

EU Directive on Corporate Sustainability Due Diligence

Summary for ICI members, July 2024

On February 23rd, 2022, the European Commission published its [proposal for a Directive on Corporate Sustainability Due Diligence](#), developed under the leadership of European Commissioners Didier Reynders (DG Justice) and Thierry Breton (DG Internal Market). After provisional agreement was found in trilogue (between the European Commission, the European Parliament and the Council) on December 13th 2023, the [final compromise text was published in the EU's Official Journal on July 25th 2024](#) which marks its entry into force.

This document highlights the main aspects of the final text compared to the original proposal (main differences are highlighted in blue), focusing on the human rights aspects of the Directive only.

Main elements of the compromise text

Some key elements from the Preamble

- Specifically mentions the right to enjoy **just and favourable conditions of work, including a fair wage and an adequate living wage** for employed workers and an **adequate living income for self-employed workers and smallholders**, which they earn in return from their work and production, a decent living, safe and healthy working conditions and reasonable limitation of working hours.
- Adds that **companies should also be responsible for using their influence to contribute to an adequate standard of living in chains of activities**. This is understood as a living wage for employees and a living income for self-employed workers and smallholders, which they earn in return from their work and production.
- Specifies that **tackling harmful purchasing practices and price pressures on producers, particularly on smaller operators, is especially important in relation to sales of agricultural and food products**.
- **Specifies conditions for disengagement:**
 - For cases where potential adverse impacts could not be addressed by appropriate measures, refers to the obligation for companies, as a last resort, to refrain from entering into new or extending existing relations with the partner in question and; Where there is a reasonable prospect of change, by using or increasing the company's leverage through the temporary suspension of the business relationship with respect to the activities concerned, adopt and implement an enhanced prevention action plan for the specific adverse impact.
 - Where there is no reasonable expectation that these efforts would succeed, for instance, in situations of state-imposed forced labour, or where the implementation of the enhanced prevention action plan failed to prevent or mitigate the adverse impact, the company should be required to terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.
 - In deciding to terminate or suspend a business relationship, the company should assess whether the adverse impacts could be reasonably expected to be manifestly more severe than the adverse impact that could not be prevented or adequately mitigated.

	European Commission proposal (February 23 rd 2022)	Compromise text (March 15 th 2024)
Objective	<ul style="list-style-type: none"> - Defines means through which companies shall conduct human rights and environmental due diligence. - Does not constate grounds for reducing the level of protection of human rights or the environment provided by the law of the Member States. 	<ul style="list-style-type: none"> - Adds that the Directive shall not constitute grounds for reducing the level of protection of human, employment and social rights.
Scope	<ul style="list-style-type: none"> - EU companies which fulfil one of the following conditions in the last financial year: <ul style="list-style-type: none"> ▪ > 500 employees on average and > € 150 million net turnover ▪ > 250 employees on average and >€ 40 million net turnover, provided that at least 50% of it was generated in one or more of the following sectors¹: Textile; Agriculture, forestry, fisheries, food/beverages, wood; Minerals and metals. - Non-EU companies which fulfil one of the following conditions in the last financial year: <ul style="list-style-type: none"> ▪ > € 150 million net turnover in the EU ▪ > € 40 million net turnover but not more than EUR 150 million in the EU, provided that at least 50% of its net worldwide turnover was generated in one of more of the sectors listed above. 	<ul style="list-style-type: none"> - Amends - EU companies which fulfil one of the following conditions: <ul style="list-style-type: none"> ▪ > 1000 employees ▪ > € 450 million turnover - Amends - Non-EU companies which fulfil one of the following conditions: <ul style="list-style-type: none"> ▪ > € 450 million turnover generated in the EU - In both cases, companies that did not meet the threshold but are a parent company of a group that reaches it, are also concerned. - Also concerns companies that entered into franchising agreements in return for royalties of >€ 22.5 million
Reach	<ul style="list-style-type: none"> - Own operations, their subsidiaries and at the level of their established direct or indirect relationships in their value chains. 	<ul style="list-style-type: none"> - Own operations, their subsidiaries, and the value chain operations carried out by established (direct and indirect) business relationships. <p><i>Value chain includes the production of goods or provision of services. It should encompass upstream business partners related to the production of goods or the provision of services (incl. the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products); and downstream business partners related to the distribution, transport and storage where the business partners carry out those activities for the company or on behalf of the company (→ Removes indirectly).</i></p> <p><i>Established business relationships means direct and indirect business relationships which are, or which are expected to be lasting, in view of their intensity and duration and which do not represent a negligible or ancillary part of the value chain. The nature of business relationships as “established” should be reassessed periodically, and at least every 12 months. If the direct business relationship of a company is established, then all linked indirect business relationships should also be considered as established regarding that company.</i></p> <p>Removes the disposal of the product.</p>

¹ The sectors are those for which OECD Guidelines exist.

