



Position Paper

of the German Bar Association prepared by the
Committee on Corporate Social Responsibility
and Compliance

on the European Commission's Public Consultation on the Corporate Sustainability Due Diligence Directive – Development of Guidelines

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Consultation Questions

Integrating due diligence into relevant policies and risk management systems

Under the CSDDD (Article 7), companies are required 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.

1. Considering the experience in your company with integrating (or your plans to integrate) due diligence into the relevant corporate governance policies, which policies do you consider most relevant?

This question is primarily aimed at gathering feedback from stakeholders in groups 1 and

2.

500 character(s) maximum

Human rights (including labour rights) and environmental impacts

The [Annex of the CSDDD](#) sets out what the human rights (including labour rights) and environmental impacts are for the purposes of due diligence. Some human rights protected under the international instruments referred to in the Directive's Annex are not expressly named there but are covered by the Directive as they are covered by the instruments in Part I, Section 2 of the Annex, such as for example specific rights of the

child, provided that the company could have reasonably foreseen the risk that such human right may be affected, taking into account the circumstances of the specific case, including the nature and extent of the company's business operations and its chain of activities, the characteristics of the economic sector and the geographical and operational context.

2. Do you think that the guidelines should seek to offer examples on adverse human rights (including labour rights) or environmental impact, and which are the most relevant types of impacts for which you see this need? Please explain.

This question is aimed at gathering feedback from stakeholders in all groups.

500 character(s) maximum

3. If you already apply corporate sustainability due diligence in your value chain, do you have a defined set of indicators to identify and monitor the adverse impacts listed in the Annex? If so, were they developed in-house or do they rely on external input? Please give a few examples and the data source(s) they rely upon.

This question is primarily aimed at gathering feedback from stakeholders in group 1.

500 character(s) maximum

Identification of adverse impacts (including data and information sources)

Under the CSDDD (Article 8), companies in scope are required to take appropriate measures to identify adverse impacts, including at the level of indirect business partners (beyond direct contractors) in their value chains.

As part of this, and taking into account relevant risk factors, companies are required to carry out a scoping of risk areas across their own activities, those of their subsidiaries and those of their business partners where impacts are most severe and most likely. Based on the results of this scoping, companies should carry out an “in-depth assessment” in those areas where the adverse impacts were identified as most severe

and most likely to occur. Companies will be expected to carry out the scoping exercise based on reasonably available information which will as a general rule preclude requesting information from business partners. Nevertheless, companies have flexibility in judging what information is reasonably available to them (Omnibus I, recital 39). Furthermore, companies will be expected to request information from business partners for the in-depth assessment only where that information is necessary and, in the case of business partners with fewer than 5000 employees, only when the information cannot reasonably be obtained by other means. For the purposes of this in-depth assessment, where adverse impacts are identified as equally likely to occur or equally severe in several areas, companies may prioritise assessing such areas which involve direct business partners.

4. In your experience, what tools proved particularly helpful to carry out a scoping of risk areas across your company's activities, those of your subsidiaries and those of your business partners? What approaches or solutions could help in performing these requirements in the cost-effective way?

This question is primarily aimed gathering feedback from stakeholders in groups 1, 2 and 3.

500 character(s) maximum

Guidance should clarify that companies may use reasonably available information, recognised industry or multi-stakeholder initiatives, digital solutions and independent reports as appropriate resources for initial scoping, provided scope/coverage, quality checks and escalation paths for gaps are documented. It should also clarify how the identification of actual and potential adverse impacts under the CSDDD should be aligned with existing materiality assessments under the CSRD framework.

5. In your experience, what tools proved particularly helpful to carry out an "in-depth assessment" in areas that were identified as most severe and most likely? What approaches or solutions could help in performing these requirements in the cost-effective way?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 3.

500 character(s) maximum

For in-depth assessments, guidance should clarify how companies may rely on targeted, proportionate information requests, recognised initiatives/digital solutions

and independent reports where suitable. Requests to business partners should be limited to what is strictly necessary and used only where the information cannot reasonably be obtained otherwise.

6. In your experience, what tools proved particularly helpful to identify indirect business partners in the value chain?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 3.

500 character(s) maximum

Identification of indirect business partners should be supported by targeted and proportionate information requests and, where suitable, recognised initiatives, digital solutions and independent reports. Companies should be able to demonstrate which alternative sources were assessed before requesting information directly from smaller partners.

7. Have you faced any legal obstacles or conflicts when collecting information for the purpose of either carrying out a scoping of risk areas, or an “in-depth assessment” as a result of third countries’ laws? Companies and stakeholders are invited to signal barriers to due diligence they may face in third countries when conducting due diligence.

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 3.

