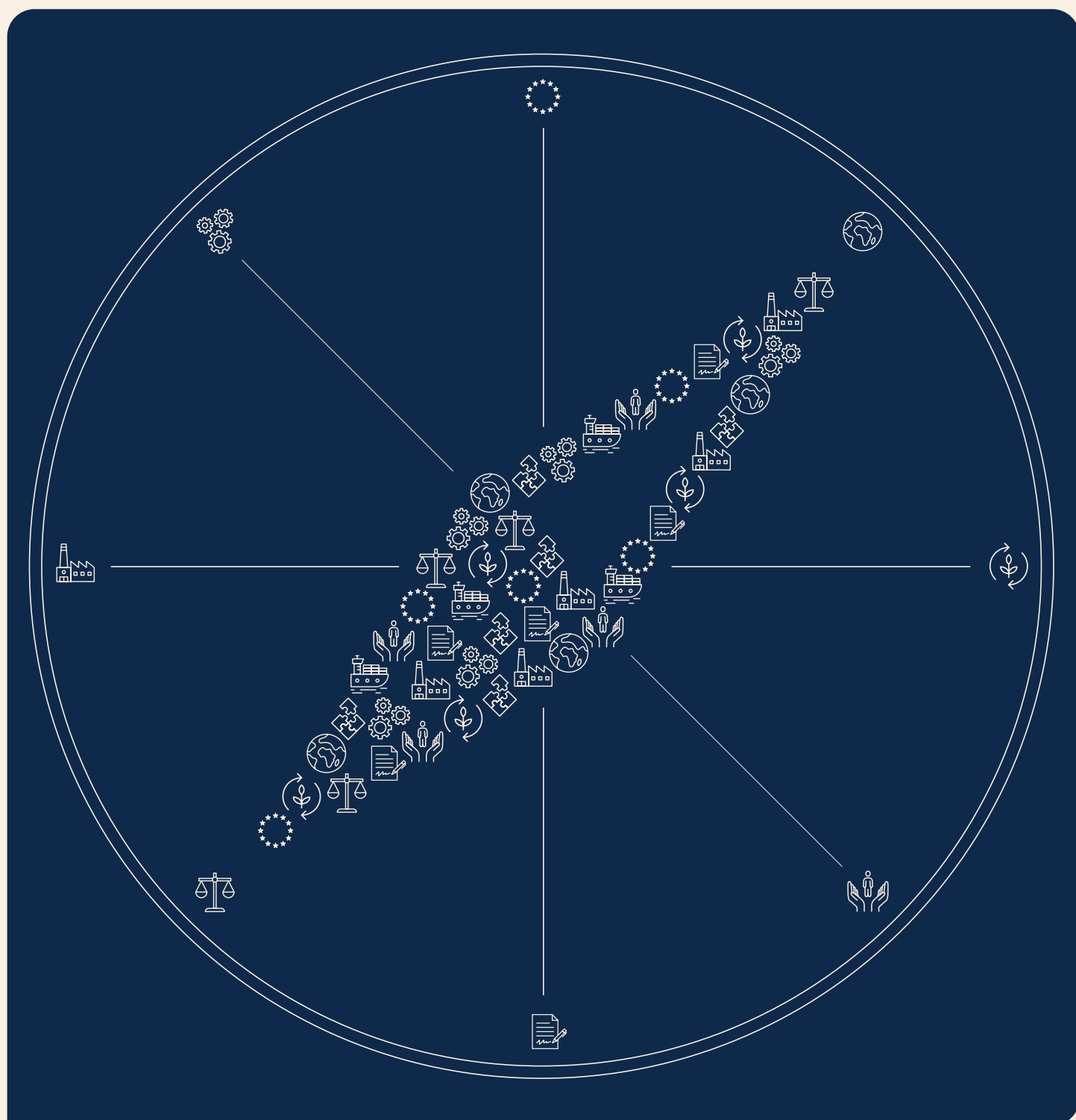


# Making the Corporate Sustainability Due Diligence Directive work for people

Guidance for effective transposition and implementation



## **Making the Corporate Sustainability Due Diligence Directive work for people**

Guidance for effective transposition and implementation

**Authors:** Gabrielle Holly, Mathilde Dicalou, Alix Myczkowski and Fatmanur Caygin

**Acknowledgements:** The authors give thanks to the following expert reviewers:  
Elin Wrzoncki, Signe Andreasen Lysgaard, Marian Ingrams, Virginie Rouas, Ben Shea,  
and Ben Vanpeperstraete.

**Cover image:** Hy-Ran Kilian

**ISBN:** 978-87-7570-387-6

**e-ISBN:** 978-87-7570-388-3

© 2026 Danish Institute for Human Rights

Wilders Plads 8K

DK-1403 Copenhagen K

Phone +45 3269 8888

[info@humanrights.dk](mailto:info@humanrights.dk)

[humanrights.dk](http://humanrights.dk)

Provided such reproduction is for non-commercial use, this publication, or parts of it,  
may be reproduced if author and source are quoted.

At DIHR we aim to make our publications as accessible as possible. We use large font size,  
short (hyphen-free) lines, left-aligned text and strong contrast for maximum legibility.

For further information about accessibility please click

[humanrights.dk/accessibility](http://humanrights.dk/accessibility)

# Contents

<b>1</b>	<b>How to navigate the guidance</b>	<b>4</b>
<b>2</b>	<b>Introduction</b>	<b>6</b>
<b>3</b>	<b>Cross-cutting principles</b>	<b>11</b>
3.1	Taking a purposive approach: what are we trying to achieve through due diligence and how does the CSDDD support those objectives?	11
3.2	When considering transposition	13
3.3	When considering implementation	15
<b>4</b>	<b>Scope of the CSDDD</b>	<b>16</b>
4.1	Personal scope	16
4.2	Material scope	18
<b>5</b>	<b>Substantive due diligence obligations</b>	<b>24</b>
5.1	Appropriate measures	24
5.2	Extent of due diligence and the chain of activities	27
5.3	Identifying impacts	30
5.4	Prioritisation	37
5.5	Preventing, mitigating or bringing an adverse impact to an end	40
5.5.1	Involvement with an adverse impact	41
5.5.2	List of appropriate measures	42
5.5.3	Suspension of a business relationship	44
5.6	Stakeholder Engagement	48
5.7	Monitoring	52
5.8	Company Complaint Mechanism	56
<b>6</b>	<b>Administrative supervision and support measures</b>	<b>60</b>
6.1	Administrative Supervision	60
6.2	Guidance	64
6.3	Accompanying Measures	66
<b>7</b>	<b>Remediation</b>	<b>70</b>
7.1	Civil liability	70
7.2	Substantiated concern mechanisms	74
7.3	Company complaint mechanism	77
<b>8</b>	<b>Concluding recommendations</b>	<b>78</b>
	Recommendations for companies	78
	Recommendations for policymakers	81
	Recommendations for CSOs, NHRIs, trade unions and other stakeholders	83
<b>Annex</b>		<b>85</b>
	Alignment gaps between the CSDDD and the UNGPs and suggested practical approaches	85
<b>Endnotes</b>		<b>90</b>

# 1 How to navigate the guidance

This Guide aims to support the interpretation and implementation of the Directive grounded in the principles of the UNGPs and the objectives of the CSDDD. It will be relevant to:

- **Policymakers** to inform the transposition laws, the design of supervisory authorities tasked with supervising and enforcing the law and the development of guidance and other accompanying measures.
- **Companies** within scope, to help them take an effective approach to implementing their due diligence obligations; as well as orientation to companies within the value chains of in scope companies to understand how the law may affect them and what support is available to them.
- **Civil Society Organizations (CSOs), Trade Unions (TUs), National Human Rights Institutions (NHRIs) and rightsholders** to understand what the CSDDD requires and how it can be used to ensure that it effectively addresses adverse human rights and environmental impacts and available mechanisms for provision of remediation.

The menu at the bottom of the page allows the reader to navigate through the different sections of the Guide. Throughout the Guide, attention points are directed toward these different actors, including recommendations relevant to the transposition phase, the implementation phase, and the future review of the Directive. Readers may consult individual sections independently depending on their role and stage of engagement with the CSDDD. The Guide is structured as follows:

- [Section 1](#): provides an outline of the Guide and orients the reader.
- [Section 2](#): introduces the Guide, outlines the background and issues that the CSDDD is designed to address, and situates the CSDDD within this broader context.
- [Section 3](#): outlines some cross-cutting and fundamental principles for effective transposition and implementation of the CSDDD in a manner aligned with the Directive's objectives and key international frameworks.
- [Section 4](#): analyses each element of the due diligence obligations in the Directive, highlighting areas of alignment and divergence with international frameworks and identifying practical considerations for transposition and implementation for policymakers, companies and other stakeholders including CSOs, NHRIs and trade unions.
- [Section 5](#): examines the role of policymakers in creating an effective enforcement and support ecosystem for the implementation of the Directive. It focuses on the role of Supervisory Authorities, their investigative and enforcement powers, and approaches to supervision. The section also analyses the guidance and support measures that policymakers should provide to facilitate effective implementation of the Directive,

- **Section 6:** outlines the remediation and liability framework under the CSDDD, with particular focus on the changes to civil liability requirements introduced through the Omnibus I amendments, as well as the substantiated concern mechanisms overseen by Supervisory Authorities and the penalty framework.
- **Section 7:** sets out a series of concluding cross-cutting recommendations for policy makers, companies and CSOs, TUs and NHRIs.

The guide also includes an annex identifying alignment gaps between the CSDDD and the UNGPs and suggests practical approaches to address them.

## 2 Introduction

Since the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>1</sup> were endorsed, significant efforts have been made to build a shared understanding of business responsibility to respect human rights. Over the past decade, international organisations, governments, companies, National Human Rights Institutions (NHRIs), civil society and workers' groups have increasingly worked to translate the expectations of the UNGPs into practical approaches for identifying and addressing adverse impacts connected to business activities. Yet companies, whether local or multinational, publicly or privately operated, continue to have adverse impacts on workers, communities, consumers and the natural environment across complex global value chains. These human rights and environmental challenges persist, underscoring the continued need to focus attention and resources on effectively preventing and addressing adverse impacts.

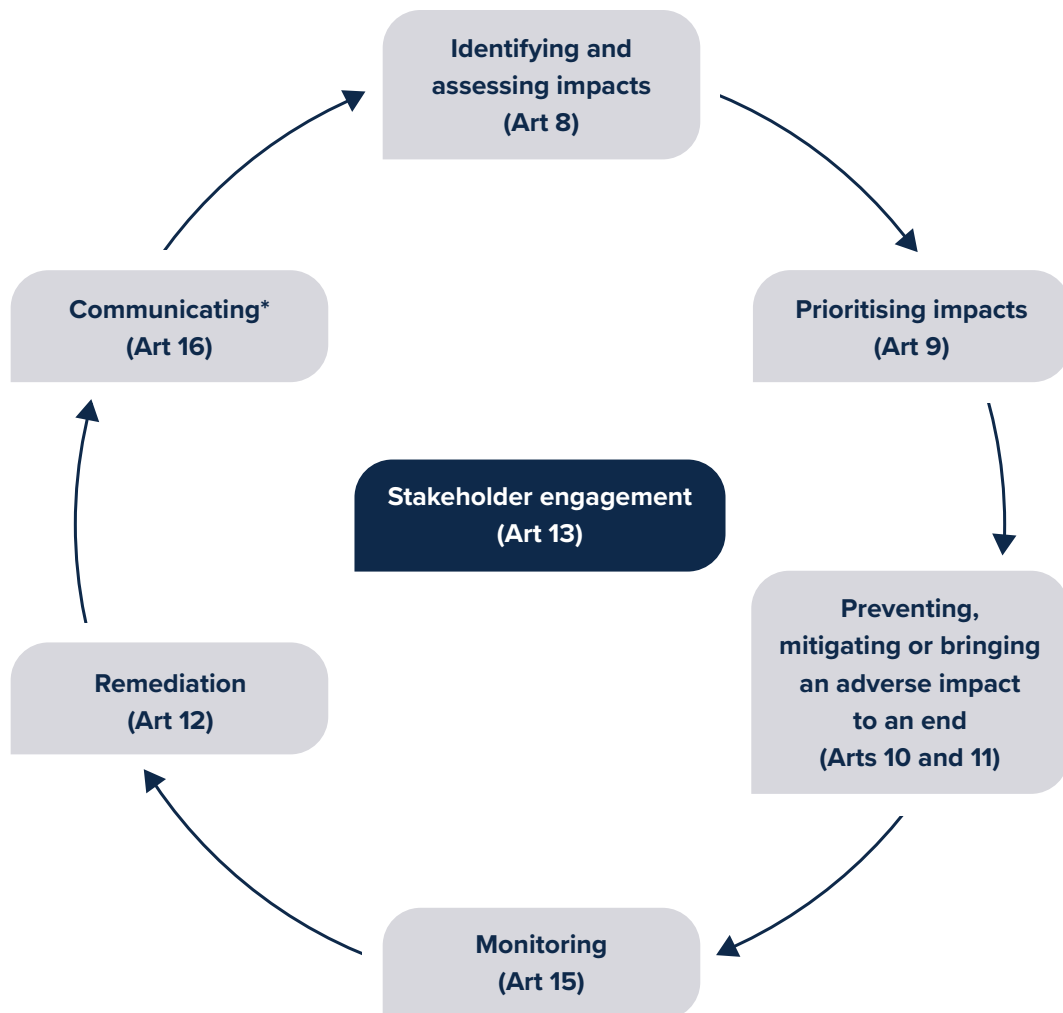
The adoption of the Corporate Sustainability Due Diligence Directive<sup>2</sup> (CSDDD) is part of a trend in recent years towards the adoption of binding sustainability obligations for companies, particularly in Europe.<sup>3</sup> It creates a cross-sectoral obligation for large companies to undertake human rights and environmental due diligence (HREDD) to identify, assess, address, and remedy potential and actual adverse impacts on human rights and the environment in connection with a company's activities and within their own operations and through their business relationships. It will have relevance not only within the EU but also throughout global value chains, applying directly to certain large non-EU companies as well as impacting a wider range of non-EU companies and stakeholders as EU-based companies cascade due diligence requirements to business partners outside the EU. The adoption of the law presents a valuable opportunity to consolidate an approach to managing human rights and environmental risks which builds on the standards set in international instruments and emerging good practices.

The CSDDD forms part of an evolving regulatory landscape seeking to address the impacts that businesses have on the enjoyment of human rights and the environment. These include initiatives on cross-sectoral corporate sustainability reporting, human rights and environmental due diligence and sustainable finance, topical regulatory initiatives, as well as bans on the importation/exportation of goods that have been produced in a way causing particular kinds of harm to people and the planet. Taken together, these instruments aim to ensure that businesses, financial institutions, and the economic system as such develop responsibly and contribute to sustainable development.<sup>4</sup>

The CSDDD represents a key initiative capable of harnessing the transformative potential of the UNGPs. However, it is important to ensure that the move from voluntary standards to binding requirements on companies retains the approach outlined in these standards rather than encouraging a shift towards a compliance-driven mindset that is more concerned with fulfilling the minimum standard required by the law than exploring the innovative approaches. Meaningful stakeholder engagement and pioneering collaborations are needed to ensure due diligence is effective in preventing, reducing and addressing harms to people and the environment. There are opportunities to address these issues in the development of transposition laws and through additional measures, such as guidance.

It is clear that mandatory measures are needed to drive change,<sup>5</sup> however, the soft law standards in the UNGPs and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines)<sup>6</sup> should continue to guide the concrete implementation of binding obligations. These internationally recognised frameworks encourage a holistic approach to due diligence that is aimed at achieving better respect for human rights and the environment with which the CSDDD is largely aligned. The stages of due diligence outlined in the CSDDD match those outlined in the UNGPs and OECD Guidelines, as depicted in the graphic below.

**Click through the different steps of due diligence to access the relevant sections of the guide.**



\* Communicating on impacts (Art 16) is not covered in a specific section of the Guide.

Accordingly, these frameworks remain critical touchstones to guide companies, state authorities, civil society and other stakeholders in the transposition and implementation of the obligations contained in the CSDDD.<sup>7</sup>

While the EU has been a pioneer in introducing a comprehensive approach to promoting sustainability, more recently there has been a shift in its political priorities, with a new focus on “simplification” in order to boost the competitiveness of the EU. In February 2025 an “omnibus” proposal was published which introduced significant amendments to the CSDDD which had only formally been in force for a few months.<sup>8</sup> The amending directive resulting from this proposal was officially adopted on 26 February 2026 (Omnibus I).<sup>9</sup> In the course of 2025 the Commission published 10 further Omnibus proposals<sup>10</sup> covering regulation in a wide range of areas including the environment, defence, chemicals, food safety and the digital space.

Efforts to simplify and reduce burdens on business were welcomed by certain segments of the business community.<sup>11</sup> However, the Commission has come under criticism for the way it has introduced a number of these simplification initiatives. A number of complaints were referred to the European Ombudsman, who made a finding of maladministration on the basis of the use of an accelerated procedure which did not accommodate transparent, evidence-based and inclusive preparation.<sup>12</sup>

### Box 1: Legislative history of the CSDDD

The CSDDD and other related measures such as the Corporate Sustainability Disclosure Regulation (CSRD) and the Green Taxonomy were introduced as measures to support the objectives of the [European Green Deal](#) and the [Sustainable Finance Action Plan](#), namely to “transform [the EU’s] economy and society to put it on a more sustainable path”<sup>13</sup> and support implementation of the UN Sustainable Development Goals.<sup>14</sup> Implementing the just and inclusive transition contemplated under these initiatives required the EU to “put sustainability and the well-being of citizens at the centre of economic policy, and the sustainable development goals at the heart of the EU’s policymaking and action”.<sup>15</sup> Measures contemplated to achieve these objectives included fostering sustainable corporate governance and requiring companies to develop sustainability strategies, including undertaking appropriate due diligence throughout the supply chain,<sup>16</sup> which ultimately became the CSDDD.<sup>17</sup>



While the CSDDD still has strong potential to strengthen responsible business conduct, a number of the amendments introduced by Omnibus I risk jeopardising the objectives of the law. These include, among others, the significant reduction of the Directive's personal scope, restrictions on the ability of in-scope companies to request information from their business partners, a narrower definition of stakeholders, stakeholder engagement requirements limited to certain stages of the due diligence process, and the fragmentation which arises from the removal of the Union-wide civil liability regime. Certain pre-existing limitations of the CSDDD remain unchanged by Omnibus I, including limited coverage of certain downstream value chain activities, the absence of corporate governance provisions, carve-outs for the financial sector, and notable gaps in the range of international human rights instruments included in the Directive's material scope.

The core purpose of the CSDDD remains the same before and after the Omnibus I amendments, namely: to ensure that businesses contribute to sustainable development and deliver better outcomes for people and the environment. Interpreting and operationalising the CSDDD solely through a narrow, formal reading of individual provisions risks overlooking the broader objective of the instrument. It is important to keep the CSDDD's core purpose as a guiding compass throughout national transposition and implementation processes.

Achieving this will require the development of clear transposition laws which capture the core concepts of due diligence faithfully, as well as encouraging effective implementation. This requires creating an enabling environment through accompanying measures and guidance informed by a purposive interpretation of the Directive and grounded in the expectations reflected in the UNGPs and the OECD Guidelines. Such guidance should provide companies with practical clarity on how to operationalise due diligence in line with the Directive's objectives, while also supporting rightsholders, CSOs, NHRIs, trade unions and other stakeholders in engaging meaningfully with these processes. Continuous learning, monitoring and assessment will also be essential to ensure that implementation remains focused on effectiveness and on delivering tangible improvements to the rightsholders and the environment.

The approach to supervision and enforcement will also be critical to promote effective due diligence and prevent purely compliance-driven approaches that focus narrowly on meeting minimum legal requirements.

The aim of this publication is to provide practical and accessible guidance on the key elements of the final CSDDD following the Omnibus I amendments, and to support policymakers, companies and stakeholders in approaching effective transposition and implementation in line with the expectations of the UNGPs. Prior to the Omnibus I amendments, the Danish Institute for Human Rights published [The EU Corporate Sustainability Due Diligence Directive: Maximising impact through transposition and implementation](#), the [Transposition of the Corporate Sustainability Due Diligence Directive: A practical guide for national human rights institutions](#), and the [reaction brief to the compromise text of the Omnibus I proposal](#), which can be read in conjunction with this guide.

## 3 Cross-cutting principles

### 3.1 Taking a purposive approach: what are we trying to achieve through due diligence and how does the CSDDD support those objectives?

The overall objective of the CSDDD is to ensure that companies contribute to sustainable development and deliver improved outcomes for individuals and the environment.<sup>18</sup> It seeks to achieve this by mandating that companies within scope undertake HREDD, articulated in a series of interdependent obligations to integrate due diligence into their policies and risk management systems, identify the impacts they have on people and the environment, take action to address them, monitor and communicate on their efforts, provide remediation for adverse impacts and engage meaningfully with stakeholders across the process.<sup>19</sup> At its core, companies are required to take “appropriate measures” to identify, avoid and address their impacts, defined to mean measures which are “capable of achieving the objectives of due diligence by effectively addressing adverse impacts”.<sup>20</sup>

To deliver on this overall objective, adherence to the Directive cannot be approached as a narrow, checkbox-driven compliance exercise focused on meeting the minimum requirements of isolated provisions. Rather, the directive should be interpreted and implemented in light of the broader objectives of HREDD. This requires reading the provisions and recitals of the CSDDD together and understanding how they support companies to effectively deliver outcomes for the people and the environment.

Due diligence is the tool that the instrument provides to support companies in navigating the risks to people and the environment which arise from the potentially complex environments in which they operate and enable them to effectively address the wide range of impacts they may encounter. Here the CSDDD reflects the pragmatic approach of the UNGPs and OECD Guidelines on which it is based.<sup>21</sup> These instruments set out a proportionate, risk-based approach to due diligence, focused on effectively preventing, mitigating or avoiding risks to people and the environment. This does not require a company to address every impact across its entire value chain all at once. This approach is reflected in the CSDDD, which entitles companies to prioritise impacts based on severity and likelihood.<sup>22</sup>

Navigating this complexity and implementing effective due diligence is greatly assisted by taking a purposive approach, asking the fundamental question: “What are we trying to achieve by doing due diligence?”. Asking this question at all stages of the process can help clarify what action should be taken in a given context both to support compliance with the CSDDD and align efforts with the international standards. For example, a company’s approach to stakeholder engagement can be substantially clarified by taking a purposive approach. The instrument includes an obligation to meaningfully engage with stakeholders at various stages of the due diligence process.<sup>23</sup> However, this does not mean engaging individually with each and every stakeholder the company may have globally. It is important to understand what is being sought to be achieved through stakeholder engagement and how it serves the broader objective of ensuring that due diligence efforts are fit for purpose and capable of effectively addressing impacts: whether helping to identify and understand an impact, designing appropriate measures that are going to be effective and meet the needs of affected stakeholders, or in understanding what form of remediation will

restore an affected person or community to the state they would have been in if the impact had not occurred. Having a purposive approach will help define who to ask, what to ask and how to ask, and avoid risk of checkbox compliance.

There is a need to look at the obligations in the CSDDD holistically, as each stage of HREDD has interdependencies. Due diligence will not always be conducted in a perfectly linear fashion, and the different stages of due diligence will inform each other. For example, identification of an impact is often presented as the first stage of due diligence, with efforts to address an impact, monitor and communicate following in sequential fashion. However, in practice due diligence is a far more dynamic process, requiring companies to continuously respond and adapt to changed circumstances or new risk factors as they arise.<sup>24</sup> Information which may lead to the identification of impacts will channel through all stages of the process, including, as expressly recognised in the instrument, through complaint or notification mechanisms.<sup>25</sup>

Further, the day-to-day exercise of HREDD will often not be a single dedicated process, rather it will interact with or be integrated within a range of other risk management processes. While companies need to ensure that such an approach satisfies their obligations under the CSDDD, integration in this way can indicate that HREDD is being meaningfully embedded in the company's existing processes. Such integration should always be done keeping in mind the objective of due diligence.

The CSDDD applies directly to only very large companies, but expressly acknowledges that these in scope companies have a great degree of influence over their value chains.<sup>26</sup> Companies within scope need to consider not only their own operations, but also their place in an oftentimes complex web of relations which constitutes the value chain of which they are a part. This includes their direct business partners, but also indirect business relationships, often extending many tiers deep within the chain.<sup>27</sup> The emphasis on business relationships in the instrument means that in order to effectively undertake due diligence, companies within scope are obliged to engage with, and in some circumstances provide support to, their business partners in order to discharge their obligations and ensure that due diligence efforts are capable of effectively addressing impacts.

The process of due diligence will also be applied to a broad and heterogeneous range of circumstances,<sup>28</sup> relationships<sup>29</sup> and kinds of impacts,<sup>30</sup> including whether or not the risk of an impact has crystallised into an actual impact. This necessitates different approaches to applying the same obligation in differing contexts. For example, the obligations to take action to prevent or bring to an end an adverse impact in Articles 10 and 11 enumerate a number of appropriate measures a company may take in response to an identified impact determined by reference to the level of involvement that the company has to the impact, the nature of the impact, as well as the particular circumstances and relevant risk factors.<sup>31</sup> This will be highly context dependent, but must always have an eye to ensuring that measures are appropriate and are capable of effectively addressing a given impact: for example, instances of forced labour identified within the operations of a direct business partner will require a materially different appropriate measures to a case of pollution which is harmful to the health of a local community occurring at a mine site deeper in the supply chain, but which ultimately supplies a key commodity to the business.

Such a purposive approach is important to embed both at the stage of developing transposition laws, as well as implementation, supervision and enforcement of the obligations in those laws.

## 3.2 When considering transposition

Member States will have to transpose the Directive's obligations by 26 July 2028 at the latest, and the CSDDD will start applying from 26 July 2029.<sup>32</sup> Policymakers should have in mind the objectives of the CSDDD articulated in the recitals when transposing its requirements into national laws and policies and discharging supervisory and enforcement functions.

Throughout, this guide offers recommendations for clear and effective transposition laws that will be relevant for policymakers, and CSOs, TUs and NHRIs who may engage in transposition processes. It identifies opportunities to go further than the minimum requirements of the CSDDD and pursue greater alignment with the international standards. Where it is not possible to go further than the text of the CSDDD it is nonetheless critical to ensure that transposition laws faithfully capture the core due diligence concepts, resolve ambiguous drafting and align to the greatest extent possible with the UNGPs and OECD Guidelines. The recitals provide important context to the substantive obligations outlined in the operative articles, elaborating on how the core concepts of due diligence are to be understood and referring explicitly to the processes of due diligence outlined in the key international standards. National legislatures should keep the objectives of the CSDDD as a core touchstone when developing transposition laws and turn to the recitals to provide clarification, as well as the UNGPs and the OECD Guidelines, which ground the CSDDD's approach to due diligence.

In all cases, drafters should have as an attention point the need for local language to accurately capture the core due diligence concepts. This guide identifies a number of examples where official translations do not precisely align with the concept as it understood in the instrument, requiring careful consideration in the development of transposition laws.

In some cases, matters of interpretation would benefit from a consistent approach across the Member States rather than being addressed on an ad hoc basis by individual Member States. In such cases, national authorities can raise ambiguities and challenges of interpretation with the European Commission to resolve through transposition workshops.

This guide also offers recommendations on technical implementation questions at the transposition stage relevant to the national context such as ensuring an effective approach to supervision and enforcement, including the designation, resourcing and capacity building of Supervisory Authorities and the development of accompanying measures.

Remediation and access to justice remains an important and under-served aspect of due diligence. Member States are obliged to ensure that companies provide remediation where they cause or jointly cause adverse impacts.<sup>33</sup> To meet this expectation, policymakers need to address and reduce the barriers that create challenges in accessing the remedy mechanisms contemplated in the CSDDD. In the case of civil liability, the CSDDD includes several measures to address access-to-justice barriers commonly faced by claimants litigating business and human rights disputes, such as access to information, limitation periods, costs of proceedings, and availability of injunctive relief.<sup>34</sup> However, these are only some of the barriers faced by claimants, indeed generally by public interest litigants.<sup>35</sup> Further barriers, such as a lack of collective redress mechanisms and challenging burdens of proof, remain unaddressed in the CSDDD. National authorities responsible for transposition are encouraged to take steps to address these remaining barriers through complementary legal and institutional measures.

There is also a need for policymakers to be alive to the need for policy coherence across other instruments which contain responsible business conduct standards,<sup>36</sup> such as the EU Batteries Regulation,<sup>37</sup> the EU Deforestation Regulation,<sup>38</sup> and the EU Forced Labour Regulation,<sup>39</sup> which impose due diligence-related obligations with differing personal scopes. Of particular relevance is the Corporate Sustainability Reporting Directive (CSRD)<sup>40</sup> as the CSDDD does not include reporting requirements per se, rather companies are expected to report under the CSRD.<sup>41</sup>

## Box 2: Harmonisation and non-regression

Article 4 of the Directive specifies certain articles which Member States are not permitted to diverge from which means that Member States may not go further than the Directive in their national laws by imposing stricter obligations. This is often termed a “maximum harmonization approach”. The scope of the provisions subject to the “maximum harmonisation approach” has been broadened by the Omnibus I amendments, to include articles covering the level at which due diligence should be conducted in a corporate group (Article 6); obligation to identify and assess actual and potential adverse impacts (Article 8); the way in which companies may prioritise identified actual and potential adverse impacts (Article 9); the obligation to prevent and mitigate potential adverse impacts through appropriate measures (Article 10(1) to (5)); the obligation to bring actual adverse impacts to an end through appropriate measures (Article 11(1) to (6)); the obligation to set up a notification mechanism and a complaints procedure (Article 14); the duty to monitor due diligence measures (Article 15); and the obligation to report and communicate on due diligence efforts (Article 16).

