



European Union  
Corporate  
Sustainability Due  
Diligence Directive  
(CSDDD) Position Paper

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## Key Recommendations

### **Ensure that the CSDDD is Understood and Implemented Effectively**

- Communicate directly with governments in third countries to ensure there is a clear understanding of the CSDDD's goals and implementation pathways.
- Develop information awareness programmes to help companies and other stakeholders in third countries understand and comply with the directive.
- Leverage connections with all relevant stakeholders to support the directive's implementation.
- Establish helpdesks to assist CSDDD-obligated businesses and their suppliers with due diligence compliance, including services tailored to individual third countries.
- Introduce assistance for companies that cannot meet due diligence requirements in a commercially viable way, to limit market exits.
- Release specific guidelines on how companies should support suppliers that are small and medium-sized enterprises (SMEs).
- Encourage third countries to adopt compatible regulations to both create a more level playing field and advance human rights and environmental goals.
- Ensure that adequate insurance products are available to protect individuals from risks and liabilities.

### **Identify Solutions and Establish Mechanisms to Help Companies Address Potential Conflicting Third-country Legislation and Other Barriers**

- Clarify provisions for companies operating in third-country markets in which the directive may conflict with local legislation or practices.
- Provide options for unique situations in which due diligence may not be possible and there are no alternative suppliers, like the provision utilities controlled by a state monopoly.
- Ensure that pathways to compliance with the directive are commercially viable and do not endanger personnel involved in due diligence work.
- Negotiate agreements with third countries and work to create an agreed list of independent, third-party due diligence service providers.

### **Ensure Consistent Implementation Across Member States**

- Consider adapting the directive to become a directly applicable EU-wide regulation.
- Clarify which bodies and/or directorates will oversee and enforce the regulation, ensuring consistent implementation across the single market.
- Release specific guidelines on the environmental- and human-rights-related information and data that must be reported.
- Ensure that relevant authorities have adequate resources to support companies' compliance with the CSDDD.
- Ensure full coherence between various directives and regulations to reduce the burden of enterprises' compliance.

- Work with member states to ensure that the development of national laws that govern human rights and environmental standards are aligned across the EU to the greatest extent possible.

### Background and Recent Developments

On 23<sup>rd</sup> February 2022, the European Commission published a proposal for a corporate sustainability due diligence directive (CSDDD), aimed at regulating environmental, social and governance (ESG) practices and promoting “sustainable and responsible corporate behaviour throughout global value chains.” Following significant compromises over the text, the directive was approved by the Council of the European Union’s (EU’s) Committee for Permanent Representatives (COREPER) on 15<sup>th</sup> March 2024, and by the European Parliament on 24<sup>th</sup> April 2024. The CSDDD was formally adopted by the Council of the EU on 24<sup>th</sup> May 2024.<sup>1</sup> In the final version, changes were made to the eligibility requirements for companies to be held legally accountable to the directive: the net worldwide turnover threshold was increased from euro (EUR) 150 million to EUR 450 million and its employee threshold was increased 500 to 1,000. As a result of these changes, it is expected that 70 per cent of the companies that the directive originally intended to cover will no longer be directly within its scope,<sup>2</sup> but could still be indirectly impacted if they supply firms that are covered.

EU Member States have a period of two years from the directive entering into force to transpose the new rules into national laws, and companies will have from three to five years from the directive entering force to comply. It is expected that further guidelines with additional details will be rolled out prior to implementation.

### Introduction

With 28 million people subject to forced labour and a record breaking rise in temperatures globally,<sup>3&4</sup> there is a pressing need for governments to ensure that all corporate entities respect human rights and the environment. In line with this goal, the European Commission has adopted the CSDDD. It is a comprehensive piece of legislation requiring large companies with a significant presence in the EU to prevent “external harm” by establishing due diligence processes that ensure their entire operations—including their subsidiaries, and upstream and downstream suppliers—are in line with EU human rights and environmental standards.<sup>5</sup> Some companies will also need to craft business strategies that support the Paris Agreement’s objective of limiting the global temperature rise to 1.5 °C.<sup>6</sup>

