
What do the EU's new rules on corporate due diligence mean for Sámi rights and mining in Sweden?

SEI working paper
October 2024

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Published by

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LKAB mine in winter, from the top of Loussavaara mountain, Sweden
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DOI: <https://doi.org/10.51414/sei2024.042>

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Acknowledgements

This paper is a deliverable from the Mistra Mineral Governance research program (www.mistramineralgovernance.se) funded by Mistra – The Swedish Foundation for Strategic Environmental Research. The paper was written during Carlo Mazzoleni's visit as guest researcher to the SEI HQ Rights and Equity Team, see: www.sei.org/centres/headquarters/research-areas/rights-and-equity

Summary

Mining activities in Sweden have adverse effects on traditional Sámi livelihoods, including economic, social, and cultural disruption. Currently, Swedish legislation does not sufficiently consider human rights in mineral licensing, suffering from a lack of meaningful Sámi participation in decision-making and reliance on voluntary corporate initiatives for human rights due diligence.

The EU Corporate Sustainability Due Diligence Directive (CSDDD) introduces new obligations for large businesses to assess and address adverse impacts on human rights. It entered into force in July 2024, and member states must implement it at the national level by the end of July 2026. This paper evaluates the implications of these new obligations, in the context of mining activities in Sweden that affect the traditional livelihoods of Indigenous Sámi reindeer herding communities.

Looking at the directive's provisions in light of international business and human rights standards, we discuss ways that the CSDDD could strengthen protection of Sámi rights by requiring companies to identify, prevent, and address adverse impacts through structured due diligence processes. However, whereas the directive can be interpreted to encompass Indigenous Peoples' rights, it lacks direct references to key rights such as the right to give or withhold Free Prior and Informed Consent. It also leaves much to interpretation as to the "appropriate measures" that companies should implement in practice to comply with the new requirements – adopting a risk-based approach to be applied on a case-by-case basis. The CSDDD's effectiveness will depend on how it is put into effect at the national level, via regulatory oversight and judicial enforcement.

In the coming years the push for mining activities on Sámi lands is expected to intensify, partly owing to EU legislation, including the Critical Raw Materials Act. One concrete example concerns the state-owned Swedish mining company LKAB's plans to mine Europe's largest known deposit of rare earth elements near Giron (Kiruna) in northern Sweden. The Gabna reindeer herding community foresees significant impacts from the mine, including land dispossession and obstruction of essential migration routes for reindeer. This case indicates the types of concerns that should be considered as part of verifying compliance with the CSDDD. For instance, LKAB's risk assessment has not included human rights, nor social and cultural impacts, of the project. Similarly, LKAB has not yet proposed measures to prevent or mitigate adverse impacts on reindeer herding.

1. Introduction: mining and Sámi reindeer herding in northern Sweden

While research on the topic remains scarce, experiences of herding communities show that mining activities in Sweden have adverse impacts on the traditional livelihoods of the Sámi, including on reindeer herding, fishing and hunting, which are essential aspects of Sámi cultural identity (Kløcker Larsen et al., 2022). For reindeer herding, mining projects can result in loss and fragmentation of grazing areas, disruption of routes used for seasonal migrations between summer and winter pasture, and disturbances and stress to the reindeer – including cumulative effects caused by infrastructure for mining projects such as roads and power lines. Economic impacts include the death of animals, costs for artificial feeding, increased workloads, and costs for equipment and material such as helicopters and fences. Social and cultural impacts include psychosocial stress, constrained opportunities for Sámi youth to continue the practice of herding, and undermining of traditional knowledge of the land (Kløcker Larsen et al. *ibid.* See also Fohringer et al., 2021; Lawrence & Kløcker-Larsen, 2019).