500 character(s) maximum

The guidance should address low-data or third-country contexts, where suppliers or business partners cannot or will not provide data. It should clarify how companies reconcile CSDDD obligations under Art. 5, 8, 10 with conflicting mandatory third-country laws (e.g. China). Where compliance with both is impossible, documented reasonable efforts, alternative information sources and proportionate escalation should suffice without breaching local law.

8. In your experience what data currently collected by public administrations may be particularly useful for the purposes of effective due diligence? Do you believe there is a need for access to such data to be facilitated?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

300 character(s) maximum

9. Please indicate which of the following due diligence methods or other actions you consider most useful and cost effective for identifying adverse impacts in value chains? What are the pros and cons of these approaches in terms of cost effectiveness)?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, and 3.

Maximum 5 selection(s)

- ☐ Complaints
- ☐ Stakeholder engagement
- ☐ Industry and multi-stakeholder initiatives
- ☐ Third-party verification
- ☐ Site visits
- ☐ Technical surveillance or digital data over value chains and/or infrastructures (e. g., satellite monitoring of risk indicators or adverse impacts in the value chain)
- ☐ Information from sustainability service providers
- ☐ Use of media, NGO or other independent reports
- ☐ Information requests to business partners
- ☐ All of the above
- ☐ Other methods

Please specify:

500 character(s) maximum

Risk factors

When identifying and assessing adverse impacts, the company should take into account relevant risk factors, such as those related to the company as a whole, to its specific business operations, to geographic and contextual factors, to the product and/or service, and to the sector. A number of actors (international organisations,

governments, NGOs, think tanks, commercial entities) publish information on sector-specific risks and other types of risks.

10. Which are particularly useful examples of such sources of information and in which areas/sectors and/or for which impacts do you see a gap in terms of documented risk factors? Do you believe there is a need for access to such data to be facilitated (e.g. via a centralised web-page)?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

500 character(s) maximum

Useful sources may include independent reports, recognised industry or multi-stakeholder initiatives and digital resources, especially where companies otherwise face low-data contexts. Guidance should recognise such sources where suitability, scope/coverage and quality checks are documented.

11. What other methods or information sources does your organisation use to support its risk identification (during both scoping and in-depth assessments) or monitoring efforts as part of due diligence? If available, please include references to specific methods or sources and elaborate briefly on their pros and cons.

This question is primarily aimed at gathering feedback from stakeholders in groups 1, and 3.

500 character(s) maximum

Other useful information sources may include independent reports, industry or multi-stakeholder initiatives and digital solutions. Their use should be accepted where companies document scope/coverage, quality checks and escalation paths for gaps.

Digital tools

Digital tools and technologies can facilitate the performance of due diligence. Such tools are for instance used for the tracking and surveillance of raw materials, goods and products throughout value chains (e.g. satellites, drones, radars or platform-based data sharing). They can help companies reduce the cost of data and facilitate the identification, monitoring and assessment of adverse impacts, as well as enhancing collaboration and stakeholder engagement.

12. What digital tools do you consider most useful to facilitate the identification, monitoring and assessment of possible adverse impacts? Please explain pros and cons.

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

500 character(s) maximum

Digital solutions like PreWave or Osapiens, including AI-supported tools and advanced analytics, should be recognised as permissible appropriate resources for risk-factor analysis, scoping and assessment where human oversight, quality controls, explainability of key outputs and audit trails are ensured.

13. Have you encountered any difficulties or problems with digital tools, including issues that cause unnecessary burdens?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

500 character(s) maximum

Potential difficulties include uncertainty on governance and oversight expectations for AI-supported or advanced analytics tools, and the risk of duplicative requests where digital resources or recognised initiatives are not accepted as appropriate resources.

14. Do you think there should be additional digital tools? What functionalities and tasks should these focus on?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

Additional digital tools should focus on risk-factor analysis, scoping, assessment, monitoring, documentation of prioritisation decisions, audit trails, and transparency on scope/coverage and quality checks.

Prioritisation

The Directive provides that where it is not feasible for companies to address all identified adverse impacts at the same time and to their full extent, they shall be able to prioritise adverse impacts based on their severity and likelihood.

15. Are there situations where in your view the severity or likelihood of a specific adverse impact is (or might be) particularly difficult to assess? How could such difficulties be overcome?

This question is aimed at gathering feedback from stakeholders in all groups.

Assessing severity and likelihood may be difficult where information is limited or only reasonably available through indirect sources. This could be addressed through non-exhaustive objective criteria/examples for reasonably available information and documentation of prioritisation decisions.

16. Regarding situations when it is “not feasible to address all identified impacts at the same time and to their full extent”, what other elements are particularly relevant to support companies in performing an appropriate risk prioritisation process?

This question is aimed at gathering feedback from stakeholders in all groups.

