HOW DO THE PIECES FIT IN THE PUZZLE?

Making sense of EU regulatory initiatives related to business and human rights
HOW DO THE PIECES FIT IN THE PUZZLE?

Making sense of EU regulatory initiatives related to business and human rights

Authors
Gabrielle Holly, Senior Adviser, Human Rights and Business
Signe Andreasen Lysgaard, Strategic Adviser, Human Rights and Business

Acknowledgements
The authors of this publication are indebted to the following reviewers: Elin Wrzoncki, Danish Institute for Human Rights; Alejandro Garcia Esteban, European Coalition for Corporate Justice; Richard Gardiner, Global Witness; Mercy Obonyo, Network of African National Human Rights Institutions; Aleksandra Palinska, Finance Watch; Anaïs Schill, Commission nationale consultative des droits de l’Homme; Melanie Wuendsch and Bettina Braun, Deutsches Institut für Menschenrechte.

Version III, April 2022
First published January 2022

Graphic design: Michael Länger
Cover image: jcomp - freepik.com


© 2022 The Danish Institute for Human Rights
Wilders Plads 8K
DK-1403 Copenhagen K
Phone +45 3269 8888
www.humanrights.dk

Provided such reproduction is for non-commercial use, this publication, or parts of it, may be reproduced if the author and source are quoted.
### SUMMARY TABLE - EU MEASURES RELATED TO BUSINESS AND HUMAN RIGHTS

<table>
<thead>
<tr>
<th>MEASURE</th>
<th>NATURE</th>
<th>STAGE</th>
<th>REFERENCE TO BHR FRAMEWORKS</th>
<th>DUE DILIGENCE</th>
<th>REGULATORY ALIGNMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Corporate Sustainability Due Diligence Directive (CSDD Directive)</td>
<td>Due diligence obligation and Corporate governance reform</td>
<td>Proposal launched February 2022</td>
<td>Multiple references and overall ambition to align with key international frameworks including the UNGPs and OECD Guidelines</td>
<td>Contains due diligence requirements that broadly aligns with due diligence steps from UNGPs and OECD Guidelines but depart from these frameworks on several accounts</td>
<td>Broad due diligence requirement will need to be considered alongside other sectoral due diligence initiatives such as the Conflict Minerals, Timber, Forced Labour and Deforestation import controls. CSDD Directive relies on CSRD for associated disclosures. Unclear how it relates to SFDR, including when covering financial sector companies. Unclear how it will interact with taxonomy regulation article 18.</td>
</tr>
<tr>
<td>Corporate Sustainability Reporting Directive (CSRD)</td>
<td>Reporting requirement</td>
<td>CSRD proposal published April 2021 and is expected to be adopted in 2022. First set of associated Disclosure Standards also expected to be finalised in 2022</td>
<td>The CSRD proposal aims for consistency with international instruments such as the UNGPs, and the OECD Due Diligence Guidance for Responsible Business Conduct and related sectoral guidelines, the UN Global Compact, the ILO Tripartite Declaration, ISO 26000 and the UN Principles for Responsible Investment</td>
<td>Requires disclosure of the due diligence process implemented, but does not itself require the exercise of due diligence or alignment with RBC standards</td>
<td>CSRD to serve as the reporting obligation associated with CSDD. CSRD also key to taxonomy alignment reporting including on article 18. Unclear how the disclosure requirements, will align with the SFDR disclosure obligations on financial market participants</td>
</tr>
<tr>
<td>Sustainable Finance Disclosure Regulation (SFRD)</td>
<td>Reporting requirement</td>
<td>Adopted in 2019 and in force as of March 2021. Regulatory technical standards adopted in delegated regulation in April 2022. Enter into force January 2023.</td>
<td>Several reporting requirements link to UNGPs and OECD Guidelines including two mandatory indicators on OECD Guideline alignment of portfolio companies and several voluntary human rights related indicators</td>
<td>Principal adverse impact statement requires financial market participants to describe their adherence to international standards for RBC due diligence</td>
<td>Financial market participants will rely on information stemming from CSRD as it relates to disclosing information related to investees. Yet it is not entirely clear how the SFDR, CSRD and CSDD will interrelate.</td>
</tr>
</tbody>
</table>
## SUMMARY TABLE - EU MEASURES RELATED TO BUSINESS AND HUMAN RIGHTS

<table>
<thead>
<tr>
<th>MEASURE</th>
<th>NATURE</th>
<th>STAGE</th>
<th>REFERENCE TO BHR FRAMEWORKS</th>
<th>DUE DILIGENCE</th>
<th>REGULATORY ALIGNMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Green Taxonomy</strong></td>
<td>Classification system</td>
<td>Entered into force July 2020. A first</td>
<td>One of three requirements for environmentally sustainable investments is that they align</td>
<td>Alignment with the minimum safeguards clause (article 18) is expected to entail</td>
<td>Unclear how article 18 will interrelate with CSRD and SFDR reporting requirements.</td>
</tr>
<tr>
<td></td>
<td>establishment a list of</td>
<td>delegated act on climate change was</td>
<td>with the UNGPs and OECD Guidelines</td>
<td>implementation of due diligence, but at this point in time there is no</td>
<td>Further, unclear how the CSDD Directive might impact functioning of article 18 clause</td>
</tr>
<tr>
<td></td>
<td>environmentally sustainable</td>
<td>adopted in June 2021 for scrutiny by the</td>
<td></td>
<td>clarification on the functioning of article 18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>activities</td>
<td>co-legislators. The Commision has</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>since proposed a complementary</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>delegated act on gas and nuclear</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>activities. Finally, a second</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>delegated act for the remaining four</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>objectives will be published in 2022</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Taxonomy Social Extension</strong></td>
<td>Classification system</td>
<td>Report from Platform on Sustainable Finance</td>
<td>Final report indicates a social taxonomy should rely heavily on UNGPs and OECD Guidelines</td>
<td>Final report indicates a social taxonomy would include expectations on due</td>
<td>Unclear how a social taxonomy would interrelate with the existing taxonomy minimum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Published February 2022</td>
<td></td>
<td>diligence including in relation to criteria for substantial contribution to</td>
<td>safeguards clause as well as with the CSDD Directive</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>taxonomy objectives</td>
<td></td>
</tr>
<tr>
<td><strong>Conflict Minerals Regulation</strong></td>
<td>Import control</td>
<td>In force since June 2017 with requirements</td>
<td>Refers to the UNGPs and OECD Guidelines, as well as the OECD Due Diligence Guidance for</td>
<td>Requires ongoing due diligence with respect to the import of Tin, Tantalum,</td>
<td>The sector and issue specific due diligence mechanism include in the Conflict</td>
</tr>
<tr>
<td></td>
<td></td>
<td>on EU importers applicable from January</td>
<td>Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas</td>
<td>Tungsten and Gold in line with that set out in the OECD Due Diligence Guidance</td>
<td>Minerals Regulation is expected to co-exist with the broad due diligence requirement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2021</td>
<td></td>
<td>for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk</td>
<td>included CSDD Directive</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Areas</td>
<td></td>
</tr>
</tbody>
</table>

Revision date: 19/04/22
## 1 SUMMARY TABLE - EU MEASURES RELATED TO BUSINESS AND HUMAN RIGHTS

<table>
<thead>
<tr>
<th>MEASURE</th>
<th>NATURE</th>
<th>STAGE</th>
<th>REFERENCE TO BHR FRAMEWORKS</th>
<th>DUE DILIGENCE</th>
<th>REGULATORY ALIGNMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timber Regulation</td>
<td>Import control</td>
<td>In force since October 2010 with requirements on EU importers applicable from March 2013</td>
<td>Does not expressly deal with human rights, however implementation reporting has noted that it is “the first legal instrument at European Union level which includes mandatory due diligence” which is a key principle for corporate sustainable responsibility under the UNGPs</td>
<td>Requires ongoing due diligence with respect to timber and timber products in line with the requirements of the Regulation</td>
<td>The sector and issue specific due diligence mechanism included in the Timber Regulation is expected to co-exist with the broad due diligence requirement included in the CSDD Directive</td>
</tr>
<tr>
<td>Proposed Import ban on goods produced using forced labour</td>
<td>Import control</td>
<td>Announced in September 2021 but next steps are unclear</td>
<td>New instrument is expected to build on international standards</td>
<td>It is not yet clear precisely how the proposed import ban will operate and what due diligence obligations could be included. The new initiative expected to cover both domestic and imported products and combine a ban with a robust, risk-based enforcement framework.</td>
<td>Unclear how a proposed ban would interact with broad due diligence requirement included CSDD Directive, but the ambition is to complement existing horizontal and sectoral initiatives.</td>
</tr>
<tr>
<td>Proposed Deforestation Regulation</td>
<td>Import control</td>
<td>Published in November 2021</td>
<td>Does not expressly address the human rights impacts of business, it nonetheless recognises the link between deforestation and adverse impacts on the enjoyment of human rights</td>
<td>Requires ongoing due diligence with respect to soy, beef, palm oil, wood, cocoa and coffee commodities, as well as derived products including leather, oil cakes and chocolate based on the collection of specified information</td>
<td>The stated intention of the proposal is for it to be complementary with the CSDD Directive, however the two initiatives have differing objectives and scope. The due diligence requirements of the Deforestation Regulation will expectedly, be more specific compared to the general duties under the proposed CSDD Directive.</td>
</tr>
</tbody>
</table>
In recent years the European Union has introduced a range of regulatory initiatives which, in different ways, seek to address the impacts that businesses have on the enjoyment of human rights, including, in particular, their operations outside the EU and throughout global value chains. These include initiatives on Corporate Sustainability Reporting, on GovernanceCorporate Sustainability Due Diligence, and Sustainable Finance, as well as trade rules and import/export restrictions. Each measure aims to ensure that businesses, financial institutions and the economic system as such develop responsibly and contribute to sustainable development. Central to advancing both these aims is fostering respect for human rights by business and financial institutions. The measures, however, vary in the degree to which they align with human rights or business and human rights standards. Further, the measures approach their shared objective from slightly different angles, each potentially forming a “piece of the puzzle”:

- Some initiatives, such as those which create due diligence obligations like the Conflict Minerals and Timber Regulations and the proposed Corporate Sustainability Due Diligence Directive and Deforestation Regulation, are aimed at ensuring that companies establish policies and processes, which would enable them to identify and address the impacts that they have on people and planet;
- Some initiatives, such as the Initiative proposed Corporate Sustainability Due Diligence Directive address the inner workings of the company in other ways, imposing requirements with respect to the governance of human rights and environmental due diligence, as well as obligations to incorporate sustainability considerations into company strategy;
- Some initiatives, such as the proposed Corporate Sustainability Reporting Directive and Sustainable Finance Disclosures Regulation, aim to encourage sustainable behaviour through disclosure regimes, requiring companies to report on the impacts they have on people and planet, as well as their governance, policies and procedures for managing such impacts;
- Others, like efforts to build green and social taxonomies, provide a classification system of economic activities and their sustainability contributions with the ambition to drive sustainable investment and combat green and social washing; and
- Others, still, leverage EU market access to encourage corporate actors to address their human rights impacts, such as the Conflict Minerals and Timber Regulations, proposed deforestation and forced labour import bans and the due diligence obligations in the proposed Corporate Sustainability Due Diligence Directive by its application to certain non-EU companies.

There is a need for regulatory alignment, in particular with the reforms currently under consideration under the proposed Corporate Sustainability Due Diligence Directive. However, while there is an acknowledged need for policy coherence, each initiative is at a different stage in the legislative process. Some are in force, some have been adopted as proposals but have not yet been through the full legislative process, and others are still in the development and consultation phases. There remain points of potential misalignment and overlap between each of the initiatives considered as part of this briefing.

As each of these initiatives potentially contributes, in some way, to the respect for human rights by business, there is further a need to ensure consistency with international instruments such as the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the OECD Due Diligence Guidance for Responsible Business Conduct. Regarding the UNGPs and OECD Guidelines as critical touchstones for the development of each of these regulatory reforms is a practical means of facilitating regulatory alignment and policy coherence, as well as a common understanding of human rights in a private sector context.

This briefing provides an overview of the various EU regulatory initiatives of relevance to business and human rights and is separated into sections considering the various regulatory measures in force or under development by the EU. Each section briefly: summarises the measure; notes the stage the measure is at in the legislative process; describes how the measure relates to business and human rights; and finally, considers what piece the measure contributes to the broader puzzle. Each section is designed to be a standalone summary of each particular measure as it relates to business and human rights, and will be updated periodically to capture developments as the various legislative processes proceed. An overview table of the various measures is included on pages 3-5.
3 SUMMARY OF REGULATORY MEASURES

OVERARCHING POLICY INITIATIVES
A OVERARCHING POLICY INITIATIVES

There are a number of overarching EU policy initiatives of relevance to business and human rights and which inform the various initiatives and legislative proposals discussed below. Key among them is the European Green Deal, a suite of policy and legislative initiatives announced in 2019 aimed at achieving no net emissions of greenhouse gases by 2050. Key elements include decoupling economic growth from resource use and ensuring that no person and no place is left behind in the green transition.

