European Parliament

Corporate sustainability due diligence

How to integrate human rights and environmental concerns in value chains

OVERVIEW

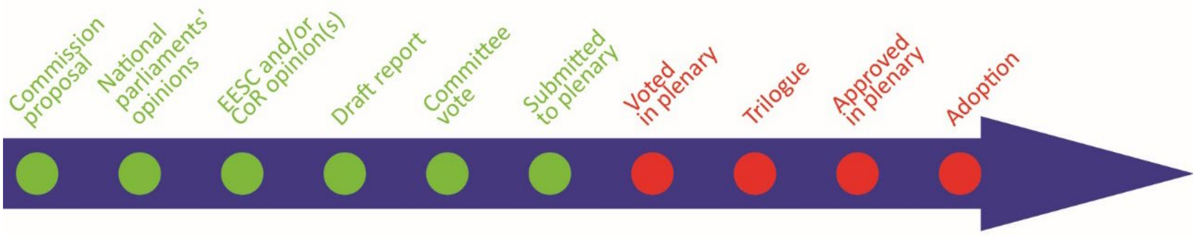
Companies can play a key role in building a sustainable economy and society. At the same time, their global value chains can pose risks to human rights and the environment. A growing number of EU companies have taken initiatives to deploy due diligence processes, often using existing voluntary international standards on responsible business conduct. Some Member States have meanwhile started developing their own legal frameworks on corporate due diligence.

To avoid fragmentation, and give businesses and citizens legal certainty, Parliament called on the Commission in a legislative-initiative resolution to introduce mandatory due diligence legislation. In February 2022, the Commission proposed a directive laying down rules on corporate due diligence obligations, directors' duties, civil liability and protection of persons reporting breaches.

The legislative file follows the ordinary legislative procedure. The Council reached political agreement on a general approach in December 2022. In Parliament, eight committees sent opinions to the Committee on Legal Affairs (responsible for the dossier), which adopted its report on the Commission proposal in April 2023. Once Members have voted on the report in plenary, the co-legislators can start interinstitutional negotiations on the final text.

Proposal for a directive of the European Parliament and of the Council on corporate sustainability due diligence and amending Directive (EU) 2019/1937

Committee responsible:	Committee on Legal Affairs (JURI)	COM(2022) 71
Rapporteur:	Lara Wolters (S&D, the Netherlands)	23.2.2022
Shadow rapporteurs:	Axel Voss (EPP, Germany) Adrián Vázquez Lázara (Renew, Spain) Heidi Hautala (Greens/EFA, Finland) Jorge Buxadé Villalba (ECR, Spain) Gilles Lebreton (ID, France) Manon Aubry (The Left, France)	2022/0051(COD) Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
Next steps expected:	Vote in plenary	



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Introduction

EU companies, especially large ones, rely on complex global value chains. Given the significant number of suppliers both in the EU and in third countries, as well as the overall complexity of value chains, EU companies may encounter difficulties in identifying and mitigating risks in their value chains linked to meeting their obligations in the areas of human rights and the environment, especially considering that the COVID-19 crisis has worsened the situation of parts of the workforce in the global supply chains.

According to a 2020 Commission study,[1] only 37 % of business respondents (operating across the EU and the world) currently conduct environmental and human rights due diligence and only 16 % cover the entire supply chain, often relying on voluntary international standards.

A number of Member States have already introduced or are considering introducing[2] national rules on due diligence, but their differences in terms of scope, risks covered, level of detail, enforcement and liability can pose challenges to EU companies operating in the EU single market.

Parliament has long advocated a stronger legal framework to oblige EU companies to shoulder their responsibility towards human rights and environmental norms in international supply chains.[3] Parliament has adopted two resolutions on the issue in recent years. On 17 December 2020, it adopted a non-legislative own-initiative resolution on sustainable corporate governance. On 10 March 2021, Parliament adopted a legislative-initiative resolution on corporate due diligence and corporate accountability.

On 23 February 2022 the Commission presented its proposal for a corporate sustainability due diligence directive (CSDDD). The proposal sets out obligations for companies regarding adverse impacts on 'actual and potential' human rights and the environment, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with which the company has a business relationship. The proposal also includes penalties and civic liability for violations of the obligations.