While European companies are fully aligned with the goals of the CSDDD, companies operating in some regions may be unable to meet its requirements due to conflicting third-country legislation, the inability

<sup>1</sup> *Corporate sustainability due diligence: Council gives its final approval*, Council of the EU, 24<sup>th</sup> May 2024, viewed 27<sup>th</sup> May 2024, <<https://www.consilium.europa.eu/en/press/press-releases/2024/05/24/corporate-sustainability-due-diligence-council-gives-its-final-approval/>>

<sup>2</sup> *EU: New European business human rights law passes crucial vote*, Amnesty International, 15<sup>th</sup> March 2024, viewed 11<sup>th</sup> May 2024 <<https://www.amnesty.org/en/latest/news/2024/03/eu-new-european-business-human-rights-law-passes-crucial-vote/>>

<sup>3</sup> *What is forced labour?*, International Labour Organization, viewed 11<sup>th</sup> May 2024, <[<sup>4</sup> \*UN cites ‘alarming surge’ in climate change over the past decade as COP28 pushes for global emissions cut\*, United Nations, 5<sup>th</sup> December 2023, viewed 11<sup>th</sup> May 2024, <<https://news.un.org/en/story/2023/12/1144372>>](https://www.ilo.org/topics/forced-labour-modern-slavery-and-human-trafficking/what-forced-labour#:~:text=Almost%2050%20million%20people%20around%20the%20world%20were,forced%20labour%2C%20and%2022%20million%20in%20forced%20marriages.></a>></p>
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<sup>5</sup> *European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, European Parliament, 24<sup>th</sup> April 2023, viewed 11<sup>th</sup> May 2024, <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329\\_EN.html#top](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html#top)>

<sup>6</sup> *Ibid.*

to conduct audits and/or political sensitivity. Furthermore, while small and medium-sized enterprises (SMEs) and large companies without direct business with the EU do not directly fall under the scope of the CSDDD, they will still be impacted if they supply firms that must comply. In addition, there is concern that the directive could be implemented in a way that is detrimental to compliant firms, giving the upper hand to companies that are bound by less stringent standards. In other words, for the CSDDD to achieve its goals, all affected businesses must be able to comply without compromising their global competitiveness.

It is important that the EU reaches out to third country governments to ensure that they understand the directive and that it can be reasonably implemented in their jurisdictions. As a step further, the EU should work with like-minded countries towards the development of compatible regulatory frameworks to further level the playing field. If the CSDDD is communicated early, clearly and implemented smoothly, the EU can make a meaningful impact in advancing human rights standards and supporting the fight against climate change. An implementation process that involves all relevant stakeholders, including those in third markets, is therefore essential to its success.

## **Key Recommendations**

### **1. Ensure that the CSDDD is Understood and Implemented Effectively**

#### **Concern**

The requirements of the directive are not well understood, and may undermine companies' competitiveness abroad.

#### **Assessment**

European businesses bring high standards in environmental protection, labour rights and corporate governance to third countries. However, while the values that the CSDDD aims to enforce are in line with those of European companies, the process of proving that they are upheld throughout supply chains could be commercially unviable and/or impossible in some markets. The burden of due diligence may dissuade European companies from entering certain markets and could discourage third-country domestic companies from working with European firms as either suppliers or partners in joint ventures. In some scenarios, European companies may be left with no choice but to exit markets where compliance becomes impossible due to local laws or other conditions. In these cases, competitors without a presence in Europe, or smaller firms outside the scope of the CSDDD but with less stringent corporate sustainability practices, would gain a competitive advantage.

An inability to comply with the CSDDD in a commercially viable way could also push non-EU companies to exit or avoid the EU market. Therefore, for the CSDDD to be effective, all impacted companies in all markets must have a practical path to compliance that limits damage to their competitiveness. Furthermore, the EU should encourage third countries to adopt compatible frameworks to ensure that as many companies as possible uphold CSDDD-equivalent standards. For that to be feasible, it must be made

clear that the directive can be reasonably implemented and is effective at advancing environmental and human rights goals.

