Open Public Consultation on the Corporate Sustainability Due Diligence Directive (CSDDD) Guidelines – Business and Human Rights Centre input[1]

Responses in blue were coordinated between, and jointly endorsed by, Business and Human Rights Centre (BHRC) and nine of its global partners (see also here): ProDESC and CIELO, Mexico; Bantay Kita, Indigenous Peoples Rights International (IPRI) and Environmental Legal Assistance Center, Philippines; Network of African National Human Rights Institutions (NANHRI), Kenya; SPEK-HAM, Indonesia; Pastoralists Indigenous Non-Governmental Organizations Forum (PINGO's Forum), Tanzania; Centre for Applied Legal Studies (CALS), University of The Witwatersrand, South Africa

Integrating due diligence into relevant policies and risk management systems

1. Considering the experience in your company with integrating (or your plans to integrate) due diligence into the relevant corporate governance policies, which policies do you consider most relevant?

Due diligence integration across all policies/systems including risk management, procurement/pricing, products/services, sales/marketing and supplier management is key, driven by dedicated staff and board oversight. Policy commitments should cover key sustainability issues (human/labour rights, environment including climate and just transition), stakeholders (e.g. HRDs, Indigenous Peoples, CSOs, migrant workers) and processes (notably stakeholder engagement, remedy). All this must inform effective and transparent due diligence that overcomes current policy-practice gaps.

Human rights (including labour rights) and environmental impacts

2. Do you think that the guidelines should seek to offer examples on adverse human rights (including labour rights) or environmental impact, and which are the most relevant types of impacts for which you see this need? Please explain.

Yes, if clearly marked as non-exhaustive and indicative – e.g. violations of Indigenous Peoples' rights (including their right to Free, Prior and Informed Consent/FPIC and to land and territory) and Human Rights Defenders' (HRDs) rights as rooted, inter alia, in the International Covenant on Civil and Political Rights; gender-based violence and harassment, violations of the freedom of expression and association (of communities, regarding surveillance technology, union busting, SLAPPs); forced labour and related indicators, environmental abuse including pollution, water depletion, deforestation, as well as climate emissions-related harms like landslides. Examples must reflect gendered, intersectional and cumulative/long-term impacts.

---

[1] For better readability, some abbreviations/acronyms used in the electronic submission due to space constraints are spelled out here, and omissions have been re-inserted in a few places. (Shortened) URLs used in the submission are embedded as hyperlinks. The numbering follows that of the official questionnaire.

Identification of adverse impacts (including data and information sources)

4. In your experience, what tools proved particularly helpful to carry out a scoping of risk areas across your company's activities, those of your subsidiaries and those of your business partners? What approaches or solutions could help in performing these requirements in the cost-effective way?

Meaningful engagement with a wide range of rights- and stakeholders is an effective way to retrieve both broad and granular risk information that should be combined with insights from lawsuits, complaints under private and public grievance channels, as well as information from CSO, union, National Human Rights Institution (NHRI) and media reports, academic research and internal functions, e.g. procurement, quality assurance or inventory/production capacity management, which often spans several supply chain tiers.

5. In your experience, what tools proved particularly helpful to carry out an "in-depth assessment" in areas that were identified as most severe and most likely? What approaches or solutions could help in performing these requirements in the [most] cost-effective way?

In-depth assessment should prioritise meaningful and safe engagement with workers, communities, HRDs, unions and local CSOs, inputs from grievance channels, and site visits. Guidelines should clarify that limitations (Art. 8 (2a) CSDDD) on information requests to suppliers mainly apply to self-assessment questionnaires, while substantive supplier engagement that looks at support needs and the in-scope company's own contribution to risks/harms is an important component of assessing (and tackling) them.

6. In your experience, what tools proved particularly helpful to identify indirect business partners in the value chain?

Companies can build on tier-n information e.g. from quality/inventory management and often have considerable leverage in identifying indirect suppliers, which they can increase by moving beyond 'policing' towards genuine engagement and trusted relations in supply chains. Publishing direct and indirect supplier lists enables rights- and stakeholder feedback including on (additional) tier-n connections; proactively partnering with CSOs, unions etc. in supply chain mapping also constitutes good practice. Not (yet) knowing all relevant suppliers is no excuse for due diligence inaction.