A number of key legislative and policy initiatives of relevance to business impacts on the enjoyment of human rights fall within the umbrella of the Green Deal, including:

- The Action Plan on Sustainable Finance, which includes the Sustainable Finance Disclosure Regulation (2016/2341), the Taxonomy Regulation (2020/852)
- measures which place restrictions on access to the single market for certain commodities on the basis of their human rights and environmental impacts, such as the proposed Deforestation Regulation

Other key initiatives, such as the proposed Corporate Sustainability Reporting Directive and the proposed Corporate Sustainability Due Diligence Directive, fall within social and employment policy, "An Economy that Works for People" under the Commission work programme 2021, although they relate to the objectives of the Green Deal.

Other initiatives considered in this briefing, such as measures which place restrictions on the import of conflict minerals and certain timber products, predate the European Green Deal, but contribute to its aims.

Another key framework underpinning the EU’s initiatives to further sustainability in the context of private sector initiatives is the 2020 European Pillar of Social Rights and the accompanying action plan. The Social Pillar covers many aspects relevant to conditions for workers including in the context of equal opportunities and access to the labour market as well as around ensuring fair working conditions. The implementation of the action plan is set for 2025.

Although not elaborated on in this paper, other Commission actions relevant to business and human rights include:

- Measures that tackle specific human rights issues including labour rights such as the proposed pay transparency directive designed to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through a pay transparency and enforcement mechanisms, or the proposed directive addressing adequate minimum wages;
- Measures that aim to improve social sustainability in certain sectors such as forthcoming work on access to essential services (tabled for 2022);
- Measures directed at repairing the economic and social damage caused by the COVID-19 pandemic such as NextGenerationEU, which includes provision for fair climate and digital transitions;
- Measures concerning the EU’s external activities, such as the 2020-2024 Action Plan on Human Rights and Democracy, which contains specific provisions on business impacts on the enjoyment of human rights;
- Measures which address the sustainability of products sold on the single market, such as the Sustainable Product Policy Initiative;
- Measures to protect the environment, such as the Environmental crime directive revision proposal (2021), which aims to strengthen the provisions on criminal sanctions for natural and legal persons;
- Measures addressing corporate tax payment, such as a directive proposal for minimum corporate tax for large companies; and
- Measures which impact on access to remedy such as the Rome II Regulation and & Brussels Recast Regulation which specify: the law applicable to a non-contractual civil claim; and jurisdiction and enforcement of judgments, respectively.
The EU has undertaken a number of steps focused on driving real economy companies to better manage and report on sustainability matters, both within their own operations and across their value chains. The two main developments in this area are the proposed Corporate Sustainability Due Diligence Directive, which includes a mandatory due diligence obligation with respect to human rights and environmental impacts and associated corporate governance reforms; and the Corporate Sustainability Reporting Directive, which concerns disclosures on a range of sustainability matters.

Both of these measures are focused on sustainability more broadly, considering not only environmental and climate change impacts, but also the impacts that a company may have on the enjoyment of human rights.
B.1 PROPOSED CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

WHAT IS IT?

The proposed Corporate Sustainability Due Diligence Directive (CSDD) (formerly the Sustainable Corporate Governance Initiative) outlines broad, cross sectoral due diligence requirements across the value chain, with certain limitations. It applies to large EU and non-EU companies and after a two year transition period, to medium sized EU and non-EU companies which operate in the textile, agricultural and extractive sectors. The proposal expressly excludes SMEs from its scope.

Under the CSDD, Member States are obliged to ensure that companies carry out due diligence by:

- integrating due diligence into their policies;
- identifying actual or potential adverse impacts;
- preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent;
- establishing and maintaining a complaints procedure;
- monitoring the effectiveness of their due diligence policy and measures; and
- publicly communicating on due diligence.

Companies are required to undertake due diligence on their own operations, their subsidiaries and those with whom they have an “established commercial relationship” in the value chain (which includes both the supply chain and the production of their goods and services, but also the downstream i.e., impacts that occur once a product or service leaves the company).

The due diligence requirement is supported by some corporate governance reforms, including requirements that company directors put in place and oversee directors the due diligence policy and process with due input from relevant stakeholders and CSOs and report to the board. It also includes a duty of care which states that directors 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.

WHAT STAGE IS IT AT?

Compliance with the proposal will be enforced by a system of Member State Supervisory Authorities with powers to investigate and sanction, linked through a European network. This is supported by requirements that companies establish a complaints mechanism available to affected parties, including CSOs or trade unions, and a civil liability mechanism that allows for a company to be sued for harms occasioned as a result of due diligence failures.

The CSDD initiative was announced in April 2020 and has undergone an Inception Impact Assessment and a public consultation between October 2020 and June 2021. The proposal emerged as an initiative overseen by the Directorate General for Justice and Consumers (DG JUST), but in July 2021 the Directorate General for the Internal Market (DG GROW) joined the file.

The Commission initially indicated that it would publish a proposal in June 2021 and subsequently in December 2021, but their proposals twice received a “red card” from the EU Regulatory Scrutiny Board (RSB).

The proposed CSDD was eventually published on 23 February 2022 and will follow a full legislative process at the EU Parliament and Council of the EU before being formally adopted after which it will be transposed at the national level.
The Explanatory Memorandum and Recitals to the CSDD expressly refer to the requirements of the UNGPs and OECD Guidelines. The process of due diligence outlined in the proposal generally aligns with the expectations of these frameworks, however there are some critical departures. For example, the proposal limits the scope of due diligence in the value chain by reference to an “established commercial relationship” which is a concept not found in the international standards the proposal is based on. The UNGPs and the OECD Guidelines expect that companies will take a risk-based approach to their due diligence, undertaking an assessment of their operations and business relationships which is guided by severity of risk rather than closeness of the business relationship. Other departures are found in the more limited expectations on companies with respect to access to remedy, in the centrality of the use of contractual assurances to secure compliance with code of conduct requirements, and the more limited personal scope of the proposal.

For a deeper analysis of the CSDD proposal please see separate DIHR publication *Legislating for Impact*.

The CSDD proposal imposes due diligence obligations which require covered companies to identify and address human rights impacts consistent with the process of human rights due diligence outlined in the UNGPs.

The Explanatory Memorandum to the proposal notes that a number of EU member states including France, Germany and the Netherlands have already enacted their own versions of a due diligence law, each of which differ slightly in scope, content and enforcement. The proposal therefore aims to address a risk of fragmentation and the possibility that diverging approaches will jeopardises a level playing field.

The broader, cross-sectoral approach to due diligence set out in the CSDD will need to be considered alongside existing Regulations which include a more narrow due diligence component, such as the Conflict Minerals and Timber Regulations. The proposed Deforestation Regulation explicitly contemplates this, and anticipates that the more specific due diligence requirements with respect to deforestation will sit alongside the overarching due diligence obligation expected in the CSDD. This is consistent with provisions in the CSDD which specify that nothing in the CSDD shall constitute grounds for reducing the level of protection of human rights, or protection of the environment or climate existing at the time of the adoption of the Directive. Further, the CSDD shall not prejudice other obligations with respect to human rights or the environment, meaning that if more extensive or specific protections apply in other EU laws, the stricter obligation shall prevail.

