

**THE DANISH
INSTITUTE FOR
HUMAN RIGHTS**

HOW DO THE PIECES FIT IN THE PUZZLE?

Making sense of EU regulatory
initiatives related to business
and human rights



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1 SUMMARY TABLE - EU MEASURES RELATED TO BUSINESS AND HUMAN RIGHTS

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
Proposed Corporate Sustainability Due Diligence Directive (CSDD Directive)	Due diligence obligation and corporate governance reform	Proposal launched February 2022. The Council adopted its negotiating position (general approach) in November 2022, which departs from the Commission's proposal in a few key respects. Trilogue negotiations between the European Parliament, the European Council, and the European Commission could begin as early as May 2023.	Multiple references and overall ambition to align with key international frameworks, including the UNGPs and OECD Guidelines.	Contains due diligence requirements that broadly align with due diligence steps from UNGPs and OECD Guidelines but depart from these frameworks on several accounts.	Broad due diligence requirements will need to be considered alongside other sectoral due diligence initiatives such as the Conflict Minerals, Timber, Batteries, Forced Labour, and Deforestation import controls. CSDD Directive relies on CSRD for associated disclosures. Unclear how it relates to SFDR, including if and when covering financial sector companies. Unclear how it will interact with taxonomy regulation Article 18.
Corporate Sustainability Reporting Directive (CSRD)	Reporting requirement	CSRD proposal was published in April 2021 and entered into force on 5 January 2023. Member States are expected to transpose the Directive into national law 18 months after it enters into force.	The CSRD aims for consistency with international instruments such as the UNGPs, the OECD Due Diligence Guidance for Responsible Business Conduct and related sectoral guidelines, the UN Global Compact, the ILO Tripartite Declaration, ISO 26000, and the UN Principles for Responsible Investment	Requires disclosure of the due diligence process implemented, but does not itself require the exercise of due diligence or alignment with RBC standards	CSRD to serve as the reporting obligation associated with CSDD Directive. CSRD is also key to taxonomy, alignment reporting, including on article 18. Unclear how the disclosure requirements will align with the SFRD disclosure obligations on financial market participants.

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
European Sustainability Reporting Standards (ESRS)	Standards on reporting requirement	The first set of draft ESRS covering cross-cutting and topical reporting were delivered by EFRAG to the European Commission on 23 November 2022. The next step is for the Commission to undertake further consultation among Member States and other EU bodies to adopt final delegated acts in June 2023.	The ESRS, at a high level, refer and commit to alignment with a responsible business conduct due diligence approach. The approach to due diligence under the CSRD is referred to in the cross-cutting standards and generally aligns with the approach to due diligence set out in the UNGPs and OECD Guidelines but departs from these frameworks on several accounts.	The exposure drafts of the ESRS do contain the stages of due diligence as described in the OECD due diligence guidance, while there are several examples of deviations from the approach in the UNGPs and OECD Guidelines.	Unclear how and when the disclosure needs of the forthcoming CSDD Directive will be reflected in the ESRS. The ESRS have a wider scope than the CSDD Directive and the Taxonomy regulation minimum safeguards provision, e.g., covering both negative and positive impacts as well as double materiality reporting, including around risks to businesses.
Sustainable Finance Disclosure Regulation (SFDR)		Adopted in 2019 and in force as of March 2021. Regulatory technical standards adopted in delegated regulation in April 2022. Enter into force January 2023.	Several reporting requirements link to UNGPs and OECD Guidelines including two mandatory indicators on OECD Guideline alignment of portfolio companies and several voluntary human rights related indicators	Principal adverse impact statement requires financial market participants to describe their adherence to international standards for RBC due diligence	Financial market participants will rely on information stemming from CSRD as it relates to disclosing information related to investees. Yet it is not entirely clear how the SFDR, CSRD and CSDD will interrelate.

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
Green Taxonomy	Classification system establishing a list of environmentally sustainable activities	Entered into force in July 2020. The first delegated act on climate change was adopted in June 2021 for scrutiny by the co-legislators and is applicable from January 2022, along with the Disclosures Delegated Act. The Complementary Delegated Act on gas and nuclear activities proposed by the Commission entered into force in January 2023. A second delegated act for the remaining four objectives is expected to be published in 2023.	One of the requirements for environmentally sustainable investments is that they align with the UNGPs and OECD Guidelines, including the declaration on Fundamental Principles and Rights at Work of the ILO, the eight fundamental conventions of the ILO, and the International Bill of Human Rights.	Alignment with the minimum safeguards clause (article 18) is expected to entail the implementation of due diligence. The Platform on Sustainable Finance published its final report on the minimum safeguards in October 2022, yet it does not constitute an official Commission position. The Commission is expected to provide more guidance around the minimum safeguards component in 2023, for instance, by way of an FAQ.	Unclear how article 18 will interrelate with CSRD and SFDR reporting requirements. Further, unclear how the CSDD Directive might impact the functioning of the article 18 clause. The final minimum safeguards report from the Platform on Sustainable Finance helpfully recalls that for this to work, the CSRD ESRS, as well as the CSDD Directive's due diligence obligations need to align with UNGPs and OECD Guidelines for them to serve as relevant proxies.
Proposed Taxonomy Social Extension	Classification system	Report from Platform on Sustainable Finance Published in February 2022. The Commission was expected in 2022 to issue its own report on whether and how it plans to extend the scope of the regulation to cover social objectives. This is yet to happen, and media reports indicate that the Commission, for the moment, has stalled on the social taxonomy.	The final report indicates that a social taxonomy should rely heavily on the UNGPs and OECD Guidelines.	The final report indicates a social taxonomy would include expectations on due diligence, including in relation to criteria for substantial contribution to taxonomy objectives.	Unclear how a social taxonomy would interrelate with the existing taxonomy minimum safeguards clause as well as with the CSDD Directive

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
Conflict Minerals Regulation	Import control	In force since June 2017 with requirements on EU importers applicable from January 2021	Refers to the UNGPs and OECD Guidelines, as well as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas	Requires ongoing due diligence with respect to the import of Tin, Tantalum, Tungsten, and Gold in line with that set out in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas	The sector and issue-specific due diligence mechanism in the Conflict Minerals Regulation is expected to co-exist with the broad due diligence requirement in the CSDD Directive.
Timber Regulation	Import control	In force since October 2010, with requirements on EU importers applicable from March 2013. It will be repealed by the Deforestation Regulation.	While it does not expressly deal with human rights, implementation reporting has noted that it is “the first legal instrument at the European Union level which includes mandatory due diligence” which is a key principle for corporate sustainable responsibility under the UNGPs	Requires ongoing due diligence with respect to timber and timber products in line with the requirements of the Regulation	It will be repealed once the Deforestation Regulation comes into force.

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
Deforestation Regulation	Import control	The proposal was published in November 2021, and a provisional political agreement between the European Parliament and the Council was reached in December 2022. Formal adoption is currently awaited.	It does not expressly address the human rights impacts of business or refer to the UNGPs and other international instruments; it nonetheless recognises the link between deforestation and adverse impacts on the enjoyment of human rights. It asks operators and traders to ensure that products are deforestation-free and legal, which means that they comply with applicable laws in the country of production, including labour rights and human rights protected under international law.	Requires ongoing due diligence with respect to soya, cattle, palm oil, wood, cocoa, rubber, and coffee commodities, as well as derived products, including leather, soya beans, oil cakes, and chocolate, based on the collection of specified information.	The stated intention of the regulation is for it to be complementary to the CSDD Directive; however, the two initiatives have differing objectives and scope. The Deforestation Regulation's due diligence requirements will be more specific compared to the general duties under the proposed CSDD Directive. It does not exclude the application of other EU legislative instruments that lay down requirements regarding value chain due diligence.
Proposed Regulation on Prohibiting Products made with Forced Labour	Import control	The Commission proposed the regulation in September 2022 as a follow-up to the announcement made in 2021.	Refers to the ILO Conventions for the definition of forced labour, and mentions due diligence guidelines or recommendations of the UN, ILO, OECD, or other relevant international organisations, including UNGPs and the OECD Due Diligence Guidance for Responsible Business Conduct	It does not itself impose an obligation to exercise due diligence on the economic operators. However, it authorizes the competent authorities to consider due diligence performance as an element while assessing whether the economic operator violates the regulation. It covers domestic and imported products and combines a ban with a robust, risk-based enforcement framework.	There are critical misalignments between the proposed Ban and the proposed CSDD Directive on the personal scope and the approach to due diligence. Unclear how the guideline on due diligence that the Commission will issue under the regulation would interact with due diligence requirements included in the CSDD Directive. Further clarification on interlinkages with SFDR and the use of Principal Adverse Impacts is needed.

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
Batteries Regulation	Due diligence obligations and sustainability rules for batteries	Following the proposal of the EU Commission in December 2020, the European Parliament and the Council reached a provisional political agreement in December 2022. Formal adoption and endorsement by the European Parliament and the Council is awaited.	Multiple references and ambition to align with key international frameworks, including the UNGPs and OECD Guidelines.	Contains due diligence requirements that broadly aligns with due diligence steps from UNGPs and OECD Guidelines but depart from these frameworks on several accounts	The due diligence requirements of the Batteries Regulation will, in some areas, be more specific compared to the due diligence duties under the proposed CSDD Directive. Ensuring that the two measures are mutually reinforcing is essential. Clarification is needed on which disclosure requirements of the CSRD are those that discharge the Batteries Regulation reporting obligations.
Proposed Critical Raw Materials Act	Measures to ensure a sustainable supply of critical raw materials	The feedback period for the European Critical Raw Materials Act was completed in November 2022. The Commission's proposal for a Critical Raw Materials Act, which will be informed by the impact assessment conducted by the Commission, was published on 16 March 2023 (the DIHR is currently developing an analysis of the proposal and will update this section accordingly in the next iteration of the publication).	There is no direct reference to the BHR frameworks, but the initiative identifies adverse social and environmental impacts as one of the fundamental problems in the supply of critical raw materials.	The foreseen regulatory and non-regulatory measures do not expressly address the requirement to respect human rights, due diligence, and responsible sourcing aspects.	Given the existing overlaps between the CSDD Directive, the Batteries Regulation and the Conflict Minerals Regulation, the proposal for a Critical Raw Materials Act will have to align with these instruments' due diligence approaches to ensure mutual reinforcement.

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
Digital Services Act (DSA)	Rules on digital services	The proposal was published on 15 December 2020. The EU Parliament adopted amendments to the proposal on 20 January 2022. It was published in the Official Journal of the European Union on 27 October 2022, entered into force on 16 November 2022 and will start to apply from 17 February 2024 for all regulated entities.	The recital of the DSA states that all providers of intermediary services should pay due regard to relevant international standards for the protection of human rights, such as the UNGPs.	It is not framed as a human rights due diligence framework, but it emphasises the need for intermediary services providers to ensure their activities protect human rights online, including the right to privacy, freedom of expression and information, prohibition of discrimination, and vulnerable users. It also requires more due diligence obligations to manage systemic risks for very large online platforms and very large online search engines.	The due diligence obligations in the DSA are both sector-focused and narrower in scope than the UNGPs and the broader due diligence obligations in the CSDD Directive. The reporting requirement under the DSA, which includes information on human rights-related risk assessment and mitigation measures, will also need to be considered alongside the disclosure requirements in the CSRD.
Proposed EU Artificial Intelligence Act (AI Act)	Law on Artificial Intelligence	The Commission published a proposal to regulate artificial intelligence in the European Union in April 2021. The Council adopted its general approach in December 2022. The proposal will follow a full legislative process at the EU Parliament and Council of the EU before being formally adopted.	While there are no explicit references to the UNGPs in the AI Act, several of the UNGPs' due diligence requirements are partly addressed by the proposal's text. Also, the adverse impacts that AI caused on fundamental rights, including the right to privacy, protection of personal data, freedom of expression and information, freedom of assembly and of association, and non-discrimination, consumer protection, workers' rights, rights of persons with disabilities, rights of children, are acknowledged in the proposal.	While it is not framed as human rights due diligence framework, the proposed AI Act aligns with the UNGPs' approach to due diligence in identifying, preventing, and mitigating potential or actual adverse impacts connected to an activity. It requires adopting a risk management system in relation to high-risk AI systems.	The alignment of the AI act with the due diligence obligations within the proposed CSDD Directive should be ensured. The disclosure requirements in the AI Act will also need to be considered alongside the disclosure requirements in the CSRD. The AI Act does not affect the application of the provisions of DSA and GDPR.

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
Proposed Artificial Intelligence Liability Directive (AILD)	Rules for non-contractual civil liability for damage caused by the involvement of AI systems	The Commission proposed the AILD in September 2022. The Council adopted its common position ('general approach') on the AI Act in December 2022. The European Parliament adopted its negotiating position on 14 June 2023. Negotiations between the three institutions began in June 2023.	There is no direct reference to the UNGPs or other BHR frameworks. However, the AILD is a direct reflection of the third pillar of the UNGPs, access to remedy, which requires states to take appropriate steps to ensure that those affected by human rights abuse have access to effective remedy through judicial and legislative means, among other means.	While it does not provide a due diligence framework on human rights, its stated aim is to enable effective enforcement of fundamental rights and preserve the right to an effective remedy where AI-specific risks have materialised. It has the potential to ensure effective enforcement of the due diligence mechanisms foreseen under both the AI Act and the proposed CSDD Directive.	The AILD and the AI Act are complementary and reinforce each other. The AILD does not affect the due diligence obligations set in the DSA. It complements other EU standards on AI policy, such as the GDPR. It is unclear yet how the AILD aligns with the liability mechanism seeking accountability for adverse impacts under the CSDD Directive regime. It remains to be seen how the interaction between the enforcement of the AI Act and the future CSDD Directive will further impact the enforcement of the AILD.
General Product Safety Regulation	Rules on product safety (including products with new technologies and the goods and products sold online)	The Commission published the proposed General Product Safety Regulation in June 2021. The proposal followed an ordinary legislative procedure, the Parliament and the Council reached a provisional political agreement on 28 November 2022. The regulation is now subject to formal approval by the EU Council and the European Parliament before it comes into force.	No direct reference to the internationally recognised instruments such as the UNGPs or the OECD Guidelines. Nevertheless, the regulation reiterates that all consumers, including the most vulnerable, such as children, older persons, or persons with disabilities, have the right to safe products. It allocates a specific chapter on the right to information and remedy by reinforcing consumer rights, i.e., the right to be informed or to file a complaint where the product is dangerous, along with extending the possible remedies to be offered for consumers in the event of a recall.	The regulation does not set a concrete due diligence scheme. Nevertheless, it obliges manufacturers and economic operators to conduct an internal risk analysis before placing a product on the market by including information on the possible risks and the solutions or corrective measures to eliminate or mitigate such risks (including need for a new risk assessment on the products if new technologies, such as software updates, have a substantial impact on the safety of the original product).	It will apply without prejudice to the provisions of the Digital Services Act, while aiming for a safety net for products and risks to the health and safety of consumers that do not enter into the scope of application of the AI Act. It remains to be seen how these different instruments interact with each other in practice.