When analysed through the lens of international human rights law, the consequences of mining activities on Indigenous Peoples' traditional livelihoods can impinge on several fundamental rights to which Indigenous Peoples like the Sámi are entitled, including rights to land and resources as well as cultural and political rights (Burger, 2014). Sweden recognizes the status of the Sámi as an Indigenous People in its constitution, and it is legally bound under international human rights law to protect their rights, including against infringements by private actors such as companies. It is a well-established principle that states have positive obligations to take all appropriate measures to prevent and address human rights abuses by private entities, as recognized by UN treaty bodies (e.g. in General Comment no. 31 of the Human Rights Committee, p.8) and the European Court of Human Rights (e.g. in the case *Fadeyeva v. Russia*, app. no. 55723/00, 2005 p. 89).

The reindeer herding right is a civil property right, recognized under the Reindeer Herding Act (bill no 1971:437) as a usufructuary right (i.e. a right to use the land for grazing, regardless of who holds formal title or ownership). Meanwhile, this right is poorly incorporated in the mineral and environmental legislation, notably the Minerals Act (bill no 1991:45) and the Environmental Code (bill no 1998:808). Here, the reindeer herding right is weakly protected, focusing on herding as an economic interest to be balanced with other competing interests related to land use. Sectoral legislation has not been revised to reflect Sweden's obligations under international law, recent domestic court precedence, or Sámi customary law (Allard, 2022).

Specific examples of the weak protection pertain to the lack of consent requirements in mineral permitting and that no requirement exists to consider potential impacts on Indigenous or other human rights, including social and cultural affairs. Notably, this is in contrast with the internationally recognized right of Free, Prior and Informed Consent (FPIC), according to which states must consult and cooperate in good faith with the Indigenous Peoples "before adopting and implementing legislative or administrative measures that may affect them" (UNDRIP, art. 19). In particular, states should do so "prior to the approval of any project affecting their lands or territories and other

resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources” (UNDRIP, art. 32). The recently legislated bill on a consultation duty with the Sámi People (bill no 2022:66) provides limited improvements (The Swedish Institute for Human Rights, 2023). Such gaps are some of the reasons that the Swedish government has received repeated critiques from various human rights organs for failing to properly implement domestically its international human rights obligations towards the Sámi (e.g. Committee on Economic, Social and Cultural Rights, 2024; Committee on the Elimination of Racial Discrimination, 2020).

In terms of business and human rights, there are also concerns that domestic legislation generally fails to ensure that companies observe international praxis on human rights due diligence, as provided by international instruments such as the UN Guiding Principles on Business and Human Rights (ENACT, 2018). The implementation of measures aimed at identifying, preventing and addressing negative impacts on Indigenous Sámi rights is hence largely left to companies to take voluntary initiatives, with the government having expressed its expectation that businesses respect human rights in their operations, for example in the 2017 Action Plan for Business and Human Rights (Swedish Ministry for Foreign Affairs, 2015) and in the State Ownership Policy and Principles for State-owned Enterprises 2020 (Swedish Ministry of Enterprise and Innovation 2020, 2020).

In this fraught regulatory context, new legislative measures that promise to step up protection for Sámi rights and the environment are of obvious interest. In this report, we focus on the EU Corporate Sustainability Due Diligence Directive (CSDDD) (European Parliament, 2024). The objective is to evaluate the implications of the human rights due diligence requirements in this new directive, in the context of mining activities in Sweden that affect the traditional livelihoods of Indigenous Sámi reindeer herding communities. Below, we review the new obligations introduced by the CSDDD and discuss their efficacy in relation to existing Swedish regulations as well as what mechanisms will be available to hold non-compliant companies accountable.

2. Method

To pursue our stated objective above, we provide a legal review of the CSDDD focusing on three due diligence obligations deemed particularly relevant for mining companies in Sweden and how their activities affect Sámi herding communities. These new provisions – articles 8, 10 and 13 – introduce additional substantial and procedural requirements for companies compared to the current national framework.

We comment on these provisions in the CSDDD in light of authoritative international instruments providing standards on corporate human rights due diligence, namely the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines). We refer to these two standards in order to provide a potential specification of the actions that companies will have to adopt in practice to comply with the new due diligence obligations. The reason for this is that the articles from the CSDDD addressed below generically require companies to take “appropriate measures”, which will be concretely defined in the guidelines that the EU Commission is called to issue to this end (pursuant to article 19 CSDDD). Although these international standards are

not binding for companies under the directive, aligning the CSDDD's requirements with the UNGP's and the OECD Guidelines would be consistent with the EU's official commitments, as well as with Recital 67 of the directive, according to which the EU Commission's guidelines should be framed "using relevant international guidelines and standards as a reference".

