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## **Stora Enso and human rights due diligence**

Understanding the compliance requirements of the proposed EU Directive on Corporate Sustainability Due Diligence for large public-interest companies through a case study of Stora Enso

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## Table of contents

Summary .....	4
Sammanfattning .....	5
Preface.....	6
Abbreviations .....	7
1 Introduction.....	8
1.1 Background .....	8
1.2 Purpose and research questions .....	10
1.3 Methodology and material.....	11
1.4 Limitations.....	13
1.5 Outline .....	15
2 International business and human rights framework .....	16
2.1 The journey towards a binding corporate human rights due diligence instrument.....	16
2.2 HRDD conceptualized through soft law instruments .....	17
2.2.1.1 UN Guiding Principles on Business and Human Rights .....	17
2.2.1.2 OECD .....	21
3 The European Commission's proposal for a CSDD Directive .....	25
3.1 Obligations and principles in the CSDD proposal .....	28
3.2 Due diligence in the value chain .....	29
3.2.1 Integrating due diligence into company policies .....	31
3.2.2 Identify and assess potential and actual adverse impacts .....	32
3.2.3 Prevent potential adverse impacts and bringing actual adverse impacts to an end .....	34
3.2.4 Complaints procedure .....	37
3.2.5 Monitoring and communication .....	38
3.3 Other relevant Articles .....	39
3.3.1 Sanctions .....	40
3.3.2 Civil liability .....	40
3.3.3 Directors' duty of care and remuneration .....	41
4 Case Study .....	42
4.1 The industry .....	42
4.1.1 The business and human rights framework.....	43
4.1.2 An emerging due diligence synergy in the industry.....	44
4.2 Stora Enso.....	47
4.3 Presentation of the company's measures with relevance for human rights due diligence .....	49

4.3.1	Annual report .....	49
4.3.2	The Stora Enso Code.....	53
4.3.2.1	Supplier code of conduct .....	53
4.3.3	Human Rights Policy and Guidelines .....	54
4.3.4	Stora Enso Grievance mechanisms .....	56
4.4	Interviews with company representatives .....	57
4.5	Example of previous Human Rights adverse impacts and corrective actions in Stora Enso’s operations .....	59
4.6	Previous case studies .....	64
4.6.1	Danish Institute for Human Rights Assessment .....	64
4.6.2	HHS a centralized approach to sustainable business practices .....	66
4.6.3	BSR human rights commitment through prioritization... ..	68
5	Gap analysis of HRDD requirements at Stora Enso .....	70
5.1	Integrating due diligence into company policies.....	70
5.2	Identifying and assessing actual or potential adverse impacts .....	71
5.3	Preventing potential adverse impacts and bringing actual impacts to an end .....	73
5.4	Maintaining a complaints procedure .....	75
5.5	Monitoring and communication .....	75
5.6	Prospects for meaningful compliance with the CSDD Proposal	76
5.6.1	International HRDD standards that foster meaningful compliance .....	77
6	Concluding remarks.....	84
	Bibliography.....	86

# Summary

This thesis seeks to examine the human rights due diligence (HRDD) requirements outlined in the EU proposal for the Corporate Sustainability Due Diligence Directive (CSDD proposal) for large EU limited liability companies (LLC), offering a comprehensive overview of these requirements. To further clarify and substantiate the HRDD provisions stated in the CSDD proposal, the thesis also includes a case study of Stora Enso, which serves as an illustration of how these requirements are applied in real-world scenarios.

The thesis is mainly done by a desk study, but has also utilized interviews, to gather information relevant to the topic. The desk study focused on examining the proposed Corporate Sustainability Due Diligence (CSDD) Directive, but also, to a lesser extent, analyzed various frameworks, guidelines, and agreements related to corporate sustainability. In the analysis of Stora Enso, a sustainability-focused company, the thesis explores the company's HRDD efforts, including existing policies, previous human rights issues, and case studies. Interviews with company representatives provided insights into current HRDD practices and internal perspectives on the company's approaches.

The thesis aims to comprehend the HRDD requirements as defined in the CSDD proposal and trace their origins from soft law frameworks that have developed international standards on the subject. By conducting this analysis, the thesis gains insights into the legal dimensions of HRDD. The thesis also endeavors to apply these HRDD to a large EU LLC, namely Stora Enso, enabling an understanding of the practical implications of the CSDD proposal and how a company can achieve meaningful compliance. The HRDD practices currently employed by Stora Enso are assessed in relation to the proposed requirements of the CSDD proposal.

The thesis finds that Stora Enso has made significant progress in their HRDD efforts. Some aspects already align with the CSDD proposal requirements, while others are progressing toward compliance. Additionally, the thesis highlights areas where the CSDD proposal diverges from international HRDD standards and suggests areas for companies seeking meaningful compliance to focus on in their continued efforts.

# Sammanfattning

Denna uppsats syftar till att undersöka de krav på human rights due diligence (HRDD) som anges i EU-förslaget till Corporate Sustainability Due Diligence Directive (CSDD-förslaget) för stora EU-bolag med begränsat ansvar (LLC), och erbjuder en omfattande översikt över dessa krav. För att ytterligare klargöra och underbygga de HRDD-bestämmelser som anges i CSDD-förslaget innehåller uppsatsen också en fallstudie av Stora Enso, som fungerar som en illustration av hur dessa krav tillämpas.

Uppsatsen är huvudsakligen gjord genom en skrivbordsstudie, men har även använt sig av intervjuer för att samla in information som är relevant för ämnet. Skrivbordsstudien fokuserade på att undersöka det föreslagna direktivet om Corporate Sustainability Due Diligence (CSDD), men analyserade också, i mindre utsträckning, olika ramverk riktlinjer relaterade till företags hållbarhet. I analysen av Stora Enso, ett hållbarhetsfokuserat företag, undersöker uppsatsen företagets HRDD-arbete, inklusive befintliga policyer, tidigare frågor om mänskliga rättigheter och fallstudier. Intervjuer med företagsrepresentanter gav insikter i nuvarande HRDD-praxis och interna perspektiv på företagets tillvägagångssätt.

Uppsatsen syftar till att förstå HRDD-kraven såsom de definieras i CSDD-förslaget och spåra deras ursprung från icke-bindande rättsliga ramverk som har utvecklat internationella standarder i ämnet. Genom att genomföra denna analys får uppsatsen insikter i de rättsliga dimensionerna av HRDD. Uppsatsen strävar också efter att tillämpa dessa HRDD på ett stort EU LLC, nämligen Stora Enso, vilket möjliggör en förståelse för de praktiska konsekvenserna av CSDD-förslaget och hur ett företag kan uppnå meningsfull efterlevnad. De HRDD-metoder som för närvarande används av Stora Enso bedöms i förhållande till de föreslagna kraven i CSDD-förslaget.

Uppsatsen visar att Stora Enso har gjort betydande framsteg i sina HRDD-insatser. Vissa aspekter överensstämmer redan med kraven i CSDD-förslaget, medan andra är på väg mot överensstämmelse. Dessutom belyser uppsatsen områden där CSDD-förslaget avviker från internationella HRDD-standarder och föreslår områden för företag som söker meningsfull efterlevnad att fokusera på i sina fortsatta insatser.

## Preface

The months dedicated to writing this thesis have been eventful, witnessing new legal developments in the area and ongoing advancements in HRDD by Stora Enso.

Legal developments in the area make it relevant to reiterate that this thesis was written during the Spring term of 2023. Any changes to legal status of proposals or developments in assessments from relevant sources are therefore not of relevance for this thesis. Of note is for example that the Regulation on Deforestation-free products entered into force on the 29<sup>th</sup> of June 2023.

Similarly, Stora Enso has continued to pursue implementation of the CSDD proposal requirements during the term. Certain changes have been implemented to their current practices and they have initiated additional initiatives aimed at achieving compliance. Such initiatives were considered up until the 1<sup>st</sup> of May 2023, any alterations after that date have not been considered.

During the time writing this thesis I have had a huge amount of support from my family and friends, supporting me through all the hardships that come with writing, and life that continues in the process. I want to thank them immensely for this support, I could not have done it without you.

I would like to thank my advisor, Radu Mares, whose expertise guided me on this journey, and whose insights made me understand the topic better. I would also like to thank my professors, who during my studies have encouraged and inspired me in so many ways.

Lastly, I would also like to thank Stora Enso for the opportunity to use the company as a case study, letting me explore a new topic and helping me deepen my understanding of how legal requirements impact business conduct.

# Abbreviations

CEU	Council of the European Union
CJEU	Court of Justice of the European Union
CSDD	Corporate sustainability due diligence
CSRD	Corporate Sustainability Reporting Directive
EU	European Union
EUR	Euro, official currency of 20 EU member states
FPIC	Free, Prior and Informed Consent
HRC	Human Rights Council
HRDD	Human Rights Due Diligence
ILO	International Labour Organization
LLC	Limited Liability Company
MNE	Multinational Enterprise
NCP	National Contact Point
NFRD	Non-Financial Reporting Directive
OECD	The Organization for Economic Cooperation and Development
SME	Small and medium-sized enterprises
TEU	Treaty of the European Union
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGPs	United Nations Guiding Principles on Business and Human Rights

# 1 Introduction

## 1.1 Background

In the past few years, the concept of corporate sustainability has become increasingly more important. Corporate sustainability is a broad concept which refers to an approach to conducting business that creates sustainable, long-term shareholder, employee, consumer, and societal value by balancing social, economic, and environmental objectives.<sup>1</sup> Due to evolving outlooks throughout society corporations have increased recognition of the concept of corporate sustainability's significant status. Also, after years of struggle with progressing both soft and hard law attempts at the UN and EU level, the organizations have recently ramped up new hard law attempts within business and human rights.<sup>2</sup> As such, developments in corporate sustainability legislation are progressing rapidly.

The United Nations Guiding Principles on Business and Human Rights<sup>3</sup> (UNGPs) and other previous soft law recommendations are evolving into hard law legislation proposals affecting how companies behave, especially in certain sectors, such as natural resource companies.

In February 2022, the European Commission presented its proposal for a Corporate Sustainability Due Diligence Directive (CSDD proposal).<sup>4</sup> The CSDD proposal will be a central aspect of this thesis as the proposal includes provisions that impose an obligation on companies to identify and mitigate human rights adverse impacts and respect for human rights throughout the value chain and will make companies subject to legal sanctions. The proposal will require both EU and non-EU companies of a certain size and within certain sectors operating within the EU to take responsibility for their own and their suppliers environmental and social impact.

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<sup>1</sup> Paolo Tenuta, Domenico Rocco Cambrea, 'Corporate Sustainability – Measurement, Reporting, and Effects on Firm Performance', SIDREA Series in Accounting and Business Administration, Springer, Cham, 2022, p. 16.

<sup>2</sup> See for example: UN Human Rights Council, 'Draft Treaty on Business and Human Rights', A/HRC/38/18., and OHCHR, 'Business and Human Rights: Treaty Process', United Nations, accessed 15 April 2023, <https://www.ohchr.org/en/business-and-human-rights/bhr-treaty-process>.

<sup>3</sup> United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', United Nations Office of The High Commissioner for Human Rights, 2011.

<sup>4</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final.



Of note for this thesis is that the CSDD is currently a proposal, meaning that the European Parliament and Council can change and eliminate provisions as part of the legislative process. This thesis focuses on the European Commission's CSDD proposal provisions; however, many aspects of the proposal are mirrored in soft law instruments such as the UNGPs<sup>5</sup>, the OECD Guidelines for Multinational Enterprises<sup>6</sup> (OECD Guidelines for MNEs) and other international frameworks and guidelines. Even if certain provisions or phrasings discussed in the thesis do not make the final version of the CSDD Directive, they are still part of the current process of defining what "human rights due diligence (HRDD) requirements" mean in practice as they are shaping the discourse on the subject.

The CSDD proposal aims to improve company law and corporate governance to incentivize long-term sustainable value creation, align interests of various stakeholders, and ensure companies contribute to sustainable development and the sustainability transition of economies and societies by preventing and minimizing potential and actual adverse impacts on human rights and the environment resulting from companies' own operations, their subsidiaries, and their value chains.<sup>7</sup> The CSDD-proposal introduces, among other things, a HRDD obligation for certain companies and a civil liability for failing to exercise due diligence.

The CSDD proposal is a big step in the development of corporate sustainability, that also brings with it questions. As this is new ground for company obligations, companies have begun asking questions as to what the CSDD proposal will require of them and how they must act to comply.

One such company is Stora Enso, which falls into the scope of large EU limited liability companies (LLC) with the most widespread and far-reaching requirements according to the CSDD proposal. The CSDD proposals main focus is on businesses with more than 500 employees and a net worldwide turnover of more than EUR 150 million in the last financial year. Stora Enso has approximately 21,000 employees worldwide and, in 2022, their global

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<sup>5</sup> Which were endorsed by the Human Rights Council in 2011 and are authoritative in this area of law.

<sup>6</sup> Organisation for Economic Cooperation and Development (OECD), 'OECD Guidelines for Multinational Enterprises', 2011.

<sup>7</sup> European Commission, 'Sustainable Corporate Due Diligence', available at: <https://eur-lex.europa.eu/legal-content/EN/PIN/?uri=CELEX:52022PC0071>, [accessed 15 April 2023].

annual net turnover was EUR 11.7 billion,<sup>8</sup> thus falling well within the scope of the CSDD proposal.

As a large company, Stora Enso will be among the first to have to implement the CSDD proposal once adopted, meaning that they must understand and implement the HRDD requirements set forth in the directive before then. Stora Enso is an interesting company for a case study, as they are a large company, have a focus on sustainability and emphasize that they are working for a more sustainable world. As such, the company will be used as an example for understanding the CSDD proposal in practice and for applying gap analysis and finding concrete improvement areas in light of the CSDD proposal.

## 1.2 Purpose and research questions

This thesis aims to look at the HRDD requirements set forth in the CSDD proposal for large EU LLCs. A detailed description of these requirements will be presented. To clarify and substantiate the HRDD requirements as expressed in the CSDD proposal, this thesis will also consist of a case study of Stora Enso to exemplify what these requirements mean in practice.

As such, the purpose of this thesis is twofold. First, this thesis aims to understand the HRDD requirements as expressed in the CSDD and conclude how these requirements have emerged from soft law requirements on the subject. By doing so, the thesis aims to understand the legal requirements of HRDD. Second, the thesis aims to apply these HRDD requirements to a large EU LLC, to understand how the CSDD proposal will work in practice and how a company should act in order to achieve meaningful compliance. This will be done by evaluating the HRDD processes currently used by Stora Enso in relation to the proposed requirements of the CSDD proposal. Based on the findings from these inquiries, the thesis will identify gaps for improvements as well as potential synergies among the company's existing processes.

By utilizing the term meaningful compliance, rather than solely compliance, the thesis aims to highlight the aim of the upcoming directive, which is to anchor human rights considerations into their operations and governance and foster sustainable and responsible corporate behavior.<sup>9</sup> This will be a step

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<sup>8</sup> Stora Enso Oyj, Annual Report 2022, available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023].

<sup>9</sup> European Commission, 'Corporate Sustainability Due Diligence', available at: [https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en) [accessed 15 April 2023].

away from previous due diligence efforts which have been more of a “ticking the box” character. However, as such, it is not enough to only look at the directive in and of itself. Therefore certain soft law instruments and academic and non-governmental organization commentary must be used to fill in gaps as to what is required to ensure meaningful compliance which not only “ticks the box” but also fosters sustainability.

Stora Enso, being a large company with global value chains, affects many people and societies around the world, and as such has a risk of human rights adverse impacts in their value chains. Through the years, certain human rights related issues have come to light within the company’s value chains, which have affected how the company works with HRDD. Stora Enso’s public policies and guidelines are permeated by the company’s ambition to their proactive commitment to solving customer and stakeholder sustainability issues and exploring ways to accelerate positive impacts.<sup>10</sup> This thesis will look at how the company’s current practices align with the CSDD proposal requirements.

To achieve the thesis aims, the research questions handled in this thesis are as follows:

1. What are the human rights due diligence requirements as set out in the proposal for the Corporate Sustainability Due Diligence Directive for large EU limited liability companies? How can these requirements be interpreted, with guidance from previous soft law instruments, to foster meaningful compliance in companies?
2. To what extent are Stora Enso’s current human rights due diligence processes in line with the requirements of the Corporate Sustainability Due Diligence Directive, and what next steps can the company take to ensure meaningful compliance with the proposal?

### 1.3 Methodology and material

The purpose of methodology is to develop a research strategy and identify the appropriate research methods to collect data and analyze it so the research questions can be answered.<sup>11</sup>

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<sup>10</sup> See for example, Stora Enso Oyj, ‘Sustainability Strategy and Governance’, (Stora Enso, n.d.), <https://www.storaenso.com/en/sustainability/sustainability-strategy-and-governance> [accessed 23 March 2023].

<sup>11</sup> White, B., ‘Mapping Your Thesis: The Comprehensive Manual of Theory and Techniques for Masters and Doctoral Research’, 2<sup>nd</sup> edn, Routledge, 2018, p. xviii.

This thesis has an overarching human rights perspective. It engages a human rights-based approach<sup>12</sup> and is based on the requirements set out in the CSDD proposal. The proposal in turn is based on soft law instruments<sup>13</sup> and refers to international human rights hard law sources<sup>14</sup> which are also considered as part of this thesis. The thesis uses a mixed methodological approach<sup>15</sup> consisting of a legal dogmatic method, law in action and case study.

The thesis employs the legal dogmatic method when aiming to describe the letter of the law and intends to compose a detailed analysis of the legal rules found in the discussed primary sources. The thesis also employs case study and law in action when focusing on applying the law that has been presented and analyzing it, focusing on the company that will be studied.

Legal dogmatic research methodology, also called “black letter” methodology, focuses on the letter of the law.<sup>16</sup> As the CSDD proposal is not yet law, it would be moot to use an approach that focuses on law in action when discussing the CSDD proposal requirements. The purpose of this is to gather, organize, and describe the legal situation, as is.<sup>17</sup> On the other hand, the case study focuses on the company’s current systems and applies a law in action approach. This aims to discuss the extent of which compliance with existent or coming regulation affects Stora Enso and guide the company in changes that might be needed for future compliance. By shifting towards law in action methodology, the thesis can analyze how the current and coming legislation affects the company in the real world, while keeping in mind the aim of the CSDD proposal, to direct focus towards what meaningful compliance means in actuality.

The collection of data has predominantly involved legal primary sources which consist of binding and non-binding documents issued by UN and EU bodies as well as international soft law instruments issued by other international organizations. The research has primarily been conducted through a desk study with the use of diverse material consisting of primary and secondary sources. The secondary sources used are academic sources

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<sup>12</sup> McConnel, L., and Smith R. (eds), ‘Research Methods in Human Rights’, 1<sup>st</sup> ed, Routledge, 2017, p. 7.

<sup>13</sup> The UNGPs and OECD Due Diligence Guidance for Responsible Business Conduct.

<sup>14</sup> Multiple treaties, conventions and declarations are mentioned in the CSDD proposal.

<sup>15</sup> White, B., ‘Mapping Your Thesis: The Comprehensive Manual of Theory and Techniques for Masters and Doctoral Research’, 2<sup>nd</sup> ed, Routledge, 2018, p. 238.

<sup>16</sup> Harris, P., ‘An Introduction to Law’, 8<sup>th</sup> ed, Cambridge University Press, 2019, p. 7.

<sup>17</sup> Ibid.

such as books and articles published by scholars researching business and human rights, especially human rights due diligence. Reports from NGO's and other organizations are used as well. The research in the case study is explorative and the qualitative analysis will be the basis for the thesis' findings.

Further primary data includes semi-structured interviews with Stora Enso representatives. The data collected from interviews was conducted between the 10-17 of May 2023, via online videoconferences. The semi-structured interviews that are utilized in this thesis are a data collection method that involve asking participants a set of open-ended questions and following them up with probe questions to explore further their responses and the topic of interest.<sup>18</sup>

## 1.4 Limitations

Research involves a trade-off between what can be achieved in practice and the ideal.<sup>19</sup> So, while the CSDD proposal discusses both human rights and environmental due diligence, and both are integral to the development of corporate sustainability, the scope of this thesis is limited to HRDD and the requirements set forth as such by the CSDD proposal. Due to the technical nature of environmental due diligence, it would require extensive research into a different field than that of HRDD. By limiting the scope to HRDD, a more in-depth analysis of the human rights-based situation can be made, and a clearer focus can be maintained on gap analysis and related to the topic. However, it should be noted that during the thesis the term "sustainability" is used as it often occurs when discussing HRDD. Sustainability should be seen as incorporating both human rights and environmental considerations, but for the thesis only human rights will be looked at in detail.

This thesis is also limited to focus on the CSDD proposal's core obligation, i.e., the articles with relevance for the due diligence process. Much of what the proposal regulates is outside its core obligation, used either as support or necessary additions to make it work as a legally binding instrument. The due diligence process is, as identified in the CSDD proposal, identifying, bringing to an end, preventing, mitigating and accounting for negative human rights impacts in the company's own operations, their subsidiaries and their value chains. A part of this core obligation is however also the Director's duty to

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<sup>18</sup> McConnel, L., and Smith R. (eds), 'Research Methods in Human Rights', 1<sup>st</sup> ed, Routledge, 2017, p. 72.

<sup>19</sup> White, B., 'Mapping Your Thesis: The Comprehensive Manual of Theory and Techniques for Masters and Doctoral Research', 2<sup>nd</sup> ed, Routledge, 2018, p. 240.

set up and oversee the implementation of the due diligence processes and integrating due diligence into the corporate strategy. The non-core obligation articles of the CSDD proposal will not be covered within the scope of this thesis.

Further, the thesis is focused on the companies defined under Article 2.1.a of the CSDD proposal, other companies and institutions are also included in the directive but fall outside the scope of this thesis. This is in part due to the fact that Article 2.1.a companies have a large impact on human rights and are interesting to focus on, as well as that this is also the group of companies in which Stora Enso falls into the scope.

It must also be noted that the CSDD proposal discussed in this thesis is the European Commission's proposal. The European Commission is responsible for planning, preparing, and proposing new legislation; they are responsible for the associated impact assessment and consultations.<sup>20</sup> However, once prepared, the European Commission's proposal is sent to the European Parliament and the Council of the European Union.<sup>21</sup>

In short, they both must give their opinions on the proposal, which they can do by suggesting changes or amendments.<sup>22</sup> After that, the European Parliament and the Council of the European Union negotiate and reach a final agreement on the proposal.<sup>23</sup> Only once the two agree can the directive be adopted by the European Parliament and the Council of the European Union.<sup>24</sup> As the European Parliament and the Council of the European Union are basing their versions on the European Commission's proposal, the European Commission's proposal can be seen as a starting point on which the European Parliament and the Council of the European Union for their own positions.

This author has chosen to focus on the European Commission's proposal. Due to the limited time one has to write a thesis, certain choices had to be made about which draft should play the biggest role in this thesis. While the other

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<sup>20</sup> European Council / Council of the European Union, "The ordinary legislative process", available at: <https://www.consilium.europa.eu/en/council-eu/decision-making/ordinary-legislative-procedure/#:~:text=The%20European%20Commission%20submits%20a,a%20conciliation%20committee%20is%20convened> [accessed: 3 May 2023].

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

drafts are mentioned in passing in this thesis the focus of this thesis has been the European Commission's proposal.

As the concept of corporate sustainability is broad, there are several legal areas that are placed within it. Most prominently are those of climate related issues and human rights adverse impacts. While much of the emerging legislation to some extent tackles both areas, this thesis will focus predominantly on the business and human rights matter to limit the scope.

## 1.5 Outline

After this introductory chapter, which aims to set the context of the work, the thesis will continue with four main chapters, and end with a few concluding remarks.

Chapter two delves into the international business and human rights framework, tracing the historical development of a binding corporate Human Rights Due Diligence instrument. It explores the conceptualization of HRDD through soft law instruments, with more in depth analysis of the UNGPs and the OECD Guidelines for MNEs.

Chapter three focuses on the CSDD proposal. It begins by examining the core obligations and principles within the proposal, along with the due diligence process in the value chain. The chapter then goes through the human rights due diligence requirements as set out in the CSDD proposal, focusing on the Articles relevant for large EU limited liability companies. Additionally, other articles related to sanctions, civil liability, and directors' duty of care are discussed briefly.

Chapter four presents a case study of Stora Enso, providing insights into the company's human rights due diligence measures and relevant initiatives. It includes interviews with company representatives and previous corrective measures taken by the company.

Chapter five evaluates Stora Enso's current practices compared to the HRDD requirements as set out in the CSDD proposal. The chapter also explores the prospects for meaningful compliance with the CSDD proposal and identifies international HRDD standards that can guide that process.

The thesis concludes with brief closing remarks that aim to summarize the key findings of the thesis.

## 2 International business and human rights framework

As no legislation exists in isolation, it is important to begin by briefly looking at other relevant policies that are important in the understanding of the CSDD proposal. Therefore, before an in-depth examination of the CSDD proposal can be presented, it is imperative to understand the context into which it is presented. To achieve this, this chapter presents an overview of the background for the area of international business and human rights, as it is important to note the context in which the CSDD proposal is appearing.

### 2.1 The journey towards a binding corporate human rights due diligence instrument

The business and human rights movement began to gain significant momentum in the late 1990s and early 2000s. A key milestone of the early stages of the movement was the establishment of the UN Global Compact, by then-UN Secretary General Kofi Annan, aiming to encourage businesses to adopt sustainable and socially responsible practices.<sup>25</sup> Another pivotal moment was the appointment of John Ruggie as the UN Special Representative on Business and Human Rights in 2005.<sup>26</sup> His work led to the development of the “Protect, Respect, and Remedy” framework, which was endorsed by the UN Human Rights Council in 2008.<sup>27</sup> This framework emphasized the roles of states and businesses in protecting and respecting human rights and providing remedy for human rights abuses.<sup>28</sup>

Also, in 1998, the International Labour Organization (ILO), which is the only tripartite UN agency and brings together governments, employers, and workers, adopted its Declaration on fundamental principles and Rights at Work.<sup>29</sup> This has been seen as essential in promoting due diligence in business operations to uphold labor rights and decent working conditions.<sup>30</sup>

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<sup>25</sup> Giuliani, E., ‘Business and human rights, history, law and policy: bridging the accountability gap’, 2<sup>nd</sup> ed, BHRJ, 2017, p. 380.

<sup>26</sup> R Mares (ed.), ‘The UN Guiding Principles on Business and Human Rights – Foundations and Implementation’, Martinus Nijhoff Publishers, Leiden, Boston, 2012, p 4.

<sup>27</sup> Ibid., p 3.

<sup>28</sup> Ibid., p 3-4.

<sup>29</sup> International Labour Organization (ILO), *ILO Declaration on Fundamental Principles and Rights at Work*, June 1988.

<sup>30</sup> Ibid.



In recent years, HRDD has gained traction and found its way into national laws of several countries, including France and Germany.<sup>31</sup> These countries have introduced legislation that requires companies to conduct HRDD to identify, prevent, and address human rights risks and adverse impacts throughout their supply chains and business operations.<sup>32</sup>

Also in recent years, as part of the 2030 Agenda for Sustainable Development, in 2015 the UN adopted the UN Sustainable Development Goals (SDGs).<sup>33</sup> The SDGs are 17 goals with an aim to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030.<sup>34</sup>

Overall, these developments have signified a growing recognition of the need for businesses to consider human rights in their operations and engage in responsible practices which have guided the work towards a binding HRDD instrument.

## 2.2 HRDD conceptualized through soft law instruments

The CSDD proposal largely build upon the work of the The UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD.<sup>35</sup> As such, they are the most influential and important to understanding the CSDD proposal and it is therefore worth taking a closer look at these instruments to see how they have advanced HRDD and what substantial differences there are between them and the CSDD proposal.

### 2.2.1.1 *UN Guiding Principles on Business and Human Rights*

The existing international standards on responsible business conduct state that companies have a responsibility to protect human rights throughout their

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<sup>31</sup> Worldfavor, “The Complete list of national human rights due diligence laws – who’s affected and how to comply”, available at: <https://blog.worldfavor.com/the-complete-list-of-national-human-rights-due-diligence-laws-whos-affected-and-how-to-comply> [accessed 15 April 2023]

<sup>32</sup> Ibid.

<sup>33</sup> UN, “Sustainable Development Goals”, available at: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/> [accessed 16 April 2023].

<sup>34</sup> Ibid.

<sup>35</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 28.

operations and value chains.<sup>36</sup> The UNGPs, which are central to the Business and Human Rights framework as they provide a globally recognized and authoritative framework for addressing the adverse human rights impacts of business activities, are structured around three pillars: the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy for victims of human rights abuses.<sup>37</sup> The UNGPs specify that companies must exercise HRDD by identifying, preventing and mitigating any adverse impacts their operations may have on human rights, and provide remedies for any adverse impacts that occur.<sup>38</sup>

As such, the UNGPs are a set of guiding principles that provide a framework for companies to prevent and address human rights abuses in their operations and supply chains. The principles aimed at businesses are to be seen as a baseline responsibility for businesses to respect human rights.<sup>39</sup> The UNGPs compel companies to adopt a human rights policy, conduct human rights impact assessments, integrate the human rights policy throughout the company and track performance.<sup>40</sup> The UNGPs also emphasize the importance of engaging with stakeholders, including workers, communities, human rights defenders and civil society organizations, in the due diligence process.<sup>41</sup>

According to the UNGPs companies have a responsibility to respect human rights.<sup>42</sup> The foundational principles for companies set out that all businesses, regardless of their size, sector, location, ownership or structure<sup>43</sup> should avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur and seek to prevent or mitigate adverse impacts that are linked to their operations, even if they have

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<sup>36</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 2.

<sup>37</sup> UN Human Rights Council, *Protect, respect and remedy: a framework for business and human rights : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie*, 7 April 2008, A/HRC/8/5, p. 5.

<sup>38</sup> Choudhury, B. (ed), ‘The UN Guiding Principles on Business and Human Rights: A Commentary’, Oxford university Press, 2023, p. 4.

<sup>39</sup> Choudhury, B. (ed), ‘The UN Guiding Principles on Business and Human Rights: A Commentary’, Oxford university Press, 2023, p. 4.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid., p. 295.

<sup>42</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’, 2011, UN Doc HR/PUB/11/04, Principle 11.

<sup>43</sup> Ibid., Principle 14.

not contributed to those impacts.<sup>44</sup> Also, companies should have policies and appropriate processes in place in order to meet their responsibility to respect human rights.<sup>45</sup> These policy requirements reflect those of the CSDD proposal.<sup>46</sup>

As stated, the UNGPs recognize the responsibility of companies to exercise human rights due diligence by identifying, preventing, and mitigating the adverse impacts of their operations on human rights and by accounting for how they address those impacts.<sup>47</sup> According to the UNGPs, businesses should refrain from violating human rights and should resolve any adverse impacts on human rights that they have added to, caused, or are associated with in their own operations, subsidiaries, and through their direct and indirect business relationships.<sup>48</sup> Despite the intention of all Member States to build on existing international regulation, new and emerging laws on due diligence are significantly different within EU Member States and result in divergent requirements.<sup>49</sup> As such, the EU has implemented the EU Action Plan on Human Rights and Democracy 2020-2024<sup>50</sup>, to strengthen engagement to actively promote the implementation of the UNGPs.<sup>51</sup> The CSDD proposal also makes clear that like the UNGPs, the proposal requires communication of relevant information on due diligence policies, procedures, and activities conducted to identify and address actual or potential adverse impacts, including the results and outcomes of those activities, as part of the due diligence process.<sup>52</sup>

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<sup>44</sup>Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’, 2011, UN Doc HR/PUB/11/04, Principle 13.

<sup>45</sup> Ibid., Principle 15.

<sup>46</sup> A policy commitment to meet their responsibility to respect human rights, a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights, processes to enable remediation of adverse human rights impacts they cause or to which they contribute.

<sup>47</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’, 2011, UN Doc HR/PUB/11/04, Principle 13 and 15.

<sup>48</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 28.

<sup>49</sup> Ibid, p. 10.

<sup>50</sup> Joint Communication to the European Parliament and the Council on the EU Action Plan on Human Rights and Democracy 2020-2024 (JOIN/2020/5 final).

<sup>51</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 31.

<sup>52</sup> Ibid. p. 40.

While the CSDD proposal references the UNGPs as setting the authoritative expectations on due diligence,<sup>53</sup> it is worth noting that the core concepts of the UNGPs are not fully in line with those of the CSDD proposal.<sup>54</sup> The CSDD proposal acknowledges that adverse impacts can occur at various stages of a product’s life cycle<sup>55</sup> and that “in order for due diligence to have meaningful impact, it should cover ... adverse impacts generated throughout the life cycle of production and use and disposal,”<sup>56</sup> including throughout the value chain. However, Article 1 of the CSDD proposal narrows the scope of due diligence to a company’s own operations, its subsidiaries, and “established business relationships”. These relationships are defined as lasting, based on intensity and duration, and not negligible or merely ancillary to the value chain.<sup>57</sup> This limited scope poses a risk that due diligence may focus on these “established business relationships” rather than addressing the most severe risks and impacts throughout the value chain.<sup>58</sup> According to Shift, the UNGPs intentionally avoided such restrictions to prevent companies from overlooking impacts in more remote parts of the value chain, where impacts are often more severe.<sup>59</sup> Furthermore, this narrow scope could be exploited through legal or tactical decisions to manage value chain relationships and avoid due diligence obligations.<sup>60 61</sup>

Further, the CSDD proposal references engaging with affected stakeholders, but does not give their perspectives the role and weight that the international standards do.<sup>62</sup> Effective implementation of HRDD under the UNGPs hinges on meaningful engagement with affected stakeholders. However, turning this

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<sup>53</sup> As well as the OECD Guidelines for MNEs.

<sup>54</sup> Shift, ‘The EU Commission’s Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT’S ANALYSIS’, March 2022, accessible at: [https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

<sup>55</sup> Such as raw material sourcing, manufacturing, product or waste disposal, and recycling.

<sup>56</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p 32.

<sup>57</sup> Ibid. p 16-17.

<sup>58</sup> Shift, ‘The EU Commission’s Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT’S ANALYSIS’, March 2022, p. 4, accessible at: [https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023]

<sup>59</sup> Ibid.

<sup>60</sup> For instance, the use of “established business relationships” created incentives for companies to avoid relationships that would be categorized as “lasting” to stay outside the scope of the due diligence duty.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid., p. 7.

principle into a legally binding duty may be one of the most challenging aspects of the process.

### 2.2.1.2 *OECD*

The OECD Guidelines for Multinational Enterprises<sup>63</sup> are a set of recommendations for responsible business conduct that provide guidance to multinational enterprises operating in or from adhering countries. Although first adopted in 1976, in 2011,<sup>64</sup> the OECD updated the Guidelines to include a chapter on human rights that aligned with the UNGPs.<sup>65</sup> As such, the Guidelines now also require companies to conduct due diligence to identify, prevent and mitigate human rights risks and impacts, and to provide remedies for any adverse impacts that occur. The Guidelines have had a large influence on the CSDD proposal and the CSDD proposal has an ambition to give the OECDs regulatory framework greater impact.<sup>66</sup>

The OECD Guidelines for Multinational Enterprises, although not binding, reflect government expectations on how businesses can act responsibly, and apply to multinational enterprises in all industries, regardless of where they operate.<sup>67</sup> According to the Guidelines, companies should respect domestic laws,<sup>68</sup> and in countries where domestic laws conflict with the Guidelines, companies should attempt to respect the Guidelines to the greatest extent possible without violating domestic law.<sup>69</sup>

While the OECD Guidelines are voluntary, compliance with them is not completely unsupervised. The governments of the affiliated states have committed to promoting the Guidelines by establishing National Contact Points (NCPs), which exercises oversight over, inform and promote the application of the Guidelines by making recommendations and mediating

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<sup>63</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, OECD Publishing.

<sup>64</sup> Of note is that they are currently under revision again.

<sup>65</sup> OECD, 'Responsible Business: Key Messages from International Instruments', available at: <https://mneguidelines.oecd.org/RBC-Key-Messages-from-International-Organisations-ENG.pdf> [accessed 17 April 2023], p. 3.

<sup>66</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, p. 28, 31 and 32.

<sup>67</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, OECD Publishing, p. 31-32.

<sup>68</sup> *Ibid.*, p. 17.

<sup>69</sup> *Ibid.*, p. 17.

between parties.<sup>70</sup> As such, the NCPs are an alternative dispute resolution system (mediation) to promote compliance with the guidelines.<sup>71</sup>

The Guidelines present recommendations for responsible business conduct in a global context. Section I of the Guidelines contains concepts and principles where it defines terms such as *supply chain* and *business relationship* that have corresponding definitions in the CSDD proposal.<sup>72</sup> Section II of the Guidelines deals with general principles and states that companies should, among other things, contribute to sustainable development and respect internationally recognized human rights, while refraining from seeking or accepting exemptions not contemplated in statutory or regulatory frameworks and refraining from discriminatory or disciplinary action against workers who make reports on practices contravene to the law, the Guidelines or the enterprise's policies.<sup>73</sup> Companies should also carry out risk based due diligence<sup>74</sup> to identify, prevent and mitigate actual and potential adverse impacts<sup>75</sup> and account for how these impacts are addressed.<sup>76</sup> Companies should engage with relevant stakeholders to enable that their views be taken into account when planning and deciding on activities that may have a significant impact on local communities.<sup>77</sup> According to Section III of the Guidelines,<sup>78</sup> which deals with disclosure, companies should disclose information on all material matters regarding their activities, structure, financial situation, performance, ownership and governance.<sup>79</sup> They should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist.<sup>80</sup>

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<sup>70</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, OECD Publishing, p. 18.

<sup>71</sup> Ibid., p. 68.

<sup>72</sup> Ibid., p. 17-18

<sup>73</sup> Ibid., p. 19-20.

<sup>74</sup> The risk based due diligence recommendation applies to chapter III to VIII of the guidelines. This applies to human rights (chapter IV), employment and industrial relations (chapter V), environment (chapter VI), combating bribery, bribe solicitation and extortion (chapter VII), and consumer interests (VIII). There are also recommendations on science and technology (chapter IX), competition (X) and taxation (XI).

<sup>75</sup> As described in paragraphs 11 and 12 of section II.; see footnote 48.

<sup>76</sup> Paragraph 10 section II; see footnote 48.

<sup>77</sup> Paragraph 14 section II; see footnote 48.

<sup>78</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, OECD Publishing, p. 27-30.

<sup>79</sup> Ibid., p 27.

<sup>80</sup> Ibid., p 28.

The OECD Guidance on Responsible business conduct and sectoral guidance<sup>81</sup>, and the sector-specific guidelines,<sup>82</sup> set out practical due diligence steps to help companies identify, prevent, mitigate, and account for how they address actual and potential impacts in their operations, value chains and other business relationships, and are internationally recognized frameworks.<sup>83</sup> There are specific guidelines for the extractive sector, mineral supply chains, agricultural supply chains, garment supply chains, and the financial sector. These have influenced the definition of high-impact sectors in the CSDD proposal. The definition of high-impact sectors<sup>84</sup> has been limited to sectors of high risk of adverse impacts and for which OECD guidance exists.<sup>85</sup>

The CSDD proposal also states that the six steps of HRDD<sup>86</sup> defined by the OECD Due Diligence Guidance for Responsible Business Conduct, which include due diligence measures for businesses to identify and resolve adverse human rights impacts, should be covered by the due diligence process outlined in the directive.<sup>87</sup> The CSDD proposal is largely based on these six

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<sup>81</sup> OECD, ‘OECD Guidance on Responsible Business Conduct’, 2018, and sector-specific guidance, available at <https://www.oecd.org/investment/ue-due-diligence-guidance-for-responsible-business-conduct.htm><https://www.oecd.org/investment/ue-due-diligence-guidance-for-responsible-business-conduct.htm> [accessed 17 April 2023].

<sup>82</sup> OECD, ‘Responsible Business Conduct: OECD Guidelines for Multinational Enterprises - sectors’, available at <http://mneguidelines.oecd.org/sectors/> [accessed 17 April 2023].

<sup>83</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 28-29.

<sup>84</sup> the high-impact sectors defined in the CSDD proposal are: the manufacture of textiles, leather and related products (...), and the wholesale trade of textiles, clothing and footwear; agriculture, forestry, fisheries (...), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages; the extraction of mineral resources regardless of where they are extracted from (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (...), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).

