



TOWARDS

A GENDER-RESPONSIVE

TRANSPOSITION

OF THE CORPORATE

SUSTAINABILITY DUE

DILIGENCE DIRECTIVE

act!onaid



Cover

Dhaka, Bangladesh. 27th December 2013

A garment worker looks on during a protest following the arrest thirteen people charged over Tazreen factory fire by High Court where 112 worker had died.

Credit: zakir hossain chowdhury zakir/Alamy Live News

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SUMMARY

In May 2024, the European Union (EU) Corporate Sustainability Due Diligence Directive (CSDDD) was adopted. This important step will require EU companies to implement human rights and environmental due diligence. This marks a major milestone towards protecting workers and communities from corporate harm and abuse. However, the CSDDD also has significant weaknesses. This briefing analyses to what extent **ActionAid's ten recommendations to ensure a gender-responsive, intersectional, and effective legislation** are reflected in the adopted directive.

To have an impact, the directive must address the gender-specific adverse impacts that corporate activities have on women's rights and gender inequality. The impacts of worker exploitation, pollution, land grabbing, harassment and discrimination are not gender neutral. To address these gender-specific impacts, ActionAid recommended the following steps: broaden the scope to cover the full value chain, including companies of all sizes and applicable to all internationally

recognised human rights; explicitly recognise the need for gender-responsive due diligence throughout every step of the due diligence process, including gender-responsive meaningful stakeholder engagement and remedy; ensure guarantees for access to justice for those experience additional barriers and that women's human rights defenders are protected.

The overview below demonstrates how ActionAid evaluates the content of the CSDDD in accordance with our recommendations using the directive's framework. It shows the positive elements (+), identifies areas for improvements (⚠) and points out the gaps and weaknesses in the CSDDD (!).

While the gender lens in the CSDDD is limited, it nevertheless provides a basis for accountability and strengthening a gender-responsive approach in national contexts. This briefing is intended to inform civil society and policymakers about the opportunities to improve gender-responsiveness in the transposition process in EU member states.

SCOPE

Personal scope:

WHY IT MATTERS

Personal scope: Regardless of the size of a company, gender-specific adverse impacts of business activities may take place in global value chains. Women are overrepresented in sectors such as the garment industry which mainly consists of small and medium enterprises, where gender-based violence is widely documented.

WHAT IS IN THE CSDDD*

- ! Less than 1% of EU companies are covered: EU companies with 1,000 employees on average and an annual turnover of EUR 450 million, and non-EU companies with an annual net turnover of EUR 450 million in the EU.

WHAT CAN BE IMPROVED

Expand the personal scope to all companies with international operations, business partners, or value chains, irrespective of their size, sector, form, ownership, or (group) structure.

Material scope:

WHY IT MATTERS

Adverse impacts of corporate activities can manifest in many forms and vary greatly from one context or sector to the other. Due diligence legislations should cover all human rights and environmental impacts, including women's rights.

WHAT IS IN THE CSDDD*

- ⚠ Companies are required to exercise due diligence for a list of human rights conventions and prohibitions and can be held liable in court for failing to do so. The rights, prohibitions and international conventions covered are referred to in its Annex (Part I, Section I and II).

WHAT CAN BE IMPROVED

Adopt a non-restrictive approach to the material scope to cover all impacts to internationally recognised human rights. Or, alternatively, specify that the list is non-exhaustive and is to be updated regularly.

Value chain scope:

WHY IT MATTERS

Women are overrepresented in low-skilled jobs at tier 2 or 3 facilities or informal work at the beginning of the upstream value chain, where adverse impacts of corporate activities are more likely to occur.

WHAT IS IN THE CSDDD*

Companies are expected to carry out due diligence across their chains of activities, and address adverse impacts arising from their own operations, those of their subsidiaries, and those of their business partners.

- + For the upstream value chain, all relations with business partners (direct and indirect) are covered regarding the production of goods or the provision of services.

- ! For the downstream value chain, where risks are related to the use of product and services, a limited approach is taken. As a result, the financial sector has been excluded from downstream due diligence on their investments.

WHAT CAN BE IMPROVED

Cover the full downstream value chain for all companies, in particular the financial sector and the impacts associated with its financial services, including the activities of their customers.

ON GENDER RESPONSIVENESS DUE DILIGENCE

Gender-responsiveness

WHY IT MATTERS

Differentiated impacts faced by women due to corporate activities often remain invisible and unnoticed. Due diligence legislation must explicitly recognise that different groups and individuals are affected differently by actual and potential adverse impacts of corporate activities, including due to gender.

WHAT IS IN THE CSDDD*

- ⚠ In its recitals, the CSDDD recognises that as part of a gender and culturally responsive approach to due diligence, companies should pay special attention to address any particular adverse impacts on individuals who may be at increased risk due to marginalisation, vulnerability or other circumstances.

WHAT CAN BE IMPROVED

Explicitly recognise that human rights and environmental due diligence must be gender responsive in national implementation laws.

ACCESS TO JUSTICE

WHY IT MATTERS

Accessing justice is difficult for anyone who has had their rights violated by corporate activities, particularly for women and those in vulnerable situations. Additional barriers exist due to financial, cultural, linguistic constraints and lack of access to information and complex corporate structures.

