



Contribution to the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

10th Session, December 2024

1. State of play

The entry into force of the [EU Corporate Sustainability Due Diligence Directive](#) (CSDDD) on 25 July 2024, marked a milestone for corporate accountability by moving from voluntary guidelines to a new legal framework at EU level that will apply to large companies domiciled in the EU or operating in the EU market. While CIDSE and its member organisations welcomed the adoption of the EU CSDDD, we believe a UN Legally Binding Instrument (LBI) is crucial for its global scope and could complement the CSDDD, especially because of its focus on victims and access to justice.

In October 2023, during the [9th session](#) of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG), negotiations and discussions on provisions stopped at Article 3. As part of the 9th session's conclusions, the Chair Rapporteur raised the need for a procedural decision for the Human Rights Council to enhance the support capabilities of the OEIGWG. The decision [56/116](#) by the Human Rights Council (HRC) was adopted on 11 July 2024. The 56/166 decision establishes 10 full-day intersessional thematic consultations each year with the assistance of legal experts selected by the Chair-Rapporteur for the purpose of discussing clusters of articles, in line with HRC resolution 26/9. We welcome the intersessional consultations as a way to speed up the process, and we encourage States to take into account the opinions of the legal experts.

2. Reflections and concerns about the process

In May 2024, as part of the intersessional activities, the Chair Rapporteur published a [Roadmap](#) towards the 10th session that included dates for the release of a [Programme of Work](#). The draft Programme of Work was published in September 2024, stating the "Continuation of the State-led negotiations" from Article 4 to 24. Likewise, the Chair Rapporteur announced in the Programme the introduction of a three-year roadmap for implementing the [HRC Decision 56/116](#), followed by comments and proposals by delegations.

For the 10th Session, the [Updated draft of the Legally Binding Instrument](#) (Updated draft) released in July 2023-and amended after the 9th Session with States' textual proposals- will be the basis for discussions.

Regarding the proposal for a reading of Articles 4 to 24, we want to share our concern about the lack of progress in the process based on the experience of the 9th session, where it was only possible to read up to Article 3. With such a pace, it is unlikely that States will be able to advance the reading up to Article 24 in a week. To foster efficient negotiations, we would like to suggest that the new Chair Rapporteur encourages the State delegations to stick to the Programme of Work to prevent -as much as possible- States that have previously provided wording proposals from reopening the discussion. Likewise, we would like to emphasise the need to continue discussing the substance, focusing on reaching a consensus among State delegations.

The draft Programme of Work also establishes the presentation by the Chair-Rapporteur of a three-year roadmap that will include a "discussion of clusters of articles of the draft LBI" for the intersessional consultations in 2025. We acknowledge this request comes from some States' proposals to advance more efficiently in the negotiations. While we appreciate the Chair's initiative as it is mindful of some States' requests, we have identified potential risks and opportunities we would like to express. First and foremost, regarding the timing, this proposal will only occur during 2025, meaning that for the 10th session, we can anticipate a process and outcome similar to the one from last year. The substantive discussions will be only next year.

As for the methodology itself, reading articles by cluster might lead to generalisations of contentious parts of the Updated draft. If there is an agreement among States and political willingness to advance in negotiations, mainly in controversial parts of the Updated draft, such as general principles, liability, statute of limitation and jurisdiction, we believe this could be a positive way out for more efficient and effective negotiations. However, the risk of watering down or neglecting essential elements is high.

The new methodology of having the Friends of the Chair and other legal experts to support the process could be very helpful in finding common ground and in building a solid treaty. It is very important that the experts are able to provide inputs early enough and in advance of the negotiations. The proposals made by the experts should address especially the critical, contentious issues. They should be based on international trends and UN recommendations on the issue of human rights and transnational corporations. States should conduct negotiations and take these inputs into account.

We also would like to stress that the intersessional, informal meetings should be open to civil society and conducted in a transparent manner.

