anti-slavery

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EU Corporate Sustainability Due Diligence Directive:

Anti-Slavery International's analysis

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Contents

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1. Introduction

Background

The **European Union's Corporate Sustainability Due Diligence Directive** entered into force on 25 July 2024.[1] It requires large companies operating in the EU to conduct human rights and environmental due diligence to identify, assess, prevent, mitigate, cease and remedy adverse impacts in their value chains.

Anti-Slavery International has been advocating for an EU corporate due diligence law since 2017 to hold companies operating in the EU accountable for human rights abuses, including forced labour, and environmental harm in their value chains, and make sure that victims of harm can access justice. As part of our advocacy in this area we published analyses on both the European Commission's proposal of the Corporate Sustainability Due Diligence Directive and the European Parliament's compromise text, outlining gaps and recommendations.

For decades, voluntary initiatives and flawed auditing and certification schemes have failed to prevent corporate harm. Many countries now recognise that they need to adopt legislation to make human rights and environmental due diligence mandatory. The EU **Corporate Sustainability Due Diligence Directive** is part of this global shift towards mandatory due diligence.

The International Labour Organization (ILO) estimates that there are 17.3 million people in forced labour in the private sector and 3.9 million people in state-imposed forced labour at any given time.[2]

What is state-imposed forced labour?

State-imposed forced labour means forced labour imposed by state authorities as described in Article 1 of the ILO Convention on the Abolition of Forced Labour, 1957 (No. 105). State-imposed forced labour includes the use of forced labour as punishment for the expression of political views, for the purposes of economic development, as a means of labour discipline, as punishment for participation in strikes or as a means of racial, religious or other discrimination.

Many of the root causes of forced labour are systemic, linked to poverty, discrimination and social exclusion.[i] Weak rule of law and restrictions on freedom of association make it difficult for workers to raise concerns and assert their rights.

Nevertheless, certain business models and practices exacerbate the problem by creating demand for forced labour. When companies over-rely on low costs and short lead times, they push these pressures down the supply chain. This fuels labour exploitation when suppliers in turn pressure workers to take on overly long hours or consecutive shifts for below minimum wage.[3] Further, companies evade responsibility for respect of human rights through flawed auditing and certification schemes, coupled with ongoing restrictions to freedom of association.

i For an analysis of root causes of forced labour, see: Genevieve LeBaron, Neil Howard, Cameron Thibos, and Penelope Kyritsis, 'Confronting the root causes: forced labour in global supply chains' (openDemocracy, 19 March 2019), available at: https://cdn-prod.opendemocracy.net/media/documents/Confronting_Root_Causes_Forced_Labour_In_Global_Supply_Chains.pdf (accessed 24 July 2024).

Our reflections on the Directive

Anti-Slavery International welcomes the EU Corporate Sustainability Due Diligence Directive. Given that the EU is the world's largest single market, the Directive has the potential to influence business practices globally, to prevent forced labour, improve the lives of workers worldwide, and strengthen access to justice for those harmed by companies.

The Directive covers key areas in which action can improve human rights protections and reduce harm. It also centres workers at several points. For example, it contains provisions on meaningful stakeholder engagement, responsible disengagement, disengagement in situations of state-imposed forced labour, and remediation for harm.

However, gaps in the Directive call into question whether it can meaningfully tackle forced labour. Most critically, it does not apply to all businesses. Not only does this create an unlevel playing field, but it leaves a large share of businesses free from potential liability. In other areas, the Directive does not go far enough to change the status quo. For instance, victims of forced labour will continue to face barriers to justice, because they bear the burden of proving that a company is responsible for harming them.

What happens next: Steps to full implementation and recommendations

Although the Directive has now entered into force, there is still some way to go before it is fully implemented. EU Member States must transpose the Directive's provisions into their national laws, the European Commission needs to draw up guidelines to support its implementation, and six years after its entry into force, the Commission must review the Directive's implementation and effectiveness (see section 2).

It is vital that the gaps identified in this analysis remain front of mind during this implementation process. Member States should seek to close them as they work to transpose the Directive's provisions into their national law and the Commission must likewise address them in its guidelines.

Scope of our analysis

This analysis is intended to inform the work of civil society organisations (CSOs) and allies active in this sector. It aims to help them advocate for the effective implementation of the Directive and support workers to exercise their rights under the Directive. Our analysis, therefore, explains the provisions included in the final text, what we advocated for, what gaps remain and what still needs to be done in terms of implementation and future amendments.

The Directive also sets out obligations and accountability measures regarding environmental harm and climate change. Governments, courts, international organisations and civil society are increasingly cognisant of the connections between human rights and environmental impacts. Climate change and other forms of environmental damage affect vulnerable and marginalised groups in unique and disproportionate ways, including by increasing their vulnerability to forced labour.[4] The Directive's provisions on the environment and climate change are, however, beyond the scope of our analysis. Commentaries by climate and environmental groups are available for readers interested in more information on this area.[5]

2. Implementation timeline

Transposition

Following the Directive's entry into force, Member States will have two years to incorporate the Directive into their national law. While a level playing field is needed to avoid fragmentation and provide legal certainty across the EU's internal market,[6] how they transpose the Directive is – to some extent – at the discretion of each Member State.

Member States have substantial flexibility to adopt more ambitious obligations in their national law.[ii] They can introduce more stringent or more specific provisions (for instance, to regulate specific adverse impacts or specific sectors[7]), to achieve a different level of protection of human, employment and social rights, the environment or the climate.[8]

This flexibility is, however, not absolute. Article 4 (Level of harmonisation) specifies which provisions must be kept the same across all Member States.[iii] Specifically, Article 4(1) provides that Member State's national laws must not diverge from Articles 8(1) and (2), 10(1) and 11(1). These are the provisions that establish the general obligation to take appropriate measures to identify and address potential or actual adverse impacts.

Recital[iv] 31 explains that Member States may nevertheless introduce provisions that indirectly raise the level of protection under Articles 8(1) and (2), 10(1) and 11(1). This includes provisions on scope, definitions, appropriate measures for remediation, meaningful engagement with stakeholders and civil liability.

This gives Member States an important opportunity to go beyond a "copy and paste" approach when transposing the Directive and consider strengthening obligations to more effectively achieve the goals of the Directive. Member States can better align provisions with international standards and best practice and adopt more stringent measures to prevent human rights abuses. They can, for example, close many of the gaps identified in this analysis by:

- extending the scope
- expanding the definition of "chain of activities" to cover the entire value chain
- removing the limitation on the human rights standards covered
- outlining a broader range of outcomes to remediate harm
- mandating stakeholder engagement throughout the entire due diligence process
- shifting the burden of proof to companies
- introducing other measures to improve access to justice

ii As part of the review process, the Commission will consider whether changes to the level of harmonisation provided for in the Directive are required to ensure a level-playing field for companies in the internal market, including the convergence and divergence of provisions of national law transposing this Directive – Article 36(2)(g).

iii Article 37 provides that Member States must adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive by 26 July 2026.

iv Recitals outline the reasons for the provisions (articles) within the Directive.

Commission guidelines

The Commission will publish voluntary model contractual clauses[9] and guidelines to provide support to companies, Member State authorities, and stakeholders.[10] The guidelines will set out what companies actually need to do to fulfil their due diligence obligations. It is important that these guidelines encourage best practice and align with international standards. We highlight relevant standards and make recommendations on these guidelines in each section of this analysis.

Review of the Directive

Article 36 (Review and reporting) requires the Commission to review the implementation of the Directive and its effectiveness, in particular for addressing adverse impacts. The Commission must submit its first report by 26 July 2030 (and every three years thereafter).[11] The review clause does not limit which areas of the Directive should be assessed nor which amendments may need to be considered. Instead, the provision outlines specific issues and questions that must be covered in the first report.

Timeline overview:

3. Personal scope: In-scope companies

The Directive as it stands

The Directive only applies to very large companies: EU companies (or the parent company of a group) with more than 1000 employees and a net worldwide turnover of more than EUR 450 million per year, and non-EU companies (or the parent company of a group) that generate a net turnover of more than EUR 450 million in the EU per year.

The Directive will be phased-in as follows:

3 years from entry into force (2027)

- EU companies = 5000+ employees and EUR 1500+ million net worldwide turnover
- Non-EU companies = EUR 1500+ million net turnover generated in the EU

4 years from entry into force (2028)

- EU companies = 3000+ employees and EUR 900+ million net worldwide turnover
- Non-EU companies = EUR 900+ million net turnover generated in the EU

5 years from entry into force (2029)

- EU companies = 1000+ employees and EUR 450+ million net worldwide turnover
- Non-EU companies = EUR 450+ million net turnover generated in the EU
- EU companies with franchising or licensing agreements = EUR 22.5+ million in royalties and EUR 80+ million net worldwide turnover
- Non-EU companies with franchising or licensing agreements = EUR 22.5+ million in royalties and EUR 80+ million net turnover generated in the EU

Smaller companies were excluded from the scope of the Directive to avoid overburdening them with due diligence obligations. Nevertheless, the Directive does require in-scope companies to provide targeted and proportionate support to their small and medium-sized enterprise (SME) business partners.[v] This support must consider the circumstances of the SME (resources, knowledge and constraints) and can include assisting the SME to access capacity-building and training, or upgrading its management systems. If compliance with the in-scope company's code of conduct, prevention action plan or corrective action plan "would jeopardise the viability of the SME",[12] financial support should be provided. Examples of financial support include direct financing, low-interest loans, guarantees to continue sourcing from the SME, and assistance with securing financing.

