



IPIS Insight

Due diligence in the arms sector:
Possible implications of the EU Corporate
Sustainability Due Diligence Directive

Editorial

Due diligence in the arms sector: Possible implications of the EU Corporate Sustainability Due Diligence Directive

Antwerp, January 2025

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Introduction

The adoption of the Corporate Sustainability Due Diligence Directive (CSDDD) in June 2024 by the EU marks a significant step towards enhancing corporate accountability across various sectors. However, the implications for the arms sector are particularly complex due to the Directive's provisions that may exempt arms-related activities from the obligation to implement due diligence processes.

The European Commission's initial draft Directive was undisputedly and wholly applicable to the arms sector.¹ However, in the process leading up to the adoption of the final text of the CSDDD, several important exclusions concerning the arms sector were carved out.

The objective of this paper is to clarify the relevant provisions and exclusions of the CSDDD and to propose interpretations where the text is ambiguous.

Commentators generally seem to agree that the arms sector is essentially excluded from the Directive, at least where it matters the most when it comes to addressing the misuse of arms, i.e. the downstream part of manufacturers' and exporters' activities. This paper suggests that the matter is more complex and proposes a possible reading of the Directive that would leave room for the CSDDD to apply more broadly to the arms sector's downstream activities. We do not seek to undermine the evident intention of the EU legislator to not prescribe the due diligence obligations incumbent on the arms sector but to delegate the exact contour of these obligations to the Member States. Rather, our aim is to spark a discussion about the parts of the CSDDD that are ambiguous and need clarification. The reading of the CSDDD proposed in this paper might provide an impetus to transpose the Directive according to the highest international standards, also as regards the arms sector.

1. Key provisions of the CSDDD relevant to arms trade

This part assesses the key provisions of the CSDDD that are potentially relevant in terms of addressing the responsibility of arms producers and exporters regarding the misuse of arms. It also explains the exclusions from the Directive's due diligence requirements, including the specific exemptions for the arms sector.

1.1. Key provisions

The CSDDD requires the EU Member States to impose due diligence obligations for companies with regards to "actual and potential human rights

adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in the chains of activities of those companies".² Furthermore, Member States are required to provide for the liability of companies violating these obligations.³

Companies must undertake risk-based due diligence through the following actions:⁴

- integrating due diligence into their policies and risk management systems

1 Cf. e.g.: ECCHR/Brot für die Welt/Misereor (2023), Arms and conflict-affected areas in the Corporate Sustainable Due Diligence Directive, Issue Sheet, p. 3 (https://www.ecchr.eu/fileadmin/user_upload/ECCHR_PP_ARMS_EN_FF.pdf).

2 Art. 1(1)(a) CSDDD.

3 Art. 1(1)(b) and Art. 29 CSDDD.

4 These required actions are enumerated in Art. 5 CSDDD and concretised in Art. 7 – 16.

- identifying and assessing actual or potential adverse impacts
- where necessary, prioritising actual and potential adverse impacts
- preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent
- providing remediation for actual adverse impacts
- carrying out meaningful engagement with stakeholders
- establishing and maintaining a notification mechanism and a complaints procedure
- monitoring the effectiveness of their due diligence policy and measures
- publicly communicating on due diligence.

1.2. Limited scope and extensive exclusions

The obligations only apply to those large companies that fall under the scope of the CSDDD. These are essentially EU companies with more than 1000 employees and a net worldwide turnover of at least 450 million EUR as well as non-EU companies with a net turnover in the EU of above 450 million EUR.⁵ However, Member States are allowed to apply even higher thresholds until 26 July 2029.⁶

Besides, the CSDDD provides for important exemptions from these due diligence obligations and from liability, in part specifically as regards the arms sector. The exclusions from the due diligence obligations concern the downstream part of companies' activities. In the upstream part, the due diligence obligations cover more activities. Also, companies of the arms sector have the same upstream obligations as the other sectors covered by the CSDDD.

