

# Position of the Rainforest Alliance on the Proposal for an EU Directive on Corporate Sustainability Due Diligence



## INTRODUCTION

The Rainforest Alliance welcomes the European Commission's proposal for an EU directive on corporate sustainability due diligence (CSDDD). This is a pivotal step towards raising the bar for stronger corporate accountability on human rights and the environment as well as setting a level playing field for companies. However, there are opportunities for improvement to meet the intended objectives of the directive and to better leverage the potential of the single market to contribute to sustainable development, particularly through the prevention, mitigation, and remediation of adverse human rights and environmental impacts in companies' value chains. This includes:

- Better aligning the proposed directive with existing, recognised international standards on due diligence, such as the United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>1</sup> and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD Guidelines)<sup>2</sup>
- Reinforcing the due diligence obligation, especially by requiring companies to conduct due diligence on their own purchasing practices and business models

- Ensuring due diligence processes work to protect the rights of smallholders, communities, and workers in global value chains
- Significantly reinforcing the environmental part of the proposal, via a broader and more flexible definition of 'adverse environmental impacts' and the inclusion of missing pieces such as climate change and Integrated Pest Management in the scope of due diligence

The Rainforest Alliance [supports human rights and environmental due diligence laws](#) that establish a level playing field for all companies and strengthen shared responsibility in global value chains. These laws contribute to positive social, environmental, and economic impacts in line with the UN's Sustainable Development Goals (SDGs) and other global environmental and human rights commitments.

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<sup>1</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations "protect, Respect and Remedy" Framework, 2011. Print.

<sup>2</sup> OECD (2011), OECD Guidelines for Multinational Enterprises, 2011 Edition, OECD Publishing, Paris, <https://doi.org/10.1787/9789264115415-en>.

We have significant experience in developing due diligence systems through [Rainforest Alliance certification](#) and tools that can inform due diligence, such as the [Accountability Framework](#) Initiative and [LandScale's assessment framework](#). The Rainforest Alliance is an international non-profit organization with more than 30 years of experience in advancing sustainable agricultural value chains in 70 countries. We work with more than four million farmers and workers across more than six million hectares of farmland. In addition, we work directly with forest communities, governments, civil society, and more than 5,000 companies. With this as our background, we will continue supporting the development of an EU directive that can generate transformation on the ground, especially in the Global South.

Building on the joint paper '[Legislating for Impact: Three Recommendations to Make Human Rights and Environmental Due Diligence Work for Smallholders](#)', this paper sets out our first recommendations for the proposed CSDDD.



Jader Medina, a farm worker at a banana plantation in Costa Rica. Photo: Yessenia Soto / Rainforest Alliance.

## KEY RECOMMENDATIONS

### To strengthen the due diligence obligation:

1. Extend the application of the due diligence obligation beyond 'established business relationships'
2. Expand the scope of companies and harmonise the obligations
3. Prevent overreliance on unilateral codes of conduct and 'contractual cascading'
4. Better delineate the role of third-party verification, industry schemes, and multi-stakeholder initiatives
5. Ensure companies address the impacts of business models, strategies, and practices
6. Ensure meaningful engagement throughout the due diligence process
7. Enable responsible disengagement as a last resort
8. Define effective complaints procedures
9. Reinforce the provisions on liability
10. Mainstream gender in the due diligence process
11. Expand the Annex to include additional human rights standards and instruments

### To uphold the rights of smallholders, forest communities, and workers in global value chains:

12. Include living income in the material scope of the directive
13. Develop specific measures to support value chain actors and stakeholders in third countries

### To live up to the European Green Deal and global environmental commitments:

14. Expand the definition of 'adverse environmental impacts'
15. Ensure companies conduct due diligence on climate risks
16. Help prevent the use of harmful agrochemicals globally



Ni Ketut Sudiarti, a cocoa farmer in Bali. Photo: IGN Andre Stiana.

## STRENGTHENING THE DUE DILIGENCE OBLIGATION

While the proposal provides a good basis to ensure companies that operate in the EU market conduct due diligence throughout their value chains, several elements could be improved to effectively ensure all companies have an equal footing and align with existing international standards such as the UNGPs and OECD Guidelines.

### **1. Extending the application of the due diligence obligation beyond 'established business relationships'**

The proposal limits the scope of the due diligence obligation to 'established business relationships'. This concept is not aligned with existing standards on due diligence—including the UNGPs and OECD Guidelines—under which companies' responsibilities to undertake due diligence apply across the whole value chain. The due diligence obligation should instead apply to all 'business relationships'—which is a concept defined in Article 3 (e) of the proposal, as well as in existing international frameworks. Adopting a whole value chain approach is essential to ensure adequate prevention and mitigation of adverse impacts back to country of origin. The term 'established business relationship' would risk limiting the coverage of the obligation to first tier, long-term suppliers. This creates the risk that indirect suppliers or short-term contracting relationships could be excluded from the scope of the due diligence obligation. Yet there is ample evidence that the risks of adverse human rights and environmental impacts are often highest close to the origin of production, where suppliers are most distant from the companies that will have to implement the CSDDD requirements. Due diligence obligations must be extended to cover indirect and temporary suppliers at origin, where the occurrence of low paid, informal, and/or migrant work, in which women are disproportionately represented, is the highest.

It is also critical to ensure that the CSDDD does not create a perverse incentive for companies to avoid securing established business relationships, making the situation of upstream value chain actors even more precarious. Long-term business relationships can influence a company's ability to assess and address adverse impacts in partnership with value chain actors and increase interest to invest in sustainability improvements at the supplier/producer/farm level. A longer-term business relationship can be an 'enabler' when it comes to addressing adverse impacts.

The due diligence obligation in the EU CSDDD should therefore be generalised to all business relationships, to include all parts of the value chain where the adverse impacts that need to be addressed are also likely to be the most severe.

### **2. Expanding the scope of companies and harmonising the obligations**

The proposal excludes small and medium-sized enterprises (SMEs) by default and introduces high thresholds for companies to fall within the scope of the directive, including for 'high-impact sectors'. This is not in line with international standards like the UNGPs and the OECD Guidelines, which expect companies to adopt due diligence processes that are appropriately adapted to their size, operating contexts and—importantly—to their risk exposure. While it may be necessary to gradually include smaller companies, they should not be completely excluded. Rather, the due diligence obligation should be proportional to their risk and adapted to the company's circumstances and context. This is all the more important as SMEs will already face higher requirements from their buyers who will have to comply with the CSDDD. This means that, although SMEs are formally excluded from the scope of the directive, they will likely bear invisible costs to contribute to the due diligence processes of their buyers while struggling to benefit from technical and financial support to do this.<sup>4</sup> In many sectors, particularly those defined as 'high-impact', SMEs

have equally risky value chains and operations as those of larger companies.

In addition, the thresholds of net turnover and number of employees used to define whether companies fall in the scope of the CSDDD or not, should be considered separately. This is to ensure that companies with high turnover (and therefore capacity to address adverse impacts) but low labour intensity are included within the scope of the directive.

For the EU CSDDD to be truly effective, all companies irrespective of their size or the sector they operate in, should be subject to the same obligations. At a minimum, a clear phase-in path should be laid out to gradually include SMEs in the scope, especially those operating in high impact sectors. This could be achieved through a specific review clause in Article 29, intervening much earlier than seven years after the entry into force of the directive, and technical and financial support to prepare SMEs for compliance.

### **3. Preventing overreliance on unilateral codes of conduct and 'contractual cascading'**

The proposal introduces codes of conduct and contractual assurances as key instruments for companies to implement due diligence. While these are relevant instruments, they are not sufficient to effectively prevent and address adverse environmental and human rights impacts. Codes of conduct and contractual assurances may be relevant foundations for companies to exercise leverage with partners, but they are not effective instruments to enable companies to examine their own potential contributions to adverse impacts (e.g., their purchasing practices). They also do not ensure that companies have put in place incentives for suppliers to assess and address actual and potential adverse impacts. Relying on contractual assurances could end up as a 'box-ticking' exercise rather than effective due

diligence that actually drives transformation on the ground. It could be used by downstream companies to pass due diligence responsibilities to upstream value chain actors. It does not incentivise a broader response from companies, since not all adverse impacts can be prevented, mitigated, and remediated via a standalone compliance approach.

For companies to address adverse impacts in their value chains and create change, more diverse strategies are needed. Companies must act on multiple levels. Firstly, they must address their own contribution to adverse impacts, including the impact of their practices on their value chain. Secondly, companies must work in partnership with other actors in their value chains to address adverse impacts. Thirdly, companies must work in collaboration with other value chain actors in the relevant sectors and geographies for their operations, to address the root causes of systemic issues that lead to adverse environmental and human rights impacts. For these reasons, the proposal should encourage greater diversity in due diligence approaches to effectively address the root causes of systemic adverse impacts.

Additionally, where codes of conduct and contractual assurances are used, they should not be drawn up unilaterally by buyers and should specify the roles of responsibilities of both parties. They should include expectations of buyers towards suppliers, as well as commitments from buyers on what suppliers can reasonably expect in return. To ensure their effectiveness, clear criteria to develop codes of conduct and contractual assurances should be included in

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4 E.g. a recent [study](#) by Bpifrance, PWC, and ORSE found that, in France, 80% of SMEs are being required to take various steps to comply with the obligations introduced by the law on duty of care ("Loi sur le devoir de vigilance") by the large actors in their value chains, without receiving accompanying support (financial or otherwise) for such efforts.



Drying tables at the Maraba Coffee Cooperative's washing station in Butare, Rwanda. By consolidating their processing, the 1,296 smallholder farmer members of the cooperative achieve economy of scale and ensure high quality. Photo by Matthew Harmer / Nice and Serious.

the directive. In particular, contractual assurances should include a buyer-supplier mutual code of conduct<sup>5</sup>, setting out buyer and supplier responsibilities in regards to due diligence (such as sustainable purchasing practices) and incentives for suppliers to improve their policies, practices, and performances. It is crucial to promote buyer-supplier collaboration and shared responsibility in the development of sustainability risk management systems, improvement plans, remediation guidelines, capacity building, training, and technical assistance for suppliers. Suppliers and business partners should be consulted on the content of any mutual code of conduct<sup>6</sup>. Credible certification schemes and multi-stakeholder initiatives can play a role in informing the development of mutual codes of conduct at the sector or geographic level.



A tea plucker on the Craigmere estate in India poses with her son on his way home from school. Photo by Kalyan Varma.

#### **4. Better delineating the role of third-party verification, industry schemes, and multi-stakeholder initiatives**

The proposed CSDDD stipulates that companies may rely on industry schemes and multi-stakeholder initiatives to support the implementation of their obligations referred to in Articles 5 to 11. Independent third-party verification is also highlighted as a key instrument to verify contractual assurances, including via 'suitable industry initiatives'. This provides a great opportunity to value ambitious sectoral initiatives and reward frontrunners. It should, however, be made clear that the responsibility to ensure compliance with the directive lies with the companies and that industry initiatives cannot be used as substitutes for individual companies' due diligence obligations. The Commission should define strict criteria to ensure that only the most robust industry schemes and multi-stakeholder initiatives can support companies in their due diligence process. These criteria should be based on internationally recognised, normative good practices, such as those set out for credible certification schemes in the International Social and Environmental Accreditation and Labelling Alliance's (ISEAL) Codes of Good Practice.<sup>7</sup> These criteria should be defined in delegated and/or implementing acts and guidelines, as referred to in Article 13.

#### **5. Ensuring companies address the impacts of business models, strategies, and practices**

Working towards addressing adverse human rights and environmental impacts in global value chains requires that companies address the actual and potential impact of their business models and strategies, including purchasing practices. Unsustainable purchasing practices can, for example, be a key factor in pushing smallholders even further into poverty. In many sectors, the combination of unfavourable contract terms and increasing downward pressure on prices in global value chains, leaves farmers with too little and unstable income, sometimes even earning less than their costs of production. This puts them in no position to invest additional resources to implement sustainable practices and comply with sustainability standards and norms. Responsible purchasing practices can play a role in ensuring that the costs of investing in sustainability are proportionally shared along the value chain, so that farmers have the means to farm sustainably.

Unsustainable purchasing practices frequently have a direct and disproportionately detrimental impact on vulnerable groups of workers, particularly women and informal/migrant/seasonal workers. They contribute to increased risks of child labour and forced labour. They also contribute to deterioration of working conditions, resulting in low wages and incomes, unsafe working conditions, violence against women, illegal and/or unauthorised (and unmonitored) subcontracting, informalization of work, unfair recruitment, as well as difficult or impossible social dialogue and bargaining agreements, among other issues.

The EU CSDDD provides an opportunity to address unsustainable purchasing practices and their consequences. Recital 30 mentions that companies should 'identify and assess the impact of a business relationship's business model and strategies, including trading, procurement and pricing practices', but this is not sufficient. Specific provisions should be included in the core obligations of the directive (in particular in Articles 5 to 10) to make companies responsible for implementing responsible purchasing practices as a key instrument to prevent and mitigate adverse impacts in their operations and value chains.

<sup>5</sup> See, for example, the [Buyer-Supplier Mutual Code of Conduct](#) of Social Accountability International and Module 4 on agreeing contractual terms in the [Guide to buying responsibly](#) of the Ethical Trading initiative

<sup>6</sup> See [OECD-FAO Guidance for Responsible Agricultural Supply Chains](#), pp.32-33 "Strengthen engagement with business partners"

<sup>7</sup> ISEAL Alliance. (2014, December). *Setting Social and Environmental Standards*, ISEAL Code of Good Practice, version 6.0.

## 6. Ensuring meaningful engagement throughout the due diligence process

The Rainforest Alliance regrets the lack of consistent provisions on continuous meaningful engagement with stakeholders and rightsholders, who are or could be impacted by adverse impacts. The CSDDD should recognise meaningful engagement as a key element at all stages of the due diligence process to ensure its effectiveness. Companies should engage with stakeholders (especially potentially impacted groups) at all stages of the due diligence process (across Articles 5 to 11)— not only at the stage of risk identification and not only when they deem it ‘relevant’. This includes the explicit recognition of the role of social dialogue and engagement with workers’ representatives and trade unions when conducting due diligence related to industrial relations, employment, and workers’ rights, as described in the OECD Guidelines and International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.<sup>8</sup> Such engagement should extend to any relevant remediation process.

In line with the UNGPs and OECD Guidelines, companies should engage with potentially affected stakeholders, with the objective of understanding and responding to their interests and concerns. They should particularly engage with those who are likely to be the most vulnerable to adverse impacts in connection with the company’s operations or value chain, such as smallholders, farm workers, Indigenous peoples and local communities, and women. For good-faith, effective, and meaningful consultations with potentially affected stakeholders and rightsholders, it is essential engagement takes place via their own representative institutions and organizations, where they exist.<sup>9</sup> The right to the free, prior, and informed consent of Indigenous peoples and local communities should also be fully embedded in relevant engagement and consultation processes, in line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169 on Indigenous and Tribal Peoples. Furthermore, while financial compensation is mentioned in Article 8 as a way for companies to neutralise adverse impacts, these provisions should be expanded to include access to other forms of remedy for impacted stakeholders. Remedy can indeed include other actions beyond financial compensation (e.g., sanctions of those responsible and commitments to prevent future harm), which can only be determined by consulting with affected stakeholders. Due attention should be given to overcome the barriers that affected groups such as smallholders, Indigenous peoples and local communities, workers, and women face in accessing and securing remedy, as well as in ensuring that all procedures are impartial, safe, and free from undue influence.