However, there are a number of qualifiers to this approach, meaning that Member States will have some level of discretion as to how they transpose the requirements of certain provisions of the Directive into national law. Member States are entitled to introduce more stringent provisions on any Article not subject to a maximum harmonisation approach.<sup>42</sup>

The CSDDD does not affect Union or national laws concerning human, employment, or social rights, or protection of the environment and climate change, except insofar as those laws concern general corporate due diligence obligations.<sup>43</sup> The recitals expressly clarify that due diligence obligations are complementary to, rather than replace, the specific legal obligations that operate to protect human rights and the environment, such as labour, working time and equality law; law concerning workplace health and safety, including the handling of hazardous materials; construction standards and building zoning laws; and law regulating product or food safety.<sup>44</sup>

In addition, the CSDDD includes a “non-regression” provision, stating that “This Directive shall not constitute grounds for reducing the level of protection of human, employment and social rights, or of protection of the environment or the climate provided for by the national law of the Member States or by the collective agreements applicable at the time of the adoption of this Directive” (Article 1(2)). However, the Omnibus I amendments introduced a qualifier to this general non-regression principle, allowing States that already have due diligence laws in place to amend them to align with the Directive (Article 1(2)). This would entitle jurisdictions such as France and Germany which already have due diligence laws in place to potentially weaken them to bring them into conformity with the CSDDD. This could impact, for example, the personal scope of the German Supply Chain Act, which currently includes companies of over 3000 employees.

### 3.3 When considering implementation

Clear transposition laws are the first stage. As we turn toward implementation, guidance, support to companies and other stakeholders and a consistent approach to supervision and enforcement will be critical. Throughout, this guide offers recommendations for implementation of transposition laws to ensure that they will result in effective due diligence which drives better outcomes for people and the environment. Recommendations are directed to policymakers, and CSOS, trade unions and NHRIs who each have a role to play in successful implementation.

Companies should take a purposive approach to implementation, informing their due diligence efforts with an understanding of their fundamental objective, asking “what is the objective of due diligence?” at all stages of the process. It is important to keep the UNGPs and OECD Guidelines as key reference points to inform a holistic, risk-based approach which centres rightsholders and the environment. In practice, this involves considering contextual risk factors, communicating with business partners, engaging constructively with rightsholders, their representatives and relevant experts, and tailoring responses to the specific risks and needs identified on the ground. This kind of engagement should be seen as a means of facilitating effective due diligence, rather than a bureaucratic “add on”. Companies should make sure that the use of external support is appropriate and does not result in a company “outsourcing” its due diligence obligations to a third-party service provider or scheme. Requirements for remediation should be considered not only in the context of a formal remediation process and be informed by the needs of stakeholders. These principles can help orient companies to conduct effective due diligence within their operational realities and the often complex environments in which they do business.

Policymakers must ensure that the approach taken to supervision and enforcement reflects the objectives of due diligence, supports innovative practices and uses enforcement powers when necessary. It is critical that guidance and other support align with the objective of the CSDDD as articulated in the recitals and the UNGPs and OECD Guidelines. A coherent approach should be taken both in the approach to supervision of the CSDDD and related instruments, and to the development of accompanying measures, including ensuring that support is given not only to business, but also to other stakeholders, with a particular focus on supporting rightsholders.

CSOs, TUs, NHRIs are vital actors to ensure that the CSDDD drives good outcomes for people and the environment. These actors can have a particular expertise in human rights or a particular issue, geography or context which can be essential to inform due diligence and ensure that the rightsholder perspective is placed at the centre.

These actors can engage with companies to provide such contextual information and expertise, as well as providing advice and expertise to Supervisory Authorities. They can help to ensure that a rightsholder centric approach is taken to monitoring compliance and assessing the effectiveness of company actions. This can include undertaking research and data gathering to assess the effectiveness and provide an evidence base to inform the review of the CSDDD to be undertaken by the Commission. Importantly they can raise awareness and support rightsholders to exercise their rights under the CSDDD and leverage the CSDDD to strengthen human rights and environmental protection in other areas.

## 4 Scope of the CSDDD

It is useful at the outset to define a number of matters of scope, namely: which companies have direct obligations under the CSDDD (Article 2) and what human rights and environmental impacts are they required to consider (Articles 3(1)(b) and (c) and the Annex).

These provisions are considered in this section, along with recommendations to ensure effective transposition and implementation of each article.

### 4.1 Personal scope

#### What does the CSDDD say?

Under the new scope of the CSDDD after the Omnibus I amendments, the Directive only applies to very large EU companies of over 5,000 employees and EUR 1.5 billion net annual turnover (Article 2(1)(a)) and non-EU companies with a net turnover of EUR 1.5 billion generated within the EU (Article 2(2)(a)). It will also apply to companies which do not meet these thresholds but are the ultimate parent company of a group which reaches these thresholds (Article 2(1)(b) and 2(2)(b)). The Directive also covers companies that have entered into franchising or licensing agreements in the EU in return for royalties amounting to more than EUR 75million in the EU, provided that they have a net worldwide turnover of more than EUR 275million (Article 2(1)(c) and 2(2)(c)).

#### What does it mean?

The UNGPs state that all companies have a responsibility to respect human rights, which can be addressed through undertaking human rights due diligence that is proportionate to their size, sector, operational context, ownership, and structure.<sup>45</sup> The CSDDD also acknowledges this in its Recital 7 by stating that “All businesses have a responsibility to respect human rights, which are universal, indivisible, interdependent and interrelated”. Nonetheless, following the Omnibus I amendments, the final personal scope of the CSDDD represents a significant reduction over the scope of the CSDDD as it was adopted and entered into force in 2024.<sup>46</sup> Current estimates<sup>47</sup> suggest that the revised scope would apply to around 1,447 corporate groups, removing 80% of companies covered in the initial scope. Only 14 EU Member States have 10 or more corporations covered by the CSDDD, with four having none at all.<sup>48</sup> This is a significant reduction in scope from the European Commission’s initial estimates for the original CSDDD.<sup>49</sup> Such a high threshold is not only a departure from the UNGPs but also significantly undermines the ability of the CSDDD to create a level playing field and to drive meaningful change across global value chains.

The personal scope is not subject to a maximum harmonization approach. Accordingly, national transposition authorities can go beyond the Directive and expand the personal scope during the national transposition of the Directive to pursue further alignment with the UNGPs. In some jurisdictions, there may also be corporate forms recognised under the national laws of the Member States, such as cooperatives, which are not included in the definition of “company” under Article 3(1)(a), which only lists those recognised under EU law. Policymakers can consider including such additional corporate forms within the personal scope of their transposition laws.

Although the obligation to conduct HREDD applies only to the largest companies under the final CSDDD, the CSDDD will nonetheless have an indirect impact on a much broader range of companies, both within and outside the EU internal market. The overall logic of the CSDDD is to apply stricter obligations on larger companies that are perceived to have sufficient resources to comply, with the expectation that they will bring other smaller companies along through their business relationships.<sup>50</sup> There may be opportunities to incentivise companies that fall outside the Directive’s personal scope to undertake due diligence by leveraging the broader support ecosystem created by the CSDDD, including guidance and accompanying tools, as well as investor and consumer expectations. This includes support which in-scope companies are required to provide to business partners who are SMEs “where necessary in light of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems”.<sup>51</sup> In addition, where compliance with the requirements of a code of conduct or prevention action plan would jeopardise the viability of the SME, companies are required to provide “targeted and proportionate financial support”.

However, challenges may also be presented by the Omnibus I amendments which introduce restrictions on information requests being made by companies to their business partners for the purpose of identifying impacts.<sup>52</sup> It is important to ensure that this restriction does not create a contradiction with the overall logic of the instrument, which contemplates that in scope companies engage with their business partners and provide support to them through the due diligence process. For more in-depth discussion of this restriction, see [Section 5.3](#).

The significant narrowing of the Directive’s personal scope following the Omnibus I amendments will also affect the supervision ecosystem. As the number of companies falling within the Directive’s scope decreases, Supervisory Authorities in several Member States may be responsible for overseeing only a limited number of companies, while others may supervise a larger number of companies depending on the distribution of in-scope entities across Member States. This may create disparities in resourcing, practice and capacity across Member States. Ensuring effective and uniform implementation will therefore require strengthening the capacity and coordination of Supervisory Authorities, including through guidance and cooperation mechanisms at EU level (see [Section 6.1](#) for more information).

#### Attention points for transposition



##### Member States should:

- Consider going beyond the Directive by expanding the personal scope to pursue alignment with the UNGPs and level the playing field for companies.
- Assess opportunities for including additional corporate forms, particularly in jurisdictions where there may be forms of companies recognised under the national laws of the Member States, such as cooperatives, which are not included in the definition of “company” under Art 3(1)(a).

**Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

## Attention points for implementation



### Member States and the Commission should:

- Seek to incentivise companies that fall outside the Directive’s personal scope to undertake due diligence. This can include leveraging the broader support ecosystem created by the CSDDD, as well as drawing on other policy frameworks and investor and consumer expectations to promote alignment with responsible business standards.
- Provide clear guidance on how companies should seek information from business partners in a way which encourages ongoing engagement, consistent with the overall logic of the instrument.
- Provide clear guidance for in-scope companies on how to effectively support SME business partners and separately issue tailored guidance for companies beyond the Directive’s formal scope, clarifying the requirements that may affect them and the support mechanisms available.
- Strengthen EU-level coordination and capacity-building of Supervisory Authorities to mitigate potential uneven supervisory burdens and approaches resulting from the Directive’s narrowed personal scope.

### Companies should:

- Continue engaging with business partners, including those outside of the Directive’s personal scope, through ongoing dialogue, information exchange and capacity-building support to ensure a meaningful approach to due diligence throughout chains of activities and with consideration of expectations under other due diligence-related EU instruments.
- Provide proportionate support to and engage with SME business partners to enable meaningful information gathering and collaboration throughout the process of HREDD without shifting expectations onto SMEs.

**Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations can** use the implementation phase to systematically collect and document an evidence base that could support expansion of the personal scope of the CSDDD in the context of the review clause.

## 4.2 Material scope

### What does the CSDDD say?

The CSDDD covers a range of human rights and environmental impacts. Companies are required to undertake due diligence on “adverse impacts”, defined to mean “adverse human rights impacts” and “adverse environmental impacts”.

The Directive defines “adverse human rights impact” (Art 3(1)(c)) as the impact resulting from an “abuse” of:

- selected rights and prohibitions included in human rights instruments listed in Part I (1) of the Annex; and

- other human rights enshrined in a list of international instruments listed in Part I (2) of the Annex, provided that:
  - a) the human right can be abused by a company or legal entity;
  - b) the human right abuse directly impairs a legal interest protected in the human rights instrument listed in the Annex; and
  - c) the company could have reasonably foreseen the risk that such human rights may be affected, taking into account the circumstances of the specific case, including the nature and extent of the company’s business operations and its chain of activities, the characteristics of the economic sector, and the geographical and operational context.

“Adverse environmental impact” is defined to mean an adverse impact on the environment resulting from the breach of the human rights prohibitions and obligations listed in Part I, Section 1, points 15 and 16 and Part II of the Annex to the Directive, taking into account national legislation linked to the provisions of the instruments listed therein (Article 3(1)(b)). This includes causing measurable environmental degradation which impacts on certain human rights interpreted in line with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Annex Part 1, Section 2, paragraph 15).

**What does it mean?**

A clear definition of the material scope of the CSDDD is needed to ensure that companies identify all relevant impacts and undertake due diligence in a way which is capable of effectively addressing the adverse impacts identified. Clarity is also needed to ensure that Supervisory Authorities are able to effectively exercise oversight and apply sanctions, and to ensure that rightsholders and other stakeholders are able to effectively utilise accountability mechanisms in the law, whether through civil liability,<sup>53</sup> reporting a substantiated concern to a Supervisory Authority or using a company complaint mechanism. Lack of clarity risks creating a complex threshold question for companies on what rights and what types of negative impacts are and are not included, which could divert much needed resources away from undertaking substantive due diligence at the implementation stage.

The UNGPs make clear that companies can impact the full spectrum of human rights. At a minimum, companies should identify impacts by reference to the rights contained in the International Bill of Human Rights<sup>54</sup> and the ILO Core Conventions.<sup>55</sup> Depending on circumstances, business enterprises may need to consider other standards, for example, those which protect specific groups or populations, or international humanitarian law.<sup>56</sup> This is also acknowledged in the recitals to the CSDDD which recognise the need for companies to consider their impacts on the full spectrum of internationally recognised human rights and to take an expansive approach to identifying and assessing human rights impacts.<sup>57</sup>

The listing of rights and instruments in the CSDDD annex is intended to assist companies to understand concretely what human rights and environmental impacts they are required to consider as part of their due diligence. However, a number of features of the definition of the material scope of the CSDDD create ambiguities and should be addressed in the transposition process and through the development of guidance.

First, while the Annex setting out the rights and instruments that constitute the material scope appears relatively comprehensive at first glance, these lists have significant gaps

and do not describe the rights and prohibitions in a manner typically understood in international human rights law. The Directive lists instruments that have been ratified by all Member States, but this list is not comprehensive, meaning that the material scope of the CSDDD is necessarily partial and will not include the full range of rights in relation to which company actions may remove or reduce enjoyment. Key omissions include<sup>58</sup> the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>59</sup> the Convention on the Elimination of all forms of Discrimination Against Women,<sup>60</sup> and the Convention on the Elimination of all forms of Racial Discrimination,<sup>61</sup> the Convention on the Rights of Persons with Disabilities.<sup>62</sup>

Second, defining adverse human rights impact by reference to “human rights abuses” not expressly listed in the annex but which could be derived from the listed instruments on certain conditions could add a level of complexity to a company’s evaluation of its adverse human rights impacts and ultimately unduly limit the scope of human rights under consideration.<sup>63</sup> For example, a company would be required to take a view on whether a right enshrined in an instrument which is legally binding on states could be abused by a company, a complex question of international law with no clear answer. Such an approach risks creating company practices which may be out of step with international law standards. Similarly, a company would be required to make an assessment of whether an abuse of a human right derived from one of the instruments impairs a “protected legal interest”, which is another complex matter which would benefit from clarification.

Third, Article 8 of the CSDDD requires that companies take “appropriate measures” to identify and assess actual and potential impacts. The relationship between the process of ascertaining whether a right or prohibition could have been relevantly “abused” by the company and the process of identification of impacts in Article 8 is not made clear in the CSDDD. By including the requirement that an “abuse” could have been reasonably identified by the company in the definition of the material scope, the CSDDD appears to create a threshold question which pre-empts the identification process in Article 8. This carries a risk of unduly narrowing the material scope of rights and prohibitions to be considered by a company as part of the identification stage.<sup>64</sup>

In addition to issues arising from the convoluted and restrictive approach to the scope of rights and prohibitions included in the Annex, other ambiguities arise from the definition of “adverse human rights impact” by reference to an “abuse” of the rights and prohibitions in the Annex. The definition of “adverse human rights impact” in the UNGP does not use the term “abuse”, rather, it has been defined to mean “any action that removes or reduces the ability of an individual to enjoy his or her human rights”.<sup>65</sup> The recitals state that the term “abuse” “should be interpreted in line with international human rights law”.<sup>66</sup> Interpretive guidance from the UN Office of the High Commissioner for Human Rights (OHCHR) has clarified that the term “human rights abuse” is used to refer to abuses committed by non-State actors, including business enterprises”, distinguished from “violations” which are breaches of international law by states.<sup>67</sup> However, the term “abuse” is used in a number of different ways under international law and international human rights law.<sup>68</sup> It is sometimes used to distinguish between “violations” of rights by states from “abuses” of rights by a company, consistent with OHCHR guidance, but it is also sometimes used interchangeably with the term “violation”. The UNGPs refer to state obligations to protect against human rights abuses,

including by third parties such as business enterprises<sup>69</sup> but do not themselves define the term nor elaborate on the relationship between the concept of abuse in the UNGPs and the concept of abuse under international human rights law.<sup>70</sup>

In sum, the complexity of these conditions creates risks that companies will spend resources on evaluating and arbitrating the nature of an adverse impact against the definition of the material scope, rather than focusing efforts on conducting effective due diligence. National transposition authorities should seek clarification and guidance from the European Commission on each of these important questions of interpretation to resolve through transposition workshops. It is also important that a common approach to the material scope is understood by Supervisory Authorities across the EU, which could be facilitated by the European Network of Supervisory Authorities (see further [Section 6.1](#) for more detailed consideration of Supervisory Authorities and the European Network). Guidance from the Commission should provide clarity for companies on these matters to ensure that resources are not unduly diverted towards these threshold questions. In line with the Recitals,<sup>71</sup> such guidance should encourage companies to consider their impacts on the full spectrum of internationally recognised human rights.

#### **Box 4: Environmental and climate due diligence under the CSDDD**

The due diligence obligation under the CSDDD covers adverse impacts on the environment resulting both from:

- breaches of rights and prohibitions in human rights instruments, including the prohibition of causing any measurable environmental degradation which have impacts on food production, deny access to drinking water, impairs access to sanitary facilities, harms health, safety land use or possessions, or systems through which an ecosystem contributes to human wellbeing (Annex I (1) paragraph 15), and the right to land and means of subsistence (Annex I (1) paragraph 16); and
- breaches of prohibitions and obligations under environmental conventions listed in the Annex (such as the Stockholm Convention on Persistent Organic Pollutants and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal) (Annex II).

Degradation of ecosystems, pollution, loss of biodiversity, and climate change can directly affect the enjoyment of fundamental rights such as the rights to life, health, water, food, housing, and an adequate standard of living<sup>72</sup> and are explicitly included in the material scope of the instrument. Companies should therefore approach environmental due diligence and human rights due diligence not only as separate processes but also consider the interdependencies between the environmental and human rights elements included in the material scope. With respect to climate impacts, despite the deletion of the mandatory transition plan for companies by the Omnibus I amendments, the material scope of the Directive still includes prohibitions on causing harmful emissions. Emissions of greenhouse gases are the cause of climate change, which at a global scale will have impacts on food production, access to clean water, sanitation as well as damage to health and use of land and assets, the specific impacts derived from human rights instruments identified in Annex I (1) paragraph 15.

Companies should therefore consider climate impacts as part of their overall human rights and environmental due diligence.<sup>73</sup> While there is no longer a specific obligation to develop and implement a climate transition plan, the development and implementation of such a plan could be one appropriate measure a company may undertake as part of their due diligence obligations.

Companies should therefore consider whether their emissions of greenhouse gases contribute to climate change in order to take measures and develop strategies to combat climate change and its related impacts on human rights. These may include conducting human rights and environmental due diligence across value chains to identify and address human rights and environmental impacts, including those related to climate change, disclosing greenhouse gas emissions, taking measures to reduce emissions in line with climate mitigation goals, and ensuring safeguards against greenwashing and undue corporate influence.<sup>74</sup>

The maximum harmonisation approach under the CSDDD does not extend to the material scope of rights that companies must consider as part of their due diligence obligations. Accordingly, transposition provides Member States with an opportunity to cover a broader range of human rights in their national laws. Stakeholders, including civil society actors and rightsholders' groups, NHRIs, TUs, and community and workers' organisations, can advocate for the ambiguities identified above to be clarified, as well as advocating for a broader range of instruments to be listed in the transposition laws consistent with the approach in the UNGPs. Further, consideration of the inclusion of other internationally recognised rights should be considered as they emerge, such as the right to a clean, healthy and sustainable environment. This should be revisited during the review of the instrument.

### Attention points for transposition



#### Member States and the Commission should:

- Pursue further alignment with the UNGPs by including a broader range of rights and instruments in the Annex during the national transposition processes.
- In order to ensure a common approach to transposition, implementation and supervision across the EU, seek clarification and guidance from the Commission on how the material scope is defined, including: the definition of “abuse” and how the three conditions in the definition of adverse human rights impact should be interpreted, i.e.: (a) that a company can abuse a right; (b) that an abuse of a right directly impairs a protected legal interest; and (c) that a company could have reasonably foreseen the risk of an abuse and how this requirement should interact with the impact identification obligation under Article 8.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level, especially advocate for clearer drafting on the material scope.

## Attention points for implementation



### The Commission should:

- Ensure that guidance adequately covers the material scope, providing clarification to companies in scope such as with regards to the listed rights and instruments of the Annex, including by encouraging companies to consider the full spectrum of internationally recognised human rights.
- Ensure that the European Network of Supervisory Authorities can be used to facilitate a common understanding of and approach to the material scope among Supervisory Authorities across the EU.
- Consider the inclusion of other internationally recognised rights during the review of the instrument.

### Companies should:

- Approach their due diligence in line with the expectations of the UNGPs to consider all internationally recognised human rights when identifying their human rights impacts, rather than being drawn into complex threshold and interpretation questions.
- Be attentive to the human rights impacts of environmental impacts and vice versa rather than approaching environmental and human rights impacts in a siloed manner.
- Take measures and develop strategies to combat climate change and its related impacts on human rights as part of their due diligence. These may include conducting human rights and environmental due diligence across value chains to identify and address human rights and environmental impacts, including those related to climate change, disclosing greenhouse gas emissions, taking measures to reduce emissions in line with climate mitigation goals, and ensuring safeguards against greenwashing and undue corporate influence.

### Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations can:

- Highlight the challenges of interpretation outlined above with the relevant national authority and encourage them to seek clarification from the European Commission on how the three conditions in the definition of adverse human rights impact will work.
- These actors can also use the implementation phase to systematically collect and document evidence base that could support for expansion of the material scope of the CSDDD in the context of the review clause.

## 5 Substantive due diligence obligations

Under the CSDDD, companies are obliged to conduct risk based human rights and environmental due diligence which includes: integrating due diligence into policies and risk management systems (Article 7); identifying and addressing actual or potential adverse impacts (Article 8) and prioritizing actions taken to address those impacts where necessary (Article 9); taking appropriate measures to prevent, mitigate and bring to an end actual and potential impacts which they have identified (Articles 10 and 11); providing remediation (Article 12); carrying out meaningful engagement with stakeholders (Article 13); establish and maintain a notification mechanism and a complaints procedure (Article 14) and monitor the effectiveness of their due diligence (Article 15). These obligations are outlined in this section, along with recommendations to ensure effective transposition and implementation of each operative article.

### 5.1 Appropriate measures

#### What does the CSDDD say?

There are a number of foundational concepts in the CSDDD which cut across many stages of due diligence. One of these is “appropriate measures”, defined to mean 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.” (Article 3(1)(o))<sup>75</sup>

The definition of appropriate measures includes a number of other important defined terms. This includes “risk factors”, defined to mean: “facts, situations or circumstances that relate to the severity and likelihood of an adverse impact, including facts, situations or circumstances at the level of the business partner, such as whether the business partner is not a company covered by this Directive or other comparable mandatory sustainability due diligence legal acts; at the level of geography and context, such as the level of law enforcement with respect to the type of adverse impact; and at the level of sectors, of business operations, and of products and services” (Article 3(1)(u)).<sup>76</sup>

It also includes “severity of an adverse impact”, which is defined to mean “the scale, scope or irremediable character of the adverse impact, taking into account the gravity of an adverse impact, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact within a reasonable period of time” (Article 3(1)(v)).<sup>77</sup>

Companies are obliged to take appropriate measures when they identify impacts (Article 8), when they take action to address actual or potential impacts (Articles 10 and 11), carry out effective engagement with stakeholders (Article 13) and in response to a well-founded complaint submitted to a company complaint mechanism, which could include provision of remediation (Article 14(3)). Accordingly, the various elements within the definition need to be considered at each of these stages of due diligence.

### What does it mean?

Taking “appropriate measures” is a foundational concept referred to across the various stages of due diligence under the CSDDD and it is essential to examine this concept closely at the outset to understand its role within the Directive’s core due diligence requirements.

The definition of “appropriate measures” has three core elements:

- **effectiveness**, in that the measure is capable of effectively achieving the objectives of due diligence;
- **proportionality**, guided by severity and likelihood criteria; and
- **availability** to the company in the given context, given the nature of the impact and relevant risk factors.

**Effectiveness:** The introduction of an “effectiveness” requirement is an important addition as it encourages the design of due diligence measures that are targeted at effectively addressing the impact, rather than being focused on mere compliance with the law. It also stresses that whilst the CSDDD introduces an obligation of means rather than results, the means are indeed meant to be effective in addressing human rights impacts and a “tick-box compliance” approach will not suffice. This concept emphasises the underlying purpose of due diligence, requiring companies to always consider whether the measures they are taking are “capable of achieving the objectives of due diligence” so as to be “appropriate” within the definition.

**Proportionality:** The definition requires that the measures a company takes are “commensurate to the degree of severity and likelihood” of an adverse impact. The definition of severity generally aligns with the concept as it is understood in the UNGPs, which require consideration of the scale, scope or irremediable character of the adverse impact. It is an important concept which requires the measures that the company takes to be proportionate to the risks encountered. Authoritative commentary to the UNGPs states that severity “is the most important factor in determining the scale and complexity of the processes the enterprise needs to have in place in order to know and show that it is respecting human rights”.<sup>78</sup> Commentary also highlights that it is not necessary for an impact to have all characteristics (scale, scope, irremediability) in order to be considered severe.<sup>79</sup> The CSDDD accords with this interpretation, using the phrase “scale, scope or irremediable character” in the definition.<sup>80</sup>

**Availability:** An appropriate measure under the CSDDD is one which is reasonably available to the company in the circumstances of the case, including the nature and extent of the impact and relevant risk factors. To make an assessment of what is “reasonably available” a company must consider both the nature of the impact itself, as well as the broader context in which the impact has occurred. This includes contextual factors identified in the definition of risk factors, such as risks which may arise from its own operations, products and services, the geographic and sectoral context in which it operates, and its business relationships.<sup>81</sup>

The definition of “appropriate measures” imports a number of other concepts, and is applied in relation to different stages of the due diligence process. It is important that all elements of this foundational concept are captured accurately in transposition laws, in line with the intended meaning articulated in the recitals.

This includes ensuring that the concept is translated faithfully into local languages in transposition laws. For example, the French translation uses the term “efficacité” instead of “effectivité” to translate the concept of “effectiveness”. The term “efficacité” implies that due diligence measures will only be “appropriate” in the sense of the Directive if they are efficiently addressing adverse impacts. On the other hand, the German translation uses the word “angemessen” (“appropriate” or “adequate”) to translate the term “effective”, which implies a weighing of different aspects and does not include fulfilling the objective of due diligence.

Further, this fundamental concept should be the subject of clear guidance which ensures that companies understand all elements of the concept and how they apply at these various stages. Guidance should align with the intentions in the recitals and the UNGPs and its authoritative interpretations, and enable common understanding among Supervisory Authorities overseeing compliance and enforcement.

#### Attention points for transposition



##### Member States and the Commission should:

- Ensure that national transposition laws faithfully reflect and translate the different components of the concept of “appropriate measures”, including effectiveness, proportionality and severity, and support a purposive interpretation of the CSDDD that promotes effective risk prevention and mitigation rather than formalistic or tickbox compliance.
- Ensure that national transposition laws reflect the CSDDD’s concept of risk factors to support risk-based, context-sensitive due diligence and avoid formalistic interpretations and implementation.
- Reflect the concept of proportionality in a way that ensures that appropriate measures are commensurate with the severity of impacts and what is reasonably available to companies, taking into account risks and context.

**Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

## Attention points for implementation



### Companies should:

- Approach the development of appropriate measures with pragmatism and result-orientation that aims to fulfil the objective of due diligence by emphasising the importance of the effectiveness criterion.
- Develop and implement appropriate measures which seek to effectively address the identified potential and actual impacts bearing in mind the specificities of a given context, including proportionality (driven by the severity criterion) and what is reasonably available to the company.

**Member States and the Commission should** ensure that the guidance emphasise the notion of “effectiveness” as underpinning the development and implementation of appropriate measures by emphasising a proactive, pragmatic and context-specific understanding of due diligence.

### Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations can:

- Throughout implementation, highlight the importance of effective measures of due diligence by documenting emerging good practices and building the capacity of implementing actors.
- Monitor the design and implementation of appropriate measures by evaluating them against the concepts of effectiveness, proportionality and availability.

## 5.2 Extent of due diligence and the chain of activities

### What does the CSDDD say?

The CSDDD mandates due diligence processes that cover not only a company’s own operations and the operations of its subsidiaries (Article 8(1)) but also business partners in its so-called “chains of activities”. “Chain of activities” is defined in the CSDDD to mean:

- first, the activities of upstream business partners that relate to the products and services of the company in question, such as, the design, extraction, sourcing, manufacture, transport, storage, and supply of raw materials, and,
- second, specific activities of downstream business partners, including the distribution, transport, and storage of products, provided that these activities are carried out for the company or on its behalf (Article 3(g)).

“Business partner” is defined in the CSDDD to include both direct business partners, with whom the company has a commercial agreement, and indirect business partners which perform business operations related to the operations, products or services of the company (Article 3(1)(f)).

### What does it mean?

The UNGPs and OECD Guidelines expect due diligence to be conducted across the full value chain, including the company’s own operations, as well as the upstream and the downstream value chain, i.e., what happens after a product or service leaves the company.

The definition of “chain of activities” does not cover all parts of the value chain. Upstream relationships are broadly construed in the definition, covering activities of business partners relating to the products and services of the company. However, the term covers only some of the activities of business partners in the downstream part of the value chain, specifically distribution, transport and storage where those activities are undertaken for or on behalf of the company. This approach could create a threshold question for companies as to whether a particular business relationship is in scope of the law, diverting resources away from conducting due diligence. To avoid this outcome, companies should be encouraged to adopt an approach in line with the UNGPs.