7. Have you faced any legal obstacles or conflicts when collecting information for the purpose of either carrying out a scoping of risk areas, or an "in-depth assessment" as a result of third countries' laws? Companies and stakeholders are invited to signal barriers to due diligence they may face in third countries when conducting due diligence.

Companies – and more so rights- and stakeholders – may face considerable legal obstacles like criminalisation of HRDs, restrictions on civic freedoms, surveillance regulation, or bans on unionisation. In such contexts, companies may, for instance, first consult with local, regional or international HRD, union, NHRI and CSO networks on how to reach out to local stakeholders in a safe and meaningful way. If due diligence is impossible, responsible suspension/exit has to be considered.

8. In your experience, what data currently collected by public administrations may be particularly useful for the purposes of effective due diligence? Do you believe there is a need for access to such data to be facilitated?

Shipping records/shipping route data, public procurement and corporate ownership data, environmental permits and human rights impact assessments (HRIAs), labour inspection results, findings of authorities under corporate accountability laws, court cases, information on land allocations, as well as customs data on exports/imports; there is a need for facilitation.

9. Please indicate which of the following due diligence methods or other actions you consider most useful and cost-effective for identifying adverse impacts in value chains? What are the pros and cons of these approaches in terms of cost-effectiveness?

- ✓ **Complaints**
- ✓ **Stakeholder engagement**
- o Industry and multi-stakeholder initiatives
- o Third-party verification
- ✓ **Site visits**
- o Technical surveillance or digital data over value chains and/or infrastructures (e.g., satellite monitoring of risk indicators or adverse impacts in the value chain)
- o Information from sustainability service providers
- ✓ **Use of media, NGO or other independent reports**
- o Information requests to business partners
- o All of the above
- ✓ **Other methods:** Trade union reports

<u>**Risk factors**</u>

10. Which are particularly useful examples of such sources of information and in which areas/sectors and/or for which impacts do you see a gap in terms of documented risk factors? Do you believe there is a need for access to such data to be facilitated (e.g. via a centralised webpage)?

CSO, union, academic and media reports, many of which we present in our database, provide rich initial evidence especially if companies connect the dots beyond sources directly mentioning them. But given stakeholders' lack of capacity and access, reported risks are only the tip of an iceberg, especially regarding informal work, lower tiers, non-consumer-facing areas and conflict contexts. Hence proactive due diligence including in-depth assessments and local engagement is vital.

We see pros and cons of a central hub and are happy to share our experience.

Digital tools

12. What digital tools do you consider most useful to facilitate the identification, monitoring and assessment of possible adverse impacts? Please explains pros and cons.

Collaborative portals that increase supply chain transparency, like Open Supply Hub; tools for documenting due diligence measures and sharing information inside companies (as long as the tool does not create a false impression of 'doing' due diligence, see below); any tool for companies can at best support, never replace, due diligence and we see considerable risk that relying on technology shifts attention away from direct engagement and practical solutions.

13. Have you encountered any difficulties or problems with digital tools, including issues that cause unnecessary burdens?

Overly relying on digital tools can misguide companies towards formalistic compliance approaches, like mass screenings at tier-1 supplier level, while shifting attention and (financial) resources away from direct engagement, hands-on solutions and real-life impacts. Apart from questions of data protection and quality, there is a risk that companies treat supply chain or 'worker voice' tools as the main locus of their due diligence and engagement when they can at best be complementary.

Prioritisation

15. Are there situations where in your view the severity or likelihood of a specific adverse impact is (or might be) particularly difficult to assess? How could such difficulties be overcome?

Severity and likelihood are particularly difficult to assess where impacts occur in opaque, informal or deeper (tier-n) supply chain tiers, e.g. in mining areas where affected communities face weak governance, restricted civic space, climate change impacts, corruption, livelihood loss or limited access to information. In manufacturing supply chains like garments and textiles, for instance, this opacity frequently manifests as unauthorised sub-contracting, informal unit offloading and unmonitored home-based finishing work where severe labour and gender-based violations are routinely concealed. It is also pronounced where freedom of association, union formation and collective bargaining are restricted or made redundant due to the broader repressive operating environment.

However, lack of information on severity/likelihood does not justify de-prioritisation of issues in due diligence, nor deferring to other criteria like financial materiality of an abuse, or ease of action/influence. The EU's guidelines should be very clear on this.

