HUMAN RIGHT DUE DILIGENCE

ETUC

TRANSPOSITION GUIDANCE

THE EU DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE ("CS3D") AS A DRIVER TO SECURE TRADE UNION AND WORKERS' REPRESENTATIVES INVOLVEMENT IN DUE DILIGENCE PROCESSES/POLICIES

CONFEDERATION SYNDICAT EUROPEÆN TRADE UNION

ETUCLEX

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Introduction[1]

On 24 May 2024, after a long and intensive legislative process, the European Council has officially adopted the Corporate Sustainability Due Diligence Directive (hereafter 'CS3D'), marking the final step in the legislative process.

The Directive was published in the Official Journal of the European Union[2] on 5 July 2024 and thus entered into forced 20 days later on 25 July 2024.

The ETUC welcomed the CSDDD as it's the world's first set of legally binding and cross-sectoral rules to hold EU and third country companies and their subsidiaries accountable for the violations of human rights. For ETUC, and despite the flaws and weaknesses its final version entails due to the significant watering down by certain member states under the pressure of business lobbies, the CS3D "is a significant piece of a puzzle to stop business models based on labour exploitation, including child and forced labour" as "the EU is [finally] paving the way for more sustainability, in putting people and the planet for profit, the CS3D directive is a clear signal to the world, that business accountability is the new norm, that workers and trade unions matter, that the environment matters."

The CS3D must now be transposed/incorporated into the national law of EU member states, EU candidate countries as well as EEA Member states (Iceland, Liechtenstein and Norway) **within 2 years and the latest by 26 July 2026 (but see also Chapter IV.5 below).**

This ETUC transposition guidance intends to help national and European trade unions in this transposition process at Member State and European level in order to make the CS3D even more a game changer and more effective.

The latter is all the more important for at least three reasons.

Firstly, the CS3D, and in particular after the final (successful) watering down by Member States in the Council of the EU, is not fully aligned with international and European standards on human rights (and environmental) due diligence ('mHR(E)DD') notably the United Nationals Guiding Principles on Business and Human Rights ('UNGPs') and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct ('OECD Guidelines').

Secondly, as mentioned, the **CS3D is only a but key piece of the puzzle of EU legislation in the area of mHR(E)DD**. The CS3D is indeed complemented by other EU legislative acts which also address negative adverse impacts in the field of human rights or environmental protection".[3] Although their approaches and orientations might differ from the CS3D (e.g. by being more sectoral oriented, or including more trade-related measures or rather focused on sustainable financing issues), their underling common objective is to achieve a better human rights, including social and trade union rights, and environmental protection. The following can be highlighted:

1 This ETUC Guidance was authored by Stefan Clauwaert, ETUC Senior Legal and Human Rights Advisor, and also includes the very valuable comments of ETUC affiliates (in particular within the ETUC Standing Committees on "Fundamental Rights and Internal Market Legislation (FRIML)" and "Workers' Participation and Company Policy (WPCP)" and members the ETUI **GoodCorp** network.

2 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, **OJ L, 05.07.2024**, p. 1-58.

3 Recital 25 CS3D.

- First and foremost there is the **Corporate Sustainability Reporting Directive** ('CSRD')[4] and the accompanying **European Sustainability Reporting Standards** (ESRS)[5] as developed by/within the **European Financial Reporting Advisory Group** (EFRAG)[6] and adopted by the Commission;

- And the **EU legislation oriented towards achieving sustainable financing** such as the **Sustainable Finance Disclosure Regulation** (SFDR)[7], the **EU (Green) Taxonomy Regulation**[8] and delegated acts[9] and the ESG Rating Regulation[10] ;

- **Furthermore there is also the sectoral, product-level or 'risk-based' EU legislation**, such as the **Timber Regulation**[11], the **Conflict-Minerals Regulation**[12], the **Deforestation Regulation**[13]**,** the **Forced-Labour Ban Regulation**[14], the **Batteries Regulation**[15], the **Ecodesign Regulation**[16] and the Critical Raw Materials Act[17].

It would be **key to ensure that the national transposition laws for the CS3D ensures the alignment of the CS3D with these other general and sectoral EU acquis on human rights and business**, in particular the CSRD, so that, as mentioned in Recital 25 of the CS3D, the "compliance with this Directive [CS3D] should facilitate compliance with the provisions and objectives of these other legislative acts, and with the terms and conditions of the applicable authorisations implemented thereunder". [18]

This ETUC transposition guide focuses on the involvement of trade unions and workers' representatives, as "stakeholders", throughout the due diligence process as defined in the CS3D. It also looks at how national and/or European trade unions can and should engage in accompanying

4 **Directive (EU) 2022/2464** of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, OJ L 322, 16.12.2022, p. 15–80.

5 **European Sustainability Reporting Standards** (ESRS).

6 **European Financial Reporting Advisory Group** (EFRAG).

7 **Regulation (EU) 2019/2088** of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, OJ L 317, 9.12.2019, p. 1–16; to note is that under the heading "simplification" the Commission Work Programme 2025 also provides for a legislative proposal (including impact assessment) to revise this SFDR in Q4 of 2025.

8 **Regulation (EU) 2020/852** of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.6.2020, p. 13–43.

9 See for more information: **EU taxonomy for sustainable activities.**

10 **Regulation (EU) 2024/3005** of the European Parliament and of the Council of 27 November 2024 of 27 November 2024 on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities, and amending Regulations (EU) 2019/2088 and (EU) 2023/2859, OJ L, 2024/3005, 12.12.2024.

11 **Regulation (EU) No 995/2010** of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance, OJ L 295, 12.11.2010, p. 23–34.

12 **Regulation (EU) 2017/821** of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, OJ L 130, 19.5.2017, p. 1–20.

13 **Regulation (EU) 2023/1115** of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, OJ L 150, 9.6.2023, p. 206–247.

14 **Regulation (EU) 2024/3015** of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937, OJ L, 2024/3015, 12.12.2024.

15 **Regulation (EU) 2023/1542** of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, OJ L 191, 28.7.2023, p. 1–117.

16 **Regulation (EU) 2024/1781** of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC, OJ L, 2024/1781, 28.6.2024.

17 **Regulation (EU) 2024/1252** of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (Text with EEA relevance), OJ L, 2024/1252, 3.5.2024.

18 Ibidem, see on this also '**How do the pieces fit in the puzzle? Making sense of EU regulatory initiatives related to business and human rights',** a publication from The Danish Institute for Human Rights, last updated on 29 April 2024.

processes at EU and national level in (or following) consultation with the European Commission, Member States and/or other relevant institutions/ bodies/networks to develop accompanying delegated acts, measures, guidelines and support tools to ensure a better and more effective implementation and application of the CS3D.

This much needed focus on the role of trade unions and workers' representatives became all the more pertinent following the announcements of Commission President Ursula von der Leyen, following huge pressure of the business lobby and certain Member States as well as in return for their support and votes she received from certain European Parliament political fractions to be reelected as President of the Commission, to launch a huge simplification and reduction of regulatory/administrative/reporting burden under her new mandate.

As regards the CSRD and CS3D, the Commission President certainly delivered upon her promise with the launch on 26 February 2025 with the launch of the so-called "Omnibus I" which provides for very substantial as well as procedural changes to the CS3D including on the opportunities provided therein for the involvement of trade unions and workers' representatives (see Chapter IV below for more details).

It is thus high time and pressing that European and national trade unions and workers' representatives grab during the transposition and application period every opportunity to defend their prerogatives, rights and opportunities as embedded in multiple provisions of the CS3D and ensure that companies are held accountable for violations of human rights, including trade union and workers' rights, and environmental rights.

Below, this ETUC transposition guide provides an overview of the different articles of the CS3D where these prerogatives, rights and opportunities are offered at European, national and/or company level, together with some recommendations on how to best embed them in national transposition laws and/or EU policy making processes.

II

Involvement of trade unions and workers' representatives

1 - Recalling the international standards (UN GDPs and OECD Guidelines)

Before entering into the specific articles of the CS3D that provide prerogatives, rights and opportunities for trade unions and workers' representatives as (privileged) "stakeholders", it is worthwhile to recall how they are considered and treated by the leading instruments in the area of "Business and Human Rights", i.e. the UN Guiding Principles and the OECD Guidelines, which are also a source of inspiration for the C3RD as such[19]. By way of example, below some exemplary and non-exhaustive quotes from those international and European instruments:

UN Guiding Principles on Business and Human Rights

Collective action through multilateral institutions can help States level the playing field with regard to business respect for human rights, but it should do so by raising the performance of laggards. **Cooperation between States, multilateral institutions and other stakeholders can also play an important role.** These Guiding Principles provide a common reference point in this regard, and could serve as a **useful basis for building a cumulative positive effect that takes into account the respective roles and responsibilities of all relevant stakeholders.** (linked to Principle 10)

The **statement of commitment** should be publicly available. It **should be communicated actively** to entities with which the enterprise has contractual relationships; others directly linked to its operations, which may include State security forces; investors; **and, in the case of operations with significant human rights risks, to the potentially affected stakeholders**. (linked to Principle 16 on "statement of (policy) commitment")

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (...) (b) **Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.** (Principle 18) Commentary to Principle 18: (...) To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society. The assessment of human rights impacts informs subsequent steps in the human rights due diligence process.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should: (...) (b) **Draw on feedback from both internal and external sources, including affected stakeholders.** (Principle 20)

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. **In all instances, communications should:**

19 See amongst others Recitals 5, 6, 14 and 62 CS3D.

(a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences; (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved; **(c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.** (Principle 21) Commentary to Principle 21: The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors. Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/ sustainability reports, to include online updates and integrated financial and non-financial reports.

OECD Guidelines for MNEs on Responsible Business Conduct

10. The Guidelines remain the leading international instrument on responsible business conduct. **The Adherents to the Guidelines are committed to co-operating** with each other and with other governments **to further their implementation in partnership** with the many businesses, **trade unions** and other non-governmental organisations **that are working in their own ways toward the same end.**

9. **Refrain from discriminatory or disciplinary action or otherwise engaging in reprisals against workers, trade union representatives or other worker representatives** who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies. (II. General Policies)

Commentary on Chapter II: General Policies

(...) 2. (...) Considering the views of other stakeholders in society, which includes the local community and those adversely affected or potentially adversely affected by their activities as well as business interests, can enrich this process. It is also recognised that governments should be transparent in their dealings with enterprises, and consult with business on these same issues. Enterprises, **social partners and other stakeholders, such as** civil society organisations and **trade unions, should be viewed as partners with government in the development and use of both voluntary and regulatory approaches (of which the Guidelines are one element) to policies affecting them**.

V. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards, **avoiding any unlawful employment and industrial relations practices, and in line with due diligence expectations** described in Chapters II and IV:

1. a) Respect the right of workers to **establish or join trade unions** and representative organisations of their own choosing, including by avoiding interfering with workers' choice to establish or join a trade union or representative organisation of their own choosing.

b) **Respect the right of workers to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations**, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

2 - Trade unions and workers' representatives are recognised as stakeholders under CS3D!

Throughout the legislative process and in particular the trilogue negotiations, the ETUC – with the strong support of the EP progressive parties – was able to secure a strong definition of "stakeholders" including not only the employees of the companies covered by the directive, its subsidiaries and business partners but also the trade unions and workers' representatives of those employees. Article 3(1)(n) of the CS3D reads:

'stakeholders' means the company's employees, the employees of its subsidiaries, trade unions and workers' representatives, *consumers and other individuals, groupings, communities or entities whose rights or interests*

are or could be affected by the products, services and operations ***of the company, its subsidiaries and its business partners, including the employees of the company's business partners and their trade unions and workers' representatives,*** *national human rights and environmental institutions, civil society organisations whose purposes include the protection of the environment, and the legitimate representatives of those individuals, groupings, communities or entities; (...).*[20]

But the biggest victory of the long and intense ETUC advocacy work has been to ensure that those trade unions and workers' representatives are involved throughout (almost) the whole the due diligence processes and policies in the companies concerned (see below), but also that in particular European (sectoral) trade unions are also involved in processes beyond the company like e.g. the elaboration of the Commission guidance on model contractual clauses (Article 18 CS3D), the Commission (sectoral) guidelines (Article 19 CS3D) and that they can also benefit – like the companies- from the support measures by Member States and/ or Commission (Article 20 CS3D).

It would thus be key that ETUC affiliates **ensure that the national transposition laws and policies provide provisions and/or actions taking fully on board those trade union and workers' representative rights and opportunities.**

Furthermore, and as the CS3D itself does not always specify how these trade union and workers' representatives rights and opportunities have to be implemented in practice, national transposition laws would also clearly need to specify key issues like:

- **who** is to be involved/consulted/informed (European) trade unions, (European) works councils, work place representations at local or cross-site-level, etc. and to create thereby also ensure relations/obligations between the respective levels (in particular between European and national representation bodies),

- **how** they should be involved (collective bargaining, information, consultation and/or participation), on **what** exactly and when they should be involved.

