the obligations imposed by the directive, most importantly a power to impose 'effective, proportionate and dissuasive' penalties. [88]

The Court of Justice of the European Union requires Member States to implement enforcement measures that act as a genuine deterrent for future violations, but these measures must also be proportionate to the harm caused and should be assessed in the light of the circumstances of each individual case [89] . Similarly, as is the case for EU competition law, they should aim at prevention; therefore they should be high enough to deter illicit activities that otherwise would be profitable if they go unpunished [90] .

FRA previous opinion on effective accountability systems

The EU and Member States should ensure that effective accountability systems are in place to monitor and, where needed, effectively address any negative impact of AI systems on fundamental rights. They should consider, in addition to fundamental rights impact assessments (…), introducing specific safeguards to ensure that the accountability regime is effective. This could include a legal requirement to make available enough information to allow for an assessment of the fundamental rights impact of AI systems. This would enable external monitoring and human rights oversight by competent bodies. The EU and Member States should also make better use of existing oversight expert structures to protect fundamental rights when using AI. These include data protection authorities, equality bodies, national human rights institutions, ombuds institutions and consumer protection bodies. Additional resources should be earmarked to establish effective accountability systems by 'upskilling' and diversifying staff working for oversight bodies. This would allow them to deal with complex issues linked to developing and using AI. Similarly, the appropriate bodies should be equipped with sufficient resources, powers and – importantly – expertise to prevent and assess fundamental rights violations and effectively support those whose fundamental rights are affected by AI. Facilitating cooperation between appropriate bodies at national and European level can help share expertise and experience. Engaging with other actors with relevant expertise – such as specialist civil society organisations – can also help. When implementing such actions at national level, Member States should consider using available EU funding mechanisms.
Source: FRA report: 'Getting the future right – AI and fundamental rights', 2020, FRA opinion 3.

From a rights-protection standpoint, strong penalties can incentivise preventive action aimed at avoiding harm in the first place, especially in high-risk supply chains affecting vulnerable groups, namely by serving as a deterrent against unlawful or abusive behaviour, and redress, namely by providing public and official recognition of the wrongdoing and conveying the message that justice is done [91] . In the context of EU harmonisation, while the regulatory acts sometimes prescribe core principles and factors for penalty determination, the discretion left to Member States may produce uneven sanctioning practices. The effectiveness of the provisions on penalties will ultimately depend on the supervisory authorities' powers and resources and their willingness to apply sanctions. Strong penalties can incentivise companies to take more seriously preventive and mitigating actions and invest in tangible solutions before a human rights risk leads to violation, abuse or damage. This is particularly important in high-risk supply chains that affect vulnerable groups.

Supervisory authorities can play an important role in enforcing, supervising and guiding the application of mandatory HRDD. They should be equipped with the requisite mandate, such as the power to conduct investigations into potential non-compliance, including on their own initiative or based on received complaints; require companies to provide information related to their due diligence processes and impacts; conduct inspections and unannounced visits; order companies to take appropriate remedial actions for any harms or risks identified; and impose penalties or corrective measures. Finally, penalties should fulfil three criteria set out in the directive, i.e. effectiveness, proportionality and dissuasiveness.

Member States should ensure that the supervisory authorities they appoint are independent and equipped with the requisite legal mandate and competence and afforded adequate resources to effectively monitor compliance with the regulatory framework, conduct investigations and enforce their decisions.

Thus, if consistent with international standards and equipped with an appropriate mandate, tools and resources and training, supervisory authorities can contribute to changing corporate culture and provide a real avenue for rights holders.

Endnotes

[1] United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework', 2012, UNGP 17 and its commentary.The UNGPs are a soft law instrument, and do not create legally binding obligations.

[2] See UNGP 17 and its commentary.

[3] See UNGP 24 and its commentary.

[4] OECD, 'Translating a risk-based due diligence approach into law: Background note on regulatory developments concerning due diligence for responsible business conduct', 2022.

[5] United Nations, 'EU Mandatory Human Rights Due Diligence Directive: Recommendations to the European Commission', 2021.

[6] United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework', 2012.

[7] Resolution adopted by the UN General Assembly, A/RES/79/1, The Pact for the Future, 22 September 2024.In its pact for the future, the UN encourages the private sector to contribute to sustainability, the achievement of the 2030 Agenda and the sustainable development goals, through partnership-based approaches and accountability in working towards implementing UN frameworks.