<p>Obligation</p>	<ul style="list-style-type: none"> - Conduct human rights and environmental due diligence by complying with specific requirements, in line with the OECD Due Diligence Guidance², including: <ol style="list-style-type: none"> 1) Integrating due diligence into their policies and have a due diligence policy (to be updated annually) 2) Identifying actual or potential human adverse impacts [on human rights and the environment] 3) Preventing and minimising potential adverse impacts, and bringing actual adverse impacts to an end and mitigating their extent, incl.: <ul style="list-style-type: none"> ▪ Develop and implement a prevention action plan where necessary ▪ Seek contractual assurances from business partners with whom it has a direct business relationship ▪ Provide targeted and proportionate support to SMEs with which the company has established business relationships 4) Establishing and maintaining a complaints procedure <ul style="list-style-type: none"> ▪ From persons or organisations 5) Monitoring the effectiveness of their due diligence policy and measures 6) Publicly communicating on due diligence <p><i>Established business relationships are defined as business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain. The nature of business relationships as 'established' shall be reassessed periodically, and at least every 12 months.</i></p> <ul style="list-style-type: none"> - Directors' duty of care: Directors shall take into account the human rights and environmental consequences of their decisions and corporate strategy, and oversee the implementation of the due diligence process. 	<ul style="list-style-type: none"> - Specifies: Conduct risk-based human rights and environmental due diligence, through meaningful stakeholder engagement, in line with the OECD Due Diligence Guidance: <ul style="list-style-type: none"> ▪ <u>Integrating due diligence into company's policies and risk management systems:</u> Have a due diligence policy (should be developed in prior consultation with the company's employees and their representative; describes the approach; includes a code of conduct and description of the process. Updated every 2 years). ▪ <u>Identifying and assessing actual or potential adverse impacts, and where necessary prioritise:</u> Should be based on quantitative and qualitative information; <ul style="list-style-type: none"> ▪ Map own operations and supply chains. ▪ Based on results, carry out in-depth assessment of own operations, those of subsidiaries and related chain of activities. Due account should be taken of the 'level of involvement of the company in an adverse impact' and the company's ability to influence the business partner causing/jointly causing the adverse impact. ▪ <u>Preventing and mitigate adverse impacts that they cause themselves.</u> Implies, where relevant, to: <ul style="list-style-type: none"> ▪ Develop and implement a prevention action plan ▪ Seek contractual assurances from direct business partners ▪ Make necessary financial or non-financial investments, adjustments, upgrades, incl. provide support to SMEs. ▪ In case of adverse impacts that could not be prevented/adequately mitigated, the company shall be required as a last resort to refrain from extending/entering into new relations with a business partner connected to the impact. ▪ <u>Bring actual adverse impacts to an end and minimise the extent:</u> <ul style="list-style-type: none"> ▪ Develop and implement a prevention action plan where necessary (can be done in cooperation with industry initiatives or MSIs). Seek contractual assurances from business partners with whom it has a direct business relationship. ▪ Provide targeted and proportionate support to SMEs. ▪ Disengagement at last resort, based on assessment of the adverse impacts in doing so. ▪ <u>Remediation of actual adverse impacts:</u> Where a company has caused/jointly caused an actual adverse impact, it shall provide remediation. Where it is caused by a business partner, voluntary remediation may be provided. The company may also use its ability to influence.
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² OECD Due Diligence Guidance for Responsible Business Conduct (2018): <http://mnequidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