Indeed, to safeguard against the phenomenon of union-busting and 'yellow unions', It would thereby be important to **ensure that the respective prerogatives and competences of independent, representative and/or duly elected trade union and workers' representatives, as they are set out in international and European human rights instruments and case law (in particular the fundamental ILO Conventions and Council of Europe European Social Charter), are thereby fully respected and reflected in the transposition laws,** in particular when trade union and workers' representatives are co-existing at the same workplace and not used to undermine in particular the trade union prerogatives as well as **to combat anti-union busting actions such as the setting up of yellow unions.**

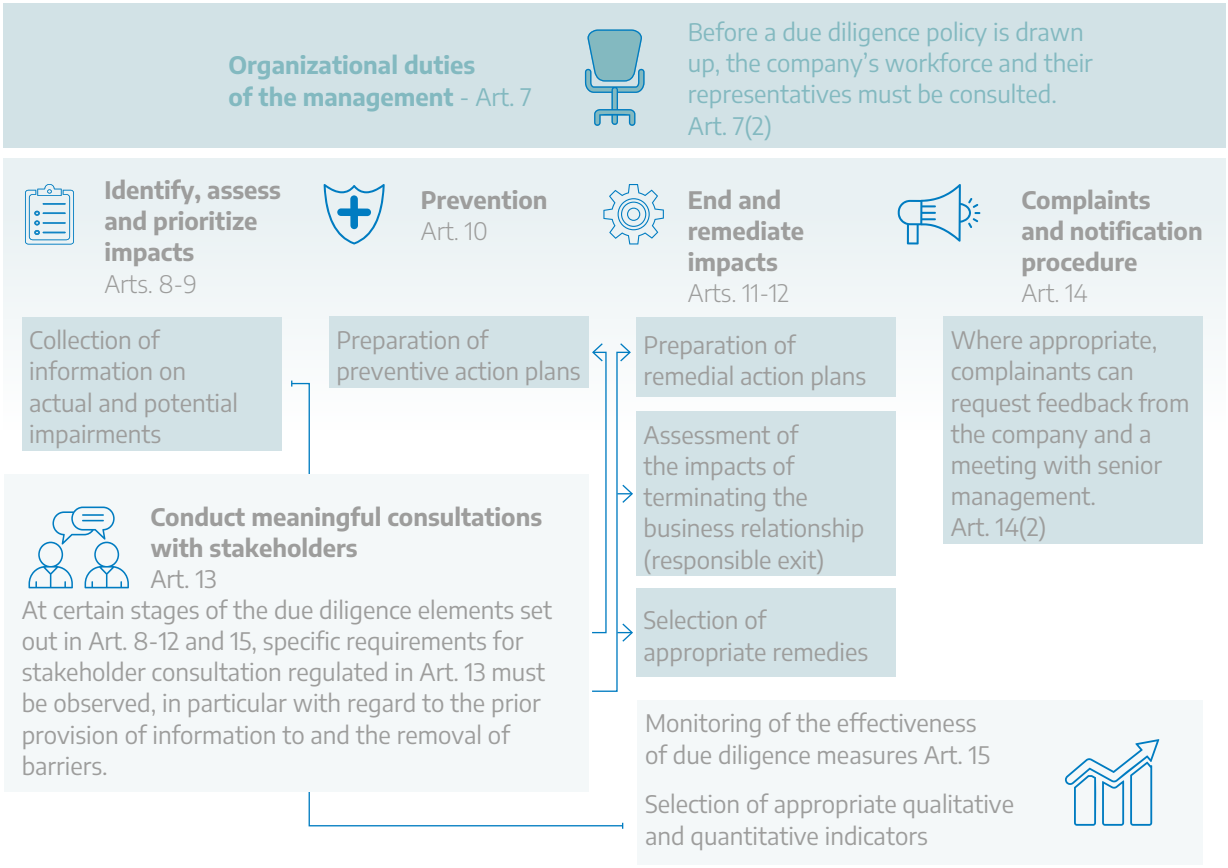
It is also to be noted that the term "trade unions" in this definition is not directly linked to the "company trade union" but rather used in a general way and **it is thus be recommended to ensure that in the transposition laws also the term "trade unions" is defined as widely as possibly thereby including international/European, national (incl. third-country), sectoral and regional trade unions organisations (established in line with ILO and Council of Europe standards and case law).**

20 Article 3(1)(n) CS3D ; ECCJ e.a. recommend also to clarify the definition of stakeholders in national transposition laws by adding "workers throughout the chain of activities" in order to ensure that the rights of supply chain workers, informal workers, home-based workers and others in non-standard working relationships are covered. (ECCJ e.a. (2024) p. 48)

3 - Trade union and workers' representatives involvement within the companies

From a mere internal company perspective, the CS3D provides throughout numerous articles for the obligation to involve trade unions and/workers' representatives in every step of establishing, implementing, applying, monitoring and enforcing the company's due diligence policies and action plans.

Figure 3 - **Provisions on engagement with stakeholders**



(Source: Grabosh (2024), figure 3, p. 9)

3.1 - General Due Diligence obligations

Article 5 CS3D on "Due Diligence" provides on overview of all due diligence obligations, including meaningful engagement with stakeholders, companies have to fulfil in order to conduct appropriate human rights and environmental due diligence with respect to their operations, the operations of their subsidiaries, and the operations of their business partners in the chains of activities of the companies.

Companies covered by this Directive should thus 1) integrate due diligence into their policies and risk management systems, 2) identify and assess, where necessary prioritise, 3) prevent and mitigate as well as bring to an end and minimise the extent of actual and potential adverse human rights and environmental impacts, 4) provide remediation in relation to actual adverse impacts, 5) carry out meaningful engagement with stakeholders, 6) establish and maintain a notification mechanism and complaints procedure, 7) monitor the effectiveness of the measures taken in accordance with the requirements that are provided for in the CS3D Directive and 8) communicate publicly on their due diligence.[21]

Recital 40 specifies that to comply with due diligence obligations, companies need to take **appropriate measures** with respect to the identification, prevention, bringing to an end, minimisation and remediation of adverse impacts, and the carrying out of meaningful engagement with stakeholders throughout the due diligence

21 Recital 38 CS3D.

ARTICLE 5 DUE DILIGENCE

1. Member States shall ensure that companies conduct risk-based human rights and environmental due diligence as laid down in Articles 7 to 16 ('due diligence') by carrying out the following actions:

(a) integrating due diligence into their policies and risk management systems in accordance with Article 7;
(b) identifying and assessing actual or potential adverse impacts in accordance with Article 8 and, where necessary, prioritising actual and potential adverse impacts in accordance with Article 9;
(c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 10 and 11;
(d) providing remediation for actual adverse impacts in accordance with Article 12;
(e) carrying out meaningful engagement with stakeholders in accordance with Article 13;
(f) establishing and maintaining a notification mechanism and a complaints procedure in accordance with Article 14;
(g) monitoring the effectiveness of their due diligence policy and measures in accordance with Article 15;
(h) publicly communicating on due diligence in accordance with Article 16.

process. The term '**appropriate measures'** should according to Article 3(1)(o) CS3D to mean "measures that are capable of achieving the objectives of due diligence, by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors". [22] Furthermore, Recital 40 clarifies that "If necessary information, including information that is deemed to be a trade secret, cannot be reasonably obtained due to factual or legal obstacles, for instance because a business partner refuses to provide information and there are no legal grounds to enforce this, such circumstances cannot be held against the company, but it should be able to explain why such information could not be obtained and should take the necessary and reasonable steps to obtain it as soon as possible". Recital 19 CS3D clarifies that "the main obligations in this Directive should be obligations of means" and that "company should take appropriate measures which are capable of achieving the objectives of due diligence by effectively addressing adverse impacts, in a manner commensurate to the degree of severity and the likelihood of the adverse impact. Account should be taken of the circumstances of the specific case, the nature and extent of the adverse impact and relevant risk factors, including, in preventing and minimising adverse impacts, the specificities of the company's business operations and its chain of activities, sector or geographical area in which its business partners operate, the company's power to influence its direct and indirect business partners, and whether the company could increase its power of influence."[23]

To note is that the reference in Article 5(e) CS3D to meaningful engagement with stakeholders came about in particular due to the pressure of the EP and the trade union/CSO movement during the legislative process.

Below, the potential for trade unions and workers' representatives in all these steps of the due diligence process will be further developed.

3.2 - Article 6 CS3D : Due diligence support at group level

Article 6 CS3D prescribes that the due diligence obligations not only apply to companies reaching the financial and/or employee thresholds as set by the Directive for EU and non-EU countries, but that the same applies to ultimate parent companies. As regards such ultimate parent companies, the obligations of this Directive should be met by the ultimate parent company or, in the event the latter has as its main activity the holding of shares in operational subsidiaries and does not engage in the taking of management, operational or financial decisions affecting the group or one or more of its subsidiaries, by one operational subsidiary established in the Union, in accordance with the conditions provided for in this Directive.

This includes, in line with Article 7 CS3D (see

22 Article 3(1)(n) CS3D.

23 Recital 19 and 40 CS3D.

ARTICLE 6
DUE DILIGENCE SUPPORT AT A GROUP LEVEL

1. Member States shall ensure that parent companies falling under the scope of this Directive are allowed to fulfil the obligations set out in Articles 7 to 11 and Article 22 on behalf of companies which are subsidiaries of those parent companies and fall under the scope of this Directive, if this ensures effective compliance. This is without prejudice to such subsidiaries being subject to the exercise of the supervisory authority's powers in accordance with Article 25 and to their civil liability in accordance with Article 29.

2. The fulfilment of the due diligence obligations set out in Articles 7 to 16 by a parent company in accordance with paragraph 1 of this Article shall be subject to all of the following conditions:

(a) the subsidiary and parent company provide each other with all the necessary information and cooperate to fulfil the obligations resulting from this Directive;
(b) the subsidiary abides by its parent company's due diligence policy accordingly adapted to ensure that the obligations laid down in Article 7(1) are fulfilled with respect to the subsidiary;
(c) the subsidiary integrates due diligence into all its policies and risk management systems in accordance with Article 7, clearly describing which obligations are to be fulfilled by the parent company, **and, where necessary, so informs the relevant stakeholders;**
(d) where necessary, the subsidiary continues to take appropriate measures in accordance with Articles 10 and 11 and to fulfil its obligations under Articles 12 and 13;
(e) where relevant, the subsidiary seeks contractual assurances from a direct business partner in accordance with Article 10(2), point (b), or Article 11(3), point (c), seeks contractual assurances from an indirect business partner in accordance with Article 10(4) or Article 11(5) and temporarily suspends or terminates the business relationship in accordance with Article 10(6) or Article 11(7).

3. Where the parent company fulfils the obligation set out in Article 22 on behalf of the subsidiary in accordance with paragraph 1 of this Article, the subsidiary shall comply with the obligations laid down in Article 22 in accordance with the parent company's transition plan for climate change mitigation accordingly adapted to its business model and strategy.

below), to ensure that the subsidiary integrates due diligence into all its policies and risk management systems, thereby clearly describing which obligations are to be fulfilled by the parent company, and, **where necessary, to inform the relevant stakeholders, i.e. workers, trade unions and workers' representatives (Article 6§2(c) CS3D)**. The CS3D does not provide guidance as to the terms "where necessary" and it would be **recommended that this information obligation is embedded in national transposition laws as an automatic and general obligation in order to avoid by-passing or endless discussions on the necessity to inform or not.**

In addition, it would be key that at group level, and when the due diligence policy is designed and followed at the parent company's level, to associate both the European and national workers' representatives in the information and consultation processes.

To note also is that Recital 22 clarifies that "the fulfilment of some of the due diligence obligations at a group level should be without prejudice to the civil liability of subsidiaries under this Directive in respect of victims to whom the damage is caused. If the conditions for civil liability are met, the subsidiary could be held liable for damage that occurred, irrespective of whether the due diligence obligations were carried out by the subsidiary or by the parent company on behalf of the subsidiary."[24]

3.3 - Article 7 CS3D : Integrating DD in company policies and risk management systems

Article 7 obliges companies to integrate due diligence into all their relevant policies and risk management systems and have in place a due diligence policy that ensures risk-based due diligence. Key for trade unions and workers' representatives is that Article 7§2 clearly spells out that such a due diligence policy **shall** be **developed in prior consultation with the company's**

24 Recital 22 CS3D.

ARTICLE 7
INTEGRATING DUE DILIGENCE INTO COMPANY POLICIES AND RISK MANAGEMENT SYSTEMS

1. Member States shall ensure that companies integrate due diligence into all their relevant policies and risk management systems and have in place a due diligence policy that ensures risk-based due diligence.

2. The due diligence policy referred to in paragraph 1 shall be developed in prior consultation with the company's employees and their representatives, and contain all of the following:

(a) a description of the company's approach, including in the long term, to due diligence;
(b) a code of conduct describing rules and principles to be followed throughout the company and its subsidiaries, and the company's direct or indirect business partners in accordance with Article 10(2), point (b), Article 10(4), Article 11(3), point (c), or Article 11(5); and
(c) a description of the processes put in place to integrate due diligence into the company's relevant policies and to implement due diligence, including the measures taken to verify compliance with the code of conduct referred to in point (b) and to extend that code's application to business partners.

3. Member States shall ensure that companies update their due diligence policies without undue delay after a significant change occurs, and review and, where necessary, update such policies at least every 24 months.

For the purposes referred to in the first subparagraph, companies shall take into account the adverse impacts already identified in accordance with Article 8, as well as the appropriate measures taken to address such adverse impacts in accordance with Articles 10 and 11 and the outcome of the assessments carried out in accordance with Article 15.

employees and their representatives.
Recital 39 further clarifies that the **integration of due diligence in companies' policies** is to be done **in line with the relevant international framework** (i.e. UN Guiding Principles) and **at all relevant levels of operation**. The code of conduct should apply in all relevant corporate functions and operations, including procurement, employment and purchasing decisions. To note also is that this applies to "internal functions" but also applies to subsidiaries and business partners. For the purposes of this Directive, employees should be understood as including temporary agency workers, and other workers in non-standard forms of employment provided that they fulfil the criteria for determining the status of worker established by the CJEU.[25]

As governments might be inclined to read this notion of "representatives" in a narrow sense (e.g. works councils), it would be **key to ensure that the transposition laws provide that this obligation relates to trade unions as well as other European and workers' representatives (EWC's, works councils, other elected bodies of representation,...).** What is sure is that it is not because the order of reference in Article 7 CS3D is first to "employees" and that then "their representatives" that the EU legislator had the intention to allow companies to inform and consult them in that order. Any meaningful consultation can only be done with the trade union and workers' representatives who will then inform and consult their workers/members. Applying any other order would also not be in line with the (case) law of the ILO (CEACR and CFA) and Council of Europe (European Committee of Social Rights).

To note also is that, unlike the UNGPs and OECD Guidelines, the CS3D on this point does not require a senior/board level oversight. Ensuring this is thus left to the discretion of the Member States and in some countries, like Germany, there are examples of corporate governance models that include such

25 Recital 39 CS3D.

trade union involvement (See also below Point 4.4).

