

European Parliament proposal for the Corporate Sustainability Due Diligence Directive: **Anti-Slavery International's key takeaways**

June 2023

Introduction

On 1 June 2023, the European Parliament agreed its [compromise text](#) for the Corporate Sustainability Due Diligence Directive (CSDDD). This agreement means that the European Parliament has formed its negotiating position for the upcoming trilogue that will take place between the Parliament, European Commission and Council of the European Union for the coming months to agree the final text of the Directive. Importantly, this agreement takes us one step closer to mandatory human rights and environmental due diligence (HREDD) legislation in the European Union (EU). We are pleased with the vast improvements made in this text to the Commission's proposal, however there are some loopholes that remain, which cause serious concern for the final legislation's ability to hold companies accountable for forced labour.

What is the Corporate Sustainability Due Diligence Directive?

CSDDD will require companies of a certain size operating in the EU to conduct HREDD to identify, prevent, mitigate and remedy adverse impacts in their value chains. It comes as part of a global shift towards mandatory due diligence which puts soft law like the UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises into binding law. There is an increasing recognition by states that mandatory HREDD, which, crucially, focuses on risks posed to people and planet and not the businesses, must be legislated. With the EU being the world's largest single market, this proposed EU-wide Directive has the potential to set a global bar on corporate accountability legislation and make a positive impact on the lives of workers worldwide.

When the Commission published its initial proposal in February 2022, Anti-Slavery International released [a comprehensive analysis and recommendations](#) for addressing the proposal's shortcomings. Using this original analysis and set of recommendations as a guide, we detail below what we have won in the Parliament's text and what we have lost. Specifically, we focus on core elements that would help or hinder protections against forced labour. These include the scope of the legislation, both in terms of which companies would have a responsibility under the Directive and which rights are covered, how far the responsibility extends across the value chain, how aligned the proposal is with international standards (what constitutes due diligence, meaningful stakeholder engagement, value chain disclosure, responsible disengagement, grievance mechanisms and remediation), and civil liability and access to justice.

It is important to note that this text is not the final legislative text, but that the strength of this text is crucial to securing strong protections for workers in global supply chains. We expect the trilogue negotiations to result in further weakening of the Parliament's provisions in order to broker an agreement between all three EU institutions. Anti-Slavery International will release a full analysis of the final Directive once it is agreed in the coming months.

How the Directive becomes law

The Parliament's agreement of their compromise text is one important step of many in creating EU law. Although campaigners have been calling for such a law for over a decade, the prospect of an EU-wide mandatory HREDD law only started to become a reality in recent years. Below are the most recent key milestones, and what is to come:

- April 2020, EU Commissioner for Justice, Didier Reynders commits to a legislative initiative on mandatory HREDD for EU companies
- February 2022, European Commission publishes its proposal for mandatory HREDD: Corporate Sustainability Due Diligence Directive
- December 2022, the Council of the European Union reaches political agreement on a general approach, which forms its position on the Commission's proposal
- June 2023, European Parliament agrees its position on the Commission's proposal with its compromise text
- From June 2023 on, the European Parliament, Council of the European Union and European Commission will enter into a trilogue to agree the final text of the Directive. It is during this time that the three entities will negotiate their respective positions and conclude discussions with the final text of the law. We expect the negotiations to conclude by no later than March 2024
- Post-trilogue, once the Directive is agreed in the trilogue, it comes into force. Member States will have two years to incorporate the Directive into their own national legal systems

1. Personal scope: Company inclusion

The European Commission's proposal

The Commission's proposal only covers very large companies operating in the EU with more than 500 employees and that turnover more than EUR 150 million per year. It extends to medium-size companies with over 250 employees and turning over EUR 40 million or more, but which operate in "high-risk" sectors. High-risk sectors include textiles, agriculture and mining sectors. Similar thresholds apply to non-EU companies that are active within the EU market.

