Access to Justice in the Corporate Sustainability Due Diligence Directive

Symposium event report – September 2025

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Access to Justice in the CSDDD:
Symposium event report

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This report distils the discussions of the Symposium, including the analysis, ideas and proposals for action expressed by meeting participants. The report serves as a record of the meeting and is being published for information purposes only. It does not purport to provide legal advice or a legal opinion and it does not necessarily represent the views either of individual participants or of the organizers.

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Key takeaways

1. The **CSDDD has the potential to enhance access to remedy** for business-related human rights harms to which companies covered by the regime may have caused or contributed, but much will depend on the way the CSDDD is transposed into domestic law.

2. There are **three main routes to remedy** envisaged in the CSDDD regime; (a) civil liability, (b) administrative action and enforcement by member state supervisory authorities, and (c) direct remediation by companies as part of their human rights due diligence obligations.

3. The CSDDD is an incomplete solution to t**he problem of fragmentation** of legal standards within the EU. Different approaches at member state level – for instance regarding key concepts such as “corporate intent”, “causation”, “complicity”, “remoteness” and “proximity”; threshold tests for regulatory and court action; and the “appropriateness” of different HRDD measures in different operating contexts – will be reflected in transposition, and **will likely lead to divergence in a number of respects.**

4. Nonetheless, **there are advantages to the CSDDD articulating a liability standard.** By clearly defining the duty of care to which companies can be held accountable when they fail to meet their due diligence obligations, the CSDDD may help address certain accountability challenges related to parent-subsidiary liability or liability within the supply chain. The CSDDD potentially provides courts with **a clearer legal basis for holding companies legally responsible for human rights harms arising in group operations or value chains.** In practice, **member states are likely to draw heavily on the law of tort (or its equivalents),** however there are other potential sources of legal liability under domestic law regimes that may be relevant too.

5. Litigants face a range of access to justice barriers, which are partially dealt with in the CSDDD. However, further reforms may be needed to ensure that court proceedings are not out of reach for most affected rightsholders, whether because of the **extremely high costs of preparing for and participating in litigation, or other barriers.**

6. There are real risks of **duplication, inconsistency and incoherence** arising from divergence among member states on various substantive and procedural issues. The CSDDD’s silence on the allocation of **burdens of proof** in civil liability cases, **as well as on tests for causation** will allow member states from adopting their own approaches to civil procedure and evidential matters in civil liability cases under the CSDDD regime, which will likely be reflective of e**xisting domestic law practice.**

7. **The arrival of the Omnibus I proposal has given rise to further uncertainties** as well as additional possible sources of legal divergence, particularly in **cross-border cases** regarding the question of the applicable law to be used to

determine civil liability cases (i.e. whether this would be the CSDDD standards, or the **law** of the place where the harm was sustained).

8. **Investigating cases of non-compliance with due diligence obligations outside the EU will be challenging** for member state authorities. In practice, supervisory authorities may not be inclined to devote substantial resources to these kinds of cases.

9. **The European Network of Supervisory Authorities** will be important for fostering consistency of approaches across the EU, at least as far as administrative enforcement is concerned.

10. There is **room for considerable improvement in the quality of company-based mechanisms** through which affected people can raise grievances and request a remedy. It will be important to **support genuine improvement,** rather than a further proliferation of inappropriate or ineffective company-based mechanisms.

1 Introduction

1.1 Background

On 24 July 2024, the EU Corporate Sustainability Due Diligence Directive ('CSDDD') was adopted. This was a significant milestone in efforts to create legally binding regimes governing the conduct of human rights and environmental due diligence by companies based in, and doing business in, the European Union.

The CSDDD lays down the framework for 'sustainability' due diligence requirements, to be elaborated and enforced through the domestic law of EU member states. Under the transposition laws, companies will be required to undertake risk-based due diligence to identify, assess, address and remedy potential and actual adverse impacts on human rights and the environment in connection with the relevant in-scope company's activities and broader business operations.

In a press release to mark the CSDDD's adoption, the European Commission explained the potential benefits as follows:

> **The Corporate Sustainability Due Diligence Directive aims to ensure that large companies contribute to the green transition towards a climate-neutral Europe, and actively identify and address human rights concerns within their operations and across their global value chains … By obliging large companies to take responsibility for harm to human rights and the environment, people and nature will be better protected, while businesses will benefit from better risk management, increased resilience, greater consumer trust and a uniform legal framework in the EU, making them attractive to sustainability-oriented investors and talent.**[1]

The CSDDD contains a number of features that have the potential to enhance access to remedy for people whose human rights have been adversely affected by business activities of companies operating within the EU single market. However, the extent to which these benefits are realized in practice depends notably on how CSDDD will be implemented at domestic level. While the CSDDD sets the requirements and parameters for member state action, future guidance from the Commission will be needed on a number of important issues.

On 26 February 2025, before the CSDDD had been transposed and implemented by EU member states, the Commission published further proposals to amend the CSDDD regime contained in the so called "Omnibus I" proposal.[2]

These proposals have been explained as a necessary response to "a new and difficult context" caused by Russia's war of aggression against Ukraine, and a rapidly shifting geopolitical situation characterized by trading tensions and concerns about the competitiveness of EU companies in this altered economic landscape.[3]

In its explanatory commentary to the Omnibus I proposal, the EU Commission expressed the hope that these further interventions will "*simplify and streamline the regulatory* *framework with a view to reduce the burden on undertakings resulting from the CSRD and the CSDDD without undermining the policy objectives of either piece of legislation and to ensure more cost-effective delivery of the overall ambition of the European Green Deal related to the green and just transition.*"[4]

What are the main ways in which the European Commission's Omnibus I proposals would alter the CSDDD regime passed in July 2024?

The Omnibus I package of measures announced in in February 2025 includes proposals for a number of amendments to the CSDDD.

These include amendments to provisions of the CSDDD relating to how companies would go about identifying adverse human rights and environmental impacts as part of their 'sustainability' due diligence process (see CSDDD, Article 8; Omnibus I Article 3(4)). The revised regime would require companies to undertake a broad scoping exercise, but places restrictions on the kinds of information requests that can be made of smaller business partners. Moreover, companies coming within the scope of the CSDDD would only be required to undertake due diligence beyond direct suppliers (i.e., beyond Tier 1) where they have "plausible information" suggesting a case for doing so.

The Omnibus I package sets out a number of proposals for amendments to Article 29 of the CSDDD (Omnibus I, Article 3(12)). For the reasons explained in section 2.1 below, Article 29 is of particular importance for access to remedy under the CSDDD. Article 29 elaborates the role of civil liability as a route through which affected people might claim compensation, and as a form of judicial enforcement. The Omnibus I proposal intends to make changes to this article including removing the obligation on Member States to ensure that civil liability is available for claims meeting the conditions specified in Article 29(1), removes the requirement that Article 29 be of mandatory overriding application, and restricts certain access to justice elements, such as provisions relating to representative actions. The proposed Omnibus I amendments to Article 29, and their practical implications, are discussed in more detail in section 2.1 and part 3 below.

Note: The Omnibus I proposal is subject to negotiation between the co-legislators which could result in different changes to Article 29 from those set out in the European Commission's proposal.

The arrival of the Omnibus I package of proposals has given rise to further uncertainties, both as regards the "direction of travel" and the detail of state and corporate obligations under the regime. Some of the supposed "simplification" measures, notably the proposal to leave civil liability largely to member state preferences, have raised new and complex issues as regards the application of the regime in cross-border cases (see further part 7 below).

1.2 About the Vienna Symposium

On 7-8 April 2025 the Danish Institute for Human Rights, the German Institute for Human Rights, the French National Consultative Commission on Human Rights and the EU Agency for Fundamental Rights co-hosted a Symposium on the Access to Justice mechanisms of the EU Corporate Sustainability Due Diligence Directive (CSDDD) in Vienna (the 'Vienna Symposium') in collaboration with the European Network for National Human Rights Institutions.

About the co-organisers

Danish Institute for Human Rights (DIHR) is the National Human Rights Institution of Denmark. It is a centre of expertise on business and human rights and has been working on the agenda for over 25 years. DIHR has been contributing its expertise in the negotiations on the CSDDD and is currently implementing a project seeking to build the capacity of European national human rights institutions on the CSDDD. It also has extensive experience working on access to remedy in the context of business-related human rights abuses with a range of actors.

German Institute for Human Rights (DIMR) is the National Human Rights Institution of Germany. DIMR has participated in the negotiations on the CSDDD, mostly together with other European National Human Rights Institutions via the European Network of National Human Rights Institutions (ENNHRI). The Institute was also involved in the development and continues to support the implementation of the German Supply Chain Act, which entered into force in 2023.

Commission nationale consultative des droits de l'homme (CNCDH): is the National Human Rights Institution of France. CNCDH has been following the negotiations on the CSDDD, including together with other NHRIs through ENNHRI. The Commission also contributes to monitoring and evaluating the implementation of the French Duty of Vigilance Act as well as, more broadly, the United Nations Guiding Principles on Business and Human Rights in France.

EU Agency for Fundamental Rights (FRA) is the EU's unique and independent centre of excellence for promoting and protecting human rights in the EU, providing independent, evidence-based support for and expertise on fundamental rights enshrined in the EU's Charter of Fundamental Rights, including access to justice. FRA has been working on access to remedy in the context of business activities and published several reports on this topic highlights the difficulties rightsholders face in seeking justice, especially in globalised value chains.

The Symposium was organised in collaboration with the European Network of National Human Rights Institutions (ENNHRI) which represents 50 NHRIs across Europe. ENNHRI provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level to enhance the promotion and protection of human rights in the region.

The event convened around 60 participants, including country experts on civil liability and access to justice from 13 jurisdictions across the EU, representatives from 13 National Human Rights Institutions, and international experts on business and human rights and access to justice.

The aims of the Vienna Symposium were to:

- ventilate challenges and opportunities for the CSDDD to play a meaningful role in facilitating access to justice;
- identify attention points for transposition and implementation; and
- identify gaps in access to justice which will not be addressed by the CSDDD which will require further reform or other action.

As the Omnibus I proposal was published in the lead up to the Vienna Symposium, discussion during the event also explored the implications of the changes in the Commission's proposal.

Research methodology

Before the Vienna Symposium
The organisers commissioned the production of five discussion papers on various aspects of access to remedy and the CSDDD to aid individual preparation and to help inform discussions between participants on the day. The titles of these discussion papers were as follows:

- #1 "The civil liability mechanism under the EU CSDDD: the substantive cause of action"
- #2 "Procedural issues raised by the civil liability provisions of the EU CSDDD"
- #3 "Supervisory authorities and the "substantiated concerns" procedure"
- #4 "Company complaint mechanisms and the role of multistakeholder initiatives (MSIs) and industry initiatives in remedy"; and
- #4 "Enforcement and remediation under the CSDDD in cross-border cases".

To engender a common understanding among participants and facilitate discussion, preparatory work carried out prior to the Vienna Symposium included the **identification of possible gaps and ambiguities in the wording of Article 29**, with a view to clarifying at the Vienna Symposium the most likely interpretations and treatments within different jurisdictions and contexts. These kinds of analyses and discussions advance understanding of potential challenges facing rights-holders, transposition dilemmas for Member States, or interpretational challenges for judges and regulators. They help identify areas where further legal clarifications and official guidance may be needed.

In January 2025, **surveys** were sent to 17 (previously identified) individual country experts representing Austria, Belgium, Denmark, Finland, France Germany, Greece, Ireland, Italy, Latvia, Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden, with a request that these be returned in the weeks prior to the symposium. Country experts were invited to review three short hypothetical case studies, and asked to provide their views on:

- how civil liability may attach in respect of corporate human rights or environmental abuses in their own jurisdiction;
- what procedural or other obstacles may be faced by claimants; and
- how the civil liability mechanism in the CSDDD can help address gaps in existing causes of action and access to justice barriers.

The survey responses were then reviewed by the organisers to distil key questions/ challenges for discussion on Day 1 on the civil liability substantive cause of action and procedural aspects sessions (covered in discussion papers #1 and #2, above).

At the Vienna Symposium
The Vienna Symposium took the form of **two days of facilitated panel discussions**, with time at the end of each session for audience participation and Q&A. The symposium was developed in line with a human rights-based approach – placing the needs and perspectives of rightsholders at the centre, including rightsholders in third countries outside the EU – and was designed in such a way as to draw from the expertise and experience of National Human Rights Institutions.
The detailed agenda can be found in Annex A. The agenda broadly tracked the themes of the discussion papers referred to above, and provided an opportunity to further probe the way in which key items in the CSDDD (and Omnibus I) would likely be approached by Member State authorities, and how key elements of enforcement arrangements would be judicially interpreted.

In the course of the symposium discussions, particular attention was given to how the the overarching obligation to provide remediation in the CSDDD informs the enforcement and accountability mechanisms in the instrument. Through an exchange of perspectives from academics and practitioners across jurisdictions, the Vienna Symposium elaborated the technical challenges associated with transposing the requirements of the Directive into national legal systems, and facilitated an exchange on what areas of divergence will remain given the nuances of the various legal systems in which it will operate.

Consideration was given not only to technical matters concerning the substantive cause of action, but also to how the CSDDD addresses the hurdles faced by rightsholders seeking access to remedy for the harms they have suffered, for example by facilitating representative actions brought by civil society organisations or trade unions, and by including provisions on costs and limitations periods. The symposium provided an opportunity to consider how these provisions might be reflected in a range of legal systems with different legal traditions, and to reflect on how the nature and severity of barriers (as well as the solutions to these) might differ from jurisdiction to jurisdiction, and from context to context.

1.3 Structure of this report

This event report sets out the key observations arising from the Vienna Symposium project, and the preparatory work outlined in the “Research Methodology” box above, including the findings from country expert surveys and background outlined in the discussion papers.

The content is arranged as follows:

- **Part 2: Access to remedy and the CSDDD: an overview:** This introductory section provides an overview of the main “access to remedy” features of the CSDDD.
- **Part 3: Civil liability mechanisms:** This section reflects further how the civil liability provisions on the CSDDD could enhance access to remedy. It also considers the most pressing policy and substantive issues likely to emerge in transposition to domestic contexts, arising both from the structure and wording of the CSDDD, and as a consequence of the Omnibus I proposals.
- **Part 4: Supervisory authorities and the substantiated concerns procedure:** This section reflects on the how this process may be designed, and features that are likely to be important for success, based on experiences to date with administration of mandatory human rights due diligence regimes within the EU.
- **Part 5: Privately-operated notifications and complaints procedures:** This section includes reflections on how regulators can enhance effectiveness of these types of mechanisms in practice, based on international standards and experiences of regulators to date.

  Part 6: Interconnectivity between mechanisms: This part is concerned with the way in which different ‘accountability’ and ‘access to remedy’ elements of the CSDDD could potentially complement and strengthen each other, identifying potential action points for policy makers to help them to capitalise on these.
- **Part 7: Implications of CSDDD for cross-border cases:** This part focuses on CSDDD implications for non-EU parties in cross-border cases. It considers the challenging issues relating to jurisdiction, applicable law under Article 29 of the CSDDD, as well as fact-finding and other challenges in such cases, before turning to consider the implications of the Omnibus I proposal.

  Part 8: Concluding reflections: This part sets out the main ‘overarching’ takeaways from the Vienna Symposium and lays out some potential action points for policy makers, both at EU and Member State level.

Annexed to this report are: the program (Annex A); the survey questions (Annex B); and key provisions of the CSDDD and Omnibus I proposal (Annex C).

2 Access to remedy and the CSDDD: an overview

People whose human rights have been adversely impacted by business activities face enormous difficulties in seeking and obtaining remedies for the harms they have suffered.[5] Improving access to remedy for affected people was a key goal of the CSDDD.[6]

The basic position on remediation is set out in Article 12 of the CSDDD which states that "Member States shall ensure that, where a company has caused or jointly caused an actual adverse impact, the company provides remediation".[7]

Under international standards[8] a whole range of possible remedies exists, and of this awareness is reflected in the definition of "remediation" in Article 3 of the CSDDD, which reads as follows:

"[Remediation means] restoration of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would have been in had an actual adverse impact not occurred, in proportion to the company's implication in the adverse impact, including by financial or non-financial compensation provided by the company to a person or persons affected by the actual adverse impact and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures".

In addition to the overarching obligation to provide remediation, the CSDDD includes several access-to-justice elements. These have the potential to enhance and augment existing avenues for remedy in cases of business-related human rights harms. They can also strengthen regulatory and company-based approaches for enabling and delivering remediation, provided these elements are successfully implemented. Access to justice elements included in the CSDDD are:

- A requirement on Member States to ensure that **civil liability mechanisms** are in place (see further section 2.1 below).
- A requirement that Member States establish supervisory authorities to oversee compliance with implementing laws. Supervisory authorities will receive "**substantiated concerns"** from the public. The substantiated concerns procedures will enable people to draw attention to possible non-compliance by companies with their obligations under the relevant legislation. Supervisory authorities will also have power to order companies found not to be in compliance with implementing legislation to provide remediation "proportionate to the infringement and necessary to bring it to an end"[9] (see further section 2.2 below).
- A requirement that companies establish or participate in **privately-operated grievance mechanisms** through which people can raise complaints about non-compliance with companies directly (see further section 2.3 below).

2.1 Civil liability mechanisms

Article 29 of the CSDDD sets out a series of instructions to Member States as to the legal conditions that will need to be in place at the domestic level to enable people to claim compensation from companies covered by the CSDDD legal regime for damage arising from due diligence failures, provided that certain criteria set out in the article are met.

