

Final Call for Alignment of the EU Corporate Sustainability Due Diligence Directive with the UN Guiding Principles on Business and Human Rights

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The Office of the UN High Commissioner for Human Rights (OHCHR) welcomes the efforts by the European Union to bring the negotiations of the Corporate Sustainability Due Diligence Directive to a successful conclusion. In the face of the urgent challenges confronting our society today – including the dramatic rise in inequality and the triple planetary crisis of climate change, biodiversity loss and pollution – it is more important than ever that States take meaningful action to respect, protect and fulfill human rights. The European Union is demonstrating much needed leadership in seeking to tackle these challenges and in putting respect for human rights at the core of that response, including through the introduction of a directive that would cover the human rights responsibilities of many companies operating in the single market.

There is global consensus that companies have a responsibility to respect human rights in their own activities and across their value chains. That question was put to the UN Human Rights Council just over a decade ago, and the answer was affirmative and unanimous. With the endorsement of the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#) in 2011, the Council also provided companies with the blueprint on how to meet this responsibility in practice.

The uptake of the UNGPs has been swift and broad. The core concept of human rights due diligence that they put forward, which is also reflected in the [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#) and [ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#), works for companies of all sizes and sectors. It enables them to prevent and address potential and actual adverse impacts across the entire spectrum of internationally recognized human rights. It expects them to engage with affected stakeholders in doing so, especially those whose rights may be most at risk. It allows them to prioritize their efforts, when necessary, by focusing on the most severe impacts to people. It drives them to carefully consider how their own business models, strategies, and purchasing and sales practices may inadvertently heighten the risk of impacts occurring in their value chains, instead of simply assuming that the problem lies with their business partners. And it expects them to use creative forms of leverage to persuade and cooperate with others in tackling human rights harms.

This principled yet practical logic ended a decades-long debate over the appropriate role of business when it comes to respecting human rights. It is therefore not surprising that it has formed the basis for subsequent legislation, including requirements on companies to disclose how they manage their human rights and environmental impacts, notably the EU's Corporate Sustainability Reporting Directive. And it explains why so many companies, investors, civil society organizations and trade unions agree that the logic of the UNGPs should inform the core content of new laws that will not only require companies to report on their due diligence, but to actually carry it out.

OHCHR therefore calls on EU Member States and the European Parliament, with the support of the Commission, to adopt a robust Corporate Sustainability Due Diligence Directive that is aligned in all essential elements with the UNGPs.

This implies, first, that the Directive should adopt a true risk-based approach. That means companies should focus first and foremost on the most severe and most likely impacts that they may be involved with in their own activities and across their entire value chains. There is no place for legal loopholes that would allow companies to ignore their most severe adverse impacts, for example because they occur downstream when the company's products are used by others. There are always reasonable steps that a company can take to mitigate such risks. OHCHR's note of September 2022 [through our B-Tech Project](#) provides examples of how companies are feasibly implementing downstream human rights due diligence.

Second, the Directive should also clearly differentiate what is expected from a company when it causes or contributes to an adverse impact, or when its operations, products or services are linked to an adverse impact through a business relationship. That includes recognizing the limits of over-reliance on contracts and audits as the main "tools" of human rights due diligence and the need for companies to go beyond them if due diligence is to deliver better outcomes for people. A contract putting obligations on a business partner is of limited use when the company's own business model and strategy is the real problem. Similarly, a top-down approach to auditing or policing business relationships for non-compliance is unlikely to address the root causes of many adverse human rights impacts, which require collaboration and innovation between businesses. It is vital that European Union law does not have the effect of discouraging investment in and engagement with business partners in sourcing and production markets beyond the European Union's borders, for example by incentivizing termination of business relationships instead of longer-term efforts to jointly tackle risks.

Third, the Directive should put people – those affected and potentially affected by adverse impacts – at the centre of the due diligence process. As noted in the UNGPs, meaningful consultation with those at risk of harm – for instance, with workers and trade unions, local communities, people who use companies' products and services, and human rights defenders – is vital to ensuring that human rights due diligence achieves its objectives. This includes the important role affected stakeholders can play in informing a company's decision to terminate business relationships, once other approaches at addressing impacts have proved unsuccessful.

Finally, the Directive should be supported by meaningful accountability measures, including administrative supervision and civil liability. Both elements are essential to ensuring people have access to remedy when their rights are harmed, as OHCHR's Accountability and Remedy Project has shown. Our [webpage on mandatory human rights due diligence](#) contains resources making these connections and covering design considerations for the enforcement of due diligence legislation.

OHCHR urges European Union institutions to work together to ensure that the forthcoming Corporate Sustainability Due Diligence Directive is fully aligned with the UNGPs. By doing so, the European Union can ensure that this important directive follows the global consensus that the UN Human Rights Council expressed in 2011, and which has driven efforts by States, business, and civil society in the business and human rights field since.