

Proposal for a Directive on Corporate Sustainability Due Diligence (CSDD) - Updated Roadmap to mobilise ahead of the EU trialogue

Discussed at the Executive Committee meeting of 27-28 October 2022

Summary of key messages

Based on the ETUC key demands as adopted by the Executive Committee in December 2019 in the ETUC Position calling for a European Directive on mandatory Human Rights Due Diligence and responsible business conduct¹, the ETUC position 'Towards an EU law on mandatory Human Rights Due Diligence: indicative roadmap for ETUC actions in 2021-2022' (December 2021)² as well as the ETUC Position 'ETUC initial analysis of the Commission's proposal for a Directive on Corporate Sustainability Due Diligence and updated roadmap for ETUC actions in 2022-2023' (March 2022)³, the ETUC Executive Committee is asked to discuss and take note of this (updated) position paper which provides in particular a summary of the main amendments the ETUC intends to put forward to the European Parliament and Member States and other stakeholders as well as an overview and update of the actions undertaken March 2022 and some suggestions for further actions in view of the EU trialogue which is likely to start in Q2 in 2023 at the earliest.

Context

With 238 days' delay, the Commission finally presented on 23rd February 2022 a [proposal for a Directive on Corporate Sustainability Due Diligence](#) ('CSDD').

However, comparing it to the ETUC key demands as adopted in December 2019, what was put on the table is a missed opportunity in particular as the Commission had clearly opted on many points for the lowest common denominator, as a baseline and thus falls very far short on many aspects on what is actually needed to ensure that violations of human rights, including trade union and workers' rights, and environmental standards are prevented and ceased. The Commission's proposal even largely ignores the strong and ambitious European Parliament

¹ [ETUC Position for a European directive on mandatory Human Rights due diligence and responsible business conduct](#), as adopted by the ETUC Executive Committee in December 2019.

² Towards an EU law on mandatory Human Rights Due Diligence: indicative roadmap for ETUC actions in 2021-2022, as discussed and agreed at the ETUC Executive Committee of 8-9 December 2021

³ [ETUC initial analysis of the Commission's proposal for a Directive on Corporate Sustainability Due Diligence and updated roadmap for ETUC actions in 2022- 2023](#), adopted at the virtual Executive Committee meeting of 16-17 March 2022.

proposals⁴ which echoed much better and with vision what the European Union should deliver to hold business and suppliers accountable for the adverse impacts of their operation on human rights, people and the planet.

As a reminder, our main trade union demands in regard to an EU law on mandatory Human Rights Due Diligence are as follows:

- Need for a European directive on mandatory human rights due diligence and responsible business conduct because the existing international and European voluntary guidelines, codes and charters did not deliver,
- This mandatory and effective due diligence mechanisms should cover all companies' activities and their business relationships, including their supply and subcontracting chains,
- As trade union and worker's rights are human rights, they should be equally protected by these mechanisms, as an important step forward to ensure the respect and enforcement of Human Rights. Human Rights should include trade unions' and workers' rights as main components,
- The Directive should provide for effective remedies and access to justice for victims/workers, including trade unions,
- Liability must be introduced for cases where companies fail to respect their due diligence obligations, without prejudice to joint and several liability frameworks,
- and last but not least, the Directive should ensure the full involvement of trade unions and workers' representatives, including EWCs throughout the whole due diligence process.

ETUC initial and detailed analysis of the Commission's proposal:

To recall, in its initial analysis of the Commission's proposal, as adopted by the ETUC Executive Committee of March 2022⁵, the ETUC summarised the major loopholes and deficiencies of the Commission proposal in more detail as follows:

- **The Directive misses the human rights, people and governance focus** as the proposal is mainly construed as a "framework" focusing on the role of companies to ensure the "sustainability" dimension of their operations but pays no serious attention to the "human rights" dimension nor to the position of affected people and victims. In addition, the focus of the Directive lies on obligations of means (i.e. establishing plans, code of conducts) not an obligation of results (i.e. to require companies to guarantee stopping adverse impacts, in all circumstances, that adverse impacts will never occur or that they will be stopped. Furthermore, the proposal overlooks business governance aspects, as Corporate Sustainability Due Diligence is reduced to unilateral business initiatives (e.g. code of conducts, prevention and corrective action plans, transition plans) and enhances businesses to play judge and jury over their own practices. It even provides for (financial) support for companies/SMEs which are excluded from the scope (i.e. support without any obligations attached to it). However, little to no support is