WHAT IS IN THE CSDDD*

- + A civil liability regime ensures that companies falling under the scope of the CSDDD can be held liable for failing to comply with the due diligence obligations.
- ⚠ Member states are required to ensure that victims of damage caused by a company's failure to meet its due diligence obligations can, in practice, file a civil liability claim.

- Limitation period must be at least five years.
- The cost of proceedings should not be prohibitively expensive.
- Claimants should be able to seek injunctive measures (both definitive and provisional) to stop violations of the CSDDD and require companies to perform an action or cease a conduct.
- Claimants should be able to ask a court to order the company to disclose evidence.

WHAT CAN BE IMPROVED

Strengthen and expand all measures to improve access to justice (related to deadlines, costs, linguistics, transparency, etc.), paying particular attention to the barriers faced by women and groups affected by systemic inequalities.

Reverse the burden of proof to effectively ensure access to justice to those affected by adverse impacts of corporate activities.

Meaningful stakeholder engagement

WHY IT MATTERS

Women and individuals or groups in marginalised situations are too often excluded from consultation and decision-making processes and experience additional barriers for participation. Yet, female workers, gender experts, NGOs, and feminists' organisations can provide tremendous support in pointing out gender risks and impacts.

WHAT IS IN THE CSDDD*

- + Companies are required to carry out meaningful stakeholder engagement in their due diligence processes, but this requirement is not included in all steps of the due diligence process (eg. step 1).

WHAT CAN BE IMPROVED

Require companies to pay particular attention to the needs of vulnerable stakeholders, and to overlapping vulnerabilities and intersecting factors when carrying out meaningful stakeholder engagement.

Make meaningful stakeholder engagement mandatory for every step of due diligence processes.

Due diligence obligations

WHY IT MATTERS

Without addressing gender in due diligence processes, gender-specific impacts remain unaddressed or can even be exacerbated. Each of the steps of due diligence processes require a gender approach to take into account women's experiences and rights.

WHAT IS IN THE CSDDD*

- + Companies are required to undertake due diligence processes aligned with the steps defined by OECD Guidelines. Of particular relevance to women's rights:
- + • Companies are expected to base their identification and assessment of risks on quantitative and qualitative information, including the relevant disaggregated data.
- ! • Companies are encouraged to use audits (third-party verification) and multi-stakeholder initiatives to support them in the implementation of their due diligence obligations.
- + • Companies are required to establish complaints mechanisms that are fair, publicly available, accessible, predictable and transparent. They are mandated to take reasonably available measures to prevent any form of retaliation.

WHAT CAN BE IMPROVED

Make it mandatory for all companies to apply a gender-responsive approach at every step of the due diligence process.

Recognise that the risks faced by (women) human rights defenders should be integrated, and ensure they are protected.

Ensure that audits and multi-stakeholder initiatives are not considered as means to assess compliance or used to replace meaningful and direct engagement with stakeholders.



Introduction

Background on the CSDDD

In May 2024, following a lengthy process, the European Union (EU) Corporate Sustainability Due Diligence Directive (CSDDD) was finally adopted. This historic step marks a milestone in protecting workers and communities from corporate harm and abuse.

By 2026, EU member states will be required to have national implementation laws in place to meet the requirements of this important directive. From 2027, the first group of EU companies will be expected to comply with the directive followed by a phased application until 2029⁽¹⁾. The directive will strengthen access to justice for victims of corporate abuse, in particular by addressing access to evidence and the ability for NGOs and unions to represent victims. It also includes provisions to implement meaningful stakeholder

engagement in the due diligence process. Both aspects are key to enhancing the protection of groups in vulnerable situations, especially women.

While welcome, the CSDDD has major weaknesses. The due diligence requirements will only apply to a very limited number of large companies estimated at 0.05% of all EU-based companies. And the disappointing exclusion of the financial sector from due diligence on their investments, gives a blank cheque to European banks to continue financing harmful fossil fuels and human rights abuses in global supply chains.

To have an impact, this directive must ultimately address the adverse impacts of corporate activities on women's rights and gender equality⁽²⁾. The exploitation of workers, pollution,

(1) EU Corporate Sustainability Due Diligence Directive, article 37 on Transposition. Two years (from entry into force) member states shall adopt national implementation law to comply with the CSDDD, after three years the law shall apply to companies with 5,000+ employees, after four years the law shall apply to companies with 3,000+ employees, and after five years the law shall apply to companies with 1,000+ employees.

(2) Even though the term 'women' is used throughout this briefing, ActionAid underscores that not only cisgender women experience the disproportionate impacts of business activities, as many vulnerable groups experience intersecting forms of discrimination.

land grabbing, harassment, discrimination and violence against human rights defenders have a different and disproportionate impact on women. It is estimated that more than 190 million women work in globalised value chains³. In many sectors, such as garment manufacturing and agriculture, women make up the majority of the workforce. Yet their rights are often denied or not recognised. In recent years, women have been disproportionately hit in terms of job-losses due to the economic crisis caused by the COVID-19 pandemic⁴.

