OVERVIEW OF THE CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

Advancing Corporate Responsibility

European Coalition for Corporate Justice

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Introduction

The Council of the EU voted on the Corporate Sustainability Due Diligence Directive (CSDDDD) on May 24, 2024, marking its official adoption. Shortly after, the CSDDDD will be published in the Official Journal of the EU and will enter into force 20 days later.

Member States will then have two years from the date the CSDDDD enters into force to adopt measures to transpose the directive into national law.

The European Coalition for Corporate Justice (ECCJ), representing over 480 civil society, trade union, and consumer organizations from 17 countries, welcomes the long-awaited legislation which has the potential to be a real game-changer and trigger a shift in business conduct.

To achieve these goals, effective and meaningful transposition by Member States will be crucial, as well as a serious commitment by businesses to implement its rules effectively.

This overview of the CSDDDD aims to highlight the main provisions of the law, helping individuals understand its scope, content and intent. This is not meant as an interpretative guidance or legal analysis of the text.
Corporations have enormous power to operate worldwide, often prioritising private profit over the wellbeing of people and the planet. Corporate abuses such as forced labour, union busting and environmental pollution are a systemic part of the global economy, impacting an estimated 450 million people working in global supply chains, not to mention affected communities. For decades victims of corporate abuse such as oil spills and factory collapses have struggled to obtain justice for the atrocities they have suffered. This continues, as the vast majority of claims for redress brought by overseas victims against European companies continue to be unsuccessful, leaving victims without redress for the harm they have suffered.

Yet, as recognised by the 2011 UN Guiding Principles on Business and Human Rights (UNGPs), all companies have a responsibility to prevent harm wherever they operate, and address harms and risks to human rights by carrying out due diligence and ensuring remedy when harm does occur. The UNGPs equally outline the States’ duty to ensure businesses’ respect for human rights, including through regulation. With the Corporate Sustainability Due Diligence Directive (CSDDD), the EU translates these responsibilities and obligations into legally enforceable rules.

The CSDDD is an EU law that imposes new legal obligations on businesses to respect human rights and the environment. This corporate accountability legislation requires certain companies to respect human rights and the environment across their global "chains of activities" (a reduced form of the value chain) by obliging them to carry out human rights and environmental due diligence (HREDD). The CSDDD also places certain obligations on companies regarding climate change and empowers victims of corporate abuse to sue companies before national courts of EU Member States for harm occurring in their chains of activities.

1 The “chain of activities” is defined in Article 3(g) or the directive and addressed on section 6 of this document.
3. WHAT HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION OBLIGATIONS DOES THE CSDDD IMPOSE ON COMPANIES?

HREDD is a standard of conduct derived from the UNGPs and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2011, 2023); international standards which outline what conduct is expected from businesses to respect people and the planet. The CSDDD puts this concept, together with civil liability and administrative enforcement, into law.

Undertaking HREDD means companies must identify and address risks and harms to human rights and the environment across their global chains of activities. This includes looking at the operations of their subsidiaries, suppliers, and other business relationships to uncover instances of human rights and environmental risk or harm such as forced labor, union-busting, or water pollution. Companies must then take steps to prevent, stop, or mitigate those risks and harms and are also obliged to remediate harm that has occurred. Remediation includes restoring rights holders and the environment to their original situation before the harm occurred or paying financial compensation. When undertaking HREDD, companies must also meaningfully engage with stakeholders like workers and communities affected by their operations. In the event that companies are unable to respond to all the harms and risks at the same time, they will be required to undertake a prioritization exercise and to first address those harms and risks that are the most severe and the most likely.

Meaningful stakeholder engagement is required in these steps.
After uncovering human rights or environmental harms or risks in its chain of activities, such as forced labour or water pollution, companies must then take “appropriate measures” to address them. In the case of actual harm, addressing means to bring the harm to an end or, when it is not possible to bring it to an end, to minimise it and remediate the damage caused. Remediation is not just about financial compensation, but also restoration to how things were before the harm occurred, such as cleaning up an oil spill. In the case of risks, addressing means to prevent the risk from materialising and if it is not possible, then to “adequately mitigate” the risk. The “appropriate measures” a company will need to take in any given harm or risk scenario will depend on the actual circumstances, but they will need to be effective.²

Such necessary measures include, but are not limited to:

**Making financial and non-financial investments**, adjustments or upgrades to facilities and production processes, for example by installing fire safety measures in supplier factories or procuring protective equipment for workers in the value chain dealing with hazardous chemicals.

**Changing its own business plan**, overall strategies and operations, including purchasing practices, for example by paying more for products and having less exploitative terms and timeframes for workers and suppliers.

**Collaborating with other entities, such as other buyers**, to increase and better exert leverage over actors deeper in the chain, for example by jointly communicating and requiring that working conditions or environmental protection measures at supplier facilities be improved.