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
The General Data Protection Regulation (GDPR)	Rules on the processing of personal data of individuals	The GDPR was adopted on 14 April 2016 and applied since 25 May 2018.	No direct reference to the UNGPs. However, the GDPR specifically acknowledges the inherent risks that data processing may pose to fundamental rights, including the right to private and family life, the protection of personal data, non-discrimination, freedom of thought, conscience, and religion; freedom of expression and information; the right to due process, and to an effective remedy in cases where interference has occurred.	The GDPR includes a series of due diligence requirements for businesses and aligns to a certain extent with the process of human rights due diligence as set out in the UNGPs. The regulation adopts a risk-based approach to determining the safeguards necessary to ensure citizens' fundamental rights are adequately protected.	The GDPR's provisions will inevitably interact with the due diligence obligation in the proposed CSDD Directive and the CSRD. It remains to be seen how the CSDD Directive and CSRD can provide support in improved reporting and transparency concerning the data processing activities covered under the GDPR.
Regulation on Trade of Dual-use Items	Rules to strengthen control over the export, transit, brokering, and technical assistance of dual-use items.	The regulation was published in the Official Journal in June 2021 and is currently in force.	There is no direct reference to the UNGPs. However, the structure of the Internal Compliance Programme (ICP) aligns with the UNGPs approach to some extent. As the human rights due diligence mechanisms foreseen under the UNGPs, the ICPs are structured as ongoing risk management systems proportionate to human rights & humanitarian law risks related to the end-use of dual-use items.	It requires exporters to adopt due diligence measures to identify possible human rights and humanitarian law violations risks in their value chain, particularly concerning the end-use of the exported cyber-surveillance items.	The regulation constitutes a specific piece of the legislative framework due to its subject-specific focus limited to the end-use of dual-use items concerning the commission of human rights or humanitarian law violations.

MEASURE	NATURE	STAGE	REFERENCE TO BHR FRAMEWORKS	DUE DILIGENCE	REGULATORY ALIGNMENT
Directive on Public Procurement	Rules on public procurement	In 2020, the EU Commission announced that a review of the Public Procurement Directive should take place in 2021. This review has since been delayed, and the EU Commission's workplan does not make provision for a review in 2023. The elements within the directive related to business and human rights may not fall within the scope of this review.	The Directive does not explicitly reference the UNGPs or the OECD Guidelines for Multinational Enterprises. However, it has a human rights dimension in requiring that economic operators comply with applicable environmental, social, and labour law obligations, including the 8 ILO Core Conventions.	The Public Procurement Directive does not require due diligence per se, so it is unclear how the requirements for socially responsible public procurement will align with due diligence as articulated in the CSDD Directive.	It is unclear how the requirements for socially responsible public procurement will align with due diligence as articulated in the CSDD Directive. Nonetheless, when state bodies purchase goods and services, they act as a business. Should proposed due diligence legislation apply to state bodies when they are acting as a business, then the limited scope of due diligence allowed for under the Public Procurement Directive may need to be addressed.

2 INTRODUCTION

In recent years the European Union has introduced a range of regulatory initiatives which, in different ways, seek to address the impacts that businesses have on the enjoyment of human rights. These include initiatives on Corporate Sustainability Reporting, Corporate Sustainability Due Diligence, and Sustainable Finance, as well as trade rules and import/export restrictions. Each measure aims to ensure that businesses, financial institutions, and the economic system as such develop responsibly and contribute to sustainable development. Central to advancing both these aims is fostering respect for human rights by business and financial institutions. The measures, however, vary in the degree to which they align with human rights or business and human rights standards. Further, the measures approach their shared objective from slightly different angles, each potentially forming a “piece of the puzzle”:

- Some initiatives, such as those which create due diligence obligations like the Conflict Minerals and Timber Regulations and the proposed Corporate Sustainability Due Diligence Directive, and the Deforestation Regulation, are aimed at ensuring that companies establish policies and processes, which would enable them to identify and address the impacts that they have on people and planet;
- Some initiatives, such as the proposed Corporate Sustainability Due Diligence Directive, address the inner workings of the company in other ways, imposing requirements with respect to the governance of human rights and environmental due diligence, as well as obligations to incorporate sustainability considerations into the company strategy;
- Some initiatives, such as the Corporate Sustainability Reporting Directive and Sustainable Finance Disclosures Regulation, aim to encourage sustainable behaviour through disclosure regimes, requiring companies to report on the impacts they have on people and the planet, as well as their governance, policies, and procedures for managing such impacts;
- Others, like efforts to build green and social taxonomies, provide a classification system of economic activities and their sustainability contributions with the ambition to drive sustainable investment and combat green and social washing; and
- Others still leverage EU market access to encourage corporate actors to address their human rights impacts, such as the Conflict Minerals and Timber

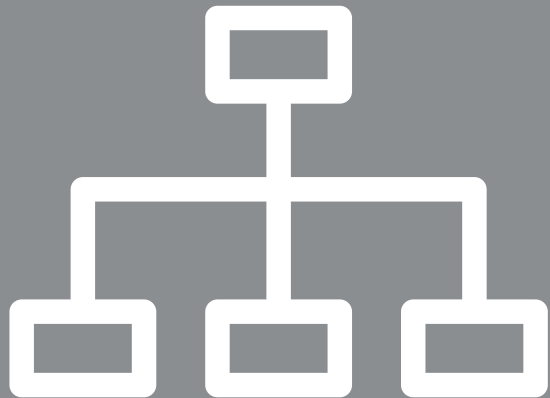
Regulations, the proposed Batteries Regulation the proposed deforestation and forced labour import bans, and the due diligence obligations in the proposed Corporate Sustainability Due Diligence Directive by its application to certain non-EU companies.

There is a need for regulatory alignment, in particular with the reforms currently under consideration under the Sustainable Finance and proposed Corporate Sustainability Due Diligence Directive. However, while there is an acknowledged need for policy coherence, each initiative is at a different stage in the legislative process. Some are in force, some have been adopted as proposals but have not yet been through the full legislative process, and others are still in the development and consultation phases. There remain points of potential misalignment and overlap between each of the initiatives considered as part of this briefing.

As each of these initiatives potentially contributes, in some way, to the respect for human rights by business, there is further a need to ensure consistency with international instruments such as the [UN Guiding Principles on Business and Human Rights](#) (UNGPs), the [OECD Guidelines for Multinational Enterprises](#) (OECD Guidelines) and the [OECD Due Diligence Guidance for Responsible Business Conduct](#) (OECD Due Diligence Guidance). Regarding the UNGPs and OECD Guidelines as critical touchstones for the development of each of these regulatory reforms is a practical means of facilitating regulatory alignment and policy coherence, as well as a common understanding of human rights in a private sector context.

This briefing provides an overview of the various EU regulatory initiatives of relevance to business and human rights. Each section briefly: summarises the measure; notes the stage the measure is at in the legislative process; describes how the measure relates to business and human rights; and finally, considers what piece the measure contributes to the broader puzzle. Each section is designed to be a standalone summary of each particular measure as it relates to business and human rights, and will be updated periodically to capture developments as the various legislative processes proceed. An overview table of the various measures is included in Section 1.

A OVERARCHING POLICY INITIATIVES



A OVERARCHING POLICY INITIATIVES

There are a number of overarching EU policy initiatives of relevance to business and human rights, and which inform the various initiatives and legislative proposals discussed below. Key among them is the [European Green Deal](#), a suite of policy and legislative initiatives announced in 2019 aimed at achieving no net emissions of greenhouse gases by 2050. Key elements include decoupling economic growth from resource use and ensuring no person or place is left behind in the green transition.

A number of key legislative and policy initiatives of relevance to business impacts on the enjoyment of human rights fall within the umbrella of the Green Deal, including:

- The Action Plan on Sustainable Finance, which includes the Sustainable Finance Disclosure Regulation (2019/2088) and the Taxonomy Regulation (2020/852);
- Measures that place restrictions on access to the single market for certain commodities on the basis of their human rights and environmental impacts, such as the Deforestation Regulation;
- Measures that form an integral part of the European Green Deal and aim to promote the circular economy and reduce the environmental and social impact throughout the life cycle of commodities, such as the Batteries Regulation;
- Measures that complement the efforts under the European Green Deal to support the fast transition to climate neutrality and net-zero industrial transformation, such as the Green Deal Industrial Plan for the Net-Zero Age; and
- The Fisheries Policy Package (2023), which includes a range of measures to improve the sustainability and resilience of the EU's fisheries and aquaculture sector, in line with the European Green Deal.

Other key initiatives, such as the adopted [Corporate Sustainability Reporting Directive](#) and the [proposed Corporate Sustainability Due Diligence Directive](#) under the [Sustainable Corporate Governance Initiative](#), fall within social and employment policy, "[An Economy that Works for People](#)", although they relate to the objectives of the Green Deal.

Other initiatives considered in this briefing, such as measures which place restrictions on the import of conflict minerals and certain timber products, predate the European Green Deal, but contribute to its aims.

Another key framework underpinning the EU's initiatives to further sustainability in the context of private sector initiatives is the [2020 European Pillar of Social Rights](#) and the accompanying [action plan](#). The Social Pillar covers many aspects relevant to conditions for workers, including in the context of equal opportunities and access to the labour market as well as around ensuring fair working conditions. The implementation of the action plan is set for 2025.

Although not elaborated on in this paper, other initiatives relevant to business and human rights include:

- Measures that tackle specific human rights issues, including labour rights, such as the [pay transparency directive](#) adopted in December 2022, designed to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms; the [directive](#) adopted in October 2022 and addressing adequate minimum wages; the [directive on improving the gender balance among directors of listed companies](#) adopted in November 2022 which aims to achieve a gender-balanced representation among top management positions; or measures introduced to further strengthen and promote [social dialogue and collective bargaining](#) at EU level;
- Measures that aim to improve social sustainability in certain sectors, such as the ongoing [work on access to essential services](#);
- Measures directed at repairing the economic and social damage caused by the COVID-19 pandemic, such as the [Recovery and Resilience Facility](#), an instrument under the [NextGenerationEU](#), which includes provision for fair climate and digital transitions;
- Measures concerning the EU's external activities, such as [the 2020-2024 Action Plan on Human Rights and Democracy](#), which contains specific provisions on business impacts on the enjoyment of human rights;
- Measures that address the sustainability of products sold on the single market, such as [the proposed Regulation for setting ecodesign](#).

[requirements for sustainable products](#) under [the Sustainable Product Policy Initiative](#) or the EU Strategy for Sustainable and Circular Textiles;

- Measures to protect the environment, such as [the Environmental crime directive revision proposal](#) (2021), which aims to strengthen the provisions on criminal sanctions for natural and legal persons;
- Measures addressing corporate tax payment, such as a [directive for minimum corporate tax](#) for large companies, adopted in December 2022;
- Measures which impact access to remedy, such as the [Rome II Regulation](#) and [Brussels Recast Regulation](#), which specify: the law applicable to a non-contractual civil claim; and jurisdiction and enforcement of judgments, respectively; and
- Measures to strengthen the rules that prevent and combat trafficking in human beings, particularly for labour exploitation, such as [the proposed directive](#) on preventing and combating trafficking in human beings and protecting its victims.

B COMPANY FOCUSED INITIATIVES



The EU has undertaken a number of steps focused on driving real economy companies to better manage and report on sustainability matters, both within their own operations and across their value chains. The two main developments in this area are the proposed Corporate Sustainability Due Diligence Directive, which includes a mandatory due diligence obligation with respect to human rights and environmental impacts and associated corporate governance reforms; and the Corporate Sustainability Reporting Directive, which concerns disclosures on a range of sustainability matters.

Both of these measures focus on sustainability more broadly, considering not only environmental and climate change impacts, but also the impacts that a company may have on the enjoyment of human rights.

B.1 PROPOSED CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

WHAT IS IT?

The European Commission's proposal for a Corporate Sustainability Due Diligence Directive (CSDD Directive) (formerly the Sustainable Corporate Governance Initiative) outlines broad, cross-sectoral due diligence requirements across the value chain, with certain limitations. It applies to large EU and non-EU companies and, after a two-year transition period, to medium-sized EU and non-EU companies which operate in the textile, agricultural and extractive sectors. The proposal expressly excludes SMEs from its scope.

Under the CSDD Directive, Member States are obliged to ensure that companies carry out due diligence by:

- integrating due diligence into their policies;
- identifying actual or potential adverse impacts;
- preventing and mitigating potential adverse impacts, bringing actual adverse impacts to an end, and minimising their extent;
- establishing and maintaining a complaints procedure;
- monitoring the effectiveness of their due diligence policy and measures; and
- publicly communicating on due diligence.

Companies are required to undertake due diligence on their own operations, their subsidiaries, and those with whom they have an “established business relationship” in the value chain (which includes not only upstream activities relating to the production of goods or the development of services, but also downstream relationships, such as the use of a service or the disposal of a product).

The due diligence requirement is supported by some corporate governance reforms, including requirements that company directors put in place and oversee the due diligence policy and process with due input from relevant stakeholders and CSOs and report to the board. It also clarifies that directors shall take the consequences of their decisions for sustainability matters, including human rights, the climate and the environment, into account when discharging their duty of care to act in the best interest of the company.

Compliance with the proposal will be enforced by a system of Member State Supervisory Authorities with powers to investigate and sanction, linked through a European network. This is supported by the requirements that companies establish a complaints procedure available to affected parties, including CSOs or trade unions, and a civil liability mechanism that allows affected people to claim damages where the failure of a company to comply with the due diligence requirements results in harm.

WHAT STAGE IS IT AT?

The CSDD Directive proposal was [announced in April 2020](#) and has undergone an [Inception Impact Assessment](#) and a [public consultation](#) between October 2020 and February 2021. The proposal emerged as an initiative overseen by the [Directorate General for Justice and Consumers](#) (DG JUST), but in July 2021, the [Directorate General for the Internal Market](#) (DG GROW) joined the file. The Commission initially indicated that it would publish a proposal in June 2021 and subsequently in December 2021, but their proposals twice received a “red card” from the [EU Regulatory Scrutiny Board \(RSB\)](#). The proposed CSDD Directive was eventually [published](#) on 23 February 2022 and will follow a full [legislative process](#) at the EU Parliament and Council of the EU before being formally adopted, after which it will be transposed at the national level.

On 1 December 2022, the European Council adopted a [general approach](#) which departs from the Commission's proposal in a few key respects, including: restricted application to the financial sector; a move from application to the full value chain in favour of application to a company's “chain of activities” which captures the supply chain but little of the downstream part of the value chain; changes to the civil liability mechanism, among other changes.

The European Parliament also adopted its own position by plenary vote on 1 June 2023, which is consistent with the [JURI Committee report](#) of 25 April 2023, except for one amendment to delete Article 26 relating to directors' obligations to oversee due diligence. It extends the scope of the CSDD Directive to medium-

B.1 PROPOSED CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

sized companies, broadens the duties of financial institutions, and preserves the value chain approach, but places limitations on the due diligence obligations required in the downstream. Furthermore, the Final Report introduces dedicated provisions on prioritisation, remediation and meaningful stakeholder engagement.

The trilogue negotiations between the European Parliament, the Council of the EU and the European Commission are expected to begin in summer 2023.



HOW DOES IT RELATE TO BHR?

The Explanatory Memorandum and Recitals to the CSDD Directive proposal expressly refer to the requirements of the UNGPs and OECD Guidelines. The due diligence process outlined in the proposal generally aligns with the expectations of these frameworks; however, there are some critical departures. For example, the Commission proposal limits the scope of due diligence in the value chain by reference to an “established business relationship”, which is a concept not found in the international standards the proposal is based on. The UNGPs and the OECD Guidelines expect that companies take a risk-based approach to their due diligence, undertaking an assessment of their operations and business relationships, which is guided by the severity and likelihood of risk rather than the closeness of the business relationship. Other departures are found in the more limited expectations on companies with respect to access to remedy, in the centrality of the use of contractual assurances to secure compliance with code of conduct requirements, and in the more limited personal scope of the proposal. The Council’s approach also differs in a few key respects, for example, by limiting the scope of due diligence to the supply chain and select parts of the downstream value chain, rather than the whole of the value chain as expected by the UNGPs and OECD Guidelines. For more details on downstream due diligence and the expectations of these frameworks, please see the separate DIHR publication “[Due diligence in the downstream value chain: case studies of current company practice](#).” There remain discrepancies when it comes to the qualified requirements for financial institutions and the limitations on due diligence on the downstream part of value chain.