When the European Commission published its proposal for the CSDDD in 2022, **ActionAid**

developed ten recommendations⁵ to ensure a gender-responsive, intersectional and effective corporate sustainability due diligence legislation. This briefing analyses to what extent ActionAid's recommendations to ensure gender-responsive legislation are reflected in the adopted directive. **The gender lens in the CSDDD is weak, nevertheless it provides a basis for accountability and strengthening a gender-responsive approach in national contexts. Therefore, this briefing is intended to inform civil society and policymakers on the necessity to improve gender-responsiveness in national law and to identify opportunities within the transposition process in EU member states to do so.**

How are women affected differently?

ActionAid's extensive work with communities around the world shows that a company's involvement in human rights abuses is often exacerbated by existing gender norms and intersecting vulnerabilities. Business activities often lead to gender-specific harm and discrimination, which can reinforce existing inequitable gender roles and structures within the workforce or communities. At the same time, women are often excluded or underrepresented in consultations and decision-making processes in trade unions, community leadership structures, and business efforts to consult stakeholders in their value chains.

Gender-specific corporate harms :

In many sectors, women are faced with persisting sexual and gender-based violence in the workplace.⁶

Women globally are often paid less than men for the same work⁷; gender norms lead to a devaluation of women's attributes and roles, and they are underrepresented at all levels of decision-making worldwide.

Women are also more vulnerable to land grabbing, as less than 15% of all formally recognised landholders globally are women.⁸

Environmental pollution may cause land degradation, affecting women's food gardens and leading to decreased food security.

Water pollution makes more people sick and at the same time, women must walk further to access clean water, leading to a higher care burden for women.

Many women around the world who are on the front line defending their fundamental rights and the environment face violence, repression and gender-based violence.

When seeking redress and remedy, women face more barriers to justice and suffer more reprisals than men.⁹

(3) "Decent work in global supply chains", ILO, Report IV, ILC, 105th session, 2016.

(4) ILO, Policy Brief, July 2021 "Building Forward Fairer: Women's rights to work and at work at the core of the COVID-19 recovery".

(5) ActionAid (2022), Ensuring a gender-responsive and effective Corporate Due Diligence Legislation in 10 steps, <https://actionaid.org/publications/2022/ensuring-gender-responsive-and-effective-corporate-due-diligence-legislation-10>

(6) ActionAid (2019), Sexual harassment and violence against garment workers in Bangladesh, <https://actionaid.org/sites/default/files/publications/ActionAid%20briefing%20paper%20on%20Bangladesh%20garment%20workers%20FINAL.pdf>

(7) ILO (2018), Global Wage Report 2018/19, What lies behind the gender pay gaps <https://www.ilo.org/publications/global-wage-report-201819-what-lies-behind-gender-pay-gaps>



For example, a research report by ActionAid showed multiple adverse and gendered impacts as a result of corporate activities in Uganda, Guatemala and Kenya¹⁰. In Uganda, large-scale agriculture led to gender-based violence. In Guatemala, indigenous women and communities who were defending their rights and the environment against a nickel mining company were met with violence and repression. And in Kenya, women working in sisal cultivation faced dire working conditions as there was no suitable accommodation for pregnancy, breastfeeding or menstruation needs.

Such gender-specific adverse impacts of business activities happen regardless of the size or sector of a company. Unless they are explicitly investigated in companies' due diligence processes, they are unlikely to be identified by

companies. **A gender-responsive approach to due diligence involves recognising a company's relationship to and impact on social norms around gender roles, complex cultural biases and power imbalances. It means analysing how business activities can disproportionately impact women, men and gender non-conforming persons, as a result of prevailing economic, social, political or cultural gender-based inequalities.** Unless deep and systemic changes are made along globalised value chains, women and marginalised groups will continue to face major obstacles to participate in decision-making, hold companies accountable for abuses and get access to justice. Legislative processes to regulate companies in relation to human rights and the environment, therefore, provide a significant opportunity to ensure that businesses uphold women's rights and to work towards achieving gender equality.

(8) FAO (2018), The gender gap in land rights, <http://www.fao.org/3/i8796en/i8796EN.pdf>

(9) ActionAid (2020), We Mean Business: protecting women's rights in global supply chains, https://actionaid.nl/wp-content/uploads/2020/02/We-Mean-Business-Protecting-Womens-Rights-in-Global-Supply-Chains_ActionAid_March-2020.pdf

(10) ActionAid et al. (2022), Pathway to a Feminist International Corporate Accountability Framework : cases from Uganda, Zimbabwe, Guatemala and Kenya, <https://actionaid.nl/2022/10/24/pathway-to-a-feminist-international-corporate-accountability-framework/>

On scope

This section sets out the scope of the CSDDD and analyses what the defined scope means from a gender perspective. The scope defines the companies, activities and adverse human rights and environmental obligations that the directive applies to. As gender-specific impacts and women's rights violations occur throughout the whole value chain regardless of the size of the company, a broad scope is crucial to address this. **There is a widespread consensus among civil society that the scope of the directive has been heavily watered down and that member states must seek to go further to protect human rights.** We aim to highlight a few specific provisions within the scope of the CSDDD that could be improved to enhance the protection of women's rights.

Personal scope - which companies are covered in the CSDDD?