3. Strengths and weaknesses of the Updated draft¹

CIDSE and its member organisations believe that one of the Updated draft's strengths is its broad personal scope of application, which, in line with the UN Guiding Principles on Business and Human Rights ([UNGPs](#)), includes all companies and all economic activities, including those of a transnational nature. Likewise, the material scope of application includes "all internationally recognized human rights and fundamental freedoms" in principle (Art. 3.3).

Nevertheless, unlike previous drafts, the Updated draft excludes environmental and climate aspects. Provisions from the Third draft on environmental and climate-related impact assessments no longer appear as part of due diligence obligations. It is problematic that the reference to the human right to a safe, clean, healthy and sustainable environment, which also justifies environment-related provisions in terms of human rights, was also deleted. The lack of a reference to the latter could have an impact on health, livelihoods, cultural and spiritual heritage, among others.

The Updated draft also has significant weaknesses regarding the due diligence obligations that States should impose on companies. Although the definition of due diligence in Article 1.8. is based on the UNGPs, the LBI provides very few details and requirements on how to conduct due diligence. While Article 6 more specifically addresses the obligation for prevention, the Updated draft, unlike the CSDDD, does not establish a corporate obligation to provide remediation and compensation for damages, as an element of corporate due diligence obligations.

It is also unclear to what extent due diligence obligations apply to a company's entire value chain. Article 6.5 establishes that States should oblige companies to take preventive measures vis-à-vis third parties only "where the enterprise controls, manages or supervises" them. The Updated draft narrowly defines business relationships with a focus on direct ties, such as affiliates, subsidiaries, agents, partnerships or joint ventures. This would result in a highly problematic restriction of due diligence obligations to subsidiaries and direct business partners. It is worth remembering that most human rights violations occur at the very beginning of the supply chain, for example, in mining or on plantations, which would thus be ignored.

The Updated draft also remains vague concerning liability. Although Article 8 obliges States to establish a "comprehensive and adequate system of legal liability" and explicitly mentions "criminal, civil or administrative" forms of liability in Article 8.2, these are only options to be

¹ Based on: Armin Paasch, "Lieferkettengesetz 3.0? Das VN-Abkommen für Wirtschaft und Menschenrechte", in: Zeitschrift Vereinte Nationen, 06/2024, forthcoming; Markus Krajewski et al, "[Analysis of the UN 2023 Updated Draft Legally Binding Instrument on Business and Human Rights](#)", CIDSE, October 2023; Kinda Mohamadieh, Otgontuya Davaanyam, Stephania Regalia and Markus Krajewski, "Complementarity of the Legally Binding Instrument on Business and Human Rights and the EU Corporate Sustainability Due Diligence Directive", forthcoming.

applied depending on the legal principles of the State party and the circumstances. The explicit requirement from the Third draft on compensation for damages (reparation to a victim) was removed and must be a mandatory element of liability from the Third Draft.² The forms of liability pursuant to Article 8.2. (a) consider the needs of victims as regards remedy. However, the definition of remedy in Article 1.9. does not explicitly include compensation. This means that the Updated draft does not expressly establish that injured parties are entitled to compensation under civil law if companies violate their duty of care and thereby contribute to damage. Moreover, unlike the Third Draft of the LBI, the Update draft remains silent on the issue of liability within corporate groups and along the supply chain.

4. Complementarity between the recently adopted CSDDD, a Legally Binding Instrument and the Updated draft

Since the Corporate Sustainability Due Diligence Directive (CSDDD) was under negotiation, CIDSE and its member organisations have been interested in how it could complement and interact with a Legally Binding Instrument³. With CSDDD's entry into force in July 2024, a group of CSOs -including CIDSE- commissioned a new legal opinion that compares the CSDDD with the Updated draft, makes recommendations for improvements of the LBI and analyses elements of complementarity between the CSDDD and the LBI. This study is an update of the one commissioned in 2023. While it is not yet published, we have integrated some of the main takeaways into our contribution.