**Providing financial and non-financial support to suppliers, in particular Small and Medium Enterprises**, in order to assist them in improving conditions.

**Developing a prevention or corrective action plan**, which outlines all the measures to be taken, with clear timeframes for action.

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² See definition of ‘appropriate measures’
Obtaining contractual assurances from business partners to ensure their effective collaboration with addressing the harm and their adherence to the code of conduct or prevention or corrective action plan.

Temporarily or permanently suspending the business relationship with businesses partners where improvements are not being made. The requirement applies only as a last resort, only for severe impacts, and is not required if the effects of terminating are “manifestly more severe” than the original risk or harm. Companies are required to engage with stakeholders before terminating or suspending a business relationship.

5. WHICH HUMAN RIGHTS AND ENVIRONMENTAL STANDARDS WILL COMPANIES NEED TO RESPECT?

Under the UNGPs and OECD Guidelines, companies must respect all human rights, with no exceptions. Unfortunately, under the CSDDD this is not the case. Companies will need to undertake due diligence regarding certain specific rights which are on a designated list of human rights in the directive. This list contains many of the most significant rights affected in a business context and includes:

- The right to life
- The right to liberty and security
- The right to privacy
- The right to enjoy just and favourable conditions of work, including a fair wage and an adequate living wage
- 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
- The right to freedom of association; assembly; to organise and collective bargain; to form trade unions
- The right to strike
- The right of individuals, groups and communities to lands and resources and to not be deprived of means of subsistence
- The prohibition of torture and inhumane or degrading treatment
- The prohibition of interference with the freedom of thought, conscience and religion
- The prohibition to restrict workers access to adequate housing
- The prohibition of the employment of a child under the age at which compulsory schooling is completed; prohibition of the worst forms of child labour
- Prohibition of forced or compulsory labour
- Prohibition of all forms of slavery and slave-trade; human trafficking
- Prohibition of unequal treatment in employment, including discrimination on the grounds of race, colour, sex, religion, political opinion

3 Annex Part 1 Section 1
In certain circumstances, companies will also have to undertake due diligence on other rights that are not on the designated list of rights, but which are derived from a list of international conventions featured in the law. This list may be expanded under certain conditions.

To meet their environmental due diligence obligations, companies must prevent and mitigate environmental harms resulting from the breaches of international environmental prohibitions and obligations in their chains of activities. The table below lists the prohibitions and obligations included in environmental instruments that companies must respect as part of their environmental due diligence:

<table>
<thead>
<tr>
<th>Environmental area</th>
<th>Prohibitions and obligations that companies must respect</th>
<th>Related environmental instruments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biodiversity and habitat protection</td>
<td>Obligation to avoid or minimise adverse impacts on biological diversity</td>
<td>• Convention on Biological Diversity</td>
</tr>
<tr>
<td></td>
<td>Prohibition on the import, export, re-export or introduction from the sea of endangered species without a permit</td>
<td>• Cartagena Protocol on Biosafety</td>
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<tr>
<td></td>
<td>Obligation to avoid or minimise adverse impacts on natural heritage properties</td>
<td>• Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits</td>
</tr>
<tr>
<td></td>
<td>Obligation to avoid or minimise adverse impacts on wetlands</td>
<td>Arising from their Utilization</td>
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<tr>
<td></td>
<td>+ applicable law in the relevant jurisdiction</td>
<td>+ applicable law in the relevant jurisdiction</td>
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<tr>
<td></td>
<td></td>
<td>Convention Concerning the Protection of the World Cultural and Natural Heritage</td>
</tr>
<tr>
<td></td>
<td></td>
<td>+ applicable law in the relevant jurisdiction</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Ramsar) Convention on Wetlands of International Importance especially as Waterfowl Habitat</td>
</tr>
<tr>
<td></td>
<td></td>
<td>+ applicable law in the relevant jurisdiction</td>
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<tr>
<td>Chemical and waste management</td>
<td>Prohibition of:</td>
<td></td>
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<td>--------------------------------</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>• the manufacture, import and export of mercury-added products</td>
<td></td>
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<tr>
<td></td>
<td>• the use of mercury or mercury compounds in some manufacturing processes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• the unlawful treatment of mercury waste</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Minamata Convention on Mercury + Regulation (EU) 2017/852</td>
<td></td>
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<tr>
<td></td>
<td>Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade</td>
<td></td>
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<tr>
<td></td>
<td>Montreal Protocol on substances that deplete the Ozone Layer to the Vienna Convention for the protection of the Ozone Layer + licensing provisions under applicable law in relevant jurisdiction</td>
<td></td>
</tr>
<tr>
<td>Pollution prevention</td>
<td>Obligation to prevent the pollution from ships</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Obligation to prevent, reduce and control pollution of the marine environment by dumping</td>
<td></td>
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<tr>
<td></td>
<td>International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>United Nations Convention on the Law of the Sea (UNCLOS) + applicable law in the relevant jurisdiction</td>
<td></td>
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</tbody>
</table>
The CSDDD also recognises the link between environmental and natural resource degradation and human rights and human wellbeing. As a result, as part of their environmental due diligence, companies must respect the prohibition on causing environmental degradation that interferes with the enjoyment of rights, such as access to safe drinking water, or substantially affects ecosystem services, as well as the prohibition on illegally evicting or taking land or natural resources on which indigenous peoples and local communities depend for their livelihood.

