

Position Paper 2024/160

Responsible business conduct in Europe in midstream

Document adopted by the 30th industriAll Europe Executive Committee
Porto, 28-29 November 2024 | 2024/160

During the last EU Commission's mandate, several major steps were made towards a better regulation of corporate social responsibility. Two directives were enacted, the CSRD ("Corporate Sustainability Reporting Directive"), making social and environmental reporting mandatory, reliable, standardised and audited, and the CS3D ("Corporate Sustainability Due Diligence Directive"), requiring from companies the setting-up of "vigilance plans" in order to tackle the adverse human rights and environmental impacts of their activities. A process to modify the EWC Directive of 2019 was also initiated to improve social dialogue in companies, and is still underway.

These two directives are a major cultural game-changer towards a more responsible business conduct in Europe, and many of their provisions comply with former trade union demands. IndustriAll Europe has, for a long time, criticised the purely financially driven management model that is based on the short-sighted view of the financial markets, and has been advocating for a socially responsible and sustainable corporate governance of multinational companies, enabling the long-term development of companies to the benefit of workers, citizens and the environment. Of course, the new legal framework will not change practices and realities overnight, but this framework is a major sign showing that the purely liberal approach of companies is losing momentum.

With the CSRD, companies will have to publish social and environmental certified information alongside financial information. With the CS3D, companies will have to set and implement measures to prevent adverse human rights and environmental impacts. In both cases, companies will be responsible for reporting social and environmental information as well as their action plans.

But we are still in midstream:

- Although not yet implemented (because of the usual delays of transposition), some argue that this will represent an unwieldy administrative burden for companies, and want to diminish the scale of the provisions of the two directives.
- Most trade unions and workers' representatives must still get hold of this new legal framework to push for concrete and genuine improvements.

In this position paper, we set out various demands for policymakers, employers and trade unions, to strengthen and implement concretely the shift towards a more responsible business conduct.

The new legal framework for responsible business conduct

The CSRD will raise the level and quality of information accessible to workers' representatives concerning social and environmental issues

In a position paper published in 2021 ("towards mandatory responsible business conduct"), industriAll Europe expressed its demand for what non-financial reporting should be. Most of the provisions of the CSRD comply with these demands: reporting will be mandatory, integrated (instead of being spread over several financial and non-financial reports), and certified, and will include reporting about due diligence policies and also encompass social and environmental indicators (which will be comparable with those of other companies). Concerning the breakdown of information by country, progress is limited except for tax payments, where the so-called Country-by-Country (CbyC) Directive will oblige multinational enterprises to publish the breakdown of their tax by country – at least for EU countries and for non-EU countries which refuse to cooperate with the EU on fiscal matters.

The advantages of the CSRD are manifold for workers' representatives:

- This Directive foresees that reporting must be elaborated with all stakeholders, including workers' representatives: "The management of the undertaking must inform the workers' representatives at the appropriate level and discuss with them the relevant information and the means of obtaining and verifying sustainability information". Thus, social dialogue will be enhanced.
- Workers' representatives need to have data and information at the European and world level to be able to adjust their strategy and demands. And this information must be reliable and comparable, which was not the case with the old legal framework. Furthermore, information foreseen by the CSRD is also qualitative and encompasses action plans. These action plans are of utmost importance for trade unions in social areas.
- Social themes are as important as green issues in the Directive. We could have feared that in the context of the green agenda of the previous European Commission, environmental themes would be prioritised in the reporting, but in the end, the CSRD foresees four social and societal themes (among them: own workforces and the workers in value chains).
- In some countries, trade unions participate in the supervisory board of funds sustained by social contributions. The CSRD will make it possible to invest these funds in companies that demonstrate a good social performance.

The CS3D will require companies to adapt their conduct in the management of value chains in a more responsible way (and fine them if they do not).