Extract from Article 29 of the CSDDD

1. Member States shall ensure that a company can be held liable for damage caused to a natural or legal person, provided that:

(a) the company intentionally or negligently failed to comply with the obligations laid down in Articles 10 and 11, when the right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person; and

(b) as a result of the failure referred to in point (a), damage to the natural or legal person's legal interests that are protected under national law was caused.

A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.

2. Where a company is held liable in accordance with paragraph 1, a natural or legal person shall have the right to full compensation for the damage, in accordance with national law. Full compensation under this Directive shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages.

Article 29 of the CSDDD obliges EU Member States to ensure that claims for damages can be brought by affected people against companies provided that the following conditions are met:

- the company in question is covered by the CSDDD regime. This means, in effect, that it is either a very large company[10] or the parent company of a group of companies with substantial business activities in the EU;[11]
- the company has failed to comply with the obligations set out in Articles 10 and 11 of the Directive to take action to address actual and potential adverse human rights impacts;
- those failures were either "intentional" or were the consequence of "negligence" on the part of the company;
- these failures have resulted in damage that engage rights listed in the Annex to the Directive where a "right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person";
- as a result of these failures there has been some damage to a natural or legal person's "legal interests that are protected under national law"; and
- the damage in question was not caused "only by … [the company's] … business partners in its chain of activities".

How would the Omnibus I proposals alter the regime for civil liability laid down in Article 29 of the CSDDD?

The Omnibus I proposal would strike out Article 29(1), removing the obligation on Member States to ensure that companies can be held liable on the conditions specified in that paragraph for failure to comply with their due diligence obligations (see section 2.1 above). It would signify a break with the idea of a (partially) harmonised, EU level liability regime.[12]
The Omnibus I proposal preserves the requirement in Article 29(2) that prospective

claimants have a right to full compensation under existing national liability regimes, stating that: *"where a company is held liable pursuant to national law for damage caused by a natural or legal person by a failure to comply with the due diligence requirements under this Directive, Member States shall ensure that those persons have a right to full compensation."*[13] However, delegating these provisions to the Member States could lead to fragmentation.

The removal of Article 29(1) does not mean that Member States should necessarily dispense with civil liability as a potential mode of enforcement of "sustainability due diligence" requirements. But the principle of legal civil liability as well as the conditions for triggering such liability would depend on the legislation of the Member State whose courts have jurisdiction.

Note: The Omnibus I proposal will be subject to negotiation between the co-legislators which could result in different changes to Article 29 from those set out in the Omnibus I package.

Key observations from the Vienna Symposium as regards the civil liability mechanism referred to in Article 29 of the CSDDD and the legal and practical implications of the Omnibus I proposals, are discussed further in section 3 below.

2.2 Substantiated concerns procedures

The CSDDD obliges EU Member States to designate one or more supervisory authorities to supervise compliance with the obligations laid down in the provisions of national law transposing the requirements of the CSDDD (see Article 24).

These supervisory authorities are i.a. responsible for enforcing cases of non-compliance, and related activities. They potentially play an important *preventative* role. They can therefore be a source of "forward looking remedies". International law instruments on remedies for human rights abuses often refer to these kinds of remedies in terms of "guarantees of non-repetition" (or non-recurrence) of harmful acts.[14]

They also have the potential to contribute to remedy for harms that have already occurred, for example, by making orders that remediation be given, proportionate to an infringement and necessary to bring it to an end,[15] or by imposing (pecuniary and other) penalties.

What are the powers of the supervisory authorities established or designated under the CSDDD?

Under the CSDDD, the supervisory authorities will have the following powers:

- Require companies to provide information related to compliance with the due diligence obligations under the CSDDD (Article 25(1);
- Carry out investigations related to compliance with the due diligence obligations under the CSDDD (Article 25 (1) to (3));
- Supervise the adoption and design of the climate transition plan (Article 25(1));
- Make orders (Article 25(5)(a)), including that a company cease infringements

of transposition laws, refrain from repetition of infringing conduct, and provide remediation proportionate to the infringement and necessary to bring it to an end;

- Impose effective, dissuasive but proportionate penalties, including pecuniary penalties of up to 5% of the company's net worldwide turnover in the previous financial year (Articles 25(5)(b) and 27);
- Adopt interim measures in the event of an imminent risk or severe and irreparable harm (Art 25(5)(c)); and
- Receive and act on substantiated concerns submitted by natural or legal persons (Article 26).

The CSDDD envisages that supervisory authorities will offer a route through which people can raise allegations of non-compliance by companies subject to the regime, which may lead to an investigation and some form of enforcement to bring about compliance. Each supervisory authority is required to establish processes for receiving, handling and resolving "substantiated concerns".[16]

Further details regarding the workings of the "substantiated concerns" procedure, and key takeaways from the Vienna Symposium as regards the implementation of relevant provisions of the CSDDD at Member State level, are discussed further in section 4 below.

2.3 Privately-operated grievance mechanisms

Under Article 14, all companies falling within the scope of the CSDDD will need to make available **two distinct types of mechanism**s through which people can communicate complaints, concerns or information regarding possible breaches of due diligence obligations under the CSDDD regime. These two mechanisms are **"complaints procedure"** and a **"notification mechanisms".**

The main difference between a 'complaint' and a 'notification' is that the former, if deemed to be "well-founded", triggers legal duties under the "taking action" provisions of the CSDDD in Articles 10 to 12[17] which include obligations on the company to provide remediation where it has caused or jointly caused an adverse impact. By contrast, the legal ramifications of a "notification" are not spelled out in the CSDDD.

Companies may meet these obligations by establishing their own complaint and notification mechanisms, or by participating in collective mechanisms, such as those operated by multistakeholder or industry initiatives.[18]

Further details regarding "complaints procedures" and the "notification mechanism" referred to in Article 14 of the CSDDD, and key takeaways from the Vienna Symposium as regards the implementation of relevant provisions of the CSDDD at member state level, are discussed further in section 5 below.

3 Civil liability mechanisms

As noted in section 2.1 above, Article 29 of the CSDDD outlines several obligations for EU Member States. These require domestic laws to establish the legal conditions that allow individuals to claim compensation from companies covered by the CSDDD regime. This compensation applies for “damage to the natural or legal person’s legal interests that are protected under national law” arising from the company’s failure to comply with its due diligence obligation.

Member states are under no obligations to establish specialised regimes for EU CSDDD compliance. Rather, they must ensure that, in cases where companies have intentionally or negligently failed to comply with their obligations under Article 10 and 11 of the Directive, there is a route for establishing legal liability for damage and for determining the compensation that will be due.
In preparation for the Vienna Symposium, the co-organisers circulated a survey to designated country experts. The survey took the form of three hypothetical scenarios, and experts were invited to comment on the causes of action likely to be relevant in each case, as well as legal and practical challenges likely to arise, and the potential contribution of the CSDDD to the ‘mix’ of legal options and solutions presently available in their respective jurisdictions. A copy of the survey questions is annexed at Annex C.

According to the results of the survey completed by the designated country experts prior to the Vienna Symposium, for some kinds of harms, the obligation on the Member States in Article 29(1) could be addressed, at least in part, through causes of action that already exist under domestic law (e.g. on corporate “torts” or “wrongs”). This could be the case, for instance, if failures to carry out human rights due diligence in accordance with the prescriptions laid down in Articles 10 and 11 came to be equated with negligence, breach of duty of care, or other related concepts within different domestic legal systems. The key components of these vary from jurisdiction to jurisdiction, but they are usually cast in terms of a breach of a legal duty (e.g. a statutory duty, and/or a duty to exercise a certain degree of care), which results in actual harm.

In addition to tort-based causes of action, some respondents were able to cite more specialised regimes (e.g. environmental laws, consumer protection laws, constitutional law) that could potentially be relied upon by claimants in at least one of the three hypothetical case studies presented.

By and large, criminal law was thought likely to play a fairly limited role, primarily in cases where the conduct constitutes an offence under domestic law. This includes instances such as unlawful surveillance, serious breaches of privacy, and clear cases of direct corporate involvement in serious human rights harms). These examples reflect the range of situations identified through survey responses, though additional relevant offences may also apply depending on domestic legal frameworks.

To the extent that gaps in legal coverage are identified – such as when adverse human rights impacts (as defined in the CSDDD) introduce novel categories of damage, not recognised under existing domestic laws on corporate wrongs – changes to domestic law could be needed to ensure that Member State’s compliance with its obligations under Article 29 of the CSDDD.

3.1 Key observations arising from the Vienna Symposium

In this section we explore in more detail some recurring themes emerging in the preparatory work for the Vienna Symposium, and in the face-to-face discussions at the symposium itself.

As can be seen from the sections that follow, there are both similarities and differences from jurisdiction to jurisdiction as regards how key concepts are likely to be understood and judicially interpreted, and the principles that are applied to determine whether or not there should be civil liability in a given case.

For instance, while all jurisdictions recognise the possibility of liability based on tort law (the law of wrongs), or substantive equivalents, there can be subtle differences between jurisdictions as regards whether or not causation can be established in the circumstances of a specific case.

Through the surveys, and also at the Vienna Symposium itself, country experts were invited to explain and comment on the limitations that domestic law places on liability based on concepts of “remoteness” and “proximity”, whereby a defendant would not be liable for harms which are deemed too remote or unforeseeable, or where there is an insufficient causal link. For instance, a common feature (i.e. within the types of liability regimes that CSDDD cases are likely to draw from) is for liability to be excluded in cases where the causal connection between the conduct of a company and the eventual harm is simply too remote for the imposition of liability on the defendant company to be fair and just. Although all jurisdictions recognise some form of limitation on liability in this way, there are differences from jurisdiction to jurisdiction as regards the legal tests to be used, and how they are applied to different fact situations.

The discussion made clear that each jurisdiction will apply rules on liability according to its own laws and legal traditions. This is likely to have a bearing on how civil liability cases based on Article 29 of the CSDDD would be approached, particularly in cases where the elements of liability are not well established in a particular jurisdiction. For example, in the context of parent company liability for acts of subsidiaries, or the liability of a company for harms which may arise further up and down the value chain where the survey responses and discussion at the symposium disclosed considerable variation in the availability of causes of action.

There are also differences from jurisdiction to jurisdiction in terms of the nature, extent and effectiveness of legal and policy reforms aimed at reducing barriers to remedy, such as through financial help, extended limitations periods, measures to reduce court costs, and to enhance access to information and assistance. These all contribute to the legal environment in which the CSDDD implementing measures will function. As such, they can be expected to have a bearing on the extent to which people can access civil liability mechanisms in practice. As noted below, the CSDDD addresses some of these access to justice issues.

3.1.1 Duty of care/actionable wrong

In seeking to apply more generalised laws on torts/wrongs to cases of business-related human rights harms, lawyers representing affected people and communities have encountered a number of problems in practice, namely:

- lack of clear and consistent standards explaining the *scope* of legal duties of care.
- lack of clear and consistent standards explaining the substance of legal duties of care. Specifically, what is a company legally required to do to prevent and mitigate the kinds of harms referred to above?
- limiting liability to categories of harm that do not map well on to, or are only rough approximations of, recognised categories of human rights harms.

The CSDDD addresses some of these challenges. The instrument clarifies the scope of the human rights due diligence obligation as covering, for companies subject to the regime, all of the business activities of their subsidiaries and business partners (as defined in the legislation).

Further, it contains a series of provisions designed to clarify the human rights risk assessment and management processes that companies subject to the regime must put in place, and provides an indication of the types of steps that need to be taken when risks or harms are identified.

Country experts expressed the view that the expression of harms in human rights terms was an important new development, which could help to address some gaps in the way the law of "torts" or "wrongs" has developed. This would potentially foster more consistency in legal approaches within the EU. A more human rights-centred approach potentially expands the categories of harm that companies can be liable for, and hence the categories of damage for which compensation must be provided (Denmark). Basing liability on HRDD obligations (process) rather than harms reaching a certain threshold (outcomes) was thought to be potentially important as it creates more scope for victim-centred approaches to decisions about which harms are actionable, and which are not.

During the discussion at the Vienna Symposium, many country experts expressed the view that there is value in Article 29 clarifying the scope and nature of the duty of care which can be sued upon to create a common approach to liability across the Member States. One expert noted that it was useful that the CSDDD clarified that companies would be responsible for abuses of specific human rights, something that was not currently the case in their jurisdiction (Denmark). The implications of the proposed Omnibus I changes for different jurisdictions within the EU were discussed at some length. While there were differences from jurisdiction to jurisdiction in terms of likely practical effect of a deletion of Article 29(1) of the CSDDD (as has been proposed as part of the Omnibus I package),[19] a broad agreement among country experts emerged that decoupling substantive obligations (i.e. to carry out sustainability due diligence under Articles 10 and 11 of the CSDDD) from a clear legal duty which could be a basis for civil liability (as envisaged in Article 29) seemed antithetical to the goal of greater legal certainty, both for claimants and for defendants.

It was also clear from the discussion that even if the Omnibus I proposal is not adopted and the text of Article 29 remains intact, there will still be variation across the Member

States as the legislatures and judiciary of each jurisdiction will interpret the requirements in Article 29 through the lens of their own legal system and traditions. Indeed, Article 29 of the CSDDD establishes a partially harmonised civil liability regime: there are matters which are not addressed in detail, such as approaches to causation, proximity and remoteness, which will be left to the legal systems of the Member States and where there is already existing variation. The issue of causation is explored in more detail in the next section.

3.2.1 Causation

Article 29 of the CSDDD does not engage with the legal tests that should be used to establish causation. Accordingly, there is the potential for different jurisdictions, and different courts within jurisdictions, to apply different tests for causation and different standards for joint and several liability in circumstances of joint causation.[20]
An exception is Article 29(5) which provides that there should be provision for joint and several liability in cases where "the damage was caused jointly by the company and its subsidiary, direct or indirect business partner". As a consequence, a company subject to the CSDDD regime (and sued on the basis of the regime contemplated in Article 29) could not avoid liability for damage resulting from Article 10 and 11 infringements because of the involvement of another company, such as a third-party supplier or business partner.[21] Aside from this, the *conditions* for joint and several liability (and rights of recourse) are matters to be resolved at EU Member State level, in line with existing legal standards and structures.

Additionally, the CSDDD does not clearly define what is meant by "damage" for the purposes of Article 29.[22] This adds further layers of complexity to the apportionment of legal responsibility between different business actors in complex causation situations.
There are various approaches courts could take to the concept of damage. These could range from a more holistic approach (in which courts take account of the interplay between multiple contributing factors and actors), to a more fragmented approach, which may have greater potential for apportionment of responsibility on narrow grounds to individual business actors.

Virtually all country experts highlighted that proving causation is a considerable challenge for would-be claimants, and many discussed the problems in some detail. Many survey respondents engaged with the question of what kinds of behaviours and contractual relationships might give rise to a compelling causation argument, and the evidence that could be used to support such arguments, drawing from domestic legal precedent and frameworks. Some respondents drew attention to challenges surrounding attributing of knowledge and acts of individuals to corporate entities, a key ingredient of certain domestic causes of action, and particularly in jurisdictions with more restrictive notions of corporate liability (Sweden). The general view seemed to be that showing causation could be a struggle in each of the hypothetical case studies considered. However, at least one respondent felt that the CSDDD and its policy underpinnings could be useful in making a case for causation in their jurisdiction (Greece).

Country experts generally agreed that CSDDD might help to clarify the behaviour that is regarded as reasonable for the purpose of complying with the legal requirements of the transposition laws, and the harms for which they should be liable. However, it sheds little light (if any) on what would be needed to establish causation. It was clear from the face-to-face discussions between country experts at the Vienna Symposium that considerable uncertainty still surrounds the tests that will be used to determine whether non-compliance with CSDDD requirements can be regarded as the cause of the harm for the purposes of attributing legal liability. Equally, while each jurisdiction recognises limitations on liability,[23] whether in the form of proximity or remoteness requirements, reasonableness requirements or other limits, these will be set by the rules of each Member State jurisdiction. Accordingly, there may be variances between jurisdictions as to how such limitations are applied in CSDDD cases.

3.1.3 Burden of proof

Rules on burden of proof clarify for all parties (a) who is responsible for proving different factual elements of a case and (b) the level of evidence needed for the court to regard that element as being proved.
The recitals of the CSDDD make clear that the intention was not to "regulate who should prove the fulfilment of the conditions for liability under the circumstances of the case, or upon which conditions civil proceedings can be initiated", but rather to leave these matters to be decided at the level of national law.[24]

In many jurisdictions the burden of proving an allegation falls on the party making that allegation, unless there are specific statutory rules to the contrary. This approach to allocating burden of proof is commonly applied in tort-based cases, and their equivalents.

The appropriate allocation of burden of proof in cases under the CSDDD was a recurring theme in the discussions on both days of the Vienna Symposium. There was general agreement that the burden of proof in civil liability cases was a heavy one for claimants to bear. Several country experts cited examples of statutory shifts in the burden of proof in specific regulatory contexts, some of which derive from EU law (and thus applicable to all Member States), for instance in consumer law or discrimination law.

This can take the form of the party making an allegation (usually the claimant or plaintiff) to present sufficient evidence to establish a basic or *prima facie* case. If this initial burden is met, the burden shifts to the opposing party (often the defendant), who must provide evidence to rebut, disprove, or refute the claim against them.

Several country experts argued that power imbalances between people seeking remedies for human rights violations (on the one hand) and corporate defendants in civil cases litigation (on the other hand) would be a relevant factor. Experts noted that, considering such disparities—including imbalances in access to key information and relevant expertise—and taking into account the directive's provision that proceedings must not be "prohibitively expensive" (see section 3.3.7 below), there is a plausible argument for reversing the burden of proof in many contexts. Accordingly, it may be appropriate to place the evidentiary burden on the party best positioned and most capable of accessing and producing relevant information, requiring that party to demonstrate the relevance and implications of such information with respect to the company's civil liability under the applicable legal framework.