Some impacts are particularly difficult to assess where they do not only harm an individual or group directly but also reinforce or deepen systemic and structural patterns of discrimination, exclusion and unequal power. Such impacts can extend beyond the immediate case and contribute to perpetuating marginalisation over time. Guidance should therefore encourage companies to assess the structural and cumulative dimensions of harm, including how business activities may reproduce existing inequalities, rather than assessing severity and likelihood only at the level of the immediate impact.

Examples of opaque, informal or deeper tiers of supply chains and contexts where corruption and impunity prevail also include large infrastructure or tourism projects, business or conservation initiatives affecting land and communities, and mass-employment settings such as maquilas.

Opacity in supply chains, some of it industry-made, is a red flag that demands urgent action from companies, not de-prioritisation. Risks in informal parts of and/or deep down in companies' supply chains, e.g. in raw materials sourcing, may be among the most severe and likely they are involved in. Companies should therefore take a precautionary approach when there are, for instance, early warning signs of severe risks across a sub-sector or -region they are connected to: rather than waiting for neat supplier-specific (audit) data and other metrics, which may be unreliable and hard to retrieve in any case, it is best to assume risks as pervasive/endemic across an industry, engage with stakeholders – especially rightsholders, as well as legitimate representatives like HRDs (who can be rightsholders and representatives at once) and independent unions and CSOs – and with suppliers early on to dig deeper, and take swift, pragmatic action to build leverage and avoid escalation or irremediability.

Such action includes assessment of and adjustments to a company's own problematic business and purchasing practices vis-a-vis suppliers, including pricing, which can have considerable negative – or if adjusted positive – effects several tiers down in supply chains.

Inclusive, meaningful and safe engagement with workers, communities, Indigenous Peoples, HRDs, CSOs, unions, NHRIs and related local, regional or global networks provides a counterweight to (initial) information gaps, including with regard to under-the-radar issues like differentiated and intersectional impacts that may remain institutionally invisible. Static social audits, in contrast, often systematically miss out on critical risks (see under questions 40-42 below).

There are also impacts that may be less severe individually but become significant through their scale, duration or widespread occurrence, including gendered and intersectional effects.

Companies should also be advised to recognise that the absence of complaints or reported concerns does not necessarily indicate the absence of harm, as individuals and/or groups may refrain from speaking up due to fear of attack or retaliation, and that growing restrictions on civic space and civic freedoms can further limit people's ability to do so, and to engage safely with companies. To address these concerns, EU guidelines and company approaches should align with UN Working Group on Business and Human Rights guidance on these issues.

The EU's guidelines should also stress the importance for companies to consult prioritisation decisions with affected rights- and stakeholders and their legitimate representatives including unions and CSOs, as this will improve robustness and legitimacy of the assessment and build trust. The same holds true for publicly communicating and explaining such decisions and the approach taken. We agree with the World Benchmarking Alliance and others that companies should disclose which impacts are deferred, why, how they will maintain leverage and when action will follow.

16. Regarding situations when it is "not feasible to address all identified impacts at the same time and to their full extent", what other elements are particularly relevant to support companies in performing an appropriate risk prioritisation process?

Appropriate prioritisation is one of the most sensitive areas on which stakeholder trust in the CSDDD and a real level playing field of fair competition among companies will hinge. We agree with Frank Bold and others that broad company discretion in prioritisation, without procedural safeguards, risks systematically marginalising severe impacts on the most vulnerable, including people and communities facing heightened or disproportionate risk because of structural inequalities, marginalisation, or power asymmetries. It is therefore key that the EU's guidelines, in addition to points raised under question 15, clarify that prioritisation:

- is based on severity – scale, scope and irremediability of negative impact – in line with the international standards;
- needs to assess severity through an intersectional lens as well, considering both who bears impacts disproportionately and the structural, territorial and institutional conditions that shape their scale, scope and irremediability;
- should also consider rightsholder vulnerability, cumulative and irreversible impacts, and whether delay could make prevention or remedy impossible. Impacts threatening land, water, food security, livelihoods, cultural heritage, physical safety or community survival should receive heightened priority. For Indigenous Peoples, FPIC must be respected throughout the project lifecycle, including the right to withhold or withdraw consent and to reject projects posing unacceptable harm;
- should consider how historical patterns of extraction, dispossession and environmental and human rights abuses have produced persistent inequalities and power asymmetries affecting communities in the Global South. Prioritisation should therefore not reproduce existing imbalances by systematically deferring impacts borne by these communities, but should contribute to correcting them through a rightsholder-centred and context-sensitive approach;
- is not based on a company's influence over, or proximity to, a specific negative impact in its supply chain – where a company lacks influence/leverage, it is expected to increase it;
- does not mean exclusion of issues but sequencing of what human rights and environmental issues to tackle first;
- is dynamic, not a static list, and needs to be constantly updated and reworked, depending on operational changes, changes of context and new insights notably from stakeholder feedback including on changes in territorial conditions, civic space, conflict dynamics and the situation of affected rightsholders;
- must be applied restrictively, in good faith, and in time-bound manner; prioritisation of certain issues to tackle first can never justify extended or indefinite inaction on others;