In order to make this possible, the scope of the CSDDD needs to be precisely defined to avoid any ambiguities. For example, given concerns about labour issues, and the fact that 50 per cent of the world's cotton comes from China and India,<sup>7</sup> would a machinery producer in the United States need to conduct due diligence on the cotton used to make its employee uniforms if it wishes to export to the EU?

There are also questions about what options companies will have if their suppliers refuse to, or cannot, comply. Businesses may be required to drop a supplier if obligations cannot be met, but in some scenarios, such as the purchase of electricity, there may only be one supplier available.

These concerns should be addressed in a concrete way as soon as possible to reduce both uncertainty for businesses and delays in implementation. More precise detail will also make it easier for the EU to communicate the directive with third countries. Simply educating stakeholders about the existence or goals of the directive is not enough; instead, care should be taken to ensure that both EU and third-country companies have a feasible pathway to compliance in other countries.

While SMEs do not fall under the CSDDD directly, protecting their role as suppliers to firms with CSDDD obligations is another key to the success of the directive and, for some SMEs, their survival. Without significant support to both EU and third-country SMEs, larger suppliers that can more easily satisfy directive obligations will have a competitive advantage. This would not only be harmful to SMEs, but would also limit the reach of the directive into third-country supply chains. It is therefore essential to ensure that SMEs can comply with the due diligence requirements of their customers, rather than pushing CSDDD-obligated firms to seek larger suppliers. Although the directive states that companies should provide compliance support to their SME suppliers, this burden should not fall entirely on companies. The European Commission should also work with third-country governments to ensure that both EU and non-EU SMEs have a reasonable way to comply with requests from companies that they supply. Relevant organisations, such as the Organisation for Economic Cooperation and Development (OECD), business groups and universities can all help with this process. It is also advisable for the EU to provide easily accessible, free assistance for SMEs that need help understanding their obligations to their customers. EU-funded projects in third countries, like a CSDDD compliance helpdesk, could be one such way for the EU to support the directive in a way that is tailored to individual markets.

Most CSDDD-obligated companies already have extensive due diligence processes in place and adhere to existing international standards but are unsure about how or if these practices will complement compliance with the CSDDD. It would therefore be prudent to align CSDDD obligations with existing international standards to the greatest extent possible, as this would increase the likelihood of third countries adopting similar regulations, helping to level the playing field for European businesses and advance the CSDDD's goals.

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<sup>7</sup> *Cotton Sector at a Glance*, United States Department of Agriculture, viewed 14<sup>th</sup> May 2024 <<https://www.ers.usda.gov/topics/crops/cotton-and-wool/cotton-sector-at-a-glance/#:~:text=The%20top%20two%20cotton%20producers,of%20cotton%2C%20surpassing%20China%20recently.>>

There is also uncertainty around individual liabilities, both in third countries and the EU. Large companies typically purchase director's and officer's insurance to cover risks that company representatives face, but it is unclear if existing insurance products will be adequate to cover CSDDD-related claims or risks associated with conducting due diligence in third countries. Clarifying the scope of liability as well as finding ways to protect personnel in third countries is essential to a smooth transition towards compliance with the directive.

## Recommendations

- Communicate directly with governments in third countries to ensure there is a clear understanding of the CSDDD's goals and implementation pathways.
- Develop information awareness programmes to help companies and other stakeholders in third countries understand and comply with the directive.
- Leverage connections with all relevant stakeholders to support the directive's implementation.
- Establish helpdesks to assist CSDDD-obligated businesses and their suppliers with due diligence compliance, including services tailored to individual third countries.
- Introduce assistance for companies that cannot meet due diligence requirements in a commercially viable way, to limit market exits.
- Release specific guidelines on how companies should support suppliers that are SMEs.
- Encourage third countries to adopt compatible regulations both to create a more level playing field and advance human rights and environmental goals.
- Ensure that adequate insurance products are available to protect individuals from risks and liabilities.

## 2. Identify Solutions and Establish Mechanisms to Help Companies Address Potential Conflicting Third-country Legislation and Other Barriers

### Concern

The CSDDD's stipulated obligations and reporting requirements place companies operating in certain third countries at a heightened level of legal and other risks.