Despite this open-endedness, based on the text of the CSDDD, it is already possible to conclude that mining companies operating in Sweden and affecting Sámi communities will need to reconsider their business practices in order to comply with the new requirements. To demonstrate the types of questions that may need attention as the CSDDD will be implemented we provide a brief review of one concrete case of a proposed mining operation on traditional Sámi lands in Sweden. This case concerns Swedish state-owned company LKAB's plans to mine Europe's largest known deposit of rare earth elements near Kiruna, namely the Per Geijer deposit.

The reasons to highlight this case are several; here we focus on two. First, it has received much media attention, partly because of public relations work carried out by the company together with the government during Sweden's EU Presidency (LKAB, 2023b). Second, in contrast to several smaller mining companies operating in northern Sweden, LKAB is expected to be clearly within the scope of the CSDDD, meeting the thresholds regarding both the number of employees and global net turnover. This entails that it will be called to comply with the new due diligence requirements outlined above once they enter into force. By looking at how LKAB has been assessing and addressing human rights considerations in the context of the ongoing licensing procedure we can highlight potential areas where the company may be required to amend its practices under the CSDDD.

The points below are based on publicly available documentation, and we acknowledge that other relevant information about the case exists outside the public domain. A first draft of the case summary (section 5 in this report) was shared with both LKAB and Gabna herding community for fact-checking prior to publication. Some factual corrections were made, when supported by available document sources. LKAB also stated its disagreement with several arguments in this report and noted that important information is missing, but did not provide further supporting document sources. The authors take sole responsibility for the final summary presented.

3. The CSDDD and its implications

The CSDDD establishes obligations for large businesses concerning actual and potential adverse impacts of their activities on human rights and the environment, as well as liabilities linked to the failure to comply with such obligations. As with all EU directives, for the CSDDD to take effect it is necessary for the member states to transpose it at national level: article 37 sets the deadline for 26 July 2026. The new rules will be coming into force gradually for companies according to their size starting in mid-2027. The key provisions are summarized in Table 1.

While the CSDDD does not directly mention Indigenous Peoples' rights among the human rights listed in Annex 1, Part I, Section I (the abuse of which amounts to

“adverse human rights impact”), it does include the rights of individuals and that affect them. Moreover, among the additional standards that companies may consider, depending on the circumstances, Recital 33 in the CSDDD explicitly refers to Indigenous Peoples’ rights “as protected under the UN Declaration on the Rights of Indigenous Peoples, including in relation to free, prior and informed consent (FPIC)”.

In the coming years the push for mining activities on Sámi lands is expected to intensify, partly owing to EU legislation, such as the Critical Raw Materials Act (CRMA) (European Commission, 2023a), aimed at facilitating so-called strategic projects via streamlined permitting and investments. The CRMA does not clarify its relationship with the CSDDD. However, to be recognized as strategic, projects must comply with certain conditions, including that “the project would be implemented sustainably” (article 6 (c)). Annex III (point 5) of the CRMA clarifies that whether projects located within the EU fulfil such criteria shall be evaluated taking into account “an overall assessment of a project’s compliance with relevant Union or national legislation”.

Arguably, this can be read as encompassing the CSDDD. Indeed, in the Commission proposal there was an explicit reference to the CSDDD as one instrument for assessing the sustainability of a project (European Commission, 2023a, Annex III, point 4 (a)). As a corollary, it is worth noting that this evaluation only refers to the *project’s* compliance, whereas no assessment would be needed about whether a member state, such as Sweden, complies with, e.g., EU or international human rights obligations.

