CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

A guide to transposition and implementation for civil society organisations

November 2024

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EXECUTIVE SUMMARY

The Corporate Sustainability Due Diligence Directive (CSDDD) represents a significant advancement in mandating responsible business conduct within and outside the European Union (EU). This guide, developed by a coalition of civil society organisations (CSOs), aims to assist other CSOs in supporting the transposition and implementation of the CSDDD across European Union (EU) Member States, ensuring that the Directive's objectives are met ambitiously and effectively.

Key priorities for transposition:

Ensure qualitative due diligence and avoid 'tick-box' compliance

- Ensure that the appropriate measures carried out by companies are effective and commensurate to the likelihood and severity of the impacts they are meant to address, as well as reasonably available to the company.
- Strengthen accountability and oversight of third-party verification and multi-stakeholder initiatives.

Aligning obligations with international standards

- Ensure a broad personal scope.
- Ensure that due diligence obligations extend to all relevant parts of the value chain, including downstream activities and financial services, and align with international standards.
- Remove conditions on material scope defining human rights impacts and bring the environmental scope in line with international norms, such as the Organisation for Economic Cooperation and Development (OECD).

Integration of due diligence into regular business processes

- Require companies to embed their due diligence responsibilities into their policies and management systems, including by requiring approval by senior management.

Effective involvement of rights and stakeholders

- Ensure companies prioritise direct engagement with primarily local rights holders and stakeholders (potentially) impacted by their activity. Early and continuous involvement will enable rights and stakeholders' concerns to be addressed preventively rather than reactively.
- Ensure that, in addition to reporting and formal stakeholder engagement, companies communicate directly to affected stakeholders when carrying out their due diligence and climate obligations.

Resources for supervisory authorities (SAs)

- Ensure that national authorities are adequately resourced, skilled and empowered to enforce the Directive effectively.

Effective access to justice

- Reverse the burden of proof in civil claims under the CSDDD. Once victims provide credible evidence of harm linked to a company's operations, it should be the company's responsibility to prove it took appropriate due diligence measures to prevent, mitigate or terminate the impact. Failing that, set clear conditions for national judges to order the disclosure of evidence that lies in the sole control of the company.

- Ensure reasonable time limitations to bring claims under the CSDDD and implement appropriate legal aid measures to account for the high costs and complexity of transnational civil litigation.

- Set reasonable conditions for national trade unions, non-governmental organisations (NGOs) and human rights institutions whose core mission includes the protection of human rights or the environment to represent victims in court.

- Ensure that courts have jurisdiction over non-EU based companies in scope.

The successful transposition and implementation of the CSDDD are critical to addressing long-standing issues of business-related human rights and environmental abuses. By actively participating in the transposition process, CSOs can help ensure that the Directive achieves its full potential in promoting responsible business practices and protecting human rights and the environment.

1 INTRODUCTION

1.1 What is the Corporate Sustainability Due Diligence Directive (CSDDD)

The Corporate Sustainability Due Diligence Directive (CSDDD) is EU legislation imposing human rights, environmental and climate obligations to very large companies domiciled in the EU and/or operating on the EU market. As a Directive, it sets out the objectives[1] that EU Member States[2] need to accomplish and a general framework on how they should do so. It obliges Member States, through a process known as 'transposition', to take the necessary implementing measures, including adopting national legislation, to achieve the objectives of the Directive. Member States retain some flexibility and discretion to define how such objectives must be achieved at the national level – while respecting the minimum requirements set out in the Directive.

The CSDDD transposition measures will compel in-scope companies to address the potential and actual adverse impacts on human rights and the environment that have arisen or may arise in their operations, as well as in the operations of their subsidiaries and business partners. Such obligations include the identification, prevention, termination, mitigation and remediation of adverse impacts. The obligation to communicate publicly about due diligence policies, processes, activities and outcomes is for most companies[3] covered by the Corporate Sustainability Reporting Directive (CSRD).[4] The CSDDD also requires companies to adopt and put into effect climate transition plans to ensure that their business models and strategies are compatible with the 1.5°C goal of the Paris agreement as well as the EU's objective of achieving climate neutrality by 2050.

The method through which companies are required to address potential and actual negative impacts throughout their operations and those of their subsidiaries and value chain (the CSDDD uses the concept of 'chain of activities') is by conducting human rights and environmental due diligence (HREDD). The due diligence steps and approach contained in the Directive are based on the existing international frameworks set by the United Nations' Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct[5] (OECD Guidelines) and relative Guidances, and the Tripartite Declaration of Principles concerning Multinational Enterprises (MNE Declaration) and Social Policy of the International Labour Organization (ILO). While many of the elements of the Directive are inspired by these international instruments, the CSDDD sometimes adopts a distinct approach.

Crucially, the above-mentioned instruments provide non-binding guidance for companies to act responsibly, encouraging, but not legally requiring, them to follow their recommendations. However, multinational companies have often failed to adequately assess and address their human rights and environmental impacts under such voluntary international frameworks. This failure can be attributed to the lack of binding enforcement mechanisms, leading to inconsistent implementation and accountability. As a result, the CSDDD proposal was introduced by the EU Commission in 2022 in order to establish a common mandatory human rights due diligence framework across the EU.

1. See Directive 2024/1760 of 13 June 2024 on corporate sustainability due diligence, Article 1.
2. As well as members of the European Economic Area (EEA), namely Iceland, Liechtenstein and Norway.
3. For companies not subject to the CSRD, the Commission is empowered to impose similar rules.
4. For background information about the Corporate Sustainability Reporting Directive, see ttps://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en?.
5. The OECD Guidelines were first introduced in 1976, and the 2011 update ensured alignment with the UNGPs. They were last updated in 2023.

The Directive also requires Member States to set up a regime of administrative supervision to monitor and sanction compliance with the law, as well as a civil liability regime for cases in which non-compliance with the obligations results in harm.

1.2 What is the transposition process

Transposition is the process by which EU Member States incorporate EU Directives into their national legal regimes. It should be noted that EU Directives can be transposed not only through ordinary legislation but also via any other regulatory measures available at the national level, including but not limited to regulation, ordinances and administrative provisions. Member States are required to transpose the requirements set by the Directive within two years from its publication in the Official Journal of the EU, which is by 26 July 2026.[6]

As the 'guardian of the European treaties', the European Commission is responsible for monitoring the transposition process for all directives in all EU Member States. The European Commission monitors transposition to verify that it is conducted in a timely and correct manner that ensures the objectives set by the Directive are attained. As part of this role, the Commission checks whether all the provisions in the Directive have been correctly transposed, and whether national measures are in conformity with the minimum standards it contains.

In the case that a Member State fails to adopt national measures, adopts measures that are inadequate to attain the objectives of the Directive or fails to respect the transposition deadline, the Commission may initiate infringement procedures before the Court of Justice of the European Union. If the Court rules in favour of the Commission, the Member State in question is legally bound to comply with its decision. Failure to do so will lead to the imposition of a penalty.

Transposition of the CSDDD is further qualified by Article 4 of the Directive on the level of harmonisation, which clarifies which provisions of the CSDDD Members States must transpose exactly, and which provisions they can make more stringent (see section 2.3).

1.3 Why it is important to aim for an ambitious transposition

The CSDDD represents a significant step forward in ensuring responsible business conduct both within and outside the EU, addressing some of the issues that have allowed business-related human rights and environmental abuse to persist for decades. For it to achieve its objectives, it is critical that the Directive is properly transposed.

At the same time, it is important that national transposition measures be more ambitious than the minimum standards set by the Directive, for example by increasing the number of companies in scope, explicitly extending the downstream coverage of the value chain or strengthening access to justice provisions. This would ensure greater alignment with the authoritative international standards on business and human rights.[7] These norms rest on a global consensus amongst states and have been developed with businesses, trade unions and civil society. Increasing alignment with international standards can ensure greater impact of the Directive, better protecting workers, peoples, communities and the environment against abuses, and thus helping EU Member States meet their own distinct obligations and commitments. Increased alignment would equally mean reducing confusion, complexity and compliance costs for companies.

In the context of the transposition process, Member States have the opportunity to address some of these gaps in protection and to provide both improved legal certainty and accountability for companies and access to effective remedy for victims.

6. Article 37(1) CSDDD.

7. See Office of the United Nations High Commissioner for Human Rights (OHCHR), Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011; Organisation for Economic Co-operation and Development (OECD), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, 2023 (update).

1.4 What civil society can do during the transposition process

The transposition process takes place at the level of each Member State. As such, much of the advocacy work to be carried out during the transposition process will resemble advocacy for any other national legislative instrument, with the important difference that national transposition measures are bound by the dispositions laid out in the Directive.

There are different ways in which CSOs can engage in the transposition process. Some of these are:

Engage with decision makers and provide information

National policy makers may not be fully aware of the CSDDD and the crucial role it can play in mandating more responsible business practices. Holding information events or bilateral meetings or engaging with decision makers on social media are some possible avenues to strengthen and broaden understanding amongst policy makers, including on the importance of an ambitious transposition.

Understand what parts of the Directive can be improved upon and, depending on the national context, push for transposition of higher standards

Generally, Directives set minimum standards and requirements which Member States can supplement in the transposition process. However, Member States cannot, in any case, lower the standards set out in the CSDDD and cannot deviate from provisions that are subject to so-called 'maximum harmonisation' (see Section 2.3).

Know the transposition calendar and modalities

In most Member States, transposition starts with a proposal from the competent ministry, usually determined based on its relevance with regards to the topic of the legislation. In the case of the CSDDD, this can be a number of ministries such as economy, finance, justice, labour or a combination of these. In the case that the competent ministry is not immediately clear, a good starting point to identify it is to look at which ministry has been responsible for transposing similar instruments in the past, such as the CSRD. Understanding when the competent ministry intends to present their proposal for transposition, as well as the relevant calendars of work (e.g. who is usually consulted during this process and when, and when voting sessions are scheduled in your national legislative assembly) is crucial.

Push for a timely and constructive legislative process

Member States have the legal obligation to transpose the CSDDD into their national systems by 26 July 2026 and to start enforcing the obligations it sets out by 26 July 2027. Those are mandatory deadlines under the Directive and Member States must meet them.[8] Transposition should be preceded by a process of open consultation to allow stakeholders to submit their views.

8. See Section 1.2 on Member States transposition obligations under EU law.

Understand potential overlap with existing national legislation

Due diligence obligations and their enforcement regimes under the CSDDD will need to be integrated into national legal systems, each with their own existing rules and specificities. Some countries, such as France and Germany, will need to adapt their existing legislations on mandatory human rights and environmental due diligence, while others will need to introduce provisions ex novo. Understanding how the CSDDD will interact with and build on existing legislation, including but not limited to national civil liability and procedural rules, is crucial for effective advocacy during transposition.

Understand interactions with other EU norms and their transposition laws or measures

In particular, the Accounting Directive and CSRD, but also other legislation focussing on issues such as deforestation, batteries, minerals and forced labour.[9] The Accounting Directive provides the framework for definitions related to companies in scope of the CSDDD, while the CSRD requires large and listed companies to publish regular reports on the social and environmental risks they face, and on how their activities impact people and the environment. Although both the CSRD and the CSDDD require companies to identify adverse impacts on human rights and the environment across (parts of) their value chains, the CSRD remains a reporting framework, while the CSDDD imposes behavioural obligations on companies. Importantly, the CSDDD does not contain new reporting obligations, as companies reporting under the CSRD are exempt from preparing a separate CSDDD report (see Focus Box 4).

Understand the existing national standards of protection of human rights, the environment and the climate

As laid out clearly by Article 1 of the CSDDD, where national law provides for stronger protection than what is laid out in the Directive, transposition cannot serve as a pretext to lower that existing, higher level of protection. Examples could be statutes of limitations or protected positions under tort law.

Understand international standards

The CSDDD draws upon authoritative international standards, such as the UNGPs, the OECD Guidelines, the OECD Guidances (sectoral and general), and the ILO MNE Declaration. However, the Directive also deviates from them in important aspects. Using the OECD Guidelines and the UNGP as a benchmark for advocacy can help raise the bar and ensure regulatory coherence.[10]

9. See The Danish Institute for Human Rights, How do the pieces fit in the puzzle? Making sense of EU regulatory initiatives related to business and human rights, 2024.

10. See OECD Watch, Alignment within Reach, 2024.

2 STRUCTURE AND KEY TERMS OF THE CSDDD

2.1 Structure of the CSDDD

The CSDDD is divided into a first part which provides the reasoning for the legislation and its provisions (Recitals), a second, operational part with the regulating provisions and finally an Annex. The recitals of an EU Directive contain important guidance on how to read the legislation. Recitals provide background, purpose, and reasoning behind a Directive's provisions, helping to clarify its objectives without having legal force. While they are not enforceable, Recitals can provide valuable guidance for EU Member States during the transposition process and for public enforcement authorities in implementing the Directive's provisions.

Articles 1 to 39 cover the binding and enforceable part of the Directive.

Article 1 sets out the Directive's three main objectives:

1. Laying down **obligations** for companies based or operating in the EU regarding their actual and potential adverse human rights and environmental impacts;
2. Introducing **liability** for violations of such obligations;
3. Laying down obligations for companies to put into effect a **climate** transition plan including objectives in line with the Paris Agreement.

The next crucial provision, **Article 2**, addresses personal scope (see Section 3.1), defining the companies covered. **Article 3** provides definitions for the key terms of the legislation, which are important to understand the meaning of later provisions.

Article 4 on the level of harmonisation determines to what extent Member States are allowed to diverge from the text of the Directive when transposing it into their national legislation (see Section 2.3).

Articles 5 to 16 set out the **due diligence obligations.** Article 5 spells out the steps that make up the due diligence process, with each step being further detailed in its own dedicated article, while Article 6 specifies the responsibilities for conducting due diligence for companies that are the parent in a group of businesses. Articles 7 to 16 are discussed in more detail in Part 4 of this publication.

Article 22 complements the corporate duty by introducing an obligation for companies to adopt and put into effect a **climate transition plan** (see Section 4.11).

Articles 17 to 21 provide a number of measures to support companies in fulfilling their obligations. Article 17, together with Article 33, foresees that due diligence reports of companies will have to be made publicly accessible online in human and machine-readable format through the

European Single Access Point (ESAP). To further provide support to companies on how to comply with their obligations under the Directive, the Commission is tasked with developing model contractual clauses (Article 18) and guidelines on how to fulfil their due diligence obligations (Article 19) and to set up a single helpdesk with the assistance of Member States (Article 21). Article 20 lays out the accompanying measures Member States can take to provide information and support to companies, their business partners, stakeholders and SMEs. It also foresees the Commission providing guidance for companies who want to rely on multi-stakeholder initiatives (see Section 4.10).

Articles 23 to 32 deal with **enforcement, civil liability** and **access to justice.** The enforcement of the CSDDD can be divided into two main types: administrative enforcement (Articles 23 – 28) and judicial enforcement (Article 29). Articles 30 and 32 protect whistleblowers who report breaches of the legislation and Article 31 allows Member States to consider the compliance with the CSDDD as a criterion for the attribution of contracts in the context of public procurement.

Articles 34 to 37 deal with **implementation, review** and **transposition.** Articles 34 and 35 delegate the power to the Commission to update the Annex of the Directive determining the international norms that form the basis for the due diligence obligations of companies (the 'normative scope') and to specify content of the reporting obligations of companies. **Article 36** details the process of review of the effectiveness of the Directive, both in general and on specific points. **Article 37** addresses Member States with regards to transposition, including rules for the staggered **implementation** of the law (see Section 3.1).

Finally, the **Annex** to the CSDDD determines which rights and freedoms and types of environmental violations are covered by the obligations introduced by the legislation (see Section 3.2) The Annex is divided in two parts:

- **Part 1** concerns human rights and is itself divided into two sections.
  - Section 1 contains a list of rights and freedoms as defined in international human rights conventions.
  - Section 2 contains a list of international human rights conventions and instruments that are covered by the text.
- **Part 2** deals with obligations and prohibitions contained in international environmental instruments.

