

# Statement on the European Commission's Proposal on Corporate Sustainability Due Diligence

23 May 2022

The [German Institute for Human Rights](#) (GIHR) welcomes the [European Commission's proposal](#) on Corporate Sustainability Due Diligence (EU CSDD). Europe-wide regulation will help to improve respect for human rights along supply chains. Individual EU Member States have already advanced the regulation of supply chains at national level, including Germany with its „[Act on Corporate Due Diligence Obligations in Supply Chains](#)“, which will enter into force in 2023. While comparable in many provisions, the EU Proposal goes beyond some provisions in the German Law.

The GIHR believes that the Proposal has a potential to have a significant positive impact on people and planet. However, this can only be achieved if companies engage with it in a meaningful way. There is a risk that some features of the law will undermine its effectiveness and foster “checkbox compliance”.

The GIHR makes the following comments on the Proposal:

## Scope of value chain

The Proposal applies to the **entire value chain**, not just the supply chain. This is an important recognition that companies can have an impact not only with respect to the production of their goods and services, but also with respect to their use, distribution and end of life disposal.

## Due Diligence in “established business relationships”

The Proposal provides for corporate due diligence obligations only in so-called "**established business relationships**". There is evidence from many sectors, however, that many human rights violations occur in short-term business relationships. Human rights due diligence obligations should therefore also cover these business relationships. Otherwise, there is a risk that the wrong incentives are set, and companies increasingly rely on short-term business relationships. Stable and long-term business relationships have been shown to be more conducive to implementing human rights due diligence, as they provide the opportunity to work more intensively with suppliers to ensure respect for human rights standards. The Proposal should thus be amended and provide for human rights due diligence obligations, regardless of the type of business relationships.

The Proposal should use a risk-based approach with a **focus on risks to rights-holders**. The risks to rights-holders should be prioritized according to their severity and rights-holders should be meaningfully involved in all steps of the due diligence process as well as in their enforcement. To effectively center rights-holder perspectives, consultations with rights-holders should be required, and not just if a company

deems it “relevant”. Consultations are key steps in informing how to effectively address business-related human rights concerns, since rights-holders possess first-hand experience with impacts of corporate decision-making and activities and are able to articulate their specific needs.

### Scope of companies covered

The Proposal contributes to the creation of a common **European level playing field** and prevents competitive disadvantages in the European market. Since the regulation would apply to companies with 500 or more employees and sales of more than €150 million and to smaller companies in some risk sectors, it would cover about 13,000 European companies, which in turn are linked to a multiple of suppliers. In addition, the draft would also apply to about 4,000 non-European companies that sell products and services within the EU and meet certain turnover thresholds within the EU.

With regard to the **financial sector**, the proposed directive falls far short of the requirements of the German Act on Corporate Due Diligence Obligations and creates several exceptions which are not in conformity with the UN Guiding Principles on Business and Human Rights (UNGPs) and are also out of step with existing practice in the sector. The directive obliges financial service providers to assess the activities of their clients with regard to potential human rights impacts before awarding contracts for financial services. The scope of the human rights due diligence obligations of financial service providers is thus limited to the pre-contractual obligations of the company.

The personal scope of the Proposal should be **closely aligned with the UNGPs** and cover all companies, but the complexity of the due diligence obligations should be proportionate to the size of the company.

### Civil liability

The draft establishes a minimum set of circumstances under which a company should be liable for human rights or environmental damage caused by due diligence failures. The pathway to civil liability through judicial mechanisms is a critical component in providing access to remedy for rights-holders.

The GIHR welcomes the inclusion of a **civil liability mechanism**. However, access to remedy will only be enforceable for those harmed by business activity, when the **burden of proof** will be eased. Rights-holders usually do not have access to the information necessary to prove that a company has not exercised due diligence. This imbalance of powers between companies and individuals needs to be addressed by easing the burden of proof for claimants in addition to Art. 22 EU CSDDD Proposal.

### Administrative enforcement

The Proposal provides for a supervisory structure that sets out clear rules on the powers of national supervisory authorities, including the power to investigate, to carry out inspections, to order the cessation of infringements, to impose financial penalties and to take measures to prevent irreparable harm. Such a range of administrative powers is necessary to account for the diversity and potential complexity of cases.

The presence of a **combination of regulatory enforcement and civil liability** in the proposed Directive is positive for the enforcement of human rights due diligence along the value chain and is therefore welcomed by the GIHR.

### About the Institute

The German Institute for Human Rights is the independent National Human Rights Institution of Germany. It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations.