



The World Banana Forum (WBF)

Working together for sustainable banana production and trade

Report of the multistakeholder discussion session at Fruit Attraction 2023 (FA23)

Attended by representatives of all constituent groups

5 October 2023

Fresh Food Logistic Summit – IFEMA (Madrid, Spain)

Title: The EU Directive on corporate sustainability due diligence (CSDD). Prospects, opportunities, and challenges for the effective implementation of the approved measures

Time: 15:00 - 15:30

Moderator: Victor Prada (WBF)

Speakers:

- **Juan Gomez Riesco (European Commission - Directorate-General for Justice and Consumers (DG-JUST))**
- **Pedro Faria (European Financial Reporting Advisory Group (EFRAG))**


Opening remarks from the World Banana Forum (WBF), Food and Agriculture Organisation of the United Nations (FAO)

Mr Victor Prada opened the session by thanking all participants for their involvement. He provided an overview of the day's agenda and the forthcoming sessions, underscoring the importance of collective efforts in attaining sustainability standards.

European Commission's Directorate-General for Justice and Consumers (DG JUST)

Mr Juan Gómez-Riesco, seconded national expert and legal officer at the European Commission (DG-JUST A3), began his intervention by providing an overview of the proposed Corporate Sustainability Due Diligence Directive (CSDDD), while refraining from elaborating on the positions of the European Parliament and the EU Council as the proposal is currently under negotiation between the co-legislators. He emphasized the international context, including the protracted negotiations on a legally binding instrument to regulate the activities of transnational corporations and other business enterprises in international human rights law, which have been ongoing for nine years, and the recent adoption of similar due diligence laws such as the Surveillance Act (2017) in France and the Supply Chain Act (2021) in Germany. These developments have encouraged the European Commission (EU) to propose and prepare harmonized legislation on the matter.

Mr Gómez-Riesco also emphasized the EU Parliament's involvement in the proposal, informing participants that the Parliament initiated legislative action through two reports: "Sustainable Corporate Government" in December 2020 and the "Wolters Initiative" in March 2021. These reports provided political momentum for the European Commission to adopt the proposed CSDD Directive. The EU Council also adopted in December 2020 the conclusions drawn on living wages and human rights in the supply chain, which pointed in the same direction. The process of preparing the proposed Directive involved extensive public consultations, with over 500,000 contributions. The text of the directives was ratified and officially adopted in February 2022. The positions of the EU Council (December 2022) and the EU Parliament (June 2023) are informing the subsequent tripartite negotiations, which commenced in June 2023. These negotiations involve the Commission, the EU Council, and the EU Parliament. The primary goal is to finalize the directive text and secure Spanish presidency approval by December 2023. In case of any postponement, the fallback plan is to adopt it before June 2024.



The main objective of the Directive is to introduce legally binding rules obliging companies to comply with sustainability due diligence requirements.

These obligations are aimed at large companies, within which 2 groups can be distinguished: 1) Companies that are based in the EU 2) Companies based outside of EU with operations in the EU. Companies within the EU are further divided into two groups: firstly, companies with more than 500 employees and an overall net turnover of more than EUR 150 million; and secondly, companies with more than 250 employees and an overall net turnover of more than EUR 40 million, provided that half of this turnover has been achieved in sectors with a high risk or impact on human rights or the environment. The same turnover criteria apply to non-EU companies operating in the EU, but the net turnover threshold taken into account is only that achieved within the EU, not globally. The criteria regarding the number of employees, however, does not apply to such non-European companies.

Next, he delineated the three pillars of the CSDDD:

Due Diligence: Companies mentioned above are required to implement due diligence procedures to identify, prevent, mitigate or end potential adverse effects on human rights or the environment. The definition of adverse effects pertaining to the environment and human rights is drawn from international treaties and human rights violations specified in the annexes.

Obligations of social administrators: The Directive assigns specific responsibilities to social administrators, with two dedicated articles (25 & 26). Social administrators must remain attentive to both the potential internal and external impacts of their company's activities and the interests of shareholders. Notably, Article 26 was rejected by both the EU Council and the EU Parliament. However, Article 25 remains a part of the directive and is supported by the Parliament, though not by the EU Council. It is crucial in taking into account the insights of stakeholders and civil society organizations and adapting corporate strategies to address adverse effects.

Fight against climate change (article 15): Companies are obliged to implement a strategy that aligns with the goal of restricting global warming to 1.5°C, as per the Paris Agreement. When climate change is a primary consequence of their operations, these companies must also incorporate emission reduction targets. Notably, this obligation falls under administrative oversight. However, it's important to note that due diligence processes do not encompass the adverse effects of climate change. Additionally, the Paris Agreement is not included among the environmental conventions listed in the annex.

Then, two mechanisms required to facilitate the transition from voluntary principles to legally binding norms were then introduced:

Administrative supervision: This mechanism requires member states to designate established administrative bodies with monitoring and investigative capabilities to oversee company activities. These authorities have the power to enforce sanctions that are effective, proportionate, and deterrent, including ceasing violations, preventing repeated offenses, and taking corrective actions proportional to the infringement. Sanctions may also involve financial penalties and interim measures to prevent severe and irreversible harm. Additionally, a European network of supervisory authorities will be established to ensure uniform application of the regulations by the authorities of the various Member States.