Overall, we believe the CSDDD goes beyond the Updated draft in some respects, such as environmental provisions, the design and scope of due diligence obligations in value chains, and precision and legal certainty in liability issues. Hence, the CSDDD could inspire some improvements in the next draft of the LBI. For instance, the LBI should address the CSDDD's gaps by ensuring universal value chain coverage, explicitly including all relevant downstream activities and non-commercial operations, while retaining the CSDDD's inclusion of both established and non-established business relationships. This comprehensive approach would better address potential adverse impacts across all areas of business operations.⁴ Likewise, States should require parent companies to undertake due diligence on behalf of their subsidiaries, ensuring compliance across the corporate group, similar to the CSDDD. Subsidiaries shall cooperate with parent companies to implement due diligence measures. States should mandate the integration of due diligence into corporate policies and management systems. In addition, they should require companies to identify and assess actual and potential adverse impacts through a structured process, similar to the detailed requirements of the CSDDD. They could also establish a clear framework for monitoring and

² German Institute for Human Rights: Time for the EU to get involved. Statement on the revised draft for a binding human rights treaty on transnational corporations and other business enterprises, September 2023, pp. 8-9.

³ Markus Krajewski et al, "[Analysis of the UN 2023 Updated Draft Legally Binding instrument on Business and Human Rights](#)", CIDSE, October 2023.

⁴ Kinda Mohamadieh, Otgontuya Davaanyam, Stephania Regalia and Markus Krajewski, "Complementarity of the Legally Binding Instrument on Business and Human Rights and the EU Corporate Sustainability Due Diligence Directive", forthcoming.

evaluating the effectiveness of due diligence measures, ensuring a comprehensive reporting by requiring companies to include detailed information in their reports and recognise rightsholders' rights to access information.

As for the environment and climate obligations, States should include corporate environmental obligations to align with international environmental conventions and standards such as the OECD guidelines, addressing gaps in global regulations like plastic pollution, soil degradation, and waste minimisation. Furthermore, they should integrate environmental due diligence into the LBI, addressing long-term global impacts like climate change and requiring businesses to adopt measurable, precautionary approaches for environmental protection. Likewise, States should explicitly incorporate the internationally recognised human right to live in a safe, healthy, and sustainable environment, emphasising the connection between human rights violations and environmental harm. In addition, the LBI should aim for an integrated approach that reflects the interdependence of climate and other environmental issues as well as human rights. This integrated approach ought to be reflected in relation to various elements of the LBI, including in the context of the definitions and in relation to due diligence, rights of victims and access to remedy, along other elements of the LBI. A comprehensive approach to environmental harms ought to cover all actual or potential harm caused to the environment or its components including pure ecological harm. It is also important to account for the rights of future generations.⁵

Regarding stakeholders' engagement, States should require companies to meaningfully engage with stakeholders, particularly vulnerable groups, throughout the due diligence process, ensuring continuous dialogue and participation in decision-making. Moreover, they could provide more detailed requirements for stakeholder consultation at every stage of the due diligence process, from impact assessments to remediation, ensuring meaningful involvement of affected communities (without prejudice to their rights to free, prior and informed consent where applicable). States should also include a definition of stakeholders alongside that of victims to ensure the inclusion of both affected and potentially affected stakeholders within the scope.⁶ Concerning specific provisions, first and foremost, we want to highlight that an added value of the LBI lies in its complementarity with national and regional regulations. It addresses several issues with an international dimension that cannot be regulated at all or only to a limited extent at the national or regional level. These include questions of competent jurisdiction (Article 9), applicable law (Article 11) and mutual legal assistance (Article 12) in transnational case constellations. This also includes international cooperation (Article 13) in implementing the LBI and establishing a UN Committee of Experts and other institutions to interpret and review national implementation.

