Frank Bold's Submission to the Open Public Consultation on CSDDD Guidelines

- Language of contribution: **English**
- Responding as: **Non-governmental organisation (NGO)**
- Stakeholder groups: **Group 2** (protecting human rights and the environment)
- Scope: **International**
- Country of origin: **Czechia**
- Organisation size: **Medium (50–249 employees)**
- Privacy: **Public**

Integrating Due Diligence into Relevant Policies and Risk Management Systems

Question 1

Considering the experience in your company with integrating (or your plans to integrate) due diligence into the relevant corporate governance policies, which policies do you consider most relevant?

Most relevant policies for integrating HREDD are risk management, procurement and supplier engagement policies (including Codes of Conduct), investment and financial decision-making, and ESRS reporting. HREDD needs board-level oversight. In Germany, the appointments of human rights officers under LkSG was an enabler for effective intgration. A standalone due diligence policy that is not operationalised across business functions is insufficient.

Human Rights (Including Labour Rights) and Environmental Impacts

Question 2

Do you think that the guidelines should seek to offer examples on adverse human rights (including labour rights) or environmental impact, and which are the most relevant types of impacts for which you see this need? Please explain.

Yes. Guidelines should provide (non-exhaustive) illustrations for the human rights, but especially also for environmental and climate-related impacts covered. Examples should address cumulative and structural impacts that fall outside traditional audit checklists. In practice, we note that especially Point 15 and 16 of Part 1, Annex 1, would benefit from illustrations. The CSDDD Annex alone is insufficient guidance for practical identification.

Question 3

If you already apply corporate sustainability due diligence in your value chain, do you have a defined set of indicators to identify and monitor the adverse impacts listed in the Annex? If so, were they developed in-house or do they rely on external input? Please give a few examples and the data source(s) they rely upon. This question is primarily aimed at gathering feedback from stakeholders in group 1 (companies).

Data sources have to be combined with stakeholder engagement on the indictor setting to address the full range of impacts covered by the CSDDD. Global sources, like the ITUC Global Rights Index or data on living wages, have to be combined with country-specific sources. The Task-Force for Nature-related Financial Disclosures provides a list of tools regarding nature-related data.

Identification of Adverse Impacts (Including Data and Information Sources)

Question 4

In your experience, what tools proved particularly helpful to carry out a scoping of risk areas across your company's activities, those of your subsidiaries and those of your business partners? What approaches or solutions could help in performing these requirements in the cost-effective way? This question is primarily aimed gathering feedback from stakeholders in groups 1, 2 and 3.

Most effective is to start with a general scoping of own operations and value chains and to identify areas of heightened risks arising from activities, services, products, locations and business relationships. Any supportive tool, i.e. from EcoVadis, Sedex or IntegrityNext, requires trained in-house employees to be effectively integrated in the overall risk assessment and should draw from a wide range of sources listed in the OECD DD Guidance (Q21), including company's complaints mechanism.

Question 5

In your experience, what tools proved particularly helpful to carry out an "in-depth assessment" in areas that were identified as most severe and most likely? What approaches or solutions could help in performing these requirements in the cost effective way? This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 3.

In-depth assessments are most effective when combining: structured interviews with workers representatives and affected communities (if necessary via trusted local CSOs); independent on-site visits; and analysis of grievance mechanism data. Questionnaire-based approaches or mere audits of direct suppliers alone are insufficient and unreliable. Guidelines should make clear that engagement with rights-holders, not just business partners, is a required component of in-depth assessment methodology.

Question 6

In your experience, what tools proved particularly helpful to identify indirect business partners in the value chain? This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 3.

Effective tools include commodity-level tracing platforms (e.g. Trase for agricultural commodities); supply chain mapping software combined with civil society intelligence; and sector-level risk scoping shared through industry initiatives. No single tool captures full value chain depth. Tiered mapping combining digital platforms with stakeholder input best identifies Tier 2+ business partners and informal producers in complex supply chains.