### Assessment

Under the CSDDD a company's "chain of activities" in which it will be required to carry out due diligence reporting include those that take place upstream and, in some cases, downstream.<sup>8</sup> This broad scope of company activity has far-reaching implications for all CSDDD-impacted companies, including SMEs that

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<sup>8</sup> Upstream activity is defined as "the production of goods or the provision of services by the company, 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." *European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, European Parliament, 24<sup>th</sup> April 2023, viewed 11<sup>th</sup> May 2024, <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329\\_EN.html#top](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html#top)>

supply larger firms, but especially those operating in markets in which obtaining due diligence information from its suppliers or business partners carries legal risks or is impractical.

While the CSDDD contains language to protect companies that simply cannot fulfil some requirements, there is significant uncertainty around the extent of protection that could be provided in practice. For example, the exemption for state security in the text says, “business partners shall never be obliged to disclose classified information or other information the disclosure of which would cause a risk to the essential interests of a state's security.” However, how the EU defines “essential interests of a state's security” may well differ from how third countries do.

Taking China as an example, state-owned enterprises (SOEs) form an inseparable part of the supply chain for almost every company as some sectors and key services, like the provision of electricity, are based entirely around SOE monopolies.<sup>9</sup> However, a growing focus on national security has made it increasingly difficult for state-linked entities to facilitate due diligence, particularly in certain regions of the country. For instance, China's recently amended State Secrets Law includes a vaguely defined concept of ‘work secrets’, which has the potential to significantly expand the scope of what may be deemed ‘sensitive’ with regard to state-linked entities. Similarly, amendments to China's Counter-espionage Law refer to the illegal collection of “other documents, data, materials or items related to national security”. This may put companies working in strategically critical fields, such as high-tech industries, medicine and artificial intelligence (AI), as well as those engaged in research and development (R&D) work more broadly, at increased risk. Furthermore, China's governance structure means that policy implementation at the local or organisation level is often much stricter than original legislation requires, meaning that even in instances in which related rules or regulations do not prohibit due diligence-related activities, it may be impossible to carry it out in practice. On top of this, the fear of breaching security-related legislation may be enough to deter some compliance and certification providers from carrying out work in China. In fact, there have already been reports that some European pharmaceutical inspectors have refused to travel to China due to fear of arrest under the Counter-espionage Law.<sup>10</sup> On top of this is the potential risk that gathering certain information may carry severe consequences even if that information is not classified as sensitive at time of collection. These concerns of both EU and third-country citizens who carry out due diligence work are legitimate, and result in them being unwilling to undertake such activities in China. If European firms are unable to identify a company or organisation to do so, they may ultimately be forced to exit and relocate production, ceding important markets to non-EU competitors with potentially lower human rights and environmental standards.

Provisions intended to reduce the potential for conflict, such as those related to state security, must therefore be clear and precise enough so that firms can be confident of operating in a way that protects the safety of their and their suppliers' personnel. Compliance must also be commercially viable to ensure that the CSDDD does not become unenforceable. If it is not, the directive will not only reduce the footprint of European business globally, but also reduce the footprint of European values and the high standards companies uphold when conducting business outside Europe, contrary to the EU's aims of advancing human rights and responsible environmental stewardship.

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<sup>9</sup> State-Owned Enterprises in the Chinese Economy Today: Role, Reform, and Evolution, University of Alberta China Institute, 2018, viewed 9<sup>th</sup> May 2024, < <https://www.ualberta.ca/china-institute/media-library/media-gallery/research/policy-papers/soepaper1-2018.pdf>>

<sup>10</sup> Pharma groups warn of supply crunch over China spying law, *Financial Times*, 21<sup>st</sup> April 2024, viewed 9<sup>th</sup> May 2024, < <https://www.ft.com/content/1d52d75f-5b54-4c27-bdd4-65409f64c64a>>

## Recommendations

- Clarify provisions for companies operating in third-country markets in which the directive may conflict with local legislation or practices.
- Provide options for unique situations in which due diligence may not be possible and there are no alternative suppliers, like the provision utilities controlled by a state monopoly.
- Ensure that pathways to compliance with the directive are commercially viable and do not endanger personnel involved in due diligence work.
- Negotiate agreements with third countries and work to create an agreed list of independent, third-party due diligence service providers.