3.1.4 Disclosure and access to information

Establishing whether or not a company was in compliance with its due diligence obligations under the CSDDD requires access to information unlikely to be in the public domain and likely to be largely in the possession of the company concerned. While litigants may have a general idea of the types of documentary evidence that could be relevant, precisely identifying and articulating the specific documents needed can be extremely challenging—not only for those outside the company, due to their lack of familiarity and access, but also for some insiders who may have limited or restricted access to certain types of information. As noted below, this problem was raised by country experts as an important justification for reversing the burden of proof, at least to some extent, in CSDDD cases.

In general, disclosure of information between the parties (referred to as “discovery” in some jurisdictions) will be covered by existing rules on civil procedure at Member State level. Article 29(3)(e) sets out conditions for Member States must meet to ensure proper disclosure, including enabling courts to order disclosure where a claimant presents reasoned justification supporting the plausibility of their claim for damages and indicates that additional evidence lies in the control of the company. Under this provision, any such disclosure shall be limited to that which is necessary and proportionate to support an actual or potential claim.

However, there are differences from jurisdiction to jurisdiction regarding:

- the methods and modes of disclosure;
- definitions of “materiality” or “relevance”;
- the relative weight to be given to competing interests and rights in order to define a level of disclosure that meets the needs of justice, as well as standards of fairness and reasonableness to all parties; and
- the stage at which disclosure may be ordered, including the availability of pre-action disclosure.

Country experts discussed the various ways in which disclosure rules can work in a way that is often disadvantageous to claimants in practice. One talked about a “chicken and egg” problem, in which applications to court for documents could be refused because a claimant had not proved, to a sufficient standard, that a cause of action exists, whereas it was actually difficult to prove the relevant facts without access to information held by the other party. For that reason, pre-action disclosure was identified as important for clarifying whether a civil claim under the Article 29 regime was possible and its prospects for success. Maintaining robust protections for whistleblowers was also considered an important part of the overall “access to information” picture. Indeed, some proceedings brought to date have relied on whistleblowers to provide information to claimants sufficient to be able to bring the claim.[25]

In the course of the discussions at the symposium, country experts discussed the challenges they had faced in getting proper access to information in human rights-related cases in practice. Several participants highlighted shortcomings in the discovery or access to information regimes within jurisdictions they were most familiar with. They also discussed various techniques used to prevent “fishing expeditions”, noting that these measures sometimes required claimants to make highly specific requests. This level of specificity was often difficult for claimants to achieve, especially if they were unfamiliar with the intricate details of corporate decision-making processes (Belgium, Netherlands). One participant suggested that, in the CSDDD context, it would be important for courts to be able to order disclosure of information held by supervisory authorities to claimants (Denmark), though another questioned the actual evidential value of this (Netherlands).

The general view of country experts seemed to be that disclosure and access to information rules at national level (or “discovery”) were already too unwieldy and strict, that greater flexibility would be advantageous from an access to remedy point of view, and that some of the wording of the CSDDD on disclosure could work against this. For instance, the criteria for “necessary and proportionate” disclosure set out in Article 29(3)(e) could potentially be more restrictive than those typically applied in some jurisdictions (e.g. allowing the court to take account of the costs of disclosure, and the legitimate interests of all parties—including, but not limited to, the defendant company—could limit disclosure compared to more permissive national practices).

3.1.5 Parent company liability

The lack of clarity in many (if not most) jurisdictions about the extent to which a parent company might be held legally liable for harms arising as a result of the business activities of its subsidiaries is a significant problem for anyone seeking a remedy through a judicial, civil liability route. The uncertainty as to whether or not a case would ever be successful, and the many procedural hurdles that arise along the way, exposes would-be litigants to enormous amounts of financial and other risks, with little guarantee that an effective remedy would ever be achieved.

Through the preparatory survey, and in face-to-face discussions at the symposium itself, country experts were invited to elaborate on the kinds of theories of liability that could be used to hold parent companies legally responsible, and their prospects of success. One of the case study hypotheticals presented in the survey concerned a scenario where a parent company might potentially be liable for actions of a subsidiary (see Annex C). Several experts gave examples, including during the symposium, of cases in which the “corporate veil” had created an extra layer of complexity for these kinds of cases, whether for gaining access to relevant (internal) information to make a case before courts and/or for holding a parent company liable for acts committed by its subsidiary. The expert discussion found that there is considerable divergence from jurisdiction to jurisdiction as regards the parameters of parent company liability, the interplay between (a) theories of civil liability (e.g. based on accessory liability and complicity) and (b) the doctrine of separate corporate personality (i.e. “the corporate veil), and the correct balance between the various policy considerations that come into play. For example, one country expert noted that under the laws of their jurisdiction there are often strict requirements to be met in order to pierce the corporate veil, such as in cases of fraud or abuse, however often there is conflation by the courts of the concept of piercing the veil with, for example, a finding of responsibility for an employee or agent (Greece).

Country experts seemed to take to view that the CSDDD is potentially helpful for clarifying the substance and scope of a company’s duty of care in a way that encourages proactive, more “hands-on” involvement of parent companies, rather than divestment of operations or creating artificial distance between a company and its subsidiaries or business partners as a way of limiting or avoiding legal liability (Netherlands). The CSDDD also contains features that could be helpful in persuading courts to pay more attention to the substance of parent company’s involvement and its effects. It was also suggested that supervisory authorities potentially have a role in helping courts to unpack the different roles and responsibilities of different corporate actors within a group (Denmark). Some country experts also expressed the view that the CSDDD may help overcome reluctance to hold a parent accountable for acts of a subsidiary (Greece, Denmark). Another participant pointed out that the difficulties of establishing who is (or should have been) responsible for what in a complex group, such as a large joint venture, should not be underestimated (Ireland). In this context, clarifying what parent companies are expected to do in order to prevent various kinds of harms committed by their subsidiaries could close some "gaps" in causes of action available at domestic level, specifically with respect to situations giving rise to human rights harms.

3.1.6 Liability in cases where harms occur further up or down the value chain

While establishing the legal liability of parent companies is challenging (see 3.1.5 above), it is much more so in relation to entities with which a company may not have any contractual or ownership connection. A considerable advantage of the CSDDD civil liability regime, compared to the existing legal landscape, is that the basis for liability of companies for problems within a supply chain, whether upstream or downstream, is made clear.
One of the case study hypotheticals outlined in the survey (see Annex C) concerned a scenario where a company applied pressure on the supplier to deliver goods according to tight timetables and to supply goods at a low price point. In response to such pressures, the supplier made wage cuts to below a living wage, required significant overtime and engaged in cost cutting on health and safety standards in the factory which has increased the incidence of accidents. Several respondents raised doubts as to whether courts of their respective jurisdictions would recognise a duty of care for acts of suppliers under their current domestic laws. One respondent referred to a lack of precedent on this point (Sweden). A number of survey respondents noted that there were very limited bases for a company to be held liable in relation to such a scenario (Latvia, Sweden), but that the CSDDD could potentially facilitate such claims if the causation threshold could be met (Spain).

However, this possibility is undermined somewhat by the changes to the due diligence obligations proposed in the Omnibus I package of amendments. As noted above, the Omnibus I proposals include a paring back of companies' obligations vis-à-vis actors that are higher and lower in a value chain than 'Tier 1' suppliers and distributors. If these obligations are altered in the manner described in the Omnibus I proposal, scope for holding companies liable for problems occurring in 'Tier 2' and beyond could be similarly reduced.

Country experts also discussed the legal theories already in existence in their jurisdictions on which cases for downstream harms could be based. For instance, several jurisdictions recognise the concept of "creation of a situation of danger" as a potential basis of liability (Ireland, Germany, Portugal). Proximity and remoteness are likely to be very important limiters of liability in downstream harms cases. But as noted above, these matters are left to the Member States' laws.

3.1.7 Costs of litigation

Article 29(3)(b) of the CSDDD requires Member States to ensure that "the cost of proceedings is not prohibitively expensive for claimants to seek justice." This provision is not affected by the proposed amendments in the Omnibus I proposal.

The provision does not make a distinction between court costs (which could perhaps be controlled in some way at Member State level) and *legal* costs (such as the costs of engaging lawyers) which, even if controlled to some degree (e.g. through court approved tables of costs, or legal aid), will nevertheless be susceptible to market forces.

Given that the inherently hight costs involved in preparing for and participating in litigation (in most jurisdictions) – covering lawyers' fees, court fees, expert reports, document preparation, translations, and more – it is not clear what “prohibitively expensive” would mean in this context or what the obligation to address the problem of “prohibitively expensive” court processes could mean in practical terms.
In the face-to-face discussion at the Vienna Symposium and in response to the survey, almost all experts specifically singled out costs as a significant barrier. Many referred also to requirements to pay security for costs[26] (which might be more onerous for claimants outside the EU), legal complexity, non-availability of contingency fee arrangements (in some jurisdictions), lack of legal aid, lack of availability of legal counsel; potential costs of translation services due to language barriers; travel costs; as well as costs of expert opinions in complex cases. This is in addition to other obstacles to access to remedy which may have cost implications, such as difficulties accessing relevant information (due to weak or ineffective disclosure or ‘discovery’ rules) and undeveloped (or highly restrictive) class action procedures, as well as the extreme difficulties of showing causation in many cases (a burden that falls largely on the claimant in all jurisdictions surveyed).

Country experts discussed the various reforms that had been made in their own jurisdictions in an attempt to alleviate the situation, and their pros and cons from an access to remedy perspective. Legal aid was considered to have had only a minimal impact in some jurisdictions. Other innovations discussed at the symposium included “after the event” insurance,[27] third party funding and crowdsourcing. It was noted that there are restrictions on third party funding in some jurisdictions, which may rule this out as an option in CSDDD type cases (Ireland). Some country experts made a connection between litigation funding and restrictions on representative actions, pointing out that inability to bring representative actions could rule out certain sources of funding (Netherlands). Country experts and other participants also discussed the likelihood of Member States taking further steps to enhance the ability of people in other countries to sue EU-based companies against the background of a rise of more inward-looking, populist nationalist political movements.

3.1.8 Standing and representative actions

In general, Article 29(1) gives standing to any “natural or legal person” who is harmed as a result of a due diligence failure meeting the conditions set in that subparagraph. Should the Omnibus I proposal be adopted, the first subparagraph in Article 29 would be deleted.[28] However, the retention of the wording in subparagraph 2 (“damage caused to a natural or legal person by a failure to comply with the due diligence requirements under this Directive”), suggests that (at least the) approach to standing would not be changed.

In addition, Article 29(3)(d) also includes a provision whereby an injured party may be represented by an authorised representative in proceedings. This provision does not demand that trade unions, non-governmental organisations and National Human Rights Institutions are given standing to bring claims under the civil liability regime in their own right. Rather, it requires that arrangements be made to allow claimants to *authorise* these organisations to bring claims on their behalf. The use of the words "without prejudice to national rules of civil procedure" potentially gives Member States the ability to ignore these provisions and perhaps rely on more general rules on standing.

The Omnibus I proposal deletes this provision altogether, removing any obligation on Member States to make representative actions of these kinds available. If this proposed amendment is adopted, then the question of availability of representative actions would be left to what currently exists under Member State laws.
On the other hand, if Article 29(3)(d) remains in its current form, a number of questions endure. The subparagraph does not squarely address the issue of what would constitute an authorisation in different scenarios, and how (and whether) this should be verified (although this may be implied in the reference to "reasonable conditions"). Ensuring that people claiming to be authorised to represent people *are in fact authorised* to do so will often be an important part of a rights-respecting remediation process, and particularly in cases involving people who may be at risk of vulnerability or marginalisation.

On the other hand, it is important that authorisation criteria are not overly restrictive, to the extent that they could create additional and unwarranted barriers to accessing remedy. The suggestion that trade unions could not act as authorised representatives if they do not comply with national law is problematic if the reference to "national law" here includes laws of countries that have repressive laws that undermine trade union rights. A possible interpretation of Article 29(3)(d) is that a trade union that had been held, at any time, *not* to be compliant with the laws of a country in which it operates could *not* be recognised as a legitimate representative of claimants for the purposes of bringing a civil liability claim under the CSDDD. Whether this was the actual intention of the drafters is not clear.

There was a range of views on the proposal in the Omnibus I package to remove Article 29(3)(d) on representative actions.[29] One country expert took the view that representative actions is perhaps best left to Member State's national law (Germany). Another one pointed out that the removal of the provision potentially offers greater flexibility, and removes dilemmas for their home State government about whether to make changes to an area of law that is already highly regulated, for a specific new area of civil liability (Poland).

But another felt that removing Article 29(3)(d) would make the introduction of reforms to facilitate CSDDD representative actions less likely (Finland). Another pointed out that the CSDDD provisions on representative actions would have sat uneasily with the very liberal approach in their home jurisdiction in any event, under which "anyone can represent anyone" (Sweden).

3.2 What questions, issues and challenges still remain?

Following section sets out the views of the expert participants who noted that there are a number of access to justice challenges and interpretive issues that are not addressed in the CSDDD text and are made all the more uncertain given the amendments proposed in the Omnibus I proposal.

3.2.1 Conceptual and procedural links between different causes of action

There are likely to be cases in which there are substantive overlaps between different causes of action and different regimes. For instance, it is possible that a case involving negligent management of supply chain relationships or subsidiaries could fall under the CSDDD, or more familiar legal theories relating to torts/wrongs. The legal, practical and procedural implications of this do not yet appear to have been well understood or developed in many jurisdictions. Claimants might be well-advised to plead their cases "in the alternative" (i.e. pleading cases under tort law, or substantive equivalents, *and* CSDDD, *and* any further specialised regimes providing for private enforcement) until the new CSDDD arrangements are properly bedded in.
In the event that the Omnibus I proposal is adopted, it seems likely that Member States will be less inclined to innovate solutions, and more likely to rely on such causes of action and legal theories as are already in place. However, the information from country experts suggests that we should not be overly optimistic about the potential for existing liability regimes to quickly adapt. In their responses to surveys, a number of respondents pointed out the lack of a conceptual link between CSDDD standards and tort liability. Only one survey response (France) suggested a cause of action that could readily be adapted to the CSDDD/civil liability context, since this conceptual link already derives from the French Duty of Vigilance Act. The discussion between country experts at the symposium itself seemed to confirm that CSDDD concepts may not be readily integrated into existing law. Instead, this will take time, effort and judicial innovation.

3.2.2 Meaning of "damage" and "protected legal interests"

Article 29(1)(b) does not set out clearly the types of harms that would give rise to a cause of action under the CSDDD civil liability regime. It is not clear whether the 'damage' referred to in Article 29(1)(b) is the same 'damage' as that referred to in the chapeau. Moreover, the reference to "damage to the natural or legal person's legal interests that are protected under national law" could be read to limit liability to cases engaging legal interests already protected under national law. The concept of "protected legal interest" may be more readily cognisable in a jurisdiction such as Germany which takes the approach of listing protected legal interests which can ground a claim, such as life, body, health, freedom, property or other legal rights.[30] However, this is not a common approach across all European legal systems. France, for example, does not use such a list approach, rather leaving the matter of what interests are to be protected to the judiciary.[31]

As is outlined in section 3.2.3 below, these gaps have a number of knock-on effects to the workability of the civil liability mechanism in EU Member States.

3.2.3 Meaning of "full compensation"

As noted above, the retention of a concept of "full compensation" linked to civil liability as an explicit legal objective of the CSDDD has provided impetus to the idea that there may be implicit or residual requirements to ensure that some form of private law (or "civil liability") enforcement, even with Article 29(1) being removed as a specific requirement (as proposed in the Omnibus I proposal).

However this debate is resolved, it is important to note that "full compensation" is not a defined term in the CSDDD.[32] Several country experts found the use of this concept in the CSDDD quite odd, given that full compensation would always be sought in practice, and the quantum is judicially determined based on the relevant facts. At least one of the country experts found the idea of a general entitlement to "full compensation" potentially problematic, suggesting that such a right would be better conceptualised as an entitlement to redress that is sufficient to help rectify harms *that have been proved*. Some country experts considered the CSDDD's failure to refer to the international standards that would apply to assessing remedies in human rights cases as a potentially problematic omission, which could create interpretational challenges and dilemmas for judges. Country experts also reflected on what this concept might mean against the background of the reality of civil liability processes, which can take many years to work through, particularly where litigation involves novel concepts. For instance, there are concepts in the "environmental" annex of the CSDDD that have never been litigated before (Ireland). Country experts were able to supply several examples of cases where claimants in civil liability cases did not survive to see compensation delivered. In light of all this, the general consensus of the country experts was that a legal requirement to ensure "full compensation" was somewhat unreal and unsatisfactory as a yardstick for state action, even if the underlying goal was a laudable one.

These problems are compounded by the lack of clarity in the CSDDD about the meaning and scope of "damage" as a foundational threshold concept (see section 3.2.2 above). For instance, if a company abruptly terminates a supply contract leading to workers losing their jobs without sufficient notice or severance entitlements, how would the "damage" be conceptualised? Clearly, whether the "damage" is conceptualised as the loss of employment, or the consequences of a failure to observe a proper process, has implications for what would be regarded as "full compensation" in the circumstances.

3.2.4 Defending collective rights

The wording of Article 29(1)(a) gives rise to some important and challenging questions about the extent to which the CSDDD is intended to enable the protection of *collective rights*.