To understand the extent of the exclusions, one needs to consider the following distinction in the CSDDD between:⁷

adverse impacts caused only by the companies' own operations ("so-called 'causing' the adverse impact as referred to in the international framework"⁸) or caused jointly by the companies and their subsidiaries or business partners ("so-called 'contributing' to the adverse impact as referred to in the international framework"⁹)

adverse impacts caused only by the operations carried out by their business partners in the chains of activities of the companies ("so-called 'being directly linked to' the adverse impact as referred to in the international framework"¹⁰).

This distinction is important because one could argue that the exclusions outlined below stem from the definition of "chain of activities", which, in turn, exclusively relates to actual and potential impacts *caused only by the companies' business partners*.¹¹ Thus, the exclusions would not concern actual and potential impacts *caused only by the companies themselves or caused jointly by the companies and their subsidiaries or business partners*.

Article 3(1)(g) of the CSDDD defines "chain of activities" as:

“(i) activities of a company’s upstream business partners related to the production of goods or the provision of services by that company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of products and the development of the product or the service; and

(ii) activities of a company’s downstream business partners related to the distribution, transport and storage of a product of that company, where the business partners carry out those activities for the company or on behalf of the company,

5 Art. 2 CSDDD.

6 See Art. 37(1) CSDDD.

7 This distinction is made in, e.g.: Art. 1(1), Art. 10(1), Art. 11(1), Art. 12 and Art. 29(1) CSDDD.

8 Recitals 45 and 53 CSDDD.

9 Ibid.

10 Ibid.

11 This exclusive relation follows from e.g. Art. 1(1)(a), 3(1)(g), 8(1), Art. 10(1), Art. 11(1), 14(1), Art. 15 and Art. 29(1) CSDDD.

and excluding the distribution, transport and storage of a product that is subject to export controls under Regulation (EU) 2021/821 or to the export controls relating to weapons, munitions or war materials, once the export of the product is authorised”.

The concept of “chain of activities” with its limited list of covered activities presents a departure from the full “value chain” principle inherent in international standards like the UN Guiding Principles on Business and Human Rights (UNGPs).¹²

Finally, liability is completely excluded – upstream and downstream – if the damage is caused only by the companies’ business partners in their chains of activities.¹³ This means that liability is *not* excluded if the damage is caused only by the companies’ own operations or caused jointly by the operations of the companies and those of their subsidiaries or business partners.

1.2.1. Sale and use of products

The first exclusion applies to all companies, including those of the arms sector. It concerns downstream due diligence regarding impacts linked to the “sale” of the companies’ products and their “use” by business partners in the chain of activities. These are crucial activities when it comes to adverse impacts involving arms companies since, in this context, the principal human rights impacts relate to the misuse of arms.

Whereas the list of activities of companies’ upstream business partners in Article 3(1)(g)(i) of the CSDDD is indicative, the list of activities of companies’ downstream business partners in Article 3(1)(g)(ii) is exhaustive.¹⁴ In the original European Commission proposal and the amendments adopted by the European Parliament, “sale” and “use” were explicitly included, but the final version omits them.¹⁵

Therefore, one possible interpretation of the CSDDD is as follows. Companies are not required to conduct due diligence in relation to the “sale” or “use” of their products, if the potential or actual adverse impacts may be or are caused only by the business partners in the companies’ chains of activities. Conversely, companies *are* required to conduct human rights due diligence regarding actual and potential adverse impacts through their products’ “sale” and “use” where these impacts are linked to their own activities, i.e. where these impacts can be qualified as caused only by the companies’ own operations or caused jointly by the operations of the companies and those of their subsidiaries or business partners.¹⁶

1.2.2. Products subject to arms export controls

The second exclusion specifically relates to the arms sector. Article 3(1)(g)(ii) of the CSDDD excludes “distribution, transport and storage of a product that is subject to export controls under Regulation (EU) 2021/821 or to the export controls relating to weapons, munitions or war materials, once the export of the product is authorised” from the definition of “chain of activities”.

12 For the understanding of the concept of “value chain” in the UNGPs, see: United Nations Human Rights, Office of the High Commissioner (2014), Frequently Asked Questions about the Guiding Principles on Business and Human Rights, p. 45 (https://www.ohchr.org/sites/default/files/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf).

13 Last sentence of Art. 29(1) CSDDD.

14 Cf. European Coalition for Corporate Justice, and others (2024), Corporate Sustainability Due Diligence Directive: A guide to transposition and implementation for civil society organisations, pp. 32 and 33 (<https://corporatejustice.org/publications/transposition-guide-for-the-csddd/>).

15 Compare Recital 17 in the Commission’s proposal of 23 February 2022 (COM(2022) 71 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>) and the Parliament’s amendments adopted on 1 June 2023 (P9_TA(2023)0209, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.pdf) with Recital 24 of the final official version of the Directive; compare also Recital 18 (Commission, Parliament) with Recital 25 (final version), as well as Art. 3(g) (Commission, Parliament) with Art. 3(1)(g) (final version).

16 See: European Commission (2024), Directive on Corporate Sustainability Due Diligence: Frequently asked questions, p. 10 (https://commission.europa.eu/document/download/7a3e9980-5fda-4760-8f25-bc5571806033_en?filename=240719_CSDD_FAQ_final.pdf); The Danish Institute for Human Rights (2024), Transposition of the Corporate Sustainability Due Diligence Directive: A practical guide for national human rights institutions, p. 23 (<https://www.humanrights.dk/publications/transposition-corporate-sustainability-due-diligence-directive-practical-guide-0>). In the cited parts, these publications especially refer to impacts linked to the companies’ “own operations”. But this formulation should include impacts caused jointly by the operations of the companies and those of their subsidiaries or business partners (“contributing” in the international frameworks), since the Directive explicitly professes being “in line with the international frameworks” and “covering the same causal relationships described in those frameworks” (see Recitals 45 and 53). And the UNGPs group “causing” and “contributing” together in contrast to “directly linked [...] by their business relationships”, see Principle 13: “The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur ...” (United Nations Human Rights Office of the High Commissioner (2011), Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, emphasis added).

According to one possible reading of the CSDDD, this could mean that companies in the arms sector are not required to conduct due diligence in relation to the “distribution, transport and storage” of arms and dual-use items, if the potential or actual adverse impacts may be or are caused only by the business partners in the companies’ chains of activities (especially those business partners using the arms or dual-use items).¹⁷ Again, conversely, companies in

the arms sector *could be* required to conduct human rights due diligence regarding actual and potential adverse impacts including through the “distribution, transport and storage” of arms and dual-use items where these impacts can be qualified as caused only by the companies’ own operations or caused jointly by the operations of the companies and those of their subsidiaries or business partners.

2. Analysis of coverage and exclusions through the arms trade lens

On the basis of the general overview of due diligence obligations, liability and exclusions under the CSDDD in the previous part, this part will expand on the question as to what this could mean for the arms sector, if one was to follow the interpretation of the Directive in the previous part.

2.1. Due diligence regarding the “sale” and “use” of arms

Following our interpretation of how the CSDDD relates to the “sale and use of products”, companies in the arms sector could be required to conduct human rights due diligence with regards to adverse impacts linked to the “sale” and “use” of their products, if these actual or potential impacts can be qualified as “caused jointly” by the company and the end-user. This applies not only to companies producing or exporting arms,

but also to companies that perform other activities or services in relation to arms, such as brokering, repair or maintenance.¹⁸ Of course, determining the required causal relationship is subject to legal appraisal, as much as regards the identification of potential impacts *ex ante* as in relation to the attribution of actual impacts *ex post*.

The view that companies producing/exporting arms significantly contribute to the adverse impacts linked to the misuse of those arms is not too far-fetched.¹⁹ It is inherent in the reasoning in criminal legal cases against arms companies alleging their “complicity” in the crimes committed with the exported arms. Examples are the criminal complaints against various European arms exporters for their alleged contribution to the crimes committed by the Saudi-led military coalition in Yemen.²⁰

¹⁷ But see the nuancing of this statement below in part 2.

¹⁸ Any exclusions relating to “services” that may result from Art. 3(1)(g)(ii) CSDDD do not apply where the adverse impact can be qualified as caused only by the companies own services or caused jointly by the companies’ services and their subsidiaries or business partners. Cf.: European Coalition for Corporate Justice, and others (2024), Corporate Sustainability Due Diligence Directive: A guide to transposition and implementation for civil society organisations, p. 34 (<https://corporatejustice.org/publications/transposition-guide-for-the-csddd/>).

¹⁹ On a closely related issue, it has been suggested that a state authority’s arms export decision (the decision to grant an export licence) might itself amount to a human rights violation (right to life), if the eventual human rights violation through the misuse of the arms was “foreseeable” for the state authority, see: H. Lammerant (2023), A human rights perspective on arms export licencing and access to information, Vredesactie/IPIS, p. 22 (<https://ipisresearch.be/publication/a-human-rights-perspective-on-arms-export-licencing-and-access-to-information/>); H. Lammerant (2021), Arms export control and the legal obligation to protect human rights: A human rights agenda to strengthen arms export control, Vredesactie, p. 39 (<https://www.vredesactie.be/sites/default/files/2021-12/Policy%20brief%20Arms%20export%20control%20and%20the%20legal%20obligation%20to%20protect%20human%20rights%20-%20Vredesactie.pdf>).

²⁰ See for example: ECCHR, and others, Case Report: European Responsibility for War Crimes in Yemen – Complicity of Italian Subsidiary of German Arms Manufacturer and of Italian Arms Export Authority (https://www.ecchr.eu/fileadmin/user_upload/CaseReport_RWMItalia_July2023.pdf); ECCHR, and others, Case Report: Made in Europe, bombed in Yemen: How the ICC could tackle the responsibility of arms exporters and government officials (https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport_ECCHR_Mwatana_Amnesty_CAAT_Delas_Rete.pdf).

The link between the due diligence-related issue of “contributing to [...] adverse human rights impacts caused by other parties” (i.e. “jointly causing” in the CSDDD’s terms) and “complicity in the commission to a crime” is made explicitly by the UNGPs.²¹ They state that such contribution may amount to complicity in the criminal legal sense.²²

The UNGPs furthermore clarify that the standard for complicity (or aiding and abetting) under international criminal law is “*knowingly* providing practical assistance or encouragement that has a substantial effect on the commission of a crime”.²³ This cognitive element is assumed to be present in criminal legal cases, in which the arms companies are alleged to have acted “knowingly accepting the risk”²⁴ of the arms being used in the commission of the crimes or “despite their knowledge of the crimes committed”²⁵. The aim not to dilute the required causal relationship too much is also inherent in the CSDDD. On the one hand, the Directive requires the cognitive element of “reasonable foreseeability” for certain human rights impacts.²⁶ On the other hand, the Directive excludes “minor or trivial contributions” from what is recognised as “jointly causing”.²⁷

As a result, there is a good case to consider adverse human rights impacts to be “caused jointly” by the company producing/exporting the arms and the end-user, provided the “knowledge” or “reasonably foreseeable” standard is fulfilled.

Apart from this argument that arms exports contribute to/jointly cause adverse human rights impacts, one can identify other – albeit much more limited – possible points of entry for due diligence obligations of companies in the arms sector. These additional points

of entry concern impacts caused only by the companies’ *business partners* in their chains of activities.

2.2. “Subject to export controls”

Even if the actual or potential adverse impact is caused only by the companies’ business partners in their chains of activities, due diligence obligations still apply in relation to the “distribution, transport and storage” of arms and dual-use items in case these products are not subject to export controls.²⁸

EU Member States may decide that certain products do not require an export licence, such as high-tech components to be integrated into larger weapon systems.²⁹ But according to the CSDDD, human rights due diligence regarding such products would not look beyond the very activities of “distribution, transport and storage”. This would not extend to the use of these products (possibly after being integrated into a larger weapon system), which means that adverse impacts linked to the misuse would not be covered by the due diligence measures, only impacts occurring in the limited context of “distribution, transport and storage”. Additionally, Article 3(1)(g)(ii) of the CSDDD requires that “the business partners carry out those activities for the company or on behalf of the company”.

2.3. “Once the export of the product is authorised”

Even if their products are subject to export control, arms companies have due diligence obligations under the CSDDD concerning activities of their business partners *before* the export is authorised. Article 3(1)(g)(ii) only excludes the listed downstream activities of the business partners “once the export of the product

21 United Nations Human Rights, Office of the High Commissioner (2011), Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Commentary to Principle 17, pp. 18 and 19.