- needs to be properly consulted with affected rights- and stakeholders and their legitimate representatives, including those who may hold critical or differing perspectives, as well as properly justified, documented, and communicated;
- has to go hand in hand with smart, effective due diligence approaches, e.g. decisive action on violations of the right to freedom of association or to a living wage (which usually requires adjustments to a brand's own purchasing and pricing practices). These are often considered enabling rights to the enjoyment of other rights, which means infringements on them in supply chains, or certain supply chain areas, make further (severe) rights abuse more likely.
- will be closely monitored by national supervisory authorities.

Responsible disengagement

17. Are you aware of examples where a decision was taken not to disengage from a business relationship because this would have potentially resulted in more severe impacts compared to those that triggered due diligence in the first place? How was the situation dealt with?

- ✓ **Yes**
- o No

While our 2023 tea report did not focus on (dis)engagement, it mentioned three companies that identified the importance of long-term partnerships with suppliers in tackling human rights issues. One of the companies set out how living wage commitments would be realised in practice. Guidance should clarify that 'cutting and running' from suppliers can be a CSDDD offense, while the same is true for irresponsible non-suspension/non-exit. Transparent due diligence is key so that peers/stakeholders can learn about and evaluate decisions.

Purchasing practices

18. In your experience, what purchasing practices proved most cost-effective while at the same time ensuring that adverse impacts are prevented and mitigated? What are their pros and cons? Out of these, are there purchasing practices that are inherently sector- or context-specific? If possible, please provide examples of specific contract or commercial terms or other best practices.

Guidance must clarify that responsible purchasing practices are a core due diligence measure under the CSDDD, including, for instance, payment terms for timely payment; planning and forecasting of realistic quota that lets suppliers properly plan workforce needs; and pricing that ring-fences living wages, overtime, as well as social security and responsible recruitment costs (to avoid, for instance, abusive recruitment fees) in the supply chain. Responsible purchasing and pricing between upper and lower tiers also has to be factored in.

Buyers must contractually commit to these practices, including on order changes, cancellations and remedy contributions. Commercial risk must not be shifted onto suppliers and workers: existing orders must be honoured, particularly in periods of crisis, wages and severance must be protected, and workers and unions meaningfully engaged, to ensure purchasing practices support, not undermine, human rights and environmental protections.

This is based on our ICT, agrifood and textile sector work, including our recent guidance for brands and buyers in global garment supply chains, and relevant for other sectors too.

Living income and living wage

19. What are most cost-effective available data that you are aware of for determining the living income for self-employed suppliers ("an adequate living income for self-employed workers and smallholders, which they earn in return from their work and production", see CSDDD Annex, Part I point 6)? Are there sectors/geographies where no such data exist or are particularly difficult/costly to obtain?

Direct and indirect labour costs must be included as a separate non-negotiable costing block in purchasing agreements so that labour cost coverage can be independently verified against an applicable benchmark, e.g. Asia Floor Wage or the Global Living Wage Coalition (Anker). Living income for smallholders has to factor in living wage for any potentially hired wage labourers. We commend Shift/LICOP's recent agribusiness guidance for stressing the importance of due diligence for a living income.

Remediation

23. In your experience, what are the most effective, including cost-effective, practices related to remediation? Please explain pros and cons.

Remedy must be tailored to the harm and root causes; be adequate, effective and prompt, and meaningfully and continuously consulted with and shaped by those affected. Companies must publish remedy measures and provide rightsholders with information on their right to remedy. A bouquet of preventive, redressive and deterrent remedies – restitution, compensation, rehabilitation, environmental restoration, satisfaction, guarantees of non-repetition – is needed including a collective/community dimension. Grievance channels must deliver effective remedy.