⁴ In particular the [European Parliament Report with recommendations to the Commission on corporate due diligence and corporate accountability](#), adopted 11 February 2021; see also [European Parliament Report on Sustainable Corporate Governance](#), adopted 2 December 2020.

⁵ [ETUC initial analysis of the Commission's proposal for a Directive on Corporate Sustainability Due Diligence and updated roadmap for ETUC actions in 2022- 2023](#), adopted at the virtual Executive Committee meeting of 16-17 March 2022.

provided for the affected people/victims/communities, nor for trade unions (and CSOs) to ensure their full engagement in the whole due diligence process.

- **A too limited scope of businesses covered seriously undermines the proposals' added value and impact.** In addition to the complete exclusion of SMEs for mainly reasons of avoiding administrative burden or other (financial) costs, even the number of companies potentially covered by the CSDD proposal are further restricted amongst other reasons because of 1) the embedded – non-consolidated – thresholds in relation to “world” turnover and/or number of employees, for both EU and non-EU companies, 2) the inclusion of certain third-country based companies within the scope of the Directive does not apply to those companies that do not meet the thresholds as they operate within the EU through different business structures such as subsidiaries, contract management and franchise, 3) the list of high risk sector companies is reduced to 3 sectors with limited due diligence obligations, 4) the exhaustive list of companies covered by Article 3, which *de facto* excludes other businesses on the basis of their legal form and 5) not covering the public sector. Similarly, a set of definitions such as the ones on “severe adverse impact”, “value chain”, “(established) business relationships” might allow for considerable further limitations and/or shifting due diligence obligations down to other layers of the supply chain.
- **Human rights include trade union, workers' and labour rights, but** the Human Rights covered by this proposal include trade union, workers' and labour rights, although there are not explicitly recognised in the hard core provisions of the proposal but shifted to annex to the Directive. In addition, the list of potential Human Rights instruments embedded in this annex is very limited, selective and random. Finally there is no reference to fundamental European Human Rights instruments like the Council of Europe European Convention of Human Rights and European Social Charter, let alone to the own Charter of Fundamental Rights of the European Union.
- **Trade union and workers' representatives are ignored and by-passed** as the proposal limits the role of trade unions to filing internal complaints about violations and provides for a restricted consultation with a selection of stakeholders concerning for example the elaboration of code of conducts or prevention and corrective action plans. Such consultation is only provided for “where relevant” and with “stakeholders” and/or (certain) civil society organisations, whereby the definition of stakeholders does not refer to trade union and workers' representatives. Construed as it is for the moment, the proposal thus not only ignores but risks also by-passing and run contrary to the rights and prerogatives which trade union and workers' representatives have under international and European human rights instruments as well as the EU *acquis* on information, consultation and participation, as well as collective bargaining and collective agreements.
- **Confusion of (alternative) grievance proceedings, little to no support for victims to access to justice, little to no effective remedies and sanctions.** The proposal provides for a plethora of alternative proceedings and structures to filling a complaint to court, such as internal grievance and complaints mechanisms, ‘a substantiated concerns’ procedure, national supervisory authorities (incl. European Network), possible use of contractual clauses between companies and suppliers. Furthermore, the proposal does not provide for support and tools for victims to overcome the manifold hurdles to seek access to justice. Proposals such as the shift of burden of proof,

collective redress, representation of victims by trade unions, civil society organisations or other bodies are not provided for despite the fact such mechanisms exist in the EU acquis in the area of non-discrimination, consumer protection, to name but a few. As for sanctions, the Commission proposal heavily relies on administrative sanctions, which could include pecuniary sanctions but these eventual pecuniary sanctions shall be based on the turnover of the company, not the actual damage caused.

In line with the discussion paper “[Towards an EU law on mandatory Human Rights Due Diligence: indicative roadmap for ETUC actions in 2021-2022](#)” (December 2021) and the [ETUC Position including the ETUC initial analysis and updated roadmap for actions](#) (March 2022), the ETUC has continued and intensified its mobilisation and advocacy work to remedy the loopholes and lacunae of the draft proposal and to ensure an ambitious and future proof Directive that can effectively prevent and remedy human rights violations and environmental damage.

Over the past months (end March-...), this advocacy and mobilisation work was concentrating around amongst others the following:

- Elaboration of a **detailed – article by article – legal analysis of the Commission proposal (including proposals for concrete amendments** and/or adding text proposals on missing priorities/issues) to be used in the further legislative process and advocacy work towards Council/Member States, European Parliament and Commission;

Following a written consultation with the affiliates (in particular the ETUC ad hoc Working Group on mandatory Human Rights Due Diligence and Sustainable Corporate Governance (mHRDD/SCG), the ETUC Labour and Internal Market Legislation Committee and the ETUC Workers’ Participation and Company Policy Committee) and two meetings of the ETUC ad hoc Working Group, the ETUC established a detailed set of concrete amendments to both the Directive and its Annex. This set has been put at the disposal of the affiliates in view and in support of their own advocacy work towards their governments and/or European Parliament. For a summary of the main proposals for amendments, see Annex 1.

The ETUC has in the meantime presented and discussed this set of concrete amendments with MEPs (assistants) of in particular the S&D, Left and Green groups. Further meetings are/will be scheduled thereby following the general legislative calendar as well as the specific calendars of the EP Committees involved in this initiative but with a particular focus on the work of JURI (lead committee) and EMPL.

The ETUC has also provided expert input in the EESC Opinion on ‘[Sustainable Corporate Governance](#)’ (INT/973, adopted July 2022) to ensure that the ETUC priorities for changing/strengthening the Directive are taken into consideration.

- Intensifying the **advocacy work in the ongoing legislative process on the Corporate Sustainability Reporting Directive (‘CSRD’)** and the ongoing related standard-setting work within the [European Financial Reporting Advisory Group](#) (EFRAG) and where ETUC is represented in the management board as well in different project task forces and expert working groups;

Members of the ‘ETUC CSDD Team’ have participated and/or provided expert input in the (very) regular meetings of the EFRAG Board and the dedicated project task forces and expert groups.

- Intensifying **the advocacy work on announced (legislative) initiatives like a [ban on forced labour products](#)** and the abolition of forced and child labour in general conditioning at the same time these initiatives with our demand on the protection of the enabling trade union rights;

ETUC [welcomed](#) the Commission’s proposal for a Regulation on banning on goods produced through forced labour as it reflects the [detailed recommendations](#) submitted by the ETUC and gives a prominent role to trade unions, which will be able to alert authorities to goods made with forced labour.

- Intensifying a **communication strategy** using thereby all **available internal tools** (ETUC website, ETUC Democracy at work campaign website ([More democracy at work | ETUC](#)), ETUCLEX website ([ETUCLEX | ETUC-Lex](#)), Megaphone, when available, social media in general,...), organisation of own webinars and/or active participation in external events and conferences, as well as via **the new joint public campaign** on the Commission proposal **together with the INGOs** European Coalition for Corporate Justice (ECCJ), European Center for Constitutional and Human Rights (ECCHR) and Friends of Earth Europe (FoEE), Forum Citoyen pour la Responsabilité Sociale des Entreprises and CIDSE.

ETUC [dedicated mHRDD website section](#), ETUC Democracy at work campaign website ([More democracy at work | ETUC](#)), ETUCLEX website ([ETUCLEX | ETUC-Lex](#)) have been regularly updated with new information and relevant documents.

The ETUC also started its own petition on ‘[End human rights violations in supply chains, involve trade unions](#)’ in July 2022 which also forms part of the new ETUC “[Action Europe](#)” community campaigning tool for a fairer deal for working people.