<sup>85</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 15.

<sup>86</sup> (1) integrating due diligence into policies and management systems, (2) identifying and assessing adverse human rights and environmental impacts, (3) preventing, ceasing or minimising actual and potential adverse human rights, and environmental impacts, (4) assessing the effectiveness of measures, (5) communicating, (6) providing remediation.

<sup>87</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p 32.

steps, and are mirrored in the due diligence obligations set forth in the CSDD proposal.

However, while starting from the right basis, there are a few key discrepancies in their approaches. These will be discussed under the relevant Article sub-headings later on in the thesis.



### 3 The European Commission's proposal for a CSDD Directive

Regardless of the exact scope of the final Directive, when the CSDD proposal is passed into law it will have a significant impact on EU companies. The CSDD proposal aims to improve the sustainability practices of European companies by requiring them to conduct due diligence on human rights and governance issues throughout their supply chains. Previously, this has been done on a voluntary basis by companies that have chosen to regard voluntary recommendations such as the OECD Guidelines for MNEs and the UNGPs.

EU companies will have an increased responsibility to ensure that their operations do not cause harm to people, both within the EU and in their global supply chains. This may require significant changes to business practices, including changes in supplier relationships, monitoring of suppliers, and implementation of new policies and procedures.

The CSDD proposal will require companies to publicly disclose information about their due diligence processes, including information on identified risks, actions taken to mitigate those risks, and the effectiveness of those actions. Increased transparency will most likely have a positive impact on the reputation of EU companies and their ability to attract investors and customers who prioritize sustainability.

If EU companies fail to comply with the requirements set out in the CSDD proposal, they could face legal liability. The proposal includes provisions for civil liability, which would allow victims of human rights abuses to seek compensation from companies that fail to identify and address risks in their supply chains.

The CSDD proposal aims to create a level playing field for EU companies by ensuring that they are all subject to the same sustainability requirements. This would help to prevent companies from gaining a competitive advantage by engaging in unsustainable practices.

The CSDD proposal has the potential to significantly impact EU companies, particularly those with global supply chains. Companies that are already implementing strong sustainability practices and human rights due diligence may be better positioned to comply with the requirements set out in the

proposal, but all companies will need to carefully assess their operations and supply chains to ensure that they are able to meet the proposed sustainability requirements.

The CSDD proposal intends to introduce major changes in laws and regulations. With the help of the CSDD proposal, the EU wants to promote sustainable and responsible business behavior throughout its entire value chain. The proposal aims to ensure that businesses operating in the internal market of the EU contribute to sustainable development and the sustainability transition of economies and societies by identifying, preventing, and mitigating, ending, and minimizing potential or actual adverse effects on human rights resulting from businesses' own operations, their subsidiaries, and their value chains.

An in-depth overview of the CSDD proposal requirements for companies, as presented by the European Commission, will be given below. In short, the CSDD proposal requires companies to conduct human rights due diligence in six steps. These six steps are:

- integrating due diligence into their policies<sup>88</sup>,
- identifying actual or potential adverse impacts<sup>89</sup>,
- preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimizing their extent<sup>90</sup>,
- establishing and maintaining a complaints procedure<sup>91</sup>,
- monitoring the effectiveness of their due diligence policy and measures<sup>92</sup>, and
- publicly communicating on due diligence<sup>93</sup>.

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<sup>88</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, Article 5.

<sup>89</sup> Ibid., Article 6.

<sup>90</sup> Ibid., Articles 7 & 8.

<sup>91</sup> Ibid., Article 9.

<sup>92</sup> Ibid., Article 10.

<sup>93</sup> Ibid., Article 11.

Beyond that, the CSDD proposal also presents requirements for companies on civil liability<sup>94</sup> and directors' duties<sup>95</sup>.

The CSDD proposal aims to promote sustainable and responsible corporate behavior and to anchor human rights in companies' operations and corporate governance.<sup>96</sup> A recurring element in discussions about how this should be done is which companies should be covered by these demands.

These demands usually lead to an increased administrative burden in the form of providing increased information to the public and increased reporting to various supervisory authorities. A trade-off must be made when legislating, between an overall interest in not negatively affecting the conditions for small and medium-sized companies to develop, and the interest in increasing the availability of necessary information.<sup>97</sup>

In the CSDD proposal, this balance has resulted in the directive being applicable primarily to larger companies. Compared to the original ambitions, the proposal is greatly reduced.<sup>98</sup> As regards the types of companies covered, Article 3.1.a of the proposal contains a definition of what constitutes a company.<sup>99</sup>

The CSDD proposal has opted to include several categories for which companies are covered and to which extent. So, while the proposal includes both companies incorporated in EU Member States and companies incorporated in third countries, provided that they meet certain thresholds in the scope, this thesis only covers the articles which concern large EU LLCs

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<sup>94</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, Article 22.

<sup>95</sup> Ibid., Articles 25 & 26.

<sup>96</sup> European Commission, 'Corporate Sustainability Due Diligence', available at: [https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en) [accessed 15 April 2023].

<sup>97</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, p. 14-15.

<sup>98</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, p. 14-15.

<sup>99</sup> 'company' means any of the following: (i) a legal person constituted as one of the legal forms listed in Annex I to Directive 2013/34/EU of the European Parliament and of the Council<sup>10</sup>; (ii) a legal person constituted in accordance with the law of a third country in a form comparable to those listed in Annex I and II of that Directive; (iii) a legal person constituted as one of the legal forms listed in Annex II to Directive 2013/34/EU composed entirely of undertakings organised in one of the legal forms falling within points (i) and (ii); (iv) a regulated financial undertaking (...).

with an average of more than 500 employees and a net turnover of more than EUR 150 million.

### 3.1 Obligations and principles in the CSDD proposal

Reason 15 of the CSDD proposal specifies that the main obligations set out in the CSDD proposal are “obligations of means” rather than obligations of results.<sup>100</sup> The CSDD proposal states that companies are not required to guarantee that adverse impacts will never occur or that they will be stopped in all circumstances. Rather, the company should take the appropriate measures which can reasonably be expected to result in the prevention or minimization of the adverse impact under the circumstances of the specific case.<sup>101</sup> The specifics of the company's value chain, the industry or geographical area in which its value chain partners operate, the company's power to influence its direct and indirect business relationships, and whether the company could increase its power of influence should all be taken into consideration.<sup>102</sup>

That the CSDD proposal focuses on obligation of means will be of importance for the provisions regarding civil liability. The civil liability provisions, which will be discussed briefly below, are an important step in ensuring that companies are held accountable for their impact on human rights throughout their value chains. In a court proceeding it will be the appropriateness of the measures taken by the company<sup>103</sup> that will determine whether the company did in fact comply or fail to comply with its due diligence obligations.<sup>104</sup> This is in line with the UNGPs approach to due diligence as a standard of care.<sup>105</sup>

The CSDD proposal's requirement for “appropriate measures” should further be seen as an application of the proportionality principle. Therefore, the characteristics of the industry in which the company operates, the resources that are available to them, and the effective influence on its established

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<sup>100</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 31-32.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> As defined in European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 36 and Article 3.q.

<sup>104</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, Article 22.1.a.

<sup>105</sup> ‘UN Guiding Principles on Business and Human Rights’, adopted by the UN Human Rights Council, 16 June 2011, A/HRC/17/31, Principle 14.

business relationships will differ for different companies.<sup>106</sup> Larger, more influential, and resourceful companies will be expected to do more to protect human rights. Considering the proportionality principle further, “appropriate measures” should be equal to the severity and likelihood of an adverse impact, and companies will be expected to prioritize their actions on this basis.<sup>107</sup>

With regards to another central principle, that of responsible disengagement as a last-resort action, the design of the directive is such that it must be possible for companies to have continuous cooperation with business partners in the value chain and avoid a termination of the business relationships that may exacerbate the adverse impacts. In line with international standards, reason 32 of the CSDD proposal states that prevention, mitigation, and bringing to an end or minimizing adverse impacts should take into account the adversely impacted’s interests.<sup>108</sup> Because disengagement can result in exacerbating adverse impacts, the CSDD proposal states clearly that this is a last-resort action, and if done, must be done responsibly.<sup>109</sup> This concept is reiterated numerous times throughout the directive.<sup>110</sup>

### 3.2 Due diligence in the value chain

The core of the CSDD proposal consists of the provisions in Articles 4 to 11 which deal with due diligence in the value chain. What is meant by “due diligence” in the CSDD proposal is established in these provisions and discussed in the coming sections. The information presented here will form the legal core of the subsequent gap analysis, presented later in the thesis.

The term “value chain” is defined in Article 3.g of the proposal as the activities related to a company's production of goods or the provision of a service, including development of the product or service and use and disposal of the product, as well as related activities upstream and downstream of the company’s established business relationships. Small and medium-sized companies that are part of the value chain are also covered. Reason 18 of the

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<sup>106</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 14-17.

<sup>107</sup> Ibid., p. 14.

<sup>108</sup> For Example, Global Forum on Responsible Business Conduct, ‘Session note Responsible Disengagement’, 30 June 2017, OECD.

<sup>109</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 37.

<sup>110</sup> See for example, *ibid.*, Article 7.5.b and 8.6.b.

CSDD proposal explains which activities upstream<sup>111</sup> and downstream<sup>112</sup> in the value chain should be encompassed; in short, all established direct and indirect business relationships that are necessary to carry out the company's activities.

According to Article 3.f of the proposal, the term “established business relationship” refers to a direct or indirect business relationship which, due to its intensity or duration, is, or is expected to be, lasting and which does not represent a negligible or ancillary part of the value chain. The purpose of limiting the application of the directive to established business relationships, compared to all business relationships, is, according to the reasons for the proposal, that the companies in established business relationships have the proper circumstances to use appropriate leverage effectively, i.e., possibility to influence.<sup>113</sup> Of note, the directive states that the nature of business relationships as “established” should be reassessed periodically (at least every 12 months). If there is an established direct business relationship of a company, then all linked indirect business relationships should also be considered as established regarding that company.<sup>114</sup>

Of note, in the Council of the European Union's (CEU) general approach to the CSDD proposal, the term “established business partners” has been changed to “business partners in companies' chains of activities”.<sup>115</sup> This is a result of some of the critique directed towards the commission draft, and an attempt to make the directive applicable to the full supply chain, not only the established relationships. According to the CEU general approach, “chain of activities” means all activities upstream, and downstream only in relation to activities conducted for, or on behalf of, the company.

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<sup>111</sup> That design, extract, manufacture, transport, store and supply raw material, products, parts of products, or provide services.

<sup>112</sup> Use or receive products, parts of products or services from the company up to the end of the life of the product, including inter alia the distribution of the product to retailers, the transport and storage of the product, dismantling of the product, its recycling, composting or land-filling.

<sup>113</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 33.

<sup>114</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 33.

<sup>115</sup> Council of the European Union, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937: - General approach’, 15024/1/22, Brussels, 30 November 2022, p. 7.

SHIFT, a non-profit organization specialized on the UNGPs has expressed that the novel and untested concept of ‘established business relationships’ is based on the ease for companies of identifying risks and using leverage in these more proximate relationships.<sup>116</sup><sup>117</sup> Here, SHIFT expresses that improvement regarding adverse impacts is often more urgent among the further removed, less established or informal business relationships.<sup>118</sup> They mean that the CSDD proposal risks leaving completely unattended the adverse impacts on smallholder farmers, workers, miners and other marginalized groups at the outskirts of the supply chains.<sup>119</sup> In an attempt to meet this critique and align with the UNGPs and the OECD Guidelines the CEU has broadened the scope to ‘business relationship’ in accordance with their article 3(e) to include direct and indirect business partners.<sup>120</sup>

Article 4 of the CSDD proposal requires Member States to ensure that companies exercise due diligence in respect of human rights throughout their value chains by implementing six measures, laid out in articles 5-11 of the directive. These measures will be discussed in the following.

### 3.2.1 Integrating due diligence into company policies

Article 5 of the CSDD proposal presents the first company due diligence requirement, namely, to integrate due diligence into all company policies and have in place a due diligence policy, which must be updated annually. Further, Article 5 clarifies what the due diligence policy companies must have in place shall include. This is a description of the company’s approach to due diligence (which must include the company’s long-term approach), a code of conduct which describes rules and principles that are to be followed by the company’s employees and subsidiaries,<sup>121</sup> and a description of the processes put in place

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<sup>116</sup> Shift, ‘The EU Commission’s Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT’S ANALYSIS’, March 2022, p. 4, accessible at: [https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

<sup>117</sup> The concept is also used in the French Duty of Vigilance Law, which does mean the concept is not completely novel and untested. However, the point from SHIFT remains relevant.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Council of the European Union, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937: - General approach’, 15024/1/22, Brussels, 30 November 2022, p. 72.

<sup>121</sup> Where relevant, in accordance with article 7(2), point (b), 7(3), 8(3), point c, or 8(4), also direct or indirect business partners to the company must follow the code of conducts rules and principles according to the updated proposal.

to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business partners.

The European Commission impact assessment states that the CSRD and other EU measures on sustainability-related disclosures are expected to intensify disclosure and reporting on sustainability issues for EU companies falling in their scope.<sup>122</sup> The impact assessment supposes that a number of companies will as a result of their reporting under the CSRD become aware of their adverse impacts and as a result adopt due diligence processes.<sup>123</sup> However, as is stated in the risk assessment, the CSRD does not contain requirements for companies to effectively prevent, address and mitigate adverse impacts, and a voluntary approach to due diligence has not been effective in mainstreaming due diligence practices and creating a level playing field.<sup>124</sup> The risk assessment also states that in the past reporting rules have proven to only incentivize frontrunner companies.<sup>125</sup> The obligations set forth in Article 5 of the CSDD proposal will for many companies work together and be applied in parallel to the requirements set out in the CSRD, but will also effectively work towards the goal of leveling the playing field and holding all companies within the scope of the directive accountable for the adverse impacts in their value chains.

The obligations presented in Article 5 of the CSDD proposal correlate closely to the OECD Guidelines Section III, which have been presented in section 2.1.1.2. The CSDD proposal requires due diligence integration into all corporate policies to be published annually as stated in Article 5, or in accordance with Article 11. The OECD Guidelines Section III state that companies should disclose information on all material matters regarding their activities, structure, financial situation, performance, ownership and governance.<sup>126</sup> They should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist.<sup>127</sup>

### 3.2.2 Identify and assess potential and actual adverse impacts

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<sup>122</sup> European Commission, ‘Inception Impact Assessment’, Ref. Ares (2020)4034032 – 30/07/2020, p. 3.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid., p. 2.

<sup>125</sup> Ibid.

<sup>126</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, OECD Publishing, p 27.

<sup>127</sup> Ibid., p 28.



According to Article 6 of the CSDD proposal, companies must take appropriate measures to identify actual and potential adverse human rights impacts arising from their own operations, their subsidiaries, and where related to their value chains, their established business relationships. In accordance with what is stated in Article 3.c of the CSDD proposal, adverse human rights impacts are understood as the violation of human rights contained in the international human rights conventions mentioned in the annex.<sup>128</sup> Provided that the company can reasonably determine the risk of an adverse impact and the appropriate measures to be taken in order to comply with their due diligence requirements, this adverse impact should also be included in the adverse human rights impact requirement under the CSDD proposal, in order to ensure comprehensive coverage of human rights.<sup>129</sup> This is the case, even if this violation of a prohibition or right is not specifically listed in the annex, if it directly affects a legal interest protected by those conventions.<sup>130</sup>

As previously mentioned, the CSDD proposal follows the proportionality principle and therefore what constitutes “appropriate measures” will be dependent on several factors. These factors may encompass the specific characteristics of the economic sector in which the company operates, the available resources at the company’s disposal, and its actual influence over

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<sup>128</sup> The Universal Declaration of Human Rights; The International Covenant on Civil and Political Rights; The International Covenant on Economic, Social and Cultural Rights; The Convention on the Prevention and Punishment of the Crime of Genocide; The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; The International Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Elimination of All Forms of Discrimination Against Women; The Convention on the Rights of the Child; The Convention on the Rights of Persons with Disabilities; The United Nations Declaration on the Rights of Indigenous Peoples; The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; United Nations Convention against Transnational Organized Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; The International Labour Organization’s Declaration on Fundamental Principles and Rights at Work; The International Labour Organization’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; The International Labour Organization’s core/fundamental conventions: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol; Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

<sup>129</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 35.

<sup>130</sup> Ibid.

its established business relationships.<sup>131</sup> In practical terms, larger, more influential, and resourceful companies will be expected to undertake greater efforts to protect human rights. The application of the proportionality principle also entails that the measures taken should commensurate with the severity and likelihood of a negative impact. Consequently, companies are anticipated to prioritize their actions based on this criterion.<sup>132</sup>

According to Article 6.4 of the CSDD proposal, the identification of adverse impacts should be based on quantitative and qualitative information. For this, companies may make use of appropriate resources, including independent reports and information gathered through the complains procedure provided for in Article 9 of the CSDD proposal. Furthermore, to gather information on actual or potential adverse impacts, companies should carry out consultations with potentially affected groups<sup>133</sup>.

### 3.2.3 Prevent potential adverse impacts and bringing actual adverse impacts to an end

According to Article 7 of the proposal, companies must take appropriate measures to prevent or, if prevention is not possible, mitigate the adverse impacts identified pursuant to Article 6 of the CSDD proposal.

The required measures are based on various forms of exercising influence within the company, in business relationships, and when pertaining to the company's value chain, contractual solutions for indirect business relationships. According to Article 7.2 these measures include the development of prevention action plans<sup>134</sup> with clear and defined timelines for action, seek contractual assurances from business partners that will ensure compliance with the company's code of conduct, making necessary investments,<sup>135</sup> providing support for small and medium sized enterprises (SME) with which the company has an established business relationship,<sup>136</sup>

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<sup>131</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, p. 14-17.

<sup>132</sup> Ibid.

<sup>133</sup> Including workers and other relevant stakeholders.

<sup>134</sup> In consultation with affected stakeholders.

<sup>135</sup> Examples are investments into management, production processes and infrastructure.

<sup>136</sup> Where compliance with the code of conduct or the prevention action plan would jeopardize the viability of the SME.

and cooperating with other companies to increase the ability to bring adverse impacts to an end.<sup>137</sup>

If prevention or adequate mitigation is not possible by the actions presented in paragraph 2, Article 7.3-4 state that the company may enter into an agreement with a partner with which it has an indirect relationship, in order to achieve compliance with the company's code of conduct or relevant prevention action plan. If such an agreement is needed, it must be accompanied by appropriate measures to ensure compliance and, if the agreement is made with an SME, the terms must be fair, reasonable, and non-discriminatory. If the adverse impacts persist despite the company undertaking the above-mentioned measures, then according to Article 7.5 the companies should not be allowed to enter new or extend existing relationships. Business relationships shall be suspended temporarily if there is a reasonable expectation of improvement or terminated entirely if the potential negative effects are severe.

If actual adverse impacts have been identified or should have been identified in accordance with what is stated in Article 6, companies must take appropriate measures to bring these to an end according to Article 8 of the proposal. Just like with the obligation to prevent and mitigate in Article 7 of the proposal, suspending or terminating a business relationship is a solution of last resort if less invasive measures have been insufficient.

As stated in Article 8 of the proposal, there are six actions that companies must take if actual adverse impacts have been identified. The companies must neutralize the adverse impact or minimize its extent<sup>138</sup>, draw up a corrective action plan when the adverse impact cannot immediately be ended<sup>139</sup>, seek contractual guarantees to ensure compliance with the company's code of conduct, make necessary investments, provide targeted and proportionate support for SMEs to ensure their viability, and collaborate with other entities to increase the company's ability to bring adverse impacts to an end<sup>140</sup>.

Article 8.6 of the proposal contains provisions like those in Article 7.5 on guarantees and conditions for limiting or terminating business relationships when the actions in article 8.3-5 have not been successful. As such, the company shall refrain from entering a new or extending an existing

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<sup>137</sup> While complying with competition law.

<sup>138</sup> e.g., compensation for damages.

<sup>139</sup> Including clear timelines for action and qualitative and quantitative indicators for measuring improvement.