## 7. Enabling responsible disengagement as a last resort

Recital 32 clearly mentions that the directive ‘should ensure that disengagement is a last-resort action’ to ‘enable continuous engagement with the value chain business partner instead of termination of business relations (disengagement) and possibly exacerbating adverse impacts’. However, this key element should also be reflected in the core obligations of the directive, particularly in Articles 7.5 and 8.6, in line with existing due diligence standards such

as the OECD Guidelines and the OECD-FAO Guidance for Responsible Agricultural Supply Chains.

Companies should be required to consider alternatives to permanent disengagement such as temporary suspension of the relationship, while implementing prevention, mitigation, and remediation measures, such as investments and capacity building. It should be made clear in Articles 7.5 and 8.6 that disengagement from suppliers should be used as a last resort measure, where mitigation is not possible, unacceptable, or attempts of mitigation have failed. Factors that are relevant to determining whether disengagement is the appropriate response include: the severity and probability of the adverse impact, the company’s ability to influence and/or build leverage over the business partner or other relevant actors (e.g., government), and how crucial the business partner is to the company.<sup>10</sup>



Workers at a tea plantation in India arrange compost around newly planted tea bushes.

Articles 7.5 and 8.6 should also stipulate that companies must assess the impacts of a decision to disengage<sup>11</sup> and consult with stakeholders and rightsholders that could be negatively impacted<sup>12</sup> as well as their representative organizations, including trade unions. When disengagement cannot be avoided, companies must address the adverse impacts related to the decision to disengage and pursue remediation of past adverse impacts where appropriate.

8 See also [Engagement with Trade Unions in Due Diligence Processes Conducted by Industry-led or Multi-Stakeholder Initiatives](#). CLARIFICATION BY THE OECD INVESTMENT COMMITTEE

9 See, for example, the [OECD FAO Guidance for Responsible Agricultural Supply Chains](#), pp. 26 and 57, and the [ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#), Article 34 and 63

10 See [OECD FAO Guidance for Responsible Agricultural Supply Chains](#), pp.36–37

11 See [OECD Guidelines](#), Article 22

12 See [ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#), Article 34

Finally, Article 11 should require companies, as part of their reporting obligations, to disclose the number of instances where they have decided to disengage, the reason for this disengagement, and the location of the concerned suppliers (without disclosing their identity, except where the company deems it acceptable to do so in accordance with applicable laws).

### **8. Defining effective complaints procedures**

The proposed CSDDD requires companies to adopt a complaints procedure in Article 9. This is a very positive element, as it can serve as an early warning system for companies, help identify potential or actual adverse impacts, and improve communication with relevant stakeholders. A complaints procedure offers an opportunity to settle issues between companies and affected rights holder before they are elevated to formal dispute resolution mechanisms. It can provide valuable feedback to companies so that they continuously improve their operations and/or management systems.

However, Article 9 could be improved by incorporating the effectiveness criteria for non-judicial grievance mechanisms set forth in Principle 31 of the UNGPs.<sup>13</sup> These principles stipulate that non-judicial grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on dialogue and engagement.

Article 9 should also recognise that the complaints procedure should complement judicial and other non-judicial mechanisms. It should, therefore, not undermine the role of trade unions in addressing labour-related risk issues. It should also not interfere with existing dispute mechanisms, such as those on labour rights and the existing industrial relations systems and labour dispute mechanisms that are part of collective bargaining agreements.<sup>14</sup>



Colombian coffee farmer Ivan Vega and his son at a stream on the family's farm.

Finally, Article 9 should stipulate that the complaints procedure must ensure the protection of complainants against retaliation.

### **9. Reinforcing the provisions on liability**

The Rainforest Alliance welcomes the inclusion of provisions on liability in the proposal and that courts in EU member states cannot deny liability on the ground that the law of the country where the harm occurred applies. This already lifts a significant barrier to justice, in particular, for impacted stakeholders from the Global South.

However, the contractual cascading approach could end up in companies systematically getting away with harms caused by indirect partners. The provisions also do not include key principles to address obstacles to justice such as narrow time limits, limited legal standing, or burden of proof. This approach should be replaced by one that adopts limitations on liability drawn from ordinary tort principles, such as foreseeability, causation, and reasonableness.

Therefore, Article 22 should be improved to remove the barriers to justice and fully enable impacted rightsholders and stakeholders to seek redress in courts.

### **10. Mainstreaming gender in the due diligence process**

The CSDDD represents a unique opportunity to fight gender inequality and discrimination in global value chains, but the Commission's proposal is currently gender blind. It does not recognize the fact that human rights abuses have differentiated impacts on individuals and groups in marginalized situations and disproportionately disadvantage women and girls. Gender-specific impacts on women happen in all sectors, including agriculture, and frequently intersect with other forms of discrimination. In line with the UNGPs and OECD Guidelines, the CSDDD should require that companies pay special attention in all steps of their due diligence to the actual and potential adverse impacts that may be faced by women.