Table 1: Articles of the CSDDD

ARTICLE	TITLE	CONTENT
1	Subject matter	Spells out the objectives of the Directive.
2	Scope	Introduces the thresholds defining what companies fall into the scope of the Directive.
3	Definitions	Defines the terms used throughout the text of the Directive.
4	Level of harmonisation	Introduces exceptions to parts of the text that cannot be directly modified by Member States.
5	Due diligence	Spells out the constitutive elements of the due diligence obligations for companies covered by the Directive.
6	Due diligence support at a group level	Specifies due diligence responsibilities for companies that are the parent with subsidiaries who are also in scope.
7	Integrating due diligence into company policies and risk management systems	Mandates the steps companies need to take to integrate due diligence into their corporate policies and systems.
8	Identifying and assessing actual and potential adverse impacts	Sets out the criteria and steps companies must take to identify and assess risks to human rights and the environment in their operations and chain of activities.
9	Prioritisation of identified actual and potential adverse impacts	Sets out the criteria and steps companies need to take when they cannot address all potential adverse impacts at once.
10	Preventing potential adverse impacts	Introduces criteria and appropriate measures that companies need to take in order to prevent adverse impacts in their operations, the operations of their subsidiaries and in their chain of activities.
11	Bringing actual adverse impacts to an end	Introduces an obligation for companies to terminate adverse impacts in their operations, in the operations of their subsidiaries and in their chain of activities.
12	Remediation of actual adverse impacts	Introduces an obligation for companies to remedy adverse impacts.

ARTICLE	TITLE	CONTENT
13	Meaningful engagement with stakeholders	Defines how and when companies must consult with stakeholders when carrying out their due diligence obligations.
14	Notification mechanisms and complaints procedure	Introduces an obligation for companies to establish fair and accessible procedures to receive complaints and be notified of concerns.
15	Monitoring	Introduces an obligation for companies to monitor and assess the implementation of their due diligence obligations at least annually.
16	Communicating	Introduces an obligation for companies to communicate publicly through annual reporting on how they fulfil their due diligence obligations.
17	Accessibility of information on the European Single Access Point (ESAP)	Establishes an European Single Access Point on which companies have to make their due diligence reports publicly accessible online in human and machine-readable format.
18	Model contractual clauses	Tasks the Commission with developing model contractual clauses in order to assist companies with their due diligence compliance.
19	Guidelines	Tasks the Commission with developing guidelines for companies on a number of topics addressed by the Directive.
20	Accompanying measures	Requires Member States to provide information and support to companies, their business partners and stakeholders (both inside and outside the EU) with specific attention to SMEs.
21	Single helpdesk	Requires the Commission to set up a single helpdesk for companies, with the assistance of Member States.
22	Combating climate change	Introduces an obligation for companies to adopt and put into effect a climate transition plan with time-bound targets for 2030 and five-year steps until 2050 in line with the 1.5°C objective of the Paris Agreement.

ARTICLE	TITLE	CONTENT
23	Authorised representative	Asks non-EU companies covered by the law to establish a legal representative in one of the Member States they operate in.
24	Supervisory authorities	Tasks Member States with establishing one or more supervisory authorities to monitor and enforce the Directive's obligations.
25	Powers of supervisory authorities	Defines the powers of supervisory authorities, including to receive complaints, carry out investigations and issue penalties.
26	Substantiated concerns	Details the ways in which parties can submit substantiated concerns to supervisory authorities.
27	Penalties	Lists what penalties supervisory authorities are empowered to impose on companies for non-compliance with their obligations.
28	European network of supervisory authorities	Mandates the Commission with the creation of a network of supervisory authorities.
29	Civil liability of companies and the right to full compensation	Introduces rules for civil liability of companies that, as a result of their failure to comply with the due diligence obligations, have caused harm and establishes the victims' rights to full compensation. It also removes some barriers to access to justice for victims.
30	Reporting of breaches and protection of reporting persons	Protects whistleblowers who report breaches of the Directive.
31	Public support, public procurement and public concessions	Allows Member States to consider compliance with CSDDD as a criteria for the attribution of contracts in the context of public procurement.

ARTICLE	TITLE	CONTENT
32	Amendment to Directive (EU) 2019/1937	Protects whistleblowers who report breaches of the Directive.
33	Amendment to Regulation (EU) 2023/2859	Includes CSDDD reporting under the scope of the EU Regulation establishing the EU single access point.
34	Exercise of the delegation	Confers to the Commission the delegated powers necessary for the implementation of the Directive.
35	Committee procedure	Establishes a Committee to organise Member State oversight of Commissions' exercise of implementing powers (comitology).
36	Review and reporting	Mandates the Commission to submit to the co-legislators a report on the extension of due diligence requirements to financial services. It also mandates the Commission to monitor the implementation of the Directive and to review it.
37	Transposition	Sets out the terms and conditions for the implementation of the Directive by Member States.
38	Entry into force	Stipulates the entry into force of the Directive.
Annex	Part I (human rights)	Lists the rights, prohibition and human rights conventions covered by the normative scope of the Directive.
Annex	Part II (environment)	Lists the prohibitions and obligations included in environmental instruments covered by the normative scope of the Directive.

2.2 Minimum and maximum harmonisation

As a Directive, the CSDDD defines a minimum set of standards that Member States must meet when adapting and incorporating it in their national systems. Member States are entitled to exceed the threshold set by the Directive and set higher standards (minimum harmonisation).

However, EU legislators chose to exempt parts of the law from this general rule and introduced maximum harmonisation for some core elements of the due diligence duties, as defined in Article 8(1) and (2), Article 10(1), and Article 11(1). Maximum harmonisation means that Member States can neither subceede the minimum nor exceed the maximum standards set in the Directive. The stipulations in Article 8(1) and (2), Article 10(1), and Article 11(1) must therefore remain uniform in all Member States and cannot be changed or amended during the transposition process.

Maximum harmonisation under the CSDDD should be interpreted strictly. Although Member States cannot directly modify the provisions in Articles 8(1), 8(2), 10(1) and 11(1), they can still introduce more stringent standards that would indirectly improve the level of protection under these provisions, for example by clarifying definitions, expanding the personal scope and normative scope of the Directive, or by setting more specific objectives to enhance protection of human rights, social rights, the environment, or the climate.[11]

Member States can also amend other sections of these articles that are not covered by maximum harmonisation, for instance to include additional categories of what can be considered 'appropriate measures' (Article 10(2) and Article 11(2)).

For provisions following the principle of minimum harmonisation, this guide presents recommendations on how to strengthen them *('recommendations').*

Provisions subject to maximum harmonisation:

- **Article 8(1) and (2)** on identifying and assessing actual and potential adverse impacts**.** The first paragraph contains a general obligation for companies to identify and assess adverse impacts. The second paragraph sets out an obligation to map a company's operations, including their subsidiaries and, where related to their chain of activities, those of a business partner, to identify risk areas where impacts are most likely to occur and to be most severe. Of those risks, companies have to carry out an in-depth assessment. Notice that the other paragraphs contained in Article 8 are not covered by the maximum harmonisation rule. While Member States cannot modify the duty to identify and assess impacts, they can amend the list of appropriate measures contained in the following paragraph.

- **Article 10(1) and Article 11(1)** on preventing, mitigating and bringing to an end potential or actual impacts that have been or should have been identified Paragraph 1 in both Articles defines the company's duty and sets out the criteria that determine its level of involvement towards a specific impact, and that must be taken into consideration when determining the appropriate measures to be taken by the company (see Graphic 2 – Degrees of involvement under the CSDDD). Under maximum harmonisation rules, Member States cannot modify this definition of the criteria set to determine the company's involvement. In contrast, they can amend the lists of appropriate measures in Article 10(2) and Article 11(3).

11. Recital 31 CSDDD.

3 PERSONAL, NORMATIVE AND VALUE CHAIN SCOPE

3.1 Companies covered by the CSDDD

Unlike the CSDDD, the international soft-law framework applies to all companies, irrespective of their size, sector or form, ownership or (group) structure, operational context or place of operation. Hence, those standards encourage all companies to operate responsibly. The international norms implicitly recognise that size is not correlated with risk, as smaller companies can sometimes generate significant risks and impacts. They also do not distinguish between sectors; the same due diligence standard applies to companies in all sectors. In contrast, the CSDDD obligations apply only to a limited group of companies, in the first place very large companies with limited, or unlimited liability form (or equivalent for non-EU based companies),[12] as well as to some regulated financial undertakings,[13] that meet the thresholds set by the Directive, namely minimum 1000 employees and a yearly net turnover of 450 Million EUR.[14]

For non-EU companies, the threshold is further defined as placed at a yearly net turnover of €450 million within the EU single market.

To account for other corporate structures, the CSDDD also applies to companies that do not meet these thresholds individually, but are the ultimate parent companies of groups that reach these thresholds on a consolidated basis.[15] It also applies to companies that have entered into franchising or licensing agreements in the EU in return for royalties amounting to more than €22.5 million in the EU, and have a net turnover of more than €80 million.

Member States may decide to stagger the imposition of obligations between, depending on the size, turnover and form of company, between 26 July 2027 and 26 July 2029 (see Article 37).

12. Annexes I and II of the Accounting Directive.

13. Article 3(1)(a)(iii) CSDDD.

14. Article 2(1), 2(2) CSDDD.

15. Article 2 (3) CSDDD.

Table 2: Key Definitions: company scope

ARTICLE	DEFINITIONS	CONTENT
3(1)(a)(i),(ii)	Company	Legal persons or financial undertakings that can be subject to CSDDD obligations, provided they meet the thresholds set in Article 2. • Any company established in the EU in one of the legal forms listed in Annex I and II of the Accounting Directive,[16] including (public and private) limited liability companies and unlimited liability companies. • A company constituted in accordance with the law of a third country in a form comparable to a company that would be covered if it was established in the EU. • Regulated financial undertakings, regardless of their legal form, including credit institutions, investment firms and electronic money institutions. Alternative Investment Funds (AIFs) and undertakings for collective investments in transferable securities (UCITS) are not included.[17]
3(1)(q)	Parent company	A company that controls one or more subsidiaries.
3(1)(r)	Ultimate parent company	A parent company that controls, either directly or indirectly in accordance with the criteria set out in Article 22(1) to (5) of Directive 2013/34/EU, one or more subsidiaries and is not controlled by another company.
3(1)(e)	Subsidiary	A legal person, as defined in Article 2(10) of Directive 2013/34/EU,[18] and a legal person through which the activity of a controlled undertaking, as defined in Article 2(1)(f), of Directive 2004/109/EC[19] of the European Parliament and of the Council, is exercised.
3(1)(s)	Group of companies, or Group	A parent company and all its subsidiaries.

16. For a list of legal forms by EU country, see Annex I and Annex II of the Accounting Directive.
17. For a comprehensive list of regulated financial undertakings covered under the CSDDD, see Article 3(1)(a)(ii).
18. Article 2(10) of Directive 2013/34/EU defines subsidiary undertaking as *'an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking'.*
19. Article 2(1), point (f), of Directive 2004/109/EC defines controlled undertaking as *'any undertaking.*

(i) in which a natural person or legal entity has a majority of the voting rights; or

(ii) of which a natural person or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or

(iii) of which a natural person or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question; or

(iv)over which a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control;'.

Graphic 1: CSDDD company scope

Phase	EU: Companies or groups	EU: Franchisors & licensors	NON-EU: Companies or groups	NON-EU: Franchisors & licensors
	Thresholds			
1 From July 2027	>5,000 employees **>€1.5** billion turnover worldwide	N/A	N/A **>€1.5** billion turnover in the EU	N/A
2 From July 2028	>3,000 employees **>€900** million turnover worldwide	N/A	N/A **>€900** million turnover in the EU	N/A
3 From July 2029	>1,000 employees **>€450** million turnover worldwide	**>€22.5** million royalties worldwide **>€80** million turnover worldwide	N/A **>€450** million turnover in the EU	**>€22.5** million royalties in the EU **>€80** million turnover in the EU

Recommendations

Member States should broaden the scope of companies to which the obligations apply:

- **By extending the duty to all types of economic actors**
  For example, economic actors such as cooperatives are not part of the CSDDD, but not including them in transposition may result in unfair (dis)advantage between e.g. supermarkets taking the form of a limited liability company, and those supermarket groups structured in a cooperative.

- **By lowering the employee and turnover thresholds**
  - At minimum, align with the CSRD, which applies to companies that have 250 or more employees and 40 million in net turnover, or that are listed. This would strengthen inter-Directive coherence.

- To Including smaller companies that would be outside of the current scope but that are operating in sectors that have a higher risk of negatively impacting human rights and the environment – the so-called 'high-risk sectors' approach. Such an approach should include, but not be limited to: extractives and mining, garment and footwear, construction and agriculture.

- Amending the phase-in timeline to reduce the time intervals or removing the phase-in approach all-together.

FOCUS BOX 1: Financial institutions and financial services under the CSDDD

As specified by the definition of 'companies' in Article 3(1)(a), certain types of financial institutions, including but not limited to banks, investment firms and insurance companies, are required to comply with CSDDD obligations when they reach the thresholds specified in Article 2. In the Directive, these are referred to as 'regulated financial undertakings' and are listed in Article 3(1)(a)(iii).

Therefore, financial institutions covered by the CSDDD are subject to the same obligations as other in-scope companies, and must:

- **Set up and operate processes to identify and assess adverse impacts** arising from their own operations, those of their subsidiaries, and those of their business partners in their chains of activities.

- **Adopt and implement climate transition plans** in line with 1.5°C decarbonisation trajectories.

However, due to the approach taken by the CSDDD in defining the downstream 'chain of activities,' the provision of financial services in the context of relationships with clients has been excluded from the scope of due diligence obligations. As a result, financial institutions are not required to conduct human rights and environmental due diligence when providing financial services to their clients.

By 26 July 2026, the Commission is required to prepare a report on possible options for laying down tailored due diligence requirements for financial services and investment activities.

Excluding the provision of financial services from the scope of due diligence obligations is a major shortcoming of the Directive, as it opens space for financial institutions to disregard the human rights and environmental impacts arising from what is their core activity as businesses. Financial institutions hold the vast majority of financial assets in the EU.[20] Member States should rectify such a shortcoming in their national transposition measures by expanding the definition of chain of activities to include financial services among the downstream activities covered by the Directive (see also Section 3.3).

20. See World Wide Fund for Nature (WWF), Banking on destruction: how European financial institutions fuel environmental crises,2023.

3.2 The CSDDD's material scope

The international soft law framework is characterised by a broad and inclusive material scope covering all human rights and environmental impacts. UN Guiding Principle 12 defines internationally recognised human rights to contain *'at minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.'* Additionally, the OECD Guidelines call for due diligence over potential and actual adverse environmental impacts, broadly defined as *'significant changes in the environment or biota which have harmful effects on the composition, resilience, productivity or carrying capacity of natural and managed ecosystems, or on the operation of socio-economic systems or on people'.* The OECD Guidelines additionally identify an illustrative and non-exhaustive list of broad harmful impacts often linked to business activity, including climate change; biodiversity loss; degradation of land, marine, and freshwater ecosystems; deforestation; air, water and soil pollution; and mismanagement of waste including hazardous substances.

The Directive adopts a more limited approach to the material scope of the due diligence duty. Instead of referring to the entire existing body of rights, laws and international instruments, it makes use of lists of rights and international instruments. These lists in the Directive's Annex are incomplete as they do not reflect the full body of human rights or relevant international instruments. As a result, the material scope of the legislation is limited. Furthermore, additional conditions for the human rights material scope require sophisticated levels of analysis, significantly impacting readability and legal certainty for legislators, companies, stakeholders, regulators and judges alike.

Table 3: Key definitions: material scope

ARTICLE	DEFINITIONS	CONTENT
3(1)(c)	Adverse human rights impact	Impact on persons resulting from an 'abuse' of: • Selected human rights and prohibitions listed in Part I, section 1 of the Annex; *or* • Other human rights enshrined in a list of international instruments in Part I, section 2 of the Annex, but only under the condition that: • The human right can be abused by a company; • The human right's abuse directly impairs a legal interest protected in the human rights instrument; and • The company could have reasonably foreseen the risk that such human right might be affected.[21]
3(1)(b)	Adverse environmental impact	Adverse impact on the environment resulting from the breach of the prohibitions and obligations listed in Part I, Section 1, points 15 and 16, and Part II of the Annex to this Directive, taking into account national legislation linked to the provisions of the instruments listed therein.

21. Article 3(1)(c) CSDDD.

3.2.1 Key priorities for transposition

The CSDDD defines adverse human rights impact in two ways: first, resulting from the abuse of a selected right listed in Annex, Part I Section 1 to the Directive, and second, resulting from the abuse of another human right if this right is enshrined in one of the international instruments listed in Section 2 of Part I of the Annex, provided a set of conditions is fulfilled.