The proposed scope is far too narrow. Roughly, only 1 per cent of EU businesses would fall under the scope of the Directive ([see section 3](#) of our analysis of the Commission's proposal). Moreover, all small and medium-sized enterprises (SMEs) are left out, regardless of their risk. The overall exclusion of SMEs is highly problematic, as the size of a company is not associated with the level of harm it can cause. For example, in the EU 99 per cent of businesses within the textiles industry, which is a sector at high risk of forced labour, are SMEs. Anti-Slavery International continues to argue that all companies should fall within scope, with a duty proportionate to their size, capacity and risk, in line with the UN Guiding Principles on Business and Human Rights (UNGPs). Another key concern is that companies within the designated "high-risk sectors" would only be required to focus on severe impacts. This is particularly relevant to forced labour, because forced labour does not occur in isolation, but sits within a non-static spectrum of abuses, such as restrictions to freedom of association and lack of payment of minimum wage. Focusing on only severe impacts could mean failure to identify and address such labour rights impacts, even if they are linked with more severe forms of exploitation.

A risk-based approach based on the UNGP principles of proportionality should be used rather than limiting companies within scope by their size. And if that were not to be achieved, the list of high-risk sectors should be expanded to include those at the greatest risk of forced labour ([see section 3C](#) of our analysis of the Commission's proposal) and other adverse impacts on human rights and the environment.

Another crucial limitation is the virtual exemption of financial institutions from due diligence obligations ([see section 4](#) of our analysis of the Commission's proposal). Only "very large" financial institutions would be under scope and would only have to conduct due diligence at the pre-investment phase. Due diligence should have the aim of identifying and addressing risk, which is not a static concern, and therefore it must be an ongoing

process. Considering the leverage financial institutions have over the companies they finance, they have tremendous potential to drive respect for environment and human rights. They, arguably, have a great deal of resource to be able to conduct meaningful due diligence.

The European Parliament's proposal

The positives

The text significantly broadens the range of companies the Directive would apply to. All EU companies with over 250 employees and a turnover of more than EUR 40 million per year would fall under the Directive's scope, regardless of their sector. Contrary to the Commission's proposal, the Parliament's text does not specify different inclusion limits based on sector, which is something we endorse. By abolishing the high-risk/low-risk distinction and lowering the company threshold, the Parliament has included more companies in the proposal's scope, while ensuring that they will all be subjected to the same due diligence obligations.

The gaps

Although the threshold is lower than the Commission's proposal, it is still insufficient to effectively tackle forced labour in global value chains, as SMEs are still excluded. This is not in line with the proportionality risk-based approach we advocate for all companies. Equally worrying is the fact that the financial sector continues to be subject to special exemptions.

The gaps are further exacerbated by the staggered implementation introduced by the text. The delays are based on the size of the company and, in total, amount to a five-year gap between the Directive's entry into force and when the smallest companies within scope will have to start implementing a due diligence policy. This means we will not see the positive effects of this law for a very long time.

2. Material scope: Human rights standards

The European Commission's proposal

Material scope, which sets out the rights covered by the Directive, is determined by an annexed semi-exhaustive list of international conventions covering human and environmental rights. In principle this approach is not problematic, however the list excludes a number of key conventions for it to be complete, and therefore effective. A non-limitative list of human rights instruments should be used instead. We have outlined a series of conventions and instruments relevant to forced labour that are missing in the proposal, in [section 2](#) of our analysis.

The European Parliament's proposal

The positives

The range of international conventions listed in the annex originally proposed by the Commission has been broadened. Notably, International Labour Organization conventions on health and safety and on violence and harassment have been included, as well as international provisions on the prohibition of discrimination. The right to a living income has also been added to the list.

The gaps

The Parliament rejected calls for adopting a non-exhaustive list of human and environmental rights covered by the Directive. Essential conventions covering migrant worker rights are still missing, despite migrant workers facing a much higher risk of exploitation and forced labour in the workplace globally. It is important that this list is extensive and has the possibility to be added to as time goes on. A company's obligation to respect the rights included within the Directive will supersede any gaps in national standards within the countries throughout a company's value chain. In simple terms, if a country has not ratified the International Covenant on Civil and Political Rights, for example, which includes Article 8 prohibiting slavery and servitude, that would not have any bearing on a company operating in that country provided they were under the scope of CSDDD.