Table 1. Summary of provisions in the Corporate Sustainability Due Diligence Directive

Companies	Activities	Human rights covered	Due diligence obligations	Enforcement mechanisms
EU companies with > 1000 employees and a global net turnover > EUR450 million Non-EU companies with a net turnover generated in the EU > EUR450 million	Companies’ own operations Operations of companies’ subsidiaries Operations of business partners in companies’ chains of activities	Listed in Annex I, Part I Section 1 Contained in the human rights instruments listed in Annex I, Part I Section 2, provided that: -the human right can be abused by a company -the human rights abuse directly impairs a legal interest protected in the human rights instruments listed -the company could have reasonably foreseen the risk that a human right may be affected	Integrate due diligence into risk-management systems Identify and assess actual or potential adverse impacts Prevent or mitigate potential adverse impacts and bring to an end or minimize actual adverse impacts Remediate adverse impacts Establish and maintain a notification and complaints procedure Monitor the effectiveness of due diligence measures and publicly communicate on due diligence.	Public supervisory authorities Civil liability regime

As we review in Table 2, the CSDDD will bring several additional requirements, according to the following articles.

Article 8: “Identifying and assessing actual and potential adverse impacts”

This article requires companies to identify and assess actual and potential adverse impacts of their operations on human rights (as listed in Annex I of the directive). Moreover, UNGP 18 clarifies that the process of identifying and assessing actual or potential adverse human rights impacts should be based on “internal and/or independent external human rights expertise”, with the clear intent to ensure the process is objective. As stated in the interpretive guide to UNGPs’ corporate responsibility to respect human rights, even if an enterprise has internal expertise on human rights, those personnel will need to consult external sources.

Article 10: “Preventing potential adverse impacts”

This article requires companies first and foremost to *prevent* adverse impacts. This might include:

- developing and implementing “a prevention action plan, with reasonable and clearly defined timelines for the implementation of appropriate measures and qualitative and quantitative indicators for measuring improvements” (art. 10, 2 (a))
- necessary “financial or non-financial investments” (art. 10, 2 (c)), and
- “modifications of, or improvements to, the company’s own business plan, overall strategies and operations” (art. 10, 2 (d)).

Both the UNGPs and the OECD Guidelines put a similarly strong emphasis on the importance of prevention.

Article 13: “Meaningful engagement with stakeholders”

This article provides that consultation with stakeholders shall take place at different steps of the due diligence process, including the first stages aimed at gathering the information required to identify and assess adverse impacts (pursuant to article 8). The OECD Guidelines (including the sector-specific Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector) elaborate on standards for how engagement with affected stakeholders should be conducted in order to be considered meaningful; for example, engagement should be ongoing, in good faith and responsive to stakeholders’ views.

Table 2. Comparison of human rights due diligence requirements

Current Swedish framework (Kløcker Larsen and Raitio 2019; Raitio et al. 2020; Allard and Curran 2021)		CSDDD	International standards: - The UN Guiding Principles on Business and Human Rights (UNGPs) - OECD Guidelines
Identify and assess actual and potential adverse impacts	No human rights impact assessment required. Environmental impact assessments (EIAs) focus on potential environmental impacts of projects on reindeer herding, framed as a public interest in pursuing an economic industry.	Article 8 requires companies to identify potential adverse human rights impacts and carry out in-depth assessments.	Human rights impact assessments should take place at regular intervals and be based on external human rights expertise (UNGP 18).
Prevent or mitigate	Authorities and courts tend to rely on an assumption of co-existence of mining activities and reindeer herding, so companies are rarely, in practice, required to avoid adverse impacts – only to take measures aimed at mitigating them, including monetary compensation.	Article 10 requires companies to prevent adverse impacts, where possible; however, if “prevention is not possible or not immediately possible” companies should take measures to mitigate such impacts.	Both the UNGPs (UNGP 11) and the OECD Guidelines (p. 16) emphasize that the purpose of due diligence is first and foremost to avoid causing adverse impacts.
Engagement with stakeholders	Consultations are required in the context of the EIAs. In the exploration stage, no EIAs are required but companies must share their work plans and invite comments from potentially affected stakeholders, including herding communities. Several specific issues have been documented in research: Unclear connection between outcomes of consultations and analysis in EIAs. Inadequate sharing of information on methods and evidence used in the assessments. Limited or no funding made available for facilitating participation.	Article 13 requires companies to consult stakeholders at different stages of the due diligence process, including for the purposes of identifying and assessing potential adverse impacts. Companies shall provide “relevant and comprehensive information”, and “address barriers to engagement” (Article 13.5).	Under the OECD Guidelines (Commentary on Chapter II, p. 28), engagement should be ongoing, two-way, conducted in good faith and responsive to stakeholders’ views.