3.4 - Article 13 CS3D : Meaningful engagement with stakeholders

For the involvement of trade unions and workers' representatives, Article 13 the key provision of the CS3D. In order to conduct meaningful human rights and environmental due diligence, companies should take appropriate measures to carry out **effective engagement** with stakeholders, for the process of carrying out the due diligence actions.[26]

This engagement should cover some key aspects.

Firstly, and without prejudice to Directive (EU) 2016/943[27], effective engagement should cover **providing** consulted stakeholders with **relevant and comprehensive information**, and secondly it should cover **ongoing consultation that allows for genuine interaction and dialogue at the appropriate level, such as project or site level, and with appropriate periodicity**. Article 13(3) CSRD lists the **stages of the due diligence process where consultation** with stakeholders is **mandatory** (i.e. companies "shall"...).

Indeed, it is to be noted however, the Article 13 CS3D does not require companies to consult stakeholders in certain crucial steps of the due diligence process, e.g. when designing their engagement frameworks, to design their complaints procedures (Article 14), when publicly communicating on due diligence (Article 16), or only requires engagement "as appropriate" in relation to monitoring obligations (Article 15). However, as Article 13 CS3D is not included in Article 4 CS3D on "Level of harmonisation" and leaves thus a flexibility to Member States to adopt more protective or stringent provisions in this regard, it is recommended that national transposition laws would require the companies, in line with

ARTICLE 13
MEANINGFUL ENGAGEMENT WITH STAKEHOLDERS

1. Member States shall ensure that companies take appropriate measures to carry out effective engagement with stakeholders, in accordance with this Article.

2. Without prejudice to Directive (EU) 2016/943, when consulting with stakeholders, companies shall, as appropriate, provide them with relevant and comprehensive information, in order to carry out effective and transparent consultations.

Without prejudice to Directive (EU) 2016/943, consulted stakeholders shall be allowed to make a reasoned request for relevant additional information, which shall be provided by the company within a reasonable period of time and in an appropriate and comprehensible format. If the company refuses a request for additional information, the consulted stakeholders shall be entitled to a written justification for that refusal.

3. Consultation of stakeholders shall take place at the following stages of the due diligence process:

(a) when gathering the necessary information on actual or potential adverse impacts, in order to identify, assess and prioritise adverse impacts pursuant to Articles 8 and 9;
(b) when developing prevention and corrective action plans pursuant to Article 10(2) and Article 11(3), and developing enhanced prevention and corrective action plans pursuant to Article 10(6) and Article 11(7);
(c) when deciding to terminate or suspend a business relationship pursuant to Article 10(6) and Article 11(7);
(d) when adopting appropriate measures to remediate adverse impacts pursuant to Article 12;
(e) as appropriate, when developing qualitative and quantitative indicators for the monitoring required under Article 15. >>

26 Recital 65 CS3D.

27 **Directive (EU) 2016/943** of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, OJ L 157, 15.6.2016, p. 1–18.

4. Where it is not reasonably possible to carry out effective engagement with stakeholders to the extent necessary to comply with the requirements of this Directive, companies shall consult additionally with experts who can provide credible insights into actual or potential adverse impacts.

5. In consulting stakeholders, companies shall identify and address barriers to engagement and shall ensure that participants are not the subject of retaliation or retribution, including by maintaining confidentiality or anonymity.

6. Member States shall ensure that companies are allowed to fulfil the obligations laid down in this Article through industry or multi-stakeholder initiatives, as appropriate, provided that the consultation procedures meet the requirements set out in this Article. The use of industry and multi-stakeholder initiatives shall not be sufficient to fulfil the obligation to consult the company's own employees and their representatives. Engagement with employees and their representatives shall be without prejudice to relevant Union and national law in the field of employment and social rights as well as to the applicable collective agreements.

international standards, to carry out meaningful engagement with trade unions and workers' representatives throughout the entire due diligence process in an early and continuous way!

Secondly, meaningful engagement with consulted stakeholders should take due account of barriers to engagement, **ensure that stakeholders are free from retaliation and retribution**, including by maintaining confidentiality and anonymity.

In situations where it would not be possible to carry out meaningful engagement with consulted stakeholders, or where engagement with additional expert perspectives is useful to allow the company to comply fully with the requirements of this Directive, companies should additionally consult with experts, such as civil society organisations or natural or legal persons defending human rights or the environment in order to gain credible insights into actual or potential adverse impacts.

When it comes to the specific "engagement" with workers, trade unions and workers' representatives, Article 13 CS3R clearly spells out that the **consultation of workers and their representatives should be conducted in accordance with relevant Union law, and where applicable, national law and collective agreements, and without prejudice to their applicable rights to information, consultation and participation, and in particular those covered by relevant Union legislation in the field of employment and social rights, including Directive 2001/86/EC ('SE'-Directive)[28], Directive 2002/14/EC ('general I/C directive')[29] (21) and Directive 2009/38/EC ('EWC (Recast) Directive')[30].**

It is thereby to be noted that the information and consultation obligations under the CS3D are "without prejudice" to the obligations under the mentioned ICP Directives (and other relevant Union law as the list is non-exhaustive!) which implies that they concern additional (!) information and consultation obligations next to the ones already existing in Union law. Furthermore, in ensuring these information and consultation obligations attention must be drawn to Article 1 of the CS3D which provides for both a non-regression clause and more favourable provision clause. (see below)

Finally, Article 13 CS3R allows companies, when carrying out **consultations**, to rely on industry initiatives to the extent that they are appropriate to support effective engagement. However, it is also crystal-clear that the use of **industry or multi-stakeholder initiatives** is **not** in itself **sufficient to fulfil the obligation to consult workers**

28 **Council Directive 2001/86/EC** of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ L 294, 10.11.2001, p. 22–32.

29 **Directive 2002/14/EC** of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, p. 29–34.

30 **Directive 2009/38/EC** of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast), OJ L 122, 16.5.2009, p. 28–44.

and their representatives! **It is recommended that both the link between the CS3D and the existing ICP (and other relevant EU) acquis as well as the relation between consultation via industry or multi-stakeholder initiatives on the one hand and consultations with trade union and workers' representatives are clearly and firmly formulated in the national transposition laws.**

In this regard, and in line with the ETUC Recommendations for Transposition of the Corporate Sustainability Reporting Directive (CSRD), it is recommended that:[31]

• The national transposition laws should **explicitly reference key EU Directives and their respective national transposition**:

- Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 Establishing a general framework for informing and consulting employees;

- Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council;

- Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees; **AND**

- Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees **(as the latter is not referred to in the CS3D!).**

• To ensure a clear mandate and role in particular for EWC (representatives) in relation to designing, implementing and monitoring due diligence policies and measures, it would be also key to **ensure that the information and consultation rights of EWC's as established in national laws are enriched and extended towards due diligence matters and processes**.

• The transposition legislation should **explicitly reference any relevant national legislation or practice** relevant for specifying the following issues:

- Which trade union and/or worker's representatives should be informed and consulted?

- How is the appropriate level of management defined?

- How shall workers' representative be informed and consulted (including time limits, rules or criteria on the process and the content of information)?

- How shall their opinion be communicated to the board?

- What complaint procedures and penalties/fines are defined for violations of this right?

• In particular, it is important to specify that workers' representatives have the right to be involved in '**materiality assessment'** – that is, the procedure that companies use to decide if an issue is 'important' enough to be reported on. Workers' representatives' involvement in 'materiality assessment' is an important safeguard against greenwashing and ensures that key issues for workers are reported on.

A recommendation for transposition language that would give workers' representatives participation rights in all stages of 'materiality assessment' is as follows:

The appropriate level(s) of workers' representatives, depending on national context] shall be consulted on:

1. the identification of the boundaries and characteristics of the companies' own operations, supply chain, business relationships, and identification of affected stakeholders;

2. the identification and assessment of the significance of actual and potential impacts, risks and opportunities, including methods of data collection and its verification, and

3. reporting on the process and outcome of materiality assessment.

31 The following specific recommendations follow indeed the ETUC Recommendations on the CSRD as elaborated for the ETUC by Sigurt Vitols (ETUI) (and with the financial support of the EU and the European Workers' Participation Fund).

3.5 - Article 14 CS3D : Notification mechanism and complaints procedure

Article 14 CS3D obliges companies to provide the possibility for persons and organisations to submit complaints directly to them in case of legitimate concerns regarding actual or potential human rights and environmental adverse impacts.

ARTICLE 14
NOTIFICATION MECHANISM AND COMPLAINTS PROCEDURE

1. Member States shall ensure that companies enable persons and entities listed in paragraph 2 to submit complaints to them where those persons or entities have legitimate concerns regarding actual or potential adverse impacts with respect to the companies' own operations, the operations of their subsidiaries or the operations of their business partners in the chains of activities of the companies.

2. Member States shall ensure that complaints may be submitted by:

(a) natural or legal persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact, and the legitimate representatives of such persons on behalf of them, such as civil society organisations and human rights defenders;
(b) trade unions and other workers' representatives representing natural persons working in the chain of activities concerned; and
(c) civil society organisations that are active and experienced in related areas where an adverse environmental impact is the subject matter of the complaint.

3. Member States shall ensure that companies establish a fair, publicly available, accessible, predictable and transparent procedure for dealing with the complaints referred to in paragraph 1, including a procedure where a company considers a complaint to be unfounded, and inform the relevant workers representatives and trade unions of that procedure.

Companies shall take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organisation submitting the complaint, in accordance with national law. Where information needs to be shared, it shall be in a manner that does not endanger the complainant's safety, including by not disclosing that complainant's identity.
Member States shall ensure that, where the complaint is well-founded, the adverse impact that is the subject matter of the complaint is deemed to be identified within the meaning of Article 8 and the company shall take appropriate measures in accordance with Articles 10, 11 and 12.

4. Member States shall ensure that complainants are entitled to:

(a) request appropriate follow-up on the complaint from the company with which they have filed a complaint pursuant to paragraph 1;
(b) meet with the company's representatives at an appropriate level to discuss actual or potential severe adverse impacts that are the subject matter of the complaint, and potential remediation in accordance with Article 12;
(c) be provided by the company with the reasons a complaint has been considered founded or unfounded and, where considered founded, with information on the steps and actions taken or to be taken.

5. Member States shall ensure that companies establish an accessible mechanism for the submission >>

of notifications by persons and entities where they have information or concerns regarding actual or potential adverse impacts with respect to their own operations, the operations of their subsidiaries and the operations of their business partners in the chains of activities of the companies.
The mechanism shall ensure that notifications can be made either anonymously or confidentially in accordance with national law. Companies shall take reasonably available measures to prevent any form of retaliation by ensuring that the identity of persons or entities that submit notifications remains confidential, in accordance with national law. The company may inform persons or entities that submit notifications about steps and actions taken or to be taken, where relevant.

6. Member States shall ensure that companies are allowed to fulfil the obligations laid down in paragraph 1, the first subparagraph of paragraph 3, and paragraph 5, through participation in collaborative complaints procedures and notification mechanisms, including those established jointly by companies, through industry associations, multistakeholder initiatives or global framework agreements, provided that such collaborative procedures and mechanisms meet the requirements set out in this Article.

7. The submission of a notification or complaint under this Article shall not be a prerequisite for, or preclude the persons submitting them from, having access to the procedures under Article 26 and 29 or to other, non-judicial, mechanisms.

Under Article 14 CS3D, companies in scope must set up a complaint procedure. Persons and organisations who could submit such complaints **should include** persons who are affected or have reasonable grounds to believe that they might be affected and the legitimate representatives of such persons on behalf of them, such as **trade unions and other workers' representatives** representing individuals working in the chain of activities concerned next to civil society organisations and human rights defenders.[32]

Furthermore, **companies should** not only establish a fair, publicly available, accessible, predictable and transparent procedure (in line with Principle 31 of the UN Guiding Principles) for dealing with those complaints but **also inform the relevant workers, trade unions and other workers' representatives about such procedures.**

Next to the complaint procedure, companies must under Article 14§6 CS3D also establish a **mechanism for the submission of notifications** which, unlike the complaints procedure, must be available (anonymously or confidentially) to anyone who has information or suspicions about adverse human rights or environmental impacts, even if they not claim to be affected themselves.

Article 14 CS3D, allows, in order to reduce the burden on companies, that they can participate in **collaborative complaints procedures and notification mechanisms**, such as those established jointly by companies, for example, by a group of companies, **through global framework agreements (see Article 14§6 CS3D). Next to providing this possibility explicitly in national transposition laws, it would be recommendable that ETUFs look at the opportunities to introduce such mechanisms (if not existing already) in global/European framework agreements.**

It is important to stress and should also **be explicitly provided for in national transposition laws that** the **submission of a notification or complaint should not be a prerequisite or preclude the person submitting them from having access to the substantiated concerns procedure or to judicial or other non-judicial mechanisms**, such as the OECD national contact points where they exist.

Article 14 CS3D also provides some further procedural safeguards that have to be ensured, including – and very important for in particular trade unions, workers' representatives and workers themselves that companies should also take reasonably available measures to **prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organisation submitting the complaint or notification**, in accordance with national law. So if or where information needs to be shared, this must be done in a way that does not endanger the complainants' safety. In that sense it is also important to read this Article in conjunction with Article 30 which provides that protections under the Whistleblowing Directive must apply to individuals reporting breaches. (see below)

32 Recital 59 CS3D.

In relation to Article 14 CS3D, Recital 59 also clarifies in this regard that **"workers and their representatives should also be properly protected, and any non-judicial remediation efforts should be without prejudice to encouraging collective bargaining and recognition of trade unions, and should by no means undermine the role of legitimate trade unions or workers' representatives in addressing labour-related disputes**.