<sup>140</sup> While complying with competition law.

relationship and rather, where allowed by law, temporarily suspend commercial relationships, or ultimately terminate the business relationship. If the relationship is suspended, the company should pursue efforts to end or minimize the extent of the adverse impact. Termination of the business relationship should be done if the adverse impact is considered severe.

The main issue in the above-mentioned Articles is what should be considered an appropriate measure under Articles 6.1, 7.1 and 8.1 of the CSDD proposal. Article 3.q of the proposal defines “appropriate measures”. These are measures that can achieve the objectives of due diligence,<sup>141</sup> correspond to the degree of severity and likelihood of the adverse impact and are reasonably available to the company<sup>142</sup>. When deciding on the appropriate measures, the company must consider the circumstances of the specific case, including the characteristics of the economic sector, the characteristics of the specific business relationship, the company’s influence in the specific case, and the need to ensure prioritization of action. The concept of prioritization in Article 3.q is the closest the CSDD proposal comes to individual risk assessments in companies when it comes to the question of which potential adverse impacts or actual adverse impacts should be prioritized.

The CSDD proposal’s definition of appropriate measures makes a point of that companies should have a certain amount of room for their own assessments when deciding which measures should be appropriate.

Articles 7 and 8 of the CSDD proposal recognize the importance of companies being able to demonstrate their compliance with the duty to conduct due diligence. However, the NGO Shift lifts the view that it appears to overly rely on contractual assurances and audit/verification processes, which have shown limited effectiveness in delivering positive outcomes for affected people.<sup>143</sup> Shift also recognizes that these approaches often impose

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<sup>141</sup> Better exploiting the potential of the single market to contribute to the transition to a sustainable economy and contributing to sustainable development through the prevention and mitigation of potential or actual human rights adverse impacts in companies’ value chains.

<sup>142</sup> What is meant by reasonably available is not specified, in the proportionality discussion of the CSDD proposal it is however discussed to the extent that larger companies have a higher burden. Very large companies will be within the scope of the full due diligence obligation, also because many of them already have certain processes in place because of reporting obligations. When passing on the burden to smaller suppliers in the value chain the requirements passed on must be fair, reasonable, non-discriminatory and proportionate requirements vis-a-vis SMEs.

<sup>143</sup>Shift, ‘The EU Commission’s Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT’S ANALYSIS’, March 2022, p. 5, accessible at:

significant costs on companies and may shift responsibility to their business partners without adequately addressing the lead companies' own practices that contribute to risks for people.<sup>144</sup> Shift states that there are more effective ways to demonstrate and assess compliance that better align with the various approaches to managing sustainability risks, as outlined in the UNGPs and OECD Guidelines, which include giving greater consideration to the role of the Board in overseeing due diligence efforts and influencing the behavior of an entity causing harm through leverage.<sup>145</sup>

### 3.2.4 Complaints procedure

The subsequent due diligence obligation for companies in the CSDD proposal is a requirement to set up a complaints procedure. The complaints procedure is regulated in Article 9 of the proposal. This article gives persons and organizations, listed in paragraph 2 of the article, who have legitimate concerns regarding actual or potential adverse impacts with respect to the company's operations<sup>146</sup> the possibility to submit complaints.

Article 9.2 states that this right applies to persons who are or have reasonable grounds to believe that they might be, affected by an adverse impact, workers' representatives such as trade unions and other workers' representatives representing individuals working in the concerned value chain, and civil society organizations active in the areas related to the concerned value chain.

In accordance with Article 9.3, companies must establish a procedure for dealing with these complaints, which must include a procedure when the company considers the complaint to be unfounded. The company must also inform the relevant workers and trade unions of these procedures. If the complaint is well-founded, the adverse impact that is the subject matter shall be deemed to be identified within the meaning of Article 6 of the proposal<sup>147</sup>,

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[https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

<sup>144</sup> Shift, 'The EU Commission's Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT'S ANALYSIS', March 2022, p. 5, accessible at:

[https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

<sup>145</sup> Ibid., p. 6.

<sup>146</sup> I.e. their own operations, the operations of their subsidiaries and their value chains.

<sup>147</sup> Identifying actual and potential adverse impacts.

which leads to the obligations under Articles 7 and 8 of the proposal coming into effect.

Member States are obliged, under Article 9.4 to ensure that complainants' rights are met. These rights are that the complainants are entitled to request appropriate follow-up from the company and to meet with company representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint.

The CSDD proposal also suggests an amendment to the EU's whistleblower directive,<sup>148</sup> which means that the whistleblowers directive's protection provisions against reprisals become applicable to those who, through the complaints procedure, report concerns about actual or potential adverse impacts to the company.<sup>149</sup>

Of interest is also that Article 19 of the CSDD proposal entitles natural and legal persons to submit substantiated concerns to supervisory authorities which will be processed according to national legislation by a court or other independent and impartial public body. The concern is substantiated when the person has reason to believe, based on objective circumstances, that the company is failing to comply with the national provisions adopted pursuant to the CSDD proposal.

Again, the NGO Shift lifts the point a complaints mechanism serves as a reactive approach to hear from stakeholders.<sup>150</sup> While this is crucial information to have, it should, according to Shift, be supplemented with clearer expectations regarding proactive engagement by the covered companies.<sup>151</sup>

### 3.2.5 Monitoring and communication

Monitoring is covered under Article 10 of the CSDD proposal. The article requires that companies carry out periodic assessments of their own operations and measures, as well as periodic assessments of the operations

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<sup>148</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

<sup>149</sup> Article 27 of the CSDD proposal states that the CSDD shall be added to the list of legal acts covered by the protection of whistleblowers in the Whistleblower Directive.

<sup>150</sup> Shift, 'The EU Commission's Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT'S ANALYSIS', March 2022, p. 8, accessible at:

[https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

<sup>151</sup> Ibid.

and measures of their subsidiaries and, where related to the company's value chains, those of their established business relationships. These periodic assessments contain monitoring of the effectiveness of the HRDD. The assessments should be carried out at least every 12 months and be based on, where appropriate, qualitative and quantitative indicators. The assessments should also be carried out when there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise. Such as if there is a spike in complaints through the complaints mechanism. Also, the company's due diligence policy shall be updated in accordance with the outcome of these assessments.

Article 11 of the CSDD proposal requires companies to publicly communicate on due diligence. However, this will only be a new requirement for companies who are not already covered by communication requirements from the 2013 Accounting Directive<sup>152</sup>. Matters covered by the CSDD must be published in an annual statement on the company's website.

The NGO Shift recognizes the challenge faced by companies in demonstrating the implementation of HRDD as a binding standard of contract.<sup>153</sup> However, solely focusing on easily measurable aspects, such as contractual clauses, corrective action plans, or relationship termination for non-compliance, may lead to an over-reliance on ineffective approaches.<sup>154</sup> The CSDD proposal's emphasis on monitoring through audits and verification could, according to Shift, result in substantial additional costs, potentially passed through value chains to suppliers and partners which are SMEs.<sup>155</sup> This could be problematic as the dominant role of audits has shown limitations in delivering improved outcomes for affected persons.<sup>156</sup>

### 3.3 Other relevant Articles

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<sup>152</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance.

<sup>153</sup> Shift, 'The EU Commission's Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT'S ANALYSIS', March 2022, p. 6, accessible at: [https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

Beyond the core due diligence Articles, there are a few other Articles in the CSDD proposal that are worth mentioning when presenting the proposal.

### 3.3.1 Sanctions

The implementation of the CSDD proposal relies on Member States' involvement in supervising and enforcing due diligence obligations. Each Member State is responsible for designing a supervision system, including providing administrative sanctions and civil liability for damages.<sup>157</sup> National supervisory authorities will be designated to conduct investigations based on complaints and concerns.<sup>158</sup> If breach of due diligence is found, the supervisory authorities shall be able to impose penalty fees under Article 20 and adopt interim measures to avoid the risk of severe and irreparable harm. The concerned company will, according to Article 18.4 of the proposal, have an opportunity to take remedial action, but this does not exempt them from imposing administrative sanctions or triggering civil liability in case of damages.

Article 20 of the proposal states that sanctions must be effective, proportionate, and dissuasive, and that Member States have some freedom in determining their specific forms. The severity of the sanction should match the seriousness of the violation and take into account the company's efforts to company and collaborate to address adverse impacts in their value chains. All decisions related to sanctions will be made public.

### 3.3.2 Civil liability

Article 22 of the CSDD proposal establishes liability for companies failing to comply with due diligence obligations under Articles 7 and 8, leading to damages from adverse impacts that should have been identified, prevented, mitigated, brought to an end or its extent minimized through appropriate measures laid down in said articles occurred and led to damage The article is characterized by the CSDD proposals principle of contract-based solutions for indirect business relationships,<sup>159</sup> providing an exception to liability if the company used contractual cascading and checked compliance.

However, liability remains if the actions taken were inadequate to prevent the adverse impact. Efforts made to comply, targeted investments, and

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<sup>157</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, p. 42.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid., p. 37.



collaborations to address impacts are considered when assessing liability. Subsidiaries and business partners remain responsible for their actions, and other stricter civil liability rules continue to apply. The exception to the liability under Article 22.2 can be seen as an incentive for risk-based control of indirect business relationships as it is likely that contractual cascading will primarily be used in the value chains where the risk of adverse impacts is greatest.

### 3.3.3 Directors' duty of care and remuneration

Articles 25 and 26 of the CSDD proposal address directors' duties and responsibilities. The provisions ensure a close link between directors' duties and due diligence obligations, clarifying how directors should act in the company's best interest, considering sustainability matters and human rights.

Article 25.1 requires directors to consider sustainability impacts in their decision-making, while Article 26.1 holds them responsible for implementing and monitoring due diligence measures and considering stakeholders' views. These articles are not subject to supervision or sanctions, and there are no liability provisions connected to them. While unlikely that these provisions will be included in the final version of the Directive, they are relevant to the understanding of the CSDD proposal as they reflect a move away from the traditional shareholder theory<sup>160</sup>, emphasizing the importance of considering stakeholders' interests for sustainable corporate governance<sup>161</sup> in line with stakeholder theory<sup>162</sup>.

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<sup>160</sup> The model was formulated by Friedman in an article in the New York Times in 1970 and has had a major impact in both law and economics regarding questions of association forms and corporate governance.

Milton Friedman, 'A Friedman doctrine: The Social Responsibility Of Business Is to Increase Its Profits', New York Times, September 13, 1970.

<sup>161</sup> Ferrarini, G., 'Redefining Corporate Purpose: Sustainability as a Game Changer in Sustainable Finance in Europe', Palgrave MacMillan, 2021, p. 120.

<sup>162</sup> Carrol, A., Buchholtz, A., 'Business & Society: Ethics, Sustainability, and Stakeholder Management', 8<sup>th</sup> ed., Cengage Learning, 2012, p. 31.

## 4 Case Study

### 4.1 The industry

Stora Enso develops and produces forest products, i.e. solutions based on wood and biomass, for a range of industries.<sup>163</sup> Industries dependent on wood and biomass have grown accustomed reinventing themselves many times over. Wood for fuel was the main product from forests for a long time, then the industry transitioned into pulpwood and sawtimber.<sup>164</sup> Today, forest products are used across a range of areas, and consumers are surrounded by products that are fully or partially from a forest product based industry.<sup>165</sup> This has led to forest products emerging as real alternatives to help address sustainability challenges in textiles, building materials, and packaging.<sup>166</sup> However, the industry is not exempt from having its own human rights related concerns, such as deforestation, illegal logging, land rights and indigenous communities, industry specific labor rights and working conditions, and supply chain transparency.

Global Management Consultancy agency McKinsey & Company published an article on changes in the industry, and there stated that the 2020's are the era of transformational change, leading companies into increased sustainability efforts.<sup>167</sup> After the dip in recent decades, the market is seeing an increased demand for paper and forest products<sup>168</sup> and this era will involve an increase of output.<sup>169</sup> At the same time increasing hard law requirements will compel the industry to be led by a focus on sustainability.<sup>170</sup> Similarly to other global industries, there is a sustainability revolution underway in the

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<sup>163</sup> Stora Enso Oyj, 'About Stora Enso', available at: <https://www.storaenso.com/en/about-stora-enso> [accessed 20 February 2023].

<sup>164</sup> Feber, D., Felix Grunewald, Oskar Lingqvist, Daniel Nordigaarden, Gregory Vainberg, 'Perspectives on paper and forest products in 2022: How can CEOs navigate today's era of transformational change', McKinsey & Company, Article, 4 April 2022, available at <https://www.mckinsey.com/industries/paper-forest-products-and-packaging/our-insights/perspectives-on-paper-and-forest-products-in-2022-how-can-ceos-navigate-todays-era-of-transformational-change> [accessed 27 February 2023], p. 1.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid., p. 4.

<sup>168</sup> As a sustainable substitute for packing and construction materials.

<sup>169</sup> Feber, D., Felix Grunewald, Oskar Lingqvist, Daniel Nordigaarden, Gregory Vainberg, 'Perspectives on paper and forest products in 2022: How can CEOs navigate today's era of transformational change', McKinsey & Company, Article, 4 April 2022, available at <https://www.mckinsey.com/industries/paper-forest-products-and-packaging/our-insights/perspectives-on-paper-and-forest-products-in-2022-how-can-ceos-navigate-todays-era-of-transformational-change> [accessed 27 February 2023], p. 4.

<sup>170</sup> Ibid., p. 5.

paper and forest products sector, with the rapid emergence of new regulations and growing concerns among global consumers.<sup>171</sup>

The movement towards sustainability is increasingly prevalent worldwide, regardless of industry. Despite the increasing popularity of sustainable practices, companies still to a large extent prioritize the pursuit of profit.<sup>172</sup> Although social and environmental objectives are becoming more prioritized in the private sector, it is a fact that it remains crucial for corporation to maintain profitability to sustain their operations.<sup>173</sup> However,, the impact of companies can be extraordinary when they leverage their scale to benefit society.<sup>174</sup> In the forest product based industries, private land owners have certain sustainability challenges that are specific to them, such as such as deforestation, illegal logging, and land rights and rights of indigenous communities in their areas of operations. These challenges will later be discussed further in relation to Stora Enso.

#### 4.1.1 The business and human rights framework

Integration of sustainability and human rights challenges in the private sector has evolved through the business and human rights framework. The UNGPs laid down standards of expected behavior from businesses with regards to human rights. These and the OECD Guidelines have for over a decade been the instruments that have provided the framework for responsible business conduct within several different sectors. The EU Green Deal and environmental pushes have likewise guided companies striving to be sustainable in their industry.

Despite these reform efforts the governance regimes currently in place seem unable of producing the fundamental shift needed to change to the

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<sup>171</sup> Feber, D., Felix Grunewald, Oskar Lingqvist, Daniel Nordigaarden, Gregory Vainberg, ‘Perspectives on paper and forest products in 2022: How can CEOs navigate today’s era of transformational change’, McKinsey & Company, Article, 4 April 2022, available at <https://www.mckinsey.com/industries/paper-forest-products-and-packaging/our-insights/perspectives-on-paper-and-forest-products-in-2022-how-can-ceos-navigate-todays-era-of-transformational-change> [accessed 27 February 2023], p. 5.

<sup>172</sup> Gast, A., Pablo Illanes, Nina Probst, Bill Schaninger, Bruce Simpson, ‘Purpose: Shifting from how to why?’, McKinsey & Company, Article, 22 April 2020, available at <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/purpose-shifting-from-why-to-how> [accessed 28 February 2023].

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

legitimately sustainable path.<sup>175</sup> For this change, CSR must encompass both the level of legal compliance and action beyond minimal legal standards and deal with the core business of the company, how that is conducted, and the social impacts of the business.<sup>176</sup> Further, companies must integrate social concerns in the decision-making of the company in such a way as to lead to an internalization of costly externalities.<sup>177</sup> Companies need to start thinking and acting for the long term; the prevailing culture of shareholder primacy invokes the destructive pressure to focus on the short term return.<sup>178</sup> This push towards sustainability has required cooperation and a new way of thinking. As stated by Stora Enso “No company can achieve the required change alone; companies and stakeholders along value chains need to collaborate to change complete systems”.<sup>179</sup>

#### 4.1.2 An emerging due diligence synergy in the industry

This forest products based industry is particularly interesting to assess compliance for, as not only the CSDD proposal but also other regulations with due diligence obligations are emerging.

The CSDD proposal, the Corporate Sustainability Reporting Directive<sup>180</sup> (CSRD) and the Regulation on deforestation-free supply chains<sup>181</sup> are all EU legislative proposals that aim to promote sustainable practices, but they have different due diligence focuses and scopes.

The CSDD proposal focuses on mandatory human rights due diligence requirements for companies operating in the EU, with a particular emphasis on global supply chains. The proposal aims to ensure that companies operating in the EU respect human rights and take effective measures to

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<sup>175</sup> Sjäffjell, B., Benjamin J. Richardson, ‘The future of company law and sustainability’, chapter 8 in ‘Company Law and Sustainability: Legal Barriers and opportunities’, Cambridge Press, 2015, p. 312.

<sup>176</sup> Ibid., p. 313.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid., p. 324.

<sup>179</sup> Stora Enso Oyj, ‘Annual Report 2022’, available at:

<https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 53.

<sup>180</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance).

<sup>181</sup> Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM(2021) 706 final).

prevent and address harm caused by their operations. If a company does not comply, they risk fines.

The CSRD, which expands on the existing Non-Financial Reporting Directive (NFRD), sets out more detailed reporting requirements for companies on their sustainability practices.<sup>182</sup> The aim of the CSRD is to provide investors and stakeholders with more comparable and reliable information on companies' sustainability practices<sup>183</sup> and contains precise references to sustainability due diligence processes.<sup>184</sup>

The NFRD aimed to improve corporate transparency and accountability by requiring companies to disclose ESG issues such as human rights.<sup>185</sup> While the NFRD had some positive impact on responsible business practices, the CSDD proposal states that most companies have not taken sufficient responsibility for their adverse impacts in their value chains.<sup>186</sup> The CSRD will mandate audit of the reported information and strengthen the standardization of reported information by allowing the Commission to adopt sustainability reporting standards.<sup>187</sup> The CSRD also introduces EU-wide sustainability reporting standards, which will help to ensure that the disclosed information is comparable, reliable, and relevant to stakeholders.<sup>188</sup>

The CSRD and CSDD proposal are closely related and will have synergies, as setting up processes for proper information collection under the CSRD is linked to identifying adverse impacts in accordance with the due diligence

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<sup>182</sup> European Commission, 'Corporate sustainability reporting', available at [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en) [accessed 10 March 2023].

<sup>183</sup> Ibid.

<sup>184</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance). See for example Article 19a "Sustainability Reporting".

<sup>185</sup> Hahnkamper-Vandenbulcke, N., 'Non-Financial Reporting Directive', European Parliamentary Research Service, Ex-Post Evaluation Unit, January 2021, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS\\_BRI\(2021\)654\\_213\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI(2021)654_213_EN.pdf) [accessed 25 February 2023], p. 3.

<sup>186</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, p. 4.

<sup>187</sup> Ibid.

<sup>188</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance), p. 12.

duty set up in the CSDD proposal.<sup>189</sup> The CSDD proposal will also require companies to have a plan in place to ensure their business model and strategies align with the transition to a sustainable economy, which the CSRD requires them to report on.<sup>190</sup> As a result, both measures will complement each other and drive corporate behavioral changes for those companies.

The Regulation on deforestation-free supply chains<sup>191</sup> (deforestation proposal), which is currently being developed, aims to prevent the placing of products linked to deforestation on the EU market.<sup>192</sup> The deforestation proposal will require companies to conduct due diligence on their supply chains to identify and mitigate the risk of deforestation and forest degradation, as well as to ensure that the products placed on the EU market are free from deforestation.<sup>193</sup> Further, the deforestation proposal will require companies to verify that products comply with relevant legislation of the country of production, including on human rights, and that the rights of affected indigenous peoples have been respected. If a company does not comply, they risk their products being prohibited from being placed on the EU market.<sup>194</sup>

The deforestation proposal includes a prohibition of placing certain commodities and derived products on the EU market if the requirement of “legal” and “deforestation free” cannot be ascertained through due diligence.<sup>195</sup> All operators, regardless of if they are EU or non-EU companies, will be covered by this prohibition, regardless of their size and legal form.<sup>196</sup>

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<sup>189</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 4.

<sup>190</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 4-5.

<sup>191</sup> Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM(2021) 706 final).

