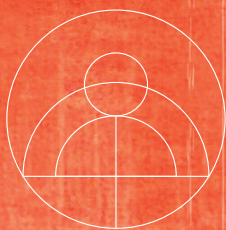


The background features a large red circle on the left and a large blue circle on the right, both with fine white diagonal lines. A white geometric pattern of overlapping circles and lines is visible on the right side. A green square is located in the bottom right corner. The text is centered within the red circle.

**CORPORATE
SUSTAINABILITY
DUE DILIGENCE
DIRECTIVE**

CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

TRANSPOSITION GUIDE



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Table of Contents

Background & Key Recommendations	5		
Main Legal & Policy Framework	7		
Acronyms	8		
Abbreviations	8		
 PART 1			
INTRODUCTION	9		
 1.1 What is the Corporate Sustainability Due Diligence Directive?	10		
FOCUS BOX 1 Is the Omnibus I package aligned with EU law?	10		
1.2 What are the objectives of the CSDDD?	11		
1.3 What is the transposition process?	12		
1.4 Why is it important to aim for ambitious transposition?	12		
FOCUS BOX 2 "Gold plating": a potential barrier to ambitious transposition of the CSDDD?	13		
1.5 What can civil society organisations do during the transposition process?	14		
 PART 2			
STRUCTURE & KEY TERMS OF THE CSDDD	16		
 2.1 Structure of the CSDDD	17		
2.2 Level of harmonisation	22		
2.3 Non-regression	23		
		PART 3	
		PERSONAL, MATERIAL & VALUE CHAIN SCOPE	24
		 3.1 Companies covered by the CSDDD	25
		FIGURE 1 Company scope	25
		FOCUS BOX 3 Financial institutions & financial services under the CSDDD	27
		3.2 Material scope	28
		3.2.1 Adverse human rights impacts	29
		3.2.2 Adverse environmental impacts	34
		FOCUS BOX 4 Strengthening the protection of Indigenous Peoples under the CSDDD	35
		3.3 What parts of the value chain are covered?	36
		 PART 4	
		CORPORATE OBLIGATIONS UNDER THE CSDDD	39
		 4.1 What is human rights & environmental due diligence?	40
		4.2 Integrating due diligence into company policies & risk management systems (Article 7)	41
		4.3 Identification & assessment (Article 8)	41
		4.3.1 Identification & assessment of impacts	43
		4.3.2 Access to information	43
		4.4 Prioritisation (Article 9)	45
		4.5 Preventing potential adverse impacts & bringing actual impacts to an end (Articles 10 & 11)	47
		4.5.1 A company's involvement in the adverse impact	47
		FIGURE 2 Degree of involvement under the CSDDD	48

Table of Contents | CONTINUED

4.5.2 Preventing potential adverse impacts	49		
4.5.3 Bringing actual impacts to an end	49		
4.5.4 Appropriate measures under Articles 10 & 11	50		
4.5.5 Responsible disengagement	51		
FOCUS BOX 5 When responsible termination might be necessary	52		
4.6 Remediating negative impacts (Article 12)	53		
4.7 Meaningful stakeholder engagement (Article 13)	55		
4.8 Notification mechanism & complaints procedure (Article 14)	58		
4.9 Monitoring (Article 15)	59		
4.10 Communicating (Article 16)	60		
4.11 The role of industry & multi-stakeholder initiatives & third-party audits in the CSDDD	61		
4.11.1 Industry & multi-stakeholder initiatives	61		
4.11.2 Third-party verifiers	62		
4.12 Climate-related obligations	63		
FOCUS BOX 6 CTP obligations under the CSRD	64		
		PART 5	
		ENFORCEMENT	65
			
		5.1 Administrative enforcement	66
		5.1.1 Nature and status of SAs	66
		5.1.2 Role and powers of SAs	67
		5.1.3 Submitting substantiated concerns to the SA	67
		5.1.4 Penalties under the CSDDD	68
		FOCUS BOX 7 Aggravating & mitigating circumstances for administrative liability	68
		5.2 Civil liability of companies & the right to full compensation	70
		5.2.1 Civil liability	70
		5.2.2 Applicable law & jurisdiction	71
		5.2.3 Access to justice	72

Background & Key Recommendations

The collapse of the Rana Plaza factory in Bangladesh in 2013, which killed over 1,100 garment workers, remains a stark reminder of the devastating impact that unregulated corporate power can have on human rights. Even though large European multinational companies were among the main buyers from Rana Plaza, few of them had to face court, and none of them were ever held liable as complicit participants in creating the conditions that led to the deaths and injuries of thousands of individuals.

Over the past few decades, countless other examples of business-related human rights and environmental harms have left communities across the world devastated and often without recourse to justice. Many of these human rights and environmental abuses - from the devastating impacts of oil spills in the Niger Delta, to the poisoning of rural Brazilian communities by toxic pesticides, and the existence of forced labour in Asian manufacturing plants - have involved some of the largest and most well-known companies active on the EU market.

Up until very recently, there has been a reliance on key voluntary standards when it comes to addressing the impact of businesses on human rights and the environment, in particular, the **UN Guiding Principles on Business and Human Rights** (UNGPs) and the **OECD Guidelines for Multinational Enterprises on Responsible Business Conduct** (OECD Guidelines). Despite the emergence of some good practice from responsible businesses, these voluntary standards have had limited impact in putting an end to corporate human rights and environmental violations across the globe.