Civil responsibility: This is a key provision that grants victims of abuse access to compensation programs. Companies are responsible for compensating damages resulting from violations of obligations outlined in Articles 7 and 8. A company can avoid liability if it has established sufficient contractual oversight and verification processes, except when these measures are insufficient to prevent or mitigate the severity of adverse effects. These are obligatory legal provisions.

Additional tools currently in existence or under negotiation that have an impact on due diligence organizations were then presented. The Directive will soon become enforceable law and be transposed to the member states (2 years for companies from the large group and 2 more years for other companies).

Mr Gómez-Riesco concluded by emphasizing the primary goal of these mechanisms: reducing adverse impacts, building trust with customers, and facilitating improved financing for companies to align themselves with the Directive.

European Financial Reporting Advisory Group (EFRAG)

Mr Pedro Faria, Environmental Lead for EFRAG, introduced the Corporate Sustainability Reporting Directive (CSRD) and outlined its objectives. He stressed that the primary aim of this legal framework is to rectify the quality concerns associated with sustainability data. It seeks to elevate sustainability reporting to the same level of importance as financial reporting. Under the CSRD, mandatory reporting is required for all large entities (those with 250+ employees) and listed SMEs, except for those with subsidiaries that are exempt. Mr Faria also explained the progressive phase-in approach, with the first reporting year set for 2024 for NFRD reporters, 2025 for other large entities, 2026 for listed SMEs (with an opt-out option until 2028), and 2028 for non-EU companies with branches or subsidiaries. In addition, smaller SMEs are encouraged to adopt simplified voluntary reporting practices.

The CSRD regime also offers extensive coverage of sustainability aspects, encompassing Environmental, Social & Governance criteria. These standards are developed by EFRAG through a multi-stakeholder approach and a consensus-based process, subsequently adopted by the EU Commission through delegated acts. This creates a robust legal framework that consists of both Level 1 (CSRD, directive) and Level 2 (ESRS, regulation) components, forming a complementary set of regulations known as the EU Sustainability Reporting Standards. Additionally, there exists a crucial concept of "double materiality", which encompasses both the impacts on sustainability and financial risks and opportunities. Mr Faria also highlighted the requirement of a location and timing report concurrently with the financial statements, as well as a mandatory audit of sustainability information. Another noteworthy point was the digital tagging of the European Sustainability Reporting Standards (ESRS) and Article 8, which pertains to "EU Taxonomy" disclosures.

An introductory overview of ESRS was subsequently provided, which is currently undergoing parliamentary review. This set of 12 standards encompasses two cross-cutting standards and ten topical standards. EFRAG published these standards as technical advice at the end of November 2022, addressing various aspects related to Environmental, Social, and Governance factors. These standards encompass disclosure requirements, both qualitative and quantitative, considerations of financial materiality, impact materiality, and, notably, up to 40 sector-specific standards. Additionally, EFRAG is actively working on SME standards, which are voluntary.


The double materiality was presented as a key principle to the ESRS. Impact Materiality encompasses sustainability issues that concern the significant real or potential impacts, whether positive or negative, that an organization has on people or the environment, spanning short, medium, or long-term timeframes. Financial Materiality was defined as sustainability matters that generate risks or opportunities that have or could reasonably be expected to have a material influence on the undertaking's development, finance position, financial performance, cash flows, access to finance or cost of capital over the short, medium or long term. Risks and opportunities may derive from impacts and from other causes unrelated to impacts. This is illustrated for instance by the distinction between climate mitigation and climate adaptation.

Furthermore, Mr Faria talked about the ESRS sustainability statements. He conveyed the importance of reflecting all material impacts, risks, and opportunities (IROs) identified by the company. Instead of prioritizing these material impacts, they must all be reported objectively, using suitable thresholds. The reporting entity is required to carry out a thorough materiality assessment process to identify these material IROs and disclose both the process employed and the results. This assessment should take into account the value chain where a connection to due diligence is present. Furthermore, the materiality assessment process should incorporate stakeholder engagement.

He went on to discuss the intricate relationship between CSRD and Due Diligence. This connection was elucidated through CSRD's Article 19a (f), which stipulates that companies must include in the management report a comprehensive account of their due diligence processes pertaining to sustainability matters. They should adhere to EU requirements on due diligence, including those laid out in the CSDDD. Furthermore, this reporting should encompass descriptions of the significant actual or potential adverse impacts linked to the company's operations and its value chain. It should also cover other adverse impacts mandated by additional EU requirements, along with details regarding any actions taken to mitigate these impacts and their outcomes.

The central role of stakeholder engagement and how it informs the assessment of impact materiality was then emphasised. This reiterated the importance of due diligence in shaping the materiality assessment, making it a pivotal component in risk management, particularly impact management within the value chain.

It was also underlined that ESRS establishes connections with international instruments, such as the UN Guiding Principles and the OECD Guidelines, without preempting the forthcoming Directive. The ESRS can be amended



as necessary to incorporate provisions from the CSDDD. Due diligence is also integrated into various other segments of the ESRS, including embedding it into governance, strategy, and business (ESRS2), engaging with affected stakeholders (ESRS 2 and cross-cutting disclosures), identifying and assessing negative impacts on people and the environment, taking action to address such impacts, and tracking the effectiveness of due diligence efforts. Furthermore, ESRS2 mandates companies to disclose a mapping of the information provided in their sustainability statement concerning the due diligence process, allowing for a comprehensive overview of due diligence-related information. This interconnected approach ensures that due diligence is thoroughly integrated into the ESRS framework.