<sup>192</sup> European Commission, ‘Deforestation-free products’, available at [https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products\\_en](https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en) [accessed 28 March 2023].

<sup>193</sup> European Commission, ‘Questions and Answers on new rules for deforestation-free products’, 17 November 2021, Brussels, available at [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_5919](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5919) [accessed 28 March 2023].

<sup>194</sup> Ibid.

<sup>195</sup> European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937’ COM/2022/71 final, p. 6-7.

<sup>196</sup> Ibid., p. 7.

Of certain interest to this thesis is the link to the CSDD proposal annex point 19, which states that

Violation of the prohibition to unlawfully evict or take land, forests and waters when acquiring, developing or otherwise use land, forests and waters, including by deforestation, the use of which secures the livelihood of a person in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights.<sup>197</sup>

The requirements of the deforestation proposal will in certain areas be more specific than the general due diligence duties outlined in the CSDD proposal. The prohibition on selling certain products will apply to all entities that place these products on the EU market. The CSDD proposal will supplement the Regulation on deforestation-free supply chains by introducing value chain due diligence related to activities not covered by the regulation, but which may directly or indirectly contribute to deforestation.

The CSDD and CSRD have a shared focus on sustainability and non-financial reporting. Both directives aim to improve sustainability reporting by requiring companies to disclose information on their ESG risks and impacts. The two legislative policies work together as the CSDD proposal proposes mandatory human rights due diligence while the CSRD focuses on detailed sustainability reporting standards and assurance requirements. The Regulation on deforestation-free supply chains shares the objective of promoting sustainable practices and reducing adverse human rights impacts, but more specifically linked to the import of certain products and certain industries. The Regulation on deforestation-free supply chains also has no civil liability sanctions and relies on the CSDD proposal to give victims access to remedy.

## 4.2 Stora Enso

Stora Enso is one of Scandinavia's largest companies, based in Finland and Sweden, with annual sales of approximately 11.7 EUR billion and approximately 21,000 employees worldwide.<sup>198</sup> While the company has industrial roots that trace back to the 1300's, today the company is a provider of packing solutions, biomaterials and wooden construction materials, and one of the largest private forest owners in the world.<sup>199</sup> Throughout its history,

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<sup>197</sup> European Commission, 'Annex to the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71, p. 3, point 19.

<sup>198</sup> *Ibid.*, p. 4.

<sup>199</sup> *Ibid.*

the company has consistently addressed new business challenges, and through divestments, mergers and acquisitions, Stora Enso has grown to be a global player in the forest product based industry.<sup>200</sup> Due to the nature of the company's business, Stora Enso works in symbiosis with nature, and the company has used this link as reason for stating that sustainability has always been at the core of its business.<sup>201</sup>

Stora Enso describes itself as a company with a long history of conducting business sustainably and responsibly.<sup>202</sup> The company states that a key success factor for them has been, and continues to be, caring for the environment.<sup>203</sup> Understandably, as it is a biomaterial company, the sustainability work at Stora Enso has primarily been focused on environmental sustainability, and as such, it is within those areas that the company has positioned itself as an industry leader with a solid reputation.<sup>204</sup> As has been mentioned previously, there are both external and internal factors pushing towards a shift to more sustainable business. The growing needs and demands being put in place by law and the reality of the world, the need for companies to reach long term sustainability through financial, environmental, and social success, and the efforts made by companies have all contributed to the growing trend of corporate sustainability. Keeping in mind that Stora Enso has done a lot of work within all three areas already, it is worth noting that the company is not starting its process from scratch, rather from a solid base of knowledge and experience, yet still has a need for improvement to meet external, and their own, requirements.

According to the company's Annual Report, at Stora Enso, sustainability is managed by the Board of Directors, CEO and the Group Leadership Team, with the CEO having ultimate responsibility for the successful implementation of the Group's sustainability strategy, and the Board of Directors' Sustainability and Ethics Committee oversees the implementation of the sustainability strategy.<sup>205</sup> The company states that their foundation is in responsible business practices, with a special focus on areas such as

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<sup>200</sup> Stora Enso Oyj, 'Our History', available at: <https://www.storaenso.com/en/about-stora-enso/our-history> [accessed 17 February 2023].

<sup>201</sup> Stora Enso Oyj, 'Sustainability at Stora Enso', available at: <https://www.storaenso.com/en/sustainability> [accessed 17 February 2023].

<sup>202</sup> <https://www.storaenso.com/en/about-stora-enso/our-history>

<sup>203</sup> Stora Enso Oyj, 'Our History', available at: <https://www.storaenso.com/en/about-stora-enso/our-history> [accessed 17 February 2023].

<sup>204</sup> Hawcock, N., 'Special Report: Europe's Climate Leaders', Financial Times, 20 April 2023, available at: <https://www.ft.com/climate-leaders-europe-2023> [accessed 30 April 2023].

<sup>205</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 52.



compliance, human rights, business ethics, safety, use of natural capital and community ethics.<sup>206</sup> Stora Enso has worked hard and earned respect for its hard work on the environmental side of sustainability, but regarding the human rights aspect the company has endured a series of setbacks. As is the case with many large companies, Stora Enso has had to acknowledge the fact that they have a significant impact on people and communities and are faced with the responsibility to address adverse human rights impacts resulting from their operations. This shift amongst companies is, after all, what has led to the development of the Business and Human Rights framework, as discussed above, which recognizes the importance of Corporate Social Responsibility as a starting point for companies to address and mitigate their impact on human rights. As the focus of the company's sustainability work has shifted to broaden the scope of sustainability to include human rights, the company has altered its way of engaging with human rights related issues, to better address actual and potential adverse impacts in their value chains. Now, as the Business and Human Rights framework is turning from soft to hard law, the company must take steps to ensure their work within the area is compliant with the new legislation.

### 4.3 Presentation of the company's measures with relevance for human rights due diligence

Sustainability reporting is increasingly becoming a requirement for companies, as is shown by the CSRD and CSDD proposal. This section will look at Stora Enso's central sustainability reporting instruments and human rights policies and codes. Of note is that the different instruments have different purposes for the company, and therefore vary in length and detail. As is the case with most, if not all, larger companies, the purpose of this is structure and clarity in the company's operation. However, this can create certain transparency issues when working to understand the company's overall HRDD processes.

#### 4.3.1 Annual report

Stora Enso has stated in its Annual Report that they are committed to the UNGPs, which require them to conduct due diligence to identify, assess, and remedy the impacts their activities may have on people.<sup>207</sup> The Annual Report

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<sup>206</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 52.

<sup>207</sup> Ibid., p 81.

is the main external tracking device for how Stora Enso is performing with regards to human rights and human rights due diligence.

Stora Enso has, in the Annual Report, identified their relevant policies on human rights as the Stora Enso Code, Human Rights Policy, Supplier Code of Conduct and Human Rights Guidelines.<sup>208</sup> These will be discussed below. The information presented in the Annual Report is comprised of information that is based on Stora Enso's key tools for tracking human rights due diligence which are the Stora Enso Code, Business practice Policy, Minimum Human Resources requirements for labor conditions, Supplier Code of Conduct, safety standards and tools for all units, and grievance mechanisms.<sup>209</sup> These are tools that have been adopted to understand and address the impacts of its activities on people.<sup>210</sup>

The annual report for 2022 presents the company's current approach to respecting human rights throughout its operations. Stora Enso acknowledges that its activities have an impact on people, including over 20,000 forest owners, 21,000 employees, over 20,000 suppliers, thousands of customers, and local communities where the company operates.<sup>211</sup>

Respecting human rights is integrated into Stora Enso's sustainability approach, and the company states that they continuously work to ensure the efficient implementation of its HRDD program.<sup>212</sup> The company has piloted three projects linked to the CSDD proposal, and they state that their actions to drive performance include continuous alignment with the CSDD proposal.<sup>213</sup>

Stora Enso is a member of a platform where the company shares sustainability information with customers on unit level, the Supplier Ethical Data Exchange (Sedex).<sup>214</sup> Currently Stora Enso primarily uses the Sedex tool to audit their own operations.<sup>215</sup> The company also shares group level information with customers through the EcoVadis platform.<sup>216</sup> Stora Enso engages with membership organizations such as the Global Business Initiative for Human

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<sup>208</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 81.

<sup>209</sup> Ibid., p. 80.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid., p. 26 and 76.

<sup>212</sup> Ibid., p. 79.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> I.e. their own mills.

<sup>216</sup> Ibid.

Rights and the World Business Council for Sustainable Development to learn from peers and experts.<sup>217</sup>

Stora Enso also reports that they have incorporated human rights into several training modules for its employees.<sup>218</sup> In 2022, a mobile friendly Code e-learning was rolled out to reach production workers, and 92% of all employees had by the end of the year completed the training.<sup>219</sup> The company also carried out mandatory Human Rights training for security guards at their Veracel joint venture operations.<sup>220</sup>

Stora Enso states that they conduct continuous or periodic monitoring with the company's key tools for human rights due diligence.<sup>221</sup> Stora Enso also conducts project-specific HRDD with tools such as investment guidelines, environmental and social due diligence for mergers and acquisitions, environmental and social impact assessments, community consultations, including Free, Prior, and Informed Consent (FPIC), and a sustainability assessment checklist for innovation projects.<sup>222</sup>

While Stora Enso states, in the Annual report and several other policies and guidelines, that the company considers all human rights to be important and respects them, the company has identified the company's highest priority human rights issues; these areas are health and safety, fair labor, land and natural resource rights, grievance mechanisms, and children's rights.<sup>223</sup> Stora Enso has taken various actions to address its impacts on people in these areas. Some examples are terminated contracts with several labor agencies in China following breaches of the Supplier Code of Conduct, implementing a child labor remediation program in Pakistan that focuses on providing vocational training to students and establishing the speak-up hotline grievance mechanism which is accessible to internal and external stakeholders.<sup>224</sup>

The company mentions FPIC, the Free, Prior and Informed Consent that is required in any decision that may impact indigenous peoples that is protected

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<sup>217</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 79.

<sup>218</sup> Ibid.

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid., p. 80.

<sup>222</sup> Ibid.

<sup>223</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 80.

<sup>224</sup> Ibid.

in international human rights standards such as UNDRIP.<sup>225</sup> Stora Enso states that it uses FPIC in community consultations as this is a key element in the company's HRDD and forestry operations concerning land leasing and indigenous peoples rights.<sup>226</sup> The company acknowledges the current legal processes related to human rights issues, such as Barra Velha Indian Reserve expansion in Brazil which is part of Stora Enso's joint venture with Veracel, who acquired land in the region where indigenous peoples have now made claims.<sup>227</sup> It should be noted that there is no clear definition of what FPIC actually means, there are uncertainties regarding the degree of consultation required and whether or not the principle entails a right of veto.<sup>228</sup>

As mentioned above, part of Stora Enso's preparation for the CSDD proposal has been piloting three projects. Stora Enso piloted an approach to integrate human rights risk assessment into the SMETA audit framework and expanded the scope to include all employees as well as on-site contractors and other affected rights-holders where applicable.<sup>229</sup> This was done during a series of audits at Biomaterials Nordic Mills.<sup>230</sup> This approach was said to incorporate the CSDD proposals requirements on HRDD and emerging best practices.

In Stora Enso's Swedish Forest operations, activities such as clearing and planting are carried out by silviculture<sup>231</sup> contractors, who predominantly employ migrant workers.<sup>232</sup> Following media reports of unfair labor conditions, Stora Enso enlisted the help of an external business and human rights organization to carry out an impact assessment and provide practical advice on how to avoid or mitigate risks to migrant workers.<sup>233</sup>

Stora Enso also carried out a deep dive assessment of the potential risks to people in the lower tiers of the supply chain for Paper for Recycling, an

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<sup>225</sup> UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295.

<sup>226</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 80.

<sup>227</sup> Ibid.

<sup>228</sup> Papillon, M., Leclair, J., & Leydet, D. (2020). Free, Prior and Informed Consent: Between Legal Ambiguity and Political Agency, *International Journal on Minority and Group Rights*, 27(2), p. 223-232.

<sup>229</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 81.

<sup>230</sup> Ibid.

<sup>231</sup> Silviculture is the practice of controlling the growth, composition/structure, and quality of forests to meet values and needs, specifically timber production.

<sup>232</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 81.

<sup>233</sup> Ibid.

important supply category for the company.<sup>234</sup> An external assessment of internal control processes in relation to international best practices was also carried out.<sup>235</sup> As part of the research for this thesis, these pilot projects were studied. It can be concluded that the pilots were constructive and productive steps for the company.

### 4.3.2 The Stora Enso Code

The Stora Enso Code is the company's name for the company's code of conduct. The company declares that their Code is rooted in the company's values and gives employees tools to make decisions in their work while promoting transparency, ethics, and sustainability.<sup>236</sup>

The Stora Enso code presents the company's commitment to its values and sustainability. The company's purpose is to "Do good for people and the planet. Replace non-renewable materials with renewable products", which guides the company's actions.<sup>237</sup> Stora Enso is driven by their values "Lead and Do What's Right" which entails going beyond mere compliance with laws and regulations to achieve better outcomes.<sup>238</sup> In the Stora Enso Code, the company states that they strive to set an example with their business and sustainability.<sup>239</sup>

#### 4.3.2.1 *Supplier code of conduct*

The Supplier Code of Conduct (SCoC) outlines minimum standards that Stora Enso's suppliers must adhere to and covers human and labor rights.<sup>240</sup> Specific examples from the SCoC are requirements to not employ workers below the legal minimum age limit, providing equal opportunities to all employees, and paying at least the national minimum wage.<sup>241</sup> The SCoC also requires suppliers to support and engage with the communities impacted by

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<sup>234</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 81.

<sup>235</sup> Ibid.

<sup>236</sup> Stora Enso Oyj, 'Stora Enso Code', available at: [https://codeofconduct.storaenso.com/en?\\_gl=1\\*13stpj8\\*\\_ga\\*ODQyODI5MTguMTY3MzQ0Mjk2OQ..\\*\\_ga\\_VGEMW7TFN1\\*MTY4Mzk5NzIxMi41MS4xLjE2ODM5OTcyMjMuNDkuMC4w\\*\\_fplc\\*YTBISyUyRmwwZ0pGRzNEWEMIMkJrdDBrc2R2YkRNVVR4cG5yU1RlMFhSWWgwRWZLbnNsRUh5WU5CMFhJOHUwQmo4JTJGQ0hnNUhkWUlyVE NOZXA3S2xzM295Y2huUVc3Y2JYbWMya1RqdHkyQWoiMkJSQ0NRyU13TmPMN0k2MINrZ2RZU2clM0QIM0Q](https://codeofconduct.storaenso.com/en?_gl=1*13stpj8*_ga*ODQyODI5MTguMTY3MzQ0Mjk2OQ..*_ga_VGEMW7TFN1*MTY4Mzk5NzIxMi41MS4xLjE2ODM5OTcyMjMuNDkuMC4w*_fplc*YTBISyUyRmwwZ0pGRzNEWEMIMkJrdDBrc2R2YkRNVVR4cG5yU1RlMFhSWWgwRWZLbnNsRUh5WU5CMFhJOHUwQmo4JTJGQ0hnNUhkWUlyVE NOZXA3S2xzM295Y2huUVc3Y2JYbWMya1RqdHkyQWoiMkJSQ0NRyU13TmPMN0k2MINrZ2RZU2clM0QIM0Q). [accessed 15 February 2023], p. 2.

<sup>237</sup> Ibid., p. 3.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid., p. 4.

<sup>240</sup> Stora Enso Oyj, 'Supplier code of conduct', January 2021, available at [https://www.storaenso.com/-/media/documents/download-center/documents/suppliers/scoc-2021/stora-enso\\_supplier-code-of-conduct\\_2021\\_v1.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/suppliers/scoc-2021/stora-enso_supplier-code-of-conduct_2021_v1.ashx) [accessed 17 February 2023].

<sup>241</sup> Ibid., p. 3.

their operations and allows Stora Enso to verify compliance with the requirements of the SCoC through audits or disclosure of information.<sup>242</sup>

The SCoC aims to ensure responsible and sustainable practices throughout Stora Enso's value chains and the requirements outlined in the SCoC cover a range of important issues. The SCoC also includes monitoring and verification mechanisms to ensure compliance with these requirements.<sup>243</sup> The SCoC further states Stora Enso's right to specify issues that need to be corrected or improved if non-compliance with the SCoC is found and the right to ultimately terminate the contact with the supplier in case of material breach of the SCoC or the supplier refusing to take corrective measures.<sup>244</sup>

### 4.3.3 Human Rights Policy and Guidelines

On their website, Stora Enso describes their HRDD procedures, which include investment guidelines, social due diligence for mergers and acquisitions, environmental and social impact assessments (ESIAs), community consultations<sup>245</sup>, sustainability assessment checklists, and engagement with membership organizations.<sup>246</sup> The company states that they recognize the importance of long-term commitments and close cooperation with global and local stakeholders to effectively address human rights challenges.<sup>247</sup> The company also references the UNGPs, saying that "companies have an ongoing responsibility to respect human rights, even where government actions and regulatory frameworks are inadequate".<sup>248</sup> This is an important reflection of the company's ambition to lead and do what's right, and an acknowledgment that Stora Enso is aware that they have the responsibility to respect human rights even when the regulation is lacking. Further, Stora Enso also states that human rights, which are integrated into the company's Sustainability Agenda, are aligned with the ten principles of the UN Global Compact.<sup>249</sup>

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<sup>242</sup> Stora Enso Oyj, 'Supplier code of conduct', January 2021, available at [https://www.storaenso.com/-/media/documents/download-center/documents/suppliers/scoc-2021/stora-enso\\_supplier-code-of-conduct\\_2021\\_v1.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/suppliers/scoc-2021/stora-enso_supplier-code-of-conduct_2021_v1.ashx) [accessed 17 February 2023], p.

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<sup>243</sup> Ibid., p. 4.

<sup>244</sup> Ibid.

<sup>245</sup> Including FPIC.

<sup>246</sup> Stora Enso Oyj, 'Human Rights', available at:

<https://www.storaenso.com/en/sustainability/human-rights> [accessed 10 February 2023].

<sup>247</sup> Ibid.

<sup>248</sup> Ibid.

<sup>249</sup> Ibid.

An often cited document regarding human rights within the company is the Stora Enso Human Rights Policy, which states that the company's commitment to respecting human rights in line with the UNGPs.<sup>250</sup> The policy is guided by international principles and standards, local regulations, and company values, including prioritizing human rights issues on which their operations can have the most severe impact.<sup>251</sup> The company takes human rights into account through their operations, engages with stakeholders to ensure a valid approach, and requires their suppliers to comply with human rights policies and guidelines.<sup>252</sup> Additionally, the company presents that they conduct HRDD and reports on their performance.<sup>253</sup>

A more detailed report on the company's human rights practices is presented in the Human Rights Guidelines. These Guidelines are referenced in the Human Rights Policy and go into detail about how the policy objectives are being worked with and provides a comprehensive overview of the Human Rights Policy objectives.<sup>254</sup> The Guidelines explain the current human rights work being done at the company. They give a thorough account of what the Human Rights policy objectives are and how the company works with them, including a reference to the international principles and standards the company sees to in its work. These include the International Bill of Human Rights<sup>255</sup>, the core labor rights conventions of the ILO, international agreements on the rights of vulnerable groups<sup>256</sup>, the UN Global Compact, relevant Children's Rights and Business Principles, and the OECD Guidelines.<sup>257</sup> Stora Enso's list of observed international agreements is

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<sup>250</sup> Stora Enso Oyj, 'Stora Enso's Human Rights Policy', December 2020, available at [https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/stora-enso\\_human-rights-policy-2020.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/stora-enso_human-rights-policy-2020.ashx) [accessed 10 February 2023].

<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> Stora Enso Oyj, 'Stora Enso Human Rights Guidelines', February 2023, available at: [https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso\\_human\\_rights\\_guidelines\\_2022.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso_human_rights_guidelines_2022.ashx) [accessed 23 February 2023].

<sup>255</sup> The International Bill of Rights consists of the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights.

<sup>256</sup> Including but not limited to the Indigenous and Tribal Peoples Convention (C169); the Convention on the Elimination of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (UNCRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW).

