THE DANISH INSTITUTE FOR HUMAN RIGHTS

WORKSHOP REPORT: NHRI ENGAGEMENT IN THE CSDD

BRUSSELS, 6-7 JUNE 2023

EXECUTIVE SUMMARY

On 6 and 7 June 2023, representatives from 18 European National Human Rights Institutions (NHRIs) participated in a two-day workshop in Brussels to build their capacity and engage on the proposed Corporate Sustainability Due Diligence Directive (the CSDD). This event was organised as part of multi-year project led by the Danish Institute for Human Rights (DIHR) and funded by the Laudes Foundation to support NHRIs in the transposition and implementation of the CSDD.

As state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level, NHRIs can play a key role in ensuring that the CSDD meets it objectives of protecting human rights and fostering responsible corporate behaviour across global value chains. NHRIs are uniquely placed to ensure that the transposition of the CSDD into national laws is done in a manner which accords with international human rights and environmental standards as well as playing a role in the implementation of those laws.

Experts from civil society, the European Commission and the European Parliament, the UN Global Compact, the UN Office of the High Commissioner for Human Rights as well as peer NHRIs provided insights during the first day on the CSDD and the broader EU regulatory landscape of relevance to business respect for human rights. The second day internal workshop for NHRIs explored how NHRIs can be involved in the transposition and implementation of the CSDD, brainstorming ideas for engagement, surveying existing NHRI practices, as well as exploring what challenges NHRIs face and support NHRIs need in order to engage further on this agenda.

A. Opportunities for NHRIs to engage with the CSDD

Participants identified the following key opportunities for NHRIs to engage in the negotiation, adoption, transposition and implementation of the CSDD:

- provide expert input on the development and implementation of the CSDD, and other relevant BHR laws and policies, based on their rights expertise and knowledge of the local context, including its legal framework, as well as ensure that rightsholders voices are heard in these processes;
- conduct research of the extent to which businesses respect human rights and/or analyses of the current legal landscape regarding business and human rights and supervisory bodies;
- support other stakeholders such as policymakers, CSOs and companies understand the implications of and engage with the development, transposition and implementation of the CSDD, including through awareness raising, capacity building and guidance development;
- build relationships between different groups of stakeholders and facilitate dialogues and engagement on the human rights implications and objectives of the CSDD both nationally, regionally and globally;

- provide specific support to businesses through, for example, guidance on human rights due diligence for specific relevant industries, sectors and types of businesses;
- provide support to national Supervisory Authorities to ensure that supervisory authorities appointed to supervise compliance CSDD have capacity on human rights;
- monitor how Supervisory Authorities are fulfilling their mandate of supervising compliance with the CSDD;
- work to ensure that access to justice for victims remains at the core of national laws transposing the CSDD and provide support to victims of human rights abuses to use accountability mechanisms required by those laws;
- gather data to assess the effectiveness of national laws transposing the CSDD including through benchmarking of companies and collecting rightsholder perspectives;
- work collaboratively on business human rights with sister NHRIs through peer-learning exchanges, workshops and other knowledge-sharing fora.

B. Challenges for NHRIs to engage further on the CSDD

Existing and foreseeable challenges for NHRIs to engage further on the CSDD were discussed, which include:

- a lack of internal knowledge on business and human rights, including the CSDD, among some NHRI staff, and a lack of capacity and resources to ensure staff have dedicated time to engage on the topic.
- the vast and diverse areas of work of NHRIs, as they engage on the full spectrum of human rights, and sometimes internal priorities or pressing issues at the national level prevent a large focus and funding being dedicated to business and human rights, including the CSDD.

C. Needs for NHRIs to engage further on the CSDD

Directly linked to the challenges encountered by the NHRIs to engage on the CSDD, practical needs were identified by participants:

- Resources to further understand the EU business and human rights landscape and the CSDD developments;
- Practical resources on how to engage with and talk to different stakeholders, including colleagues and management within NHRIs, policymakers and businesses;
- The development of talking points, peer learning and experience sharing;
- Resources and capacity, including finance.

D. Agreed next steps for NHRIs to engage on the CSDD

NHRI representatives agreed on the following next steps which could be supported by the DIHR project:

- Work to increase internal knowledge and capacity on business and human rights internally within institutions and between colleagues
- Establish a platform for knowledge sharing and collective action
- Develop tools and guidance to support NHRIs further engage on the CSDD, as well as explore opportunities for financing targeted activities
- Prepare for a regrant and support programme

INTRODUCTION

On 6 and 7 June 2023, representatives from 18 European National Human Rights Institutions (NHRIs) participated in a two-day workshop in Brussels to build capacity and engage on the proposed Corporate Sustainability Due Diligence Directive (the CSDD). This event was organised as part of multi-year project led by the Danish Institute for Human Rights (DIHR) to support NHRIs in the transposition and implementation of the CSDD.

The CSDD presents an opportunity for transformative change in how businesses engage with and address their impact on the enjoyment of human rights. The transposition of the Directive will require each Member State to enact and enforce national laws, including adjustments to laws in jurisdictions which have already adopted due diligence laws. In each case, transposition legislation should use a human rights-based approach and involve meaningful and stakeholder engagement—expertise which well-capacitated NHRIs are well placed to provide. The CSDD should represent the minimum of what will be required of States and companies, meaning that NHRIs can encourage the development of ambitious transformative laws which align with the objectives of key international frameworks regulating business impacts on human rights including the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD GLs).

NHRIs are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. NHRIs address the full range of human rights, including civil, political, economic, social and cultural rights. While their mandates differ between jurisdictions, NHRIs should be constituted in accordance with the Paris Principles, which set out the features of NHRIs and their responsibilities. In 2010, NHRIs adopted the Edinburgh Declaration articulating how they can engage to ensure business respect for human rights, including through:

i. Advising government, parliament and other public bodies to address core human rights concerns, as well as to eradicate all forms of discrimination;
ii. Promoting and harmonising national laws and practices with international human rights instruments, including by undertaking workshops and engaging their respective governments and policymakers on business and human rights; providing guidance to business on how to integrate human rights in their operations;
iii. Monitoring and investigating the human rights situation on the ground, including human rights abuses committed by businesses, reporting on the conditions of access to justice;
iv. Reporting to the public, Parliament and international monitoring bodies such as the UN and other international human rights system (such as the UPR);
v. Promoting a culture of rights, through training and awareness raising activities and human rights education, including by conducting specific research on business respect for human rights and facilitating dialogue between stakeholders on the topic.

As human rights experts well versed in their national contexts, NHRIs can play a role in ensuring that the development and implementation of national laws meets States obligations to protect and promote human rights obligations, including in respect of businesses related human rights impacts. In this context, the DIHR is currently focusing on activating the role of these actors to turn them into active players in the adoption of the CSDD, starting with this two-day workshop.

The objectives of the workshop were to:

- Build capacity of NHRIs on business and human rights, including on policy and regulatory developments with a focus on the CSDD;
- Identify the needs of NHRIs to engage further with business and human rights policy and regulatory developments, with a focus on the CSDD; and
- Identify opportunities and initial activities for NHRIs to engage with business and human rights policy and regulatory developments in their national context in the period leading up to the transposition of the CDDD.

The two-day workshop convened representatives from 18 European NHRIs. A list of participating organisations is contained in Annex 2.

- Day 1 consisted of panels of NHRI and expert speakers who presented on the main legal aspects of the CSDD as well as its interactions with the EU regulatory and policy landscape in relation to business and human rights.

- Day 2 was a closed workshop for NHRIs to reflect on the issues brought up during the first day and brainstorm ideas and ways forward to engage in the trialogue negotiations, and follow the adoption of the Directive, the transposition and the implementation of the CSDD. A copy of the programme be found at Annex 1.