CSDDD

The personal scope of the CSDDD, addressed in article 2, defines which entities will be covered under the directive⁽¹⁾. The CSDDD only applies to very large EU companies with over 1,000 employees and a turnover of 450 million euros, as well as companies outside the EU with an annual turnover of 450 million euros in the EU market. While international standards, such as the OECD Guidelines for Multinational Enterprises, apply due diligence expectations to all companies with international operations, business partners or value chains, irrespective of their size, sector, form, ownership or (group) structure⁽²⁾, the EU chose a far narrower scope. At the same time, other related EU instruments have a broader scope - such as the Corporate Sustainability Reporting Directive (CSRD), which covers EU companies with over 250 employees and a turnover of 40 million euros.

What does this mean from a gender perspective?

With the adopted approach to personal scope, it is estimated that only 0.05% of EU companies are covered⁽³⁾. Regardless of the size of a company, adverse impacts of business activities may take place in global value chains, affecting the rights of workers and communities such as economic rights, access to land, decent work, domestic and unpaid care work. In particular in relation to women's rights, it is widely documented that gender-based violence, discrimination and harassment are rampant in the workplace, affecting all professions and sectors⁽⁴⁾. Additionally, women are overrepresented in many sectors which mainly consist of small to medium-sized enterprises - such as the garment and footwear sector, where they provide around 80% of jobs and account for 60-70% of the industry's turnover in Europe⁽⁵⁾. There is a risk that a huge proportion of the workforce and potentially impacted rights holders, particularly women, in production countries will not reap the benefits of this legislation if the personal scope of national implementation laws remains limited.

Value chain scope – which activities are covered in the CSDDD?

Chain of activities

CSDDD

In article 1, the directive lays down rules regarding “obligations for companies regarding actual and potential human rights and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in the chains of activities of those companies”. These business partners include both direct and indirect relationships, meaning that negative impacts of all tiers of the upstream chain of activities are included in due diligence obligations.

The CSDDD introduces the concept of “chain of activities” in article 3.1.g. to define which parts of the value chain pertain to the scope of companies' due diligence. This concept creates differentiated levels of responsibility along the value chain. For the upstream value chain, all relations with business partners are covered regarding the production of goods or the provision of services. For the downstream value chain, where risks are related to the use of products and services, a limited approach is taken by requiring companies to address those impacts

(1) EU Corporate Sustainability Due Diligence Directive, article 2: EU companies with 1000 employees on average and an annual turnover of EUR 450 million, and non-EU companies with an annual net turnover of EUR 450 million in the EU.

(2) OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, chapter I, paragraphs 4 and 6.

(3) European Coalition for Corporate Justice, (15. Mar. 2024) “REACTION CSDDD endorsement brings us 0.05% closer to corporate justice,” <https://corporatejustice.org/news/reaction-csddd-endorsement-brings-us-0-05-closer-to-corporate-justice/>

(4) International Labour Organization (ILO) Violence and Harassment Convention No. 190, 2019, art. 1 https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NQ:P12100_ILO_CODE:C190

(5) OECD, 2021, Introductory paper on SMEs and Responsible Business Conduct in the Garment and Footwear Sector <https://mneguidelines.oecd.org/Introductory-paper-on-smes-and-responsible-business-conduct-in-the-garment-and-footwear-sector.pdf>

only related to the distribution, transport or storage of the product for the company or on behalf of the company. While international standards¹⁶ include all types of business relationships throughout both the upstream and downstream value chain in companies' due diligence processes, the CSDDD's approach is less comprehensive.

What does this mean from a gender perspective ?

Women are overrepresented in sectors¹⁷ where demand for low-skilled labour at tier 2 or tier 3 supplier facilities is high at the beginning of the upstream value chain, such as cotton plantations or tea estates¹⁸. Or where informal work is the norm, such as in the garment sector where seamstresses often work from home, and risk falling outside of the scope of companies' due diligence processes¹⁹. Moreover, women and communities are often impacted by supplier operations, such as communities who are dependent on the water or land that is polluted by large-scale agricultural operations. These impacts tend to be overlooked during due diligence processes, yet can be enormous in terms of likelihood, scale and severity. In that sense, the inclusion of all business partners, both direct and indirect, along the whole upstream value chain is an important improvement in the CSDDD. At the same time, the limitations to the activities in the downstream value chain are highly problematic due to the severity of the resulting impacts. For example, the sale and subsequent use of pesticides is excluded from downstream due diligence because of these limitations, while the use of pesticides poses risks to women working in agriculture or living in rural areas, including reproductive health issues such as infertility and breast cancer²⁰.

Financial sector exclusion

CSDDD

Due diligence expectations are limited for certain sectors²¹. The limited approach to companies' obligations in relation to downstream value chain activities leads to a de facto exclusion of the financial sector from downstream due diligence on their investments. This is further clarified in recital 26 of the CSDDD, stating that for regulated financial undertakings, the definition of the term 'chain of activities' should not include downstream business partners that receive their services and products. In the review clause of the CSDDD, the European Commission is mandated to submit a report within two years after entry into force of the directive on the need to establish additional due diligence requirements for financial undertakings with respect to their downstream due diligence on financial services and investments.

What does this mean from a gender perspective ?

