

No one and nothing stays behind - EU Parliamentary Position on CSDD Directive proposal

YES-Europe Policy Brief

October 2023



YES – Europe
Young leaders in
Energy and
Sustainability

This policy brief provides a shortened overview of the EU Parliament's position concerning the CSDD Directive proposal.

The EU Commission adopted on the 23rd of February 2023 a proposal for a Directive on corporate sustainability due diligence (further in the text: Proposal), with it the EU aims to regulate: sustainable and responsible behavior of companies, environmental and human rights considerations in corporate governance and supply chain operations (EU Commission, [Corporate sustainability due diligence](#)). On the 1 st of June 2023, the European Parliament published its adopted Amendments to the Proposal (further in the text: Amendments) (EU Parliament, [Document A9-0184/2023](#)).*

Keywords: EU, CSDD, Parliamentary Position

**For more see: [YES Policy Brief, The CSSD Directive: a way to solve the puzzle of geopolitics of energy supply chains?](#)*

Obligatory duty to respect human rights

The Amendments introduce **two separate obligations**:



obligatory duty of all companies to respect human rights



obligations for companies that fall under the scope of the Proposal (due diligence, etc)

Both the Proposal and the Amendments utilize the term human rights, not only to include international human rights regulations and instruments, but also other international instruments such as but not limited to: core/fundamental conventions of the International Labor Association, United Nations Convention against Corruption, OECD Anti-Bribery Convention, and the international humanitarian law instruments laid out in the Geneva Conventions and additional protocols.

Adjustments to the scope of applicability

The Amendments dictate that the obligatory duty of due diligence would only apply to EU companies with more than 250 employees on average and worldwide net turnover exceeding EUR 40 million in the financial year; or to companies that are the ultimate parent company of a group that had 500 employees and a net worldwide turnover of more

than 15 million in the last financial year for which annual statements have been prepared.

They provide a calculation for the applicability threshold, which states that the following must be included in the calculation:



number of employees (including temporary agency and other workers in non-standard forms of employment within the meaning of the Directive (EU) 2018/957)

turnover of company's branches, which are places of business other than the head office that are legally dependent on it, and therefore considered as part of the company, in accordance with EU and national legislation



The Amendments give an obligatory mandate to the Commission to develop sector-specific guidelines for listed sectors, that must be based on existing OECD due diligence sectors guidance. It added the following sectors: wearing apparel, marketing, and advertising of food and beverages, animal products, energy, construction and related activities, listed financial and IT services, and platform services.

The Amendments do not provide a concise duty for companies to contribute, but rather an ambiguous duty for them to be responsible for using their influence to contribute to an adequate standard of living in supply chains. Adequate standard of living is defined as a living wage for employees, and a living income for self-employed workers, and smallholders, which they earn from their work and production, and must meet their needs and those of their families.



The Amendments establish a broad temporal obligation for companies to include not only long-term targets and obligations in their due diligence policies but also short-term and medium-term targets and obligations. Companies operating in high-conflict areas would also have obligations and standards stemming from International Humanitarian Law, International Criminal Law standards, and follow guidance provided by relevant international bodies, including the International Red Cross and the UNDP.

To ensure that the parent company adapts the due diligence policy of its subsidiaries, the Amendments dictate that those subsidiaries must provide all **relevant and necessary information** to their parent company. When a parent company performs special tasks on behalf of its subsidiaries, both must clearly and transparently communicate with relevant stakeholders and the public domain, and the subsidiaries must integrate climate in their policies and risk management.



The Amendments define the word “communicate” as an obligation of companies to take appropriate measures to carry out meaningful engagement with affected stakeholders that will allow for genuine interaction and dialogue, however, if such an approach is not possible the Amendments obligates companies to still maintain meaningful engagements with other relevant stakeholders such as: civil organizations, or legal or natural persons defending human rights or the environment in order to gain credible insights into potential or actual adverse events.

The Amendments acknowledge the possibility of SMEs voluntarily applying the future Directive, and as a stimulation, they would receive support for implementing it. Support is defined as providing the necessary tools and measures that will help SMEs in implementing the future Directive.



Tools can be provided by both the member state and the EU Commission. The EU Commission would be mandated to build the tools within the pre-existing tools, projects, and other actions with due diligence implementation within the EU and third countries. Measures that would be used to help SMEs include: the creation of an observatory for value chains, and the facilitation of joint stakeholder initiatives



The Amendments enable mandated trade unions, civil society organizations, or other relevant actors acting in the public interest (such as: National Human Rights Institutions or Ombudsman) to bring actions before their courts on behalf of a victim or group of victims of adverse impacts, and the Amendments emphasize that they must have the same rights and obligations of a claimant party, without any prejudice to existing laws of the member states.

Two mechanisms of legal protection are provided to protect human rights and environmental defenders:



companies must not expose them to any kind of violence



obligation of all member states to provide necessary safeguards to address strategic lawsuits against public participation (SLAP lawsuits) in accordance with EU and national legislation.

Conclusion

In the meantime, both France and Germany have already integrated a corporate sustainability due diligence framework into their respective legal systems (Ibid). France has done it by creating a system where all companies can file a request to become a company with a special mission that can choose social and environmental objective(s) (Ministry of Finance, Economy, Industrial and Digital Sovereignty, How to become a company with a mission?), whilst on the 16 th of July 2023 Germany adopted the Act on Corporate Due Diligence Obligations in Supply chains (Bundestag, LkSG).

This indicates that the three current approaches to drafting such legislation are prevalent. The **French approach** is limited in scope and easier to implement for both administrative organs and companies. The **German approach** bears a strong resemblance to the Proposal of the Commission, while the Amendments could represent a strong combined EU federalist and left-wing position that would be best described by their own words no one will be left behind. Two conflicting approaches signal a strong divide between the German/Commission approach and the EU Parliamentary approach as to what would fall under the scope of human rights through the lenses of due diligence reporting.