The list of rights and prohibitions and conventions used to define 'adverse human rights impacts' in the Annex is too limited, particularly to prevent and remedy women's rights abuses at all levels in corporate value chains. It should be expanded to include additional conventions, such as ILO Convention 190 on violence and harassment in the world of work.

Stakeholder engagement and complaints mechanisms must also be gender-responsive, and the identification of risks and monitoring of and reporting on due diligence must include gender-sensitive indicators, including the use of disaggregated data.

<sup>13</sup> See Principle 31 of the [UNGPs](#), pp.38

<sup>14</sup> See OECD FAO Guidance for Responsible Agricultural Supply Chains, p.33



Anna Cheptoek Chemutai, a coffee farmer in Mount Elgon, Uganda, who took part in gender equality trainings, works on the farm with her husband Alfred. Photo courtesy of Kyagalanyi Coffee.

## **11. Expanding the Annex to include additional human rights standards and instruments**

The Annex of the proposed EU directive includes a limited list of human rights violations, with a catch-all clause that refers to relevant UN and ILO instruments. This approach creates ambiguities and risks promoting a selective application of standards. A non-limitative list of human rights standards and instruments would be a more suitable approach. Should it be maintained though, it would be key to ensure that the list covers all relevant human rights conventions and instruments. For example, in relation to workers' rights, while the eight core fundamental ILO conventions are referenced in the Annex, all technical and governance ILO conventions and instruments must be added to the list, such as those on the protection of wages, harassment and violence, and adequate workers' housing.

At a minimum (but not limited to), the following list of key international human rights standards and instruments would need to be explicitly incorporated into the Annex:

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- The International Convention for the Protection of All Persons from Enforced Disappearance
- The UN Declaration on Human Rights Defenders
- ILO Convention 1: Hours of Work (Industry)
- ILO Convention 26: Minimum Wage-Fixing Machinery Convention
- ILO Convention 30: Hours of Work (Commerce and Offices)
- ILO Convention 81: Labour Inspection
- ILO Convention 95: Protection of Wages
- ILO Convention 131: Minimum Wage Fixing
- ILO Convention 135: Workers' Representatives
- ILO Convention 155: Occupational Safety and Health
- ILO Convention 169 on Indigenous and Tribal Peoples (In addition to the United Nations Declaration on the Rights of Indigenous Peoples, which is included in the Annex, but there should also be an explicit reference to the free, prior, and informed consent of Indigenous peoples and local communities.)
- ILO Convention 181: Private Employment Agencies, including Article 7 on the ban of recruitment fees
- ILO Convention 183: Maternity Protection
- ILO Convention 184: Safety and Health in Agriculture
- ILO Convention 190: Violence and Harassment
- ILO Recommendation 85: Protection of Wages
- ILO Recommendation 115: Workers' Housing
- ILO Recommendation 135: Minimum Wage Fixing
- The ILO Constitution
- ILO Code of Practice on Safety and Health in Agriculture
- The ILO Centenary Declaration for the Future of Work



## UPHOLDING THE RIGHTS OF SMALLHOLDERS, FOREST COMMUNITIES, AND WORKERS IN GLOBAL VALUE CHAINS



*Diana Mendoza and her children plant trees on the family farm in Honduras to help protect water sources and restore forestland.*

### Who is a smallholder?

The definition of a smallholder varies depending on local laws and definitions of the countries where they are based. The EU Renewable Energy Directive defines smallholders as farmers who independently conduct an agricultural activity on a holding with an agricultural area of less than two hectares, for which they hold ownership, tenure rights, or any equivalent title granting them control over the land, and who are not employed by a company, except for a cooperative of which they are members with other small holders, provided that such a cooperative is not controlled by a third party.

About 500 million farms worldwide (84 percent of total farms) are smaller than two hectares. However, the EU definition has limitations, as many smallholders do not own the land they farm, and, in some sectors and countries, smallholders may have much larger plots than two hectares, while still being much smaller (and more vulnerable) in comparison to other farms in their area and/or sector.

Smallholders are some of the most marginalised actors in global value chains. At the same time, they produce a third of the world's food supply and represent an overwhelming share of producers in some sectors defined as 'high impact' in the proposed directive. The gross annual value of smallholder crop, fuelwood and charcoal, timber, and non-timber forest products lies between US\$869 billion and US\$1.29 trillion.<sup>15</sup> While smallholders and forest communities can be active drivers of sustainable development, the conditions for them to do so and produce their goods in an economically, socially, and environmentally sustainable way are often lacking. This can discourage risk-adverse downstream companies from forming or maintaining lasting business relationships with them. Leveraging the CSDDD to encour-

age long term engagement and investments to support suppliers would therefore greatly benefit smallholders and forest communities.