For a deeper analysis, please see the separate publications [Legislating for Impact](#) by the DIHR, which focuses on the Commission proposal for a CSDD Directive, and the ENNHRI [Statement on the proposal for a Corporate Sustainability Due Diligence Directive](#).

B.1 PROPOSED CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE



PIECE OF THE PUZZLE?

The CSDD Directive proposal imposes due diligence obligations which require covered companies to identify and address human rights impacts consistent with the process of human rights due diligence outlined in the UNGPs.

The Explanatory Memorandum to the proposal notes that a number of EU Member States, including [France](#), [Germany](#), and the [Netherlands](#), have already enacted their own versions of a due diligence law, each of which differs slightly in scope, content, and enforcement. The proposal, therefore, aims to address the risk of fragmentation and the possibility that diverging approaches will jeopardise a level playing field.

The broader, cross-sectoral approach to due diligence set out in the CSDD Directive will need to be considered alongside existing regulations, which include a narrower due diligence component, such as the Conflict Minerals, Batteries, and Timber Regulations, as well as the forthcoming Forced Labour Ban. The Deforestation Regulation explicitly contemplates this and anticipates that the more specific due diligence requirements with respect to deforestation will sit alongside the overarching due diligence obligation expected in the CSDD Directive. This is consistent with provisions in the CSDD Directive which specify that nothing in the CSDD Directive shall constitute grounds for reducing the level of protection of human rights or protection of the environment or climate existing at the time of the adoption of the Directive. Further, the CSDD Directive shall not prejudice other obligations with respect to human rights or the environment, meaning that if more extensive or specific protections apply in other EU laws, the stricter obligation shall prevail.

The CSDD Directive does not include transparency requirements obliging companies to make disclosures about their due diligence processes as relevant rules are already enshrined in the CSRD (discussed below). It only demands annual statements on corporate due diligence processes from those companies that are not subject to the CSRD, especially non-EU companies. Whether disclosure requirements follow from the CSRD or the CSDD Directive, care must be taken to ensure that the provisions are adequate to meet the

expectations of the UNGPs, in particular, the expectation of continuous disclosure and communication, which may not be adequately addressed through annual reporting requirements. Further, a consistent and coherent approach should be taken between the scope of the disclosures required and the scope of due diligence required under the CSDD Directive. For example, the CSRD and associated ESRS currently require disclosures to be made in relation to the full value chain, including impacts on consumers and end users. Efforts should be made to ensure that the CSDD Directive aligns with the approach taken in the CSRD. If the financial sector ends up being included in the final CSDD Directive, it is not entirely clear how the proposed CSDD Directive requirements will interplay with linked requirements under the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation.

Compliance with the proposed CSDD Directive is referred to in the proposed Critical Raw Materials Act as one element to assess the sustainable implementation of a project for the purpose of granting strategic status, which has the benefit of streamlined permitting processes and facilitation of financing opportunities. As such, efforts should be taken to ensure that the proposed CSDD Directive provides a relevant metric to assess the sustainability of a project under the proposed Critical Raw Materials Act.

The CSDD Directive includes reliance on certification scheme as means of undertaking due diligence, as does the proposed Critical Raw Materials Act, and, to some extent, the Conflict Minerals Regulation and the Deforestation Regulation. Accordingly, efforts should be made to ensure a coherent approach to the development of criteria for such schemes.

B.2 CORPORATE SUSTAINABILITY REPORTING DIRECTIVE

WHAT IS IT?

The [Corporate Sustainability Reporting Directive](#) (CSRD) replaces the [Non-Financial Reporting Directive](#) (NFRD) adopted in 2014 and effective from 2017, which sets out rules on the disclosure of non-financial information by certain large EU-based companies, including disclosures on environmental, social, human rights, anti-bribery and corruption and diversity matters. It does so through amendments to [the Accounting Directive](#), [the Transparency Directive](#), [the Audit Directive](#), and [the Audit Regulation](#). The CSRD reframes the reporting requirements from a collection of non-financial topics for reporting to a requirement to report on “sustainability matters” and “principal impacts”, concepts derived from the Sustainable Finance Disclosure Regulation. The CSRD requires that companies report on the following “sustainability matters”:

- A description of the undertaking’s business model and strategy, including plans to ensure compliance with net zero targets, the effect of sustainability risks and opportunities, and how the strategy/plans reflect broader stakeholder interests;
- Sustainability targets and progress against them;
- The role of administrative, management and supervisory bodies with regard to sustainability matters;
- Policies in relation to sustainability matters;
- The due diligence processes implemented for sustainability matters, including principal actual and potential adverse impacts throughout the value chain and actions taken to prevent, mitigate or remediate impacts;
- Principal risks of the undertaking related to sustainability matters; and
- Relevant indicators.

The CSRD also provides for new European Sustainability Reporting Standards (ESRS) that all reporting companies will be required to use. For further detail on the proposed European Sustainability Reporting Standards, please see the following section (from page 25).

It is expected that company reports will be required to be uploaded in electronic format and accessible through a [Single Access Point](#) to be developed by the European Securities and Markets Authority.

WHAT STAGE IS IT AT?

A public consultation on a review of the NFRD was conducted in 2020, held between February and June 2020. On 21 April 2021, the Commission adopted a [proposal for a CSRD](#), which would amend the NFRD. Following a full [legislative process](#) at the EU Parliament and Council of the EU, a [provisional political agreement](#) was reached between the European Parliament and European Council on 21 June 2022 and was [adopted](#) by the European Parliament on 10 November 2022. The CSRD was published in the EU Official Journal on 16 December 2022 and [entered into force](#) on 5 January 2023.

Member States are expected to transpose the Directive into national law 18 months after its entry into force. Companies captured by the CSRD will be required to report on a staggered timetable as follows:

- Companies subject to the NFRD will need to comply with the provisions of the CSRD beginning from 1 January 2024 (i.e., reporting in 2025 on the basis of 2024 data);
- Other large companies not currently subject to the NFRD must comply from 1 January 2025 onward (i.e., reporting in 2026 on the basis of 2025 data);
- SMEs will need to comply from 1 January 2026 (i.e., reporting in 2027 on the basis of 2026 data); and
- Third-country companies will need to comply from 1 January 2028 (i.e., reporting in 2029 on the basis of 2028 data).
- The CSRD is overseen by the EU Directorate General for Financial Stability and Capital Markets (DG FISMA).

B.2 CORPORATE SUSTAINABILITY REPORTING DIRECTIVE



HOW DOES IT RELATE TO BHR?

The CSRD proposal and its associated disclosure standards aim for consistency with international instruments such as the UNGPs and the OECD Due Diligence Guidance and related sectoral guidelines, the UN Global Compact, the Tripartite Declaration of Principles of the International Labour Organisation concerning Multinational Enterprises and Social Policy, the ISO 26000 standard on social responsibility, and the UN Principles for Responsible Investment.

The proposal's understanding of due diligence aligns with the UNGPs as a process that undertakings carry out to identify, prevent, mitigate, and remediate the principal actual and potential adverse impacts connected with their activities. The proposal also incorporates other concepts from the UNGPs, requiring companies to report on “principal” impacts connected with an undertaking's activities, including impacts directly caused by the undertaking, impacts to which the undertaking contributes, and impacts which are otherwise linked to the undertaking's value chain. Although the concept of “principal” impacts is intended to align with the UNGPs principle of severity, the use of terminology which departs from the UNGPs could lead to conceptual confusion. The CSRD requires undertakings to make certain disclosures about social factors. Human rights are considered a subset of “social” and is listed separately from equal opportunity and certain issues related to labour. Equal opportunities, working conditions, and other areas that the EU wishes to highlight are, however, ultimately included within human rights and should be considered as part of an overarching obligation to report on the undertaking's human rights impacts.



PIECE OF THE PUZZLE?

The CSRD requires undertakings to disclose a description of the due diligence process implemented with regard to sustainability matters, the principal actual or potential adverse impacts connected with the undertaking's value chain, including its own operations, its products and services, its business relationships and its supply chain; any actions taken, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts.

Although the CSRD requires disclosures of the due diligence processes a company is using with respect to sustainability matters, it does not itself require the exercise of due diligence. It therefore constitutes a softer element in the mix of measures which should be designed to work alongside a harder element provided by the due diligence obligation in the proposed CSDD Directive. Given that the CSRD was adopted substantially before the CSDD Directive proposal entered the discussion, particular care needs to be taken to ensure that the form of disclosures required by ESRs are adequate to meet the CSDD Directive requirements. Further, the CSRD disclosure standards have a wider scope than that of the CSDD Directive, e.g., covering both negative and positive impacts. The reporting will also have to be made in accordance with the principle of double materiality, meaning that an undertaking will be required to report not only on how sustainability matters impact the undertaking but also what impacts the undertaking has on people and planet, in addition to risks to businesses. As a result, there will likely be a need to specify which disclosure requirements of the CSRD are those that discharge the CSDD Directive obligations and which serve a different purpose. This will also be key for demonstrating alignment with article 18 of the Taxonomy Regulation. Further, potential conflicting requirements or cross-pressures need to be carefully thought through. For instance, how obligations to transparently report severe impacts under the CSRD will interact with a potential liability mechanism seeking accountability for such impacts under the CSDD Directive regime.

Careful consideration should be given to the extent to which the CSRD meets the information needs of the CSDD Directive. The CSDD Directive aims to align

B.2 CORPORATE SUSTAINABILITY REPORTING DIRECTIVE

with the key international frameworks of the UNGPs and OECD Guidelines, both of which consider due diligence, including the responsibility to communicate, as a continuous ongoing process. The requirement to report annually under the CSRD may not meet this expectation of continuous disclosure. Further, as the CSRD entered into force before the CSDD Directive, efforts should be made to ensure that the scope of reporting required under the CSRD and the scope of due diligence required under the CSDD Directive are aligned to the greatest extent possible. For example, as the CSRD requires disclosures to be made in relation to the full value chain, including impacts on consumers and end users, a consistent approach should be taken under the CSDD Directive.

The CSRD requires disclosure of “sustainability matters”, a concept derived from the disclosures on “sustainability factors” in the Sustainable Finance Disclosure Regulation. However, it is also not yet clear how the CSRD will work with the Sustainable Finance Disclosure Regulation, which requires disclosures from financial market participants on sustainable investments. Notably, the Sustainable Finance Disclosure delegated regulation requires financial actors to periodically disclose information on whether an investment is aligned with the OECD Guidelines and the UNGPs. On the other hand, the CSRD provides that real economy companies must disclose their due diligence processes, but does not require that companies demonstrate in their sustainability reporting that these processes are aligned with the OECD Guidelines and the UNGPs. Further, consideration should be given to whether the CSRD and associated ESRS meet the information needs of other regulations. For example, the [Deforestation Regulation](#) states that operators falling within the scope of other EU legislative instruments that lay down requirements regarding value chain due diligence may fulfil their reporting obligations by including the required information when reporting in the context of other EU legislative instruments, such as the CSRD.

B.3 EUROPEAN SUSTAINABILITY REPORTING STANDARDS



WHAT IS IT?

The CSRD requires undertakings to report on non-financial matters in accordance with a set of European Sustainability Reporting Standards (ESRS). The CSRD states that the Commission shall adopt delegated acts (delegated acts are non-legislative acts adopted by the European Commission that serve to amend or supplement the primary legislation and are of a technical nature) to provide for these ESRS, which specify the information that undertakings are required to report. The delegated acts setting out the ESRS are to be reviewed at least three years after adoption.

The ESRS are being [developed](#) on the basis of technical advice provided by the European Financial Reporting Advisory Group (EFRAG).

In line with the CSRD, the ESRS require double materiality disclosures, meaning that an undertaking will be required to report not only on how sustainability matters impact the undertaking but also what impacts the undertaking has on people and planet. The overall architecture of the exposure drafts of the ESRS is arranged around a set of cross-cutting disclosure requirements, requiring companies to set out their general strategy, governance, and materiality assessment, and a set of topical disclosure requirements on Environmental, Social, and Governance matters.

Human rights-related disclosures are situated with the Social topical standard, and disclosures are required in relation to four groups of rightsholders: own workforce; workers in the value chain; affected communities; and consumers and end users. Undertakings are also required to make disclosures concerning their due diligence, both under the general cross-cutting standards and the topical standards. In particular, the Governance topical standard requires the preparation of a “Statement on Due Diligence”.



WHAT STAGE IS IT AT?

In June 2020, EFRAG was [given the mandate](#) to develop draft EU sustainability reporting standards. In March 2021, the EFRAG [Project Task Force on preparatory work for elaborating possible EU non-financial reporting standards](#) published [technical recommendations and a roadmap](#) for developing the reporting standards. In April 2022, the task force published exposure drafts for public consultation of the first set of cross-cutting and topical ESRS, which went to public consultation between 30 April and 8 August 2022.

In April 2022, EFRAG formed the EFRAG Sustainability Reporting Board, which supported by the EFRAG Technical Expert group is tasked with the responsibility to provide technical advice to the European Commission. Following consultation, the [first set of draft ESRS](#) covering cross-cutting and topical reporting were [delivered by EFRAG](#) to the European Commission on 23 November 2022. Following consultations among Member States, other EU bodies as well as a short external consultation, the Commission [adopted](#) the delegated regulation on the ESRS on 31 July 2023.

A second set of sectoral standards and standards for SMEs are in development by EFRAG. Following a request by the European Commission in March 2023, EFRAG Sustainability Reporting Board decided to prioritise guidance on the implementation of the first set of standards over the preparatory work on specific sectors and SMEs. Priority has been given to guidance on materiality and value chain. As a result, the publication of the second set of draft standards and the respective consultations for the second set of standards, which were planned to take place between April and May 2023, are postponed until later in the year.

B.3 EUROPEAN SUSTAINABILITY REPORTING STANDARDS



HOW DOES IT RELATE TO BHR?

The ESRS refer and commit to alignment with a responsible business conduct due diligence approach. The approach to due diligence under the CSRD is referred to in the cross-cutting standards and generally aligns with the approach to due diligence set out in the UNGPs and OECD Guidelines.

Meaningful implementation of due diligence enables reporting entities to identify impacts that are material from an impact materiality perspective, meaning impacts on people and on the planet. The ESRS link the identification phase of due diligence and the assessment of impact materiality through the specific reference to the process of due diligence in the UNGPs and OECD Guidelines.

Preparers are asked to prepare a separate “Statement on due diligence” under the Governance topical standard, in addition to an expectation to embed due diligence throughout the underlying process used to identify and address impacts that are to be the subject of the reporting obligations across the ESRS more broadly.

The ESRS contain the stages of due diligence as described in the OECD due diligence guidance. However, they do so by considering the various stages at different levels within the architecture of the ESRS: the identification phase is considered only in the cross-cutting disclosure requirements, whereas the subsequent four stages, taking action to address impacts, tracking implementation and results and remedy are addressed to varying degrees in the implementation disclosures forming part of the topical standards. A description of the process for and outcome of the impact materiality assessment is relevant not only at the cross-cutting level, but also at the level of the topical standards. Disclosure of what impacts have been identified as material for a reporting entity, and the process for identification of those impacts is certainly relevant at the cross-cutting level. It is important for stakeholders to understand what impacts drive a company’s actions at group or aggregate level. However, it is also important for a more granular account of

impact identification to be included in the topical standards, both as a means of explaining how the identification of the material cross-cutting impacts which have been disclosed have been arrived at, as well as providing a clear explanation of how the preparer has engaged with each topic within the topical disclosures.