The exclusion of the financial sector from downstream due diligence raises major concerns, as it is through its investments that most of the adverse impacts risks are concentrated, such as exploitation, discrimination and land grabbing. In addition to human rights abuses enabled by funding harmful projects such as fossil fuels and industrial agriculture, investors and banks are the main drivers of damaging climate change and its impacts on women and communities in the Global South²². Due to existing gender inequality in society, women and girls continue to be at the forefront of the devastating impacts of the financing of large-scale fossil fuel and industrial agriculture projects. Women and children are 14 times more likely to die from climate disasters than men²³. Women are more dependent on threatened natural resources, and therefore more vulnerable to droughts, floods and extreme weather temperatures.

(16) OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, chapter II, commentary 17.

(17) Such as textile, agriculture, manufacturing, electronics, tourism, health and social care and domestic work.

(18) ILO and Fair Wear Foundation. Global supply chains : where do women work and under what conditions? [Online] Available from https://gbv.itcilo.org/index.php/briefing/show_paragraph/id/40.html

(19) Fair Wear Foundation. How does Covid-19 affect women garment workers? [Online] Available from <https://www.fairwear.org/covid-19-dossier/worker-engagement-and-monitoring/gender-analysis/>

(20) UN Special Rapporteur on toxics and human rights (2024), Call for inputs – Gender and toxics, <https://www.ohchr.org/en/calls-for-input/2024/call-inputs-gender-and-toxics#:~:text=Marcos%20A.%2C%20and%20non%20governmental%20organisations>

(21) OECD Watch, 2024, Alignment within Reach. Remaining opportunities to align the EU CSDDD with the OECD Guidelines <https://www.oecdwatch.org/alignment-within-reach/>

(22) ActionAid International, 2023, How the finance flow : The banks fuelling the climate crisis <https://actionaid.org/publications/2023/how-finance-flows-banks-fuelling-climate-crisis#downloads>

(23) UN Women (2018) Turning Promises into Action : Gender Equality in the 2030 Agenda for Sustainable Development, <https://www.unwomen.org/en/digital-library/publications/2018/2/gender-equality-in-the-2030-agenda-for-sustainable-development-2018>



Material scope – which adverse impacts and human rights abuses are covered?

CSDDD

A restrictive list of human rights conventions and prohibitions has been adopted for which companies are required to exercise due diligence and can be held liable in court for failing to do so. The rights, prohibitions and international conventions covered are referred to in the CSDDD Annex :

Part I, section 1: includes a list of selected human rights and prohibitions.

Part I, section 2: refers to other human rights, covered by the scope provided that

I. the human right can be abused by a company

II. the human rights abuse directly impairs a legal interest protected in the human rights instrument

III. the company could have reasonably foreseen the risk that such human rights might be affected²⁴

(24) EU Corporate Sustainability Due Diligence Directive, article 3.

This is contrary to international standards on responsible business conduct, such as the OECD Guidelines²⁵, which applies to all internationally recognised human rights and includes a broad definition of all adverse environmental impacts. This is also the approach taken in the existing French due diligence law (Loi de Vigilance)²⁶. The restrictive approach of the CSDDD leads to ambiguity and leaves room for interpretation.

What does this mean from a gender perspective ?

Adverse impacts of corporate activities can manifest in many forms and vary greatly from one context or sector to the other. Women's and girls' rights worldwide are systematically undermined due to patriarchal norms, which intersect with other forms of oppression based on gender identity, ethnicity, disability, class etc. In response to this, different international conventions have been established to address the realities faced by women and girls and enhance their protection. In the CSDDD, several of these international conventions are currently not included in the Annex²⁷. Particularly relevant for women's rights are the exclusion of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and International Labour Organization Convention (190) on Violence and Harassment. To ensure a coherent international law framework, any new legislation on corporate accountability should build on existing treaties and conventions to provide maximum protection for women, human rights defenders and other marginalised groups.

Recommendations

In their national implementation laws, member states should :

Expand the personal scope while transposing the CSDDD to ensure all companies are aligned with the OECD Guidelines. Alternatively, alignment with the thresholds of the CSRD could be an option.²⁸

Ensure the full downstream value chain is covered for all companies, applying the approach taken on the upstream value chain.

Require financial undertakings to exercise downstream due diligence on their financial services and investments.

Avoid a restrictive approach to the material scope of the due diligence obligation. This can be achieved by broadening the scope to encompass all impacts on internationally recognised human rights and adverse environmental impacts or by making the list of rights covered non-exhaustive.

The European Commission should :

Ensure the need for a downstream due diligence requirement for financial undertakings' financial services and investments is reflected in their review report and accompanied by an effective legislative proposal.

(25) OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, Chapter II.

(26) Official version : <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000034290626> . For an English translation : <https://vigilance-plan.org/wp-content/uploads/2019/06/2019-VPRG-English.pdf#page=80>

(27) Such as : the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination or the ILO Convention (190) on Violence and Harassment, the UN Declaration on the Rights of Indigenous People, the Declaration on Human Rights Defenders and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

(28) Companies with more than 250 employees, a turnover of over €40 million and over €20m total assets.