This has led to the emergence of a consensus among states, businesses, trade unions, and civil society in recent years on the need for new, legally binding measures to hold businesses to account for human rights and environmental harms in their operations, subsidiaries and global value chains – underscored by the introduction of mandatory human rights due diligence legislation in the Netherlands, France, Germany and Norway.

At the EU level, this culminated in the adoption of the **Corporate Sustainability Due Diligence Directive** (CSDDD, or Directive) in 2024 – a landmark corporate accountability law that introduced legally binding measures on businesses operating on the EU market to address human rights and environmental abuses in their global value chains.

However, in February 2025, the European Commission introduced its first Omnibus package, the first in a series of far-reaching legislative packages forming part of the large deregulation agenda initiated by the Von der Leyen Commission. Under the guise of “simplification” and enhancing European “competitiveness”, the **Omnibus I** package¹ aimed at dismantling key sustainability laws, including the Corporate Sustainability Due Diligence Directive.

Despite having already entered into force and having undergone the full EU legislative process, a highly coordinated corporate lobbying campaign led by some of the largest fossil fuel companies in the world led to substantive amendments being introduced by the Omnibus I package that have weakened key elements of the CSDDD, including in relation to company scope, stakeholder engagement, climate accountability, and access to justice.²

Moreover, the controversy around how the Omnibus I process was conducted led to the European Ombudsman finding that the Commission committed “maladministration” in the preparation of the legislative proposal.³

1 The Omnibus I package contained several proposals, including the “stop-the-clock” proposal and the “requirement” proposal. See European Commission, “Omnibus I package - Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief” (February 2025); Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements (COM/2025/81 final); Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements (COM/2025/80 final).

2 See SOMO, ‘The secretive cabal of US polluters that is rewriting the EU’s human rights and climate law’ (2025), <https://www.somo.nl/the-secretive-cabal-of-us-polluters-that-is-rewriting-the-eus-human-rights-and-climate-law/>

3 European Ombudsman, *Recommendation on the European Commission’s compliance with ‘Better Regulation’ rules and other procedural requirements in preparing legislative proposals that it considered to be urgent* (983/2025/MAS - the “Omnibus” case, 2031/2024/VB - the “migration” case, and 1379/2024/MIK - the “CAP” case) (November 2025).

Despite all of this, the final iteration of the CSDDD, as amended by the Omnibus I package, was given final approval by EU Member States on 26 February 2026, with the instrument coming into force shortly thereafter on 18 March 2026.

Member States now have until **26 July 2028** to transpose the CSDDD and, crucially, the opportunity to address some of the damage done by the Omnibus I package by restoring key human rights and environmental protections and ensuring that national laws transposing the CSDDD are aligned with the existing international standards on business and human rights.

By actively participating in the transposition process, civil society organisations (CSOs) can help ensure that the Directive achieves its full potential in promoting responsible business practices and protecting human rights and the environment.

This guide, developed by a coalition of CSOs, aims to assist policymakers and CSOs in supporting the transposition and implementation of the CSDDD across EU Member States, ensuring that the Directive's objectives are met ambitiously and effectively.

Key priorities for transposition:

Ensuring effective due diligence and avoiding “tick-box” compliance⁴

- Require companies to embed their due diligence responsibilities into their policies and management systems, including by requiring formal approval by board and senior management.
- Define “reasonably available information” in a non-exhaustive and open-ended manner.
- Ensure that companies properly and accurately document and justify their prioritisation decisions.
- Ensure that the appropriate measures carried out by companies are effective and commensurate to the likelihood and severity of the impacts they are meant to address.
- (Re-)introduce an obligation for companies to terminate business relationships responsibly in specific situations, such as after failed attempts at preventing or mitigating severe impacts, when adverse impacts are irremediable, where there is no reasonable prospect of change, or when the entity causing the severe adverse impacts does not take immediate action to prevent or mitigate them.
- Strengthen accountability and oversight of third-party verification and multi-stakeholder initiatives.

Guaranteeing civil liability and effective access to justice

- Establish civil liability mechanisms that allow companies to be held to account for damage caused by a failure to comply with the full due diligence requirements under the CSDDD.
- Introduce national provisions to ensure the overriding mandatory application of civil liability and access to justice provisions under the CSDDD in cross-border cases.
- Provide for a reversal of the burden of proof in civil claims under the CSDDD. Once victims provide credible evidence of harm linked to a company's operations, it should be the company's responsibility to prove that it took appropriate due diligence measures to prevent, mitigate, or terminate the impact.
- Empower national courts to order disclosure of evidence that lies in the company's sole control.
- Ensure that limitation periods applicable to CSDDD claims are sufficiently long to account for the challenges of transnational litigation and provide appropriate legal aid measures to facilitate access to justice.
- Set reasonable conditions for national trade unions, non-governmental organisations (NGOs) and institutions whose core mission includes the protection of human rights or the environment to represent victims in court.

Establishing independent and resourced supervisory authorities (SAs)

- Ensure that national authorities are adequately resourced, skilled, and empowered to enforce the Directive effectively.
- Guarantee that SAs enjoy the necessary independence from both governments and companies, as required by the CSDDD.
- Require that SAs provide an accessible and effective substantiated concerns mechanism by guaranteeing persons submitting such concerns to be informed of the progress and outcome of the assessment, have access to an effective review mechanism, and can submit concerns free of charge.
- Ensure SAs consult relevant stakeholders during investigations, where applicable, taking into account the barriers faced by affected communities and ensuring that any information provided is handled safely and anonymously.
- Require SAs to proactively and continuously involve complainants throughout the investigation process.

⁴ These key priorities follow the structure and order of the CSDDD's articles.

Ensuring effective involvement of rightsholders and stakeholders

- Expand the definition of “stakeholders” to explicitly include “all workers throughout the chain of activities”, Indigenous Peoples, and human rights defenders.
- Require companies to carry out meaningful stakeholder engagement throughout the entire due diligence process, in line with the OECD Guidelines.
- Require companies to prioritise direct engagement with rightsholders and stakeholders (potentially) impacted by their activity, with early and continuous involvement to enable concerns to be addressed preventively rather than reactively.
- Ensure that companies adopt specific and tailored measures when engaging with vulnerable stakeholders and adopt appropriate measures to protect stakeholders from retaliation.

Integrating climate transition plan obligations

- Require companies to adopt and implement a climate transition plan (CTP) in line with international standards, or as per the original CSDDD, and ensure adequate supervision by national authorities.

Aligning obligations with international standards

- Ensure a broad personal scope of application.
- Ensure that due diligence obligations cover all relevant parts of the value chain, including downstream activities and financial services, in line with international standards.
- Remove restrictive conditions on the material scope of human rights impacts and align the environmental scope with internationally recognised standards (such as the OECD Guidelines).

MAIN POLICY & LEGAL FRAMEWORK

- **CSDDD Text:** Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02024L1760-20260318>
- **Omnibus I Directive (requirements) Text:** Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32026L0470>
- **Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31**, 21 March 2011: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- **OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (last updated in 2023):** <https://doi.org/10.1787/81f92357-en>.
- **OECD Due Diligence Guidance for Responsible Business Conduct (2018):** https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/02/oecd-due-diligence-guidance-for-responsible-business-conduct_c669bd57/15f5f4b3-en.pdf
- **ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy:** https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_emp/%40emp_ent/%40multi/documents/publication/wcms_094386.pdf

ACRONYMS

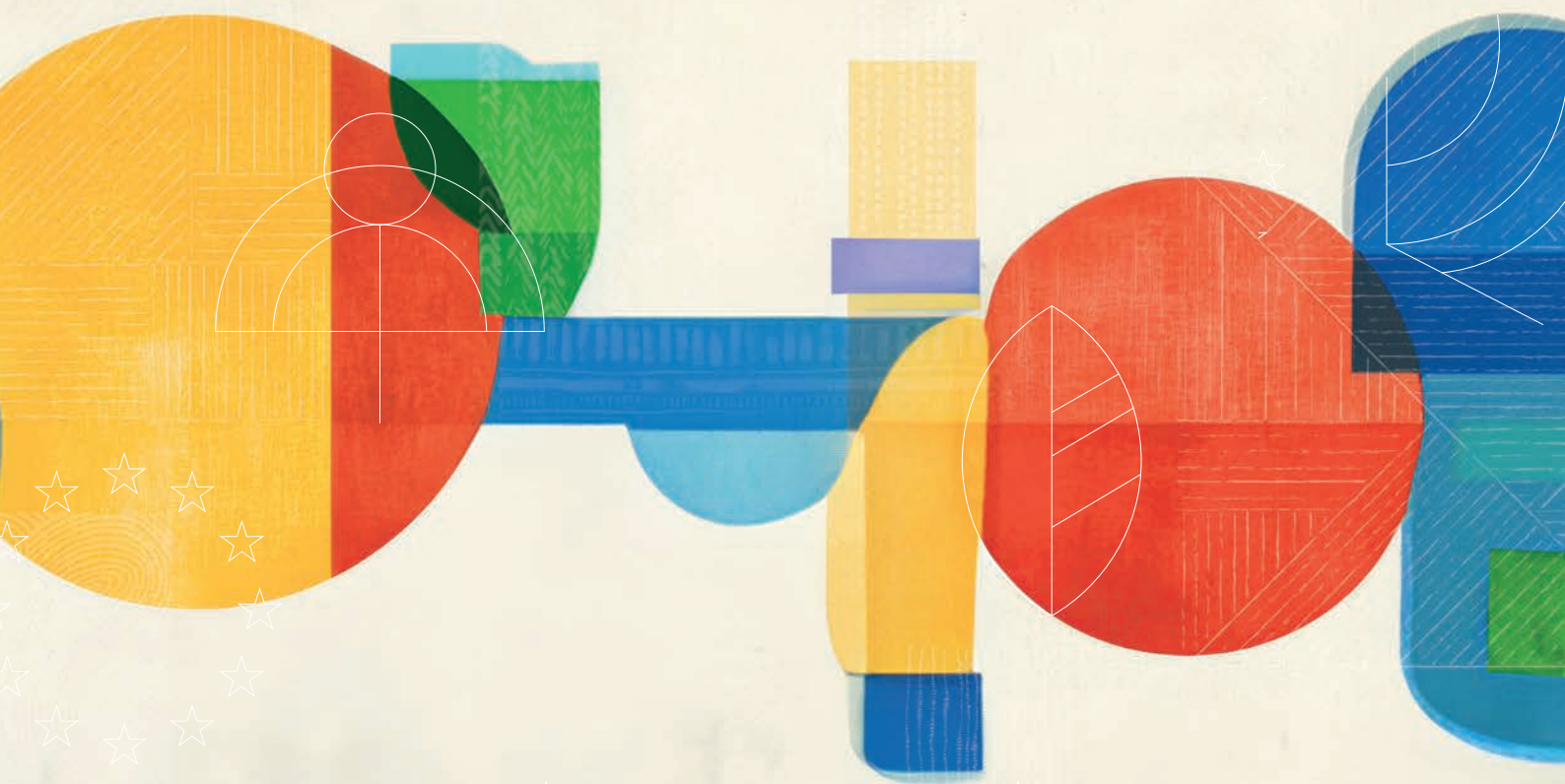
CJEU	Court of Justice of the European Union	ILO	International Labour Organization
CSDDD	Corporate Sustainability Due Diligence Directive	MSIs	Multi-stakeholder initiatives
CSOs	Civil society organisations	NGOs	Non-governmental organisations
CSRD	Corporate Sustainability Reporting Directive	OECD	Organisation for Economic Co-operation and Development
CTP	Climate transition plan	SAs	Supervisory Authorities
ESAP	European Single Access Point	SFRD	Sustainable Finance Disclosure Regulation
EU	European Union	SMEs	Small and medium-sized enterprises
FPIC	Free, Prior, and Informed Consent	TFEU	Treaty on the Functioning of the European Union
GHG	Greenhouse Gas	UNGPs	United Nations Guiding Principles on Business and Human Rights
HREDD	Human rights and environmental due diligence		