Context

Before embarking on its current proposal, the Commission had attempted to establish a framework for sustainable corporate governance. The fact that the Commission changed the name of its initiative signals a more restricted focus on due diligence, with a few provisions on directors' duties in relation to sustainability in the decisions on behalf of their company.[4]

At EU level, rules on sustainable corporate governance have focused mainly on setting reporting requirements under the Non-Financial Reporting Directive (NFRD), as regards environmental, social and human rights-related risks, impacts, measures (including due diligence) and policies. The NFRD, which entered into force in 2014, was recently replaced by the Corporate Sustainability Reporting Directive (CSRD), which entered into force on 5 January 2023. The latter extended the number of companies covered by the NFRD (from 11 700 to around 50 000) and added sustainability reporting to the company due diligence process. The directive also introduced rules on principal, actual or potential adverse impacts relating to the company's value chain (that is, its operations, products and services, business relationships and supply chain), as well as rules on actions taken, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts.[5] The CSRD and the CSDDD examined here are closely inter-related and complementary to each other. The CSDDD will also complement the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation, by imposing obligations on companies to provide data and information on risks within their value chains that are linked to the respect of human rights or environmental impacts. These data and information would be relevant for assessing environmental, social, and governance (ESG) risks, and for developing ESG investments.

EU environmental law does not generally apply to value chains outside the EU, even though they may be accountable for up to 80-90 %[6] of the environmental harm resulting from EU production. The Environmental Liability Directive established a framework for environmental liability with regard to preventing and remedying environmental damage. This framework is based on the 'polluter pays' principle for companies' own operations, but it does not cover companies' value chains. The civil liability introduced by the CSDDD will therefore be complementary to the Environmental Liability Directive.

Finally, the proposed directive will also complement Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the Employers' Sanctions Directive, the Conflict Minerals Regulation, the proposal for a regulation on deforestation-free supply chains, the proposal for a new batteries regulation, the future sustainable products initiative (SPI), and the communication on the power of trade partnerships.[7]

Existing situation

In recent years, an increasing number of EU companies have taken measures to deploy due diligence processes, often using the existing international voluntary standards on responsible business conduct. In order to expand the scope of corporate due diligence, some EU Member States have started developing their own legal frameworks in this area. Although all of these frameworks seek alignment with existing international standards, they differ from each other in terms of scope, risks covered, level of detail, enforcement and liability. Morevoer, as noted by the Commission, emerging EU[8] and national laws on corporate due diligence differ too.[9] The resulting fragmentation and barriers within the EU single market risk creating additional administrative burden and costs for companies operating across borders. A legislative act at EU level would bring legal certainty and allow for a level playing field for companies operating in the single market.

Comparative elements

The EU's two largest economies – France and Germany – have adopted national due diligence laws of a mandatory nature. **France** was the first country in the EU and worldwide to adopt a general due diligence law (Loi sur le devoir de vigilance) in 2017. **Germany** adopted a law on due diligence (Sorgfaltspflichtengesetz) in July 2021, after a survey of Germany companies with more than 500 employees between 2018 and 2019 showed that less than 20 % sufficiently integrate voluntary due diligence in their management. The **Netherlands** adopted in 2019 a Child labour due diligence law requiring enterprises to make sure no child labour occurs in their supply chains.

Table 1 – A comparison of some aspects of the French and German due diligence laws

Elements of the law	France	Germany
Scope	Large companies with over 5 000 employees in France and over 10 000 in the world	Enterprises with more than 3 000 employees (1 000 employees from 1 January 2024) that have their central administration, principal place of business, administrative headquarters, statutory seat or branch office in Germany
Business relations covered	Activities of companies under direct and indirect control, and of all contractors and suppliers to which there is 'an established commercial relation'	Companies' own operations and supply chain operations (direct and indirect suppliers)
Due diligence obligations	A vigilance plan with regard to human rights, health, security of the persons and the environment; the plan, whose main	A risk management system to identify, prevent or minimise the risks of human rights violations and damage to the environment; risk analysis,

	aim is to prevent and mitigate risks, includes elements such as risk mapping, an alert mechanism with the participation of labour unions, and a follow-up mechanism	prevention, mitigation, internal complaint mechanism, reporting
Penalties	None – initial provisions were struck down by the Constitutional Council	Administrative fines up to €800 000 or up to 2 % of annual global turnover (should the latter be over €400 million)
Liability	Civil liability	Civil liability explicitly excluded