The wording of Article 29(1) which conditions liability on whether a right or prohibition in the annex is "aimed to protect a natural or legal person" could be interpreted to limit or exclude liability for environmental claims or group rights collectively exercised.[33] While the recitals of the CSDDD state that persons who suffer damage from adverse environmental impacts can claim compensation under the Directive even where such claims overlap with human rights claims,[34] there remain questions as to the extent to which (or whether) environmental claims are enabled where there is no clearly ascertainable individual claimant harmed, or where harms are suffered as a group.

Equally, this condition could create restrictions on other cases of group rights which are collectively exercised, such as collective bargaining.[35] Rights to freedom of assembly, rights to organise and collective bargaining are expressly listed in Part 1 of the Annex, but there is nonetheless emphasis given to individual rights in the wording "aimed to protect a natural or legal person". The recitals state that this wording is intended to exclude derivative or indirect damage (e.g. such as to a landlord who suffered economic loss as a result of a workplace injury to a worker resulting in inability to pay rent),[36] but the extent to which the emphasis given to individual rights would create a further restriction is unclear.

There is a lack of consistency across the EU on the extent to which collective rights are protected, and how, which might make some forums better for these kinds of cases than others. Some jurisdictions have put in place specific regulatory architecture around "collective rights", for example Poland has a specific regulatory framework which allows certain public entities and environmental organisations to bring claims to protect the environment as a common good, however NGOs cannot represent a group in class actions, and procedural mechanisms for collective redress in civil cases remain limited. Others take a more fragmented, context-specific, approach. With or without Article 29(1), it is possible that the CSDDD could help to prompt more legal development around defence of collective rights, provided these are well covered and well-articulated in the Annex. Some experts noted that the CSDDD was more restrictive than laws in their own jurisdictions on this point (France), particularly as regards the availability of environmental claims. Accordingly it would be important that the non-regression principle is applied, by which the CSDDD cannot be used as "grounds for reducing the level of protection of human, employment and social rights, or of protection of the environment or of protection of the climate provided for by the national law of the Member States or by the collective agreements applicable at the time of adoption" of the directive.[37]

3.2.5 Implications of the Omnibus I proposal

The in-person discussion at the Vienna Symposium provided an opportunity to grapple with the legal implications of the proposed amendments set out in the Omnibus I proposal from the perspective of different national legal systems.

In relation to the removal of Article 29(1), experts had differing views about whether Article 29(1) would have led to concrete changes to the law on civil liability, and what the implications of such changes would be, indeed the effects of Article 29 would be different across the Member States.

For some jurisdictions which have well developed bodies of jurisprudence and a tradition of litigating parent company claims, country experts felt that Article 29(1) was of little practical importance as relevant legal provisions were already in place (Netherlands). Nonetheless, even in jurisdictions where this was felt to be the case, experts considered that there was value in retaining the mandatory overriding application provision in Article 29(7) to address practical challenges regarding the applicable law. Some experts felt that the non-regression clauses in the CSDDD would keep progressive elements in place where the existing law of the member state went *beyond* CSDDD requirements (France). However, other country experts argued that the removal of Article 29(1) would have substantive impact (Germany). This was particularly the case in jurisdictions where there are less established traditions of litigating claims which would fall within the CSDDD.

A number of country experts felt that Article 29(1) of CSDDD potentially gave more clarity regarding "what is the fault here?" (Latvia). This could be useful in "negligence by omissions" cases, e.g. for overcoming rules about bystander liability (Sweden). It was also considered potentially helpful in jurisdictions where judges are traditionally conservative and less inclined to innovate (Greece), or where existing law may have the effect of ousting liability for harms occurring beyond Tier 1 (e.g. for reasons of "lack of control", as legally defined), or supplying presumptions against this (Germany). One expert mentioned that the removal of Article 29(1) might remove a potential driver for the production of guidance which might facilitate a more harmonized approach. Several experts considered that the removal of Article 29(1) would simply favour the status quo, making the future development of laws on value chain governance difficult to predict. It was suggested by some experts that CSDDD cases may end up looking and feeling very much like negligence cases. Others reflected on whether we might eventually see some conceptual “entanglement” of negligence concepts and the ideas in the CSDDD.

Experts differed in their view on whether retaining the requirement to provide full compensation in Article 29(2) disclosed an implied obligation on the Member States to ensure the availability of civil liability. Country experts did not seem overly confident that such an obligation was implied. The lack of clarity in the CSDDD as regards the interconnectivity of the various features relevant to access to remedy (see below), makes the implications of the removal of Article 29(1) even more difficult to define with any confidence.

Country experts gave attention to the implications of the Omnibus I proposal to pare back ‘sustainability due diligence’ obligations under the CSDDD beyond Tier 1, without coming to an overall consensus on these points. Some doubted that this ‘paring back’ would have a significant impact on judicial determinations on what is fair and reasonable (Netherlands), and that judges would likely take account of the practical difficulties of investigating human rights issues beyond Tier 1 (Ireland). One drew attention to the importance of the CSRD in this context, pointing out that the kinds of information companies have access to is driven not only by the CSDDD. Another country expert highlighted similarities between these proposals and current law and practices within their own jurisdiction (Germany). However, others thought that this ‘paring back’ would have real and adverse implications for rightsholders seeking to hold companies responsible for harms occurring beyond ‘Tier 1’ (Portugal), by potentially altering the scope of what would be “actionable” under the CSDDD regime.

4 Supervisory authorities and the substantiated concerns procedure

4.1 How can the substantiated concerns procedure under the CSDDD enhance access to remedy for affected people?

4.1.1 Powers of supervisory authorities

Under the CSDDD, the supervisory authorities designated by EU member states to act as administrative supervisors of the CSDDD and have a range of powers described above at section 2.2. These include investigating instances of non-compliance, requiring companies to provide information, making orders that infringements be ceased or remediation given, adopting interim measures or imposing penalties.

The supervisory authorities designated by Member States to supervise compliance with the CSDDD may exercise their powers either directly or in cooperation with other authorities, or by application to judicial authorities (Article 25(6)).

4.1.2 The "substantiated concerns" procedure

As noted in section 2.2.2 above, the CSDDD envisages that supervisory authorities will offer a route through which people can raise allegations of non-compliance by companies subject to the regime, which may lead to an investigation and some form of enforcement to bring about compliance.

Pursuant to Article 24, substantiated concerns should be directed:

- in the case of a concern about an EU-based company, to the supervisory authority of the Member State in which that company is registered (Article 24(2)); and
- in the case of a concern about a non-EU-based company, to the supervisory authority in which the company has a branch or, in the absence of any branches, to the supervisory authority of the place where the company generates the highest share of its net turnover (Article 24(3)).

Article 26(4) directs EU Member States to ensure that, if a substantiated concern falls under the competence of a different supervisory authority (presumably in a different jurisdiction), the matter is transferred.

Channels for making substantiated concerns are required to be accessible (Article 26(1)). However there is minimal guidance about how the substantiated concerns procedure is intended to work in practice. The CSDDD provisions note the importance of ensuring confidentiality, and also of observing certain aspects of due process, such as dealing with the concern within a reasonable period of time and keeping the person raising the concern (and other interested parties) properly informed about decision-making at various points and about "next steps".[38]

4.1.3 Outcomes of "substantiated concerns" procedures

The potential outcomes are not clearly laid out in the CSDDD and may be a matter for national implementation.

There is a suggestion in Article 25 that substantiated concerns may prompt an investigation into the alleged non-compliance, or some other form of action by the supervisory authority. However, this is not a requirement.

The Directive makes particular mention of compensation, but the wording does not necessarily exclude other kinds of outcomes, should Member States wish to provide for these, such as a negotiated corrective action plan (i.e. between company and supervisor) or mediated settlement (i.e. between the company concerned and those affected).

The Directive confirms that decision-making by supervisory authorities should be reviewable by judicial processes.[39]

4.2 Reflections from panel discussion

Panellists shared reflections on various aspects of administrative supervision. They noted that administrative supervision and enforcement rests on the idea that compliance with law is in the public interest, and that ensuring compliance through enforcement by an authority is a core function of government. One panellist noted that a benefit of administrative sanction was its relatively low barriers to access. While criminal enforcement can be a stronger form of sanction, it has a correspondingly higher threshold. Similarly, civil liability can involve significant costs and other barriers.

- **Core features of a supervisory authority:** Panellists reflected that independence and impartiality are core features of the supervisory authority under the CSDDD. This is directed not only at independence from political interference, but also to protect against corporate capture. Panellists noted that most Member States will not have an existing body with the full range of competencies needed to supervise and enforce the CSDDD. Panellists felt that it was likely that Member States will look to industry for advice and expertise in establishing their supervisory authorities, and it is important in that process to ensure that supervisory authorities are independent from industry it regulates and are informed by a balance of perspectives, including from NGOs and National Human Rights Institutions.
- **Interconnectivity and overlapping processes:** Panellists also reflected on the issue of interconnectivity and overlapping processes[40] between administrative supervision, civil liability and other processes such as National Contact Point (NCP) specific instances processes under the OECD Guidelines on Multinational Enterprises.[41] They noted that there will quite likely be cases where parallel processes have been invoked in relation to the same set of facts, such as supervisory authorities plus voluntary processes like the NCP system. It is important for supervisory authorities to anticipate and address this, for instance in policies on complaints handling, information sharing and enforcement approaches. In doing so, there is often a difficult balance to be struck between maintaining an appropriate separation between the different processes, but also minimising the risk of unhelpful "second-guessing" across the various processes -

e.g. where different mechanisms arrive at different views on established facts. Equally, panellists noted that having alternative mechanisms available could be mutually reinforcing. The potential for a substantiated concern to be referred to a supervisory authority could provide an incentive to actively participate in and reach resolution through a "softer" mediated process, such as that offered by NCPs. There is also potential for exchange between such mechanisms on matters of interpretation. The majority of the 700 cases brought before NCPs to date[42] concern human rights and due diligence, and NCP cases have been at the forefront of elaborating the due diligence expectations under the OECD Guidelines, particularly on emerging issues, such as due diligence in relation to the downstream part of the value chain, and the obligations of the financial sector. Accordingly, there may be learnings which supervisory authorities can look to in order to interpret due diligence obligations, to the extent that the CSDDD aligns with the OECD Guidelines.

- **Approach to supervision and enforcement:** A participant speaking in relation toa Member State regulatory authority, spoke of the need for prioritisation of effort, providing examples of what risk-based approach to regulatory supervision would involve in practice. Language of "appropriate measures" in the CSDDD creates space for companies to come up with their own risk-management proposals, and the participant felt that this should be facilitated by supervisory authorities if at all possible. Resources are also directed in the first instance at the most risky branches. But, at the same time, it is important for supervisory authorities to be able to provide appropriately robust "challenge" to corporate contentions, for example, the regulator has power to go directly to companies and inspect their records or conduct a fuller investigation, as well as sanction non-compliance. However, it is often the case that less confrontational approach in the first instance can be more productive in terms of getting a constructive dialogue started. Accordingly, in the initial phase of supervision a participant indicated that the regulator has tried to apply a cooperative/learning process approach, considering it counterproductive to go in with the strongest tools first. It was indicated that in this initial phase of supervision, the focus of the regulator is on effort, not result, taking a proportionate approach where there are systemic issues that are not so easy to address and recognising that risk management is a continuous process. To support this approach, the regulator has developed a range of guidance, including on the risk-based approach. This guidance and seeks to encourage companies to take a proportionate and pragmatic approach to addressing supply chain risks, rather than blanket their first-tier suppliers with questionnaires. The regulator also has a complaint mechanism channel available through their website. The participant noted that complaints can be raised by a complainant if they are themselves affected, or by those who are not affected, however as noted below, a representative from civil society raised a number of challenges faced by rightsholders accessing this mechanism.
- **Ensuring consistency in approaches to supervision:** Panellists felt that the CSDDD does not answer all questions regulatory bodies may have about administrative supervision and that, even within the EU, there were marked differences from jurisdiction to jurisdiction as to the regulatory approach. This would likely be shaped by existing legal structures and conditions. In some cases, existing structures, traditions and rules on administrative supervision could create some challenges and dilemmas. For instance, one country expert expressed the view that the requirements set out in Article 26 regarding standing and official review of decisions seemed to be a departure from how administrative supervision is generally conducted within the relevant jurisdiction (Germany). The European Network of Supervisory Authorities provides

a forum to discuss and potentially harmonise approaches and to reduce the risks of markedly different findings and approaches between different jurisdictions, which could damage legal certainty and the credibility of the regime.

- **Challenges for rightsholders:** Panellists also articulated the challenges faced by rightsholders in accessing remedy through administrative supervisory processes. A panellist from the CSO community highlighted the difficulties stakeholders can have in practice in raising matters directly with regulators, and the importance of proactive outreach to publicise opportunities for engagement (including through complaints mechanisms) and how these will work. Shortcomings from rightsholder perspective include: lack of accessibility and awareness of what procedures are available, which rights they have and what matters can be referred to a supervisory authority; fear of retaliation and lack of trust; and process challenges. The panellist noted that addressing these concerns would require that public authorities do more to:
  - improve accessibility for rights-holders:
  - improve access to information general, and procedures;
  - be transparent about procedures and outcomes;
  - ensure the active involvement of complainants in the process;
  - ensure that there are effective non-retaliation protections for complainants; and
  - send a signal to rightsholders by actively using the powers of investigation and enforcement available.

5 Privately-operated notifications and complaints procedures

5.1 How can the privately-operated notifications and complaints procedures envisaged in the CSDDD enhance access to remedy for affected people?

5.1.1 What does the CSDDD require?

Provisions relating to privately-operated notifications and complaints procedures are largely to be found in Article 14 of the CSDDD.

The objective of this provision is to ensure that all companies falling within the scope of the EU CSDDD make available **two distinct types of mechanisms** through which people can communicate complaints, concerns or information regarding possible breaches of due diligence obligations under the CSDDD regime.

These two mechanisms are **"complaints procedure"** and a **"notification mechanism".**
It is not clear how these complaints and notification procedures will operate in practice. Article 14 of the CSDDD leaves open many questions of design and administration that will need to be filled by Member States, EU guidance, supervisory authority policies, and by companies themselves.

The both the complaints procedure and the notification mechanism play a role in the identification of adverse impacts, however it is only respect of the complaint mechanism that well founded complaints are taken to be identified and would need to be responded to under the CSDDD regime (i.e. under the "taking action" provisions of Articles 10, 11 and 12). In distinguishing between a 'complaint' and a 'notification', the most important factor appears to be *who* is seeking to raise and issue with the company and on what basis.[43] For a matter to be regarded as a complaint, it needs to be raised by people with a direct and material interest in the matter (by reason of being actually or potentially affected), and/or their 'legitimate representatives', including trade unions. 'Notifications', on the other hand, may be made by anyone.

5.1.2 Key similarities and differences between complaints procedures and notification mechanisms

The key similarities and differences between the complaints procedure and the notification mechanism are summarised in the table below.

As noted in section 2.1.3 above, the main difference between a 'complaint' and a 'notification' is that the former, if deemed to be "well-founded", triggers legal duties under the "taking action" provisions of the CSDDD (Articles 10 and 11), whereas the legal ramifications of a "notification" are not spelled out in the CSDDD.

Issue	Complaints procedure	Notification mechanism
Procedure	Company to devise and implement a suitable procedure both for progressing and rejecting complaints. Procedure needs to provide for • requests for follow up; • meetings between complainants and company's representatives at an "appropriate level"; and • transparency about reasons for decisions.	Company has flexibility to determine suitable procedure. CSDDD states that the companies may give information on decisions taken will be shared with people making notifications, affording the company a discretion.
Relationship to due diligence	Where a complaint is "well founded", the adverse impact in question is deemed to have been "identified", and specific (and presumably legally enforceable) due diligence obligations will flow from this.	Where a complaint is deemed to have been identified, it triggers an obligation on the company to take appropriate measures in accordance with Articles 10-12,
Relationship to remediation	Complainants are entitled to "request" (though are not necessarily entitled to receive) appropriate follow up to complaints, which could conceivably include engagement on the question of remediation (though this is not made explicit), and to meet with the company's representatives to discuss remediation.	Not clear.
Possible outcomes	Action under Articles 10,11 and 12 CSDDD	This could result in remediation being given where a company causes or jointly causes an adverse impact.
Issue	**Complaints procedure**	**Notification mechanism**
Participation in collaborative mechanisms	Companies can fulfil obligations envisaged under Article 14 to "collaborative … [initiatives], including those established jointly by companies, through industry associations, multi-stakeholder initiatives or global framework agreements, provided they meet the requirements laid down in Article 14."	Companies can fulfil obligations envisaged under Article 14 to "collaborative … [initiatives], including those established jointly by companies, through industry associations, multi-stakeholder initiatives or global framework agreements, provided they meet the requirements laid down in Article 14."

Issue	Complaints procedure	Notification mechanism
Standing	Affected and potentially affect-ed people, and their "legitimate representatives", trade unions and other workers' represen-tatives, as well as civil society organisations (environmental impacts only).	Anyone with information or concerns about actual or po-tential impacts.
Safeguarding	Take reasonably available measures to protect against retaliation "by ensuring confi-dentiality" of identity of person or organisation submitting complaint.	Take reasonably available measures to protect against retaliation "by ensuring confi-dentiality" of identity of person providing information or ensure that notifications can be made anonymously.

In distinguishing between a 'complaint' and a 'notification', the most important factor appears to be *who* is seeking to raise and issue with the company and on what basis. For a matter to be regarded as a complaint, it needs to be raised by people with a direct and material interest in the matter (by reason of being actually or potentially affected), and/or their 'legitimate representatives', including trade unions.

'Notifications', on the other hand, may be made by anyone.

5.1.3 Role and outcomes of complaints procedures

The complaints procedure could potentially be a pathway to remedy, and under Article 14 if the complaint is considered well-founded, the company should take appropriate measures, including provide remediation as required by Article 12.