3. Extension of due diligence duties across the full value chain

The European Commission's proposal

The Commission's text includes an appropriate definition of value chain, based on international standards. Specifically, the value chain covers "activities related to the production of a good or provision of services by a company, including the development of the product or the service and the use and disposal of the product". However, a large concern we had with the Commission's proposal ([see section 5](#) of our analysis of the Commission's proposal) was the limited extension of due diligence requirements to only "established business relationships" within value chains. This is problematic because it could encourage companies to focus only on their top tier suppliers rather than looking deeper in their supply chain, where higher risks of forced labour are typically found. It also disincentivises any consideration of sub-contracted or informal suppliers, which are typically used in industries with higher risk of forced labour and can reduce oversight within the supply chain; these in turn increase risk. In cases of forced labour, companies may try to absolve their responsibility because of not having direct oversight over the informal or sub-contracted suppliers who are complicit.

A focus on established business relationships could also prevent companies from building longer-term relationships with suppliers to avert any liability, creating a vacuum of responsibility for improving working conditions. This in turn encourages more volatile relationships and adds increased burden to stakeholders trying to hold companies accountable, as they would have the responsibility of proving the nature of the business relationship as part of their case. Longer-term relationships bring resilience to the supply chain, allow for greater oversight, and can foster joint work towards improved practices to prevent forced labour. We instead advocate for all business relationships across the whole value chain to be included within the due diligence requirements, using a risk-based approach in line with international standards.

The European Parliament's proposal

The positives

The concept of established business relationships is eliminated and the text encourages a risk-based approach along the whole value chain, pointing to key international standards. These changes are key to ensuring that the potential adverse impacts to people and the environment are paramount in due diligence efforts rather than the proximity of a business to its business partners.

The gaps

The definition of value chain is limited in its reach: companies are not required to identify, prevent or remediate adverse impacts caused by the use of their product after it has been sold. This would allow companies to continue profiting from human rights abuses in their global value chains. For example, surveillance technology could continue being used in the Xinjiang Uyghur Autonomous Region where the Chinese government is persecuting Uyghurs and other Turkic and Muslim-majority peoples, including through a system of state-imposed forced labour. Under the Parliament's proposal, companies would not be legally required to address the fact that their surveillance equipment is being used to enable this system of persecution.

4. Alignment of due diligence duty with international guidelines: Reducing reliance on contracts, industry initiatives and third-party verifications

The European Commission's proposal

The Commission's proposal aims to provide companies with guidance on how to address adverse impacts through a semi-closed list of due diligence measures. There is a heavy focus on contractual assurances, third-party verification schemes (including audits and certification schemes), and multi-stakeholder/industry initiatives. This risks putting the focus on tick-box exercises that have been shown to be ineffective, instead

of what would be most appropriate for reducing the risk of forced labour. These methods have been used to push responsibility for harm down the supply chain, instead of fostering a shared responsibility approach which recognises how practices at the top of the chain can be important in preventing or perpetuating exploitative practices further down the chain ([see section 6A](#) of our analysis of the Commission's proposal). The text also limits liability for adverse impacts caused by indirect partner activity if the lead company used any of the due diligence measures listed unless it can be proven that it was "unreasonable" to expect such steps would be adequate.

The Commission's proposal gives insufficient recognition of the important due diligence approaches, which would drive more shared responsibility. Critically, the Commission's proposal fails to focus on the role purchasing practices can play in driving workers harm, and on the importance of leverage in preventing or remediating it. Irresponsible purchasing practices, such as short lead times and prices that undercut fair labour costs, can drive exploitative practice such as forced overtime, and wage withholding, with workers ultimately facing the brunt of this pressure. Leverage, which is how a lead company can influence the behaviour of business partners, can be used to build better practice through, for example, capacity-building and engagement with trade unions and civil society. Importantly, where companies lack influence with direct or indirect suppliers to improve practices, they should undertake efforts to increase leverage, for example by collaborating with industry peers.