24. What are best practices that you are aware of to determine a company's proportionate involvement in an adverse impact for the purpose of remediation when a company jointly causes the adverse impact together with others (e.g., its business partner(s) or other companies)? Have there been difficulties to determine appropriate remediation in case of joint causation in certain situations and how have these difficulties been overcome?

Guidance should provide examples of joint causation through harmful business models/practices including purchasing/pricing, project design, financing etc., and illustrate how ‘linkage’ becomes ‘contribution’/joint causation due to persistent inaction/inadequate action on an issue. Good practice includes collaboration between buyers on remedy. Brands still too often expect suppliers or states to provide remedy rather than acknowledging their own contribution. Public beneficial ownership and other data is key to identifying who benefits from and contributes to harm.

Conflict-Affected and High-Risk Areas (CAHRAs)

25. In your experience, what are the most significant operational challenges preventing effective due diligence in CAHRAs? How can these challenges be overcome?

- o Limited access to data/information: difficulty verifying information due to data-poor environments or restricted physical access
- o Safety risks to stakeholders: inability to consult with affected individuals and communities without exposing them to retaliation or violence
- o Safety risks to staff: security threats to company personnel or auditors preventing on-the-ground assessment
- ✓ **Legal conflicts: national laws (e.g., secrecy acts, counter-terrorism laws) that conflict with due diligence expectations**[2]
- o Complexity of supply chains: difficulty tracing business partners in informal or opaque war economies
- o Other

26. To assist companies in determining when specific due diligence obligations apply, would specific guidance regarding the identification of "high-risk" areas beyond active conflict zones be helpful? If so, please indicate your preference:

- ✓ **List of contextual risk indicators: a list of "red flags" indicating state fragility or authoritarianism (e.g., suppression of civil society, suspension of legal protections, spike in inflammatory/hate speech)**[3]
- o References to and guidance on how to use specific, reputable global indices (e.g., OECD States of Fragility, RULAC, or the World Bank FCS list) to determine a country’s risk level
- o Sector-specific case studies for "early warning" contexts: practical examples of how companies in different industries have identified high-risk signals in seemingly stable or "pre-conflict" environments
- o Other

27. In your experience, which specific practical tools or frameworks (e.g. examples of structural drivers and root causes, early warning “red flag” indicators, conflict actor mapping, targeted questions for self-evaluation, scenario planning) proved to be

---

[2] The electronic questionnaire allowed only one selection and we chose “legal conflicts” (see here for an example), while other challenges are also relevant.

[3] If clearly marked as non-exhaustive and indicative.

particularly useful and cost-effective in integrating conflict analysis into your company's scoping and in-depth assessment?

Guidelines should reference UNDP's Heightened Human Rights Due Diligence in Conflict-Affected Contexts guide and provide guidance on heightened due diligence and responsible exit in the context of the crime of aggression, a gap that a recent B4Ukraine report BHRC has collaborated on addresses; see also our tracking of companies' approaches in the context of Myanmar, OPT/Israel and Ukraine.

Sharing of information and resources, collaboration

29. As regards cooperation with other companies (i.e., with peers, in the framework of industry schemes) to carry out certain aspects of due diligence (e.g., risk analysis, stakeholder engagement, remediation, investment, capacity building, exercising leverage) what has worked well and what has not? Have competition law considerations constrained cooperation for due diligence? How can compliance burden be further reduced by data sharing and collaboration? Please describe the types of constraints encountered and any solutions (e.g. organisational or procedural steps) found to overcome those obstacles.

Guidance should clarify (again) that good faith collaboration between businesses (peers, direct and indirect suppliers, clients) for sustainability due diligence purposes, including on responsible purchasing/pricing and the provision of living wages and remedy, and including ad hoc and issue-driven cooperation outside of multi-stakeholder initiative (MSI) structures, does not constitute a competition law issue. Companies still sometimes quote competition law as an issue/excuse. Supervisory authorities should also proactively ensure clarity.