6. HOW FAR INTO THE VALUE CHAIN WILL COMPANIES NEED TO CARRY OUT DUE DILIGENCE?

Under the international standards, HREDD must cover the entire value chain. Unfortunately, the CSDDD introduces the novel concept of “chain of activities” to define the scope of application of the obligations within a company’s value chain. In relation to the upstream part of a company’s value chain, due diligence obligations apply to companies with respect to their own operations, the operations of their subsidiaries, and the operations of their business partners in the production of goods or the provision of services.

Essentially, the due diligence obligations cover the entire upstream part of the chain, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and development of the product or the service. In contrast, within the downstream part of a company’s value chain, activities related to the transport, distribution and storage of the company’s product are covered in case these activities are carried out by the company itself or by a business partner for or on behalf of the company. This concept deviates from the full value chain scope in other EU legislations, such as the CSDR, and its revision is explicitly mandated.4

4 See Article 36(2)(c)
7. WHAT WILL COMPANIES HAVE TO DO IN RELATION TO THE CLIMATE?

The CSDDD will require companies to address the impacts of their operations on the climate, including in their value chains, through climate transition plans. The purpose and aim of the transition plans are to ensure that the company’s business model and strategy are compatible with the sustainable economy transition and the objectives of limiting global warming to 1.5 degrees Celsius and the EU’s pledge to achieve climate neutrality by 2050. Companies will be required to set time-bound emission reduction targets (for scope 1 to 3 emissions), describe the decarbonisation levers and take implementing actions, as well as to adjust their business model accordingly. The obligation to design and put into effect a transition plan builds on the Corporate Sustainability Reporting Directive (CSRD). Companies disclosing a plan under the CSRD will not be required to prepare an additional plan for CSDDD purposes, but they will be obliged to put said plan into effect and update it accordingly. The adoption and design of transition plans will be monitored by national authorities.\(^5\)

8. WHAT LEGAL RIGHTS DOES THE CSDDD ESTABLISH FOR COMMUNITIES AND WORKERS IN GLOBAL VALUE CHAINS?

The CSDDD equips rights-holders with new avenues to better hold companies to account, including to monitor compliance and participate in enforcement; improving access to justice for civil liability claims; access to information; stakeholder engagement obligations as well as whistle-blower protection for company employees.

**Access to Justice:**

In addition to ascertain civil liability for harm caused as the result of due diligence failures, an important contribution of the CSDDD is to make the avenue to justice more accessible, affordable, and efficient for victims of corporate abuse. The law helps to tackle a number of long-standing barriers that prevent victims from seeking and accessing justice via the following measures:

- **Access to evidence:** judges will have the power to compel companies to disclose relevant evidence required as proof in a claim brought against them. Whilst this is not a reversal of the burden of proof, it will help to reset the imbalance of power that often makes it impossible from victims to prove a case against a company that withholds necessary evidence.

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\(^5\) CSRD
Under the CSDDD companies will need to meaningfully engage with stakeholders throughout the due diligence process, specifically when identifying harms and risks, when prioritising company responses; when developing prevention and corrective action plans; when deciding whether to terminate a business relationship; when providing for remediation; and when developing criteria for monitoring. Companies will be required to take proactive steps to ensure that communities and workers voices are heard, this means to ensure effective and transparent consultation as well as appropriate, timely and comprehensive communication at the aforementioned stages. In contrast to actively seeking stakeholder input via engagement, companies will also need to set up grievance mechanisms to enable the submission of complaints to the company. Upcoming guidelines on protection from retaliation and retribution and on identification and engagement with stakeholders are to be drafted by the European Commission.

Stakeholder Engagement:

Complaints to government authorities:
Confidentiality and anonymity of those submitting substantiated concerns or providing relevant information should be respected to ensure they are protected from intimidation and retaliation.

Whistle-blower protection:
Company employees will be protected from company retaliation by provisions of the EU Whistle-blowers Directive when reporting breaches of the CSDDD within the company, to government authorities or to the public, for example to the media.
9. HOW WILL THE CSDDD BE ENFORCED?