Further, there are a number of examples of deviations from the approach in the UNGPs and OECD Guidelines that risk confusing preparers and diluting the approach. For example, the UNGPs and OECD Guidelines address both risks (potential impacts) and actual impacts in the context of sustainability, but the ESRS uses impacts only when referring to impact materiality and risks when referring to financial materiality aspect.



PIECE OF THE PUZZLE?

It is unclear how the disclosure needs of the forthcoming CSDD Directive will be reflected in the ESRS. While the development of the CSDD Directive is at a much earlier stage of the legislative process, it is nonetheless anticipated that the disclosures required under the CSRD will be closely linked to the due diligence obligations under the CSDD Directive. As noted in the section above, where the ESRS require disclosures on an undertaking’s due diligence, there are some departures from the expectations of the key international frameworks. As the CSDD Directive is expected to largely align with these frameworks, careful consideration should be given to how reporting on due diligence is incorporated into the ESRS, at what level of the architecture the phases of due diligence are considered, and how the identification phase of due diligence should inform the identification of material impacts from an impact materiality perspective. Alignment to the greatest extent possible between these two parallel measures should be encouraged.

Further, the ESRS have a wider scope than that of the CSDD Directive and the Taxonomy Regulation minimum safeguards provision, e.g., as they cover both negative and positive impacts as well as double materiality reporting, including around risks to businesses. As a result, there will be a need to specify which

B.3 EUROPEAN SUSTAINABILITY REPORTING STANDARDS

ESRS disclosure requirements are those that discharge the CSDD Directive obligations and which are needed to demonstrate and check alignment with minimum safeguards under the taxonomy, and which serve a different purpose.

For further details on the ESRS and elaboration of these potential misalignments, please see the [DIHR's high-level input on the draft ESRS](#).

Further, consideration should be given to whether the CSRD and associated ESRS meet the information needs of other regulations, particularly as sectoral standards are developed. For example, the [Deforestation Regulation](#) states that operators falling within the scope of other EU legislative instruments that lay down requirements regarding value chain due diligence may fulfil their reporting obligations by including the required information when reporting in the context of other EU legislative instruments, such as the CSRD.

C FINANCE FOCUSED INITIATIVES



In line with its Sustainable Finance Strategy, the EU has already taken a number of steps to further the sustainability agenda within the financial sector and the financial system as such. Linked to the Green Deal and the urgency of leveraging the financial sector to address climate change and fund the green transition, several of the initiatives have predominantly been aimed at 'greening' finance rather than at capturing the full range of sustainability aspects.

Many of them, however, do contain social or human rights-specific elements and hence merit further monitoring and interrogation from a business and human rights angle. Selected finance-oriented legislative measures, as well as ones currently under development, are presented and discussed below.

C.1 SUSTAINABLE FINANCE DISCLOSURE REGULATION

WHAT IS IT?

[The Sustainable Finance Disclosure Regulation \(2019/2088\)](#) (SFDR) is part of a broader suite of measures taken by the EU in follow-up to the Sustainable Finance Action Plan. The regulation aims to strengthen the disclosures of the financial services sector pertaining to investments promoted as having sustainability as an objective or as having environmental, social, or governance (ESG) characteristics. The measure, among other things, aims to encourage financial market participants (FMPs) such as asset managers, pension funds, or insurance companies, as well as financial advisers, to scale up their consideration of negative environmental or social risks and impacts in their investment decisions or financial advice. The measure includes different components to achieve that aim. For example, FMPs with more than 500 employees have to disclose periodic entity-level “principal adverse impacts statements”. The regulation applies to both FMPs and financial advisers, covers both entity (corporate-wide) and product (investment)-level reporting, and requires disclosures in the form of pre-contractual disclosures (aimed at capturing the degree to which sustainability is considered in investment decisions), website disclosures and disclosures in periodic reports. The SFDR is accompanied by a [delegated regulation](#) that details the content, methodologies, and presentation of the relevant information required through technical standards.

WHAT STAGE IS IT AT?

The disclosure regulation was adopted in the spring of 2019 and published in December 2019. The regulation and its different components are introduced in stages, the first of which started applying to FMPs in March 2021. The final regulatory technical standard reports were published in [February](#) and [October 2021](#). The latter aims to be a “single rulebook” in relation to both SFDR requirements and taxonomy-related product disclosures (refer to the taxonomy section). The regulatory technical standards were transposed into law in April 2022 when the Commission adopted a [delegated regulation](#) in October 2022 [to require](#) FMPs to disclose their portfolios’ exposure to Taxonomy-compliant gas and nuclear-related activities in line with the Taxonomy [Complementary Climate Delegated Act \(CDA\)](#).

The delegated regulation applies from January 2023. In April 2023, the European Supervisory Authorities launched a [public consultation](#) with suggested amendments to the existing regulatory technical standards regarding principal adverse impacts and financial product disclosures.

In its [sustainable finance package](#) published in June 2023, the European Commission announced comprehensive assessment of the SFDR to enhance the usability of the overall sustainable finance framework, including the launch of a public consultation in autumn 2023.

C.1 SUSTAINABLE FINANCE DISCLOSURE REGULATION



HOW DOES IT RELATE TO BHR?

The SFDR refers to sustainability factors as “environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters.” The delegated regulation requires periodic disclosure of information on whether an investment is aligned with the OECD MNE Guidelines and the UNGPs. The delegated regulation also includes pre-contractual reporting questions on how investments align with the aforementioned frameworks. A supportive reporting template for disclosing the mandatory “principal adverse impact statement” contained in annex one of the delegated regulation further includes 14 mandatory “principle adverse impact (PAI) indicators”, five of which relate to social sustainability and/or human rights. Two of these include OECD MNE Guidelines, but none of them refer explicitly to the UNGPs; instead, they confusingly refer to the UN Global Compact. Through the OECD Guideline-related social PAIs, FMPs will have to disclose their share of investments in investee companies that have been involved in violations of the OECD Guidelines and/or UN Global Compact and lack policies to monitor compliance with the OECD Guidelines or grievance/complaints-handling mechanisms to address violations of OECD Guidelines. UNGPs are further referenced in additional voluntary indicators. In other words, once the regulation starts applying and requires more transparency through reporting, it has the potential to drive more consideration for human rights and responsible business conduct by asset managers and eventually owners and others. However, the regulation might also add to the confusion, including by introducing indicators that are not fully aligned with business and human rights standards as well as by requiring FMPs to disclose whether an investment is aligned with RBC standards (which is a difficult request as RBC standards are not compliance standards, and hence a yes / no determination is challenging as alignment with the standards entails continuous implementation efforts).



PIECE OF THE PUZZLE?

True to the name of the measure, at its core, the regulation is a disclosure regime and hence will contribute to driving more transparency around the inclusion of environmental and social risk factors in investment. It importantly addresses entities in the financial services sector, whereas the CSRD is aimed at real-economy companies. The two measures, however, are interdependent as FMPs will rely on information stemming from CSRD standards to meet obligations under the SFDR. The requirements under SFDR, however, start applying to FMPs before the requirements under the CSRD start applying to their portfolio companies, which can impair FMPs' ability to access this information from portfolio companies and hence might cause imperfect reporting under the SFDR in the first years. The SFDR also brings to life reporting in relation to the Taxonomy Regulation, as it, for instance, commits FMPs to report on the degree of taxonomy alignment, which in principle should include alignment with the minimum safeguards clause that also includes human rights standards (refer to the Green Taxonomy section). The measure, in other words, is a way of encouraging the uptake of the agenda within the financial sector and, thereby, through a trickledown effect amongst investee companies. Rather than mandating a certain performance or conduct, the bill aims to result in such change through the disclosure requirement.

C.2 THE GREEN TAXONOMY

WHAT IS IT?

[The Taxonomy Regulation](#) from 2020 aims to provide clarity for investors, companies, and policymakers on which economic activities can be considered environmentally sustainable, thereby hoping to redirect capital toward economic activities that further the aims of the Green Deal. Concretely, it introduces a classification system of environmentally sustainable economic activities based on six environmental objectives:

- Climate change mitigation
- Climate change adaptation
- Use and protection of water and marine resources
- Circular economy
- Pollution prevention and control
- Protection and restoration of biodiversity and ecosystems

For economic activities to be considered environmentally sustainable or 'taxonomy aligned', they need to align with three overarching conditions and associated technical screening criteria:

- Contribute substantially to one or more of the six objectives;
- Do no significant harm to the remaining objectives; and
- Respect Article 18 minimum safeguards, including around human rights and governance matters.

The regulation applies to financial and real economy companies within the scope of the Non-Financial Reporting Directive (NFRD) which are obliged to make entity-level disclosures, as well as financial market participants that are required to disclose to what extent financial products they market meet the criteria set out in the Taxonomy. Member States and the EU are also required to use the Taxonomy, for example, when setting up green labels or certification schemes.

The Taxonomy Regulation aims to provide incentives for a market-based green transition by potentially steering capital out of environmentally harmful

investments into environmentally sustainable ones. In other words, the Taxonomy does not in and of itself mandate any investor to divest from certain companies and into others but envisages that the provision of a classification system and associated reporting obligations will drive the market and have such an effect.

WHAT STAGE IS IT AT?

The Taxonomy Regulation came into force in July 2020. Practically, however, the first disclosures start applying from 1 January 2022 for climate adaptation and climate mitigation objectives, in line with the technical screening criteria adopted through [delegated acts](#). The remaining disclosures started applying as of 1 January 2023 in relation to the other four environmental objectives, for which delegated acts are currently under development. The Commission is expected to provide more guidance around the minimum safeguards component of the regulation in 2023, for instance, by way of an FAQ.

C.2 THE GREEN TAXONOMY



HOW DOES IT RELATE TO BHR?

It does so primarily through Article 18 on minimum safeguards, which are defined to be procedures implemented by a company that is carrying out an economic activity to ensure alignment with the OECD Guidelines and UNGPs, as well as the International Bill of Rights and the ILO Core Conventions. Article 18 aims to ensure that activities that can be considered environmentally sustainable do not at the same time cause harm to people or infringe human rights standards. The Taxonomy Regulation, however, provides little clarity around the implementation of Article 18 or how, in a disclosure context, taxonomy users are expected to document Article 18 alignment. The Platform on Sustainable Finance published its [Final Report on Minimum Safeguards](#) in October 2022. The report makes plain that alignment with the minimum safeguards includes meeting both process and performance criteria. The former can be performed by way of aligning with the UNGPs and the latter by the introduction of three outcome-oriented performance checks, including whether the undertaking has been found guilty in any related court cases. The report also suggests that the CSDD Directive and CSRD will be critical to bringing to life the practice and data needed to document and assess compliance with the minimum safeguards.



PIECE OF THE PUZZLE?

The Taxonomy Regulation is a unique piece of the puzzle in that its main unit of analysis is “economic activities”. In this respect, it differs in approach from the proposed CSDD Directive and adopted CSRD measures, which instead focus on the economic entity. It has some overlap with the SFDR in its focus on driving transparent disclosures and emphasising the economic activity level. However, through objectives and detailed technical screening criteria, the Taxonomy gets deeper into the substantive content of environmental sustainability than any of the measures stated above, in that it includes granular performance thresholds for activities to substantially contribute and do no significant harm to environmental objectives, respectively. The Article 18 minimum safeguards clause does, however, retain a focus on “undertakings” rather than activities in that it requires procedures to ensure alignment with international human rights standards is implemented by the entity carrying out the green economic activity. In this respect, the minimum safeguards are aligned with the conceptual approach in the proposed CSDD Directive, the CSRD, and the SFDR, although the latter includes a focus on both economic entity and activity levels. However, inconsistencies can lie in the details, for instance, in the example of SFDR principal adverse impact indicators (for a description, please refer to the SFDR section), which are not fully aligned with the requirements of the Article 18 clause. At this point in time, it is unclear how CSRD or SFDR-related human rights reporting or the future due diligence duty in the proposed CSDD Directive might eventually be considered proxies for alignment with Article 18. The final minimum safeguards report from the Platform on Sustainable Finance helpfully recalls that for this to work, the CSRD and associated ESRS, as well as CSDD Directive due diligence obligations need to align with UNGPs and OECD Guidelines for them to serve as relevant proxies.

C.3 TAXONOMY EXTENSION – THE SOCIAL TAXONOMY



WHAT IS IT?

The Green Taxonomy Regulation, as described above, focuses predominantly on environmental sustainability. Aside from the minimum safeguard clause, which requires alignment with the UNGPs and other international human rights and responsible business conduct standards, the Taxonomy Regulation importantly includes provision for the taxonomy to have a broader scope over time, including by extending the taxonomy to social impacts, which include human rights. A [final report](#) from the Commission-external advisory group has provided the case for a social taxonomy outlining how a social taxonomy should ideally encompass: both the social contributions of economic activities that are inherently social (such as housing or health); and other economic activities which might contribute to social sustainability in the way that they are carried out (for example, by respecting decent work standards). The report also presents a range of options for how a green and a social taxonomy might meaningfully interrelate.



WHAT STAGE IS IT AT?

The social taxonomy is at a very early stage. In 2020 the Platform on Sustainable Finance was asked to advise the Commission on extending the green taxonomy to encompass social objectives. The Platform issued its draft report for consultation in the summer of 2021 and its final report in February 2022. As a next step, the Commission was expected in 2022 to issue its own report on whether and how it plans to extend the scope of the regulation to cover social objectives. This is yet to happen, and media reports [indicate](#) that the Commission, for the moment, has stalled on the social taxonomy. Should the Commission decide to go ahead with the social taxonomy at a later time, it is expected that the Platform would be tasked with developing the social taxonomy design and eventually associated technical screening criteria.

C.3 TAXONOMY EXTENSION – THE SOCIAL TAXONOMY



HOW DOES IT RELATE TO BHR?

The social taxonomy report suggests that a social taxonomy would aim to build on and reinforce business and human rights standards. For example, the report argues that the taxonomy should include objectives oriented at minimising negative impacts and maximising positive impacts on workers, communities and consumers and/or end users. The report also argues that a social taxonomy should recognize the key contribution of respect for human rights by businesses towards realising sustainable development i.e., that addressing negative impacts on workers, consumers, or communities can constitute a substantial contribution to sustainable development. Given that a social taxonomy would likely be modelled around the design features of the existing green taxonomy, it would also take the business and human rights framework into new territory by needing to align with the green taxonomy requirements that an economic activity makes a ‘substantial contribution’ to environmental objectives and ‘does no significant harm’ to both environmental and social objectives.

If successful, the social taxonomy could offer companies and investors substantive guidance around what constitutes “good performance” on human rights in the context of an economic activity by prescribing impact performance thresholds and metrics.



PIECE OF THE PUZZLE?

A future social taxonomy would, in a manner similar to the green taxonomy, potentially provide a market-based incentive structure for aligning investments and activities with human rights. Should the EU succeed in providing such a classification system it could contribute significantly to making more tangible and concrete the “S” in ESG. Ideally, this would direct investors that want to be socially responsible to prioritise investee companies with sound human rights due diligence processes and corresponding positive outcomes for people. However, although this could be expected to interplay with the mandatory human rights and environmental due diligence duty on EU companies in the proposed CSDD Directive and the reporting requirements in the CSRD, which will also contain disclosure requirements around due diligence practices, it is not yet clear how these measures will align and interrelate.

D TRADE AND IMPORT/ EXPORT CONTROLS



In line with the EU's 2015 [Trade for All](#) and 2017 [Aid for Trade](#) strategies, the EU has used trade instruments as a tool to promote business and human rights and implementation of UN human rights conventions as well as the ILO Core Conventions.

