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## Knocking Down Business-related Human Rights Abuses with a Feather: Is the European Corporate Sustainability Due Diligence Directive Sufficient to Tackle Corporate Impunity?

By Daniel Uribe

In April 2024, the European Parliament approved the Corporate Sustainability Due Diligence Directive (CSDDD), aiming to ensure that European firms and their partners uphold human rights and environmental standards in their supply chains. This Directive applies to large EU and non-EU companies, with a phased implementation starting in 2027. The CSDDD mandates the integration of due diligence in corporate policies and the development of transition plans aligned with the Paris Agreement. Despite these advancements, the Directive's scope and civil liability provisions are limited to effectively hold corporations accountable for human rights abuses. The ongoing negotiations on an International Legally Binding Instrument on Business and Human Rights offer an opportunity to adopt common standards on due diligence and jurisdiction to improve access to justice and remedies for victims of corporate-related abuses.

*En avril 2024, le Parlement européen a approuvé la directive sur le devoir de diligence raisonnable en matière de développement durable des entreprises (CSDDD), qui vise à garantir que les entreprises européennes et leurs partenaires respectent les droits de l'homme et les normes environnementales dans leurs chaînes d'approvisionnement. Cette directive s'applique aux grandes entreprises européennes et non européennes, avec une mise en œuvre progressive à partir de 2027. La directive impose l'intégration du devoir de diligence dans les politiques des entreprises et l'élaboration de plans de transition en accord avec l'Accord de Paris. Malgré ces avancées, le champ d'application de la directive et les dispositions relatives à la responsabilité civile sont limités et ne permettent pas de tenir les entreprises pour responsables des violations des droits de l'homme. Les négociations en cours sur un*



*instrument international juridiquement contraignant sur les entreprises et les droits de l'homme offrent l'occasion d'adopter des normes communes en matière de diligence raisonnable et de juridiction afin d'améliorer l'accès à la justice et aux recours pour les victimes d'abus liés aux entreprises.*

*En abril de 2024, el Parlamento Europeo aprobó la Directiva sobre diligencia debida de las empresas en materia de sostenibilidad (CSDDD), cuyo objetivo es garantizar que las empresas europeas y sus socios cumplan con los derechos humanos y las normas medioambientales en sus cadenas de suministro. Esta Directiva se aplica a las grandes empresas de la UE y fuera de la UE, con una implementación gradual que comienza en 2027. La Directiva exige la integración de la diligencia debida en las políticas empresariales y la elaboración de planes de transición acordes con el Acuerdo de París. A pesar de estos avances, el alcance de la Directiva y las disposiciones de responsabilidad civil son limitadas para responsabilizar eficazmente a las empresas por abusos de derechos humanos. Las negociaciones en curso sobre un instrumento internacional jurídicamente vinculante sobre empresas y derechos humanos ofrecen una oportunidad de adoptar normas comunes sobre diligencia debida y jurisdicción para mejorar el acceso a la justicia y los recursos para las víctimas de abusos relacionados con empresas.*

## Introduction

In April 2024, the European Parliament approved the Corporate Sustainability Due Diligence Directive (EU) 2019/1937 (CSDDD)[1]. This Directive has the objective of ensuring that European firms and their partners uphold human rights and other social and environmental standards in their supply chains. The CSDDD applies to European Union (EU) companies and parent companies with over 1,000 employees and a worldwide turnover above 450 million euros, but not immediately. The directive will apply gradually, starting in 2027, with companies of more than 5000 employees and worldwide turnover higher than 1500 million euros. Non-EU companies meeting similar criteria and companies with franchising or licensing agreements in the EU are also covered.

The Directive places a significant responsibility on these firms, requiring them to integrate due diligence in their policies and support compliance by small and medium-sized business partners. Equally important, companies must develop a transition plan to align their business models with the Paris Agreement to the United Nations Framework Convention on Climate Change. EU Member States play a crucial role, as they are mandated to provide detailed information on due diligence obligations to corporations under the scope of the Directive, and establish supervisory authorities to investigate and sanction non-compliance. The Directive also recognises liability for damages caused by breaches of the Directive's obligations.