As noted above, CSDDD is not prescriptive as to the remediation processes under Article 12. For complaints procedures, article 14 provisions regarding rights to request follow up and rights to request meetings with company officials might increase the likelihood of some form of specially negotiated remediation being achieved in individual cases, however it remains to be seen how these processes are set up in practice. There are no guarantees in the provisions of Article 14 themselves.

5.2 Reflections from panel discussion

Panellists noted that empirical research into the performance of company-based and Multistakeholder Initiative (MSI) -based complaint or grievance processes raises concerns about their contributions so far to resolving human rights-related issues in value chains and delivering effective remedies. Corporate practice is haphazard and insufficiently developed.[44] It is also largely opaque, with very little peer learning between companies to improve processes. Many company-led mechanisms in use at present appear sub-standard when analysed from a human rights perspective. It should not be assumed that merely having such a mechanism in place is positive in human rights terms. Indeed, certain mechanisms may have a negative impact or set the complainants back in accessing remedy, e.g. by raising unrealistic expectations, or in inappropriate or insensitive engagement with affected people, or consuming time and energy of a complainant without resulting in meaningful outcomes. As one panellist put it, If the CSDDD results in an increase of ineffective mechanisms this could result in rightsholders being sent “down some dark alleys”: for example, unsuccessfully seeking remediation via such a mechanism instead of pursuing civil litigation beyond the statute of limitations period. Other problems uncovered in empirical research include poor outreach and communications about these types of mechanisms, and evidentiary burdens that are overly burdensome and legalistic. Experts stressed the need for national authorities to be well appraised of the human rights dangers of these kinds of mechanisms as well their human rights benefits, in order to regulate these aspects of the CSDDD regime properly.

- **Role of MSIs and collective grievance mechanisms:** A representative from an MSI which operates a grievance mechanism noted that there are a range of advantages to participating in a collective scheme over a company operating its own complaint mechanism. Running grievance mechanisms is resource intensive and complaint processes can be difficult to manage day-to-day. It can be difficult in practice to plan, to ensure that appropriate resourcing and support is in place for when it is needed as complaints tend not to come in at a steady, predictable stream. Instead, it is fairly typical to receive few or no complaints for periods, and then to receive a many of them. These kinds of “bumps” in demand may be easier to absorb in large organisations. Companies have found collaborations useful in practice, for advice and support, but also as a way of pooling resources. This can be more efficient than an individual company having its own information management system and capacitated staff trained in grievance handling. The panellist expressed the view that collective mechanisms can also benefit from the expertise and institutional memory, and a track record of complaints handling derived from iterative improvements over time. Lastly, MSIs have the potential to address grievances in a more impartial way than a company which is tasked with assessing its own practices. However, as the panellist noted, there are also challenges with collective mechanisms. It is important for companies to stay engaged, and not to think that they can “outsource” responsibilities to MSI-led processes, not least because learnings from complaints mechanisms need to be fed back into human rights due diligence. MSI-led mechanisms can also struggle to provide remediation in many cases. Accordingly, a company participating in a collective mechanism must still consider whether that is sufficient to constitute compliance with its obligations to provide remediation under Article 12 of the CSDDD.
- **Need for fitness criteria:** Panellists noted that there is a need to ensure that the fitness criteria that the European Commission is required to develop for MSIs and industry initiatives also includes criteria on complaint mechanisms.
- **Challenges faced by rightsholders:** Panellists noted that rightsholders often experienced challenges accessing private complaint mechanisms similar to those noted above in relation to raising complaints with supervisory authorities. Challenges in terms of access, awareness of rights, rightsholder participation and adequacy of non-retaliation protections were raised, as were a range of other evidentiary and process concerns. The challenges for rightsholders in achieving effective remedy through such mechanisms were considered significant, but features of the CSDDD, such as the overarching obligation on companies to provide remediation in Article 12, and obligations to monitor as a means of disincentivising repeat offences, were considered helpful to drive better practices.

Ultimately, panellists agreed that in order for the CSDDD to have a positive effect it must meaningfully contribute to a tangible and observable reduction in barriers to remedies, as opposed to a proliferation of ineffective grievance mechanisms. Panellists also considered that the CSDDD could potentially have a positive effect in promoting greater transparency of company led grievance mechanisms, which remain largely opaque processes with little information disclosed on what outcomes have been reached for rightsholders and whether remedies have been provided. One panellist considered that Article 14 opens up the possibility for a supervisory authority to request this kind of information from companies to supplement what is currently available in sustainability reporting. Lastly, panellists were of the view that the "fitness criteria" for MSIs supporting company due diligence which European Commission is required to develop, must be designed in a way which translates into good practice, which includes consideration of how MSIs support collaborative complaint mechanisms.

6 Interconnectivity and interaction between mechanisms

Each of the different mechanisms discussed in this report can be viewed as part of a broader package of measures that can potentially, with careful design and thoughtful implementation, amount to more than the sum of their parts. There is little detail in the CSDDD itself regarding the different ways these different mechanisms can complement and support each other.

However, this lack of detail may allow greater space for innovation. This section is an exploration of the kinds of links that should not be overlooked as EU member states consider how to translate the CSDDD requirements into impactful and effective national regimes.

6.1 Interconnectivity between Supervisory Authorities and courts

Important questions arise concerning the relationship between the work of supervisory authorities designated under the CSDDD and the role of courts under Article 29.

Article 25(9), concerning the powers of Supervisory Authorities, states that decisions of such authorities regarding a company's compliance shall be without prejudice to a company's civil liability under Article 29. However, notably this leaves a number of questions open with regard to *relevance* of supervisory authority decision-making to *determinations* of civil liability.

For instance, to what extent must a court have regard to dealings between a defendant company and the competent supervisory authority as regards matters material to the case? If a supervisory authority has declared that certain actions by certain companies constitute compliance with certain provisions, must a court defer to this? Or can it make its own determinations on the question of compliance?

If a supervisory authority has agreed to allow a company an extended period of time to take corrective action (e.g. in recognition of challenges posed by some unexpected event), must this be taken into account by a court in deciding whether or not a company was in compliance with its obligations under Article 10 or 11?

The lack of attention given in the provisions of the CSDDD to the interface between (a) the work of supervisory authorities and (b) the role of the courts under the Article 29 regime gives rise to risks of incoherence and inconsistency. This could be the case, for instance, in the event that a court were to decline to recognise (or be legally barred from giving effect to) a concession made by a supervisory authority as part of ongoing engagement with a company on compliance issues.

Moreover, the flexibility afforded to companies in Articles 10 and 11 of the CSDDD (which rely on the concept of "appropriate measures") provide space for significant disagreement *between supervisory authorities*, and *between supervisory authorities* and courts as to whether a corporate strategy is "compliant" with the CSDDD or not.

6.2 Interconnectivity between privately operated complaint mechanisms and other forms of regulation and enforcement

Importantly, Article 14(7) provides that 'complaints' and 'notifications' are not to be pre-conditions for accessing other forms of enforcement, such as a substantiated concern procedure with a supervisory authority (see Part 4 above), or a civil lawsuit (see Part 3 above).

In legislating to compel direct remediation by companies in cases "where a company has caused or jointly caused an actual adverse impact" (see Article 12, reproduced in Annex D for ease of reference), the CSDDD provisions potentially open the door for supervisory authorities to intervene directly in cases where companies have not been sufficiently proactive in pursuing effective remedies, as a matter of straightforward legal compliance, without the need for a prior determination by a court of legal liability.

It is possible to envisage a situation in which a refusal by a company to progress a complaints procedure might lead to a referral to the relevant supervisory authority in the form of a 'substantiated concerns procedure', alleging a breach by the company of its obligations under the transposed provisions of Articles 12 and 14.

At the same time, or perhaps in the alternative, those affected might also contemplate a civil liability action, in which the matters raised in a complaint or notification are used as evidence for what a company *ought* to have been aware of as part of a broader case that the company's legal obligations under the CSDDD had not been observed.

More generally, it is possible that the data collected through notification and complaint mechanisms could be useful to help target the actions and budgets of supervisory authorities towards areas and business activities that carry the greatest risks of human rights harms to people.

From the perspectives of regulatory effectiveness and agility, and to provide rights-holders with the tools and flexibility they need, it is important that synergies between different enforcement options are recognised and taken into account as part of the transposition process.

6.3 Overlapping or "parallel" proceedings

Different views between or among groups of affected people about the best way to remedy a situation may also give rise to "parallel" or "overlapping" proceedings in relation to the same set of facts, or a similar or related set of issues.

Some complaints or notifications procedures may anticipate these types of scenarios and, for efficiency, provide for "consolidation" of complaints (or "concerns" in the case of the notification mechanism).

For companies who have outsourced these procedures or mechanisms to collaborative initiatives, operated by MSIs or industry associations or pursuant to a global framework agreement, it may be convenient, for instance where complaints against a number of different companies concern the same farm or factory, to amalgamate those complaints and concerns, and to deal with them as a group. While this can be expedient, it is important that these kinds of "consolidation" arrangements are not foisted on complainants and other kinds of mechanism users. A rights-respecting process for consolidation or amalgamation of complaints will always be developed in close consultation with existing or prospective users, who should never be "locked in" to procedures that they do not feel are working for them.

6.4 Reflections from the Vienna Symposium

Country experts discussed the possibility that overlapping or "parallel" processes could yield different, and possibly opposing, results. This could come about, for instance, if courts and supervisory authorities adopted differing interpretations of key terms and requirements. One country expert highlighted the possibility that some action (or non-action) of a supervisory authority might be challenged in an administrative court (i.e. of the same jurisdiction), creating yet further potential for judicial "second-guessing" of regulatory decision-making. The possibility that the relevant supervisory authority (or authorities) may be from a state (or states) other than the "forum state" of the civil liability proceedings is an added potential source of complication. The role of the supervisory authorities in civil enforcement cases – for instance, whether they could or should be called as expert witnesses in judicial processes, and the extent to which courts could or should reopen issues of fact that had been determined at regulatory level – would need careful consideration during transposition and implementation in coordination with the European Commission.

7 Implications for non-EU parties in cross border cases

In this Part 7, the use of the term “cross-border case” refers to “a situation of alleged business-related human rights harm where the relevant facts, actors or evidence needed to prove a case are located in more than one State”.[45] A common scenario would be where people affected by human rights abuses in Country X (a non-EU State) wish to make allegations against, and seek remedies from, a company based in Country Y (an EU State).

7.1 Applicable law in civil cases under the arrangements set out in Article 29

7.1.1 Background and brief explanation

The body of law known as “private international law” or “conflicts of law” governs key aspects of the conduct of cross-border cases, including the crucial issue of what domestic law should be used to determine the issues at stake. In the EU, the relevant piece of legislation is the Rome II Regulation ((EC) No. 864/2007).

“Overriding mandatory application”

The CSDDD contains a provision requiring EU Member States to ensure that the provisions of national law transposing the civil liability regime are of “overriding mandatory application” in cases where the law applicable to such claims is not the national law of a Member State (Article 29(7)).

This could occur in circumstances where litigation in the EU concerns harms which occur in a third country. If applicable private international law rules determine that the law applicable to the dispute is the law of that third country which does not have an equivalent liability regime, the civil liability regime set out in the CSDDD will nonetheless be available to a claimant if the transposition laws are of “mandatory overriding application”. The recitals of the CSDDD clarify that “Member States should also ensure that the requirements in respect of which natural or legal persons can bring the claim, the statute of limitations and the disclosure of evidence are of overriding mandatory application” (Recital 90).

Applicable law under the Rome II Regulation

Ordinarily, the Rome II Regulation (EC 864/2007) will be applicable in conflict of laws issues concerning non-contractual obligations to ascertain the applicable law in cases of intra-EU disputes.

Article 4(1) of Rome II lays down a general rule that “the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs.” This applies as a default rule if the cause of action is not otherwise covered by a specific rule in the Regulation.[46]

Article 2 of Rome II states that the Regulation is of “universal application” meaning that any law which is specified by the Regulation shall be applied whether or not it is the law of a Member State. Accordingly, courts will apply Rome II to determine the applicable law. Where the law is determined to be that of a third country which is not an EU Member State, Article 29(7) will apply.

Article 16 of Rome II also provides that "nothing in this Regulation shall restrict the application of provisions of the law of the Forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation". Pursuant to CSDDD Article 29(7), this would include all provisions of Article 29.

The effect of this provision in cases concerning harm sustained outside the EU would generally be that for all matters covered by Article 29 the applicable law would be the law of the forum state. For matters not covered by Article 29, a court may need to apply the law of the third country applicable to the dispute.

However, this creates a degree of complication in cross-border cases, as the provisions in Article 29 do not provide a complete set of rules for civil liability. Member States' own conflict of laws rules might take differing views of which aspects of a claim are procedural or substantive, and consequently whether it will be the law of the forum which applies to a particular aspect (such as admissibility of evidence, or quantum of damages, for example), or the law of a third country. Given that this would complicate matters significantly, it is possible that a court may elect to apply the law of the forum.[47]

7.1.2 Reflections from the Vienna Symposium

There seemed to be consensus between country experts that, as a result of Article 29(7) of the CSDDD, the "applicable law" in CSDDD cases would be the law of the EU member state in which the case was brought (as opposed to the law of the state where the harm occurred in the case of a civil claim based on tort law, or its substantive equivalent).

Determinations of which is the applicable law to different elements of a case can hinge on whether an issue is categorised as "procedural" or "substantive", but exchanges between country experts confirmed that these questions are not always clear cut, and indeed may have different answers depending on which applicable law is determining the question (Germany).

Survey responses disclosed that there are a number of issues across jurisdictions concerning both applicable law and matters of jurisdiction which have the potential to significantly complicate civil claims under the CSDDD regime. Respondents from a range of jurisdictions referred to the unpredictability of how judicial discretion as regards jurisdictional and choice of law matters might be exercised, at the same time noting a general tendency (in many jurisdictions) to defer to other forums and systems of law in cross-border cases as far as is possible within the parameters of prevailing law. However, some respondents seemed to take the view that the fact that the CSDDD was aimed at helping to prevent and remediate business-related human rights abuses *outside* the EU (as well as within it) could potentially make the choice of law position clearer (at least as far as CSDDD-based cases are concerned), with judges more likely to retain jurisdiction and apply forum state law in "CSDDD cases" (or at least to a fuller extent) in order to give proper effect to transposing legislation.

Country experts then turned their attention to the effect of the proposed removal of Article 29(7) (in the Omnibus I proposal). Several country experts took the view that this could lead to the law of the forum being displaced in favour of foreign law in some cases, and there were doubts expressed (and also some hopes) about the extent to which public policy exceptions allowing for the court to apply the law of the forum could assist to ensure that the CSDDD regime would still be relevant in cross-border cases involving harm occurring outside the forum state. As noted in the discussions, this is an issue where judges might have considerable discretion. Several country experts considered that having to plead a public policy exception in order to be able to rely on causes of action based on the CSDDD would be an undesirable state of affairs, compounding the uncertainties surrounding CSDDD-based civil liability yet further.

Experts also noted that the removal of Article 29(7) would have consequences not only in relation to determination of the law applicable to the substantive cause of action, but also in relation to a number of access to justice elements elaborated in Article 29 which are considered substantive rather than procedural. This includes, for example, limitation periods. The Rome II Regulation is clear that the law applicable to the substantive cause of action will also supply the law on limitation, rather than the law of the forum. This means that the removal of Article 29(7) could result in foreign law supplying the limitation rule, rather than the law of the EU Member State in which the claim is litigated.

7.2 Jurisdiction

7.2.1 Background and brief explanation

The CSDDD contains no provision specifying which court has jurisdiction for the purposes of the civil liability claims envisaged under Article 29. The jurisdiction of courts is governed by general rules on the exercise of civil jurisdiction within the EU under the 'recast' Brussels Regulation ((EU) No. 1215/2012).

Under the 'recast' Brussels Regulation, the courts that would potentially have jurisdiction over civil liability claims filed under the arrangements contemplated in Article 29 of the CSDDD would be as follows:

- the courts of the place of domicile of the company concerned (Article 4(1));
- the courts of the place where the harmful event occurred (assuming the claim(s) could be categorised as a "tort, delict or quasi-delict") (Article 7(2));
- the courts 'seized' of any criminal proceedings concerning the same acts or omissions (and provided those courts can entertain civil claims as well as criminal ones) (Article 7(3)); and
- in cases where there are multiple defendants, and where claims are closely connected (e.g. possible "joint causation"), the courts of the place where any one of them is domiciled (Article 8(1)).

Claimants are able to seek to establish jurisdiction either under the general jurisdiction rule in Article 4(1) or under one of the grounds of special jurisdiction set out in Article 7.
It is possible that the courts of more than one EU Member State may potentially have jurisdiction over a civil liability claim made under the arrangements envisaged in Article 29 of the CSDDD where the place of domicile[48] and the place of the harm[49] are different.

Under Article 6 of the ‘recast’ Brussels Regulation, the jurisdiction of the courts of each EU Member State over companies *not* domiciled within the EU *is a matter for that state’s own domestic law.*

7.2.2 Reflections from the Vienna Symposium

Despite the likelihood that jurisdiction would *prima facie* exist over a locally domiciled parent company, not all of the country experts were confident that the courts of their “home” jurisdiction would retain jurisdiction in cases involving allegations of human rights harms taking place in other jurisdictions. Some felt there would be a good chance of the case being dismissed under domestic conflicts of laws rules (for want of sufficient “connecting factors”), some were reasonably confident that jurisdiction of the “forum court” would be retained, and some considered the issue to be finely balanced. The exchanges between country experts seemed to support the overarching observation arising from the survey responses that the jurisdictional picture is a complex one, and judicial decision-making on this question highly fact and context dependent. At least one country expert took the position that the CSDDD did not take sufficient account of the implications of the recast Brussels Regulation on this point.