Concretely, this means that transposing legislation and measures must on the one hand cover the impact resulting from the abuse of any of the human rights and prohibitions listed in Part I, Section 1, of the Annex (see pp 26-28).[22] These rights and prohibitions are selected and derived from the human rights instruments in Section 2 of Part I of the Annex and must be interpreted according to international law. Consequently, for the transposition as well as for later application, legislators, implementing authorities, companies and judges will need to take international jurisprudence and recommendations of treaty bodies into account. It is noteworthy too that the list in Section 1 also lists human rights impacts linked to environmental harm and thus bridges the two areas of the Directive's material scope.

This approach goes against that of the international standards, which recognise that companies can and do have a negative impact on the entire spectrum of internationally recognised human rights, and that their responsibility to respect applies to all such rights. More fundamentally, it contradicts the principle that all human rights are indivisible and interdependent. In practice, this fragmented and confusing approach is likely to create legal uncertainty for companies, rights holders and national enforcing authorities alike, and to undermine the Directive's effectiveness in preventing business-related human rights abuse.

Furthermore, Member States must also ensure that any abuse of a human right not listed in Part I, Section 1, of the Annex but which is enshrined in one of the human rights instruments listed in Part I, Section 2, of the Annex also constitutes an adverse human rights impact, if:

- The right concerned can be abused by a company or legal entity;
- The abuse directly impairs a legal interest protected in the human rights instrument; and
- The company could have reasonably foreseen the risk that such a human right may be affected, taking into account the circumstances of the specific case.

This list of human rights instruments does not reflect the full body of existing human rights instruments and, worryingly, certain core ones are missing.[23] However, their absence does not mean that the rights at their focus do not fall into the scope of the CSDDD at all, but that they are included as far as covered by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which are both listed. They

22. Article 3(c)(i) CSDDD.

23. Including but not limited to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention of the Rights of Persons with Disabilities (CRPD), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the UN Convention against Corruption (UNCAC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the UN Declaration on Human Rights Defenders, ILO Convention 190 on Violence and Harassment in the World of Work, International Humanitarian Law.

both encompass a broad catalogue of rights and constitute the basis on which other thematic instruments are built. In addition, Recital 33 clarifies that businesses are expected to take additional standards to those listed in the Annex into account in their due diligence efforts, depending on the circumstances they find themselves in. Similarly, Recital 42 formulates the expectation that businesses carry out heightened due diligence consistent with International Humanitarian Law.

As regards to the set of three conditions, they lack clarity regarding their regulatory purpose which Member States will urgently need to address in the transposition to avoid confusion for companies and enforcing authorities. For instance, the first of the three conditions requires that the right at risk can be abused by a company. It is, however, clarified by the UNGPs that companies can have an adverse impact on the entire spectrum of internationally recognised human rights. Take as an example the obligation of a state to fulfil a certain economic right. Under international law, businesses are not expected to fulfil such positive human rights obligations. Nevertheless, businesses can contribute to or be linked to human rights violations resulting from a state's failure of its obligation to fulfil or protect such economic rights, for example by paying poverty wages. Similarly, in a situation in which a community is unable to access clean water due to pollution following a company's operations, it is the state who fails to ensure access to clean water. However, the company can contribute to the state's failure. In short, Principle 12 of the UNGPs highlights that a company can impact any human right, so that the first condition will always be met. Instead of engaging in an assessment of whether a right can be abused by a company, businesses will need to understand their involvement in the human rights impact at hand to identify appropriate measures.

The second of the three conditions requires that the abuse directly impairs a legal interest protected in the human rights instrument. The Directive, however, leaves it unclear how such a 'legal interest' actually differs from the human right that has been, or potentially will be, abused. In addition, it requires the abuse to 'directly impair' the legal interest without clarifying how this should be understood and that it must be distinguished from the level of a business' involvement with the human rights impact (causing, jointly causing or being directly linked).

Finally, the third condition requires that the risk of human rights impact must have been foreseeable for the company. This seems contradictory to the basic concept of due diligence, as it is exactly one of the purposes of due diligence to identify actual and potential human rights risks. In other words, due diligence ensures foreseeability of risks. Foreseeability can therefore not be a condition for due diligence. In summary, the regulatory purpose and effectiveness of the three conditions are obscure.

Recommendations

The CSDDD defines 'adverse human rights impact' using a complex system that artificially distinguishes between two sets of human rights (Annex Part I Section 1 versus Section 2), applying to one set (Section 2) a test of confusing conditions.

To avoid potential interpretation and application issues arising from the artificial distinction between two human rights categories in Article 3(c) and the Annex, Member States should take a broader approach to defining 'adverse human rights impact'. Since neither Article 3(c) nor the Annex itself are covered by maximum harmonisation, during transposition, Member States can and should go beyond the approach set out in the Directive.

Below are three alternative approaches through which Member States could improve on the normative human rights framework set by the CSDDD.

- **Option A: Include all internationally recognised human rights**

  Member States should broaden the material scope in national law and require companies to conduct due diligence for impacts on all 'internationally recognised human rights', in line with the UNGPs and the OECD Guidelines.[24] There should be no conditions attached to recognising a human rights abuse as having an adverse human rights impact.

  The rights, prohibitions and instruments listed in Part I of the Annex should be made explicitly non-exhaustive and maintained for indicative purposes.

- **Option B: Remove the conditions applying to Section 2 (preferably in combination with Option C)**

  Member States should eliminate the effect of the artificial distinction between the two sets of human rights established by Sections 1 and 2 of the Annex by disregarding the conditions set by Article 3(1)(c) when transposing the Directive.

- **Option C: Address gaps in protection by including additional human rights instruments (preferably in combination with Option B)**

  To ensure the effectiveness of the CSDDD in protecting internationally recognised human rights from corporate abuse, Member States should, at a minimum, include additional international human rights instruments and/or standards currently left out by the Annex.

  International Labour Organisation instruments

  Member States that have already ratified the ILO Convention 155 on Occupational Safety and Health and the ILO Convention 187 on a Promotional Framework for Occupational Safety and Health should include both conventions in their transposition. Since June 2022, these conventions are considered fundamental ILO conventions, meaning that all ILO Member States now have an obligation to promote and realise the principles that they enshrine. Including these two conventions in the context of transposition will also increase legal certainty by proactively anticipating predictable modifications to the Annex, as the CSDDD mandates the Commission to add these ILO fundamental instruments to the Annex via delegated acts once all Member States have ratified them.[25]

24. UNGPs, GP 12 and Commentary to GP 12. OECD guidelines, paragraphs 44-45.
25. Recital 32 CSDDD.

Other ILO instruments that should be included in national transposing measures are the Protocol of 2014 to the Forced Labour Convention, 1930 (P029); the Hours of Work (Industry) Convention, 1919 (No. 1); the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); the Weekly Rest (Industry) Convention, 1921 (No. 14); the Protection of Wages Convention, 1949 (No. 95) and Recommendation, 1949 (No. 85); the Minimum Wage Fixing Convention, 1970 (No. 131) and Recommendation, 1970 (No. 135); the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173); the Violence and Harassment Convention, 2019 (No. 190), the Home Work Convention, 1996 (No. 177); and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Conventions and instruments focusing on rights holders

In line with international standards,[26] the CSDDD emphasises the need for companies to consider additional international instruments and standards in their due diligence, depending on the circumstances. In particular, companies should pay special attention to adverse impacts on individuals who may be at a higher risk due to marginalisation, vulnerability or other circumstances, either individually or as members of certain groupings or communities.[27] To ensure companies effectively pay attention to such impacts, Member States should, as a minimum, include international human rights instruments focusing on vulnerable categories of rightsholders.[28]

26. OECD Guidelines, paragraph 45.
27. Recital 33 CSDDD.
28. These include but are not limited to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), The UN Declaration on Human Rights Defenders, The International Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), The Convention on the Rights of Persons with Disabilities (CRPD),The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families(ICRMW), ILO Convention 190 on Violence and Harassment in the World of Work and the 4 Geneva Conventions.

Rights, Prohibitions and Conventions
currently included in the Annex, part I, sections 1 and 2

Rights and Prohibitions included in international human rights instruments

- The right to life, interpreted in line with Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR).
- The right to liberty and security, interpreted in line with Article 9(1) of the ICCPR.
- The right to privacy, interpreted in line with Article 17 of the ICCPR.
- The right to enjoy just and favourable conditions of work, including a fair and adequate living wage and income, as well as safe and healthy working conditions and reasonable limitation of working hours, interpreted in line with Articles 7 and 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Prohibition of restricting workers' access to adequate housing if the housing is provided by the company, as well as the prohibition of restricting workers' access to food, clothing, water and sanitation in the workplace, interpreted in line with Article 11 of the ICESCR
- The right of the child to the highest attainable standard of health; to education; to an adequate standard of living; to be protected from economic exploitation, interpreted in line with Articles 34 and 35 of the Convention of the Rights of the Child.
- The right to freedom of association; assembly and to organise, interpreted in line with articles 21 and 22 of the ICCPR, Article 8 of the ICESR.
- The right to strike, to form and join trade unions and to collective bargain interpreted in line with the IILO Freedom of Association and Protection of the Right to Organise Convention(No 87), and the ILO Right to Organise and Collective Bargaining Convention (No 98)The right of individuals, groups and communities to lands and resources and to not be deprived of means of subsistence, interpreted in line with Articles 1 and 27 of the ICCPR and Articles 1, 2 and 11 of the ICESCR.
- Prohibition of torture, cruel, inhuman or degrading treatment, interpreted in line with Article 7 of the ICCPR.
- Prohibition of forced labour interpreted in line with Article 2(1) of the ILO Forced Labour Convention, (No 29).
- Prohibition of all forms of slavery and slave-trade interpreted in line with Article 8 of the ICCPR
- Prohibition of arbitrary or unlawful interference with a person's privacy and family, interpreted in line with Article 17 of the ICCPR.
- Prohibition of interference with the freedom of thought, conscience and religion, interpreted in line with Article 18 of the ICESCR.
- Prohibition of the employment of a child under the age at which compulsory schooling is completed and in any case not less than 15 years old, interpreted in line with Article 2(4) and Articles 4 to 8 of the ILO Minimum Age Convention (No 138).
- Prohibition of the worst forms of child labour, including slavery, prostitution, illicit activities such as drug trafficking, interpreted in line with Article 3 of the ILO Worst Forms of Child Labour Convention (No 182.)
- The prohibition of forced or compulsory labour including work resulting of debt bondage or human trafficking, interpreted in line with Article 2(1) of the ILO Forced Labour Convention (No 29).
- Prohibition of causing any measurable environmental degradation that impacts adversely on the enjoyment of specific rights, including the rights to food, water, sanitation, health, safety and the right to use land and lawfully acquired possessions and on ecosystem services, interpreted in line with Article 6(1) of the ICCPR and Articles 11 and 12 of the ICESCR.
- Prohibition of unlawful eviction or taking land or forests when developing or otherwise using land, forests and waters, including by deforestation, interpreted in line with Article 6(1) of ICCPR and Articles 11 and 12 of the ICESCR.
- Prohibition of unequal treatment in employment, in particular the payment of unequal remuneration for work of equal value and discrimination on grounds of national extraction, social origin, race, colour, sex, religion, political opinion, interpreted in line with the Articles 2 and 3 of the ILO Equal Remuneration Convention (No100), Articles 1 ans 2 of the ILO Discrimination Convention (No 111) and Article 7 of the ICESCR.

Human rights and fundamental freedoms instruments

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights.
- The Convention on the Rights of the Child
- The International Labour Organization's core/ fundamental conventions.
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87).
- Right to Organise and Collective Bargaining Convention, 1949 (No 98).
- Forced Labour Convention, 1930 (No 29) and its 2014 Protocol.
- Abolition of Forced Labour Convention, 1957 (No 105).
- Minimum Age Convention, 1973 (No 138).
- Worst Forms of Child Labour Convention, 1999 (No 182).
- Equal Remuneration Convention, 1951 (No 100).
- Discrimination (Employment and Occupation) Convention, 1958 (No 11).

Prohibition and obligations included in environmental Instruments

currently included in the Annex, Part II

- The obligation to avoid or minimise adverse impacts on biological diversity, interpreted in line with Article 10, point (b) of the 1992 Convention on Biological Diversity and applicable law in the relevant jurisdiction, including the obligations of the Cartagena Protocol on the development, handling, transport, use, transfer and release of living modified organisms and of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 12 October 2014.
- The prohibition on the import, export, re-export or introduction from the sea of any specimen included in the Appendices I to III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973 without a permit, interpreted in line with Articles III, IV and V of the Convention;
- The prohibition of the manufacture, import and export of mercury-added products listed in Annex A Part I to the Minamata Convention on Mercury of 10 October 2013 (Minamata Convention), interpreted in line with Article 4(1) of the Convention;
- The prohibition of the use of mercury or mercury compounds in the manufacturing processes listed in Annex B Part I to the Minamata Convention after the phase-out date specified in the Convention for the individual processes, interpreted in line with Article 5(2) of the Convention;
- The prohibition of the unlawful treatment of mercury waste, interpreted in line with Article 11(3) of the Minamata Convention and Article 13 of Regulation (EU) 2017/852 of the European Parliament and of the Council;
- The prohibition of the production and use of chemicals listed in Annex A to the Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants (POPs Convention), interpreted in line with Article 3(1), point (a), point (i) of the Convention and Regulation (EU) 2019/1021 of the European Parliament and of the Council;
- The prohibition of the unlawful handling, collection, storage and disposal of waste, interpreted in line with Article 6(1), point (d), points (i) and (ii) of the POPs Convention and Article 7 of Regulation (EU) 2019/1021;
- The prohibition of the import or export of a chemical listed in Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) of 10 September 1998, interpreted in line with Article 10(1), Article 11(1), point (b) and Article 11(2) of the Convention and indication by the importing or exporting Party to the Convention in line with the Prior Informed Consent (PIC) Procedure;
- The prohibition of the unlawful production, consumption, import and export of controlled substances in Annexes A, B, C and E to the Montreal Protocol on substances that deplete the Ozone Layer to the Vienna Convention for the protection of the Ozone Layer, interpreted in line with Article 4B of the Montreal Protocol and licensing provisions under applicable law in relevant jurisdiction;
- The prohibition of the export of hazardous or other waste, interpreted in line with Article 1(1) and (2) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Basel Convention) and Regulation (EC) No 1013/2006 of the European Parliament and of the Council :

  (a) to a party to the Convention that has prohibited the import of such hazardous and other wastes, interpreted in line with Article 4(1), point (b) of the Basel Convention;

  (b) to a state of import that does not consent in writing to the specific import, in the case where that state of import has not prohibited the import of such hazardous wastes, interpreted in line with Article 4(1), point (c) of the Basel Convention;

  (c) to a non-party to the Basel Convention, interpreted in line with Article 4(5) of the Basel Convention;

  (d) to a state of import if such hazardous wastes or other wastes are not managed in an environmentally sound manner in that state or elsewhere, interpreted in line with Article 4(8) the first sentence of the Basel Convention.
- The prohibition of the export of hazardous wastes from countries listed in Annex VII to the Basel Convention to countries not listed in Annex VII for operations listed in Annex IV to the Basel Convention, interpreted in line with Article 4A of the Basel Convention and Article 34 and 36 of Regulation (EC) No 1013/2006;

- The prohibition of the import of hazardous wastes and other wastes from a non-party that has not ratified the Basel Convention, interpreted in line with Article 4(5) of the Basel Convention;
- The obligation to avoid or minimise adverse impacts on the properties delineated as natural heritage as defined in Article 2 of the Convention Concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972 (the World Heritage Convention), interpreted in line with Article 5, point (d) of the World Heritage Convention and applicable law in the relevant jurisdiction;
- The obligation to avoid or minimise adverse impacts on wetlands as defined in Article 1 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat of 2 February 1971 (Ramsar Convention), interpreted in line with Article 4(1) of the Ramsar Convention and applicable law in the relevant jurisdiction;
- The obligation to prevent the pollution from ships, interpreted in line with the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as amended by the Protocol of 1978 (MARPOL 73/78). This includes:

  (a) The prohibition on the discharge into the sea of:

  (i) oil or oily mixtures as defined in Regulation 1 of Annex I to MARPOL 73/78, interpreted in line with Regulations 9 to 11 of Annex I to MARPOL 73/78;

  (ii) noxious liquid substances as defined in Regulation 1(6) of Annex II to MARPOL 73/78, interpreted in line with Regulations 5 and 6 of Annex II to MARPOL 73/78; and

  (iii) sewage as defined in Regulation 1(3) of Annex IV to MARPOL 73/78, interpreted in line with Regulations 8 and 9 of Annex IV to MARPOL 73/78.