The CSDDD is the latest regulation related to corporate social responsibility adopted by the European Union. In 2014, it adopted Directive 2014/95/EU[2] on disclosing non-financial and other information by certain large undertakings and groups. This Directive required some large companies "to disclose in their management report information on policies, risks and outcomes regarding environmental matters, social and employee aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors". Nonetheless, given that the effects of Directive 2014/95/EU[3] were limited to the disclosure of information, adopting the CSDDD was considered as a necessary step towards strengthening the enforcement of human rights by European business enterprises.

## Lack of Accountability and Access to Remedy

The complexities of modern corporate structures in a globalised economy have created significant legal obstacles for victims seeking justice in cases of corporate-related human rights abuses.[3] Victims encounter numerous practical and procedural challenges when attempting to access judicial mechanisms for remedies, both in the home and host states where transnational

[2] See: European Parliament, Disclosure of Non-financial and Diversity Information, Directive 2014/95/EU in <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0095>.

[3] See: EarthRights International, "Out of Bounds: Accountability for Corporate Human Rights Abuse After Kiobel" (2013), available at <https://earthrights.org/publication/out-of-bounds/> in Daniel Uribe and Danish, "Designing an International Legally Binding Instrument on Business and Human Rights" (Geneva, South Centre, 2020) in <https://www.southcentre.int/wp-content/uploads/2020/07/Designing-an-International-Legally-Binding-Instrument-on-Business-and-Human-Rights-REV.pdf>.

[1] See: European Parliament, Corporate Sustainability Due Diligence Directive and amending Directive (EU) 2019/1937 in [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html).

corporations (TNCs) operate. TNCs are not viewed as a single entity but as a network of individual companies registered in various domestic jurisdictions, each with its own legal personality and benefiting from limited liability. These legal structures limit the ability of victims to hold corporations accountable for human rights abuses, as they must navigate a maze of separate legal entities and jurisdictions.

In response to these challenges, the European Commission proposed the CSDDD intending to advance “respect for human rights and environmental protection, create a level playing field for companies within the Union and avoid fragmentation resulting from Member States acting on their own. It would also include third-country companies operating in the Union market, based on a similar turnover criterion”[4]. Likewise, the European Parliament recognised the need to clarify the rules of civil liability and applicable law, particularly at the level of direct and indirect business relations in the value chain where the applicable law is not the law of an EU Member State[5].

Nonetheless, the text adopted is far less ambitious than expected[6]. Beyond the reduced scope of corporations under the Directive, civil liability is only applicable to companies that have not, ‘intentionally or negligently’, fulfilled their due diligence obligations and do not apply to business partners in their value chain when the act is the ‘sole responsibility’ of that business partner[7]. It also establishes a limitation period of five years since the claimant knew or could have reasonably known of an infringement for bringing actions for damages.

Although the Directive intends to clarify the civil liability standards applicable to human rights abuses, it is still unclear how it will limit the application of doctrines like *forum non-conveniens* and non-applicable law in transnational human rights abuse. Similarly, the Directive does not tackle the issue of reversal of the burden of proof, which means that victims carry the burden of proving that the parent company ‘intentionally or negligently’ did not comply with its due diligence obligations and its direct linkage with the harm or abuse that serves as the ground for the claim.

### Is the CSDDD the Only Fish in the Sea?

The adoption of the CSDDD was not made in a vacuum but as part of an array of national, regional and multilateral efforts towards protecting human rights from business enterprises' misconduct. The EU Directive on due diligence is a response to previous experiences at the national level, for example, the French Duty of Vigilance Law[8], the German Due Diligence Supply Chain Act[9], and the United Kingdom Modern Slavery Acts[10]. These national regulations have included reporting obligations for business enterprises and subjected businesses to design a set of policies and mechanisms directed towards identifying and assessing risks in their business operations[11].