ABBREVIATIONS

Accounting Directive	Directive 2013/34/EU
Batteries Regulation	Regulation (EU) 2023/1542
Brussels I Regulation	Regulation (EU) No 1215/2012
CSDDD	The Corporate Sustainability Due Diligence Directive, as amended by the Omnibus I Directive
Corporate Sustainability Reporting Directive (or CSRD)	Directive (EU) 2022/2464
EU Charter	Charter of Fundamental Rights of the European Union
European Climate Law	Regulation (EU) 2021/1119
MNE Declaration	ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
OECD Guidelines	OECD Guidelines for Multinational Enterprises on Responsible Business Conduct
Omnibus I Directive (or “Omnibus I”)	The directive amending the substantive requirements of the CSDDD (it does not refer to the “stop-the-clock” Directive).
Original CSDDD	The Corporate Sustainability Due Diligence Directive, as adopted in June 2024
Rome II Regulation	Regulation (EC) No 864/2007
Sustainable Finance Disclosure Regulation (or SFDR)	Regulation (EU) 2019/2088

PART 1

INTRODUCTION



1.1	What is the Corporate Sustainability Due Diligence Directive?	10
1.2	What are the objectives of the CSDDD?	11
1.3	What is the transposition process?	12

1.4	Why is it important to aim for ambitious transposition?	12
1.5	What can civil society organisations do during the transposition process?	14

1.1 What is the Corporate Sustainability Due Diligence Directive?

The CSDDD is a landmark EU law that for the first time introduces requirements on large companies domiciled or operating in the EU to address human rights and environmental abuses in their global value chains. It originally entered into force in July 2024 after over two years of intensive negotiations between the European Commission, EU Member States, and the European Parliament.⁵

Despite significant amendments introduced under the Omnibus I package and corporate lobbying efforts to kill the legislation outright, the final iteration of the CSDDD, as amended by the Omnibus I Directive,⁶ was given final approval by EU Member States on 26 February 2026, with the law coming into force shortly thereafter on 18 March 2026.

FOCUS BOX 1

DOES THE OMNIBUS I PACKAGE ALIGN WITH EU LAW?

The Omnibus I package faces serious constitutional vulnerabilities. Article 52(1) of the EU Charter of Fundamental Rights requires that a limitation on Charter rights must be lawful, necessary, proportionate, and must respect the essence of the right concerned.

While simplification is a legitimate objective, the Omnibus I package may not meet the strict requirements of Article 52, as it lacked a comprehensive impact assessment and failed to consider less restrictive alternatives with fewer impacts on protected human rights. The Commission itself states the changes would “substantially reduce effectiveness” in preventing severe violations. Furthermore, the absence of comprehensive impact assessments and any serious consideration of less restrictive alternatives make it extremely difficult for the EU legislature to satisfy the proportionality calculus that Article 52(1) demands.

At European level, the jurisprudence of the Court of Justice of the European Union (CJEU) is increasingly pointing the same direction. Once the EU legislates to protect fundamental rights, reversing those

protections is no longer just a legislative prerogative, but legal constraints apply. In assessing this, the CJEU is increasingly focused on the practical effects of legislative changes rather than their formal classification. The deliberate weakening of existing rights-protective legislation may therefore constitute a “limitation” on Charter rights.

The climate dimension adds a further non-regression layer. The European Climate Law creates a binding obligation for all EU policy to align with the –55% emissions reduction target by 2030 and net-zero by 2050. The raising of the CSDDD and the Corporate Sustainability Reporting Directive (CSRD)⁷ thresholds and deletion of the obligation on companies to adopt and implement transition plans risk direct conflict with this obligation.