Question 7

Have you faced any legal obstacles or conflicts when collecting information for the purpose of either carrying out a scoping of risk areas, or an "in-depth assessment" as a result of third countries' laws? Companies and stakeholders are invited to signal barriers to due diligence they may face in third countries when conducting due diligence. This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2 and 3.

Obstacles include: oppression of collective labour rights, state secrecy or economic security legislation, and retaliatory legal frameworks. SLAPP actions against rights defenders restrict access to credible local intelligence and expose CSOs to legal risk. In some jurisdictions, disclosing adverse impact information constitutes a criminal offence. These challenges are not new. Guidelines can acknowledge these challenges and encourage collective approaches via MSIs and associations.

Question 8

In your experience what data currently collected by public administrations may be particularly useful for the purposes of effective due diligence? Do you believe there is a need for access to such data to be facilitated? This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

Customs data (trade/import), company registers, environmental permit registers, labour inspection records, and land registry data are highly relevant. Access is often restricted. A centralised EU portal aggregating public-sector data sources for due diligence purposes would facilitate implementation.

Question 9

Please indicate which of the following due diligence methods or other actions you consider most useful and cost effective for identifying adverse impacts in value chains? What are the pros and cons of these approaches in terms of cost effectiveness)?

Selected options:

1. Stakeholder engagement
2. Complaints

3. Use of media, NGO or other independent reports
4. Site visits
5. Industry and multi-stakeholder initiatives

Explanation:

Different methods are needed for different impacts. Stakeholder engagement and complaints capture impacts that document-based methods miss. Site visits enable verification beyond self-reporting. MSIs reduce duplication where well-governed. Third-party verification adds credibility. No single method suffices; combining these approaches is most effective. Cost-efficiency increases when pooled pre-competitively across companies through sector-level frameworks.

Risk Factors

Question 10

Which are particularly useful examples of such sources of information and in which areas/sectors and/or for which impacts do you see a gap in terms of documented risk factors? Do you believe there is a need for access to such data to be facilitated (e.g. via a centralised web-page)?

Useful sources: OECD sector guidance, ITUC Global Rights Index, ILO reports, Trase for agricultural commodities, Global Forest Watch for deforestation, Global Slavery Index, Corruption Perception Index, CSO sources (BHRC) etc. Gaps exist for: informal economy workers, artisanal mining, smallholder agriculture and downstream, but those can be recognised within the risk factors. A centralised EU gateway linking existing sources (rather than a new database) could be helpful.

Question 11

What other methods or information sources does your organisation use to support its risk identification (during both scoping and in-depth assessments) or monitoring efforts as part of due diligence? If available, please include references to specific methods or sources and elaborate briefly on their pros and cons. This question is primarily aimed at gathering feedback from stakeholders in groups 1, and 3.

A major risk factor that signals increased severity is where

- there are impacts stemming from the same activity that affect both people and nature
- contribution to systemic impacts.

Digital Tools

Question 12

What digital tools do you consider most useful to facilitate the identification, monitoring and assessment of possible adverse impacts? Please explains pros and cons. This question is primarily aimed at gathering feedback from stakeholders in groups 1, 2, 3 and 5.

Tools can only support HREDD, not replace it. Satellite monitoring is useful for deforestation or land use change; digital grievance platforms can enable anonymous worker reporting. Pros are: scalability, geographic reach. Cons: cannot substitute direct engagement; may embed existing data biases; create access barriers for low-income suppliers. Careful attention is needed for AI tools and their biases! Digital tools must complement genuine stakeholder and supplier engagement.

Question 13

Have you encountered any difficulties or problems with digital tools, including issues that cause unnecessary burdens?

Key difficulties: data gaps in high-risk geographies; over-reliance on supplier self-reporting; inability to capture workers' and communities' lived experience; algorithmic bias in risk-scoring systems; and poor interoperability generating duplicative reporting burden, particularly for business partners. Companies risk tick-box compliance if digital tools are treated as substitutes for genuine engagement rather than as supporting instruments.

Question 14

Do you think there should be additional digital tools? What functionalities and tasks should these focus on?