Preparation of the proposal

Consultations, collection and use of expertise

Between 30 July and 8 October 2020, the Commission launched an inception impact assessment (roadmap). Between 26 October 2020 and 8 February 2021, it conducted an open public consultation, which received 473 461 responses, 122 785 citizen signatures and 149 position papers. The Commission further launched a dedicated consultation of social partners, a number of stakeholder workshops and conferences and meetings. Stakeholders generally acknowledged the need for an EU legal framework on due diligence.[10] To support the analysis of the different options, the Commission awarded support contracts to external experts for a study on due diligence requirements through the supply chain and a study on directors' duties and sustainable corporate governance.

Impact assessment

A first draft impact assessment was submitted to the Commission's Regulatory Scrutiny Board (RSB) on 9 April 2021. After the RSB issued a negative opinion, a revised impact assessment was submitted to it for a second opinion on 8 November 2021. While noting the significant changes made to the report in response to its first round of remarks, the RSB nevertheless issued a second negative opinion on 26 November 2021. On 23 February 2022, the Commission presented its proposal for a directive accompanied by the 'revised' impact assessment (IA) report,[11] complemented by a staff working document on the follow-up to the RSB's second negative opinion. The Commission, also in the light of the consent given by its Vice-President for Inter-Institutional Relations and Foresight,[12] Maroš Šefčovič, decided to proceed with this initiative for a number of reasons. First, it is aligned with the Commission's political priority of 'An economy that works for people'; second, it responds to the urgency of action in the field of value chain due diligence as a contribution to the sustainability transition; and third, it address the risk of increasing the fragmentation of the single market. The Commission also took into account the fact that the initiative was included in the Parliament, Council and Commission's joint political priorities for 2022. In October 2022, EPRS published an initial appraisal of the Commission's IA, pointing out some weaknesses, including the limited number of stakeholders from non-EU countries consulted, in particular from developing countries.

The changes the proposal would bring

The proposal would introduce mandatory human rights and environmental due diligence (mHREDD), and a duty for directors to set up and oversee the implementation of due diligence and to integrate it into the corporate strategy.

Scope (Article 2). The new diligence rules would apply to the following companies and sectors:

- EU companies (Group 1): all EU limited liability companies with 500+ employees and €150 million+ in net turnover worldwide

- EU companies (Group 2): other limited liability companies operating in defined high-impact sectors,[13] with 250+ employees and €40 million+ in net turnover worldwide. For Group 2, rules will start to apply 2 years later than for group 1.
- Non-EU companies active in the EU, with a threshold for turnover generated in the EU aligned with Group 1 and 2.

Focus: Preventing or mitigating potential adverse impacts

Companies would have to take appropriate measures to prevent, or where prevention is not possible, adequately mitigate potential adverse human rights impacts and adverse environmental impacts, as identified in Article 6. A company would be required to take the following actions, where relevant:

(a) develop and implement a **prevention action plan**, with reasonable and clearly defined timelines for action and indicators. The action plan would have to be developed in consultation with affected stakeholders;

(b) seek **contractual assurances** from a business partner with which it has a direct business relationship, that it would ensure compliance with the company's code of conduct and, as necessary, prevention action plan, including by seeking corresponding contractual assurances from its partners, to the extent that their activities are part of the company's value chain (**contractual cascading**). The contractual assurances would have to be accompanied by the appropriate **measures to verify compliance**;

(c) provide **support for an SME** with which the company has an established business relationship, in order to facilitate the SME's compliance with the company's code of conduct or prevention action plan. The cost of the independent third-party verification of compliance should not fall on the SME.