Country experts also took time to discuss and compare the conditions that would need to be satisfied in their respective jurisdictions for a court to permit the joinder of a foreign company (e.g. a subsidiary or supply chain actor) as a co-defendant. This was described by most country experts as a matter for judicial discretion. While the exercise of such discretion takes place within the framework of the recast Brussels Regulation rules, there is still space for subjectivity in judicial decision-making (and hence variation from jurisdiction to jurisdiction), based on domestic traditions, policy priorities and precedent. The lack of jurisdictional rule in the CSDDD was identified by some experts as a potential gap in facilitating access to justice in cross-border cases. Some experts were of the view that reforms to jurisdictional rules in the Brussels Recast Regulation would be needed to fully address access to justice issues.

7.3 Fact-finding and other challenges in cross-border cases

7.3.1 General

A number of practical challenges arise in cross-border cases involving non-EU rightsholders simply by virtue of the fact that the state which takes responsibility for enforcement of the CSDDD regime (whether through the supervisory authority route, or as the “forum state” for civil liability proceedings) will not have jurisdiction over people or places in the jurisdictions where harms are alleged to have arisen. This means that the enforcing state will rely on the cooperation of authorities in the state where the harms have occurred to be able to investigate factual allegations (e.g. as to causation, or joint causation), and to verify matters that may be relevant to the whether or not a case can proceed, such as the standing of the claimants. The required cooperation can be facilitated in a variety of ways, most usually through mutual legal assistance arrangements, or perhaps through cross-border liaison or information-exchange arrangements between regulators.

Several survey respondents (Spain, Ireland) highlighted the practical difficulties involved in gathering information from other countries (and accessing the expertise needed to interpret it), even if the formal arrangements for legal cooperation are there. While there are examples of cross border cooperation, several respondents expressed scepticism at the prospects of forum state law enforcement or investigators putting significant resources into investigating cases of harm in countries outside the EU (especially in the absence of a request from the other State). This was a recurring observation of respondents in their comments about the possible role of criminal (and quasi-criminal or "administrative") law.

7.3.2 Standing, verification and follow-up in cross-border cases: a comparison of CSDDD access to remedy mechanisms

Standing requirements under each of the main "access to remedy" mechanisms, as well as the follow-up work needed in response to the raising of allegations and concerns, give rise to some practical and procedural issues in cross-border cases, as summarised in the table below. It may not be necessary for courts and supervisory authorities to proactively verify all of the issues mentioned above (see right hand column) in all cases.

It may be sufficient to rely, for instance, on some form of legal declaration or affidavit, with penalties (e.g. for contempt of court) if a person's claims to be an authorised representative turn out to be false, or where an authorised representative is found to be acting outside the scope of its authorisation (its "terms of reference").
However, in cases where verification *is* necessary (e.g. if questions are raised about the authority of a representative) the assistance of agencies actors outside the EU will likely be needed, for instance to clarify facts relevant to a person or entity's interests and standing, or to provide a legal opinion (i.e. to the extent that non-EU law governs any material issues).

This kind of cross-border cooperation could be facilitated and enhanced in a range of ways, such as

- and for courts and supervisory authorities: formalised arrangements for liaison and information exchange with judicial and regulatory counterparts in relevant non-EU states;
- for companies: identifying and forging good relationships with appropriately qualified local partners.

In many contexts, modern communication technologies are making it much easier to establish and maintain good lines of communication in cross-border cases than would previously have been the case, and are providing a greater range of options for engagement.

However, lack of smartphone access, network unreliability and non-availability, and the risk of surveillance of people seeking to access these mechanisms mean that these types of solutions need to be implemented with care, and in a way that does not exclude people with low literacy or poor internet access, for example.

Type of mechanism	Who has standing? (i.e. who is allowed to access the mechanism?)	Potential challenges in cross-border cases
Civil liability court proceedings (as per the arrangements set out in Article 29).	Any natural or legal person (i.e. alleging they have been harmed) per Articles 29(1) and (2).	Verifying the claims of third parties to have been authorised by "alleged injured parties" to act on their behalf.
	Trade unions, non-governmental organisations authorised to act on behalf of the "alleged injured party" PROVIDED THAT the relevant trade union or non-governmental organisation "complies with the requirements laid down in national law" per Article 29(3)(d). *NB, the Omnibus I Proposal would remove the requirement on Member States to provide for this possibility.*	Verifying the compliance (or otherwise) of trade unions and NGOs with national law. [Note that it is not made clear in Article 29(3)(d) which "national law" this refers to, e.g. whether it is the national law of the forum state, or that of some other interested state]. Verifying the legal capacity of an NHRI to act "in accordance with national law".
	NHRIs based in a Member State, "in accordance with national law". *NB, the Omnibus I Proposal would remove the requirement on Member States to provide for this possibility.*	Accessing the information needed to verify representatives' terms of reference (i.e. scope of authorisation).
Substantiated concerns procedure – initial contact (as per the arrangements set out in Article 26).	Any natural or legal person per Article 26(1).	Access to information needed to verify the identity of a person raising a concern, and any safeguarding issues that may arise. Establishing and maintaining good lines of communication.
Substantiated concerns procedure – judicial review (as per the arrangements set out in Article 26(4)).	Persons who have submitted a substantiated concern (see above) and "having, in accordance with national law, a legitimate interest in the matter" per Article 26(4).	Verifying a person's "legitimate interest" in a matter. [Note wording that suggests that whether or not someone has a legitimate interest in a matter is to be determined in accordance with "national law" – but it is not clear whether the national law that should be applied is that of the *forum state* or the law of the *state where a person is located* or the law of *the state where the harm occurred*.]

Type of mechanism	Who has standing? (i.e. who is allowed to access the mechanism?)	Potential challenges in cross-border cases
Complaints procedure (i.e. direct to company or process made available by company) (as per the arrangements set out in Article 14).	Natural or legal persons "who have been affected or have reasonable grounds to believe that they might be affected" by a company's non-compliance per Article 14(2). Legitimate representatives of the above, trade unions, civil society organisations that are "active and experienced" (in cases of environmental impacts).	Verifying claims by complainants to be the "legitimate representatives" of others. [Note that the criteria for assessing "legitimacy", and the applicable law from which such criteria would be taken, are not spelled out in Article 14.]. Access to information needed to assess risks of retaliation and appropriate safeguards. Establishing and maintaining good lines of communication.
Notification mechanism (i.e. direct to company or process made available by company) (as per the arrangements set out in Article 14).	Any "persons or entities" who have information or concerns regarding adverse impacts covered by the Directive per Article 14(5).	Access to information needed to assess risks of retaliation and appropriate safeguards. Establishing and maintaining good lines of communication (e.g. for purposes of follow-up).

7.3.3 Reflections from Vienna Symposium

The access to remedy challenges faced by rightsholders outside the EU were raised repeatedly by country experts and other participants over the course of the two days of discussion. Some country experts described the difficulties in making sure that people outside the EU were aware of their rights, and how they could be enforced through the CSDDD regime. It was noted that accessing the assistance needed to investigate allegations, and to collate and present evidence was expensive, and that the risks of retaliation – against rightsholders, family members and associates, human rights defenders and their representatives – is considerable. Relevant to note in this context is the lack of legally recognised union rights and freedoms in many of the non-EU states where supplier factories and farms to EU companies are based. In practice, EU-based regulators tend to focus their fact-finding on the companies over which they have jurisdiction on the basis of domicile (rather than seeking to launch investigations into factual allegations touching on other countries. This would make them better placed to investigate allegations as to whether due diligence had been done correctly, than allegations of causation leading to actual harm in other countries. One country expert talked of the value of "information repositories" and questionnaires, to enhance understanding of human rights risks in third countries. Cross-border investigations could be a practical possibility, with sound planning, proper resourcing and appropriate expertise.

8 Concluding observations

The expert discussion at the Vienna Symposium and the preparatory work that fed those discussions elaborated a range of issues of practical significance which should be considered in order for the CSDDD to play a meaningful role in addressing access to remedy challenges.

The overarching obligation on companies set out in Article 12 to provide remediation where they cause or jointly cause an adverse impact, and exercise leverage where impacts are caused by business partners informs the three prospective access to justice mechanisms in the instrument: civil liability in Article 29, the substantiated concerns mechanism operated by supervisory authorities in Articles 24-28 and the company complaint and notification mechanisms in Article 14.

With respect to civil liability, experts noted that tort law, laws of 'wrongs' (and substantive equivalents) provide the domestic level causes of action likely to be of most relevance to situations where human rights harms have been caused by non-compliance with human rights due diligence requirements. Experts considered that the expression of harms in human rights terms was an important new development, which could help to address some gaps in the way the law of "torts" or "wrongs" has developed, and potentially foster more consistency in legal approaches within the EU.

It was noted that the effect of Article 29 will depend greatly on the particularities of the legal regime in each Member State. It will also depend on the level of maturity of the jurisdiction with respect to litigating claims of the kind likely to fall within scope of the CSDDD liability regime. Jurisdictions with an established body of jurisprudence were less likely to see significant effects than those with a more restrictive approach to, for example, parent company or supplier liability. Indeed, experts were of the view that Article 29 was more likely to make a contribution in relation to clarifying the basis for claims attaching liability to a parent company for acts of a subsidiary, or attaching liability in relation to supply chain impacts.

However, it was noted that in any case, liability would never be unlimited as all jurisdictions recognise some form of "guardrail", whether framed as reasonableness, proximity, remoteness or other limitation. As Article 29 does not itself address limitations on liability of this kind, the operation of such guardrails will be left to the rules of the particular member state.

Country experts and other expert participants saw value in Article 29 clarifying the scope and nature of the standard to which companies can be held to account in order to create a common approach to liability across the member states and greater legal certainty for claimants and defendants.

While there were a range of features in the CSDDD which could improve access to remedy for rightsholders litigating claims, there are a number of issues which are not addressed in the instrument which should be considered for further reform. Those include both substantive elements of the cause of action, such as rules on causation, but also certain access to justice elements. Although the CSDDD contains some provisions that may help, over time, to ameliorate the practical and procedural barriers faced by would-be civil claimants, many serious barriers remain. Experts noted differences from jurisdiction to jurisdiction in terms of the nature, extent and effectiveness of measures aimed at reducing barriers to remedy, including financial assistance, extended limitations periods, measures to reduce court costs, and to enhance access to information and legal support. While the CSDDD does contain measures to address these challenges, how the various jurisdictions transpose and implement the requirements in Article 29 will be informed by these existing features of the Member State's legal environment. This will have a bearing on the extent to which people can access civil liability mechanisms in practice.

In addition, while the access to justice elements of Article 29 contain laudable goals, such as requirements to ensure that costs are not prohibitive, the lack of specificity around how this should be achieved creates risk of divergence among Member States practical implementation challenges. Participants noted the need for the CSDDD to be implemented in a way which concretely benefits rightsholders.

With respect to issues arising in cross-border cases, there seemed to be consensus between country experts that, as a result of Article 29(7) of the CSDDD, the "applicable law" in CSDDD cases would be the law of the EU member state in which the case was brought. If Article 29(7) is removed, as is proposed in the Omnibus I proposal, several country experts took the view that this could lead to local law being displaced in favour of foreign law. Although the possibility of recourse to a public policy exception were raised, doubts were expressed about the extent to which this could assist to ensure that the CSDDD regime would still be relevant in cross-border cases involving harm occurring outside the forum state. Experts also noted that the removal of Article 29(7) would have consequences not only in relation to determination of the law applicable to the substantive cause of action, but also in relation to a number of access to justice elements, elaborated in Article 29, which are considered substantive rather than procedural, including limitation periods. Other conflict of laws matters, such as rules on jurisdiction, are not addressed in the CSDDD and may require further reforms.

Despite its shortcomings, Article 29 was described more broadly as a paradigm shift for corporate accountability which, together with the other avenues for remedy foreseen by the CSDDD, should facilitate access to justice in cases of corporate human rights abuses.

With respect to administrative supervision, experts noted that there was a need for Member States to have the requirements of independence and impartiality of supervisory authorities at the top of mind when designating the authority and building its capacities. As required by the CSDDD, care should be taken to ensure that the authority is free both from political interference but also corporate capture. It is important in that process to ensure that supervisory authorities are independent from industry it regulates and are informed by a balance of perspectives, including from NGOs and National Human Rights Institutions. Experts noted that existing regulators take a pragmatic and proportionate approach to supervision, and that there was a need to ensure a consistent approach to supervision across the European Union by making use of the European network of supervisory authorities. Further, experts noted that the substantiated concerns process envisaged by the CSDDD will interact with existing mechanisms, such as those of NCPs. It is important for supervisory authorities to anticipate and address this, for instance in policies on complaints handling, information sharing and enforcement approaches, but also to recognise opportunities for such mechanisms to be mutually reinforcing and a source of learning.

With respect to company complaint mechanisms, in order for the CSDDD to have a positive effect experts expressed the view that it must meaningfully contribute to the improvement of access to remedies, rather than lead to a proliferation of ineffective grievance mechanisms. Experts also considered that the CSDDD could potentially have a positive effect in promoting greater transparency of company led grievance mechanisms, which remain largely opaque at the present time. While experts expressed the view that there are benefits to participating in a collaborative redress regime, such as those offered by MSIs, it is important for companies to stay engaged, and not to think that they can “outsource” responsibilities to MSI-led processes. There is a need to ensure that the fitness criteria that the European Commission is required to develop for MSIs and industry initiatives also includes criteria on complaint mechanisms and that these criteria translate into good practices.

The CSDDD gives very little consideration to how the different prospective access to justice mechanisms within the instrument may overlap and inter-relate. Country experts discussed the possibility that overlapping processes could yield different, and possibly opposing, results. However, the CSDDD does not provide solutions as to what should be done in such cases. These are issues that would need to be resolved at national level.

In the case of each of the potential access to remedy mechanisms in the CSDDD, experts highlighted challenges for rightsholders in terms of access, awareness of rights, rightsholder participation and adequacy of non-retaliation protections, as well as a range of other evidentiary and process concerns. Further reforms to address these challenges will be necessary in order to support the CSDDD mechanisms to be capable of providing effective remedy.

Annexes

Annex A: Program

Time	Session	Speakers
DAY 1		
9:00-9:15	Arrival	
9:15-9:30	Welcome and introduction	Opening remarks from the organizers: • Gabrielle Holly, Danish Institute for Human Rights (DIHR) • Dr Franziska Oehm, German Institute for Human Rights (GIHR) • Anais Schill, Commission nationale consultative des droits de l'homme (CNCDH) • Siobhan McInerney Lankford, European Union Agency for Fundamental Rights (FRA)
9:30-9:40	The CSDDD, remedy and the Omnibus	Heidi Hautala, Adviser on sustainability and corporate accountability, former Vice President of the European Parliament
9:40-10:00	Remediation keynote • What does remediation mean under international law and what do the UNGPs expect? • How is remediation required under the CSDDD and how do the mechanisms in the CSDDD it contribute to the remedy ecosystem?	Mauricio Lazala, Chief, Business and Human Rights Section, United Nations Office of the Hugh Commissioner for Human Rights
10:00-10:20	Break	

Time	Session	Speakers
10:20-1:30 11.50-12.00: break	Facilitated expert discussion: Civil liability: Substantive cause of action • How does Article 29 of the CSDDD fill gaps in existing causes of action? • What challenges arise from the Omnibus amendments? • What level of fragmentation exists across jurisdictions? • What challenges remain/ future reforms are needed?	Discussion among country expert participants Facilitator: Gabrielle Holly, DIHR
1:30-2:30	Lunch	
2:30-5:00 4:00-4:10: break	Facilitated expert discussion: Civil liability: procedural issues and access to justice • How does Article 29 of the CSDDD address barriers to access to justice? • What challenges arise from the Omnibus amendments? • What challenges remain or what other procedural reforms are needed?	Discussion among country expert participants Facilitator: Patrycia Pogodzinska, FRA
5:10-5:30	Close of day	Closing remarks from the organizers
6:30	Dinner	
DAY 2		
9:00-9:15	Arrival	
9:15-9:30	Welcome and introduction	Welcome from organizers
9:30-11:00	Panel discussion: Role of Supervisory Authorities • Discussion of opportunities for SAs to play a role in relation to remediation • Identify what is necessary to make substantiated concerns mechanism effective • Discuss the role of NCPs in relation to the SA under the CSDDD	• Professor Markus Krajewski, University of Erlangen-Nürnberg • Nicolas Hachez, Head of Access to Remedy, Organisation for Economic Co-operation and Development • Elsa Heiner, Adviser, Bundesamt für Wirtschaft und Ausfuhrkontrolle • Annabell Brüggemann, Senior Legal Adviser, European Center for Constitutional and Human Rights Moderator: Dr Franziska Oehm, GIHR

Time	Session	Speakers
11:00-11:15	Break	
11:15-12:30	Panel discussion: Company complaint mechanisms and the role of MSIs and Industry initiatives What does the CSDDD require? What do we need to enable this mechanism to meaningfully play a role in remedy/accountability?	• Professor James Harrison, University of Warwick • Mark Wielga, Director, Nomogaia • Liselotte Goemans, Grievance Mechanism Coordinator, Fair Wear • Ben Vanpeperstraete, Senior EU Adviser, Anti-Slavery International Moderator: Gabrielle Holly, DIHR
12:30-1:30	Lunch	
1:30-3:00	Panel discussion: Remediation for harms outside the EU – how can the CSDDD benefit non-EU rightsholders and what challenges arise? What opportunities does the CSDDD offer to rightsholders outside EU and what consequences might the Omnibus amendments have? What challenges remain and what further reforms are necessary to facilitate access to justice? What effect might a legally binding instrument on business and human rights have?	• Joseph Byomhangyi, Co-chair, African Coalition for Corporate Responsibility and Project Coordinator Uganda Consortium on Corporate Accountability • Catherine Kessedjian, Professeur émérite, Université Paris-Panthéon-Assas; Arbitre et Médiateur • Channa Samkalden, Partner, Prakken d'Olivera • Dr Virginie Rouas, Policy Officer European Coalition for Corporate Justice Moderator: Anais Schill, CNCDH
3:00-3:15	Break	
3:15-4:00	Conclusion	Key takeaways from the symposium by the organisers
4:00-4:15	Closing remarks	Sirpa Rautio, Director, FRA
4:15-6:00	Drinks	

Annex B: Survey for country experts

The survey was sent to country experts and returned in the weeks prior to the symposium. Survey responses were used to distil key questions/challenges for discussion on Day 1 on the civil liability substantive cause of action and procedural aspects sessions.