Priority additions: interoperable grievance tools that respect the UNGP criteria for effective mechanisms; monitoring of high-risk environmental indicators integrating satellite and trade data. Guidelines should favour open-source and publicly accessible tools over proprietary solutions, ensuring value chain partners in lower-income countries are not excluded by cost barriers.

Prioritisation

Question 15

Are there situations where in your view the severity or likelihood of a specific adverse impact is (or might be) particularly difficult to assess? How could such difficulties be overcome?

Assessment can be more difficult for: slow-onset and cumulative environmental impacts (soil degradation, water stress); structural human rights abuses embedded in national legal frameworks. Overcoming difficulties requires: scenario-based assessment and consultation with affected communities as a counterweight to data gaps. Guidelines have to clarify that absence of verified data does not justify deprioritisation of high-severity risks.

Question 16

Regarding situations when it is "not feasible to address all identified impacts at the same time and to their full extent", what other elements are particularly relevant to support companies in performing an appropriate risk prioritisation process?

Prioritisation must centre on severity as defined under the UNGPs (scale, scope, remediability), not financial materiality to the company. Guidelines should explicitly require documented prioritisation decision-making enabling accountability; and recommend structured multi-stakeholder review of prioritisation decisions. Broad company discretion in prioritisation, without procedural safeguards, risks systematically marginalising the most severe impacts on the most vulnerable people.

Responsible Disengagement

Question 17

Are you aware of examples where a decision was taken not to disengage from a business relationship because this would have potentially resulted in more severe impacts compared to those that triggered due diligence in the first place? How was the situation dealt with?

Answer: Yes

Cases documented include the Responsible Mica Initiative, an MSI, where companies manage to jointly increase leverage and took corrective action despite a difficult and high-risk environment. Guidelines should require documentation of the progress on corrective actions and an assessment of the disengagement's own impacts on affected people and communities. Guidelines should also give recommendations for responsible termination.

Purchasing Practices

Question 18

In your experience, what purchasing practices proved most cost-effective while at the same time ensuring that adverse impacts are prevented and mitigated? What are their pros and cons? Out of these, are there purchasing practices that are inherently sector- or context specific? If possible, please provide examples of specific contract or commercial terms or other best practices.

Effective practices target reliable production planning, contracting, payment terms and costing. References can be made to established industry frameworks (e.g. ACT, CFRPP for textile). Good emerging practice includes collaborative production planning, fair payment and contract terms (including, e.g. payment within 30-60 days, binding lead-time commitments preventing last-minute order changes), and costing strategies that allow for safe and decent working conditions. Multi-year contracts provide stability and the principle of shared responsibility between the company and its business partner is key for successful changes. It is well documented that short-term contracts, below-cost pricing, and last-minute cancellations are structural root causes of labour rights violations in garments, agri-food, and electronics. Guidelines should illustrate good emerging purchasing practices. Responsible purchasing practices require procurement staff training for effective implementation.

Living Income and Living Wage

Question 19

What are most cost-effective available data that you are aware of for determining the living income for self-employed suppliers ("an adequate living income for selfemployed workers and smallholders, which they earn in return from their work and production", see CSDDD Annex, Part I point 6)? Are there sectors/geographies where no such data exist or are particularly difficult/costly to obtain?

Anker Research Institute methodology and WageIndicator Foundation benchmarks are the most reliable peer-reviewed living wage sources. The Global Living Wage Coalition provides sector-specific data. Gaps exist for subsistence farming households and informal economy workers, especially in Sub-Saharan Africa and South and Southeast Asia. Guidelines should reference the ILO tripartite living wage framework's criteria for living wage calculations and recognise the role of collective bargaining.

Investment

Question 20

Which cost-effective practices are you aware of as regards companies making investments in their value chains to prevent or address adverse impacts? This question is aimed at gathering feedback from stakeholders in all groups.

Effective measures include collective investment through pre-competitive company coalitions (multi-buyer farmer training funds, shared infrastructure investment); shared traceability infrastructure at sector level; and investing into training of business partners. Guidelines should encourage collective mechanisms with clear governance frameworks for joint investment funds targeting identified adverse impacts.