Legal experts have emphasised that the absence of comprehensive impact assessments and any serious consideration of less restrictive alternatives makes it extremely difficult for the EU legislature to satisfy the proportionality calculus that Article 52(1) demands.⁸ The result, they warn, is not just a legal vulnerability but a strategic own-goal: companies that relax compliance in reliance on Omnibus I could face retroactive obligations if the measures are annulled, extending rather than resolving the very legal uncertainty the package purports to cure.

5 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

6 Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements.

7 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

8 Cirio, “The Legal Validity of the Omnibus Package: A Charter Rights Analysis” (May 2025); Baldon Avocats, “Potential Legal Challenges under EU Law to the Proposed Omnibus Directive Amending the CSRD and the CSDDD” (June 2025).

1.2 What are the objectives of the CSDDD?

As a directive, the CSDDD sets out the objectives that EU Member States⁹ need to accomplish and a general framework on how they should do so.¹⁰ It obliges Member States, through a process known as “transposition”, to take the necessary implementing measures to achieve the objectives of the Directive. Member States retain some flexibility and discretion to define how such objectives must be achieved at the national level, while respecting the minimum requirements set out in the Directive. However, given the nature of the CSDDD as a company law instrument, most transposition measures will need to be legislative in nature.

The CSDDD transposition measures will compel in-scope companies to **address the potential and actual adverse impacts on human rights and the environment** that have arisen or may arise in their operations, as well as in the operations of their subsidiaries and business partners. Such obligations include the identification, prevention, mitigation and remediation of adverse impacts.

Companies are required to conduct human rights and environmental due diligence (HREDD) to address potential and actual negative impacts throughout their operations and those of their subsidiaries and value chain (the CSDDD uses the concept of “chain of activities”). The due diligence steps contained in the Directive are **based on the existing international standards** on business and human rights as set down in the following:

- the UN Guiding Principles on Business and Human Rights (UNGPs),
- the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct¹¹ (OECD Guidelines) and related guidance documents,¹² and
- the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

While many of the elements of the Directive are inspired by these international instruments, the CSDDD, as amended by Omnibus I, diverges from these existing standards in a number of key respects.

Crucially, **these international standards are voluntary by nature and provide non-binding guidance for companies to act responsibly**. The reliance on voluntary standards, guidelines, and codes of conduct has failed to systematically prevent human rights and environmental abuses from happening in the value chains of multinational companies.

Despite significant amendments to the CSDDD introduced by Omnibus I, the Directive retains the legal requirement for large companies to address human rights and environmental abuses in their operations, subsidiaries and global value chains through carrying out effective due diligence.

Crucially, **the CSDDD establishes a dual system of enforcement**. Member States are required to set up a regime of administrative supervision to monitor company compliance with the law and to sanction companies in breach of their due diligence obligations. Member States are also required to ensure harm caused by breaches of due diligence obligations can give rise to civil liability under national law and that victims can obtain full compensation.

⁹ Members of the European Economic Area (EEA), namely Iceland, Liechtenstein and Norway, are also concerned.

¹⁰ See Article 1 CSDDD.

¹¹ The OECD Guidelines were first introduced in 1976, and the 2011 update ensured alignment with the UNGPs. They were last updated in 2023.

¹² The guidance documents include Due Diligence for Responsible Corporate Lending and Securities Underwriting (2019), Due Diligence Guidance for Responsible Business Conduct (2018), Due diligence guidance on stakeholder engagement in extractive industries (2017), OECD Due Diligence Guidance for Responsible Supply Chains in the Garment & Footwear Sector (2017), Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains (2017), OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2011).

1.3 What is the transposition process?

Transposition is the process by which EU Member States incorporate EU directives into their national legal regimes. EU directives can be **transposed through ordinary legislation** or any other measure available at the national level, including but not limited to regulations, ministerial orders, statutory instruments, and administrative provisions. **Member States are required to transpose the requirements set by the CSDDD by 26 July 2028.**¹³ Companies will need to comply with the transposition measures a year thereafter.

As the “guardian of the European treaties”, the European Commission is responsible for monitoring the transposition process for all directives in all EU Member States. The European Commission monitors transposition to verify that it is conducted in a timely and correct manner that ensures the directive’s objectives are achieved. As part of its role, the Commission checks whether all the provisions in directives have been transposed and whether national measures are in conformity with the minimum standards it contains. While the CSDDD is binding and its objectives must be achieved, Member States retain significant discretion as to the manner and form in which they transpose its provisions.

In the case that a Member State fails to adopt national measures, adopts measures that are inadequate to achieve the objectives of the Directive, or fails to respect the transposition deadline, the Commission may initiate infringement procedures before the Court of Justice of the European Union. If the Court rules in favour of the Commission, the Member State in question is legally bound to comply with its decision. Failure to do so can under certain circumstances lead to the imposition of penalties, including fines.

Transposition of the CSDDD is further qualified by Article 4 of the Directive in relation to the level of harmonisation. This clarifies which provisions of the CSDDD are subject to **maximum harmonisation** (see also Section 2.2).¹⁴ In other words, Member States are limited in their ability to introduce more stringent obligations with respect to certain articles of the Directive. As a general rule, however, Member States have discretion when it comes to transposition and are entitled to introduce more robust obligations or higher standards with respect to those provisions which are not subject to maximum harmonisation.

1.4 Why is it important to aim for ambitious transposition?

While the CSDDD represents a step forward in ensuring responsible business conduct both within and outside the EU, significant amendments introduced by Omnibus I have weakened core provisions of the Directive and **undermined the alignment with international standards on business and human rights** contained in the original law.