4. Will the CSDDD ensure access to remedies?

The CSDDD provides for two complementary enforcement mechanisms through which those affected by companies’ failure to comply with the due diligence obligations might seek remedies. These mechanisms are discussed below.

4.1 Administrative supervision

The CSDDD requires member states to designate independent authorities to oversee companies’ compliance with the CSDDD’s obligations. To this end, they must have adequate resources and human rights expertise (art. 24). Supervisory authorities shall have the power to investigate alleged breaches of due diligence obligations, either on their own initiative or in response to substantiated concerns. They shall also be authorized to issue injunctions, such as orders to cease an infringement, provide appropriate remediation, or adopt interim measures, and to impose penalties, including financial penalties of up to 5% of the company’s worldwide net turnover (art. 25 and

27). A supervisory authority “may initiate an investigation (...), where it considers that it has sufficient information indicating a possible breach by a company of the obligations provided for in the provisions of national law adopted pursuant to this Directive” (art. 25). According to Article 26, both natural and legal persons are entitled to submit “substantiated concerns” when they have reason to believe that a company is failing to comply with the CSDDD’s provisions. Supervisory authorities shall assess such concerns within an appropriate timeframe (art. 6.4) and provide information on the result of their assessment and the reasoning behind that result (art. 26.5 - first part).

In cases where substantiated concerns are submitted by those who have, in accordance with national law, a legitimate interest in the matter – as it would be for Sámi herding communities, whose right to conduct reindeer herding is recognized under national law and would likely be impacted by a mining company’s breach of obligations – the supervisory authority shall inform “of its decision to accept or refuse any request for action, as well as a description of the further steps and measures, and practical information on access to administrative and judicial review procedures” (art. 26.5 - second part). Also, persons with a legitimate interest in the complaint shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failures to act of the supervisory authority. Of course, because the directive’s provisions will not apply retroactively, substantiated concerns will most likely only regard facts that occurred *after* the entry into force of the Swedish law implementing the CSDDD.

In any case, the directive postulates that the decisions of supervisory authorities regarding a company’s compliance with the CSDDD’s provisions shall be without prejudice to the company’s civil liability under article 29. This means that if a party, such as a herding community, presents a substantiated concern it could – regardless of the decision of the supervisory authority – still activate the civil liability regime discussed below.

4.2 Civil liability regime

Article 29 of the CSDDD requires member states to ensure that companies can be held liable for damages caused by the intentional or negligent failure to comply with articles 10 and 11 – in other words, for not adopting appropriate measures to prevent potential adverse impacts (art.10) or to bring to an end actual adverse impacts (art.11) that should have been identified in accordance with Article 8. Hence, this norm provides a legal basis on which Sámi communities might rely for suing mining companies for alleged harms resulting from adverse impacts of extractive activities on their rights to lands and livelihoods, as interpreted in line with Article 27 of the ICCPR. However, the provisions under Article 29 of the CSDDD, as well as how they will interact with domestic civil laws, raise several legal issues that Sámi communities must consider for evaluating limits and opportunities under the new civil liability regime, including the following:

Claimants will have to prove the damage suffered, as well as the company's negligent or intentional failure to comply with the due diligence obligations laid down in articles 10 or 11 of the CSDDD, and the causal link between the failure to comply and the damage suffered. This is determined by Swedish rules on the burden of proof in civil proceedings, as the directive "does not regulate who should prove the fulfilment of the conditions for liability under the circumstances of the case" (Recital 81). To reduce the burden of proof, the directive mandates that national courts must be able to order the disclosure of evidence held by the company, insofar as it is necessary and proportionate; that is, when a "claimant presents a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of their claim for damages and has indicated that additional evidence lies in the control of the company" (art. 29.3 (e)). This implies that member states must ensure that national procedural laws provide for efficient disclosure mechanisms; otherwise, the requirement would be ineffective.