During the course of the workshop NHRI representatives from countries which have either adopted or proposed due diligence legislation (France, Germany, Norway, and Belgium) shared their experiences both engaging with the legislative process and engaging during implementation. A summary of the existing national measures can be found at Annex 4.

WORKSHOP SUMMARY

During the workshop, the speakers and the NHRIs were invited to reflect on the different mandates of NHRIs to engage in the trialogue negotiations, the transposition of the CSDD and the implementation of the legislation in their national contexts. An overview of key points raised discussed during the workshop follows.

1. Engagement during negotiation of the CSDD: key issues

The final text of the CSDD will be negotiated during the trilogue phase, which is anticipated to run from 7 June 2023 to March 2024 at the latest. The Commission, Council and Parliament have adopted different positions on certain key issues in their respective proposals which will be resolved during the negotiations.

During the workshop, speakers highlighted a number of critical issues which NHRIs should be alive to during the negotiation phase, including stakeholder engagement with particular emphasis on human rights defenders, without which the CSDD and subsequent transposition laws may not aptly fulfil its objective of addressing human rights abuses in global value chains. Another key consideration raised during the workshop was access to justice for victims of business-related human rights abuses, which will be critical to ensure the CSDD is fully implemented, works for better human rights outcomes and that the hurdles that can exist for rightsholders in obtaining remedy are addressed. Finally, all speakers stressed that the CSDD should not be seen as the end goal, but rather as one tool towards ensuring responsible business conduct, and that it should be regarded as part of a broader ensemble of measures relating to business and human rights. These issues link to the core mission of NHRIs as independent bodies mandated to uphold human rights in their country contexts and beyond. Because of their particular position and ability to engage with a variety of stakeholders, NHRIs can ensure that these voices are heard and effectively consulted in the negotiations, as well as safeguarded in the final text of the CSDD. Similarly, NHRIs know first-hand the challenges faced by victims of business-related abuses as they already engage on access to justice issues.

A comparison document outlining the key differences between the Commission, Council and Parliament proposals on these points can be found at Annex 3.

2. Engagement during transposition of the Directive into Member State laws

Once the CSDD is adopted, the transposition phase will commence, during which time Member States will have two years to transpose the requirements of the Directive into their national laws, with the potential for a phased approach to be taken in respect of certain classes of company.

Participants discussed the role which NHRIs can play during the transposition phase to have a voice in the development of laws in their national contexts. Through their mandate to provide legal analysis and recommendations to policymakers in their own countries, NHRIs have an important role in influencing the design of transposition laws that focus on getting better human rights outcomes.

Participants noted that NHRIs can engage with policymakers and other actors, prepare legal analysis, consultation responses and prepare recommendations to their national institutions on what to include in the transposition laws. NHRIs can also begin engagement with policymakers and other actors in implementation issues, for example, the appointment and capacity development of Supervisory Authorities.

3. Engagement during implementation

Following transposition, the implementation phase will begin. Participants in the workshop discussed the various entry points for NHRIs to engage during this phase. These include interactions with the national Supervisory Authorities who will be appointed to oversee compliance and enforcement with national laws; engaging with and convening stakeholders; sharing human rights expertise and the development of guidance; monitoring implementation and data gathering; engagement with rightsholders, including support to access accountability and remedy mechanisms required under the CSDD; and engagement with sister NHRIs both within and outside the EU.

a) Engaging with and supporting Supervisory Authorities

Each Member State will be required to appoint a Supervisory Authority to oversee compliance and enforcement of the CSDD. Supervisory Authorities are expected to be adequately resourced and capacitated, including capacity on human rights, as well as empowered with a range of powers including investigation and sanctioning powers. The Supervisory Authorities could benefit from the national and local knowledge of NHRIs with regards to business and human rights, and NHRIs could have a capacity building role.

NHRIs discussed exploring a more formal role in relation to the Supervisory Authorities, potentially taking the role of observer or part of an advisory body to support the institution(s) that will be appointed to this role and build their human rights expertise.

As noted at section d below, NHRIs could also take a monitoring role in relation to the Supervisory Authorities.

b) Engaging with and convening stakeholders: policymakers, CSO, business

The implementation of the CSDD will not only require a range of stakeholders to build their capacity on the contents of the Directive and the transposition legislation to ensure an effective implementation, but also a substantial understanding of human rights frameworks to which the Directive refers as well as an understanding of the process of human rights due diligence under Pillar 2 of the UNGPs and the OECD Guidelines. This will require stakeholders to learn and exchange knowledge and experiences. In this context, NHRIs discussed how they could engage with a range of actors in the national context to facilitate dialogue and consultation, as well as build capacity. This includes CSO groups engaged on corporate accountability, business organisations as well as individual businesses, where mandates allow, and policymakers.

Given their unique mandate and status, NHRIs can also act as a bridge between different types of stakeholders, including businesses and business networks. NHRIs are well placed to provide spaces for multi-stakeholder exchanges and moderating networks convening human rights experts and businesses.

c) Awareness raising, sharing expertise, guidance and training

Businesses, civil society and other rights-holders will need to be capacitated on the contents of both the future CSDD and the transposition laws. NHRIs discussed what role they could play in awareness raising on the content of the CSDD, what businesses will need to do in order to engage in meaningful due diligence, and informing other stakeholders such as civil society groups and rightsholders of the new requirements on companies and the envisaged accountability and remedy mechanisms available.

The CSDD also foresees the development of guidance as key in implementing the obligations set out in the text. As human rights experts well versed in the national context, NHRIs can share their expertise by capacity building, including through the development of context specific guidance and trainings tailored to specific industries, types of businesses and human rights impacts that are key for their national contexts.

NHRIs can use a train the trainer approach by training state authorities, lawyers, auditing and certification businesses, as well as bringing in other organisations' expertise and becoming a hub for capacity-building.

d) Monitoring and data gathering

Under the CSDD, Member States will have to report to EU review processes 6 to 7 years after adoption. This entails consistent data gathering on the state of business and human rights in every implementing State's jurisdiction by human rights experts. In this context, NHRIs' independence, expertise and broad mandate, as well as their capacity to engage with a wide range of stakeholders place them as key actors to gather data. For example, NHRIs can develop case studies, conduct industry-specific activities, provide baseline assessments and sectoral/industry human rights impact assessments and other analyses of their local contexts to inform due diligence processes and prioritisation of risks and impacts.

In addition, the good application of the Directive will require monitoring of implementing actors, such as State institutions as well as businesses. NHRIs will have a key role in monitoring the implementation of the Directive during the transposition phase and after the national legislation is adopted. NHRIs can monitor how the Supervisory Authorities are overseeing compliance and enforcement of national laws transposing the requirements of the CSDD and report to the government. Moreover, as suggested during the workshop, NHRIs could monitor the implementation of the due diligence obligations by companies, including by providing feedback on businesses' due diligence reports.

e) Enforcement and access to justice

The CSDD envisages civil liability for harms caused by due diligence failures, as well as the ability to refer substantiated concerns and complaints to Supervisory Authorities and company complaint mechanisms. NHRIs can link activities on the CSDD to their broader work on the access to justice agenda by pushing for the consideration of the victims' perspectives in the design of national implementation laws as well as enabling access to accountabilty mechanisms envisaged by the CSDD.

Within their specific mandates, NHRIs could be well placed to support victims of business-related human rights abuses by raising awareness of the accountability and remedy mechanisms envisaged by the CSDD and assisting them to use these processes.

NHRIs can also amplify rightsholder voices in company or policymaker-led stakeholder engagement and consultation. This is especially true for victims from third countries who may seek to use the accountability and remedy mechanisms in the CSDD to seek remediation.

f) Engagement with sister NHRIs

European NHRIs are well placed to liaise with sister organisations in the EU to share learnings as well as explore avenues to act collectively, for example by preparing joint positions and statements on the CSDD in collaboration with ENNHRI in order to have more influence on EU and/or domestic policy makers and other influential actors.