SMEs

Question 21

In your experience, have you used specific contractual terms that are fair, reasonable, and non-discriminatory when entering into contractual relationships with SME business partners to facilitate or support the due diligence process?Please explain pros and cons. This question is primarily aimed at gathering feedback from stakeholders in group 1.

No answer.

Question 22

In your experience, what are the most cost-effective measures to support SMEs? What are the pros and cons? This question is primarily aimed at gathering feedback from stakeholders in groups 1 and 5.

Sector-level capacity-building platforms, model codes of conduct with practical implementation guidance, and peer-to-peer learning networks are effective measures. Direct financial support (e.g., sourcing guarantees) can be a complement. Guidelines could encourage sector associations to act as intermediaries in providing support to SMEs.

Remediation

Question 23

In your experience, what are the most effective, including cost-effective, practices related to remediation? Please explain pros and cons.

Most effective and durable are community-designed remediation (in consultation with affected stakeholders) aligned with the international standards (adequate, effective and prompt). Purely financial compensation without structural change rarely prevents recurrence. Guidelines should illustrate the different forms of remediation (e.g. restitution, compensation, rehabilitaion, guarantees of non-repetition).

Question 24

What are best practices that you are aware of to determine a company's proportionate involvement in an adverse impact for the purpose of remediation when a company jointly causes the adverse impact together with others (e.g., its business partner(s) or other companies)? Have there been difficulties to determine appropriate remediation in case of joint causation in certain situations and how have these difficulties been overcome?

Remediation is often an issue of cooperation between companies and about finding joint solutions. The involvement of the companies can be different, but still a common response pooling resources can be more effective. Guidelines should encourage collaboration and coordination mechanisms where multiple companies share responsibility for joint causation.

Conflict-Affected and High-Risk Areas (CAHRAs)

Question 25

In your experience, what are the most significant operational challenges preventing effective due diligence in CAHRAs? How can these challenges be overcome?

Selected options:

- **Limited access to data/information: difficulty verifying information due to data-poor environments or restricted physical access**
- **Safety risks to stakeholders: inability to consult with affected individuals and communities without exposing them to retaliation or violence**
- **Safety risks to staff: security threats to company personnel or auditors preventing on-the-ground assessment**
- Legal conflicts: national laws (e.g., secrecy acts, counter-terrorism laws) that conflict with due diligence expectations
- **Complexity of supply chains: difficulty tracing business partners in informal or opaque war economies**
- Other

Additional text (150 characters maximum):

Guidelines can encourage remote engagement, encrypted channels and trusted intermediaries for companies facing such constraints.

Question 26

To assist companies in determining when specific due diligence obligations apply, would specific guidance regarding the identification of "high-risk" areas beyond active conflict zones be helpful? If so, please indicate your preference

Selected options:

- **List of contextual risk indicators: a list of "red flags" indicating state fragility or authoritarianism (e.g., suppression of civil society, suspension of legal protections, spike in inflammatory/hate speech)**
- **References to and guidance on how to use specific, reputable global indices (e.g., OECD States of Fragility, RULAC, or the World Bank FCS list) to determine a country's risk level**
- **Sector-specific case studies for "early warning" contexts: practical examples of how companies in different industries have identified high-risk signals in seemingly stable or "pre-conflict" environments**

Question 27

In your experience, which specific practical tools or frameworks (e.g. examples of structural drivers and root causes, early warning "red flag" indicators, conflict actor mapping, targeted *questions for self-evaluation, scenario planning) proved to be particularly useful and cost-effective in integrating conflict analysis into your company's scoping and in-depth assessment? This question is primarily aimed at gathering feedback from stakeholders in group 1.*

Guidelines should reference the UNDP Heightend Human Rights Due Diligence in Conflict-Affected Contexts guide and sector-specific guidance, such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict -Affected and High-Risk Areas.

Sharing of Information and Resources, Collaboration

Question 28

What are the main reasons that make information problematic to share with business partners? What best practices have emerged to address such concerns?

Between companies, there can be commercial confidentiality concerns and competition law uncertainty, but also fear of no-tolerance clauses. Best practices include pre-competitive information sharing frameworks, or contractual non-disclosure provisions with explicit sustainability carve-outs.