Through the [Generalised Scheme of Preferences Plus \(GSP+\)](#), low and lower-middle-income countries that have ratified and effectively implemented 27 international conventions on human rights, labour rights, environmental preservation, and good governance can gain preferential EU market access. From 2009, new generation agreements signed by the EU include dedicated chapters on Trade and Sustainable Development. In these chapters, the EU and its partner countries commit to respecting a number of international conventions for labour standards and environmental preservation. To promote transparency and civil society involvement, these agreements also create domestic advisory groups and promote regular civil society forums.

Responsible business conduct is also a key component of the [EU Action Plan on Human Rights and Democracy 2020-2024](#). The various EU development cooperation modalities, including grants, budget support, guarantees and blending and forms of technical assistance can contribute to the creation of an enabling environment for EU regulatory initiatives relevant to business respect for human rights to be effective.

Further, the EU has imposed a number of measures aimed at restricting access to the EU single market in the form of import and export restrictions on the basis of human rights and environmental impacts. These include import controls such as the [Conflict Minerals Regulation \(2017/821\)](#) and the [Timber Regulation \(2010/995\)](#), each of which creates a due diligence and reporting obligation on importers, as well as proposed restrictions on commodities contributing to deforestation and on goods produced using forced labour, considered below. The EU also places export restrictions on items which may be harmful to human rights, such as dual-use items, which are goods, software, and technology that can be used for both civilian and military applications through the [Export Control Regulation \(2021/821\)](#).

These trade and import/export controls are supplemented by the EU's sanctions regime, which has been updated in 2020 by [Regulation \(EU\) 2020/1998](#) and [Council Decision \(CGSP\) 2020/1999](#), to establish a sanctions regime for serious human rights violations and abuses by State and non-State actors, including corporations, worldwide. This may include robust sanctions for those providing financial or other support to perpetrators of human rights abuses.

D.1 CONFLICT MINERALS REGULATION

WHAT IS IT?

The [Conflict Minerals Regulation](#) from 2017 is aimed at addressing human rights abuses linked to the sourcing of “3TG” minerals, (Tin, Tantalum, Tungsten, and Gold), which are often sourced from areas: in a state of armed conflict; fragile post-conflict areas; areas with weak or non-existent governance and security; and areas with widespread and systematic violations of international law, including human rights abuses.

The regulation requires EU-based importers of 3TG minerals to identify and address actual and potential risks linked to conflict-affected and high risk-areas when they carry out due diligence on their supply chain. This requires following a five-step framework set out in the [OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas](#). In accordance with the OECD Guidance, EU importers are required to:

- Establish strong company management systems;
- Identify and assess risk in their supply chains;
- Design and implement a strategy to respond to identified risks;
- Carry out an independent third-party audit of supply chain due diligence; and
- Report annually on supply chain due diligence.

The regulation is complemented by [Guidance for businesses](#).

WHAT STAGE IS IT AT?

The regulation was subject to an [Impact Assessment](#) and a [Study on costs and benefits for the mineral industry](#) and was signed into law in June 2017. An [appraisal of the Impact Assessment](#) followed in 2017.

Requirements on EU importers apply from 1 January 2021. A June 2021 [report](#) from a coalition of European NGOs found that there has been a considerable variance in the implementation of the regulation among EU Member States, and a general lack of transparency which it was indicated would hinder effective monitoring.

D.1 CONFLICT MINERALS REGULATION



HOW DOES IT RELATE TO BHR?

Alongside the Timber Regulation, the Conflict Minerals Regulation is one of the few EU measures which explicitly imposes human rights and environmental due diligence obligations on businesses seeking to import goods onto the single market. The Conflict Minerals Regulation acknowledges that “Human rights abuses are common in resource-rich conflict-affected and high-risk areas and may include child labour, sexual violence, the disappearance of people, forced resettlement and the destruction of ritually or culturally significant sites” and that conflict “minerals, potentially present in consumer products, link consumers to conflicts outside the Union. As such, consumers are indirectly linked to conflicts that have severe impacts on human rights”.

The regulation refers to the OECD Guidelines for Multinational Enterprises and the UNGPs, as well as basing its process of due diligence on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. That guidance defines due diligence as “an ongoing, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict” and references the UNGPs and OECD Guidelines in that definition.



PIECE OF THE PUZZLE?

The Conflict Minerals Regulation is an early example of a due diligence measure, taking inspiration from the experience of the Timber Regulation (considered in the section below). It is often cited as an inspiration for the due diligence requirements in the proposed CSDD Directive, as well as providing a precedent for the application of due diligence obligations on EU actors in relation to activities which have occurred outside the EU.

Unlike other EU measures which allow an operator to satisfy legal requirements by providing proof of certification, such as the Renewable Energy Directive, the Conflict Minerals Regulation requires ongoing due diligence. In a departure from the Timber Regulation, it also requires an independent third-party audit of the due diligence system and an annual report; however, unlike the Timber Regulation, there is no prohibition on placing any of the minerals sourced from conflict areas on the EU market.

The sector and issue-specific due diligence mechanism included in the Conflict Minerals Regulation will also interact with the due diligence obligations in the proposed CSDD Directive, which takes a broader, cross-sectoral approach to due diligence. The proposed CSDD Directive states that it shall be without prejudice to obligations in the areas of human rights, protection of the environment and climate change under other Union legislative acts. Further, it states that if the provisions of the proposed CSDD Directive conflict with a provision 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 shall prevail to the extent of the conflict and shall apply to those specific obligations.

In addition, the regulation provides a role for third-party audits overseen by government, industry associations and other organisations as part of the due diligence process. The proposed CSDD Directive, the Deforestation Regulation and the proposed Critical Raw Materials Act also make reference to such schemes. Accordingly, efforts should be made to ensure a coherent approach to the development of criteria for such schemes.

D.2 TIMBER REGULATION



WHAT IS IT?

The [EU Timber Regulation](#) from 2010 sets out the obligations of operators who first place timber and timber products on the EU market. It is part of a broad set of measures introduced by the [Forest Law Enforcement, Governance and Trade \(“FLEGT”\) Action Plan](#) adopted in 2003 to tackle illegal logging. It aims to counter the trade in illegally harvested timber and timber products by:

- Prohibiting placing illegally harvested timber and products derived from such timber on the EU market;
- Imposing a requirement that EU traders who place timber products on the EU market exercise due diligence; and
- Obliging traders to keep records of their suppliers and customers.

The three key elements of due diligence under the EU Timber Regulation are:

- Information: The operator must have access to information describing the timber and timber products, country of harvest, species, quantity, details of the supplier, and information on compliance with national legislation.
- Risk assessment: The operator should assess the risk of illegal timber in his supply chain, based on the information identified above and the criteria set out in the regulation.
- Risk mitigation: When the assessment shows that there is a risk of illegal timber in the supply chain, that risk can be mitigated by requiring additional information and verification from the supplier.



WHAT STAGE IS IT AT?

The regulation was signed into law in October 2010 and entered into application on 3 March 2013.

A [2016 Report](#) on the first two years of implementation of the Timber Regulation found that the regulation had raised awareness of the problem of illegal logging amongst EU consumers, and added value to international efforts to halt deforestation and forest degradation, conserve biodiversity and address climate change.

The report also noted that EU importers “have not consistently implemented the DD requirements during the first two years of application of the Regulation”. However, “Although the uptake of the DD obligation has been slow, there is evidence that operators are gradually implementing DD, demanding more information and legality assurance from their suppliers. This demonstrates that the DD obligation has the potential to change market behaviours of operators, thus creating supply chains free of illegally harvested timber.”

The [2017](#) and [2019](#) Reports on the implementation of the Timber Regulation each noted that although progress had been made, “continuous efforts are needed to ensure a uniform and effective application of the EUTR across countries” since “uneven implementation can have potential implications in terms of both the effectiveness of legislation and a level playing field for market operators”.

D.2 TIMBER REGULATION



HOW DOES IT RELATE TO BHR?

Alongside the Conflict Minerals Regulation, the Timber Regulation is one of the few EU measures which explicitly imposes human rights and environmental due diligence obligations on businesses seeking to import goods onto the single market. Although the Timber Regulation does not expressly deal with human rights, the [2017 Report](#) on implementation noted that it is “the first legal instrument at the European Union level which includes mandatory due diligence, a key principle for corporate sustainable responsibility in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs)”. [It has been argued that](#) the due diligence obligation in the Timber Regulation should be characterised as a process undertaken to satisfy a condition to place goods on the single market, rather than a process to encourage continuous improvement as envisaged by the UNGPs.



PIECE OF THE PUZZLE?

The Timber Regulation is an early example of a due diligence measure and is often cited as an inspiration for the due diligence requirements in the SCG Initiative, as well as providing a precedent for the application of obligations on EU actors in relation to activities which have occurred outside the EU.

Unlike other EU measures which allow an operator to satisfy legal requirements by providing proof of certification, such as the Renewable Energy Directive, the Timber Regulation requires ongoing due diligence. The Timber Regulation will be repealed by the Deforestation Regulation.

D.3 REGULATION ON DEFORESTATION-FREE PRODUCTS

WHAT IS IT?

The [Deforestation Regulation](#), which repeals the Timber Regulation, sets strict mandatory due diligence rules for companies that want to place soya, cattle, oil palm, rubber, wood, cocoa, and coffee commodities, as well as derived products, including leather, furniture, oil cakes, and chocolate on the EU market to ensure that only products that are deforestation-free, produced in accordance with national laws and covered by a due diligence statement are allowed on the EU market. The Commission's proposal followed most of the recommendations set out in a 2020 [EU Parliament report](#) but has a more restricted scope in that it does not expressly address human rights abuses and does not include a civil liability mechanism.

The rules aim to tackle any deforestation, whether legal or illegal, under the laws of the country of production. Considering the EU's position as a significant economy consuming these commodities, the Deforestation Regulation [intends](#) to help reduce global deforestation while reducing greenhouse gas emissions and biodiversity loss. The commodities in scope have been identified as the leading causes of deforestation [upon an impact assessment](#). The list of commodities will be reviewed in two years to assess whether other products need to be covered.

Along with the due diligence regime set for the operators, which includes measures to ensure traceability to the origin of commodity production, the Deforestation Regulation establishes a country benchmarking system to assess deforestation risks. Also, it asks Member States to rule on effective and dissuasive penalties, including fines reaching up to 4% of the operators' annual turnover in the EU and a temporary exclusion from public procurement processes and access to public funding.

WHAT STAGE IS IT AT?

The proposal was published on 17 November 2021 and followed a full [legislative process](#) at the EU Parliament and Council of the EU. In December 2022, a provisional agreement was [reached](#) between the EU Parliament and the Council of the EU, and formal adoption is currently awaited. The regulation entered into force on 29 June 2023. From that date, operators and traders will have 18 months, and microenterprises and small enterprises will have 24 months for the adaptation period.

D.3 REGULATION ON DEFORESTATION-FREE PRODUCTS



HOW DOES IT RELATE TO BHR?

The Deforestation Regulation acknowledges in its Recital that human rights violations are linked to expanding agricultural production, resulting in the degradation of forests. The regulation recognises the link between deforestation and adverse impacts on the enjoyment of human rights and the need to address climate change, biodiversity loss, and deforestation to ensure humanity's survival and sustained living conditions on Earth.

The Deforestation Regulation foresees strict due diligence rules for companies that want to place the subject commodities in the EU market or export from the EU market. Operators must ensure that the subject products (i) are deforestation-free, (ii) have been produced per the relevant legislation of the country of production, which includes i.e., the laws on labour rights, human rights protected under international law, and land use rights (iii) are covered by a due diligence statement. The regulation also requires some operators to publicly report on their due diligence systems and the steps taken to implement their due diligence obligations.

The due diligence process described in the regulation requires that relevant operators:

- Collect adequately conclusive and verifiable information and documents accompanied by evidence;
- Undertake a risk assessment based on the collected information to establish whether there is a risk of non-compliance with the regulation. Such an assessment should consider human rights aspects linked to deforestation, including the presence of indigenous peoples in the production region and the consultation and cooperation in good faith with them and concerns about the region of production, such as level of corruption, violations of international human rights, the prevalence of deforestation, or the complexity of the relevant supply chain.
- Apply risk mitigation measures, which include supporting their suppliers regarding compliance with the regulation through capacity building and investments.

This process differs somewhat from the process of human rights due diligence outlined in the UNGPs, not only in the procedural stages but also in approach, by not requiring a broader identification of risk with a rightsholder focus, rather a risk assessment conducted on the collection of specified information. On the other hand, the emphasis on engagement with the suppliers under the risk mitigation measures is an important feature that aligns with the UNGPs approach to exercising leverage and focusing on engagement rather than immediate disengagement, which should be considered a last resort.



PIECE OF THE PUZZLE?

The regulation imposes its own due diligence obligations on operators of the specified commodities, and, therefore, has a different personal scope to the proposed CSDD Directive. While the stated intention of the regulation is to complement the proposed CSDD Directive, the two initiatives have differing objectives. As the [proposal version of the regulation](#) noted, "While the SCG (now CSDD Directive) regime will address business operations and value chains in general, the deforestation approach is focusing on specific products and product supply chains. Therefore, while the overall objectives of the two initiatives may be shared and are mutually supportive, specific objectives are different."

In accordance with these differing objectives, the due diligence requirements of the Deforestation Regulation will, in some areas, be more specific compared to the general duties under the proposed CSDD Directive. The proposed CSDD Directive states that if the provisions of the proposed CSDD Directive conflict with a provision 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 shall prevail to the extent of the conflict and shall apply to those specific obligations. Deforestation Regulation also clarifies in its Recital that the existence of this regulation should not exclude the application of other EU legislative instruments that lay down requirements regarding value chain due diligence.

D.3 REGULATION ON DEFORESTATION-FREE PRODUCTS

The regulation clarifies that operators which also fall within the scope of other EU legislative instruments that lay down requirements regarding value chain due diligence may fulfil their reporting obligations under the Deforestation Regulation by including the required information when reporting in the context of other EU legislative instruments, such as the CSRD.

In addition, the regulation includes that operators may rely on certification schemes as a means of undertaking due diligence, specifying that these do not replace the due diligence process itself. The proposed CSDD Directive, the proposed Critical Raw Materials Act and the Conflict Minerals Regulation also make reference to such schemes; accordingly, efforts should be made to ensure a coherent approach to the development of criteria for such schemes.

D.4 A PROPOSED IMPORT BAN ON GOODS PRODUCED WITH FORCED LABOUR



WHAT IS IT?

The European Commission's proposal for a Forced Labour Ban in September 2022 followed the [calls from the European Parliament](#) for a legislative proposal on an "effective traceability mechanism for goods produced through forced labour", which it states "could pave the way for a complete ban on the importation into the EU of goods produced through modern forms of slavery or forced labour, especially forced work of vulnerable groups extorted in violation of basic human rights standards." The proposal aims to effectively prohibit the placing and making available on the EU market and the export from the EU of products made with forced labour, covering both domestic and imported products regardless of company, industry, or origin. It builds on the international definitions and standards established by the International Labour Organisation on forced labour. The prohibition of forced labour covers the entire supply chain of the subject product, including its extraction, harvest, production, or manufacture.

The proposed ban applies to economic operators, which means any natural or legal person or association of persons placing or making available products on the Union market or exporting products. Further, Member States must designate a competent authority responsible for its implementation through a robust and risk-based enforcement approach. Before initiating an investigation -in a preliminary phase- the competent authorities will assess forced labour risks based on various sources, including submissions from civil society, information on due diligence actions provided by economic operators, or a database of forced labour risk areas or products. If they identify a substantiated concern of a violation, the proposal grants the competent authorities the authority to initiate an investigation on the subject products and economic operators. If a violation is established, they can decide on the withdrawal of products from the EU market and disposal of the subject products made with forced labour. In other words, the proposed ban burdens competent national authorities to prove that products have been produced using forced labour.