Model Contractual Clauses

31. What is your experience of cooperating with business partners to ensure efficient due diligence?

We second Frank Bold and others in stressing that engaging with and supporting business partners is key to effective due diligence in line with the CSDDD and its emphasis of risk-based quality due diligence rather than superficial one-size-fits-all approaches. Supplier engagement, backed by and going beyond model contractual clauses, should include sustained dialogue with business partners (potentially involving rights- and stakeholders too, if such 'tripartite' format is safe enough and agreed by them), capacity building, as well as adjustments to a company's own (purchasing) practices if these fuel issues at supplier level. Responsible contracting is an important basis and can codify some of this partnership approach (as opposed to unilateral 'policing') but practical implementation, including with regard to deeper supply chain tiers, is key.

32. What cooperation should the model contract clauses recommend between the in-scope company and its business partners as regards:

- **the adoption and implementation of any prevention/correction action plan**
- **the cost of addressing adverse impacts**
- **stakeholder engagement**
- **the notification and complains mechanisms**

with a view to ensure that due diligence is efficient and cost-effective while compliance burden is not shifted to the business partners?
Please provide examples of appropriate contractual clauses, if possible.

It is key indeed that any model clauses do not encourage undue shifting of CSDDD obligations to business partners as this would render due diligence ineffective and risk repeating pitfalls of failed CSR models. Guidelines and model clauses should require shared responsibility and joint problem-solving including remediation, and place due emphasis on the assessment/adjustment of purchasing practices. Guidelines should clarify that the concept of purchasing practices goes beyond sustainability criteria in supplier selection as it captures how price and quota pressure, unrealistic lead times, short-notice order changes, unfair payment terms etc. coming from lead firms can exacerbate human rights and environmental issues at supplier level (see question 18). Stakeholder engagement cannot simply be outsourced to suppliers either (see question 47). The same holds true for grievance channels, for which there are multiple approaches, including in-scope company or sector-wide mechanisms promoted across several tiers of the supply chain.

34. Are there other elements required by the CSDDD that are challenging to translate into contractual terms? What could be ways to overcome this challenge?

We agree with Frank Bold and others again that model contractual clauses are one but not the only tool in the engagement with business partners; shared responsibility in all its aspects and the necessary avoidance of perverse incentives against disclosure from suppliers may be more difficult to translate, and also hinge on effective practice and trusted relations. The same holds true for due diligence on tier-n level adverse impacts, where in-scope companies may have limited or no contractual relations. Hands-on approaches – including lead firm engagement with direct and indirect business partners as well as stakeholders across several tiers to jointly tackle a human rights or environmental issue – may be required that cannot be fully captured contractually but are all the more vital.

35. Are you aware of any useful and relevant best practices for contractual clauses operationalising human rights and environmental due diligence? If yes, elaborate.

We commend the work of the Responsible Contracting Project (RCP) and would like to stress that guidelines and practices around contractual clauses should be regularly re-assessed, informed by stakeholder feedback. Creating a legal basis that prohibits a ‘cut and run’ approach or cost shifting and embeds shared responsibility is important. Our Forced Labour Benchmarks (KTC) have not captured improvements in companies’ approaches to shared responsibility contracting since 2022. In addition, transparency around this topic remains poor. At the same time, since the pandemic we have identified that buyer purchasing practices have also largely stayed the same, and in some cases, including in relation to payment terms, have gotten worse, putting suppliers under increased pressure. In response to economic and climate pressures, we have seen companies continue to abruptly and unilaterally shift sourcing strategies and shift risk down the supply chain.

<u>**Guidance on fitness criteria for industry and multi-stakeholder initiatives (Article 20)**</u>

36. In your view, for which due diligence measures do industry or multi-stakeholder initiatives offer the biggest added value?

- ✓ **Identification of adverse impacts, including risk assessment**
- o Prioritisation
- o Investment
- o SME support
- ✓ **Increasing leverage through collaboration (e.g., to mitigate risks or bring to an end actual impacts)**
- o Remediation
- o Verification
- o Monitoring effectiveness of actions
- o Stakeholder engagement
- o Operating notification/complaint mechanisms
- ✓ **Other**: Trust building, experimentation, learning – but persistent limitations, including system-inherent, when it comes to core due diligence support.

37. What are, in your view, the main challenges for existing industry and multistakeholder initiatives in view of their role in supporting due diligence under the CSDDD (e.g., misalignment with the due diligence requirements, misalignment of audit protocols with the material scope of the CSDDD, in particular the Annex)? What are the main gaps in the geographical, sectoral, topical or value chain coverage of existing industry and multi-stakeholder initiatives?