The CSDD does not include its own transparency requirements obliging a company to make disclosures about their due diligence processes, rather deferring those disclosures to the CSRD (discussed below). Care must therefore be taken to ensure that the CSRD disclosure requirements are adequate to meet the expectations of the UNGPs and this proposed Directive. With regard to the financial sector, the CSDD includes in its personal scope large financial undertakings, however it is not clear how the proposed CSDD requirements will interplay with linked requirements under the Sustainable Finance Disclosure Regulation and taxonomy regulation.
B.2 CORPORATE SUSTAINABILITY REPORTING DIRECTIVE

WHAT IS IT?

The proposed Corporate Sustainability Reporting Directive (CSRD) would amend the Non-Financial Reporting Directive (NFRD) adopted in 2014, and effective from 2017 which sets out rules on disclosure of non-financial information by certain large EU based companies, including disclosures on environmental, social, human rights, anti-bribery and corruption and diversity matters. In the assessment accompanying the proposal, the Commission refers to the insufficiency of existing reporting requirements, resulting in disclosures failing to meet the information needs of users. To address these shortcomings, the CSRD proposal:

- Reframes the reporting requirement from a collection of non-financial topics for reporting to a requirement to report on “sustainability matters” and “principal impacts”, concepts derived from the Sustainable Finance Disclosure Regulation;
- Extends the scope to include not only large public interest companies with over 500 employees, but all large companies and listed SMEs;
- Aims to remove ambiguity around the “double materiality” requirement to reporting, meaning that companies should report not only on how sustainability issues impact their business, but also how the company impacts on people and planet; and
- Will provide for new EU sustainability reporting standards that all reporting companies will be required to use.

The proposal foresees that companies will be required to report on the following “sustainability matters”:

- A description of the undertaking’s business model and strategy, including plans to ensure compliance with net zero targets, the effect of sustainability risks and opportunities, and how the strategy/plans reflect broader stakeholder interests;
- Sustainability targets and progress against them;
- Due diligence processes implemented for sustainability matters;
- Principal and potential adverse impacts throughout the value/supply chain;
- The role of management in sustainability matters; and
- Principal risks of the undertaking related to sustainability matters.

It is expected that company report will be required to be uploaded in electronic format and accessible through a Single Access Point to be developed by the European Securities and Markets Authority.

Interim working papers detailing draft reporting standards outlines the potential future reporting structure under the CSRD as well as proposed specific disclosure requirements. In addition to cross-cutting and aggregate disclosure requirements, the draft suggests introducing distinct standards related to environmental, social and governance impacts. The social pillar is suggested to consist of separate reporting standards as it relates to impacts on own workers, workers in the value chain, communities and end-users/consumers.

WHAT STAGE IS IT AT?

A public consultation on a review of the NFRD was conducted in 2020, held between February and June 2020. On 21 April 2021, the Commission adopted a proposal for a CSRD, which would amend the NFRD. The CSRD proposal is following a full legislative process at the EU Parliament and Council of the EU before being formally adopted.

The proposed CSRD is overseen by the EU Directorate General for Financial Stability and Capital Markets (DG FISMA).

In June 2020, the European Financial Reporting Advisory Group (EFRAG) was given a mandate to develop draft EU sustainability reporting standards. In March 2021 the EFRAG Project Task Force on preparatory work for the elaboration of possible EU non-financial reporting standards published technical recommendations and a roadmap for the development of the reporting standards. By April 2022 the task force has published a long list of working papers outlining draft disclosure requirements that are expected to go through consultation and further finalisation steps with a view to adoption by the Commission by the end of October 2022, with a second set of standards including to follow in October 2023.
B.2 CORPORATE SUSTAINABILITY REPORTING DIRECTIVE

The CSRD proposal and its associated disclosure standards aim for consistency with international instruments such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct and related sectoral guidelines, the UN Global Compact, the Tripartite Declaration of Principles of the International Labour Organisation concerning Multinational Enterprises and Social Policy, the ISO 26000 standard on social responsibility, and the UN Principles for Responsible Investment.

The proposal’s understanding of due diligence aligns with the UNGPs as a process that undertakings carry out to identify, prevent, mitigate and remediate the principal actual and potential adverse impacts connected with their activities.

The proposal also incorporates other concepts from the UNGPs, requiring companies to report on “principal” impacts connected with an undertaking’s activities including impacts directly caused by the undertaking, impacts to which the undertaking contributes, and impacts which are otherwise linked to the undertaking’s value chain. Although the concept of “principal” impacts is intended to align with the UNGPs principle of severity, the use of terminology which departs from the UNGPs could lead to conceptual confusion.

The CSRD requires undertakings to make certain disclosures about social factors. Human rights are considered as a subset of “social” and is listed separately from equal opportunity and certain issues related to labour. Equal opportunities, working conditions and other areas that the EU wishes to highlight are however ultimately included within human rights and should be considered as part of an overarching obligation to reporting on the undertaking’s human rights impacts. Interim working papers outlining potential disclosure requirements related to social factors are split by impacts on own workers, workers in the value chain, communities and end-users/consumers. The drafts suggest that future reporting will align closely with the UNGP due diligence steps, however risk of deviations remain including with respect to not unintendedly narrowing the spectrum of impacts considered for reporting as a result of the stakeholder-driven approach.

The CSRD is likely to require undertakings to disclose a description of the due diligence process implemented with regard to sustainability matters; the principal actual or potential adverse impacts connected with the undertaking’s value chain, including its own operations, its products and services, its business relationships and its supply chain; any actions taken, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts.

Although the CSRD is likely to require disclosures of the due diligence processes a company is using with respect to sustainability matters, it does not itself require the exercise of due diligence. It therefore constitutes a softer element in the mix of measures which should be designed to work alongside a harder element provided by the due diligence obligation in the proposed CSDD Directive. Given that the CSRD proposal was published substantially before the CSDD proposal, particular care needs to be taken to ensure that the form of disclosures required are adequate to meet the CSDD requirements. Further, the draft CSRD disclosure standards have a wider scope than that of the CSDD, e.g. covering both negative and positive impacts as well as double materiality reporting, including around risks to businesses. As a result, there will likely be a need to specify which disclosure requirements of the CSRD are those that discharge the CSDD obligations and which serve a different purpose. This will also be key for demonstrating alignment with article 18 of the taxonomy regulation. Further, potential conflicting requirements or cross-pressures need to be carefully thought through. For instance, how will obligations to transparently report severe impacts under the CSRD interact with a potential liability mechanism seeking accountability for such impacts under the CSDD regime.

