



Supporting the implementation of the EU Corporate Sustainability Due Diligence Directive in global supply chains involving smallholders and their communities



Solidaridad

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SUMMARY

This paper highlights crucial measures that the European Union and member states should develop for an effective implementation of the EU Corporate Sustainability Due Diligence Directive (CSDDD), particularly focusing on supporting smallholder¹ farmers and their communities outside the EU. The CSDDD is an EU directive that aims to advance responsible business behaviour in global value chains regarding human rights and the environment. Smallholder farmers hold a dual role, as economic operators with the responsibility to respect human rights and environmental standards as part of their business, and as rightsholders entitled to protection under internationally recognized human rights agreements.

The CSDDD has the potential to bring benefits to smallholder farmers, through better protection of human rights and more equal relationships based on collaboration, shared responsibility, and fair purchasing practices. However, there are also risks of unintended consequences, such as buyer disengagement and the cascading of compliance requirements without adequate support for cost and risk management. To address these challenges, proper implementation of the CSDDD by companies is essential, but additional support from other stakeholders will also be crucial. Article 14 of the CSDDD includes a commitment of member states and the European Commission to develop accompanying measures, emphasising the provision of information and support to companies, especially SMEs, and stakeholders around the world. It is imperative for EU member states, their development agencies, the Commission, and EU delegations, to actively involve smallholders in the development of accompanying measures and the decision-making behind them.

This paper, developed by Rainforest Alliance, Solidaridad, Fairtrade International and the Fair Trade Advocacy Office, in close cooperation with producer organisations and their representative organisations, was written to inspire discussions, increase awareness and emphasise the need for the EU and member states to design and implement support measures that producer organisations and their networks believe are the most relevant for them.

Such measures include spreading information, both to rightsholders and supply chain actors, on how to use the CSDDD to access their rights; effectively monitoring challenges in implementation; and allocating adequate resources to empower smallholder farmers through grants, investments and technology transfer. Industry collaboration is equally essential, requiring support for initiatives that improve dialogue between buyers and suppliers. Moreover, emphasis should be placed on bolstering regulatory frameworks in partner countries, endorsing grassroots-driven models for labour rights and strengthening access to justice mechanisms by supporting for example National Human Rights Institutions.



¹ The definition of a smallholder farmer can vary depending on the crop they grow or region where they are based. Generally speaking, those whose farms are smaller than two hectares are usually considered to be smallholder farmers. These farmers are responsible for producing a third of the world's food supply and play an important role in several global value chains.

BACKGROUND

Accompanying measures to the CSDDD

The Corporate Sustainability Due Diligence Directive (CSDDD) aims to advance responsible business behaviour in value chains inside and outside Europe regarding human rights and the environment.² After its entry into force, member states have two years to transpose the Directive into their national legislation.

To support companies in implementing the requirements the European Commission shall issue guidelines (article 13) and member states shall develop accompanying measures, and the Commission may support this work (article 14). Article 14 specifies that “Member States shall, in order to **provide information and support** to companies, their business partners and stakeholders, set up and operate individually or jointly dedicated websites, platforms or portals. Specific consideration shall be given, in that respect, to the **SMEs that are present in the chains of activities of companies**”. Additionally, “the Commission may complement Member States’ support measures building on existing Union action **to support due diligence in the Union and in third countries** and may devise new measures, including facilitation of joint stakeholder initiatives to help companies fulfil their obligations.”

Such accompanying measures are crucial for a successful implementation of the Directive. As a joint publication by the Commission and International Trade Centre states, “many of the actors will need training, tools, technology or financial support to play their roles effectively; (...) This is why accompanying measures for the effective and inclusive implementation of due diligence are as important as the underlying legislation itself. (...) Those measures will have to respond in particular to the challenges faced by MSMEs [micro, small, medium enterprises], smallholder farmers, artisanal miners and producers/suppliers operating in areas of informality and weak governance.”³

Aside from accompanying measures, the directive also mandates the European Commission to draft guidance on several due diligence aspects. The Commission will among other things provide guidelines on meaningful stakeholder engagement, responsible disengagement and fair purchasing practices.



