

Unboxing the New EU Corporate Sustainability Due Diligence Directive

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Today, we can confirm a huge step in the field of Human Rights and Business: companies in Europe have been legally obliged to respect human rights and the environment during their business operations due to the final positive vote in the European Council on the Corporate Sustainability Due Diligence Directive (CSDDD). The Directive now forms part of a global effort of Business and Human Rights enthusiasts to establish mandatory human rights due diligence obligations for companies. After transposition into national legislation within the next two years, EU and non-EU corporations that fall under the CSDDD's scope of application must comply with a set of due diligence obligations, need to establish, and adapt climate plans, and are liable to rightsholders for compensation in civil lawsuits under adapted rules of access to justice. Administrative authorities will supervise compliance.

There is obviously a lot more to unpack in the final text of the Directive. The [German Institute for Human Rights](#), with tremendous support from Verfassungsblog, and in particular Isabella Risini, offers analysis in a blog symposium, which starts with this contribution. A set of invited authors, who have been – in one way or the other – involved in the legislative process of this important business and human rights milestone. The contributions engage with the final text of the Directive and give some initial guidance for interpretation and transposition requirements. We will start with a critical reflection on the neo-colonial context of the law and the law-making process, the non-involvement of rightsholders mainly from the Global South and the outcome regarding stakeholder participation. Secondly, access to justice and administrative supervision measures for rightsholders will be put under scrutiny. Thirdly, the scope of human and environmental rights that are covered by the Directive will be examined. Fourthly, the transposition phase is in focus: accompanying measures, paired with comparative analysis in the context of existing national due diligence legislation, the extraterritorial reach of the Directive, and the involvement of National Human Rights Institutions, one of whom is the [German Institute of Human Rights](#). The transposition and application of the Directive will dominate the agendas of business and human lawyers as well as environmental rights scholars and practitioners. This Symposium intends to provide an initial overview of some of the numerous questions that arise from this piece of legislation.

Political development

The CSDDD, which is considered one piece of the puzzle of corporate accountability for human and environmental rights violations, is the result of a political thriller that took place over the past years. The [final version](#) of the Directive is a political compromise and the result of four years of preparatory work as well as [trilogue](#) negotiations, which began in [June 2023](#) and were concluded in [April 2024](#). During

these trilogues, attempts were made to reach agreements on earlier versions of the CSDDD as captured in the [European Commission's February 2022 proposal](#), the [European Council's November 2022 General Approach](#) and the [European Parliament's amended draft in June 2023](#).

Where do we come from?

Debates around corporate responsibility for human and environmental rights violations started in the early 1970s with attempts to prevent corporate involvement in the South African Apartheid regime. In the 1980s and 1990s, grassroots resistance and mobilization in the aftermath of catastrophes like the oil spills in the [Ogoni Delta in Nigeria](#), or the gas leak in [Bhopal, India](#), marked a new area of the quest for corporate accountability. The underlying basis for the Directive are the [UN Guiding Principles on Business and Human Rights](#) (UNGPs) from 2011, which reflect the first comprehensive soft-law framework outlining a global standard for preventing and addressing the adverse impacts of businesses. The UNGPs were often regarded as a useful frame of reference, but their non-binding character led many companies to underperform in preventing, mitigating, and compensating for human rights violations and environmental degradation. Thus, the turn of the principles into now [mandatory legislation](#) was a necessary step to ensure compliance. The compromise text negotiated by EU member states largely aligns with the UNGPs, however, there are some fundamental differences regarding the limitation on the number of companies that fall within the scope of the CSDDD, limitation within the downstream part of the supply chain, as well as the exclusion of the financial sector to name some examples.

What's the Directive about?

The CSDDD is an economic policy instrument that aims to achieve improvements for people by obliging companies to take measures to prevent human rights violations and improve the human rights and environmental situation along the supply chain in the long term. To this end, companies must identify actual or potential negative impacts on human rights and the environment and take effective measures to counter them. Authorities in the Member States should monitor enforcement. Currently, companies with more than 1,000 employees and a minimum turnover of 450 million euros per year are covered by the CSDDD, which according to current calculations amounts to almost 5,500 companies across Europe. Remarkably, the CSDDD also includes companies that are based outside the EU, but are active on the European market, provided they achieve a net turnover of 450 million euros per year worldwide. This extraterritorial element means, for example, that large tech companies are covered by the CSDDD.

In addition, Member States must also ensure that companies under their jurisdiction are liable under civil law. Under the CSDDD, plaintiffs will face fewer hurdles in enforcing a potential claim for damages than before. The Directive stipulates that, for example, the burden of proof, assistance with procedural costs and an extended limitation period must be introduced. This improved access to justice is a clear

benefit for those affected. In cases where companies have been unable to prevent human and environmental rights violations, remedies must be found for those affected and compensation must be provided.

The CSDDD enshrines due diligence obligations as a duty of endeavour and a reporting obligation. Companies are not per se responsible for the existence of labour exploitation in a country; however, they must make efforts to avoid exploitation or forced labour in their supply chain. Companies must analyse human rights risks and negative environmental impacts; according to the CSDDD, they can then prioritise the most serious violations. In contrast to other national laws, companies must analyse their entire so-called activity chain, i.e. from the raw material through processing and manufacturing to the distribution of a product.

In addition to upcoming transposition and implementation efforts, the finalization of the EU legislative process also provides an opportunity to draw and distribute some of the focus on mandatory human rights due diligence processes from over the last couple of years. Scholars' and practitioners' wisdom, energy and creativity can now also be redirected to the other pillars of Human Rights and Business, which will always have to be complementary to achieve the goal of responsible business avoiding harm for people and planet.

Conclusion

The purpose of the law cannot be repeated often enough: protection of human and environmental rights, accountability for those violating such rights, and putting rightsholders at the center of debates. Has the outcome the potential to fulfill this purpose or will it be a paper tiger creating endless reporting obligations with little to no effect on human rights and environmental protection? Although some achievements on human rights and environmental protection got lost during political negotiations, the Directive has the potential to provide a good basis and to serve its purpose. Transposition into national legislation and effective implementation will be the key point for turning it into an effective tool for the protection of human rights and the environment.