In that context it is also important that the transposition of the Directive does not lead to a situation where trade unions' or workers' representatives rights to address labour-related disputes is impeded or obstructed through the introduction of a notification mechanism and/or complaints procedure, particularly in conjunction with the introduction of supervisory authorities covering the scope of the Directive. The powers of the supervisory authorities must not be interpreted as replacing or superseding the rights of trade unions in labour-related disputes. Trade unions must always be able to address labour-related disputes on behalf of themselves or their members, regardless of a situation where a supervisory authority simultaneously has instigated a (legal) proceeding regarding a company. Indeed, and in line with Principle 29 of the UN Guiding Principles, **operational-level grievance mechanisms can be important complements to** wider stakeholder engagement and **collective bargaining processes, but cannot substitute for either**.[33]

For more guidance on "non-state grievance mechanisms" and the conditions, criteria and modalities it should fulfil to be effective, reference can be made to Principles 28-31 of the UN Guiding Principles. And finally, as mentioned above in relation to Article 13 CS3D, **national transposition laws should require companies to consult trade unions and workers' representatives in the design, monitoring and governance of both the notification mechanism and complaints procedure.**

3.6 - Article 15 CS3D : Monitoring (periodic assessments)

Setting up due diligence policies is one thing, but nothing if companies were not obliged also to monitor the implementation and effectiveness of their due diligence measures.

Hence, Article 15 CS3D provides for the obligation for companies to carry out periodic assessments of their own operations, those of their subsidiaries and, where related to the chain of activities of the company, those of their business partners, to assess the implementation and to monitor the adequacy and effectiveness of the identification, prevention, minimisation, bringing to an end and mitigation of adverse impacts.

Such assessments should be carried out without undue delay after a significant change occurs, but at least every 12 months and be revised in-between if there are reasonable grounds to believe that new risks of adverse impact could have arisen. A "**significant change**" should be understood as a change to the status quo of the company's own operations, operations of its subsidiaries or business partners, the legal or business environment or any other substantial shift from the situation of the company or its operating context. **Examples of a significant change could be** cases when the company starts to operate in a

33 See in this sense also **Principle 29 of the UN Guiding Principles** which states that "Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms." Furthermore, Principle 30 of the UN Guiding Principles states that "Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available." The accompanying "Commentary" states that "Human rights-related standards are increasingly reflected in commitments undertaken by industry bodies, multi-stakeholder and other collaborative initiatives, through codes of conduct, performance standards, global framework agreements between trade unions and transnational corporations, and similar undertakings. Such collaborative initiatives should ensure the availability of effective mechanisms through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met. The legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms. The mechanisms could be at the level of individual members, of the collaborative initiative, or both. These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts." Similarly, Guideline 51 of the OECD Guidelines ... provides that "When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the Guidelines recommend that enterprises provide for or co-operate in their remediation through legitimate processes. Enterprises should establish or participate in processes to enable remediation. Some situations require co-operation with judicial or Statebased non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines, transparency, rights-compatibility, being a source of continuous learning, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning. **Operational-level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the Guidelines."**

ARTICLE 15
MONITORING

Member States shall ensure that companies carry out **periodic assessments** of their own operations and measures, those of their subsidiaries and, where related to the chain of activities of the company, those of their business partners, to assess the implementation and to monitor the adequacy and effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of adverse impacts. Such assessments shall be based, where appropriate, on qualitative and quantitative indicators and be carried out without undue delay after a significant change occurs, **but at least every 12 months** and whenever there are reasonable grounds to believe that new risks of the occurrence of those adverse impacts may arise. **Where appropriate, the due diligence policy,** the adverse impacts identified and the appropriate measures that derived shall be updated in accordance with the outcome of such assessments and with due consideration of relevant information from stakeholders.

new economic sector or geographical area, starts producing new products or changes the way of producing the existing products using technology with potentially higher adverse impact, or **changes to its corporate structure via restructuring or via mergers or acquisitions.** "**Reasonable grounds**" to believe that there are new **risks may arise in different ways**, **including** learning about the adverse impact from publicly available information, **through stakeholder engagement**, or through notifications.

Article 15 CS3D thus offers via and in different ways opportunities to workers, workers' representatives and trade unions to trigger regular or immediate assessments to be conducted by the company and such opportunities should be clearly embedded and spelled out in national transposition laws.

Companies should retain documentation demonstrating their compliance with this requirement for at least five years. Such documentation should at least include, where relevant, the identified impacts and in-depth assessments pursuant to Article 8, the prevention and/or corrective action plan pursuant to Articles 10(2), point (a), and 11(3), point (b), contractual provisions obtained or contracts concluded pursuant to Articles 10(2), point (b), Article 10(4) and 11(3) (c), Article 11(5), verifications pursuant to Articles 10(5) and 11(6), remediation measures, periodic assessments as part of the company's monitoring obligation, as well as notifications and complaints. Financial undertakings should carry out periodic assessment only of their own operations, those of their subsidiaries and those of their upstream business partners.
A weakness of Article 15 CS3D, if read in conjunction with Article 13§3 CS3D (see above), that "stakeholders" are (only) consulted at the level of the development of the indicators. It would thus be **recommendable that in the national transposition processes trade unions and workers' representatives are involved/ consulted in all stages relating to this monitoring strategies /periodic assessments** so including elaboration of the monitoring strategies/ periodic assessments, there substances as well as any follow up/revision processes relating to these monitoring strategies/periodic assessments.

3.7 - Article 29 CSRD: Civil liability of companies and right to full compensation

Next to monitoring and periodically assessing due diligence policies, enforcement is of course of paramount importance. Although far from perfect because being seriously watered down during the legislative process under the pressure of certain member states and the business lobby, the CS3D provides for a comprehensive article on civil liability and a right to (financial) compensation.

The CS3D therefore addresses via Article 29 CS3D certain practical and procedural barriers to justice for victims of adverse impacts, including difficulties in accessing evidence, the limited duration of limitation periods, the **absence of adequate mechanisms for representative actions (e.g. by trade unions**), and the prohibitive costs of civil liability proceedings. For more clarifications, see in particular Recitals 81-91 of the CS3D.

ARTICLE 29
CIVIL LIABILITY OF COMPANIES AND THE RIGHT TO FULL COMPENSATION

1. Member States shall ensure that a company can be held liable for damage caused to a natural or legal person, provided that:

(a) the company intentionally or negligently failed to comply with the obligations laid down in Articles 10 and 11, when the right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person; and
(b) as a result of the failure referred to in point (a), damage to the natural or legal person's legal interests that are protected under national law was caused.
A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.

2. Where a company is held liable in accordance with paragraph 1, a natural or legal person shall have the right to full compensation for the damage, in accordance with national law. Full compensation under this Directive shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages.

3. Member States shall ensure that:

(a) national rules on the beginning, duration, suspension or interruption of limitation periods do not unduly hamper the bringing of actions for damages and, in any case, are not more restrictive than the rules on national general civil liability regimes; the limitation period for bringing actions for damages under this Directive shall be at least five years and, in any case, not shorter than the limitation period laid down under national general civil liability regimes; limitation periods shall not begin to run before the infringement has ceased and the claimant knows, or can reasonably be expected to know:

(i) of the behaviour and the fact that it constitutes an infringement;
(ii) of the fact that the infringement caused harm to them; and
(iii) the identity of the infringer;

(b) the cost of proceedings is not prohibitively expensive for claimants to seek justice;

(c) claimants are able to seek injunctive measures, including through summary proceedings; such injunctive measures shall be in the form of a definitive or provisional measure to cease infringements of the provisions of national law adopted pursuant to this Directive by performing an action or ceasing conduct;

(d) reasonable conditions are provided for under which any alleged injured party may **authorise a trade union**, non-governmental human rights or environmental organisation or other non-governmental organisation, and, in accordance with national law, national human rights' institutions, based in a Member State **to bring actions to enforce the rights of the alleged injured party**, without prejudice to national rules of civil procedure; a trade union or non-governmental organisation may be authorised under the first subparagraph of this point if it complies with the requirements laid down in national law; those requirements may include maintaining a permanent presence of its own and, in accordance with its statutes, not engaging commercially and not only temporarily in the realisation of rights protected under this Directive or the corresponding rights in national law;

(e) when a claim is brought, and a claimant presents a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of their claim for damages and has indicated that additional evidence lies in the control of the company, courts are able to order that >>

such evidence be disclosed by the company in accordance national courts shall limit the disclosure of the evidence sought to that which is necessary and proportionate to support a potential claim or a claim for damages and the preservation of evidence to that which is necessary and proportionate to support such a claim for damages; in determining whether an order for the disclosure or preservation of evidence is proportionate, national courts shall consider the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence; the scope and cost of disclosure as well as the legitimate interests of all parties, including any third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure; whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information; Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages; Member States shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.

4. Companies that have participated in industry or multi-stakeholder initiatives, or used independent third-party verification or contractual clauses to support the implementation of due diligence obligations may nevertheless be held liable in accordance with this Article.

5. The civil liability of a company for damages arising under this provision shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the chain of activities of the company. When the damage was caused jointly by the company and its subsidiary, direct or indirect business partner, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the conditions of joint and several liability and the rights of recourse.

6. The civil liability rules under this Directive shall not limit companies' liability under Union or national legal systems and shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.

7. Member States shall ensure that the provisions of national law transposing this Article are of overriding mandatory application in cases where the law applicable to claims to that effect is not the national law of a Member State.

For workers, trade unions and workers' representatives, the key part of Article 29 CS3D lies in paragraph 3(d) which obliges Member States to **ensure that reasonable conditions are provided for under which any alleged injured party may authorise amongst others a trade union to bring actions to enforce the rights of the alleged injured party**, without prejudice to national rules of civil procedure.

For a trade union to be authorised to do so, it must comply with the requirements laid down in national law; those requirements may include maintaining a permanent presence of its own and, in accordance with its statutes, not engaging commercially and not only temporarily in the realisation of rights protected under the CS3D or the corresponding rights in national law. However, trade unions will be able to sue also in their own name and the CS3D is thus not intended to create an authorisation to bring representative actions. Recital 84 clarifies in this regard that that could be achieved by provisions of national civil procedure on authorisation to represent the victim in the context of a third-party intervention, based on the explicit consent of the alleged injured party, and should not be interpreted as requiring the Member States to extend the provisions of their national law on representative actions as defined in Directive (EU) 2020/1828 of the European Parliament and of the Council.[34]

One **major weakness of the CS3D and Article 29 CS3D** in particular, is that it **does not reverse the burden of proof in favour of the claimants; a lacunae which definitely has to be closed in national transposition laws!**

34 Recital 84 CS3D; **Directive (EU) 2020/1828** of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, p. 1–27.

It is recommended that trade unions revisit the provisions of national civil law procedures and what is provided therein on access to justice for trade unions and to provide in the national transposition laws that those civil law procedures provisions will be adapted accordingly as to allow trade unions to make representations also in cases alleging violation of the CS3D. After all the main objective of Article 29 CS3D is to overcome certain practical and procedural barriers (and increase the access) to justice including by addressing the absence of adequate mechanisms for representative actions.

As Article 29§3(e) is formulated/construed in a rather complex manner which might create confusion as this also includes trade unions or CSO's not based in a Member State, it is recommended that national transposition laws and/or existing civil procedural law do not require indeed that the intervening trade union should be based in a Member State but also allows trade unions located outside the EU to intervene themselves or on behalf of victims under the same conditions as trade unions based in the EU/member state concerned. As for such transnational human rights litigation which can be even more costly than mere national ones, the national transposition laws should also address the issue of costs of such transnational litigation by e.g. the waving of fees or providing for the creation of legal aid funds for claims brought under the CS3D.

This is all the more important as Member States are also obliged to **ensure that claimants should be able to seek injunctive measures in the form of a definitive or provisional measure to cease infringements of the provisions of national law adopted pursuant to the CS3D** by performing an action or ceasing conduct.

Furthermore, the **civil liability of a company for damages arising due to its failure to carry out adequate due diligence should be without prejudice to civil liability of its subsidiaries or the respective civil liability of direct and indirect business partners in its chain of activities**. Where the company caused the damage jointly with its subsidiary or business partner, it should be **jointly and severally liable** with that subsidiary or business partner. This should be in accordance with national law on the conditions of joint and several liability, and **without prejudice to any Union or national law on joint and several liability**, and on rights of recourse for the full compensation paid by one jointly and severally liable party.

Finally, and despite to the explicit recognition of trade unions in Article 29§3(d) to intervene on behalf of the alleged injured party, it needs to be pointed out that Article 29§1 contains a weakness when it comes down to protecting **trade unions** themselves if they are a alleged injured victim e.g. because they are the subject/victim of anti-union busting practices by the company.

Article 29§1 CS3D only protects "**legal or natural persons**"; however it might be that in some countries do not have a legal personality and would thus not "as a legal person" be covered by this provision and would thus not be able to benefit from the right to full compensation for the damage caused to the trade union. **It would thus be recommendable for trade union organisations to check whether -given their legal personality- they would be protected by Article 29§1 CS3D as an alleged injured victim themselves. If not, it will need to be ensured in national transposition laws that the protection of Article 29§1 CS3D is expanded beyond natural and legal persons and thus include also trade unions themselves.**

In relation to the latter, and as Article 29 CS3D does not include explicitly collective rights in the scope of liability, it is recommended that national transposition laws clarify that collective rights such as the right to freedom of assembly, the right to organise and to bargain collectively do fall under the scope of liability risks.

And finally, the CS3D does not address the question of jurisdiction of Member States' courts over third-country companies in civil claims. Given also the absence of comprehensive EU rules on this (for the moment), it would be essential that transposition laws also ensure the national courts can effectively exercise jurisdiction over non-EU companies that fall under the scope of the CS3D.

4 - Other involvement possibilities for social partners (incl. national and European (ETUC/ETUFs) trade unions)

Next to different articles that provide for rights and opportunities for trade unions and workers' representatives at the company level and/or within the chain of activities, the CS3D also contains several articles where a **role** is provided **for European and/or national trade unions and it is recommended for the ETUC, ETUFs and national trade unions to coordinate their (joint) actions in achieving the most effective implementation of those articles.**

4.1 - Article 18 CS3D: Commission guidance on model contractual clauses

In order to give companies tools to help them comply with their due diligence requirements through their chains of activities, the **Commission, in consultation with** Member States and **stakeholders, should provide guidance on model contractual clauses**, which can be used voluntarily by companies as a tool to help fulfil their obligations in Articles 10 and 11 CS3D.

> **Article 18**
> **MODEL CONTRACTUAL CLAUSES**
>
> In order to provide support to companies to facilitate their compliance with Article 10(2), point (b), and Article 11(3), point (c), the **Commission, in consultation** with Member States and **stakeholders,** shall **adopt guidance about voluntary model contractual clause**s, by 26 January 2027.