On gender- responsive due diligence

This section analyses to what extent a gender lens is integrated in the CSDDD. Research has shown that companies are unlikely to adopt a gender-responsive approach to due diligence if not required to do so²⁹. While the 2022 proposal by the European Commission and the Council's general approach were completely gender-blind, the European Parliament adopted several amendments to advance gender-responsiveness and an intersectional approach in the CSDDD. **Unfortunately, the gender lens in the final adopted CSDDD is quite limited. Although gender as a factor to be considered and a gender approach to due diligence are clarified in the recitals, they are not included in the articles of the directive. However, it does provide a basis for accountability on a gender approach, which was not included in the first drafts.** In this section, we aim to highlight several opportunities to strengthen gender-responsiveness and intersectionality in the due diligence requirement outlined in the CSDDD.

(29) ActionAid France (2021), *Vigilance 0 Les multinationales françaises et les violences sexistes et sexuelles* : <https://soutenir.actionaid.fr/vigilance0/>; Equileap (2021), *Gender Equality in the Netherlands*, https://equileap.com/wp-content/uploads/2021/10/Equileap_DutchReport_2021.pdf

CSDDD

The CSDDD recognises the importance of integrating a gender-responsive approach in human rights and environmental due diligence. The expectations of companies in this regard are addressed in the recitals³⁰. As part of a gender- and culturally responsive approach to due diligence, companies should pay special attention to any particular adverse impacts on individuals who may be at heightened risk due to marginalisation, vulnerability or other circumstances. This recognition is positive in terms of the better understanding of the due diligence requirements for companies, and it provides a base for strengthening gender-responsive and intersectional identification of risks. Additionally, it enables stakeholder engagement and improves the grievance mechanism. However, it falls short of international standards and the European Parliament's position during the trilogue negotiations and does not mandate the gender approach to be applied to all steps of due diligence processes.

What does this mean from a gender perspective ?

Women and groups in situations of marginalization or vulnerability face different and disproportional impacts due to corporate activities, ranging from abuses of economic rights, exploitation at work, impacts on their unpaid care work and persisting gender-based violence. At the same time, these individuals and groups can also experience additional barriers in participation in consultations, accessing remedy or face gender-specific as well as more severe threats and retaliation when speaking out. Because these impacts tend to go unnoticed unless specifically addressed, it is crucial for companies to integrate gender and intersectional³¹ perspectives are integrated in their due diligence policies, which may require special measures or approaches. This is supported by growing international recognition from the UN and OECD³² on the importance of integrating a gender-responsive approach in human rights and environmental due diligence.

Due diligence obligations

Articles 5 to 16 outline due diligence obligations for companies. In general terms, it is positive that they largely reflect the process as defined by the OECD Guidelines. In this section, we aim to highlight some provisions within due diligence obligations that present a specific challenge for women's rights, recognising that this is not an exhaustive list of ways to strengthen the due diligence duty in the directive.

Identifying and assessing risks

CSDDD

The CSDDD clarifies in the recitals that companies are expected to base their identification and assessment of risks on quantitative and qualitative information, including the relevant disaggregated data that can be reasonably obtained by a company³³. Collecting and assessing disaggregated data means that collected data is disaggregated by characteristics such as sex, gender, age, race, ethnicity, class, migration status and disability.

What does this mean from a gender perspective ?

Gender impacts are only brought to light when

they are explicitly investigated. Issues such as sexual violence are often difficult to identify, as they are usually regarded as sensitive. It is therefore important that companies build on gender expertise and identify gender-specific trends and patterns in actual or potential adverse impacts. The use of disaggregated data is key to conducting an intersectional analysis of the risks. It is therefore crucial that this is mandatory for companies in national implementation laws.

Additional training and awareness-raising tools are essential to ensure that all the actors involved in due diligence can really take ownership of what 'gender mainstreaming' means.

(30) EU Corporate Sustainability Due Diligence Directive, recital 33.

(31) An intersectional approach shows the way that people's social identities can overlap, creating compounding experiences of discrimination. We tend to talk about race inequality as separate from inequality based on gender, class, sexuality or immigrant status, while in fact these are intersecting factors that overlap.

(32) UN Working Group on Business and Human Rights (2019), Gender Dimensions of the UN Guiding Principles on Business and Human Rights : <https://www.undp.org/publications/gender-dimensions-guiding-principles-business-and-human-rights> ; OECD (2028), OECD Due Diligence Guidance on Responsible Business Conduct : <https://mnequidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>

CSDDD

The CSDDD strongly encourages audits (third-party verification) and multi-stakeholder initiatives to support companies to implement their due diligence obligations. This is specifically included specifically for joint risk identification, meaningful stakeholder engagement and establishing grievance mechanisms. It clarifies, however, that reliance on audits and multi-stakeholder initiatives do not exempt a company from liability.

What does this mean from a gender perspective ?

Research extensively and repeatedly shows that social audits, certification schemes and multi-stakeholder initiatives often fail to identify and address adverse impacts in value chains, and in

particular gendered ones³⁴. For example, Human Rights Watch concluded that companies in the garment sector heavily rely on social audits to monitor conditions in the factories, while these are not equipped to capture or address sexual harassment and gender-based violence³⁵. Given the conflicts of interests, limits to transparency and weak standards of some third-party verification and multi-stakeholders initiatives that are repeatedly evidenced, there is a real risk that the use of these mechanisms do not contribute to strengthening companies' due diligence performance. On the contrary, they may leave adverse impacts inadequately identified and addressed, in particular with regards to women's rights. It is important to ensure that the use of these mechanisms is not sufficient to assess a company's compliance with its due diligence obligations.