Also the joint ETUC-INGOs campaign “Justice is everybody’s business” was launched via a [dedicated website](#) and a [photo action in front of the Council of the EU](#) beginning of September 2022.

For both the mobilisation and advocacy work, **cooperation with the affiliates** has started to be intensified via in particular the organisation of regular meetings (+/- every two weeks) of the ETUC ad hoc Working Group on mandatory Human Rights Due Diligence and Sustainable Corporate Governance (mHRDD/SCG) and regular information exchange to the Executive Committee and relevant ETUC permanent committees (e.g. the Labour and Internal Market

Legislation Committee and the Workers' Participation and Company Policy Committee) or other ETUC (support) structures like the ETUC Fundamental Rights and Litigation Advisory Group (FRLIT AG) and ETUCLEX.

For the cooperation with affiliates on the detailed set of ETUC amendments see above (and Annex 1); as for further regular information and discussions with the permanent committees, dedicated sessions are planned at the meeting of the Labour and Internal Market Legislation Committee of 25 October and the meeting of the Workers' Participation and Company Policy Committee on 26 October.

Dedicated sessions were also organised in the framework of the ETUC Annual EWC Conference (8-9 September, Brussels) and are envisaged at the meetings of the ETUC NETLEX Conference (15-16 November) and the ETUC Fundamental Rights and Litigation Advisory Group on 17 November.

A more detailed but non-exhaustive overview of the different meetings members of the 'ETUC CSDD Team'⁶ held and/or attended with relevant stakeholders can be found in the Annex 3.

What's next?

1. *For the next months to come and up till the start of the triilogue (expected to start Q2 or 3 2023 with a view to end before May 2024), the ETUC proposes to concentrate and intensify its actions as follows:*

- In line with the calendars for the (votes on the) opinions of the different EP Committees (see Annex 2), to step up the targeted (physical, online and/or breakfast) meetings with selected MEPs (and/or their assistants)
- As the Czech Presidency is currently speeding up its work in view of reaching their "general approach" by beginning of November, the ETUC will step up the coordination of actions to be envisaged by the affiliates towards their own governments amongst others by providing them further material in the form of template letters, background documents on the eventual acceptable and non-acceptable provisions/approaches in the respective Presidency compromises, etc.
- The ETUC will also continue to interact with specific governments (i.a. German, French) which have approached the ETUC (affiliates) with requests for specific inputs/amendments on key issues like the role of trade union and workers' representatives.
- To consider new actions together with the INGOs in particular under the "Justice is Everybody's business" campaign in particular the national roll-out of the campaign.

The timing and format of these different actions will be presented at and discussed with at the regular meetings with the ETUC mHRDD/SCG ad hoc working group.

⁶ The 'ETUC CSDD Team' consists of Isabelle Schömann (ETUC Confederal Secretary), Stefan Clauwaert (ETUC Senior Legal and Human Rights Advisor), Stefan Gran (ETUC Senior Advisor), and Niklas Franke (ETUC Project Officer) with the expert support of Sigurt Vitols (ETUI Associated Researcher) for the work with the EFRAG on the CSRD Directive and the administrative support of Esyllt Meurig.

ANNEX 1:

Summary of the main ETUC amendments to the CSDD Directive

Following the priorities identified in the ETUC initial legal analysis, the ETUC elaborated the a set of detailed amendments to both the Directive and its Annex. Below a non-exhaustive summary is provided.

- **To ensure that Human Rights include Trade Union and Workers' rights (i.e. broaden the material scope)**
 - Add “human rights” dimension in the title of the Directive next to the “sustainability” dimension
 - Add references to Article 2 TEU (respect for human rights) and Article 151 (improved working/living conditions) in the Preamble
 - Add explicit reference in Article 1 (subject) that human rights include trade union and workers' rights
 - Ensure coherence between definition of “adverse human rights impact” (Article 3) with list of international and European human rights instruments/violations in Annex
 - Expand the list of international and human rights instruments in the Annex by adding further references to UN, ILO, Council of Europe and EU fundamental rights instruments and make the list subject to a regular review and update
 - Add in Article 13 further international and European human rights bodies (as well as the European (sectoral) social partners) to the actors the Commission should involve in elaborating specific sectoral or adverse human rights guidelines

- **To broaden the personal scope of the Directive**
 - Delete the whole Article 2 (scope) and definition of “company” in Article 3 and replacing it with a proposal for a general definition expressing that this Directive applies to all undertakings irrespective of the sector, their activities, their size, their structure, their turn over, their legal form
 - Replace the term “company” throughout the whole text by “undertaking”
 - Ensuring that the Directive also applies to subsidiaries/franchising by
 - expanding the definitions of “business relationship”, “value chain”
 - deleting the definition of “established business relationship” and “severe adverse human rights impact” (all in Article 3)
 - In case the option in first bullet point would not be achieved, a set of amendments is prepared to ensure a much larger personal scope (e.g. by lowering the turnover/number of workers thresholds, turning those thresholds in consolidated/group thresholds, add high risk sectors and notion of “high risk economic activity”, adding new definitions on ‘vertical, subcontracting and outsourcing agreements’, ...)

- **To ensure the full involvement of trade union and workers' representatives in the whole due diligence process**
 - Expanding the definition of “stakeholder” (Article 3) by adding explicit reference to “trade union and workers' representatives”
 - Adding a new definition of “trade union and workers' representatives along the lines of the relevant ILO Conventions
 - Adding a horizontal clause in Article 4 (due diligence obligations) that undertakings must ensure the rights and prerogatives of trade union and/or workers' representatives (information, consultation, participation and negotiation) are fully respected and applied.
 - Add specific references to trade union and workers' representatives in other articles like Article 5 (integrating DD into undertaking policies), Article 7 (preventive action plan), Article 9 (complaints procedure), Article 13 (guidelines), Article 17&21 ((network of) supervisor authorities), ...
 - Ensure that support and accompanying measures now only envisaged for SMEs are also offered to trade union and their representatives

- **To ensure effective liability, remedies, access to justice and enforcement**
 - Delete references to “contractual assurances”
 - Delete definition/references to “severe” adverse impact to avoid distinctions in liability depending on whether an impact is severe or not
 - Strengthening and expanding the obligations on integrating DD in undertaking policies in Article 5
 - Strengthen Article 22 on “civil liability” by adding provisions on “burden of proof”, disclosure requirements, collective redress
 - Ensure that alternative procedures in Article 9 (complaints procedure) and 19 (substantiated concerns) are not undermining the possibility for victims to start proceedings before courts
 - Strengthen the role, powers and structure of the supervisory authorities including a proposal to turn the “network of supervisory authorities” into “an authority of its own” along the example of the European Labour Authority (ELA) or embedded in the ELAA
 - Adding suspension or exclusion of public contracts, public procurement contracts in Article 24 as potential sanctions.

ANNEX 2: Time calendar votes European Parliament Committees

JURI (lead committee)

Timetable JURI	
Hearing (with associated committees)	26 October 2022
Presentation of draft report in JURI	17 November 2022
Deadline for amendments	30 November 2022
Consideration of amendments	January 2023
Vote in JURI	End of March 2023
Plenary mandate	May 2023

Rapporteur: Lara Wolters (S&D)
Shadows: Axel Voss (EPP)
Adrian Vázquez Lázara (Renew)
Heidi Hautala (Greens)
Manon Aubry (The Left)

EMPL

Send draft to translation	24 Oct. 2022
Consideration of draft opinion	8 Nov. 2022
Deadline for AMs	14 Nov. 2022
Consideration of AMs	--
Vote in EMPL	Feb 2023, week 6

Rapporteur: Samira Rafaela (Renew)
Shadows: Miriam Lexmann (EPP)
Evelyn Regner (S&D)
Sara Matthieu (Greens)
Leila Chaibi (The Left)

DROI

Consideration of draft opinion	10 October 2022
Deadline for AMs	14 October 2022
Consideration of AMs	--
Vote	30 November 2022