Initiatives to address businesses' compliance with human rights obligations have been taken in other regions. Thus, the Special Rapporteur on Economic, Social, Cultural and Environmental Rights of the Inter-American Commission of Human Rights (IACHR) published a thematic report considering the Inter-American Standards on Business and Human Rights[12]. The Special Rapporteur noted that:

[4] See: European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Doc. COM(2022) 71 final 2022/0051(COD) in <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>.

[5] See: European Parliament, Corporate Sustainability Due Diligence Directive and amending Directive (EU) 2019/1937 in [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html).

[6] See: Giuseppe Cioffo and Muriel Treibich, “Compromise EU law will start holding companies accountable, 11 years after Rana Plaza collapse”, Clean Clothes Campaign, 24 April 2024 in <https://cleanclothes.org/news/2024/24-april-2024-csddd-eu-vote-completed>.

[7] European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Doc. COM(2022) 71 final 2022/0051(COD), Art. 29 in <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>.

[8] Corporate Duty of Vigilance Law, No. 2017-399 of 27 March 2017.

[9] Law about corporate due diligence obligations in supply chains, Federal Law Gazette Volume 2021 Part I No. 46, issued in Bonn on July 22, 2021 in [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBL&jumpTo=bgbl121s2959.pdf#\\_bgbl\\_%2F%2F\\*%5B%40attr\\_id%3D%27bgbl121s2959.pdf%27%5D\\_1715675009813](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL&jumpTo=bgbl121s2959.pdf#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s2959.pdf%27%5D_1715675009813).

[10] United Kingdom, Modern Slavery Act (2015 c. 30), Explanatory notes, para. 255. Available from <https://www.legislation.gov.uk/ukpga/2015/30/notes/division/5/6/1>.

[11] See: Daniel Uribe, *Beyond Corporate Social Responsibility: Strengthening Human Rights Due Diligence through the Legally Binding Instrument on Business and Human Rights*, Research Paper, No. 138 (Geneva, South Centre, 2021) in [https://www.southcentre.int/wp-content/uploads/2021/10/RP138\\_Beyond-Corporate-Social-Responsibility\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2021/10/RP138_Beyond-Corporate-Social-Responsibility_EN.pdf).

[12] See: Soledad Garcia, *Business and Human Rights: Inter-American Standards, Special Rapporteurship on Economic, Social, Cultural and Environmental Rights*, Inter-American Commission of Human Rights (2019) in [https://www.oas.org/en/iachr/reports/pdfs/Business\\_Human\\_Rights\\_Inte\\_American\\_Standards.pdf](https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf).



The absence of a mechanism for international human rights compliance and supervision by private agents within international human rights law does not necessarily imply that the norms emanating from them are elusive for businesses or that such norms have no effect on those non-state actors[13].

In fact, the report emphasises that the standards of the Inter-American System have condemned actions of non-state actors that negatively affect human rights and considered that the behaviour of non-state actors is relevant when assessing the international responsibility of the State[14]. In line with these standards, the report recognises that the protection and respect of human rights do not depend on the identity or nature of the aggressor. If companies have been involved, their obligations not only extend to respect human rights but also include adequate redress, mitigation of harm and the duty to exercise due diligence in human rights matters[15].

The African Union adopted the Protocol to the African Continental Free Trade Agreement on Investment (AfCFTA-Pol) in 2023[16]. The AfCFTA-Pol has gone beyond conventional rules on investment protection and promotion by recognising the human rights obligations of business enterprises at the continental level. According to Chapter 5 of the AfCFTA-Pol, investors and their investments must adhere to high standards of business ethics, encompassing comprehensive human rights and labour standards. Article 39 of the AfCFTA-Pol mandates investors to provide timely and accurate disclosures on all significant matters related to the enterprise, including financial status, performance, ownership, governance, and environmental risk.

In line with these efforts, the CSDDD should not be seen as the only or last step in developing strong standards on business and human rights but provides an important precedent that can inform the elaboration and adoption of the legally binding instrument on

business and human rights under Human Rights Council Resolution 26/9[17].