Relevant elements include objective criteria for likelihood and severity, clear documentation of prioritisation decisions, and confirmation that not addressing all identified impacts simultaneously should not, by itself, trigger sanctions where prioritisation is duly justified.

Responsible disengagement

The CSDDD requires engagement with business partners and a focus on preventing and addressing adverse impacts. However, it also provides that, as a measure of last resort when all other measures have failed, the business relationship must be suspended until the impact is addressed, under the condition that suspension would not lead to a

manifestly more severe human rights or environmental harm than the one that could not be addressed.

17. Are you aware of examples where a decision was taken not to disengage from a business relationship because this would have potentially resulted in more severe impacts compared to those that triggered due diligence in the first place? How was the situation dealt with?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

☐ Yes

☐ No

Please explain:

500 character(s) maximum

Purchasing practices

Purchasing practices (e.g., related to pricing, payment terms, delivery terms, order modifications, risk transfer, or contract termination) can have an impact on human rights, including labour rights, and the environment along value chains.

The CSDDD requires companies, where relevant, to make the necessary modifications of, or improvements to, their purchasing practices as part of the appropriate measures to address (prevent, mitigate, bring to an end, minimise) adverse impacts.

18. In your experience, what purchasing practices proved most cost-effective while at the same time ensuring that adverse impacts are prevented and mitigated? What are their pros and cons?

Out of these, are there purchasing practices that are inherently sector- or context-specific?

If possible, please provide examples of specific contract or commercial terms or other best practices.

This question is aimed at gathering feedback from stakeholders in all groups.

1000 character(s) maximum

Living income and living wage

19. What are most cost-effective available data that you are aware of for determining the living income for self-employed suppliers (“an adequate living income for self-employed workers and smallholders, which they earn in return from their work and production”, see CSDDD Annex, Part I point 6)?

Are there sectors/geographies where no such data exist or are particularly difficult /costly to obtain?

This question is aimed at gathering feedback from stakeholders in all groups.

500 character(s) maximum

Investment

As part of the measures to prevent and address adverse impacts, the CSDDD requires, where relevant, making the necessary financial or non-financial investments in, and adjustments or upgrades of, for example facilities, production or other operational processes and infrastructures.

20. Which cost-effective practices are you aware of as regards companies making investments in their value chains to prevent or address adverse impacts?

This question is aimed at gathering feedback from stakeholders in all groups.

500 character(s) maximum

SMEs

In setting out the due diligence duties, the CSDDD includes specific safeguards for SME business partners. An important safeguard is the requirement for in-scope companies to use contractual terms that are fair, reasonable, and non-discriminatory, and that do not shift compliance burdens to SME business partners. Furthermore, where relevant, companies should provide SME business partners with targeted and proportionate support where necessary in view of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems, and, where compliance with the code of conduct or a prevention/correction action plan would jeopardise the viability of the SME, by providing targeted and proportionate financial support (such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing).

21. In your experience, have you used specific contractual terms that are fair, reasonable, and non-discriminatory when entering into contractual relationships with SME business partners to facilitate or support the due diligence process? Please explain pros and cons.

This question is primarily aimed at gathering feedback from stakeholders in group 1.

500 character(s) maximum

SMEs, including law firms, are burdened by the large number of different codes of conduct, many of which are not well suited to the legal profession.

Moreover, contractual terms with SME business partners should be targeted, proportionate and limited to what is strictly necessary for due diligence. Guidance should clarify the evidentiary standard for showing which alternative sources were assessed before requesting information from smaller partners.

22. In your experience, what are the most cost-effective measures to support SMEs? What are the pros and cons?

This question is primarily aimed at gathering feedback from stakeholders in groups 1 and 5.

500 character(s) maximum

Cost-effective support for SMEs should include proportionate, targeted information requests and avoidance of duplicative requests where information can reasonably be

obtained through appropriate alternative resources such as recognised initiatives or digital solutions.

Please also refer to question 34 for further comments.

Remediation

The CSDDD stipulates that where a company has caused or jointly caused an actual adverse impact, including in its value chain, the company shall provide [remediation](#). Remediation means restoration of the affected person or persons, communities or the environment to a situation equivalent or as close as possible to the situation they would have been in had the actual adverse impact not occurred, in proportion to the company's implication in the adverse impact. It includes financial or non-financial compensation and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures. The Directive also provides that the company must meaningfully engage with stakeholders (the company's employees, the employees of its subsidiaries and of its business partners, and their trade unions and workers' representatives, as well as individuals or communities whose rights or interests are or could be directly affected by the relevant products, services and operations of the company, its subsidiaries and its business partners and the legitimate representatives of those individuals or communities) when designing remediation measures.

23. In your experience, what are the most effective, including cost-effective, practices related to remediation? Please explain pros and cons.

This question is aimed at gathering feedback from stakeholders in all groups.