According to Recital 66 CSRD, the guidance should aim to facilitate a clear allocation of tasks between contracting parties and ongoing cooperation, in a way that avoids the transfer of the obligations provided for in the CS3D to a business partner and automatically rendering the contract void in case of a breach. The guidance should also reflect the principle that the mere use of contractual assurances cannot, on its own, satisfy the due diligence standards provided for in this Directive.[35]

ETUC has tried during the legislative process to integrate amendments in this Article 18 that would explicitly refer to the European/national social partners however without success. **Hence, ETUC and the ETUFs should approach the Commission to ensure that European are as "stakeholder" involved in the consultation process to elaborate this guidance on model contract clauses.**

4.2 - Article 19 CS3D : Guidelines (general/ sector-specific/use of digital tools and technologies)

In order to provide support and practical tools to companies or to Member State authorities on how companies should fulfil their due diligence obligations in a practical manner, and to provide support to stakeholders, the **Commission,** using relevant international guidelines and standards as a reference, and **in consultation with** Member States and **stakeholders**, the European Union Agency for Fundamental Rights, the European Environment Agency, the **European Labour Authority**, and where appropriate with **international organisations and other bodies having expertise in due diligence**, should **issue guidelines, including general guidelines and guidelines for specific sectors or specific adverse impacts** and the interplay between this Directive and other Union legislative acts pursuing the same objectives and providing for more extensive or more specific obligations.

Furthermore, the **Commission should issue guidelines with useful information and references to appropriate resources in relation to the use of digital tools and technologies**, such as those used for tracking, surveillance or tracing raw materials, goods and products throughout value chains, for instance satellites, drones, radars, or platform-based solutions, as they could support and reduce the cost of data gathering for value chain management, including the identification and assessment of adverse impacts, prevention and mitigation, and monitoring of the effectiveness of due diligence measures. In order to help companies fulfil their due diligence obligations along their value chain, the use of such tools and technologies

35 Recital 66 CS3D.

Article 19
GUIDELINES

1. In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations in a practical manner, and to provide support to stakeholders, the **Commission, in consultation with** Member States **and stakeholders,** the European Union Agency for Fundamental Rights, **the European Environment Agency, the European Labour Authority, and where appropriate with international organisations and other bodies having expertise in due diligence, shall issue guidelines, including general guidelines and sector-specific guidelines or guidelines for specific adverse impacts.**

2. The guidelines to be issued pursuant to paragraph 1 shall include:

(a) guidance and best practices on how to conduct due diligence in accordance with the obligations laid down in Articles 5 to 16, particularly, the identification process pursuant to Article 8, the prioritisation of impacts pursuant to Article 9, appropriate measures to adapt purchasing practices pursuant to Article 10(2) and Article 11(3), responsible disengagement pursuant to Article 10(6) and Article 11(7), appropriate measures for remediation pursuant to Article 12, and on how to identify and engage with stakeholders pursuant to Article 13, including through the notification mechanism and complaints procedure established in Article 14;
(b) practical guidance on the transition plan as referred to in Article 22;
(c) sector-specific guidance;
(d) guidance on the assessment of company-level, business operations, geographic and contextual, product and service, and sectoral risk factors, including those associated with conflict-affected and high-risk areas;
(e) references to data and information sources available for the compliance with the obligations provided for in this Directive, and to digital tools and technologies that could facilitate and support compliance;
(f) information on how to share resources and information among companies and other legal entities for the purpose of compliance with the provisions of national law adopted pursuant to this Directive, in a manner that is in accordance with the protection of trade secrets pursuant to Article 5(3) and the protection from potential retaliation and retribution as provided for in Article 13(5);
(g) information for stakeholders and their representatives on how to engage throughout the due diligence process.

3. The guidelines referred to in paragraph 2, points (a), (d), and (e), shall be made available by 26 January 2027. The guidelines in paragraph 2, points (b), (f) and (g), shall be made available by 26 July 2027.

4. The guidelines referred to in this Article shall be made available in all the official languages of the Union. The Commission shall periodically review the guidelines and adapt them where appropriate.

should be encouraged and promoted. When using digital tools and technologies, companies should take into account and appropriately address possible risks associated therewith, and put in place mechanisms to verify the appropriateness of the information obtained.[36]

As for Article 18 on voluntary model clauses (see above), the ETUC has tried during the legislative process to integrate amendments in this Article 19 that would explicitly refer to the European/national social partners however without success.

Hence, the ETUC and ETUFs should approach the Commission to ensure that European and national trade unions, as "stakeholder", are involved in the consultation process to elaborate these different guidelines. To note thereby is that the guidelines referred to in paragraph 2, points (a), (d), and (e), shall be made available by 26 January 2027. The guidelines in paragraph 2, points (b), (f) and (g), shall be made available by 26 July 2027. (But see also Chapter IV.5 regarding the deadlines)

36 See Recital 68 CS3D.

A key demand for the European trade union movement in relation to those Commission Guidelines is that the guidance on all these topics is fully aligned with international standards as well as existing sectoral guidance.

It is also to be considered how the ETUC (and the representatives of ETUFs and national trade unions in the ETUC delegation) cand help to ensure that the European Labour Authority (ELA) is indeed - as referred to in Article 19 CS3D - is consulted in the elaboration of these guidelines. ETUC (jointly with the ETUFs) should also consider approaching the Commission to ensure that international bodies and organisations with expertise in due diligence, like the relevant UN, ILO and Council of Europe, are associated to the work on these guidelines.

4.3 - Article 20 CS3D : Accompanying measures (information, support,...)

Article 20 CS3D obliges Member States to introduce several information and support measures/tools ranging from websites, platforms to even financial support. All these measures/channels are in first instance directed to companies (and in particular SME's although they are not directly included in the scope of the CS3D), however ETUC managed to ensure in the legislative process that also "stakeholders", so including national and European trade unions, would be able to benefit from these measures and tools.

The fact that "stakeholders" might be able to

Article 20
ACCOMPANYING MEASURES

1. **Member States shall**, **in order to provide information and support** to companies and their business partners **and to stakeholders**, **set up and operate individually or jointly dedicated websites, platforms or portals.** Specific consideration shall be given, in that respect, to the SMEs that are present in the chains of activities of companies. Those websites, platforms or portals shall, in particular, give access to:

(a) the content and criteria for reporting as laid down by the Commission in the delegated acts adopted pursuant to Article 16(3);

(b) the Commission's guidance about voluntary model contractual clauses as provided for in Article 18 and the guidelines it issues pursuant to Article 19;

(c) the single helpdesk provided for in Article 21; and

(d) information for stakeholders and their representatives on how to engage throughout the due diligence process.

2. Without prejudice to State aid rules, Member States may financially support SMEs. **Member States may also provide support to stakeholders** for the purpose of facilitating the exercise of rights laid down in this Directive.

3. The **Commission may complement Member State support measures**, building on existing Union action to support due diligence in the Union and in third countries, and may devise new measures, including facilitation of industry or multi-stakeholder initiatives to help companies fulfil their obligations.

4. Without prejudice to Articles 25, 26 and 29, companies may participate in industry and multi-stakeholder initiatives to support the implementation of the obligations referred to in Articles 7 to 16 to the extent that such initiatives are appropriate to support the fulfilment of those >>

obligations. In particular, companies may, after having assessed their appropriateness, make use of or join relevant risk analysis carried out by industry or multi-stakeholder initiatives or by members of those initiatives and may take or join effective appropriate measures through such initiatives. When doing so, companies shall monitor the effectiveness of such measures and, continue to take appropriate measures where necessary to ensure the fulfilment of their obligations.

The Commission and the Member States may facilitate the dissemination of information on such initiatives and their outcome. The **Commission,** in collaboration with Member States, **shall issue guidance setting out fitness criteria and a methodology for companies to assess the fitness of industry and multi-stakeholder initiatives.**

5. Without prejudice to Articles 25, 26 and 29, companies may use independent third-party verification on and from companies in their chains of activities to support the implementation of due diligence obligations to the extent that such verification is appropriate to support the fulfilment of the relevant obligations. Independent third-party verification may be carried out by other companies or by an industry or multi-stakeholder initiative. Independent third-party verifiers shall act with objectivity and complete independence from the company, be free from any conflicts of interest, remain free from external influence, whether direct or indirect, and shall refrain from any action incompatible with their independence.

Depending on the nature of the adverse impact, they shall have experience and competence in environmental or human rights matters and shall be accountable for the quality and reliability of the verification they carry out.

The **Commission**, in collaboration with Member States, **shall issue guidance setting out fitness criteria and a methodology for companies to assess the fitness of third-party verifiers, and guidance for monitoring the accuracy, effectiveness and integrity of third-party verification**.

benefit from information and support measures implemented by Member States is in any case not further clarified in the related Recitals 69 to 72 of the CSRD where references to those stakeholders are completely omitted[37].

Nevertheless, it is recommended to national trade unions try to ensure that in the national transposition laws (and policies) the possibility for trade unions to benefit from information and support tools/measures (incl. financial support if considered relevant and appropriate) set up by Member States is guaranteed and that they are thus not merely oriented/addressed to companies irrespective of their size.

ETUC's position on this from the start has been if even companies that do not fall under the scope of the CS3D can benefit from support, why not the "other side" too?! This applies similarly to the European Commission, which "may complement" the support measures of Member States, but which should not be directed solely to companies (in particular SMEs) or upstream economic operators but also to other stakeholders, including European and national trade unions in EU and third-countries.

4.4 - Article 24-25 CS3D: Powers of supervisory authorities (investigations, judicial remedy)

In order to ensure the monitoring of the correct implementation of companies' due diligence obligations and ensure the proper enforcement of this Directive, Article 24 obliges Member States to designate one or more national supervisory authorities (SA).

Whereas Article 24 CS3D elaborates mainly on the independent status of these supervisory authorities, **it says nothing on the eventual involvement of stakeholders, including trade unions, in its work and governance structure; a lacunae which should be addressed also in national transposition laws.**

It would be indeed be key that national trade unions are part of the governance structure (e.g. by establishing a tripartite governance body).

37 Recitals 69-72 CS3D.

Article 25
POWERS OF SUPERVISORY AUTHORITIES

1. Member States shall ensure that the supervisory authorities have adequate powers and resources to carry out the tasks assigned to them under this Directive, including the power to require companies to provide information and carry out investigations related to compliance with the obligations set out in Articles 7 to 16. Member States shall require the supervisory authorities to supervise the adoption and design of the transition plan for climate change mitigation in accordance with the requirements provided for in Article 22(1).

2. A supervisory authority may initiate **an investigation on its own initiative or as a result of substantiated concerns** communicated to it pursuant to Article 26, where it considers that it has sufficient information indicating a possible breach by a company of the obligations provided for in the provisions of national law adopted pursuant to this Directive.

3. Inspections shall be conducted in compliance with the national law of the Member State in which the inspection is carried out and after prior warning has been given to the company, except where prior warning would hinder the effectiveness of the inspection. Where, as part of its investigation, a supervisory authority wishes to carry out an inspection on the territory of a Member State other than its own, it shall seek assistance from the supervisory authority in that Member State pursuant to Article 28(3).

4. If, as a result of the actions taken pursuant to paragraphs 1 and 2, a supervisory authority identifies a failure to comply with the provisions of national law adopted pursuant to this Directive, it shall grant the company concerned an appropriate period of time to take remedial action, if such action is possible. Taking remedial action shall not preclude the imposition of penalties or the triggering of civil liability, in accordance with Articles 27 and 29, respectively.

5. When carrying out their tasks, supervisory authorities shall have at least the power to:
(a) order the company to:

(i) cease infringements of the provisions of national law adopted pursuant to this Directive by performing an action or ceasing conduct;
(ii) refrain from any repetition of the relevant conduct; and
(iii) where appropriate, provide remediation proportionate to the infringement and necessary to bring it to an end;
(b) impose penalties in accordance with Article 27; and
(c) adopt interim measures in the event of an imminent risk of severe and irreparable harm.

6. Supervisory authorities shall exercise the powers referred to in this Article in accordance with national law:

(a) directly;
(b) in cooperation with other authorities; or
(c) by application to the competent judicial authorities, which shall ensure that legal remedies are effective and have an equivalent effect to the penalties imposed directly by supervisory authorities.

7. Member States shall ensure that each natural or legal person has the right to an effective judicial remedy against a legally binding decision by a supervisory authority concerning them, in accordance with national law.

8. Member States shall ensure that the supervisory authorities keep records of the investigations referred to in paragraph 1, indicating, in particular, their nature and result, as well as records of any enforcement action taken under paragraph 5.

9. Decisions of supervisory authorities regarding a company's compliance with the provisions of national law adopted pursuant to this Directive shall be without prejudice to the company's civil liability under Article 29.

Some inspiration can be found here in e.g. Germany where the DGB is part of the stakeholder council of the BAFA[38]) or the ACM[39] in the Netherlands. Furthermore, as the supervisory authority has to be "independent", it should also be **ensured that if it would be "housed/linked" to a Ministry that this would be then an appropriate Ministry like Social Affairs or Justice** rather than e.g. the Ministry of Finance or Economy. It could also be advisable to **see how in particular Labour Inspection Services could be associated to the work and governance of the SAs** as they have sometimes also more far reaching investigative/ sanctioning powers than what the CS3D prescribes.

Article 25 CS3D on the other hand focuses on the powers of those national supervisory authorities and does offer some possibilities and opportunities for trade unions and workers' representatives involvement in the work of these authorities.

Of particular relevance for trade unions, workers' representatives and workers is Article 25§2 CS3D which stipulates that the supervisory authorities should be entitled to carry out investigations, on their own initiative or based on **substantiated concerns** raised under the CS3D (see for the latter below on Article 26 CS3D "Substantiated concerns"). Those investigations could include, where appropriate, **on-site inspections** and the **hearing of relevant stakeholders**, **which following the definition of stakeholders under the CS3D include workers, trade unions and workers' representatives**.[40]

National trade unions should ensure that it is set clearly out in national transposition laws that trade unions, workers' representatives and the workers they represent should be heard first and foremost when on-site inspections or hearings are organised/conducted. National transposition laws should also consider making inspections without prior warning the rule, rather than the exception.