<sup>257</sup> Stora Enso Oyj, 'Stora Enso Human Rights Guidelines', February 2023, available at: [https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso\\_human\\_rights\\_guidelines\\_2022.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso_human_rights_guidelines_2022.ashx) [accessed 23 February 2023], p. 3.

similar to the annex of the CSDD proposal,<sup>258</sup> albeit a shortened list of conventions, that nonetheless suggests they should already be in a suitable place regarding implementation and compliance with the directive.<sup>259</sup>

The company's Human Rights Guidelines has a section dedicated to the company's highest priority human rights commitments.<sup>260</sup> These were established in 2018 with support from the non-profit BSR, which is discussed below. The selected rights were confirmed by the Group Leadership Team and reviewed by key external stakeholders.<sup>261</sup> The highest priority human rights commitments are of particular importance in countries where the company has a large number of employees, including Finland, Sweden, China, Poland and Brazil.<sup>262</sup> Stora Enso also identified high-risk sourcing categories that could impact the highest priority human rights through their supply chains.<sup>263</sup>

The Human Rights Guidelines also present how Stora Enso is integrating human rights into its sustainability work.<sup>264</sup> This section of the Guidelines presents how some human rights impacts are connected to the company's sustainability work.<sup>265</sup> The company states that many of the potential impacts are connected to their highest priority human rights.<sup>266</sup> Stora Enso also presents a non-exhaustive table to show their work with human rights impacts.<sup>267</sup>

#### 4.3.4 Stora Enso Grievance mechanisms

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<sup>258</sup> European Commission, 'Annex to the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71, p. 4.

<sup>259</sup> Missing from Stora Enso's list are *The Convention on the Prevention and Punishment of the Crime of Genocide*, and *United Nations Convention against Transnational Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*.

<sup>260</sup> European Commission, 'Annex to the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71, p. 5.

<sup>261</sup> Stora Enso Oyj, 'Stora Enso Human Rights Guidelines', February 2023, available at: [https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso\\_human\\_rights\\_guidelines\\_2022.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso_human_rights_guidelines_2022.ashx) [accessed 23 February 2023], p. 5.

<sup>262</sup> Ibid.

<sup>263</sup> Ibid.

<sup>264</sup> Ibid., p. 11.

<sup>265</sup> Ibid.

<sup>266</sup> Ibid.

<sup>267</sup> Ibid., p. 11-12.



With regard to company grievance mechanisms, on their website, Stora Enso states that it is everyone's responsibility to help prevent unethical, illegal, or irresponsible behavior.<sup>268</sup> Therefore the company encourages an open and honest culture where employees can raise concerns about any suspected case of misconduct or ethical behavior.<sup>269</sup> The company provides for various ways to raise concerns, including reporting directly to the Ethics and Compliance team or through the Speak Up Hotline where concerns can be reported anonymously.<sup>270</sup> The Speak Up Hotline is an independent external service that allows employees and external stakeholders to report grievances or potential non-compliance cases and is available in 25 languages and open 24/7.<sup>271</sup> Once a concern is raised, the Ethics and Compliance team investigates these reports; consequent findings are recorded and reviewed and the company then takes relevant actions.<sup>272</sup> Proven cases of non-compliance can lead to disciplinary and/or legal action.<sup>273</sup> Stora Enso also emphasizes that retaliation of any kind against anyone who reports a concern is a violation of the Stora Enso Code and will not be tolerated.<sup>274</sup>

#### 4.4 Interviews with company representatives

To understand Stora Enso's viewpoint on HRDD and the CSDD proposal, interviews were held with company representatives. This gave insight into both the current practices in place at the company, and how the representatives view the work that is being done. While the interviews presented a lot of constructive and positive information with regards to the thesis topic, the key takeaways are summarized below.

Currently, the responsibility for integrating human rights within the company is decentralized, with various departments assuming distinct roles in addressing different aspects of human rights. Nonetheless, it is generally recognized among the interviewed company representatives that a holistic responsibility for human rights and a coordinated and unified approach and processes are necessary to drive an efficient human rights and sustainability

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<sup>268</sup> Stora Enso Oyj, Stora Enso Code and the Speak Up Hotline', available at: <https://www.storaenso.com/en/sustainability/code-of-conduct> [accessed 1 May 2023].

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> Stora Enso Oyj, Stora Enso Code and the Speak Up Hotline', available at: <https://www.storaenso.com/en/sustainability/code-of-conduct> [accessed 1 May 2023].

<sup>272</sup> Ibid.

<sup>273</sup> Ibid.

<sup>274</sup> Ibid.

practice. At the same time, the representatives acknowledge the need for time to properly develop robust and comprehensive human rights due diligence.

The company representatives understand that the human rights related grievances that are reported through the Speak Up Hotline could be only representing the tip of the iceberg of existing concerns. The representatives stated that they consider more efforts are necessary in reaching out to stakeholders through the company's supply chain and spreading awareness about the grievance mechanism leading to difficulties in collecting complaints.

The representatives further stated that Stora Enso should continue to develop and grow a clear and comprehensive process for identifying and addressing potential human rights risks in its supply chains, including new types of challenges and traditional challenges in new shapes and forms. Currently the company conducts audits and checks with a regular schedule and also relies on grievance requests or stakeholder requests to prompt action in specific supply chains.

However, the representatives said that Stora Enso is working on mapping and identifying high-risk areas and developing a sustainability due diligence process to comply with upcoming legislation and improve responsible sourcing. As such, the company is also actively working to develop a comprehensive human rights framework and address specific high-risk areas within its supply chains. The representatives stated that like many other companies, there is a strong demand of expertise on human rights within the company, but efforts are being made to tap into existing expertise and promote collaboration across different areas.

The representatives said that while the SCoC requires suppliers to comply with Stora Enso standards, it is always a challenge to reach a high degree of training and support for all the supplies globally and in proportion to the large number of suppliers, the company would like to increase the number of audits. The representatives also stated that the company's approach to addressing human rights issues in the supply chain should become more proactive rather than reactive.

The representatives said that Stora Enso recognizes the importance of communication, transparency and stakeholder engagement in its sustainability journey. They stated that the company is working on improving reporting and addressing human rights concerns through activities such as

providing helpful information to forest rangers<sup>275</sup> and thematic workshops during the annual “supplier day” to reach out to those who are more actively involved in high-risk areas.

#### 4.5 Example of previous Human Rights adverse impacts and corrective actions in Stora Enso’s operations

Stora Enso, has faced several human rights-related challenges in the past. Some of these incidents have garnered substantial public attention and resulted in significant alterations to the company’s organizational framework, providing insights that shape its current operations. Examining past challenges related to human rights allows for a deeper comprehension of recurring human rights-related issues faced by the company and the measures taken to mitigate the reoccurrence of such situations. Therefore, a few examples will be presented here.

##### *Guangxi*

In 2011, a Finnish documentary was released and gained wide attention, and concerned Stora Enso’s land leasing practices in Guangxi, China.<sup>276</sup> The Documentary developed off a not-for-profit organization<sup>277</sup> investigation, which had reported that Stora Enso’s investment from the early 2000s, in eucalyptus tree plantations in the Guangxi province was accused of mistreatment of local landholders and illegal land grabbing that led to land conflicts and two reported deaths and episodes of violence.<sup>278</sup> The report from the organization said they had made Stora Enso aware of legal irregularities in its land acquisitions in Guangxi as early as 2006, but subsequent field studies indicated the company hadn’t changed its land purchasing practices.<sup>279</sup>

Once publicized, a Stora Enso representative said that the company agreed with many of the organization’s observations and that Stora Enso was

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<sup>275</sup> Swedish “skogsvårdare”.

<sup>276</sup> Red Forest Hotel, ‘Red Forest Hotel: The Movie’, available at <https://www.redforesthelthemovie.com/> [accessed 23 March 2023].

<sup>277</sup> The Rights and Resources Initiative.

<sup>278</sup> Rights and Resources Initiative, ‘New RRI and RDI report reviews Stora Enso land acquisition practices in Southern China’, blog, 8 October 2010, available at <https://rightsandresources.org/blog/new-rri-and-rdi-report-reviews-stora-enso-land-acquisition-practices-in-southern-china/> [accessed 25 March 2023].

<sup>279</sup> Ibid.

reviewing the land deals they had made in China.<sup>280</sup> After the review the representative said that a majority of the deals were in order, but many were not, and they had made amendments to those.<sup>281</sup> The representative also emphasized a difficulty in pricing and the question of who owned the right to use the land.<sup>282</sup> Although acknowledging the human rights impacts, stakeholders seemed dissatisfied as a group of eleven Finnish and international NGOs, in 2013, filed a complaint to the UN Human Rights Council about human rights violations in connection to Stora Enso's plantations.<sup>283</sup>

The company worked with the UNHRC Working Group of Communications to clarify their position and respond to all allegations related to land use in Guangxi.<sup>284</sup> The company stated that they started a legal screening and correction process for all contracts related to collectively owned lands.<sup>285</sup> Their process in the case included desktop documentation review, field investigations, collection of missing documentation and signing of new agreements or amendments directly with affected villages or households.<sup>286</sup>

Media coverage regarding the case died down in the subsequent years, but on the company website Stora Enso still has a section regarding the region, where they also still conduct business.<sup>287</sup> The company states that their forestry operations in Guangxi work with local communities to understand the social impact of their operations.<sup>288</sup> In 2020, as part of new forest certification requirements, the company conducted a community mapping which included four neighboring regions, to understand the potential social impact of their activities on ethnic minorities.<sup>289</sup> The mapping showed that

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<sup>280</sup> Pomfret, J., 'Stora Enso slammed for land grabs in China report', Reuters, 8 October 2010, available at <https://www.reuters.com/article/storaenso-china-idUKTOE69608X20101008> [accessed 25 March 2023].

<sup>281</sup> Ibid.

<sup>282</sup> Ibid.

<sup>283</sup> World Rainforest Movement, 'NGOs filed a complaint to United Nations against Stora Enso's human rights violations in China', WRM Bulletin 188, 30 March 2013, available at: <https://www.wrm.org.uy/other-information/ngos-filed-a-complaint-to-united-nations-against-stora-ensos-human-rights-violations-in-china> [accessed 25 March 2023].

<sup>284</sup> Stora Enso Oyj, 'Stora Enso Global Responsibility Report 2013', available at: [https://www.e-julkaisu.fi/storaenso/global\\_responsibility\\_report/2013/pdf/Stora\\_Enso\\_Global\\_Responsibility\\_Report\\_2013.pdf](https://www.e-julkaisu.fi/storaenso/global_responsibility_report/2013/pdf/Stora_Enso_Global_Responsibility_Report_2013.pdf) [accessed 25 March 2023], p. 14.

<sup>285</sup> Ibid.

<sup>286</sup> Ibid., p. 26.

<sup>287</sup> Stora Enso Oyj, 'Engaging with vulnerable groups', available at: <https://www.storaenso.com/en/sustainability/social/engaging-with-vulnerable-groups> [accessed 25 March 2023].

<sup>288</sup> Ibid.

<sup>289</sup> Ibid.

16% of all communities in the regions can be considered ethnic minorities.<sup>290</sup> The company states that they have used this assessment to gain better understanding of the customs and structure of the communities around their plantations to develop their social engagement activities.<sup>291</sup>

### *Pakistan*

In 2014, media reports uncovered the use of child labor in Stora Enso's supply chain in Pakistan.<sup>292</sup> The reports presented that one of Stora Enso's subcontractors in Pakistan had employed children, as young as four years old, to collect wastepaper from landfills for low wages.<sup>293</sup> The paper was then sold to a paper and cardboard company in which Stora Enso was a partial owner.<sup>294</sup> A Swedish TV program, that was one of the media reports, claimed that Stora Enso management knew, based on an external consultant report, about not just the risk but existence of child labor in the supply chain when the company started to look into forming a joint venture in 2012.<sup>295</sup> The news led to immediate and strong reactions; customers and owners threatened to leave the company, the public was outraged, and employees were deeply disappointed and upset.<sup>296</sup> At the time, one company representative commented that they have put together a long term plan to improve working conditions, but did not carry out an in-depth investigation into the supply chain in order to find out what was really going on, and to determine whether any supply chain actually needed to be closed down.

Once uncovered by media, Stora Enso took immediate action to address the situation. In a public letter to stakeholders the Stora Enso CEO confirmed the report was accurate and that the company wants to increase transparency

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<sup>290</sup> Stora Enso Oyj, 'Engaging with vulnerable groups', available at: <https://www.storaenso.com/en/sustainability/social/engaging-with-vulnerable-groups> [accessed 25 March 2023].

<sup>291</sup> Ibid.

<sup>292</sup> Björk, K., 'Stora Enso utnyttjade barnarbete', yle, published 6 March 2014, last updated 2 July 2015, available at <https://svenska.yle.fi/a/7-766862https://svenska.yle.fi/a/7-766862> [accessed 26 March 2023].

<sup>293</sup> Ibid.

<sup>294</sup> Ibid.

<sup>295</sup> Myers, H., 'Stora Enso reorganizes due to child labor controversy (Pakistan)', Business and Human Rights Resource Centre, Article, 21 March 2014, available at <https://www.business-humanrights.org/en/latest-news/stora-enso-reorganizes-due-to-child-labor-controversy-pakistan/> [accessed 26 March 2023].

<sup>296</sup> Holmberg, I., Petrelius Karlberg, P., 'Stora Enso Case Study: a centralized approach to sustainable business practices', Stockholm School of Economics, October 2018, p. 5, available at <https://www.hhs.se/contentassets/ab9e7216f6004419a2e695650a71f5ac/stora-enso---case-study-final-2018--ny-titel-.pdf> [accessed 26 March 2023].

within and outside the group concerning global responsibility challenges.<sup>297</sup> Thus began the company's work to reconcile company values and the realities in Pakistan, and the company began investigating the cooperation with their subcontractors in the country.<sup>298</sup> Because there was no central function to handle the situation, the crisis spread quickly and affected all areas of the company.<sup>299</sup> In 2017, Stora Enso decided to divest its holding in Pakistan, and stated it would carry on with the Public Private Partnership with the ILO to promote decent work and combat child labor.<sup>300</sup> The company also pledged to continue to support its share of the community investment programs it had been funding in the country and used an independent third party to advise on the responsible exit.<sup>301</sup> In the company's Annual Report from 2022 the company stated that the child labor remediation programme in Pakistan was still ongoing and had a planned completion early in 2023.<sup>302</sup>

### *Brazil*

In Brazil, Stora Enso owns 50% of a joint venture company named Veracel. Veracel operates independently and has been affected by illegal land invasions of private property since 2008.<sup>303</sup> In 2008, Stora Enso made an announcement that a federal judge in Brazil had issued a decision declaring that the permits granted by the State of Bahia for the operations of Veracel were not valid.<sup>304</sup> The judge ordered Veracel to take certain actions, including reforestation with native trees on part of Veracel's plantations and a possible fine.<sup>305</sup> Veracel disputed the decision and filed an appeal against it; the company claims to operate in full compliance with all Brazilian laws and to have obtained all the necessary environmental and operating licenses for its

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<sup>297</sup> Myers, H., 'Stora Enso reorganizes due to child labor controversy (Pakistan)', Business and Human Rights Resource Centre, Article, 21 March 2014, available at <https://www.business-humanrights.org/en/latest-news/stora-enso-reorganizes-due-to-child-labor-controversy-pakistan/> [accessed 26 March 2023].

<sup>298</sup> Ibid.

<sup>299</sup> Holmberg, I., Petrelius Karlberg, P., 'Stora Enso Case Study: a centralized approach to sustainable business practices', Stockholm School of Economics, October 2018, p. 5, available at <https://www.hhs.se/contentassets/ab9e7216f6004419a2e695650a71f5ac/stora-enso--case-study-final-2018--ny-titel-.pdf> [accessed 26 March 2023].

<sup>300</sup> Stora Enso Oyj, 'Stora Enso to divest its holding in Bulleh Shah Packing in Pakistan',

<sup>301</sup> Ibid.

<sup>302</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 80.

<sup>303</sup> Stora Enso Oyj, 'Sustainable resettlement in Brazil', available at <https://www.storaenso.com/en/sustainability/sustainability-reporting/sustainable-resettlement-in-brazil> [accessed 27 March 2023].

<sup>304</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 140.

<sup>305</sup> Ibid.

industrial and forestry activities from the relevant authorities.<sup>306</sup> In November 2008, a Federal Court suspended the effects of the decision and as of 2022 no provisions have been recorded in Veracel's or Stora Enso's accounts for the reforestation or the possible fine.<sup>307</sup>

The Veracel issue concerns land invasions of private property, and affects various actors that use the land, such as mining companies and farming businesses.<sup>308</sup> The root cause of the problems that landless people face is not companies, but Veracel has stated that they aim to be part of the local solution, without taking on the role of the state.<sup>309</sup> The company has been supporting the Sustainable Settlements Initiative since 2012, which provides farmland and technical educational support to landless people.<sup>310</sup> Veracel has agreed not to seek to repossess areas occupied before July 2011 and has voluntarily approved the transfer of approximately 20,000 hectares of land to benefit landless people since 2012.<sup>311</sup> Veracel also has a dialogue with communities and negotiated the direct sale of around 850 hectares to two communities.<sup>312</sup> Stora Enso has stated that community consultations, including FPIC, are a key element in Stora Enso's HRDD and forestry operations, especially concerning land leasing and indigenous peoples' rights.<sup>313</sup> In Brazil, Veracel maintains good relations with local Pataxó and Tupinambá communities.<sup>314</sup> Of note is that some of the indigenous communities are calling for the expansion of the Barra Velha Indian Reserve; the extension would cover hundreds of land properties, including 3,219 hectares of land acquired by Veracel before the indigenous peoples first made claim to the land.<sup>315</sup> At the end of 2022, this case was being processed by the regional federal court.<sup>316</sup> Veracel remains committed to complying fully with the court's eventual decision.<sup>317</sup>

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<sup>306</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 140–141.

<sup>307</sup> Ibid.

<sup>308</sup> Stora Enso Oyj, 'Sustainable resettlement in Brazil', available at <https://www.storaenso.com/en/sustainability/sustainability-reporting/sustainable-resettlement-in-brazil> [accessed 27 March 2023].

<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

<sup>311</sup> Ibid.

<sup>312</sup> Ibid.

<sup>313</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 80.

<sup>314</sup> Ibid.

<sup>315</sup> Ibid.

<sup>316</sup> Ibid.

<sup>317</sup> Ibid.

These incidents demonstrate the challenges that companies operating with global supply chains can face with regards to human rights. However, it must also be noted that Stora Enso has taken steps to address these issues and improve its human rights due diligence processes in recent years.<sup>318</sup> The company has committed to respecting human rights throughout its operations and supply chains and has implemented several initiatives to address issues related to land rights, forced labor, and other human rights concerns.<sup>319</sup>

## 4.6 Previous case studies

In 2015, as a result of human rights violations within the company, Stora Enso commissioned a case study by the Danish Institute for Human Rights who published a Human Rights Assessment of Stora Enso<sup>320</sup>, and in 2018, two valuable case studies were published by the Stockholm School of Economics<sup>321</sup> and Business for Social Responsibility (BSR)<sup>322</sup> that have guided the company's continued work within the area.

### 4.6.1 Danish Institute for Human Rights Assessment

In 2014, Stora Enso, in cooperation with the Danish Institute for Human Rights, conducted Human Rights Assessments across all its production units and forestry operations.<sup>323</sup> The assessments were aimed at understanding the human rights impacts of the company's operations and integrating a human

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<sup>318</sup> Stora Enso Oyj, 'Annual Report 2022', available at:

<https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 79.

<sup>319</sup> Ibid.

<sup>320</sup> Danish Institute for Human Rights, Human Rights and Development Department – Corporate Engagement Programme & Stora Enso, Global Responsibility, 'Stora Enso Human Rights Assessment: Review and Consolidation Report', 2015, available at [https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA\\_2015\\_DIHR\\_REPORT.ashx](https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA_2015_DIHR_REPORT.ashx)[https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA\\_2015\\_DIHR\\_REPORT.ashx](https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA_2015_DIHR_REPORT.ashx) [accessed 2 April 2023].

<sup>321</sup> Holmberg, I. And Petrelius Karlberg, P., 'Stora Enso Case Study: A centralized approach to sustainable business practices', Stockholm School of Economics, October 2018, available at:

<https://www.hhs.se/contentassets/ab9e7216f6004419a2e695650a71f5ac/stora-enso---case-study-final-2018--ny-titel-.pdf> [accessed 20 March 2023].