Finally, in Article 14, the Updated draft also addresses the relationship between the LBI and international trade and investment agreements. According to this article, the latter should be interpreted and implemented in a way that does not undermine or restrict the implementation of the LBI's human rights obligations. It is important to mention that, compared to the Third draft, the Updated draft is weaker in this regard. Previously, Article

⁵ Kinda Mohamadieh, Otgontuya Davaanyam, Stephania Regalia and Markus Krajewski, "Complementarity of the Legally Binding Instrument on Business and Human Rights and the EU Corporate Sustainability Due Diligence Directive, forthcoming.

⁶ *Ibidem*.

14.5 contained the additional obligation for States to ensure that new bilateral or multilateral trade and investment agreements are "compatible" with their human rights obligations. Therefore, we strongly recommend restoring this obligation to the Updated draft.

5. Recommendations⁷ on specific provisions of the Updated draft as per the Programme of Work

	Recommendations	Proposed amendments for the Updated draft (current text)
Article 5. Protection of victims	States should advocate for a comprehensive definition of victims and list of remedies. The LBI provisions concerning the rights of victims and rights-holders should clearly define measures to guarantee fair, adequate, timely, non-discriminatory, appropriate, and gender-sensitive access to justice. This includes individual or collective reparations and effective remedies for human rights violations linked to corporate activities.	Article 5.2: Certain amendments such as ' <i>persons, groups, and organisations that promote and defend human rights and environment regardless of the sex, age and profession</i> ' could be beneficial for recognising and bringing visibility to all relevant human rights and environmental defenders.
Article 6. Prevention	States should adopt duty of care obligations and mandate human rights due diligence, consistent with the UN Guiding Principles on Business and Human Rights (UNGPs), ensuring alignment in language and approach. Preventive measures must address risks specific to conflict-affected areas. Likewise, these obligations must explicitly reference the rights and needs of the most affected groups such as Indigenous People, women, children, among others. Specify actions companies must take to prevent and mitigate adverse impacts, such as implementing corrective action plans, adjusting purchasing and distribution practices, or disengaging from harmful partners. Clearly define "corporate involvement" by specifying the terms "cause," "contribute," and "directly linked," to assign responsibility to	It is suggested that section (d) to Article 6.2 be reworded as follows: <i>"promote the active and meaningful participation rights of individuals and groups, such as trade unions, civil society, non-governmental organizations, indigenous peoples, and community-based organizations, to access to information, communication, participation with private and public organisations related to the development and implementation of laws, policies and other measures to prevent the involvement of business enterprises in human rights abuse."</i> Section (d) of Article 6.4, which sets out the responsibility of companies to meaningfully engage relevant stakeholders in the human rights due diligence process, needs to be explicitly worded as follows:

⁷ Based on: Armin Paasch, "Lieferkettengesetz 3.0? Das VN-Abkommen für Wirtschaft und Menschenrechte", in: Zeitschrift Vereinte Nationen, 06/2024, forthcoming; Markus Krajewski et al, "[Analysis of the UN 2023 Updated Draft Legally Binding instrument on Business and Human Rights](#)", CIDSE, October 2023; Kinda Mohamadieh, Otgontuya Davaanyam, Stephania Regalia and Markus Krajewski, "Complementarity of the Legally Binding Instrument on Business and Human Rights and the EU Corporate Sustainability Due Diligence Directive", forthcoming.