500 character(s) maximum

24. What are best practices that you are aware of to determine a company's proportionate involvement in an adverse impact for the purpose of remediation when a company jointly causes the adverse impact together with others (e.g., its business partner(s) or other companies)?

Have there been difficulties to determine appropriate remediation in case of joint causation in certain situations and how have these difficulties been overcome?

This question is aimed at gathering feedback from stakeholders in all groups.

500 character(s) maximum

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Conflict-Affected and High-Risk Areas (CAHRAs)

In conflict-affected and high-risk areas, as defined in accordance with Regulation (EU) 2017/821, human rights abuses are more likely to occur and to be severe. Companies should take this into account and adapt their due diligence to conflict-affected and high-risk areas. Companies should take such situations into account as particular geographic and contextual risk factors when performing in-depth assessments as part of the identification process, when taking appropriate measures to prevent, mitigate, bring to an end and minimise identified adverse impacts, and when engaging with stakeholders (see recital 42 of the CSDDD).

Operational challenges in conflict contexts

To ensure the guidelines take into account relevant barriers to due diligence, companies are invited to comment on the specific obstacles they may (or have) face(d) when conducting due diligence in Conflict-Affected and High-Risk Areas (CAHRAs).

25. In your experience, what are the most significant operational challenges preventing effective due diligence in CAHRAs? How can these challenges be overcome? *This question is aimed at gathering feedback from stakeholders in all groups.*

- ☐ Limited access to data/information: difficulty verifying information due to data-poor environments or restricted physical access
- ☐ Safety risks to stakeholders: inability to consult with affected individuals and communities without exposing them to retaliation or violence
- ☐ Safety risks to staff: security threats to company personnel or auditors preventing on-the-ground assessment
- ☐ Legal conflicts: national laws (e.g., secrecy acts, counter-terrorism laws) that conflict

with due diligence expectations

- ☐ Complexity of supply chains: difficulty tracing business partners in informal or opaque war economies
- ☐ Other

Please specify:

150 character(s) maximum

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Expectations on identifying “high-risk” contexts

Recital 42 of the CSDDD refers to the need to adapt due diligence to the context of "conflict-affected and high-risk areas". While some overviews (e.g., lists of CAHRAs) exist, companies may have difficulties identifying "high-risk" situations (e.g. authoritarianism, instability) before they escalate into full conflict.

26. To assist companies in determining when specific due diligence obligations apply, would specific guidance regarding the identification of "high-risk" areas beyond active conflict zones be helpful? If so, please indicate your preference:

This question is aimed at gathering feedback from stakeholders in all groups

- ☐ List of contextual risk indicators: a list of "red flags" indicating state fragility or authoritarianism (e.g., suppression of civil society, suspension of legal protections, spike in inflammatory/hate speech)
- ☐ References to and guidance on how to use specific, reputable global indices (e. g., OECD States of Fragility, RULAC, or the World Bank FCS list) to determine a country's risk level
- ☐ Sector-specific case studies for "early warning" contexts: practical examples of how companies in different industries have identified high-risk signals in seemingly stable or "pre-conflict" environments
- ☐ Other

Please specify:

150 character(s) maximum

Integration of conflict analysis

In CAHRAs, it is appropriate for companies to consider their impacts on the conflict dynamics where these may negatively affect people or the environment (e.g., are company assets used by armed groups? is the hiring process or use of land/water fuelling ethnic tension?).

27. In your experience, which specific practical tools or frameworks (e.g. examples of structural drivers and root causes, early warning “red flag” indicators, conflict actor mapping, targeted questions for self-evaluation, scenario planning) proved to be particularly useful and cost-effective in integrating conflict analysis into your company’s scoping and in-depth assessment?

This question is primarily aimed at gathering feedback from stakeholders in group 1.

500 character(s) maximum

Sharing of information and resources, collaboration

For the purposes of due diligence, companies [are entitled](#) to share resources and information within their respective corporate groups and with other legal entities. Furthermore, as part of appropriate due diligence measures, companies are required to collaborate with other entities, including (where relevant) to increase the company’s ability to prevent or mitigate adverse impacts, in particular where no other measure is suitable or effective.

28. What are the main reasons that make information problematic to share with business partners? What best practices have emerged to address such concerns? *This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.*

500 character(s) maximum

Information sharing can be problematic where business partners have limited willingness or ability to provide data, especially in low-data or third-country contexts. It may also be constrained by mandatory third-country laws, including data localisation, confidentiality, export control or blocking statutes. Guidance should clarify that documented reasonable efforts and alternative sources should be sufficient where direct information sharing is legally restricted.