It is important to note that downstream impacts cannot be ignored by a company. Even if the definition of chain of activities takes a more restrictive approach this part of the value chain, a number of downstream impacts arise from companies’ own operations. Conducting due diligence on a company’s own operations should therefore take into account impacts arising from, for example, the design, sale and marketing of products and services. For due diligence on these kinds of business activities to be effective, it should consider the way the product or service may be used. As we have outlined in a previous report,<sup>82</sup> many companies and financial actors are already doing some form of due diligence on the downstream part of their value chain including by using existing risk management systems (such as “know your customer” checks, anti-bribery and corruption processes, etc) to consider the impacts of the design, sale, marketing, use, and disposal of products. It is important to ensure that the CSDDD does not perversely encourage a step back from emerging good practices. This would also be consistent with the approach under the CSRD<sup>83</sup> and the associated European Sustainability Reporting Standards (ESRS)<sup>84</sup> which cover downstream impacts.

Companies should be encouraged to approach due diligence in this way. National transposition authorities should ensure transposition laws do not use unduly restrictive language that limits downstream due diligence to distribution, transport, and storage only excluding consideration of a broader range of downstream impacts, including those arising from the design, sales, and marketing of products and services within own operations. Member States and the Commission should also clarify, through guidance and practical examples, the types of downstream impacts arising from companies’ own operations and the possible effective measures to address them.

As the definition of “chain of activities” is not subject to a maximum harmonization approach, national transposition authorities could also be encouraged to expand the definition transposition laws to include parts of the downstream value chain, such as the use of the product or service, design, composition, commercialisation, sales, marketing, disposal and waste management. Such an approach would align with the UNGPs, which apply to the full value chain and reflect the current downstream due diligence practices of companies. Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations, can advocate for an expanded definition to pursue further alignment with the UNGPs.

The review clause requires that the Commission report on whether the definition of “chain of activities” needs to be revised,<sup>85</sup> offering an opportunity to evaluate whether the definition is fit for purpose and propose an amendment.

## Attention points for transposition



### Member States should:

- Consider expanding the definition of the “chain of activities” in transposition laws to include parts of the downstream value chain, such as the use of the product or service, design, composition, commercialisation, sales, marketing, disposal and waste management. Such an approach would align with the UNGPs and reflect the ongoing downstream due diligence practices of companies.
- Ensure that transposition laws do not use unduly restrictive language that limits downstream due diligence to distribution, transport, and storage only, but rather emphasises that companies’ own operations due diligence requires consideration of a broader range of downstream impacts, including those arising from the design, sales, and marketing of products and services.

**Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

## Attention points for implementation



### Member States and the Commission should:

- Encourage companies to engage with impacts across the value chain, including downstream impacts which may arise through own operations activities such as the design, sales, and marketing of products and services, and ensuring that due diligence is not artificially constrained by strictly defined steps in the chain of activities.
- Provide guidance on the types of downstream impacts arising from companies’ own operations and the possible effective measures to address them, drawing from emerging good practice.
- Through the European Network of Supervisory Authorities, ensure a harmonised approach to supervision that encompasses the downstream effects arising from “own operations”-related activities, such as design and marketing.

### Companies should:

- Align approaches with the UNGPs rather than diverting resources into excessive processes to evaluate whether a particular business relationship falls within the definition of chain of activities.
- Conduct due diligence on downstream impacts as part of its due diligence on the design, sale, marketing, distribution and other aspects directly mentioned in the Directive.
- Consider other downstream steps that are not explicitly listed in the Directive and where companies may have adverse impacts, including with relation to the use of products, as well as end-of-life considerations related to circularity and waste management.

**Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations** can monitor potential

and actual adverse impacts throughout implementation occurring as part of companies' downstream value chain, as well as document examples of company practicing due diligence on their downstream value chain to contribute to the evidence base for revision of the definition of "chains of activities" in the context of the review.

## 5.3 Identifying impacts

### What does the CSDDD say?

Under the CSDDD, in-scope companies are required to take appropriate measures to identify and assess actual and potential adverse impacts (Article 8(1)). The Directive requires companies to:

- First, carry out a scoping exercise to identify "general areas" where adverse impacts are most likely to occur and be most severe. This scoping should be conducted based solely on "reasonably available information" and must cover the companies' own operations, those of their subsidiary and those of their business partners in their chains of activities (Article 8(2)(a)).
- Second, based on that scoping, companies should carry out an in-depth assessment in the areas where adverse impacts were identified to be most likely to occur and be most severe (Article 8(2)(b)). The Directive states that in-depth assessment should aim to obtain accurate and reliable information, in particular on the nature and extent, causes, severity, and likelihood of the identified adverse impacts, to enable prioritisation and the adoption of appropriate measures to address the identified risks (Omnibus I, Recital 40).

While conducting these assessments, companies must consider relevant risk factors, including risks arising at the level of the business partner, at the level of geography and context and at the level of sectors, of business operations, and of products and services (Article 3(1)(u) and Article 8(2), see discussion at [Section 5.1](#) above).

The CSDDD as amended by Omnibus I includes a new restriction on a company's ability to request information from business partners for the purpose of the in depth assessment, allowing such requests only where the information is "necessary" and, for business partners with fewer than 5,000 employees, only where the information "cannot be reasonably obtained by other means" (Article 8(3)(a) and (b)). Omnibus I, Recital 41, highlights that requests should be targeted, reasonable, and proportionate.

This should be read alongside other restrictions on seeking information from business partners for the purposes of sustainability reporting introduced to the CSRD. See further Box 5.

In addition, the CSDDD recognises other means by which an impact may be deemed "identified". Under Article 14(3), where a complaint referred to a company complaint mechanism is assessed to be "well-founded", it is taken to be identified for the purpose of Article 8, requiring companies to take appropriate measures in line with Articles 10 and 11.

### What does it mean?

Identification is a threshold question in the CSDDD. Companies are only required to take “appropriate measures” to address impacts under Articles 10 and 11 if they have been identified. The process used to identify impacts, therefore, is critical as it impacts all other stages of due diligence.

The overall approach to identification in the CSDDD broadly aligns with the with the risk-based approach of the key international standards, the UNGPs, the OECD Guidelines<sup>86</sup> as elaborated in the OECD Due Diligence Guidance for Responsible Business Conduct (OECD Due Diligence Guidance),<sup>87</sup> and the ILO Tripartite Declaration.<sup>88</sup> Consistent with the approach in these standards, risk assessment should focus on risks to people and the environment, rather than risks to the business.<sup>89</sup>

Under the international standards, companies are required to identify any potential and actual adverse impacts in which the company may be involved, either through their own activities or arising from their direct or indirect business relationships. The process should draw on internal and/or independent external human rights expertise and involve meaningful consultation with potentially affected groups and other relevant stakeholders, in a manner commensurate with the size of the company and the nature and context of its operations.<sup>90</sup> The UNGPs acknowledge that where business enterprises have large numbers of entities in their value chains, it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, due to factors such as operating context and the products or services involved and prioritise these areas for HREDD.<sup>91</sup>

However, the UNGPs also note that the responsibility to respect human rights is not reduced even where due diligence is challenging because of the complexity and scale of a business’ operations or value chain: “not knowing about human rights abuses linked to its operations, products or services is unlikely by itself to satisfy key stakeholders, and may be challenged in a legal context, if the enterprise should reasonably have known of, and acted on, the risk through due diligence”.<sup>92</sup>

Under the CSDDD, companies are required to take “appropriate measures” to identify impacts, which imports all of the elements of that definition into the identification exercise (see [Section 5.1](#) above). Accordingly, companies must ensure that the process undertaken to identify impacts is capable of effectively achieving the objectives of due diligence, is proportionate, based on severity and likelihood criteria, and reasonably available, given the context and relevant risk factors. The Recitals note that the requirement to take appropriate measures does not equate to a requirement that companies identify all impacts.<sup>93</sup> However, the CSDDD itself suggests that the process to identify impacts should not be construed too narrowly, given that Articles 10 and 11 which concern the actions that a company should take to address actual and potential impacts applies to impacts that “have been, or should have been, identified”.<sup>94</sup> Companies therefore should undertake a pragmatic and risk-based approach consistent with that articulated in the UNGPs and OECD Guidelines, and the obligation to approach identifying impacts in a manner capable of effectively achieving the objectives of due diligence.

While the CSDDD adopted in 2024 required companies to map their own operations, those of their subsidiaries and their chain of activities, the final text following the Omnibus I amendments requires companies to conduct a scoping exercise, followed by an in-depth assessment. The Directive therefore no longer explicitly requires a comprehensive mapping of the value chain to the entity level. The “scoping exercise” instead requires a general understanding of the company’s operations and business relationships across the chain of activities and its associated human rights and environmental risks, which is largely in line with the expectations of the UNGPs and OECD Guidelines.<sup>95</sup> While a comprehensive mapping is no longer required, conducting an effective scoping exercise will still require companies to obtain a sufficient level of visibility over their operations and business relationships to enable the identification and prioritisation of higher risk areas for in-depth assessment.<sup>96</sup>

While the approach to identification is generally consistent with the risk-based approach, which requires companies to direct their attention to areas of greatest risk to people and the environment, there is one key departure in the amendments introduced through Omnibus I. Article 8(3)(c) entitles a company to prioritise assessing impacts which involve direct business partners where adverse impacts identified are “equally likely to occur or equally severe” in several areas of the value chain.

An undue focus on direct business partners would not be effective in addressing human rights and environmental impacts, which typically occur farther in the supply chain or the downstream part of the value chain. The European Commission has itself acknowledged that “the main risks to human rights and the environment most often occur farther upstream (and downstream) in the value chain”.<sup>97</sup> This has also been acknowledged by company practitioners.<sup>98</sup> Human rights and environmental risks often depend on complex contextual risk factors and evolving information. It is difficult to ascertain how a company would be able to make the assessment that an impact arising in the context of a direct supplier (Tier 1) would be “equally likely” or “equally severe” as an impact arising in another part of the value chain (Tier n). Determining that impacts are “equally” likely and severe raises practical challenges and may lead to rigid numerical risk scoring approaches with an undue focus on direct business partners, departing from the UNGPs’ flexible, pragmatic, and risk-based approach to due diligence which treats severity as the primary consideration with likelihood as a secondary consideration. Such approaches could limit the Directive’s ability to contribute to meaningful risk identification and mitigation across global value chains. In practical terms, the difficulty in establishing whether something is of equal likelihood or severity should direct companies to apply a true tier agnostic risk-based approach, directing attention to where risks are most likely and severe. For these reasons, the provision should not be interpreted in a manner which diverts resources towards ranking exercises at the expense of conducting meaningful due diligence, or a default prioritisation of direct business partners. This is essential to prevent a further narrowing of the Directive’s transformative impact across value chains, especially considering its already limited personal scope. Commission guidance should encourage such an approach.

As noted above (see [Section 4.2](#)), the definition of “adverse human rights impact” includes a requirement that an “abuse” could have been reasonably foreseen by the company in respect of rights and prohibitions gleaned from the instruments listed in Part 1, Section 2 of the Annex. This element of the definition should not be interpreted as narrowing the scope of risks to be considered at the identification stage under Article 8. Guidance should clarify how the criterion in the definition of an adverse human rights impact, “that

a company could reasonably have foreseen the risk of such abuse”, interacts with the impact identification obligation under Article 8. Companies should be encouraged to approach the identification exercise broadly and assess potential impacts across their operations and value chains without treating foreseeability as a preliminary threshold that limits the range of risks examined. Such an interpretation would be consistent with the logic of the UNGPs and with the Directive’s own framing that impacts to be addressed include those that “have been, or should have been, identified”.<sup>99</sup>

Companies are required to undertake the scoping exercise based solely on “reasonably available information”. There is no definition in the Directive itself as to what constitutes “reasonably available information”. Omnibus I, Recital 39 states that companies are not required to systematically identify adverse impacts at the entity level, but rather to scope general areas by relying solely on information reasonably available to them. The same recital further states that, as a general rule, this will preclude them from requesting information from business partners, and that companies will have flexibility in determining what information is reasonably available to them. It should be noted that there are no limitations under the international standards with respect to the information that companies should use to identify adverse impacts.

Although scoping is intended to be a broad, initial exercise that enables prioritisation, this does not relieve companies from carefully assessing the scope, credibility, and sufficiency of the information available to them.<sup>100</sup> “Reasonably available information” should be interpreted expansively and include a wide range of credible sources,<sup>101</sup> such as research services, independent and civil society reports, media investigations, complaints submitted through complaint mechanisms,<sup>102</sup> submissions through notification mechanisms,<sup>103</sup> and information obtained through meaningful stakeholder engagement during risk identification process.<sup>104</sup> The last point is particularly important given that the final text of the Directive narrows the definition of stakeholders by removing NHRIs and civil society actors from its scope (see [Section 5.6](#)). In this context, continued engagement with NHRIs and civil society actors, as well as a broad and good-faith interpretation of “reasonably available information” by companies, becomes essential to ensure that information that could reasonably be obtained from these stakeholders is not excluded from the scoping exercise.

This restriction on information requests applies at the stage of the in-depth assessment, meaning that companies may request information from business partners only where the information is necessary and, in the case of business partners with fewer than 5,000 employees, only where the information cannot be reasonably obtained by other means.<sup>105</sup>

If implemented strictly, this restriction could contradict the overall logic of the CSDDD, which recognises the influence that the larger in scope companies have over their global value chains, and introduces a number of expectations across the instrument that in scope companies engage with their business partners and provide support to them through the due diligence process.

As outlined in [Section 5.1](#) above, appropriate measures must be effective in addressing adverse impacts. To ensure that the measures are effective, companies should engage with business partners in their chains of activities. The ability to ask the right questions and engage with business partners is central to what the UNGPs expect from companies and to enabling due diligence to be more than a paper exercise. In practice, companies identify and assess risks

through a combination of methods, including ongoing dialogue and quotidian engagement with business partners and suppliers. Information which could inform the identification exercise can be obtained through routine site visits as part of a company’s tendering, know-your-customer, procurement or quality assurance processes, social audits and other interactions with business partners from whom they source or to whom they provide their services<sup>106</sup> in addition to formal HREDD-specific processes. Measures are often shaped and tailored to be effective through these interactions with business partners. It is important to ensure that the restrictions on information requests introduced by Omnibus I do not impede these processes.

#### **Box 5: Limits on information requests under the CSRD**

The Omnibus I introduced new restrictions on making information requests of business partners for the purpose of conducting in-depth. A similar limitation has been introduced in the Corporate Sustainability Reporting Directive (CSRD).

Under the new provisions in the CSRD, reporting undertakings may not require business partners that fall below the 1,000-employee threshold (“protected undertakings”) to provide information beyond what will be specified in a forthcoming delegated act covering voluntary reporting standards based on the current Voluntary Standard for SMEs (VSME). If they do so, protected undertakings have a statutory right to decline such requests.

In practice, there will be an ongoing interaction between sustainability reporting steps taken under the CSRD and due diligence processes conducted under the CSDDD. While these two instruments impose distinct obligations, sustainability reporting processes under the CSRD often improve visibility over impacts in the value chains and may help inform due diligence processes when taking appropriate measures to address identified impacts.

Disclosures on social sustainability and human rights contained in the current VSME are not aligned with a risk-based approach and are largely confined to a limited set of metrics related to own workforce. Relying solely on this level of information would restrict visibility of human rights impacts on workers in value chains, as well as on communities and consumers or end users.

To ensure adequate visibility over human rights risks in value chains, the forthcoming delegated act based on the VSME should address the shortcomings of the current standard and encourage disclosures aligned with a materiality based and risk-based approach.

Moreover, the thresholds for what constitutes “necessary” information or information that “cannot be reasonably obtained by other means” remain unclear, as does how this provision could be operationalised. It is important that in-scope companies continue to engage with their business partners to support continuous improvements in respect for human rights and the environment. Without clear guidance, these restrictions could create threshold questions which could unnecessarily divert resources away from meaningful due diligence. National transposition authorities should clarify the thresholds for what

constitutes “necessary” information or information that “cannot be reasonably obtained by other means”. The Commission and Member States should provide guidelines for in scope companies to calibrate their measures when requesting an appropriate level of information that is “targeted, reasonable and proportionate”.<sup>107</sup> Such guidance can facilitate information requests commensurate with the level and nature of the risk, as well as the type and size of the business partner from whom the information is sought.

Guidance should further clarify how this restriction is to be interpreted against the obligations across the instrument requiring companies to engage and support their business partners. In doing so, guidance should emphasise that in order for due diligence measures to be effective, it must involve meaningful, ongoing engagement with business partners throughout the company’s chain of activities to effectively identify adverse impacts and address them in line with the UNGPs.

Companies should treat the limitations on information requests not as a constraint but as an incentive to design more proportionate, targeted and reasonable engagement with business partners. Rather than relying on standardised questionnaires or approaches implemented uniformly across suppliers, companies are encouraged to tailor supplier assessments based on relevant risk factors, contextual considerations and the results of their scoping exercises. They should also continue to embed human rights considerations into existing operational processes such as procurement, tendering, supplier onboarding, audits, and other routine interactions with business partners. Integrating human rights considerations into these operational practices can enable companies to frame information requests in a more targeted and proportionate manner.

Impact identification is a critical phase, as all subsequent HREDD steps will build on this first stage. National transposition authorities and the Commission should therefore clarify ambiguous terms in line with the spirit of the UNGPs and ensure that transposition laws and upcoming guidance do not inadvertently/indirectly restrict the critical stage of impact identification. The guidance should ensure that the appropriate measures taken at that stage are guided by the effectiveness criterion, thereby allowing for a broad identification of actual and potential impacts.

### Attention points for transposition



#### Member States and the Commission should:

- Ensure that transposition laws accord with the risk-based approach and relevant recitals.
- Consider how companies are to interpret the restrictions on information requests under the CSRD (for reporting purposes) as opposed to the CSDDD (for the broader due diligence exercise), as well as how to connect such potential restrictions with the expectations under other EU instruments.

**Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

## Attention points for implementation



### The Commission and Member States should:

- Provide guidance for in-scope companies on how to calibrate their measures when requesting an appropriate level of information from business partners that is “targeted, reasonable and proportionate”, to facilitate information requests commensurate with the level and nature of the risk, as well as the type and size of the business partner from whom the information is sought.
- Guide companies on how they should navigate the CSDDD’s limitations on information requests in the context of overlapping due diligence obligations under other EU instruments, in order to promote consistency, legal certainty and effective risk identification.
- Clarify how the criterion in the definition of an adverse human rights impact, “that a company could reasonably have foreseen the risk of such abuse”, interacts with the impact identification obligation under Article 8. The Commission should ensure that interpretation of these elements aligns as closely as possible with the UNGPs to support a consistent approach among Member States to the definition of adverse human rights impacts.

### Companies should:

- Focus on risks to people and the environment, rather than risks to the business.
- Scope their general operations and business relationships to identify higher risk areas across their operations and value chains and undertake more detailed and specific assessment of areas identified as high risk during the in-depth assessment stage to support the effective prioritisation of the most severe and likely impacts.
- Continue meaningful engagement with NHRIs and civil society actors, alongside stakeholders formally defined in the Directive, even if these actors are not included within the stakeholder definition. This ensures that information reasonably available from them is duly considered in the scoping exercise conducted as part of the adverse impact identification process.
- Adopt a pragmatic approach to implementing the identification obligations and allocate their resources where impacts are most severe and most likely, in a tier-agnostic fashion.
- Treat the limitations on information requests not as a constraint but as an incentive to design more proportionate, targeted and reasonable engagement with business partners, and tailor supplier assessments based on relevant risk factors, contextual considerations and the results of their scoping exercises.
- Embed human rights considerations into existing operational processes such as procurement, tendering, supplier onboarding, audits, and other routine interactions with business partners, which, in turn, can help companies to frame information requests in a more targeted and proportionate manner.
- Where uncertainty arises, seek guidance from Supervisory Authorities or other relevant experts on how information requests can be appropriately designed and tailored.
- Approach the identification exercise broadly and assess potential impacts across operations and value chains without treating foreseeability criteria under the definition of “adverse human rights impact” as a preliminary threshold that limits the range of risks examined.

- Be attentive to similarities and differences between the impact identification obligation in the CSDDD and impact assessment exercise under CSRD and avoid treating them as one. As acknowledged in the ESRS, impact identification as part of HREDD should inform impact materiality assessment.

**Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations can:**

- Continue to support the effective identification of adverse impacts in the given context and advocate for greater clarity where terms remain ambiguous. They can also highlight the range of methods companies use to identify and assess risks and contribute to improved identification practices.
- Provide context-specific insights on human rights and environmental risks in a given jurisdiction, including gaps in legal frameworks, challenges with enforcement and systemic issues. This input can be provided through stakeholder engagement processes conducted by the companies.
- Support rightsholders in bringing their perspectives at the impact identification stage, including by facilitating access to and dialogue with potentially affected stakeholders.

## 5.4 Prioritisation

### What does the CSDDD say?

Article 9(1) of the CSDDD provides that companies can prioritise impacts “where it is not feasible to prevent, mitigate, bring to an end or minimise all identified adverse impacts at the same time and to their full extent”. Prioritisation should be done on the basis of severity and likelihood (Article 9(2)). The actual or potential influence of the company on its business partners, the level of involvement of the company in the adverse impact, the proximity to the subsidiary or the business partner, or its potential liability should not be considered relevant factors at the prioritisation stage (CSDDD, Recital 44).

Once the most severe and most likely adverse impacts are addressed in accordance with Article 10 or 11 within a reasonable time, the company shall address less severe and less likely adverse impacts (Article 9(3)).

The Omnibus I amendments introduced a new provision specifying that where a company has prioritised an impact in accordance with the Article 9, the mere fact of not having addressed a less significant adverse impact shall not expose the company to penalties (Article 9(4)).

### What does it mean?

The UNGPs entitle a company to prioritise impacts, but primarily on the principle of severity with likelihood as a secondary consideration.<sup>108</sup> After addressing the most severe impacts, companies are then required to address those with the next greatest severity until they have addressed all their actual and potential impacts on human rights.<sup>109</sup> This means that action should be taken on the basis of whether an impact is severe in the sense of its scope and scale, and where a delayed response would make the impact irreparable, regardless of its likelihood.<sup>110</sup>

There are opportunities to provide clarification in transposition laws or accompanying guidance to emphasise that, in line with the UNGPs, the severity of impacts should remain the central consideration in prioritisation decisions. Such a clarification would help ensure that prioritisation practices remain aligned with the risk-based logic of HREDD and avoid the risk that severe impacts are overlooked due to a lower perceived probability.

The provision limiting exposure to penalties should be regarded as an incentive for companies to adopt a robust, principled, pragmatic and well-documented approach to their prioritisation process, justifying why certain impacts were addressed first, why they deemed the prioritisation exercise necessary, and why it was not feasible for them to address the impacts. Companies must allocate resources to address the most severe and likely impacts as a priority, but in principle should not ignore other identified impacts solely because they are not the most severe, even if there is a lack of repercussions in the form of penalties.<sup>111</sup>

It is important for national transposition authorities and the Commission to emphasise that likelihood and severity function only as criteria for sequencing due diligence actions. They do not relieve companies of their broader responsibility to address less severe or less likely identified impacts gradually, once the most severe impacts have been addressed, until all actual and potential human rights impacts are duly covered.

The prioritisation exercise in Article 9 concerns prioritisation among actions that a company may take to address identified impacts. However, the Omnibus I amendments introduced a new provision in the identification article which allows companies to prioritise in depth assessments on their direct business partners “where [as part of the general scoping] adverse impacts are identified as equally likely to occur or equally severe in several areas”.<sup>112</sup> As noted above in [Section 5.3](#), ascertaining that an impact is equally likely or severe is a challenging prospect. Member States and the European Commission should clarify in the upcoming guidance that companies should prioritise most severe and likely adverse impacts, wherever they occur in the value chain, without an undue focus on direct business partners.

National authorities and the Commission should provide clear guidance on how companies can evaluate severity and likelihood, as well as how to meaningfully prioritise impacts without risking worsening the level of severity and likelihood of other unaddressed impacts, including those that occur at the level of indirect business partners. Such guidance should avoid overly prescriptive approaches while providing clear indications or methodologies for adopting pragmatic approaches to prioritisation and for explaining prioritisation methodologies.

Companies should allocate their resources where impacts are most severe and most likely, in a tier-agnostic fashion. They should also consider documenting their prioritisation decisions and their rationale. This may include, for example, providing contextual information on the factors considered in assessing severity and likelihood, summarising insights gained through stakeholder engagement, explaining how the prioritisation of certain impacts fits within the broader landscape of identified adverse impacts, and outlining how other identified impacts are expected to be addressed progressively once the most severe or most likely impacts have been addressed.

Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and worker organisations, can share insights through stakeholder

engagement to ensure that prioritisation decisions reflect the contextual realities and severity and likelihood of impacts as experienced by rightsholders.

### Attention points for transposition



#### Member States and the Commission should:

- Provide clarification to emphasise that, in line with the UNGPs, the severity of impacts should remain a central consideration in prioritisation decisions. Such clarification would help ensure that prioritisation practices remain aligned with the risk-based logic of HREDD and avoid the risk that severe impacts are overlooked due to a lower perceived probability or financial materiality.
- Clarify that severity and likelihood function only as criteria for sequencing due diligence actions. They do not relieve companies of their broader responsibility to address less severe or less likely identified impacts gradually once the most severe impacts have been addressed, until all actual and potential human rights impacts are duly covered.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

### Attention points for implementation



#### Member States and the Commission should:

- Provide guidance clarifying that companies should prioritise most severe and likely adverse impacts, wherever they occur in the value chain, without an undue focus on direct business partners.
- Explain, in guidance, how companies can evaluate severity and likelihood, as well as how to meaningfully prioritise impacts without risking worsening the level of severity and likelihood of other unaddressed impacts, including those that occur at the level of indirect business partners. Such guidance should avoid overly prescriptive approaches while providing clear indications or methodologies for adopting pragmatic approaches to prioritisation and for explaining prioritisation methodologies.

#### Companies should:

- Adopt a pragmatic approach to implementing the identification obligations and allocate their resources where impacts are most severe and most likely, in a tier-agnostic fashion.
- Consider documenting prioritisation decisions and their rationale. This may include, for example, providing contextual information on the factors considered in assessing severity and likelihood, summarising insights gained through

stakeholder engagement, explaining how the prioritisation of certain impacts fits within the broader landscape of identified adverse impacts, and outlining how other identified impacts are expected to be addressed progressively once the most severe or most likely impacts have been prioritised.

- Allocate resources to address the most severe and likely impacts as a priority, but not ignore other identified impacts solely because they are not the most severe, even if there are no repercussions in the form of penalties.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations can:**

- Advocate for the adoption of clear language in guidance reflecting the above considerations, in particular emphasising that prioritisation should remain aligned with the risk-based approach to HREDD and should not lead to an undue focus on direct business partners.
- Engage with and monitor companies' prioritisation strategies to assess whether severe impacts across the value chain are being effectively considered and addressed, including those arising at the level of indirect business partners,
- Share insights through stakeholder engagement and support rightsholders to help ensure that prioritisation decisions reflect the contextual realities and severity and likelihood of impacts as experienced by rightsholders.

## 5.5 Preventing, mitigating or bringing an adverse impact to an end

Following the prioritisation of identified actual and potential adverse impacts, companies are required to take appropriate measures to prevent or adequately mitigate impacts (Article 10(1)) and, where impacts have actually occurred, minimise or bring those to an end (Articles 11(1) and (2)). Articles 10 and 11 detail the ways companies should approach addressing the impacts they have identified, including by considering their degree of involvement to the impact and the leverage they are able to exercise.

To prevent, mitigate or bring to an end an adverse impacts, companies are required to take into account several factors:

- Their involvement in the impact (Article 10(1) and 11(1));
- What measures are appropriate (Articles 10(2)-(5) and 11(3)-(6)) including ensuring that the measures meet the CSDDD's definition of "appropriate measures" which requires a broad contextual analysis of the nature of an impact, relevant risk factors and that measures are effective, proportionate and available, as explained in [Section 5.1](#) above;
- Whether suspension of the business relationship is necessary in the circumstances (Articles 10(6) and 11(7)).

These elements are considered in turn in the following sections.

## 5.5.1 Involvement with an adverse impact

### What does the CSDDD say?

Under the Directive, when designing the right measure in a given context, companies must consider how they are involved in an impact, meaning whether the company causes an impact alone or jointly with a subsidiary or business partner, or whether the impact is caused only by a business partner in the company's chain of activities (Articles 10(1)(a) and 11(1)(a)). Additionally, companies must consider whether the impact occurs at the level of a subsidiary or business partner, and the company's ability to influence the actor causing the adverse impact (Articles 10(1)(b-c) and 11(1)(b-c)).

### What does it mean?

The categories of involvement outlined in Articles 10(1) and 11(1) are drawn from the "involvement framework" outlined in the UNGPs<sup>113</sup> (ie, whether a company causes, contributes, or is directly linked to an impact). Although they do not use the exact wording of the UNGPs, the Recitals make clear that this difference in terminology "avoids confusion with existing legal terms in national legal systems while covering the same causal relationships described in [international frameworks such as the UNGPs and OECD Guidelines]".<sup>114</sup> Accordingly, the concept of "jointly cause" is analogous to "contribution" in the UNGPs, and "impacts caused only by their business partner in the chains of activities of the company" is analogous to "directly linked" in the UNGPs.<sup>115</sup> The extent of a company's involvement in an impact is an important consideration that can help determine which appropriate measures will be necessary in a given case, as the UNGPs recognise.<sup>116</sup>

While the provisions which refer to the involvement framework are subject to maximum harmonisation, transposition laws should give particular attention to the Directive's involvement framework and ensure that the core concepts of the UNGPs and OECD Guidelines are accurately reflected. In this context, national authorities should make clear that the notions of "cause," "jointly cause," and "impacts caused only by a business partner" must be understood in line with the UNGPs' approach, which treats involvement as points along a spectrum of responsibility that may overlap or evolve as circumstances change.<sup>117</sup> To ensure legal clarity and alignment with international standards, transposing authorities should also clarify, either in national legislation or in accompanying guidance, how this terminology corresponds to established concepts under the UNGPs and OECD Guidelines so that companies are not encouraged to interpret the categories as rigid silos but instead as part of a fluid and context-dependent framework for addressing adverse impacts.