	Recommendations	Proposed amendments for the Updated draft (current text)
	<p>companies enabling or facilitating adverse impacts through their activities and business relationships. It should be emphasised that all due diligence obligations extend to the whole value chain, not just direct business partners or “established business relationships”.</p>	<p>“meaningful consult engage in continuous, active and two-way dialogue with all relevant, potentially affected groups and other relevant stakeholders in an equal manner, paying particular attention to the stakeholder perspective”.</p> <p>In particular, the phrase “all relevant stakeholders” should also be emphasised in meaningful stakeholder engagement.</p> <p>Article 6.4: It is suggested to reintroduce the reference to enhanced due diligence in conflict-affected areas, specifically in situations of occupation, with reference to respecting international humanitarian law obligations, and referring to existing international standards and guidance, including the Geneva Conventions and its additional protocols.</p> <p>Article 6.4.b: it is suggested to introduce the need to consult with potentially impacted women and women’s organisations in all stages of human rights due diligence processes to identify and address the differentiated risks and impacts experienced by women and girls.</p> <p>Article 6.5.: It is suggested to replace “where the enterprise controls, manages or supervises the third party” by “along the whole value chain”.</p>
<p>Article 7. Access to remedy</p>	<p>The LBI should tackle procedural and practical obstacles that have hindered victims of corporate-related human rights abuses and environmental harm from obtaining justice.</p> <p>Strengthen the provision on the reversal of the burden of proof, as access to corporate documents is key for proven abuses of due diligence obligations and/ or causation of harm by a business enterprise.</p> <p>Require companies to remediate harm, integrating this obligation into the HRDD definition and Article 7 of the LBI. This can be aligned with Article 12 of the CSDDD, requiring remediation for harm caused or jointly</p>	<p>Article 7.4.: It is suggested that the wording “when and as applicable” be deleted.</p> <p>It is suggested that an Article 7.5 (d) be included as follows:</p> <p>“(d) to ensure the recognition and prompt execution of national or foreign judgments or awards, in accordance with the present Legally Binding Instrument and the Rights of Victims under Article 4.”</p>

	Recommendations	Proposed amendments for the Updated draft (current text)
	<p>caused by companies, while allowing voluntary remediation or leveraging influence for harm caused solely by business partners.</p> <p>Include detailed provisions for company-based grievance mechanisms, ensuring individuals and communities can submit complaints and access remedies through transparent and accessible channels.</p>	
Article 8. Legal liability	<p>The LBI should reintroduce a provision that establishes liability across value chains and complex corporate structures to ensure uniform application of corporate accountability across the jurisdictions of State Parties.</p> <p>A provision should clarify that corporate adherence to due diligence obligations does not automatically release companies from liability.</p> <p>The LBI should also mandate that administrative enforcement of corporate obligations includes consultation with victims of human rights and environmental harm. Authorities must prioritise victims' needs for remedies when issuing penalties and corrective actions to businesses.</p> <p>Article 8.2 should specifically refer to the rights of victims, including the right to an effective remedy as listed in Article 4 on Rights of Victim.</p> <p>Domestic law qualifiers under Article 8 should be deleted or, alternatively, Article 8 should explicitly indicate that essential requirements regarding legal liability (Article 8.2) cannot be overridden by domestic legal principles.</p>	<p>It is suggested that an Article 8.7 be included as follows: <i>“When determining the liability of a natural or legal person for human rights abuses that may arise from their business activities or relationships, the competent court or authority can take into account whether the person undertook adequate human rights due diligence measures in accordance with Article 6, but compliance with applicable human rights due diligence standards shall not absolve from liability ipso jure.”</i></p> <p>Article 8.2.: it is suggested to delete <i>“subject to the legal principles of the State Party”</i>.</p> <p>Article 8.2 (a): should be reworded as follows: <i>“responsive to the rights of the victims including the right to effective remedy”</i>.</p> <p>Article 8.4.: it is suggested to reintroduce the previous wording from the Third Draft of the LBI on <i>“reparation to a victim”</i>.</p>
Article 9. Jurisdiction	<p>The LBI should expand the grounds for jurisdiction and increase the choices of jurisdiction available to victims. It should include broad and</p>	<p>It is suggested that Article 9.1 (a) be reworded as follows: <i>“the human rights abuse took place, in whole or in part, including acts or</i></p>