Question 29

As regards cooperation with other companies (i.e., with peers, in the framework of industry schemes) to carry out certain aspects of due diligence (e.g., risk analysis, stakeholder engagement, remediation, investment, capacity building, exercising leverage) what has worked well and what has not? Have competition law considerations constrained cooperation for due diligence? How can compliance burden be further reduced by data sharing and collaboration? Please describe the types of constraints encountered and any solutions (e.g. organisational or procedural steps) found to overcome those obstacles.

Industry schemes have enabled shared auditing (e.g. Sedex/SMETA, amfori/BSCI) but also face challenges, e.g. limited worker voice and lack of binding remediation pathways. We recommend that the guidelines explicitly endorse pre-competitive due diligence cooperation, including on purchasing practices (see the example of ACT in textil) and collaboration on remedy which is underdeveloped. Joint remediation funds with transparent governance should be encouraged.

Question 30

In your experience, are there particular aspects of the cooperation between the parent company and its subsidiaries that may raise particular difficulties (including any legal requirements under other regulatory regimes that might create obstacles)? This question is primarily aimed at gathering feedback from stakeholders in group1.

Guidelines could clarify how CSDDD due diligence support at group level interacts with national corporate law requirements and directors' fiduciary duties.

Model Contractual Clauses

Question 31

What is your experience of cooperating with business partners to ensure efficient due diligence? (1000 characters)

Engagement with business partners is absolutely central to successful due diligence. Guidelines should clarify that this engagement goes beyond model contract clauses. Effective cooperation requires regular structured dialogue (not one-off questionnaires), training for procurement staff and shared investment in corrective action planning. Companies should consider power asymmetries and suppliers facing multiple conflicting buyer requirements. Sector-level collaborations can be very supportive. Gaining trust for a shared responsibility is key and this can include buyers‘ committments to relationship continuity while taking corrective measures. Supplier's fear that disclosing problems triggers contract termination can be overcome if there is trusted cooperation. Model clauses should make continuity the default during corrective action. Guidelines should promote bilateral corrective action planning rather than unilateral compliance demands as the expected standard of cooperation.

Question 32

What cooperation should the model contract clauses recommend between the in scope company and its business partners as regards:

- *the adoption and implementation of any prevention/correction*
- *action plan the cost of addressing adverse impacts*
- *stakeholder engagement*
- *the notification and complaints mechanisms*

with a view to ensure that due diligence is efficient and cost effective while compliance burden is not shifted to the business partners? Please provide examples of appropriate contractual clauses, if possible. (1000 characters)

Measures should remain flexible, contracts clauses are only one tool. Regarding prevention/correction action plans, guidelines should require joint development with realistic timelines and mutual resource commitments, not unilateral imposition on suppliers. Costs should be shared proportionally and clauses making full compliance a payment precondition should be avoided. Stakeholder engagement is very context-specific and more effective, if done in cooperation with local partners. Clauses must protect workers' rights to engage without fear of retaliation. Regarding complaints mechanisms, for large business partners, it makes sense to require them at factory/partner level. Company level mechanism or using third-party mechanism are an effective complement. Guidelines should encourage collaboration, providing those joint complaint mechanism respect the UNGP effectiveness criteria.

Question 33

In situations where the in-scope company and its business partner(s) are located in different countries, is there a need for specific contractual clauses on jurisdiction and applicable law to the contract? If so, why and can you provide examples of such clauses? (1000)

Model clauses should clarify that both parties (in-scope company and business partner) cooperate on HREDD and stress the principle of shared responsibility. Clauses should specify the accessible dispute resolution, not solely international arbitration, which disadvantages smaller parties lacking financial resources. EU companies contracting with third-country suppliers should avoid arbitration venues imposing prohibitive costs on smaller partners.

Question 34

Are there other elements required by CSDDD that are challenging to translate into contractual terms? What could be ways to overcome this challenge? (1000 characters maximum)

Model contract clauses are one tool in the engagement with business partners but should not be the only one. More challenging to translate is shared responsibility and avoiding to create perverse incentives against disclosure. Guidelines should distinguish structural and framework commitments from process-based obligations (better addressed through procedural clauses), provide illustrations of how these elements can be operationalised and explicitly warn against over-reliance on compliance representations and warranties as a substitute for genuine ongoing due diligence cooperation.