However, Member States can take steps to address this during national transposition by ensuring that transposed CSDDD provisions are, as far as is possible, aligned with existing international standards and do not undermine stronger protections that may already exist at national level.¹⁵

The existing international standards on business and human rights reflect a global consensus among states, businesses, trade unions, and civil society. Increasing alignment with these standards can ensure that the Directive has greater impact, can better protect workers, peoples, communities and the environment against abuses.

Increased alignment would also mean reducing confusion and complexity, which could in turn reduce compliance costs for companies and would help EU Member States in fulfilling their obligations and commitments under international law.¹⁶ Finally, given the constitutional challenges outlined above, Member States that narrowly transpose the Directive risk violating their non-regression obligations under both international and EU law.

¹³ Article 37(1) CSDDD.

¹⁴ Articles 6, 8 and 9, Article 10(1) to (5), Article 11(1) to (6), and Articles 14 to 16 CSDDD.

¹⁵ See Office of the United Nations High Commissioner for Human Rights (OHCHR), [Implementing the United Nations “Protect, Respect and Remedy” Framework](#) (2011); OECD, [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#) (2023) (update).

¹⁶ See for example International Court of Justice, *Advisory Opinion on the Obligations of States in Relation to Climate Change* (23 July 2025) para 428.

FOCUS BOX 2

“GOLD PLATING”: A POTENTIAL BARRIER TO AMBITIOUS TRANSPOSITION OF THE CSDDD?

The European Council conclusions from March 2026 explicitly called on Member States to “avoid gold-plating and disproportionate national requirements when transposing and implementing EU rules”.¹⁷

EU law allows for Member States to add extra regulatory requirements when transposing EU directives into national law, particularly where more robust environmental, climate or human rights standards may exist at national level.¹⁸ “Gold plating”, on the other hand, refers to transposition measures that go beyond what is necessary to achieve the objectives of a directive, and are often considered excessive, protectionist and counterproductive to its aims.

The recent Communication on Better Regulation creates unhelpful and unnecessary ambiguity by expanding the definition of “gold plating” to include any transposing measures that introduce a “wider scope, stricter rules or obligations”.

Equally concerning is the Commission’s proposal that any measures that have a “detrimental effect on the single market and hamper business operations” could be considered gold plating “even where these practices do not amount to an infringement of EU legislation”.¹⁹

If applied strictly, this broader definition could seriously restrict the ability of Member States to exercise their legitimate regulatory discretion during transposition. Worse still, it could lead to stronger or more robust standards at national level being undermined, as any additional regulatory measures might be labelled as “gold plating”.

Deliberate attempts to blur the line between legitimate regulatory freedom and “gold plating” not only risks weakening the effective and ambitious transposition of the CSDDD, but also calls into question the very nature of directives as legal instruments designed to allow for divergence and threatens to encroach on the national regulatory autonomy guaranteed under EU law.

Member States should not be discouraged from adopting stronger standards when transposing the CSDDD, particularly when this leads to better human rights and environmental outcomes. Such an approach is not only permissible under EU law but is explicitly provided for in the Directive itself.²⁰



17 See European Council meeting (19 March 2026) - Conclusions (2026).

18 Article 288 Treaty on the Functioning of the European Union (TFEU).

19 European Commission, “A Simpler, Clearer and Better Enforced EU Rulebook” COM(2026) 380 final (28 April 2026), pp. 12-13.

20 See Article 4(2) CSDDD; Recital 38 Omnibus I Directive.

1.5 What can civil society organisations do during the transposition process?

The transposition process takes place at the level of each Member State. National level advocacy is therefore critical to ensuring the timely, effective, and ambitious transposition of the Directive into national law.

CSOs can engage in and influence the transposition process at national level in various ways, including:

1

Engaging with decision makers and providing information at an early stage. National policy makers may not be fully aware of the objectives of the CSDDD and the crucial role it can play in mandating more responsible business practices. Holding (public) information events, securing bilateral meetings, and engaging with decision makers on social media are some possible avenues to strengthen and broaden understanding amongst policy makers, including with regard to the importance of ambitious transposition.

2

Knowing the transposition calendar and modalities. In most Member States, transposition starts with a proposal from the competent ministry, which is usually determined based on its relevance to the legislation. In the case of the CSDDD, this could be several ministries, such as economy, finance, justice, labour, or even a combination of these. In the case that the competent ministry is not immediately clear, a good starting point is to identify which ministry has been responsible for transposing similar instruments in the past, such as the CSRD. Understanding when the competent ministry intends to present their proposal for transposition, as well as the relevant calendars of work (e.g. who is usually consulted during this process and when voting sessions are scheduled in your national legislative assembly) is crucial.

3

Pushing for a timely, transparent and constructive legislative process. Member States have the legal obligation to transpose the CSDDD into their national systems by 26 July 2028 and to start enforcing the obligations it sets out by 26 July 2029. These are mandatory deadlines under the Directive and Member States must meet them.²¹ Transposition should be preceded by a process of open consultation and allow for scrutiny by the public, civil society, trade unions, and elected representatives.

4

Advocating for ambitious transposition of CSDDD provisions into national law. EU directives set minimum standards and requirements which Member States can go beyond in the transposition process by introducing more stringent obligations. However, Member States cannot lower the standards set out in the CSDDD and cannot deviate from provisions that are subject to so called “maximum harmonisation” (see Section 2.2).