European NHRIs are also well placed to liaise with sister organizations in third countries where European companies have their operations or those of their business relations covered by the future directive; in this context, European NHRIs can act as a bridge for these institutions outside the EU to reach the relevant resources in the EU and vice-versa.

g) Broader engagement with the BHR agenda

Lastly, speakers stressed that the adoption of the CSDD is not a final step but rather one part of the broader policy agenda to which NHRIs can contribute through their positions as human rights experts. Engagement with the CSDD can be a valuable means of building capacity on business and human rights generally within the NHRI, as well as facilitating engagement with the broader EU regulatory agenda.

There are strong links between engagement on business and human rights and the CSDD to existing activities of a range of the NHRI participants, including work on access to justice and engagement with the judiciary, whistleblower protections, and SLAPPs. NHRIs discussed how they could identify links with and leverage existing workstreams to both design activities and build a mandate internally to engage on this agenda.

4. Examples of existing NHRI engagement with the CSDD

During the workshop, NHRIs shared their experiences engaging with the CSDD and other relevant business and human rights policy developments at the EU and national level, demonstrating already existing ways and opportunities for them to engage on this agenda. Examples shared during the discussion included:

- The Danish and Finnish NHRIs have undertaken benchmark studies of the largest companies in their respective jurisdictions in order to create a baseline on respect for human rights by corporate actors which could fall under the scope of the CSDD;
- The Latvian NHRI has been producing materials on the UNGPs, including through providing translations of available documents into Latvian.
- The French NHRI has engaged with civil society organisations (CSOs), members of the French Parliament, the Ministry of Foreign Affairs, business organisations and other stakeholders to raise awareness and build capacity on the CSDD, the Corporate Sustainability Reporting Directive (CSRD) and the UNGPs more broadly. The German NHRI has participated in consultations with the Labour Ministry, the development agency and ministry on the CSDD, in addition to having regular engagement with relevant ministries at the national level and having engaged with German members of the European Parliament working on the file at the EU.
- The Danish NHRI has been engaged with businesses and business organisations directly to provide guidance and updates on the CSDD and other relevant policy developments, such as the proposed Forced Labour Ban, including through the Nordic Business Network for Human Rights, which came out with a statement in support of mandatory human rights due diligence.
- The Federal Institute for Human Rights, one of Belgium's NHRIs, and the German NHRI indicated that they had provided input for other national state institutions during consultations for the CSDD and other business and human rights policy developments at EU level.
- All participating NHRIs shared experiences supporting victims in judicial and non-judicial processes, with some for complaints relating specifically to business and human rights. More generally speaking, NHRIs have also been undertaking work on improving access to justice: for example, the Romanian NHRI shared that it had been appointed by the Ministry of Justice to conduct work on Strategic Lawsuits Against Public Participation (SLAPPs). The French NHRI also previously organised CSO hearings in the context of a case involving a French multinational corporation in Uganda. NHRIs could leverage their experience supporting affected rights-holders' access to justice once the CSDD transposition law are in place as those will provide new avenues for obtaining remedy in the case of business-related human rights abuses.
- Collectively, European NHRIs have contributed to and used resources from the European Network of NHRIs (ENNHRI), including statements following the Commission's proposal and the Council's general approach. For example, one of the Belgian NHRIs translated the latest statement into French and Dutch and shared with the French speaking and Dutch NHRIs for dissemination and advocacy with local policymakers.
- The Danish NHRI has produced research pieces on the CSDD and other EU policy and regulatory developments on due diligence as well as case studies on downstream due diligence, a key aspect of the CSDD. These case studies were translated into German and French and shared by other NHRIs for dissemination with local actors.

5. Summary of NHRI reflections on needs for engagement on the CSDD

During the second day of the workshop, NHRI representatives undertook group work to identify were actions that they could already take individually and collectively during the trialogue, the transposition and the implementation phases, as well as identifying their needs.

It was acknowledged that the participating NHRIs each have different mandates and levels of capacity on this agenda, and accordingly the activities engaged and the level of engagement will differ across the group.

To achieve these activities, NHRIs expressed that they had the following needs:

- More financial and personal capacity: NHRIs emphasised the very different levels of capacity within their institutions to take on the roles recommended during the workshop. To be able to realistically implement these activities, NHRIs would need further support, either through more financial means or by building the capacity of staff within their institutions.
- Knowledge on how to conduct advocacy during the trilogue negotiations and the transposition phases: NHRIs need to know how, when, where and with whom to engage on the CSDD. This implies gaining insights into the legislation, including when discussions are being held and whom to speak to, as NHRIs stated that it was difficult to know who in their national jurisdiction was involved in the negotiations. NHRIs all indicated needing some tools to conduct advocacy, including cheat sheets, statements (such as the ENNHRI statement on the CSDD) to have speaking points.
- Stakeholder mapping: directly related to the above point, NHRIs will need to map the relevant actors to ensure effective outreach and awareness-raising activities. This mapping does not only concern whom to advocate to, but also where to find resources from actors that may already be working on the topic (e.g., academic institutions; law firms providing pro bono support; civil society organisations etc.)
- Trainings: Reflecting issues of lack of capacity, NHRIs will need to receive more training to be able to themselves build the capacity of other actors on the CSDD.
- More capacity on how to conduct baseline assessments and human rights impact assessments: Providing evidence-based information and recommendations for better human rights outcomes being one of the mandates of NHRIs, participants indicated that they would need to be trained on methodologies.
- Knowledge sharing and peer exchanges: NHRIs indicated that a hub or platform for sharing documents, resources and other information for NHRIs would be useful. More broadly speaking, NHRIs will need opportunities for peer-to-peer exchanges.
- Promote a National Action Plan on business and human rights (NAP-BHR): NHRIs that have been able to work more in depth on the topic have indicated that existence of a policy framework on business and human rights like a NAP-BHR has helped in pushing the agenda forward in their countries.

6. Next steps

To conclude the two-day workshop, the NHRIs jointly designed next steps to address the needs listed above.

- Establishment of a communications channel
  In order to keep the momentum started at the workshop, the NHRIs established a communications channel to give each other updates on the trilogue negotiations as well as their engagement with stakeholders on the CSDD. Additionally, it was decided that an online platform would be created to upload and share resources on the CSDD and how to engage in the different steps of the adoption of the CSDD.
- Creation of a Playbook for NHRIs on the CSDD
  In collaboration with the NHRIs, the DIHR will create a folio of resources to easily refer to on the CSDD and engaging with stakeholders on the topic in order to address a need that was raised multiple times during the workshop. The Playbook will contain, among other things, key information and talking points on the CSDD.
- Preparing a regrant and support programme
  To address practical needs for support, the DIHR will be publishing a call for proposals of activities to support work on the CSDD. Cognisant that the lack of resources is a concrete hurdle for most NHRIs, the support could come in the form of grants, but the DIHR also envisages other forms of technical and practical support towards NHRI activities.