Question 35

Are you aware of any useful and relevant best practices for contractual clauses operationalising human rights and environmental due diligence? If yes, elaborate. (1000 characters maximum)

The Responsible Contracting Project (RCP) offers practical templates aligned with UNGP standards (e.g. the ABA MCC 2.0 and the EMC Zero Draft). Key features of best-practice clauses are mutual undertakings (not solely supplier obligations), graduated response mechanisms (e.g. remediation before termination), explicit human rights carve-outs in liability limitation clauses, prohibitions on passing compliance costs to workers, and worker voice provisions including access for union representatives. Guidelines could mention practices to avoid, e.g. making human rights violations into warranties triggering automatic termination, clauses fully indemnifying in-scope companies for supplier compliance failures, or requiring suppliers to warrant conditions beyond their operational control.

Industry and Multi-Stakeholder Initiatives (Article 20)

Question 36

In your view, for which due diligence measures do industry or multi-stakeholder initiatives offer the biggest added value? (answers in bold)

- ***Identification of adverse impacts, including risk assessment***
- *Prioritisation*
- *Investment*
- *SME support*
- ***Increasing leverage through collaboration (e.g., to mitigate risks or bring to an end actual impacts)***
- ***Remediation***
- *Verification*
- ***Monitoring effectiveness of actions***
- ***Stakeholder engagement***
- ***Operating notification/complaint mechanisms***
- *Other, Please specify: (150)*

No addition

Question 37

What are, in your view, the main challenges for existing industry and multistakeholder initiatives in view of their role in supporting due diligence under the CSDDD (e.g., misalignment with the due diligence requirements, misalignment of audit protocols with the material scope of the CSDDD, in particular the Annex)? What are the main gaps in the geographical, sectoral, topical or value chain coverage of existing industry and multi-stakeholder initiatives?

Membership in an MSI can only support the company's own due diligence; it cannot replace own measures. Key challenges are the absence of binding remediation pathways, insufficient worker and community voice in governance, limited Tier 2+ supplier coverage, and misalignment with CSDDD Annex scope (particularly environmental impacts). Transparent governance is needed to ensure scheme independence from member companies and meaningful stakeholder representation in decision-making bodies.

Question 38

Which of the following governance or other challenges of existing industry or multistakeholder initiatives do you consider as being the most important? (answers in bold)

- ***conflicts of interest, including any undue influence on the governance of the initiative or on specific measures by participating companies***

- *governance bodies and their decision-making roles and responsibilities not clearly defined*
- *collaboration opportunities within an initiative and collaboration and interoperability between initiatives not sufficiently exploited resulting in undue burden for participating companies and audited value chain partners*
- ***lack of independence and competence of assessors/verifiers, undermining the credibility of their work***
- ***insufficient robustness of audit or assessment methods***
- ***insufficient engagement with stakeholders***
- ***lack of effectiveness in bringing about tangible impact***
- ***processes not sufficiently adapted to cater for local realities and/or the interests of relevant stakeholders (including smallholders, SMEs, artisanal producers)***
- *Other*

Please explain: (150)

No further addition

Accompanying measures

Question 39

From the list below, which specific potential facilitation role of the European Commission would benefit your organisation the most and how? (answers in bold)

- *Acting as a convener - or delegating to a platform of existing initiatives - to share best practice and peer-to-peer learning.*
- ***Engaging with companies, industry associations, and other stakeholders to design new initiatives for more participants to benefit.***
- ***Other roles***

Additional text (150 characters maximum):

The Commission should provide sufficient resources for the help desk and prioritise the fitness criteria for MSIs and auditor trainings.

Third-Party Verification (Article 20)

Question 40

What best practices could ensure the independence of third-party verifiers from the companies that they assess, from the companies on whose behalf they act and from external influence?