As regards potential adverse impacts that could not be prevented or adequately mitigated, the company would be required to **refrain from entering into new or extending existing relations** with the partner in connection with, or in the value chain of which, the impact has arisen. Member States would have to provide for the availability of an option to terminate the business relationship in contracts governed by their laws.

Source: developed from Article 7 of the Commission proposal.

The proposal would apply to companies' own operations and subsidiaries, and their value chains (direct and indirect established business relationships). While not directly included in the scope of the proposal, SMEs could be affected by its provisions in their capacity as contractors or subcontractors to companies that are within its scope. Therefore, the proposal includes accompanying measures that would support all of the companies – including SMEs – that may be indirectly affected. Measures include the development of individually or jointly dedicated websites, platforms or portals and potential financial support for SMEs.

Human rights and environmental standards (Article 3). Due diligence under the proposed directive would be carried out with respect to all adverse human rights and environmental impacts identified in its annex, which fall under the scope of international human rights, fundamental freedoms and environmental conventions as mentioned in the annex. Moreover, the proposal is in line with existing international soft law standards, in particular the UN's guiding principles on business and human rights, the OECD guidelines for multinational enterprises and the OECD due diligence guidance for responsible business conduct.

Compliance (Articles 4-10). In order to comply with the corporate due diligence duty, companies would need to:

- integrate due diligence into their policies (Article 5);
- identify actual or potential adverse human rights and environmental impacts (Article 6);
- prevent or mitigate potential impacts (Article 7);
- bring to an end or minimise actual impacts (Article 8);
- establish and maintain a complaints procedure (Article 9);
- monitor the effectiveness of the due diligence policy and measures (Article 10);

- publicly communicate on due diligence (Article 11).

Climate change obligation (Article 15). The proposed directive would require certain large companies (including EU and non-EU ones but excluding those operating in defined high-impact sectors) to adopt a plan to ensure that the company's business model and strategy are compatible with the transition to a sustainable economy, including limiting global warming to 1.5°C in line with the Paris Agreement. The plan would have to identify the extent to which climate change poses a risk to or has an impact on a company's operations. In case climate change is identified as posing a 'principal risk' for, or as having a 'principal impact' on, a company's operations, the company should include emissions reduction objectives in its plan. Companies should duly take into account the fulfilment of these obligations when setting the remuneration policy, if the variable part of the remuneration is linked to a director's contribution to the company's business strategy and long-term interests and sustainability.

Enforcement (Articles 17-21). Member States would be required to designate one or more bodies to supervise national compliance with the obligations laid down in the proposed directive. These supervisory authorities should have adequate powers and resources to carry out the tasks assigned to them under the new directive, including the power to request information and carry out investigations related to compliance with the obligations. They would be able to initiate an investigation on their own motion or on the grounds of substantiated concerns submitted by any natural or legal person. Administrative sanctions would be determined by each Member State and enforced by the supervisory authorities. A European network of supervisory authorities would be established to facilitate cooperation, coordination and alignment.

Civil liability and reporting of breaches (Articles 22, 23, 27). Companies would be held liable for damage if they fail to comply with obligations to prevent, mitigate, minimise or put an end to potential adverse impacts, or if this failure gives rise to an adverse impact that could otherwise have been avoided. A company would not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship; however, the company would be liable in case it was unreasonable to expect that the action actually taken by the indirect partner (including as regards verifying compliance) would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact. The proposed directive would allow application of the provisions of the Directive on the protection of persons who report breaches of EU law (Directive (EU) 2019/1937) for the protection of persons reporting breaches of the proposed directive.

Directors' duty of care (Articles 25-26). Directors of EU companies would be responsible for providing for and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organisations. The directors would report to the board of directors in that respect. Member States would have to amend their laws, regulations and administrative provisions on breaches of directors' duties, in order to include the consequences of directors' decisions on human rights, climate change and other environmental issues.

Advisory committees

In July 2022, the European Economic and Social Committee (EESC) adopted a mandatory opinion on the Commission proposal. It called for policy coherence between national policies and European legislation that covers similar areas or also includes due diligence rules. It asked for the co-legislators to keep in mind the challenging situation for micro, small and medium-sized enterprises and ensure that support tools are ready at EU and national level once the due diligence legislation enters into force. The opinion emphasised the importance of involving trade unions and workers' representatives in the due diligence processes. The Committee was also concerned that the Commission proposal contained numerous unclear legal concepts that were open to interpretation and needed to be better defined. Lastly, it called for recognition that due diligence requires a risk-based approach and can involve prioritisation based on a risk assessment.

