

Translated from Finnish (7.2.24)

Statement by the Centre for Corporate Responsibility: Corporate Sustainability Due Diligence Directive and Finnish Government's position paper (UJ 50/2023)

Based on the Finnish government's so-called U-letter (UJ 50/2023), Finland intends to abstain from voting on the outcome of the negotiations on the European Corporate Sustainability Due Diligence Directive (CSDDD) in the European Council. In this statement Centre for Corporate Responsibility (CCR), gives its analysis of the U-continuation letter and the problems the letter raises as insurmountable for Finnish Government's support for said directive.

The compromise reached at the trilogue negotiations between the European Parliament, the Council and the Commission is the result of long and difficult negotiations, which Finland's proposed position threatens to overturn. CSDDD would be a key part of the implementation of Finnish companies' human rights responsibility in relation to the expectations set for them in the UN Guiding Principles on Business and Human Rights (UNGPs). CCR has been actively involved in studies that show that at the practical level, Finnish companies lack a systematic integration of human rights responsibilities, show a severe lack in monitoring human rights' due diligence in their supply chains, and publish very little information on the implementation of their human rights responsibilities¹. Based on such research results, we see that the CSDDD would constitute a necessary and effective tool to address such shortcomings, and that CSDDD would also harmonize the current fragmented practices of EU countries, creating equal conditions for European companies to respect human rights and the environment.

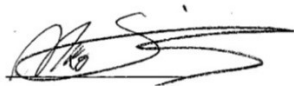
CCR is also concerned that the proposed position jeopardizes Finland's own state obligations to protect human rights. The proposed position questions, in particular, one of the basic principles of the international human rights system, is that States have the responsibility to ensure that victims of human rights violations have access to remedy, and that states takes appropriate steps to prevent, investigate, punish and redress business-related human rights abuses within their territory and/or jurisdiction.

In particular, the point in the U-continuation letter stating that "class action for damages ... cannot be considered as workable solutions from the point of view of Finland's legal system, as they deviate from the general rules in force here and fragments the system" (free transl.) is problematic for two reasons:

1) class action lawsuits are one of the few mechanisms through which victims of human rights violations would have the opportunity to obtain redress from business, especially in countries where the state itself violates the UN human rights principles or does not monitor them². The proposed position seemingly questions the suitability of the class action mechanism as a legal mechanism at large and the remedy aspect of international human rights system and its application in Finland. At the same time, the most severe human rights violations in the value chains of companies often target specific, vulnerable stakeholder groups such as child workers, migrant workers, indigenous peoples, etc. for who class action lawsuits are often the only realistic possibility for remedy in civil court systems. The EU Agency for Fundamental Rights also considers the class action mechanism to be a key part of the due diligence obligation³.

2) We see that the U-continuation letter does not present sufficient grounds for opposing the extension of the group action right. As stated in the letter, Finland already has a class action lawsuit right that allows consumers to use class action to assert their rights. In its current form, this part of the letter can be interpreted more as a political stance against the class action mechanism than as it provides little evidence or analysis of why it would be problematic from the point of view of the Finnish legal system.

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Nikodemus Solitander

Dr.Sc. (econ.), Director, CCR - Centre for Corporate Responsibility CCR is joint research institute between Hanken School of Economics and University of Helsinki, www.ccr-helsinki.org, email: ccr@hanken.fi, tel: +358 40 3521451

¹ Tran-Nguyen, E., Halttula, S., Vormisto, J., Aho, L., Solitander, N., Rautio, S., & Villa, S. (2021). Status of Human Rights Performance of Finnish Companies (SIHTI) Project: Report on the status of human rights performance in Finnish companies. Publications of the Ministry of Economic and Employment Energy 2021:17, <http://urn.fi/URN:ISBN:978-952-327-737-3>

² Komba, N., Annala Tesfaye, L., Nilsson, E., Solitander, N., Trommer, S., Verbrugge, B. & Andersson, G. (2023) Towards inclusive European CSR legislation: Analysing the impacts of the EU corporate sustainability directive on LDC trade, Ministry for Foreign Affairs, Helsinki 2023: <https://urn.fi/URN:ISBN:978-952-281-374-9>.

³ European Union Agency for Fundamental Rights (2020) Business and human rights – access to remedy, doi:10.2811/54662