Independence is best ensure via joint contracting and funding (e.g. at scheme-level rather than companies selecting/paying auditors directly, verifiers should not provide consulting services to assessed entities) and independent oversight. Moreover: unannounced audits, interviews with workers/affected communities without senior management present and off premises, publication of audit findings and follow-up actions, confidential complaints mechanisms.

Question 41

In your view, what level of experience and competence in human rights (including labour rights) or environmental matters, according to the nature of the adverse impact, would be necessary for third-party verifiers to support companies in implementing the Directive's requirements?

Requirements include strong knowledge of responsible business conduct and human rights/environmental and climate risks; sector- and context-specific expertise; and skills in gender- and minority-sensitive audits, including protecting anonymity in data collection and providing aftercare for affected rights-holders. Competence standards should be defined by an independent multi-stakeholder body.

Question 42

In your experience, what are the most effective standards ensuring that the thirdparty verifiers are accountable for the quality, effectiveness, reliability and integrity of the verification?

Standards should include public disclosure of findings, independent appeals mechanisms accessible to affected stakeholders as well as verified entities, transparent governance, multi-stakeholder involvement. Plus, liability for negligent or fraudulent findings that contribute to harm.

Meaningful Stakeholder Engagement

Question 43

Taking into account the requirements of the CSDDD, in your experience what are the most cost-effective means to engage with stakeholders in the performance of due diligence? What are the pros and cons?

Most effective to address harm are structured dialogues with affected stakeholders, worker representatives and trusted local intermediaries for community outreach; grievance mechanisms with local language support and annual reporting-back to consulted stakeholders on actions taken. This builds legitimacy and improves quality of impact identification. It requires long-term senior management commitment.

Question 44

Which methods have proven most cost-effective in identifying and involving marginalized groups (for example certain groups of indigenous people) or 'hidden' stakeholders, such as those working in the informal sector or victims of human trafficking?

Robust risk assessment should capture stakeholders at higher risks, often beyond tier 1 (informal, or migrant workers, children, etc). Collaboration with trusted community-based organisations or experts with established local presence; mobile outreach in remote areas using local intermediaries can be helpful methods. Pro-active engagement with indigenous communities‘ representatives respecting FPIC is crucial in certains geographies.

Question 45

What are the most robust and cost-effective mechanisms for guaranteeing confidentiality and protecting participants from retaliation?

Most robust mechanisms include anonymous reporting channels operated by independent third parties and contractual non-retaliation protections. Engagement of informal economy workers requires facilitation by organisations operating entirely outside employer oversight to ensure participants feel genuinely safe. In high-risk contexts, companies must ensure no data collected from participants is shared with employers, governments, or armed actors under any circumstances.

Information for Stakeholders on How to Engage

Question 46

What are the most critical issues for stakeholders covered by the Directive in terms of engagement with companies at different stages of the due diligence process? What are best practices leading to an effective (including cost-effective) due diligence process?

Most critical issues concern a lack of meaningful access to company due diligence processes, engagment when decisions have been made (pro forma) and the absence of feedback loops informing affected stakeholders of outcomes and actions taken. Best practices include advance notice of consultations, independent facilitation and stakeholder-based verification of remediation outcomes.

Question 47

In your experience, what the most cost-effective approaches that companies can use to involve stakeholders at the level of indirect business partners? What are pros and cons?

Guidelines should encourage collaborative, sector-level stakeholder platforms addressing impacts at deeper tiers of value chains, capacity-building for tier-n partners, participatory risk scoping exercises involving affected community members, and engagement of trusted intermediaries with established local presence. Challenge: indirect partners may lack capacity for structured engagement processes.

Question 48

What are best practices in terms of the company’s security procedures so that vulnerable stakeholders feel safe to engage (e.g., in terms of guarantees of anonymity, protection against retaliation, other)?

Best practices approach vulnerable stakeholders if possible via trusted intermediaries (of workers, communities etc). Next, they include strict data minimisation protocols, anonymisation of all responses, gender-sensitivity, strict protection measures for children, explicit policies prohibiting data sharing with employers or state authorities in repressive contexts.

