Support for alignment of the CSDDD with the international standards on sustainability due diligence

More than a decade has passed since the unanimous endorsement of the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the last update of the OECD Guidelines for Multinational Enterprises in 2011.

These authoritative international standards united stakeholders around a shared understanding of the scope of corporate responsibility for adverse sustainability impacts across the value chain. They have since been adopted, and relied on, by companies and industry associations as the blueprint to secure better outcomes for people and the environment, and have shaped emerging practice across sectors and geographies.

In our view, the next few months will be pivotal in the further evolution of responsible business conduct. The European Parliament will soon vote on its position on the Corporate Sustainability Due Diligence Directive (CSDDD) and, by mid-2023, the Council, Parliament and Commission are expected to begin negotiations on a final law. It holds huge promise for leveling the playing field for companies already implementing the international due diligence standards, as well as driving better outcomes for people and planet through global value chains. However, this depends on the new law being aligned with the existing international standards, and with their consistent interpretation.

The international standards have already found their way into the legal framework that supports the European Green Deal. Neither the Sustainable Finance Disclosure Regulation, the Corporate Sustainability Reporting Directive nor the Taxonomy Regulation contain definitions of due diligence that diverge from the UNGPs and OECD Guidelines. Now the CSDDD should follow this approach to complement mandatory sustainability disclosure with substantive due diligence duties on human rights and environmental impacts, as well as requirements to address climate change risks and impacts.

Many companies and industry associations have expressed support for the Directive on the basis that there would be the greatest possible alignment between the international standards and the CSDDD. In particular, this implies the following five points:

1. **The due diligence requirements should be risk-based and apply to the entire spectrum of risks and impacts across the full value chains of companies in all sectors, including financial institutions, in line with the international standards.** The same concepts in those standards that make due diligence feasible in an upstream context – including prioritisation on the basis of severity and the need to look at how a company's own activities can heighten or reduce risks across value chains – also make it feasible in a downstream context. While some companies' approaches to downstream risk may be evolving more slowly than their upstream work, companies across a diverse range of sectors have already been putting this risk-based approach into practice.[1] There is no need to make exceptions if we truly want a level playing field and to ensure downstream risks are effectively managed. This also applies to the inclusion of financial products and services.

[1] See for specific company examples, e.g., Danish Institute for Human Rights, 'Due Diligence in the Downstream Value Chain', February 2023, available at https://www.humanrights.dk/publications/due-diligence-downstream-value-chain-case-studies-current-company-practice.

2. **Using leverage effectively requires creativity and learning from others' experiences.** Multistakeholder collaboration can play a role in such efforts. The Directive should encourage innovative approaches to collaborative leverage. It should also recognise that initiatives need to hold their members accountable and involve affected stakeholders in their work or governance structures. However, such initiatives can only support, but never replace, a company's own due diligence responsibilities. They therefore cannot provide any 'safe harbour'.
3. **The core content of the due diligence duty (in particular articles 7 and 8 of the Directive) should incentivise companies and their directors to look at the company's own activities that can heighten or reduce risks to people, the environment and climate across value chains.** This may be through companies' purchasing, R&D and sales practices or may be inherent in their business model or corporate strategy. The duty should also encourage engagement by companies with business partners based on long-term collaboration and open discussion about challenges, rather than top-down policing through an overreliance on contracts and audits. Such an approach simply shifts responsibility on to business partners and is not effective in tackling the root causes of abuses.
4. **The distinguishing feature of sustainability due diligence is that it depends for its effectiveness and credibility on the perspectives of affected stakeholders.** These include workers and trade unions in a business' own operations and value chain; local communities affected by its operations or those of its value chain partners; people affected by use of its products or services; and human rights and environmental defenders, who often work in support of these groups. Meaningful and safe engagement with affected stakeholders – with special attention to people in vulnerable situations – is central to due diligence. It is particularly important for credible prioritisation and tracking whether a company's efforts are effective in practice, including where it provides remedy for harms it has caused or contributed to. This needs to be reflected clearly in the Directive.
5. **The Directive will not be effective without meaningful enforcement to ensure that companies that are subject to it carry out due diligence to a high quality and that those who are harmed have access to remedy.** This includes both administrative supervision and civil liability, and both forms of enforcement are reflected in the Commission, Council and the draft JURI Committee report. With regard to civil liability, the final Directive should separate the scope of liability from the scope of the due diligence duty and build on well-established concepts of causation (including contribution) in domestic laws.

In conclusion, the Corporate Sustainability Due Diligence Directive will not achieve its full impact if it harmonises expectations between EU member states while diverging from the accepted international standards of the UNGPs and OECD Guidelines. This would undermine the leading position of the EU in the area of responsible business conduct and the European Green Deal, and jeopardise the efforts of many companies that have invested in implementing the international standards. Instead, a European level playing field should recognise those companies' efforts by setting an ambitious norm to improve human rights, environmental and climate outcomes along global value chains in line with the international standards.

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