Jointly causing an impact is not limited to circumstances where there is an equal implication of a company and its subsidiary or business partner, but extends to all cases of a company causing an impact in combinations with the acts of one of these other parties. This can include circumstances where a company substantially facilitates or incentivises a business partner to cause an adverse impact.<sup>118</sup> This could, for example, include incentives driven by poor purchasing practices, such as aggressive price negotiation, inaccurate forecasting, late orders or short lead times.<sup>119</sup>

While the UNGPs outlined the three categories of involvement as a means of encouraging companies to consider the impacts they may have in a broader sense, they also specified responsibilities with regard to remediation which flowed from each category: where a company caused or contributed to an impact, they should enable remediation, where

a company was linked to an impact, they should exercise leverage. Since their adoption, there have been examples of company practice that have undertaken a sometimes reductive assessment that a company was in the “directly linked” category rather than the “contribution” category. This has often been driven by a desire to limit responsibilities to remediate.<sup>120</sup> To implement HREDD meaningfully, companies should not see themselves as bound by siloed categories of involvement, rather they should consider their involvement as a means of informing what measures may be appropriate to take in the circumstances.

This is especially important when implementing Article 11 measures (to bring an impact to an end). Companies are expected to be able to bring actual impacts to an end in their own operations and those of their subsidiaries,<sup>121</sup> and should consider these measures in tandem with an approach to providing an effective remedy for rightsholders who may have been affected by the company’s activities, as set out in Article 12. Companies must consider the different categories of involvement as a spectrum to guide action rather than strict, siloed categories leading to pre-determined conduct/selection of remediation measures. After having identified an actual impact, companies should make best efforts to remediate the impact on rightsholders, even where they have jointly caused or are linked to the impact through the activities of a business partner in their chains of activities, rather than seek to deflect responsibility. Bearing in mind the pragmatic approach to due diligence expected of companies under the CSDDD, companies should retain flexibility and adaptability as guiding principles for adopting the appropriate due diligence measures.

Guidelines should avoid this potentially reductive understanding of involvement and provide concrete guidance and examples of how to approach an identified adverse impact.

## 5.5.2 List of appropriate measures

### What does the CSDDD say?

Articles 10(2) and 11(3) provide a list of what could constitute appropriate measures. They do so by first listing measures companies “shall” take, where relevant. These range from:

- developing prevention or corrective action plans that include clearly defined timelines and indicators to measure improvements (Articles 10(2)(a) and 11(3)(b));
- using contractual assurances and verification, including through third-party service providers and industry and multi-stakeholder initiatives (Articles 10(2)(b) and 11(3)(c));
- making financial and non-financial investments or other adjustments to the company’s business plan, overall strategies, operations, including purchasing practices, design and distribution practices management or production processes (Articles 10(2)(c) and 11(3)(d));
- making necessary modifications or improvements to the company’s own business plan and strategies (Articles 10(2)(d) and 11(3)(e));
- providing targeted and proportionate financial support to SME partners, including providing or enabling access to capacity-building, training or upgrading management systems, and, direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME (Articles 10(2)(e) and 11(3)(f));<sup>122</sup>
- collaborating with other entities, including business partners, to prevent, mitigate or bring an impact to an end (Articles 10(2)(f) and 11(3)(g)); and

- In the case of actual impacts, neutralise the impact or minimise its extent (Article 11(3)(a)) and provide remediation (Article 11(h)).

In addition, Articles 10(3) and 11(4) list measures companies “may” take, including engaging with a business partner about the company’s expectations with regard to preventing and mitigating potential adverse impacts or bringing to an end or minimising actual impacts, or providing or enabling access to capacity-building, guidance, administrative and financial support such as loans or financing, while taking into consideration the resources, knowledge and constraints of the business partner (Article 10(3) and Article 11(4)).

Importantly, the CSDDD requires that special consideration should be given to the size and resources of the SMEs business partners, as in Articles 10(2)(e) 11(3)(f). When seeking contractual assurances from SMEs, the company should ensure that the terms are “fair, reasonable and non-discriminatory” and bear the costs of any third party verification undertaken to verify compliance (Articles 10(5) and 11(6)).

### **What does it mean?**

In order to provide implementing companies with “legal clarity and certainty” the CSDDD specifies a list of measures already considered “appropriate”.<sup>123</sup> The measures listed will be familiar to most in the marketplace: most companies within scope are likely to use codes of conduct and contractual assurances, as well as drawing on social audits, but also include requirements to make investments in management processes, adjusting purchasing practices, and creating business models which better respect human rights. The listed measures can be useful interventions as part of a holistic, risk-based due diligence process. Listing such appropriate measures could also enable other stakeholders to monitor companies’ efforts.

However, individually, the limitations of many of these listed measures are well known.<sup>124</sup> Companies with a more mature approach to engaging with their human rights impacts have adopted a range of additional strategies to address the root causes of adverse human rights impacts and work more collaboratively with their business partners, State authorities, and other stakeholders.

These measures must therefore be considered as examples, and not as the only measures a company can take. The inclusion of a specific paragraph with an open list of measures a company “may” take under Articles 10(3) and 11(4) provides an invitation for the implementing company to develop additional measures that would be of relevance to the specificities of the company’s business model, chain of activities, sector, industry, geography of operations, but also the type of identified impact, the rightsholders involved, and other factors. Accordingly, companies are encouraged to develop innovative, tailored measures that respond to the specific features of their operations and the impacts they identify and not be bound by the options listed in the text of the Directive, so long as these fulfil the effectiveness criterion. This is broadly in line with the approach of international standards, which expect companies to develop approaches to addressing impacts in a meaningful manner.

This is supported by the inclusion of the clause “where relevant” before both lists of measures companies “shall” and “may” take, which invites companies to evaluate the specific situation in which the identified adverse impact may arise or has arisen and, on that basis, develop and implement the measures which would be most suitable

to address it. It must be remembered that in order for a measure meet the definition of “appropriate measures”, measures must be capable of achieving the objectives of due diligence by effectively addressing adverse impacts, requiring companies to keep these factors in mind when determining whether a particular measure may be relevant to take, and in their design.

Many companies are increasingly adopting innovative HREDD practices. These include the use of comprehensive human rights impact assessments, the empowerment of trade unions and civil society, and investments in management and production processes that structurally reduce risks. Companies are also piloting human rights-aligned business models, emphasising long-term collaboration, partner capacity-building, and collective, sector-wide responses where impacts cannot be addressed by one company alone. It is therefore crucial that the Directive’s requirements reinforce rather than hinder these emerging practices, ensuring that companies are encouraged to maintain and expand approaches that are genuinely effective in identifying, preventing, and mitigating adverse impacts.<sup>125</sup> Member States and the Commission should ensure that this open understanding of the list of due diligence measures, supported by the effectiveness criterion, is reflected in transposition laws and in guidance. Implementing companies should seek to meaningfully engage with the array of appropriate measures suitable for addressing an impact occurring or risking to occur on the basis of different factors, thereby assessing “relevance” and “effectiveness” of the measure.

Transposition should also clarify that the use of contractual assurances, one of the Directive’s explicitly listed “appropriate measures,” must not lead to a compliance-based approach that allows companies to shift their due diligence obligations onto business partners.<sup>126</sup> The Directive makes clear that contractual assurances alone cannot constitute an effective measure to address adverse impacts and must be considered in light of the company’s involvement and leverage in the partner’s operations. Transposition laws and guidance should reflect this approach, confirming that while contractual assurances may support due diligence, they cannot be used to contract out the company’s own obligations.

### 5.5.3 Suspension of a business relationship

#### What does the CSDDD say?

In respect of adverse impacts that could not be adequately prevented, mitigated, or brought to an end by taking appropriate measures, including through contractual assurances, the Directive requires companies, to take certain actions:

- refrain from entering into new or extending a business relationship (Articles 10(6)(a) and 11(7)(a)),
- suspend the business relationship “with respect to the activities concerned”, including with a view to using or increasing its leverage, where the law governing its relationship with the business partner concerned so entitles it (Articles 10(6)(b) and 11(7)(b)), and
- adopt and implement an enhanced prevention and corrective action plan for the specific adverse impact without undue delay, provided that there is a reasonable expectation that such efforts will succeed (Articles 10(6)(c) and 11(7)(c)).

These actions are framed as requirements of last resort which should be undertaken only until the impact is addressed (Article 10(6) and 11(7)).

In the CSDDD as adopted in 2024, a company was required to either temporarily suspend or terminate the business relationship. Post-Omnibus, a company is only required to suspend a business relationship, although the suspension may be of an indefinite period. This gives companies a certain level of flexibility regarding the implementation timelines of the action plans and the assessment of whether there is a reasonable expectation that the business partner can address the impact. In addition, the CSDDD reinforces an expectation of continuous engagement, specifying that as long as there is a reasonable expectation that enhanced action plans will succeed, continuing to engage with the business partner shall not expose the company to penalties and liability under the Directive (Articles 10(6) and 11(7)).

### **What does it mean?**

Under the UNGPs, termination remains an important and sometimes necessary step where impacts are severe, irremediable, or where the partner refuses to change. The CSDDD's approach reflects the UNGPs' expectation that companies should first try to use or increase leverage to address adverse impacts linked to their business partners.<sup>127</sup> Measures such as refraining from engaging in new or expanded engagements, or suspending an existing relationship, are consistent with the UNGPs as ways to incentivise change when initial efforts at prevention or mitigation have not succeeded.

The CSDDD adopts an approach in which companies, are required to consider the adverse impacts of disengagement relative to the impacts of remaining engaged. Before suspending a business relationship, companies are required to assess whether doing so would likely cause adverse impacts that are clearly more severe than the impacts that could not be prevented or adequately mitigated. If this is the case, the company is not required to suspend the relationship and may instead justify its decision to the competent Supervisory Authority, providing reasoned grounds for not suspending the business relationship.<sup>128</sup> The UNGPs do require companies to consider the impacts of terminating a relationship, but do not frame this as a balancing exercise in the same way as the CSDDD.<sup>129</sup>

If a company decides to suspend the relationship temporarily, this must be done on reasonable notice and be accompanied by measures to address impacts that may arise from the suspension; equally, where a decision not to suspend the relationship is taken, the company must monitor the impact. In either case, companies are required to keep the decision under review.<sup>130</sup> The integration of these requirements into the Directive is a welcome approach, as it aligns with the expectations set out in the international frameworks.

The provisions related to suspension are not subject to maximum harmonisation, meaning that Member States may consider including an obligation to terminate a business relationship where efforts to use leverage and bring a business partner into compliance through action plans and additional engagement have little to no certainty of succeeding, with impacts continuing to risk occurring.<sup>131</sup>

Indefinite suspension can functionally have the same effect as termination. There is a need to make sure that companies continue to consider suspension as a means of exercising leverage in the same way as they would have done had the CSDDD included the threat

of termination. Member States and the Commission should clarify in guidance that a purposive approach should be taken to the application of suspension by recognising it primarily as a leverage enhancing measure aimed at facilitating addressing identified adverse impacts in the operations of business partners.<sup>132</sup> The objective of suspension should therefore be to facilitate improvements in practices of the business partners rather than simply removing a source of risk to the company.

Even where a relationship has been suspended, companies are expected to remain engaged, continue to work with the supplier towards a solution, and use any increased leverage resulting from the suspension. In practice this means active engagement on whether the suspension is contributing to the prevention, mitigation, or remediation of adverse impacts. Companies, in turn, should implement suspension measures through a purposive approach that incentivises corrective actions to address and remediate identified adverse impacts.

Member States and the Commission should also clarify through guidance and practical examples: how companies are expected to assess whether there is a reasonable expectation that the action plans will succeed; how companies should determine appropriate and proportionate timelines for enhanced preventive and corrective action plans; and how the severity of the abuse should influence the timeline of the disengagement response. The guidance should also highlight the contexts where companies lack leverage to address the adverse impact, and there is no reasonable prospect of change, for instance, in situations of state-imposed forced labour. Guidance should also underline that, under the UNGPs, the more severe the abuse, the more quickly an enterprise will need to see change before making a decision. For as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its ongoing efforts to mitigate the impact and be prepared to accept any reputational, financial, or legal consequences of the continuing connection.<sup>133</sup>

The obligations in relation to responsible disengagement should also be considered alongside other relevant obligations set out in other articles. These include obligations to consult stakeholders under Article 13 and to provide remediation under Article 12. Member States should also ensure that companies taking a disengagement decision engage with stakeholders and, specifically, rightsholders who may be affected by the decision to prevent or mitigate any adverse impacts arising from disengagement. In the absence of consultation, companies risk overlooking stakeholders' concerns and credible information on potential adverse impacts that disengagement may generate. Even if the Directive does not impose such an obligation, companies may still face accountability for failures to meet the due diligence expectations during the disengagement phase under the OECD Guidelines through National Contact Point processes.<sup>134</sup> Even though not required by the Directive, companies should therefore continue to engage stakeholders before suspending or terminating business relationships, to ensure their decisions are evidence-based, informed by stakeholders' concerns, and aligned with international standards.

## Attention points for transposition



### Member States and the Commission should:

- Ensure national laws highlight the need for appropriate measures to be effective and undertaken consistently with the principles of the risk-based approach rather than taking a compliance-driven approach by undertaking only the measures a company “shall” take in Articles 10(2) and 11(3). Transposition could specify that Articles 10(2) and 11(3) set out an open rather than a closed list of measures and that contractual assurances can be used by companies to fulfil their due diligence obligations but cannot be used to “contract out” their obligations.
- Ensure that national transposition of the CSDDD reflects the standards set by the UNGPs by embedding responsible disengagement requirements, including treating disengagement as a measure of last resort where meaningful improvement remains possible; assessing and consulting affected stakeholders on potential social, economic, and remediation-related impacts; and requiring corrective and preventive action plans with clear, time-bound milestones that strengthen company leverage and support continuous improvement in addressing adverse impacts.

**Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

## Attention points for implementation



### Member States and the Commission should:

- Clarify the notions of “cause” and “jointly cause” to determine appropriate measures, and to conceptualise involvement as a spectrum rather than set categories that may drive a compliance approach.
- Provide guidance and concrete examples, as well as gather case study examples, of innovative approaches of due diligence, including on the deeper tiers of chains of activities.
- Support the development of innovative and pragmatic measures of due diligence by the companies and prevent the uptake of a compliance-based approach whereby companies only apply the measures listed in Articles 10 and 11.
- Provide guidance clarifying that a purposive approach should be taken to the application of suspension by recognising it primarily as a leverage enhancing measure aimed at facilitating addressing identified adverse impacts in the operations of business partners.

### Companies should:

- Not interpret the list of measures in Articles 10 and 11 as exhaustive, and instead design and implement due diligence measures focusing on whether the measure is effective to tackle identified adverse impacts, such as by considering the specificities of the impacts, where those occur in the value chain, the businesses involved, etc.

- When developing appropriate measures, consider the involvement framework as a spectrum rather than rigorous categories to determine action.
- When implementing suspension measures, continue to work with the supplier towards a solution and use any increased leverage resulting from the suspension to address identified adverse impacts, and engage with a broad range of stakeholders to ensure that any decision to suspend or terminate a relationship is informed by stakeholders' concerns.
- Ensure that the decision to suspend a business relationship involves considerations of remediation to ensure that any adverse impacts that occurred before disengagement and during disengagement have been remediated, and consult meaningfully with stakeholders even where there are no express obligations to do so.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations can:**

- Develop case studies and examples of innovative approaches to due diligence, underlining the pragmatic and holistic nature of HREDD in line with international standards.
- Share evidence on emerging company practices such as the use of human rights impact assessments, the empowerment of trade unions and civil society, long-term collaboration and capacity building with business partners, and sector-level initiatives.
- Support rightsholders in bringing their perspectives at this stage of due diligence, including by facilitating access to and dialogue with potentially affected stakeholders.

## 5.6 Stakeholder Engagement

### What does the CSDDD say?

Article 13 of the CSDDD requires companies to conduct effective engagement with stakeholders at specific stages of the due diligence process:

- when gathering information to identify, assess and prioritise impacts;
- when developing preventing and corrective actions plans; and
- when adopting remediation measures (Article 13(3)).

Article 3 defines stakeholders as “the company’s employees, the employees of its subsidiaries and of its business partners, and their trade unions and workers’ representatives, and individuals or communities whose rights or interests are or could be directly affected by the products, services and operations of the company, its subsidiaries and its business partners and the “legitimate representatives” of those individuals or communities” (Article 3(1)(n)).

Companies are required to identify barriers to engagement and ensure that participants are not subject to retaliation (Article 13(5)). Recitals also underline that “particular attention should be paid to the needs of vulnerable stakeholders, and to overlapping vulnerabilities and intersecting factors, including by taking into account potentially affected groupings or communities, for example those protected under the UN

Declaration on the Rights of Indigenous People and those covered in the UN Declaration on Human Rights Defenders” (Recital 65).

Where engagement with stakeholders is not “reasonably possible”, companies shall seek out experts “who can provide credible insights” (Article 13(4)).

In addition, companies are permitted to fulfil their obligations to engage with stakeholders through industry and multi-stakeholder initiatives, but only if it is appropriate to do so and that the requirements in the article are otherwise met. It is not permitted to use these actors to support engagement in the case of the company’s own employees or their representatives (Article 13(6)).

To facilitate meaningful engagement through effective and transparent consultations, companies are required to provide stakeholders with relevant and comprehensive information. Stakeholders are entitled to make reasoned requests for additional information which a company is obliged to provide within a reasonable time or provide a written justification for refusal (Article 13(2)).

### **What does it mean?**

The Directive confines stakeholder engagement to specific stages and decisions. The CSDDD’s approach excludes, for example, stakeholder consultation on “appropriate measures” other than prevention and corrective action plans, decisions to suspend a business relationship, and monitoring due diligence.<sup>135</sup> Stakeholder engagement with affected people and groups, as well as their legitimate representatives, is one of the most critical means of ensuring that effective approaches to due diligence are adopted. Internationally recognised standards like the UNGPs and the OECD Guidelines place stakeholder engagement at the heart of the due diligence process and remediation requirements.<sup>136</sup> By consulting with stakeholders throughout the process, companies can more effectively identify the impacts they may have on human rights and design appropriate measures to adequately address them.

The CSDDD has a restrictive approach to who is defined as a stakeholder under the Directive. It effectively restricts that definition to only those who may be directly affected by the actions of a company, its subsidiaries, and business partners. This definition importantly leaves out actors such as CSOs and NHRIs. By narrowing the range of stakeholders, the aim is to reduce a potential burden on companies and make stakeholder engagement more proportionate.<sup>137</sup> However, actors like NHRIs and CSOs have subject-matter expertise and sometimes more resources to meaningfully engage with companies, including issuing recommendations for an effective HREDD process. Narrowing the definition of stakeholders and excluding NHRIs and CSOs removes the rights afforded to stakeholders from these actors, and weakens their ability to support or monitor company due diligence, as well as to ensure accountability. It could also restrict companies’ ability to properly map their risks and understand broader contextual factors, which are critical to designing effective and appropriate measures.

Article 13 is not subject to maximum harmonisation, meaning that transposition laws may go further than the text of the Directive. Member States are encouraged to broaden both the definition of stakeholders to ensure that companies are incentivised to engage with a broader range of actors, as well as include a broader range of due diligence steps which

must be informed by stakeholder engagement. This approach in transposition is important given other restrictions in other parts of the CSDDD, notably on limitations to information requests (See [Section 5.3](#)) and the reduced personal scope (See [Section 4.1](#)), which impact the quality and availability of data to inform risk identification and management.

Care must be taken when translating “stakeholder engagement” into local language and local law to ensure that the nature of the concept is not lost in the transposition. Examples of the available official translations of the CSDDD include the Danish “meningsfuldt samarbejde med interessenter,” which directly translates to requiring “meaningful collaboration with interested parties” at intervals, and the Spanish “colaboración constructiva con las partes interesadas,” both of which evoke a “collaboration” with interested parties, rather than consultations and engagement; or the French “échanges constructifs” (“constructive exchanges”), which implicitly creates an attitude with which to approach dialogues rather than the need to engage per se. National transposition authorities should ensure transposition laws that reflect the principles of effective and meaningful engagement with stakeholders, as elaborated in the recitals. Stakeholders, including civil society actors and rightsholders groups, NHRIs, trade unions, and community and worker organisations, can advocate for national laws and guidance to reflect the principles of meaningful engagement in line with the UNGPs.

The combined effect of a narrow definition of stakeholders and the limitation of stakeholder engagement to only specific stages of the due diligence process could hamper companies’ ability to conduct effective due diligence through the appropriate measures that address stakeholders’ needs. To ensure the effectiveness of their measures, companies ensure that stakeholder engagement informs all stage of the due diligence process, and look beyond the strict list of stakeholders in the CSDDD to consider a wider range of actors, in particular NHRIs and civil society. At the same time, companies should do so by developing a meaningful approach to stakeholder engagement which does not require engaging all stakeholders for the same stages of due diligence. For example, engagement with CSOs, NHRIs and other expert actors may be more relevant to obtain information in a given jurisdiction or in relation to risk factors associated with a sector, while engagement with workers and their representatives may be more relevant when developing prevention or remediation measures, or more targeted interventions. Care should also be taken to ensure that the needs of particularly vulnerable stakeholders are taken into account.<sup>138</sup>

Guidance should reflect the approach to stakeholder engagement of the international standards as detailed in the analysis above to ensure a harmonised understanding across the EU. Reflecting the fundamental role of stakeholder engagement in HREDD is critical to ensuring the effectiveness of the CSDDD. Stakeholder engagement should be presented as an opportunity for the company to undertake effective due diligence, informing the identification process, ensuring that measures taken to identify are appropriate and that remediation meets the needs and expectations of affected people. Engagement should be driven by the purpose and needs of the specific context, including an assessment of which actors are best placed to provide relevant insights into a potential or actual adverse impact and at which point in the due diligence process their involvement is most appropriate. Ensuring that transposition captures this logic will support more effective and meaningful stakeholder engagement and provide greater clarity for companies in implementing their due diligence obligations.

In addition, Member States should consider clarifying the remaining ambiguity as to whether it would be up to the companies to assess who could constitute a “legitimate representative” under the Directive. As mentioned above, the Recitals provide that legitimate representatives may include CSOs and human rights defenders, but leaves a margin of discretion for more to be included under that category. This is an ambiguity which could be addressed in guidance. There is a similar need to clarify potential ambiguities with regard to whether it would be up to companies to determine who is a “relevant” stakeholder, which could potentially leave a margin of discretion to companies leading to the undue exclusion of certain stakeholders from consultation and other engagement processes.

Throughout the implementation of the Directive, policymakers should monitor the way companies are engaging with stakeholders, as well as whether the measures to ensure that the protections and prerogatives to which stakeholders are entitled are sufficient to enable meaningful engagement. Companies are also allowed to use multistakeholder initiatives (MSIs) and industry schemes to facilitate consultation with stakeholders. The CSDDD mandates that their use is not a substitute for consultation with a company’s own employees<sup>139</sup> but potentially allows for freer use for consultation with other affected stakeholders. The Commission should clarify through guidance and practical examples that the use of experts, multi-stakeholder initiatives or industry initiatives should only be used to support stakeholder consultation where it is appropriate to do so, and cannot substitute for meaningful stakeholder engagement.

Such considerations should also be monitored by Supervisory Authorities, who may consider providing guidance on relevant actors and experts companies can engage with in their jurisdictions. The CSDDD also provides that “Member States may also provide support to stakeholders for the purpose of facilitating the exercise of the rights laid down in this Directive”.<sup>140</sup> Member State authorities, including national transposition and Supervisory authorities where relevant, should provide this support, including by reviewing transparency and disclosure frameworks at the national level.

### Attention points for transposition



#### Member States and the Commission should:

- Capture in transposition laws that stakeholder engagement is core to the due diligence process and is not an “add-on”, to encourage a broader approach to engagement throughout the due diligence process and adequately translate the concept of meaningful stakeholder engagement.
- Consider broadening the definition of stakeholders to include civil society actors and NHRIs, and giving these stakeholders prerogatives to meaningfully engage with policymakers and companies to inform the effective implementation of the CSDDD.

**Stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and workers’ organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

## Attention points for implementation



### Member States and the Commission should:

- Provide necessary support to stakeholders to facilitate the exercise of rights in the CSDDD relevant to the national context and monitor, throughout implementation, that those rights are effectively exercised by stakeholders.
- Guidance should emphasise that stakeholder engagement is integral to the due diligence process and encourage companies to see engagement with stakeholders as a means of ensuring that due diligence efforts will be effective.
- Clarify through guidance and practical examples that the use of experts, multi-stakeholder initiatives or industry initiatives should only be used to support stakeholder consultation where it is appropriate to do so and cannot substitute for meaningful stakeholder engagement.

### Companies should:

- Seek to engage with a broad range of stakeholders, including NHRIs and civil society actors, throughout all steps of the due diligence process to ensure that their measures are appropriate and effectively tailored to the relevant context and impacts, and are informed by the needs, concerns, and knowledge of stakeholders.
- Work, including with other actors, to address barriers to access of engagement processes to ensure that engagement is meaningful and conducted in a way that provides safety, transparency and trust with stakeholders and prevents stakeholder fatigue.

### Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations can:

- Proactively engage with companies throughout their HREDD processes by leveraging their role as human rights experts in their jurisdictions and or programme countries.
- Support other stakeholders, especially potentially affected stakeholders, in engaging with companies, including by providing capacity-building on the CSDDD, avenues for engagement and the existing rights and prerogatives in the law.

## 5.7 Monitoring

### What does the CSDDD say?

Article 15 requires that companies monitor the implementation and the adequacy and effectiveness of the appropriate measures they use to identify, prevent, mitigate, bring to an end and minimise adverse impacts through periodic assessments. Where appropriate, assessments are required to be based on qualitative and quantitative indicators. The assessment does not only cover the measures taken by the implementing company, but requires that companies also conduct these assessments on the operations and measures of their subsidiaries and business partners in their chains of activities.

Companies are expected to conduct these periodic assessments when a significant change occurs or, at the very least, every five years. A “significant change” is not defined in the instrument, but recitals clarify that it means a “change to the status quo of the company’s own operations, operations of its subsidiaries or business partners, the legal or business environment or any other substantial shift from the situation of the company or its operating context” (Recital 61). The recitals cite examples such as cases when the company starts to operate in a new economic sector or geographical area, starts producing new products or changes the way of producing the existing products using technology with potentially higher adverse impact, or changes its corporate structure via restructuring or via mergers or acquisitions.

Companies should also conduct these assessments when there are “reasonable grounds” to believe that the due diligence measures are no longer adequate or effective, or that new risks that impacts would occur have arisen or may arise. The recitals specify that there are different ways that those reasonable grounds may exist, such as, but not limited to, publicly available information, learning about risks through stakeholder engagement or through notifications through the notification mechanism ([Section 5.8](#)).

The CSDDD requires companies to update their due diligence policy, the risks they have identified and their due diligence measures on the basis of the monitoring. That update should also be conducted “with due consideration of relevant information from stakeholders”.

Lastly, while not specified in Article 15, recitals state that companies should retain documentation demonstrating compliance with this requirement for at least five years (Recital 61).

### **What does it mean?**

The expectation under the key international standards is for companies to monitor the implementation and effectiveness of their due diligence measures on an ongoing basis, including their general policies and processes for conducting HREDD, as well as in a manner that is integrated in the preventive and corrective action plans they take when risks are identified.<sup>141</sup> This monitoring exercise is intended to drive continuous improvement by enabling companies to assess and analyse whether policies and due diligence systems are being implemented effectively.

When implementing the monitoring obligation of the CSDDD, companies should consider the HREDD process as a whole and see the interconnectedness of each step of due diligence. Other provisions in the CSDDD specify that the company must take appropriate measures to identify and address their impacts. In order to meet this requirement, the measures that a company takes must be capable of achieving the objectives of due diligence by effectively addressing adverse impacts ([Section 5.1](#)). In order to understand if this criterion is met, companies must monitor and assess their measures.

Under the UNGPs, companies should base their tracking efforts on appropriate qualitative and quantitative indicators, as well as feedback from both internal and external sources, including affected stakeholders.<sup>142</sup> This approach is reflected in Article 15 through its reference to the different ways companies may have to assess their measures (and subsequently review policies and due diligence measures). Article 15 does not reflect the

critical role of stakeholder engagement in the monitoring phase. In addition, the CSDDD no longer requires companies to engage with stakeholders when developing qualitative and quantitative indicators for monitoring assessments.<sup>143</sup> As outlined above, the UNGPs expect companies to base their monitoring efforts on feedback from both internal and external sources, including affected stakeholders. Stakeholder input could help companies tailor and target monitoring efforts to reflect changes in the operating context, emerging risks, or the risk profile of a specific activity or business partner. To align with international frameworks, companies should go beyond the Directive's minimum requirements and engage stakeholders when developing monitoring indicators and designing their monitoring efforts, to ensure their measures remain effective in addressing identified risks in the given context and responsive to stakeholders' needs and concerns.