[8] European Parliamentary Research Service, 'Towards a mandatory EU system of due diligence for supply chains', 2020.

[9] See footnote 1.

[10] European External Action Service, 'Business and human rights', EEAS website, 2024.

[11] OECD, OECD guidelines for multinational enterprises on responsible business conduct, OECD Publishing, Paris, 2023.

[12] European Commission, 'The European Green Deal: Striving to be the first climate-neutral continent', European Commission website.

[13] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

[14] Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (OJ L 130, 19.5.2017, p. 1).

[15] Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) (OJ L 206, 11.6.2021, p. 1).

[16] Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (OJ L, 2024/1252, 3.5.2024).

[17] Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937 (OJ L, 2024/3015, 12.12.2024).

[18] Directive (EU) 2024/1760 of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (OJ L, 2024/1760, 5.7.2024).

[19] Article 3(1)(g) of Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (OJ L, 2024/1760, 5.7.2024).

[20] European Commission, Impact assessment report accompanying the document proposal for a Directive of the European Parliament and of the Council on corporate sustainability due diligence and amending Directive (EU) 2019/1937, SWD/2022/42 final of 22 February 2022.

[21] Loi n° 2017-399 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [Law on the Duty of Vigilance of Parent Companies and Ordering Companies], Journal Officiel de la République Française n°0074, 27 March 2017; Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten[Lieferkettensorgfaltspflichtengesetz, Supply Chain Due Diligence Act], Bundesgesetzblatt I, 22 July 2021; Wet zorgplicht kinderarbeid [Child Labour Due Diligence Act], Senate of the Netherlands, 14 May 2019.

[22] See footnote 1, in particular the commentary on foundational principles (section II.A).

[23] See footnote 1, in particular principles 11 and 13 and the commentaries thereon.

[24] See footnote 1.

[25] See footnote 11.

[26] See footnote 1.

[27] UN: OHCHR, 'International Bill of Human Rights: A brief history, and the two international covenants', UN website.

[28] ILO, ILO declaration on fundamental principles and rights at work and its follow-up , ILO, Geneva, 2022.

[29] This applies analogously to environmental due diligence, as specified in the OECD Guidelines, pp. 19–20.

[30] UN Human Rights Council, 'Improving accountability and access to remedy for victims of business-related human rights abuse: The relevance of human rights due diligence to determinations of corporate liability', A/HRC/38/20/Add.2, 1 June 2018, paragraph 8.

[31] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, OECD Publishing, Paris, 2018, p. 15.

[32] In this context, the CSDDD limiting of the due diligence scope across the downstream value chains (especially for the financial sector), itsapplicability to only a group of very large companies and a lack of specific focus on high-risk sectors or contexts such as conflict areas are a limitation, as they leave out potentially severe harms that could be prevented through due diligence.

[33] Article 3(1)(o) of the CSDDD: '"appropriate measures" means measures that are capable of achieving the objectives of due diligence by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors.'. 'Severity' and 'risk factors' are further defined in Article 3(1)(u) and (v) of the CSDDD.

[34] Recital 19 includes relevant guidance: 'This Directive should not require companies to guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped. For example, with respect to business partners, where the adverse impact results from State intervention, the company might not be in a position to arrive at such results. Therefore, the main obligations in this Directive should be obligations of means.'.

[35] '[D]ue diligence must manifestly aim at achieving the outcome of no harms; however, the occurrence of a harm is not in itself sufficient evidence that the due diligence was inadequate." (emphasis original) in: Davis R., 'Legislating for Human Rights Due Diligence: How outcomes for people connect to the standard of conduct', Shift Viewpoints, 2021.

[36] UNGP 18 – commentary. United Nations Development Programme, 'Human Rights Due Diligence: An Interpretive Guide', 2021, q. 34.

[37] UNGP 18 – commentary.

[38] OECD, 'Translating a risk-based due diligence approach into law: Background note on regulatory developments concerning due diligence for responsible business conduct', 2022.

[39] For example, the German Supply Chain Act model requires assessment until tier 1 suppliers and further if there is 'substantiated knowledge' about possible adverse impacts, which is considered one of the drivers of many companies adopting formalistic compliance approaches over risk-based due diligence.Bright, C., Elliott, J., Gonzalez De Aguinaga, S., Huyse, H., Marx, A., Otteburn, K. and Pietropaoli, I., 'Policy Brief – Implementing the CSDDD: Lessons learnt from the comparative experiences', 2025.

[40] See footnote 3.