In September 2020, the EESC also adopted an exploratory opinion on sustainable supply chains and decent work in international trade, produced at the request of the German Council Presidency. The EESC urged a more effective and consistent regulatory framework to achieve decent work, respect for human rights and sustainability in global value and supply chains; to promote global and EU social and environmental objectives; to foster fair competition between economic operators; and to support European economic activities. Due diligence should explicitly cover trade union and workers' rights, which form an essential part of decent work.

Stakeholder views[14]

BusinessEurope, a confederation of national business organisations, supports an EU framework on due diligence, but considers that 'the aim to make supply chains more sustainable needs to be achieved in a way that is workable for companies and must not unilaterally make European companies responsible for factors way beyond their control'. In its opinion, it is 'unrealistic to expect that European companies can control their entire value chains across the world, including "indirect" third party suppliers or even customers'. BusinessEurope acknowledges the aim to partly exclude SMEs from the proposed obligation, even though they will still be impacted indirectly. It considers that 'the inclusion of the financial sector bears the risk of unwanted effects and could cause another access to finance problem'. BusinessEurope warns that the 'intrusion into the careful balance on directors' duties creates the risk to disrupt the primary function of boards, in accordance with national company laws'.

EcoDa, an organisation representing national institutes of directors, considers the Commission proposal 'unclear and unprecise when it comes to the duties of board directors' and one that 'provides relatively little useful clarification on the notion of directors' duty of care'. According to EcoDa, the increased risk of legal disputes involving stakeholders who disagree with decisions taken by the board, could get 'European businesses into legal jeopardy and could make our companies even more risk averse'. On the other hand, EcoDa welcomes that the proposed directive respects the principle of proportionality by excluding SMEs and by including non-European companies.

EuroCommerce, an organisation representing the retail and wholesale sector, acknowledges the importance of the issue of supply chain due diligence, but warns on the fact that 'the nature of retail and wholesale means dealing with a constantly changing multiplicity of actors in highly differentiated, often global value chains'; therefore it asks the co-legislators 'to adopt a measure which takes these specificities into account and provides clear definitions and a proportionate allocation of responsibilities'. Given that the sector it represents relies on complex and diverse supply chains across the world, EuroCommerce's position is that 'it can only have limited impact and leverage beyond the own-brand products it sources directly and in ensuring that tier-1 suppliers respect the rules and can give reliable assurances that they demand the same from their suppliers'. Eurocommerce stresses how important it is that the 'EU due diligence framework is consistent with existing European legislation.

Accountancy Europe, an organisation representing qualified accountants, auditors and advisors, welcomes the proposal, but states that 'the European Parliament and the Council will need to improve clarity on certain aspects'. Given that business impacts take place throughout the entire value chain, the proposal needs to clarify the concept of 'established business relationships'. Moreover, the organisation highlights the issue of information from suppliers: 'Companies with parts of their supply chain outside of the EU will need access to reliable information on their suppliers. Clarity and legal certainty will be essential for directors and assurance practitioners'. Accountancy Europe stresses the fact that 'reliable due diligence will require external verification'. It furthermore notes that this proposal is inter-related with the proposal on a corporate sustainability reporting directive, 'but the scope and implementation dates of the two directives are significantly different, and ... this may cause implementation difficulties and costs'.

Principles for responsible investment (PRI), a UN-supported network of investors dedicated to promoting sustainable investment, welcomes the due diligence obligations, particularly where they are aligned with international standards, but argues that the proposed directive needs certain improvements, such as increased coherence with EU legislation on sustainable finance. PRI furthermore considers the scope of the proposal as not being broad enough, something that risks leaving gaps for investors; it therefore calls on the Commission to introduce a mandatory due diligence proposal covering all businesses operating in the EU, regardless of sector or size.