Time	Session	Speakers
8:45 – 9:00	Arrival of participants and coffee	
9:00 – 9:30	Welcome and introduction	European Network of National Human Rights Institutions Danish Institute for Human Rights
9:30 – 10:40	**SESSION 1:** Exploring the key elements of the CSDD Directive Short presentation of national laws and initiatives	Danish Institute for Human Rights Commission nationale consultative des droits de l'Homme (France) German Institute for Human Rights (Germany) Federal Institute for Human Rights (Belgium) Norwegian National Human Rights Institutions (Norway)
10:40 - 11:00	Coffee break	Danish Institute for Human Rights
11:00 – 12:15	**SESSION 2:** Due diligence obligations under the CSDD Directive, opportunities and gaps	Business and Human Rights Resource Centre European Coalition for Corporate Justice Frank Bold UN Global Compact
12:15 – 13:15	**Lunch**	
13:15 – 14:45	**SESSION 3:** Interactions with the EU policy and regulatory ecosystem How do the due diligence requirements under the CSDD Directive interact with requirements under other instruments?	German Institute for Human Rights World Benchmarking Alliance Global Reporting Initiative Frank Bold European External Action Service
14:45-15:15	Coffee break	

Time	Session	Speakers
15:15 – 16:15	**SESSION 4:** Enforcement and remedy envisaged under the proposed CSDD Directive	Office of the High Commissioner for Human Rights European Coalition for Corporate Justice Danish Institute for Human Rights
16:15 – 16:30	Close of day	Danish Institute for Human Rights
19:30	Dinner	

Day 2: NHRI Day - Implementing the CSDD Directive as NHRIs – NHRI-ONLY DAY

Time	Session	Speakers
8:15 – 8:30	Arrival	
8:30 – 9:15	**SESSION 5:** Coffee and meeting with VP of the European Parliament	VP of the European Parliament
9:15 – 9:45	**SESSION 6:** Presentation of NHRI answers to the business and human rights survey by DIHR and NHRIs	Danish Institute for Human Rights National Human Rights Institutions
9:45 – 10:45	**SESSION 7:** Legislating for human rights due diligence	Commission nationale consultative des droits de l'Homme (France) German Institute for Human Rights (Germany) Federal Institute for Human Rights (Belgium) Norwegian National Human Rights Institutions (Norway
10:45 – 11:15	Coffee break	
11:15 – 12:15	**SESSION 8:** Group work - What role for NHRIs individually in relation to the CSDD Directive?	
12:15-13:15	Lunch	
13:15 – 13:45	Report back from Session 8	

Time	Session	Speakers
13:45 – 15:00	**SESSION 9:** Group work - How can NHRIs engage collectively on the CSDD Directive?	
15:00-15:15	Coffee break	
15:15 – 16:15	**SESSION 10:** Assessment of needs and discussion around potential regrants/support to NHRI activities	Danish Institute for Human Rights National Human Rights Institutions
16:15 – 16:30	Close of day and thank you	European Network of National Human Rights Institutions

ANNEX 2: LIST OF PARTICIPATING INSTITUTIONS

NHRIs

Belgium – Federal Institute for the Protection and Promotion of Human Rights
Belgium – Unia (Interfederal Centre for Equal Opportunities and Opposition to Racism)
Belgium – Myria (Federal Migration Centre)
Bulgaria – Ombudsman of the Republic of Bulgaria
Croatia – Ombudswoman of the Republic of Croatia
Cyprus – Commissioner for Administration (Ombudsman)
Czech Republic – Public Defender of Rights
Denmark – The Danish Institute for Human Rights
Finland – Finnish Human Rights Centre
France – French National Consultative Commission on Human Rights
Germany – German Institute for Human Rights
Greece – Greek National Commission for Human Rights
Ireland – Irish Human Rights and Equality Commission
Latvia – Ombudsman's Office of the Republic of Latvia
Luxembourg – Consultative Human Rights Commission of Luxembourg
Norway – Norwegian National Human Rights Institution
Portugal – Ombudsman
Romania – Romanian Institute for Human Rights
Sweden – Swedish Institute for Human Rights
European Network of National Human Rights Institutions

External speakers:

Business and Human Rights Resource Centre
European Coalition for Corporate Justice
Frank Bold
Global Reporting Initiative
World Benchmarking Alliance
UN Global Compact Network
UN OHCHR

ANNEX 3: COMPARISON OF THE CSDD PROPOSALS

Key features of the EU's Corporate Sustainability Due Diligence Directive
Background document for NHRI workshop on 6-7 June 2023
May 2023

On 23 February 2022, the European Commission (the Commission) published its proposal for a Corporate Sustainability Due Diligence Directive (CSDD Directive) which requires large companies to identify and address their negative human rights and environmental impacts in line with key international frameworks including the UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines for Multinational Enterprises (OECD Guidelines) and associated due diligence guidance. DIHR's analysis of the Commission's proposal notes that "in principle the proposal has solid anchorage in key international frameworks, [however] in practice it contains a number of deviations from these standards. Such deviations need to be assessed not just in terms of how well they work from a hard law perspective or their ability to create legal certainty for companies, but also for their likelihood in driving respect for human rights by business."

On 30 November 2022, the Council of the European Union (the Council) published its General Approach, departing in some key respects from the Commission's position. Negotiations in the European Parliament (the Parliament) are still underway. On 1 June 2023, the Parliament adopted its position largely based on the committee on legal affairs (JURI Committee)'s Final Report, setting out its negotiating position. Trilogue negotiations between the Commission, the Council and the Parliament began on 8 July 2023.

Below we highlight the following key features of the CSDD Directive and compare the approaches taken by the Commission, the Council and the Parliament in their proposals:

1. Personal scope
2. Due diligence obligation
3. Scope of due diligence
4. Stakeholder engagement and consultation
5. Administrative supervision and enforcement, civil liability and remedy
6. Corporate governance and directors' duties

1. Personal Scope

SUMMARY		
The proposals take **different approaches on which companies should be required to comply with the Directive**. The **Commission and the Council's** proposals include **only very large companies and mid-sized companies working in high-impact sectors** like the garment, agriculture and mining industries. The **Parliament takes a more expansive approach**, including large and mid-sized companies regardless of sector. All three proposals extend the personal scope to **non-EU companies**, provided that such a third country company is carrying on business in the EU on a scale which meets specified turnover thresholds. Lastly, the proposals **differ on the extent to which financial institutions are included**.		
Commission Proposal (23.02.2022)	**General Approach of the Council (30.11.2022)**	**European Parliament position (01.06.2023)**
The Commission Proposal would apply to four types of companies (Art 2): • Large EU companies (>500 employees and a net turnover >150 million Euro) • Mid-sized EU companies (>250 employees and a net worldwide turnover >40 million Euro) working in high-impact sectors (i.e., extractives, agriculture, textiles) • Large non-EU companies (with a net turnover in the EU >150 million Euro) • Mid-sized non-EU companies (>40 million Euro net EU turnover) working in high-impact sectors • The definition of "company" includes specified financial institutions, such as credit institutions, investment firms and insurance companies (Art 3(iv))	The General Approach of the Council proposes the same personal scope as the Commission, but with some divergence from the financial institutions included by the Commission in the definition of "company" (Art 3(iv)).	The Final Report defines the personal scope more broadly covering (Art 2): • Mid-sized EU companies (>250 employees and a net worldwide turnover >40 million Euro) • EU parent companies of large groups (>500 employees and a net worldwide turnover >150 million Euro) • Large non-EU companies (with a net turnover >150 million Euro worldwide and >40 million Euro in the EU) • Non-EU parent companies of large groups (>500 employees, a net turnover >150 million Euro worldwide, and >40 million in the EU) • The definition of "company" includes specified financial institutions, with some divergence from the institutions included by the Commission (Art 3(1)(iv))

2. Substantive due diligence obligation

<table>
<tr><th colspan="3">SUMMARY</th></tr>
<tr><td colspan="3">The key elements and general approach to due diligence is common across the three proposals. Each requires that companies:
• put in place a policy framework;
• identify impacts;
• take appropriate measures to prevent or bring an impact to an end;
• maintain a complaints procedure;
• monitor the effectiveness of due diligence; and
• communicate on their due diligence.