Advocacy and gaps

We advocated for the scope to include all companies, regardless of size, with due diligence obligations proportional to their size, capacity and level of risk, in line with international standards and guidelines[13] (see section 3 of our analysis of the Commission's proposal and section 1 of our analysis of the European Parliament's compromise text). This would have allowed smaller companies greater autonomy when addressing risks, instead of requiring them to adhere to the compliance criteria of larger buyers, as will be the case under the Directive. While the Directive does mandate in-scope companies to support SME business partners, it is not entirely clear what this would look like in practice.

The scope of the Directive not only excludes SMEs, but many large companies as well. Indeed, it is estimated that only 5421 companies fall within the scope of the Directive.[14] This is concerning because all companies, regardless of size, can cause, contribute to or be linked to forced labour.

> According to the ILO's Global Estimates of Modern Slavery, 18.7% of victims of forced labour exploitation are in the manufacturing sector,[15] which includes textiles. The textile sector therefore has a high risk of forced labour. However, the current employee thresholds effectively exclude the apparel and textile sector from the direct scope of the Directive, given that according to 2024 data from the European Apparel and Textile Confederation, 99.7% of EU textile companies have fewer than 250 employees.[16]

While the direct scope of the Directive is extremely limited, its indirect reach will be far broader, because businesses in an in-scope company's chain of activities will be indirectly affected.

Recommendations

All companies should make sure they understand the requirements set out in the Directive. They should follow best practice – in line with international standards – to identify, assess, prevent, mitigate, cease and remedy adverse impacts in their value chains.

When transposing the Directive, **Member States** should consider expanding the personal scope of their due diligence frameworks to cover all companies and other economic operators not explicitly under scope of the Directive, such as cooperatives, with proportional due diligence requirements.

Likewise, **the Commission** should expand the scope of the Directive to cover all companies, as well as other entities such as cooperatives, when it reviews which companies should fall within the scope of the Directive.[17]

v See section 4A for the definition of business partner.

4. Material scope: Business partners and chain of activities

A: General scope for companies

The Directive as it stands

The Directive requires companies to undertake risk-based human rights and environmental due diligence with respect to their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners.

The Directive refers to both direct and indirect business partners.[18]

A direct business partner is an entity:

> *with which the company has a commercial agreement related to the operations, products or services of the company or to which the company provides services*

For example, a tier one supplier could fall into this category.

An indirect business partner is an entity:

> *which is not a direct business partner but which performs business operations related to the operations, products or services of the company*

For example, a sub-contractor engaged by a tier one supplier delivering a service for the lead company could fall into this category.

The Directive refers to a company's "chain of activities", referencing both upstream and downstream activities.[19]

For upstream business partners, this means activities:

> *related to the production of goods or the provision of services by the company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and the development of the product or the service*

For downstream business partners, it only means activities:

> *related to the distribution, transport and storage of a product of that company, where the business partners carry out those activities for the company or on behalf of the company*

For example, a retail company that contracts a business partner to deliver its products to consumers.

The downstream chain of activities does not include the disposal of a product.[20] Nor does it include business partners related to the services of the company,[21] for example, a pharmaceutical company that contracts an agency (business partner) to market its drugs and medical devices.

The Directive also excludes the distribution, transport, storage and disposal of products subject to EU export controls, including those covered by the Dual-Use Regulation.[22] The Dual-Use Regulation covers items that can be used for both civil and military purposes, including software and technology that can be used for cyber-surveillance. Recital 25 explains that under this regime, Member States should consider the risk of such goods being used for internal repression or the commission of serious violations of human rights or international humanitarian law.

Advocacy and gaps

We advocated for the Directive to cover the entire value chain[vi] (see section 5 of our analysis of the Commission's proposal and section 3 of our analysis of the European Parliament's compromise text).

The narrower definition of "chain of activities" in the Directive deviates from the standards set by the UN Guiding Principles on Business and Human Rights (UNGPs)[23] and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines).[24] Both of these frameworks recommend due diligence to be carried out across the **entire value chain**.

The "chain of activities" wording in the Directive means that upstream activities of business partners are covered, but downstream activities (related to distribution, transport and storage) are limited to **direct business partners** that carry out such activities on behalf of the company.[25] This creates the risk that companies will fail to identify and address the most salient risks in more remote tiers of their value chains.[26]

This narrow definition could also allow companies to ignore forced labour in the use or disposal of their products. This is a significant gap, given that shipbreaking and waste disposal are extremely high-risk sectors for labour exploitation and human rights abuses.[27]

While the Directive does refer to the EU's Dual-Use Regulation and Member States' obligation to consider the risk of their goods being used in human rights abuses, the Dual-Use Regulation does not oblige companies to carry out comprehensive due diligence to assess the potential human rights impacts that could arise from the use of their products.

Indeed, Amnesty International found that the Dual-Use Regulation does not go far enough to stop exports of surveillance tools to repressive regimes.[28] This statement followed an investigation that revealed that the Chinese government is using digital surveillance tools exported to China by EU companies as part of the widescale system of control and persecution of Uyghurs, Turkic and other Muslim-majority peoples.[29]

Recommendations

Companies should carry out due diligence across their entire upstream and downstream value chain in line with international standards. According to a recent report by The Danish Institute

vi Value chain means entities with which a company has a direct or indirect business relationship, understood as all types of business relationships – suppliers, franchises, licensees, joint ventures, investors, clients, contractors, customers, consultants, and financial, legal, and other advisers – and any other non-state or state entities linked to its business operations, products or services. It is understood as all types of business relationships, which either (a) supply products or services that contribute to the company's own products or services, or (b) receive products or services from the company. For example, the marketing, distribution, transport, storage, use, and disposal of the goods or services.

for Human Rights, many companies are already conducting some form of due diligence on their downstream value chains.[30] The report notes that it is "critical that businesses think not only about their suppliers when assessing their human rights impacts, but also about how their products and services can impact the enjoyment of rights".[31]

When transposing the Directive, **Member States** should consider expanding the material scope of these provisions to require companies to carry out due diligence on their entire value chain.

The Commission should expand the definition of "chain of activities" to cover companies' entire value chain. It can do this as part of its review of the implementation of the Directive and its effectiveness under Article 36(2)(b).

B: The financial sector

The Directive as it stands

Financial institutions are included in the scope of the Directive. However, only their upstream chain of activities is covered by the Directive and subject to due diligence obligations;[vii] for example, the purchase of external services, such as software. Downstream business partners that use financial institutions' services and products – such as investments and loans – are excluded from their chain of activities. This means that financial institutions will not have to carry out due diligence on their clients' activities.

Advocacy and gaps

We advocated for there to be no exemptions to the financial sector's obligations (see section 4 of our analysis of the Commission's proposal). The significant exemptions in the final text are contrary to the OECD Guidance for the sector,[32] which expects all financial institutions to carry out due diligence across their entire value chain.

The Directive does not require financial institutions to carry out pre-investment or ongoing due diligence, nor to exert leverage or engage with clients to identify, prevent, mitigate or remedy forced labour and other impacts.

Forced labour is not a static situation. An investment that is initially at low risk of forced labour can become high risk in the course of the investment. This might happen due to conflict, the impacts of climate change, health emergencies (such as the Covid-19 pandemic), changes in political power, or changes to business models and strategies.

The financial sector exemptions are therefore extremely disappointing, even more so considering the leverage financial institutions have over the companies they finance and the tremendous power they have to drive respect for human rights and the environment.[33] Moreover, the limited scope of the Directive disregards the views of the many financial institutions that supported the inclusion of ongoing due diligence obligations for the sector across the entire value chain.[34]

vii Recital 26. Recital 51 also notes that the specificities of financial services need to be acknowledged, and financial undertakings are expected to consider adverse impacts and to use their leverage to influence companies, for example by exercising shareholders' rights.

Recommendations

In line with OECD Guidance, the **financial sector** should address risks in clients' value chains, where forced labour is most likely to occur. There are already a number of examples of financial institutions using their leverage to address forced labour risks across their value chains, including in lower tiers.[viii] Additionally, **financial institutions** should conduct ongoing client due diligence and suspend or stop providing services if they identify adverse impacts (see section 6.2E).

When transposing the Directive, **Member States** should align with international standards and remove the exemptions for the financial sector.

The Commission should remove the exemptions for financial institutions and introduce ongoing due diligence obligations across their entire value chains under the same conditions as other companies. It can recommend this in its report on the need for additional sustainability due diligence requirements for regulated financial undertakings provided for in Article 36(1).[ix]

Mandatory transparency in the financial sector: Key to respecting human rights and protecting the environmental

Repórter Brasil (Brazil)

Evidence from around the world indicates that the financial sector is contributing to environmental damage. In 2022, non-governmental organisation Repórter Brasil found links between French banks and Brazilian agribusinesses with a record of deforestation in their supply chains.

This research shows that, despite pledging to protect the environment, some financial institutions prioritise profit when they invest in and enable the expansion of industries that drive deforestation, such as cattle ranching and large-scale agriculture. This in turn exacerbates climate change, given that the Amazon rainforest is essential for regulating global temperatures.[35]

Mandatory transparency rules are urgently needed to stop financial institutions funding activities that directly or indirectly contribute to human rights violations and the climate crisis. Such rules would enable the public and civil society to monitor and hold companies accountable for harmful practices.

The recently approved Directive falls short in this regard. Under the Directive, the financial sector is subject to weak transparency and monitoring requirements compared to other sectors. This is a major missed opportunity for people and the planet.