WHAT STAGE IS IT AT?

The initiative was announced during the [State of the Union Address](#) by European Commission President Ursula von der Leyen on 15 September 2021. The announcement follows an [EU Trade Policy Review](#) in February 2021, which called for effective action and enforcement mechanisms to ensure that forced labour does not find a place in the value chains of EU companies, and the publication in June 2021 of European Commission [guidance](#) for companies to help combat forced labour in the supply chain.

The proposed Forced Labour Ban, which takes the form of a regulation, was published on 14 September 2022 without a full [impact assessment](#). It will now be discussed and agreed upon by the European Parliament and the Council of the European Union for reconciliation, following the EU's [ordinary legislative procedure](#). The proposal is expected to apply 24 months after its entry into force.

D.4 A PROPOSED IMPORT BAN ON GOODS PRODUCED WITH FORCED LABOUR



HOW DOES IT RELATE TO BHR?

The import ban focuses on particular human rights harms associated with forced labour, which is not only pervasive in global supply chains but is [also present within the EU](#). The proposed Forced Labour Ban acknowledges that combating forced labour and promoting corporate sustainability due diligence standards are priorities of the EU's agenda on human rights.

The Explanatory Memorandum of the proposed ban refers to the UNGPs and OECD Guidelines on Multinational Enterprises and Due Diligence regarding implementing international standards on responsible business conduct while defining forced labour based on the standards and definitions adopted by the ILO instruments. More importantly, the proposal requires the competent authorities to request from the economic operators information on actions taken to identify, prevent, mitigate, or end the risk of forced labour in their operations and value chains concerning the products under assessment, including based on due diligence guidelines or recommendations of the UN, ILO, OECD or other relevant international organisations.

On the other hand, under the proposed Forced Labour Ban, due diligence is not an obligation introduced for economic operators but merely a factor that will be taken into consideration by the competent authorities when assessing the existence of a violation. Therefore, the proposed ban does not require the broad range of economic operators to conduct effective human rights due diligence aligned with the UNGPs and OECD Guidelines. Also, the proposed Forced Labour Ban diverges from the UNGPs since it does not ask economic operators to engage with suppliers and use leverage to correct the situation of exploited workers, including through remediation, considering the interests of the right-holders.



PIECE OF THE PUZZLE?

The proposed regulation is intended to complement existing horizontal and sectoral EU initiatives, particularly the corporate sustainability due diligence and reporting obligations. The stated purpose of the proposed Forced Labour Ban is to fill the gap as the existing instruments, including the proposed CSDD Directive, currently do not include a prohibition of placing and making available products made with forced labour on the EU market.

It is unclear how the guideline on due diligence that the Commission will issue under the proposed Forced Labour Ban would interact with the due diligence requirements included in the CSDD Directive. Moreover, there are critical misalignments between the proposed Forced Labour Ban and the proposed CSDD Directive. For instance, these two instruments have differences in their personal scope. While CSDD Directive only applies to large companies that meet employee and turnover thresholds (and over time, medium-sized companies operate in “high impact” sectors), the Forced Labour Ban covers all economic operators regardless of size or sector. Since the personal scope of the CSDD Directive is more limited, the proposed Forced Labour Ban should ensure that it requires companies falling outside the scope of the CSDD Directive to undertake human rights due diligence as per the requirements of the UNGPs. Moreover, the scope of due diligence across the value chain also varies between these instruments: while the proposed ban requires competent national authorities to adopt a risk-based approach and focus on steps in the value chain where the risk of forced labour is high, current proposals for the CSDD Directive may have a more limited approach to the scope of due diligence, as the Council's general approach focuses on the upstream part of the value chain, as well as select downstream impacts.

The proposed Forced Labour Ban also does clarify how it will interact with the Sustainable Finance Disclosure Regulation (SFDR) and the use of Principal Adverse Impacts statements when competent national authorities assess the existence of a violation under the proposed Forced Labour Ban. For a deeper analysis of the Commission's Forced Labour Ban Proposal, please see the separate DIHR [publication](#).

E GREEN TRANSITION



To overcome challenges posed by climate change and associated environmental degradation, the European Commission [designs and implements](#) reforms to support a just and inclusive green transition. The critical initiative among them is the [European Green Deal](#), which aims to transform the Union into a fair, prosperous society and a climate-neutral and competitive economy. Under this initiative, a suite of policy and legislative measures was announced to achieve no net greenhouse gas emissions by 2050. These measures [identify](#) actions to be taken, particularly regarding climate change and emissions reduction, environment and circular economy, just transition, clean energy transition, and financing green and sustainable projects. In order to guide the national authorities of the Member States to achieve the goal of the Green Deal, the Commission also published the [Technical Support Instrument](#).

Among the initiatives that further the aims of the Green Deal are [the Taxonomy Regulation](#), intended to provide incentives for the market-based green transition, and the [Communication on A Green Deal Industrial Plan for the Net-Zero Age](#). Also, as an integral and complementary part of the European Green Deal, several legislative measures were introduced by the Commission, such as [the Batteries Regulation](#) and [the Critical Raw Materials Act Initiative](#).

E.1 BATTERIES REGULATION

WHAT IS IT?

[The Batteries Regulation](#) is an integral part of the [European Green Deal](#), which outlines safety, sustainability, and labelling requirements to strengthen sustainability rules for batteries and waste batteries. Once it enters into force, the new regulation will replace the existing Batteries Directive from 2006. Considering the increasing demand for batteries for sustainable development, clean energy, and climate neutrality, the Batteries Regulation sets out rules and policy measures to achieve the following objectives:

- Strengthening the internal market through a standard set of rules,
- Promoting a circular economy and
- Reducing the environmental and social impact throughout all stages of the battery life cycle.

The Regulation applies to all types of batteries sold in the EU, covering the entire battery life cycle from design to reuse or recycling. Among measures, the regulation sets targets of varying ambition levels for battery waste collection, recovery from waste batteries, mandatory minimum levels for recycled content, and recycling efficiency of materials used in batteries (cobalt, nickel, lithium, etc.). Moreover, the regulation introduces information and labelling requirements, including implementing battery passports and QR codes while setting strict restrictions for hazardous substances like mercury and cadmium. By doing so, the regulation [intends](#) to foster the development of a sustainable battery industry and support Europe's clean energy transition.

One of the most crucial elements of the regulation is the due diligence measures to address the social and environmental risks related to raw material extraction, processing, and trading for battery manufacturing purposes.

WHAT STAGE IS IT AT?

Following the [proposal](#) of the EU Commission in December 2020, the European Parliament and the Council [reached](#) a provisional political agreement in December 2022. The final compromise text of the trilogue agreement on batteries was [published](#) in January 2023. The Batteries Regulation must now be endorsed and formally adopted by the European Parliament and the Council.

HOW DOES IT RELATE TO BHR?

It does so primarily by introducing a risk-based due diligence regime for economic operators placing batteries on the EU market or into service. The Regulation foresees “battery due diligence obligations” for economic operators regardless of the battery type and requires them to verify the source of raw materials (listed as cobalt, natural graphite, lithium, nickel, and their chemical compounds) used for batteries placed on the market.

The Regulation asks for the due diligence to be consistent with the UNGPs, the OECD Guidelines, the OECD Due Diligence Guidance, and related sectoral guidelines such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. It aims to ensure that materials used for battery manufacturing are sourced responsibly by obliging companies to identify and mitigate the social and environmental risks associated with raw materials extraction, processing, and trading. The associated risks listed in the annex include child labour, forced labour, infringements on trade union freedoms, occupational health and safety, and soil, water, and air pollution, among others.

In short, the regulation generally aligns with the UNGPs approach to human rights due diligence. For instance, it identifies due diligence as a process to identify, prevent, mitigate, and otherwise address adverse impacts associated

E.1 BATTERIES REGULATION

with their activities or sourcing decisions. It emphasizes the need for effective and meaningful consultation with affected communities. It further obliges economic operators to establish a grievance mechanism, including an early-warning risk-awareness system and a remediation mechanism, based on the UNGPs.

On the other hand, the regulation introduces that due diligence obligations apply only to economic operators with a turnover exceeding EUR 40 million in the financial year preceding the last financial year. This provision constitutes a direct diversion from the UNGPs, which emphasizes that all businesses must respect human rights throughout all their operations, independent of their size. Lastly, as opposed to the UNGPs requiring due diligence throughout the entire value chain, the Batteries Regulation requires economic operators to identify and assess adverse impact risks only throughout their supply chain.



PIECE OF THE PUZZLE?

The Batteries Regulation clearly states that the provisions on due diligence obligations apply without prejudice to Union law on due diligence obligations concerning minerals and metals originating from conflict-affected and high-risk areas. Therefore, it does not affect the implementation of the Conflict Minerals Regulation that covers tin, tantalum, tungsten, and gold but does not address any raw materials used for battery production. As further interaction, the Conflict Minerals Regulation supports the implementation of the Batteries Regulation by providing an indicative, non-exhaustive, regularly updated list of conflict-affected and high-risk areas.

The regulation imposes its own due diligence obligations on economic operators placing batteries on the EU market and, therefore, has a different personal and material scope to the proposed CSDD Directive. Although the overall objectives of the two initiatives are mutually supportive, they have different specific objectives. For the economic operators who fall in the scope of both legislations, the due diligence requirements of the Batteries Regulation will, in some areas, be more specific compared to the general duties under the proposed CSDD Directive. In case of a conflict, more extensive or specific obligations will prevail. Considering the expected intersections between the scope of these two initiatives, ensuring that the two measures are mutually reinforcing is essential.

The regulation requires senior management to oversee due diligence processes, which aligns with the current proposal of the CSDD Directive, though it is not yet known whether senior management oversight will remain in the final CSDD Directive text. It is unclear how the guidelines that the Commission will publish as regards the due diligence requirements of the Batteries Regulation will interact with the requirements under the CSDD Directive. Moreover, clarification is needed on which disclosure requirements of the CSRD are those that discharge the Batteries Regulation reporting obligations.

E.2 CRITICAL RAW MATERIALS ACT

WHAT IS IT?

The proposed Critical Raw Materials (CRM) Act proposes a regulatory framework to develop and strengthen the sustainability and circularity of CRM in the EU's value chains. In the face of increasing demand for CRM, the initiative [aims](#) to identify strategic actions and policy projects along the value chain and ensure sufficient reserves where supply is at risk. Drawing on [a 2023 study on CRM for the EU](#), the proposal lists 34 CRM, which are non-energy, non-agricultural raw materials that are important for the EU economy and whose supplies are subject to a high level of supply risk. Among these CRM, 16 are labelled as Strategic Raw Materials (SRM), i.e., raw materials that score among the highest in terms of strategic importance, forecasted demand growth and difficulty of increasing production.

The proposal creates a framework for a project promoter to apply to have a project recognised as a “Strategic Project” which contributes to securing the EU's supply of SRM. This status has the benefit of streamlined permitting processes and facilitation of financing opportunities. Strategic projects are required to be implemented sustainably, meeting environmental, social and governance (ESG) criteria specified in the initiative. This includes the adoption of socially responsible practices, such as respect of human and labour rights, quality jobs potential and meaningful engagement with local communities and relevant social partners.

The initiative specifies that the assessment of whether a project meets these ESG criteria shall take into account a project's compliance with relevant EU law and international standards, including the planned CSDD Directive, the OECD Guidelines and the UNGPs. A Project promoter may show compliance with these ESG criteria by providing evidence of that it is certified as part of a scheme recognised in the law.

The decision to qualify a project as strategic will be made by the Commission and the European CRM Board, a new institution created by the proposal, which will be composed of Member States representatives.

Member States will have to identify large companies manufacturing strategic technologies using SRMs on their territory (e.g., batteries for energy storage and e-mobility, data transmission and storage, mobile electronic devices, robotics, etc.). These large companies will have an obligation to audit their supply chains every two years to map the extraction, processing and recycling of SRM they use as well as to undertake a stress test of their SRM supply chains. Under the proposed regulation, the Commission will be tasked with monitoring and stress testing supply risks related to CRM at different stages of the value chain.

WHAT STAGE IS IT AT?

The EU Commission President Ursula von der Leyen [announced](#) the launch of a CRM Act in September 2022. The announcement followed an action plan introduced in the [2020 Communication on CRM by the Commission](#), the European Parliament's [Resolution](#) in November 2021 calling for an EU strategy on CRM, and the European Council's [Versailles Declaration](#) from March 2022 calling to reduce EU's strategic dependencies on supply of CRM.

The feedback period upon a [call for evidence](#) and [public consultation](#) in preparation for the European CRM Act was completed in November 2022. The [Commission's proposal](#) for a CRM Act, which takes the form of a regulation and is informed by the impact assessment conducted by the Commission, was published on 16 March 2023. The proposal will follow the ordinary legislative procedure and be examined by the European Parliament and the Council of the EU.

E.2 CRITICAL RAW MATERIALS ACT



HOW DOES IT RELATE TO BHR?

The initiative identifies adverse social and environmental impacts as one of the fundamental problems in the supply of CRM. It acknowledges that these adverse impacts occur in third countries as well as within the territory of Member States. Environmental and human rights impacts are “sustainability considerations” that need to be satisfied in order for projects to obtain strategic status done through an assessment of impacts on human and labour rights as well as meaningful stakeholder engagement in line with internationally recognised due diligence standards. However, there are no explicit requirements for project promoters to undertake human rights and environmental due diligence when sourcing CRM and SRM. The proposal makes explicit references to relevant OECD Guidance, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the UNGPs when assessing whether a project is “strategic”. However, it also envisages that the sustainability criterion to grant strategic project status could be satisfied if the project has been certified as part of a recognised scheme under the proposed regulation, although no such certification scheme currently exists.



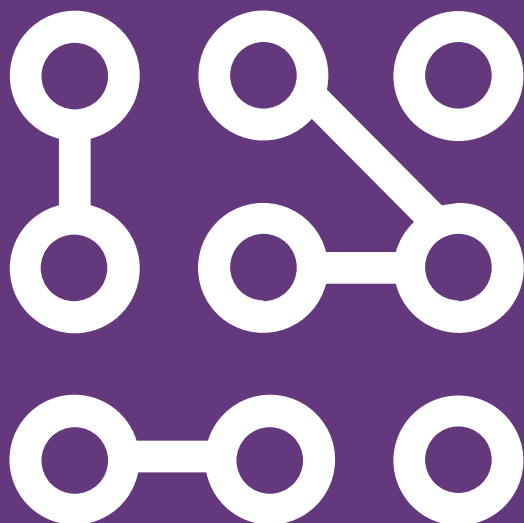
PIECE OF THE PUZZLE?

The updated lists of strategic and critical raw materials annexed to the proposed CRM Act include cobalt, nickel, lithium, tungsten and tantalum, which are also covered by the Conflict Minerals Regulation and the upcoming Batteries Regulation. However, consideration of human rights impacts under the CRM Act are undertaken only at the stage of applying for a project to be assessed as “strategic” rather than as part of an ongoing due diligence obligation as required under the Conflict Minerals and Batteries Regulations.

By creating obligations related to the sourcing and recycling of products containing CRM, the proposed CRM Act is in line with the EU’s Circular Economy Action Plan, one of the European Green Deal’s main building blocks. Similarly, the proposed regulation creates obligations for Member States to increase efforts towards the recovery of CRM from waste products and mining waste, in line with the obligations related to recycling and disposal of batteries under the Batteries Regulation.