To provide effective judicial remedies, the CSDDD requires member states to allow claimants not only to seek monetary compensation but also to ask courts to issue injunctive reliefs (i.e. non-monetary remedies), including through summary proceedings, in the form of final or interim orders to companies to take an action or cease conduct (article 29,3 (c)). The conditions under which such remedies can be accessed will depend on national rules and measures other than monetary compensation. Similarly, national tort laws will apply to assess whether and to what extent claimants can seek compensation for non-monetary damages, which may be particularly significant in relation to fundamental rights.

The costs of civil proceedings are a practical barrier to accessing judicial remedies. The CSDDD generally requires member states to ensure that such costs are not "prohibitively expensive for claimants" (art. 29,3 (b)), but it will depend on national rules to ensure that these costs are such that claimants are not prevented from bringing their actions.

5. Case: LKAB's project to mine transition minerals

Several exploration projects are ongoing in northern Sweden and are likely to be proposed as strategic projects to the EU Commission, under the CRM Act (IVA, 2024). By August 2024, the Commission had received 77 applications focused on extraction, from both within and outside the EU (European Commission, 2024b). Of these, according to Svemin, as reported by SVT, six projects have been proposed for extraction in Sweden (Everlång, 2024), several of which are on traditional Sámi lands. One of these proposed projects is used here to exemplify some of the issues that are likely to be subjects of attention when the CSDDD is implemented in coming years. This case concerns Swedish state-owned company LKAB's plans to mine Europe's largest known deposit of rare earth elements to produce, among other things, renewable energy technologies. LKAB is hoping to have this project designated as "strategic" under the CRMA (LKAB, 2024).

The Per Geijer deposit (concession Luossavaara K nr 2) is located near the town of Giron (Kiruna), which already hosts one of the largest underground iron ore mines in the world, run by LKAB and located on both the lands of Gabna and the adjacent Laevas herding community. The new project would take place only a few kilometres away, on the lands of the Gabna herding community. In its statements, Gabna foresees multiple and extensive impacts, including land dispossession, economic damage and social and cultural impacts. Notably, the proposed mine is expected to obstruct the only remaining seasonal migration route essential for connecting the winter pastures and summer pastures, which would jeopardize the future of the whole community (Gabna Reindeer Herding Community, 2021, 2023). In its application for a concession permit (currently in review by the Mineral Inspectorate) LKAB also refers to potential impacts. However, it maintains that alternative solutions can be found to enable continued migration past Giron. These solutions, though, would require Gabna to commit to cooperate with the company on further analyses (LKAB, 2023a) (see further on this point below).

Below is a list of examples serving to indicate the types of questions that may need attention as the CSDDD will be implemented. In this case it concerns whether LKAB's conduct, while potentially considered by government to follow national regulations, would also comply with the new human rights requirements provided by the Corporate Sustainability Due Diligence Directive. The issues noted arise in part due to the mismatch between the treatment of Sámi Indigenous rights in current Swedish mining legislation and Sweden's international human rights obligations (see Table 2 above).