BEUC, an organisation representing consumers, strongly supports the initiative because 'a lack of transparency along the supply chain does not only hinder informed choice of already environmentally and socially engaged consumers. It also prevents consumers who are less conscious about their environmental and social impacts to develop greater awareness'. It argues that 'this initiative should apply not only to large but to all companies operating or placing products on the EU market. The EU should also include climate change in these due diligence requirements'. BEUC asks that due diligence rules be properly enforced and that easy access to justice be guaranteed. Finally, it recommends taking into account the broader 'sustainability puzzle'.[15]

Finance Watch, a non-governmental organisation that conducts research and advocacy on financial regulation, welcomes proposals on mandatory corporate sustainability due diligence, but considers that 'they are too limited in scope, leaving out 99 % of EU companies'. It is also concerned about the four-year delay for high-risk sector companies with between 250 and 500 employees, and the fact that the proposal exempts them from the measures aimed at combating climate change in Article 15. Finance Watch argues also that 'environmental due diligence should refer to EU law and include climate-related considerations'. The NGO 'welcomes the requirement for companies to adopt a transition plan. However, according to the proposal, emissions reduction objectives would only be required in case climate change is identified as a principal risk for, or a principal impact of, the company's operations'. Moreover, in its opinion, 'leaving the assessment up to every company leaves too much leeway and opens the door to circumvent the rules'.

Oxfam, a confederation of charitable organisations focusing on global poverty, argues that the proposal 'is a far cry from what is needed to protect people and the planet from irresponsible business practices' and that its scope is so limited that 99 % of companies will be left outside it. Oxfam is not happy with the arrangement whereby companies could both fulfil their duty of care (in the supply chain) through contractual assurances from their direct business partners, and outsource verification of compliance. It criticises the provisions under which 'companies will ... be required to adopt a climate transition plan in line with the 1.5°C objective of the Paris Agreement, accompanied with emission reduction objectives only when climate change is a risk to the company itself'.

Friends of the Earth Europe, a network of organisations dedicated to environmental issues, considers that the proposal is a milestone, but that it 'fails to ensure liability for climate damage or guarantee justice for affected people worldwide'. In its opinion, the proposal 'leaves gaping loopholes that will allow corporations to escape liability by claiming they have met their obligations despite not taking real action to stop harms'. It argues that the proposal falls well short of what true liability would entail, as it allows companies to claim compliance with due diligence rules by obtaining 'contractual assurances' from their suppliers about their own compliance with the company's code of conduct. According to the NGO, 'the proposal also fails to ease the massive burden of proof for people seeking justice for corporate abuses in EU courts.

Legislative process

The Commission adopted the legislative proposal (COM(2022) 71) on 23 February 2021; it falls under the ordinary legislative procedure (2022/0051(COD)). In Parliament, the Committee on Legal Affairs

(JURI) is responsible for the file, and has appointed Lara Wolters (S&D, the Netherlands) as rapporteur. On 7 November 2022, the rapporteur published her draft report. Eight Parliament committees provided JURI with opinions: the Committees on Industry, Research and Energy (ITRE), International Trade (INTA), Foreign Affairs (AFET), Development (DEVE), Environment, Public Health and Food Safety (ENVI), Internal Market and Consumer Protection (IMCO), Economic and Monetary Affairs (ECON), and Employment and Social Affairs (EMPL).

Parliament JURI committee report

On 25 April 2023, the JURI committee adopted its report by 19 votes to 3, with 3 abstentions. The report introduces a number of key amendments, in the following areas:

Scope. The range of companies subject to the directive would be expanded, by lowering the relevant employee[16] and turnover thresholds, and abandoning the concept of high-impact sectors. *For companies formed under EU legislation*, the CSDD rules would apply to:

- companies with 250 employees or more, and a turnover of €40 million or over;
- companies that are the ultimate parent company of a group with at least 500 employees, generating over than €150 million in net worldwide turnover.

For companies formed under legislation of a third country, the rules would apply to:

- companies with a turnover higher than €150 million if at least €40 million was generated in the EU, including turnover generated by third party companies with whom the company and/or its subsidiaries has entered into vertical agreement in the Union in return for royalties;
- companies that are the ultimate parent company of a group with at least 500 employees, and with a group turnover as defined in the previous point.