Financial institutions must be more transparent. They must provide more specific information about the sectors, countries and regions in which they operate and about the environmental and human rights risks associated with their investments. They must explain in detail what they are doing to prevent, mitigate and remedy any adverse impacts related to their activities, their clients' activities and their investment portfolios. Without this transparency, the financial sector will continue to contribute to human rights abuses and environmental damage with impunity.

viii For example, relating to Uyghur forced labour in solar panel production. See, Eventide, 'Eradicating Forced Labor from Solar Supply Chains: Eventide's Approach' (January 2022), available at: https://www.eventideinvestments.com/wp-content/uploads/2022/01/Eventide-SpecialReport-Uyghur-AdvisorV2-02-Single-1.pdf (accessed 7 August 2024).

ix The report is to be published at the earliest opportunity after 25 July 2024, but no later than 26 July 2026.

5. Material scope: Human rights standards

The Directive as it stands

The Directive offers an opportunity to close gaps in national human rights standards along the whole of an in-scope company's value chain. This is because an in-scope company will be obliged to respect the rights covered by the Directive (directly in its own operations and indirectly through those of its business partners) regardless of the standards in force in third countries.

To illustrate: if a country has not ratified the International Covenant on Civil and Political Rights, Article 8 of which prohibits slavery and servitude, an in-scope company would still have to respect that prohibition along its chain of activities regardless of the location of its operations or those of its business partners.

The material scope of the Directive is set out in its Annex which contains an exhaustive list of standards. Part I of the Annex sets out the rights and prohibitions under international human rights instruments covered by the Directive, and Part II the prohibitions and obligations under environmental instruments. These lists do not include all human rights that may be impacted by companies' global activities, which limits the material scope of the Directive.

The Directive does however include the key rights and standards relating to forced labour, including the ILO Fundamental Conventions. Notably, it explicitly includes the 2014 Protocol to the Forced Labour Convention, 1930 (No. 29). This Protocol updates and strengthens the Forced Labour Convention, by creating important obligations for ratifying states which, if fully implemented, should reduce the incidence of slavery.

Advocacy and gaps

Business operations can impact the entire spectrum of internationally recognised human rights. In line with the UNGPs, all businesses should respect every one of these rights.

We therefore advocated for the Directive to apply to a non-exhaustive list of human rights and for no human rights standards to be excluded from the scope (see section 2 of our analysis of the Commission's proposal and section 2 of our analysis of the European Parliament's compromise text). The limited list of human rights instruments included in the Directive risks promoting a selective approach and a hierarchy of human rights.

Critically, several interrelated rights and instruments are excluded from the scope of the Directive that would make it complete and therefore effective. Key conventions on migrant workers' rights are missing, despite migrant workers facing a much higher risk of exploitation, forced labour and structural inequalities in global value chains.[36] Other conventions that protect workers from human rights abuses – such as those on human trafficking, discrimination, and violence and harassment – are also missing from the Directive.

The following is a non-exhaustive list of excluded rights and conventions that should be included in the scope of the Directive:

- The UN Slavery Convention 1926 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956
- The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (the Palermo Protocol) 2000
- ILO Violence and Harassment Convention, 2019 (No. 190)[x]
- ILO Governance (Priority) Conventions – Labour Inspection Convention, 1947 (No. 81); Employment Policy Convention, 1964 (No. 122); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
- Article 7 on equality before the law of the Universal Declaration of Human Rights (1948)
- Articles 1 and 2 of the UN Convention on the Elimination of All Forms of Discrimination against Women (1979)[xi]
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the ILO Migration for Employment Convention 1949 (No.97), and the ILO Migrant Workers (Supplementary Provisions) Convention 1975 (No.143)
- Inclusion of rights relevant to living incomes, such as codified in Article 23 and 25 of the Universal Declaration of Human Rights (1948)
- The UN Convention for the Protection of All Persons from Enforced Disappearances 2010 and the UN Declaration on Human Rights Defenders (1998)[xii]

Recommendations

Companies should follow best practice and take a comprehensive approach that goes beyond the scope of the Directive when identifying human rights risks. **Member States** should consider including all human rights violations and environmental harms in scope when transposing the Directive.

The Commission should extend the list of in-scope human rights standards and make it non-exhaustive. Fortunately, it has the opportunity to do so, given that, under the review clause, it must consider whether the Annex should be amended and extended to cover additional adverse impacts.[37]

x Recital 32 states that reference to the ILO Occupational Safety and Health Convention, 1981 (No. 155), and the ILO Promotional Framework for Occupational Safety and Health, 2006 (No 187), will be added to the Annex once ratified by all EU Member States.

xi The Convention on the Elimination of All Forms of Discrimination against Women is referred to in Recital 33 of the Directive as an international instrument that companies may need to take into consideration, where relevant, when taking account of specific contexts or intersecting factors as part of the due diligence process, and paying special attention to any particular adverse impacts on individuals who may be at heightened risk due to marginalisation, vulnerability or other circumstances, individually or as members of certain groups or communities.

xii The UN Declaration on Human Rights Defenders is referred to in Recital 65 regarding effective engagement with stakeholders and paying attention to the needs of vulnerable stakeholders.

6. Due diligence obligations

Overview

Article 5 of the Directive sets out the due diligence actions that companies must undertake:

- **Integrating due diligence** into their policies and risk management systems[38]
- **Identifying, assessing** and, where necessary, **prioritising** actual or potential adverse impacts[39]
- **Preventing and mitigating** potential adverse impacts,[40] and **ending** any actual adverse impacts and **minimising** their extent[41]
- **Providing remediation** for actual adverse impacts[42]
- Carrying out **meaningful stakeholder engagement**[43]
- Establishing and maintaining a **notification mechanism and complaints procedure**[44]
- **Monitoring the effectiveness** of their due diligence policies and measures[45]
- **Publicly communicating** on due diligence[46]

Companies must develop their due diligence policies in consultation with their employees and employee representatives.[47] These policies must include three elements:

1. a description of the company's approach to due diligence (including in the long term);[48]
2. a code of conduct describing the rules and principles to be followed throughout the company and its subsidiaries, and by direct or indirect business partners;[49]
3. a description of the processes for integrating due diligence into company policies and implementing due diligence, including measures to verify compliance with the code of conduct and to extend its application to business partners.[50]

6.1 Cross-cutting concepts and provisions of due diligence

The Directive as it stands

The following are the key concepts that shape the interpretation of the due diligence obligations contained in the Directive.

Appropriate measures

The Directive refers to "appropriate measures" that companies must take to identify, assess, prevent, mitigate, end and remediate adverse impacts and to engage with stakeholders.[51] Appropriate measures are defined in Article 3(o) of the Directive as:

> *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*

Prioritisation and risk

The Directive takes a risk-based approach. Article 9 allows companies to prioritise any actual or potential adverse impacts identified based on their severity and likelihood if it is not feasible to completely prevent, mitigate, end or minimise them all at the same time.[xiii] Once the most severe and most likely adverse impacts have been addressed within a reasonable timeframe, companies must address less severe and less likely adverse impacts.[52] Severity means the scale, scope or irremediability, taking into account the gravity of the adverse impact, including the number of individuals affected, the extent of environmental harm, and irreversibility of any harm or environmental damage.[53]

xiii When assessing adverse human rights impacts, Recital 37 refers companies to guidance that illustrates how their activities may impact human rights and which corporate behaviour is prohibited in accordance with internationally recognised human rights. Specifically, the United Nations Guiding Principles Reporting Framework, and the Interpretive Guide to the corporate responsibility to respect human rights are referred to. See, Shift and Mazers, 'UN Guiding Principles Reporting Framework with implementation guidance' (2017), available at: https://www.ungpreporting.org/wp-content/uploads/UNGPReportingFramework_withguidance2017.pdf (accessed 3 May 2024); United Nations, 'The Corporate Responsibility to Respect Human Rights: An Interpretative Guide' (2012) UN Doc HR/PUB/12/02, available at: https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf (accessed 3 May 2024).

Company level of involvement

Companies are required to take "appropriate measures" (i.e. capable of achieving the objectives of due diligence)[54] to identify, assess, prevent, mitigate and end any potential or actual adverse impacts.[55] To determine which measures are appropriate, it is necessary to consider how involved a company is in an adverse impact.[56] The more involved the company, the more extensive the measures deemed appropriate.

Under the Directive, there are three levels of involvement in an adverse impact:

1. the adverse impact is *caused* by the company themselves (highest level of involvement);
2. the adverse impact is *jointly caused* by the company with its subsidiaries or business partners;
3. the adverse impact is *caused only* by *a business partner* of the company in the company's chain of activities (lowest level of involvement).[57]

The use of the term "cause" at all three levels diverges from the UNGP framework, which uses the terms "cause", "contribute to" and "directly linked to" to describe analogous levels of involvement.[xiv] Recitals 45 and 53 explain that this wording was chosen for the Directive to avoid confusion with existing legal terms at the national level, while describing the same causal relationships.

Company leverage and influence

The Directive also takes account of a company's **leverage** or **influence**. Leverage describes the power a company has to influence the behaviour of its business partners. Under the Directive, a company's leverage or degree of influence is taken into consideration to determine appropriate measures to prevent, mitigate or end adverse impacts.[58] Such measures might include temporarily suspending a business relationship (see section 6.2E).

Recitals 45 and 53 also explain that companies should exercise their leverage to prevent, mitigate and end adverse impacts, even where an adverse impact is caused only by one of its business partners.[59] Leverage can also be used to influence a business partner to remediate harm.[60]

The Directive gives examples of how companies can exercise their influence or increase their leverage, such as:

- through market power, pre-qualification requirements or linking business incentives to human rights and environmental performance (Recitals 45 and 53);
- through collaborative action with the business partner associated with the adverse impact or with a direct business partner of that business partner (Recitals 45 and 53);
- through industry or multi-stakeholder initiatives (Recital 52).