MSI membership can at best support, never replace, a company's own due diligence measures. Many MSIs operate at a high "flying altitude" and provide a space for learning/sharing rather than concrete action tailored to supply chain contexts. Key (systemic) risks include paperwork/process-based compliance and overreliance on certification, or on MSI membership as such as supposedly sufficient due diligence; lacking CSDDD-alignment; corporate-driven approaches; downward convergence of standards; and poor records regarding rightsholder consultation and remedy.

38. Which of the following governance or other challenges of existing industry or multistakeholder initiatives do you consider as being the most important?

- ✓ **conflicts of interest, including any undue influence on the governance of the initiative or on specific measures by participating companies**

- ○ governance bodies and their decision-making roles and responsibilities not clearly defined
- ○ collaboration opportunities within an initiative and collaboration and interoperability between initiatives not sufficiently exploited resulting in undue burden for participating companies and audited value chain partners
- ✓ **lack of independence and competence of assessors/verifiers, undermining the credibility of their work**
- ✓ **insufficient robustness of audit or assessment methods**
- ✓ **insufficient engagement with stakeholders**
- ✓ **lack of effectiveness in bringing about tangible impact**
- ✓ **processes not sufficiently adapted to cater for local realities and/or the interests of relevant stakeholders (including smallholders, SMEs, artisanal producers)**
- ✓ **Other:** Local realities insufficiently reflected, lack of enforceability, rightsholder exclusion from governance, capacity gaps between corporate versus other participants

Accompanying measures

39. From the list below, which specific potential facilitation role of the European Commission would benefit your organisation the most and how?

- ○ Acting as a convener – or delegating to a platform of existing initiatives – to share best practice and peer-to-peer learning.
- ○ Engaging with companies, industry associations, and other stakeholders to design new initiatives for more participants to benefit.[4]
- ✓ **Other roles:** Enable CSOs, unions, HRDs and community organisations to promote CSDDD awareness, provide legal advice, engage with companies and in monitoring, ground-truthing etc.

Guidance on third-party verification (Article 20)

40. What best practices could ensure the independence of third-party verifiers from the companies that they assess, from the companies on whose behalf they act and from external influence?

Pitfalls and (inherent) limitations of social audits have long been documented. For the CSDDD's smart, risk-based, engagement-oriented approach, it is key that implementation also moves beyond the auditing paradigm. Guidance must clarify that audits are not the main vehicle of due diligence but a specific and very limited monitoring tool whose use, risks and added value, if any, have to be carefully assessed and justified. Fees and conflict of interest must be disclosed.

[4] The electronic questionnaire allowed only one selection, but the second option seems relevant to us too.

41. In your view, what level of experience and competence in human rights (including labour rights) or environmental matters, according to the nature of the adverse impact, would be necessary for third-party verifiers to support companies in implementing the Directive's requirements?

Gender and intersectional expertise, as well as meaningful engagement and relationship with affected rightsholders, at least. But we would like to stress the systemic limitations: for instance, in sectors like textile, critical risks including verbal abuse, gender-based harassment and excessive overtime driven by aggressive buyer quotas are systematically missed by static audits. Continuous engagement with rightsholders, trusted local CSOs and shop-floor paralegals can catch risks far earlier and more effectively than formal checklists.

42. In your experience, what are the most effective standards ensuring that the third-party verifiers are accountable for the quality, effectiveness, reliability and integrity of the verification?

To the very least, audit results/reports need to be made public and accessible including to workers, CSOs, HRDs and communities, as well as specify the commissioning and/or sourcing company. There must be accountability for poor-quality verification. Where audits are the epitome of a tick-box 'policing' approach towards supply chains, they are especially prone to 'cheating' and unreliability. Enforceable labour rights agreements with unions that instate shop-floor monitoring via worker committees constitute better practice examples.

<u>**Meaningful stakeholder engagement**</u>

43. Taking into account the requirements of the CSDDD, in your experience what are the most cost-effective means to engage with stakeholders in the performance of due diligence? What are the pros and cons?

Rather than relying on expensive snapshot third-party audits with minimal feedback, companies should focus on effective rights- and stakeholder engagement that caters to cultural diversity and truly involves those affected, including, in community contexts, those in opposition to (planned) projects. Engagement must shape due diligence instead of being a box to tick, and can then enable early warning, help avoid bad investment and crucially, ensure prevention, mitigation and remediation meet rightsholder needs.