Question 49

How can companies engage with stakeholders in a way that specifically addresses and removes barriers for vulnerable stakeholders or groups (such as, depending on the context, workers representatives, indigenous peoples, women, or migrant workers)? In your view, what specific support do vulnerable stakeholders need?

Engagement should be accompanied by independent and trusted intermediaries. The approach should be gender-sensitive, accessible for persons with disabilities, respect standards for indigenous community engagement and incorporate intersectional analysis into stakeholder mapping requirements.

Guidelines for Supervisory Authorities

Questions 50–56 are primarily targeted at supervisory authorities.

Question 50

Which aspects of the CSDDD do you expect to present the greatest practical challenges for supervisory authorities when carrying out their oversight functions? What would be new challenges compared to the enforcement tasks of existing supervisors (including in other policy areas)? How can the guidelines contribute to addressing those challenges? This question is primarily aimed at supervisors. 1000 character(s) maximum

Greatest challenges in exercising oversights relate to lack of expertise in assessing whether measures are appropriate, the quality of companies' risk-based prioritisation decisions, requiring deep sector expertise supervisors may lack; evaluating meaningful stakeholder engagement. Moreover, insufficient independence, lack of resources and investigative powers, and divergent national enforcement traditions can be problematic.

Guidelines should provide orientation for supervisors with regard to the assessment framework for key due diligence elements, sector-specific indicators of systemic non-compliance, and guidance on burden of proof allocation. Cross-border coordination mechanisms are essential to prevent inconsistent outcomes.

Question 51

Based on experience with other enforcement regimes (deforestation, conflict minerals, product safety, etc.) what types of information, documentation and/or evidence have proven most useful when checking compliance with due diligence-type obligations? This question is primarily aimed at supervisors.

From experience especially with the conflict minerals regime random sampling can be effective, most useful documentation includes internal risk assessments, complaint mechanism protocols, corrective action plans with timelines, and evidence of stakeholder engagement. Process documentation is more verifiable than outcome claims.

Question 52

What would be best practices (e.g., organisational steps, procedures, other mechanisms) from other policy areas that have proven useful for the coordination among supervisors? Which aspects of cooperation with other supervisors do you expect to present the greatest practical challenges in practice? This question is primarily aimed at supervisors.

No answer.

Question 53

Which factors listed in Article 27(2) do you expect to be most difficult to operationalise when determining the level of pecuniary penalties? This question is primarily aimed at supervisors. (answers in bold)

- *Nature, gravity and duration of the infringement, severity of the impacts*
- *Investments and targeted SME support provided under Articles 10, 11 CSDDD*
- *Collaboration with other entities to address impacts*
- ***Extent to which prioritisation decisions were made in accordance with Article 9 CSDDD***
- *Relevant previous infringements found by final decision*
- ***Extent of any remedial action taken***
- ***Financial benefits gained or losses avoided***
- *Other aggravating or mitigating factors*

Question 54

In your experience as a supervisory authority, are there circumstances characterising an infringement that raise specific questions in determining the level of fines (and that therefore should be addressed in the guidance)?

No answer.

Question 55

What features of the guidance to be issued in accordance with Article 27(4) of the CSDDD would be most helpful in assisting supervisory authorities in determining the level of penalties, in a way that contributes to a uniform fining practice across the EU? This question is primarily aimed at supervisors.

A public transparency requirements for all final decisions and a centralised fining decisions database accessible to all Member State authorities would support consistent practice and reduce the risk of regulatory arbitrage across jurisdictions.

Question 56

Are there best practices from other policy areas (at EU or national level) that, in your view, could usefully inform sanctioning and fining decisions under the CSDDD? Please provide concrete examples (e.g., fining guidelines, assessment frameworks, judicial approaches). This question is primarily aimed at supervisors.

Useful precedents from our perspective include the EU competition law fining guidelines and best practices from the Anti-Money Laundering enforcement. Common feature of effective regimes are transparent, pre-published methodology enabling predictability.

Conclusion / Document Upload

Description of documents uploaded

Frank Bold's published legal analysis on CSDDD post Omnibus I is submitted as supporting material. The document elaborates on the positions summarised in this questionnaire.