Recital 34 explains that companies should also use their influence to contribute to an **adequate standard of living** in their chains of activities. This means that employees earn a living wage, and self-employed workers and smallholders earn a living income for their work and production.[61] In this vein, the right to enjoy just and favourable conditions of work under Article 7 of the International Covenant on Economic, Social and Cultural Rights is included as a protected right in the Annex to the Directive.

xiv The UNGPs three categories of involvement are whether the company caused the adverse impact, whether the company contributed to the adverse impact, or whether the company is involved solely because the impact is directly linked to its operations, products or services by a business relationship. See, United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Principles 15, 17, 19 and 22 and commentary, available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed 29 July 2024).

Advocacy and gaps

Prioritisation and risk

We advocated for a risk-based approach to due diligence that recognises the role of leverage (see section 5 and section 6C of our analysis of the Commission's proposal). We therefore welcome the Directive's risk-based approach to due diligence. This is the approach taken by the UNGPs and the OECD Guidelines. These standards direct companies to consider the severity of the risk wherever it occurs in their value chain when deciding where to focus their due diligence efforts to prevent and mitigate impacts. In contrast, the Directive's "chain of activities" is narrower, covering fewer types of downstream activities (see section 4).

Company level of involvement

The use of caused, jointly caused or caused only by business partners potentially provides a clearer framework than existing international frameworks.[xv] As has been noted by the Danish Institute of Human Rights, the Directive could, if supported by appropriate guidance, encourage "companies to consider how they could be involved in an impact to inform appropriate measures without creating incentives to artificially place a company in one involvement category or another".[62]

Company leverage and influence

We also welcome the fact that the role of leverage is recognised in the final text, in line with international standards. The specific reference to using leverage to ensure an adequate standard of living is particularly important to remove factors that create an enabling environment for forced labour exploitation, such as financial insecurity (see also section 6.2D).

The Directive suggests that multi-stakeholder initiatives can help create additional leverage with direct and indirect business partners to support the fulfilment of due diligence obligations. However, the effectiveness of multi-stakeholder initiatives varies dramatically, and they are not sufficient to reliably detect abuses or provide access to remedy.[63]

Recommendations

As part of the review process, the Commission will draft:

- best practice guidance on how to prioritise impacts (Article 9);[xvi]
- sector-specific guidance;[xvii]

[xv] The Directive follows the UNGPs and outlines in Article 12(2) that where an adverse impact is only caused by a business partner remediation is voluntary, but the company may use its influence to encourage remediation. Some companies seek to categorise their level of involvement as being "directly linked to" rather than "contributing to", therefore avoiding the duty to remediate. Previously, an analysis paper focused on direct linkage due to the claim that banks are more likely to be directly linked to adverse impacts: Thun Group of Banks, 'Paper on the Implications of UN Guiding Principes 13 & 17 in a Corporate and Investment Banking Context' (December 2017), available at: https://media.business-humanrights.org/media/documents/files/documents/2017_01_Thun_Group_discussion_paper.pdf (accessed 29 July 2024). The analysis was disputed by John Ruggie: John G 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' (Harvard Kennedy School, 21 February 2017), available at: https://media.business-humanrights.org/media/documents/files/documents/Thun_Final.pdf (accessed 29 July 2024).

[xvi] Article 19(2)(a). Guidelines will be made available by 26 January 2027.

[xvii] Article 19(2)(c). No date is provided for when this guidance will be issued.

- guidance on the assessment of specific risk factors related to company type, business operations, location and context, products and services, and sector, including risks associated with conflict-affected and high-risk areas;[xviii]
- guidance setting out the fitness criteria of industry and multi-stakeholder initiatives.[xix]

The Commission should ensure this guidance aligns with international standards on the prioritisation of risks and existing sectoral guidance. Guidance on industry and multi-stakeholder initiatives must acknowledge existing issues and account for the associated shortcomings in emphasising that they should only be used as part of a broader due diligence policy.

Beyond participation in multi-stakeholder initiatives, **companies** should explore more varied ways to exert and increase their leverage. These efforts could focus on improving practices (such as through capacity-building), engagement with trade unions and civil society, and collaborative efforts with industry peers that have the same indirect partners.

6.2 Due diligence obligations

A: Contractual assurances, industry initiatives, and third-party verification

The Directive as it stands

Under the Directive, companies must take appropriate measures to prevent, mitigate, end or minimise adverse impacts. Seeking contractual assurances is one such appropriate measure.[xx] These assurances can be agreed with business partners, with corresponding assurances from indirect partners.

Recitals 46 and 54 explain that contractual assurances should ensure that responsibilities are shared appropriately between a company and its business partners. However, obtaining them is not an absolute requirement. Companies are only required to "seek" contractual assurances, on the grounds that "obtaining them may depend on the circumstances".[64]

Once obtained, contractual assurances should be accompanied by **appropriate measures to verify compliance**. Companies can verify compliance via independent third-party verification (social audits and certification schemes), including industry or multi-stakeholder initiatives.[65] Article 20(5) likewise provides that companies may use independent third-party verification to the extent that they are in fact appropriate. Crucially, however, Article 29 (on civil liability) states that companies can still be held liable for actual adverse impacts even if they rely on contractual assurances, third-party verification, or industry or multi-stakeholder initiatives.[66] Companies cannot, therefore, avoid liability by pushing the burden onto suppliers.

xviii Article 19(2)(d). Guidelines will be made available by 26 January 2027.

xix Article 20(4). No date is provided for when this guidance will be issued.

xx Article 10(2)(b) and Article 11(3)(c). Article 10(4) and Article 11(5) also refer to when the company may seek contractual assurances from an indirect partner.

Advocacy and gaps

We advocated against contractual assurances and verification of compliance being the dominant way for companies to fulfil their due diligence obligations or prevent harm. We also called for shared obligations to prevent large companies pushing responsibility down the supply chain (see section 6A of our analysis of the Commission's proposal and section 4 of our analysis of the European Parliament's compromise text).

The Directive recognises the role that balanced and equitable contractual clauses can play in supporting human rights and environmental due diligence by creating shared obligations.[67] However, while the Directive works to ensure that social audits are not used by a company to discharge their due diligence duty, any reference to the practice is worrying.

As evidenced by the many cases of documents being falsified and violations concealed,[68] social audits are wholly ineffective at identifying forced labour.[69] Indeed, identical or very similar language has also been found in audit reports on different factories,[70] suggesting that the audits were superficial or generic at best. Even where better designed and executed, audits only provide a snapshot in time. They are often tick-box exercises and, because they are often planned in advance, they allow for the falsification of conditions and concealment of abusive conditions.[71]

Further, forced labour is often hidden, and can be characterised by coercive control, poor recruitment practices and recruitment fees being charged to employees, among other indicators. Exploitation and forced labour can therefore be hard to detect without meaningful, deep and trusted engagement with workers. Social audits are unable to achieve this, because they tend to be opaque one-off exercises that are more concerned with protecting the contracting company's reputation than building trust with workers or providing remediation. Moreover, because their findings are not disclosed, they offer little opportunity for scrutiny or to hold companies to account.[72]

Recommendations

Pursuant to Article 18, the Commission will adopt guidance on voluntary model contractual clauses, in consultation with Member States and stakeholders. These model clauses are intended to help companies comply with Article 10(2)(b) and Article 11(3)(c) on seeking contractual assurances.[xxi] **The Commission** should ensure that these model contractual clauses create shared human rights and environmental due diligence obligations for lead companies and suppliers, and that they include remedy provisions.

Further, Article 20(5) provides that the Commission, in collaboration with Member States, must issue guidance setting out criteria and a methodology for companies to assess the fitness of third-party verifiers, as well as guidance on monitoring the accuracy, effectiveness and integrity of third-party verification.[xxii] Here, **the Commission** should highlight in the guidance the problems associated with over reliance on contractual assurances and third-party verification. It should make it clear that these mechanisms should form part of a broader due diligence policy that accounts for their shortcomings.

[xxi] Guidance about voluntary model contractual clauses will be adopted by 26 January 2027.

[xxii] No date is provided for when this guidance will be issued.

Anti-Slavery International's partner Workers Rights Watch in Kenya details how the Kenyan cut-flower sector, despite experiencing significant growth in the global market, continues to rely on negative working conditions:

"Conditions experienced by women workers and male lower cadre employees include hazardous work, low pay, job insecurity coupled with discrimination and lack of enforcement of labour laws.[73] Women workers also often face gender-based violence, including sexual harassment. A due diligence approach that moves away from mere auditing to instead a results-based monitoring system is required; it should be a transition from privately-owned processes answerable to corporations and consumers only, to a regulated, public, and democratically accountable framework."[74]

B: Transparency and value chain mapping disclosure

The Directive as it stands

As part of identifying and assessing actual and potential adverse impacts, Article 8 of the Directive obliges companies to map their own operations, their subsidiaries and, where related to their chain of activities, their business partners. Based on that mapping, companies must then carry out an in-depth assessment in the areas where adverse impacts were identified to be most likely and severe. However, the Directive does not require companies to publicly disclose their value chains.[xxiii]

Advocacy and gaps

Forced labour typically occurs in the lower tiers of the supply chain. It is therefore crucial that companies map and understand their value chains to detect potential and actual adverse impacts and address them appropriately. There are multiple benefits to mapping and disclosing value chains:

- It can encourage companies to establish joint approaches to due diligence with shared suppliers and sub-suppliers, including joint grievance mechanisms and capacity-building;
- It can support SMEs' due diligence activities by allowing them to compare their suppliers against the information provided by larger companies sourcing from the same suppliers;
- It enables meaningful information disclosure to stakeholders as part of the consultation process;
- It provides crucial data to those wanting to use the legislation and improve company practice;
- It can ensure that companies do not source from locations at high risk of state-imposed forced labour.

xxiii Article 16 outlines that companies subject to Directive 2013/34/EU (as amended by the Corporate Sustainability Reporting Directive) will have no additional reporting requirements. Those that don't fall under the Reporting Directive but fall under the Due Diligence Directive will have to report on matters covered in the Due Diligence Directive in an annual statement (in particular, information on due diligence, actual and potential adverse impacts identified, and appropriate measures taken with respect to those impacts).