Instructions

Please use the following hypothetical case studies to elaborate:

- how civil liability may attach in respect of corporate human rights or environmental abuses in your jurisdiction;
- what procedural or other obstacles may be faced by claimants; and
- how the civil liability mechanism in the CSDDD can help address gaps in existing causes of action and access to justice barriers.

Please also consider any potential private international law issues that may arise in the case study.

Company X is headquartered in your jurisdiction and will ultimately be within scope of the CSDDD.

Case Study 1: Company X has a subsidiary in Zambia that owns an industrial complex. Pollution discovered in a local river system has been traced back to this industrial complex. The polluting emissions from the complex have resulted in environmental damage. Members of a local community which relies on the river system for their supply of water have reported adverse health impacts which they say are occurring a result of the pollution. A preliminary investigation has established that some aspects of day-to -day management and maintenance of the complex had been outsourced to a local contractor, which, in turn relied on their own sub-contractors for specific tasks.

Case Study 2: Company X procures goods from a supplier that operates out of a factory in in Bangladesh. Company X has applied pressure on the supplier to deliver goods according to tight timetables and to supply goods at a low price point. In response to these pressures, the supplier has been making wage cuts to below a living wage, requiring significant overtime and cost cutting on health and safety standards in the factory which has increased the incidence of accidents. Local unions campaigning for fair pay have complained of intimidation and harassment of workers and their representatives seeking to raise the issue of fair pay.

Case Study 3: Company X manufactures face recognition technology. It has equipped its technology with safeguards to prevent certain kinds of uses depending on the risk profile of the purchaser, however these safeguards are well known to be easily bypassed. Company X sells its technology to what has been deemed to be a “high risk” purchaser, who then bypasses the safeguards and uses it to surveil human rights defenders and apply pressure to prevent them from organising and engaging in advocacy.

In respect of each case study, please answer the following questions:

1. Please give a short summary of what causes of action are currently available to claimants in your jurisdiction to sue Company X or any prospective co-defendants in respect of each case Study and what a claimant would need to prove in order to successfully make out a claim, eg:
    a. Tort/wrongs
    b. Criminal law
    c. Environmental law
    d. Constitutional law
    e. Consumer law
    f. etc

    and outline where there are particular gaps in access to remedy in your jurisdiction, for example: challenges in respect of a strict prohibition on piercing the corporate veil; lack of availability of certain causes of action, eg lack of recognition of corporate criminal liability etc.

2. Please give a short summary of what procedural or other barriers to access to justice exist in your jurisdiction, eg_
    a. Costs
    b. Disclosure
    c. Lack of collective redress regime
    d. etc

3. In respect of each case study, how can the statutory liability mechanism under the CSDDD help address:
    a. Gaps in existing causes of action;
    b. Procedural barriers to access to justice?

4. Do you see any challenges arising from the final text of Article 29 of the CSDDD?

Annex C: Relevant provisions of the CSDDD and Omnibus I proposal

Article 2

Scope

1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State and which fulfil one of the following conditions:
   - (a) the company had more than 1,000 employees on average and had a net worldwide turnover of more than EUR 450 000 000 in the last financial year ……
   - (b) the company did not reach the thresholds as referred to in point (a) but is the ultimate parent company of a group that reached those thresholds in the last financial year for which consolidated annual financial statements have been or should have been adopted;
   - (c) the company entered into or is the ultimate parent company of a group that entered into franchising or licensing agreements in the Union in return for royalties with independent third-party companies, where those agreements ensure a common identity, a common business concept and the application of uniform business methods, and where those royalties amounted to more than EUR 22 500 000 in the last financial year for which annual financial statements have been or should have been adopted, and provided that the company had or is the ultimate parent company of a group that had a net worldwide turnover of more than EUR 80 000 000 in the last financial year for which annual financial statements have been or should have been adopted.

2. This Directive shall also apply to companies which are formed in accordance with the legislation of a third country and fulfil one of the following conditions:
   - (a) the company generated a net turnover of more than EUR 450 000 000 in the Union in the financial year preceding the last financial year;
   - (b) the company did not reach the threshold as referred to in point (a) but is the ultimate parent company of a group that on a consolidated basis reached that threshold in the financial year preceding the last financial year;
   - (c) the company entered into or is the ultimate parent company of a group that entered into franchising or licensing agreements in the Union in return for royalties with independent third-party companies, where those agreements ensure a common identity, a common business concept and the application of uniform business methods, and where those royalties amounted to more than EUR 22 500 000 in the Union in the financial year preceding the last financial year; and provided that the company generated, or is the ultimate parent company of a group that generated, a net turnover of more than EUR 80 000 000 in the Union in the financial year preceding the last financial year.

Note: *Parent company is defined in Article 3 ('Definitions') as "a company that controls one or more subsidiaries". "Subsidiary" is also a defined term in the EU CSDDD. The definition relies heavily on cross references to other EU legislation, but the ultimate effect is circular. That is to say, a parent company is one that controls subsidiaries, and subsidiaries are companies that are controlled by other, parent, companies.*

Article 12

Remediation of actual adverse impacts

1. Member States shall ensure that, where a company has caused or jointly caused an actual adverse impact, the company provides remediation.

2. Where the actual adverse impact is caused only by the company's business partner, voluntary remediation may be provided by the company. The company may also use its ability to influence the business partner that is causing the adverse impact to provide remediation.

Note *that "remediation" is defined in Article 3 of the CSDDD as*

"restoration of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would have been in had an actual adverse impact not occurred, in proportion to the company's implication in the adverse impact, including by financial or non-financial compensation provided by the company to a person or persons affected by the actual adverse impact and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures"

Article 14

Notification mechanism and complaints procedure

1. Member States shall ensure that companies enable persons and entities listed in paragraph 2 to submit complaints to them where those persons or entities have legitimate concerns regarding actual or potential adverse impacts with respect to the companies' own operations, the operations of their subsidiaries or the operations of their business partners in the chains of activities of the companies.

2. Member States shall ensure that complaints may be submitted by:
    (a) natural or legal persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact, and the legitimate representatives of such persons on behalf of them, such as civil society organisations and human rights defenders;
    (b) trade unions and other workers' representatives representing natural persons working in the chain of activities concerned; and
    (c) civil society organisations that are active and experienced in related areas where an adverse environmental impact is the subject matter of the complaint.

3. Member States shall ensure that companies establish a fair, publicly available, accessible, predictable and transparent procedure for dealing with the complaints referred to in paragraph 1, including a procedure where a company considers a complaint to be unfounded, and inform the relevant workers representatives

and trade unions of that procedure. Companies shall take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organisation submitting the complaint, in accordance with national law. Where information needs to be shared, it shall be in a manner that does not endanger the complainant's safety, including by not disclosing that complainant's identity.

Member States shall ensure that, where the complaint is well-founded, the adverse impact that is the subject matter of the complaint is deemed to be identified within the meaning of Article 8 and the company shall take appropriate measures in accordance with Articles 10, 11 and 12.

4. Member States shall ensure that complainants are entitled to:
   (a) request appropriate follow-up on the complaint from the company with which they have filed a complaint pursuant to paragraph 1
   (b) meet with the company's representatives at an appropriate level to discuss actual or potential severe adverse impacts that are the subject matter of the complaint, and potential remediation in accordance with Article 12;
   (c) be provided by the company with the reasons a complaint has been considered founded or unfounded and, where considered founded, with information on the steps and actions taken or to be taken.

5. Member States shall ensure that companies establish an accessible mechanism for the submission of notifications by persons and entities where they have information or concerns regarding actual or potential adverse impacts with respect to their own operations, the operations of their subsidiaries and the operations of their business partners in the chains of activities of the companies. The mechanism shall ensure that notifications can be made either anonymously or confidentially in accordance with national law. Companies shall take reasonably available measures to prevent any form of retaliation by ensuring that the identity of persons or entities that submit notifications remains confidential, in accordance with national law. The company may inform persons or entities that submit notifications about steps and actions taken or to be taken, where relevant.

6. Member States shall ensure that companies are allowed to fulfil the obligations laid down in paragraph 1, the first subparagraph of paragraph 3, and paragraph

5. through participation in collaborative complaints procedures and notification mechanisms, including those established jointly by companies, through industry associations, multi-stakeholder initiatives or global framework agreements, provided that such collaborative procedures and mechanisms meet the requirements set out in this Article.

7. The submission of a notification or complaint under this Article shall not be a prerequisite for, or preclude the persons submitting them from, having access to the procedures under Article 26 and 29 or to other, non-judicial, mechanisms.

Article 24

Supervisory Authorities

1. Each Member State shall designate one or more supervisory authorities to supervise compliance with the obligations laid down in the provisions of national law adopted pursuant to Articles 7 to 16 and Article 22.

2. As regards a company referred to in Article 2(1), the competent supervisory authority shall be that of the Member State in which the company has its registered office.

3. As regards a company referred to in Article 2(2), the competent supervisory authority shall be that of the Member State in which the company has a branch. If the company does not have a branch in any Member State, or has branches located in different Member States, the competent supervisory authority shall be the supervisory authority of the Member State in which the company generated most of its net turnover in the Union in the financial year preceding the last financial year before the date indicated in Article 37 or the date on which the company first fulfils the criteria laid down in Article 2(2), whichever comes last.

   A company referred to in Article 2(2) may, on the basis of a change in circumstances leading to it generating most of its turnover in the Union in a different Member State, make a duly reasoned request to change the supervisory authority that is competent to regulate matters covered by this Directive in respect of that company.

4. Where a parent company fulfils the obligations resulting from this Directive on behalf of its subsidiaries in accordance with Article 6, the competent supervisory authority of the parent company shall cooperate with the competent supervisory authority of the subsidiary, which will remain competent to ensure that the subsidiary is subject to the exercise of powers in accordance with Article 25. In this regard, the European Network of Supervisory Authorities set up under Article 28 shall facilitate the necessary cooperation, coordination and provision of mutual assistance in accordance with Article 28.

5. Where a Member State designates more than one supervisory authority, it shall ensure that the respective competences of those supervisory authorities are clearly defined and that they cooperate closely and effectively with each other.

6. Member States may designate the authorities for the supervision of regulated financial undertakings also as supervisory authorities for the purposes of this Directive.

7. By 26 July 2026, Member States shall inform the Commission of the names and contact details of the supervisory authorities designated pursuant to this Article, as well as of their respective competences where there are several designated supervisory authorities. They shall inform the Commission of any changes thereto.

8. The Commission shall make publicly available, including on its website, a list of the supervisory authorities, and, where a Member State has several supervisory authorities, the respective competences of those authorities in relation to this Directive. The Commission shall regularly update the list on the basis of the information received from the Member States.

9. Member States shall guarantee the independence of the supervisory authorities and ensure that they, and all persons working for or who have worked for them, and auditors, experts and any other persons acting on their behalf, exercise their powers impartially, transparently and with due respect for obligations of professional secrecy. In particular, Member States shall ensure that the supervisory authorities are legally and functionally independent, free from external influence, whether direct or indirect, including from the companies falling within the scope of this Directive or other market interests, that their staff and the persons responsible for the management are free from conflicts of interest, subject to confidentiality requirements, and refrain from any action incompatible with their duties.

Article 25

Powers of supervisory authorities

1. Member States shall ensure that the supervisory authorities have adequate powers and resources to carry out the tasks assigned to them under this Directive, including the power to require companies to provide information and carry out investigations related to compliance with the obligations set out in Articles 7 to 16. Member States shall require the supervisory authorities to supervise the adoption and design of the transition plan for climate change mitigation in accordance with the requirements provided for in Article 22(1).

2. A supervisory authority may initiate an investigation on its own initiative or as a result of substantiated concerns communicated to it pursuant to Article 26, where it considers that it has sufficient information indicating a possible breach by a company of the obligations provided for in the provisions of national law adopted pursuant to this Directive.

3. Inspections shall be conducted in compliance with the national law of the Member State in which the inspection is carried out and after prior warning has been given to the company, except where prior warning would hinder the effectiveness of the inspection. Where, as part of its investigation, a supervisory authority wishes to carry out an inspection on the territory of a Member State other than its own, it shall seek assistance from the supervisory authority in that Member State pursuant to Article 28(3).

4. If, as a result of the actions taken pursuant to paragraphs 1 and 2, a supervisory authority identifies a failure to comply with the provisions of national law adopted pursuant to this Directive, it shall grant the company concerned an appropriate period of time to take remedial action, if such action is possible.

Taking remedial action shall not preclude the imposition of penalties or the triggering of civil liability, in accordance with Articles 27 and 29, respectively.

5. When carrying out their tasks, supervisory authorities shall have at least the power to:
   (a) order the company to:
      (i) cease infringements of the provisions of national law adopted pursuant to this Directive by performing an action or ceasing conduct;
      (ii) refrain from any repetition of the relevant conduct; and
      (iii) where appropriate, provide remediation proportionate to the infringement and necessary to bring it to an end;
   (b) impose penalties in accordance with Article 27; and
   (c) adopt interim measures in the event of an imminent risk of severe and irreparable harm.

6. Supervisory authorities shall exercise the powers referred to in this Article in accordance with national law:
   (a) directly;
   (b) in cooperation with other authorities; or
   (c) by application to the competent judicial authorities, which shall ensure that legal remedies are effective and have an equivalent effect to the penalties imposed directly by supervisory authorities.

7. Member States shall ensure that each natural or legal person has the right to an effective judicial remedy against a legally binding decision by a supervisory authority concerning them, in accordance with national law.

8. Member States shall ensure that the supervisory authorities keep records of the investigations referred to in paragraph 1, indicating, in particular, their nature and result, as well as records of any enforcement action taken under paragraph 5.

9. Decisions of supervisory authorities regarding a company's compliance with the provisions of national law adopted pursuant to this Directive shall be without prejudice to the company's civil liability under Article 29.

10. Member States shall ensure that supervisory authorities publish and make accessible online an annual report on their activities under this Directive.

Article 26

Substantiated concerns

1. Member States shall ensure that natural and legal persons are entitled to submit substantiated concerns, through easily accessible channels, to any supervisory authority when they have reasons to believe, on the basis of objective circumstances, that a company is failing to comply with the provisions of national law adopted pursuant to this Directive.

2. Member States shall ensure that, where persons submitting substantiated concerns so request, the supervisory authority takes the necessary measures for the appropriate protection of the identity of that person and their personal information, which, if disclosed, would be harmful to that person.

3. Where a substantiated concern falls under the competence of another supervisory authority, the authority receiving the substantiated concern shall transmit it to that authority.

4. Member States shall ensure that supervisory authorities assess the substantiated concerns in an appropriate period of time and, where appropriate, exercise their powers as referred to in Article 25.
5. The supervisory authority shall, as soon as possible and in accordance with the relevant provisions of national law and in compliance with Union law, inform persons referred to in paragraph 1 of the result of the assessment of their substantiated concerns and shall provide the reasoning for that result. The supervisory authority shall also inform persons submitting such substantiated concerns who have, in accordance with national law, a legitimate interest in the matter, of its decision to accept or refuse any request for action, as well as of a description of the further steps and measures, and practical information on access to administrative and judicial review procedures.

6. Member States shall ensure that persons submitting substantiated concerns in accordance with this Article and having, in accordance with national law, a legitimate interest in the matter, have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.

Article 27

Penalties

1. Member States shall lay down the rules on penalties, including pecuniary penalties, applicable to infringements of the provisions of national law adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2. In deciding whether to impose penalties and, if such penalties are imposed, in determining their nature and appropriate level, due account shall be taken of:
   (a) the nature, gravity and duration of the infringement, and the severity of the impacts resulting from that infringement;
   (b) any investments made and any targeted support provided pursuant to Articles 10 and 11;
   (c) any collaboration with other entities to address the impacts concerned;
   (d) where relevant, the extent to which prioritisation decisions were made in accordance with Article 9;

(e) any relevant previous infringements by the company of the provisions of national law adopted pursuant to this Directive found by a final decision;
(f) the extent to which the company carried out any remedial action with regard to the subject matter concerned;
(g) the financial benefits gained or losses avoided by the company due to the infringement;
(h) any other aggravating or mitigating factors applicable to the circumstances of the case concerned.

3. Member States shall provide for at least the following penalties:
(a) pecuniary penalties;
(b) if a company fails to comply with a decision imposing a pecuniary penalty within the applicable time limit, a public statement indicating the company responsible for the infringement and the nature of the infringement.

4. When pecuniary penalties are imposed, they shall be based on the company's net worldwide turnover. The maximum limit of pecuniary penalties shall be not less than 5 % of the net worldwide turnover of the company in the financial year preceding that of the decision to impose the fine.