The proposed CSDD Directive will require large and medium sized companies and working in the extraction and manufacturing of mineral products, to identify and address adverse human rights and environmental impacts by undertaking due diligence and accordingly could be covered by both initiatives. One criterion to be considered when assessing the sustainability of strategic projects is compliance with the future CSDD Directive. As such, efforts should be taken to ensure that compliance with the proposed CSDD Directive is capable of providing a relevant metric for the assessment of the sustainable implementation of a project for the purpose of granting strategic status. The CRM Act envisages a role for certification schemes to show that a project meets sustainability criteria. The CSDD Directive may also include reliance on certification schemes as a means of undertaking due diligence. Accordingly, efforts should be made to ensure a coherent approach to the development of criteria for such schemes.

F SUPPLEMENT: DIGITAL ECOSYSTEM- FOCUSED INITIATIVES



The EU has undertaken a number of specific steps towards addressing fundamental rights risks in the digital ecosystem. These actions come after a series of policy frameworks, research, and reports that have reviewed the different aspects of the current and future digital ecosystem in Europe. The direction of the EU towards further developing the digital economy and society can also be found in the 2030 Policy Programme “[Path to the Digital Decade](#)” published in September 2021, and the recent EU Commission’s “[Declaration on Digital Rights and Principles for the Digital Decade](#)”, [published](#) in the EU Official Journal in January 2023.

During this period, the EU has put in place, and proposed, a series of regulations addressing risks to fundamental rights in the scope of the digital ecosystem. The regulations have been focused on specific activities (e.g., data processing), specific technologies (e.g., AI systems), and specific actors (e.g., intermediary services providers). The four main developments in this area are [the General Data Protection Regulation](#) (GDPR), [the Digital Services Act](#) (DSA) and the forthcoming [Artificial Intelligence \(AI\) Act](#), as well as the proposed [Artificial Intelligence Liability Directive](#). All four regulations include a range of obligations placed on tech companies and activities in the digital sphere that aim to address significant, systematic, or severe risks to fundamental rights and freedoms. Additional regulations of relevance include the [Digital Markets Act](#), the proposed [Cyber Resilience Act](#), the [Regulation on addressing the dissemination of terrorist content online](#), and the proposed [Regulation on Privacy and Electronic Communications](#); however, these are not elaborated on in this briefing. Also, there are other peripheral regulations, which again are not further examined in this briefing, such as the [Data Act](#), the [Data Governance Act](#), and the [General Product Safety Directive](#).

F.1 DIGITAL SERVICES ACT



WHAT IS IT?

One of the overarching goals of the [Regulation on a Single Market for Digital Services](#) (more commonly known as the Digital Services Act, or DSA) is [indicated](#) to “create a safer digital space in which the fundamental rights of all users of digital services are protected,” by establishing harmonised rules for a safe, predictable and trusted online environment. The Act specifically regulates providers of intermediary services (which is defined to include “mere conduit”, “hosting” and “caching” services) and [focuses](#) on their role in the “intermediation and spread of unlawful or otherwise harmful information and activities”. It also addresses how efforts to moderate content by such services pose risks to the fundamental rights of their users, in particular, the right to freedom of expression.

The DSA imposes obligations of different levels of intensity in content moderation, depending on the [type of intermediary services providers](#). It ranges from all intermediary services providers being subject to requirements on their terms and conditions regarding content moderation, and reporting on how they do content moderation, to online platforms being required to provide access to a complaint-handling system.

The Act requires different levels of communication and reporting dependent on the type of service. All intermediary services providers have a reporting obligation on removal orders, information orders, content moderation, and complaints. Online platforms have additional reporting obligations on out-of-court dispute settlement, suspensions for misuse, and use of automated means in content moderation, while very large online platforms (with over 45 million users) have additional reporting obligations on systemic risk assessment, mitigating measures, independent audit report, and audit implementation report.

Providers of very large online platforms and very large online search engines are obliged to:

- assess and mitigate significant systemic risks, including risks to fundamental rights, stemming from their services
- be subject to independent audits to assess their compliance with their obligations under the Act
- apply additional requirements on content recommender systems and advertising.



WHAT STAGE IS IT AT?

The [proposal](#) was published on 15 December 2020. The EU Parliament adopted [amendments](#) to the proposal on 20 January 2022, and a political agreement between the EU Parliament and EU Member States was [reached](#) on 23 April 2022. The Act was then [adopted](#) during the first reading by the EU Parliament on 5 July 2022, followed by the [formal adoption](#) by the Council of the EU on 4 October 2022. It was published in the Official Journal of the EU on 27 October 2022 and [entered into force](#) on 16 November 2022. It is expected to start applying for all regulated entities on 17 February 2024.

F.1 DIGITAL SERVICES ACT



HOW DOES IT RELATE TO BHR?

The DSA is not framed as a human rights due diligence framework; however, it emphasises the need for intermediary services providers (including online platforms) to ensure their activities protect human rights online, including the right to privacy, freedom of expression and information, prohibition of discrimination, and vulnerable users. The Recital of the DSA states that all providers of intermediary services should pay due regard to relevant international standards for the protection of human rights, such as the UNGPs.

Some of the obligations explicitly require intermediary services providers to consider human rights, including:

- Requiring that they have due regard to the rights of all parties involved, including the applicable fundamental rights of the recipients of the service when the restrictions are placed on the use of the service;
- Amendments adopted by the EU Parliament that contain additional requirements to consider particular human rights in specific instances, such as voluntary efforts to investigate illegal content, shall be non-discriminatory.

In particular, the DSA requires very large online platforms to identify, assess and put in place mitigation measures for significant systemic risks related to their services, the scope of which includes any actual and foreseeable negative effects for the exercise of fundamental rights. At this point, the DSA partly aligns with the UNGPs approach to due diligence since it asks to identify actual and potential impacts, considering their severity and probability of the risks.

On the other hand, the overall due diligence obligations in the DSA concerning a transparent and safe online environment depart from the due diligence process set out in the UNGPs on several accounts. The due diligence obligations apply selectively to digital service providers, depending on the nature of their services and their size. The UNGPs expect that all businesses' due diligence processes adopt a risk-based approach, addressing any risks in respect of actual and potential human rights impacts. Further, the UNGPs

require adequate and meaningful consultation with the affected stakeholders; on the contrary, the DSA's Recital states that providers of very large online platforms and of very large online search engines conduct their risk assessments and design their risk mitigation measures with the involvement of representatives of groups potentially impacted by their services only "where appropriate". The due diligence requirements in the regulatory text also omit any provision for stakeholder engagement and consultation.



PIECE OF THE PUZZLE?

As noted above, the due diligence obligations in the DSA are both sector-focused and narrower in scope than the UNGPs and the broader cross-sectoral human rights and environmental due diligence obligations in the proposed CSDD Directive.

The proposed CSDD Directive states that its provisions shall be without prejudice to obligations in the areas of human rights, protection of the environment and climate change under other Union legislative acts. Furthermore, it states that if any stipulation made by the proposed CSDD Directive conflicts with a provision of another EU legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act shall prevail to the extent of any such conflict and shall apply to those specific obligations. The disclosure requirements in the DSA will also need to be considered alongside the disclosure requirements in the CSRD.

The proposed EU Artificial Intelligence Act, examined in detail below, also establishes that it shall not affect the application of the provisions on the liability of intermediary service providers of the DSA.

F.2 EU ARTIFICIAL INTELLIGENCE ACT



WHAT IS IT?

The proposed [EU Regulation on harmonised rules on artificial intelligence](#) (AI Act) is part of a wide range of initiatives taken by the EU in relation to digital technologies, including AI. It should be seen in the light of the “[European Strategy on AI](#)” (2018), “[the Coordination Plan on AI](#)” (2018) (a joint commitment with Member States), and the “[Guidelines for Trustworthy AI](#)” in 2019” developed by the High-Level Expert Group on Artificial Intelligence.

The objective of the proposed AI Act is to ensure that AI systems are safe and respect the existing laws on fundamental rights and values of the European Union, especially considering that its advancement creates specific challenges regarding safety and protection due to the distinct characteristics of this technology.

The law addresses applications of AI to four risk categories: 1) applications and systems that create an unacceptable risk, such as a government-run social scoring system; 2) high-risk applications, such as scanning of job applicants’ CVs; 3) applications that are of limited or, 4) minimal risk, such as its use in identifying patterns in documents with the use of an algorithm.

The AI Act places a ban on unacceptable risk applications of AI and specifies that providers of high-risk AI systems need to have a procedure in place to assess risks throughout their lifecycles. Providers and users of AI systems that are not within the unacceptable risk or high-risk categories are not required to have such procedures in place; rather, they are encouraged to develop codes of conduct that reflect the spirit and intent of the AI Act’s requirements for high-risk AI systems.

The Act includes certain disclosure obligations placed on a provider of a high-risk AI system to inform authorities where the application presents a risk to fundamental rights. The AI Act also introduces administrative enforcement mechanisms.



WHAT STAGE IS IT AT?

The EU Commission developed a [White Paper on AI](#) (2020), which was followed by a public consultation, and which finally led to the [AI Act proposal](#) that the EU Commission published on 21 April 2021. The Council adopted its common position (‘general approach’) on the AI Act in December 2022. The European Parliament [adopted](#) its negotiating position on 14 June 2023. Negotiations between the three institutions began in June 2023.

F.2 EU ARTIFICIAL INTELLIGENCE ACT



HOW DOES IT RELATE TO BHR?

The proposed regulation aims to provide AI developers, deployers, and users with clear requirements and obligations with respect to specific uses of artificial intelligence. With its stated objectives of ensuring that AI systems have no negative impacts on fundamental rights, the Act has implications for businesses developing or using AI systems. The adverse impacts that AI causes on fundamental rights, including the right to privacy, protection of personal data, freedom of expression and information, freedom of assembly and of association, non-discrimination, consumer protection, workers' rights, rights of persons with disabilities, rights of children, are acknowledged in the proposal.

While there are no explicit references to the UNGPs in the AI Act, several of the UNGPs' due diligence requirements are addressed in part by the proposal's text. The proposed regulation aligns to an extent with the UNGPs' approach to due diligence in identifying, preventing, and mitigating potential or actual adverse impacts connected to an activity: it requires a risk management system be adopted where the use of artificial intelligence presents a high risk to fundamental rights or safety. The proposed regulation also follows the approach of the UNGPs to changes in operations or operating contexts, acknowledging that assessment and review is an ongoing, iterative process. The proposal outlines how the risk management system should incorporate adequate procedures for testing; and it details requirements for its oversight, evaluation, and revision, in addition to post-market monitoring of the use and impact of the AI deployed. The proposal also incorporates aspects of the UNGPs regarding businesses' external communication with affected stakeholders, with the proposed regulation intending those operators of high-risk AI systems ensure transparency and provision of information to users and further mandates record-keeping for reporting and investigating of any adverse AI-related incidents.



PIECE OF THE PUZZLE?

As with the Digital Services Act (DSA), the AI Act specifies a number of activities to identify and assess actual or potential adverse impacts on fundamental rights. The risk-based approach and wide scope extending to AI applications developed and utilised across a range of stakeholders, including larger business actors, should ensure the alignment of the AI act with the due diligence obligations within the proposed CSDD Directive and the CSRD, both of which take a broader, cross-sectoral approach to due diligence. This approach aims to achieve a consistent, harmonised implementation of the legal framework in achieving its objectives and, should the provisions of the proposed CSDD Directive conflict with a provision of another EU legislative act (such as the AI Act), then whichever provides for more extensive or more specific obligations, shall prevail. The disclosure requirements in the AI Act will also need to be considered alongside the disclosure requirements in the CSRD. The AI Act further states that it shall not affect the application of the provisions on the liability of intermediary service providers of the DSA. Moreover, it further establishes that its application is without prejudice and complements the General Data Protection Regulation (see page 57).

F.3 ARTIFICIAL INTELLIGENCE LIABILITY DIRECTIVE



WHAT IS IT?

The proposed [Artificial Intelligence Liability Directive](#) (AILD) has a stated aim to improve the functioning of the EU single market by laying down uniform rules for certain aspects of non-contractual civil liability for damage caused by the involvement of AI systems. By introducing harmonised rules, it is intended to prevent the emergence of fragmented AI-specific adaptations of national civil liability rules and to ensure that persons harmed by AI systems enjoy the same level of protection as in cases not involving AI systems. In this regard, it aims to clarify the liability of companies developing or using AI.

In this scope, it [addresses](#) the difficulties of proof in legal proceedings linked with AI to support that justified claims are not hindered. Specifically, the AILD applies to non-contractual civil law claims for damages caused by AI systems, where such claims are brought under fault-based liability regimes, and it eases the burden of proof through the (i) use of disclosure and (ii) a rebuttable presumption of a causal link.

1. The use of disclosure (in other words, the disclosure of evidence) aims to provide affected persons seeking compensation for damage caused by the high-risk AI systems the possibility to identify potentially liable persons and relevant evidence for a claim. With this goal, the AILD empowers national courts to order the disclosure of relevant evidence about specific high-risk AI systems that are suspected of having caused damage.

If a defendant fails to comply with an order by a national court, the court shall presume the defendant's non-compliance with a relevant duty of care, which can be further rebutted by the defendant. Claimants can also request the disclosure of evidence from providers or users that are not defendants if all proportionate attempts were unsuccessful to gather the evidence from the defendant.

2. In addition, the AILD establishes a rebuttable presumption of causality between the defendant's fault consisting of the lack of compliance with the

prescribed duty of care under the EU or national law and the output subject to a damage claim. Such output can be a result produced by the AI systems or the failure of the AI systems to produce an output that gave rise to the relevant damage. By doing so, AILD intends to provide an effective basis for the compensation claims. How to apply the presumption varies based on the level of the AI system's risk as well as the usage of the AI systems.

These measures are intended to give those seeking compensation for damage caused by AI systems a more reasonable burden of proof and a chance to succeed with justified liability claims.



WHAT STAGE IS IT AT?

In October 2020, the European Parliament [adopted](#) a legislative own-initiative resolution on civil liability for AI and requested the Commission to propose legislation. On 28 September 2022, the Commission delivered on the objectives of the [White Paper on AI](#) and on the European Parliament's request with the [Proposal](#) for the AILD. The Commission's proposal will now need to be adopted by the European Parliament and the Council.

F.3 ARTIFICIAL INTELLIGENCE LIABILITY DIRECTIVE



HOW DOES IT RELATE TO BHR?

The AILD aims to enable effective private enforcement of fundamental rights and preserve the right to an effective remedy where AI-specific risks have materialised and also to give businesses an incentive to prevent damage in order to avoid liability.

Access to remedy is the third pillar of the UNGPs. Under the UNGPs, States must take appropriate steps to ensure that those affected by human rights abuse have access to effective remedies through judicial and legislative means, among other means. In order to realise this effective remedy, States are also expected to consider ways to reduce legal, practical, and other relevant barriers that could lead to a denial of access to remedy. The combination of the disclosure and burden-shifting mechanisms of the AILD could be a way to ensure the effective access to remedy by reducing the barriers for the claimants in civil liability litigations in the EU.

It also emphasises the duty of care, which means a required standard of conduct set by national or Union law to avoid damage to legal interests, including life, physical integrity, property, and the protection of fundamental rights. Moreover, the AILD has the potential to ensure effective enforcement of the due diligence mechanisms foreseen under both the AI Act and the proposed CSDD Directive.



PIECE OF THE PUZZLE?

The proposal establishes that the AILD and the AI Act are complementary and reinforce each other. While the AI Act aims to ensure safety and protect fundamental rights will reduce risks, it does not eliminate those risks entirely because damage may still occur when such a risk materialises. The AILD also provides an incentive for businesses to comply with the AI Act and therefore contributes to preventing the occurrence of damages, in addition to its potential contribution to the enforcement of the requirements for high-risk AI systems imposed by the AI Act as the failure to comply with those requirements constitutes an important element triggering the alleviations of the burden of proof.