The inadequacy of tick box due diligence on preventing forced labour

Forced labour is often hidden and can be characterised by coercive control, poor recruitment practices, and recruitment fees being charged to the employee. These are difficult to detect without deep, meaningful and trusted engagement with workers. The use of contracts to ensure better practice throughout a value chain has typically been top-down and works against shared responsibility. Audits provide snapshots in time and are not very effective at spotting the more hidden indicators. Certification schemes have been shown to be more focused on environmental sustainability and are ineffective at proving an absence of forced labour. And none guarantee remediation for workers who have experienced forced labour. Industry initiatives can be an important space for collaboration and wider industry learning, however they should not be a replacement for accountability.

The European Parliament's proposal

The positives

An important part of the Parliament's proposal is the explicit recognition that relying on third-party verifications, contractual clauses and multi-stakeholder/industry initiatives may not exempt companies from civil liability in the event of actual adverse impacts. While companies may seek advice from auditors or industry initiatives, for example, they bear individual responsibility for identifying, addressing, mitigating and preventing adverse impact, which cannot be outsourced. Additionally, the Parliament suggests an open list of due diligence tools, allowing for its expansion and flexibility. Notably, the Parliament introduces additional due diligence tools that require active engagement from companies at the top of the supply chain, including the elimination of negative purchasing practices. To address potential adverse impacts and to end actual adverse impacts and remediate accordingly, companies should use and increase leverage, according to the Parliament's proposal.

The gaps

Third-party verifications, multi-stakeholder initiatives and contractual assurances still have a central role in the text, so companies are still likely to overly rely on them. Even though the text states that companies can still be liable for damages despite use of these activities, the activities can still be a form of validation of due diligence, which is problematic. These due diligence activities will continue to be insufficient in addressing and preventing adverse human rights impacts unless they are reformed to focus on affected stakeholders and the root causes of harm.

Case study: Ineffective audits in the Brazilian cocoa industry

Anti-Slavery International partner Reporter Brasil is a Brazilian NGO aiming to identify and publicise situations that impair labour rights and cause social and environmental damage in Brazil.

Brazil is one of the main agricultural exporters in the world, selling coffee, sugar, meat and gold worldwide. However, many workers are trapped in slavery, forced to work long hours without food, medical assistance, sanitation and potable water in many instances. Employers deduct fees, leaving workers with very little money or in many cases in debt bondage. Some cacao production in Brazil gives a strong example of the inefficiencies of third-party auditing and certification schemes. **It was recently found that two multinational companies operating in the EU had purchased cocoa beans from farms that use slave labour, despite the farms being certified a few months prior.** In fact, many certified farms continue to use forced labour, as revealed by Reporter Brasil investigations.

5. Alignment of due diligence duty with international guidelines: Mandating meaningful stakeholder engagement

The European Commission's proposal

The Commission's proposal only mandates stakeholder engagement at limited stages of the due diligence process, essentially leaving the choice on whether and how to engage with stakeholders up to companies (see section 7 of our analysis of the Commission's proposal). The result is that the engagement serves certain tick-box criteria, does not get to the heart of the harm and hinders any identification or remediation efforts. Proactive and meaningful stakeholder engagement is the core tool by which companies can effectively design due diligence policies and therefore must be mandatory at every step of the due diligence process. There are various barriers to engagement, such as worker fear or threats of retaliation which are common in cases of forced labour. These barriers can only be overcome through building the trust of workers and identifying their needs. Those affected by company practice hold first-hand knowledge of the impacts on the ground. The proposal also does not consider that human rights abuses have differentiated impacts on individuals and groups in marginalised situations.

Case study: Migrant workers from Bangladesh and the need for meaningful stakeholder engagement

Anti-Slavery International partner OKUP (Ovibashi Karmi Unnayan Program) is a grassroots migrant workers organisation in Bangladesh.

They support migrant workers who have been subject to forced labour and exploitation. Workers from Bangladesh usually have to pay local corrupt recruitment agents in exchange for jobs, with the promise of good salaries and employment perks. To cover the costs, workers typically take out loans with high interest rates or sell their family assets. What they find when they arrive in the destination country is not the job they were promised. Most of the time it takes workers years to repay their loans. The result is that they often leave their employer and choose undocumented work in hopes of earning more money to repay their loans more swiftly. The reality is that undocumented workers are not always paid and typically have no access to compensation, because of their immigration status.