<sup>322</sup> Business for Social Responsibility, 'Stora Enso: Human Rights Commitment through Prioritization', 13 December 2018, available at: <https://www.bsr.org/en/case-studies/stora-enso-human-rights-commitment-through-prioritization> [accessed 27 March 2023].

<sup>323</sup> Danish Institute for Human Rights, Human Rights and Development Department – Corporate Engagement Programme & Stora Enso, Global Responsibility, 'Stora Enso Human Rights Assessment: Review and Consolidation Report', 2015, available at [https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA\\_2015\\_DIHR\\_REPORT.ashx](https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA_2015_DIHR_REPORT.ashx) [accessed 2 April 2023], p. 5.



rights perspective into business operations and decision making.<sup>324</sup> The assessments were facilitated by the Danish Institute for Human Rights, Business for Social Responsibility and Fair Working Conditions.<sup>325</sup> The consolidated report presented results of the assessments and was meant to provide a baseline for future actions within the company. Stora Enso's CEO at the time acknowledged that businesses have human rights impacts whether they recognize them or not, and that it was a top priority to know and understand their impacts to be able to prevent, mitigate and remedy them.<sup>326</sup>

The report presents that the company's commitment to human rights is a key part of their Global Responsibility strategy and that the company had been seeking for continuous development and improvement of its HRDD.<sup>327</sup> At the time, Stora Enso's human rights approach consisted of policy commitment on human rights through a public human rights statement and code of conduct, global, regional and pre-investment human rights assessments, preventive and remediation actions on assessment findings, tracking implementation of actions through Group wide and other specific performance indicators, accountability through transparent communications, and effective access to grievance and remediation mechanisms.<sup>328</sup>

The report found 14 key findings and several areas where improvements were needed.<sup>329</sup> These included employment practices, diversity management, employee privacy, freedom of association, occupational health and safety, and community impacts.<sup>330</sup> Recommendations included meaningful implementation of the Stora Enso SCoC, strengthening company procedures on social impact assessments, assessing and engaging with contractors on key areas of concern, ensuring security actors be trained in the implementation of human rights standards, putting in place activities that reduce overtime,

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<sup>324</sup> Danish Institute for Human Rights, Human Rights and Development Department – Corporate Engagement Programme & Stora Enso, Global Responsibility, 'Stora Enso Human Rights Assessment: Review and Consolidation Report', 2015, available at [https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA\\_2015\\_DIHR\\_REPORT.ashx](https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA_2015_DIHR_REPORT.ashx) [accessed 2 April 2023], p. 5.

<sup>325</sup> Ibid.

<sup>326</sup> Ibid.

<sup>327</sup> Ibid., p. 8.

<sup>328</sup> Ibid.

<sup>329</sup> Ibid., p. 9-11.

<sup>330</sup> Ibid.

and ensuring employees feel the available grievance mechanisms are safe and available to them.<sup>331</sup>

While the above mentioned is not the exhaustive list of recommendations, it presents some of the areas the company was instructed to work on in 2015. In the interviews conducted for this thesis, it seems many of the areas are still relevant in the company's work, and implementation of the recommendations from the human rights assessments are ongoing. Some aspects of the assessments are process improvements which need continuous monitoring and as such will never be completed, as the company aims to continue to constantly learn and adapt to the world around them.

#### 4.6.2 HHS a centralized approach to sustainable business practices

The case study presented by Stockholm School of Economics discusses Stora Enso's transition from a traditional paper and pulp company to a renewable materials company driven by sustainability and changing market demands, and the company's efforts to become a more ethical.<sup>332</sup> The case study was centered around the incorporation of sustainability concerns into a global organization and finding the right balance between centralized and local operations, and explored how both strategic decisions and practical work were integrated into the company.<sup>333</sup> The case study points out that Stora Enso had made steady progress on environmental sustainability while being challenged on issues of social responsibility and business ethics.<sup>334</sup>

The case study presents challenges that the company faced during the transformation process, such as the need to change the company culture and align the organization around sustainability goals.<sup>335</sup> For example, the company had to integrate its sustainability efforts across different functions and delegate CSR responsibilities to people closer to the operations, which

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<sup>331</sup> Danish Institute for Human Rights, Human Rights and Development Department – Corporate Engagement Programme & Stora Enso, Global Responsibility, 'Stora Enso Human Rights Assessment: Review and Consolidation Report', 2015, available at [https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA\\_2015\\_DIHR\\_REPORT.ashx](https://www.storaenso.com/-/media/Documents/Download-center/Documents/Sustainability/0502HRA_2015_DIHR_REPORT.ashx) [accessed 2 April 2023], p. 9.11.

<sup>332</sup> Holmberg, I. And Petrelius Karlberg, P., 'Stora Enso Case Study: A centralized approach to sustainable business practices', Stockholm School of Economics, October 2018, p. 1, available at: <https://www.hhs.se/contentassets/ab9e7216f6004419a2e6956650a71f5ac/stora-enso---case-study-final-2018--ny-titel-.pdf> [accessed 20 March 2023].

<sup>333</sup> Ibid.

<sup>334</sup> Ibid.

<sup>335</sup> Ibid., p. 9.

led to positive responses but created challenges regarding transparency.<sup>336</sup> An important initiative was to replace the many “scattered principles” with a platform integrating the different aspects of sustainability.<sup>337</sup> Cooperation between different functions was recognized as being essential for good performance.<sup>338</sup> In line with the developments during the 1990’s which saw a boom in voluntary business initiatives on sustainability to meet claims regarding overall business complicity in human rights abuses,<sup>339</sup> the company appointed a Vice President (VP) of CSR who played a significant role in driving a more holistic view of sustainability work within the organization.<sup>340</sup> The VP of CSR incorporated many different areas containing sustainability issues within the company, and the company got started with new practices, such as sustainability audits.<sup>341</sup>

The company rebranded with a new overall purpose which was aimed to reflect the company’s emphasis on sustainability and responsibility throughout its global supply chains.<sup>342</sup> The company decided to start delegating CSR-responsibilities to people closer to the operations, which led to ownership of the issues being placed in the divisions.<sup>343</sup> While this led to positive responses, the company was also transparent with the negative aspect that the center lost the overview and control of what measures the divisions were actually taking.<sup>344</sup> The case study presents that while the company’s approach to sustainability is decentralized and spread between different groups and functions, the legal aspects remain centralized.<sup>345</sup> The reasoning behind the decision was that the current Head of Legal, who had been with the company for many years and was well-versed in business ethics and

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<sup>336</sup> Holmberg, I. And Petrelius Karlberg, P., ‘Stora Enso Case Study: A centralized approach to sustainable business practices’, Stockholm School of Economics, October 2018, p. 12, available at: <https://www.hhs.se/contentassets/ab9e7216f6004419a2e6956650a71f5ac/stora-enso---case-study-final-2018-ny-titel-.pdf> [accessed 20 March 2023].

<sup>337</sup> Ibid., p. 4.

<sup>338</sup> Ibid., p. 1.

<sup>339</sup> See Ruggie, J., ‘The Social Construction of the UN Guiding Principles on Business and Human Rights’, in ‘Research Handbook on Human Rights and Business’, Surya Deva and David Birchall (ed), Edward Elgar, 2020, p. 67.

<sup>340</sup> Holmberg, I. And Petrelius Karlberg, P., ‘Stora Enso Case Study: A centralized approach to sustainable business practices’, Stockholm School of Economics, October 2018, p. 4, available at: <https://www.hhs.se/contentassets/ab9e7216f6004419a2e6956650a71f5ac/stora-enso---case-study-final-2018-ny-titel-.pdf> [accessed 20 March 2023].

<sup>341</sup> Ibid.

<sup>342</sup> Ibid., p. 11.

<sup>343</sup> Ibid., p. 4.

<sup>344</sup> Ibid.

<sup>345</sup> Ibid.

compliance, also headed the operations in Sweden.<sup>346</sup> Therefore, the legal aspects of sustainability remained under central control.<sup>347</sup>

The case study also presents Stora Enso as a frontrunner in Sweden in many sustainability related areas.<sup>348</sup> For instance, the company was first to introduce a competition law compliance program, and among the first to apply the UK Bribery Act, and over the years the company has found other companies to benchmark their work against, for instance Telia regarding anti-corruption and compliance, as well as Nestlé, IKEA and H&M with regard to supply chains and strong central sustainability functions.<sup>349</sup>

Ultimately, the case study presents that Stora Enso's transformation resulted in increased revenue, improved reputation, and a more engaged workforce.<sup>350</sup> The case study emphasises how Stora Enso's commitment to sustainability and transformation into a renewable materials company has enabled it to remain competitive and create value for all stakeholders.

#### 4.6.3 BSR human rights commitment through prioritization

The case study from BSR describes the organizations work to support Stora Enso's human rights journey.<sup>351</sup> It further develops the work that Stora Enso began with the Danish Institute for Human Rights with their companywide human rights impact assessment (HRIA) to identify and assess potential and actual adverse human rights impacts.<sup>352</sup>

The company then used the findings of the HRIA to develop a human rights action plan (HRAP) and implement it across the organization.<sup>353</sup> The plan included measures such as setting up a grievance mechanism, providing training on human rights to employees, and establishing a Human Rights Council to oversee the implementation of the plan.<sup>354</sup> BSR collaborated with

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<sup>346</sup> Holmberg, I. And Petrelius Karlberg, P., 'Stora Enso Case Study: A centralized approach to sustainable business practices', Stockholm School of Economics, October 2018, p. 4, available at:

[https://www.hhs.se/contentassets/ab9e7216f6004419a2e695650a71f5ac/stora-enso---case-study-final-2018-\\_-ny-titel-.pdf](https://www.hhs.se/contentassets/ab9e7216f6004419a2e695650a71f5ac/stora-enso---case-study-final-2018-_-ny-titel-.pdf) [accessed 20 March 2023].

<sup>347</sup> Ibid.

<sup>348</sup> Ibid., p. 11

<sup>349</sup> Ibid.

<sup>350</sup> Ibid.

<sup>351</sup> Business for Social Responsibility, 'Stora Enso: Human Rights Commitment through Prioritization', 13 December 2018, available at: <https://www.bsr.org/en/case-studies/stora-enso-human-rights-commitment-through-prioritization> [accessed 27 March 2023].

<sup>352</sup> Ibid.

<sup>353</sup> Ibid.

<sup>354</sup> Ibid.

Stora Enso to implement a local HRAP in China, and once that was completed, Stora Enso partnered with BSR to identify the company's highest priority human rights issues.<sup>355</sup> The goal was to find the human rights issues where Stora Enso has the most impact.<sup>356</sup>

BSR recognized that for their project to be successful, they required commitment from all business and supporting functions, while also reflecting the real-world business challenges Stora Enso was facing.<sup>357</sup> The case study therefore highlights the importance of prioritizing human rights commitments and implementing them across the organization to ensure that human rights are respected and upheld throughout the company's operations.<sup>358</sup> Through regular individual interactions with the project steering group and function heads, BSR and Stora Enso mapped the company's existing human rights systems and gaps in its processes.<sup>359</sup> The diverse working group then identified eight human rights priorities, which were then discussed and approved by Stora Enso's executive team, turning a broader strategy into a corporate wide initiative.<sup>360</sup> The high priority human rights were meant to guide Stora Enso's future work, and included an updated due diligence and monitoring program.<sup>361</sup> The work done together with BSR has had a large impact on Stora Enso, as the high impact human rights which were identified in the case study guide the work the company does today when prioritizing human rights in its business.

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<sup>355</sup> Business for Social Responsibility, 'Stora Enso: Human Rights Commitment through Prioritization', 13 December 2018, available at: <https://www.bsr.org/en/case-studies/stora-enso-human-rights-commitment-through-prioritization> [accessed 27 March 2023].

<sup>356</sup> Ibid.

<sup>357</sup> Ibid.

<sup>358</sup> Ibid.

<sup>359</sup> Ibid.

<sup>360</sup> Ibid.

<sup>361</sup> Ibid.

## 5 Gap analysis of HRDD requirements at Stora Enso

The Finish NGO SHITI published a report on the status of human rights performance of Finnish companies, where Stora Enso outperforms other Finnish industry companies in their human rights performance in almost every measured category.<sup>362</sup> While being the top performing company, and the only company to reach the top score in HRDD, Stora Enso's total score is 63%, with certain categories such as "company human rights practices"<sup>363</sup> standing out with a score of 4.3/20.<sup>364</sup>

The report indicates that the company does a lot to promote human rights and integrate HRDD into its business. However, when taking a step back to look at the bigger picture of ensuring meaningful compliance the report shows that there are certain areas where the company has a lot to do if it truly wishes to integrate these processes into its business in a meaningful way. Below, Stora Enso's current HRDD will be analyzed in relation to the requirements of the CSDD proposal to concretize what those gaps are.

By examining Stora Enso's current HRDD practices and comparing those practices to the requirements set out in the CSDD proposal, valuable insights can be gained into the challenges that large EU LLCs may face concerning complying with the proposed legislation. Additionally, areas can be identified where Stora Enso may want to develop its practices in order to ensure meaningful compliance in line with the international soft law standards that influenced the CSDD proposal, providing a roadmap for the company, and others, to follow.

### 5.1 Integrating due diligence into company policies

As stated in chapter three, according to Article 5 of the CSDD proposal the company must integrate due diligence into all company policies and have in place a due diligence policy, which must be updated annually. Currently, while Stora Enso has integrated human rights considerations and due

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<sup>362</sup> Tran-Nguyen, E., Halttula, S., Vormisto, J., Aho, L., Solitander, N., Rautio, S., & Villa, S., 'Status of Human Rights Performance of Finnish Companies (SHITI) Project: Report on the status of human rights performance in Finnish companies', 16 March 2021, p. 44.

<sup>363</sup> The indicators for this theme were, for example, taking respect for human rights into account in procurement practices, including living wage requirements and prohibition of forced labor requirements in supplier requirements.

<sup>364</sup> Ibid.

diligence into many of its existing policies, the company does not have a sustainability due diligence policy publicly available.

As previously presented, the due diligence policy must, to conform to the CSDD proposal requirements, include a description of

- The company's current, and long-term, approach to due diligence,
- a code of conduct which describes rules and principles that are to be followed by the company's employees and subsidiaries, and
- a description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business partners.

Currently, the HRDD aspects are covered by the Human Rights Guidelines which describe the company's approach to human rights due diligence and references the Stora Enso Code and SCoC which present codes of conduct for the company which describe the rules and principles that are to be followed by the company and to a certain extent also describes how the company implements due diligence.<sup>365</sup>

## 5.2 Identifying and assessing actual or potential adverse impacts

As previously mentioned, Article 6 of the CSDD proposal establishes the obligation for companies to take appropriate measures to identify actual or potential adverse human rights impacts in their own operations, in their subsidiaries and at the level of their established direct or indirect business relationships in their value chain. An adverse human rights impact refers to an adverse impact on protected persons resulting from the violation of one of the rights or prohibitions listed in the CSDD proposal Annex. To identify the relevant adverse impacts, companies are permitted to utilize appropriate quantitative and qualitative information, which may include independent reports and information obtained through the company's complaints procedure. Additionally, companies should, when applicable, engage in consultations with potentially affected groups, such as workers and other relevant stakeholders, to gather information concerning actual or potential

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<sup>365</sup> Stora Enso Oyj, 'Stora Enso Human Rights Guidelines', February 2023, available at: [https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso\\_human\\_rights\\_guidelines\\_2022.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso_human_rights_guidelines_2022.ashx) [accessed 23 February 2023], p. 4.

adverse impacts. Since appropriate measures must be seen in light of the proportionality principle, and Stora Enso must be viewed as a larger, more influential, and resourceful company they can be assumed to be expected to undertake greater efforts to protect human rights.

Stora Enso has taken measures to identify actual and potential adverse impacts, for example through their HRIA conducted across the company's entire supply chain in 2018.<sup>366</sup> Also, Stora Enso's annual report notes if the company has identified and addressed human rights risks.<sup>367</sup> In their Human Rights Guidelines, the company states that their investment guidelines stipulate that human rights risks and impacts must be duly identified, assessed, and addressed prior to approval in projects with business-critical risks.<sup>368</sup>

However, as was stated by company representatives during interviews, the company should continue to develop and grow a clear and comprehensive process for identifying and addressing potential human rights risks in its supply chains. Currently the company conducts audits and spot checks in certain areas and relies on grievance requests or stakeholder requests to prompt action in specific supply chains.

It is this author's understanding that the CSDD proposal will require a more systematic and comprehensive approach from the company wherein the company may need to establish a broader process for continuously and preemptively assessing and prioritizing human rights risks throughout the supply chains. This process must include engagement with stakeholders, including workers, communities, and civil society organizations, to ensure that the risk assessments are comprehensive and robust.

Special regard should be taken of relationships with suppliers, as the CSDD proposal requires consultations with potentially affected groups, including potentially affected individuals or communities, and seek their input early in their processes, which can be more difficult further away from the core business where suppliers operate.

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<sup>366</sup> See chapter 4.6.3.

<sup>367</sup> See chapter 4.3.1.

<sup>368</sup> Stora Enso Oyj, 'Stora Enso Human Rights Guidelines', February 2023, available at: [https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso\\_human\\_rights\\_guidelines\\_2022.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso_human_rights_guidelines_2022.ashx) [accessed 23 February 2023], p. 2.



Also, while employees within the core business group working with sustainability have considerable expertise on the area, current staff throughout the company and suppliers may not have sufficient expertise in human rights issues to adequately identify and assess potential impacts on their levels. However, the company does invest in training and development for their staff to improve their human rights knowledge and skills.<sup>369</sup> This is reflected in the representative's acknowledgment of the need for time to properly develop robust and comprehensive HRDD.

There seems to be a need for the company to embed human rights into its broader strategy and operations to ensure that potential impacts are identified and addressed in a timely and effective manner. These gaps highlight the need for Stora Enso to improve its approach to identifying actual or potential adverse impacts in order to comply with the CSDD proposal's Article 6. By addressing these gaps, the company can ensure that it has a comprehensive and effective HRDD process in place that meets the requirements of the proposed legislation.

### 5.3 Preventing potential adverse impacts and bringing actual impacts to an end

In accordance with Articles 7 and 8 of the CSDD proposal companies are required to take appropriate measures to either prevent, or if prevention is not immediately possible, adequately mitigate potential adverse human rights impacts and take appropriate measures to bring actual impacts to an end. The adverse impacts are those that have, or should have been, identified in line with the obligation to identify actual and potential adverse impacts. The Articles outline various actions that companies should take to address actual and potential adverse impacts. These impacts include neutralizing or minimizing impacts, developing prevention and corrective action plans, seeking contractual assurances from business partners, making necessary investments, and providing support for SMEs. If the impacts cannot be adequately mitigated, companies may refrain from extending relations with the involved partners and may temporarily suspend or terminate business relationships as a last resort. Again, the proportionality principle plays a crucial role in deciding what constitutes appropriate measures.

The Human Rights Guidelines shed light on Stora Enso's current practices concerning the Articles. Currently, the company encourages its partners to

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<sup>369</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 79.

continuously enhance their human rights performance by clearly communicating their values and expectations to them.<sup>370</sup> This communication is facilitated through various means, such as contractual requirements, and collaborative efforts to address any challenges faced by their partners.<sup>371</sup> Stora Enso actively engages with potentially affected individuals or their representatives on a regular basis to identify opportunities for updating their priorities, policies, and practices.<sup>372</sup> Additionally, the company's employees can express their perspectives on Stora Enso's performance as an employer through an annual employee survey.<sup>373</sup>

The Human Rights Guidelines also state that when Stora Enso's activities result in or contribute to adverse human rights impacts, they take appropriate measures to address and remedy the situation, engaging with the affected stakeholders to find the most suitable solutions.<sup>374</sup> The company also ensures that affected stakeholders have access to other remedy initiatives and collaborates with them.<sup>375</sup> When violations are committed by third parties associated with Stora Enso through its operations, products, or services, the company strives to use their influence along with relevant stakeholders to ensure those impacts are remedied.<sup>376</sup> The approach to finding solutions considers the specific needs of the affected individuals and the details of each case, and Stora Enso stresses the importance of engaging with the stakeholders and their representatives in the process.<sup>377</sup>

It is this author's understanding the Stora Enso has here gone beyond the requirements set forth in Articles 7 and 8 of the CSDD proposal and in certain respects incorporated what certain NGOs have critiqued the proposal for, namely using leveraging as a means of persuasion. Also, with regard to previous human rights adverse impacts and corrective actions in Stora Enso's

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<sup>370</sup> Stora Enso Oyj, 'Stora Enso Human Rights Guidelines', February 2023, available at: [https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso\\_human\\_rights\\_guidelines\\_2022.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso_human_rights_guidelines_2022.ashx) [accessed 23 February 2023], p. 3.