Definitions. Among other things, the definition of *adverse human rights and environmental impacts* has been clarified with reference to the international conventions and instruments listed in the annex, supplemented with other instruments. The definition of *value chain* has been broadened, by including the sale, distribution, transport, storage, and waste management of a company's products or the provision of services. The new definition of *affected stakeholders* would include also workers' representatives, the companies' trade unions, subsidiaries and entire value chains. Moreover, the JURI committee proposes to add the category of *vulnerable stakeholders*.

Single market clause. A new provision would require Member States to coordinate their efforts when transposing the directive, with a view to full harmonisation, in order to ensure a level playing field and to prevent the fragmentation of the single market.

Regulated financial undertakings. Regulated financial undertakings would remain within the scope of the directive; *institutional investors and asset managers* would be asked to take appropriate measures to induce their investee companies to bring actual adverse impacts caused by them to an end.

Due diligence. Adopting a *risk-based approach*, companies would be asked to carry out a due diligence policy that should be proportionate and commensurate to the likelihood and severity of their potential adverse impact, as well as their specific circumstances and risk factors, particularly their sector and location of activity, the size and length of their value chain, the size of the company, its capacity, resources and leverage. In identifying and assessing actual and potential adverse impacts, companies would be asked to identify individual higher risk business relationships. Companies would be asked also to take appropriate measures, by using or increasing the company's leverage with responsible parties to seek to prevent or mitigate the potential adverse impact and to influence the entity causing the impact. The concepts of *prioritisation* (prioritising potential and actual adverse impacts) according to the severity and likelihood of impacts, and of *remediation* (remedying actual adverse impacts) would be added to the due diligence actions, and to the actions to bring actual adverse impacts to an end. Remediation should aim to restore the affected persons and groups or communities and/or environment to a situation equivalent or as close as possible to their situation prior to the impact.

Climate change. Companies would be obliged to develop and implement a transition plan in line with the CSRD reporting requirements. Directors would be responsible for overseeing these obligations; in cases of companies with more than 1 000 employees, any variable remuneration for directors would have to be linked to the company transition plan.

Sanctions. It would be up to Member States to lay down the rules on sanctions for infringements of national provisions transposing the directive. Sanctions could include pecuniary sanctions, the maximum limit should not be less than 5 % of the company's net worldwide turnover in the business year preceding the fining decision.

Civil liability. Access to justice and legal remedies is a fundamental element of the future directive. In order to ensure effective compensation for victims of adverse impacts, Member States would be required to lay down rules governing civil liability, including on a limitation period of at least 10 years, and rules on measures to ensure that costs of proceedings are not prohibitively expensive for claimants. Mandated trade unions, civil society organisations, or other relevant actors acting in the public interest would be able to bring actions before a court on behalf of a victim or a group of victims of adverse impacts.

Council general approach

In the Council, the Commission presented the proposal to the Competitiveness Council on 24 February 2022, and meetings were then held in the Council preparatory bodies. In November 2022, the Czech Presidency proposed a number of compromise texts, and a political agreement was reached at the Competitiveness Council on 1 December 2022. A qualified majority supported a general approach as the Council negotiating position on the CSDD proposal. The Council's text includes changes on various subjects:

Scope. The Council proposes a phase-in approach for application of the directive. *Three years* from the entry into force of the directive, the rules would first apply to very large EU companies with more than 1 000 employees and €300 million net worldwide turnover, and to non-EU companies with €300 million net turnover generated in the EU. *Four years* from the entry into force of the directive, the rules would apply to EU and non-EU companies in group 1.[17] *Five years* from the entry into force of the directive, the rules would apply to EU and non-EU companies in group 2.[18] Group 1 and group 2 companies would be subject to CSDD, if the Commission thresholds were met for 2 consecutive years.

Definitions. The Council proposes to abandon the concept of 'established business relationship' as proposed by the Commission, in favour of using only the definition of 'business partner'. The term 'value chain' would be replaced by 'chain of activities', meaning a move from the concept of entire 'value chain' towards mainly the supply chain concept, including only in a limited manner the downstream partners. The Council proposes to strengthen the risk-based approach.

