

BHR professionals' call to preserve a strong CSDDD in trilogue

As business and human rights (BHR) practitioners, lawyers and academics working with and within companies, we call on co-legislators to recalibrate the Omnibus I in today's final trilogue negotiations and avoid changes to the Corporate Sustainability Due Diligence Directive (CSDDD) that make it harder, not easier, to implement human rights and environmental standards effectively and proportionally. We are more worried than ever that the Omnibus I has moved far away from its originally stated purpose of technical simplification, towards excessive and unnecessary deregulation that ignores what businesses really need.

In particular, we call on you to preserve and restore:

- **Harmonised civil liability in the CSDDD, as deleting it would cause legal uncertainty** for businesses across the EU. It is a myth that no harmonised civil liability would mean no civil liability. Comprehensive legal studies and cases in the Netherlands, the UK, Canada and elsewhere show that not harmonising civil liability means chaos: companies will be sued under potentially 200 different laws. This is the opposite of legal certainty;
- **The risk-based approach covering the entire supply chain, as it gives companies the freedom to prioritise their most significant human rights and environmental risks.** Focusing efforts on direct suppliers, as is still being discussed, would incentivise companies to focus where risks are often lower, waste resources and create a parallel system which is out of step with the internationally recognised due diligence standards of the UN Guiding Principles and OECD Guidelines. Rules should not unduly restrict the flow of supply chain information either;
- **A company scope that much more closely aligns with the original CSDDD.** A significantly higher threshold of 5000 instead of 1000 employees and €1.5bn instead of €450m turnover would essentially mean the CSDDD is replaced with an entirely different law, and undermine the strong standards needed for a level playing field among market participants. **The same applies to a drastic reduction of the Corporate Sustainability Reporting Directive's scope;**
- **An obligation to adopt and implement climate transition plans,** to provide orientation to companies in line with scientific evidence. Deleting this obligation would punish the great number of companies that are already investing in meeting their climate responsibilities, and signal that Europe stopped caring about the planet at a time when the need is greatest given the loss of other major supporters of climate action. A recent Advisory Opinion by the International Court of Justice has clarified States' obligation to prevent significant harm to the climate system, and to protect and respect human rights in the context of climate change. Subsequent legal analysis has pointed out that a full removal of climate transition plans would therefore expose the EU and its Member States to increased litigation risk at the international level.

A strong and reliable framework for human rights and environmental due diligence is key to legal certainty for business, as well as a strong and competitive social market economy in a world of globalised competition. It is also an opportunity to retain EU leadership on aligning with

international standards and putting them into practice, which provides competitive advantage to companies when due diligence and transition planning frameworks are developing in many parts of the world.

The imminent trilogue decision can shape the sustainability of European business, with implications extending to the EU's functioning as an open society and sovereign democracy and market. Let us make this trilogue count for the better. Please safeguard the substance of laws that, like no other in the Union, deliver key protections along with long-term economic viability.

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8 December 2025