		<ul style="list-style-type: none"> ▪ <u>Establishing and maintaining a notification mechanism and complaints procedure</u>: Should be fair, publicly available, accessible, predictable and transparent. Complaints may be submitted by: <ul style="list-style-type: none"> ▪ natural or legal persons who are affected and their legal representation ▪ trade unions and other workers' representatives representing individuals working in the <u>chain of activities</u> concerned ▪ civil society organisations active <u>and experienced</u> in the areas ▪ <u>Monitoring the effectiveness of the due diligence measures</u>: Where possible, shall be based on qualitative and quantitative indicators and be carried out at least every 12 months and whenever there are reasonable grounds to believe that new risks may arise. ▪ <u>Publicly communicating on due diligence</u>: annually. <p>- Adds that companies should retain documentation regarding the actions adopted to fulfil their due diligence obligations to demonstrate compliance for min. 5 years.</p> <p>- Precises rules for disengagement:</p> <ul style="list-style-type: none"> ▪ Adopt and implement an enhanced prevention action plan for the specific adverse impact by using or increasing the company's leverage through the temporary suspension of business relationships with respect to the activities concerned. The action plan shall include a specific and appropriate timeline for the adoption and implementation of all actions therein, during which the company may also seek alternative business partners; ▪ If there is no reasonable expectation that these efforts would succeed, or if the implementation of the enhanced prevention action plan failed to prevent, mitigate or bring to an end the adverse impact, terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe. ▪ Prior to temporarily suspending or terminating the business relationship, the company shall assess whether the adverse impacts of doing so can be reasonably expected to be manifestly more severe than the adverse impact that could not be prevented or adequately mitigated. Should that be the case, the company shall not be required to suspend or to terminate the business relationship, and shall be in a position to report to the competent supervisory authority about the duly justified reasons of such decision. ▪ Where the company decides to temporarily suspend or terminate the business relationship, the company shall take steps to
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		<p>prevent, mitigate or bring to an end the impacts of suspension or termination, provide reasonable notice to the business partner and keep that decision under review.</p> <ul style="list-style-type: none"> ▪ Where the company decides not to temporarily suspend or terminate the business relationship, the company shall monitor the potential adverse impact and periodically reassess its decision and whether further appropriate measures are available. <p>- Specifies the targeted and proportionate support that companies should provide for an SMEs, incl. by providing or enabling access to capacity-building, training or upgrading management systems, and, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME, providing targeted and proportionate financial support, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing.</p> <p>- Removes Directors' duties</p>
Complaint's	<ul style="list-style-type: none"> - Persons who are affected or might be affected, trade unions and other workers' representatives shall be granted the possibility to submit complaints in case of legitimate concerns regarding the potential or actual adverse impacts. - Any natural or legal person that has reasons to believe that a company does not appropriately comply with its due diligence obligations is entitled to submit substantiated concerns. 	<p><i>Similar</i></p>
Sanctions / Penalties	<ul style="list-style-type: none"> - Should be effective, proportionate, and dissuasive. Pecuniary sanctions, if applicable, shall be based on the company's turnover. - Civil liability: For damages arising due to failure to comply with due DD process. Concerns only established business relationships (lasting relationships). 	<ul style="list-style-type: none"> - Amends that penalties should be dissuasive, proportionate and effective, including: <ul style="list-style-type: none"> ▪ Pecuniary penalties commensurate with the company's turnover (min 5%) ▪ Civil liability for damages caused to a natural or legal person, provided that the company intentionally and negligently failed to comply. - Specifies that for companies belonging to a group, pecuniary penalties are calculated taking into account the consolidated turnover at the level of the parent company. - Adds that a company cannot be held liable if the damage was caused only by its business partners in its chain of activities. - Clarifies that victims should have the right to a full compensation for the damage occurred, in accordance with national law. NGOs can bring actions to court, limited to national rules of civil procedures.
Guidelines & supporting measures	<ul style="list-style-type: none"> - Companies may rely on industry schemes or multi-stakeholder initiatives to support the implementation of their obligations. 	<p>Adds:</p> <ul style="list-style-type: none"> - Guidance assessing the fitness of industry and multi-stakeholder initiatives (MSI).

	<ul style="list-style-type: none"> - Guidelines for specific sectors and specific adverse impacts may be issued - Guidance and model contractual clauses to help companies fulfil their obligations - Support to SMEs by Member States: Financial support and help build capacity; - Member States shall set up and operate individually or jointly dedicated websites, platforms or portals. 	<ul style="list-style-type: none"> - Guidance with fitness criteria and methodology of third-party verifiers. - Establish a single helpdesk through which companies may seek information, guidance and support about how to fulfil their obligations - Specifies that guidelines for specific sectors or specific adverse impacts should include: <ul style="list-style-type: none"> ▪ guidance and best practices on how to conduct due diligence ▪ guidance on the assessment of company-level, business operations, geographic and contextual, product and service, and sectoral risk factors, ▪ references to data and information sources available for the compliance and to digital tools and technologies that could facilitate and support compliance, ▪ information for stakeholders and their representatives on how to engage throughout the due diligence process.
Entry into force	<ul style="list-style-type: none"> - On the 20th day following that of its publication in the Official Journal of the EU 	<ul style="list-style-type: none"> - Same
Transposition	<ul style="list-style-type: none"> - Member States shall adopt and publish by 2 years from the entry into force. - Applies to larger companies 2 years from the entry into force - Applies to smaller companies 4 years from the entry into force 	<p>Amends:</p> <ul style="list-style-type: none"> - Applies to companies with > 5000 employees and > €1500 million turnover 3 years after the entry into force - Applies to companies with > 3000 employees and > €900 million turnover 4 years after the entry info force - Applies to companies with > 1000 employees and > €450 million turnover after 5 years after the entry info force