Smallholders need to generate enough income from their operations to be able to meet the needs of their farms and their households—including to sustain their revenue-generating assets. Since this, however, is rarely the case, smallholders often make decisions that undermine themselves in the long run. For example, by degrading productive assets (e.g., mining their soil) to increase incomes in the short run. They are also unlikely to be able to secure decent working conditions for workers (or their household workforce), including paying a living wage, or to cover the costs of producing sustainably. If smallholders do not meet their needs—which should be considered more broadly than just basic needs—then they cannot afford the social (e.g., no child labor) and environmental improvements (e.g., no deforestation or sustainable diversification) that their buyers, governments, and consumers expect from them. While Recital 49 of the proposal recognises the need to pay specific attention to the challenges faced by smallholders in third countries, more needs to be done in the CSDDD as part of the core obligations of companies to prevent, mitigate, and remediate adverse human rights and environmental impacts in value chains. The directive needs to ensure that downstream value chain actors' responsibilities lead to policies and practices that contribute to smallholders and forest communities earning an income that covers household needs and the cost to farm sustainably, including providing decent working conditions and living wages to workers. While normative definitions on what a living income should encompass are important to raise awareness and facilitate reporting, it is necessary to go beyond definitions and engage meaningfully with the impacted communities. In the end, what matters is mapping and bridging the unmet needs that the communities themselves have identified.



Eriberto Ruiz, a worker at the Finca Santa Marta banana farm in Costa Rica, helps his daughter with her schoolwork.

<sup>15</sup> World Wildlife Fund. (2020, July 13). "WWF report puts spotlight on 'Unseen Foresters', calls for greater recognition of communities' role in sustainable forest management." Retrieved from [https://wwf.panda.org/wwf\\_news/?364650/WWF-report-puts-spotlight-on-Unseen-Foresters-calls-for-greater-recognition-of-communities-role-in-sustainable-forest-management](https://wwf.panda.org/wwf_news/?364650/WWF-report-puts-spotlight-on-Unseen-Foresters-calls-for-greater-recognition-of-communities-role-in-sustainable-forest-management)

## 12. Including living income in the material scope of the directive

The CSDDD should recognise poverty as one of the root causes of sustainability issues in global value chains—at a minimum in the Recitals. In agricultural value chains involving smallholders, the fact that smallholders cannot generate an income that covers their basic needs is one of the most salient potential sustainability risks that should be prioritised throughout the due diligence process. Smallholder-intensive sectors, like agriculture and forestry, are considered ‘high impact’ in the proposed CSDDD, for which companies would only have to focus on ‘severe adverse impacts’ in their due diligence process.

Rainforest Alliance applauds that the proposed CSDDD includes living wage and decent standard of living in Part I of the Annex—this should be maintained to ensure these elements are taken into account by companies in their due diligence process. It is, however, regrettable that it does not include any reference that would make companies responsible for using their leverage to contribute to a living income in relevant value chains, especially since it is a precondition for the realization of human rights and the implementation of more sustainable practices. This can be rectified by adding an explicit mention of living income in the Annex, referring to the right to an adequate standard of living, in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights<sup>16</sup> and Article 25 of the Universal Declaration of Human Rights.<sup>17</sup> Including this in the Annex would provide the foundation to work towards global value chains where farmers earn an income that covers their basic household needs and the costs of farming sustainably.

## Living wage and living income: what is the difference?

**Living wage** refers to the remuneration received by a worker for a standard workweek in a particular place, sufficient to afford a decent standard of living for the worker and their family.

**Living income**, in the case of smallholders, is understood as the income they derive from their production, which should meet the needs of both their household and their farm, including the needs of their dependents (e.g., living wages for workers). It is a key human right and a precondition for the realisation of sustainable farming practices.

Both living wage and living income are crucial to address poverty as a root cause of adverse human rights and environmental impacts.

<sup>16</sup> United Nations (General Assembly), “International Covenant on Economic, Social, and Cultural Rights.” Treaty Series, vol. 999, Dec. 1966, p. 171.

<sup>17</sup> United Nations. Universal Declaration of Human Rights. 1948.



Counting money at the Village Savings & Loans in Malawi. Photo by Sydelle Willow Smith.

### 13. Developing specific measures to support value chain actors and stakeholders in third countries

The Rainforest Alliance welcomes the explicit mention in Article 14 of support measures to enable the implementation of due diligence in third countries, including new measures like the facilitation of joint stakeholder initiatives to help companies fulfil their obligations.

We encourage the Commission and member states to develop specific measures, create new programmes, and build on existing initiatives, in particular (but not limited) to:

- **Inform stakeholders** in third countries on the upcoming EU requirements and how they may affect them, well before the directive enters force
- **Assess the needs of farmers and forest communities** and devise effective strategies so that they can achieve sufficient income to meet these needs
- **Provide technical and financial support to SMEs, smallholders, and farmer groups** in producing countries to build their capacity so that they can comply with their buyers' expectations
- **Support the representation and participation of marginalised stakeholders** and groups that could potentially be affected by adverse environmental and human rights impacts in multistakeholder and sectoral initiatives
- **Provide technical and financial support to trade unions and civil society** organisations to ensure their full engagement and participation in due diligence processes
- **Ensure consistency with the implementation of the Communication on Decent Work Worldwide<sup>18</sup>** by leveraging its key tools to support and enhance consultation processes with trade unions in due diligence processes, as well as to support the development of mature industrial relations and social dialogue, for which Freedom of Association is key
- **Develop cooperation and partnership mechanisms with governments of third countries to:**
  - facilitate access to extension services, inputs, infrastructure, and education, particularly for smallholders and female farmers
  - work towards an enabling environment and rule of law (through the development of new relevant policies and laws and reinforcement of existing laws)
  - ensure multistakeholder participation in decision making processes



Workers wash bananas after harvesting at a Rainforest Alliance Certified banana farm in Costa Rica.

