

**2024**

# III ASCEA

**Conference**



# The EU's Corporate Sustainability Due Diligence Directive and Human Rights: Ensuring Due Diligence in Labor Practices

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# Due Diligence

- UNGPs: Due diligence is a "process to identify, prevent, mitigate and account for how they [companies] address impacts on human rights"
- Due Diligence as a standard of care (human rights context) and Due Diligence as a process to prepare business transactions (business context)
- HRDD is not just about the assessment of business risks and compliance with legal obligations but also requires consideration of stakeholders, including workers at supply chains, interests that are often not identical to those of the contracting parties
- Standard of conduct, not on result (?)

# EU's CSDDD

**SUBJECT MATTER:** Actual and potential human rights adverse impacts

## **ELEMENTS:**

- 1) Identifying and assessing actual and potential human rights risks
- 2) Integrating and acting upon the findings
- 3) Tracking Responses
- 4) Communicating how impacts are addressed

**PERSONAL SCOPE:** 1000+ employees and a net worldwide turnover of EUR 450+ million (+/- 6.000 EU companies and +/- 900 non-EU companies)



# UNGPs

**SUBJECT MATTER:** Actual (occurred or currently occurring\_ and potential (may occur, has not happened yet) human rights impacts

## **ELEMENTS:**

- 1) Integrating DD into their policies
- 2) Identifying actual or potential adverse impacts
- 3) Preventing and mitigating potential adverse impacts, bringing actual adverse impacts to an end, and minimizing their extent
- 4) Establish and maintain a complaints procedure
- 5) Monitoring the effectiveness of their DD policy and measures
- 6) Publicly communicating on DD

**PERSONAL SCOPE:** All enterprises

# potential labour rights risks

- Duty to know – comprehensive and proactive attempt to uncover human rights risk
- Understanding the 'specific impact on specific people, given a specific context of operation'
- Collect data and information as a precondition for taking actions
- Taking variables into consideration i.e. different business operations may differently affect certain groups e.g. posted workers, migrant workers, women, etc.
- A non-exclusive list of tools and methods to identify and assess risks
- **Labour rights context:**
  - **Self-assessment as a tool:** Assess its own policies and business practices and understand how they really work in practice
  - **Meaningful engagement with stakeholders** (consultations not limited only to workers' organizations, but also to consult stakeholders outside of the company e.g. CSOs, governments, business partners in supply chain, or local communities.



# Posted workers' perspective



- Employee sent out by his employer to carry out services in another country on a temporary basis.
- Specific labor rights risks
  - undeclared work and labor exploitation
  - poor working conditions
  - living wage (“cheap(er) labour”)
  - irregular payment of social contributions
  - occupational safety and health rights
  - pregnancy and maternity leave

\* prioritizing labor rights risks i.e. different industries may impose different risks (construction sector, textile sector, etc.) – context must be taken into account to reach the standard of care



- **Duty to act based on knowledge**
- **Positive obligation to act, to not remain a passive observer**
- **Three stages at which a diligent enterprises should act:**
  - prevention phase (potential risks)
  - mitigation phase (occurring risks)
  - remediation (when risks are not prevented on time) – *restitutio in integrum* or fair compensation
- **What is an appropriate measure?**
- **What kind of leverage can a corporation use over the business partner in its supply chain that has caused an adverse labor rights impact?**

# Challenges – work in progress

- A labor rights violation occurred – the company does not directly cause, but the impact is directly connected with its operations, products, or services, or by a business relationship
- The burden of proof remains on the victims, making it hard for those who have been exploited in global value chain to access justice
- **‘Reach out and help’** principle – Big corporations are mandated **to only terminate business relationships with suppliers as a last resort** – encouraging a responsible approach and cooperation to solve problems and ultimately protecting the income of workers.
- Financial institutions are not sufficiently covered by the regulation (excluded from the scope of EU’s CSDDD)
- Checkbox process
- Possible competition disturbances



# Possible developments

- Influence on contractual obligations e.g. content of a commercial contract may include human rights clauses (Draft - European Model Clauses (EMCs) for Responsible and Sustainable Chains, July 2024)
- Compliance with CSDDD may become criterion for awarding public procurement contracts
- A growing number of countries, trade unions and corporations making public commitments to implement living wages

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Thank you  
for your attention!

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