

# CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CSDDD)

**Proposal COM(2022) 71** of 23 February 2022 for a **Directive** of the European Parliament and of the Council on **Corporate Sustainability Due Diligence** and amending Directive (EU) 2019/1937.

cepPolicyBrief No. 16/2022

**SHORT VERSION** [[go to Long Version in German](#)]

## Context | Objective | Interested Parties

**Context:** The activities of companies can violate human rights and/or have an adverse impact on the environment. Some Member States have imposed legal due diligence obligations on companies in this regard. Eligible companies must take measures to ensure that in their supply chains, human rights are respected and the environment is protected.

**Aim:** The Commission wants the Directive to harmonise the varying requirements of the Member States. To this end, the Commission wants to oblige companies to identify the adverse impacts of their activities on human rights and the environment and to avoid the identified adverse impacts.

**Affected parties:** Companies with a turnover of more than EUR 150 million and more than 500 employees, their subsidiaries and the direct and indirect business partners of such companies.

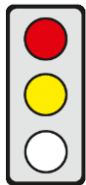
## Brief Assessment

### Pro

- ▶ Protecting human rights and the environment, not only in the EU but also in third countries, is in principle worthwhile. Companies are of major importance in this respect as a result of their cross-border supply chains and economic activities.
- ▶ The EU's value system with regard to foreign and trade policy cannot be considered in isolation from the economic activities of its companies in third countries. The CSDDD closes a gap in this respect by harmonising the rules applicable to EU companies vis-à-vis third countries.

### Contra

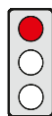
- ▶ The term "human rights" refers not only to the Universal Declaration of Human Rights, but also to 19 other conventions and declarations under international law, which in many cases have not been uniformly ratified even by democratic states. Considering that EU companies should have more diversified supply chains and reduce their dependencies, the CSDDD runs the risk of failing to set standards.
- ▶ The conventions and declarations covered by the Directive contain many obligations which States must first define in concrete terms before they can be implemented by companies, e.g. the right to just and favourable conditions of work.
- ▶ The Directive is often imprecise. The accumulation of vague legal terms, most notably even in essential articles of the Directive, is contrary to the principle of legal certainty. Thus, the Directive also applies to "established business partners" but fails to define with sufficient precision when a business relationship is considered to be established.
- ▶ The obligation to pro-actively assess even indirect established business partners requires an effort that, for many medium-sized companies, is disproportionate when compared to the possibility of guaranteeing compliance with human rights and environmental standards.
- ▶ Combined with strict liability regulations, due diligence requirements that are virtually impossible to implement may cause "clean" companies to avoid countries where human rights and environmental standards are often disregarded.



## Scope [Long version A 3.2 and A 3.3]

**Commission proposal:** Companies must identify and, where appropriate, prevent, mitigate or bring to an end actual and potential adverse impacts on human rights and environmental standards resulting from

- their own activities,
- the activities of their subsidiaries, or
- their established direct and indirect business relationships.



**cep-Assessment:** Having to proactively assess the adverse impacts of indirect established business partners requires an effort that will be a disproportionate burden for medium-sized companies. In the case of such business partners, a duty to verify should only exist if a company has substantiated knowledge of possible adverse effects by this business partner.

## Lack of clarity [Long version A.1, A.3.2]

**Commission proposal:** Established business relationships are defined as direct or indirect business relationships that are, or are expected to be, lasting and are not merely a negligible part of the value chain.



**cep-Assessment:** The Directive is vague in many respects. Definitions are often completely open and do not provide sufficient guidance to the user on how they should be interpreted. The accumulation of vague legal terms, most notably even in core articles of the Directive, is contrary to the principle of legal certainty. Thus, the Directive applies to "established business partners" but fails to define with sufficient precision when a business relationship is considered to be established.

## Application of international conventions and declarations [Long version A.3.2]

**Commission proposal:** Adverse impacts are adverse impacts on human rights or the environment resulting from a violation of rights or prohibitions under international law

- which are explicitly listed in the Annex to the Directive, or
- which are contained in a convention or declaration referred to in the Annex to the Directive.



**cep-Assessment:** Calling for human rights and environmental standards, not only in the EU but also in third countries, is worthwhile. However, even democratic countries do not uniformly recognise all the rights covered by the Directive. The conventions and declarations covered by the Directive contain many obligations that countries must first define in more detail before companies can implement them.

## Civil liability [Long version A.6]

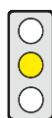
**Commission proposal:** Companies are liable for damages if they fail to fulfil their duty of care, and this results in adverse impacts – which should have been identified, avoided, mitigated, remedied or minimised – and causes harm.



**cep-Assessment:** The strict rules on liability under the CSDDD may lead companies to avoid certain countries where less attention is paid to human rights and environmental standards. Respect for human rights and environmental standards may deteriorate even further in these countries as a result. In addition, the specialisation benefits of free trade will be lost in this case.

## Application of the Directive's transposition [Long version A.6]

**Commission proposal:** Member States must ensure that their rules implementing the Directive's civil liability provisions take precedence in cases where the law of a third country would otherwise be applicable.



**cep-Assessment:** This rule deviates from the basic rule under EU law of applying the law of the place where the damage occurred. Nevertheless, the provision does not constitute a system breach because EU law also allows the law of a Member State to provide, in any case, that a situation be determined in any case according to the law of the said Member State rather than the law of another state, whatever the content of the latter.