The CSRD requires disclosure of “sustainability matters”, a concept derived from the disclosures on “sustainability factors” in the Sustainable Finance Disclosure Regulation. However, it is also not yet clear how the CSRD will work with the Sustainable Finance Disclosure Regulation which requires
disclosures from financial market participants on sustainable investments. It is notable that the Sustainable Finance Disclosure delegated regulation requires periodic investment level disclosure of information on whether an investment is aligned with the OECD Guidelines and the UNGPs whereas real economy companies obliged to report under the CSRD expected to disclose their due diligence processes but are not explicitly required to demonstrate alignment when reporting on their own sustainability impacts.
In line with its Sustainable Finance Strategy the EU has already taken a number of steps to further the sustainability agenda within the financial sector and the financial system as such. Linked to the Green Deal and urgency of leveraging the financial sector to address climate change and fund the green transition, several of the initiatives have predominantly been aimed at ‘greening’ finance rather than necessarily at capturing the full range of sustainability aspects.

Many of them however do contain social or human rights specific elements and hence merit further monitoring and interrogation from a business and human rights angle. Select finance oriented legislative measures as well as ones currently under development are presented and discussed below.
C.1 SUSTAINABLE FINANCE DISCLOSURE REGULATION

WHAT IS IT?

The Sustainable Finance Disclosure Regulation (2019/2088) (SFDR) is part of a broader suite of measures taken by the EU in follow up to the Sustainable Finance Action Plan. The regulation aims to strengthen the disclosures of the financial services sector that pertains to investments promoted as having sustainability as its objective or as having environmental, social or governance (ESG) characteristics. The measure among other things aims to encourage financial market participants (FMPs) such as asset managers, pension funds or insurance companies, as well as financial advisers to scale up their consideration of negative environmental or social risks and impacts in their investment decisions or financial advice. The measure includes different components to achieve that aim. For example, FMPs such as asset managers with more than 500 employees, have to disclose periodic entity level 'principal adverse impacts statements'. The regulation applies to both FMPs and financial advisers, covers both entity (corporate-wide) and product (investment level) level reporting and requires disclosures in the form of pre-contractual disclosures (aimed at capturing the degree to which sustainability is thought into investment decisions), website disclosures and disclosures in periodic reports. The SFDR is accompanied by delegated regulation that detail the content, methodologies and presentation of the relevant information required though technical standards.

WHAT STAGE IS IT AT?

The regulation was adopted in spring 2019 and published in December 2019. The regulation and its different components are introduced in stages the first of which started applying to FMPs in March 2021 although technical disclosure standards were not adopted at the time. The final regulatory technical standard reports were published in February and October 2021. The latter aims to be a “single rulebook” in relation to both SFDR requirements and taxonomy-related product disclosures (refer to taxonomy section). The regulatory technical standards were transposed into law in April 2022 when the Commission adopted delegated regulation. According to the supervisory statement the application of the delegated regulation has however been postponed until January 2023.
C.1 SUSTAINABLE FINANCE DISCLOSURE REGULATION

The SFDR refers to sustainability factors defined as ‘environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters’. The delegated regulation requires period disclosure of information on whether an investment is aligned with the OECD MNE Guidelines and the UNGPs. The delegated regulation also includes pre-contractual reporting questions on how investments align with the aforementioned frameworks. A supportive reporting template for disclosing the mandatory ‘principal adverse impact statement’ contained in annex one of the delegated regulation further include 14 mandatory ‘principle adverse impact (PAI) indicators’ five of which relate to social sustainability and/or human rights. Two of these include OECD MNE Guidelines, but none of them refer explicitly to the UNGPs, instead they confusingly refer to UN Global Compact. Through the OECD Guideline related indicators, FMPs will have to disclose their share of investments in investee companies that have been involved in violations of the OECD Guidelines as well as their share of investments in investee companies without policies to monitor compliance with the OECD Guidelines or grievance /complaints handling mechanisms to address violations of OECD Guidelines. UNGPs are further referenced in additional voluntary indicators. In other words, once the regulation starts applying it has potential to drive more consideration for human rights and responsible business conduct by asset managers and eventually owners and others and to result in more transparency around their efforts. However, the regulation might also add to the confusion, including by introducing indicators that are not fully aligned with business and human right standards as well as by requiring FMPs to disclose whether an investment is aligned with RBC standards or not, which is a difficult request as RBC standards are not compliance standards, and hence a yes / no result is challenging as alignment with the standards entail continuous implementation efforts.

True to the name of the measure, at its core the regulation is a disclosure regime and hence will contribute to driving more transparency around the inclusion of environmental and social risk factors in investment. It importantly addresses entities in the financial services sector, whereas the CSRD is aimed at real-economy companies. The two measures, however, are interdependent as FMPs will rely on information stemming from CSRD standards to meet obligations under the SFDR. The SFDR also brings to life reporting in relation to the Taxonomy Regulation, as it for instance commits FMPs to report on the degree of taxonomy alignment, which in principle should include alignment with the minimum safeguards clause that also includes human rights standards (refer to the Green Taxonomy section). The measure in other words is a way of encouraging the uptake of the agenda within the financial sector and thereby through a trickledown effect amongst investee companies. Rather than mandating a certain performance or conduct, the bill aims to result in such change through the disclosure requirement.
C.2 THE GREEN TAXONOMY

WHAT IS IT?

The Taxonomy regulation from 2020 aims to provide clarity for investors, companies and policymakers on which economic activities can be considered environmentally sustainable thereby hoping to redirect capital toward economic activities that further the aims of the Green Deal. Concretely, it introduces a classification system of environmentally sustainable economic activities by introducing six environmental objectives:

- Climate change mitigation
- Climate change adaptation
- Use and protection of water and marine resources
- Circular economy
- Pollution prevention and control
- Protection and restoration of biodiversity and ecosystems

For economic activities to be considered environmentally sustainable or ‘taxonomy aligned’ they need to align with three overarching conditions and associated technical screening criteria:

- Contribute substantially to one or more of the six objectives;
- Do no significant harm to the remaining objectives; and
- Respect Article 18 minimum safeguards including around human rights and governance matters.

The regulation applies to financial and real economy companies (non-financial institutions) within the scope of the NFRD, which are obliged to make entity-level disclosures, as well as financial market participants that are required to disclose to what extent financial products they market meet the criteria set out in the Taxonomy. Member States and the EU are also required to use the Taxonomy, for example when setting up green labels or certification schemes. The Taxonomy Regulation aims to provide incentives for a market based green transition by potentially steering capital out of environmentally harmful investments into environmentally sustainable ones. In other words, the Taxonomy does not in and of itself mandate any investor to divest from certain companies and into others, but envisages that the provision of a classification system and associated reporting obligations will drive the market and have such effect.

WHAT STAGE IS IT AT?