4.5 - Article 26 CS3D : substantiated concerns

Member States should establish an accessible mechanism for receiving substantiated concerns, free of charge or with a fee limited to covering administrative costs only, and ensure that practical information is made available to the public on how to exercise this right.

Article 26§1 CS3D provides that [any] natural and legal persons are entitled to submit substantiated concerns. As the CS3D recitals provide no further clarification on this, **it should be ensured and clarified in the national transposition laws that this applies workers, workers' representatives and trade unions irrespective of the legal status they hold under national law.**

To note also is that according to Article 26§6 **persons who have submitted a substantiated concern** and have a legitimate interest in the matter **should have access to a court or independent and impartial public body** that should have the competence **to review the** procedural and substantive legality of the **decisions, acts or failure to act of the supervisory authority**.

In order to indeed maximise the effectiveness of substantiated concerns it is recommended that in national transposition laws national supervisory authorities are required to provide an answer within clearly defined timelines and provide any legal or natural persons having submitted a concern with access to a court to review the supervisory authorities' decisions by establishing that all submitters have a legitimate interest.

Also this opportunity for trade unions and workers' representatives should be set out clearly in national transposition laws. Furthermore, it should be ensured in the national transposition laws that for instance:

- Clear delays are introduced/fixed for the assessment of substantiated concerns, including the delay within which they must be concluded,

- It is clarified that all submitters of concerns must be informed of the progress and the outcome of the assessment by the supervisory authority and that they have access to a review instance,

- Specific timings are introduced when interim measures are requested and that petitioners are regularly informed on (the timeline of) the investigation,

- It is clarified that submission of substantiated concerns is free of charge.

38 **BAFA** (Bundesamt für Wirtschaft und Ausfuhrkontrolle; The Federal Office for Economic Affairs and Export Control).

39 **ACM (Autoriteit Consument & Markt).**

40 Recital 75 CSRD.

Article 26
SUBSTANTIATED CONCERNS

1. Member States shall **ensure that natural and legal persons are entitled to submit substantiated concerns**, through easily accessible channels, to any supervisory authority when they have reasons to believe, on the basis of objective circumstances,
that a company is failing to comply with the provisions of national law adopted pursuant to this Directive.

2. Member States shall ensure that, where persons submitting substantiated concerns so request, the supervisory authority takes the necessary measures for the appropriate protection of the identity of that person and their personal information, which, if disclosed, would be harmful to that person.

3. Where a substantiated concern falls under the competence of another supervisory authority, the authority receiving the substantiated concern shall transmit it to that authority.

4. Member States shall ensure that supervisory authorities assess the substantiated concerns in an appropriate period of time and, where appropriate, exercise their powers as referred to in Article 25.

5. The supervisory authority shall, as soon as possible and in accordance with the relevant provisions of national law and in compliance with Union law, inform persons referred to in paragraph 1 of the result of the assessment of their substantiated concerns and shall provide the reasoning for that result. The supervisory authority shall also inform persons submitting such substantiated concerns who have, in accordance with national law, a legitimate interest in the matter, of its decision to accept or refuse any request for action, as well as of a description of the further steps and measures, and practical information on access to administrative and judicial review procedures.

6. Member States shall ensure that persons submitting substantiated concerns in accordance with this Article and having, in accordance with national law, a legitimate interest in the matter, have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.

4.6 - Article 28 CSRD : European Network of Supervisory Authorities

As for the monitoring and enforcement, and next to national supervisory authorities, the CS3D also obliges the Commission to set up a European Network of Supervisory Authorities. Unfortunately, Article 28 does not provide any role of "stakeholders" (including national/European trade unions) in the work or governance structures of this European network.

Article 28
EUROPEAN NETWORK OF SUPERVISORY AUTHORITIES

1. The Commission shall set up a European Network of Supervisory Authorities, composed of representatives of the supervisory authorities. The European Network of Supervisory Authorities shall facilitate the cooperation of the supervisory authorities and the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, the sharing of information among them.

The Commission may invite Union agencies with relevant expertise in the areas covered by this Directive to join the European Network of Supervisory Authorities. (...)

ETUC tried to ensure that this European network would be composed in a more balanced manner beyond representatives of supervisory authorities only and that also European/national social partners would be associated to/involved in the work and/or governance of this European Network. This possibility was not upheld and the Commission may only invite other Union agencies with relevant expertise in the areas covered by the Directive to join the network.

European/national trade unions should now work towards such involvement by ensuring e.g. that the European Labour Authority, which definitely has expertise in the areas covered by the CS3D and in which the European social partners have been able to achieve an involvement, **is invited to and actually joins the network in order to ensure an indirect trade union involvement therein. Furthermore, European/national trade unions should keep pressuring the Commission to ensure that also European/national trade unions are (directly) involved in the work and governance (e.g. as observer) of the European network.**

5 - Trade unions/workers' representatives rights/involvement under CS3D v. their involvement under other EU acquis

Throughout the CS3D, several articles deal also with mechanisms, possibilities and rights of trade unions and workers' representatives as they are embedded in other EU acquis and which should either be amended or at least the relationship/applicability between/of the CS3D with those mechanisms, possibilities and rights in that other EU acquis should also be ensured in the national transposition laws.

5.1 - Whistleblowing Directive

Article 30 CS3D obliges Member States to take the necessary measures to ensure that the Whistleblowing Directive (EU) 2019/1937[41] applies to the reporting of breaches of the provisions of national laws transposing the CS3D as well as to the protection of the persons reporting such breaches.

Recital 60 CS3D further clarifies, that due to a broader list of persons or organisations being entitled to submit a complaint and a broader scope of subject-matter of complaints, the **complaints procedure under the CS3D should be legally understood as a mechanism that is separate from the internal reporting procedure set up by companies in accordance with** the Whistleblowing Directive.

If the breach of Union or national law included in the material scope of the latter Directive can be considered to be an adverse impact and the reporting person is a worker of the company that is directly affected by the adverse impact, then that person could use both procedures. Nevertheless, if one of the conditions above is not met, then the person should be able to proceed only via one of the procedures.[42] Recital 93 specifies that persons who work for companies subject to due diligence obligations provided for in the CS3D or who are in contact with such companies in the context of their work-related activities can play a key role in exposing breaches of the provisions of national transposition laws.

They can thus contribute to preventing and deterring such breaches and strengthening the enforcement of the CS3D.

Article 30
REPORTING OF BREACHES AND PROTECTION OF REPORTING PERSONS

Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937 applies to the reporting of breaches of the provisions of national law transposing this Directive and the protection of persons reporting such breaches.

41 **Directive (EU) 2019/1937** of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17–56.

42 Recital 60 CS3D.

It is recalled that the Whistleblowing Directive provides comprehensive protection including against retaliation acts for workers, workers' representatives and trade unions reporting such breaches[43].

It would thus be key, also for the enforcement process of the whole CS3D, that the national transposition laws ensure the applicability of Directive (EU) 2019/1937 (including the protection of persons reporting breaches).

5.2 - Public procurement, public support and concessions

In Article 31 CS3D the link is also made to another important EU acquis to ensure the protection and respect for trade union and workers' rights, i.e. Directive 2014/23/EU ('award of concession contracts' Directive)[44], Directive 2014/24/EU ('public procurement' Directive)[45] and Directive 2014/25/EU ('public procurement in water, energy, transport and postal services sectors' Directive)[46].

According to Article 31 and Recital 92 of the CS3D, Member States should ensure that compliance with the obligations resulting from the provisions of national law transposing this Directive, or their voluntary implementation, qualifies as an environmental and/or social aspect or element that contracting authorities may, in accordance with these Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, take into account as part of the award criteria for public and concession contracts or lay down in relation to the performance of such contracts. Contracting authorities and contracting entities may **exclude** or may be required by Member States to exclude **from participation in a procurement procedure, including a concession award procedure,** where applicable**, any economic operator**, where they can demonstrate by any appropriate means a **violation of applicable obligations in the fields** of environmental, **social and labour law, including those stemming from certain international agreements ratified by all Member States and listed in those Directives**, or that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable.

As Article 31 CS3D does not specify what role due diligence compliance should play in decisions by Member States or the EU to grant aid or subsidies to companies, **it would be recommendable to specify or clarify this aspect in national transposition laws and/or the foreseen revision of the public procurement Directives so that indeed government agencies and EU bodies will pay attention to this point in the context of funding programmes.**

Whereas unfortunately the language in Article 31 CS3D is rather soft and not obligatory (i.e. "Member States may…"), **national trade unions should try to ensure that the national transposition laws also provide at least the possibility to exclude economic operators that violate their obligations under social**

Article 31
PUBLIC SUPPORT, PUBLIC PROCUREMENT AND PUBLIC CONCESSIONS

Member States shall ensure that compliance with the obligations resulting from the provisions of national law transposing this Directive, or their voluntary implementation, qualifies as an environmental or social aspect that contracting authorities may, in accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, take into account as part of the award criteria for public and concession contracts, and as an environmental or social condition that contracting authorities may, in accordance with those Directives, lay down in relation to the performance of public and concession contracts.

43 While the Whistleblowing Directive is referenced in the Due Diligence Directive, it only protects "persons who work for companies subject to due diligence obligations provided for in [the Due Diligence Directive] or who are in contact with such companies in the context of their work-related activities". (Recital 93) This means it only protects whistleblowers that have a work-related relationship with an in-scope company (such as current or former workers). It does not cover a wider definition of human rights defenders nor any external individual or group reporting forced labour.

44 **Directive 2014/23/EU** of the Eur opean Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014, p. 1–64.

45 **Directive 2014/24/EU** of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p. 65–242.

46 **Directive 2014/25/EU** of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014, p. 243–374.

and labour law (including those listed in international agreements by all Member States and list in those Directives), are excluded from participating in procurement procedures, including concession award procedures.

ETUC and the ETUFs in particular should also take up the proposal in Recital 92 that "to ensure consistency of Union legislation and support implementation, the Commission should consider whether it is relevant to update any of those directives, in particular with regard to the requirements and measures Member States are to adopt to ensure compliance with the sustainability and due diligence obligations throughout procurement and concession processes" **and thus further pressure the Commission to indeed as soon as possible revise these Directives also in that sense.**

5.3 - Forthcoming Commission delegated acts

At several places, the CS3D provides for the Commission to adopt delegated acts (including for amending and extending the Annexes (material scope) to e.g. ILO H&S Conventions). However there is no real involvement foreseen for European/national trade unions in the elaboration and adoption of such delegated acts, for the moment only for EU institutions, Member States and "(Member States) experts" and "(Commission) expert groups".[47]

It is therefore recommended that **ETUC/ETUFs/ national trade unions pressure the Commission/ EU institutions to obtain full involvement in the elaboration of those delegated acts as "experts" and/or as part of "(Commission) expert groups".**

47 See in particuar Recitals 32, 95, Article 3§2, Article 16§3, Article 20§1(a) and Article 34 CS3D.

III

CS3D is a floor, not a ceiling!

1 - The 'non-regression' and 'more favourable provision' clauses versus the 'harmonisation' clause

Member States according to Article 1 CS3D **firstly MUST refrain from reducing existing standards** of protection (as they exist in certain Member States like France, Germany and the Netherlands) when transposing the CS3D (Article 1§2 CS3D), but secondly, have the possibility to set higher standards than those provided for in the CS3D (Article 1§3 CS3D and Article 4§2 CSRD (see below).

Recital 17 clarifies in this regard that if indeed the provisions of this CS3D conflict with provisions of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act should prevail to the extent of the conflict and should apply to those specific obligations. Examples of such obligations in Union legislative acts include the obligations set out in Regulation (EU) 2017/821 of the European Parliament and of the Council, Regulation (EU) 2023/1542 of the European Parliament and of the Council and Regulation (EU) 2023/1115 of the European Parliament and of the Council.[48]

Using this "more favourable provision" during the transposition process can help to close the gaps as they currently exist between the CS3D and the UNGP's and OECD guidelines but more importantly also with those between the CS3D and the CSRD.

2 - The (limited) Harmonisation clause

Next to the 'non-regression' clause in Article 1 CS3D, the CS3D gives Member States, when transposing the Directive in national law, a considerable opportunity to go beyond a "copy and paste" approach and to adopt more ambitious, more

Article 1
SUBJECT MATTER (...)

2. This Directive shall **not constitute grounds for reducing the level of protection** of human, employment and social rights, or of protection of the environment or of protection of the climate provided for by the national law of the Member States or by the collective agreements applicable at the time of the adoption of this Directive.

3. This Directive shall be without prejudice to obligations in the areas of human, employment and social rights, and of protection of the environment and climate change under other Union legislative acts. If a provision of this Directive conflicts with a provision of **another Union legislative** act pursuing the same objectives and **providing for more extensive or more specific obligations**, the provision of that other Union legislative act **shall prevail** to the extent of the conflict and shall apply as regards those specific obligations

48 See Recital 17 CS3D; Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, OJ L 130, 19.5.2017, p. 1; Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, OJ L 191, 28.7.2023, p. 1; and Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with defore-station and forest degradation and repealing Regulation (EU) No 995/2010, OJ L 150, 9.6.2023, p. 206.

stringent or more specific obligations including to achieve a different level of protection of human, employment and social rights.

However, this flexibility is not absolute. Indeed, Article 4 CSRD provides for a certain "harmonisation" and limitation to the use of the more favourable provision clause by - in principle - excluding certain articles of the CS3D where such a more favourable approach is not possible and Member State cannot diverge from the content of those CSRD provisions.

Article 11(1), such as the provisions on the scope, on the definitions, on the appropriate measures for the remediation of actual adverse impacts, **on the carrying out of meaningful engagement with stakeholders and on civil liability; or from introducing provisions of national law that are more specific in terms of their objective or the field covered, such as provisions of national law regulating specific adverse impacts or specific sectors of activity, in order to achieve a different level of protection of human, employment and social rights**, the environment or the climate."[49]

Article 4
LEVEL OF HARMONISATION

1. Without prejudice to Article 1(2) and (3), Member States shall not introduce, in their national law, provisions within the field covered by this Directive laying down human rights and environmental due diligence obligations diverging from those laid down in Article 8(1) and (2), Article 10(1) and Article 11(1).