² https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en

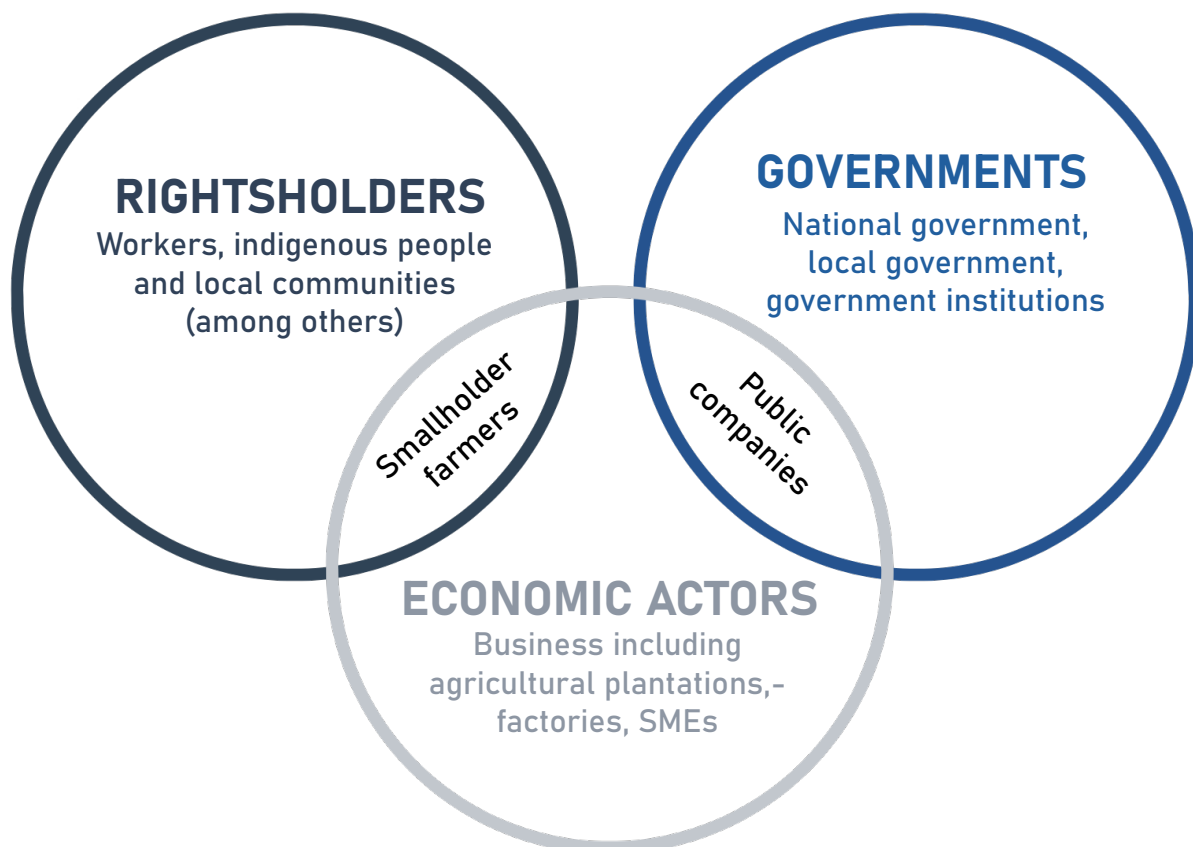
³ https://international-partnerships.ec.europa.eu/system/files/2022-07/making-mandatory-human-rights-and-environmental-due-diligence-work-for-all_en.pdf

The role of smallholders within the CSDDD

The CSDDD will apply directly to large companies⁴ operating in Europe. Because these companies are expected to conduct due diligence not only in their operations, but also in their chain of activities, this means that the CSDDD is expected to impact not only these companies, but also other stakeholders. We can divide these in three categories: **rightsholders**, such as for example workers or farmers, whose rights are at the core of the due diligence obligations of companies; **economic actors**, including companies of all sizes and geographical locations, such as for example suppliers; and **governments**, within and outside the EU, who will play an important role through policies and support measures to effectively protect human rights and the environment, as laid down in the Directive.

Certain actors may fall into multiple categories. For example, smallholder farmers are simultaneously economic actors, by virtue of being small scale businesses and part of value chains of European companies, as well as rightsholders, because their labour and human rights are often at risk. Moreover, they are crucial actors in enabling environmentally responsible production by preventing deforestation or adopting less polluting techniques, for instance.

Smallholder farmers are faced with harsh realities, exacerbated by climate change and global value chain disruptions. Often dependent on few buyers, they lack the bargaining power to negotiate for a better price which would cover the production costs, not to mention the costs of sustainable production, payment for living wages to their seasonal workers or a decent living for themselves and their families. Instead, they are often faced with last minute changes in order volumes and contracts as well as unfair payment terms, worsening poverty and creating further adverse human rights impacts.