²¹ See Section 1.3.

²² Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

²³ See Danish Institute for Human Rights, “How do the pieces fit in the puzzle? Making sense of EU regulatory initiatives related to business and human rights” (2026).

²⁴ See OECD Watch, “Updated – Alignment within Reach: Remaining Opportunities to Align the EU CSDDD with the OECD Guidelines” (2026).

5

Building expertise on how CSDDD provisions complement existing national legislation. Due diligence obligations and their enforcement regimes under the CSDDD will need to be integrated into national legal systems, each with their own existing rules and specificities. Some countries, such as France and Germany, will need to adapt existing human rights and environmental due diligence legislation, while others will need to introduce provisions *ex novo*. Understanding how the CSDDD will interact with and build on existing corporate human rights and environmental due diligence legislation, including but not limited to national civil liability and procedural rules, is crucial for effective advocacy during transposition.

6

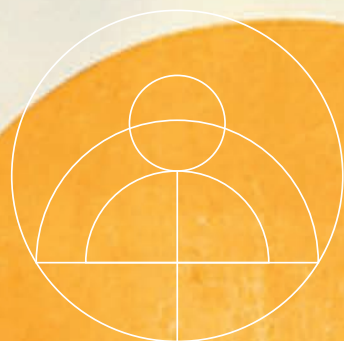
Highlighting existing national standards on the protection of human rights, the environment and the climate. As laid out clearly by Article 1 of the CSDDD, where national law provides for stronger protection than what is laid out in the Directive, transposition cannot serve as a pretext to lower that existing, higher level of protection, e.g., statutes of limitations or national labour law.

7

Mapping interactions with other EU laws that have been transposed. In particular, the Accounting Directive²² and CSRD, but also other legislation focusing on issues such as deforestation, batteries, minerals and forced labour.²³ The Accounting Directive provides the framework definitions related to company-law, while the CSRD requires large and listed companies to publish regular reports on the social, environmental and governance risks they face, and on how their activities impact people and the environment. Although both the CSRD and the CSDDD require companies to identify adverse impacts on human rights and the environment across (parts of) their value chains, the CSRD remains a reporting framework, while the CSDDD imposes behavioural obligations on companies. Importantly, the CSDDD does not contain new reporting obligations, as companies reporting under the CSRD are exempt from preparing a separate CSDDD report (see Focus Box 6). Similarly, the Forced Labour Regulation does not impose new due diligence obligations but refers to a variety of standards, from voluntary ones to the CSDDD for companies under its scope. However, it also looks at presence of forced labour to prevent the import, placing on the market, and export of any goods.