  (b) The prohibition of unlawful pollution by harmful substances carried by sea in packaged form as defined in Regulation 1 of Annex III to MARPOL 73/78, interpreted in line with Regulations 1 to 7 of Annex III to MARPOL 73/78; and

  (c) The prohibition of unlawful pollution by garbage from ships as defined in Regulation 1 of Annex V to MARPOL 73/78, interpreted in line with Regulations 3 to 6 to Annex V of MARPOL 73/78.
- The obligation to prevent, reduce and control pollution of the marine environment by dumping, interpreted in line with Article 210 of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and applicable law in the relevant jurisdiction.

3.2.2 Adverse environmental impacts

The Directive defines environmental adverse impacts in two ways.

Firstly, if environmental degradation impacts on certain human rights included in Part I, Section 1 of the Annex (rights and prohibitions) discussed above. More specifically:

Point 15 of Part I, Section 1, of the Annex captures measurable environmental degradation or other impacts on natural resources that lead or may lead to negative impacts on one or more of the following: the rights to food, water, sanitation, health, safety and property, and ecosystem services contributing to human well-being.[29] The chapeau of Point 15 contains a non-exhaustive list of ways in which environmental degradation may occur.

Point 16 of Part I, Section 1 of the Annex captures unlawful land-grabbing or natural resource appropriation, including by deforestation, that leads or may lead to negative impacts on the rights of individuals, groups and communities to lands and resources, or the right not to be deprived of means of subsistence.[30]

In both cases, companies have an obligation to address potential and actual environmental degradation. This is because point 15 prohibits the causation of environmental degradation, which may also be covered through Part I, Section 2 of the Annex.

Secondly, adverse environmental impacts can result from breaches of a selection of international environmental obligations and prohibitions listed in Part II of the Annex.[31]

29. See EU Corporate Sustainability Due Diligence Directive, Annex, Part I, Section 1, paragraph 15.
30. See EU Corporate Sustainability Due Diligence Directive, Annex, Part I, Section 1, paragraph 16.
31. See ClientEarth, Frank Bold, Environmental Due Diligence and Reporting in the EU (2024), page 62.

Recommendations

The environmental impacts should be further aligned with the definition of environmental impacts under the CSRD[32] and sector-specific due diligence legislation, such as the Batteries Regulation.[33] This would also bring the definition more in line with that of the OECD Guidelines, which as of June 2023 cover all impacts to the environment, including climate change.

- **Option A: Define impacts on the environment primarily through a comprehensive list of environmental impacts, including:**
  - Climate change;
  - Biodiversity loss;
  - Air, water and soil pollution;
  - Degradation of land, marine and freshwater ecosystem;
  - Deforestation;
  - Overconsumption of material, water, energy and other natural resources;
  - Harmful generation and mismanagement of waste, including hazardous substances.

  In such a scenario, the Annexes would serve to specify the obligations regarding specific types of environmental harm.

- **Option B: Ensure the list of prohibitions and obligations in the environmental conventions is complete by referring to all appropriate provisions.[34] Additionally, ensure that all environmental impacts are covered by adding the following Conventions to the Annex Part 2:**
  - Paris Agreement under the United Nations Framework Convention on Climate Change.

    Article 2(1)(a), Article 4(1) and Article 4(2) – the obligation to reduce greenhouse gas emissions.Article 5(1) – the obligation to conserve and enhance sinks and reservoirs of greenhouse gases.
  - UN Water Convention (Convention on the Protection and Use of Transboundary Watercourses and International Lakes).

    Article 2 – The obligation to take appropriate measures to prevent, control and reduce the impacts of water use and pollution, and to converse and restore ecosystems.

32. Article 29b of the Accounting Directive provides that the delegated act on the ESRS specify the information that companies will have to disclose in relation to: (i) climate change mitigation, including as regards scope 1, scope 2 and, where relevant, scope 3 greenhouse gas emissions; (ii) climate change adaptation; (iii) water and marine resources; (iv) resource use and the circular economy; (v) pollution; and (vi) biodiversity and ecosystems.

33. Regulation (EU) 2023/1542, Annex X (2)(a) defines risk categories related to environment, climate and human health, considering direct, induced, indirect and cumulative effects, as including: '(i) air, including air pollution such as greenhouse gas emissions, (ii) water, including seabed and marine environment, and including water pollution, water use, water quantities (flooding or droughts) and access to water, (iii) soil, including soil pollution, soil erosion, land use and land degradation, (iv) biodiversity, including damage to habitats, wildlife, flora and ecosystems, including ecosystem services, (v) hazardous substances, (vi) noise and vibration, (vii) plant safety, (viii) energy use, (ix) waste and residues'.

34. For more detail, please refer to ClientEarth, Frank Bold, Environmental Due Diligence and Reporting in the EU (2024), page 52.

FOCUS BOX 2: Strengthening the protection of Indigenous Peoples under the CSDDD

Indigenous Peoples are disproportionately affected by corporate abuse. Yet the CSDDD fails to properly address their unique risks to exercise specific collective rights, including to their ancestral lands, cultures and livelihoods.

When transposing the Directive, it is crucial that law-makers and companies draw a clear distinction between the corporate obligation to consult with Indigenous Peoples in the context of meaningful stakeholder engagement on the one hand and the state obligation to obtain their Free Prior and Informed Consent (FPIC) on the other. Obtaining Indigenous Peoples' consent remains a state obligation and the company should not interfere (to ensure it remains Free), not commence the project (to ensure it remains Prior), provide information in an accessible format (to ensure it remains Informed) and respect the outcomes of such process (to ensure it respects Consent).

In order to strengthen the protection of Indigenous Peoples under the Directive, Member States should adapt the material scope provided in the Annex to explicitly include references to them and their rights. Specifically:

- Add the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the list of human rights instruments in Annex Part I, Section 2.
- Clarify that Indigenous Peoples are included in the rights holders mentioned in Part I, Section 1, point 16 of the Annex on the right to land and the prohibition of being unlawfully evicted. The current formulation of 'individuals, groupings and communities' is too vague to effectively guarantee these protections for Indigenous Peoples and the specific protections they enjoy under international human rights law.
- Under the same point, explicitly include the right to Free, Prior and Informed Consent under the 'right to land', which is only referred to as a Recital in the Directive.[35]
- Clarify the distinction between a company's duty to engage meaningfully with stakeholders under Article 13 of the CSDDD and the State's duty to secure FPIC before approving projects affecting Indigenous lands, resources or cultural heritage, and particularly how engagement with stakeholders is different from securing FPIC.

35. Recital 33 CSDDD.

3.3 What parts of the value chain are covered

International standards such as the UNGPs and the OECD Guidelines expect companies to undertake due diligence across their whole value chain. This includes carrying out due diligence on their own activities and those of their business relationships both upstream and downstream in the entire value chain.

Instead, the CSDDD requires companies to carry out due diligence to identify and address adverse impacts arising from their own operations, those of their subsidiaries, and those of their business partners in their 'chains of activities' – a bespoke concept introduced by the Directive which refers to select parts of the value chain.

Table 4: Definitions: value chain

ARTICLE	DEFINITIONS	CONTENT
3(1)(g) (i), (ii)	Chain of activities	(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, 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.
3(1)(f)(i)	Direct business partner	An entity with which the company has a commercial agreement related to the operations, products or services of the company or to which the company provides services pursuant to Article 3(1)(g)(i) and (ii).
3(1)(f) (ii)	Indirect business partner	An entity which is not a direct business partner but which performs business operations related to the operations, products or services of the company.

The term '**chain of activities'** is defined by distinguishing between upstream and downstream.[36]

Activities of a company's business partner in the **upstream** related to the production of goods or provision of services are included in the scope of a company's due diligence obligation. For illustrative purposes, the CSDDD provides a non-exhaustive list of typical activities that companies should consider.

36. Article 3(1)(g)(i) and 3(1)(g)(ii) CSDDD.

The activities of a company's business partners in the **downstream** are explicitly covered if they fulfil the following two conditions:

- They are related to the distribution, transport and storage of a company's products.
- They are carried out 'for the company or on behalf of the company'.[37]

Additionally, the Directive contains two exclusions of products that could otherwise be included under the definition of downstream chain of activities.

- The activities of a company's downstream business partners related to the services of the company are not included in the chain of activities.[38]
- Additionally, dual-use items covered by Regulation 2021/821, and weapons, munitions or other war materials subject to controls are not included in the downstream chain of activities once the export of the product is authorised under said frameworks.[39]

By 'business partners', the CSDDD does not refer only to direct (i.e. contractual) relationships, but also includes indirect relationships. This also includes relationships with suppliers of products beyond tier one – for instance, a textile mill providing cotton to a garment factory with which the company has a direct contractual relationship, or a mine that supplies a smelter or a subcontracting unit. Similarly, all types of entities in the value chain may be business partners of a company, insofar as they perform operations related to the company's operations, products or services. Therefore, the chain of activities includes both formal and, where present, informal aspects of the economy.

Relating to the downstream part of the value chain, the CSDDD refers to activities carried out 'for the company or on behalf of the company' without clarifying how this distinction relates to the Directive's definition of business relationships, which covers both direct and indirect business partners. This risks creating confusion and overlaps.

Finally, it is important to remember that the concept of 'chain of activities' serves to establish what parts of the value chain are generally covered by the company's due diligence obligations. However, a number of downstream impacts can be caused or jointly caused by a company's actions and omissions, thus the company is to take appropriate measures to address them. For example, a company may take measures to avoid or terminate impacts of a product by modifying its design or composition.

Recommendations

When transposing the CSDDD, Member States should ensure that the definition of companies' value chains is better aligned with the international standards. This would better contribute to the Directive's objective of preventing adverse impacts on human rights and the environment. Moreover, as existing examples of due diligence in the downstream value chain[40] show, downstream due diligence is a feasible requirement.

- **Option A: Alignment with international standards**
  - Align the approach to the downstream value chain with that of the upstream. Include all downstream activities of a business partner and provide an illustrative, rather than exhaustive, list of downstream activities.
  - In addition, expand the definition of business partners to include non-commercial relationships. Companies may be involved

37. This distinction is separate from the distinction between direct and indirect business partners, and companies need to consider the activities of indirect partners in relation to distribution, transport and storage carried out for them or on their behalf.

38. Recital 26 CSDDD.

39. Article 3(1)(g)(ii) CSDDD.

40. See The Danish Institute for Human Rights, Due Diligence in the Downstream Value Chain: case studies of current company practices, 2024.

in adverse impacts through all types of relationships, both of a commercial and non-commercial nature. For example, a company operating in a conflict-affected area and whose facilities are protected by state security forces may be connected to adverse impacts committed by the security forces when providing such protection.[41]

- **Option B: Targeted expansion of the definition**
  - Remove the limitation to only cover activities performed 'for the company or on behalf of the company'. This additional, undefined concept should be deleted in transposition to avoid confusion and overlaps.
  - At minimum, explicitly expand the list of downstream activities to include key activities likely linked to adverse impacts.

    Waste management: [42] in addition to harming human rights and the environment, (deficient) waste management may lead to large clean-up bills eventually being passed on to public authorities and taxpayers. Adding these activities in the definition of 'chain of activities' would contribute to avoiding such outcomes. Moreover, producer responsibility in relation to end-of-life management is an established concept under EU law (see for instance Extended Producer Responsibility schemes), and the CSDDD could reinforce and complement such measures to ensure coherent regulation.

    Design and composition of the product: the design and composition of the product are currently referred to in the definition of upstream chain of activities. However, their effects might be felt in the downstream part of the value chain and are dependent, at least in part, on company choices. Therefore, it is essential that the definition of 'chain of activities' clarifies that impacts ascribable to the design and composition stages of the value chain should be identified and addressed irrespective of the stage at which the adverse impacts are actually felt.

    Use of goods: the use of a company's product is an important potential activity through which companies may be connected to adverse impacts. Companies already have an established practice of considering the (reasonably foreseeable) use of their products under product safety legislation. Similarly, ecodesign legislation also includes reference to certain environmental aspects of a product's use. Including 'use', 'intended use' and 'foreseeable misuse' among downstream activities under the CSDDD would foster coherence with such legislation.
  - Include the distribution, transport and storage of products subject to export control. When transposing, the CSDDD Member States should not exclude products whose export have been authorised under export control and, where necessary, amend relevant national legislation on export controls to clarify that companies should carry out due diligence even when export authorisations have already been granted.

- **Option C: Clarify current ambiguities in the definition**
  - Clarify that companies are, at minimum, required to address downstream impacts arising from their own operations and that of their subsidiaries. As a matter of fact, the exclusion of services from the downstream chain of activities applies only to business partners, and not to services the company itself or its subsidiaries provide.
  - Clarify that business partners active in the informal economy shall also be considered as 'business relationships' and are therefore included as part of the chain of activities.
  - Member States should clarify that companies are required to identify adverse impacts arising from the use of the services linked to their own operations and those of their subsidiaries, and make the necessary modifications to their business plan, overall strategies and operations, including the design, purchasing and distribution practices of their services.

41. UNGP Interpretive Guide, pages 41-42.
42. The political agreement of December 2024 between the EU Council and European Parliament included the activities of downstream business partners related to the waste management of a company's products. The agreement referred to 'disposal of the product, including the dismantling, recycling, composting or landfilling [···] excluding the disposal of the product by consumers'. This reference was later removed due to last-minute pressure in Council by some Member States.

4 CORPORATE OBLIGATIONS UNDER THE CSDDD

4.1 What is mandatory human rights and environmental due diligence (HREDD)

HREDD is a methodology through which companies can operationalise their respect for human rights and the environment. HREDD prescribes that companies identify, assess, prevent, mitigate, bring to an end and remediate human rights and environmental damages throughout their value chain. Companies should also communicate, track and monitor the impacts they have identified or are addressing. The international standard for HREDD was set in 2011 through the adoption of the United Nations' Guiding Principle on Business and Human Rights and the update, in 2011 and 2023, of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.

The HREDD process under the CSDDD is clearly inspired by international law standards, but deviates in some points – such differences will be spelled out in the text of this guide. The UNGPs and OECD guidelines provide a useful guide of which business conduct is expected from companies and how the Directive's due diligence provisions should be interpreted, as indicated repeatedly by the recitals to the Directive.[43]

Article 5 of the CSDDD contains provisions on what the practical steps of a company's due diligence should look like, namely:

- Integrating due diligence into the company's policies and risk management systems (Section 4.2);
- Identifying and assessing actual or potential adverse impacts (Section 4.3.1) and, where necessary, prioritising actual and potential adverse impacts (Section 4.3.2);
- Preventing and mitigating potential adverse impacts (Section 4.6.1) and bringing actual adverse impacts to an end and minimising their extent (Section 4.6.2);
- Providing remediation for actual adverse impacts (Section 4.7);
- Carrying out meaningful engagement with stakeholders (Section 4.6);
- Establishing and maintaining a notification mechanism and a complaints procedure (Section 4.9);
- Documenting the actions carried out to fulfil due diligence obligations;
- Monitoring the effectiveness of a company's due diligence policy and measures (section 4.7);
- Publicly communicating on due diligence.

43. Recitals 6, 37, 51, 67 CSDDD.

4.2 Integrating due diligence into companies' policies

The international framework expects companies to embed responsible business conduct into their policies. Such policies should be embedded in management systems and overseen by the highest levels of management, and they should set clear expectations of business partners.

Article 7 of the CSDDD requires companies in scope to adopt a due diligence policy and to integrate it in their corporate policies.

The due diligence policy must be developed in consultation with the company's employees and their representatives and, at a minimum, must cover the company's approach to due diligence and a code of conduct for the company, its subsidiaries and its business partners. The policy must also describe how the company is putting due diligence into effect and how it is verifying compliance with its code of conduct both internally and with its business partners.

When significant changes occur, companies are required to update their due diligence, which must be reviewed at least every two years.

Article 5(4) requires Member States to ensure that companies retain documentation of the actions carried out to fulfil their due diligence obligations for the purpose of demonstrating compliance. Such documentation should at least include the identified risks and impacts and in-depth assessments pursuant to Article 8, the prevention and/or corrective action plan, contractual provisions obtained or contracts concluded, verifications pursuant to Articles 10(5) and 11(6), remediation measures, periodic assessments as part of the company's monitoring obligation, as well as notifications and complaints.

Recommendation

Member States should:

- Ensure a company's senior management responsibility and oversight of the due diligence duty.