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	<p>inclusive forum options for claimants, explicitly banning the use of “forum non-conveniens” and incorporating “forum necessitatis” to guarantee access to justice.</p> <p>Furthermore, as the current EU rules on jurisdiction and conflict of laws contain important gaps for the successful enforcement of corporate obligations and access to remedy for victims, the LBI could play an important role in enabling adaptations of rules of private international law for cases relating to corporate human rights and environmental harm, especially in the context of the evaluation of important EU regulation on questions of jurisdiction and applicable law (the Recast Brussels I Regulation and the Rome II Regulation).</p>	<p><i>omissions that led to the abuse, within the territory or jurisdiction of that State Party;</i></p> <p>It is suggested that Article 9.3 be reworded as follows: <i>State Parties shall take such measures as may be necessary, and consistent with its domestic legal and administrative systems, to ensure that decisions by relevant State agencies relating to the exercise of jurisdiction in the cases referred to in Article 9.1 shall respect the rights of victims in accordance with Article 4, including with respect to:</i></p> <ul style="list-style-type: none"> (a) <i>the discontinuation of legal proceedings on the grounds that there is another, more convenient or more appropriate forum with jurisdiction over the matter; or</i> (b) <i>the length of judicial proceedings and evidentiary burden placed on victims;</i> (c) <i>the coordination of actions as contemplated in Article 9.4.</i>
Article 10 Statue of limitations	States should enable judges to extend statutes of limitations if the facts of the case warrant it. The LBI could make a provision for this.	
Article 11. Applicable law		It is suggested that Article 11.2 be reworded as follows: <i>“All matters of substance which are not specifically regulated under this (Legally Binding Instrument) may shall, upon the request of the victim, be governed by the law of another State where: [...]”</i>
Article 14. Consistency with international law	The LBI should reintroduce the clause of Article 14.5 b (column right) or a similar provision which ensures that States also have obligations when drafting new trade and investment agreements. It might even be an option to include an obligation of States to revise and, if necessary, to redraft any existing trade and investment agreements which could potentially limit the ability of States to fulfil their human rights obligations.	<i>(b). All new bilateral or multilateral trade and investment agreements shall be compatible with the States Parties’ human rights obligations under this (Legally Binding Instrument) and its protocols, as well as other relevant human rights conventions and instruments.</i>

	Recommendations	Proposed amendments for the Updated draft (current text)
Article 15. Institutional arrangements	The functions and powers of the Committee should be strengthened by, among other things, having the ability to hear individual complaints. (Article 15)	
Article 18. Settlement of Disputes		It is suggested that: Section (a) of Article 18, which sets out companies' responsibility to identify and assess the company's human rights impacts, be amended to include environmental risk assessments to be consistent with the precautionary approaches set out in the Rio Declarations. The other sections of Article 18 of the Updated draft, which includes the specific measures such as taking action, conducting monitoring and communicating on human rights impacts, include environmental impacts alongside human rights .

6. Final requests to maximise the impact of the process for the LBI

Regarding the process, CIDSE and its member organisations would like to request the Chair to come up with a new draft early enough ahead of the 11th session to allow for adequate study and preparation. Furthermore, legal experts' recommendations should be taken into consideration.

We would also like to highlight the importance of engaging the EU in the negotiations. During the 9th session, the EU representative held in his speech that a future EU Corporate Sustainability Due Diligence Directive "could form a basis for the EU's future involvement in the negotiations". However, EU representatives from the European Commission have confirmed it is unlikely to have such a mandate for the 10th session. CIDSE, its member organisations and other allied CSOs have been urging the EU for the mandate for years. It is worth to recall that In January 2024, the European Parliament, through the INI procedure (2023/2108) urged the Council "to adopt an ambitious mandate for negotiations as soon as possible so that the EU is able to actively participate in the negotiations with a view to shaping the future LBI ". With the adoption of CSDDD, we hope it can set conditions for the EU to adopt a mandate for actively and formally engaging in LBI negotiations.

On the complementarity between CSDDD and the LBI, the EU should be wary of viewing the CSDDD as a blueprint for the LBI, especially as the CSDDD also has major weaknesses. In contrast to the LBI, the CSDDD provides a narrow scope of application to very large companies and excludes financial transactions, arms exports, and large parts of downstream supply chains. In addition, the civil liability regime requires affected parties to prove 1) the damage itself, 2) a company's breach of due diligence obligations and 3) the causal link between the breach and the damage.