29. As regards cooperation with other companies (i.e., with peers, in the framework of industry schemes) to carry out certain aspects of due diligence (e.g., risk analysis, stakeholder engagement, remediation, investment, capacity building, exercising leverage) what has worked well and what has not? Have competition law considerations constrained cooperation for due diligence? How can compliance burden be further reduced by data sharing and collaboration?

Please describe the types of constraints encountered and any solutions (e.g. organisational or procedural steps) found to overcome those obstacles.

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

1000 character(s) maximum

Cooperation through industry or multi-stakeholder initiatives can reduce duplicative requests and support risk analysis, provided companies document the initiative's scope/coverage, quality checks and escalation paths for gaps. Guidance should clarify to what extent such initiatives may be relied upon as appropriate resources. Competition law should not prevent companies from reasonable cooperation to reduce complexities and enhance efficiency of supply chain due diligence.

Due diligence support at group level

In a situation where both a parent company and (certain of) its subsidiaries fall within the scope of application of the CSDDD, the Directive allows the former to fulfill the due diligence obligations of the latter on their behalf. This can bring efficiencies in the exercise of due diligence. However, such due diligence support is subject to certain conditions (for example the subsidiary abides by its parent company's due diligence policy accordingly adapted, the subsidiary continues to take appropriate measures that

the parent cannot take, etc.) and it does not relieve the subsidiaries of their due diligence obligations.

30. In your experience, are there particular aspects of the cooperation between the parent company and its subsidiaries that may raise particular difficulties (including any legal requirements under other regulatory regimes that might create obstacles)? *This question is primarily aimed at gathering feedback from stakeholders in group 1.*

500 character(s) maximum

Parent-subsidiary cooperation may be limited by mandatory local laws. Guidance should clarify how group-level due diligence can be documented where information sharing is legally restricted and how documented reasonable efforts, alternative information sources and proportionate escalation steps may be relied upon in this case. In a de facto group where a parent lacks the right to issue binding instructions to subsidiaries particular difficulties arise.

Model Contractual Clauses

Under the CSDDD, responsibility to carry out due diligence lies with the large companies falling within its personal scope of application. As part of due diligence, the Directive requires companies to take appropriate measures, such as the adoption of a prevention or correction action plan and, where relevant, seeking contractual assurances from business partners that they will comply with the company's code of conduct, including by establishing corresponding contractual assurances from their business partners, making necessary investments, providing targeted support to SMEs business partners, collaborating with other entities including to increase the company's ability to prevent or mitigate adverse impacts, neutralising and remediating actual impacts, engaging with stakeholders, operating notification and complaints mechanisms, etc.

The CSDDD requires the Commission to issue model contract clauses for voluntary use to facilitate the implementation of the due diligence duties. The Directive clarifies that these clauses 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 Directive to a business partner and automatically rendering the contract void or triggering termination options in case of an adverse impact.

31. What is your experience of cooperating with business partners to ensure efficient due diligence?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

1000 character(s) maximum

Efficient cooperation with business partners should be based on targeted, proportionate and strictly necessary information requests. Companies should be able to demonstrate which alternative sources were assessed before requesting information directly from smaller partners.

32. What cooperation should the model contract clauses recommend between the in-scope company and its business partners as regards:

- the adoption and implementation of any prevention/correction action plan
- the cost of addressing adverse impacts
- stakeholder engagement
- the notification and complains mechanisms

with a view to ensure that due diligence is efficient and cost effective while compliance burden is not shifted to the business partners?

Please provide examples of appropriate contractual clauses, if possible.

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

1000 character(s) maximum

Model contract clauses should be modular, for example with baseline clauses and sector add-ons. They should support prevention/correction action plans, stakeholder engagement, notification and complaints mechanisms, and be usable in international contracts without creating de facto non-harmonised national standards.

33. In situations where the in-scope company and its business partner(s) are located in different countries, is there a need for specific contractual clauses on jurisdiction and applicable law to the contract? If so, why and can you provide examples of such

clauses?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 3.

1000 character(s) maximum

No, no specific contractual clauses are required. The contractual relationship should be assessed in its overall economic context. It comprehensively governs the parties' obligations, including applicable law and jurisdiction. Within the EU, these are determined under the Rome I and Brussels Ia Regulation, allowing parties to choose one substantive law and one forum for their entire contractual relationship, including CSDDD-relevant matters. Specific clauses on applicable law and jurisdiction, and connecting factors for CSDDD-related aspects, would split the contractual statute and jurisdiction, causing legal and practical delimitation difficulties. The object should remain a single, uniform applicable law and forum. Where parties choose applicable law and jurisdiction, it reflects their assessment of the appropriate law and court. In the absence of such a choice, applicable law and jurisdiction are determined under the harmonised rules of Rome I and Brussels Ia Regulations respectively.

34. Are there other elements required by CSDDD that are challenging to translate into contractual terms? What could be ways to overcome this challenge?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 3.