This approach is generally consistent with the process of human rights due diligence outlined in the UNGPs. However, each proposal takes a slightly different approach to what constitutes an “appropriate measure” a company may be required to take in order to address an adverse impact and the manner and extent to which a company is required to consider its involvement as part of this process. All proposals incorporate an entitlement to prioritise the actions to be taken to address impacts, but adopt different formulations: the Commission captures this entitlement through the definition of “appropriate measures” and the Council and Parliament’s texts by the introduction of a new Article. The Parliament includes some additional actions which should be taken by institutional investors to induce their investee companies to address adverse impacts. Lastly, the proposals also differ in the extent to which a parent company may conduct due diligence on behalf of its subsidiary at group level.</td></tr>
<tr><th>Commission Proposal
(23.02.2022)</th><th>General Approach of the Council
(30.11.2022)</th><th>European Parliament position
(01.06.2023)</th></tr>
<tr><td><u>Overall due diligence approach:</u> Member States are obliged to ensure that companies carry out due diligence by:
• integrating due diligence into their policies (Art 5);
• identifying actual or potential adverse impacts (Art 6);
• taking “appropriate measures” to prevent and mitigate potential adverse impacts, bringing actual adverse impacts to an end, and minimising their extent (Arts 7 and 8);
• establishing and maintaining a complaints procedure (Art 9);
• monitoring the effectiveness of their due diligence policy and measures (Art 10); and
• publicly communicating on due diligence (Art 11).

Due diligence should be conducted on a company’s human rights and environmental impacts defined in Article 3, which includes reference to lists international instruments set out in annexes to the proposal.</td><td><u>Overall due diligence approach:</u> The Council maintains the general approach to due diligence proposed by the Commission.</td><td><u>Overall due diligence approach:</u> The JURI text also maintains the general approach to due diligence proposed by the Commission.</td></tr>
</table>

SUMMARY		
Appropriate measures: Articles 7 and 8 are key provisions which specify what kinds of appropriate measures a company may take to prevent an adverse impact or bring it to an end. An "appropriate measure" is defined as a measure which is capable of achieving the objectives of due diligence, commensurate with 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 characteristics of the economic sector and of the specific business relationship and the company's influence thereof, and the need to ensure prioritisation of action (Art 3(q)). Such measures may include: • Neutralising or minimising the extent of the impact, including by payment of damages or financial compensation (Art 8(3)(a)); • Developing and implementing a prevention or corrective action plan (Arts 7(2)(a) and 8(3)(b)); • Seeking contractual assurances from a business partner in a direct business relationship to ensure compliance with the code of conduct, and cascading those obligations (Arts 7(2)(b) and 8(3)(c)); • Making necessary investments (e.g., management or production processes) (Arts 7(2)(c) and 8(3)(d)); • Providing support to SMEs with whom the company has an established business relationship (Arts 7(2)(d) and 8(3)(e)); and • Collaborate with other entities to increase the company's ability to bring the impact to an end (Arts 7(2)(e) and 8(3)(f)).	Appropriate measures: the Council adopts the Commission's definition of "appropriate measures", but in addition specifies that companies shall take into account their involvement in an adverse impact when determining what appropriate measures to take, i.e., what constitutes an appropriate measure will differ depending on: whether a company has caused or jointly caused the impact or whether the impact was caused only by a business partner; whether the impact occurred in the operations of a subsidiary or business partner; and the degree of influence it has over a business partner who has caused an impact (Art 7(1) and Art 8.(1)). In some respects, this reflects the expectations of the involvement framework set out in the UNGPs which acknowledges that companies should take different action depending on whether they have caused, contributed to or are directly linked to an adverse impact. In addition, the Council text introduces a new provision clarifying a company's entitlement to prioritise actions to address adverse impacts based on their severity and likelihood (Art 6a).	Appropriate measures: The JURI text expands on the Commission's definition of "appropriate measures" in (Art 3(q)) by introducing language requiring that the measure be capable of "effectively addressing" the impact in a proportionate manner, commensurate with the size, resources and capacities of the company. Like the Council text, it also requires that companies assess their involvement in an impact when determining appropriate measures, but in a different way to that proposed by the Council. Per Article 7(1) and Article 8(1) appropriate measures are: • where a company causes an impact, measures which aim to prevent, mitigate or remediate the impact; • where a company may contribute to an impact, measures which aim to prevent, mitigate or remediate the contribution to the impact, or by using leverage; and • where a company is directly linked to an impact, measures which aim to use or increase leverage, including with respect to remediation. The JURI text expands on the actions which might be considered "appropriate measures" including, for example, the adaptation of business models and strategies (Art 7(2)(ca) and Art 8(3)(da)) and engagement through business relationships, including the provision of capacity building, guidance or administrative or financial support (Art 7(2)(da) and Art 8(3)(ea)). The JURI text includes a new provision specifying that companies should take appropriate measures in the composition, design and commercialisation of a product or service when distributing or selling a product or providing a service (Art 7(2a) and 8(3a)).

SUMMARY		
		The JURI text also includes a provision entitling a company to prioritise actions to address adverse impacts based on their severity and likelihood, but uses a different formulation to the Council (Art 8b). Lastly, the JURI text also includes some additional obligations on institutional investors to take steps to induce their investee companies to address adverse impacts (Art .8a).
Group due diligence: the Proposal does not provide for due diligence to be conducted at a group level.	Group due diligence: The Council text also introduces a provision entitling a parent company to conduct due diligence at group level under certain circumstances (Art 4a).	Group due diligence: The JURI text also introduces a provision entitling a parent company to conduct due diligence at group level under certain circumstances (Art 4a).

3. Scope of due diligence

SUMMARY		
The three proposals take **different approaches to the scope of due diligence,** in particular **with respect to the parts of the value chain that will be covered**. **Each proposal places a limit on the scope** of due diligence required of a company, whether by defining scope by reference to a business relationship, as in the case of the Commission's proposal limiting to diligence to established business relationships, or by carving out certain phases or activities in a company's value chain, as in the efforts to limit consideration of the use of products or services found in the Council and Parliament's texts. Further, **each proposal treats financial institutions differently** than real economy companies, requiring a more limited scope of due diligence for this sector.		
Commission Proposal (23.02.2022)	**General Approach of the Council (30.11.2022)**	**European Parliament position (01.06.2023)**
Scope of the value chain: The Commission Proposal requires due diligence on the full value chain. This means that companies need to identify and address not only impacts arising in the context of their supply chain (the "upstream"), but also in the "downstream" part of the value chain, i.e., after a product or service leaves the company (Art 3(g)). While this is quite a broad scope the proposal places limitations on the extent of the due diligence requiring companies to conduct due diligence on their own operations, those of their subsidiaries and those with whom it has an "established business relationship" (Art 6) a novel concept that is vaguely defined as a direct or indirect business relationship "which is, or which is expected to be lasting ... and is not a negligible or ancillary part of the value chain" (Art 3(f)).	Scope of the value chain: Rather than using the term "value chain" or limiting due diligence to "established business relationships", the Council introduces a novel term, "chain of activities", to define the scope of due diligence. The concept would still require due diligence on the supply chain, but places certain limitations on due diligence in the downstream part of the value chain. The definition of downstream activities in the "chain of activities" includes distribution, transport, storage and disposal generally with certain exclusions, but omits the requirement to undertake due diligence on the use of the product and service (Art 3(g)).	Scope of the value chain: The JURI Committee's Final Report reintroduces the concept of "value chain" to define the extent of the due diligence requirements, while reducing the range of covered downstream activities to the sale, distribution, transport, storage, and waste management of products and the provision of goods and services (Art 3(1)(g)). This approach preserves the value chain approach but places limitations on the due diligence obligations required in the downstream, notably with regard to the use of the products and services. The Final Report omits the concept of "established business relationships", and requires that companies conduct due diligence with respect to their operations, those of their subsidiaries and those carried out by entities in their value chains with whom the company has a business relationship (Art 1(a)).
Financial institutions: The Commission also proposes a more constrained approach to financial institutions, for example, by restricting due diligence to clients only and requiring they undertake due diligence at the pre-contract stage rather than over the life of an investment (Art 6(3)).	Financial institutions: The Council also adopts a more limited definition of "chain of activities" for financial institutions (Art 3(g)) in addition to maintaining the limitations on the scope of due diligence for financial institutions proposed by the Commission (Art 6(3)).	Financial institutions: The JURI report extends the scope of due diligence for financial institutions proposed by the Commission (Art 6(3)) to both pre-contract phase as well as impacts during the provision of a service where a financial institution has been made aware of the impact via a notification mechanism established under Art 9.