- During the exploration stage (2020–23), LKAB identified no “impacts of importance” for reindeer herding in its work plans submitted to the Mineral Inspectorate (LKAB, 2020a, 2020b). This is despite Gabna contesting such conclusions, maintaining that the exploration work amounted to major disturbances to reindeer herding (Gabna Reindeer Herding Community, 2021).
- During the development of the mining concession application (2023–ongoing), no consultations with Gabna herding community were undertaken. The community refrained from participation, due to concerns over a lack of legal protection for their rights and anticipated significant impacts on both traditional reindeer herding and Sámi culture (Gabna Reindeer Herding Community, 2023).
- The impact assessment included in the application to the Mineral Inspectorate was conducted based solely on LKAB's own knowledge and does not include social and cultural impacts, nor wider human rights risks of the project (LKAB 2023).
- The company has not proposed any measures to prevent or mitigate potential adverse impacts on reindeer herding, stating it will make such analysis later (LKAB, 2023a)

6. Concluding remarks

While the coming years will see changes in what is expected of large mining companies, the CSDDD also leaves much to interpretation. Notably, it does not provide concrete guidance on companies' expected conduct to meet the due diligence requirements; instead it only defines "appropriate measures" in general terms as those "capable of achieving the objectives of due diligence by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the adverse impact" (article 3,1 (o)). Similarly, with regard to Article 10, it does not clarify under what conditions it may be sufficient to mitigate adverse human rights impacts, or when, instead, the adverse impacts are so significant that they must be avoided.

This open-endedness reflects a risk-based approach, with interpretation on a case-by-case basis. It also reflects that the directive's implementation relies heavily on existing domestic legislation, which may – as is the case in Sweden – not be fully compliant with international human rights law. Notably, as mentioned above, the directive does not include FPIC nor Indigenous Peoples rights in general, except for the reference in Recital 33. This is despite the Commission in its original proposal including among the human rights covered by the Directive "indigenous peoples' right to the lands, territories and resources", in accordance with the UN Declaration on the Rights of Indigenous Peoples (European Commission, 2022). Moreover, during the negotiations on the directive's final text, the European Parliament proposed to add explicit references in the provision to Indigenous rights and FPIC concerning meaningful engagement with affected stakeholders (Amendment 206), and to include among the human rights covered the right of Indigenous Peoples to self-determination (Amendment 352) (European Parliament, 2023). Still, explicit references to Indigenous Peoples' rights were excluded from the final text of the CSDDD.

Moving forward, one source of guidance will be the implementing guidelines that the EU Commission is required to develop (pursuant to Article 19 of the CSDDD). Another will be defined by the approach taken by the Swedish government in transposing the directive, including the mandate given to, and/or assumed, by the competent national authority to supervise and follow up. An important role in this regard might also be played by national civil courts, which, in assessing alleged breaches of articles 10 and 11, will have to establish the content of companies' duty of care in relation to the specific cases brought to their attention. Notably, the CSDDD's civil liability regime could be an important tool in the context of the growing phenomenon of "just transition litigation", i.e. legal actions by which affected communities and/or individuals contest the disproportionate social and environmental impacts of projects related to the energy transition, as in the case of the mining of transition minerals (Savaresi, A., et al. 2024).

Research on earlier efforts to legislate mandatory due diligence requirements (e.g. in individual European member states) has highlighted that companies tend to retain much discretion. This, results in selective application of rules, limited information disclosure, and difficulties for affected social groups to hold companies accountable (Schilling-Vacaflor & Gustafsson, 2024). This is why some suggest that due diligence regimes, even with mandatory rules, are little more than half-hearted attempts to compensate for deeper regulatory failures of governments, and do not fundamentally

address the inherent asymmetries in power and resources that typically exist between companies and communities (Deva, 2023). Arguably, the practical value of the new provisions will rely heavily on the readiness of companies and capacities of affected rights holders, such as Sámi herding communities, to flesh out how to meaningfully apply the provisions – whether through collaboration or contestation.

From a research perspective, an important methodological challenge also presents itself: the development and operationalization of robust human rights impact assessments for mining projects that are suitable for a Sámi cultural context, including reindeer herding. Indigenous mobilization around instruments such as community-based impact assessments, combined with legal action and other modes of resistance, has often proven vital for infusing justice considerations and rights protections into land-use planning and licensing of extractive projects (e.g. Kløcker Larsen, 2018; O'Faircheallaigh, 2021). The piloting of such new impact assessment approaches, together with affected Sámi herding communities (and potentially committed companies, too), will arguably be an important research frontier, providing both new knowledge and decision-making support.

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