

To the attention of Mr Miroslav Hrstka,
Permanent Representation of the Czech
Republic to the European Union
Head of Unit - Intellectual property rights,
company law, audit and accounting
miroslav_hrstka@mzv.cz

Brussels, August 29th, 2022

Object: Corporate Sustainability Due Diligence Directive proposed compromise text

Dear Mr Hrstka,

We, the undersigned civil society organisations, wish to express our deep concerns over specific elements of a proposed compromise text to the EU Corporate Sustainability Due Diligence Directive (CSDDD), as reported by POLITICO on 29th of July 2022.

While we welcome timely progress made towards obtaining a common position on the directive, a number of the proposed provisions would create dangerous loopholes in the Directive's structure and hinder its intended purpose.

Our first concern, as NGOs working with victims of human and environmental rights violations, is that the proposed compromise allows companies to [*continue buying supplies even if there is a “severe” human rights or environmental risk when “no available alternative to that business relationship exists and the termination would cause substantial prejudice to the company.”*]

In line with existing international due diligence standards, companies should always attempt to mitigate and remediate adverse impacts in their operations and value chains. It would be highly problematic if EU policy and legal frameworks indicated that severe human rights and environmental violations are acceptable and can persist without companies mitigating and/or remediating these.

When there is no leverage (nor possibility to increase it), such as in the case of state-sponsored human rights or environmental adverse impacts, companies should responsibly disengage. But the proposed exception would allow companies to disregard severe abuses.

An example of ongoing corporate abuse is the current prevalence of state-imposed forced labour in the solar panel sector, which depends heavily on polysilicon produced in the Xinjiang Autonomous Uyghur Region (Uyghur Region). Another is the continued prevalence of deforestation-risk Brazilian soy in animal feed and pet food supply-chains in Europe, despite companies' commitments to cease sourcing products linked to the destruction of forests and other natural ecosystems in view of the devastating levels of forest loss in the region.

Allowing companies to continue purchasing products made with forced labour runs contrary to the spirit of human rights due diligence, to this Directive's objective, and to all of the EU's commitments to eradicate forced labour. It would also strongly undermine parallel and complementary EU efforts on the upcoming forced labour instrument. Such “consumptive demand” exception also runs counter to current international practice.¹

¹ The US Tariff Act barred products made or transported by convict, forced or indentured labour, but goods could be exempted from such a measure if the US domestic production could not meet demand. In 2016, this provision, which had rendered the Act largely ineffective, was nullified.

Additionally, this framework would stifle any incentive to develop sustainable, alternative sourcing and production capacities in other markets to lower the dependency on products associated with such abuses. The clause stating that corporations must justify their decision or periodically reassess it, does nothing to prevent harmful business practices. In its current form, the wording of the compromise text as described by POLITICO risks incentivising companies to make the easier choice of “business as usual” and remain associated with severe human or environmental violations.

Secondly, we are concerned about how the prioritisation concept is introduced in this compromise text. Our organisations, along with over [200 NGOs](#), called for the CSDDD to be aligned with International Standards, such as the UN Guiding Principles on Business and Human Rights (UNGPR) or the OECD Guidelines. This includes integrating risk-based and prioritisation approaches, to ensure companies address the most severe risks first.

However, the concept of prioritisation that POLITICO describes discharges companies from their responsibility to address all risks and adverse impacts over time. The compromise would remove businesses’ liability for impacts that they did not prioritise. Given that companies themselves would choose which impacts to prioritise, it incentivises them to cherry-pick only the easiest or least costly violations to address (rather than the most severe ones) and so to decide unilaterally for which human rights and environmental adverse impacts they could be held accountable. This approach would also undermine the risk-identification, meaningful stakeholder engagement and preventive dimensions of the due diligence process, resulting in the whole effort losing steam and the final legislative instrument having very little impact. The ultimate victims of such a clause are the impacted or at-risk people, communities and workers as such an attempt to limit companies’ liability would end up in denying access to justice to affected rights holders.

Thirdly, we believe that the clarification of the role of directors in overseeing a company’s due diligence strengthens the due diligence approach and prevents corporate responsibility or compliance departments from operating in a silo. This element should not be underestimated and should be maintained. The involvement of directors and boards is paramount to ensuring that companies are able to take the necessary strategic decisions with regard to the management and oversight of sustainability risks and impacts.

With these concerns in mind, and to avoid having the CSDDD become a paper tiger with little impact or substance, we would be eager to meet you and discuss the rationale behind these propositions, in the hope of working together towards effective solutions.

We remain at your disposal to find a time that would suit your agenda.

Yours sincerely,

Signatories

1. Anti-Slavery International	10. European Center for Constitutional and Human Rights (ECCHR)
2. Business & Human Rights Resource Centre	11. European Environmental Bureau (EEB)
3. CIDSE	12. Environmental Justice Foundation
4. Clean Clothes Campaign	13. Fair Finance International
5. CNCD-11.11.11 (Belgium)	14. The Fair Trade Advocacy Office
6. Diakonia	15. Fairtrade International
7. Entraide et Fraternité (Belgium)	16. FOCSIV (Italy)
8. EU-LAT Network	17. Fundación Alboan
9. European Coalition for Corporate Justice (ECCJ)	18. Global Witness
	19. Human Rights Watch

- 20. IM Swedish Development Partner
- 21. International Federation of the Economy for the Common Good (ECG)
- 22. International Federation for Human Rights (FIDH)
- 23. International Service for Human Rights (ISHR)
- 24. Irish Coalition for Business and Human Rights (ICBHR)
- 25. IUCN National Committee of the Netherlands (IUCN NL)
- 26. Protection International (PI)
- 27. Red de solidaridad para la transformación social - Reds (Barcelona)
- 28. ShareAction
- 29. Solidaridad
- 30. Transport & Environment
- 31. Trócaire (Ireland)
- 32. Vredesactie
- 33. We Effect
- 34. World Fair Trade Organization Europe (WFTO-Europe)
- 35. World Uyghur Congress (WUC)
- 36. WWF

Letter sent in copy to members of the Working Party on company Law