- **Provide incentives for companies** to maintain their relationships with high-risk suppliers (e.g., through facilitated access to public-private partnerships and co-finance mechanisms)
- **Provide guidance to companies** and relevant value chain actors to enable sectoral cooperation on sustainable purchasing practices, in alignment with EU competition law

<sup>18</sup> "Commission Sets out Strategy to Promote Decent Work Worldwide and Prepares Instrument for Ban on Forced Labour Products." 23 Feb. 2022, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1187](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1187).



Tea pluckers work at the Chamraj plantations in India's Nilgiri Hills. Photo by Sara Hylton.

## **LIVING UP TO THE GREEN DEAL AND GLOBAL ENVIRONMENTAL COMMITMENTS**

The Rainforest Alliance regrets that the proposal falls short of ensuring that companies effectively address adverse environmental impacts. As it stands, the proposal is not at the level of ambition needed for the EU and its member states to deliver on the Green Deal objectives as well as its global environmental commitments. Given the dire state of global climate and environmental indicators, the EU CSDDD is a key opportunity to address environmental impacts beyond EU borders and to mobilise companies so that they contribute to global environmental objectives.

### **14. Expanding the definition of 'adverse environmental impacts'**

Part II of the Annex is extremely limited, as it misses several key environmental conventions—including the Paris Agreement, the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the UN Convention to Combat Desertification, and the UNECE Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention)—leaving major environmental adverse impacts outside of the scope of due diligence. While Annex Part I rightfully includes a provision that expands the list of environmental adverse impacts by covering those with human rights implications, this may result in companies ignoring environmental adverse impacts whose link to human rights is not evident. At a minimum, Part II of the Annex should be expanded to include other key environmental conventions and should mirror the structure of Part I (including a 'catch-all' clause beyond the specific provision listed). A review clause should also be included in the directive, so that the Commission can regularly review and modify the Annex, especially since new conventions and treaties may be signed and ratified in the future.

The definition of 'adverse environmental impact' should also be extended beyond adverse impacts resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in Annex Part II. The proposed definition is not sufficient to ensure major adverse environmental impacts are covered and does not provide sufficient flexibility to companies. For example, there is no existing international convention to tackle deforestation while many companies have committed to tackle deforestation in their value chains. The definition should refer to non-limitative categories of adverse environmental impacts, following the same approach as other key EU policies (such as the EU Taxonomy or the EU Corporate Sustainability Reporting Directive).

### **15. Ensuring companies conduct due diligence on climate risks**

Although Article 15 of the proposal includes an obligation for companies to adopt a plan to ensure that their business model and strategy are compatible with the 1.5 °C objective of the Paris Agreement, it does not require companies to conduct due diligence on climate risks. First, Article 15 only applies to the biggest companies in scope, while it should apply to all companies in scope, particularly those in high impact sectors. Furthermore, the proposal does not include the Paris Agreement in the list of agreements and conventions in Annex Part II that serves as a basis for companies to address adverse environmental impacts in their value chains.

The latest report from the Intergovernmental Panel on Climate Change (IPCC)— Climate Change 2022, Impacts, Adaptation and Vulnerability<sup>19</sup> — shows the importance of addressing climate risks in the CSDDD. The report highlights that climate impacts have already caused irreversible damages and that safeguarding biodiversity and ecosystems is fundamental to climate resilient development. Almost all companies are responsible for emitting green-

house gasses (GHG), and therefore, all companies should include climate risks and objectives in their due diligence and strategies.

A wide variety of initiatives and methodologies have been developed for companies to set 'Paris-aligned' objectives and strategies. The Greenhouse Gas Protocol and the Science Based Targets Initiative, for example, both set a clear and ambitious decarbonization roadmap through science-based targets while aligning with the Paris Agreement and promoting a net-zero energy system by mid-century. While many companies have committed to climate objectives, the number is still too low and their voluntary commitments often fall strongly behind the emissions cuts needed according to the IPCC special report on the impacts of global warming of 1.5 °C.<sup>20</sup> Additionally, they often lack clear implementation plans.

The EU CSDDD is an opportunity to scale up these commitments. It would also complement the Corporate Sustainability Reporting Directive<sup>21</sup>, which introduced an obligation for companies to report on their plans to ensure that their business model and strategy are compatible with the transition to a sustainable economy and limiting of global warming to 1.5°C. It is, however, crucial to go beyond reporting obligations and ensure companies take ambitious and clear steps to address their climate impacts by drastically reducing their greenhouse gas (GHG) emissions. The EU commitments to reduce GHG emissions to at least 55 percent below 1990 levels by 2030 and to become climate-neutral by 2050 cannot be achieved without mobilising the private sector and requiring companies to contribute their fair share. The EU CSDDD is a key instrument to achieve this, hence the need to include the Paris Agreement from the outset in the Annex—to ensure that companies conduct due diligence on climate impacts—and to expand the application of Article 15 to all companies in scope.

