

CORPORATE SUSTAINABILITY DUE DILIGENCE

FACTSHEET – MAY 2022

WHAT IS THE CORPORATE SUSTAINABILITY DUE DILIGENCE PROPOSAL?

It is the European Commission's proposal for a Directive to legislate the **impacts of corporate activities on human rights and the environment**.

The Commission tabled the proposal in February 2022. It will now be discussed by the European Parliament and Council of the EU until they agree on a common text.

WHAT COMPANIES DOES THE LAW APPLY TO?

The proposal covers two types of EU companies and two types of foreign companies operating in the EU.

- The law applies to **EU companies**
 - 1) with **500 employees** and a net **turnover of 150 mln EUR**
 - 2) with **250 employees** in three **high-risk sectors** (garments, agri-food and mining).
- The law applies to **non-EU companies** operating in the EU
 - 1) with **150 mln EUR in turnover** generated in the EU and
 - 2) with **40 mln EUR in turnover** generated in the EU in one of three **high-risk sectors** (garments, agri-food, mining).

WHAT WILL COMPANIES BE ASKED TO DO?

They will be asked to prevent, cease and mitigate the potential and actual adverse impacts of their activities on human rights and the environment through human rights and environmental due diligence.

Companies will have to perform these checks regarding their operations, the operations of their subsidiaries and the operations of companies with which they have an ongoing relationship (for at least one year) and which is reasonable to think will continue in the future. The proposal identifies the latter as **'established business relationships'**.

WHAT IS HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE (HREDD)?

HREDD is a practical tool companies can use to check, address and cease human rights and environmental violations.

The Organisation for Economic Cooperation and Development indicates **six steps** of HREDD:

- 1) embedd responsible business conduct** into companies' policies and management,
- 2) Identify** and assess **adverse impacts** on human rights and the environment,
- 3) cease, prevent or mitigate** those impacts,
- 4) track** the implementation and results of the policies adopted,
- 5) communicate** how those impacts are addressed and
- 6) provide for or cooperate in remediation** for the damage caused.

International standards for HREDD have been published by the OECD and are also detailed in the United Nations' Guiding Principles on Business and Human Rights (UNGPs). These principles have been developed in consultation with businesses, civil society and states.

IS THE COMMISSION'S PROPOSAL ALIGNED WITH INTERNATIONAL HREDD STANDARDS?

Only in part. On numerous points, the proposal omits international standards or deviates from them.

For example, the proposal only applies to a limited set of companies. The UNGPs recognise that respecting human rights and the environment is a duty of all companies, not only large ones. The way companies fulfil such duty to respect should be proportional to a company's

size, sector of operations, governance structure and context.

The UNGPs and the OECD Guidelines highlight that HREDD should always be conducted in consultation with stakeholders affected, but the Commission proposal only integrates stakeholder consultation as an optional step.

The UNGPs also recognise that corporate activities can affect virtually the whole range of human rights, but the Commission's proposal only covers a selection of negative impacts on human rights.

WHAT HUMAN RIGHTS DO COMPANIES HAVE TO CHECK FOR?

A range of human rights is detailed in Annex I of the proposal. The Commission asks companies to check for adverse impacts on protected persons that represents a violation of one of the rights included in the Annex. This is contrary to the OECD and UNGPs, which state that companies have to check for any impact that prevents people from enjoying their rights.

WHAT ENVIRONMENTAL IMPACTS DO COMPANIES HAVE TO CHECK FOR?

Companies have to check whether their actions violate one of the obligations in the second section of the Annex to the proposal. This excludes an extensive range of impacts on water, soil, air, and ecosystems not included in the Annex.

CAN COMPANIES BE HELD ACCOUNTABLE FOR NOT CEASING, PREVENTING AND MITIGATING THEIR ADVERSE IMPACTS ON HUMAN RIGHTS AND THE ENVIRONMENT?

Yes. The proposal includes the possibility of holding companies civilly liable for failing to comply with their due diligence obligations. This is accomplished through the establishment of Supervisory Authorities in the Member States.

CAN COMPANIES BE HELD ACCOUNTABLE FOR THE HARM

THEY CAUSE TO HUMAN RIGHTS AND THE ENVIRONMENT?

Yes, if the harm results from a failure on the company's part to take all appropriate measures to cease, prevent or mitigate those impacts.

CAN COMPANIES BE HELD ACCOUNTABLE FOR THEIR IMPACT ON CLIMATE CHANGE?

No. Although the proposal does ask companies to adopt climate change mitigation plans, it does not contain any provisions to sanction companies when they fail to adopt a plan or implement it.

DOES THE PROPOSAL INCLUDE PROVISIONS TO HELP VICTIMS ACCESS JUSTICE?

No. The proposal does not include mechanisms to facilitate access to justice for victims of corporate abuse – the issue is left for the Member States to tackle.

MORE RESOURCES

- CIDSE's position paper: [Raising the Stakes for People and the Planet. Improving the European Commission's Corporate Sustainability Due Diligence Proposal.](#)
- [Civil society statement on the proposed Corporate Sustainability Due Diligence.](#)
- European Parliament study, [Access to legal remedies for victims of corporate human rights abuses in third countries](#)
- [CIDSE's Illustrated Glossary of Access to Justice for victims of corporate abuse: what does it mean and why do we need an EU law.](#)

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