

Contribution of CIDSE and its member organisations to the 10th Session of the UN Legally Binding Instrument: Position on the Updated Draft

Presentation by Armin Paasch, Misereor at the side event “Caring for our Common Home: The need for a Legally Binding Instrument for TNCs and other types of business”

12 December 2024

For decades, CIDSE, its members and partners from the Global South have been supporting people and communities, who are facing exploitation, destruction of the environment, evictions, violence, and other human rights abuses committed by corporations. And in most of these cases, people are denied their right to effective remedy, while corporation evade their responsibility.

This is why the UN-Treaty has been ranking very in our agenda from the beginning of the process. And this is why we have campaigned for a strong Corporate Sustainability Due Diligence Directive in the EU, the famous CSDDD.

For ten years, we have been calling for an active participation of the EU in the negotiations on the Treaty. But until now, the EU has refused its formal engagement in the negotiations with various arguments that have changed over the time. The year, the last excuse was that the EU would have to agree on CSDDD as a common position first as a basis for a negotiation mandate.

In July 2024, the CSDDD has entered into force. Moreover, in October 2024, the Commission has concluded its own legal analysis of the Updated Draft of the Treaty. But still, the EU lacks a negotiation mandate and keeps on refusing formal engagement.

As CIDSE, we consider this a scandal and a clear lack of respect for States and civil society from the Global South who kick started the process and who have been investing a lot of energy.

This abstention is completely irrational as the EU should have a clear interest in protecting human rights and the environment. It should have an interest in a level playing field for corporations worldwide. And even though the CSDDD is much weaker that we had expected, it contains elements that may inspire improvements of the so-called Updated Draft which is the current basis for the Treaty negotiations in Geneva.

Let me give three examples:

- 1) The Update Draft completely excludes **environmental and climate related aspects**. Even the reference to the human right to a clean, safe, healthy and sustainable environment was deleted from the previous Third Draft. The EU could actively advocate for improvements based on the CSDDD, that extends due diligence to 16 prohibitions and obligations based on international environmental instruments.
- 2) The Update Draft is vague in the formulation of **due diligence obligations** for corporations and even limits prevention on third parties “where the enterprise controls, manages or supervises the third party”. In practice this means that companies would only have to take care of the activities of their own subsidiaries and some of their business partners.

This is completely inadequate, because most of the violations happen at the beginning of the value chain, for example in mining or plantations. In this respect, the CSDDD is more precise on due diligence and not limited to third parties under the control of a company but covers direct and indirect business relationships throughout the chain of activities.

- 3) The Update Draft requires a comprehensive system of **legal liability**, but it lacks a clear obligation for States to introduce civil liability of corporations for damages they have caused. The CSDDD establishes such civil liability even though in practice, the burdens of prove are very high.

These are areas where the EU has the potential and an interest to advocate for improvements. Not to do so, would be irresponsible, and would even run against the interests of European business whose obligations would go beyond the obligations of companies from other countries.

Having said this, I would like to highlight that the CSDDD has many weaknesses, that a future UN Treaty should correct. For example,

- the scope of the CSDDD is limited to very large companies with more than 1,000 employees and a turnover above 450 million Euro, while the Updated Draft covers all corporations.
- And the CSDDD excludes financial activities, exports of weapons and the use of exported goods from due diligence, while Update Draft covers the whole value chain and all sector and activities in principle.

For this, we want to highlight that the **CSDDD cannot be a blueprint** for the UN Treaty, that should go much beyond. Moreover, the UN Treaty is complementary to the CSDDD, because it regulates aspects that are not covered in the CSDDD, for example with respect to jurisdiction, applicable law, international cooperation and the relationship of human rights with other legal regimes such as trade and investment law.

In all these areas however, we see a lot of room for improvement, especially in the Update Draft. And in our Position Paper we will make concrete recommendations for such improvements.

I would like to **conclude with a general remark**: In Europe, conservative parties and business associations often criticize the CSDDD for imposing European values and duties to countries in the Global South. The history of the UN-Treaty shows that the opposite is true: The call for binding obligations and legal liability for corporations and access to justice for the affected people comes from the Global South. But it has been blocked for more than ten years by G7 countries.

Only recently, the EU has initiated a **positive paradigm** shift with the conclusion of the CSDDD. However, the fact that the EU keeps on blocking similar efforts from the Global South at the international level, seriously undermines the credibility of the EU and its commitment to real partnership and multilateralism.

This is why we call on the EU: Stop blocking the Treaty process, develop a mandate and engage seriously and actively. This is a multilateral credibility test for the EU. And the international acceptance of sustainability efforts from the EU will depend on this process.