<sup>371</sup> Stora Enso Oyj, 'Stora Enso Human Rights Guidelines', February 2023, available at: [https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso\\_human\\_rights\\_guidelines\\_2022.ashx](https://www.storaenso.com/-/media/documents/download-center/documents/sustainability/storaenso_human_rights_guidelines_2022.ashx) [accessed 23 February 2023], p. 3.

<sup>372</sup> Ibid.

<sup>373</sup> Ibid.

<sup>374</sup> Ibid., p. 4.

<sup>375</sup> Ibid.

<sup>376</sup> Ibid.

<sup>377</sup> Ibid.

operations, the company has acted swiftly and appropriately once and adverse impact was identified which have led to changed routines for the company.

## 5.4 Maintaining a complaints procedure

As previously mentioned, the CSDD proposal requires that companies establish a mechanism that allows certain people and organizations to submit complaints if they have legitimate concerns regarding potential or actual adverse impacts, including in the company's value chain. This possibility to submit complaints should be accessible to individuals who are directly affected or have reasonable grounds to believe they might be impacted by adverse impacts, trade unions, and other workers' representatives representing individual employees within the relevant value chain, and to civil society organizations active in the concerned area.

Stora Enso's current practices provide channels for workers and external stakeholders to raise complaints about potential human rights abuses or violations. While the company's grievance mechanisms are available online for everybody, the issue of accessibility was raised by representatives during interviews as the existence of the mechanisms has been difficult to widely communicate to workers and stakeholders throughout the company's value chains, which limit their effectiveness in identifying and addressing potential adverse impacts. The fact that the company has accessible grievance mechanisms in place is compliant with the requirements of the CSDD proposal. However, the company acknowledges the need to raise awareness about these mechanisms to ensure accessibility across its entire operation. Stora Enso representatives have also stated that they are aware that further efforts are necessary to achieve full accessibility for their grievance mechanisms.

## 5.5 Monitoring and communication

Further, as part of the proposed requirements, companies will need to conduct regular assessments of their due diligence measures. These assessments aim to verify the proper identification of adverse impacts and the implementation of preventive or corrective measures. Additionally, the assessments will determine the extent to which adverse impacts have been prevented, brought to an end, or minimized. Companies will also have to report on the matters covered by the CSDD proposal, but this is for large EU LLCs not a new requirement.

Stora Enso reports on their HRDD as part of their Sustainability Reporting in their Annual Report.<sup>378</sup> The company is currently working on implementation of its HRDD program, which is considered to be on track.<sup>379</sup> The monitoring process involves continuous or periodic assessments, which cover various aspects like the Stora Enso Code, Business Practice Policy, Minimum Human Resources Requirements for labour conditions, Supplier Code of Conduct, Safety standards and tools for all units, and Grievance mechanisms.<sup>380</sup> Additionally, project-specific HRDD measures are undertaken, such as the Investment Guidelines, Environmental and Social due diligence for mergers and acquisitions, Environmental and Social Impact Assessments (ESIAs), Community consultations (including FPIC), and Sustainability Assessment checklist for innovation projects.<sup>381</sup> As the company does not have a specific due diligence policy in place the monitoring is distributed among these different instruments and projects.

Stora Enso recognizes the importance of risk assessments, control processes, and comprehensive monitoring in an effective compliance management system and their risk assessment procedures, detailed in their Enterprise Risk Management instructions, are regularly conducted across all units.<sup>382</sup> The results are used by divisional management teams, the Ethics and Compliance function, and in the group level Enterprise Risk Management process.<sup>383</sup> Moreover, the company conducts audits of its own operations and suppliers, and the company plans to establish a sustainable sourcing process to monitor and ensure supplier compliance beyond audits.<sup>384</sup> As mentioned, Stora Enso also conducts ESIAs for all new projects that may have significant adverse impacts on local communities.

The lack of a due diligence policy could present challenges for monitoring and reporting on HRDD measures. Despite this, Stora Enso has proactively aspired to align with the requirements of the CSDD proposal.

## 5.6 Prospects for meaningful compliance with the CSDD Proposal

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<sup>378</sup> Stora Enso Oyj, 'Annual Report 2022', available at: <https://www.storaenso.com/en/investors/annual-report> [accessed 14 February 2023], p. 51-94.

<sup>379</sup> Ibid., p. 79.

<sup>380</sup> Ibid., p. 80.

<sup>381</sup> Ibid., p. 80.

<sup>382</sup> Ibid., p. 78.

<sup>383</sup> Ibid.

<sup>384</sup> Ibid., p. 79 and 84.

As has been shown above, Stora Enso is largely in compliance with the requirements of the CSDD proposal. While certain areas are still under development, the company is clearly heading in the right direction and seems well prepared for the coming legislation.

It is however worth restating that in the larger picture of the emerging business and human rights framework complying with the CSDD proposal means meeting the minimum legal requirements set out in the legislation, while ensuring meaningful compliance goes beyond the minimum.

As it stands, Stora Enso has a long history of conducting business sustainably and responsibly, aims to follow their values of “lead” and “do what’s right”, and is committed to international standards such as the SDGs, the UN Global Compact, the UNGPs, and the OECD Guidelines.

Previously, this thesis has pointed out how the CSDD proposal HRDD requirements deviate from international standards that have emerged from the UNGPs and the OECD. In order to comply with the CSDD proposal requirements and ensure meaningful compliance as intended by international HRDD standards, the company should adhere to a more proactive, integrated, and continuous approach to sustainability and human rights due diligence. Companies that incorporate the guidance from soft law and develop responsible business practices for ensuring meaningful compliance will be better positioned to meet the changing expectations of stakeholders, mitigate risks, and create long-term value for both the company and society as a whole.

To that extent, Stora Enso can enhance its HRDD efforts and strengthen compliance measures to demonstrate a genuine commitment to responsible business conduct. Therefore, the final section of the thesis is dedicated to presenting certain areas where the CSDD proposal deviates from international HRDD standards and aims to highlight what a company should be wary of, if wishing to ensure meaningful compliance.

### 5.6.1 International HRDD standards that foster meaningful compliance

Both an analysis done by the NGO Shift and OHCHR feedback on the CSDD proposal have highlighted areas where the CSDD proposal is not in alignment with international standards. While aimed at suggesting changes to the proposal, these reviews of the CSDD proposal’s alignment with international standards can also serve as useful resources for companies seeking to achieve meaningful compliance.

The CSDD proposal fails to prioritize the risk of serious human rights impacts from value chain actors without an “established business relationship” with the company.<sup>385</sup> This is contrary to the UNGP recommendation, as, according to the UNGPs, it can be unreasonably difficult for companies to conduct due diligence across large value chains, and therefore these companies may “identify general areas where the risk of adverse human rights impacts is most significant ... and prioritize these for human rights due diligence.”<sup>386</sup> In the Commission’s explanatory memorandum the UNGPs and OECD Guidelines are acknowledged to extend the expectation of due diligence throughout the entire value chain.<sup>387</sup> The UNGPs intentionally avoided limiting the scope of due diligence to specific closely related business relationships to prevent companies from focusing solely on risks and impacts among their strategic suppliers and other proximate partners, while disregarding impacts in more distant parts of the value chain where impacts may be more severe.<sup>388</sup>

The OHCHR feedback for the CSDD proposal states that while the CSDD proposal aims to provide legal certainty with the use of the term “established business relationships”, the approach may prove challenging to apply practically. The exclusion diminishes the effectiveness of HRDD as a risk management exercise and analysis becomes less comprehensive in terms of covered business relationships which can limit the holistic understanding of the company’s business model’s potential contributions to adverse human rights impacts within its value chains.<sup>389</sup> Also, back in 2008, Professor Ruggie emphasized that the extent of leverage should not be the sole determinant of

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<sup>385</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR Feedback on the Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence”, 23 May 2022, p. 3, available at: <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf> [accessed on 25 April 2023].

<sup>386</sup> United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights : Implementing the United Nations "Protect Respect and Remedy" Framework*, New York, United Nations Office of the High Commissioner for Human Rights, 2011, Guiding Principle 17 and Commentary.

<sup>387</sup> Shift, ‘The EU Commission’s Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT’S ANALYSIS’, March 2022, p. 3, accessible at: [https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

<sup>388</sup> Ibid. p. 3.

<sup>389</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR Feedback on the Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence”, 23 May 2022, p. 3, available at: <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf> [accessed on 25 April 2023].

a company's responsibility; rather, responsibilities arise from potential or actual impacts connected to a company's operations, products, or services.<sup>390</sup>

Basing the scope of due diligence on leverage with "established business relationships" contradicts the principles of the UNGPs and OECD guidelines and diminishes the potential of the CSDD proposal to fulfill its intended purpose of enhancing corporate accountability for adverse impacts throughout the value chain.<sup>391</sup> Moreover, the restricted scope may create perverse incentives, leading companies to rely on temporary arrangements to avoid "established business relationships" which could exacerbate human rights-related risks.<sup>392</sup>

The CSDD proposal also limits mandatory HRDD to identifying and preventing adverse human rights impacts as defined within the directive, which differs from the UNGPs intended meaning.<sup>393</sup> The CSDD proposal defines adverse impacts as violations of a set of human rights for protected persons, while according to the UNGPs, an adverse human rights impact is characterized by actions that diminish an individual's capacity to enjoy their human rights.<sup>394</sup>

Therefore, when formulating their approach to HRDD, companies must be aware that their business activities can impact virtually all internationally recognized human rights, not just those listed in the CSDD proposal annex. Also, companies' "corporate responsibility to respect" under the UNGPs encompasses all such rights, and it should also be remembered that the corporate responsibility to respect human rights exists independently of States' abilities and willingness to fulfill their human rights obligations.<sup>395</sup>

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<sup>390</sup> This is discussed in Ruggie's 2008 report presenting the "Protect, Respect and Remedy" Framework to the UN Human Rights Council, available at <https://digitallibrary.un.org/record/625292?ln=en>, at paras 65-72.

<sup>391</sup> Shift, 'The EU Commission's Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT'S ANALYSIS', March 2022, p. 4, accessible at: [https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

<sup>392</sup> Ibid.

<sup>393</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "OHCHR Feedback on the Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence", 23 May 2022, p. 5, available at: <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf> [accessed on 25 April 2023].

<sup>394</sup> Ibid.

<sup>395</sup> Ibid.

The UNGP commentary further states that “the initial step in conducting human rights due diligence is to identify and assess the nature of actual and potential adverse human rights impacts with which a business enterprise may be involved.”<sup>396</sup> Companies should therefore avoid preconceiving which human rights are most likely to be relevant to their business operations.<sup>397</sup>

The CSDD proposal lacks a requirement for companies to prioritize more severe risks or those that may become irreparable over time, which is not in line with the expectations of the UNGPs.<sup>398</sup> Also, the definition of “appropriate measure” allows companies to prioritize risks based on factors not relevant to the prioritization analysis under the UNGPs.<sup>399</sup> Since strategies for addressing human rights risks are context-dependent, companies need flexibility in determining appropriate responses.<sup>400</sup> The UNGPs do not attempt to specify in advance the actions required, instead, the test of “appropriateness” is based on what can reasonably be expected of a company in those circumstances to prevent or mitigate adverse human rights impacts.<sup>401</sup> However, the list of actions specified in the CSDD proposal appear to, according to the OHCHR feedback, overly rely on risk management techniques, such as contractual assurances based on codes of conduct coupled with auditing and other verification activities, which have shown limited effectiveness in achieving better human rights outcomes in practice.<sup>402</sup> The UNGPs instead suggest measures such as technological advancements that enable companies to trace components and products from

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<sup>396</sup> United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights : Implementing the United Nations "Protect Respect and Remedy" Framework*, New York, United Nations Office of the High Commissioner for Human Rights, 2011, Guiding principle 18 and Commentary.

<sup>397</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR Feedback on the Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence”, 23 May 2022, p. 5, available at: <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf> [accessed on 25 April 2023].

<sup>398</sup> United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights : Implementing the United Nations "Protect Respect and Remedy" Framework*, New York, United Nations Office of the High Commissioner for Human Rights, 2011, Guiding Principle 24 and Commentary.

<sup>399</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR Feedback on the Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence”, 23 May 2022, p. 8, available at: <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf> [accessed on 25 April 2023].

<sup>400</sup> *Ibid.*, p. 8.

<sup>401</sup> *Ibid.*

<sup>402</sup> *Ibid.*



source to destination, investments in initiatives addressing the root causes of abuse, and “grassroots” capacity-building projects.<sup>403</sup>

Further, provisions related to the suspension or termination of contractual relationships also seem to lean towards over-prescription and may not adequately incorporate key aspects of the UNGPs.<sup>404</sup> To conform with international standards, the CSDD proposal should sufficiently consider the potential adverse human rights impacts that may result from terminating contractual arrangements and should promote the concept of “responsible exist” for companies, particularly in cases where impacts are severe and the company lacks sufficient leverage to address them.<sup>405</sup> These CSDD measures present issues which may lead to an undue emphasis on formal processes rather than achieving effective and meaningful human rights outcomes for companies.

“Access to remedy,” as outlined in the UNGPs third pillar, mandates the provision of effective remedies when human rights are violated.<sup>406</sup> However, the CSDD proposals Article 9, which concerns a complaints procedure, deviates from how company-based grievance mechanisms are envisioned in the UNGPs and do not adequately consider current practices in this field, as demonstrated by the OHCHR’s Accountability and Remedy Project (ARP III).<sup>407</sup> According to the UNGPs, company based grievance mechanisms should serve two vital functions, namely supporting the identification of adverse human rights impacts as part of an ongoing HRDD and enabling

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<sup>403</sup> United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights : Implementing the United Nations "Protect Respect and Remedy" Framework*, New York, United Nations Office of the High Commissioner for Human Rights, 2011, Guiding Principle 19 and Commentary, p. 20-22.

<sup>404</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR Feedback on the Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence”, 23 May 2022, p. 8, available at: <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf> [accessed on 25 April 2023].

<sup>405</sup> Shift, ‘The EU Commission’s Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT’S ANALYSIS’, March 2022, p. 6, accessible at: [https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

<sup>406</sup> United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights : Implementing the United Nations "Protect Respect and Remedy" Framework*, New York, United Nations Office of the High Commissioner for Human Rights, 2011, Guiding Principles 1 and 3 and Commentary.

<sup>407</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR Feedback on the Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence”, 23 May 2022, p. 11, available at: <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf> [accessed on 25 April 2023].

timely resolution of grievances and remediation of impacts to prevent harms from compounding and grievances from escalating.<sup>408</sup> The OHCHR clarifies that the CSDD proposal lacks the second key function, and fails to acknowledge or integrate the effectiveness criteria provided by the UNGPs for designing such mechanisms.

During ARP III, OHCHR assessed company best practices worldwide regarding grievance mechanisms and found that meaningful stakeholder engagement in the design and performance of such mechanisms is essential to building trust and encouraging affected stakeholders to utilize the mechanisms effectively.<sup>409</sup> The CSDD proposal fails to meaningfully involve any stakeholders in the development of the mechanism and completely neglects many relevant stakeholders as it only requires companies to “inform ... relevant workers and trade unions” of the complaints procedure.<sup>410</sup>

Despite definite significance in determining the effectiveness of HRDD processes, stakeholder engagement and consultation has not received the prominence it deserves in the CSDD proposal.<sup>411</sup> The UNGPs emphasize meaningful consultation with affected groups and relevant stakeholders in identifying impacts, stressing that it should not only be done when deemed relevant by the company.<sup>412</sup> UNGP 20 calls for companies to consider feedback from affected stakeholders when assessing the effectiveness of their responses, which is not reflected in the CSDD proposals article on

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<sup>408</sup> United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights : Implementing the United Nations "Protect Respect and Remedy" Framework*, New York, United Nations Office of the High Commissioner for Human Rights, 2011, Guiding Principle 31 and Commentary.

<sup>409</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR Accountability and Remedy Project: Meeting the UNGP’s Effectiveness Criteria”, Summary of ARP III Guidance, 10 December 2021, p. 11, available at: <https://www.ohchr.org/sites/default/files/2022-01/arp-note-meeting-effectiveness-criteria.pdf> [accessed April 25 2023].

<sup>410</sup> Ibid.

<sup>411</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR Feedback on the Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence”, 23 May 2022, p. 13, available at: <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf> [accessed on 25 April 2023].

<sup>412</sup> Shift, ‘The EU Commission’s Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT’S ANALYSIS’, March 2022, p. 8, accessible at: [https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

monitoring.<sup>413</sup> To conclude, as stated in the Shift analysis, “Human rights due diligence is fundamentally about assessing risks to people, rather than risks to the business. This means that people need to be at the center of due diligence processes.”<sup>414</sup>

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<sup>413</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR Feedback on the Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence”, 23 May 2022, p. 13, available at: <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf> [accessed on 25 April 2023].

<sup>414</sup> Shift, ‘The EU Commission’s Proposal for a Corporate Sustainability Due Diligence Directive: SHIFT’S ANALYSIS’, March 2022, p. 8, accessible at: [https://shiftproject.org/wp-content/uploads/2022/03/Shift\\_Analysis\\_EU\\_CSDDProposal\\_vMarch01.pdf](https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf) [accessed: 15 April 2023].

## 6 Concluding remarks

This thesis has had a twofold aim. The thesis has aimed to understand the HRDD requirements as expressed in the CSDD proposal and explore how these requirements have emerged from soft law requirements on the subject. In doing so, the thesis aimed to understand the legal requirements the CSDD proposal. The thesis also aimed to apply these HRDD requirements to a large EU LLC, to understand how the CSDD proposal will work in practice. This was done by evaluating the due diligence processes currently in place within Stora Enso and relating these to the proposed requirements of the CSDD proposal.

To achieve the thesis aims, the research questions handled in this thesis were as follows:

1. What are the human rights due diligence requirements as set out in the proposal for the Corporate Sustainability Due Diligence Directive for large EU limited liability companies? How can these requirements be interpreted, with guidance from previous soft law instruments, to foster meaningful compliance in companies?
2. To what extent are Stora Enso's current human rights due diligence processes in line with the requirements of the Corporate Sustainability Due Diligence Directive, and what next steps can the company take to ensure meaningful compliance with the proposal?

As has been shown, corporate sustainability has grown forth in different frameworks, guidelines, and agreements. The CSDD proposal, which largely builds on the work of the UNGPs and OECD Guidelines for MNEs, aims to be a cohesive instrument of HRDD and clarify company requirements on the subject. The thesis has attempted to create a cohesive outline of the requirements set in place by the CSDD proposal for large EU LLCs. The most significant provisions of the CSDD proposal in this aspect have been discussed in the thesis. These were integrating due diligence into company policies and having in place a due diligence policy,<sup>415</sup> identifying actual or potential adverse impacts arising from the companies own operations, those of their subsidiaries, or where related to company value chains, their

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<sup>415</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, Article 5.

established business relationships,<sup>416</sup> preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimizing their extent,<sup>417</sup> establishing and maintaining a complaints procedure,<sup>418</sup> monitoring the effectiveness of their due diligence policy and measures<sup>419</sup>, and publicly communicating on due diligence<sup>420</sup>.

The Stora Enso case study has compared these requirements to the company's current practices, looking at relevant company policies and guidance, existing grievance mechanism, previous case studies, human rights related issues from the past and interviews with company representatives. The case study reveals that the company has made significant progress in its compliance efforts with the upcoming legislation. The case study also identified specific areas where the CSDD proposal diverges from current international HRDD standards, offering potential next steps for a company seeking to achieve meaningful compliance.

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<sup>416</sup> European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' COM/2022/71 final, Article 6.

<sup>417</sup> Ibid., Articles 7 & 8.

<sup>418</sup> Ibid., Article 9.

<sup>419</sup> Ibid., Article 10.

<sup>420</sup> Ibid., Article 11.

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