The AILD further establishes that the proposal does not affect the rules set by the DSA and complements the DSA and the General Data Protection Regulation, which is further examined below.

Regarding its possible interaction with the future CSDD, it is unclear yet how the AILD aligns with the liability mechanism seeking accountability for adverse impacts under the CSDD regime. It remains to be seen how the interaction between the enforcement of the AI Act and the future CSDD will further impact the enforcement of the AILD.

F.4 GENERAL PRODUCT SAFETY REGULATION



WHAT IS IT?

The [General Product Safety Regulation](#), which will replace the current [General Product Safety Directive](#) by [transforming](#) it into a regulation, is an integral part of the [New Consumer Agenda 2020](#) of the European Commission. The regulation seeks to modernise the general framework for the safety of non-food consumer products and improve the internal market's functioning while providing high consumer protection. More importantly, it seeks to address the product safety challenges arising from emerging technologies and the increasing amount of goods and products sold online. It [establishes](#) clear obligations for online marketplaces and creates a single set of market surveillance rules while redefining the safety requirements for the products.



WHAT STAGE IS IT AT?

The European Commission [published](#) the proposed General Product Safety Regulation in June 2021. The proposal followed an ordinary legislative procedure, and three trilogue meetings were [held](#) between 15 September and 28 November 2022. The European Parliament and the Council [reached](#) a [provisional political agreement](#) on the proposed regulation on 28 November 2022. The regulation is now subject to formal approval by the EU Council and the European Parliament before it comes into force.

F.4 GENERAL PRODUCT SAFETY REGULATION



HOW DOES IT RELATE TO BHR?

The regulation does not set a concrete due diligence scheme or does not refer to internationally recognised instruments such as the UNGPs or the OECD Guidelines. Nevertheless, the regulation reiterates that all consumers, including the most vulnerable, such as children, older persons, or persons with disabilities, have the right to safe products while emphasising that dangerous products can negatively affect consumers and citizens.

In this scope, it extends consumer protection to the new digital technologies, acknowledging that new technologies might also pose new risks to consumers' health and safety or change how the existing risks could materialise. It emphasises the need for a new risk assessment on the products if new technologies, such as software updates, have a substantial impact on the safety of the original product. The regulation requires that when assessing whether a product is safe, the risks to vulnerable consumers such as children, older people, and persons with disabilities, as well as the impact of gender differences on health and safety, should be a separate consideration. It specifically emphasises the need to consider the health risk posed by digitally connected products, especially to vulnerable consumers such as children, and calls manufacturers to ensure that the design of these products follows the children's best interests. Aspects for assessing the safety of products also include cybersecurity and evolving, learning, and predictive functionalities of a product.

The regulation further obliges manufacturers and economic operators to conduct an internal risk analysis before placing a product on the market by including information on the analysis of the possible risks related to the product and the solutions or corrective measures adopted to eliminate or mitigate such risks. Regarding access to remedy, it allocates a specific chapter on the right to information and remedy by reinforcing consumer rights, i.e., the right to be informed or to file a complaint where the product is dangerous, along with extending the possible remedies to be offered for consumers in the event of a recall.

Lastly, the regulation foresees specific obligations related to product safety for providers of online marketplaces. In this scope, providers of online marketplaces must cooperate with market surveillance authorities if they detect a dangerous product on their platform and establish a single point of contact to enable consumers to communicate directly and rapidly with them concerning product safety issues. Providers of online marketplaces are also required to ensure that they have internal product safety processes in place to comply with this regulation without undue delay.



PIECE OF THE PUZZLE?

The text [proposed](#) by the European Commission includes a section stating that the proposal is consistent with the EU's digital policies in place, in particular with the proposal for the DSA and with the legislative work on AI and the internet of things. It further states that the proposal provides a safety net for products and risks to the health and safety of consumers that do not enter into the scope of application of the AI Act. The [text](#) of the provisional political agreement reached between the Council and the Parliament also clarifies that this regulation should apply without prejudice to the provisions of the DSA. It remains to be seen how these different instruments interact with each other in practice.

F.5 GENERAL DATA PROTECTION REGULATION

WHAT IS IT?

The [General Data Protection Regulation](#) (GDPR) aims to protect the “fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data”. It provides for rules on the processing of personal data of individuals (“data subjects”) by automated means or as part of a filing system.

The GDPR applies to all data controllers and processors, including public authorities and bodies, and only covers one particular dimension of a business activity: data processing.

Businesses, to the extent that they are “controllers” (those who determine the purposes and means of the processing of personal data) or “processors” (those who process personal data on behalf of the controller), are subject to obligations under the GDPR, including:

- To process data according to the principles of lawfulness, fairness and transparency, with a prohibition or restriction on the processing of certain categories of personal data (e.g., data concerning an individual’s racial or ethnic origin or criminal convictions and offences);
- To give effect to the rights of the data subject (e.g., to provide information on, to rectify or erase their personal data);
- To implement measures to ensure and demonstrate that processing of data is conducted in accordance with the GDPR (including measures designed to implement data protection principles) and to ensure secure processing;
- To carry out assessments of the impact on the protection of personal data caused by processing that is likely to result in a high risk to the rights and freedoms of natural persons. This activity should include two assessments: (1) an assessment of whether the type of processing is likely to result in a high risk to the rights and freedoms of natural persons, and (2) where that is found to be the case, a specific data protection impact assessment (DPIA) must be carried out. The DPIA should specifically contain an assessment of the risks to the rights and freedoms of natural persons and the measures that should be taken to address those risks.

The GDPR also outlines requirements regulating the duties of controllers in instances where data breaches that result in the disclosure of personal data present a high risk to the individuals concerned. The regulation also sets out certain conditions for reporting the potential consequences of automated decision-making based on the processing of personal data, though it does not require disclosures in respect of any impact assessment or due diligence conducted.

WHAT STAGE IS IT AT?

The GDPR was adopted on 14 April 2016 and has applied since 25 May 2018.

F.5 GENERAL DATA PROTECTION REGULATION



HOW DOES IT RELATE TO BHR?

The GDPR sets out to protect individuals' fundamental rights in the context of the processing of their personal data and includes a series of due diligence requirements for businesses as "controllers" or "processors" of personal data. The regulation specifically acknowledges the inherent risks that data processing may pose to fundamental rights, including the right to private and family life, home and communications; the protection of personal data; freedom of thought, conscience and religion; freedom of expression and information; the right to due process, and to an effective remedy in cases where interference has occurred.

The GDPR aligns to a certain extent with the process of human rights due diligence as set out in the UNGPs. The regulation adopts a risk-based approach to determining the safeguards necessary to ensure citizens' fundamental rights are adequately protected. This method includes a requirement to assess whether the activities performed are likely to present a high risk to the rights and freedoms of persons whose personal data is being processed. Where a high risk is identified, a Data Protection Impact Assessment (DPIA) should then be performed, which evaluates the extent of the threats to fundamental rights posed and incorporates a further analysis of the appropriate measures to address them. In parallel to the approach of the UNGPs, impact assessment is confirmed as an iterative, ongoing process that is subject to regular review.

While the principal focus for the due diligence requirements of the GDPR relates primarily to the right to the protection of personal data, the entirety of protections granted by the EU Charter of Fundamental Rights is intended to be considered in its application. Further, it contains specific provisions that reflect the concern that certain personal data can be particularly sensitive and also specifically acknowledges that children merit additional protection as data subjects. The regulation also acknowledges that the processing of special categories of data may lead to discrimination and provides additional safeguards where privacy and confidentiality are especially important, such as in evaluating workplace performance.



PIECE OF THE PUZZLE?

As with both the DSA and AI Act, the GDPR contains specific provisions corresponding to requirements to identify and appraise potential adverse impacts. However, in contrast to the aforementioned Acts, the GDPR has the specific objective to protect personal data. It is important, though, to emphasise that beyond protecting the data itself, the purpose of the legislation is in fact to safeguard the right to privacy and the right to the protection of the personal data of the individuals concerned. The broad application of the regulation, given that the processing of personal data is increasingly becoming ubiquitous across many business activities, means that the GDPR's provisions will inevitably interact with the due diligence obligation in the proposed CSDD and the adopted CSRD. It remains to be seen how the CSDD and CSRD can provide support in improved reporting and transparency in relation to the data processing activities covered under the GDPR.

F.6 REGULATION ON TRADE OF DUAL-USE ITEMS



WHAT IS IT?

The EU Regulation on Trade of Dual-use Items was [published](#) in the Official Journal of the EU in June 2021. The regulation [aims](#) to strengthen control over the export, transit, brokering, and technical assistance of dual-use items, including software and technology, which can be used for civil and military purposes.

The primary purpose of this regulation is to ensure that relevant considerations, including international obligations and commitments, national foreign and security policy issues, human rights, intended end-use, and risk of diversion, are considered in the area of dual-use items. The regulation introduces precise and robust legal requirements concerning dual-use items while strengthening guidance to exporters regarding responsible practices. It allows Member States to fulfil their responsibilities, particularly regarding non-proliferation, regional peace, security and stability, and respect for human rights and international humanitarian law, through an effective common system of export controls on dual-use items.

The regulation emphasises cyber-surveillance items, a form of dual-use items “specially designed to enable the covert surveillance of natural persons by monitoring, extracting, collecting or analysing data from information and telecommunication systems”. For cyber-surveillance items, it acknowledges the danger of misuse by persons complicit in or responsible for directing or committing severe violations of human rights or international humanitarian law and foresees additional authorisation requirements.



WHAT STAGE IS IT AT?

The regulation was [published](#) in the Official Journal of the EU in June 2021 and is currently in force.

F.6 REGULATION ON TRADE OF DUAL-USE ITEMS



HOW DOES IT RELATE TO BHR?

The regulation foresees due diligence obligations for exporters, brokers, providers of technical assistance, or other relevant stakeholders to enable them to act in conformity with this regulation. Accordingly, they must assess risks related to transactions through transaction-screening measures as part of an Internal Compliance Programme (ICP). The regulation requires that the exporters' size and organisational structure have to be considered when developing and implementing ICPs.

As defined by the regulation, ICP systems should be ongoing and cover effective, appropriate, and proportionate policies and procedures to achieve compliance with the regulations by analysing the risks related to the export of the items. Although there is no direct reference to the UNGPs in the regulation, the structure of the ICP systems aligns with the UNGPs approach to some extent. As the human rights due diligence mechanisms foreseen under the UNGPs, the ICPs are structured as ongoing risk management systems proportionate to human rights and humanitarian law risks related to the end-use of dual-use items.

In this scope, current regulation requires exporters to adopt due diligence measures to identify risks of possible human rights and humanitarian law violations in their value chain, particularly concerning the end-use of the exported cyber-surveillance items. According to its due diligence findings, the exporter may suspect that cyber-surveillance items it plans to export are intended to be used in connection with the commission of severe human rights and international humanitarian law violations. In this case, the exporter shall notify the competent authority and will follow the competent authorities' decision/authorisation. Therefore, the regulation demonstrates a commitment of the EU towards human rights-based export control.



PIECE OF THE PUZZLE?

The regulation has the potential to [enhance](#) the EU's capacity to protect human rights and support secure value chains for strategic items. It constitutes a specific piece of the legislative framework due to its focus on human rights or humanitarian law violations in the end-use of dual-use items. Since the regulation takes a value chain approach, with a specific focus on the phase of the use of the product, it remains to be seen how the regulation's due diligence requirements will interact with those of the proposed CSDD Directive. In particular, the proposals for the CSDD Directive have varying degrees of scope, with the Commission and the Council providing limitations with concepts such as "established business relationships" or "chains of activities" respectively, and could mean that the phase of the use of products is not covered by the proposed CSDD Directive. Similarly, the proposed CSDD Directive states that its provisions apply without prejudice to other regulatory measures.

G SUPPLEMENT: PUBLIC PROCUREMENT



G.1 SUPPLEMENT: PUBLIC PROCUREMENT

WHAT IS IT?

The [EU Directive on Public Procurement](#) (2014/24/EU) complements the EU's other procurement directives to allow public authorities in member states to “engage in socially responsible public procurement by buying ethical products and services, and by using public tenders to create job opportunities, decent work, social and professional inclusion and better conditions for disabled and disadvantaged people.” The directive requires Member States to adopt measures applicable to procurements over certain thresholds, to:

- ensure that in the performance of public contracts, economic operators comply with applicable obligations in the fields of environmental, social, and labour law;
- ensure mandatory grounds for public authorities to exclude economic operators on grounds including corruption, human trafficking, and include the possibility to exclude economic operators when the contracting authority can demonstrate a violation of environmental, social, and labour law obligations;
- reject tenders that are abnormally low due to poor human rights standards, in case the economic operator is unable satisfactorily to account for the low level of the price; and
- ensure the principle of proportionality, which means that the requirements, award criteria, technical specifications, etc., must be proportional and linked to the subject matter of the contract.

WHAT STAGE IS IT AT?

In 2020, the EU Commission [announced](#) that a review of the Public Procurement Directive should take place in 2021. This review has [since been delayed](#) due to the pandemic and delays by states in transposing the directive. [Information on the transposition of the Directive](#) into the law of 15 Member States was published by the EU Commission in 2019. However, the EU Commission's workplan [does not make provision](#) for a review in [2022](#) and [2023](#).

The EU Commission has [stated](#) that the review is to be “limited to the economic effects on the internal market resulting from the application of the thresholds on the internal market, in particular in terms of factors such as the cross-border award of contracts and transaction costs” and that “wider questions relating to the functioning of the directive are not within the scope of this specific review.” Consequently, the elements within the directive related to business and human rights may not fall within the scope of this review.

G.1 SUPPLEMENT: PUBLIC PROCUREMENT



HOW DOES IT RELATE TO BHR?

The directive does not explicitly reference the UN Guiding Principles on Business and Human Rights or the OECD Guidelines for Multinational Enterprises. However, it has a human rights dimension in requiring that economic operators comply with applicable obligations in the fields of environmental, social, and labour law, including the 8 ILO Core Conventions. This gives public authorities the ability to introduce measures across the procurement cycle (including in tender documents and contracts) to ensure that economic operators respect human rights. It also requires that economic operators be excluded from winning public tenders should they be convicted of human trafficking and gives public authorities the ability to exclude economic operators convicted of other human rights abuses.

However, the directive articulates a principle of proportionality, which means that measures (including requirements, award criteria, and technical specifications) designed to ensure economic operators demonstrate and implement respect for human rights must be proportional and linked to the subject-matter of the public contract. Broad measures addressing the economic operator as a whole (e.g., requiring the company to have a human rights policy or equal pay among all staff) cannot be required. A public authority can require that all supplies which the authority purchases are produced in accordance with, for example, Fair Trade labelling, but not that all the supplies produced by the economic operator, including supplies not produced for the contracting authority, shall be made according to such a standard.

This requirement limits the potential to use public procurement to fully implement the UNGPs and include measures to require, for example, that economic operators implement human rights protections and undertake human rights due diligence across the full breadth of their operations.



PIECE OF THE PUZZLE?

The Public Procurement Directive does not require due diligence per se, so it is unclear how the requirements for socially responsible public procurement will align with due diligence as articulated in the CSDD. Nonetheless, when state bodies purchase goods and services, they act as a business. Should proposed due diligence legislation be applicable to state bodies when they are acting as a business, then the limited scope of due diligence allowed for under the Public Procurement Directive may need to be addressed.

Presently the CSDD does not expressly deal with public procurement nor includes an explicit link to the Public Procurement Directive. This disconnect has been criticised by a range of stakeholders, including the [ETUC](#). However, public buyers may be indirectly captured by the CSDD if a company within the scope of the CSDD sells goods or services to a public body, given that companies covered by the CSDD are required to undertake due diligence across their value chains.

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