Complaint mechanisms

CSDDD

Article 14 requires companies to establish complaints mechanisms that are "fair, publicly available, accessible, predictable and transparent". Companies are also mandated to take "reasonably available measures to prevent any form of retaliation" against those submitting the complaint.

What does this mean from a gender perspective ?

Standing up for human rights and the environment often comes at a cost. Concerns

about the privacy and safeguarding of complaints and whistleblowing mechanisms form a huge barrier for people affected by corporate activities who want to stand up for their rights, in addition to other social or cultural barriers. In particular, women human rights defenders often face gender-specific threats and gender-based violence, used as a way to control them. For companies to address risks effectively, complainants, whistleblowers and women human rights defenders need to be able to express grievances safely, without fear of repercussion, through a confidential and anonymous alert system.

Credit : Fabeha Monir/ActionAid



(33) EU Corporate Sustainability Due Diligence Directive, recital 41.

(34) SOMO (2022), A piece not a proxy : <https://www.somo.nl/a-piece-not-a-proxy/>; KIT Institute (2020), Evaluation of the Dutch RBC Agreements 2014-2020 : <https://www.kit.nl/institute/publication/evaluation-of-the-dutch-rbc-agreements-2014-2020/>; Human Rights Watch (2019), Combating Sexual Harassment in the Garment Industry : <https://www.hrw.org/news/2019/02/12/combating-sexual-harassment-garment-industry>

(35) Human Rights Watch (2019), Combating Sexual Harassment in the Garment Industry : <https://www.hrw.org/news/2019/02/12/combating-sexual-harassment-garment-industry>



Meaningful stakeholder engagement

CSDDD

The CSDDD requires companies to carry out meaningful stakeholder engagement in their due diligence process³⁶ and dedicates a specific article outlining the expectations for this engagement³⁷. Within this article, it also mandates companies to identify and address barriers to engagement and ensure that participants are not the subject of retaliation or retribution. While not

included in the directive's articles, the recitals further outline the expectations of companies to pay particular attention to the needs of vulnerable stakeholders, and to overlapping vulnerabilities and intersecting factors³⁸. However, the requirement for meaningful consultation is not comprehensively included for each step of the due diligence process.

(36) EU Corporate Sustainability Due Diligence Directive, article 5.

(37) EU Corporate Sustainability Due Diligence Directive, article 13.

(38) EU Corporate Sustainability Due Diligence Directive, Recital 65

What does it mean from a gender perspective?

It is important to engage with impacted and potentially impacted stakeholders and rightsholders in every step of the process, and it is a core and centre element of human rights and environmental due diligence. Women and individuals or groups in vulnerable situations are often excluded from consultation and decision-making processes, intentionally being sidelined

or rendered invisible despite their collective organisation, struggles and achievements. Companies need to take special provisions to ensure these groups can meaningfully take part in consultation processes. Female workers, gender experts, NGOs and feminists' organisations can provide tremendous support in pointing out gender risks and impacts as well as designing effective gender-responsive due diligence policies and remediation processes.

Recommendations

In their national implementation laws, member states should :

Require companies to apply a gender-responsive and intersectional approach to human rights and environmental due diligence.

Expect companies to base their identification and assessment of risks on disaggregated data (among other sources of quantitative and qualitative information).

Ensure that audits and multi-stakeholder initiatives are not considered as a means to assess compliance or used to replace meaningful and direct engagement with stakeholders. Monitor the capacities of these initiatives to effectively address gendered adverse impacts in value chains.

Require companies to carry out meaningful stakeholder engagement throughout every step of the due diligence process (article 7 to 16), with special attention to women and marginalised groups that are most affected by negative impacts.

Include the expectation that companies to pay particular attention to the needs of vulnerable stakeholders, and to overlapping vulnerabilities and intersecting factors in the national implementation laws.

Include measures to protect complainants and human rights defenders and ensure barriers to access to complaint mechanisms are identified and addressed.

The European Commission should :

Issue specific guidelines for companies on the implementation of gender-responsive and intersectional human rights and environmental due diligence (article 19).



5 On access to justice

This section analyses to what extent the CSDDD improves access to justice for those affected by corporate harm, particularly women and groups affected by systemic inequalities. Access to justice refers to the ability of individuals and groups to seek and obtain justice through the legal system, which poses one of the greatest challenges for those affected by corporate abuse. Therefore, access to justice has been a key topic for advocacy among civil society. The imposition of civil liability as well as accompanying measures to improve access to justice in the CSDDD can be considered a milestone. This section briefly highlights the CSDDD main strengths in terms of improving access to justice as well as opportunities to address remaining gaps for access to justice.



CSDDD

The CSDDD creates a civil liability regime which ensures that companies can be held liable for failing to comply with the due diligence obligations. Importantly, the directive also ensures that companies can be held liable both jointly and severally for damages caused in conjunction with other business relations. Additionally, the CSDDD includes several measures meant to improve access to justice for victims. It requires member states to ensure a minimum limitation period for filing legal actions, mandates that costs of legal proceedings must not be prohibitively expensive, enables injunctive measures, provides conditions to improve access to information, and enables the representation of victims by NGOs and trade unions.