## **16. Helping prevent the use of harmful agrochemicals globally**

In agricultural value chains, the use of harmful agrochemicals often causes human rights violations and adverse environmental impacts. Conventional pesticide usage poses several severe risks to human health, with an estimated 255,000,000 pesticide poisonings per year<sup>22</sup>, 150,000 suicides from pesticide ingestion per year<sup>23</sup>, and recent research showing the link between exposure to pesticides and long-term links to Parkinson's disease.<sup>24</sup> Pesticide risks are also extended to nature. By contaminating, soil, water, and land, pesticides have proven toxic to birds, fish, and key pollinators. Bees identified as essential pollinators have decreased by 30 percent since 2006, largely due to the wide use of pesticides, specifically neonicotinoids.<sup>25</sup>



Tea pluckers sort freshly harvested leaves at the Kericho plantation in Kenya. Photo by Caroline Irby.

19 Climate Change 2022: Impacts, Adaptation and Vulnerability – Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change. Intergovernmental Panel on Climate Change 2022. <https://www.ipcc.ch/report/ar6/wg2>.  
20 IPCC, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Pan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3–24. <https://doi.org/10.1017/9781009157940.001>.

21 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance OJ L 330, 15.11.2014, p. 1–9 (BG, ES, CS, DA, DE, ET, EL, EN, FR, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)

22 Sadler, David. "Schulze Plans Export Ban For Dangerous Pesticides." *Globe Echo*, 11 Feb. 2022. <https://globeecho.com/news/europe/germany/schulze-plans-export-ban-for-dangerous-pesticides/>.

23 Preventing suicide: a resource for pesticide registrars and regulators. Geneva: World Health Organization and Food and Agriculture Organization of the United Nations; 2019. Licence: CC BY-NC-SA 3.0 IGO.

24 Hancock, Dana B et al. "Pesticide exposure and risk of Parkinson's disease: a family-based case-control study." *BMC neurology* vol. 8 6. 28 Mar. 2008. doi:10.1186/1471-2377-8-6

25 Why Bees Matter: The Importance Of Bees And Other Pollinators For Food And Agriculture. Food and Agriculture Organization of the United Nations; 20 May 2018. <https://www.fao.org/3/i9527en/i9527en.pdf>.

The Rainforest Alliance welcomes the inclusion of the Stockholm and Rotterdam Conventions in Part II of the Annex, but there are many more hazardous pesticides that are still widely used and which are not covered by these conventions. At minimum, the Annex should refer to all pesticides that are hazardous according to the Joint Meeting on Pesticide Management FAO/WHO definition.<sup>27</sup> In addition, the Annex should include a provision that the phase-out of these pesticides should be reached with support of alternative pest and weed control measures, according to the 'Integrated Pest Management' (IPM) approach as defined by the FAO.<sup>27</sup> IPM includes measures such as increasing biodiversity on and around the farm to attract natural predators of pests and using alternative measures at an early stage to strongly reduce the spread of pests and the need to apply hazardous pesticides.

Banning the most hazardous pesticides alone will not fully mitigate the risks associated with pesticide use. Rather, a fundamental shift in agricultural practices is needed. However, without including a reference to implementing IPM as a preventive measure, banning pesticides can easily result in producers exchanging these pesticides for other hazardous pesticides or using less hazardous pesticides but applying more of them. Companies need to support producers in their value chains to ensure an effective transition to implementing IPM practices.

## CONCLUSION

The Commission's proposed directive on corporate sustainability due diligence sends a much-needed political and market signal, and the Rainforest Alliance applauds its ambition. However, if the proposal is to meet its own objectives, steps must be taken during the ensuing legislative process to strengthen the eventual directive and facilitate effective implementation.

The Rainforest Alliance encourages the European Parliament and the Council to consider incorporating the key recommendations within this paper. In particular, the CSDDD should be aligned with existing recognised international standards on due diligence (i.e., the UNGPs and OECD Guidelines), to ensure effective due diligence that drives change on the ground. Provisions to uphold the rights of smallholders and forest communities in global value chains, especially those that enable a living income, should be included in the CSDDD. In addition, the environmental scope of the directive should be significantly reinforced to align with global environmental commitments and the SDGs, as well as with the EU Green Deal objectives.

Finally, the EU and its member states should work together to put in place all of the accompanying measures needed to support the most vulnerable value chain actors, most notably, the aforementioned smallholders and communities in the Global South. We will continue supporting the development of an EU directive that can generate transformation in producing countries around the world and make use of our expertise on sustainable production and value chains to provide relevant input during the legislative and implementation processes.

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26 "NSP - Highly Hazardous Pesticides (HHPs)." Food and Agriculture Organization of the United Nations, <https://www.fao.org/agriculture/crops/thematic-sitemap/theme/pests/code/hhp/en/>.

27 "Integrated Pest Management (IPM) | Pest and Pesticide Management." Food and Agriculture Organization of the United Nations, <https://www.fao.org/pest-and-pesticide-management/ipm/integrated-pest-management/en/>.



A truckload of Rainforest Alliance Certified cocoa awaits transport in the farming village of Paul Kru, Côte d'Ivoire. Photo by Nice and Serious.



The Rainforest Alliance is creating a more sustainable world by using social and market forces to protect nature and improve the lives of farmers and forest communities.

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