22 Ibid., p. 18.

23 Ibid., p. 19, emphasis added.

24 C. Schliemann/L. Bryk (2019), Arms Trade and Corporate Responsibility: Liability, Litigation and Legislative Reform: Democracy and Human Rights, Friedrich-Ebert-Stiftung, p. 26/27 (<https://library.fes.de/pdf-files/iez/15850.pdf>).

25 ECCHR, and others, Criminal complaint against French arms manufacturers for the export of war materials in the context of the Yemen conflict: Questions and answers, p. 3 (https://www.ecchr.eu/fileadmin/user_upload/Q_A_-_September_2022_-_Criminal_complaint_against_French_arms_manufacturers_.pdf).

26 See Art. 3(1)(c)(ii) CSDDD: “... the company could have reasonably foreseen the risk that such human right may be affected ...”.

27 See Recitals 45 and 53 CSDDD.

28 Argumentum e contrario from Art. 3(1)(g)(ii) CSDDD.

29 See for example the export from Flanders to Israel of displays integrated into the control stations of Unmanned Aerial Vehicles used in military operations in Gaza: H. Lammerant, Belgische wapenexport naar Israël: De speling tussen woord en daad in het exportcontrolebeleid (2024), Vredesactie/IPIS, p. 14 (<https://ipisresearch.be/publication/belgian-arms-exports-to-israel-the-discrepancy-between-words-and-deeds-in-export-control-policy/>).

is authorised³⁰. This means that, under the Directive, arms companies are required to conduct pre-licence due diligence concerning impacts arising from the

activities of their business partners, albeit again exclusively in relation to the distribution, transport and storage of their products.

3. Impact of the CSDDD on accountability in the arms sector

From the foregoing analysis it is evident that certain downstream activities linked to the arms sector are excluded from the application of the Directive, but the exact extent of these exclusions is complex and ambiguous. While the Directive mandates that companies conduct due diligence in relation to human rights and environmental risks in their chain of activities, its explicit exclusion of some arms trade downstream activities and its ambiguity may result in several negative consequences for both companies and the broader global community.³⁰

3.1. Risk of companies minimising due diligence efforts

The CSDDD's lack of clear guidance on the arms sector creates a potential loophole, allowing companies in this industry to exploit the ambiguity and, as a result, potentially scale back their due diligence efforts.

- **Lack of uniformisation/EU-wide requirements**

With no clear and comprehensive EU-wide due diligence requirement for arms companies, there is little incentive for businesses to go beyond the minimum standards already mandated under existing export controls (such as the Common Position and the ATT).³¹ As a result, arms companies may limit their efforts to the compliance requirements of these

existing frameworks, which may not fully account for human rights impacts in the same way that a comprehensive EU Due Diligence Directive would.

- **Inconsistent implementation across EU Member States**

Since regulatory oversight is left to national and/or sub-national governments, the implementation of national laws related to due diligence may be uneven across the EU, leading to inconsistencies in the enforcement of human rights standards. Some Member States or competent sub-national authorities may adopt stronger due diligence requirements (like Flanders or Germany), while others may fail to do so. This lack of EU-wide harmonisation could encourage companies to headquarter in countries with weaker regulations and minimise their responsibility for human rights impacts in the arms trade.³²

3.2. Increased risk of complicity in human rights abuses

Without comprehensive due diligence obligations under the CSDDD, arms companies may face an increased risk of becoming complicit in human rights abuses.³³ If, for *arms transfers to repressive regimes*, arms companies are not required to conduct rigorous human rights assessments (as would be mandated under the CSDDD if the downstream part of the

30 Joint NGO statement to the European Parliament and EU Member States: The EU Corporate Sustainability Due Diligence Directive must fully cover the arms sector (<https://www.amnesty.eu/news/the-eu-corporate-sustainability-due-diligence-directive-must-fully-cover-the-arms-sector/>).

31 B. Vroege (2024), A constitutional perspective on EU arms controls: mediating trade, security, and humanitarian responsibility, *European Law Open*, Volume 3, Issue 2 (<https://www.cambridge.org/core/journals/european-law-open/article/constitutional-perspective-on-eu-arms-controls-mediating-trade-security-and-humanitarian-responsibility/BDEFA1BEC491FECFEDC7DD2F9A4E7573>).

