



Comparison of UN Draft Treaty on TNCs & HRs with EU Proposed Directive on Corporate Sustainability Due Diligence

broad and non-exhaustive comparison of topics addressed (excluding environment)

| Topic | UN Treaty | EU Directive |
|--|--|--|
| Subject matter | -- | Art. 1 |
| Statement of purpose | Art. 2 | -- |
| Scope | Art. 3 | Art. 2 |
| Rights of victims | Art. 4 | (Art. 23: persons reporting breaches) |
| Class and representative action | Art. 4.2.d | -- |
| Protection of victims | Art. 5 | -- |
| Prevention / Due diligence | Art. 6 | Art. 4 - 7, Art. 26 |
| Bringing adverse impacts to an end | Art. 6 ('mitigate') | Art. 8 |
| Complaints procedure (company-based) | -- | Art. 9 |
| Monitoring (company-based) | (Art. 6.3.c) | Art. 10 |
| Free, prior and informed consent | Art. 6.4.d | -- |
| Communicating | Art. 6.3.d, 6.4.e | Art. 11 |
| Access to justice/remedy; enforcement | Art. 7 | Art. 17 and 18 (Supervisory Authorities) and 19 (Substantiated concerns) |
| Legal costs | Art. 7.3.c and 7.4 | -- |
| Exclusion of <i>forum non conveniens</i> | Art. 7.3.c and Art. 9.3 | -- |
| Burden of proof | Art. 7.5 | -- |
| Interim measures / injunction | (Art. 4.2.c) | Art. 18.5.c |
| Legal liability | Art. 8 (civil and criminal, for legal and natural persons) | Art. 22 (civil, for companies) |

| Topic | UN Treaty | EU Directive |
|---|---|---|
| Sanctions | Art. 8.3 | Art. 20 |
| Adjudicative jurisdiction | Art. 9 | -- |
| Forum necessitatis | Art. 9.5 | -- |
| Statute of limitations | Art. 10 | -- |
| Applicable law | Art. 11 | (Art. 22.5) |
| Mutual legal assistance and judicial cooperation | Art. 12 | Art. 21 (European Network of Supervisory Authorities) |
| International cooperation | Art. 13 | |
| Consistency with international law (particularly trade and investment agreements) | Art. 14 | -- |
| Model contractual clauses, Guidelines, Accompanying measures | (Art. 6.5: support to SMEs, Art. 13.2.a: capacity building) | Art. 12 - 14 |
| Combating climate change | (Art. 6.4.a, climate change impact assessments) | Art. 15 |
| Institutional arrangements | Art. 15 (Committee, COP, Fund for victims) | -- |
| Supervisory Authorities | -- | Art. 17, Art. 18 / Art. 21 |
| Directors' duty of care | -- | Art. 25 |
| Implementation / Transposition | Art. 16 | Art. 30 |
| Particular attention to vulnerable groups and conflict-affected areas | different articles | -- |
| Review | -- | Art. 29 |

Broad conclusions

Compared with the EU Directive, the UN Treaty elaborates (more) on

- Rights of victims
- Protection of victims
- Free, prior and informed consent
- Legal assistance
- Liability
- Adjudicative Jurisdiction
- Statute of limitations
- Applicable law
- Mutual legal assistance and judicial cooperation
- Consistency with international law (particularly regarding trade and investment agreements)
- Institutional arrangements
- Particular attention to vulnerable groups and conflict-affected areas

Compared with the UN Treaty, the EU Directive elaborates (more) on

- Bringing adverse impacts to an end
- Complaints procedure (company-based)

- Supervisory authorities
- **Directors' duty of care**
- Review

The topics of the EU Directive that are common with or additional to those of the UN Treaty may be those on which the EU may negotiate and issue a corresponding mandate:

- Scope
- Prevention / Due diligence
- Access to justice/remedy; enforcement
- Legal liability
- Sanctions
- Applicable law
- Supervisory authorities
- Mutual legal assistance and international cooperation
- **Directors' duty of care**
- Implementation/transposition
- Review