2. Notwithstanding paragraph 1, this Directive shall not preclude Member States from introducing, in their national law, more stringent provisions diverging from those laid down in provisions other than Article 8(1) and (2), Article 10(1) and Article 11(1), or provisions that are more specific in terms of the objective or the field covered, in order to achieve a different level of protection of human, employment and social rights, the environment or the climate.

On the other hand, even the limitation in Article 4§1 CS3D is not absolute as an opening for more or other implementation is provided in Article 4§2 CS3D.

Recital 31 clarifies in this regard that "it is essential to establish a Union framework for a responsible and sustainable approach to global value chains, given the importance of companies as a pillar in the construction of a sustainable society and economy. The emergence of binding law in several Member States has given rise to the need for a level playing field for companies in order to avoid fragmentation and to provide legal certainty for businesses operating in the internal market. Nonetheless, this Directive should not preclude Member States from **introducing more stringent provisions of national law** diverging from those laid down **in Articles other than Article 8(1) and (2), Article 10(1) and Article 11(1), including where such provisions may indirectly raise the level of protection of Article 8(1) and (2), Article 10(1) and**

So in sum, with the exception of Article 8(1) and (2), Article 10(1) and Article 11(1) CS3D (and if those only to a limited extent, national trade unions can try to ensure that national transposition laws go beyond the rights and obligations (in an upwards/positive way) as set in other articles of the CS3D of relevance to workers, workers' representatives and trade unions. **It is thus recommended to exploit this possibility to the maximum in the transposition process and to ensure that the CS3D is transposed in a way that would bring it more closely in line with international human rights standards.**

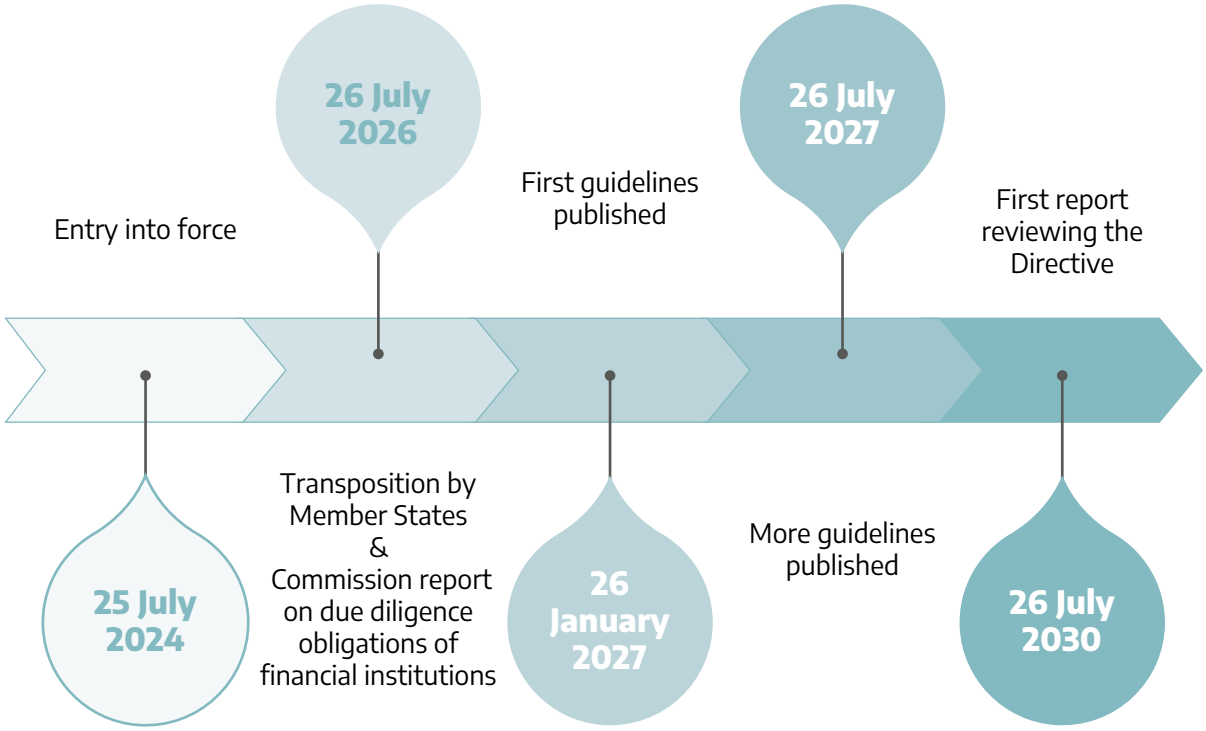
49 Recital 31 CS3D.

3 - Important deadlines to recall and watch out for!

The CS3D provides for several mandatory deadlines that the Member States (and/or Commission) have to respect in relation to transposition, application, review, reporting, etc.

It would be key for European and national trade unions to ensure that Member States and/or Commission are pressured to respect their obligations under this CS3D on time!

Timeline overview:



(Source: McCullagh, V. (2024), p. 6)

3.1 - Transposition and application deadlines (Article 37 (1) CS3D)

According to Article 37(1) CS3D, Member States have **by 26 July 2026**, to adopt (and publish) the national transpositions laws, regulations and administrative provisions and notify/communicate them to the Commission.

The national transposition laws need to ensure that the measures adopted apply to the companies in line with the following deadline:

- **3 years (i.e. from 26 July 2027)** for **EU companies** with more than 5,000 employees and a turnover of €1,500 million, and for **non-EU companies** that generated a net turnover of more thanEUR 1 500 000 000 in the Union[50] ;

- **4 years (i.e. from 26 July 2028)** for **EU companies** with more than 3,000 employees and a turnover of €900 million, and **non- EU companies that generated a net turnover of more than €900 million** [51].

- **5 years (i.e. from 26 July 2029)** for companies with more than 1,000 employees and a turnover of €450 million[52].

But see also Chapter IV.5 below on the possible impact of the "Omnibus I" on the transposition and application deadlines.

	EU		NON - EU	
PHASE	Companies or group	Franchisors & licensors	Companies or group	Franchisors & licensors
	THRESHOLDS			
1 From July 2027	>5,000 employees	N/A	N/A	N/A
	>€1.5 billion turnover worldwide		>€1.5 billion turnover in the EU	
2 From July 2028	>3,000 employees	N/A	N/A	N/A
	>€900 million turnover worldwide		>€900 million turnover in the EU	
3 From July 2029	>1,000 employees	>€22.5 million royalties worldwide	N/A	>€22.5 million royalties in the EU
	>€450 million turnover worldwide	>€80 million turnover worldwide	>€450 million turnover in the EU	>€80 million turnover in the EU

(Source: ECCJ e.a. (2024), p. 19.)

50 With the exception of the measures necessary to comply with Article 16, which Member States shall apply to those companies for financial years starting on or after 1 January 2028.

51 With the exception of the measures necessary to comply with Article 16, which Member States shall apply to those companies for financial years starting on or after 1 January 2029.

52 With the exception of the measures necessary to comply with Article 16, which Member States shall apply to those companies for financial years starting on or after 1 January 2029.

3.2 - Review and reporting (by the European Commission) (Article 36 CS3D)[53]

• **At the earliest opportunity after 25 July 2024 but no later than 26 July 2026**, the Commission shall submit **a report** to the to the European Parliament and to the Council on the need for **additional sustainability due diligence requirements tailored to regulated financial undertakings** with respect to the provision of financial services and investment activities, and the options for such due diligence requirements as well as their impacts, **if appropriate it shall be accompanied by a legislative proposal**.

The **first report, i.e. by 26 July 2030**, shall, inter alia, assess the following issues:

(a) the **impacts** of the CS3D **on SMEs**, together with an assessment of the effectiveness of the different measures and tools for support provided to SMEs by the Commission and the Member States;

(b) the **scope** of the CS3D **in terms of the companies covered**, whether it ensures the effectiveness of this Directive in light of its objectives, a level playing field between entities covered and that companies cannot circumvent the application of this Directive, including:

- whether Article 3(1), point (a), needs to be revised so that entities constituted as **different legal forms** from those listed in Annex I or Annex II to Directive 2013/34/EU are covered by this Directive;

- **whether business models or forms of economic cooperation with third-party companies** other than those covered by Article 2 **need to be included** in the scope of this Directive;

- whether **the thresholds regarding the number of employees and net turnover** laid down in Article 2;

- whether the **criterion of net turnover generated in the Union for non-EU companies needs to be revised**;

(c) whether the **definition of the term 'chain of activities'** needs to be revised;

(d) whether the **Annex to this Directive [material scope]** needs to be modified, including in light of international developments, and whether it should be extended to cover additional adverse impacts, in particular adverse impacts on good governance;

(e) whether the **rules on combatting climate change** provided for in this Directive, especially as regards the design of transition plans for climate change mitigation, their adoption and the putting into effect of those plans by companies, as well as the powers of supervisory authorities related to those rules, need to be revised;

(f) the **effectiveness of the enforcement mechanisms** put in place at national level, of the **penalties** and the **rules on civil liability**;

(g) whether **changes to the level of harmonisation** provided for in this Directive are required to ensure a level-playing field for companies in the internal market, including the convergence and divergence between provisions of national law transposing this Directive.

• **By 26 July 2030**, and **every three years thereafter** (2033, 2036,...), the Commission shall submit a **report** to the European Parliament and to the Council **on the implementation of this Directive and its effectiveness** in reaching its objectives, in particular in addressing adverse impacts. The report shall be accompanied, if appropriate, by a legislative proposal.

3.3 - Commission Guidance on voluntary model contractual clauses (Article 18 CS3D)

By 26 January 2027, the Commission has to adopt guidance on voluntary model contractual clauses following a consultation process with Member States **and stakeholders**, i.e. including European/national social partners.

3.4 - Commission Guidelines (general/sectoral/use of digital tools and technologies) (Article 19 CS3D)

In order to provide support and practical tools to companies or to Member State authorities on how companies should fulfil their due diligence obligations in a practical manner, and to provide support to stakeholders, the **Commission,** using relevant international guidelines and standards as a reference, and **in consultation with** Member States and amongst others **stakeholders (incl.**

53 See also Recital 98 CS3D.

European and national social partners) should **issue guidelines, including general guidelines and guidelines for specific sectors or specific adverse impacts** and the interplay between this Directive and other Union legislative acts pursuing the same objectives and providing for more extensive or more specific obligations.

Depending on the topic addressed by the guidelines, the Commission shall make them available by **26 January 2027 or 26 July 27.** (See above Article 19 CS3D)

3.5 - Establishment national supervisory authority/European Network Supervisory Authorities (Article 24(7) and 28 CS3D)

By 26 July 2026, Member States shall inform the Commission of the **names and contact details** of the **supervisory authorities** designated pursuant to this Article, as well as of their respective competences where there are several designated supervisory authorities. (see also above of the recommendations for trade unions on what to ensure in relation to their involvement in relation to the structure, competences and powers of the supervisory authorities.

The CS3D does on the other hand not specify the deadline by which the European Network of Supervisory Authorities will be established and/or operational (incl. the eventual involvement of EU agencies (and indirectly European/national trade unions.

IV

What will 'OMNIBUS I' bring us (or not)?!

On 26 February 2025, the Commission launched its first so-called OMNIBUS (legislative) package ('Omnibus I and II') to simplify the rules on sustainability reporting and Due Diligence. Whereas 'Omnibus II' focusses on EU Investment regulations, the 'Omnibus I' proposes considerable changes to the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CS3D), the Taxonomy Regulation, the Carbon Adjustment Mechanism (CBAM) Regulation.

In sum, this 'Omnibus I and II' package includes:

• A proposal for a Directive amending the CSRD and the CSDDD;

• A proposal which postpones the application of all reporting requirements in the CSRD for companies that are due to report in 2026 and 2027 (so-called wave 2 and 3 companies) and which postpones the transposition deadline and the first wave of application of the CSDDD by one year to 2028;

• A draft Delegated act amending the Taxonomy Disclosures and the Taxonomy Climate and Environmental Delegated Acts subject to public consultation;

• A proposal for a Regulation amending the Carbon Border Adjustment Mechanism Regulation;

• A proposal for a Regulation amending the InvestEu Regulation.[54]

Although the Commission claims that the main changes in the area of sustainability due diligence and to the CS3D will be "without undermining the policy objectives of either piece of legislation" and make it "more proportionate and strengthen the CS3D proportionality" and will "ensure a more coherent and simpler regulatory environment", for ETUC it is clear that they will do exactly the opposite and hollow out key provisions of the CS3D leaving it thus without the few teeth it still had. Furthermore several of those changes will lead to a CS3D that is even further away from the recognised standards

54 The **relevant documents** are:

- Commission Press Release (26/02/2025);
- Commission Q&A Omnibus Package (26/02/2025);
- 2/27/2025 - Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements;
- 2/27/2025 - Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements;
- 2/27/2025 - COMMISSION STAFF WORKING DOCUMENT Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism;
- 2/27/2025 - COMMISSION STAFF WORKING DOCUMENT Accompanying the documents Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements and specifying further steps;
- 2/27/2025 - ANNEXES to the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism;
- 2/27/2025 - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism;
- 2/27/2025 - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2015/1017, (EU) 2021/523, (EU) 2021/695 and (EU) 2021/1153 as regards increasing the efficiency of the EU guarantee under Regulation (EU) 2021/523 and simplifying reporting requirements.

under international and European standards as set in the UN Guiding Principles (UNGP's) and the OECD Guidelines, including in relation to "stakeholder" (and thus trade union and workers' representatives) involvement!

In the framework of the different CS3D articles examined above in Parts II-III, the following proposed changes will have detrimental impact for the effectiveness of the CS3D and trade union and workers' representatives involvement if they come about.