32 European Coalition for Corporate Justice (2022), *Dangerous gaps undermine EU Commission's new legislation on sustainable supply chains* (<https://corporatejustice.org/news/dangerous-gaps-undermine-eu-commissions-new-legislation-on-sustainable-supply-chains/>).

33 European Coalition for Corporate Justice/Frank Bold (2022), *From rushed reactions to proper preparedness: Corporate due diligence in times of armed conflict*, p. 11 (https://corporatejustice.org/wp-content/uploads/2022/09/ECCJ_Due-Diligence_in_Armed_Conflict_v03.pdf).

chain of activities in the arms sector was fully included), there is a higher chance that arms exports will contribute to conflict, oppression, or abuses in authoritarian regimes.³⁴

For example, arms sales to Saudi Arabia amid its involvement in the Yemen conflict have raised significant concerns among human rights organisations about the use of EU-made weapons in violating international human rights and humanitarian law.³⁵

- **Lack of post-sale monitoring**

Concerning the inclusion or exclusion of downstream activities in the arms sector, arms companies may assume they are not responsible for how their products are used once they are transferred to foreign governments or non-state actors. While the Directive may leave ambiguity regarding the practical implementation of due diligence, it does not grant

impunity for actual or a carte blanche for potential human rights violations. Arms companies are still legally obligated to uphold international humanitarian law and human rights standards, as these norms are embedded in national law and other binding international frameworks, which apply to their operations.³⁶

- **Indirect complicity**

The CSDDD could have helped to establish a clearer requirement for arms companies to assess and mitigate risks associated with third-party actors, such as subcontractors or re-exporters, who may not be subject to the same regulatory scrutiny. This lack of clear instructions/clarity regarding transparency and due diligence on third-party transactions could enable arms companies to circumvent accountability mechanisms and contribute to human rights abuses by proxy.³⁷

4. Ways in which due diligence standards in the arms sector can be strengthened

4.1. Minimum harmonisation³⁸ in the CSDDD and national transposition

One way of improving due diligence standards in the arms trade is to ensure that national laws align with and, where possible, expand upon the principles of the CSDDD, especially in countries with significant defence industries or arms trade agreements. While the

CSDDD partly excludes arms trade, Member States retain the competence to go beyond its provisions, including by mandating due diligence obligations for the whole value chain, encompassing use and sale, as part of the implementation of the CSDDD or through their arms trade and dual-use legislation. For instance, Member States can incorporate stricter provisions and could therefore choose to align with international

34 M. Kanetake/C. Ryngaert (2023), Due diligence and corporate liability of the defence industry: Arms exports, end use and corporate responsibility, Flemish Peace Institute (<https://vlaamsvredesinstituut.eu/wp-content/uploads/2023/05/VVI-Rapport-Due-Diligence-WEB-new.pdf>).

35 ECCHR/Brot für die Welt/Misereor (2023), Arms and conflict-affected areas in the Corporate Sustainable Due Diligence Directive, Issue Sheet, (https://www.ecchr.eu/fileadmin/user_upload/ECCHR_PP_ARMS_EN_FF.pdf).

36 M. Kanetake/C. Ryngaert (2023), Due diligence and corporate liability of the defence industry: Arms exports, end use and corporate responsibility, Flemish Peace Institute (<https://vlaamsvredesinstituut.eu/wp-content/uploads/2023/05/VVI-Rapport-Due-Diligence-WEB-new.pdf>).

37 H. Alwishewa (2024), The move towards human rights due diligence policies by the arms industry, Forum on the Arms Trade (<https://www.forumarmstrade.org/blog/the-move-towards-human-rights-due-diligence-policies-by-the-arms-industry>).