Regulated financial undertakings. The Council would leave to Member States the decision to apply the directive to regulated financial undertakings.

Climate change. The Council proposes amendments to align the CSDD text as much as possible to the CSRD; the Council proposes to delete the provision linking the climate change obligation to the variable part of directors' remuneration.

Directors' duties. The Council's text would delete the two articles in the Commission proposal dedicated to directors' duty of care.

Civil liability. The Council made significant amendments to article 22. According to the Council text, a company should not be held liable if the damage was caused only by business partners in its chain of activities. The Council mentions expressly the right to full compensation for victims, which should not lead to over-compensation.

Next steps

The plenary vote on the JURI committee report is scheduled during the May II plenary session (31 May to 1 June 2023). Once Parliament has agreed on its position, interinstitutional negotiations with the Council and the Commission can start.

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Accountancy Europe, EGIAN, Supply chain sustainability assessment. Current market practice insights, 28 January 2022.

ENDNOTES

1 See Study on due diligence requirements through the supply chain (Chapter 4.1, Overview of current practices, p. 48), Commission, January 2020.

2 Here an overview, at global level, of countries that have drafted or are in the process of drafting a national action plan (NAP) on business and human rights. The overview also lists other initiatives outside the government sector.

3 For further details, see Towards a mandatory EU system of due diligence for supply chains (section on the 'European Parliament's position'). A parliamentary Working Group on Responsible Business Conduct has been strongly involved in working on aspects related to the topic.

4 Further information about the concepts and relations of 'sustainable corporate governance' and 'due diligence' is available in the Finance Watch Policy briefing on Sustainable Corporate Governance of 21 June 2021.

5 See Article 19a 2.(e) of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM(2021)189.

6 See impact assessment report, Section 1.2.2, pp. 3-4.

7 The Commission communication 'The power of trade partnerships: together for green and just economic growth' identifies how to enhance the contribution of EU trade agreements to promoting the protection of the environment and labour rights worldwide. It fosters shared ownership by all EU institutions and Member States to achieve concrete changes, including by means of sanctions.

8 According to the impact assessment report (pp. 4-5), supply chain due diligence instruments are included in the Conflict Minerals Regulation, in the EU Timber Regulation, and in the proposal on a battery regulation.

9 See impact assessment report, Section 2.2.2.4, pp. 27-28.

10 Detailed information on the consultation strategy and on the conclusions regarding the stakeholder consultations is contained in Annex 2 of the impact assessment report.

11 The impact assessment report is accompanied by an executive summary.

12 According to the Commission's Better Regulation rules, a positive opinion from the Regulatory Scrutiny Board is required for a file to proceed to the adoption stage. However, the vice president for inter-institutional relations and foresight can allow work on an initiative to go on despite a second negative opinion by the Regulatory Scrutiny Board. The explanatory memorandum of the Commission proposal flags that the opinions of the Regulatory Scrutiny Board are an assessment of the quality of the impact assessment and not an assessment of the related legislative proposal.

13 Art. 2.1(b) identifies the following sectors as having a high impact: i) the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear; ii) agriculture, forestry, fisheries (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages; iii) the extraction of mineral resources regardless from where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).

14 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

15 BEUC considers the 'new rules on due diligence will only be one piece of the puzzle and need to be complemented by other ambitious regulations in the field of sustainable products, sustainable food policies, sustainable energy production, sustainable finance, competition law or better consideration of environment and human rights in EU trade negotiations'.

16 For the purpose of calculating the number of employees, the JURI committee proposes to add to the Commission's proposed list of types of employment 'other workers in non-standard forms of employment'.

17 According to the Commission proposal, Group 1 is composed of companies with 500+ employees and at least €150 million in net turnover generated worldwide (EU companies) or generated in the EU (non-EU companies).

18 According to the Commission proposal, Group 2 is composed of companies operating in high-impact sectors, with at least 250 employees and €40 million net turnover generated worldwide (EU companies) or generated in the EU (non-EU companies).

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