4.3 Risk identification and prioritisation

The international soft-law framework requires companies to identify and assess risks and impacts they cause, contribute to, or are directly linked to through business relationships. Companies should begin by undertaking a scoping exercise. Through this, the company should map the business partners within its value chain, collect data to understand possible risks related to the company's sector, geography and business partners, identify the most significant risks and continuously update the mapping to incorporate lessons learned from its own due diligence process or changes in circumstance.

Having completed the broad scoping, the company should then conduct a deeper assessment of its most significant risks and impacts and consider the nature of its own involvement. When performing assessments, companies should use a methodology that is fit to identify the risks that can be expected in their chain of activities.

Finally, where it is not possible to address all potential and actual adverse impacts immediately, the company should prioritise the most significant risks and impacts for action, based on their severity and likelihood. Once the most significant impacts are addressed, the company must still move on to address less significant impacts.

Table 5: Key definitions: risk identification and prioritisation

ARTICLE	DEFINITIONS	CONTENT
3(1)(l)	Severe adverse impact	Adverse impact that is especially significant on account of its nature, such as an impact that entails harm to human life, health or liberty, or on account of its scale, scope or irremediable character, taking into account its gravity, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact, within a reasonable period of time.
3(1)(o)	Appropriate measures	Measures that are 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, and reasonably available to the company, taking into account the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors.

4.3.1 Identification - Article 8

As per Article 8, companies covered by the Directive have the obligation to take 'appropriate measures' to identify and assess actual and potential adverse impacts with respect to their own operations, the operations of their subsidiaries, and the operations of their business partners in the chains of activities of the companies, down to the raw material level.

The obligation includes at least 2 steps (Article 8.2):
(a) **Map** their operations, including those of their subsidiaries and the activities of their business partners in their chain of activities, to identify general areas where adverse impacts are most likely to occur and to be most severe;

(b) Based on the mapping conducted under point (a), carry out an in-depth **assessment** of their operations, their subsidiaries', and those of their business partners in their chain of activities in areas identified as having the highest likelihood and severity of adverse impacts.

It should be noted that the term 'areas' in Article 8(2)(b) should not be interpreted restrictively to mean only geographic areas. On the contrary, it refers to the identified parts of the chain of activities (for instance, specific jurisdictions, value chain stages or types of relationships) where adverse impacts are most likely to occur or be most severe. When assessing geographic areas specifically, companies are expected to implement heightened human rights due diligence when their operations or those of their business partners occur in conflict-affected and high-risk areas (CAHRAs)[44], as defined in Regulation (EU) 2017/821 (also known as Conflict Mineral Regulation).[45] It should also be noted that, when identifying adverse impacts, companies should not only identify and assess their own impacts, but also take into account the impact(s) of a business partner's business model and strategies, including their trading, procurement and pricing practices.[46]

44. Recital 41 CSDDD.
45. See UN Working Group on Business and Human Rights, Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide, 2022.
46. Recital 42 CSDDD.

As regards the frequency of the impact identification, Recital 41 clarifies that the identification of adverse impacts should be done in an iterative way that can respond to significant changes regularly – but at least every twelve months. This iterative nature of the identification extends to its results. If companies cannot obtain some of the necessary information in their chain of activities, they should be able to provide reasons for such an outcome, and are required to take the necessary steps to obtain it.[47] The Directive precises that companies can participate in industry or multi-stakeholder initiatives (MSIs) or can use the services of third-party verifiers as a support to these processes (see Section 4.8).

Recommendations

Member States should:

- Ensure that companies' impact assessment in accordance with Article 8(2)(b) includes a more detailed mapping of its actual individual business relationships, including names and locations. Member States should ensure that companies make the mapping of their value chain publicly available as part of their obligation to communicate publicly on their due diligence.

- Facilitate and encourage open data initiatives to map supply chains and identify risks and types of adverse impacts across sectors and countries, in order to avoid duplications, ease the burden for all companies regardless of their capacities and facilitate the access to this information for SMEs in particular.

4.3.2 Prioritisation – Article 9

If it is not feasible to prevent, mitigate, bring to an end or minimise all identified actual and potential impacts, companies are required to prioritise their efforts.[48] This prioritisation must be based on the severity and likelihood of the impacts.[49] Extraneous factors such as proximity to or influence over business partners or potential liability cannot be taken into account.[50]

Article 9 makes it clear, however, that the prioritisation does not lift the obligation for a company to address all identified adverse impacts and is only provided as a sequencing measure when it is not possible to address all impacts at the same time. Once the most severe and most likely impacts have been addressed by taking appropriate measures, companies must address the less severe and less likely ones.[51] The Directive specifies that prioritised impacts have to be addressed in a reasonable time.[52] Moreover, once appropriate measures have been taken or put in place to address a prioritised impact, companies do not need to wait for this to be fully or actually addressed before initiating measures to address impacts prioritised as less severe.

The meaning of 'severity' and 'likelihood' is aligned to the UN and OECD standards. The severity of an adverse impact should be assessed by its scale, scope, irreversibility and the extent of harm to individuals or the environment, without considering the company's influence, involvement, proximity or liability.[53]

47. Recital 41 CSDDD.
48. Article 9(1) CSDDD. Conversely, if it is possible to address all impacts at the same time, companies are not allowed to prioritise.
49. Article 9(2) CSDDD.
50. Recital 44 CSDDD.
51. Article 9(3) CSDDD.
52. Ibid.
53. Recital 44 CSDDD.

Recommendation

Member States should:

- Clarify that companies are required to accurately document and justify their prioritisation decisions, ensuring transparency about why some impacts were addressed first and why others were deemed less urgent or impossible to address at the time. This provides an important basis for public authorities or national courts in case they have to assess prioritisation decisions.[54]

4.4 Preventing potential adverse impacts and bringing actual impacts to an end

4.4.1 A company's involvement in the adverse impact

Under the international framework, companies are expected to cease, prevent and mitigate adverse impacts. A company's involvement in an adverse impact determines the scope of actions the company should take to address the harm. Because of this, companies must understand their involvement in relation to a given impact. Companies ***cause*** an impact where their own activities result in that impact. Companies ***contribute*** to an impact where their activities, in combination with other actor(s), cause the harm, or where their activities facilitate another actor cause the harm. Companies are directly ***linked*** to an impact where there is a link between the harm and their products, services, or operations through business relationships with other actors.

The CSDDD uses different terminology to determine relevant involvement, namely the situation in which:

- A company may have exclusively **caused** the impact.
- A company may have contributed to an impact by causing it **jointly** with a subsidiary or a business partner (this extends to both acts and omissions, including those where a company facilitates or incentivises a business partner to cause an adverse impact).[55]
- An impact may be present in a company's chain of activity but be **only caused by a business partner.**

The terminology used by the Directive seems to focus on the role of subsidiaries and business partners in the causation of and linkage to an adverse impact. Though this differs from the wording used under international standards, Recitals 45 and 53 clarify that the involvement categories should be applied in line with international frameworks. In particular, they highlight that the obligation to take appropriate measures to bring to an end or minimise the extent of a harm equally applies also when third parties outside of the company's chain of activities are also causing the adverse impact. To

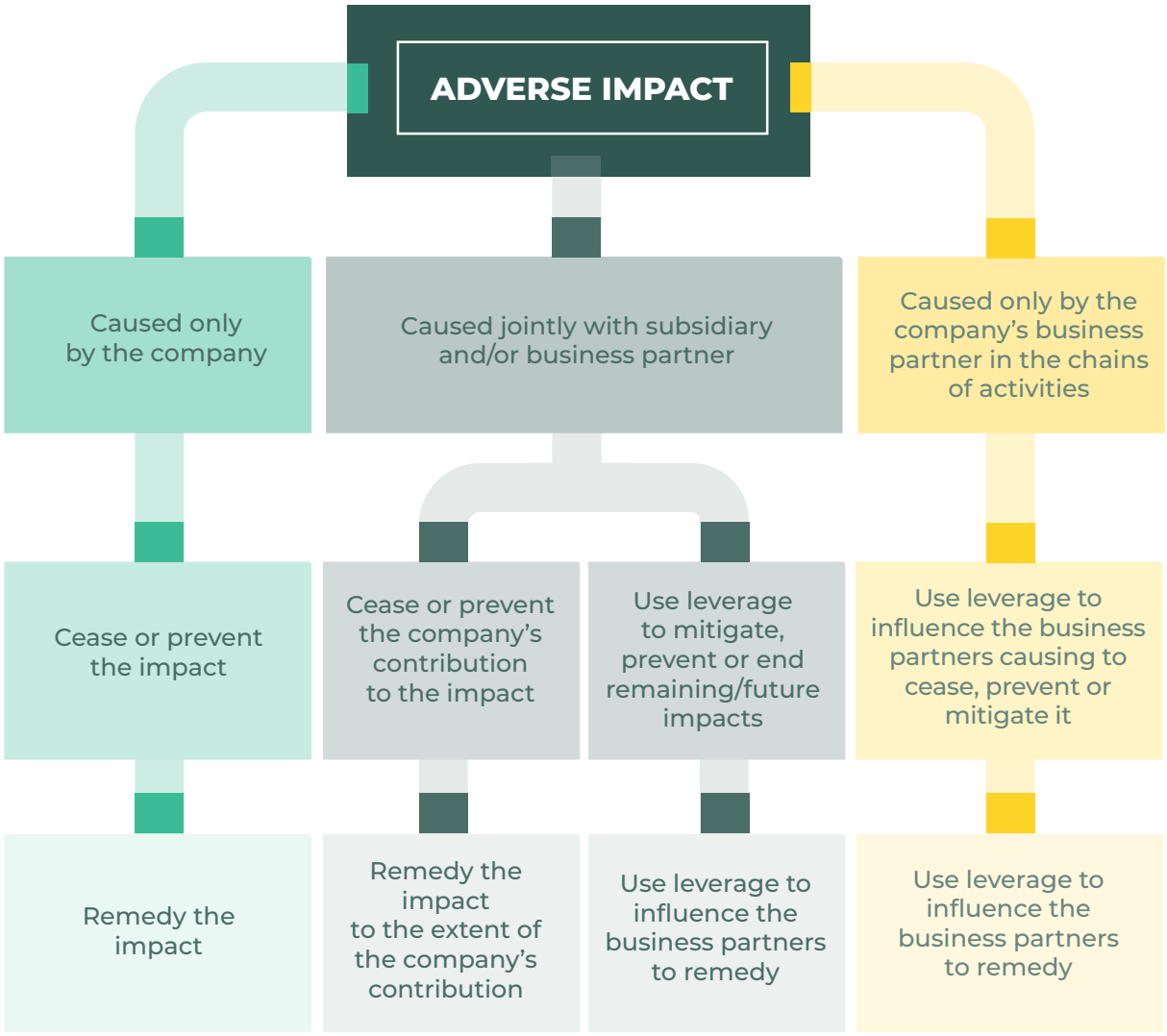
54. Article 27(2)(d), Recital 80 CSDDD.
55. Recital 53 CSDDD. It must be noted that, in the international standards, 'incentivising' a business partner does not require intention but merely the increase of the risk of an adverse impact (see OECD Guidance, page 70). As per Recital 53, the CSDDD must be interpreted in line with said standards.

avoid misinterpretation, Member States should ensure that the clarification provided by the recitals is reflected in transposition.

Importantly, under the international framework, a relationship between a company and an impact is not static but can evolve over time. For example, according to the OECD Due Diligence Guidance,[56] when a company is linked to an impact in its chain of activities but repeatedly fails to address it over time, despite being aware of it, its degree of involvement can evolve. Over time, it can be considered that the company is condoning, facilitating or even incentivising the business partner, and thus is contributing to the impact.[57] This can affect how a company's responsibility is evaluated.

The international norms base their expectation for companies to respond to impacts on their involvement in (or relationship to) them. Companies causing the impact should cease or prevent the impact and remedy it. Companies contributing to the impact should cease

Graphic 2: Degree of involvement under the CSDD



56. See OECD, OECD Due Diligence Guidance for Responsible Business Conduct, page 71, 2018.

57. See Clean Clothes Campaign, ECCHR, Public Eye and SOMO, Respecting rights or ticking boxes? Legislating human rights due diligence, 2023.

or prevent their contribution and remedy the impact to the extent of the company's contribution. Companies contributing to the impact should also use leverage to mitigate remaining impacts and prevent future impacts and use leverage to encourage remedy of any remaining impacts. Finally, companies directly linked to impacts should use leverage to influence the entity(ies) causing the impact to stop causing and mitigate the impact and use leverage to influence the entity(ies) causing the impact to remedy it.

The CSDDD defines a similar way in which companies must prevent (Article 10), bring to an end to (Article 11) and remediate impacts (Article 12) depending on how they are connected to them. This is to reflect the fact that potential and actual adverse impacts may be caused by a company alone, jointly with one or more actors, or by their business partners only, and that said impacts may happen at different points in a company's chain of activities.

Table 6: Key definitions: preventing adverse impacts

ARTICLE	DEFINITIONS	CONTENT
3(1)(u)	Risk factors	Facts, situations or circumstances that relate to the severity and likelihood of an adverse impact, including company-level, business operations, geographic and contextual, product and service, and sectoral facts, situations or circumstances.
3(1)(i)	SME	Micro, small or a medium-sized undertaking, irrespective of its legal form, that is not part of a large group, as those terms are defined according to Article 3(1), (2), (3) and (7) of Directive 2013/34/EU (Accounting Directive).

4.4.2 Preventing adverse impacts

Once potential adverse impacts have been identified and prioritised according to Articles 8 and 9, the company has an obligation to take appropriate measures to prevent them (Article 10). When prevention is not possible, the company has an obligation to adequately mitigate potential adverse impacts. This obligation pertains to both impacts that have been, or should have been, identified.

4.4.3 Bringing actual impacts to an end

Having identified and prioritised actual adverse impacts according to Articles 8 and 9, the company must take appropriate measures to end them (Article 11). In every situation in which an impact cannot be immediately brought to an end, the company has an obligation to minimise its extent.

4.4.4 Appropriate measures under both articles

Both the prevention and the termination of impacts are achieved through the company taking 'appropriate measures' to those ends. Articles 10 and 11 determine 'appropriate measures' in combination with Article 3(1)(o), which clarifies that those measures should be capable of achieving the objectives of due diligence and are capable of effectively addressing the impacts at hand. Appropriate measures must thus be effective in preventing or terminating adverse impacts. They must be commensurate to the likelihood and severity of the impact and must be reasonably available to the company.

Both Articles 10 and 11 foresee that the appropriate measures should take into account the relations between the company and the impact (causing, jointly causing or causation exclusively by a business partner) and introduce a number of categories of measures to be taken. Several of the categories of measures focus on addressing the company's own actions, such as neutralising the impact or minimising its extent, making financial or non-financial investments into facilities or processes and making modifications or improvements to the company's plans, strategies, and operations, including purchasing practices, design and distribution practices. Others guide the company in strengthening its due diligence engagement with business partners, such as by seeking contractual assurances that the partner will comply with the company's prevention action plan, or by providing financial or other support to a partner that is a small or medium-sized enterprise (SME). In addition, Articles 10(3) and 11(4) note that companies may take, where relevant, measures in addition to those listed. These two provisions helpfully signal that in certain contexts, companies will need to go beyond the broad measures suggested by the Directive to effectively address the impacts. Here, the definition in Article 3(1)(o) will again be of guidance for companies to determine what measures will be expected as appropriate.

Recital 66 clarifies that, while contractual assurances can be an important tool to request that business partners respect human rights and the environment, carry out due diligence and prevent harm, a company cannot transfer its own responsibilities to the business partner. This so-called 'contractual cascading' would threaten accountability and effective change across chains of activities.

Article 3(1)(o) states that appropriate measures must 'be reasonably available to the company'. However, the article does not clarify what constraints to the availability of a certain measure the company should consider, nor does it set expectations with regard to the financial resources a company should devolve to address risks connected to its operations and business relationships.

Finally, the Directive precises that companies can participate in MSIs or can use the services of third-party verifiers as a support to these processes (see Section 4.10). It is noteworthy that consultation through MSIs can be helpful to determine broad or general risks of negative impacts, for example, at country level. However, they cannot and should not replace consultation with stakeholders directly affected by the operations or relationship, for instance at factory or site level.

Recommendations for both articles

Member States should:

- Clarify that measures carried out by companies must not only meet the requirements of Article 10 and 11 CSDDD but also reflect Article 3(1)(o) CSDDD, namely to be effective in preventing or terminating adverse impacts, commensurate to their likelihood and severity, and reasonably available to the company. These articles therefore need to be read together.