⁴ Companies of any sector with >1000 employees and >450 million euro annual net turnover

Potential benefits and risks that the directive brings

There are several **opportunities** that the CSDDD can bring to smallholders, both as rightsholders and as supply chain actors. As rightsholders, this is primarily an opportunity to see increased respect of their human rights and an improved environment. The Directive opens doors for more opportunities to voice concerns with the buyers of their products, as well as to make use of the complaint mechanisms that companies will need to set up. These complaint mechanisms, as well as the ability to submit substantiated concerns to competent authorities, can also be used by others on behalf of rightsholders such as smallholder farmers. Finally, for cases where smallholder farmers are victims of negative corporate impacts that could have been prevented by due diligence, they will have improved access to justice in European courts.

As supply chain actors, smallholders will also benefit from increased opportunities to engage with their buying companies and be part of the due diligence process, by for example advising buying companies on which risks they should prioritise. The CSDDD could also become a starting point for potential new partnerships, programs and investments from business partners. We also expect that buying companies will, due to the Directive, review the impacts of their purchasing practices and business plans, in such a way that their own behaviour towards suppliers (like smallholders) is not contributing to negative human rights and environmental impacts. This could mean improvements for smallholder farmers if companies opt for better practices such as long-term partnerships, fair negotiation models, adequate payment terms and fair prices. Last but not least, the CSDDD may also present itself as an opportunity for those smallholders that already have in place risk management systems to get a return on their investment, as it could strengthen their access to the EU market.

However, there are also many **potential risks** for smallholders. Lead companies might opt to avoid countries deemed high-risk and smaller suppliers. In certain instances, they may choose disengagement over actively mitigating or remediating risks, even though CSDDD expressly prohibits such behaviour. Moreover, the costs associated with compliance to HREDD might be shifted onto smallholder farmers, rather than being shared collaboratively. Consequently, these circumstances could exacerbate negative consequences on human rights and the environment, as producers may find themselves compelled to reduce costs, resorting to practices such as employing child labour or maintaining substandard working conditions for seasonal workers.

Also, while the Directive does not directly apply to smallholder producer organisations outside of the EU, European companies, retailers and traders will likely increasingly demand compliance with sustainability requirements through contractual cascading. The CSDDD says that companies have to address the impact of their purchasing practices on human rights and the environment as well as using fair terms when drafting contracts. There is however, still a risk that buyers will increase requirements without sufficient support. This may cause additional burdens on suppliers in these countries.

Recent research commissioned by the Ministry for Foreign Affairs of Finland (March 2023) confirms that the CSDDD could have significant effects on smaller operators, such as smallholders, workers and local communities around the world. The study underscores the gap between requirements of the Directive and the circumstances in the legislative environment and the resources of companies and producers in the least developed countries (LDCs)⁵



⁵ <https://valtioneuvosto.fi/en/-/study-eu-rules-on-corporate-due-diligence-are-welcome-but-more-is-needed-to-prevent-unintended-adverse-impacts>

Addressing the risks and enhancing the benefits

Addressing these risks for negative consequences and making sure that the CSDDD brings positive outcomes for rightholders first and foremost requires good implementation by the companies in scope of the CSDDD. They need to implement it in a way that addresses the root causes of negative human rights and environmental impact, including by addressing the impact of their purchasing and pricing practices and engaging meaningfully with stakeholders in line with the OECD Guidelines. It also means paying attention to the right to living wages and living incomes, that are a precondition for many other human rights, as well as only disengaging as a last resort and before cutting ties with a business partner taking into consideration its potential impact on the rightholders.

In addition, for rightholders to fully make use of the benefits of the law there needs to be adequate support measures developed by the EU and member states targeted at countries outside of the EU, producer organisations, suppliers, and local communities. These measures should strive to optimise the positive effects of the CSDDD for rightholders around the world, while preventing any adverse impacts caused by costs moving up in the supply chains and through increased requirements when trading with companies operating in the EU.

We therefore welcome that accompanying measures are explicitly required by the law and that efforts are already being made by the European Commission's department for International Partnerships (DG INTPA), many EU delegations and EU member states (alone and in collaboration through the TEAM Europe initiative).