The CSRD is about reporting, while the CS3D is more about action plans. With the CS3D, companies will (gradually, from 2026) have to establish due diligence actions to prevent any actual or potential adverse impacts of their activities on human rights and on the environment. They will have to identify and assess risks concerning human rights and the environment, and prioritise and take appropriate measures to mitigate these risks (which can go so far as to end relations with a sub-contractor). In the aforementioned position paper of 2021, industriAll Europe expressed its demands and the CS3D has taken on board many of them:

- Scope (the CS3D will apply to companies with more than 1,000 employees, but unfortunately not to SMEs)
- Covered operations (the CS3D concerns the comprehensive value chains of companies, not only tier 1 subcontractors)
- Type of assessed risks (addressed risks cover workers and trade unions, with a clear reference to ILO fundamental workers and trade union rights)

- Trade unions' involvement: Article 13 of the CS3D foresees the consultation of stakeholders, including workers' representatives, at every stage of the due diligence process
- Sanctions and liability: the CS3D foresees administrative fines as well as the possibility for victims to take legal action for extra-contractual liability, and to claim compensation (only at a civil level, not criminal)
- Warning mechanisms and grievance procedure: the CSRD requires Member States to foresee a notification mechanism, a complaints procedure in companies, and the creation of a national supervisory authority

The interest of the CS3D for trade unions and their representatives is numerous:

- The CS3D enhances a fairer globalisation
- International trade development must not be done at the expense of workers. The CS3D can be a tool to fight for workers' rights in the world, which have been strongly deteriorating in recent years (measured by the Global Rights Index published by the ITUC in 2024). Note that the CS3D will also apply to non-EU based companies when they generate a net turnover of more than €450M in the EU
- The CS3D will enhance social dialogue
- The CS3D will enhance dialogue between EU Member States and developing countries. In order to implement the CS3D, European trade unions will have to cooperate more with trade unions from developing countries

To complete this new approach, a strengthening of information and consultation and participation rights of the 2002 Directive and of the 2009 EWC Directive is still needed.

Corporate sustainability and responsibility are based on the participation of all stakeholders. In the social field, workers' representatives are of the utmost importance. The CSRD makes reporting about the companies' own-workforces and workers in the value chains mandatory, while the CS3D is partly focused on workers in the value chain. This is why it is necessary to add a third pillar to the new corporate sustainability framework, to strengthen the focus of trade union representatives' rights at all levels (national and European).

The revision of the EWC Directive is underway, and industriAll Europe has, for a long time, been calling for a strengthening of EWC rights.

The CSRD and CS3D foresee special dispositions to enhance workers' representatives' rights, but these are very general. While most of the requirements will be executed at the level of the parent company in major undertakings, neither Directive mentions EWC rights. The result is that in most (all?) countries, in the context of the transposition of these Directives, the labour law will be amended to take into account the Directives, but only for national representatives. Of course, from a legal point of view, EWCs can use the Directives, but without any reference to EWCs in the Directives and the transposition laws, this creates ambiguity.

Even if it is not yet on the agenda of the EU Commission, national information and consultation and participation rights must also be strengthened.

In the context of the post-EU elections, we must be careful with the implementation of these two Directives.

The new framework is still not implemented:

- The CSRD will enter into force concretely in 2025 (for the 2024 annual report), but at this stage, only for listed, large companies.
- The CS3D is only at the beginning of the transposition process in Member States and provisions will enter into force only in 2026.

There are voices today in the EU that complain about administrative burdens and demand less regulation. If we aren't careful, the CSRD and CS3D could be strongly weakened (in the scope of the CSRD for example, and even in the requirements for the CS3D). There is always room for better regulation, but this should not undermine social and workers' rights or environmental protection.

Our demands towards policymakers

- (Member States) To integrate the ETUC's proposals made in January 2024 for the CSRD Directive transposition
- (EU Commission) Make the EWC Directive revision a priority
- (EU Commission) To initiate a revision of the Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community

Our demands towards employers

- To associate workers' representatives in the CSRD and CS3D deployment process in each company
- (if not yet done) To organise as fast as possible specific meetings with trade unions in each company about sustainability reports in the context of the CSRD, with a special focus on social issues (own workforce and workers in the value-chain)
- (if not yet done) To include sustainability reporting in the context of the CSRD on the agenda of the next EWC meeting and ask employers precisely how they will establish the part on social issues (concerning the date, in order to report in 2025 their sustainability report for the year 2024, employers have already developed a draft)
- To foresee a breakdown by country for major social issues in their reporting

Our demands towards trade unions and workers' representatives

- To organise trainings on the CSRD (both at European and national level)
- To explain to their members why social reporting is key for trade union rights and how the CS3D could improve social rights in value chains
- (in each company) To intervene in the elaboration of the new social and environmental reporting
- (in each company) To organise internal meetings to discuss and decide which issues must have priority, and which proposals can be made for the reporting of social issues
- (in each company) To demand meetings with the management on social reporting