The Taxonomy regulation came into force in July 2020. Practically, however, the first disclosures start applying from 1 January 2022 for climate adaptation and climate mitigation objectives, in line with the technical screening criteria adopted through delegated acts (delegated acts are non-legislative acts adopted by the European Commission that serve to amend or supplement the primary legislation and are of a technical nature). The remaining disclosures start applying as of 1 January 2023 in relation to the other four environmental objectives, for which delegated acts are currently under development.
C.2 THE GREEN TAXONOMY

HOW DOES IT RELATE TO BHR?

It does so primarily through Article 18 on minimum safeguards, which are defined to be procedures implemented by a company that is carrying out an economic activity to ensure alignment with the OECD Guidelines and UNGPs, as well as the International Bill of Rights and the ILO Core Conventions. Article 18 aims to ensure that activities that can be considered environmentally sustainable do not at the same time cause harm to people or infringe human rights standards. The Taxonomy Regulation, however, provides little clarity around the implementation of Article 18 or how, in a disclosure context, taxonomy users are expected to document Article 18 alignment. The Platform on Sustainable Finance has been tasked with advising the Commission on the functioning of Article 18. However, this phase of the Platform’s advisory work commenced only at the end of 2021 with a view to providing advice in 2022. As a result, market participants, including ESG service providers, are starting to develop their own interpretation of how Article 18 alignment should be substantiated, potentially diluting the strength of the clause or its potential to foster respect for human rights in the context of the green transition or environmentally sustainability at large.

PIECE OF THE PUZZLE?

The Taxonomy Regulation is a unique piece of the puzzle in that its main unit of analysis is ‘economic activities’. In this respect, it differs in approach from the proposed CSDD Directive and CSRD measures, which instead focus on the economic entity. It has some overlap with the SFDR in its focus on driving transparent disclosures and emphasising the economic activity level. However, through objectives and detailed technical screening criteria the Taxonomy gets deeper into the substantive content of environmental sustainability than any of the measures stated above, in that it includes granular performance thresholds for activities to substantially contribute and do no significant harm to environmental objectives, respectively. The Article 18 minimum safeguards clause does however retain a focus on ‘undertakings’ rather than activities in that it requires procedures to ensure alignment with international human rights standards be implemented by the entity carrying out the green economic activity. In this respect, the minimum safeguards are aligned with the conceptual approach in the proposed CSDD Directive, the CSRD, and the SFDR, although the latter includes a focus on both economic entity and activity levels. However, inconsistencies can lie in the details, for instance in the example of proposed SFDR principal adverse impact Indicators (for a description, please see the section on the SFDR above) which are not currently aligned with the requirements of the Article 18 clause. At this point in time, it is unclear how CSRD or SFDR related human rights reporting might equal ‘alignment with Article 18’ or how a future due diligence duty in the proposed CSDD Directive might relate to Article 18, although one could expect that such measures would be key in delivering the data necessary for evaluating alignment.
C.3 TAXONOMY EXTENSION – THE SOCIAL TAXONOMY

WHAT IS IT?

The Green Taxonomy regulation as described above focuses predominantly on environmental sustainability. Aside from the minimum safeguard clause, which requires alignment with the UNGPs and other international human rights and responsible business conduct standards, the Taxonomy Regulation importantly includes provision for the taxonomy to have a broader scope over time, including by extending the taxonomy to social impacts, which include human rights. A final report from the Commission-external advisory group has provided the case for a social taxonomy outlining how a social taxonomy should ideally encompass: both the social contributions of economic activities that are inherently social (such as housing or health); and other economic activities which might contribute to social sustainability in the way that they are carried out (for example, by respecting decent work standards). The report also presents a range of options for how a green and a social taxonomy might meaningfully interrelate.

HOW DOES IT RELATE TO BHR?

The social taxonomy report suggests that a social taxonomy would aim to build on and reinforce business and human rights standards. For example, the report argues that the taxonomy should include objectives oriented at minimising negative impacts and maximising positive impacts on workers, communities and consumers and/or end users. The report also argues that a social taxonomy should recognize the key contribution of respect for human rights by business towards realising sustainable development i.e. that addressing negative impacts on workers, consumers or communities can constitute a substantial contribution to sustainable development. Given that a social taxonomy would likely be modelled around the design features of the existing green taxonomy, it would also take the business and human rights framework into new territory by needing to align with the green taxonomy requirements that an economic activity make a ‘substantial contribution’ and ‘do no significant harm’ to social objectives. If successful, the social taxonomy could offer companies and investors substantive guidance around what constitutes “good performance” on human rights in the context of an economic activity by prescribing impact performance thresholds and metrics.

WHAT STAGE IS IT AT?

The social taxonomy is at a very early stage. In 2020 the Platform on Sustainable Finance was asked to advise the Commission on extending the green taxonomy to encompass social objectives. The Platform issued its draft report for consultation in the summer of 2021 and its final report in February 2022. As a next step, the Commission is expected in 2022 to issue its own report on whether and how it plans to extend the scope of the regulation to cover social objectives. Should the Commission decide to go ahead with the social taxonomy, it is expected that the Platform would be tasked with developing the social taxonomy design and eventually associated technical screening criteria.

PIECE OF THE PUZZLE?

A future social taxonomy would, in a manner similar to the green taxonomy, potentially provide a market-based incentive structure for aligning investments and activities with human rights. Should the EU succeed in providing such a classification system it could contribute significantly to making more tangible and concrete the ‘S’ in ESG. Ideally this would direct investors that want to be socially responsible to reward investee companies with sound human right due diligence processes and corresponding positive outcomes for people. However, although this could be expected to interplay with the mandatory human rights and environmental due diligence duty on EU companies in the proposed CSDD Directive, and the reporting requirements in the CSRD which will also contain disclosure requirements around due diligence practices, it is not yet clear how these measures will align and interrelate.
TRADE AND IMPORT/EXPORT CONTROLS

In line with the EU’s 2015 Trade for All and 2017 Aid for Trade strategies, the EU has used trade instruments as a tool to promote business and human rights and implementation of UN human rights conventions as well as the ILO Core Conventions.

Through the Generalised Scheme of Preferences Plus, low and lower-middle income countries who have ratified and effectively implemented 27 international conventions on human rights, labour rights, environmental preservation and good governance can gain preferential EU market access. From 2009, new generation agreements signed by the EU include dedicated chapters on Trade and Sustainable Development. In these chapters, the EU and its partner countries commit to respecting a number of international conventions for labour standards and environmental preservation. To promote transparency and civil society involvement, these agreements also create domestic advisory groups and promote regular civil society forums.

Further, the EU has imposed a number of measures aimed at restricting access to the EU single market in the form of import and export restrictions on the basis of human rights and environmental impacts. These include import controls such as the Conflict Minerals Regulation (2017/821) and the Timber Regulation (2010/995), each of which create a due diligence and reporting obligation on importers, as well as proposed restrictions on commodities contributing to deforestation and on goods produced using forced labour, considered below.