Effective grievance mechanisms must consider the particular vulnerability of undocumented workers and their fears of deportation and retaliation. Any effective remediation mechanism must also consider the hurdles undocumented migrant workers face in accessing remedy and what remedy would be most appropriate to them in their situation. **Stakeholder engagement, with special consideration of the vulnerabilities different people face, is crucial to the effectiveness of any due diligence regime.**

The European Parliament's proposal

The positives

The Parliament's text brings stakeholders back to the fore of the due diligence process, dedicating a whole article to stakeholder engagement. Importantly, the text specifies that stakeholder engagement must be meaningful and not merely cosmetic. Companies must also safeguard against retaliation. The text also ensures that stakeholder engagement is mandatory throughout all stages of due diligence, from risk identification, to remediation for adverse impacts, to responsible disengagement to understand the consequences of terminating a business relationship on workers ([see section on responsible disengagement below](#)). The Parliament's text also includes a comprehensive definition of stakeholder and calls on companies to take into account the special needs of vulnerable stakeholders in marginalised situations. This approach brings about a major improvement to the Commission's text and represents a crucial gain for the protection of the rights of people at risk of and victims of forced labour.

The gaps

The requirements do not go as far as we recommended ([see section 7](#) of our analysis of the Commission's proposal), which is to consult stakeholders in order to design the actual engagement framework. This is the best way to ensure that barriers are being understood and addressed.

While there is a provision for companies to provide information to stakeholders about their value chain and actual or potential adverse impacts on the environment and human rights, this provision must only be complied with "as appropriate". Affected stakeholders will continue to face obstacles in accessing verifiable information about a company's practices. With the lack of mandatory reporting ([see section on value chain mapping and disclosure below](#)), and the light-touch nature of this obligation, the challenge affected stakeholders have in bringing a claim against a company will remain.

6. Alignment of due diligence duty with international guidelines: Mandating value chain mapping and disclosure

The European Commission's proposal

The Commission's proposal does not include any meaningful disclosure responsibility on companies. There is alignment with the EU Corporate Sustainability Reporting Directive, however that only involves publishing an annual statement. We continue to insist that companies must be required to map and disclose value chains. In situations of forced labour, which are more commonly in the lower tiers of the supply chain, this activity is crucial to detect potential and adverse impacts, and address them appropriately. Disclosing value chains encourages companies to investigate and understand their value chains. This in turn establishes better relationships with suppliers and facilitates more meaningful consultation with stakeholders.

The European Parliament's proposal

The positives

This obligation has not been extended within the Parliament's proposal.

The gaps

The lack of mandatory mapping and disclosure of global value chains represents a missed opportunity for improvement of the Commission's text. Mapping and disclosure are fundamental transparency measures that can support stakeholder access to knowledge, better enforcement, better information for suppliers down the chain, and crucial data for those wanting to use the legislation to improve company practice ([see section 10](#) of our analysis of the Commission's proposal). Disclosure can also encourage pre-competitive collaboration and assist SMEs to conduct due diligence, by allowing them to compare their suppliers against the information provided by larger companies sourcing from the same suppliers.

Case study: Importance of mandatory transparency and traceability

Anti-Slavery International partner Fundacion Libera is a Chilean non-profit organisation that aims to prevent and combat trafficking in persons and modern slavery in Chile and Latin America.

Lack of transparency is costing lives and hides poor and exploitative working conditions. **Any effective due diligence law should require companies to map and disclose their entire supply chains.** This is particularly relevant to forced labour situations, where harm tends to take place at the lower levels of the supply chain, in countries like Chile, which has a large agriculture industry. Therefore, it should be a prerequisite for a company to map and understand its supply chain, both to prevent the greatest risks of forced labour and to take steps to address it where it exists.

Without proper transparency and traceability, at-risk, abused and exploited workers lack a powerful tool to assert their rights and hold companies accountable. Concealing practice in the lower tiers of the supply chain is something that is increasing in Chile. Companies are not voluntarily increasing transparency and, in some cases, transnational Chilean companies are de-listing from the stock exchange, preventing further scrutiny in the future. This is part of a wider resistance to address environmental and social factors. Therefore, for any law that aims at protecting worker rights, transparency obligations must be mandated as part of that law.