1000 character(s) maximum

As the CSDDD does not provide for any exemption for the legal profession, companies (in scope and in supply chains) reserve sweeping information and audit rights in their contracts also with lawyers and law firms, not respecting the legal profession's confidentiality obligations; and they require law firms to apply due diligence also on their clients, often connected with the expectation that a law firm should reject a client who has or might have negative impacts on human rights or the environment, disregarding the legal profession's function, supported by human rights, to guarantee access to justice for everyone. Although the CSDDD should be without prejudice to the rules on professional secrecy (recital 43) this does not prevent companies to treat law firms like any other business. There should be a separate set of Model Clauses for lawyers exempting them from information and audit obligations and due diligence regarding their clients (downstream service not included in CSDDD).

35. Are you aware of any useful and relevant best practices for contractual clauses operationalising human rights and environmental due diligence? If yes, elaborate.

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 3.

1000 character(s) maximum

Concerning Law firms, best practice should be that contractual clauses from clients, suppliers or any other business partner respect lawyers' confidentiality obligations (no Information and Audit rights regarding law firms) and Access to Justice guarantees (no obligation on law firms to deny representing clients who have or may have negative impacts on human rights or the environment; to advise and represent such clients is a lawyer's professional function).

Guidance on fitness criteria for industry and multi-stakeholder initiatives (Article 20)

[Industry or multi-stakeholder initiatives](#) can support due diligence efforts and reduce burdens, for instance by providing tools, information or capacity building, or assessing a company's operations, sites, products or services in relation to human rights, including labour rights, and environmental impacts. The Directive allows in-scope companies to participate in fit-for-purpose industry and multi-stakeholder initiatives to support the fulfilment of their obligations. However, in-scope companies are required to monitor the effectiveness of the measures carried out by such initiatives, and their use does not exonerate companies from their due diligence duties and liability in case of non-compliance.

Industry and multi-stakeholder initiatives can play a key role in supporting their members in carrying out due diligence, be it voluntary standards or requirements under law. The logic of these initiatives is that the associated challenges can best be met through collective action using pooled resources.

36. In your view, for which due diligence measures do industry or multi-stakeholder initiatives offer the biggest added value?

- ☐ Identification of adverse impacts, including risk assessment
- ☐ Prioritisation
- ☐ Investment

- ☐ SME support
- ☐ Increasing leverage through collaboration (e.g., to mitigate risks or bring to an end actual impacts)
- ☐ Remediation
- ☐ Verification
- ☐ Monitoring effectiveness of actions
- ☐ Stakeholder engagement
- ☐ Operating notification/complaint mechanisms
- ☐ Other

Please specify:

150 character(s) maximum

37. What are, in your view, the main challenges for existing industry and multi-stakeholder initiatives in view of their role in supporting due diligence under the CSDDD (e.g., misalignment with the due diligence requirements, misalignment of audit protocols with the material scope of the CSDDD, in particular the Annex)? What are the main gaps in the geographical, sectoral, topical or value chain coverage of existing industry and multi-stakeholder initiatives?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

500 character(s) maximum

Key challenges include whether initiatives have adequate scope/coverage, reliable quality checks and clear escalation paths for gaps. Guidance should clarify the documentation expected to demonstrate the adequacy of reliance on such initiatives.

38. Which of the following governance or other challenges of existing industry or multistakeholder initiatives do you consider as being the most important?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

- ☐ conflicts of interest, including any undue influence on the governance of the initiative or on specific measures by participating companies

- ☐ governance bodies and their decision-making roles and responsibilities not clearly defined
- ☐ collaboration opportunities within an initiative and collaboration and interoperability between initiatives not sufficiently exploited resulting in undue burden for participating companies and audited value chain partners
- ☐ lack of independence and competence of assessors/verifiers, undermining the credibility of their work
- ☐ insufficient robustness of audit or assessment methods
- ☐ insufficient engagement with stakeholders
- ☐ lack of effectiveness in bringing about tangible impact
- ☐ processes not sufficiently adapted to cater for local realities and/or the interests of relevant stakeholders (including smallholders, SMEs, artisanal producers)
- ☐ Other

Please explain:

150 character(s) maximum

Accompanying measures

In the context of accompanying and support measures, 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. This could result in considerable reduction of compliance burdens.

39. From the list below, which specific potential facilitation role of the European Commission would benefit your organisation the most and how?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 5.

- ☐ Acting as a convener - or delegating to a platform of existing initiatives - to share best practice and peer-to-peer learning.
- ☐ Engaging with companies, industry associations, and other stakeholders to design new initiatives for more participants to benefit.
- ☒ Other roles

Please specify:

150 character(s) maximum

The Commission should support the harmonised application of the CSDDD provisions throughout the EU and refrain from expanding its requirements.