The EU also places export restrictions on items which may be harmful to human rights such as dual-use items, which are goods, software and technology that can be used for both civilian and military applications through the Export Control Regulation (2021/821).

These trade and import/export controls are supplemented by the EU’s sanctions regime, which has been updated in 2020 by Regulation (EU) 2020/1998 and Council Decision (CGSP) 2020/1999, to establish a sanctions regime for serious human rights violations and abuses by State and non-State actors, including corporations, worldwide. This may include robust sanctions for those providing financial or other support to perpetrators of human rights abuses.
The Conflict Minerals Regulation from 2017 is aimed at addressing human rights abuses linked to the sourcing of “3TG” minerals, (Tin, Tantalum, Tungsten and Gold), which are often sourced from areas: in a state of armed conflict; fragile post-conflict areas; areas with weak or non-existent governance and security; and areas with widespread and systematic violations of international law, including human rights abuses.

The regulation requires EU based importers of 3TG minerals to identify and address actual and potential risks linked to conflict-affected and high risk-areas when they carry out due diligence of their supply chain. This requires following a five-step framework set out in the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas. In accordance with the OECD Guidance, EU importers are required to:

- Establish strong company management systems;
- Identify and assess risk in their supply chains;
- Design and implement a strategy to respond to identified risks;
- Carry out an independent third-party audit of supply chain due diligence; and
- Report annually on supply chain due diligence.

The regulation is complemented by Guidance for businesses.

The regulation was subject to an Impact Assessment and a Study on costs and benefits for the mineral industry and signed into law in June 2017. An appraisal of the Impact Assessment followed in 2017.

Requirements on EU importers apply from 1 January 2021. A June 2021 report from a coalition of European NGOs found that there has been considerable variance in implementation of the Regulation among EU Member States, and a general lack of transparency which it was indicated would hinder effective monitoring.
Alongside the Timber Regulation, the Conflict Minerals Regulation is one of the few EU measures which explicitly imposes human rights and environmental due diligence obligations on businesses seeking to import goods onto the single market. The Conflict Minerals Regulation acknowledges that “Human rights abuses are common in resource-rich conflict-affected and high-risk areas and may include child labour, sexual violence, the disappearance of people, forced resettlement and the destruction of ritually or culturally significant sites” and that conflict “minerals, potentially present in consumer products, link consumers to conflicts outside the Union. As such, consumers are indirectly linked to conflicts that have severe impacts on human rights”.

The Regulation refers to the OECD Guidelines for Multinational Enterprises and the UNGPs, as well as basing its process of due diligence on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-affected and High-Risk Areas. That guidance defines due diligence as “an ongoing, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict” and references the UNGPs and OECD Guidelines in that definition.

The Conflict Minerals regulation is an early example of a due diligence measure, taking inspiration from the experience of the Timber Regulation (considered in the section below). It is often cited as inspiration for the due diligence requirements in the proposed CSDD Directive, as well as providing a precedent for the application of due diligence obligations on EU actors in relation to activities which have occurred outside the EU.

Unlike other EU measures which allow an operator to satisfy legal requirements by providing proof of certification, such as the Renewable Energy Directive, the Conflict Minerals Regulation requires ongoing due diligence. In a departure from the Timber Regulation, it also requires an independent third-party audit of the due diligence system and an annual report, however, unlike the Timber Regulation, there is no prohibition on placing any of the minerals sourced from conflict areas on the EU market.

The sector and issue specific due diligence mechanism included in the Conflict Minerals regulation will also interact with the due diligence obligations in the proposed CSDD Directive, which takes a broader, cross-sectoral approach to due diligence. The proposed CSDD Directive states that it shall be without prejudice to obligations in the areas of human rights, protection of the environment and climate change under other Union legislative acts. Further, it states that if the provisions of proposed CSDD Directive conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act shall prevail to the extent of the conflict and shall apply to those specific obligations.
**WHAT IS IT?**

The [EU Timber Regulation](https://www.eur-lex.europa.eu/) from 2010 sets out the obligations of operators who first place timber and timber products on the EU market. It is part of a broad set of measures introduced by the [Forest Law Enforcement, Governance and Trade ("FLEGT") Action Plan](https://ec.europa.eu/environment/forests/legislation/flegt/index_en.htm) adopted in 2003 to tackle illegal logging. It aims to counter the trade in illegally harvested timber and timber products by:

- Prohibiting placing illegally harvested timber and products derived from such timber on the EU market;
- Imposing a requirement that EU traders who place timber products on the EU market exercise due diligence; and
- Obliging traders to keep records of their suppliers and customers.

The three key elements of due diligence under the EU Timber Regulation are:

- Information: The operator must have access to information describing the timber and timber products, country of harvest, species, quantity, details of the supplier and information on compliance with national legislation.
- Risk assessment: The operator should assess the risk of illegal timber in his supply chain, based on the information identified above and the criteria set out in the regulation.
- Risk mitigation: When the assessment shows that there is a risk of illegal timber in the supply chain, that risk can be mitigated by requiring additional information and verification from the supplier.

The regulation was signed into law in October 2010 entered into application on 3 March 2013.

A [2016 Report](https://ec.europa.eu/environment/forests/legislation/eutr/2016report_en.htm) on the first two years of implementation of the Timber Regulation found that the Regulation had raised awareness of the problem of illegal logging amongst EU consumers, and added value to international efforts to halt deforestation and forest degradation, conserve biodiversity and address climate change.

The report also noted that EU importers “have not consistently implemented the DD requirements during the first two years of application of the Regulation”. However, “Although the uptake of the DD obligation has been slow, there is evidence that operators are gradually implementing DD, demanding more information and legality assurance from their suppliers. This demonstrates that the DD obligation has the potential to change market behaviours of operators, thus creating supply chains free of illegally harvested timber.”

The [2017 and 2019](https://ec.europa.eu/environment/forests/legislation/eutr/2017report_en.htm#) Reports on the implementation of the Timber Regulation each noted that although progress had been made, “continuous efforts are needed to ensure a uniform and effective application of the EUTR across countries” since “uneven implementation can have potential implications in terms of both the effectiveness of legislation and a level playing field for market operators”.
Alongside the Conflict Minerals Regulation, the Timber Regulation is one of the few EU measures which explicitly imposes with human rights and environmental due diligence obligations on businesses seeking to import goods onto the single market. Although the Timber Regulation does not expressly deal with human rights, the 2017 Report on implementation noted that it is “the first legal instrument at European Union level which includes mandatory due diligence, a key principle for corporate sustainable responsibility in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs)”. It has been argued that the due diligence obligation in the Timber Regulation should be characterised as a process undertaken in order to satisfy a condition to placing goods on the single market, rather than a process to encourage continuous improvement as envisaged by the UNGPs.