4. Stakeholder engagement and consultation

SUMMARY		
The three proposals have diverging approaches on the extent to which companies will have to conduct stakeholder engagement throughout the design and implementation of their due diligence process. Under the **Commission and the Council's positions**, **stakeholder consultation is only mandatory in certain circumstances**, and in general a company is only required to consult with affected stakeholders "where relevant". The **Parliament has taken a more comprehensive approach** to stakeholder engagement.		
Commission Proposal (23.02.2022)	**General Approach of the Council (30.11.2022)**	**European Parliament position (01.06.2023)**
The Commission's proposal only provides a limited role for stakeholders in the due diligence process, both in terms of design and implementation. Articles 7 and 8, which are concerned with the prevention of potential impacts and the ending of actual impacts respectively. Generally, companies are only required to consult with stakeholders "where relevant" but in some instances companies are required to engage with affected stakeholders, such as in the development of prevention or corrective action plans (Art 7(2)(a) and 8(3)(b)). Under this proposal, directors will be required to have "due consideration for relevant input from stakeholders and civil society organisations" when implementing due diligence actions and policies (Art 26).	Similarly, the Council's general approach only envisages a limited role for stakeholder consultations. When developing model contract clauses, the Commission will be required to do so in consultation with Member States and stakeholders (Art 12).	The JURI Committee Final Report creates a new Article 8(d) dedicated to carrying out meaningful engagement with affected stakeholders. Obligations include: • Engaging and consulting affected stakeholders to design their due diligence processes; • informing stakeholders about their value chain and actual or potential impacts they have assessed; and • set up a consultation framework through which the company will communicate transparently on their due diligence processes (Art 8(d)(5)). Affected stakeholders would be empowered to request written information about a company's due diligence, which companies will have to disclose within a "reasonable amount of time" (Art 8(d)(4)). Further, when disclosing and communicating on the impacts of their activities, companies are required to address any hurdles that affected stakeholders may face when engaging with the company, including by ensuring that they are not subjected to retaliation or retribution. The JURI Committee Final Report provides that this stakeholder engagement should be gender-responsive and respect the UN Declaration on the Rights of Indigenous Peoples (Art 8(d)(7)).
Financial institutions: The Commission also proposes a more constrained approach to financial institutions, for example, by restricting due diligence to clients only and requiring they undertake due diligence at the pre-contract stage rather than over the life of an investment (Art 6(3)).	Financial institutions: The Council also adopts a more limited definition of "chain of activities" for financial institutions (Art 3(g)) in addition to maintaining the limitations on the scope of due diligence for financial institutions proposed by the Commission (Art 6(3)).	Financial institutions: The JURI report extends the scope of due diligence for financial institutions proposed by the Commission (Art 6(3)) to both pre-contract phase as well as impacts during the provision of a service where a financial institution has been made aware of the impact via a notification mechanism established under Art 9.

5. Administrative supervision and enforcement, liability and remedy

SUMMARY		
In terms of enforcement, the three proposals incorporate a combination of **public enforcement through state-based Supervisory Authorities** who are given a range of powers to investigate and enforce compliance with the requirements of the Directive and a **civil liability mechanism** allowing victims to claim damages through litigation. Each proposal includes a **mechanism by which companies can be sued for harms caused by failures to meet their due diligence obligations**, **however the proposals differ in their breadth**. For example, the Council requires that companies can only be liable where they intentionally or negligently caused a harm to a protected interest under national law, meaning that Member States will not be required to create additional categories of damage to those existing under their national legal systems. This is a more restrictive approach than the Commission or the Parliament, which do not include these requirements. In addition, the Parliament's proposal also includes requirements to remove barriers commonly faced by claimants, such as high costs and access to evidence held by the defendant. The three proposals expect that companies will engage in **remediation** where harm has occurred. However, **the proposals place different degrees of emphasis on remediation and take different approaches to what form remediation may take** whether financial or through non-financial forms of compensation such as restitution, rehabilitation and public apologies. The three proposals all **require that companies establish and operate complaints handling mechanisms**.		
Commission Proposal (23.02.2022)	**General Approach of the Council (30.11.2022)**	**European Parliament position (01.06.2023)**
Administrative supervision and enforcement: Member States must establish national Supervisory Authorities that are tasked with the public enforcement of the due diligence provisions supported by a European Network of Supervisory Authorities. Supervisory authorities investigate cases of non-compliance and can order companies to comply with their due diligence obligations, impose sanctions, and take interim measures (Arts 17-21).	Administrative supervision and enforcement: The Council maintains the approach taken by the Commission.	Administrative supervision and enforcement: The JURI text takes a similar approach to the Commission and Council, but extends the responsibilities of Supervisory Authorities, for example, requiring them to keep a list of companies subject to the Directive and keep records of investigations and Art 18(7a-b)).
Civil liability: A company will be liable if it failed to comply with the due diligence obligations in Articles 7 and 8, and as a result an adverse impact that should have been addressed through the due diligence process occurred and led to damage (Art 22).	Civil liability: the Council takes a more restrictive approach, requiring that companies may only be liable where they **intentionally or negligently** fail to comply with their due diligence obligations and damage is caused to a protected interest under national law (Art 22(1)). It places a further restriction by specifying that a company cannot be held liable if a harm was caused only by its business partners (Art 22(1)). Lastly, it excludes the possibility of punitive or other damages which could result in overcompensation (Art 22(2)).	Civil liability: Under the JURI proposal, a company will be liable for damage where it failed to comply with the due diligence obligations in the directive as a whole, and as a result the company caused or contributed to an impact that should have been addressed through the due diligence process (Art 22(1)). The proposal also introduces procedural requirements that aim to make it easier for affected persons and communities to hold companies accountable. These include cost, provisions on limitation periods, the possibility of legal representation of victims by trade unions or CSOs, and easier access to evidence that is held by companies (Art 22(2a)).

SUMMARY		
Remedy: If an adverse impact occurs, companies may be required to pay damages or financial compensation to affected persons or communities (Art 8(3)(a)). Further, companies are to be required to set up complaints handling mechanisms (Art 9(1)) accessible to affected persons and other stakeholders including trade unions and CSOs (Art 9(2)).	Remedy: The Council adopts a similar approach to the Commission, but specifies that companies are obliged to provide remediation (Art 8(3)(g)), rather than only financial compensation. As with the Commission proposal, companies are required to set up complaint mechanisms (Art 9).	Remedy: The JURI proposal includes a new article on remediation (Art 8c) which specifies that remediation goes beyond financial compensation and may include restitution, rehabilitation, public apologies, reinstatement, a contribution to investigations, and prevention of further harm, with the aim of restoring the affected persons' situation. It also introduces new requirements that aim to make complaint handling mechanisms more accessible, transparent, and effective (Art 9).

