

Stakeholder engagement in the EU Corporate Sustainability Due Diligence Directive (CSDDD)

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1. Context

On February 23rd, 2022, the [European Commission](#) (EC) adopted a proposal for a Directive on Corporate Sustainability Due Diligence (CSDDD). This directive seeks to set obligations for companies to **identify, prevent, mitigate, and put an end to** actual and potential human rights and environmental adverse impacts throughout their value chain.

As stated by the Office of the United Nations High Commissioner for Human Rights (OHCHR), engaging with stakeholders should not be overlooked as it provides information and knowledge essential to a sustainable mandatory human rights and environmental due diligence (mHREDD) process, and to **effective grievance and remedial** mechanisms.¹ Yet, if the **consultation and participation** of stakeholders and affected communities are foreseen in the draft directive, the positions of the Council and the European Parliament (EP) are clearer on this matter than the Commission, and it is the Parliament's approach which proves to be the most comprehensive and effective.

It is in consequence a priority to ensure that the directive under negotiation ultimately establishes obligations for companies to **genuinely and meaningfully** engage with rights-holders. It supposes to take into account several aspects:

2. Who stakeholders are

Depending on the definition provided in article 3 of the directive, the scope of the persons actually targeted will vary. In that regard, both the Commission and the Council defined "stakeholders" as being people affected, or potentially affected. The EP makes a clear distinction between "affected stakeholders" that are defined in article 3 and all other relevant stakeholders that may also be consulted, informed or entitled to seize grievance mechanisms and supervisory authorities, for example.

The Commission's definition of stakeholders refers to *"the company's employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships"* (Art. 3(n)). A stakeholder is then defined as an affected – or potentially affected – stakeholder. The Council specifies that it may encompass trade unions, workers' representatives, and may cover consumers, civil society organisations (CSOs), national human rights (HR) and environmental institutions, as well as human rights and environmental defenders (HREDDs). Thus, when referring to specific obligations to consult, inform or recognise stakeholders' expertise, it mostly means those whose rights or interests are affected by the operations concerned.

The EP, in turn, does not define "stakeholder", although some stages in the due diligence process imply their consultation or intervention i.e., regarding grievance mechanism, or when submitting substantiated concerns to national supervisory authorities. The EP also distinguishes between "affected" and "vulnerable" stakeholders, with the latter being granted additional attention and rights.

The Parliament thus adopts a broader definition of stakeholders which better reflects the contribution and additional expertise that rights defenders can provide, in addition to those of victims and affected communities.

1. OHCHR "OHCHR Feedback on the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence", 2022, p. 12 <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf>.

3. What engagement entails

The role and place of stakeholders vary according to the institutions' positions. Similarly, their protection needs are differently accounted for by the institutions. For instance, the EP is the only one to systematically require their protection against retaliation throughout the entire due diligence process.

3.1 The Commission

The EC **limits the obligation to consult stakeholders** to the identification (Art 6) and development of preventive and corrective action plans (Articles 7 and 8). Consulting stakeholders should instead be required across all stages of the due diligence process.

Yet, the Commission finally grants stakeholders the **right of initiative**. They may lodge complaints through the complaint mechanisms companies must set up (Art. 9) and lodge detailed complaints through supervisory authorities (Art. 19(1)).

However, significant limitations remain in the EC's position. If the Commission allows a wide range of affected individuals and groups - including trade unions, workers' representatives, and CSOs - to submit complaints through companies' mechanisms, it only offers this possibility to organisations that are "active in the areas related to the value chain concerned" (Art. 9(2)(c)). It is an **undue restriction**, as their expertise may be linked to other but relevant specific human rights, or countries, regions, conflicts or tensions-related characteristics (Art. 9(1)). Additionally, companies are not required to largely inform on their mechanisms, as only "relevant workers and trade unions" are explicitly entitled to be informed by companies (Art. 9(3)). This limits the transparency and accessibility of complaint mechanisms.

3.2 The Council

The Council's position largely follows that of the Commission, although it suggests important improvements.

The Council proposes that companies regularly assess the implementation and effectiveness of their identification, prevention and corrective measures in **due consideration** of stakeholders' relevant information (Art. 10 (1)). Moreover, its position rightfully opens up access to its complaint procedure to CSOs being not only active in the area of the value chain but in "human rights or environmental adverse impact that is the subject matter of the complaint" (Art. 9 (2) (c)). It also requires the **confidentiality** and **protection** of stakeholders against retaliation (Art. 9 (2a)) This more inclusive and protective position towards stakeholders provides a more robust remedial mechanism.

Yet, these improvements could be **furthered** by extending protection measures against threats from a wider range of actors, since retaliation can be conducted by actors other than the company and its subsidiaries. In fact, the Parliament requires protection against retaliation without specifying its source. It also demands protection against retribution (see below Art. 8d(7)). This would allow greater protection from stakeholders from threats and blackmail, regardless of their nature or origin.

3.3 The Parliament

The EP provides the **most comprehensive, consistent, and inclusive** approach. Its new Article 8d is dedicated specifically to laying out obligations for companies to carry out **meaningful** stakeholder engagement at each stage of the due diligence process. These stages encompass the development of a due diligence policy (Art. 5), the identification of adverse impacts (Art. 6), the development of action plans (Art. 7 and 8), the termination of business relationships (Art. 7 and 8), the prioritisation of adverse impacts (Art. 8b), the development of remedial measures (Art. 8c), the establishment of notifications and non-judicial grievance mechanisms (Art. 9), and monitoring obligations (Art. 10).

Contrary to the Commission, the EP clarifies that such engagement consists in **informing and consulting** affected stakeholders in a “comprehensive, structural, effective, timely and culturally and gender sensitive manner” throughout these stages (Art. 8d (1)). Affected stakeholders should be **informed** on the value chain and the adverse impacts on human rights, the environment and good governance (Art. 8d (3)). They should be **consulted** via appropriate frameworks (Art. 8d (5)). Where it is not possible to carry out meaningful engagement with affected stakeholders, or where a complementary expertise is required, the EP obliges companies to engage in a meaningful way with other relevant stakeholders defending human rights or the environment (Art. 8d (2)). Additionally, the EP emphasises on the **confidentiality, anonymity, and protection** of affected stakeholders against retaliation (Art. 8d (7)). Lastly, **particular guarantees and rights** are finally granted to claimants who bring civil actions for damages, whether in relation to the right of representation or to effective access to courts (Art. 22 (2a)(c)).

4. Recommendations

Existing practices and litigation attest the need for a legislation that insists on a meaningful and effective engagement of stakeholders, whether they be affected or potentially affected individuals, populations or communities, as well as human rights and environmental organisations. Similarly, the need to ensure the effectiveness of the **Free, Prior, and Informed consent** of rights-holders along with the **full protection** of stakeholders against reprisals is by now well-established.²

Thus, we call on stakeholder engagement in the CSDDD to:

- Be meaningful;
- Encompass a broad range of actors;
- Distinguish between affected and vulnerable stakeholders, and recognizing in addition the role of trade unions, human rights defenders and environmental and human rights CSOs;
- Be culturally and gender sensitive;
- Be continuous, transparent and informed.

2. FIDH, “Europe can do better: How EU policy makers can strengthen the Corporate sustainability due diligence directive”, June 2022 § N. 794a, p. 6.

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