The Timber Regulation is an early example of a due diligence measure, and often cited as inspiration for the due diligence requirements in SCG Initiative, as well as providing a precedent for the application of obligations on EU actors in relation to activities which have occurred outside the EU.

Unlike other EU measures which allow an operator to satisfy legal requirements by providing proof of certification, such as the Renewable Energy Directive, the Timber Regulation requires ongoing due diligence.

The sector and issue specific due diligence mechanism included in the Timber regulation will also interact with the due diligence obligation in the proposed CSDD Directive, which takes a broader, cross-sectoral approach to due diligence. The proposed CSDD Directive states that it shall be without prejudice to obligations in the areas of human rights, protection of the environment and climate change under other Union legislative acts. Further, it states that if the provisions of proposed CSDD Directive conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act shall prevail to the extent of the conflict and shall apply to those specific obligations.
**WHAT IS IT?**

European Commission President von der Leyen has announced that the Commission will propose a legislative initiative which will effectively prohibit placing products on the EU market that have been made using forced labour. The announcement follows an EU Trade Policy Review in February 2021 which called for effective action and enforcement mechanisms to ensure that forced labour does not find a place in the value chains of EU companies.

The proposals follow calls from the European Parliament for a legislative proposal on an “effective traceability mechanism for goods produced through forced labour”, which it states “could pave the way for a complete ban on the importation into the EU of goods produced through modern forms of slavery or forced labour, especially forced work of vulnerable groups extorted in violation of basic human rights standards”.

The European Commission’s Communication on Decent Work Worldwide from February 2022 indicates that the initiative will cover both domestic and imported products and combine a ban with a robust, risk-based enforcement framework. It is as yet unclear precisely what form such a ban would take, but a discussion paper commissioned by Greens MEP Anna Cavazzini published in February 2021 surveys similar measures from the US, Canadian and Mexican contexts and outlines options for an EU measure.

**WHAT STAGE IS IT AT?**

The initiative was announced during the a State of the Union Address by European Commission President Ursula von der Leyen on 15 September 2021. It follows the publication in June 2021 of European Commission guidance for companies to help combat forced labour in the supply chain. The next steps and prospective timing for the introduction of such a ban are as yet unclear.
D.3 A PROPOSED IMPORT BAN ON GOODS PRODUCED WITH FORCED LABOUR

HOW DOES IT RELATE TO BHR?

The import ban focuses on particular human rights harms associated with forced labour, which is not only pervasive in global supply chains, but is also present within the EU. Recent EU guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains acknowledges that responsible business conduct by EU companies plays a crucial role in ensuring that EU policies on human rights are effectively implemented, including with regard to labour. These include policies intended to reflect the requirements of the UNGPs and other frameworks including the OECD Guidelines and ILO core conventions. It is not yet clear precisely how the proposed import ban will operate and what frameworks will be expressly referred to. However, import bans such as that implemented in the US generally impose a hard ban on the importation of products that are associated with forced labour. In general, this would require companies to cut ties with suppliers associated with forced labour, rather than work with them in a process of continuous improvement. This creates a potential tension with the process of due diligence as envisaged by the UNGPs, which is an ongoing process, under which companies identify and address risks and develop long term strategies using disengagement as a last resort.

PIECE OF THE PUZZLE?

While there was some speculation that this measure would form part of what was formerly the Sustainable Corporate Governance Initiative, the Explanatory Memorandum to the proposed CSDD Directive and the Communication on Decent Work Worldwide make clear that the Commission is preparing a new legislative proposal that will effectively prohibit the placing on the Union market of products made by forced labour, including forced child labour. It has been indicated that the new instrument will build on international standards and complement horizontal and sectoral initiatives, in particular the due diligence obligations as laid down in the CSDD proposal.

The Explanatory Memorandum to the proposed CSDD Directive makes clear that although the proposal is expected to play an essential role in tackling the use of forced labour in global value chains, and it is as yet unclear how this future proposal addressing forced labour will relate to it and align with the process of mandatory due diligence outlined therein.
D.4 PROPOSED REGULATION ON DEFORESTATION-FREE PRODUCTS

WHAT IS IT?

The proposed Deforestation Regulation sets mandatory due diligence rules for companies which want to place soy, beef, palm oil, wood, cocoa and coffee commodities, as well as derived products including leather, oil cakes and chocolate on the EU market with the aim to ensure that only products that are deforestation-free and produced in accordance with national laws are allowed on the EU market.

The Commission’s proposal follows most of the recommendations set out in a 2020 EU Parliament report but has a more restricted scope, in that it does not expressly address human rights abuses, and does not include a civil liability mechanism.

WHAT STAGE IS IT AT?

The proposal was published on 17 November 2021 and will follow a full legislative process at the EU Parliament and Council of the EU before being formally adopted.
D.4 PROPOSED REGULATION ON DEFORESTATION-FREE PRODUCTS

HOW DOES IT RELATE TO BHR?

While the proposed Deforestation Regulation does not expressly address the human rights impacts of business, it nonetheless recognises the link between deforestation and adverse impacts on the enjoyment of human rights and the need to address climate change, biodiversity loss and deforestation in order to ensure the survival of humanity and sustained living conditions on Earth.

The due diligence process described in the proposal requires that relevant operators:

- Collect information demonstrating that the particular commodity or product to be imported is deforestation free, has been produced in accordance with national laws and are covered by a due diligence statement;
- Undertake a risk assessment based on the information collected; and
- Apply risk mitigation measures.

This process differs somewhat from the process of human rights due diligence outlined in the UNGPs, not only in the procedural stages but also in approach, by not requiring a broader identification of risk with a rightsholder focus, rather a risk assessment conducted on the collection of specified information.

PIECE OF THE PUZZLE?

The proposed Regulation will impose its own due diligence obligations on importers of the specified commodities, and therefore will likely have a different personal scope to the proposed CSDD Directive. While the stated intention of the proposal is for it to be complementary with the proposed CSDD Directive, the two initiatives have differing objectives. As the proposal notes “The [proposed Corporate Sustainability Due Diligence Directive, formerly the SCG initiative] is based on a horizontal approach addressing adverse human rights and environmental impacts acting upon the behaviour of companies in their own operations and in their value chains. While the SCG regime will address business operations and value chains in general, the deforestation approach is focusing on specific products and product supply chains. Therefore, while the overall objectives of the two initiatives may be shared and are mutually supportive, specific objectives are different.” In accordance with these differing objectives, the due diligence requirements of the Deforestation Regulation will, in some areas, be more specific compared to the general duties under the proposed CSDD Directive.

The proposed CSDD Directive states that it shall be without prejudice to obligations in the areas of human rights, protection of the environment and climate change under other Union legislative acts. Further, it states that if the provisions of proposed CSDD Directive conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act shall prevail to the extent of the conflict and shall apply to those specific obligations.