DG INTPA in the European Commission and the International Trade Centre (ITC) have introduced a typology of eight categories for accompanying measures. Whilst all of them are relevant and needed, in our recommendations we highlight concrete measures needed in relation to four of them that were seen as particularly urgent to smallholder farmers and their representative that were consulted in the lead-up to this paper:

- Information and guidance on due diligence process and legal requirements;
- Industry collaboration and stakeholder engagement;
- Producer/Supplier Capacity Building and Empowerment; and
- Regulatory environment and support ecosystem in partner countries

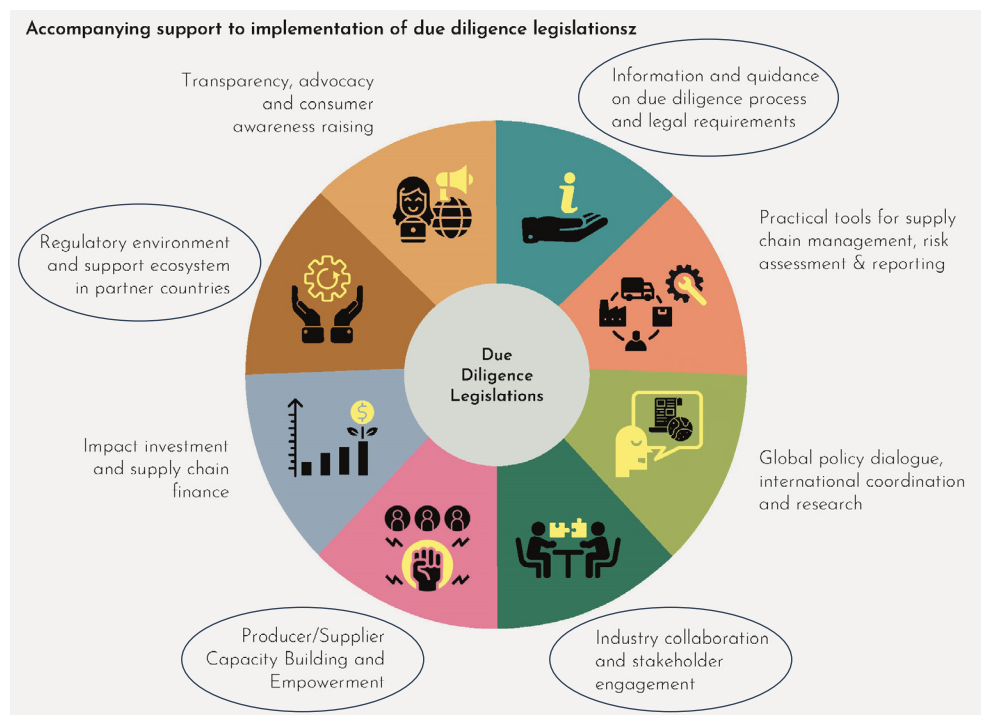


Image Source: Making Mandatory Human Rights and Environmental Due Diligence Work for All: Guidance on designing effective and inclusive accompanying support to due diligence legislation⁶

⁶ https://international-partnerships.ec.europa.eu/system/files/2022-07/making-mandatory-human-rights-and-environmental-due-diligence-work-for-all_en.pdf

RECOMMENDATIONS

General principles in developing the accompanying measures



Inclusivity

When designing and implementing support measures, a wide range of actors needs to be considered and supported to achieve sustainable value chains:

- **Rightsholders:** this includes workers, smallholders, indigenous peoples, migrants and local communities, among others. Measures should be in place to ensure that they are informed of their rights and that there are mechanisms for dialogue and to actively participate in the due diligence process. This often requires building their capacity to meaningfully participate in consultations or make use of grievance mechanisms and other mechanisms provided by the CSDDD to enforce their rights. These stakeholders may be difficult to reach or involve. Therefore, accompanying measures aimed at rightsholders may also target their representatives, such as trade unions, farmer cooperatives, and civil society organisations.
- **Civil Society Organisations (CSOs):** CSOs play a key role in implementing programs that support the most vulnerable stakeholders, building their capacity, and reporting on human rights violations and environmental harm. They must be appropriately funded to fulfil supporting function in the context of the implementation of the CSDDD. With adequate support they can also better activate the mechanisms provided by the CSDDD to maximise their impact (e.g. place substantiated concerns and raise grievances).
- **Small (SME) suppliers outside of the EU:** Many SMEs will need to adapt their current practices in order to meet new human rights and environmental standards. While there is extensive support foreseen to SMEs in the EU, it is important that SMEs also outside of the Union are supported by their buyers and by the EU through accompanying measures, such as, for example, co-investments, grants, capacity building, and training.
- **Governments:** In partner countries (states outside of the EU who are impacted by the CSDDD), governments at various levels, as well as government institutions, have the responsibility to ratify and enforce international conventions on human rights and the environment, set and enforce standards for business, regulate markets, and ensure a level playing field for all market actors. These governments need to receive accurate information about the CSDDD from the EU and support in implementing strategies to facilitate compliance with the Directive.