Article 15 includes language requiring a company to conduct a monitoring assessment without undue delay where a significant change occurs and at least every five years, or where there are reasonable grounds to believe that due diligence measures are no longer adequate or effective or that new risks have arisen. A review every five years may be appropriate for a review of a company's policy framework depending on the circumstances, but is unlikely to be sufficient to review the effectiveness of their due diligence measures. Companies in scope cannot meet these obligations if they only conduct a monitoring assessment every five years, without also being alive to potential changes in circumstance which may require adjustments to their due diligence efforts in order to ensure that they are effective. This means that they will need to have some means of continuously monitoring their operational context and business relationships and how their due diligence efforts are working in these circumstances in order to know whether one of these triggers occurs. This is aligned with the UNGPs' approach to due diligence as a continuous, iterative process. Developing effective and proactive monitoring measures thus helps in ensuring that these appropriate measures meet the effectiveness criterion. This will also ensure that new risks are better and more quickly identified to prevent the risk from actualising or for further harm to occur.

Article 15 is subject to the maximum harmonisation clause, meaning that Member States may not go further than the text of the Directive in their transposition laws. However, transposition laws could clarify that HREDD is not a one-off process that could theoretically only take place every five years; rather, it is an ongoing proactive process. In addition, guidance should encourage companies to approach the monitoring requirement in a proactive manner and should clarify, through guidance and practical examples, the types of situations that constitute a significant change or create reasonable grounds to believe that measures are no longer adequate or effective, or that new risks of adverse impacts may arise.

## Recommendations for transposition



**Member States and the Commission should** adequately capture the concepts of HREDD as an ongoing process of continuous learning to avoid a compliance-based approach whereby companies only conduct an assessment of their potential adverse impacts every five years.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

## Recommendations for implementation



### Member States and the Commission should:

- Ensure that guidance emphasises all elements of the monitoring article, namely that companies must undertake assessments without undue delay where a significant change occurs and at least every five years, or where there are reasonable grounds to believe that due diligence measures are no longer adequate or effective or that new risks have arisen.
- Emphasise in guidance that companies cannot simply conduct a monitoring assessment every five years, without also being alive to potential changes in circumstance which may require adjustments to their due diligence efforts.
- Clarify, through guidance and practical examples, the types of situations that constitute a significant change or create reasonable grounds to believe that measures are no longer adequate or effective, or that new risks of adverse impacts may arise.
- Guide companies to develop monitoring indicators and regularly assess the effectiveness of their due diligence measures by encouraging a proactive approach.

### Companies should:

- Conduct frequent and regular monitoring to ensure that their measures remain effective in addressing identified risks and responsive to emerging risks and evolving operating contexts.
- Go beyond the Directive's minimum requirements and engage stakeholders when developing monitoring indicators and designing their monitoring efforts, to ensure their measures remain effective in addressing identified risks and responsive to stakeholders' needs and concerns.

### Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations can:

- Monitor the implementation of companies' due diligence measures, including the follow-up they conduct to verify their effectiveness and adequacy and support the development of monitoring indicators.
- Make companies aware of potential new risks and significant changes which would constitute "reasonable grounds" to assess due diligence measures.

## 5.8 Company Complaint Mechanism

### What does the CSDDD say?

Under Article 14, all companies falling within the scope of the CSDDD will need to make available a “complaints procedure” and a “notification mechanism” through which people can communicate complaints, concerns or information regarding possible breaches of due diligence obligations under the CSDDD regime.

The complaint mechanism is open to: natural or legal persons who have reasonable grounds to believe that they may be affected by an adverse impact and their legitimate representatives such as CSOs and human rights defenders (Article 14(2)(a)); trade unions and other workers representatives (Article 14(2)(b)); and environmental CSOs (Article 13(2)(c)).

The complaint mechanism is required to be fair, publicly available, accessible, predictable, and transparent procedure, including for assessing whether complaints are well-founded (Article 14(3)).<sup>144</sup> Companies are required to inform the relevant trade unions and workers’ representatives of that procedure and take measures to prevent retaliation by ensuring the confidentiality of the identity of the person or organisation submitting the complaint (Article 14(3)).

Complainants are entitled to request appropriate follow up of a complaint from the company, meet with the company’s representatives at an appropriate level to discuss the complaint and potential remediation and be provided with reasons a complaint has been considered founded or unfounded and what actions will be taken (Article 14(4)).

If a complaint is well-founded, the adverse impact that is the subject of the complaint will be deemed to be identified for the purpose of the CSDDD and must therefore be addressed through appropriate measures within a company’s due diligence process (Article 14(3)).<sup>145</sup>

Companies may meet their obligations under Article 14 by establishing their own complaint and notification mechanisms, or by participating in collective mechanisms, such as those operated by multistakeholder or industry initiatives (Article 14(6)).

Submitting a complaint or notification under Article 14 is deemed not to be a prerequisite to a company accessing the substantiated concerns procedure ([Section 7.2](#)) or other non-judicial mechanisms (Article 14(7)).

### What does it mean?

Complaint procedures and notification mechanisms can facilitate impact identification and prioritisation processes, and the monitoring of the effectiveness of due diligence measures. Companies can obtain important information and insights through these mechanisms regarding human rights conditions in the given context, the severity and likelihood of impacts, as well as whether measures previously taken by the company have been appropriate and effective in addressing adverse impacts. As this information may be shared by various actors at different times and across different operating contexts and value chains, it is important for companies to ensure ongoing and iterative due diligence systems capable of remaining responsive to complaints and triggering in depth assessments where necessary. A received complaint or notification may necessitate further engagement with relevant business partners to obtain the necessary information on the subject matter through targeted and proportionate approaches, as well as engagement with relevant stakeholders to design tailored interventions.

It should not be assumed that merely having such a mechanism in place is positive in human rights terms. Indeed, poorly designed and operated mechanisms may have a negative impact or set the complainants back in accessing remedy by, for example: poor outreach and communications; engaging in inappropriate or insensitive engagement with affected people; raising unrealistic expectations; consuming time and energy of a complainant without resulting in meaningful outcomes; or involving processes or evidentiary burdens that are overly burdensome and legalistic.<sup>146</sup> It is also critical that companies address their obligations to guard against retaliation in the design and operation of a complaint or notification mechanism.

It is important to ensure that the CSDDD does not result in an increase of ineffective mechanisms. The UNGPs set out a number of “effectiveness criteria” for non-judicial grievance mechanisms which need to be taken into account in order to address these risks. These include legitimacy, accessibility, predictability, equity, transparency, rights compatibility, and being a source for continuous learning.<sup>147</sup> The CSDDD specifies in its Recitals that the terms “fair, publicly available, accessible, predictable and transparent” of Article 14(3) should be understood in line with the UNGPs’ effectiveness criteria and as referred to in the UN Committee on the Rights of the Child General Comment No 16.<sup>148</sup> It is important that relevant guidance makes clear the need for complaint mechanisms to meet these criteria, as well as provide support to companies to develop mechanisms that do so. National authorities need to be well apprised of the human rights dangers of these kinds of mechanisms as well their human rights benefits, in order to regulate these aspects of the CSDDD regime properly.

The complaint mechanism could also be a pathway to remediation for affected rightsholders, as is made explicit by the reference to potential remediation under Article 12.<sup>149</sup> It is important that guidance makes explicit the relationship between the complaint mechanism and remediation. See further [Section 7.3](#) below.

**Box 6: Difference between complaint procedures, notification mechanisms under the CSDDD and whistleblowing mechanisms under the EU Whistleblowing Directive<sup>150</sup>**

**Complaint procedures under the CSDDD** are part of companies’ human rights and environmental due diligence processes. They allow natural or legal persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact to submit complaints. Legitimate representatives of such persons, such as civil society organisations and human rights defenders; trade unions and other workers’ representatives, civil society organisations that are active and experienced in related areas where an adverse environmental impact is the subject matter of the complaint, are also allowed to submit complaints. These procedures aim to support the identification, prevention, mitigation, and remediation of adverse impacts.

Under the complaint procedure, where a complaint is “well founded”, the adverse impact in question will be deemed to have been “identified”, and companies will need to take appropriate due diligence measures to address and remediate this identified adverse impact.

**Notification mechanisms under the CSDDD** are also part of companies' human rights and environmental due diligence processes. They allow persons and organisations to submit notifications where they have information or concerns regarding actual or potential adverse impacts. Unlike complaint procedures, persons using notification mechanisms do not need to demonstrate that they are or might be affected by an adverse impact or represent affected persons. The mechanism serves as broader information line through which companies can receive information relevant to identifying and assessing risks and impacts within their operations and chains of activities.

**Whistleblowing mechanisms under the EU Whistleblowing Directive** are internal reporting mechanisms designed to enable the reporting of certain breaches of the Union law by persons who became aware of such breaches in the context of their work-related activities, such as employees, consultants, volunteers, suppliers, contractors and trainees. Unlike complaint procedures or notification mechanisms under the CSDDD, whistleblowing mechanisms do not primarily aim to identify or address adverse human rights or environmental impacts in value chains. Instead, they focus on reporting breaches of Union law, including breaches of national laws transposing the CSDDD.<sup>151</sup> While the EU Whistleblowing Directive grants reporting persons protection against retaliation, whistleblowing channels are primarily intended for individuals who obtain information about breaches in a work-related context. As a result, the group of persons able to submit reports through whistleblowing channels differs from those who may use complaint procedures or notification mechanisms under the CSDDD, though they may overlap.

### Attention points for transposition



**Member States and the Commission should** ensure that transposition laws reflect the CSDDD's intent that grievance mechanisms support early identification and remediation of adverse impacts, including by aligning national requirements with the effectiveness criteria set out in the UNGPs and avoiding approaches that reduce grievance mechanisms to formal or purely procedural tools.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

## Attention points for implementation



### Member States and the Commission should:

- Provide clear guidance on how companies can fulfil their obligation to set up or participate in grievance mechanisms, including through shared, sectoral, or multi-stakeholder mechanisms, in a manner that promotes accessibility and effective use across value chains.
- Promote meaningful stakeholder involvement in the design and operation of grievance mechanisms, including engagement with rights-holders, worker representatives, CSOs, and NHRIs, to enhance trust, contextual relevance, and the quality of information feeding into due diligence processes.
- Provide guidance throughout implementation on how to ameliorate grievance mechanisms to ensure better use by potential victims of harms.
- Actively raise awareness with different stakeholders about the different remedy mechanisms which exist in a given jurisdiction, and provide clear guidance as to how those interact with companies' grievance mechanisms.
- Ensure that fitness criteria for MSIs and Industry Initiatives address the role that they may play in providing collaborative mechanisms.

### Companies should:

- Design grievance mechanisms that meet the UNGPs' effectiveness criteria to ensure that potentially affected rightsholders effectively access, trust and make use of the mechanisms, paying due care for the safety of users.
- Consider developing different mechanisms or mechanism entry points for different users, such as for the company's own workers, workers in the value chains, end-users and consumers, and communities.
- Ensure that there are effective processes in place to guard against the risk of retaliation.
- Use the information received through complaint procedures and notification mechanisms to facilitate impact identification and prioritisation processes and the monitoring of the effectiveness of due diligence measures.
- Ensure ongoing and iterative due diligence systems capable of remaining responsive to grievances and triggering in depth assessments where necessary.

### Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations can:

- Support rightsholders in accessing grievance mechanisms by raising awareness of their existence, functioning and the rights and protections that must be afforded to victims of harms.
- Engage with companies and monitor the operationalisation of their complaint procedures to ensure that their complaint processes are designed and implemented in a way that is compatible with the Directive's requirements and consistent with the UNGPs effectiveness criteria.
- Submit complaints through the companies' complaint procedures to ensure that affected rightsholders' needs and concerns are taken into consideration when tailoring appropriate measures and providing remediation.

# 6 Administrative supervision and support measures

## 6.1 Administrative Supervision

### What does the CSDDD say?

The CSDDD requires that Member States designate one or more Supervisory Authorities to supervise compliance with the laws transposing the CSDDD (Articles 24 to 28). Member states are required to inform the Commission of the names and contact details of their Supervisory Authorities by 26 July 2028 (Article 24(7)).

Supervisory Authorities are required to be legally and functionally independent, free from external influence, including companies within scope and other market interests. Staff and all persons working for the Supervisory Authorities, including experts and auditors, are required to be free from conflicts of interest and exercise their powers impartially and transparently (Article 24(9)).

The Directive specifies that Supervisory Authorities must have adequate powers and resources to discharge their functions (Article 25(1)). These include:

- Requiring companies to provide information and carry out investigations related to compliance with the due diligence obligations set by the Directive (Article 25(1)), including in response to “substantiated concerns” reported by natural or legal persons that a company is not complying with its obligations (see [Section 6.2](#) for more information);
- Carrying out inspections in compliance with national law (Article 25(3));
- Making orders (Article 25(5)(a)), including that a company:
  - cease infringements of transposition laws,
  - refrain from repetition of infringing conduct, and
  - provide remediation proportionate to the infringement and necessary to bring it to an end;
- Imposing effective, dissuasive but proportionate penalties, including pecuniary penalties of up to 3% of the company’s net worldwide turnover in the previous financial year (Articles 25(5)(b) and 27)); and
- Adopting interim measures in the event of an imminent risk or severe harm (Article 25(5)(c)).

The Supervisory Authorities may exercise their powers either directly or in cooperation with other authorities or apply to judicial authorities to ensure that legal remedies are effective (Article 25(6)).

The Commission must also set up a European Network of Supervisory Authorities, to facilitate cooperation, coordination and alignment of practices of national Supervisory Authorities (Article 29). Supervisory Authorities are also expected to provide mutual assistance when one of them wishes to carry out an inspection in another Member State than its own.

Supervisory Authorities are also required to have a procedure for receiving “substantiated concerns” submitted by natural or legal persons who have reason to believe that a company is failing to comply with its due diligence obligations (Article 26). For in-depth consideration of this procedure, see [Section 6.2](#) below.

Member States are also required to adopt rules on penalties, including pecuniary penalties, for breaches of national laws transposing the Directive. In this context, Supervisory Authorities will have the power to impose effective, dissuasive but proportionate penalties, including pecuniary penalties of up to 3% of the company’s net worldwide turnover in the previous financial year (Article 25(5)(b) and Article 27)).<sup>152</sup>

### **What does it mean?**

Supervisory Authorities can potentially play an important preventative role and can be a source of “forward-looking remedies” or “guarantees of non-repetition” of harmful acts. They also have the potential to contribute to remedy for harms that have already occurred, including by making orders for remediation. For further consideration of the substantiated concerns procedure, see [Section 6.2](#) below.

Independence, impartiality and transparency are key features for the credibility of Supervisory Authorities and should be at the centre of the way they will carry out their mandate and be organised. Care should be taken to ensure that Supervisory Authorities are free both from political interference but also corporate capture, and are informed by a balance of perspectives, including from CSOs and NHRIs. While not expressly required by the CSDDD, design features such as an internal appeals procedure, accessibility by a range of stakeholders, and a proactive approach to stakeholder engagement should not only be made possible by the Supervisory Authorities’ organisation, but also contribute to informing the Supervisory Authorities’ decision-making, including in the prioritisation of sectors or industries.<sup>153</sup>

Member states should ensure that the independence, impartiality, and transparency requirements are effectively operationalised, with particular attention to safeguarding independence from both political influence and corporate capture,<sup>154</sup> and that Supervisory Authorities are equipped with sufficient human and financial resources and adequate competencies.

Given the broad scope of issues and areas of law covered by the CSDDD, they will be required to have a broad range of competencies. These include corporate law, competition law, environmental law, trade law, private international law, human rights law, sector and industry-specific challenges, as well as a solid grounding in human rights and environmental due diligence, as outlined in the UNGPs and OECD Guidelines. Being equipped with these competencies is essential for the Supervisory Authorities to meaningfully engage with both businesses and other stakeholders, to challenge businesses’ performance and to tailor guidance, capacity-building, and other advice to specific types of actors and sustainability issues as needs arise. As well as expert CSOs, NHRIs across the Member States are institutions with human rights expertise specific to their national contexts, and should be regarded as an important partner as the supervisory builds expertise and exercises its supervisory mandate.

The CSDDD is not prescriptive regarding the obligations of Supervisory Authorities when they identify a failure to comply with the requirements of the Directive, this affords Member States some flexibility in how they ensure effective supervision and enforcement. It is important that Supervisory Authorities adopt an approach to supervision which emphasizes the need for companies to comply with the CSDDD in line with the objectives of due diligence. Not all human rights impacts can be brought to compliance levels immediately, as they may be systemic to an industry or a particular geographical context. In such instances, effective due diligence involves more nuanced approaches to creating change and addressing systemic impacts. Supervision should encourage context-appropriate, pragmatic and innovative due diligence practices rather than limiting oversight to a narrow assessment of formal compliance with the specific measures referenced in the Directive. Such an approach to supervision should strike a balance between giving companies the necessary flexibility to tailor their due diligence measures to the specific contexts and risks they face and intervening more robustly where there are serious risks of non-compliance, including in the application of penalties. This kind of approach can also help ensure that supervision remains responsive to evolving risks, sector-specific challenges and emerging good practices in responsible business conduct.

Within the EU, there are marked differences between jurisdictions as to the regulatory approach, shaped by existing legal structures and conditions. These differences increase the risk of differing supervisory approaches between countries, especially as the Directive does not thoroughly cover all aspects of administrative supervision. As a result of the reduced personal scope following the Omnibus I amendments, there will be considerable divergence between the number of companies in scope across the Member State jurisdictions. Supervisory Authorities in some Member States may be responsible for overseeing only a very limited number of companies, and may face challenges building the specialised expertise and capacity necessary to oversee the implementation of the Directive. Limited workload may also hinder the development of consistent supervisory practices and approaches to investigations. On the other hand, authorities in other Member States may still be required to supervise a relatively large group, and may experience operational challenges and issues related to constrained resources.

Addressing these potential disparities will be important to ensure legal certainty and the credibility of the supervision regime. It will require strong coordination mechanisms at the EU level. Good collaboration and harmonization of approaches is also needed to ensure that the mutual assistance mechanisms set out in the directive for investigations can function properly.

The European Network of Supervisory Authorities can play an important role in that context, if given the resources to do so, as it provides a forum to foster collaboration and potentially harmonize approaches, so as to reduce the risks of markedly different findings between different jurisdictions, in particular through discussions and peer learning initiatives.<sup>155</sup>

Member States should ensure that Supervisory Authorities actively participate in the European Network of Supervisory Authorities and other coordination and peer learning mechanisms to exchange supervisory experience, develop shared expertise, and promote consistent approaches to supervision and enforcement across the Union.

## Attention points for transposition



### Member States and the Commission should:

- Ensure that the appointed authorities are independent, adequately resourced and equipped with the necessary expertise, including in human rights, environmental protection and corporate HREDD practices to deliver on the different facets of their mandate to supervise the implementation of the Directive.
- Clearly reflect in transposition laws the prerogatives of Supervisory Authorities, including their authority to request information, conduct investigations, impose sanctions, and cooperate with other national and EU-level bodies, to ensure legal certainty and effective enforcement.
- Ensure coherent interaction between supervision of the CSDDD and other instruments which regulate business impacts on human rights and the environment.
- Engage with other stakeholders, such as NHRIs, in Member States to explore avenues for collaboration and information exchange during implementation.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations** can engage with policymakers on the designation and the design of the Supervisory Authorities, to advocate for the provision of adequate resources and competencies and to ensure that they meet the requirements of independence, impartiality and transparency. Engaging on these questions in the transposition phase can help determine how best to engage with the Supervisory Authorities in the implementation phase.

## Attention points for implementation



### Member States and the Commission should:

- Coordinate and encourage information sharing between Supervisory Authorities to enable a harmonised approach to supervision across the EU.
- Ensure that Supervisory Authorities have the adequate resources, both human and financial, over time, to deliver on their mandate.
- Promote a common understanding of key due diligence concepts among Supervisory Authorities, as well as evolving risk factors in jurisdictions in and outside the EU.
- Facilitate cooperation between Supervisory Authorities and other relevant bodies, such as NHRIs, labour inspectorates, environmental authorities and judicial bodies, to strengthen information-sharing, complementarity, and access to remedy within the broader accountability ecosystem.
- Monitor and address imbalances in supervisory capacity and caseload across Member States, including where narrowing of the Directive's personal scope results in uneven supervisory burdens, to safeguard effective and credible enforcement across the Union.

**Companies should:**

- Engage constructively and transparently with Supervisory Authorities, recognising their role in supporting effective and consistent implementation, and providing timely, accurate and wellsubstantiated information when requested.
- Monitor guidance, enforcement practice, and emerging expectations from Supervisory Authorities, including across Member States where relevant, and adjust internal due diligence processes accordingly.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations can:**

- Monitor the exercise of the Supervisory Authorities' mandate to ensure that it operates in an independent, impartial, and transparent manner.
- Raise awareness about the role of Supervisory Authorities to different stakeholders, including companies and potentially affected rightsholders.
- Share information with Supervisory Authorities, by raising concerns, systemic human rights issues and emerging risks.
- Explore potential collaboration opportunities to develop the Supervisory Authorities' capacity on human rights and discharge its monitoring and enforcement function.

## 6.2 Guidance

**What does the CSDDD say?**

To be effectively implemented, the CSDDD will need to be accompanied by a range of measures to ensure a strong enabling environment for due diligence laws in the EU and in third countries. The Directive requires the Commission to develop guidance to provide support to Member States, companies and stakeholders on fulfilment of due diligence obligations. The guidance will include general guidelines and sector-specific guidelines or guidelines for specific adverse impacts (Art 19).

The guidance will include (Article 19 (2)):

- guidance and best practices on how to conduct due diligence, particularly, the identification process (Article 8), the prioritisation of impacts (Article 9), appropriate measures to adapt purchasing practices pursuant (Article 10(2) and Article 11(3)), responsible disengagement (Article 10(6) and Article 11(7)), appropriate measures for remediation (Article 12), and on how to identify and engage with stakeholders (Article 13), including through the notification mechanism and complaints procedure (Article 14), by 26 July 2027;
- sector-specific guidance;
- guidance on the assessment of company-level, business operations, geographic and contextual, product and service, and sectoral risk factors, including those associated with conflict-affected and high-risk areas, by 26 July 2027;
- references to data and information sources available for the compliance with the obligations under the Directive, and to digital tools and technologies that could facilitate and support compliance, by 26 July 2027;
- information on how to share resources and information among companies and other legal entities, in a manner that is in accordance with the protection of trade secrets and the protection from potential retaliation and retribution, by 26 July 2028; and

- information for stakeholders and their representatives on how to engage throughout the due diligence process, by 26 July 2028.

Further, the Directive requires the Commission to adopt guidance about voluntary model contractual clauses (Article 18). The Recitals clarify that such guidance should facilitate a clear allocation of tasks between contracting parties and support ongoing cooperation, while avoiding the transfer of the obligations under the Directive to a business partner or the automatic invalidation of contracts in the event of a breach.

The Commission is also expected to develop fitness criteria for MSIs, industry initiatives and third party verifiers (Articles 20(4) and (5)). See further [Section 6.3](#) below.

### What does it mean?

The guidance developed by the Commission will play an important role in shaping how the Directive is implemented in practice. While the Directive sets the legal framework, Commission guidance can provide important clarification on key concepts, support a coherent understanding of due diligence obligations, and encourage approaches that remain aligned with the objectives of the Directive and the UNGPs.

The guidance to be developed by the Commission can encourage companies to approach their obligations mindful of the objectives of due diligence and should clearly position the UNGPs and OECD Guidelines as important reference frameworks.

The guidance and support materials should acknowledge and encourage emerging practices of companies with a more mature approach to identifying and addressing the root causes of adverse human rights impacts. These include the use of human rights impact assessments, empowering trade unions and civil society, investing in management or production processes, creating business models that better respect human rights, encouraging long-term collaboration and capacity building with partners, and working at the sectoral level. Facilitation of these measures can also prevent the misapprehension that companies need only undertake the appropriate measures expressly required in the Directive,<sup>156</sup> rather than undertake a holistic, risk-based approach to due diligence. The guidance and model contract clauses should clarify that the use of contractual assurances cannot, in itself, satisfy the due diligence obligations under the Directive or constitute an appropriate measure capable of effectively addressing adverse impacts.

The Commission will develop this guidance in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, the European Labour Authority, and where appropriate with international organisations and other bodies having expertise in due diligence.

Given the critical importance of the guidance, the Commission should consult with stakeholders and experts on its development. It is vital that this includes not only input from businesses, but also civil society actors, rightsholders' groups, NHRIs, trade unions, and community and worker organisations, who can highlight areas of the Directive that would benefit from further clarification (as analysed across various sections of this Practical Guide) and provide inputs grounded in the needs, concerns, and knowledge of rightsholders. Their engagement can support the development of guidance and contribute

to the implementation of the Directive in a manner that delivers meaningful outcomes for people and the environment and remains aligned with relevant international standards.

The above sections of this guide which consider the operative due diligence obligations on companies make a number of recommendations to inform the approach that the guidance should take in order to maximise the effectiveness of the instrument.

### 6.3 Accompanying Measures

#### What does the CSDDD say?

Article 20 outlines a number of “accompanying measures” to support companies to undertake due diligence and for stakeholders exercise their rights under the CSDDD.

Support measures to be provided by the Commission and Member States include: information accessibility (Article 20(1)); financial and other support to SMEs and other stakeholders (Article 20(2)); and other forms of support (Article 20(3)).

In addition, Article 20 provides entitlements to companies to use MSIs, industry initiatives and third-party verification to support them to undertake due diligence under certain conditions (Articles 20(4) and (5)).

#### What does it mean?

To be effectively implemented, the CSDDD will need to be accompanied by a range of measures to ensure a strong enabling environment for due diligence laws in the EU and in third countries. This includes support to companies in scope, their business partners in the chain of activities, as well as support given to other stakeholders.

With respect to support to companies, the CSDDD requires the Commission to establish a single helpdesk for companies to seek information, guidance, and support on fulfilling their due diligence obligations. Relevant national authorities in each Member State are also required to collaborate with the single helpdesk to assist in tailoring the information and guidance to national contexts and in disseminating that information and guidance (Article 21). Member States should also operate websites, platforms, or portals to make available a number of resources and pieces of guidance required to be developed under other articles in the Directive (Article 20(1)). These include guidance and model contract clauses required from the Commission (Articles 18 and 10), the content and criteria for reporting (Article 16(3)), the single helpdesk (Article 21), and information for stakeholders and their representatives on how to engage throughout the due diligence process. Such information should prioritise accessibility and usability.<sup>157</sup>

The accompanying measures foreseen under the Directive also place particular emphasis on supporting SMEs. Member States are expected to give special consideration to SMEs present in the chains of activities of in-scope companies when developing information and support measures (Article 20(1)), meaning that information provided should not just have in scope companies as a target audience, but also focus on supporting SMEs and other companies not in scope to undertake due diligence. The Directive also provides Member States may financially support SMEs where that would not contravene state aid rules (Article 20(2)).

Examples of SME-specific tools and resources already exist at the EU level,<sup>158</sup> but also at the Member State levels, linked to existing supply chain due diligence laws.<sup>159</sup>

Article 20(2) provides that “Member States may also provide support to stakeholders for the purpose of facilitating the exercise of the rights laid down in this Directive”. In line with expectations of the UNGPs<sup>160</sup> and OECD Due Diligence Guidance,<sup>161</sup> the text of the CSDDD recognises that meaningful stakeholder engagement is a core part of effective due diligence, mandating that stakeholders be consulted throughout the due diligence process.<sup>162</sup>

There are a range of rights afforded to stakeholders under the Directive which could be the subject of support envisaged by Article 20(2). These include: rights to meaningful consultation<sup>163</sup> free from retaliation or retribution,<sup>164</sup> and to be provided with relevant and comprehensive consultation to facilitate effective and transparent consultation;<sup>165</sup> rights to submit complaints to company complaint mechanisms<sup>166</sup> free from retaliation,<sup>167</sup> to request appropriate follow up,<sup>168</sup> meet with company representatives<sup>169</sup> and be provided information on the complaint;<sup>170</sup> rights to report substantiated concerns to Supervisory Authorities;<sup>171</sup> rights to pursue civil claims against a company pursuant to Member State law.<sup>172</sup> Member States should actively consider what forms of support may be given to stakeholders to exercise these rights to ensure effective implementation of the Directive.

The Directive further outlines that the Commission may complement Member State support measures, building on existing Union action to support due diligence in the Union and in third countries.<sup>173</sup> The measures taken by Member States and the Commission targeting third countries will be particularly necessary as the CSDDD will have relevance not only within the EU but also on global value chains, where it will impact a wide range of non-EU entities and activities. Such measures could include support to empower rightsholders, civil society, trade unions or other worker representatives and NHRIs to tackle obstacles to accessing justice in cases of adverse impacts; providing guidance and capacity building to companies, including smaller companies in the chains of activities of in-scope companies to help them adopt sustainable production practices. In addition to guidance, tools and resources, accompanying measures such as development cooperation, trade and investment policy are critical tools to create the required enabling environment in third countries.<sup>174</sup> This should be accompanied by other measures to support state institutions in third countries to step up efforts to realise the UNGPs alongside efforts to support implementation of the Directive, including the development of National Action Plans on Business and Human Rights. Policymakers should be encouraged to consult with stakeholders in the development of these various support measures.

The CSDDD also sees a role for multistakeholder initiatives, industry initiatives, and third-party verification to support companies in discharging their due diligence obligations,<sup>175</sup> to the extent that such initiatives are appropriate to support the fulfilment of those obligations. In addition to this general entitlement to make use of such initiatives to support due diligence, the CSDDD lists a number of specific areas where such initiatives can be used, such as to identify and assess adverse impacts, the development of prevention and corrective action plans,<sup>176</sup> facilitation of stakeholder consultation,<sup>177</sup> or in providing collaborative complaints procedures or notification mechanisms.<sup>178</sup>

Article 20 and relevant recitals make clear that the use of such third-party services should be seen as a means to support the fulfilment of due diligence obligations under the CSDDD, and may only be used to the extent that they are appropriate to do so. This is a critical element as a wealth of research has recommended against over-reliance on such Initiatives.<sup>179</sup> In light of their limitations, use of such Initiatives should not be regarded as a substitute for due diligence, rather they should be used to facilitate or support the holistic risk-based approach to due diligence outlined in the CSDDD.