[41] Alleweldt, F., Baeza-Breinbauer, D. Bauer, M., Bright, C., Deinger, H., Kara, S., Salinier, C., Tejero Tobed, H. and Torres-Cortés, F., Study on due diligence requirements through the supply chain – Final report, Publications Office of the European Union, 2020, pp. 214–217.OECD, 'Complaints database', OECD Watch website, accessed 17 October 2025.Business & Human Rights Resource Centre, 'Latest News', Business and Human Rights Resource Centre website, accessed 17 October 2025.

[42] FRA, Business and Human Rights – Access to remedy, Publications Office of the European Union, Luxembourg, 2020.

[43] Business & Human Rights Resource Centre, Beyond tier 1: Exploring "substantiated knowledge" in the German Supply Chain Act, Business and Human Rights Resource Centre website, accessed 20 October 2025.

[44] Judgment of the Tribunal Judiciaire de Paris of 5 December 2023, Fédération des Syndicats solidaires, Unitaires et Democratiques des Activities Postales et de Telecommunications (SUD PTT) v S.A. La PosteFédération des Syndicats solidaires, Unitaires et Democratiques des Activities Postales et de Telecommunications (SUD PTT) v S.A. La Poste, RG 21/15827.Latham & Watkins Litigation & Trial Practice, 'French court reaches precedent decision on the duty of vigilance law', Latham & Watkins, 2024.Da Graça Pires, C., 'La Poste Case: The first decision on the merits by the Paris Court of Appeal's special chamber, a methodological milestone structuring duty of vigilance jurisprudence', 8 September 2025.

[45] UNDP, Human Rights Due Diligence and the Environment: A practical tool for business, New York, 2024; Filmer-Wilson, E. and Anderson, M., 'Integrating human rights into energy and environment programming: A reference paper', UNDP, 2005.

[46] Danish Institute for Human Rights: Ruiz Liard Krysa, M. and Ploug Petersen, M., Human Rights Obligations and Adaptation to Climate Change: An analysis of recommendations to states from international human rights mechanisms, Danish Institute for Human Rights, Copenhagen, 2024.

[47] See footnote 11.

[48] In the context of the Business & Human Rights Resource Centre, 'shared responsibility' is also used more broadly to highlight the role of private actors in upholding human rights, next to States' obligation in this regard. This paper considers shared responsibility between companies and actors in the value chains, as typically used in the context of global value chain contracting and purchasing practices.

[49] As outlined in Articles 10 and 11 and recitals 19, 45, 46 and 53. Furthermore, support for SMEs (Article 10(2) (e), Article 10(5), Article 11(2)(f) and Article 11(6)), and collaboration with other entities (Article 10(2)(f)) offer potential pathways for increasing impact on the ground.

[50] Article 10(2)(b), Articles 10(4) and 10(5), Article 11(3)(c) and Articles 11(5) and 11(6) of the CSDDD. The European Commission is bound to provide a set of model contractual clauses, as per Article 18 of the CSDDD.

[51] Rutger's Centre for Corporate Law and Governance, 'The Responsible Contracting Project', Responsible Contracting Project website, accessed 17 October 2025.

[52] European Commission: Directorate-General for International Partnerships, International Trade Centre, 'Making mandatory human rights and environmental due diligence work for all: Guidance on designing effective and inclusive accompanying support to due diligence legislation', 2022, pp. 16–17; Elliott, J., Pietropaoli, I. and Gonzalez de Aguinaga, S., Towards new human rights and environment due diligence laws: Reflections on changes in corporate practice, British Institute of International and Comparative Law, London, 2024, pp. 21–26.

[53] Article 15 of the CSDDD.

[54] UNGP 19 – commentary. OECD Due Diligence Guidance for Responsible Business Conduct, practical action 3.2 h).

[55] Recitals 46, 47 and 54 of the CSDDD.

[56] UNGP 19 – commentary.

[57] UNGP 19 – commentary.

[58] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, OECD Publishing, Paris, 2018, p. 48.

[59] See footnote 1. OECD, 'Updated commentaries on the OECD guidelines for multinational enterprises on responsible business conduct', C/MIN(2023)12/ADD2, p. 8.

[60] See footnote 11.

[61] United Nations Development Programme, 'Human Rights Due Diligence: An Interpretive Guide', 2021, q. 34.

[62] Global Business Initiative on Human Rights, 'What "Good" Looks Like – Meaningful stakeholder engagement', 2025.

[63] See footnote 58.