Guidance on third-party verification (Article 20)

The CSDDD allows companies to use [independent third-party verification](#) to support the implementation of due diligence obligations to the extent that such verification is appropriate to support the fulfilment of relevant obligations, in particular the obligation to verify compliance by business partners with the contractual assurances regarding the company's code of conduct and possible prevention and corrective action plans.

Independent third-party verification may be carried out by specialised companies or by an industry or multistakeholder initiative. According to the Directive, the third-party verifier must be objective, completely independent from the company, free from any conflicts of interest and from external influence, have experience and competence in human rights (including labour rights) or environmental matters, according to the nature of the adverse impact, and be accountable for the quality and reliability of the verification.

40. What best practices could ensure the independence of third-party verifiers from the companies that they assess, from the companies on whose behalf they act and from external influence?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

500 character(s) maximum

Third-party verifiers should not have advised the company before, in particular not with regard to the issues to be assessed; there should be no conflict of interest in any

way; verifiers have to be qualified for the specific assessment (which could require lawyers, engineers or persons with specific local cultural and language experience).

41. In your view, what level of experience and competence in human rights (including labour rights) or environmental matters, according to the nature of the adverse impact, would be necessary for third-party verifiers to support companies in implementing the Directive's requirements?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

500 character(s) maximum

The verifier has to be "fit for purpose" of the assessment; only verifiers with the required qualification should be engaged; when competence in human rights and environmental rights is required a lawyer should be involved (at the moment all kinds of consultants advise on human rights and their correct application).

42. In your experience, what are the most effective standards ensuring that the third-party verifiers are accountable for the quality, effectiveness, reliability and integrity of the verification?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

500 character(s) maximum

Meaningful stakeholder engagement

The Directive requires companies to take appropriate measures to carry out effective and meaningful engagement with stakeholders (the company's employees, the employees of its subsidiaries and of its business partners, and their trade unions and workers' representatives, as well as individuals or communities whose rights or interests are or could be directly affected by the relevant products, services and operations of the company, its subsidiaries and its business partners and the legitimate representatives of those individuals or communities). Consultation of stakeholders should take place to identify, assess and prioritise adverse impacts, when developing (enhanced) prevention

and corrective action plans, and when adopting appropriate measures to remediate adverse impacts.

43. Taking into account the requirements of the CSDDD, in your experience what are the most cost-effective means to engage with stakeholders in the performance of due diligence? What are the pros and cons?

This question is primarily aimed at gathering feedback from stakeholders in groups 1 and 3.

500 character(s) maximum

Guidance should clarify that stakeholder engagement during the in-depth assessment should be targeted, risk-based and proportionate, and should not automatically be required in every case. This is particularly relevant where the business partner has fewer than 5,000 employees and information requests are restricted. Guidance should also explain how these limits interact with stakeholder engagement obligations and provide criteria for identifying relevant stakeholders and legitimate representatives under Article 3(1)(n).

44. Which methods have proven most cost-effective in identifying and involving marginalized groups (for example certain groups of indigenous people) or 'hidden' stakeholders, such as those working in the informal sector or victims of human trafficking?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, and 3.

500 character(s) maximum

45. What are the most robust and cost-effective mechanisms for guaranteeing confidentiality and protecting participants from retaliation?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, and 3.

500 character(s) maximum

Robust mechanisms should include confidentiality and non-retaliation safeguards, with clear minimum process steps for complaints and a lead-handling approach to avoid duplication across internal and external actors.

Information for stakeholders and their representatives on how to engage throughout the due diligence process

The Commission is tasked with issuing guidance containing information for stakeholders and their representatives (as defined in the directive) on how to engage throughout the due diligence process (e.g. when gathering the necessary information on actual or potential adverse impacts to identify, assess and prioritise them; when developing prevention and corrective action plans or enhanced action plans; and when adopting appropriate measures to remediate adverse impacts).

46. What are the most critical issues for stakeholders covered by the Directive in terms of engagement with companies at different stages of the due diligence process? What are best practices leading to an effective (including cost-effective) due diligence process?

This question is primarily aimed at gathering feedback from stakeholders in groups 2, 4 and 5.

500 character(s) maximum

Guidance should clarify who qualifies as a legitimate representative under Article 3(1)(n), including criteria for mandate, independence, representativeness and protection from retaliation. This would help companies determine with whom stakeholder engagement may be conducted in a legally certain and proportionate manner.

47. In your experience, what the most cost-effective approaches that companies can use to involve stakeholders at the level of indirect business partners? What are pros and cons?

This question is primarily aimed at gathering feedback from stakeholders in groups 2, 4 and 5.

500 character(s) maximum

For indirect business partners, stakeholder engagement should be proportionate and risk-based. Guidance should clarify how stakeholder involvement can be conducted where direct information requests to smaller business partners are restricted or where relevant information can reasonably be obtained through alternative sources.