Member States shall ensure that, with regard to companies referred to in Article 2(1), point (b), and Article 2(2), point (b), pecuniary penalties are calculated taking into account the consolidated turnover reported by the ultimate parent company.

5. Member States shall ensure that any decision of the supervisory authorities concerning penalties related to the infringements of the provisions of national law adopted pursuant to this Directive is published, remains publicly available for at least five years and is sent to the European Network of Supervisory Authorities set up under Article 28. The published decision shall not contain any personal data within the meaning of Article 4(1) of Regulation (EU) 2016/679.

Article 28

European Network of Supervisory Authorities

1. The Commission shall set up a European Network of Supervisory Authorities, composed of representatives of the supervisory authorities. The European Network of Supervisory Authorities shall facilitate the cooperation of the supervisory authorities and the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, the sharing of information among them.

The Commission may invite Union agencies with relevant expertise in the areas covered by this Directive to join the European Network of Supervisory Authorities.

2. Member States shall cooperate with the European Network of Supervisory Authorities in order to identify the companies within their jurisdiction, in particular by providing all necessary information in order to assess whether a third-country company fulfils the criteria laid down in Article 2. The Commission shall set up a secured system for the exchange of information regarding the net turnover generated in the Union by a company referred to in Article 2(2) that does not have a branch in any Member State or has branches located in different Member States, through which Member States shall regularly communicate information they have regarding the net turnover generated by such companies. The Commission shall analyse that information within a reasonable period of time and notify the Member State where the company generated most of its net turnover in the Union in the financial year preceding the last financial year, that the company is a company referred to in Article 2(2) and the supervisory authority of the Member State is competent in accordance with Article 24(3).

3. Supervisory authorities shall provide each other with relevant information and mutual assistance in carrying out their duties and shall put in place measures for effective cooperation with each other. Mutual assistance shall include collaboration with a view to exercising the powers referred to in Article 25, including in relation to inspections and information requests.

4. Supervisory authorities shall take all appropriate steps needed to reply to a request for assistance by another supervisory authority without undue delay and no later than 1 month after receiving the request. Where necessary due to the circumstances of the case, the period may be extended by a maximum of two months based on a proper justification. Such steps may include, in particular, the transmission of relevant information on the conduct of an investigation.

5. Requests for assistance shall contain all the necessary information, including the purpose of and reasons for the request. Supervisory authorities shall only use the information received through a request for assistance for the purpose for which it was requested.

6. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress regarding the measures to be taken in order to respond to the request for assistance.

7. Supervisory authorities shall not charge each other fees for actions and measures taken pursuant to a request for assistance.

However, supervisory authorities may agree on rules to indemnify each other for specific expenditure arising from the provision of assistance in exceptional cases.

8. The supervisory authority that is competent pursuant to Article 24(3) shall inform the European Network of Supervisory Authorities of that fact and of any request to change the competent supervisory authority.
9. When doubts exist as to the attribution of competence, the information on which that attribution is based will be shared with the European Network of Supervisory Authorities, which may coordinate efforts to find a solution.

10. The European Network of Supervisory Authorities shall publish:
   (a) the decisions of the supervisory authorities containing penalties, as referred to in Article 27(5); and
   (b) an indicative list of third-country companies subject to this Directive.

Article 28

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1. The Commission shall set up a European Network of Supervisory Authorities, composed of representatives of the supervisory authorities. The European Network of Supervisory Authorities shall facilitate the cooperation of the supervisory authorities and the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, the sharing of information among them.

   The Commission may invite Union agencies with relevant expertise in the areas covered by this Directive to join the European Network of Supervisory Authorities.

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3. Supervisory authorities shall provide each other with relevant information and mutual assistance in carrying out their duties and shall put in place measures for effective cooperation with each other. Mutual assistance shall include collaboration with a view to exercising the powers referred to in Article 25, including in relation to inspections and information requests.

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5. Requests for assistance shall contain all the necessary information, including the purpose of and reasons for the request. Supervisory authorities shall only use the information received through a request for assistance for the purpose for which it was requested.

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10. The European Network of Supervisory Authorities shall publish:

(a) the decisions of the supervisory authorities containing penalties, as referred to in Article 27(5); and
(b) an indicative list of third-country companies subject to this Directive.

Proposed amendments to Article 29 of CSDDD under 'Omnibus' proposal of 25 February 2025 (shown as track changes from the original)

Article 29

Civil liability of companies and the right to full compensation

~~1. Member States shall ensure that a company can be held liable for damage caused to a natural or legal person, provided that:~~

~~(a) the company intentionally or negligently failed to comply with the obligations laid down in Articles 10 and 11, when the right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person; and~~

~~(b) as a result of the failure referred to in point (a), damage to the natural or legal person's legal interests that are protected under national law was caused.~~

~~A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.~~

2. Where a company is held liable pursuant to national law for damage caused to a natural or legal person by a failure to comply with the due diligence requirements under this Directive, Member States shall ensure that those persons have a right to full compensation. Full compensation shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages.'; ~~Where a company is held liable in accordance with paragraph 1, a natural or legal person shall have the right to full compensation for the damage, in accordance with national law. Full compensation under this Directive shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages.~~

3. Member States shall ensure that:

(a) national rules on the beginning, duration, suspension or interruption of limitation periods do not unduly hamper the bringing of actions for damages and, in any case, are not more restrictive than the rules on national general civil liability regimes;

the limitation period for bringing actions for damages under this Directive shall be at least five years and, in any case, not shorter than the limitation period laid down under national general civil liability regimes;

limitation periods shall not begin to run before the infringement has ceased and the claimant knows, or can reasonably be expected to know:
(i) of the behaviour and the fact that it constitutes an infringement;
(ii) of the fact that the infringement caused harm to them; and
(iii) the identity of the infringer;

(b) the cost of proceedings is not prohibitively expensive for claimants to seek justice;
(c) claimants are able to seek injunctive measures, including through summary proceedings; such injunctive measures shall be in the form of a definitive or provisional measure to cease infringements of the provisions of national law adopted pursuant to this Directive by performing an action or ceasing conduct;

~~(d) reasonable conditions are provided for under which any alleged injured party may authorise a trade union, non-governmental human rights or environmental organisation or other non-governmental organisation, and, in accordance with national law, national human rights' institutions, based in a Member State to bring actions to enforce the rights of the alleged injured party, without prejudice to national rules of civil procedure;~~

a trade union or non-governmental organisation may be authorised under the first subparagraph of this point if it complies with the requirements laid down in national law; those requirements may include maintaining a permanent presence of its own and, in accordance with its statutes, not engaging commercially and not only temporarily in the realisation of rights protected under this Directive or the corresponding rights in national law;

(e) when a claim is brought, and a claimant presents a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of their claim for damages and has indicated that additional evidence lies in the control of the company, courts are able to order that such evidence be disclosed by the company in accordance with national procedural law;

national courts shall limit the disclosure of the evidence sought to that which is necessary and proportionate to support a potential claim or a claim for damages and the preservation of evidence to that which is necessary and proportionate to support such a claim for damages; in determining whether an order for the disclosure or preservation of evidence is proportionate, national courts shall consider the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence; the scope and cost of disclosure as well as the legitimate interests of all parties, including any third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure; whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information;

Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages; Member States shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.

4. Companies that have participated in industry or multi-stakeholder initiatives, or used independent third-party verification or contractual clauses to support the implementation of due diligence obligations may nevertheless be held liable in accordance with national law.'; ~~4. Companies that have participated in industry or multi-stakeholder initiatives, or used independent third-party verification or contractual clauses to support the implementation of due diligence obligations may nevertheless be held liable in accordance with this Article.~~

5. The civil liability of a company for damages as referred to in this Article shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the chain of activities of the company.'; ~~5. The civil liability of a company for damages arising under this provision shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the chain of activities of the company.~~

When the damage was caused jointly by the company and its subsidiary, direct or indirect business partner, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the conditions of joint and several liability and the rights of recourse.

6. The civil liability rules under this Directive shall not limit companies' liability under Union or national legal systems and shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.

~~7. Member States shall ensure that the provisions of national law transposing this Article are of overriding mandatory application in cases where the law applicable to claims to that effect is not the national law of a Member State.~~

Endnotes

1 European Commission, New rules fostering sustainable and responsible corporate behaviour enter into force - European Commission, 25 July 2024.

2 European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, Brussels, 26.2.2025, COM(2025) 81 final 2025/0045 (COD). This was accompanied by a proposal to “stop the clock” on the CSDDD and Corporate Sustainability Reporting Directive (‘CSRD’). See the Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements (2025/0044).

3 European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, Brussels, 26.2.2025, COM(2025) 81 final 2025/0045 (COD), p2.

4 European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, Brussels, 26.2.2025, COM(2025) 81 final 2025/0045 (COD), p2.

5 European Union Agency for Fundamental Rights, Business and Human Rights – Access to Remedy (2020) https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-business-human-rights_en.pdf

6 See Recitals 16, 79, 82.

7 Article 12(1).

8 See UN Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005); art 13 ECHR (Papamichalopoulos v. Greece, Brumarescu v. Romania), art 47 of the Charter (Von Colson (C-14/83), Marshall II (C-271/91)); Guide on Article 13 of the Convention – Right to an effective remedy , Council of Europe, "Study of the European Court of Human Rights case-law on just satisfaction" (2023).

9 Article 25(5)(a)(iii) of the CSDDD

10 The CSDDD as adopted would ultimately apply to very EU large companies of 1000 employees and a turnover of 450million Euro (Art 2(1) (a)) and non.EU companies with a net turnover of 450million in the EU (Art 2(2)(a)), phased in over 5 years.

11 See CSDDD Article 2 for the detailed provisions regarding which companies will come within the scope of the CSDDD.

12 This is elaborated in language in the recitals. Recital 28 of the Omnibus I which states that “the specific, Union-wide liability regime currently provided for in Article 29(1) of that Directive should be removed”. Directive of the European Parliament and of the Council amending Directives (EU) 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements (2025/0045)

13 Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements (2025/0045), Article 3(12). Recital 28 states that “as a matter of both international and Union law, Member States should be required to ensure that victims of adverse impacts have effective access to justice and to guarantee their right to an effective remedy … Member States should therefore ensure that, in case a company is held liable for a failure to comply with the due diligence requirements laid

down in Directive (EU) 2024/1760, and that where such failure caused damage, victims are able to receive full compensation, which should be granted in accordance with the principles of effectiveness and equivalence".

14 See further, OHCHR, Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide 2024

15 Article 25(5)(a)(iii).

16 Note that "substantiated concern" is not a defined term in the CSDDD.

17 Note that Article 10 and 11 are the parts of the Directive that are concerned with "preventing" and "addressing" adverse human rights impacts, commonly referred to as the "taking action" provisions of the Directive.

18 Article 14(6).

19 See section 2.1 above and section 7 on cross border cases.

20 Aside from being a key concept in the attribution of prima facie liability under the CSDDD regime, this will also be material for determining whether a company can avail itself of a defence to civil liability on the basis that the real cause of the damage was solely the acts or omissions of business partners "in [that company's] chain of activities", and not the company itself

21 Note that the Omnibus I proposal makes a minor amendment to the first subparagraph of paragraph 5, changing the text from "The civil liability of a company for damages arising under this provision shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the chain of activities of the company" to "The civil liability of a company for damages referred to in this Article shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the chain of activities of the company".

22 See further section 3.2 above.

23 This was noted by a number of expert participants, including those form Netherlands, Finland and Denmark.

24 See Recitals to CSDDD, para. 81.

25 See e.g. Okpabi & Others v Royal Dutch Shell Plc & Another [2021] UKSC 3.

26 Security for costs is a legal mechanism available in some jurisdictions that requires a party (usually the plaintiff/claimant) to provide a financial guarantee to cover the potential costs of the opposing party in a legal proceeding.

27 After the event insurance is a type of insurance which covers the legal costs involved in litigation. It can be used as a means of covering the costs of another party and/or elements of a party's own costs.

28 See also the box above in section 2.1.

29 The EU Representative Actions Directive (2020/1828) does allow for representative actions but only in respect of consumer claims. It allows qualified entities to bring collective actions on behalf of consumers against traders for unlawful practices. For further materials on representative actions, see: Business and Human Rights – Access to remedy, Publications Office of the European Union, Luxembourg, 2020.); and Representative action and procedural rights of civil society organisations in Enforcing consumer rights to combat greenwashing | Rights (2024),

30 See German Civil Code (BGB), §823

31 See further Danish Institute for Human Rights, Transposition of the Corporate Sustainability Due Diligence Directive: A Practical Guide For National Human Rights Institutions (September 2024), p36.

32 Although there are definitions of this concept to be found in other EU directives and caselaw.

See, for instance Directive 2014/104/EU of the European Parliament and of the Council - of 26 November 2014 - on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union , Article 3: “Right to full compensation 1. Member States shall ensure that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm. 2. Full compensation shall place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed. It shall therefore cover the right to compensation for actual loss and for loss of profit, plus the payment of interest. 3. Full compensation under this Directive shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages." See also Katri Havu, Full, Adequate and Commensurate Compensation for Damages under EU Law: A Challenge for National Courts 2018, European law review 43, 1, p. 24-46

33 Article 29(1) reads as follows: “1. Member States shall ensure that a company can be held liable for damage caused to a natural or legal person, provided that: a. the company intentionally or negligently failed to comply with the obligations laid down in Articles 10 and 11, when the right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person; and b. as a result of the failure referred to in point (a), damage to the natural or legal person’s legal interests that are protected under national law was caused. A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.”. The underlined language in Article 29(1)(a) requiring that “the right, prohibition or obligation listed in the Annex … is aimed at protecting the natural or legal person” as a condition for liability could be interpreted in a way which unduly limits the scope of the liability mechanism in that it must aim to protect the subjective interests of individual persons, rather than protecting group or collective interests.. However, language in Recital 79 states that “The condition that the damage has to be caused to a person as a result of the company’s failure to comply with the obligation to address the adverse impact, when the right, prohibition or obligation listed in the Annex to this Directive, the abuse or violation of which is resulting in the adverse impact that should have been addressed, is aimed to protect the natural or legal person to whom the damage is caused, should be understood as meaning that derivative damage (caused indirectly to other persons who are not the victims of adverse impacts and who are not protected by the rights, prohibitions or obligations listed in the Annex to this Directive) is not covered”

34 CSDDD, Recital 89

35 See further Danish Institute for Human Rights, Transposition of the Corporate Sustainability Due Diligence Directive: A Practical Guide For National Human Rights Institutions (September 2024), p. 35.

36 See CSDDD, Recital 79.

37 See CSDDD Article 1(2).

38 Supervisory authorities are required to: assess the substantiated concern within an “appropriate period of time” and exercise their powers where appropriate (Art 26(4)). They also have to inform those reporting substantiated concerns the result of their assessment, provide reasoning as soon as possible, as well as inform them of their decisions to accept or effuse any request for action and a description of further steps to be taken (Art 26(5)). Member States are also required to ensure that necessary measures are taken to protect the identity of person making substantiated concern (Art 26(2)).

39 Member States are required to ensure that: processes for administrative or judicial review of such decisions are available (Art 26(6)) and that information about such review processes are

available to those submitting substantiated concerns (Art 26(5)).

40 The CSDDD does anticipate the possibility of parallel processes. Article 25(9) of the CSDDD provides that "decisions of supervisory authorities regarding a company's compliance with the provisions of national law adopted pursuant to this Directive shall be without prejudice to the company's civil liability under Article 29". The CSDDD also foresees that "the submission of a notification or complaint under [Art. 14] shall not be a prerequisite for, or preclude the persons submitting them from, having access to the procedures under Article 26 [substantiated concerns procedure] and 29 [civil liability] or to other, non-judicial, mechanisms" (Art. 14(7)).

41 National Contact Points (NCPs) for Responsible Business Conduct are national agencies in countries adhering to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct tasked with supporting all actors – companies, governments and stakeholders – in implementing responsible business conduct. In addition to their awareness raising and policy support functions, they act as a non-judicial grievance mechanism for alleged breaches of the Guidelines by companies (known as 'specific instances'), see National Contact Points for Responsible Business Conduct | OECD.

42 National Contact Points for Responsible Business Conduct Database | OECD

43 Article 14 provides almost no information or guidance as to how the notification mechanism will work in practice, or even what it is for (e.g. how it will be integrated into human rights due diligence in practice).

44 See further: James Harrison, Mark Wielga, and Margarita Parejo, "In Search of Effective Corporate Grievance Mechanisms: Can Mandatory Due Diligence Laws be a Progressive Force?" Journal of Human Rights Practice, 2024 16(3), pp819–835; James Harrison and Mark Wielga, "Grievance Mechanisms in Multistakeholder Initiatives: Providing Effective Remedy for Human Rights Violations?" Business and Human Rights Journal. 2023 8(1) pp43-65; OHCHR Accountability and Remedy Project III: Enhancing effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuse 26 September 2024.

45 OHCHR Interpretative Guide on A2R, p. 22.

46 Such as product liability, competition or environmental claims, etc.

47 Whether pursuant to Article 16, or Article 26, which allows for a public policy exception where the law of the third country is "manifestly incompatible" with the law of the Forum noting of course that Recital 32 of Rome II, indicates that these provisions should only be used in "exceptional circumstances".

48 The place of domicile for companies as the statutory seat, the central administration or the principal place of business: Article 63(1) Brussels Recast

49 The "place where the harmful event occurred" covers both the "place where the damage occurred" and the "place of the event giving rise to that damage". The applicant may choose to bring the action against the defendant in either of these two places, per Judgment of the European Court of Justice 7 March 1995, Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA., C-68/93, EU:C:1995:61