Where companies participate in MSIs or industry initiatives, they have an ongoing obligation to “monitor the effectiveness of such measures and continue to take appropriate measures where necessary to ensure the fulfilment of their obligations”.<sup>180</sup> The CSDDD also makes clear that companies participating in industry or multi-stakeholder initiatives or using third-party verification to support the implementation of due diligence obligations can still be penalised by a Supervisory Authority<sup>181</sup> or held liable under the civil liability mechanism under the national law.<sup>182</sup>

When relying on such mechanisms or other external actors, including consultants, legal advisers or digital tools, companies should reflect on the responsible use of external support and develop internal frameworks to guide this engagement. This includes assessing whether these actors or tools operate within a human rights-based approach, evaluating their expertise and competence, and clarifying which elements of the due diligence process they can meaningfully support. Such reflection helps companies retain ownership of the due diligence process and remain attentive to potential gaps.

Multistakeholder initiatives, industry initiatives, third party verifiers, digital tool operators and other actors providing external support should align their methodologies with a human rights-based approach and international frameworks, including the UNGPs and OECD Guidelines. This includes adopting structural measures to mitigate conflicts of interest, addressing the root causes of adverse impacts, developing credible methodologies for identifying and assessing adverse impacts, ensuring meaningful and safe engagement with affected rightsholders, improving transparency in methodologies and results, and clearly communicating the limitations of the tools and assessments they provide.

National transposition authorities should clarify, through their national laws and associated guidance, that the use of such initiatives, verification and external actors should remain a support and not a substitute for a due diligence. They should emphasise that ultimate responsibility for due diligence remains with the company.

The Commission, in collaboration with Member States, is required to set out fitness criteria and a methodology for companies to assess the fitness of industry and multi-stakeholder initiatives and of third-party verifiers. In addition, the Commission is also required to issue guidance for monitoring the accuracy, effectiveness, and integrity of third-party verification.<sup>183</sup> The Recitals acknowledge the critical need for this guidance to address the shortcomings of ineffective audits.<sup>184</sup> The Commission should actively engage with stakeholders, including civil society actors and rightsholders’ groups, NHRIs, trade unions, and community and worker organisations, in developing this guidance and fitness criteria, to ensure that it meaningfully addresses the well-documented shortcomings of these schemes and establishes robust institutional and operational fitness criteria.

## Attention points for implementation



### The Commission should:

- Clarify through guidance that the use of industry and multi-stakeholder initiatives, verification and other external support systems cannot be used as a substitute for due diligence; rather, they should be used only to facilitate or support a holistic, risk-based approach to due diligence, and that ultimate responsibility for due diligence remains with the company.
- Actively engage with stakeholders in developing and implementing guidance and fitness criteria on the use of initiatives and verification, to ensure they meaningfully addresses the well-documented shortcomings of these schemes and establishes robust institutional and operational fitness criteria.
- Support third countries through guidance, tools, and resources, as well as other accompanying measures such as development cooperation and trade policy to create an enabling environment in third countries.
- Develop accompanying measures targeting not only on supporting European companies but also on non-EU companies and other relevant actors, including CSOs, trade unions and NHRIs, both within and outside the European Union.

### Stakeholders, including civil society actors and rightsholders groups, NHRIs, trade unions, and community and worker organisations, can:

- Advocate during transposition and implementation for clear legislative safeguards ensuring the responsible use of industry and multi-stakeholder initiatives and can monitor and scrutinise corporate practice to ensure that such mechanisms are not relied upon in a manner inconsistent with the UNGPs.
- Engage with national policymakers on the development of information accessibility and support measures.
- Identify gaps in Member States' existing information and support measures and engage with Member State authorities on which support measures to prioritise and on ensuring that they are fit for purpose and tailored to the relevant national context.

# 7 Remediation

A core aspect of implementing due diligence obligations is providing remediation to those harmed by business operations.

Member States are obliged to ensure that companies provide remediation where they cause or jointly cause an impact (Article 12(1)). The CSDDD also contemplates that companies may voluntarily provide remediation where an impact is caused by a business partner, or exercise leverage encouraging a business partner causing the impact to themselves provide remediation (Article 12(2)). Supervisory Authorities are to be equipped with powers to order remediation (Article 25(5)(a)(iii)).

The CSDDD defines “remediation” to mean restitution of the affected persons or communities to a situation as close as possible to that they would be in had the impact not occurred, proportionate to the company’s involvement (Article 3(1)(t)). It also specifies that remediation should include both financial and non-financial compensation. Companies are obliged to consult with stakeholders when they are adopting appropriate measures to remediate adverse impacts (Article 13(3)(c)).

There are three main routes to remedy envisaged in the CSDDD regime: (a) possibility of civil liability before relevant national courts, (b) administrative supervision and enforcement by member state supervisory authorities, and (c) direct remediation by companies as part of their HREDD obligations. These are considered in turn below.

## 7.1 Civil liability

### What does the CSDDD say?

The CSDDD requires member States to ensure that “where a company is held liable pursuant to national law for damage caused to a natural or legal person by a failure to comply with the due diligence requirements under this Directive, Member States shall ensure that those persons affected have a right to full compensation. [...]” (Art 29(2)). If a company is held liable pursuant to Article 29, it will be without prejudice to the liability of its subsidiaries or business partners, and where damage was caused jointly by the company, and its subsidiaries or business partners they shall be jointly and severally liable (Article 29(5)). Companies participation in an industry or multistakeholder initiative or the use of third party verification cannot be used as a shield to liability (Article 29(4)). The rules on liability under the CSDDD shall not limit liability under EU or national rules which provide for liability in situations not covered by, or which provide for stricter liability than, the CSDDD (Article 29(6)).

In addition, Article 29 requires Member States to address a number of barriers to access to justice, ensuring that: national rules on limitation periods do not hamper bringing of actions and are at least five years (Article 29(3)(a)); costs of proceedings are not prohibitively expensive (Article 29(3)(b)); injunctive measures are available (Article 29(3)(c)); and that national courts are able to order the disclosure of evidence on certain conditions (Article 29(3)(e));

### What does it mean?

The CSDDD as adopted in 2024 included a requirement that Member States ensure that a company could be held liable for damages caused by failure to meet due diligence requirements under specified conditions (formerly Article 29(1)).<sup>185</sup> In doing so, it would have created a common set of conditions on which liability could accrue, and accordingly would have enabled a partially harmonized EU level liability regime for harms arising from due diligence failures.

This provision was deleted following the Omnibus amendments. As such, the specific obligation on Member States to ensure that liability could accrue on the conditions specified in that paragraph was removed. However, the language in Article 29(2) which requires Member States to ensure that victims have an entitlement to full compensation remains. This should be read alongside other provisions in the instrument concerning access to remedy. This includes the requirement on Member States to ensure that companies provide remediation where it has caused or jointly caused an adverse impact<sup>186</sup> and language in the Recitals to Omnibus I which recall overarching obligations on Member States under European and international law to ensure that victims of adverse impacts have effective access to justice and to guarantee their right to an effective remedy.<sup>187</sup>

Accordingly, the deletion of Article 29(1) provides discretion on Member States on how they ensure that their liability regimes are fit for purpose, but the underlying objective needs to be achieved: namely that victims have effective access to justice and a right to remedy and full compensation.

The operative parts of the CSDDD create a set of duties requiring in scope companies to conduct due diligence to identify and address adverse impacts in accordance with the terms laid down in the Directive. Member States each have existing liability regimes that could apply to cases where harms arise as a result of due diligence failures in their own operations, in relation to their subsidiaries and supply chains often based on tort or its equivalents. In this context, the removal of Article 29(1) has not removed liability risk from the instrument. It has instead created a degree of uncertainty over the standard to which companies can be held to account for due diligence failures, depending on the approach taken in the Member State in which an action is brought. While litigation risk can provide an incentive for companies to conduct effective due diligence that does not result in actionable harms, is important that this uncertainty does not result in companies designing their due diligence efforts with the primary driver of removing liability risk, rather than effectively addressing impacts.

Further, given the clear and well-documented gaps in access to remedy for victims of business-related harms, existing national law civil liability regimes, including those which provide for procedural rules, may not be adequately equipped to ensure access to effective remedy in respect of the new legal obligations on companies introduced in the CSDDD.<sup>188</sup> There is significant variation across Member States in relation to available causes of action, procedural barriers, evidentiary standards, and interpretations of full compensation.<sup>189</sup> This could lead to substantially different access to justice outcomes across the Union. Ensuring coherence and effectiveness in this area will therefore depend on how national systems interpret and operationalise liability in alignment with the Directive's objectives and international frameworks.

It is challenging to see how Member States could fulfil their obligations to ensure that companies provide remediation under the CSDDD, as well as their obligations under European and international law, without examination and potential revision of existing national liability regimes, including their procedural rules. This process should be guided by the European Commission through transposition workshops. Unless there is a common commitment across the Member States to ensure that their national liability regimes are fit for the purpose of providing access to justice for due diligence failures under the CSDDD, there will be considerable fragmentation across the Union.

Another significant change to the civil liability article was the deletion of a provision requiring EU Member States to ensure that the provisions of national law transposing the civil liability regime are of “overriding mandatory application” in cases where the law applicable to such claims is not the national law of a Member State (formerly Article 29(7)). This is of significance for transnational human rights cases where challenges with applicable law, jurisdiction, evidence and other procedural matters add another layer of complexity. The effect of this provision would have been to ensure that the civil liability mechanism in the CSDDD would be available even where applicable private international law rules determine that the law applicable to the dispute is the law of that third country which does not have an equivalent liability regime.<sup>190</sup>

The deletion of this provision could lead to the law of the forum being displaced in favour of foreign law in some cases, which might not recognise liability for due diligence failures contemplated in the CSDDD. This could create barriers to access to remedy which would be contrary to the overarching obligation on Member States to ensure that remediation be given<sup>191</sup> and that victims have an entitlement to full compensation.<sup>192</sup>

As we have seen recently in litigation in France,<sup>193</sup> the determination of the law applicable to a dispute is often a matter for the exercise of judicial discretion, which can be unpredictable in the absence of a clear rule.<sup>194</sup> Litigation could be made considerably less complex and a far more certain legal environment created if Member States were to make their own national provisions of mandatory overriding application, with the possibility of extending this approach to not only the liability provisions, but across the whole of the instrument.

Following Omnibus I, the CSDDD continues to require Member States to address access to justice challenges referred to above, however a further amendment introduced by the Omnibus deleted an obligation on Member States to ensure that there are reasonable conditions for representative actions to be brought by a trade union, NGO or NHRI on behalf of a victim.<sup>195</sup> Accordingly, the question of availability of representative actions is left to what currently exists under Member State laws, which could be another source of fragmentation which should be addressed in transposition workshops facilitated by the Commission.

Lastly, the effectiveness of national enforcement mechanisms and their protective effects on rightsholders is a matter which will be the subject of review under Article 36(f). To inform the review, a cross-jurisdictional survey of national civil liability and access to justice frameworks should be conducted which could help identify emerging approaches, common challenges and areas where revisions of the CSDDD may be necessary, grounded in evidence.

## Attention points for transposition



### Member States should:

- Examine existing liability regimes in their jurisdictions to assess whether these are fit to provide access to remedy and full compensation for victims and use the margin of discretion in the CSDDD to revise liability regimes where gaps have been identified.
- Take steps to identify and address barriers to access to justice through legal and institutional measures.
- Specify that the CSDDD is of mandatory overriding application.

### The Commission should:

- To create legal certainty, use transposition workshops to encourage Member States to examine their national liability regimes, including procedural rules, to assess that they can provide remediation under the CSDDD.
- Encourage a common approach to making the CSDDD transposition provisions of overriding mandatory application consistent across the EU to avoid fragmentation and create legal certainty.
- Conduct a survey of existing avenues for liability and potential and actual barriers to accessing full compensation and remedy for rightsholders across EU jurisdictions, including to inform the review of the Directive.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

## Attention points for implementation



### Member States and the Commission should:

- Address barriers to access to remedy, particularly in transnational litigation, to ensure victims' effective right to remediation and full compensation.
- Cooperate to support the consistent implementation of liability rules across the EU through guidance, exchange of information and examples of practice to avoid further fragmentation and uneven protection.
- Actively monitor implementation by commissioning an analysis of the procedural aspects and outcomes of civil liability cases as they arise to identify barriers and needs for potential adjustments through legal revisions.
- Cooperate, in coordination with the Commission, to examine how the liability mechanisms interact with other access to justice measures of the CSDDD.

### Companies should:

- Avoid designing due diligence with the primary objective of avoiding litigation risk, rather than effectively addressing impacts.
- Document and, where relevant, transparently disclose decision-making processes related to the due diligence process to demonstrate the company's

approach to impact identification, assessment, prioritisation and the actions that have been taken to address those impacts.

- Engage meaningfully and proactively with rightsholders when identified risks may lead to remediation, including civil liability, to support early resolution and effective remediation.
- Prepare to engage in good faith in potential civil liability cases by providing access to internal documents and processes and with a view of enabling an effective access to remedy and full compensation for victims, where relevant.
- Anticipate transnational litigation risks, including differences in applicable law, jurisdiction, and evidentiary standards and reflect these considerations in groupwide due diligence and governance frameworks.
- Monitor developments in case law to identify where certain due diligence processes and practices could be adapted.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations can**

- Support access to remedy for victims of harms by providing information, supporting documentation of harms and linking those to companies' due diligence processes and operations.
- Engage with policymakers and judicial actors in their jurisdictions and across the EU to highlight systemic access to justice barriers and where reforms would be needed to enable effective access to remedy.
- Where possible and appropriate, support or initiate strategic litigation cases, which can support a better understanding and interpretation of the due diligence obligations of the Directive in practice.
- Monitor and gather evidence on the experiences of liability cases in their jurisdictions to inform future guidance and revisions to legal frameworks.

## 7.2 Substantiated concern mechanisms

### What does the CSDDD say?

The Directive provides for a route through which people can raise allegations of non-compliance to Supervisory Authorities, which may lead to an investigation and some form of enforcement to bring about compliance.

Supervisory Authorities are required to establish processes for receiving, handling and resolving “substantiated concerns” reported by natural or legal persons that a company is not complying with its obligations (Articles 25(2) and 26). Channels for making substantiated concerns are required to be accessible (Article 26(1)).

Supervisory Authorities are required to assess the substantiated concern within an “appropriate period of time” and exercise their powers where appropriate (Article 26(4)). Supervisory Authorities are required to inform those reporting substantiated concerns of the result of their assessment and provide reasoning as soon as possible, as well as their decision to accept or refuse any request for action and a description of further steps to be taken (Article 26(5)). Member States are required to ensure that processes for administrative or judicial review of such decisions are available (Article 26(6)), and that information on such

review processes is available to those submitting substantiated concerns (Article 26(5)). Member States are also required to ensure that necessary measures are taken to protect the identity of the person making a substantiated concern (Article 26(2)).

Pursuant to Article 24, substantiated concerns should be directed:

- in the case of a concern about an EU-based company, to the supervisory authority of the Member State in which that company is registered (Article 24(2)); and
- in the case of a concern about a non-EU-based company, to the supervisory authority in which the company has a branch or, in the absence of any branches, to the supervisory authority of the place where the company generates the highest share of its net turnover (Article 24(3)).

Article 26(4) directs EU Member States to ensure that, if a substantiated concern falls under the competence of a different Supervisory Authority (presumably in a different jurisdiction), the matter is transferred.

Supervisory Authorities can address substantiated concerns by, “where appropriate”, initiating an investigation and exercising their statutory powers (See [Section 6.1](#)), for example to order remediation or impose pecuniary or other penalties.

### **What does it mean?**

The UNGPs set out a number of “effectiveness criteria” for non-judicial grievance mechanisms which should be considered when designing processes to address substantiated concerns. These include legitimacy, accessibility, predictability, equity, transparency, rights compatibility, and being a source for continuous learning.<sup>196</sup> Challenges in terms of access, awareness of rights, rightsholder participation and adequacy of non-retaliation protections have been raised in relation to existing supervisory mechanisms, as well as range of other evidentiary and process concerns. Fulfilling the effectiveness criteria is important to address these challenges.<sup>197</sup> This includes improving information on stakeholders’ rights and on the available procedures and ensuring that complaints will be handled in a transparent and accessible manner, with the active involvement of complainants. It also requires ensuring effective non-retaliation protections for complainants and sending a clear signal to rightsholders by actively using the powers of investigation and enforcement.<sup>198</sup>

The Directive provides minimal guidance about how the substantiated concerns procedure should work in practice, and does not clearly prescribe specific outcomes to this procedure, apart from the exercise of Supervisory Authorities’ powers “where appropriate”. This leaves room for Member States to be more prescriptive about Supervisory Authorities’ duties and to ensure that substantiated concern processes are designed and implemented in a way that is consistent with the UNGPs effectiveness criteria and that contributes to effective supervision and enforcement. The European Network of Supervisory Authorities can also be leveraged in order to ensure consistency of approach across the Member States.

There will be interconnectivity and overlapping processes between administrative supervision, civil liability and other processes such as those operated by National Contact Points (NCP) established pursuant to the OECD Guidelines, where parallel cases may be brought before these mechanisms simultaneously.<sup>199</sup> In addition, Member States should consider how the substantiated concerns mechanism operates in the context of

other enforcement mechanisms under related instruments, such as the Forced Labour Regulation.<sup>200</sup> It is important for Supervisory Authorities to anticipate and address this, for example in policies on complaints handling, information sharing and enforcement approaches. Supervisory Authorities should ensure clarity around the interplay between the substantiated concerns mechanism under the CSDDD and other complaints and grievance mechanisms at the national level, including, where relevant, NCPs.

Further, there is potential for exchange between such mechanisms on matters of interpretation. For example, NCP cases have elaborated due diligence expectations under the OECD Guidelines, particularly in relation to emerging issues such as due diligence in the downstream part of value chains and the obligations of the financial sector.<sup>201</sup> Accordingly, during the implementation of the Directive, Supervisory Authorities may draw on the interpretive practice developed through NCP specific instances when interpreting due diligence obligations, to the extent that the CSDDD aligns with the OECD Guidelines.<sup>202</sup>

### Attention points for transposition



#### Member States and the Commission should:

- When designing the Supervisory Authorities and the substantiated concern mechanisms, ensure consistency with the UNGPs' effectiveness criteria.
- Design the substantiated concern mechanism with consideration of its place in and interactions with the broader remedy landscape, including by clarifying its interaction with national civil liability regimes and other remedy mechanisms available. This should be coordinated at the level of the Commission to ensure a consistent approach across Member States.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations** can advocate for the recommendations made above in their respective jurisdictions and with the Commission at EU-level.

### Attention points for implementation



#### Member States and the Commission should:

- Ensure that substantiated concern procedures are designed and implemented in a way that is consistent with the UNGPs' effectiveness criteria and contributes to effective supervision and enforcement.
- Ensure that clear information is available on the substantiated concern procedures, which matters can be referred to Supervisory Authorities, and how complaints will be handled in a transparent and accessible manner, non-retaliation protections for complainants.
- Supervisory Authorities send a clear signal to rightsholders by actively using the powers of investigation and enforcement.

- Ensure clarity around the interplay between the substantiated concerns mechanism under the CSDDD and other complaints and grievance mechanisms at the national level, including, where relevant, NCPs for Responsible Business Conduct.
- Supervisory Authorities draw on the interpretive practice developed through NCP specific instances when interpreting due diligence obligations, to the extent that the CSDDD aligns with the OECD Guidelines.
- Engage the European Network of Supervisory Authorities to facilitate consistent approaches to substantiated concerns.

**Stakeholders, including civil society actors and rightsholders' groups, NHRIs, trade unions, and community and workers' organisations can:**

- Plan how best to monitor the way Supervisory Authorities receive and address substantiated concerns, including ensuring that they are dealt with without undue delay. This could include monitoring the adequacy of administrative or judicial review processes available in respect of decisions of the Supervisory Authorities.
- Plan for awareness-raising about the substantiated concerns processes and provide support to rightsholders using these processes.
- Develop a solid evidence base examining how access to justice in relation to the CSDDD is operating across the Member States. NHRIs, in particular, can facilitate a cross-jurisdictional survey of national civil liability frameworks drawing on their expertise as national human rights, institutions, to assess how civil liability mechanisms function in practice.

### 7.3 Company complaint mechanism

Companies are obliged to establish complaint and notification mechanisms, which could potentially be an avenue to the provision of remediation to affected people. However, many company-led mechanisms in use at present appear inadequate when analysed from a remedy perspective. Research into the performance of company-based and MSI-based complaint or grievance processes raises concerns about their contributions so far to resolving human rights-related issues in value chains and delivering effective remedies. Corporate practice is haphazard and insufficiently developed. It is also largely opaque, with very little peer learning between companies to improve processes.<sup>203</sup>

For a description of the CSDDD provisions on the complaint mechanism, see above [Section 5.8](#). As noted above. It is important that the obligations with respect to complaint mechanisms do not result in a proliferation of ineffective mechanisms. Design of mechanisms with the UNGPs effectiveness criteria in mind can help address these potential risks. For recommendations with respect to the complaint mechanism, see [Section 5.8](#) above.

## 8 Concluding recommendations

The CSDDD and related transposition laws should be interpreted and implemented in light of their overarching objective: preventing, mitigating, and remediating adverse human rights and environmental impacts, and improving outcomes for people and the environment. Keeping the CSDDD's core purpose in mind should serve as a guiding compass throughout national transposition and implementation processes, the development of guidance or capacity-building programs, the design of due diligence systems and appropriate measures, and supervision approaches will be essential to prevent purely compliance-driven approaches that focus narrowly on meeting minimum legal requirements.

The CSDDD will apply across diverse sectors and global value chains. Its implementation will involve multiple actors both within and outside the EU.<sup>204</sup> This includes: policymakers at the national and EU level responsible for transposition and supervision, developing guidance and development of accompanying measures; companies in scope designing and operating due diligence systems and business partners throughout global value chains; and rightsholders and other stakeholders, including civil society organisations, national human rights institutions and trade unions monitoring due diligence efforts, availing themselves of remedy mechanisms and providing contextual insights on appropriate due diligence measures.

Each of these actors has a contribution to make in order to ensure effective implementation of the CSDDD. Throughout this guide, we have offered recommendations to each of these actors mindful of the differing roles they will play in implementation of the instrument. We summarise these cross-cutting recommendations below.

### Recommendations for companies

- **Take a purposive approach and ask: what is the objective of due diligence?**

In-scope companies should approach the implementation of their obligations under the CSDDD with a clear understanding of the underlying purpose of HREDD. The central question guiding due diligence practices should be: “What is the ultimate objective of implementing HREDD processes?”. Keeping the purpose of the CSDDD as a “north star” can help companies design due diligence systems that focus on delivering tangible improvements rather than purely procedural compliance. As discussed in this publication, several design features emphasise this approach and guard against the risk of checkbox compliance, such as requiring appropriate measures to be “effective” and effective engagement with stakeholders.

Companies are encouraged to approach the CSDDD as an opportunity to strengthen their HREDD systems in line with the UNGPs. Integrating due diligence across core internal functions and departments enables different parts of the organisation to establish

ownership, share information, identify risks collectively and develop coordinated responses. In doing so, companies can develop a holistic understanding of potential and actual impacts across operations and value chains.

- **Adopt a risk-based and holistic approach to due diligence**

Companies should adopt a flexible, risk-based approach to identifying and addressing adverse impacts. In practice, this involves considering contextual risk factors, communicating with business partners, engaging rightsholders, their representatives and relevant experts, and tailoring responses to the specific risks and needs identified on the ground. Such an approach requires flexibility and a holistic perspective when designing and implementing due diligence processes, guided by the core purpose of preventing, mitigating and remediating adverse impacts and contributing to better outcomes for people and the environment. Prioritisation should remain focused on the severity and likelihood of impacts, and enable the identification and response to adverse impacts including those occurring in the deeper tiers of value chains.

- **Engage constructively with business partners**

Effective due diligence requires constructive and ongoing exchanges between companies and their business partners to ensure that adverse impacts are properly identified and that interventions are tailored to address them effectively. Limitations on information requests introduced by the Directive should therefore not be interpreted as preventing companies from obtaining targeted, reasonable, and proportionate information necessary for effective risk identification.

A purposive interpretation of due diligence obligations, consistent with the UNGPs, supports companies in exchanging information with their business partners throughout the due diligence process by obtaining targeted, reasonable, and proportionate information necessary to effectively identify and address risks. A coherent approach should be taken to engagement, bearing in mind the support in scope companies are required to provide to SMEs elsewhere in the directive, including obligations on companies to provide targeted and proportionate support to SME business partners.

- **Make sure use of external support is appropriate**

The CSDDD recognises that multistakeholder initiatives, industry initiatives and third-party verification can support companies in implementing due diligence, for example, in identifying and assessing adverse impacts, developing prevention and corrective action measures, facilitating stakeholder engagement and participating in collaborative complaints or notification mechanisms.

When relying on such mechanisms or other external actors, including consultants, legal advisers or digital tools, companies should reflect on the responsible use of external support and develop internal frameworks to guide this engagement. This includes assessing whether these actors or tools operate within a human rights-based approach,

evaluating their expertise and competence, and clarifying which elements of the due diligence process they can meaningfully support. Such reflection helps companies retain ownership of the due diligence process and remain attentive to potential gaps.

- **See stakeholder engagement as a means of facilitating effective due diligence**

This includes integrating stakeholder engagement throughout the due diligence process and engaging with a broad range of stakeholders. Rightsholders and their credible representatives, workers' organisations, trade unions, civil society organisations and NHRIs, both within and outside the EU, play a key role in the effective implementation of the CSDDD. Their insights into local contexts, sectoral dynamics and lived experiences of impacts can enable effective identification, assessment and prioritisation of risks. Through meaningful engagement in the due diligence process, these actors can help ensure that due diligence remains grounded in the needs and concerns of the affected stakeholders. They can inform designing prevention, mitigation, and remediation measures that are tailored and responsive to their needs. These stakeholders are also critical actors for monitoring implementation of the Directive, supporting affected individuals and communities in accessing remedy mechanisms, and engaging in dialogue with companies, Supervisory Authorities, and policymakers to shape practices that serve the needs and concerns of rightsholders.

Stakeholder engagement with affected people and groups, as well as their representatives, should be central throughout the due diligence process to identify impacts and design tailored measures to effectively address them. A purposive interpretation of due diligence obligations supports companies in identifying the broad range of stakeholders in each context and engaging with them throughout the due diligence process. This enables a more mature approach to due diligence that extends beyond the Directive's definition of stakeholders and limited stakeholder engagement requirements. Doing so can raise the quality of due diligence and make sure that measures taken are appropriate, avoiding costs and investment in measures which do not meet the needs of stakeholders or the definition of appropriate measures in the instrument.

- **Keep UNGPs and OECD Guidelines as a reference point**

Soft law instruments such as the UNGPs and OECD Guidelines have guided companies in their due diligence practices for over a decade and have been influential in the development of the CSDDD. They remain critical touchstones for the implementation of the CSDDD.

Transposition, implementation and supervision of the CSDDD should remain informed by relevant international standards, particularly the UNGPs and the OECD Guidelines.<sup>205</sup> These frameworks emphasise pragmatic and proportionate approaches to due diligence, where companies are expected to tailor their responses to the nature, severity and context of the risks they face across their operations and value chains.

- **Enable and provide remediation**

Under the CSDDD, companies will be required to provide remediation where they have caused or jointly caused an adverse impact. Companies will also be expected to consider whether to provide remediation voluntarily or exercise leverage where an impact with which the company is connected is caused only by a business partner.

In the CSDDD Consideration of remediation arises when a company designs and operates complaint mechanisms, cooperates with Supervisory Authorities supervising compliance or participates in litigation. However, consideration of remediation questions should not only arise at the point at which a formal process is triggered. It should be actively considered across the due diligence process as a company takes appropriate measures to address the impacts it identifies, and in its relationship to its business partners, including the degree of leverage that exists. Remediation must also be informed by the needs of stakeholders, whose needs are central to determining what would be appropriate to restore them to the situation they would have been in had the impact not occurred.<sup>206</sup>

## **Recommendations for policymakers**

- **Supervision and enforcement**

It is important to ensure that Supervisory Authorities exercise their monitoring, supervisory and enforcement powers in a manner that reflects the objectives and underlying logic of the Directive and its grounding in the UNGPs. This requires a purposive interpretation of the CSDDD and a supervisory approach that recognises and supports context-appropriate, pragmatic and innovative due diligence practices by companies, rather than limiting oversight to a narrow assessment of formal compliance with the specific measures referenced in the Directive. Such an approach can also help ensure that supervision remains responsive to evolving risks, sector-specific challenges and emerging good practices in responsible business conduct.

To ensure effective administrative supervision, it is critical that Supervisory Authorities have strong human rights competencies and the necessary knowledge and skills in corporate law, trade law, private international law, and sector-and industry-specific challenges. They should also be adequately equipped to monitor the CSDDD transposition law proactively, including having sufficient financial and human resources.

- **Guidance**

The CSDDD obliges the Commission to develop guidance as well as model contract clauses and the Member States to develop tools and resources to support companies and stakeholders in understanding and implementing the Directive's requirements.

The guidance developed by the Commission will play an important role in shaping how the Directive is implemented in practice. Commission guidance can provide important clarification on key concepts, support a coherent understanding of due diligence obligations, and encourage approaches that remain aligned with the objectives of the Directive and the UNGPs.

The guidance and support measures to be developed by the Commission and national authorities should align with the objectives of the CSDDD as articulated in the recitals, and clearly position the UNGPs and OECD Guidelines as primary reference frameworks.