7. Alignment of due diligence duty with international guidelines: Ensuring disengagement is responsible

The European Commission's proposal

The wording proposed by the Commission creates a risk that companies will immediately cut ties with suppliers when indicators of forced labour are found, rather than incentivising them to use their leverage to improve the situations where possible or to remediate workers in either case (see section 8 of our analysis of the Commission's proposal). This practice of "cutting and running" puts workers in even more vulnerable situations instead of remedying the exploitation. In these cases, the lead company often places the blame for such adverse impacts on the suppliers, ignoring its own role in the harm. For cases where it may be impossible to improve the situation and disengagement is necessary, the responsibility to remediate workers for adverse impacts caused and contributed to must be maintained. It is also important that state-imposed forced labour also be considered within this provision. In such cases companies must urgently disengage, because there is no prospect of preventing the adverse impact. Without a nuanced articulation of this within the law, the risk is that companies will remain engaged long after they should have exited.

The European Parliament's proposal

The positives

The Parliament's proposal instead ensures disengagement is done responsibly by aligning disengagement criteria to OECD standards which encourages lead firms to work with suppliers towards continuous improvement. It works to ensure disengagement is responsible and does not exacerbate harm by outlining a series of concrete steps companies should take before ending a business relationship due to exploitation. For example, companies should assess the potential adverse impact on workers from suspending the relationship. They should consult affected stakeholders to ensure their needs are considered when developing action plans, remediation plans or when terminating a business relationship. Terminating a relationship does not absolve the company from the responsibility to provide remedy for any adverse impacts it caused or contributed to. Recitals also account for situations of state-imposed forced labour where the only responsible course of action is immediate disengagement. This is due to the inability to conduct due diligence on the ground and the fact that no company will have enough leverage to work towards any improvement in practice.

The gaps

We do not see any major gaps in this provision.

8. Alignment of due diligence duty with international guidelines: Ensuring meaningful grievance mechanisms and protection from retaliation

The European Commission's proposal

Non-judicial grievance mechanisms are integral to due diligence as they allow those who have been affected by adverse impacts a channel to raise their grievance and, if they are effective, they allow access to remediation for the harm experienced. They must work in tandem with access to justice routes, in particular for forced labour, where workers, such as migrant workers, need urgent access to remediation to ensure their safety. The proposal gives the possibility to persons and organisations to submit “complaints” to companies. However, the provision is too narrow and risks encouraging corporate-led top-down approaches. The focus on implementing a mechanism to make a complaint, rather than a mechanism to achieve remedy creates an imbalance of power between corporates and complainants in the design of the process and the assessment of complaints. The common corporate-led approach lacks the oversight, independence and accountability needed to secure workers' trust and guarantee effective remedy resolutions ([see section 9](#) of our analysis of the Commission's proposal).

The European Parliament's proposal

The positives

The Parliament's text improves the Commission's text. It thoroughly elaborates the way grievance mechanisms ought to be set up, modelling the guidelines on international standards, and in particular the UNGPs. It outlines principles to ensure the mechanisms are well-designed and urges companies to develop them in such a way that they are informed by stakeholders' knowledge and needs. Among the measures recommended to safeguard whistleblowers, there is an obligation for companies to ensure anonymity or confidentiality of those submitting a notification or grievance.

The gaps

While we recognise the limitations of what can be achieved in this Directive, we maintain our position that, in order to enable effective access to remedy for workers in exploitation and forced labour, we must see a global shift away from corporate-led approaches to grievance mechanisms, which will likely remain the predominant approach under the Directive. Meaningful grievance mechanisms must be co-designed, implemented and governed by workers and their representatives, and must also be understood as a complement, but not alternative, to the right to collectively bargain. Ultimately, the Parliament amendments go some way towards this, and the gaps that remain should be addressed by complementary work to strengthen the ability of workers on-the-ground in source countries to create mechanisms to monitor conditions, raise issues and complaints, and access remedy, such as through worker-driven social responsibility initiatives.