38 Minimum harmonisation refers to the fact that the CSDDD sets certain basic standards and obligations for due diligence in relation to human rights and environmental risks, but Member States have flexibility in implementing and extending these standards in line with their national context and political priorities. This provides an opportunity for countries to go beyond the minimum requirements set by the EU and adopt stricter laws and regulations.

standards like the OECD Guidelines or UNGPs.³⁹ This is explicitly allowed under Article 4(2) of the CSDDD, which permits Member States to introduce more stringent or specific national provisions, diverging from those laid down in provisions other than Article 8(1) and (2), Article 10(1) and Article 11(1), to achieve a higher level of protection in areas such as human rights, environmental sustainability, and climate protection.

Although the CSDDD itself does not mandate due diligence obligations for the arms sector in line with international standards, it can be argued that Member States are required to implement them as part of their broader obligations under other legal frameworks, including the EU Dual-Use Regulation (Regulation 2021/821), implicitly under EU Common Position 2008/944/CFSP and following from the positive obligations as part of the right to life (Article 2 of the European Convention on Human Rights, Article 6 of the International Covenant on Civil and Political Rights).⁴⁰ The exclusion in Article 3(1)(g) (ii) of the CSDDD should therefore not be seen as a strict limitation on Member States' ability to adopt broader due diligence requirements. Instead, it reflects the specific scope of the CSDDD in relation to these existing frameworks, which gives Member States the flexibility to go further than the current arms trade legislation.

4.2. Push for further clarification of the Directive

Given the complexity of the arms trade and the potential for diverging interpretations of the current provisions in the CSDDD, it is imperative to advocate for further clarification and elaboration of the Directive's text. While the CSDDD, at least partly, excludes the arms trade from its downstream due diligence requirements, this exclusion should not create a loophole for neglecting human rights and environmental considerations. There is a significant risk that the current wording of the Directive could lead to weaker standards or create uncertainty regarding the scope of due diligence obligations for arms companies.

For instance, companies should be required to assess not only the immediate risks of their arms exports but also the longer-term and indirect risks associated with the end-use of weapons in conflict zones or by repressive regimes. The CSDDD could be enhanced by specifying that companies must evaluate reasonably foreseeable consequences, even if they are not immediately evident in terms of direct legal requirements under the Directive.

39 Good practices that go in the right direction already exist. For example, Flanders published guidelines encouraging arms companies to carry out human rights due diligence as part of their export processes (for further details, refer to Section 6.1, 'Flanders: Leading by Example' in: L. Lizarazo-Rodríguez/IPIS, Due diligence and corporate accountability in the arms value chain, IPIS/VUB, (<https://ipisresearch.be/publication/due-diligence-and-corporate-accountability-in-the-arms-value-chain/>)).

40 For the obligations for arms exporting states flowing from the right to life, see: H. Lammerant (2021), Arms export control and the legal obligation to protect human rights: A human rights agenda to strengthen arms export control, *Vredesactie*, pp. 12 – 17 (<https://www.vredesactie.be/sites/default/files/2021-12/Policy%20brief%20Arms%20export%20control%20and%20the%20legal%20obligation%20to%20protect%20human%20rights%20-%20Vredesactie.pdf>)).



Conclusion and recommendations

The exclusions in the downstream part of the chain of activities in the arms sector from the CSDDD may prompt companies in this sector to minimise their due diligence efforts within the licenced export of their products, increasing the risk of complicity in human rights abuses linked to the post-sale use of their products. As observed in other high-risk industries, the absence of robust due diligence standards could result in serious human rights violations. However, through proactive measures (transposition) and potential regulatory adjustments, states, together with companies and other stakeholders, should work towards a more transparent and accountable arms sector, better aligned with the EU's human rights and sustainability goals, in accordance with the following recommendations:

- Ensure that due diligence is conducted in relation to all activities concerning arms and dual-use items (including their sale and use) where the actual or potential adverse impacts linked to these activities

can be qualified as caused only by the companies or jointly by the companies and their subsidiaries or business partners.

- Do not exclude the use, sale, distribution, transport and storage of – or any other activities or services relating to – arms/dual-use items from due diligence as regards actual or potential impacts linked to these activities caused only by the companies' business partners, even after the export of these products is authorised.
- EU Member States should recognise that they are required to adopt due diligence obligations for arms companies in line with international standards irrespective of the CSDDD. Companies should recognise that they are not exempt from respecting human rights and should fulfil their responsibilities under the international due diligence standards irrespective of the CSDDD.

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