Shared responsibility

Public and private actors have a shared responsibility to support different stakeholders in global supply chains. As established by articles 7 and 8 in the CSDDD, companies should invest in their own value chains and include due diligence systems, sustainability, and human rights costs into their procurement practices, including pricing, as a prerequisite to properly implementing due diligence throughout their value chains. It is crucial that these investments support the most vulnerable stakeholders. The EU should make this principle clear in all guidance on the implementation of the CSDDD to companies. It should also support engagement at a pre competitive level and help form public-private partnerships to address and seek joint solutions for specific issues upstream, which will be an essential piece of the puzzle of mitigating key risks.

RECOMMENDATIONS (continuation)

Recommended accompanying measures to support smallholders



Information and guidance on due diligence process and legal requirements

1. Provide information and capacity building on all the steps of the due diligence process (from investigation to remediation) to cooperatives and SMEs in partner countries that are part of European companies' value chains and are likely to face increased contractual demands in the area.
2. Intensify engagement of EU delegations with stakeholders in partner countries to monitor on-the-ground situations and report on implementation challenges, with a focus on stakeholders that are in the weakest position in global supply chains. This could be done through appointing a person in each EU delegation to support correct implementation by companies and access to justice for rightsholders.
3. Allocate sufficient budget for providing information to rightsholders and their representatives (workers, farmers or co-operatives, local civil society organisations, trade unions, communities, and human rights and environmental defenders) on how to access remediation, grievance mechanisms, and file complaints under the CSDDD.
4. Raise awareness of governments in partner countries and support their efforts to improve business accountability locally (for instance through bilateral human rights or sectoral dialogues).
5. When developing guidance for companies on what is expected as a good implementation of the law, ensure that it is done in a consultative manner and based on due diligence guidelines from the OECD, including their sector-specific guidance. It is imperative that the Commission emphasises that contracts are just one instrument within a company's due diligence toolbox and that they should not be used as a way of passing on costs to suppliers. Guidelines should, among other things, provide effective strategies for achieving living incomes and living wages.



Industry collaboration and stakeholder engagement

6. Support multi stakeholder dialogues / roundtables at the international, national or local level that aim to address human rights and environmental adverse impact, and incentivise direct participation of vulnerable stakeholders or their representatives, including smallholder farmers.
7. Set up or support public-private partnerships that support cooperation between supply chain partners through fair sharing of cost in the supply chain, co-investments.
8. Support landscape approaches that aim at scaling up action to address human rights and environmental adverse impacts in relevant jurisdictions, involving all relevant stakeholders.





Producer/Supplier Capacity Building and Empowerment

9. As acknowledged by DG INTPA and ITC, "Small producer organisations will also need financial support, technology and training to implement the requirements of human rights and environmental due diligence". The EU, including member states, should therefore support smallholder farmers (through transfer of know-how, equipment, funding, investments) in their transition towards sustainable food production systems and agro ecological practices in particular. It is important that this is done in the form of grants and not as loans. This is in order to protect farmers from entering or remaining in a spiral of debt.
10. Fund pilot projects to assess the potential challenges of implementing the CSDDD and the financial burden for smallholder farmers who are faced with increased contractual obligations from companies under the scope of the Directive.
11. Support cooperatives and smallholder associations technically and financially to set up due diligence systems to manage the Human Rights, environmental and climate risks their members are confronted with.
12. Support smallholders to organise themselves in areas where farm groups or associations are not widespread.
13. Support smallholder farmers in understanding which data/information may be needed for HREDD processes and provide them with information about their rights and privacy in light of information sharing with third parties.



Regulatory environment and support ecosystem in partner countries

14. Support the development of producer- and worker-driven models that improve labour laws for workers and smallholder farmers. This could include worker and/or producer driven remedy efforts, working for an enabling environment for trade unions, and binding tripartite agreements.
15. Equip National Human Rights Institutions to effectively support access to justice.
16. Support the set-up and roll-out of traceability and mapping systems that enable transparency of the whole value chain (on national or industry level) without imposing excessive financial burden on smallholders.





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