Additionally, the text still falls short of protecting human rights defenders from potential retaliation. There is no acknowledgement that those fighting for human rights face a higher risk of retaliation. The text does not include the UN Convention on the Protection of All Persons from Enforced Disappearances and the UN Declaration on Human Rights Defenders 1998.

9. Alignment of due diligence duty with international guidelines: Ensuring remediation is appropriate and effective

The European Commission's proposal

The Commission's proposal fails to provide clear guidelines to companies on how they can effectively and appropriately remediate when they have caused or contributed to adverse environmental and human rights impacts. Additionally, the text only mentions financial compensation as an example of remedy. This simplified understanding of remedy risks allowing companies to "pay their way out" of harm they have caused, rather than ceasing to cause the adverse impact and/or adjusting the type of remedy to the context and to the victims' needs.

The European Parliament's proposal

The positives

The Parliament's text greatly expands on remedy provisions by dedicating an entire new article to it. This provision provides detailed guidance on the establishment of meaningful and effective remedy in line with international standards. It also broadens its definition by including apologies, restitution, rehabilitation, non-financial compensation or guarantees of non-repetition, as per UNGP standards. Effective and people-centred remediation is key to preventing further adverse impact. Meaningful engagement with affected stakeholders is mandated as part of remedial plan development in the text. And remediation is required whenever a company has caused or contributed to actual adverse impacts.

The gaps

We do not see any major gaps in this provision.

10. Civil liability for companies and access to justice for victims of harm

The European Commission's proposal

The Commission incorporates a civil liability regime for companies acting in breach of their due diligence obligations. This would establish an extremely powerful precedent that would allow victims to seek remedy from overseas. However, loopholes for companies to avoid liability exist, as the duty is ambiguous. Significant barriers limit the possibility for victims of corporate harm to access justice ([see section 11](#) of our analysis of the Commission's proposal). A key barrier in access to justice is that the burden of proof falls on victims, who typically have limited power and resources, rather than on corporations.

The European Parliament's proposal

The positives

The Parliament's text outlines the due diligence duty more clearly, which limits the possibility of companies escaping liability. Moreover, it explicitly mentions that resorting to third-party verifications does not exempt companies from being liable for actual adverse impacts, which removes an important loophole ([see section on third-party verifications above](#)). The Parliament's text makes great improvements on access to justice providing further measures, including a long limitation period to take a case to court (10 years), economic support for victims, removal of language barriers, the possibility of injunctive measures and allowance for trade unions, civil society organisations or other collective stakeholders to represent victims in court.

The gaps

A big loss is that the burden of proof, in terms of holding companies liable for actual adverse impacts, still falls on the victim. They must show that the company is responsible for the harm they have experienced. Victims do not have the same resource or access to information as companies, and therefore this omission by the Parliament perpetuates the power imbalance that already exists. We believe that the burden should, instead, be on companies to demonstrate that they took appropriate steps to identify, prevent, mitigate and stop the harm. The decision not to make parent companies automatically liable for the actions of their subsidiaries will further hinder victims' access to justice. This is because it makes it more difficult for victims to hold parent companies accountable, for example, when their subsidiaries are not within scope of the law.

11. Other areas

The Parliament made significant improvements towards climate due diligence, by expanding due diligence obligations to companies' climate impacts and strengthening the criteria for corporate transition plans. We welcome these improvements, given the intersectionality between climate change, environmental harm, and forced labour and human trafficking. However, gaps in environmental protections remain in the Parliament's proposal.

Conclusion

The approval of the European Parliament's text is a major milestone for corporate accountability legislation. The text significantly improves the European Commission's original proposal and centres workers at a number of points throughout. However, the gaps that remain cause great concern for the final Directive's ability to meaningfully tackle forced labour. The text does not cover all businesses, which would leave a large portion free from potential liability and works against a level playing field for businesses. And crucially, victims of forced labour will continue to struggle to find justice as long as the burden of proving a company's responsibility for their harm sits on their shoulders.

We will continue to advocate for the best possible version of the Directive. We will do this by working closely with fellow NGOs, progressive businesses, policymakers and our global partners to ensure gaps are addressed and environmental and human rights are safeguarded.