6. Corporate governance and directors' duties

SUMMARY		
The three proposals **differ in the extent to which they require a company to implement corporate governance reforms**, including the extent to which they impose duties on directors in relation to a company's due diligence. The Parliament requires that Directors **take into account sustainability matters when taking decisions** in the best interest of the company. The **Commission also includes this requirement, as well as including a duty for directors** to set up and oversee the design and implementation of due diligence and **adapt corporate strategy to take into account the findings of the due diligence** process. The **Council adopts a much more restrictive approach**, demanding only that a company put in place and oversee due diligence as required by the Directive, but does not impose a requirement specifically on directors to do so, nor requiring any further corporate governance reforms.		
Commission Proposal (23.02.2022)	**General Approach of the Council (30.11.2022)**	**European Parliament position (01.06.2023)**
The Commission's proposal introduced a responsibility for directors to establish and oversee the due diligence process (Art 26(1)). Further, it specifies that directors, under their general duty to act in the best interest of the company, shall take into account the consequences of their decisions for sustainability matters including human rights, climate change and the environment in discharging their duty to act in the best interests of the company (Arts 25). In addition, directors will be required to adapt the corporate strategy to account for the identified actual and potential adverse impacts (Art 26)	The Council's proposal removes all articles dedicated to corporate governance reforms (Arts 25 and 26) including the directors' duty of care and to set up and oversee the due diligence process, as well as to adapt the company's strategy to account for identified adverse impacts. Instead, the proposal incorporates a requirement that a company puts in place and oversees due diligence as required by the Directive, but does not specify that this must be done by directors (Art 5(3)), allowing a company discretion as to how it establishes and exercises oversight on due diligence.	The final report, as adopted on 1 June in Plenary, maintains a provision requiring that directors take into account sustainability matters when acting in the best interest of the company. However, the report excludes the obligation to establish and oversee due diligence and adapt corporate strategy in light of the due diligence findings.

7. Material scope

SUMMARY		
When defining adverse environmental and human rights impacts in Article 3(b) and Article 3(c) respectively, all proposals refer to an annex listing instruments to ground the substance of issues to be addressed by the due diligence process. However, what is required for an adverse environmental or human rights impact to be characterised and the human rights and instruments covered in the proposals' annexes differ. The Commission requires a violation of an obligation contained in certain human rights instruments, potentially creating a high legal threshold for characterisation. The Council has a more limited approach, restricting the scope to human rights conventions that have been ratified by States and introduces conditions to characterise an impact. The Parliament has a broader approach to the material scope of adverse human rights impacts.		
Commission Proposal (23.02.2022)	**General Approach of the Council (30.11.2022)**	**European Parliament position (01.06.2023)**
The Commission's annex lists international conventions but has notable omissions, such as instruments on free, prior and informed consent, human rights defenders, and the European human rights framework. The proposal defines an 'adverse human right' to mean 'an adverse impact on protected persons resulting from the violation of one of the rights or prohibitions' in the Annex, creating a high threshold to characterise the adverse impact.	The Council's approach limits the scope of human rights covered by limiting them to those contained in the conventions ratified by Member States (Art 3(c)(i)—(ii)). The Council also provides that the human rights abuse should directly impair a legal interested protected in the instruments listed in part of the Annex.	The Parliament defines the impacts as resulting from actions removing or reducing the ability of an individual or group to enjoy the rights or protections enshrined in international conventions and instruments instead of using the term 'violation' to characterise an impact. The Annex covers a broad range of human rights and instruments, but some notable omissions remain, such as European human rights instruments.

ANNEX 4: OVERVIEW OF NATIONAL MANDATORY HUMAN RIGHTS DUE DILIGENCE LAWS

	France Duty of Vigilance Law	Germany Supply Chain Due Diligence Law	Norway Transparency Act	Belgium Law proposal introducing a duty of vigilance and a duty of responsibility on companies throughout their value chains	Netherlands proposal for a Responsible and Sustainable International Business Conduct Act
Status	Adopted and entered into force 2017[1]	Adopted in 2021 and entered into force in 2023[2]	Adopted in 2021 and entered into force on 1 July 2022.	Law proposal introduced in April 2021. Amendments introduced in August 2022 (included in the present summary). Adoption within the current legislature is uncertain	Law proposed in the Dutch parliament, latest draft from January 2023
Legislative Approach	Process-based Companies covered must establish, publish and implement a vigilance plan; the plan must include appropriate measures to identify and prevent human rights and environmental risks	Process-based To comply with due diligence obligations, companies must implement appropriate risk management systems, and establish responsibilities for monitoring compliance, for example by appointing a human rights officer.[3]	Process-based Companies must publish an account of their due diligence assessments in accordance with OECD Guidelines.	Process-based Companies must draw up a diligence plan setting out the measures taken to implement it.	Process-based General duty of care for companies to take reasonable measures to address human rights and environmental impacts; combined with obligations to integrate a due diligence policy and to investigate, tackle, monitor, report and remedy adverse impacts in value chains.
Sectoral vs cross sectoral	Cross sectoral The law applies to all sectors and industries[4]	Cross sectoral The law applies to all sectors and industries	Cross sectoral The law applies to all sectors and industries	Cross sectoral The law applies to all sectors and industries	Cross sectoral

	France Duty of Vigilance Law	Germany Supply Chain Due Diligence Law	Norway Transparency Act	Belgium Law proposal introducing a duty of vigilance and a duty of responsibility on companies throughout their value chains	Netherlands proposal for a Responsible and Sustainable International Business Conduct Act
All companies vs only certain companies	A defined set of large companies / domestic companies The law applies to a certain type of companies (sociétés anonymes) established in France with a certain number of employees (5,000 if head office is on French territory or 10,000 if head office is on French territory or abroad[5])	A defined set of large companies / domestic companies and foreign companies with certain presence in the territory The law applies to companies that have their central administration, their principal place of business, their administrative headquarters, their statutory seat or branch office in Germany; from 2024 the law will apply to companies with 1,000 or more employees[6]	A defined set of large companies / domestic companies and foreign companies which deliver products/services to domestic markets The law applies to larger enterprises that are resident in Norway and that offer goods or services in or outside Norway, or larger foreign enterprises that offer goods or services in Norway, and that are liable to tax to Norway pursuant to internal Norwegian legislation (Sections 2 and 3). It is estimated that the law will apply directly to around 9000 enterprises. In addition, we can expect that smaller enterprises will be affected indirectly, by larger enterprises' demands upon them.	All companies The law would apply to companies: • Established in Belgium (statutory seat) • Active in Belgium (which supply products to end users residing in Belgium or which deliver products from Belgium) SMEs would however not be under obligation to draw up a due diligence plan. Entry into force would first concern large companies or those involved in high-risk sectors or regions. It would take place one year later for SMEs that are not active in high-risk sectors or regions.	A defined set of large companies / domestic companies operating abroad and foreign companies, which carry out an activity in the Netherlands or selling a product on the Dutch market. Medium-sized companies may be covered 6 years after entry into force.

	France Duty of Vigilance Law	Germany Supply Chain Due Diligence Law	Norway Transparency Act	Belgium Law proposal introducing a duty of vigilance and a duty of responsibility on companies throughout their value chains	Netherlands proposal for a Responsible and Sustainable International Business Conduct Act
Material scope	A full range of human rights and environmental matters Serious violations of all human rights and fundamental freedoms, the health and safety of people and the environment[7]	Enumerated human rights and environmental matters[8] [9] Enumerated human rights and environmental risks, rather than covering the full spectrum of human rights issues	A full range of human rights Fundamental human rights the are internationally recognised human rights that are enshrined, among other places, in the International Covenant on Economic, Social and Cultural Rights of 1966, the International Covenant on Civil and Political Rights of 1966 and the ILO's core conventions on fundamental principles and rights at work. It also covers the European Convention on Human Rights, UN Convention on Rights of the Child etc. Does not include a threshold for the environment.	A full range of human rights, humanitarian law norms and environmental norms With respect to human rights law and humanitarian law, the law proposal provides a non-exhaustive (but fairly extensive) list of conventions to be taken into account. With respect to the environment, the proposal refers to art.2, par. 17 of EU regulation 2019/2088 but also to local environmental law and international environmental law.	Full range of human rights, environmental and climate matters, as a minimum, a non-exhaustive list of adverse impacts