1 - Streamlining the stakeholder engagement obligations, including simplifying the definition of "stakeholders" (Article 3(1)(n) and 13 CS3D)

In sum, the Omnibus I proposals 'simplify" the definition of "stakeholders" in (Article 3(1)(n) and 13 CS3D) by seriously reducing the individuals and groupings that need to be informed and consulted to "relevant" stakeholders only (e.g. by deleting "consumers" and other "groupings")[55]. The proposed changes will -at least for the moment- not impact on trade unions and workers' representatives as they are still considered as "stakeholders that need to be consulted in any event".

However, the proposals also intend to limit the different stages in which 'relevant' stakeholders need to be consulted and this might thus impact their role.

It is however clear that with these proposals "stakeholder engagement" will even be brought further away than what is required in international standards that require meaningful consultation with "potentially affected groups and other relevant stakeholders as appropriate to the size and nature of the business operations" (see also above Chapter II.3).

Concretely the proposals would imply the following for the texts of Article 3(n) and 13 CS3D:

Article 3(1)(n) of the CS3D (definition of stakeholders):

'stakeholders' means the company's employees, the employees of its subsidiaries and of its business partners, and their trade unions and workers' representatives, ~~consumers~~ and ~~other~~ individuals, ~~groupings~~, or communities ~~or entities~~ whose rights or interests are or could be affected by the products, services and operations **of the company, its subsidiaries and its business partners , ~~including the employees of the company's business partners and their trade unions and workers' representatives,~~** ~~national human rights and environmental institutions, civil society organisations whose purposes include the protection of the environment~~, and the legitimate representatives of those individuals , ~~groupings~~, or communities ~~or entities~~;

Article 13 of the CS3D ('meaningful engagement with stakeholders')

1. Member States shall ensure that companies take appropriate measures to carry out effective engagement with stakeholders, in accordance with this Article.

2. Without prejudice to Directive (EU) 2016/943, when consulting with stakeholders, companies shall, as appropriate, provide them with relevant and comprehensive information, in order to carry out effective and transparent consultations.

Without prejudice to Directive (EU) 2016/943, consulted stakeholders shall be allowed to make a reasoned request for relevant additional information, which shall be provided by the company >>

55 See SWD(2025) 80, p.38 and Recital 24 of the Proposal (COM(2025) 81 final) which reads: "(24) To reduce burdens on companies and **make stakeholder engagement more proportionate, companies should only have to engage with workers, their representatives including trade unions**, and individuals and communities whose rights or interests are or could be directly affected by the products, services and operations of the company, its subsidiaries and its business partners, and that have a link to the specific stage of the due diligence process being carried out. That includes individuals or communities in the neighbourhood of plants operated by business partners where those individuals or communities are directly affected by pollution, or indigenous people whose right to lands or resources are directly affected by how a business partner acquires, develops or otherwise uses land, forests or waters. **Moreover, stakeholder engagement should only be required for certain parts of the due diligence process, namely at the identification stage, for the development of (enhanced) action plans and when designing remediation measures."**

within a reasonable period of time and in an appropriate and comprehensible format. If the company refuses a request for additional information, the consulted stakeholders shall be entitled to a written justification for that refusal.

3. Consultation of **relevant** stakeholders shall take place at the following stages of the due diligence process:

(a) when gathering the necessary information on actual or potential adverse impacts, in order to identify, assess and prioritise adverse impacts pursuant to Articles 8 and 9;
(b) when developing prevention and corrective action plans pursuant to Article 10(2) and Article 11(3), and developing enhanced prevention and corrective action plans pursuant to Article 10(6) and Article 11(7);
~~(c) when deciding to terminate or suspend a business relationship pursuant to Article 10(6) and Article 11(7);~~
(d) when adopting appropriate measures to remediate adverse impacts pursuant to Article 12;
~~(e) as appropriate, when developing qualitative and quantitative indicators for the monitoring required under Article 15.~~

4. Where it is not reasonably possible to carry out effective engagement with stakeholders to the extent necessary to comply with the requirements of this Directive, companies shall consult additionally with experts who can provide credible insights into actual or potential adverse impacts.

5. In consulting stakeholders, companies shall identify and address barriers to engagement and shall ensure that participants are not the subject of retaliation or retribution, including by maintaining confidentiality or anonymity.

6. Member States shall ensure that companies are allowed to fulfil the obligations laid down in this Article through industry or multi-stakeholder initiatives, as appropriate, provided that the consultation procedures meet the requirements set out in this Article. The use of industry and multi-stakeholder initiatives shall not be sufficient to fulfil the obligation to consult the company's own employees and their representatives.

7. Engagement with employees and their representatives shall be without prejudice to relevant Union and national law in the field of employment and social rights as well as to the applicable collective agreements.

2 - Prolonging the intervals between periodic assessments (Article 15 CS3D)

The proposals also intend to amend Article 15 CSRD to extend the intervals in which companies need to **regularly assess** the adequacy and effectiveness of due diligence measures, **from 1 year to five years**. Whereas this will significantly reduce burdens not just for in-scope companies but also for their business partners, often SMEs, which risk being at the receiving end of (detailed) information requests as part of these monitoring exercises, it will however also seriously impact the possibilities of trade unions and workers' representatives to engage properly in the whole due diligence monitoring process.

At the same time, the proposal recognises that business relationships, and the risks and impacts arising from the activities covered by such business relationships, may evolve over time, sometimes even within short time frames.

Also, measures taken to address potential or actual impacts might turn out to be inadequate or ineffective, based on experience gained with implementing them, and indications for this may arise before the date for the next regular assessment. Therefore, the company should carry out ad hoc assessments in these situations.

3 - No more EU wide civil liability regime (Article 29 CS3D)

The most detrimental proposals are however related to Article 29 CS3D on "civil liability". Indeed, the proposals defer everything back **to the various**

national civil liability regimes and limiting pecuniary sanctions by:

a. deleting the harmonised EU conditions for civil liability and creating thus 27 different national civil liability regimes and allowing for "forum/court shopping";

b. Leaving national law to define whether its civil liability provisions override otherwise applicable rules of the third country where the harm occurs

c. And also the 5% of turnover as a minimum cap for pecuniary penalties (Article 27/(4) is deleted, and the Commission will in cooperation with MS elaborate guidelines on imposing fines.

But from a trade union perspective, the most worrying and at the same time unacceptable change would be the revoking of the obligation for Member States to ensure that victims of human rights violations would not be able anymore to authorise a trade union to represent them before court and this only to "limit possible litigation risks (for companies to be held accountable)![56]

Concretely the proposals would mean the following for Article 29 CS3D:

Article 29 Civil liability of companies and the right to full compensation

~~1. Member States shall ensure that a company can be held liable for damage caused to a natural or legal person, provided that:~~

~~(a) the company intentionally or negligently failed to comply with the obligations laid down in Articles 10 and 11, when the right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person; and~~
~~(b) as a result of the failure referred to in point (a), damage to the natural or legal person's legal interests that are protected under national law was caused.~~
~~A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.~~

2. Where a company is held liable pursuant to national law ~~in accordance with paragraph 1~~, for damage caused to a natural or legal person by a failure to comply with the due diligence requirements under this Directive, Member States ~~shall~~ ensure that those persons shall have the right to full compensation ~~for the damage, in accordance with national law~~. Full compensation ~~under this Directive~~ shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages.

3. Member States shall ensure that:

(a) national rules on the beginning, duration, suspension or interruption of limitation periods do not unduly hamper the bringing of actions for damages and, in any case, are not more restrictive than the rules on national general civil liability regimes; the limitation period for bringing actions for damages under this Directive shall be at least five years and, in any case, not shorter than the limitation period laid down under national general civil liability regimes; limitation periods shall not begin to run before the infringement has ceased and the claimant knows, or can reasonably be expected to know:

(i) of the behaviour and the fact that it constitutes an infringement;
(ii) of the fact that the infringement caused harm to them; and
(iii) the identity of the infringer;

(b) the cost of proceedings is not prohibitively expensive for claimants to seek justice; >>

56 See Recital 28 of the Proposal which further more states that "In view of the different rules and traditions that exist at national level when it comes to allowing representative actions, the specific requirement in that regard in Directive (EU) 2024/1760 should be deleted. Such deletion is without prejudice to any provision of the applicable national law allowing a trade union, non-governmental human rights or environmental organisation, other nongovernmental organisation or a national human rights institution to bring actions to enforce the rights of the alleged injured party, or to support such actions brought directly by such party."

(c) claimants are able to seek injunctive measures, including through summary proceedings; such injunctive measures shall be in the form of a definitive or provisional measure to cease infringements of the provisions of national law adopted pursuant to this Directive by performing an action or ceasing conduct;

~~(d) reasonable conditions are provided for under which any alleged injured party may~~ **~~authorise a trade union~~**~~, non-governmental human rights or environmental organisation or other non-governmental organisation, and, in accordance with national law, national human rights' institutions, based in a Member State~~ **~~to bring actions to enforce the rights of the alleged injured party~~**~~, without prejudice to national rules of civil procedure; a trade union or non-governmental organisation may be authorised under the first subparagraph of this point if it complies with the requirements laid down in national law; those requirements may include maintaining a permanent presence of its own and, in accordance with its statutes, not engaging commercially and not only temporarily in the realisation of rights protected under this Directive or the corresponding rights in national law;~~

(e) when a claim is brought, and a claimant presents a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of their claim for damages and has indicated that additional evidence lies in the control of the company, courts are able to order that such evidence be disclosed by the company in accordance national courts shall limit the disclosure of the evidence sought to that which is necessary and proportionate to support a potential claim or a claim for damages and the preservation of evidence to that which is necessary and proportionate to support such a claim for damages; in determining whether an order for the disclosure or preservation of evidence is proportionate, national courts shall consider the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence; the scope and cost of disclosure as well as the legitimate interests of all parties, including any third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure; whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information; Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages; Member States shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.

4. Companies that have participated in industry or multi-stakeholder initiatives, or used independent third-party verification or contractual clauses to support the implementation of due diligence obligations may nevertheless be held liable in accordance with ~~this Article~~ national law.

5. The civil liability of a company for damages as referred to in this Article ~~arising under this provision~~ shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the chain of activities of the company. ~~When the damage was caused jointly by the company and its subsidiary, direct or indirect business partner, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the conditions of joint and several liability and the rights of recourse.~~

6. The civil liability rules under this Directive shall not limit companies' liability under Union or national legal systems and shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.

~~7. Member States shall ensure that the provisions of national law transposing this Article are of overriding mandatory application in cases where the law applicable to claims to that effect is not the national law of a Member State.~~

4 - Extending maximum harmonisation clause (Article 4 CS3D) and deleting the review clause on inclusion of financial services (Article 36 CS3D)

Two further proposed amendments also risk limiting the role and possibilities of trade unions and workers' representatives.

Firstly, there is the proposal to included more provisions regarding core due diligence obligations to better ensure a level playing field across the EU into the "level of harmonisation" clause (Article 4 CS3D, see above Chapter III.2), including the identification duty, the duties to address adverse impacts that have been or should have and to **Article 14 ('notification mechanisms and complaint procedures'**).

This would imply that Member States cannot adopt more ambitious or stringent norms in that regard than what the CS3D prescribes in Article 14 CS3D (see also above Chapter II.3.5). On the other hand, the proposals still seem to leave some opening as it is stated that "**where MS consider it necessary to address emerging risks linked to new products and service or, for instance, to strengthen/raise labour rights they should not be prevented from doing so in particular in areas where the EU has limited competences, for instance in labour law"!** [57] **Secondly, there is the proposal to delete from the review clause the inclusion of financial services** in the scope of the due diligence directive in future, which would imply that by removing the review the COM is turning a 'temporary carve out" for financial undertakings which got already a special regime under the current CS3D into a permanent carve out![58]

5 - Postponing application and implementation deadlines (Article 37 CS3D)

And finally, there is also the proposal give companies more time to prepare for implementing the new framework by **postponing, by one year, the transposition deadline (26 July 2027** instead of 26 July 2026)) **and the first phase of the application** of the sustainability due diligence requirements, covering the largest companies (**to 26 July 2028**). On the other hand, the **elaboration of the necessary guidelines by the Commission under Article 19 CS3D will be advanced to July 2026** (instead of January 2027), allowing companies to build more on best practices and reduce their reliance on legal counselling and advisory services.[59]

57 See explanations in COM(2025) 81 final.

58 Because according to the SWD "a few business associations" called for it.

59 To note is that indeed following a rarely used exceptional urgency procedure, the European Parliament voted, with 531 votes for, 69 against and 17 abstentions, in favour of extending the implementation and application deadlines for the CS3D with one year and with two years for the CSRD. Member states will have an extra year – until 26 July 2027 – to transpose the rules into national legislation. The one-year extension will also apply to the first wave of businesses to be affected, namely: EU companies with over 5,000 employees and net turnover higher than €1.5 billion, and non-EU companies with a turnover above this threshold in the EU. These companies will only have to apply the rules from 2028. See for more details the EP Press Release of 3 April 2025 on HYPERLINK "**https://www.europarl.europa.eu/news/en/press-room/20250331IPR27557/sustainability-and-due-diligence-meps-agree-to-delay-application-of-new-rules**"'Sustainability and due diligence: MEPs agree to delay application of new rules'.

V

Annex: List of resources

This section provides a non-exhaustive overview of useful weblinks and analyses by different "stakeholders".

ETUC MATERIAL

ETUC Position(s)/material on **Due diligence & subcontracting | ETUC**, incl.

- **ETUC reaction to the final adoption of the Directive**
- **Unchained Revolution - An ETUC documentary on CSDD**
- **Justice is Everybody's Business - Joint Campaign for a CSDD Directive**
- **ETUC initial analysis of the CSDD Directive Proposal**

ETUC statements/reactions to 'Omnibus I and II' package:

- **ETUC Position on the Better Regulation Agenda – for people and planet, not for profit**, adopted by ETUC EXCO on 10/12/2024;
- **ETUC Statement "EU regulation to deliver for all - No to Deregulation!"** - Joint Statement | ETUC of 17/12/2024
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- **IndustriAll Europe and due diligence**

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- 2/27/2025 - COMMISSION STAFF WORKING DOCUMENT Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism
- 2/27/2025 - COMMISSION STAFF WORKING DOCUMENT Accompanying the documents Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements and specifying further steps
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