Rapporteur: Raphael Glucksmann (S&D)
Shadows: Ivan Stefanec (EPP)
Katalin Cseh (S&D)
Heidi Hautala (Greens)
Marisa Matis (The Left)

ENVI

Consideration of draft opinion	10 October 2022
Deadline for AMs	17 October 2022
Consideration of AMs	--
Vote	February 2023

Rapporteur: Tiemo Wölken (S&D)
Shadows: Pietikäinen Sirpa (EPP)
Pascal Canfin (Renew)
Marie Toussaint (Greens)
Mick Wallace (The Left)

Further Opinions/ Rapporteurs:

ECON: Rene Repasi (S&D)
INTA: Barry Andrews (Renew)
DEVE: Pierfrancesco Majorina (S&D)
ITRE: Martina Dlabajova (Renew)
IMCO: Deirdre Clune (EPP)

Annex 3:

Encounters by the ETUC CSDD team		
29 March	CCOO/ISTAS Final Conference of the TALK Project on non-financial reporting	Online
22 April	Colloquium of the Belgian Sociality Party on Corporate Sustainability Due Diligence	Brussels
4 May	Meeting with MEP Lara Wolters on Corporate Sustainability Due Diligence	Strasbourg
4 May	Meeting with MEP Raphaël Glucksmann on Corporate Sustainability Due Diligence	Strasbourg
17 May	ETUC Ad hoc group on Corporate Sustainability Due Diligence	Online
19 May	Visit of French Senators on Corporate Sustainability Due Diligence	Brussels
25 May	ETUC/NGOs webinar with Commissioner Reynders on mandatory Human Rights Due Diligence / Corporate Sustainability Due Diligence	Online
1 June	ETUC-Eurocadres webinar on mandatory Human Rights Due Diligence “How to influence company strategies” / Corporate Sustainability Due Diligence	Online
2 June	ETUC Meeting on Forced Labour	Online
14 June	United Nations Global Pact France Conference on Corporate Sustainability Due Diligence	Online
16 June	Meeting with ETUC affiliates on forced labour	Online
23 June	Global Poverty Project meeting on mHREDD	Online
5 July	Meeting with MEP Heidi Hautala on CSDD	Strasbourg
5 July	Meeting with MEP Mathieu on CSDD	Strasbourg
6 July	Meeting with MEP Vaquez on CSDD	Strasbourg
6 July	Meeting with MEP Manon Aubry on CSDD	Strasbourg
7 July	Trade Union Intergroup meeting on CSDD	Strasbourg
8 July	ETUC ad hoc group on CSDD	Online
11 July	Meeting with advisor from the Permanent Representation of the Czech Republic	Online
12 July	Webinar on the NGO campaign on CSDD	Online
29 August	Meeting with EFFAT on CSDD	Online
6 September	Campaign Launch of “Justice is Everybody’s business” campaign with NGOs	Brussels

	Photo action in front of the Council	
6 September	ETUC ad hoc group on CSDD	Online
8 & 9 September	CSDD workshop & panel on CSDD during EWC Conference	Brussels
9 September	Meeting with EFBWW on their subcontracting campaign	Online
20 September	UDW Platform "Tackling undeclared work in supply chains"	Bratislava
27 September	Meeting with Paul Tang MEP on EFRAG	Online
28 September	Second annual conference of the nova law school on the draft Corporate Sustainability Due Diligence Directive (CSDDD): opportunities and challenges	Lisbon
6 October	ETUC ad hoc group on CSDD	Online
12 October	Conference of the Socialists and Democrats in the European Parliament "People, Planet and Profit – Debating the Future of Due Diligence"	Brussels
18 October	FES event "The Changing World – Due Diligence Law as the Opportunity"	Berlin
19 October	Meeting at the French Parliament on CSDD	Paris
25 October	ETUC Labour and Internal Market Legislation Committee	Brussels
26 October	ETUC Workers' Participation and Company Policy Committee	Brussels
7 November	Stakeholder meeting with MEP Axel Voss on CSDD	Brussels
15-16 November	ETUC NETLEX Conference 2022 followed by ETUC Fundamental Rights and Litigation Advisory Group	Brussels