44. Which methods have proven most cost-effective in identifying and involving marginalized groups (for example certain groups of indigenous people) or 'hidden' stakeholders, such as those working in the informal sector or victims of human trafficking?

Risk assessment should involve comprehensive mapping of stakeholders affected by business activity and in vulnerable positions in a way that is safe, flexible, continuous and open for new insights. For instance, stakeholders consulted at early stages may point to additional marginalised groups. Onsite visits and meetings in locations familiar to vulnerable stakeholders are important. Indigenous Peoples' decision-making systems and governance structures need to be fully understood and respectfully engaged with.

45. What are the most robust and cost-effective mechanisms for guaranteeing confidentiality and protecting participants from retaliation?

These include anonymity and confidentiality; safe formats (e.g. outside of the factory); strong security protocols for handling participant data; having a do no harm policy and effectively communicating a zero-tolerance approach to attacks on HRDs across business relationships, including state parties. More information here and here. Retaliation is less likely where brands commit to joint problem-solving with suppliers rather than superficially 'policing' them.

Information for stakeholders and their representatives on how to engage throughout the due diligence process

46. What are the most critical issues for stakeholders covered by the Directive in terms of engagement with companies at different stages of the due diligence process? What are best practices leading to an effective (including cost-effective) due diligence process?

Continuous involvement at all stages of due diligence, not one-off; early access to adequate information including on (project) risks; engagement with Indigenous Peoples through the lens of their right to FPIC; consultation beyond a limited number of representatives to involve the broader community in ways culturally appropriate and respectful of local processes – this requires sufficient time, funding and capacity for meaningful participation. Guidance should stress the non-exhaustive nature of the CSDDD's stakeholder definition (Art. 3 (n)) and list stakeholder examples (HRDs, CSOs, Indigenous Peoples).

47. In your experience, what are the most cost-effective approaches that companies can use to involve stakeholders at the level of indirect business partners? What are pros and cons?

Guidelines should clarify that companies in scope cannot just outsource stakeholder engagement at the level of indirect business partners to those suppliers, or certification etc., but should maintain ownership of initiating and facilitating engagement. Indirect partners may lack capacity/incentives for structured engagement if merely cascaded down as a formal requirement. CSOs, unions, HRD networks, trusted intermediaries etc. with knowledge of local contexts and supply chains can help make connections.

48. What are best practices in terms of the company's security procedures so that vulnerable stakeholders feel safe to engage (e.g., in terms of guarantees of anonymity, protection against retaliation, other)?

See under question 45. Other good practices: consultation with less exposed intermediaries in case of security risks for rightsholders, e.g. in contexts of conflict and limited civic space, including with protection-focused CSOs (ex. Front Line Defenders); gender and intersectional sensitivity; child protection protocols; bans on data sharing with employers/authorities; brands taking HRDs/unionists' side in SLAPP hearings; re-building trust through the provision of remedy and long-term relationship building outside of emergencies.

49. How can companies engage with stakeholders in a way that specifically addresses and removes barriers for vulnerable stakeholders or groups (such as, depending on the context, workers representatives, indigenous peoples, women, or migrant workers)? In your view, what specific support do vulnerable stakeholders need?

Barriers must be addressed, for instance, through linguistically, culturally (incl. Indigenous), gender- and conflict-sensitive, intersectional approaches; appropriate location (worker housing etc.); and trusted intermediaries and collective processes. Vulnerable stakeholders need respect and flexibility, as well as access to timely information, capacity building (e.g. on their rights, related protections, and/or community-based monitoring), legal advice and networks. The declining funding for worker-/community-driven due diligence is concerning.

Conclusion

Answers number 2, 15-16, 23-24 and 40-49 were coordinated with, and endorsed by, our partners ProDESC and CIELO, Mexico; Network of African National Human Rights Institutions (NANHRI), Kenya; Pastoralists Indigenous Non-Governmental Organizations Forum (PINGO's Forum), Tanzania; Indigenous Peoples Rights International (IPRI), Environmental Legal Assistance Center and Bantay Kita, Philippines; Centre for Applied Legal Studies (CALS), University of The Witwatersrand, South Africa; and SPEK-HAM, Indonesia.

We share the European Coalition for Corporate Justice (ECCJ), Human Rights Watch and others' concern regarding the "cost-effectiveness" framing of many questions and
thank you for the opportunity.

*****

14 August 2026