What does this mean from a gender perspective?

Accessing justice is difficult for anyone who has had their rights violated by corporate activities. Judicial processes are expensive and accessing information to provide proof of the allegations

is often impossible for individuals and groups in vulnerable situations due to complex corporate structures and presence in different jurisdictions. In practice, even with the CSDDD provisions, it will still be a major challenge for victims to manage to secure resources to pursue their claims. Even in cases where they are successful, achieving justice for the harm suffered such as adequate compensation and cessation of harmful operations will remain a challenge. For example, the limitation period of five years is too restrictive in cases where health impacts only become apparent after a longer period.

Persistent gender inequality creates additional barriers for women to access justice. Women are more likely to be financially dependent and excluded from consultations and decision-making, as well as responsible for domestic and health care work. Judicial institutions are places where oppression and domination patterns can be replicated, which can further victimise the complainant. To avoid this, it is necessary that procedures are gender responsive.

Recommendations

Member states should strengthen their measures to improve access to justice, paying particular attention to the barriers faced by women and groups affected by systemic inequalities, by :

Expanding the limitation period beyond five years.


Ensuring victims' assistance funds for legal representation, strengthening access to information and transparency.

Providing regular trainings to judicial staff on gender.

Consider reversing the burden of proof to effectively ensure access to justice to those affected by adverse impacts of corporate activities.



Conclusion



On the path to end corporate impunity, the adoption of the CSDDD is a milestone, achieved as a result of the never-ending push from civil society, women, workers, affected communities, trade unions, academics and many more. The vast corporate lobby deployed against the CSDDD is proof of its vital importance and potential. While we can celebrate that the CSDDD was adopted, some crucial demands were lost along the way or simply never considered. That is why influencing the directive's national transposition and subsequent implementation remains crucial. National implementation laws can and should be strengthened, drawing upon ActionAid's recommendations and opportunities to strengthen gender-responsiveness as well as the work of many other civil society organisations that intend to inform the transposition.

It is key that member states strive for the broadest possible scope in national law during the transposition. This involves covering more companies, ensuring the downstream value chain is included and avoiding the exclusion of the financial sector. A non-restrictive approach to the adverse human rights impacts included is needed to ensure all internationally recognised human rights apply. As too is the explicit requirement to ensure a gender-responsive approach to meaningful stakeholder engagement and due diligence. Finally, strengthened measures to improve access to justice are needed, especially regarding those experiencing additional barriers such as women and groups affected by systemic inequalities.

Work will continue even after the transposition process to ensure that human rights and environmental due diligence are not reduced to a compliance-based tick-the-box exercise. In particular, civil society and trade unions will play a crucial role as watch dogs, keeping supervisory authorities, governments and companies in check. It will be crucial for civil society to monitor and advise supervisory authorities to ensure that relevant capacity and expertise on gender-responsive due diligence is in place and request accountability. The guidelines to be developed by the European Commission will be crucial for effective implementation. For example, on what is expected from gender-responsive meaningful stakeholder engagement or improving gender-responsive purchasing practices.

At the same time, the struggle for binding rules to ensure corporate justice is not over. Significant gaps remain in the current global system that allow corporate power to thrive, and prevent affected women and communities from accessing justice. The UN Binding Treaty on Business and Human Rights presents an important opportunity to address these issues. With negotiations taking place since 2014, this binding instrument attempts to impose worldwide binding rules on corporations and goes beyond human rights due diligence. It goes further than the CSDDD to protect victims of corporate abuse and includes measures to tackle barriers experienced by women and affected communities to access justice. It is therefore key that the EU and its member states constructively and ambitiously engage in the negotiations to ensure a Feminist Binding Treaty on Business and Human Rights which makes corporate accountability the global standard.

FURTHER READING

On the CSDDD

ECCJ et. al. (2024, to be published) CSDDD transposition guide, see :
www.corporatejustice.org

OECD Watch (2024)
[Alignment within reach. Remaining opportunities to align the EU CSDDD with the OECD Guidelines](#)

Danish Institute for Human Rights (2024)
[The EU Corporate Sustainability Due Diligence Directive: Maximising impact through transposition and implementation](#)

On Gender-responsive due diligence

ActionAid (2022)
[Ensuring a gender-responsive and effective Corporate Due Diligence Legislation in 10 steps](#)

ActionAid et. Al. (2022)
[Pathway to a Feminist International Corporate Accountability Framework: cases from Uganda, Zimbabwe, Guatemala and Kenya](#)

ActionAid (2020)
[We mean business. Protecting women's rights in global supply chains](#)

Global Policy Forum et al. (2020)
[Gender Justice in Global Supply Chains](#)

UN HRC (2019)
[Gender dimensions of the Guiding Principles on Business and Human Rights](#)



This report has been published
by ActionAid France and
ActionAid Netherlands

October 2024.

Authors :

Anna Hengeveld
Maelys Orellana

Proofreading and review :

Mégane Ghorbani
Karol Balfe
Gráinne Kilcullen
Mathilde Panneau

Design :

Sandra Muller

Website :

www.actionaid.fr
www.actionaid.nl



**Co-funded by
the European Union**

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of ActionAid France and do not necessarily reflect the views of the European Union.



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