### 3. Ensure Consistent Implementation Across Member States

#### Concern

The legal requirements of the CSDDD could lead to a divergence among the different national laws created to govern due diligence obligations, which will result in complex administrative burdens for all companies that fall within the scope of the directive.

#### Assessment

While the Corporate Sustainability Reporting Directive (CSRD)—which ensures that companies are transparent in their ESG reporting—relies on unified and specific EU standards as a basis for national authorities to formulate their related legal frameworks, the CSDDD relies on broader international standards,<sup>11</sup> leaving considerable leeway for discretionary interpretation of the directive.<sup>12</sup> This could result in different EU Member States implementing their national laws that govern human rights and environmental standards—as required by the CSDDD—in an inconsistent way, which would see companies having to comply with multiple different, potentially conflicting, requirements.

Therefore, while the directive mandates a review of these national laws six years after the CSDDD’s entry into force,<sup>13</sup> the European Commission would be well advised to continually monitor the implementation

<sup>11</sup> Those of the United Nations (UN) and the OECD.

<sup>12</sup> The text passed by the European Parliament reads, “the civil liability rules under this Directive shall not limit companies’ liability under Union or national legal systems and shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.” *European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, European Parliament, 24<sup>th</sup> April 2023, viewed 11<sup>th</sup> May 2024, <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329\\_EN.html#top](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html#top)>

<sup>13</sup> The directive’s text calls for the Commission to assess “whether changes to the level of harmonisation provided for in this Directive are required to ensure a level-playing field for companies in the internal market, including the convergence and divergence between provisions of national law transposing this Directive” six years after the entry into force of the Directive and every three years thereafter. *European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, European Parliament, 24<sup>th</sup> April 2023, viewed 11<sup>th</sup> May 2024, <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329\\_EN.html#top](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html#top)>



process,<sup>14</sup> to allow for immediate adjustments to be made if divergences occur. Ideally, the resulting national laws should be aligned to the extent that the Commission could produce a standardised document that, if followed, would ensure that companies achieve compliance in all member states.<sup>15</sup>

## Recommendations

- Consider adapting the directive to become a directly applicable EU-wide regulation.
- Clarify which bodies and/or directorates will oversee and enforce the regulation, ensuring consistent implementation across the single market.
- Release specific guidelines on the environmental- and human-rights-related information and data that must be reported.
- Ensure that relevant authorities have adequate resources to support companies' compliance with the CSDDD.
- Ensure full coherence between various directives and regulations to reduce the cost of enterprises' compliance.
- Work with member states to ensure that the development of national laws that govern human rights and environmental standards are aligned across the EU to the greatest extent possible.

## Abbreviations

AI	Artificial Intelligence
COREPER	Committee for Permanent Representatives
CSDDD	Corporate Sustainability Due Diligence Directive
CSRD	Corporate Sustainability Reporting Directive
ESG	Environmental Social Governance
EU	European Union
OECD	Organisation for Economic Cooperation and Development
R&D	Research and Development
SME	Small and Medium-sized Enterprise
SOE	State-owned Enterprise
UN	United Nations

<sup>14</sup> Member states have two years from the directive entering force to transpose the directive into national laws. Companies then have a minimum of one additional year to comply with the directive. *European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, European Parliament, 24th April 2023, viewed 11th May 2024, <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329\\_EN.html#top](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html#top)>

<sup>15</sup> The directive does stipulate that guidelines about contractual clauses will be issued by the Commission within 30 months of the directive entering force, but this will be of limited usefulness if it is not applicable to all member states. According to feedback from industry representatives, the timeline proposed is also too short, as it will only leave companies with a few months to prepare for compliance and integrate the necessary contractual clauses into agreements with suppliers. *European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, European Parliament, 24th April 2023, viewed 11th May 2024, <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329\\_EN.html#top](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html#top)>