We advocated for companies to be required to map and publicly disclose their value chains (see section 10 of our analysis of the Commission's proposal and section 6 of our analysis of the European Parliament's compromise text). The Directive is disappointingly limited in terms of mandating public disclosure.

Some companies already publicly disclose lists of direct suppliers, types of products and number of workers.[75] Know the Chain has recently highlighted companies that are disclosing lists of names and addresses of first, second, third, and fourth-tier suppliers.[76] There are also examples of existing collaborative approaches to information sharing, such as the Open Supply Hub, which collects and provides access to publicly available supplier lists.[77] Open Supply Hub reports that its corporate partners find transparency to be more of a benefit than a hinderance, citing benefits such as more effective collaboration, enhanced understanding and clarity around suppliers.[78]

Recommendations

Companies should map and publicly disclose their value chains. This is particularly important when it comes to forced labour, because abuses tend to happen in the lower tiers of the supply chain. Unless companies map and disclose their value chains, it will be difficult to identify entities implicated in forced labour in their value chains for enforcement and accountability purposes. When transposing the Directive, **Member States** should require companies to also publicly disclose their value chains.

Recital 68 acknowledges that digital tools and technologies could facilitate and reduce the cost of data gathering for value chain management. Such tools are already used for tracking, surveillance and tracing raw materials, goods and products throughout value chains. It is recognised that they could also be used, among other things, to identify, assess, prevent and mitigate adverse impacts, and monitor the effectiveness of due diligence measures.[79]

Pursuant to Article 19(2)(e), the Commission will provide guidelines indicating sources of data and information, digital tools and technologies that could help companies comply with their obligations under the Directive.[xxiv] When using such tools it is however noted that companies should consider and address any risks associated with their use and should "verify the appropriateness of the information obtained".[80] It is important that where companies are using such tools to help map their value chains that **the Commission**, through its guidance, encourages them to publicly disclose this information.

[xxiv] Guidelines will be made available by 26 January 2027.

Transparency is integral to preventing products made with forced labour from entering the EU market

Turkmen.news (Turkmenistan)

Turkmenistan's cotton industry is underpinned by a system of state-imposed forced labour. The Turkmen government, which heads one of the most closed and repressive regimes in the world, maintains total control of cotton production and forces farmers to meet official production quotas under threat of penalties.[81] During each year's harvest, the government forces tens of thousands of public sector workers to pick cotton, pay a bribe or hire a replacement worker. Anyone unable to do this faces threats of lost wages and termination of their employment.

Turkmen cotton continues to enter the EU textile and apparel market. Research shows that this happens through two main streams: as finished goods produced in Turkmenistan that are exported via direct trade routes, and through suppliers in countries that produce textiles using Turkmen cotton, yarn and fabric.[82]

Even though over 140 companies have committed to not knowingly sourcing Turkmen cotton,[83] poor transparency and weak traceability means many of these companies may still have Turkmen cotton in their products.

We hope that the Directive will mark a turning point in this situation, because companies will now be obliged to map and trace the source of the cotton, yarn, and fabric in their products and identify ultra-high-risk sourcing locations like Turkmenistan. Companies cannot reasonably be expected to mitigate the risk of forced labour in Turkmenistan. Those companies sourcing products containing Turkmen cotton will therefore be required to end those business relationships.

While not mandated in the Directive, companies must publicly disclose their suppliers and from where they source their raw materials. Doing so will enable external stakeholders to hold them accountable for human rights abuses in their supply chains. Transparency and public review are indispensable to ensure that the prohibition on engaging with state-imposed forced labour is actually effective.

Credit: muratart/Shutterstock

C: Stakeholder engagement

The Directive as it stands

The Directive requires companies' due diligence policies to be developed in prior consultation with their employees and employee representatives.[84] It brings stakeholders to the fore of the due diligence process, with a whole article dedicated to stakeholder engagement.[85]

Stakeholders are defined in the Directive[86] as:

> *the company's employees, the employees of its subsidiaries, trade unions and workers' representatives, consumers and other individuals, groupings, communities or entities whose rights or interests are or could be affected by the products, services and operations of the company, its subsidiaries and its business partners, including the employees of the company's business partners and their trade unions and workers' representatives, national human rights and environmental institutions, civil society organisations whose purposes include the protection of the environment, and the legitimate representatives of those individuals, groupings, communities or entities*

The Directive makes stakeholder engagement mandatory in the following steps of the due diligence process:

- Gathering information on actual or potential adverse impacts, to identify, assess and prioritise adverse impacts;[87]
- Developing prevention and corrective action plans, and enhanced prevention and corrective action plans;[88]
- Deciding to terminate or suspend a business relationship;[89]
- Adopting appropriate measures to remediate adverse impacts;[90]
- Developing, as appropriate, indicators for monitoring the effectiveness of due diligence.[91]

Importantly, the Directive specifies that **stakeholder engagement must be meaningful**, and that consultation should allow for genuine interaction and dialogue.[92] It requires companies to identify and address barriers to engagement and ensure stakeholders are free from retaliation and retribution.[93] Further, the Directive calls on companies to take into account the needs of **vulnerable stakeholders**, as well as overlapping vulnerabilities and intersecting factors, including potentially affected groups or communities.[xxv] Engagement with employees and their representatives should be conducted in accordance with EU and national law, as well as collective agreements.[94]

The Directive also provides that where it is not reasonably possible to carry out effective engagement with stakeholders, companies must also consult experts.[95] Such experts include civil society organisations, individuals or other entities defending human rights or the environment who can provide credible insights into potential or actual adverse impacts.[96]

[xxv] Recital 65. In particular, the text refers to, as an example, those protected under the United Nations Declaration on the Rights of Indigenous People and those covered in the United Nations Declaration on Human Rights Defenders.

Advocacy and gaps

For due diligence to be effective, meaningful stakeholder engagement is essential. We advocated for meaningful stakeholder engagement to be mandatory at all stages of due diligence. We also advocated for the need to identify and incorporate specific considerations for people in situations of heightened vulnerability (see section 7 of our analysis of the Commission's proposal and section 5 of our analysis of the European Parliament's compromise text).

Forced labour is often hidden, due to worker intimidation or forced labour indicators not being immediately visible (such as debt bondage). Meaningful stakeholder engagement is therefore a fundamental part of due diligence. It allows companies to identify factors that indicate a risk of exploitation or the root causes of exploitation. One-off tick-box exercises (as often conducted through social audits, see section 6.2A) fail to build trust with workers, and consequently fail to identify forced labour or risks of forced labour. We therefore welcome the fact that the Directive specifies that stakeholder engagement must be meaningful and not merely superficial.

Importantly, the Directive calls on companies to safeguard against retaliation and take into account the special needs of vulnerable stakeholders in marginalised situations. For forced labour, this can include migrant workers, casual, temporary and seasonal workers, homeworkers, workers from marginalised groups, such as indigenous peoples, people of lower-castes or ethnic minorities, illiterate workers, women and children.

Significantly, the Directive provides that where engagement is credibly unfeasible, companies should consult with representatives and experts. This is extremely important for state-imposed forced labour, where engagement with workers is almost impossible. State-imposed forced labour often takes place in repressive political contexts, such as in Turkmenistan and the Uyghur Region, where there are security risks and freedoms are severely constrained.

However, the Directive does not require companies to consult stakeholders when designing their engagement frameworks. This would be the best way to ensure that barriers and particular vulnerabilities are understood and addressed. Likewise, the Directive does not require companies to engage with stakeholders to design their complaints procedures (Article 14, see section 6.2F) or when publicly communicating on due diligence (Article 16), and only requires engagement "as appropriate" in relation to monitoring obligations (Article 15).

Stakeholder engagement only being required "as appropriate" in relation to monitoring obligations (Article 15) means those evaluating the impact, relevance and efficiency of measures might be limited to the company that initiated and implemented them. If they do not engage workers, trade unions, civil society and other stakeholders at the monitoring stage, processes may lack objectivity, fail to identify unintended consequences and therefore fail to identify relevant improvements.[xxvi]

Similarly, companies are only required to provide stakeholders with relevant and comprehensive information for effective and transparent consultation "as appropriate".[97] Affected stakeholders will therefore continue to face obstacles when they seek to access verifiable information about a company's practices or attempt to bring a claim against a company.

As highlighted in a policy paper by the Clean Clothes Campaign, the European Center for Constitutional and Human Rights (ECCHR), Public Eye and the Centre for Research on Multinational Corporations (SOMO), any legislation should shift the burden onto companies to actively seek ways to disclose information to the greatest extent possible, in a meaningful and user-friendly way.[98]

Additionally, and disappointingly, the Directive does not include human rights defenders in its definition of stakeholders, nor does it acknowledge that those fighting for human rights face a higher risk of retaliation (see section 6.2F). Indeed, neither the 1998 UN Declaration on Human Rights Defenders nor the 2010 UN Convention for the Protection of All Persons from Enforced Disappearance are included in the list of rights and conventions covered by the Directive.[xxvii]

Recommendations

Meaningful stakeholder engagement is a fundamental part of due diligence and therefore should be mandatory throughout the entire due diligence process. It should be recognised that failing to meaningfully engage stakeholders should constitute a failure to conduct appropriate human rights and environmental due diligence.