### **Could the Legally Binding Instrument on Business and Human Rights Strengthen the CSDDD's Effectiveness?**

The objective behind developing a legally binding instrument on business and human rights is to respond to the complexity of corporate structures in the current globalised economy and their capacity to elude human rights obligations. The discussion held by the Open-ended Intergovernmental Working Group on Business and Human Rights (OEIGWG) has not only identified the legal barriers that limit the rights of victims to access to justice in cases of corporate-related human rights abuses but also the possible progression from the human rights due diligence (HRDD) principles in the United Nations Guiding Principles on Business and Human Rights[18].

The discussion on the legally binding instrument on business and human rights started almost ten years ago, and it has confirmed the need to adopt mandatory human rights due diligence with respect to business enterprises. The ultimate objective of HRDD is to mitigate any potential harm, including criminal acts and human rights abuses. Although including HRDD requirements in domestic legislation is important in protecting human rights, building common international standards, particularly concerning liability, remedies and sanctions for non-compliance, is still necessary. According to the debates, HRDD should mandate private firms to assess their activities across various contexts, sectors, and circumstances, including extra-legal ethical standards and fostering an organisational culture that promotes responsible business activities.

For example, in December 2023, the Paris Judicial Court ruled in favour of the French Postal Union (*Fédération des Syndicats Solidaires, Unitaires et Démocratiques des Activités Postales et de Télécommunications*) against La Poste. The court found La Poste's vigilance plan non-compliant with

[13] Ibid., para. 179.

[14] Ibid., para. 184.

[15] IACHR, Preliminary Observations of the On-Site Visit to Brazil (November 2018).

[16] See: Protocol of the Agreement Establishing the African Continental Free Trade Agreement on Investment.

[17] See: Human Rights Council, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, Resolution 26/9 (2014) in [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/26/9](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9).

[18] See: Daniel Uribe and Danish, "Designing an International Legally Binding Instrument on Business and Human Rights" (Geneva, South Centre, 2020) in <https://www.southcentre.int/wp-content/uploads/2020/07/Designing-an-International-Legally-Binding-Instrument-on-Business-and-Human-Rights-REV.pdf>.

French Law and issued an injunction mandating La Poste to develop a comprehensive risk mapping to identify, analyse, and prioritise risks, establish thorough processes for assessing subcontractors, create a mechanism for alerting and collecting reports in consultation with trade unions, and publish detailed monitoring of vigilance measures, beyond mere general statements<sup>[19]</sup>.

This is the first judicial decision considering a claim under the French Duty of Vigilance Law, and it evidences increasing judicial scrutiny of corporate vigilance plans. It also showcases the necessity for a detailed and actionable human rights due diligence framework within companies of the same group and suggests the benefits of developing clear international standards for protecting human rights. The referred to legally binding instrument on business and human rights has the potential to enhance common standards for implementing national and regional HRDD frameworks, that could improve access to justice and remedies for victims of human rights, a link which is still missing in existing HRDD frameworks.

## Conclusion

The approval of the Corporate Sustainability Due Diligence Directive (CSDDD) by the European Parliament in April 2024 marks a significant step forward in committing large European firms and their partners to uphold human rights, environmental and other standards in their supply chains.

The CSDDD builds on previous EU regulations, such as the 2014 Directive on disclosing non-financial information, by shifting from disclosure of information to developing HRDD plans by corporate groups. This Directive should not be viewed in isolation but as part of a process aiming to develop robust standards for business and human rights, as it is built on national efforts in France, Germany, and the UK, and regional initiatives like the African Union's AfCFTA Protocol and the Inter-American Human Rights System.

The ongoing discussions around a legally binding international instrument on business and human rights highlight the necessity of common standards, particularly regarding liability and access to remedies for victims of corporate-related abuses. The CSDDD, while an important advancement, should be seen as one component of the evolving global landscape that seeks to enhance corporate accountability and protect human rights comprehensively.

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[19] Paris Judicial Court, n° 21/15827 (Dec. 5, 2023).

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