	France Duty of Vigilance Law	Germany Supply Chain Due Diligence Law	Norway Transparency Act	Belgium Law proposal introducing a duty of vigilance and a duty of responsibility on companies throughout their value chains	Netherlands proposal for a Responsible and Sustainable International Business Conduct Act
Nature and scope of the due diligence obligation	Due diligence that covers human rights and environmental risks resulting directly or indirectly from a company's activities covering those of: • the company itself • companies under direct or indirect control[10] • subcontractors and suppliers with whom it maintains an established business relationship[11] [12]	Due diligence on: • the company itself • affiliated enterprises under the company's decisive influence • direct suppliers, i.e., focus on first-tier suppliers • indirect suppliers, if the company has substantiated knowledge of human rights or environmental violations by the suppliers	Due diligence on a full-supply chain business partners Supply chain means any party in the chain of suppliers and sub-contractors that supplies or produces goods, services or other input factors included in an enterprise's delivery of services or production of goods from the raw material stage to a finished product. Business partner means any party that supplies goods or services directly to the enterprise, but that is not part of the supply chain	Due diligence that covers the company, its subsidiaries, its associated companies (10% stake) and entities involved in its value chain. The value chain would include entities directly or indirectly supplying products, (including financial services) and entities receiving products (including financial services).	Due diligence regarding adverse impacts on human rights and the environment covering the entire value chain, including a company's own activities and those of its business relationships

	France Duty of Vigilance Law	Germany Supply Chain Due Diligence Law	Norway Transparency Act	Belgium Law proposal introducing a duty of vigilance and a duty of responsibility on companies throughout their value chains	Netherlands proposal for a Responsible and Sustainable International Business Conduct Act
Enforcement and liability	Civil liability mechanism If a company under the law's scope fails to establish, implement or publish a vigilance plan, any concerned parties can file a complaint; harmed individuals can bring a civil lawsuit based on French tort law to seek damages More precisely, two type of judicial enforcement mechanisms are provided for by the French duty of vigilance Law: • An injunction to ensure corporate compliance with the obligations set out in the Law (after having served the non-compliant company with a formal notice (mise en demeure), in case of persisting non-compliance after three months); • and the possibility of remediation when harm has occurred, which could have been prevented by the execution of the due of vigilance obligations (Art. L. 225-102-4 and L. 225-102-5 of the Commercial Code).	Administrative supervision Implementation is monitored by BAFA which carries out risk-based inspections of companies, and imposes financial penalties and administrative fines of up to eight million euros or up to two percent of their annual turnover for violations; companies in violation can be excluded from the award of public contracts within a period of up to three years.[13] A violation does not give rise to any liability under civil law of Germany;[14] however, the law enables affected persons to authorise domestic trade unions and NGOs to bring civil proceedings in their own capacity for issues of paramount importance, such as right to life.[15]	Administrative supervision The Consumer Authority monitors compliance with the provisions of the Act. To ensure compliance, the Consumer Authority and the Market Council may issue individual decisions regarding prohibitions and orders, enforcement penalties and infringement penalties Duty to provide information: Everyone is obligated to provide the Consumer Authority and the Market Council with the information these authorities require to carry out their duties pursuant to this Act	Administrative supervision Criminal law enforcement Civil liability mechanism An administrative body would monitor the submission of due diligence plans by companies and respect of the due diligence obligation throughout the whole value chain. This administrative body would also be able to initiate criminal procedures. A violation could give rise to civil liability and the law proposal also provides for a collective reparation mechanism enabling NGOs and trade unions to lodge compensation claims on behalf of victims. The proposal also provides for a reversal of the burden of proof. Companies would need to demonstrate that they complied with their due diligence obligation.	Administrative enforcement through the Netherlands Authority for Consumers and Markets (ACM) Further, civil enforcement is possible based on tort law where companies have breached the general duty of care to take reasonable measures to address human rights and environmental impacts. If a claimant provides facts suggesting a link between an adverse impact and a company, the latter must prove that it has not acted in breach of its obligations.

	France Duty of Vigilance Law	Germany Supply Chain Due Diligence Law	Norway Transparency Act	Belgium Law proposal introducing a duty of vigilance and a duty of responsibility on companies throughout their value chains	Netherlands proposal for a Responsible and Sustainable International Business Conduct Act
Transparency and disclosure	Disclosure in the company's annual reports[16] (The vigilance plan as well as the report on its effective implementation are made public and included in the annual report (rapport de gestion) The plan is intended to be drawn up in association with the company's stakeholders	Disclosure of annual reports online Companies must submit annual reports on their implementation of their due diligence obligations to BAFA and must publish the reports online.[17]	Disclosure online plus provision of access information in the company's annual report / Mechanism of the right to information of any third party	Disclosure of all due diligence plans in a publicly accessible database. The plan should also be published on the website of the company. Companies must also produce an annual report of the implementation of the due diligence plan. All 'interested parties" could request access to both documents.	Annual disclosure of a report on the company's due diligence policy and measures, which must be accessible on its website.
Key resources	English translation of the Law in Reference Guidance ECCJ. French Corporate Duty of Vigilance Law FREQUENTLY ASKED QUESTIONS.	English translation of the German Law Germany: New Law Obligates Companies to Establish Due Diligence Procedures in Global Supply Chains to Safeguard Human Rights and the Environment Federal Ministry of Labour and Social Affairs of Germany. Act on Corporate Due Diligence in Supply Chains and Frequently Asked Questions	English translation of the Transparency Act: https://lovdata.no/dokument/NLE/lov/2021-06-18-99 The Consumer Authority has allot of information in English: https://www.forbrukertilsynet.no/the-transparency-act	Text of the legislative proposal (including legislative history and amendments proposals) Analysis by the Federal institute for human rights (also available in Dutch)	Unofficial English translation of the Responsible and Sustainable International Business Conduct Act (Wet verantwoord en duurzaam internationaal ondernemen) For more details on the state of the proposal, visit the dedicated website of the Parliament (in Dutch)

ENDNOTES

1 Business and Human Rights Resource Centre (BHRRC). France's Law on the Corporate Duty of Vigilance.
2 Article 5, Paragraph 1 of the Act.
3 FMLSA. Frequently Asked Questions. Q VI.1.
4 ECCJ. French Corporate Duty of Vigilance Law FREQUENTLY ASKED QUESTIONS. Q2.
5 ECCJ, supra. Q3.
6 FMLSA, supra. Q I.3.
7 ECCJ, supra. Q2.
8 The following human rights are listed: prohibition of child labour, protection against slavery and forced labour, freedom from discrimination, protection against unlawful taking of land, occupational health and safety and related health hazards, prohibition of withholding an adequate living wage, the right to form trade unions and workers' representations, the prohibition of causing any harmful soil change or water pollution and protection against torture. (FMLSA, supra. Q V.1.)
9 The following environment-related risks are enumerated: environmental risks which lead to human rights violations (e.g., poisoned water) and the risks arising from substances that are dangerous to humans and the environment, specifically persistent organic pollutants regulated under the Stockholm Convention, mercury emissions regulated under the Minamata Convention and transboundary movements of hazardous waste and their disposal regulated under the Basel Convention. (FMLSA, supra. Q V.1.)
10 The concept of control here is used by commercial companies for book-keeping purposes in the context of the preparation of consolidated accounts and the group management report. It is classified as exclusive control which enables the company to have decision-making power, in particular over the financial and operational policies of another entity. This control can be exercised by different methods: legal control, de facto control or contractual control. (Stéphane Brabant, Charlotte Michon and Elsa Savourey. The Vigilance Plan. Cornerstone of the Law on the Corporate Duty of Vigilance. Page 2.)
11 Under French law, the concept of established business relationship covers all types of relations between professionals, defined as stable, regular relationships, with or without contract, with a certain volume of business, creating a reasonable expectation that such relation will last. (ECCJ, supra. Q4)
12 ECCJ, supra. Q4 and Q5.
13 FMLSA, supra. Q XIV.1 and XV.1.
14 Section 3, Paragraph 3 of the Act.
15 FMLSA, supra. Q XV.3
16 ECCJ, supra. Q5.
17 FMLSA, supra. Q XIII.1.