Companies should meaningfully engage with stakeholders throughout all stages of the due diligence process. When transposing the Directive, **Member States** should consider expanding the requirements for stakeholder engagement to this effect.

xxvi Article 15 only provides that where appropriate, the due diligence policy will be updated with due consideration of relevant information from stakeholders.

xxvii Recital 65 outlines that meaningful stakeholder engagement should take into account potentially affected groups or communities, such as those covered in the UN Declaration on Human Rights Defenders.

Pursuant to Article 19(2)(a), the Commission will issue guidelines on how to identify and engage with stakeholders pursuant to Article 13.[xxviii] These guidelines will also include information for stakeholders and their representatives on how to engage with companies throughout the due diligence process (Article 19(2)(g)).[xxix] **The Commission** should ensure that these guidelines provide practical examples of meaningful engagement with stakeholders, while paying particular attention to the needs and interests of groups in situations of heightened vulnerability.
The Commission should ensure its guidelines follow international standards, i.e. it should emphasise the importance of carrying out stakeholder engagement throughout the whole due diligence process, including when designing the engagement framework.

D: Responsible purchasing practices

The Directive as it stands

The Directive obliges companies to reform their purchasing practices, where relevant, as an appropriate measure to prevent, mitigate, end or minimise potential or actual adverse impacts.[99] Recitals 46 and 54 also note that companies' purchasing policies should "contribute to living wages and incomes for their suppliers" and "not encourage actual adverse impacts on human rights or the environment".[100] Such measures could, in particular, address adverse impacts caused jointly by the company and its business partners. This includes impacts resulting from the deadlines or specifications that companies impose on their business partners.[101]

Recital 47 highlights the agriculture sector as particularly at risk in this regard. It notes the importance of tackling harmful purchasing practices and price pressures on producers, particularly smaller operators. Specifically, it states that, to address the power imbalances in the agricultural sector, ensure fair prices and strengthen the position of farmers, "large food processors and retailers should adapt their purchasing practices, and develop and use purchasing policies that contribute to living wages and incomes for their suppliers".

Advocacy and gaps

Irresponsible purchasing practices are a key driver of labour exploitation.[102] Insufficient lead times, prices that virtually preclude fair wages, and other unreasonable demands drive suppliers to cut corners. This can lead to companies withholding wages, and forcing workers to take on excessive overtime and accept poverty wages, among other harmful practices. Suppliers may also subcontract to unauthorised third parties to meet demand.

We therefore advocated for the Directive to require companies to reform their purchasing practices when addressing adverse impacts (see section 6B of our analysis of the Commission's proposal) and welcome the inclusion of this requirement in the final text. Its inclusion should prevent large companies pushing responsibility and risk down the supply chain, while making no changes to their own business models.

We also welcome the mention of living wages and incomes for suppliers, and the specific reference to smaller operators and the agriculture sector. Smallholder farmers face harsh realities

xxviii Guidelines will be made available by 26 January 2027.

xxix Guidelines will be made available by 26 July 2027.

because they often depend on a small number of buyers, lack bargaining power, and face increased costs, unfair payment terms and last minute changes to order volumes and contracts.[103]

Research on supporting the implementation of the Directive advocates for companies to invest in their value chains to account for the cost of due diligence systems, sustainability and human rights in their procurement practices.[104] It explains that this is a prerequisite for effective due diligence throughout their value chains and requires companies to reevaluate their pricing models. The research highlights that "it is crucial that these investments support the most vulnerable stakeholders".[105] It advocates for companies to engage with suppliers before opening competitive tenders and to participate in public-private partnerships to "address and seek joint solutions for specific issues upstream".[106]

However, greater focus on workers in the agriculture sector is also needed. While the Directive does acknowledge the power of purchasing policies to contribute to living wages and incomes for suppliers, it is vital that these policies lead to fair pay for workers in practice. Research reveals power imbalances in the UK agricultural sector, with supermarkets receiving a far greater portion of the retail price than suppliers, finding that "the average experience of migrant agricultural workers in the UK is absolute poverty".[107] Given supermarkets' dominant position in the market, the report argues that they should pay their suppliers more to fund wage increases that reflect the true cost of their products.[108]

Recommendations

Companies should reform purchasing practices as part of addressing adverse impacts, including by using purchasing policies that contribute to living wages and incomes for their suppliers. The ILO has recently reached an agreement on the issue of living wages, including a number of principles that should be followed to estimate living wages.[109] The Ethical Trading Initiative has also outlined areas for companies to consider to make living wages a reality.[110]

The Commission will issue guidance on appropriate measures to adapt purchasing practices pursuant to Article 10(2) and Article 11(3).[xxx] **The Commission** should ensure that its guidelines provide clear and practical ways for companies to improve their purchasing practices and prevent labour exploitation. Noting the explicit mention of the agriculture sector (Recital 47) and the power imbalances in the sector, it is imperative that the Commission's guidelines provide clear objectives for companies to effectively address these imbalances.

xxx Article 19(2)(a). Guidelines will be made available by 26 January 2027.

E: Responsible disengagement

The Directive as it stands

The Directive contains key requirements that should help to ensure disengagement is responsible and does not exacerbate harm:

- companies must assess the potential adverse impact of disengagement on workers;[111]
- stakeholders must be consulted when deciding to terminate or suspend a business relationship;[112]
- remediation must be provided for actual adverse impacts[xxxi] in consultation with stakeholders.[113]

Specifically, the Directive requires companies to terminate relationships, as a **last resort**, where they have failed to prevent, mitigate, cease or minimise adverse impacts.[xxxii] Two approaches are envisaged in Articles 10(6) and 11(7):

1. Temporarily suspending a business relationship "provided that there is a reasonable expectation that those efforts will succeed" (enhanced prevention or corrective action plan);
2. Terminating a business relationship if the potential or actual adverse impact is severe, and if there is no reasonable expectation that efforts will succeed, or if the implementation of the enhanced prevention or corrective action plan has failed.

Before suspending or terminating a business relationship, a company must engage with stakeholders[114] and assess whether the adverse impacts of suspension or termination "can be reasonably expected to be manifestly more severe" than the initial harm. If this is the case, the company should not suspend or terminate the business relationship, and shall be in a position to report to the competent supervisory authority of the duly justified reasons for this decision. If a company decides not to suspend or terminate the business relationship, the company must monitor the potential or actual adverse impacts, periodically assess its decision and determine whether further appropriate measures are available.

If a company decides to temporarily suspend or terminate a business relationship, it must take steps to prevent, mitigate or end the impacts of this suspension or termination. The company must also provide reasonable notice to the business partner concerned and keep its decision under review. Terminating a relationship does not absolve the company of its responsibility to provide remedy for any actual adverse impacts it caused or jointly caused.[xxxiii]

Crucially, Recitals 50 and 57 recognise that in situations of **state-imposed forced labour** companies should be required to terminate the business relationship.

xxxi Article 11(3)(h) and Article 12. Exceptionally, in the context of Uyghur forced labour, companies are unable to support the direct provision of remedy to workers in the Uyghur Region. As an alternative, Anti-Slavery International recommends that companies that have contributed to or profited from Uyghur forced labour engage with representatives of the global Uyghur community to provide financial aid to Uyghur refugees. This is best practice in the fashion industry. A similar approach could be taken to remediate state-imposed forced labour in cotton harvesting in Turkmenistan.

xxxii Articles 10(2), 10(4)-(5), 11(3), and 11(5)-(6) outline appropriate measures companies must take (where relevant) to prevent, mitigate, or end adverse impacts, including by developing and implementing prevention or corrective action plans.

xxxiii Article 12 outlines that the company must provide remediation where the company has caused or jointly caused an actual adverse impact (see section 6.2G).

Advocacy and gaps

Responsible disengagement is a crucial part of the due diligence process that aims to prevent any negative impacts of a company's withdrawal from a business relationship. We advocated for the provisions on responsible disengagement to align with international standards[115] and require companies to consider the potential adverse impacts of their withdrawal (see section 8 of our analysis of the Commission's proposal and section 7 of our analysis of the European Parliament's compromise text). We therefore welcome the inclusion of responsible disengagement in the Directive and the alignment of the criteria with international standards.

We also advocated for state-imposed forced labour to be explicitly addressed in the disengagement requirements. We drew attention to the fact that the OECD's concept of "last resort" is misused by businesses to avoid disengaging from situations of state-imposed forced labour (see section 8 of our analysis of the Commission's proposal). We therefore also welcome the specific reference to state-imposed forced labour and the requirement to terminate business relationships where state-imposed forced labour is identified.

This is extremely important because in such situations the only responsible course of action is immediate disengagement. This is because it is impossible to conduct credible due diligence on the ground, use or increase leverage to improve practices, or secure remediation for affected individuals. As recognised in the Directive's wording, "there is no reasonable expectation that [...] efforts would succeed".[116]

In cases of state-imposed forced labour, ongoing engagement is a particularly severe risk, because it can expose companies to links with forced labour constituting a crime against humanity.[117] However, in such situations, the approach of companies should differ depending on the relationship with the associated business partner (see flow chart on responsible disengagement below).

Recommendations

Excluding situations where a company is directly sourcing from an entity using state-imposed forced labour, it is important that **companies** engage with stakeholders[118] and develop a responsible exit plan if they decide to disengage. This exit plan should detail the actions the company will take, as well as its expectations for its business partners to prevent adverse impacts from disengagement.

Member States should ensure that the specific provisions on state-imposed imposed forced labour in Recitals 50 and 57 are explicitly included in their national laws when transposing the Directive.

The Commission should ensure that its guidelines, issued in accordance with Article 10(6) and Article 11(7),[xxxiv] set out how companies can responsibly disengage without exacerbating harm. This means outlining that companies should engage to mitigate the risk of forced labour, using leverage to do so. They should also account for situations in which credible due diligence is impossible on the ground and there is no prospect of change, such as in situations of state-imposed forced labour. They should recognise that these situations require urgent and immediate disengagement, given the scale, scope, and irremediability of state-imposed forced labour.

