

The EU Corporate Sustainability Due Diligence Directive must fully cover the arms sector

Four EU Member states are among the world's top ten arms exporters: France (3rd), Germany (5th), Italy (6th) and Spain (9th). Together in the period 2017-2021, they were responsible for over 21% of global arms exports. As pointed out by the UN Working Group on Business and Human Rights and civil society organisations, there are no known examples of arms companies that conduct proper human rights due diligence (HRDD) with respect to arms production, transfers, and services despite the potential extremely severe impacts of this industry.

The draft Corporate Sustainability Due Diligence directive (the "CSDDD" or the "Directive") can contribute to filling important gaps when it comes to the accountability of European arms companies, which have for too long evaded scrutiny and accountability and hidden behind States' arms authorisation processes.

Scope of the arms sector value chain to be covered

We, the undersigned organisations, are therefore concerned with the Council of the EU's current position to exclude from the definition of "chain of activities" the distribution, transport, storage and disposal of dual-use items and weaponry, as well as the export of weapons, munitions or war materials after an export license has been granted, as well as the use of all such products. We urgently call upon the Member States and the European Parliament to address the severe human rights risks and risks of violations of international humanitarian law (IHL) posed by the arms and dual-use sector by ensuring that all activities in these sectors be fully covered in the Directive, as proposed by the Commission.

The arms sector and the whole value chain of actors linked to its operations should not be partially or fully exempted from the Directive on the premise that it is already subject to national arms export controls. The distribution, transport, storage and disposal of weapons and dual-use products pose important human rights risks including but not limited to the risk of violations of international humanitarian law, diversion of weapons, environmental pollution and degradation resulting from the disposal of weapons, to name just the most urgent concerns. Over the past decades, we have seen these risks materialise again and again. State arms export control regimes in many cases fail to prevent such risks as well.

Excluding downstream activities from the scope of the due diligence obligation because they are already subject to state export controls falls short of the objectives of the Directive. In addition, it misses the fundamental point of the international standards, namely the UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines, which clearly state that companies have their own, individual responsibility to respect human rights and to prevent, end and remediate adverse impacts. These responsibilities exist outside and independently from the human rights obligations of states and their ability and willingness to fulfil these. State export controls therefore by definition cannot replace the corporate responsibility to conduct human rights due diligence.

Arms companies already possess the necessary means to carry out due diligence. They count on additional sources of information, presence in the countries of the export

destination and at times, year-long business relationships with their customers that enables them to make an informed assessment. Moreover, having to report publicly about their risk assessments and measures taken to avoid violations and abuses of human rights and international humanitarian law can contribute to ensuring greater public oversight of arms export decisions.

The arms sector must be listed as a high-risk sector and subject to enhanced human rights due diligence obligations

The proposal for a Directive by the Commission includes a list of high-impact sectors that is stated to reflect the priority areas for international action aimed at tackling adverse impacts on people and the environment. The documented severe human rights and environmental impacts posed by the arms sector warrant that the arms sector be included in the list of high-impact sectors. Furthermore, due to the heightened risks inherent to supplying weapons to conflict-affected and high-risk human rights areas, the Directive should make explicit that companies operating in (including selling or exporting to) conflict-affected and high-risk areas should conduct heightened, conflict-sensitive human rights due diligence.

This would be in line with what the UNGPs and OECD guidelines require from companies operating in or linked to conflict-affected and high-risk areas, as well as with recommendations from the UN Working Group on business and human rights, which recommended that arms companies: “Ensure that HRDD processes are enhanced in situations of heightened risk, such as armed conflicts or internal upheaval.”

If the EU is seriously committed to tackling the harmful human rights impacts of EU companies as well as to global peace and disarmament, it cannot partially or fully exempt one of the most high-risk industries from its human rights obligations, regardless of its strategic importance or the profits it derives from it.

Scope of human rights to be protected

Finally, in terms of the material scope of rights to be covered by the due diligence process, due diligence must cover all internationally recognised human rights instead of defining human rights impacts solely on the selective and incomplete lists of rights currently in the draft Annexes. Hence, the definition of human rights needs to be an open-ended definition. Annex 2 should include all relevant international and regional human rights instruments, and as noted by the Office of the High Commissioner for Human Rights and others, the CSDDD should also refer to international humanitarian law as a standard that businesses are expected to take into account. The four Geneva Conventions and their Additional Protocols should thus be added to the Annex.

We, the undersigned organisations, hence call on Members of the European Parliament and Member States to ensure that:

- **The entire value chain of the arms sector (upstream as well as downstream activities, products and business relations) be included in the due diligence**

obligations set out by the Directive, regardless of whether these activities, products or business relations are subject to national export controls in EU Member States.

- **Arms and dual-use sectors be included in the scope of the Directive as high-impact sectors.**
- **Companies that operate or have business relations in conflict-affected and high-risk areas be subject to a heightened due diligence obligation.**
- **The list of human rights covered in the scope of the Directive comprises all human rights, including international humanitarian law.**