- **Accompanying measures**

The CSDDD envisages that various forms of support are needed to create an enabling environment to ensure that companies are able to effectively discharge their due diligence obligations and that stakeholders are able to exercise the rights given to them under the Directive. There is a need for a coherent approach to the development of accompanying measures. This is a complex ecosystem of measures implemented at the EU, Member States, and Partner Country levels, as well as through multi-stakeholder initiatives and industry initiatives from the private sector. Others such as civil society, trade unions, and NHRIs, also have a role to play to create an effective enabling environment. These actors should also both contribute to and be supported by this ecosystem of accompanying measures.

It should also be ensured that the use of third-party services are used as a means to support the fulfilment of due diligence obligations under the CSDDD, and may only be used to the extent that they are appropriate to do so, as part of their supervision and support functions.

- **Policy coherence**

The CSDDD does not operate in isolation. Its implementation will take place alongside a growing body of EU legislation that addresses sustainability related risks and impacts from different regulatory angles. These include instruments containing more targeted due diligence obligations and reporting requirements under the Corporate Sustainability reporting Directive. Each of these instruments is likely to rely on different approaches to supervision, guidance, enforcement and institutional oversight within Member States. Ensuring coherence across these regulatory initiatives will therefore be an important consideration for policymakers, supervisory authorities and companies during the transposition and implementation phases. Referring to the UNGPs and the OECD GLs as critical touchstones for the implementation of each of these instruments enables a holistic approach that supports policy coherence and consistent implementation across the EU's responsible business regimes.

## Recommendations for CSOs, NHRIs, trade unions and other stakeholders

### • Building capacity and supporting guidance and other support measures

CSOs, NHRIs and trade unions can play an important role in ensuring the CSDDD achieves its objectives of protecting human rights and promoting responsible business conduct across global value chains. These actors can provide advice and expertise to support the effective implementation of the CSDDD in their jurisdiction.

These actors can help shape guidance and tools that are effective and inclusive by ensuring the voices and concerns of affected rightsholders are given due consideration. These actors can engage with and build the capacity of a wide range of stakeholders, including policymakers, businesses, rightsholders and their representatives to raise awareness of the CSDDD and the opportunities it presents for strengthening respect for human rights and the environment. They can facilitate dialogues and partnerships between governments, businesses and civil society, and build the knowledge of local stakeholders who will be crucial actors in implementing the Directive within local contexts.

### • Monitoring

CSOs, NHRIs and trade unions also have a crucial monitoring function with respect to companies' due diligence policies actions and effects on the ground. They can share identified gaps and areas for improvement during the stakeholder engagement or expert consultation process. The particular expertise and connection to rightsholders that these actors have brings a particular perspective to monitoring efforts, ensuring that the impacts on the rightsholder are central to assessing the effectiveness of a company's due diligence efforts.

### • Engaging with companies

While the Directive does not explicitly require companies to engage stakeholders when developing qualitative and quantitative indicators to assess the effectiveness of their HREDD measures, these actors can proactively share their monitoring insights. Companies adopting a more mature approach to due diligence can benefit significantly from these insights when designing these indicators.

### • Supporting rightsholders

These actors can facilitate engagement with rightsholders including affected communities and workers in the due diligence process. They can draw attention to the concerns of individuals and groups that might be marginalised or excluded from participation and decision-making. They can share concerns and insights from the local context, which, in turn, can inform measures companies take to address adverse impacts. This ensures that

these measures are responsive to the specific needs and challenges of the local context. These actors are also crucial in utilising and promoting new remedies and accountability avenues introduced by the CSDDD. They can provide affected rightsholders with the support and guidance needed to seek remedy under the Directive, and file complaints or initiate litigation themselves.

- **Research and evidence gathering**



The research and data-gathering efforts of these actors can also support the Commission's future review and evaluation of the Directive. The Directive requires the Commission to conduct a first review of its impacts covering its personal scope, the definition of the chain of activities, and its material scope, including the types of human rights and environmental impacts companies must address. The review will also assess the impact on SMEs and the effectiveness of SME support measures, the effectiveness of national enforcement mechanisms and their protective effect on rightsholders, as well as whether adjustments to the level of harmonisation are necessary. CSOs, NHRIs and trade unions will be crucial in monitoring and documenting the implementation and impacts of the Directive, particularly in the areas subject to review, to ensure that the review process and any future legislative measures are informed by evidence-based analysis.



- **Leveraging the CSDDD to strengthen human rights and environmental protection**




These actors can also leverage the CSDDD to encourage policy development and regulatory reforms, and to strengthen human rights and environmental standards and corporate accountability frameworks at the domestic level. They can advocate for reforms of national policies and legal frameworks, that address corporate impacts on human rights and the environment including advancing national provisions on liability and remedy. They can advocate for a 'smart mix' of voluntary and mandatory measures, including promoting the adoption of mandatory human rights and environmental due diligence laws and sustainability reporting requirements at the national level.



# Annex





## Alignment gaps between the CSDDD and the UNGPs and suggested practical approaches

	UNGPs	CSDDD	Alignment	Suggested Approach
Personal scope	<p><b>All companies</b> have a responsibility to respect human rights, which can be addressed through undertaking HRDD that is proportionate to their size, sector, operational context, ownership, and structure (UNGPs: GP 14).</p>	<p>EU companies of over <b>5,000 employees</b> and a net worldwide annual turnover of <b>EUR 1.5 billion</b></p> <p>Non-EU companies with a net turnover of <b>EUR 1.5 billion</b> in the EU</p> <p>Companies which do not meet above thresholds, but is the ultimate parent company of a group which reaches these thresholds</p> <p>Companies that have entered into franchising or licensing agreements in the EU in return for royalties amounting to more than <b>EUR 75 million</b> in the EU and have a net worldwide turnover of more than <b>EUR 275 million</b> (Art 2(1)(c) and 2(2)(c)).</p>		<p>Out-of-scope companies should be incentivised to conduct HREDD in line with the UNGPs by leveraging the CSDDD's support eco-system, guidance and tools, and drawing on other evolving regulatory expectations, such as the EU Batteries Regulation, the EU Deforestation Regulation, and the EU Forced Labour Regulation, which impose due-diligence related obligations with differing personal scopes.</p> <p>Member States can consider expanding the personal scope of the CSDDD in their national transposition laws.</p>
Material Scope	<p>Companies should identify and assess human rights impacts by <b>including all internationally recognised human rights</b> as a reference point, since enterprises may potentially impact virtually any of these rights (UNGPs: GP 18).</p>	<p>Selected human rights listed in the Annex and other human rights enshrined in a list of international instruments listed in the Annex, provided that:</p> <ol style="list-style-type: none"> <li>1. the human right can be abused by a company or legal entity;</li> <li>2. the human right abuse directly impairs a legal interest protected in the human rights instrument listed in the Annex; and</li> <li>3. the company could have reasonably foreseen the risk that such human rights may be affected, taking into account the circumstances of the specific case, including the nature and extent of the company's business operations and its chain of activities, the characteristics of the economic sector, and the geographical and operational context (Art 3(1)(c)).</li> </ol>		<p>Human rights due diligence processes should seek to address all potentially affected human rights instead of being tied to the list of rights and instruments in the CSDDD's annexes or by convoluted parameters setting out ways a company can abuse a right.</p>

	UNGPs	CSDDD	Alignment	Suggested Approach
Scope of due diligence	<p>Companies should conduct due diligence <b>across the full value chain</b>.</p> <p>The UNGPs define the “business relationships” as to include relationships with business partners, entities in its <b>value chain</b>, and any other non-State or State entity directly linked to its business operations, products or services (UNGPs: GP 13).</p>	<p>The scope of due diligence includes:</p> <ul style="list-style-type: none"> <li>• Company’s own operations</li> <li>• Operations of its subsidiaries</li> <li>• Business partners in “<b>chain of activities</b>” (Art 1(1)(a)).</li> </ul> <p><b>Chains of activities</b> include:</p> <ul style="list-style-type: none"> <li>• first, the activities of upstream business partners that relate to the products and services including, such as, the design, extraction, sourcing, manufacture, transport, storage, and supply of raw materials, and,</li> <li>• second, <b>specific activities</b> of downstream business partners, including the distribution, transport, and storage of products, provided that these activities are carried out for the company or on its behalf (Art 3(g)).</li> </ul>		<p>Recognising that severe adverse human rights impacts can occur throughout the full value chain, the exercise of due diligence should not be bound by potentially artificial limitations on the downstream. A sensible approach to due diligence requires assessing downstream impacts of a company’s own operations (such as the design or marketing of a product) and other downstream impacts, including by encouraging the use of existing risk management processes (e.g., KYC checks, anti-bribery and corruption processes).</p> <p>This can also be clarified through the expansion of the scope of due diligence in transposition laws.</p>
Risk Identification	<p>Companies should identify and assess <b>any actual or potential adverse human rights impacts</b> arising in their own activities or as a result of their business relationships (UNGPs: GP 18) Where companies have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, they should <b>identify general areas where the risk of adverse human rights impacts is most significant</b>, and prioritize these for human rights due diligence (UNGPs: GP 17)</p>	<p><b>Two-step approach:</b></p> <p><b>1) Scoping exercise</b>, based solely on reasonably available information, to identify general areas across own operations, subsidiaries and those of their in-scope business partners where adverse impacts are most likely to occur and to be most severe</p> <p><b>2) Based on the results of the scoping exercise, carry out an in-depth assessment</b> in the areas where adverse impacts were identified to be most likely to occur and most severe:</p> <ul style="list-style-type: none"> <li>• companies may request information from business partners <b>only where that information is necessary</b>, and, in the case of <b>business partners with fewer than 5,000 employees, only when the information cannot reasonably be obtained by other means</b>,</li> <li>• where the necessary information can be obtained from different business partners, companies prioritise requesting information, where reasonable, directly from the business partner or partners where the adverse impacts are most likely to occur.</li> <li>• where adverse impacts are identified as equally likely to occur or equally severe in several areas, companies may prioritise assessing such areas which involve direct business partners ((Art 8(2)(2a)).</li> </ul>		<p>By introducing some limitations on information requests that companies can make of their business partners, as well as the possibility to prioritise assessing impacts on the first tier where those are “equally likely... or equally severe”, the CSDDD departs from the UNGPs’ approach.</p> <p>Companies are encouraged to take a risk-based approach, focusing on where the most severe impacts to human rights are, no matter which tier of the value chain they occur at. By focusing on where the most severe impacts are and meaningfully engaging with business partners to address those, companies can more effectively mitigate risks and provide appropriate redress, without adopting approaches that would unduly burden business partners, such as by making unreasonable information requests.</p>

	UNGPs	CSDDD	Alignment	Suggested Approach
Risk Prioritisation	The prioritisation of which impacts to address first shall be <b>based on the severity</b> of the adverse impacts (UNGPs: GP 24).	The prioritisation shall be <b>based on the severity and likelihood</b> of the adverse impacts (Art 9(2)).		Prioritisation in human rights due diligence should be understood as a tool to approach tackling identified impacts rather than a way to avoid addressing certain impacts. Companies should be encouraged to tackle as many adverse impacts as possible, and only prioritise where meaningful action on all impacts is not immediately possible.
Addressing Identified Risks	To prevent and mitigate adverse human rights impacts, companies should integrate the findings from their impact assessments across relevant internal functions and processes and <b>take appropriate action</b> (UNGPs: GP 19).	Companies are required to take <b>appropriate measures</b> to prevent and adequately mitigate potential adverse impacts, and to bring actual adverse impacts. The CSDDD lists some examples of measures (Art 10(1) and 11(1)).  <b>Appropriate measures</b> mean measures that are capable of achieving the objectives of due diligence by <u>effectively</u> addressing adverse impacts (emphasis added, Art 3(1)(o)).		What constitutes an appropriate measure will depend on the contextual factors and the type of impact which has been identified. The measures listed in Articles 10 and 11 should be perceived as guides for the types of approaches companies should and may develop, but other measures may better suit the context in which an impact has arisen. The CSDDD creates an impression that Articles 10 and 11 provide a closed list of measures, which does not incentivise companies to develop context-dependent and innovative measures.  Instead of only engaging with the appropriate measures set out in the CSDDD, developing tailored approaches may be more suitable. Engaging with stakeholders can help determine the most effective measures in a given setting.
Involvement Framework	Companies must adopt measures to address impacts depending on whether the company <b>causes</b> or <b>contributes to</b> the impact through its own activities or is <b>directly linked to the impact</b> by its business relationships (UNGPs: GP 17).	Companies should consider whether they <b>cause an impact alone</b> or <b>jointly with a subsidiary or business partner</b> , or whether the <b>impact is caused only by a business partner in the company's chain of activities</b> (Arts 10(1)(a) and 11(1)(a)). The Recitals clarifies that this difference in terminology avoids confusion with existing legal terms in national legal systems while covering the same causal relationships described in the international frameworks.		The involvement framework of the UNGPs and the CSDDD is to be understood as a spectrum, rather than set categories which may create artificial silos between whether a company “causes”, “jointly causes”(contributes) or “is linked to” an impact. This framework serves as a tool to broaden companies’ understanding of how they can, through their business relationships, be involved with an impact and should, therefore, take measures to address and remedy it. The existence of this framework should not inadvertently incentivise inaction because a company is removed from an impact and where it could be taking a measure to address it.

	UNGPs	CSDDD	Alignment	Suggested Approach
Disengagement	<p>Before ending a relationship or leaving a geographical area, companies should use or increase their leverage to influence the entity causing the impact or support the business relationship in implementing corrective measures. In situations where the company lacks the leverage and is unable to increase its leverage, the company should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so. The severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. (UNGPs: GP 19).</p>	<p>For potential adverse impacts that could not be prevented or adequately mitigated, or could not be brought to an end, companies shall, <b>as a last resort and until the impact is addressed:</b></p> <ul style="list-style-type: none"> <li>• refrain from entering into new, or extending existing, relationships with a business partner.</li> <li>• suspend the business relationship with respect to the activities concerned, including with a view to using or increasing its leverage. The suspension period is not limited in time.</li> <li>• adopt and implement an enhanced prevention &amp; corrective action plan for the specific adverse impact without undue delay provided that there is a reasonable expectation that such efforts will succeed.</li> </ul> <p>The CSDDD does not impose an obligation on companies to terminate a business relationship. As long as there is a reasonable expectation that the enhanced prevention or corrective action plans will succeed, continuing to engage with the business partner will not expose the company to penalties and liability under the Directive. (Arts 10(6) and 11(7)).</p>		<p>While termination is no longer mandated, the CSDDD's approach to disengagement should be applied as a means to encourage companies to engage with their business partners to bring them to compliance. The purpose of suspension (and termination) is not to absolve the company from responsibility by removing itself from the context or relationship leading to the adverse impact. Rather, companies should approach suspension as a means to increase leverage, which they can use to change the business partner's conduct.</p>
Monitoring Effectiveness	<p>Human rights due diligence should be ongoing, recognising that risks may change as operations and contexts evolve (UNGPs: GP 17). Companies should track the effectiveness of their response using appropriate qualitative and quantitative indicators and feedback from internal and external sources, including affected stakeholders (UNGPs: GP 20).</p>	<p>The Directive requires assessments to evaluate the implementation of due diligence measures and to monitor their adequacy and effectiveness, based on qualitative and quantitative indicators, carried out without delay following a significant change, and at least every five years. Assessments must also be conducted whenever there are reasonable grounds to believe that the measures are no longer adequate or effective, or that new risks of adverse impacts may arise (Art 15).</p>		<p>Monitoring the effectiveness of due diligence measures is essential to ensure that the measures adopted are appropriate and can effectively feed back into the impact identification process. It should therefore be ongoing. Monitoring indicators and processes should be built into the due diligence measures that seek to address the identified impacts.</p> <p>Ensuring the existence of avenues for receiving stakeholder input can support this ongoing monitoring.</p> <p>Such understanding of monitoring can be distinguished from broader, company-wide impact assessments and reviews of general human rights-related policies and processes.</p>

	UNGPs	CSDDD	Alignment	Suggested Approach
Remediation	<p>Where a company identifies that it has caused or contributed to an impact, it should enable remediation, where a company was linked to an impact, it should assess different factors to determine appropriate actions to ensure remediation, such as its ability to exercise leverage with the business partner that is connected to the impact. (UNGPs: GP 19 and GP 22).</p>	<p>Where a company has caused or jointly caused an actual adverse impact, it is required to provide remediation.</p> <p>Where the actual adverse impact is caused only by the company's business partner, voluntary remediation may be provided by the company. The company may also use its ability to influence the business partner that is causing the adverse impact to provide remediation (Art 12).</p>		<p>As explained in the row above, the nature of the company's involvement with an impact should not artificially or unduly prevent the provision of remedy. A rights-based approach requires approaching remediation as an outcome-oriented process grounded in meaningful engagement with the affected rightsholders, rather than a process focused on the company's perspective and "distance" to the impact.</p>
Stakeholder Engagement	<p>The UNGPs place stakeholder engagement at the heart of the due diligence process (UNGPs: GP 18, GP 20, GP 21)</p> <p>The Interpretive Guide to the UNGPs defines stakeholders as any individual <b>who may affect or be affected</b> by an organisation's activities.</p>	<p>Consultation of stakeholders is only required to take place at the following due diligence stages:</p> <ul style="list-style-type: none"> <li>• when gathering the necessary information on actual or potential adverse impacts, to identify, assess and prioritise adverse impacts;</li> <li>• when developing prevention and corrective action plans, and enhanced prevention and corrective action plans;</li> <li>• when adopting appropriate measures to remediate adverse impacts (Art 13).</li> </ul>		<p>Engagement with stakeholders should be understood as one of the best tools to make due diligence measures effective, as it ensures that those are rooted in the lived experiences of rightsholders and are context-specific. Therefore, companies should seek to engage with stakeholders beyond the CSDDD's prescribed steps and list of actors.</p>
Stakeholder Engagement		<p>The CSDDD employs a more <b>restricted definition of "stakeholder"</b> to include only those who may be directly affected by the actions of the company, its subsidiaries, and business partners.</p>		<p>While companies are encouraged to engage with as broad a range of stakeholders as possible, not all stakeholders should be consulted for all stages of the due diligence process. Instead, considering the specific purpose and expectations from the engagement can enable a more meaningful approach to selecting the stakeholders to engage with, when, and in what parameters.</p>
Company Grievance Mechanisms	<p>Companies should establish or participate in effective operational-level grievance mechanisms, open to different rightsholder groups. These mechanisms and their processes should meet certain effectiveness criteria to ensure that mechanisms are legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue (UNGPs: GP 29, 31).</p>	<p>The CSDDD requires companies to establish both notification mechanisms and a procedure to handle complaints which can be submitted by potentially affected natural or legal persons, trade unions, workers' representatives and relevant CSOs. Companies can fulfil this obligation by participating in existing or collaborative complaints procedures and notification mechanisms. The complaints procedure must be fair, publicly available, accessible, predictable and transparent. Companies are expected to take measures to prevent retaliation (Art 14).</p>		<p>The CSDDD does not fully reflect the UNGPs' effectiveness criteria in Article 14, but it specifies that "fair, publicly available, accessible, predictable and transparent" must be understood in line with the UNGPs' criteria.</p> <p>Complaint mechanisms should be a clear pathway to remediation; the mere existence of such mechanisms will not be sufficient in human rights terms.</p>

# Endnotes

- 1 Office of the High Commissioner for Human Rights (OHCHR), [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework \(UNGPs\)](#) (1 January 2012).
- 2 [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](#). When referred to the “CSDDD”, it should be understood its current consolidated version (as of 18/03/2026), amended by [Directive \(EU\) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, \(EU\) 2022/2464 and \(EU\) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements \(Omnibus I\)](#), which can be accessed through the dedicated [link](#) on the webpage (“Current consolidated version: 18/03/2026”). The version of the CSDDD first adopted in June 2024 shall be referred to as “CSDDD in its original version”.
- 3 Danish Institute for Human Rights, [Mandatory Human Rights Due Diligence Laws: Key Design Features and Practical Considerations](#) (3 September 2025).
- 4 An overview of these and other relevant EU initiatives regulating business impacts on human rights, including through due diligence obligations, can be found in this publication: Danish Institute for Human Rights, [How do the pieces fit in the puzzle? Making sense of EU regulatory initiatives related to business and human rights](#) (9 February 2026); Danish Institute for Human Rights, [Mandatory Human Rights Due Diligence Laws: Key Design Features and Practical Considerations](#) (3 September 2025).
- 5 World Benchmarking Alliance, [Social Benchmark 2024 Insights Report](#) (July 2024), p19.
- 6 Organisation for Economic Cooperation and Development (OECD), [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#) (8 June 2023).
- 7 This is explicitly acknowledged in the [CSDDD](#), Recitals 5, 6 and 20.
- 8 [Omnibus I Package: Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, \(EU\) 2022/2464 and \(EU\) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements](#), COM(2025) 81 final (26 February 2025).
- 9 [Directive \(EU\) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/CE, 2013/34/EU, \(EU\) 2022/2464 and \(EU\) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements](#).
- 10 European Commission, “[Simplification](#)”.
- 11 See, for example: BusinessEurope, “[BusinessEurope Reacts to the Trilogue Deal Reached on Omnibus I](#)” (9 December 2025); BusinessEurope, “[Omnibus I: CS3D, CSRD and Taxonomy, Position Paper](#)” (April 2025); Dansk Erhverv, “[EU’s aftale om omnibus: Mere end 80 procent af virksomhederne bliver fritaget fra CSRD](#)” (26 February 2026); Confindustria, BDI and Medef, “[Trilateral Business Forum Joint Declaration](#)” (6 November 2025).
- 12 This has been the subject of [a complaint to the European Ombudsman](#) [complaint to the European Ombudsman](#) [complaint to the European Ombudsman](#) alleging failure to comply with EU’s Better Regulation guidelines re Omnibus I finding maladministration. In response, the European Commission is now seeking to [amend the Better Regulation Guidelines](#). See ENNHRI, “[ENNHRI response to the call for evidence on the revision of the EU’s Better Regulation Framework](#)” (January 2025).

- 13 European Commission, [Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal on the European Green Deal](#) (Communication on the European Green Deal), COM(2019) 640 final (11 December 2019), p2.
- 14 European Commission, [Communication on the European Green Deal](#) (11 December 2019), p3.
- 15 European Commission, [Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: Action Plan: Financing Sustainable Growth](#) (Sustainable Finance Action Plan), COM(2018) 97 final (8 March 2018), p11. The recitals to the CSDDD note that the behaviour of companies is key to the success of the EU’s sustainability objectives (Recital 3), and that the private sector could play an important role in promoting sustained, inclusive and sustainable economic growth (Recital 9).
- 16 The CSDDD was [announced in April 2020, at the time under the name of “Social Corporate Governance initiative”](#), and underwent an [Inception Impact Assessment](#) and a [public consultation](#) between October 2020 and February 2021. The proposal emerged as an initiative overseen by the [Directorate General for Justice and Consumers](#) (DG JUST), but in July 2021, the [Directorate General for the Internal Market](#) (DG GROW) joined the file. The Commission initially indicated that it would publish a proposal in June 2021 and subsequently in December 2021, but their proposals twice received a “red card” from the [EU Regulatory Scrutiny Board \(RSB\)](#). The proposal for a Corporate Sustainability Due Diligence Directive was eventually [published](#) by the Commission on 23 February 2022.
- 17 The CSDDD was [announced in April 2020, at the time under the name of “Social Corporate Governance initiative”](#), and underwent an [Inception Impact Assessment](#) and a [public consultation](#) between October 2020 and February 2021. The proposal emerged as an initiative overseen by the [Directorate General for Justice and Consumers](#) (DG JUST), but in July 2021, the [Directorate General for the Internal Market](#) (DG GROW) joined the file. The Commission initially indicated that it would publish a proposal in June 2021 and subsequently in December 2021, but their proposals twice received a “red card” from the [EU Regulatory Scrutiny Board \(RSB\)](#). The proposal for a Corporate Sustainability Due Diligence Directive was eventually [published](#) by the Commission on 23 February 2022.
- 18 See [box 1](#) above. The recitals to Omnibus I expressly state that the amendments introduced by Omnibus I do not alter the overarching policy objectives of the CSDDD: “In the context of the Commission’s commitment to reducing reporting burdens and enhancing competitiveness, it is necessary to amend Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 of the European Parliament and of the Council, whilst maintaining the policy objectives specified in the Commission communication of 11 December 2019 entitled ‘The European Green Deal’ (the ‘European Green Deal’) and the Commission communication of 8 March 2018 entitled ‘Action Plan: Financing Sustainable Growth’ (the ‘Sustainable Finance Action Plan’), [Omnibus I](#), Recital 2.
- 19 See [CSDDD](#), Art 5. In addition companies also have obligations to establish and maintain complaint and notification mechanisms: see [CSDDD](#), Art 14.
- 20 See [CSDDD](#), Art 3(1)(o), and Recitals 19, 40.
- 21 The recitals expressly refer to the [UNGPs](#) and [OECD Guidelines](#) (Recitals 5, 6 and 20) and note that all businesses have a responsibility to respect human rights (Recital 7). Recital 5 refers to the UNGPs. It states that: “Existing international standards on responsible business conduct specify that companies should protect human rights and set out how they should address the protection of the environment across their operations and value chains. The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) recognise the responsibility of companies to exercise human rights due diligence by identifying, preventing and mitigating

the adverse impacts of their operations on human rights and by accounting for how they address those impacts. The UN Guiding Principles state that businesses should avoid infringing human rights and should address adverse human rights impacts that they have caused, contributed to or are linked with in their own operations, those of their subsidiaries and through their direct and indirect business relationships.” Recital 6 refers to the OECD Guidelines and the [ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#). It states that: “The concept of human rights due diligence was specified and further developed in the Guidelines for Multinational Enterprises (MNE Guidelines) of the Organisation for Economic Cooperation and Development (OECD) which extended the application of due diligence to environmental and governance topics. The OECD Due Diligence Guidance for Responsible Business Conduct (Guidance for Responsible Business Conduct) and sectoral guidance are internationally recognised frameworks setting out practical due diligence steps to help companies identify, prevent, mitigate and account for how they address actual and potential impacts in their operations, supply chains and other business relationships. The concept of due diligence is also embedded in the recommendations of the International Labour Organization’s (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.” In addition, Recital 20 highlights that the due diligence process in the CSDDD should align with that in the OECD Guidelines: “The due diligence process set out in this Directive should cover the six steps defined by the [OECD] Guidance for Responsible Business Conduct, which include due diligence measures for companies to identify and address adverse human rights and environmental impacts. That process encompasses the following steps: (1) integrating due diligence into policies and management systems; (2) identifying and assessing adverse human rights and environmental impacts; (3) preventing, ceasing or minimising actual and potential adverse human rights and environmental impacts; (4) monitoring and assessing the effectiveness of measures; (5) communicating and (6) providing remediation”. The recitals also note that the CSDDD is consistent with the joint communication of the Commission on the EU Action Plan on Human Rights and Democracy 2020-2024. That action plan defines as a priority strengthening the Union’s engagement to actively promote the global implementation of the UNGPs and other relevant international guidelines such as the OECD Guidelines, including by advancing relevant due diligence standards: see Recital 14.