[xxxiv] Article 19(2)(a). Guidelines will be made available by 26 January 2027.

Below are examples of responsible disengagement scenarios based on an interpretation of how the Directive would apply.

Scenario A (forced labour):

Forced labour found (or risks thereof) at business partner factory or business partner sourcing from factory where forced labour found (or risks thereof)

→

ENGAGE:
Seek to exert and increase leverage (prevention/corrective action plan) to get business partner to remove forced labour or risks thereof

→

If measures fail (prevention/corrective action plan) and impact of temporary suspension/termination would not be more severe than initial harm:
TEMPORARILY SUSPEND BUSINESS RELATIONSHIP*

MONITOR AND ENGAGE
(enhanced prevention/ corrective action plan)

→

If enhanced prevention/ corrective action plan fails:
TERMINATE BUSINESS RELATIONSHIP*

If measures fail (prevention/corrective action plan) and impact of temporary suspension/termination would be more severe than initial harm:
DO NOT TEMPORARILY SUSPEND/TERMINATE

MONITOR AND ENGAGE
Report to competent supervisory authority, monitor impact, periodically assess decision and whether further appropriate measures are available

* When a company temporarily suspends or terminates a business relationship, it must take steps to prevent, mitigate or end the impacts of that suspension or termination, provide reasonable notice to the business partner, and keep that decision under review.

Scenario B (state-imposed forced labour):

Business partner operates in the Uyghur Region (adverse impact = state-imposed forced labour)

→

TERMINATE BUSINESS RELATIONSHIP
No prospect of using or increasing leverage

Scenario C (state-imposed forced labour):

Business partner sources from entity operating in the Uyghur Region (adverse impact = state-imposed forced labour)

→

ENGAGE:
Seek to exert and increase leverage to get business partner to shift sourcing from the Region

If business partner has no credible plan to shift sourcing from the Region and attempts to exert and increase leverage fail:

TERMINATE BUSINESS RELATIONSHIP

If business partner commits to terminating sourcing from the Region:

TEMPORARILY SUSPEND BUSINESS RELATIONSHIP – MONITOR AND ENGAGE

F: Grievance mechanisms and protection from retaliation

The Directive as it stands

Article 14 of the Directive obliges companies to enable individuals and entities to submit complaints to them about "legitimate concerns" regarding actual or potential adverse impacts.[xxxv] Complaints may be submitted by individuals or their representatives (such as civil society organisations and human rights defenders), trade unions and other workers' representatives, and civil society organisations that are active and experienced in relevant areas.

Companies must establish a fair, publicly available, accessible, predictable and transparent procedure for dealing with complaints. This also applies to complaints a company considers to be "unfounded". Companies must inform the relevant workers' representatives and trade unions of that procedure. If a company finds a complaint well-founded, the company must take appropriate measures as described in the Directive.

Further, under the Directive, complainants are entitled to request appropriate follow-up, and meet with company representatives to discuss actual or potential *severe* adverse impacts (emphasis added) and potential remediation.[119] They are also entitled to be provided with the reasons the company considers a complaint to be founded or unfounded, along with information on the steps and actions taken or to be taken.[120]

Additionally, separate to the due diligence obligations of the company, Article 26 provides for an alternative mechanism that allows a person to submit "substantiated concerns" to any supervisory authority if they believe (on the basis of objective circumstances) that a company is failing to comply with its due diligence obligations.[121] Supervisory authorities must take any necessary measures to protect the person's identity, where requested to do so.[122]

Risk of retaliation

The Directive also requires companies to take reasonably available measures to prevent retaliation by ensuring the anonymity of the person or organisation submitting the complaint, in accordance with national law. Where information needs to be shared, this must be done in a way that does not endanger the complainant's safety. Companies must not, for example, disclose information that could be used to identify them.[123] Article 30 provides that the protections under the Whistleblowing Directive[124] must apply to individuals reporting breaches.

xxxv Article 14(6) and Recital 59 also provide that in order to reduce the burden on companies, they should be able to participate in collaborative complaints procedures and notification mechanisms, such as those established jointly by companies (for example, by a group of companies), through industry associations, multi-stakeholders' initiatives or global framework agreements.

Advocacy and gaps

Non-judicial grievance mechanisms are an important way for workers at risk of or experiencing forced labour to access remedy. Indeed, workers can face significant obstacles when seeking to access remedy through other routes. Such obstacles could include having a limited understanding of their rights and barriers to collective bargaining.[125] We advocated for a complaints mechanism aligned with the UNGPs effectiveness criteria and Office of the United Nations High Commissioner for Human Rights (OHCHR) recommendations (see section 9 of our analysis of the Commission's proposal and section 8 of our analysis of the European Parliament's compromise text).

However, for these mechanisms to be effective, they must be designed *with* workers and address the power imbalance between employers and workers. This power imbalance can be addressed, for example, by binding agreements, genuine enforceability and access to swift remediation. Non-judicial alternatives that are not designed with workers or that fail to address power imbalances tend not to be trusted by workers, lack legitimacy and fail to effectively address harm.[126]

Unfortunately, existing company and industry-led grievance mechanisms fail to meet the needs of workers and effectively remediate harm.[127] Because the Directive does not require companies to engage stakeholders in the design, implementation or governance of grievance mechanisms, there is a significant risk that companies will fall back on ineffective tools.

Given that stakeholder engagement is not required, there is a risk any grievance mechanisms implemented will fail to meet the needs of workers, particularly those at heightened risk of vulnerability. They are also unlikely to garner the necessary trust to be meaningfully used. A report by the OHCHR states that those intended to use the mechanisms must have their needs and perspectives heard and recognised.[128] Meaningful grievance mechanisms must therefore be jointly designed, implemented and governed by workers and their representatives, and must be understood as a complement, but not alternative, to the right to collectively bargain.

It is concerning that Article 14 allows companies to act as their own arbiter when designing their complaints mechanisms and dealing with complaints. Companies will be able to determine themselves whether a complaint is "unfounded" or "well-founded".[129] As noted in the UNGPs, "since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue".[130]

It is positive that companies are required to respond to any complaints and that complainants can meet with company representatives to discuss potential remediation.[131] However, representatives of complainants should also be able to request follow-up. Moreover, such requests should cover all impacts, not only "severe adverse impacts". Indeed, impacts that may not be considered severe can nonetheless create an enabling environment for forced labour (for example, withholding wages and restricting freedom of association).

Risk of retaliation

Human rights defenders are at enormous risk of retaliation when challenging corporate abuse. In 2023 alone, the Business and Human Rights Resource Centre recorded 630 attacks against human rights defenders.[132] While the Whistleblowing Directive is referenced in the Due Diligence Directive, it only protects "persons who work for companies subject to due diligence obligations provided for in [the Due Diligence Directive] or who are in contact with such companies in the context of their work-related activities".[133] This means it only protects whistleblowers that have a work-related relationship with an in-scope company (such as current or former workers). It does not cover a wider definition of human rights defenders nor any external individual or group reporting forced labour.

Recommendations

Companies must involve workers when designing their grievance mechanism to ensure 1) it is meaningful, 2) it addresses the workers' needs and 3) it removes any risk of retaliation. Companies must also make sure to prioritise freedom of association.

When transposing the Directive, **Member States** should consider expanding the requirements for stakeholder engagement to all stages of the due diligence process, including the design, implementation and governance of grievance mechanisms.

Under Article 19(2)(a), the Commission must issue guidelines on how to identify and engage with stakeholders pursuant to Article 13 (on stakeholder engagement). This includes engagement on the notification mechanism and complaints procedure established under Article 14. Pursuant to Article 19(2)(f), the guidelines will also include information on how to share resources and information while protecting complainants from retaliation and retribution.[xxxvi]

The Commission should ensure that its guidelines outline how companies must protect *all* stakeholders and their representatives from reprisals or adverse impacts when exercising their rights under the Directive. These measures should also protect human rights, land and environmental defenders. Indeed, companies should be obliged to make sure that no stakeholders are put at risk when submitting a complaint. **Member States** should adopt provisions to this effect when transposing the Directive.

xxxvi Protection from potential retaliation and retribution is provided for in Article 13(5). Guidelines relating to information and resource sharing will be made available by 26 July 2027.

To address forced labour and combat human trafficking, invest in law enforcement and empower migrant workers

ASTRA – Anti-Trafficking Action (Serbia)[134]

In 2023, over 50 000 people arrived in Serbia for work. Many came from low-income countries and had little knowledge of their rights or what support services are available. In a series of reports, ASTRA documents how recruiters and employers – often Chinese companies operating in the construction and industrial sectors – exploit these workers' vulnerable position.

More robust labour inspections are needed in sectors with high concentrations of migrant workers. These inspections should proactively look for signs of forced labour, such as withholding workers' passports, restricting where they can go or allowing abusive conditions. The prosecuting and judicial authorities must act quickly when such cases come to their attention, because workers often leave – or are forced to leave – the country immediately after an exploitative situation ends.

Empowering migrant workers is also crucial. Workers must be able to report exploitation without fear of retaliation. Reporting channels must be available and accessible to them. Such channels could include multilingual hotlines, anonymous reporting mechanisms and legal aid services. They should take into account the specific barriers, needs and circumstances of marginalised workers, including migrant workers.