- Ensure that the lists of measures in Article 10 and 11 CSDDD are not to be understood as exhaustive.

- Require companies to build financial and technical capacity to ensure appropriate measures to address the risks linked to their chain of activities are available to them.

- Clarify that companies must develop a preventive or corrective action plan addressing the actual or potential harm in consultation with affected stakeholders and/or their representatives including NGOs, trade unions and other stakeholders' organisations. Given the specific nature of impacts, the added value of MSIs can be limited, and should not replace consultation with affected stakeholders at the level where the impact takes place.

- Ensure that when companies document their due diligence process and corrective action plans, they identify the root causes of why some impacts could not be prevented, mitigated or brought to an end and explain how they are addressing such issues, and if not, why that is the case.

- In relation to contractual assurance, clarify that the allocation of tasks between contracting parties must not amount to a transfer of due diligence obligations to a business partner.

4.4.5 Responsible disengagement

In particular cases, the international framework considers that appropriate responses to prevent, mitigate or cease an impact may include temporary suspension of a business relationship while pursuing ongoing risk mitigation or, as a last resort, disengagement from the business relationship. Disengagement is usually envisioned after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact.

Under the CSDDD, disengagement is also a last resort. When tackling persistent impacts, if there is a reasonable expectation of success, companies are required to adopt and implement an enhanced prevention action plan[58] or an enhanced corrective action plan[59] for the specific adverse impact. When enhanced action plans also fail to prevent or mitigate an impact, the company may decide to disengage from a business relationship.

The decision to disengage should take into account potential social, environmental and economic adverse impacts that it may engender. When a company chooses to leave a business relationship, they should do so responsibly, including by seeking meaningful consultation with relevant stakeholders in a timely manner and, where possible, by taking appropriate measures to prevent or mitigate adverse impacts related to their disengagement. The company must also communicate in a timely manner its decision to disengage from the business partner and keep the same decision under review.

Companies should only disengage from a business relationship when the potential adverse impact of disengagement in itself is deemed, after an assessment, less severe than the initial adverse impact that could not be prevented or adequately mitigated.

FOCUS BOX 3: When disengagement is necessary

The CSDDD provides for cases when it is imperative that companies disengage from a business relationship. For example, when enhanced prevention action plans fail to prevent or mitigate the adverse impact and the potential impact is severe, considering characteristics such as significance, scale, scope, gravity and irremediability, the business relationship should be terminated. The Directive clarifies that the timeline for such cases depends on their severity of the adverse impact.

In cases where there is no reasonable expectation that efforts to mitigate, prevent or cease the adverse impact, such as when there is insufficient leverage over the actors and the potential impact is severe, the business relationship should be terminated. The Directive makes clear that this is the case for situations of state-imposed forced labour, in which disengagement is not a measure of last resort but the appropriate approach from the start. The same approach could apply to certain cases of armed conflict or certain operations in authoritarian regimes. For further understanding of challenging contexts, such as in the case of armed conflict, guidance can be taken from the OHCHR.

58. Article 10(6) CSDDD.
59. Article 11(7) CSDDD.

Where the company decides **not** to temporarily suspend or terminate the business relationship pursuant to this Article, it must:

- Monitor the potential adverse impact.
- Periodically assess its decision and whether further appropriate measures are available.

Both articles 10.6 and 11.7 stipulate that Member States should provide for the availability of an option to terminate the business relationship in contracts governed by their laws.

Recommendations

Member States should:

- In order to properly identify the risks associated with disengagement, require companies to engage in a timely manner, efficiently and meaningfully with stakeholders impacted by the decision to disengage, before reaching this decision, and address the adverse impacts related to the decision to disengage in consultation with them.
- Ensure that their transposition norms integrate the Directive's specific provisions[60] to situations where there is no likelihood of success, for example in the context of SIFL, as well as certain situations of armed conflict or when operating in authoritarian regimes. In order to define this, guidance can be taken from the OHCHR.[61]

60. Recitals 50 and 57

61. See OHCHR, Business and Human Rights in Challenging Contexts, 2023.

4.5 Remediating negative impacts

Table 7: Key definitions: remediating negative impacts

ARTICLE	DEFINITION	CONTENT
3(1)(t)	Remediation	Restoration of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would have been in had an actual adverse impact not occurred, in proportion to the company's implication in the adverse impact, including by financial or non-financial compensation provided by the company to a person or persons affected by the actual adverse impact and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures.

The international soft law framework expects companies to provide for or cooperate in remediation for impacts they cause or contribute to. It also expects companies to use leverage to encourage business relationships to remediate impacts to which the company is only directly linked to. States must take appropriate steps to ensure remedy, through judicial, administrative, legislative or other appropriate means.

Remediation must be adequate, effective and prompt.[62] Concretely, where possible, companies must restore the affected person or persons to the situation they would be in had the adverse impact not occurred and enable remediation that is proportionate to the significance and scale of the adverse impact. Remedy might take different forms, such as apologies; restitution or rehabilitation; or financial or non-financial compensation, depending on the nature and extent of the adverse impact.

Under the CSDDD, companies are obliged to provide remediation in cases where they caused or jointly caused an adverse impact. Companies may choose to voluntarily remedy impacts that have been caused only by business partners or use their ability to influence the business partner that is causing the adverse impact to provide remediation.

Remediation is defined in Article 3(1)(t) as restoring victims of human rights and the environment to a situation as close as possible to one in which the impact had not occurred. The remedy should be commensurate to the degree of involvement of the company and can include financial or non-financial compensation, including covering the costs incurred by victims or public authorities in seeking remedy. When adopting remedial measures, companies must consult with stakeholders.[63]

Recommendation:

Member States should:

- Clarify in their transposition measures that companies must provide adequate, effective and prompt remediation and that this may entail different forms of remedy.
- Enhance the definition of remediation by including the substantive forms that remedies can take as per international normative framework. Member States can equally make references to the preventative measures in Article 10 to include harm prevention through, for example, guarantees of non-repetition.[64]
- Require companies to use their leverage to influence the business partner that is causing the adverse impact to provide remediation.

62. See OHCHR, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005.
63. Article 13.3(d) CSDDD.
64. See UNGP, Chapter III, p 28.

4.6 Meaningful stakeholder engagement

The international standards describe meaningful stakeholder engagement as one of the essential components of effective due diligence, and in some cases even a right in and of itself.[65] Meaningful stakeholder engagement is defined as being ongoing (continuous), two-way, conducted in good faith by participants on both sides, and responsive to stakeholders' views. It should be timely, accessible, appropriate, and safe for stakeholders. Companies should remove potential barriers to engagement for people in positions of vulnerability or marginalisation. Stakeholders are broadly defined but an emphasis is given to affected stakeholders.

Table 8: Key definitions: meaningful stakeholder engagement

ARTICLE	DEFINITION	CONTENT
3(1)(t)	Remediation	Restoration of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would have been in had an actual adverse impact not occurred, in proportion to the company's implication in the adverse impact, including by financial or non-financial compensation provided by the company to a person or persons affected by the actual adverse impact and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures.

Under Article 13 of the Directive, Member States are to ensure that companies will carry out effective engagement with stakeholders. The definition of stakeholders[66] includes the workers of a company, its subsidiaries and its business partners (together with their trade unions and other workers' representatives), as well as consumers and other individuals and groups whose rights or interests are or could be affected by the activity of the company, its subsidiaries and its business partners (as well as their legitimate representatives). National human rights and environmental institutions and civil society organisations whose purposes include the protection of the environment are also considered stakeholders under this provision. Article 3(1)(n) is non-exhaustive, Recital 65 lists further stakeholder and rights holder groups such as Indigenous Peoples and human rights defenders (HRDs).

Under Article 13(3) of the CSDDD, meaningful engagement with stakeholders is an obligation in some steps of the due diligence, not in the whole process. This obligation comprises identification, assessment and prioritisation of actual or potential adverse impacts as per Articles 8 and 9; prevention and corrective measures pursuant to Articles 10(2) and (6), 11(3) and (7); bringing actual adverse impacts to an end or mitigating them as per Article 10 (6) and 11(7); remediation as stated in Article 12; and monitoring pursuant to Article 15.

Article 13(6) allows companies to participate in MSIs as a support to their engagement with stakeholders. While industry initiatives may be useful to identify the most risk-prone areas of a company's chain of activities, Recital 65 states that they cannot and should not replace meaningful and direct engagement with stakeholders, and that relying on such an initiative alone is not sufficient (See section 4.11 on the role of MSIs).

65. See, ILO, Collective Bargaining Convention, 1981 (No. 154).
66. Article 3(1)(n) CSDDD.

Recommendations:

Member States should:

- Ensure companies prioritise direct engagement with rights holders and stakeholders (potentially) impacted by their action or omission, which will often be stakeholders at the location of the activity. Early and continuous involvement will enable rights and stakeholders' concerns to be addressed preventively rather than reactively.

- In alignment with international standards, require companies to carry out meaningful stakeholder engagement throughout the entire due diligence process. Engagement with stakeholders should, at minimum, be mandatory in all phases of developing, implementing, and reviewing the due diligence policies.

- Explicitly mention Indigenous Peoples and HRDs as potentially affected stakeholders to be consulted under Article 13 CSDDD, in line with interpretative guidance from Recitals.[67]

- Require specific and adapted measures to be set up by companies when engaging with vulnerable stakeholders, in particular by considering languages, cultures and customs. The needs and barriers faced by vulnerable stakeholders must be considered[68], including overlapping vulnerabilities, specific contexts and intersecting factors,[69] including gender, age, race, ethnicity, class, caste, education, migration status, disability and social and economic status, as part of a culturally and gender responsive approach to due diligence.

- Ensure companies adopt appropriate measures to ensure that stakeholders face no retaliation for engaging in consultation or exercising their rights to submit complaints.

- Clarify the definition of stakeholders by adding 'workers throughout the chain of activities'.[70] This ensures that the rights of supply chain workers, informal workers, home-based workers and others in non-standard working relationships are covered. To safeguard against the phenomenon of union-busting and 'yellow unions', Member States should also clarify in transposition that, where elected, representative trade unions are established, they should be consulted as a priority over other forms of worker 'representatives'. While Article 3(1)(n) is and should remain non-exhaustive, stakeholder and rights holder groups mentioned in Recital 65 should be expressly mentioned in transposition measures, notably, Indigenous Peoples and HRDs.

- Clarify that stakeholder consultation does not equate with obtaining Indigenous Peoples' FPIC (see Focus Box 2).

- Ensure companies make documentation and information accessible to affected or potentially affected stakeholders.

67. Recital 65 CSDDD.
68. Recital 65 CSDDD.
69. Recital 33 CSDDD.
70. Article 3(1)(n) CSDDD.

4.7 Notification mechanism and complaints procedure

International standards expect companies to provide for or cooperate in remediation for impacts they cause or contribute to. They require companies to provide for or cooperate with legitimate grievance mechanisms, including by cooperating in good faith with judicial and non-judicial mechanisms. Companies are also required to establish an operational-level grievance mechanism for direct claims.

The Directive requires Member States to ensure that companies establish a notification mechanism and complaints procedure pursuant to Article 14. Through the notification mechanism any person and entity may inform the company of concerns regarding actual or potential adverse impacts. Companies must ensure confidentiality in order to prevent any form of retaliation.[71] Complaints may be submitted directly to the company by natural or legal persons affected by an adverse impact and their representatives (such as CSOs, trade unions and other workers' representatives).[72] CSOs may also submit complaints in relation to adverse environmental impacts.[73] The procedure to assess and respond to such complaints must be fair, public, available, accessible, predictable and transparent.

Those submitting complaints must be entitled to request an appropriate follow-up by the company, be provided with the reasons for a complaint to be considered unfounded or founded and, when founded, be informed about the steps taken or planned to address it. Moreover, when an impact is severe, the submitters have the right to meet with company representatives to discuss them and their potential remediation.[74]

The Directive also requires companies to take measures to prevent retaliation by ensuring the anonymity of the person or organisation submitting the complaint, in accordance with national law. Where information needs to be shared, this must be done in a way that does not endanger the complainant's safety.[75]

Recommendations

Member States should:

- In addition to the requirements of Article 14(3), ensure the notification and complaints mechanisms address submissions promptly and effectively.
- Require companies to consult stakeholders, including workers and trade unions, in the design, monitoring and governance of both the notification mechanism and the complaints procedure, ensuring that these are meaningful, address claimants needs and prevent risks of retaliation.
- Require companies to ensure the accessibility of the notification mechanisms and complaint procedures for stakeholders, taking due account of relevant barriers, such as gender, language and culture.[76]

71. See Global Witness, Annual Defenders Report 2023/2024, for recent and documented instances of retaliation faced by human rights and environmental defenders for their work to defend human rights, their land, and the environment (2024).
72. Article 14(2)(a) and (b) CSDDD.
73. Article 14(2)(c) CSDDD.
74. Article 14(4) CSDDD.
75. Article 14(3) CSDDD.
76. In line with Recital 59 CSDDD.

4.8 Monitoring

The international framework expects companies to monitor the implementation and effectiveness of their due diligence activities. This involves the company tracking its own internal commitments, activities, and goals on due diligence, for example by carrying out periodic internal reviews, and periodically assessing business relationships to verify that adverse impacts have actually been prevented or mitigated. To do so, engagement with impacted stakeholders during the tracking and monitoring phase is crucial. Lessons learned from the monitoring should feed back into the whole due diligence process.

The CSDDD largely echoes these expectations, as under Article 15 of the Directive, companies shall assess the implementation and monitor the adequacy and effectiveness of their own operations and measures, those of their subsidiaries and those of their business partners regarding the identification, prevention, mitigation, bringing to an end and minimisation of the extent of adverse impacts.

The CSDDD helpfully foresees monitoring at least every 12 months and whenever there are reasonable grounds to believe that significant new risks regarding adverse impacts may arise. The CSDDD envisions at least some level of stakeholder engagement at the monitoring stage, namely to support development of quantitative and qualitative indicators for monitoring. The Directive also incorporates a learning element, calling on companies to update their due diligence policy, the identified adverse impacts, and the derived 'appropriate measures' based on insights gained through monitoring.

Recommendations

Member States should:

- Ensure that companies engage with stakeholders throughout the process of tracking and monitoring, and not just in relation to the development of indicators.

4.9 Communicating

The international soft law framework calls on companies to communicate how impacts are addressed. This involves communicating externally relevant information on all due diligence steps of the company. The information should be published in a way that is easily accessible and appropriate, such as on the enterprise's website, at the enterprise's premises, and in local languages. The guidance explains that, for human rights impacts that the enterprise causes or contributes to, the company must *'communicate with impacted or potentially impacted rightsholders in a timely, culturally sensitive and accessible manner information that is specifically relevant to them.'*[77]

The CSDDD's communication requirements under Article 16 reduce communication to reporting. Companies subject to sustainability reporting under the Accounting Directive (2013/34/EU) can discharge this step by compliance with the sustainability reporting requirements.[78] Companies not subject to reporting requirements under the Accounting Directive (2013/34/EU) shall report on matters covered by the CSDDD by publishing an annual statement on their website. The statement must be published in at least one official language of the EU Member State of the supervisory authority designated under the CSDDD (see section 5.1) and, where different, in a language common in the sphere of international business. It should be published within 12 months after the financial year's balance sheet date or, for companies voluntarily reporting under the Accounting Directive, by the annual financial statements' publication date. By 31 March 2027, the Commission will adopt delegated acts specifying detailed reporting content and criteria, aligning them with sustainability reporting standards under the Accounting Directive and ensuring no duplication with reporting requirements for companies subject to the Disclosure Regulation (EU) 2019/2088.

Recommendation

Member States should:

- Ensure that in their reporting companies also communicate on their due diligence efforts in a way that is available to impacted or potentially impacted rightsholders, not only other businesses or regulators, in a timely, culturally sensitive, and accessible manner.

77. OECD Guidelines, p. 33.
78. The Accounting Directive (2013/34/EU) has been amended by the CSRD to entail sustainability reporting requirements.

4.10 The role of industry, multi-stakeholder initiatives (MSIs) and third-party audits in the CSDDD

Table 9: Key definitions: MSIs and third party verification

ARTICLE	DEFINITIONS	CONTENT
3(1)(h)	Independent third-party verification	Verification of the compliance by a company, or parts of its chain of activities, with human rights and environmental requirements resulting from this Directive by an expert that is objective, completely independent from the company, free from any conflicts of interest and from external influence, has experience and competence in environmental or human rights matters, according to the nature of the adverse impact, and is accountable for the quality and reliability of the verification.
3(1)(j)	Industry and multi-stakeholder initiatives (MSIs)	A combination of voluntary due diligence procedures, tools and mechanisms, developed and overseen by governments, industry associations, interested organisations, including civil society organisations, or groupings or combinations thereof, that companies may participate in in order to support the implementation of due diligence obligations.