- 22 See [CSDDD](#), Art 9.
- 23 See [CSDDD](#), Art 13.
- 24 This is also reflected in the approach in Art 15 on Monitoring, which requires a company to monitor its efforts every five years, or “whenever there are reasonable grounds to believe that new risks of the occurrence of those adverse impacts may arise”.
- 25 See [CSDDD](#), Art 14(3).
- 26 See [Omnibus I](#), Recital 37.
- 27 Under Art 8, companies are required to identify impacts arising from their own operation, those of their subsidiaries and direct and indirect business partners in their “chain of activities”, defined to mean certain specified activities in the upstream and downstream value chain: Art 3(1)(g).
- 28 See the definition of “risk factors” in Art 3(1)(u) which identifies company level business operations, as well as other contextual, geographic, sectoral, product and service factors.
- 29 The CSDDD defines “business relationships” to mean a relationship with a business partner: Art 3(1)(p). The definition of “business partner” includes both direct and indirect business partners: Art 3(1)(f).
- 30 The material scope of the CSDDD covers a very broad range of adverse environmental and human rights impacts, defined in Art3(1)(b) and (c) respectively.
- 31 Art 10(1) and 11(1) require consideration of the involvement of the company and the definition of “appropriate measures” in Art 3(1)(o) designates a measure as “appropriate” if it is capable

- of achieving the objectives of due diligence taking into account the nature of the impact, the circumstances of the specific case as well as relevant risk factors.
- 32 See [CSDDD](#), Art 37.
- 33 See [CSDDD](#), Art 12.
- 34 See [CSDDD](#), Art 29(3).
- 35 EU Agency for Fundamental Rights Agency, [Business and Human Rights: Access to Remedy](#) (5 October 2020).
- 36 See Danish Institute for Human Rights, “How do the pieces fit in the puzzle? Making sense of EU regulatory initiatives related to business and human rights” (latest version: February 2026).
- 37 [Regulation \(EU\) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation \(EU\) 2019/1020 and repealing Directive 2006/66/EC](#) (“Batteries Regulation”).
- 38 [Regulation \(EU\) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation \(EU\) No 995/2010](#) (“Deforestation Regulation”).
- 39 [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](#) (“Forced Labour Regulation”).
- 40 [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](#) (CSRD).
- 41 For companies not in scope of the CSRD, Article 16 provides for an alternative reporting regime.
- 42 Art 4(2) states that “this Directive shall not preclude Member States from introducing, in their national law, more stringent provisions diverging from those laid down in provisions other than Articles 6, 8 and 9, Article 10(1) to (5), Article 11(1) to (6) and Articles 14 to 16, or provisions that are more specific in terms of the objective or the field covered, including by regulating specific products, services or situations, in order to achieve a different level of protection of human, employment and social rights, the environment or the climate”. See also [Omnibus I](#), Recital 38: “...Member States should continue to be allowed to introduce more stringent provisions on other aspects or provisions on due diligence that are more specific in terms of the objective or the field covered. Such provisions include provisions of national law regulating specific adverse impacts or specific sectors of activity, in order to achieve a different level of protection of human, employment and social rights, the environment or the climate. To increase legal certainty and to ensure the necessary regulatory freedom, in particular as regards emerging specific risks for which due diligence obligations might be important, it should be clarified that such provisions include due diligence obligations concerning specific products, services or situations. Conversely, national rules going beyond a specific objective or field, for instance by regulating the due diligence process in general or regulating due diligence in an entire sector, do not constitute such provisions.”
- 43 Art 1(4) clarifies that the Directive does not affect Union or national law relating to matters other than those concerning companies’ due diligence obligations regarding their adverse human rights and environmental impacts. It means that the due diligence obligations set under the Directive do not affect Union or national laws concerning human, employment, or social rights, or protection of the environment and climate change, except insofar as those laws concern general corporate due diligence obligations.
- 44 See [Omnibus I](#), Recital 36.
- 45 See [UNGPs](#), Guiding Principle (GP) 14.
- 46 The CSDDD text adopted in April 2024 and entered into force in July 2024 was originally

- intended to apply to very EU large companies of 1000 employees and a turnover of EUR 450 million and non-EU companies with a net turnover of EUR 450 million in the EU. It was also set to apply to companies which do not meet these thresholds, but is the ultimate parent company of a group which reaches these thresholds, as well as companies that have entered into franchising or licensing agreements in the EU in return for royalties amounting to more than EUR 22.5million in the EU, and a net turnover of more than EUR 80million.
- 47 SOMO, [Updated Datahub shows 1,400 corporate groups covered by weakened CSDDD](#) (14 April 2026).
- 48 SOMO, [Updated Datahub shows 1,400 corporate groups covered by weakened CSDDD](#) (14 April 2026).
- 49 The European Commission estimated that around 6,000 EU companies and 900 non-EU companies would have been covered by the 2024 version of the CSDDD. See European Commission, [Corporate sustainability due diligence](#)
- 50 See [Omnibus I](#), Recital 37.
- 51 [CSDDD](#), Art 10(2)(e).
- 52 See [Omnibus I](#), Art 8(2a).
- 53 For further analysis on this point, see [Section 7.1](#).
- 54 The [International Bill of Human Rights](#) refers to the [Universal Declaration of Human Rights](#) (UDHR), the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic Social and Cultural Rights](#) (ICESCR).
- 55 See [UNGPs](#), GP 12.
- 56 See [UNGPs](#), Commentary to GP 12. See also OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#) (UNGPs Interpretive Guide), (1 June 2012), p11.
- 57 See [CSDDD](#), Recitals 32 and 33.
- 58 Other omissions include the [first two](#) Optional Protocols to the Convention on the Rights of the Child, the [ILO Minimum Wage Convention, 1973 \(No. 138\)](#), [ILO Occupational Safety and Health Convention, 1981 \(No. 155\)](#) and [ILO Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#), as well as international humanitarian law instruments and other frameworks such as, inter alia, the [UN Declaration on the Rights of Indigenous Peoples](#) and the [UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities](#), and the key European human rights instruments, including the [European Convention on Human Rights](#) (ECHR) and the [EU Charter of Fundamental Rights](#) (2000/C 364/01).
- 59 [Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#) (1987).
- 60 [Convention on the Elimination of all forms of Discrimination Against Women](#) (1981).
- 61 [Convention on the Elimination of all forms of Racial Discrimination](#) (1969).
- 62 [Convention on the Rights of Persons with Disabilities](#) (2006).
- 63 There are a number of rights which are not listed in Part 1 of the Annex but which could potentially be derived from the instruments in the second part of the Annex where they meet the conditions specified in Art 3(1)(c)(ii), for example, freedom of movement, freedom of expression, social security, adult education or cultural participation. In addition, there are rights which are included in the instruments listed in Part 2 of the Annex, which have more detailed articulations and stronger protection on other instruments, such as the [Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), the [Convention on the Elimination of all forms of Discrimination Against Women](#).
- 64 The UNGPs Interpretive Guide notes that “If abuses do occur where they could not reasonably have been foreseen, the enterprise’s stakeholders will assess it on its response: how well and how swiftly it takes action to prevent or mitigate their recurrence and to provide for or support

- their remediation (see Guiding Principles 22 and 29)”, OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#) (1 June 2012), p44.
- 65 The definition can be found in authoritative guidance on the UNGPs prepared by the UN Office of the High Commissioner for Human Rights: OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#) (2012) at p5.
- 66 See [CSDDD](#), Recital 32.
- 67 OHCHR, [Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide](#) (18 October 2024), p16.
- 68 The concept of “abuse of rights” finds its origins in private domestic law, reflecting the idea that rights are conferred on people with specific social aims and come with inherent limits, i.e. a right should be exercised in conformity with the aim for which the right was created and to exercise a right otherwise would constitute an abuse. See “Abuse of rights”, Elgar Encyclopedia of Human Rights (2022), p13; Paulien de Morree, Rights and Wrongs under the ECHR: The Prohibition of abuse of rights in Article 17 of the European Convention on Human Rights (2016), Intersentia, pp141-142. The status of the doctrine of “abuse of rights” under international law is generally accepted in practice but there remains debate on its scope and nature. However, in the context of international human rights law, the doctrine of abuse of rights is less established: see Paulien de Morree, Rights and Wrongs under the ECHR, pp135, 142. The clearest articulation of the principle of an abuse of rights in international human rights law is found in so termed “abuse clauses” in various international human rights instruments prohibiting states or persons from engaging in activities or performing acts aimed at the destruction or limitation of the rights and freedoms in the instrument. See for example [ICCPR](#), Art 5(1); [ICESCR](#), Art 5(1); [UDHR](#), Art 30; [ECHR](#), Art 17. The UNGPs and OECD Guidelines do not use this concept of “abuse”, but rather define the term “adverse human rights impact” to mean “any action that removes or reduces the ability of an individual to enjoy his or her human rights”, OHCHR, [UNGPs Interpretive Guide](#) (1 June 2012). Such provisions are found in both the ICCPR and ICESCR but are not included in any of the other instruments listed in the Annex. Generally such “abuse of rights” provisions can only be applied in conjunction with the substantive provisions of the relevant instrument elaborating the right in question. See “Abuse of rights”, Elgar Encyclopedia of Human Rights, pp13-20; European Court of Human Rights (ECtHR), [Mozer v. the Republic of Moldova and Russia \[GC\]](#), 23 February 2016, para 222. Such provisions generally provide that a party has “no right” to abuse the rights outlined in the particular instrument, rather than imposing an explicit obligation on them to refrain from abusing such rights. See “Abuse of rights”, Elgar Encyclopedia of Human Rights, p13. In the context of European jurisprudence, the concept of “abuse” in the ECHR refers to the harmful exercise of a right by its holder in a manner inconsistent with or contrary to the purpose for which it is granted. It is therefore used in a different sense to that in the CSDDD, where companies are obliged to consider as part of their due diligence abuses of rights enjoyed by others, rather than a harmful exercise of a right the company enjoys. See ECHR, Art 17; European Court of Human Rights, [Guide on Article 17 of the European Convention on Human Rights](#), 29 February 2024, p8.
- 69 See [UNGPs](#), GP 1 and Commentary.
- 70 The [UNGPs](#) could have had an opportunity to make this clarification but did not do so. The commentary to Guiding Principle 17 notes that the term “complicity” has both legal and non-legal meanings: “As a non-legal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party. As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases”. There is no equivalent commentary in the context of the term “abuse” which acknowledges the legal definition under international human rights law and the perhaps more colloquial use of the term interchangeably with “violation”.

- 71 See [CSDDD](#), Recitals 32-37.
- 72 Human Rights Council, [Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment \(A/HRC/22/43\)](#) (24 December 2012); [Expert seminar on the responsibility of business enterprises to respect the human right to a clean, healthy and sustainable environment – Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd](#) (2 January 2024). See also International Court of Justice, Advisory Opinion, [Obligations of States in Respect of Climate Change](#) (23 July 2025) and ECtHR, [Verein KlimaSeniorinnen Schweiz and Others v. Switzerland \[GC\]](#) (9 April 2024).
- 73 This would be consistent with the observations of the Inter-American [Court of Human Rights](#), which found that “States must: (i) urge all business enterprises domiciled or operating in their territory and jurisdiction to take effective measure to combat climate change and its related impacts on human rights; (ii) Enact legislation that requires business enterprises to conduct human rights and environmental due diligence to identify and address human rights and environmental impacts, including climate change-related impacts, across the entire value chain; (iii) require public and private businesses to disclose in an accessible way the greenhouse gas emissions along their value chain; (iv) require business enterprises to take measures to reduce such emissions, and to address their contribution to the climate and to climate mitigation targets, throughout their operations, and (v) adopt a range of regulations to discourage greenwashing and undue corporate influence in the political and regulatory domains in this regard, and to support the actions of human rights defenders” , Advisory Opinion Ao-32/25: [Climate Emergency and Human Rights](#) (29 May 2025), para 347; a report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, [Information Note on Climate Change and the Guiding Principles on Business and Human Rights](#) (June 2023), paras 4 to 8; as well as the International Court of Justice observations on state obligations to regulate the activities of private actors with respect to climate-related emissions and the interdependencies between the adverse effects of climate change and the enjoyment of human rights: [Advisory Opinion of 23 July 2025](#), paras 403 and 428.
- 74 See further OECD, [Guidelines for Multinational Enterprises on Responsible Business Conduct](#) (8 June 2023), Chapter VI “Environment” and associated commentary; OECD Watch, [“The OECD Guidelines and climate change”](#); OECD Watch, [“The OECD Guidelines and the environment”](#); OECD Watch, [“The OECD Guidelines and just transition”](#).
- 75 See also Recitals 19 and 40.
- 76 See also [CSDDD](#), Recitals 19, 41, 42.
- 77 See also [CSDDD](#), Recital 44.
- 78 OHCHR, [UNGPs Interpretive Guide](#) (1 June 2012), Q12, p19.
- 79 OHCHR, [UNGPs Interpretive Guide](#) (1 June 2012), Q13, p19.
- 80 [CSDDD](#), Art 3(1)(l), emphasis added.
- 81 [CSDDD](#), Recital 40.
- 82 Danish Institute for Human Rights, [Due diligence in the downstream value chain: case studies of current company practice](#) (May 2024).
- 83 [Directive \(EU\) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation \(EU\) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting \(Text with EEA relevance\)](#).
- 84 [Commission Delegated Regulation \(EU\) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards](#).
- 85 See [CSDDD](#), Art 36(2)(c).

- 86 See [OECD Guidelines](#), Chapter II “General Policies”, paras A11-A12, and associated Commentary, para 15.
- 87 OECD, [OECD Due Diligence Guidance for Responsible Business Conduct](#) (2018), Section 2, 2.1, pp25-28.
- 88 International Labour Organisation, [Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy \(MNE Declaration\)](#) (Sixth edition, 2022).
- 89 OECD, [OECD Due Diligence Guidance for Responsible Business Conduct](#) (2018), p15; EU Agency for Fundamental Rights, [A Human Rights Approach to Due Diligence: Reflections on Key Principles](#) (2025), p11.
- 90 See [UNGPs](#), GP 18.
- 91 See [UNGPs](#), GP 17.
- 92 OHCHR, [UNGPs Interpretive Guide](#) (1 June 2012), p42.
- 93 Recital 40 of Omnibus I states that companies are only required to take appropriate measures to identify adverse impacts, and are accordingly not required to identify every adverse impact in their operations, those of their subsidiaries, and those of their business partners.  
In some cases, that could lead to such an impact not being identified and, therefore, not being prevented, mitigated, brought to an end or minimised, despite the company having complied in full with its obligations under Directive (EU) 2024/1760.
- 94 [CSDDD](#), Arts 10(1) and 11(1), emphasis added.
- 95 See OECD, [OECD Due Diligence Guidance for Responsible Business Conduct](#) (2018), Section A.2, Q19, p. 61; [UNGPs](#), GPs 17, 18 and associated commentary.
- 96 See OECD, [OECD Due Diligence Guidance for Responsible Business Conduct](#) (2018), Section A.2, Q19, p. 61.
- 97 See [Commission Staff Working Document Accompanying the documents Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, \(EU\) 2022/2464 and \(EU\) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements Proposal for a Directive of the European Parliament and of the Council amending Directives \(EU\) 2022/2464 and \(EU\) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements and specifying further steps, SWD/2025/80 final](#) (26 February 2025), p35.
- 98 See Danish Institute for Human Rights, [Nordic companies express concerns with reframing of the Corporate Sustainability Due Diligence Directive](#) (30 September 2025); and Mathilde Dicalou, Noah Mardirossian and Gabrielle Holly, [Paper-pushers or change-makers? The EU’s Omnibus should not stifle companies’ efforts to tackle their most severe human rights risks](#) (3 October 2025), Business and Human Rights Centre.
- 99 See [CSDDD](#), Arts 10(1) and 11(1).
- 100 See OECD, [OECD Due Diligence Guidance for Responsible Business Conduct](#) (2018), Section A.2., Questions 20 and 21, pp62-65.
- 101 See [CSDDD](#), Art 8(4).
- 102 See [CSDDD](#), Art 14.
- 103 See [CSDDD](#), Art 14(5).
- 104 See [CSDDD](#), Art 13(3)(a).
- 105 See [CSDDD](#), Art 8(3) and [Omnibus I](#), Recital 41.
- 106 Danish Institute for Human Rights, [Due diligence in the downstreamvalue chain: case studies of current company practice](#) (May 2024).
- 107 [Omnibus I](#), Recital 41.
- 108 Under the UNGPs, risk-based due diligence entails prioritising impacts where it is not possible to address all identified impacts at once, and this prioritisation should be made based

- on severity (see [UNPGs](#), GP 24). The severity of human rights impacts “will be judged by their scale, scope and irremediable character” ([UNPGs](#), GP 14). This is also clearly stated in the UNPGs Interpretive Guide: “In the context of human rights risk, severity is the predominant factor. Probability may be relevant in helping prioritize the order in which potential impacts are addressed in some circumstances”, OHCHR, [UNPGs Interpretive Guide](#) (1 June 2012), p7.
- 109 OHCHR, [UNPGs Interpretive Guide](#) (1 June 2012), Question 87, p82.
- 110 See [UNPGs](#), GP 24 and Commentary.
- 111 See [CSDDD](#), Art 9(4).
- 112 See [CSDDD](#), Art 8(3)(c).
- 113 See [UNPGs](#), GP 19 and associated Commentary.
- 114 See [CSDDD](#), Recital 45.
- 115 See [CSDDD](#), Recital 45.
- 116 See [UNPGs](#), GP 19 and associated Commentary.
- 117 See John Ruggie, [Comments on Thun Group of Banks Discussion Paper on the Implications of UN Guiding Principles 13 & 17 In a Corporate and Investment Banking Context](#) (Comments on Thun Group of Banks), (21 February 2017).
- 118 See [CSDDD](#), Recital 45.
- 119 See, for example, Joint Ethical Trading Initiatives, [Guide to Buying Responsibly](#) (7 September 2017).
- 120 See for example analysis from the Thun Group of Banks which advanced the view that financial institutions could only ever be directly linked to an impact, and therefore did not bear responsibilities to remediate: Thun Group of Banks, [Paper on the Implications of UN Guiding Principles 13b and 17 in a corporate and investment banking context](#) (December 2017). This analysis was disputed by John Ruggie, the architect of the UNPGs in his response: John Ruggie, [Comments on Thun Group of Banks](#) (21 February 2017).
- 121 See [CSDDD](#), Recital 53.
- 122 See [CSDDD](#), Recital 54, which specifies “The notion of ‘Jeopardising the viability of an SME’ should be interpreted as possibly causing a bankruptcy of the SME or putting the SME in a situation where bankruptcy is imminent.”
- 123 See [CSDDD](#), Recital 53.
- 124 For example: on the limitations of relying on contractual assurances and third-party verification, see, e.g., European Coalition for Corporate Justice (ECCJ), [European Commission’s Proposal for a Directive on Corporate Sustainability Due Diligence: A Comprehensive Analysis](#) (April 2022), pp11-12; on the limitations of third-party verification, see also SOMO, [A piece, not a proxy](#) (25 November 2022).
- 125 See, e.g., Danish Institute for Human Rights, [Legislating for impact: analysis of the proposed EU corporate sustainability due diligence directive](#) (23 March 2022); Danish Institute for Human Rights, [Nordic companies express concerns with reframing of the Corporate Sustainability Due Diligence Directive](#) (30 September 2025); Mathilde Dicalou, Noah Mardirossian and Gabrielle Holly, Danish Institute for Human Rights, [Paper-pushers or change-makers? The EU’s Omnibus should not stifle companies’ efforts to tackle their most severe human rights risks](#) (3 October 2025), Business and Human Rights Centre.
- 126 This concern was raised by, among others, ECCJ, [European Commission’s Proposal for a Directive on Corporate Sustainability Due Diligence: A Comprehensive Analysis](#) (April 2022), p11. Among other things, the [CSDDD](#) specifies that contractual assurances do not exempt an in-scope company from liability (see Recital 52).
- 127 See OHCHR, [Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting](#) (1 August 2023).
- 128 See [CSDDD](#), Arts 10(6) and 11(7).

- 129 See [UNGPs](#), GP 19.
- 130 See [CSDDD](#), Arts 10(6) and 11(7).
- 131 The inclusion of an obligation to terminate should be accompanied with appropriate guidance to ensure that disengagement is conducted responsibly, including by ensuring that the adverse impacts of disengagement do not outweigh the risk of upholding the business relationship. This includes encouraging companies to make use or seek to increase their leverage where they have identified that they contribute to an impact or that an impact is occurring due to the action of a companies in their chains of activities. National transposition authorities can go beyond the basic text of the CSDDD by requiring that corrective and preventive action plans include a clear and appropriate timeline for the adoption and implementation of measures aimed at addressing adverse impacts. Establishing such timelines can increase leverage over business partners and help ensure that identified adverse impacts are addressed within a defined and reasonable period, while supporting continuous improvement in business partners' operations.
- 132 See [CSDDD](#), Arts 10(6)(b) and 11(7)(b) and Recital 44.
- 133 See [UNGPs](#), GP 19.
- 134 For example, see: Business and Human Rights Centre, [Myanmar & Norway: Telenor failed to conduct adequate human rights due diligence required by OECD Guidelines in its operations and disengagement in Myanmar, finds Norwegian NCP](#) (11 December 2025).
- 135 These steps were explicitly removed in the pre-Omnibus I version of the Directive, but the UNGPs expect a broader approach, see for example the express expectation that companies engage stakeholders to verify whether adverse impacts are being addressed and tracking effectiveness: [UNGPs](#), GP 20.
- 136 See [UNGPs](#), GPs 18, 20 and 21.
- 137 See [Omnibus I](#), Recital 45.
- 138 See [CSDDD](#), Recital 65.
- 139 See [CSDDD](#), Art 13(6).
- 140 See [CSDDD](#), Art 20(2).
- 141 See [UNGPs](#), GP 20.
- 142 See [UNGPs](#), GP 20.
- 143 See [Omnibus I](#), Art 13(3) amendments removing the obligation to engage with stakeholders when developing qualitative and quantitative indicators for monitoring assessments,
- 144 See also [CSDDD](#), Recital 59.
- 145 The main difference between a 'complaint' and a 'notification' is that a complaint, if deemed to be "well-founded", triggers legal duties under the "taking action" provisions of the CSDDD in Articles 10 to 12 which include obligations on the company to provide remediation where it has caused or jointly caused an adverse impact. By contrast, the consequences of a "notification" are not spelled out in the CSDDD.
- 146 See further: Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025), pp35-37; and OHCHR, [Access to Remedy in Cases of Business-Related Human Rights Abuse: an Interpretive Guide](#) (18 October 2024), pp72-73.
- 147 [UNGPs](#), GP 31; see also OHCHR, "[Access to Remedy in Cases of Business-Related Human Rights Abuse: A Practical Guide for Non-State-Based Grievance Mechanisms](#)" (26 September 2024); OHCHR, [Access to Remedy in Cases of Business-Related Human Rights Abuse: A Practical Guide for State-Based Non-Judicial Mechanisms](#) (23 September 2024).
- 148 See [CSDDD](#), Recital 59.
- 149 See [CSDDD](#), Art 14(4)(b).
- 150 [Directive \(EU\) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on](#)

- [the protection of persons who report breaches of Union law.](#)
- 151 See [CSDDD](#), Art 30.
- 152 [CSDDD](#), Art 27(2): In deciding whether to impose penalties and, if such penalties are imposed, in determining their nature and appropriate level, the following factors will be taken into consideration: (a) the nature, gravity and duration of the infringement, and the severity of the impacts resulting from that infringement; (b) any investments made and any targeted support provided pursuant to Articles 10 and 11; (c) any collaboration with other entities to address the impacts concerned; (d) where relevant, the extent to which prioritisation decisions were made in accordance with Article 9; (e) any relevant previous infringements by the company of the provisions of national law adopted pursuant to this Directive found by a final decision; (f) the extent to which the company carried out any remedial action with regard to the subject matter concerned; (g) the financial benefits gained or losses avoided by the company due to the infringement; (h) any other aggravating or mitigating factors applicable to the circumstances of the case concerned.
- 153 See Shift and OHCHR, *Enforcement of Mandatory Due Diligence: Key Design Considerations for Administrative Supervision* (October 2021).
- 154 Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025), p30.
- 155 The European Network can also help address challenges in cross border cases. See, e.g., Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025), pp44-45.
- 156 See [CSDDD](#), Arts 10 and 11.
- 157 There are several examples of such information portals in jurisdictions that have already adopted their own mandatory due diligence laws. For example, in the German context, the Federal Office for Economic Affairs and Export Control (BAFA), which supervises the German Supply Chain Due Diligence Act (German law), has published a range of guidance materials on its website: See Federal Office for Economic Affairs and Export Control website [Supply Chain Act](#). In addition, the Helpdesk on Business and Human Rights (German Helpdesk) provides support, advisory services, tools, and resources to help businesses comply with the requirements of German Law. See Agency for Business and Economic Development, [“Helpdesk on Business and Human Rights”](#).
- 158 See, for example, European Commission, [My Business and Human Rights: A guide to human rights for small and medium-sized enterprises](#) (2012). In the case of other regulatory initiatives, such as the Conflict Minerals Regulation ([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](#)), resource portals and toolboxes have been established to facilitate the conduct of due diligence under the law, including resources for SMEs, see European Commission, [Due diligence ready!](#).
- 159 For example, in the German context, BAFA has prepared specific guidelines for SMEs who would not be in scope of the German Law but would nonetheless be affected by it. See Federal Office for Economic Affairs and Export Control, [Collaboration in the supply chain between obliged enterprises and their suppliers: The most important questions and answers for SME](#) (August 2023). The services and resources provided by the German Helpdesk also include tools specific to SMEs. See Agency for Business and Economic Development, [SME Compass](#).
- 160 See [UNGPs](#), GP 18.
- 161 See OECD, [OECD Due Diligence Guidance for Responsible Business Conduct](#) (2018), pp28-30.
- 162 See [CSDDD](#), Art 13 and Recitals 40, 65, 67.
- 163 See [CSDDD](#), Art 13.

- 164 See [CSDDD](#), Art 13(5).
- 165 See [CSDDD](#); Art 13(2): “consulted stakeholders shall be allowed to make a reasoned request for relevant additional information, which shall be provided by the company within a reasonable period of time and in an appropriate and comprehensible format. If the company refuses a request for additional information, the consulted stakeholders shall be entitled to a written justification for that refusal.”
- 166 See [CSDDD](#), Art 14 (1) and (2).
- 167 See [CSDDD](#), Art 14(3).
- 168 See [CSDDD](#), Art 14(4)(a).
- 169 See [CSDDD](#), Art 14(4)(b).
- 170 See [CSDDD](#), Art 14(4)(c).
- 171 See [CSDDD](#), Art 26.
- 172 See [CSDDD](#), Art 29(2).
- 173 See [CSDDD](#), Art 20(3).
- 174 See European Commission and 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](#) (1 July 2022).
- 175 See [CSDDD](#), Art 20(4) and (5).
- 176 See [CSDDD](#), Art 10(2)(a) and Art 11(3)(a).
- 177 See [CSDDD](#), Art 13(6). See also Recital 65. Note that the use of initiatives is not sufficient to fulfil obligations to consult with workers and their representatives: Article 13(6).
- 178 See [CSDDD](#), Art 14(6) and Recital 59.
- 179 See J. Ford and J. Nolan, ‘Regulating transparency on human rights and modern slavery in corporate supply chains: the discrepancy between human rights due diligence and the social audit’, *Australian Journal of Human Rights* (2020) 26 (1), pp27-45.
- 180 [CSDDD](#), Art 20(4).
- 181 See [CSDDD](#), Arts 25 and 26.
- 182 See [CSDDD](#), Art 29 and Recital 52.
- 183 See [CSDDD](#), Art 20(4) and (5).
- 184 See [CSDDD](#), Recital 52.
- 185 See [CSDDD](#) in its original version, Art 29(1): ”Member States shall ensure that a company can be held liable for damage caused to a natural or legal person, provided (a) the company intentionally or negligently failed to comply with the obligations laid down in Articles 10 and 11, when the right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person; and (b) as a result of the failure referred to in point (a), damage to the natural or legal person’s legal interests that are protected under national law was caused. A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.”
- 186 See [CSDDD](#), Art 12.
- 187 See [Omnibus I](#), Recital 49.
- 188 See Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025); EU Agency for Fundamental Rights, [Business and Human Rights – Access to Remedy](#) (2020).
- 189 See Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025).
- 190 Ordinarily, the Rome II Regulation ([Regulation \(EC\) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations](#)) will be applicable in conflict of laws issues concerning non-contractual obligations to ascertain the applicable law in cases of intra-EU disputes. Article 4(1) of Rome II lays down a general

rule that “the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs.” This applies as a default rule if the cause of action is not otherwise covered by a specific rule in the Regulation. Article 2 of Rome II states that the Regulation is of “universal application” meaning that any law which is specified by the Regulation shall be applied whether or not it is the law of a Member State. Accordingly, courts will apply Rome II to determine the applicable law. Where the law is determined to be that of a third country which is not an EU Member State, Article 29(7) would have applied.

- 191 See [CSDDD](#), Art 12.
- 192 See [CSDDD](#), Art 29(2).
- 193 Tribunal judiciaire de Paris, 34e chambre, 12 mars 2026, No. RG 22/04017 (No. Portalis 352J-W-B7G-CWPRF), [Association Sherpa et al v SA Laboratoires de Biologie Végétale Yves Rocher](#).
- 194 As noted in Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025), country experts surveyed noted that there is a level of unpredictability regarding how judicial discretion would be exercised on jurisdictional and choice of law matters, and noted a general tendency (in many jurisdictions) to defer to other forums and systems of law in cross-border cases as far as is possible within the parameters of prevailing law. However, some respondents seemed to take the view that the fact that the CSDDD was aimed at helping to prevent and remediate business-related human rights abuses outside the EU (as well as within it) could potentially make the choice of law position clearer (at least as far as CSDDD-based cases are concerned), with judges more likely to retain jurisdiction and apply forum state law in “CSDDD cases” (or at least to a fuller extent) in order to give proper effect to transposing legislation, see pp42-43. For an example of a Member State court applying the applicable law of a third country, see *y Jabir v KIK Textilien und Non-Food GmbH* 7 O 95/15 which resulted in proceedings in Germany being dismissed not on the merits, but on the basis of the application of a limitation period supplied by the law of Pakistan, in spite of a waiver agreement on limitation having been agreed between the parties. See [ECCHR: Regional Court in Dortmund dismisses Pakistanis’ complaint against KiK](#).
- 195 See [CSDDD](#) in its original version, Art 29(3)(d).
- 196 See [UNGPs](#), GP 31. See also OHCHR, [Accountability and Remedy Project II: Enhancing Effectiveness of State-Based Non-Judicial Mechanisms in Cases of Business-Related Human Rights Abuse](#); OHCHR, [Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse Through State-Based Non-Judicial Mechanisms](#), A/HRC/38/20 (14 May 2018); and OHCHR, [“Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse Through State-Based Non-Judicial Mechanisms: Explanatory Notes to Final Report”](#), A/HRC/38/20/Add.1 (1 June 2018). See also Shift and OHCHR, [Enforcement of Mandatory Due Diligence: Key Design Considerations for Administrative Supervision](#) (October 2021).
- 197 See Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025), p32.
- 198 See Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025), p32.
- 199 See Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025), pp30-31.
- 200 [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](#).
- 201 See Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due](#)

- [Diligence Directive: Symposium event report](#) (12 September 2025, pp30-31).
- 202 See Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025, pp30-31).
- 203 See Jennifer Zerk and Gabrielle Holly, [Access to Justice in the Corporate Sustainability Due Diligence Directive: Symposium event report](#) (12 September 2025), pp35-37.
- 204 See Danish Institute for Human Rights, [The EU Corporate Sustainability Due Diligence Directive for non-EU stakeholders - Businesses](#), [The EU Corporate Sustainability Due Diligence Directive for non-EU stakeholders - CSOs and TUs](#), [The EU Corporate Sustainability Due Diligence Directive for non-EU stakeholders - NHRIs](#), [The EU Corporate Sustainability Due Diligence Directive for non-EU stakeholders - Policymakers](#) (March 2026).
- 205 For authoritative interpretation of these guidelines, see [OHCHR Helpdesk on Business and Human Rights | OHCHR](#)
- 206 See further OHCHR, [Access to Remedy in Cases of Business-Related Human Rights Abuse: an Interpretive Guide](#) (18 October 2024), Box 1, p30.