G: Remediation

The Directive as it stands

The Directive dedicates an entire article to remediation as part of the due diligence process for actual adverse impacts.[135] It defines remediation[136] as:

> *restoration of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would be in had an actual adverse impact not occurred [...]*

Under the Directive, remediation should be proportionate to the company's involvement in the adverse impact.[137] If a company causes or jointly causes an actual adverse impact, it must provide remediation.[138] If the actual adverse impact is caused only by the company's business partner, the company may provide voluntary remediation and may also use its ability to influence the business partner to provide remediation.[139]

Under the Directive, remediation can include paying financial or non-financial compensation to those affected and, where applicable, reimbursing public authorities for any costs they incur for necessary remedial measures.[140]

Article 29(3)(c) provides for claimants to seek injunctive measures to end infringements of national laws transposing the Directive. These measures may order companies to do, or to stop doing, something with a view to ending the infringements.

Advocacy and gaps

Remediation is an important part of effective due diligence. It must be provided in situations where harm occurs, regardless of any efforts taken to prevent harm. The UNGPs establish a clear expectation that states and businesses have a collective responsibility to provide workers access to effective remedy for human rights violations, including labour abuses.

Effective remedies are essential in the context of forced labour because workers are typically in financially insecure and vulnerable positions, increasing the likelihood of ongoing exploitation.[141] Swift remediation helps to break this cycle of exploitation.[142]

We advocated for remediation to be required whenever a company has caused or contributed to harm and for the type of remedy to be tailored to the context and the victims' needs (see section 9 of our analysis of the European Parliament's compromise text).

We welcome the inclusion of mandatory remediation where a company has caused or jointly caused an adverse impact, in line with international standards. However, the range of remediation options should be broader. Under the UNGPs, remedial measures could also include apologies, restitution, rehabilitation and guarantees of non-repetition.

In situations where harm is caused only by a business partner, it is important that companies use their leverage to compel that business partner to provide remediation, especially as this could lead to future prevention and mitigation.[143]

Effective, people-centred remediation is key to preventing further adverse impacts. The requirement to meaningfully engage stakeholders in the adoption of appropriate measures to remediate adverse impacts is a welcome inclusion.[144]

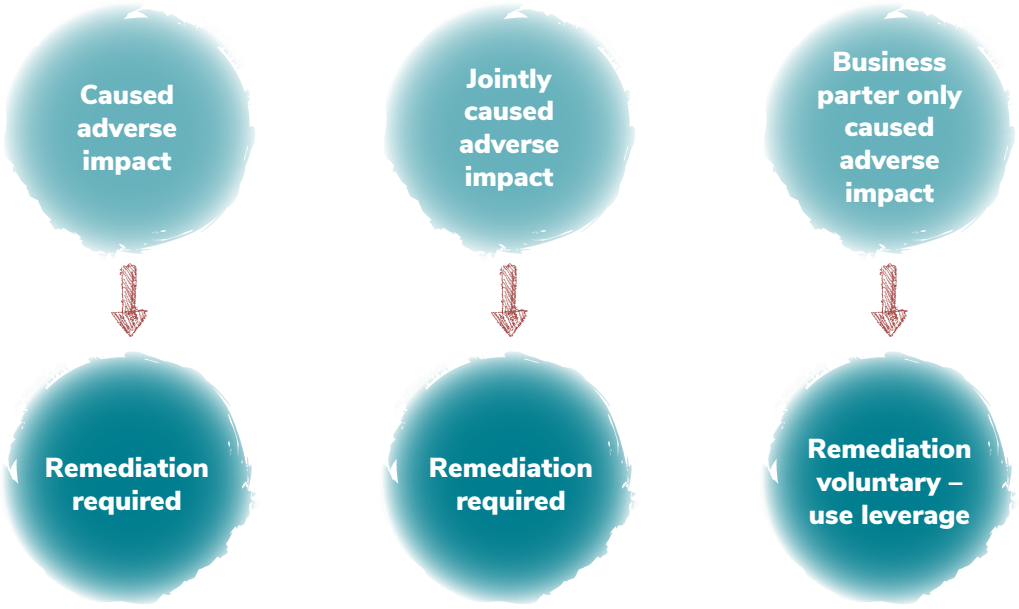
Recommendations

It is important that there are a range of outcomes available to counteract, or make good, any adverse impact. **Companies** should make sure that they also assess drivers of harm, so they can take appropriate corrective measures to prevent the adverse impact from reoccurring. This could include, for example, changing their business models.

Companies should engage with suppliers and affected stakeholders to remediate all adverse impacts that they caused or jointly caused. They should adjust the type of remedy to the context and to the victims' needs. They should exert their influence to ensure the affected parties receive remediation if the harm was caused only by a business partner.

As outlined in Article 19(2)(a), the Commission will issue guidance and best practice on appropriate measures for remediation pursuant to Article 12.[xxxvii] **The Commission** should ensure that this guidance aligns with international standards and provides for a range of outcomes for victims of harm.

[xxxvii] Guidelines will be made available by 26 January 2027.



Ensure migrant workers' access to remediation

OKUP (Bangladesh)

Thousands of Bangladeshi workers are employed in the supply chains of EU companies, often in third countries in Asia or the Middle East. There is extensive evidence that many of these workers fall into debt traps due to exorbitant recruitment fees.[145] Many are also subject to serious violations of human and labour rights, including forced labour.[146] At the same time, migrant workers are often denied access to justice and remedy. This might be due to a lack of appropriate legal mechanisms to hold perpetrators accountable, power imbalances, language barriers, physical inaccessibility or a lack of bargaining power.

OKUP strongly recommends that migrant workers, as well as trade unions and civil society organisations with a credible record of working with them, are meaningfully engaged in the design and implementation of individual and multi-stakeholder remediation mechanisms.

Credit: Fardous Hasan Pranto/Shutterstock

7. Civil liability for companies and access to justice for victims of harm

The Directive as it stands

Article 29 of the Directive establishes civil liability for damage caused to a person's legal interests by a company that **intentionally or negligently fails to comply with the obligation to prevent potential adverse impacts**[147] **or end actual adverse impacts.**[148]

When a company is held liable, victims of harm have the right to full compensation for the damage that occurred.[149] Importantly, the Directive explicitly states that using third-party verification does not absolve companies of liability for actual adverse impacts, closing a potential loophole.[150]

Article 29 sets out measures to support access to justice:

- The cost of proceedings must not be prohibitively expensive;[151]
- Claimants may seek injunctive measures;[152]
- Any alleged injured party may authorise a trade union, non-governmental organisation or national human rights institution to bring an action to enforce their rights (in accordance with national law and other criteria laid down in the Directive);[153]
- Courts may order companies to disclose necessary and proportionate evidence in their control, if a claimant can provide a reasoned justification (based on reasonably available facts and sufficient evidence) to support the plausibility of their claim.[154]

Article 29 cannot limit a company's liability under national law.[155] Therefore, where broader or stricter liability exists (such as under tort regimes), that liability continues to apply.

Advocacy and gaps

We advocated for two key points in this area:

- The removal of loopholes that would allow companies to evade liability through weak due diligence methods (such as audits and third-party verification);
- The reversal of the burden of proof, i.e. from the claimant to the company (see section 11 of our analysis of the Commission's proposal and section 10 of our analysis of the European Parliament's compromise text).

For due diligence to be effective, it is imperative that companies are held accountable and that the people harmed have access to justice. However, the civil liability provided for in the Directive is limited, given that companies cannot be held liable if the damage was caused only by one of their business partners in their chain of activities.[156]

Moreover, the Directive fails to address a number of barriers to justice. It could, for example, have improved access to justice by:

- increasing the limitation periods within which claimants can bring a case
- providing economic support to claimants
- removing language barriers

A major shortcoming of the Directive is that the burden of proof still falls on the claimant. Claimants must show that a company is responsible for the harm they experienced. However, claimants generally have less access to resources and information than companies. By maintaining the status quo, the Directive perpetuates the pre-existing power imbalance. This is particularly so given that company value chains are often neither transparent nor traceable and claimants might not even be able to prove they are in a company's value chain (see section 6.2B). While the Directive does mitigate this situation by allowing courts to order a company to disclose evidence, this provision does not sufficiently relieve the burden on claimants when they bring a case.

Recommendations and next steps

Companies should bear the burden of proof to demonstrate that in the event of harm, they took appropriate steps to identify, prevent, mitigate and stop the harm. When transposing the Directive, **Member States** should adopt provisions to this effect.

Article 36(2)(f) provides that the effectiveness of the enforcement mechanisms put in place at national level, of the penalties and the rules on civil liability, are to be assessed in the review of the Directive. When determining the Directive's effectiveness, **the Commission** should consider – as a matter of priority – the barriers that prevent those harmed from seeking redress and the implications of maintaining the status quo.

8. Conclusion

The adoption of the EU Corporate Sustainability Due Diligence Directive is a major milestone for corporate accountability. However, the gaps identified in this analysis must be addressed to protect workers and prevent harm. In particular, major gaps remain in the personal and material scope of the Directive and in how the Directive addresses barriers to justice, given that claimants still bear the burden of proof.

Nonetheless, the implementation of the Directive presents a host of opportunities. **Companies** have an opportunity to demonstrate best practice and carry out meaningful due diligence throughout their value chains. **Member States** have the opportunity to show bold leadership and close the gaps identified when they transpose the Directive. **Civil society organisations** and **the Commission** have the opportunity to work together to establish more robust and practical measures, in line with international standards, when drafting the guidance and best practice that will accompany the Directive. Finally, **the Commission** has the opportunity to consider amendments to the Directive as part of the review process. Such amendments will apply to all Member States and have the potential to improve corporate accountability and level the playing field.

All actors must seize these opportunities to ensure the effective implementation of the Directive, guided by respect for human rights for everyone everywhere. Anti-Slavery International is committed to supporting the implementation of this Directive in the strongest possible way, working with civil society and trade union allies, the European Commission and supportive businesses to do so. We welcome civil society organisations to contact us if they would like to work together or for more information about our work in this area.

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