4.10.1 Industry and multi-stakeholder initiatives

MSIs are mentioned in the Directive on a few occasions. The CSDDD foresees that they can be called upon by companies under scope in support of the implementation of their duties under Articles 7 to 16, as long as these MSIs and other industry initiatives are appropriate to do so.[79] Companies are thus required to assess MSIs' appropriateness before resorting to them to support their due diligence obligations.[80] In particular, in-scope companies may use MSIs to:

- Cooperate in the development of their prevention and corrective action plans to address potential and actual impacts.[81]
- Support, but not replace, consultation with stakeholders.[82]
- Use or establish collaborative complaints procedures, notification mechanisms and grievance mechanisms.[83]

79. Article 20(4) CSDDD.
80. Ibid.
81. See Articles 10(2)(a) and 11(3)(b), which reference the use of MSIs for these purposes.
82. Article 13 CSDDD. Article 13(6) clarifies that using MSIs is not in itself sufficient to fulfil the obligation to consult workers and their representatives.
83. Article 14(6) CSDDD.

The Commission, in collaboration with Member States, is required to issue guidance (by January 2027) setting out fitness criteria and a methodology for companies to assess the fitness of industry and MSIs.

Notice that participation in MSIs does not relieve companies of their own responsibility and legal liability with regard to their due diligence obligations (Articles 13(6), 20(4)). Article13(6) allows companies to participate in MSIs as a support to their engagement with stakeholders. While industry initiatives may be useful to identify the most risk-prone areas of a company's chain of activities, Recital 65 states that they cannot and should not replace meaningful and direct engagement with stakeholders, and that relying on such an initiative alone is not sufficient.

4.10.2 Third-party verifiers

When assessing the compliance of business partners with their codes of conduct, and to verify the compliance of their own due diligence policy and practices with the Directive,[84] companies may make use of third-party verifiers. Third-party verification can be conducted by MSIs, by private auditing companies or by other initiatives such as, for instance, through mechanisms introduced by enforceable binding agreements between companies, stakeholders (such as trade unions) and civil society. According to Article 3(h), providers of third-party verification must fulfil the following criteria:

- They must be an expert in the field of human rights and environmental due diligence and have experience in the impact(s) at hand;
- They must conduct their work objectively and be completely independent from the company;
- They must be free from any conflict of interest and from external influences;
- They must be accountable for the quality and reliability of the information they provide.

Article 29(4) reiterates that although companies may use third-party verifiers or contractual clauses as a support to the implementation of their due diligence operations, they remain liable for the fulfilment of their obligations under the Directive.

Recommendations

Member States should:

- In cases where companies intentionally participated in an MSI to mislead stakeholders and the supervisory authorities on the appropriateness of their due diligence duty or stakeholder engagement, take this into account as an aggravating factor under Article 27(2)(h) when determining the type of penalty (on penalties and their determination, see section 5.2.3).
- Operationalise the accountability of third-party verification by pro-actively scrutinising third-party verifiers and allowing stakeholders and rights holders to challenge their expertise, objectivity, independence, freedom of conflict of interest, quality and reliability.
- Clearly spell out, in line with Articles 13(6) and 20(4), that cooperating with an MSI or other industry initiative does not relieve companies of their own responsibility and legal liability with regard to their due diligence obligations but can only provide support for fulfilling their obligations.
- In all cases where stakeholder consultation through MSIs or other industry schemes is proposed, clarify that this cannot replace meaningful and direct engagement with rights holders, their representatives including NGOs, trade unions and other stakeholders' organisations and that relying on such an initiative alone is not sufficient.

84. See also Recital 52 CSDDD.

4.11 Climate transition plans

Article 22 of the CSDDD obliges companies to reduce their Greenhouse Gas (GHG) emissions by means of a climate transition plan. The tool of transition planning emerged from company practice in response to the Paris Agreement and is already referenced in other EU laws.[85] A transition plan sets out how a company will adapt its business model and strategy and reduce its emissions to be compatible with the goal of limiting global warming to 1.5°C in line with the Paris Agreement.

All companies in scope of the CSDDD have to comply with Article 22. This includes financial institutions, as defined in Article 3(1)(a)(iii).

Article 22 formulates two duties: companies have a duty to 'adopt and put into effect' a transition plan. First, the duty to adopt means that there is a formal internal approval of the plan by administrative, management or supervisory bodies of the company. Secondly, the CSDDD requires companies to put into effect the plan and hence includes a duty directed towards implementation. The duty to put into effect a transition plan has to be read in line with the overall Article 2.[86]

The duty to implement climate transition plans is phrased as an obligation of means[87]. This is further underlined by the operative wording on 'best efforts': the 'best efforts' element is in relation to the goal (ensuring 1.5°C compatibility). This underlines that there is a requirement to implement the plan, while recognising that 1.5°C is not the result of any individual company's actions.

Companies do not just have to report a credible plan as per the European Sustainability Reporting Standards (ESRS) climate standard,[88] but they are obliged to take action to implement it and monitor the actions on a yearly basis. This is particularly important given the current stage of corporate climate action, with many pledges coupled with insufficient execution.

When fulfilling their transition plan obligation, companies have to explain how their plan and actions will enable them to be compatible with goals set in the Paris Agreement and the EU climate targets (see Recital 10). While companies have some discretion in deciding how to steer their business model and strategy towards a 1.5°C trajectory, the CSDDD obliges them to respect the political goals as such.

Article 22(1)(a) to (d) introduces four essential elements necessary for climate transition plans to comply with the obligation: targets, decarbonisation levers and key actions, an explanation and quantification of the investments and funding, and a description of the role of the administrative, management and supervisory bodies. All four elements are based on existing CSRD requirements.

85. Direct and indirect references in CSRD, ESRS, CSDDD and SFDR, as well as in Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches and environmental, social and governance risks ('Capital Requirements Directive'), and agreed amendments to Directive 2009/138/EC (the Solvency II Directive, on the taking-up and pursuit of the business of Insurance and Reinsurance), which are pending formal confirmation by the Council of the EU.
86. See for instance Article 22(1)(c), which defines 'investments and funding supporting the implementation of the transition plan' (emphasis added) as one key element of its design. Recital 73 clearly says that the 'plan should develop implementing actions to achieve the company's climate targets'.
87. Recital 73 CSDDD: 'Such requirements should be understood as an obligation of means and not of results. Being an obligation of means, due account should be given to the progress companies make, and the complexity and evolving nature of climate transitioning. While companies should strive to achieve the greenhouse gas emission reduction targets contained in their plans, specific circumstances may lead to companies not being able to reach these targets, where this is no longer reasonable.'
88. ESRS E1 specifies the CSRD disclosure obligations with regard to impacts related to climate change. See Frank Bold, Briefing: Overview and Frequently Asked Questions, pages 7-8, 2022 .

Article 22(1)(a) clarifies that the targets have to be time-bound, set for 2030 and in five-year steps up to 2050 and be based on conclusive scientific evidence.[89] The CSDDD furthermore clarifies that companies should prioritise absolute emission reduction targets for scopes 1 to 3.[90] Article 22 refers to scopes 1 to 3 and to products and services portfolio in line with the CSRD understanding of the value chain and does not reference the concept of 'chain of activities' of CSDDD. For financial institutions, this means they have to address financed emissions within their CSDDD mandated plan.

Lastly, Article 22(3) requires companies to update their climate transition plan every 12 months and explain the progress they have made towards achieving the targets.

FOCUS BOX 4: How does the obligation to adopt and implement climate transition plans under the CSDDD relate to the disclosure of transition plans under the CSRD?

The text of Article 22 of the CSDDD is heavily based on the wording of the CSRD and is closely aligned with the CSRD as regards the content requirements. Article 22(2) includes a presumption of compliance for companies that have reported a climate transition plan under the CSRD. This presumption is limited to the fulfilment of the duty to adopt a plan, and all companies still have a new obligation under the CSDDD to put these plans into effect and update them on a yearly basis (see also Recital 73). The adoption, design and updating of the plan are all under public supervision according to Article 25(1) of the CSDDD. For the small number of companies that are in the scope of the CSDDD, but do not fall under the CSRD, the Commission is empowered to draft a Delegated Act as per Article 34 of the CSDDD to set reporting requirements.

89. Recital 73 CSDDD: it defines scientific evidence as 'meaning evidence with independent scientific validation that is consistent with the limiting of global warming to 1.5 °C as defined by the Intergovernmental Panel on Climate Change (IPCC) and taking into account the recommendations of the European Scientific Advisory Board on Climate Change'.
90. Scope 1 emissions are direct emissions from owned or controlled sources, scope 2 emissions are indirect emissions from the generation of purchased energy consumed by the company and scope 3 emissions are all other indirect emissions that occur in a company's value chain. See Greenhouse Gas Protocol, Corporate Value Chain (Scope 3) Accounting and Reporting Standard, page 5.

Recommendations

The approach the CSDDD takes to defining corporate obligations in relation to impacts on climate differs from other social and environmental impact, as the Paris Agreement is not included in Part II of the CSDDD Annex. However, the Directive includes obligations to take appropriate measures on the human rights impacts related to harmful emissions.

Member States should:

- Provide clear instructions for the design of a climate transition plan in Article 22(1)(a)-(d) and ensure full transposition, as this will guarantee a common framework for the design of climate transition plans under the CSDDD across the EU market.

- Strengthen the wording on targets in coherence with the ESRS E1 and clearly state that targets have to be GHG-emission reduction targets for scopes 1 to 3.

- Ensure that the obligations to develop and put into effect adequate climate transition plans in line with the 1.5°C reduction targets of the Paris Agreement are monitored and enforced by the supervisory authorities. That implies that companies with insufficient plans or plans that are not implemented sufficiently should be sanctioned. Complaints from stakeholders on this issue should also be dealt with by SAs – see part 5.1 below.

- Link the achievements of the climate transition plan to a part of the variable remuneration of the company's directors. Including sustainability considerations in the remuneration packages of directors could have increased the influence of the CSDDD on the behaviour of directors to effectively address climate mitigation.

5 ENFORCEMENT

Articles 23 to 32 of the CSDDD deal with administrative enforcement, civil liability and access to justice. Enforcement under CSDDD can be divided into two main types: administrative enforcement (Articles 23-28) and judicial enforcement (Article 29).

5.1 Administrative enforcement

The CSDDD introduces a system of administrative enforcement by SAs of the obligations under the Directive. Each Member State can create or appoint one or more SAs,[91] which are given the power to, among other things, receive complaints, carry out investigations and issue penalties. Member States must appoint a SA by the end of the transposition period (26 July 2026),[92] and notify the European Commission.[93] Companies that are not headquartered in the EU should for this purpose establish a legal representative in one of the Union's 27 Member States,[94] notifying the competent authority responsible for supervising the company, which is the SA of the country where it has a branch or – if the company has no branches in the EU or has branches in more than one Member State – where it realises most of its turnover in the Union.[95]

Importantly, public enforcement is without prejudice to civil liability provisions (see section 5.2).[96] Therefore, persons having suffered harm may seek to hold the company liable even where it has already been sanctioned by public authorities.

5.1.1 Nature and status of Supervisory Authorities (SAs)

Member States retain ample discretion when determining the number and nature of SAs. However, the CSDDD requires that they are of a public nature and legally and functionally independent[97] and free from external influence (direct or indirect).[98] This entails that the SAs should not be subject to influence from companies covered by the CSDDD or other market interests and that the staff and management should be free from personal conflicts of interest.[99]

If there is more than one SA, Member States are required to ensure that their competences are clearly delineated and that they cooperate effectively.[100] The CSDDD does not explicitly establish what criteria to use when more than one SA is designated. This possibility allows for the use of existing specialised authorities to implement the CSDDD in their particular

91. Article 24(1) CSDDD.
92. Article 24(7) CSDDD.
93. Article 24(7) CSDDD.
94. Article 23(1) CSDDD.
95. Article 24(3) CSDDD.
96. Article 25(9) CSDDD.
97. See OECD, Organisation of public administration: agency governance, autonomy and accountability', 2021, see pp. 20 and ff. for an overview of how the concept of 'functional independence' has developed in EU law, including through its interpretation by the CJEU.
98. Article 24(9) and Recital 75 CSDDD.
99. Ibid.
100. Article 24(5) CSDDD.

mandate (for example financial regulators or labour inspectorates).[101]

The Directive requires SAs to publish an annual report on their activities,[102] which must at least include the 'most serious breaches identified'.[103] The CSDDD. does not further detail the content of the report.

5.1.2 The role and powers of SAs

The role of SAs is to supervise compliance with Articles 7 to 16 (human rights and environmental due diligence) and 22 (adopting and putting into effect transition plans).[104] Regarding transition plans, SAs are required to supervise the adoption and design of the plan in accordance with the requirements in Article 22(1). However, the implementation of the plans is not explicitly subjected to enforcement.[105]

The CSDDD establishes minimum powers that Member States must provide to SAs to appropriately fulfil their roles. Member States can choose whether these powers are exercised directly (by the SAs themselves or in cooperation with other authorities) or indirectly (by application to judicial authorities).[106]

SAs must be empowered to, at least, require companies to provide information on their compliance with their obligations under the Directive and carry out investigations into companies' implementation of due diligence and must supervise the adoption and design of climate transition plans (CTPs).[107]

Investigations may be initiated by SAs on their own initiative or as a result of a substantiated concern (see following section). The investigations may include on-site inspections carried out in accordance with national law.[108] As a rule, inspections should be announced in advance, except where 'prior warning would hinder the effectiveness of the inspection'.[109] Investigations may also include the hearing of 'relevant stakeholders'.[110]

When, as a result of the investigation, SAs consider that the company is non-compliant,[111] they may order the company:

- To cease the non-compliance (be it by taking action or ceasing certain conduct);
- To abstain from repeating the conduct;
- To provide proportionate remediation;
- To adopt interim measures where there is a risk of severe and irreparable harm.

Any of these remedial actions taken by the company do not preclude the imposition of penalties nor civil liability.[112]

101. Recital 75 establishes that '[…] Where competent authorities under sectoral legislation exist, Member States could identify those as responsible for the application of this Directive in their areas of competence. […]'. Article 24(6) lays down an explicit possibility for financial supervisors.
102. Article 24(10) CSDDD.
103. Recital 75 CSDDD.
104. Article 24(1) CSDDD.
105. Article 25(1) CSDDD.
106. Article 25(6) CSDDD.
107. Article 25(1) CSDDD.
108. Article 25(3) CSDDD.
109. Ibid.
110. Recital 75 CSDDD. As a reminder, Article 3(1)(n) defines stakeholders in an open way to include employees, trade unions and workers' representatives; consumers; individuals, groupings, communities or entities whose rights or interests are or could be affected, and their legitimate representatives; national human rights and environmental institutions; civil society organisations whose purposes include the protection of the environment.
111. Articles 25(4) and (5) CSDDD.
112. Article 25(4), second subparagraph CSDDD.

Finally, the Directive establishes certain minimum procedural guarantees that Member States must provide. Persons (natural or legal) concerned by a binding decision must have access to effective judicial remedy.[113] They must also keep records of investigations and of enforcement actions taken, including but not limited to sanctions.[114]

5.1.3 Submitting subtantiated concerns to the SA

Article 26 requires that each SA establishes a channel to receive so-called 'substantiated concerns'. Such concerns can be submitted by any natural or legal person having reason to believe that a company is failing to comply with its due diligence or climate transition planning obligations.[115] The CSDDD does not require that the non-compliance results in an adverse impact, nor that the submitter is directly affected by such an impact. The only requirement for the submission of concerns is a belief that the company is not appropriately fulfilling its obligations, based on objective circumstances.[116] Anonymity must be ensured when requested by the submitters,[117] and the channels to submit concerns must be free of charge or with a fee limited to covering administrative costs only.[118]

The Directive does not lay down binding timelines for SAs to assess substantiated concerns and respond to submitters, but it requires that the assessment is done 'in an appropriate period of time'[119] and submitters be informed 'as soon as possible' of the result of the assessment.[120] This risks a lack of predictability for the person or entity submitting the concern. Also, it seems problematic that submitters will be informed only about the result of the assessment. Depending on the case, this could take a considerate amount of time.