[64] United Nations, 'United Nations Declaration on the Rights of Indigenous Peoples', 61/295, 2007, Articles 10, 11.2, 19, 28, 29.2 and 32.

[65] UNGPs 17–21 and their commentaries.

[66] See footnote 11, pp. 20–22.

[67] CSDDD, recital 65, Article 13.

[68] UNGP 25 and its commentary.

[69] Case 222/84 Johnston [1986] ECR 1651.Judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097.Judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313.

[70] UN Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework', pp. 28-29.

[71] UN Human Rights Council, 'Improving accountability and access to remedy for victims of business-related human rights abuse: The relevance of human rights due diligence to determinations of corporate liability', A/HRC/38/20/Add.2, 2018, paragraph 45.

[72] Bernaz, N., Bueno, N., Holly, G. and Martin-Ortega, O., 'The EU Directive on Corporate Sustainability Due Diligence: The final political compromise', Business and Human Rights Journal, Vol. 9, Issue 2, 2024, pp. 294–300.

[73] Civil liability is linked specifically to the obligations set out in Articles 10 and 11.

[74] Holly, G. and Zerk, J., Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report, Danish Institute for Human Rights, Copenhagen, 2025.

[75] Kramer X. and Silva de Freitas, E., 'The Corporate Sustainability Due Diligence Directive: PIL and Litigation Aspects', 2024.

[76] Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations prescribes in Article 4(1) that the law of the Member State in which the damage occurs is applicable as the default rule. This will also be the law applicable to environmental damage, unless the claimant chooses to base their claim on the law of the Member State in which the event giving rise to the damage occurred (Article 7(1)).

[77] See also endnote 75.

[78] Based on findings from fieldwork research in selected EU Member States – Finland, France, Germany, Italy, the Netherlands, Poland and Sweden – and the United Kingdom (data collection was conducted before the EU–UK withdrawal agreement entered into force).

[79] García Esteban, A. and Patz, C., Suing Goliath – An analysis of civil cases against EU companies for overseas human rights and environmental abuses and environmental harm in their global operations and value chains, and key recommendations to improve access to judicial remedy, European Coalition for Corporate Justice, Brussels, 2021. Dubost, C. and Potier, D., Rapport d'information déposé en application de l'article 145-7 alinéa 1 du règlement, par la commission des lois constitutionnelles, de la législation et de l'administration générale de la République sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, 2022.

[80] See CSDDD, Article 29(3).

[81] FRA, Enforcing consumer rights to combat greenwashing, Publications Office of the European Union, Luxembourg, 2024.

[82] Caygın Aydın, F., Dicalou, M., Holly, G., and Morris, D., Mandatory human rights due diligence laws: Key design features and practical considerations, Danish Institute for Human Rights, Copenhagen, 2025.

[83] United Nations and Shift, 'Enforcement of Mandatory Due Diligence, Key Design Considerations for Administrative Supervision', Policy Paper, 2021, p.7;

[84] UN Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework', p. 23.

[85] UNGPs 1,3, 25, 26 and 27 and the commentaries thereon.

[86] see CSDDD Recital 75, Articles 24, 25, and United Nations and Shift, 'Enforcement of Mandatory Due Diligence, Key Design Considerations for Administrative Supervision', Policy Paper, 2021.

[87] see CSDDD Recital 75, Articles 24, 25, and United Nations and Shift, 'Enforcement of Mandatory Due Diligence, Key Design Considerations for Administrative Supervision', Policy Paper, 2021.

[88] see CSDDD Article 24 and 25.

[89] Tobler, C., 'ECJ case law on effective, proportionate and dissuasive remedies', in: European Commission: Directorate-General for Employment, Social Affairs and Equal Opportunities, Remedies and sanctions in EC non-discrimination law, Publications Office of the European Union, Luxembourg, 2006, pp. 8–16. Judgment of the Court of 2 August 1993, M. Helen Marshall v Southampton and South-West Hampshire Area Health Authority, C-271/91, ECLI:EU:C:1993:335.

[90] European Commission, 'Fines for breaking EU Competition Law', 2011.

[91] See footnote 43.

About this publication

Luxembourg: Publications Office of the European Union, 2025

HTML

- TK-01-25-034-EN-Q
- ISBN: 978-92-9489-690-2
- DOI: 10.2811/1385698

PDF

- TK-01-25-034-EN-N
- ISBN: 978-92-9489-691-9
- DOI: 10.2811/2506137

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