The CSDDD will be enforced using both public and private enforcement mechanisms. Member States must designate national supervisory authorities capable of investigating business compliance with the CSDDD and imposing sanctions (including pecuniary sanctions) in cases of non-compliance. A company can also be held civilly liable for damage caused to natural and legal persons as a result of the company’s failure, whether intentional or negligent, to comply with its obligations to prevent and bring to an end risks and harms taking place in its chain of activities. As an incentive, company compliance can be considered as part of the award criteria for public and concession contracts.

10. WHICH COMPANIES WILL BE COVERED?

The CSDDD will apply to very large EU companies with more than 1000 employees and a net worldwide turnover of more than EUR 450 million in the last financial year. EU companies that do not reach these thresholds but are the ultimate parent company of a company group that reaches more than 1,000 employees and a net worldwide turnover of more than EUR 450 million in the last financial year are also covered. This is approximately 0.05% of EU companies and business activities.⁶

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⁶ Source, SOMO with some data from Orbis & Eurostat, calculations are made based on publicly available data and come with attached methodological limitations
The CSDDD applies not only to EU companies, but also to third-country companies with a turnover in the EU. In this case, the third-country company must have a net turnover of more than EUR 450 million in the EU, regardless of the number of employees. When a third-country company does not meet this threshold but is the ultimate parent company of a group that does, it must comply with the CSDDD’s due diligence requirements.

Additionally, the CSDDD applies to both EU and third-country franchisors and licensors that meet certain thresholds:

- EU franchisors and licensors (either companies or groups) earning royalties of more than EUR 22.5 million and generating a net worldwide turnover of more than EUR 80 million; and
- Third-country franchisors and licensors (either companies or groups) earning royalties of more than EUR 22.5 million in the EU and generating a net turnover of more than EUR 80 million in the EU.

The CSDDD allows ultimate parent companies whose main activity is the holding (or ownership) of shares in operational subsidiaries to be exempt from the directive’s due diligence requirements, subject to certain conditions. In this case, these companies, called non-operational holdings, should not participate in the management, operational or financial decision making of the subsidiaries. Moreover, one of their EU subsidiaries should fulfil the due diligence and climate transition plan obligations.

The financial sector received a very controversial and special carve-out. They are only required to undertake due diligence for the upstream part of their value chain. This means that the financial services and products they sell to downstream business partners are not covered by the directive.

While small and medium enterprises (SMEs) do not fall within the scope of the directive, they may be indirectly affected as contractors or subcontractors to the companies subject to due diligence obligations. To reduce the financial and administrative burden on SMEs, the CSDDD requires Member States and the Commission to provide information and support, including financial support to build SMEs’ capacity. Companies whose business partners are SMEs are also encouraged and, in some cases, required to help them comply with due diligence measures, with training and financial investments.
The Council of the EU voted on the CSDDD on May 24, 2024. Shortly after its adoption, the CSDDD will be published in the Official Journal of the EU and will enter into force 20 days later. Member States will then have two years from the date the CSDDD enters into force in order to adopt measures to transpose the directive in national law.

While the CSDDD will be in effect, it will not immediately apply to all in-scope companies once the transposition is over. The CSDDD provides for a staggered application of national transposing measures in three phases. This means that in-scope companies will be required to progressively comply with the CSDDD’s requirements, based on their size. Due diligence requirements will only apply to the entirety of in-scope companies in 2029, giving smaller companies more time to prepare.

<table>
<thead>
<tr>
<th>Phase 1: From 2027</th>
<th>Phase 2: From 2028</th>
<th>Phase 3: From 2029</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU companies or groups</td>
<td>Non-EU companies or groups</td>
<td>Franchisors and licensors</td>
</tr>
<tr>
<td>Employee threshold</td>
<td>Employee threshold</td>
<td>Employee threshold</td>
</tr>
<tr>
<td>&gt; 5000 employees</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Financial threshold</td>
<td>Financial threshold</td>
<td>Financial threshold</td>
</tr>
<tr>
<td>&gt; EUR 1.5 billion net worldwide turnover</td>
<td>&gt; EUR 900 million net worldwide turnover</td>
<td>&gt; EUR 450 million net worldwide turnover</td>
</tr>
<tr>
<td>Franchisors and licensors</td>
<td>Royalties in the EU</td>
<td>Royalties in the EU</td>
</tr>
<tr>
<td>&gt; 22.5 million</td>
<td>&gt; EUR 80 million net worldwide turnover</td>
<td>&gt; EUR 80 million net worldwide turnover</td>
</tr>
</tbody>
</table>

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The Directive mandates the European Commission to establish a unified EU help desk, to coordinate the network of national supervisory authorities and to issue guidelines for both companies and the authorities. These steps will be taken by the Commission while Member States transpose the directive into national law.\(^7\)