When deciding whether and how to proceed with the substantiated concern, the SA is required to provide the reasoning behind the chosen course of action, and inform the company of the substantiated concern.[121] Submitters having a legitimate interest in the matter need to be informed whether the SA has accepted or refused any request for action and must have access to an impartial review, judicial or otherwise, of the decision concerning both the process and the substance and action or inaction by the SA.[122]

5.1.4 Penalties under the CSDDD

Article 27 establishes minimum penalties that Member States must foresee for the infringement of transposition laws. Penalties must be effective, proportional and dissuasive.[123]

At a minimum, Member States must provide for two types of penalties: pecuniary penalties (fines) and, if a company fails to pay the fine in time, a public statement indicating the company responsible for the infringement and the nature of the infringement.[124]

An example of a non-pecuniary penalty can be found in the German LkSG which allows for a time-limited exclusion from public procurement for companies having been found to be in non-compliance and fined as a consequence.[125]

113. Article 25(7) CSDDD.
114. Article 25(8) CSDDD see also section "What powers do SAs have?"' above.
115. Article 26(1) CSDDD.
116. Ibid.7
117. Article 26(2) CSDDD.
118. Recital 75 CSDDD.
119. Article 26(4) CSDDD.
120. Article 26(5) CSDDD.
121. Article 26(5) CSDDD.
122. Article 26(6) CSDDD.
123. Article 27(1) CSDDD.
124. Article 27(3) CSDDD.
125. See LkSG, Section 22. Additionally, minimum fine amounts are required according to the obligation that the company has failed to comply with (for fine tranches according to non-compliances, refer to Section 24 LkSG).

The CSDDD establishes certain criteria to be taken into consideration when deciding whether to impose penalties (both pecuniary or other) as well as their extent (see Focus Box 5).

For pecuniary penalties, Article 27(4) requires that they must be based on the net worldwide turnover of the company,[126] and clarifies that, for parent companies, the relevant turnover is the entire group's consolidated turnover (even when imposed on a subsidiary).[127] Member States are not required to lay down a cap (a maximum amount) for penalties, but, if they do so, it must not be lower than 5% of the company's net worldwide turnover.[128]

To ensure transparency, SA decisions imposing penalties must be published and remain publicly available for at least 5 years.[129]

FOCUS BOX 5: Aggravating and mitigating circumstances for administrative liability

Article 27(2) CSDDD establishes the following criteria to take into account when deciding whether to impose penalties and, if so, determining their nature and extent:

- The nature, gravity and duration of the infringement, and the severity of the impacts resulting from that infringement;
- Any investments made and any targeted support provided pursuant to Articles 10 [Duty to take appropriate measures to prevent or mitigate potential impacts] and 11 [Duty to take appropriate measures to bring to an end or minimise actual impacts];
- Any collaboration with other entities to address the impacts concerned;
- Where relevant, the extent to which prioritisation decisions were made in accordance with Article 9;
- Any relevant previous infringements by the company of the provisions of national law adopted pursuant to this Directive found by a final decision;
- The extent to which the company carried out any remedial action with regard to the subject matter concerned;
- The financial benefits gained or losses avoided by the company due to the infringement;
- Any other aggravating or mitigating factors applicable to the circumstances of the case concerned.

126. Article 27(4) CSDDD. When assessing whether a non-EU company must comply with the CSDDD, only turnover in the EU market is considered. This is because the inclusion of companies with significant operations in the Union is necessary for the Directive to achieve its objectives (see Recital 29). This link to the Union market is used to determine whether the company must comply with the CSDDD, but for covered non-EU companies, the relevant criterion to set pecuniary penalties is also net worldwide turnover.

127. Recital 77 CSDDD. This seems to be of particular relevance in situations when both the group's ultimate parent company and one or more of the subsidiaries fall within the Directive's scope. Moreover, for companies falling under the scope of the CSDDD by virtue of being the ultimate parents of groups that taken together fulfil its turnover and employee thresholds, Article 27(4), second subparagraph, clarifies that the group's turnover is the relevant one to base pecuniary penalties on.

128. Article 27(4), first subparagraph CSDDD.

129. Article 27(5) CSDDD.

Recommendations

As the CSDDD defines public enforcement relatively broadly, important choices are left to transposition and implementation by Member States. In this context, it is important that decision-makers further refine the mandate and functioning of the SAs while not unduly restricting their ability to work. To this end, several aspects relating to the submission of substantiated concerns, the sanctions regime, and annual reporting by SAs require further specification to enable effective public enforcement and enhance predictability.

Member States should:

- Introduce delays for the assessment of substantiated concerns, including within which they must be concluded.
- Clarify that all submitters of concerns must be informed of the progress and the outcome of the SA's assessment and have access to a review instance.
- Introduce specific timing when interim measures are requested and regularly communicate to petitioners on their timeline and the investigation.
- Ensure that the submission of substantiated concerns is free of any charge, to ensure the accessibility of the mechanism.
- Ensure that SAs consult, where applicable, relevant stakeholders as part of the investigation process. This consultation should consider the barriers faced by affected communities and guarantee that any information provided by them remains safe and anonymous.
- Ensure that SAs require companies to prove that they have undertaken their best efforts to implement their transition plans. SAs should also investigate if transition plans are in line with the 1.5°C objective of the Paris Agreement and apply sanctions if this is not the case.
- Add possible penalties to the list of Article 27(3), from which a SA can draw in response to infringement of the transposition norms, including exclusion from public procedures, in line with Article 57(4)(a) of the Public Procurement Directive.[130]
- Ensure the dissuasive effect of pecuniary penalties by providing for sufficiently high minimum amounts, without prejudice to the assessment of factors listed in Article 27(2) when deciding to go beyond said minimum quantities.

Specify that SAs document in their annual report the approach taken towards assessing and ensuring companies' compliance with due diligence obligations, its future strategy and all concrete enforcement actions taken by the authority. Such predictability would allow all stakeholders (including in-scope companies) to assess the effectiveness of the Directive. Notably, the report should not be limited to the most severe non-compliances, but should include information on all identified non-compliances, all remedial action ordered to companies, and all sanctions imposed by the public authority. A description of the approach taken by the SA to monitoring of compliance should also be provided in the report.

130. See Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

5.2 Civil liability

Article 29 of the CSDDD sets out the framework under which companies within its scope can be held liable before EU Member State courts, for damages caused in the context of their global operations. A company can be held liable under the CSDDD if the following three conditions are met.

- Firstly, a natural or legal person must suffer damage to a protected legal interest under national law.
- Secondly, the right, prohibition or obligation (listed in the Annex) abused must be *'aimed at protecting the natural or legal person'*,[131] meaning that derivative damage caused indirectly to persons who are not the victims of the abuse is not covered by the Directive.[132]
- Finally, the damage must arise from a *negligent or intentional* failure by the company to comply with its due diligence obligations to prevent or bring to an end adverse impacts that were or should have been identified and prioritised (Articles 10 and 11).

The scope of Article 29 is limited to obligations under Articles 10 and 11 and thus excluding harm caused by a failure to correctly identify, prioritise, remediate, engage with stakeholders or set-up a notification and grievance mechanism. It also excludes liability for adverse climate impacts and failing to align the company with the objectives of the Paris Agreement by putting into effect adequate climate transition plans. Enforcement of these provisions is therefore only administrative.

Furthermore, Article 29 does not explicitly include collective rights in the scope of liability. Yet, the normative scope of the Directive does explicitly refer to collectively exercised rights such as the right to freedom of assembly or the right to organise and to bargain collectively. Excluding collective rights from the scope of liability risks creating artificial distinctions between different categories of rights and contradicting the principles of indivisibility and interdependence of human rights.

Although the Directive does not regulate the issue of causality itself, it does clarify that liability does not apply to damages caused only by the company's business partners in their chain of activities,[133] which corresponds to the so-called 'directly linked to' scenario as referred to in the involvement framework under international standards.[134]

In cases where the damage is caused jointly by a company and its subsidiary, or by a company and its business partners, both parties should be jointly and severally liable according to the conditions of joint and several liability under national law.[135]

It is also explicitly stated that participation in industry or MSIs, as well as the use of third-party audits or contractual clauses, does not prevent a company from being held liable under the CSDDD.[136]

Importantly, civil liability rules for due diligence obligations cannot limit companies' liability under existing union or national legal systems, including in cases where existing legislation

131. Article 29(1) CSDDD.
132. Recital 79 CSDDD for example, a landlord may not claim damages against a company as a result of their tenant not being able to pay rent following the tenant's loss of income as a result of a violation of workplace safety standards.
133. Ibid.
134. Recital 45 CSDDD.
135. Article 29(5) CSDDD.
136. Article 29(4) CSDDD.

would allow liability for adverse human rights or environmental impacts in situations not covered by the directive.[137]

This is particularly important as civil liability regimes vary widely between EU countries, requiring flexibility to integrate due diligence liability into their existing legal systems. Therefore, Article 29 only provides the minimum conditions under which companies must be held liable under the CSDDD framework, without restricting Member States' ability to set or maintain pre-existing stricter standards for liability.

Lastly, it should be noted that Member States must make civil liability rules set out by the CSDDD of overriding mandatory application. This means that Member States must ensure that in cases brought under the CSDDD, national courts apply national laws transposing the CSDDD's provisions on civil liability and access to justice (see Section 5.2.1), even when another law would apply under existing private international law, both at the EU[138] and national level.

The CSDDD does not address the question of jurisdiction of Member States' courts over third-country companies in civil claims. In the absence of comprehensive EU rules on jurisdiction on this matter (both within the CSDDD and the Brussels I Regulation),[139] each Member State's rules on jurisdiction will determine whether national courts can effectively exercise jurisdiction over non-EU companies.

Recommendations

Member States should:

- Apply the notion of 'protected legal interest' to all categories of damage that would normally be compensated under national tort rules.[140] Member States can thus transpose the provision in a Directive-conformant fashion without necessarily referring to or introducing new provisions.

- Expand the scope of liability to cover all obligations set out by the CSDDD –this should thus include explicitly harm caused by a failure to correctly identify, prioritise, remediate, engage with stakeholders or set-up a notification and grievance mechanism. Moreover, this should also include liability for adverse climate impacts and failing to align the company with the objectives of the Paris Agreement, by putting into effect adequate climate transition plans.

- Ensure that, at a minimum, damages suffered by dependents of a victim of serious human rights abuses, including bodily harm or death, should equally be compensated under civil liability, as they are the direct result of the harm caused to the primary victim.

- Clarify that group rights – which is to say rights that are collectively exercised as opposed to pertaining to a specific natural or legal person – are protected under the civil liability regime of the CSDDD.

- Ensure that their private international rules of jurisdiction allow non-EU companies falling into the scope of the Directive to be sued in their national courts.

137. Article 29(6) CSDDD.

138. See Regulation 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

139. Regulation 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

140. Recital 79 CSDDD.

5.2.1 Access to justice

To ensure the right to an effective remedy, the CSDDD addresses some, though not all, practical and procedural barriers to justice for victims of adverse impacts.[141] These measures aim to tackle the duration of limitation periods, prohibitive costs of civil liability proceedings, the absence of adequate mechanisms for representative actions, difficulties in accessing evidence, and the need to provide timely judicial mechanisms to ensure compliance with the Directive.

The Directive clarifies that national rules on limitation periods should not hamper the bringing of civil claims. The limitation period for bringing civil liability claims under the CSDDD must be set at a minimum of five years by Member States and, in any case, cannot be less than the limit already set by national civil liability regimes.[142] The Directive also specifies the conditions that must be met for limitation periods to begin to run. Namely, such periods cannot start before the infringement has ceased and the claimant knows, or can reasonably be expected to know, about the behaviour and that it constitutes an infringement, the damage resulting from it and the identity of the infringer.[143]

The cost of proceedings should also not be prohibitively expensive, so that claimants can effectively seek justice.[144]

Moreover, claimants should be able to seek injunctive measures before national courts (both definitive and provisional) to quickly put an end to violations of due diligence obligations, by requiring companies to perform an action or cease a conduct.[145]

Additionally, Member States must set reasonable conditions under which alleged victims are able to authorise trade unions, human rights organisations, NGOs and human rights institutions based in the EU to bring civil liability actions to enforce their rights.[146]

The Directive does not address the question of the burden of proof, leaving it to Member States to decide what party bears it in the case of proceedings. This can represent a significant obstacle for claimants, as traditional procedural rules on the burden of proof are often a major barrier to justice in civil cases.

Article 29 foresees the possibility for national courts to mandate a company to disclose information in its possession. If the claimants provide sufficient information indicating that additional evidence is within the company's control, national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages. The CSDDD limits evidence disclosure to what is necessary and proportionate.

141. Article 29(3) CSDDD.
142. Article 29(3)(a) CSDDD.
143. Article 29(3)(a)(i), (ii), (iii) CSDDD.
144. Article 29(3)(b) CSDDD.
145. Article 29(3)(c) CSDDD.
146. Article 29(3)(d) CSDDD

Recommendations

Member States should:

- Enact national legislation that allows for the reversal of the burden of proof in civil claims under the CSDDD. This is paramount to address the asymmetry of power and resources between claimants and defendants in transnational cases of corporate abuse.

- Ensure that organisations having the protection or advancement of human rights and/or the environment explicitly mentioned as their goal, for example in their statutes, are considered organisations to be able to represent victim plaintiffs.

- Ensure that victim plaintiffs can authorize non-governmental organizations that are based outside of the EU to bring claims on their behalf, under the same conditions as organisation based in the Union.

- Adopt accompanying measures to assist claimants with the costs of proceedings. Member States should review legal aid rules to ensure that they take into account the high costs of civil litigation. They should also reconsider or mitigate the application of the 'loser pays' principle to CSDDD-related civil claims in light of the resource disparity between the parties by, for example, providing for maximum court fees or legal aid.

- Clarify co-defendants' rules to ensure that a company and its foreign subsidiary and business partner can be sued together by plaintiffs in the case that the damage was caused jointly under Article 29(5).

- To properly account for the international character of corporate abuse cases, extend the time limitation to bring claims before national courts to a minimum of 10 years. Most national statute of limitations on tort claims traditionally assume a relative geographical proximity between the claimant and the defendant, while cases brought under the CSDDD will often be transnational in nature and would thus naturally warrant a longer limitation period.

European Coalition for Corporate Justice

The European Coalition for Corporate Justice (ECCJ) is the largest European civil society network devoted to corporate accountability, gathering more than 480 NGOs, trade unions and academic institutions from 19 European countries. Together, we work to change the rules to keep business accountable.

https://corporatejustice.org/

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Clean Clothes Campaign

Clean Clothes Campaign (CCC) is an international network of trade unions and NGOs dedicated to improving working conditions and empowering workers in the global garment and sportswear industries

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ECCHR EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

ECCHR is an independent, non-profit legal and educational organisation dedicated to enforcing civil and human rights worldwide. It was founded to protect and enforce the rights guaranteed by the Universal Declaration of Human Rights, as well as other human rights declarations and national constitutions. Together with those affected and partners worldwide, ECCHR uses legal means to end impunity for those responsible for torture, war crimes, sexual and gender-based violence, corporate exploitation and fortressed borders.

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frank bold

Frank Bold is a Czech-European public interest law organization specializing in green finance, clean energy, responsible corporate conduct, ESG, and sustainability. We promote better corporate governance, transparency and accountability through EU legal frameworks and the identification and promotion of best practices.

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OXFAM

Oxfam is a global movement of people who are fighting inequality to end poverty and injustice. Across regions, from the local to the global, we work with people to bring change that lasts.

https://www.oxfam.org/en/eu

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CIDSE Together for global justice

We are an international family of Catholic social justice organisations working for transformational change to end poverty and inequalities, challenging systemic injustice, inequity, destruction of nature and promoting just and environmentally sustainable alternatives

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fidh

The FIDH (International Federation for Human Rights) is an international human rights NGO. It brings together 188 national human rights organisations in 116 countries. Since 1922, FIDH has been committed to defending all civil, political, economic, social and cultural rights as defined in the Universal Declaration of Human Rights.

www.fidh.org

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anti-slavery

Founded in 1839, Anti-Slavery International is the oldest international human rights organisation in the world. We began fighting to eliminate the slave trade, and today we're still fighting to end all forms of slavery and slavery-like practices around the world.

www.antislavery.org

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Friends of the Earth Europe

Friends of the Earth Europe is the largest grassroots environmental network in Europe, uniting more than 30 national organisations with thousands of local groups. Our Brussels office coordinates our network's joint campaigns, and pushes for action by the EU to protect people and planet.

friendsoftheearth.eu

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