48. What are best practices in terms of the company's security procedures so that vulnerable stakeholders feel safe to engage (e.g., in terms of guarantees of anonymity, protection against retaliation, other)?

This question is primarily aimed at gathering feedback from stakeholders in groups 2, 4 and 5.

500 character(s) maximum

Security procedures should include confidentiality and non-retaliation safeguards and a clear intake/triage process for complaints to avoid duplication and ensure safe handling.

49. How can companies engage with stakeholders in a way that specifically addresses and removes barriers for vulnerable stakeholders or groups (such as, depending on the context, workers representatives, indigenous peoples, women, or migrant workers)? In your view, what specific support do vulnerable stakeholders need?

This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 4 and 5.

500 character(s) maximum

Guidelines for supervisory authorities (specific questionnaire targeted to supervisors only)

50. Which aspects of the CSDDD do you expect to present the greatest practical challenges for supervisory authorities when carrying out their oversight functions? What would be new challenges compared to the enforcement tasks of existing supervisors (including in other policy areas)? How can the guidelines contribute to addressing those challenges?

This question is primarily aimed at supervisors.

1000 character(s) maximum

Practical challenges for supervisory authorities may include avoiding duplicative or conflicting requirements, ensuring legal certainty on the boundaries of full harmonisation, and assessing whether companies have adequately documented reasonably available information, prioritisation and reliance on appropriate resources. Guidance should clarify the interplay and hierarchy between the CSDDD and related EU acts, including the EU Forced Labour Regulation and the EU Conflict Minerals

Regulation, to prevent inconsistent supervision and enforcement. Guidelines could address this through interpretative examples and objective documentation criteria.

51. Based on experience with other enforcement regimes (deforestation, conflict minerals, product safety, etc.) what types of information, documentation and/or evidence have proven most useful when checking compliance with due diligence-type obligations?
This question is primarily aimed at supervisors.

500 character(s) maximum

Useful evidence would include documentation of reasonably available information assessed, likelihood/severity-based prioritisation decisions, alternative sources considered before requesting partner data, scope/coverage and quality checks for initiatives or digital solutions, escalation paths for gaps, and audit trails for AI-supported tools. Guidance should also clarify the evidentiary standard and burden of proof for reasonable-efforts obligations, including what documentation is sufficient to demonstrate compliance with due diligence duties.

52. What would be best practices (e.g., organisational steps, procedures, other mechanisms) from other policy areas that have proven useful for the coordination among supervisors? Which aspects of cooperation with other supervisors do you expect to present the greatest practical challenges in practice?

This question is primarily aimed at supervisors.

500 character(s) maximum

53. Which factors listed in Article 27(2) do you expect to be most difficult to operationalise when determining the level of pecuniary penalties?

This question is primarily aimed at supervisors.

- ☐ Nature, gravity and duration of the infringement, severity of the impacts
- ☐ Investments and targeted SME support provided under Articles 10, 11 CSDDD
- ☐ Collaboration with other entities to address impacts
- ☐ Extent to which prioritisation decisions were made in accordance with Article 9 CSDDD
- ☐ Relevant previous infringements found by final decision
- ☐ Extent of any remedial action taken
- ☐ Financial benefits gained or losses avoided

☐ Other aggravating or mitigating factors

Please specify:

150 character(s) maximum

54. In your experience as a supervisory authority, are there circumstances characterising an infringement that raise specific questions in determining the level of fines (and that therefore should be addressed in the guidance)?

This question is primarily aimed at supervisors.

500 character(s) maximum

55. What features of the guidance to be issued in accordance with Article 27(4) of the CSDDD would be most helpful in assisting supervisory authorities in determining the level of penalties, in a way that contributes to a uniform fining practice across the EU? *This question is primarily aimed at supervisors.*

500 character(s) maximum

56. Are there best practices from other policy areas (at EU or national level) that, in your view, could usefully inform sanctioning and fining decisions under the CSDDD? Please provide concrete examples (e.g., fining guidelines, assessment frameworks, judicial approaches).

This question is primarily aimed at supervisors.

500 character(s) maximum

Mailing List

Europe

European Commission

- Directorate-General for Justice and Consumers (DG JUST)
- Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA)

European Parliament

- Committee on Legal Affairs (JURI)

Council of the European Union

Permanent Representation of the Federal Republic of Germany to the European Union

Legal Advisers of the German Länder Representations to the European Union

Council of Bars and Law Societies of Europe (CCBE)

German Association of the Liberal Professions (BFB) – Brussels Office

Association of German Chambers of Industry and Commerce (DIHK) – Brussels Office

Federation of German Industries (BDI) – Brussels Office

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Bundesministerium für Justiz und Verbraucherschutz