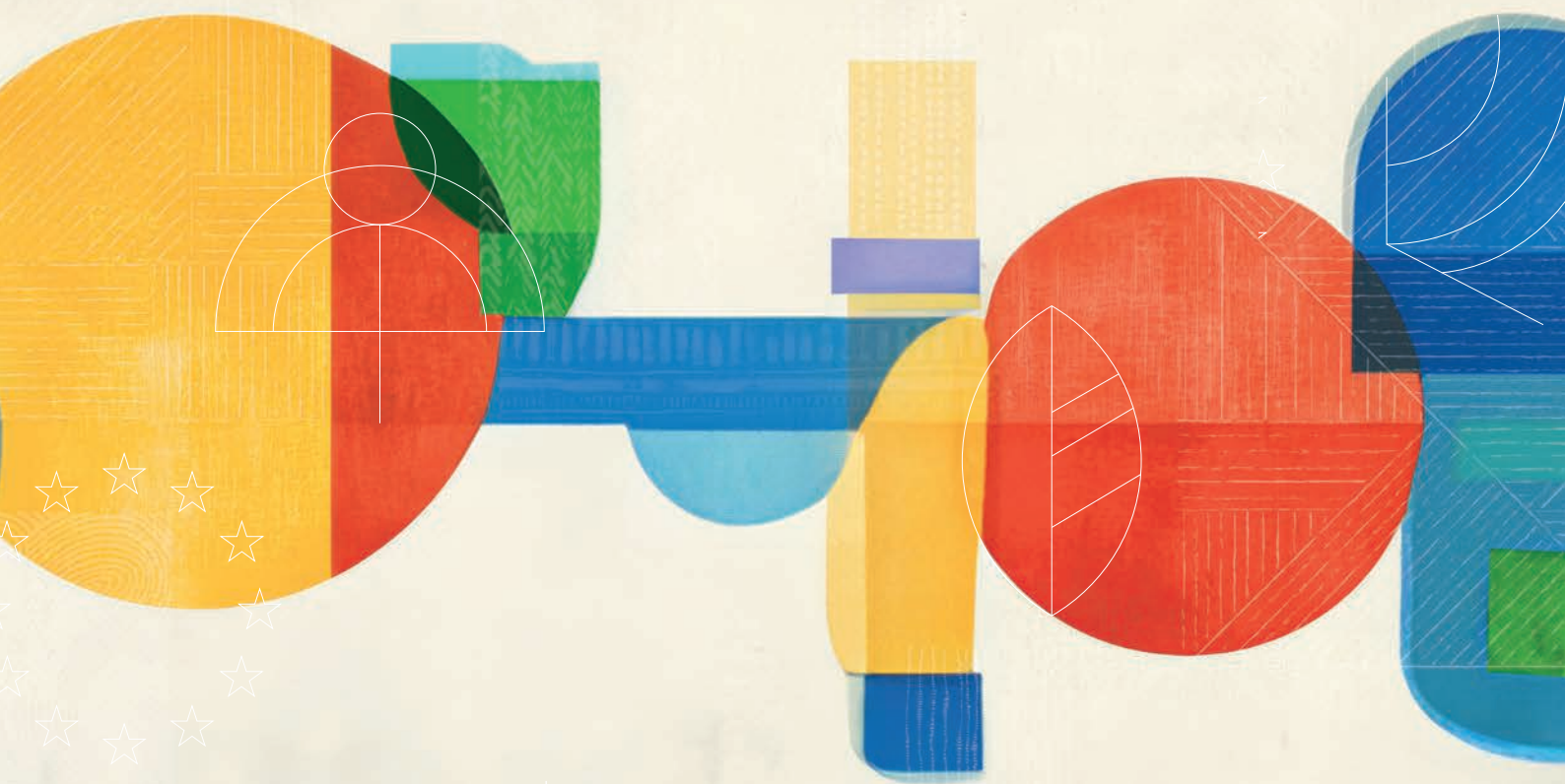
8

Raising awareness about the international standards. The CSDDD draws upon authoritative international standards, including the UNGPs, the OECD Guidelines, the OECD Guidance (sectoral and general), and the ILO MNE Declaration. However, the Directive also deviates from them in important aspects. Using the OECD Guidelines and the UNGP as a benchmark for advocacy can help raise the bar and ensure regulatory coherence.²⁴



PART 2

STRUCTURE & KEY TERMS OF THE CSDDD



2.1	Structure of the CSDDD	17
2.2	Level of harmonisation	22
2.3	Non-regression	23

2.1 Structure of the CSDDDD

The CSDDDD is divided into three parts: the first part provides the grounds and reasoning for the legislation and the operative provisions (Recitals);²⁵ the second part sets out the operational provisions; and the third part is the normative scope in the form of an Annex.

The recitals of EU directives contain important guidance on how to read the legislation. Recitals provide background, purpose, and reasoning behind a directive's provisions. While they are not legally binding, recitals have significant interpretative value and provide valuable guidance for EU Member States during the transposition process, as well as for courts and public enforcement authorities when assessing corporate compliance.

Article 1

1. **Obligations** for companies based or operating in the EU regarding their actual and potential adverse human rights and environmental impacts
2. **Liability** for violations of such obligations.

Article 2 clarifies which companies fall under the scope of the Directive (see Section 3.1).

Article 3 provides definitions for the key terms of the legislation, which are necessary to understand the meaning of later provisions.

Article 4 on the level of harmonisation determines to what extent Member States are allowed to diverge from the text of the Directive when transposing it into their national legislation (see Section 2.2).

Articles 5 to 16 set out the **due diligence obligations**. Article 5 spells out the steps and structure that make up the due diligence process, with each step being further detailed in its own dedicated article. Article 6 specifies the responsibilities for conducting due diligence when several companies in a corporate group are independently in scope. Articles 7 to 16 are discussed in more detail in Part 4 of this publication.

Articles 17 to 21 contain measures to support companies in fulfilling their obligations. Article 17, together with Article 33, foresees that due diligence reports of companies will have to be made publicly accessible online in human and machine-readable format through the European Single Access Point (ESAP). Furthermore, the European Commission is tasked with developing model contractual clauses (Article 18) and guidelines to assist companies in fulfilling their due diligence obligations (Article 19) and to set up a single helpdesk with the assistance of Member States (Article 21). Article 20 lays out the accompanying measures Member States can take to provide information and support to companies, their business partners, stakeholders and SMEs. It also foresees the Commission providing guidance for companies who want to rely on multi-stakeholder initiatives (see Section 4.11).

Articles 23 to 32 deal with **enforcement, civil liability** and **access to justice**. The enforcement of the CSDDDD can be divided into two main types: administrative enforcement (Articles 23 – 28) and judicial enforcement (Article 29). Articles 30 and 32 protect whistleblowers who report breaches of the legislation and Article 31 allows Member States to consider the compliance with the CSDDDD as a criterion for the attribution of contracts in the context of public procurement.

Articles 34 to 37 deal with **implementation, review** and **transposition**. Articles 34 and 35 delegate the power to the Commission to update the Annex of the Directive determining the international norms that form the basis for the due diligence obligations of companies (the “normative scope”) and to specify the content of the reporting obligations of companies. Article 36 details the process of review of the effectiveness of the Directive, both in general and on specific points. Article 37 addresses Member States with regard to transposition, including setting down the deadlines by which Member States must transpose and start implementing the Directive.

²⁵ Recitals of the original CSDDDD remain applicable unless the corresponding operative provisions to which they relate have been amended or deleted, or unless they contradict the provisions of Omnibus I. Omnibus I recitals apply to the provisions of the CSDDDD that were amended by the Omnibus I Directive.

Finally, the Annex to the CSDDD determines which rights and freedoms and types of environmental violations are covered by the obligations introduced by the legislation (see Section 3.2). The Annex is divided in two parts.

- **Part 1** concerns human rights and is itself divided into two sections.
- Section 1 contains a list of rights and prohibitions as defined in international human rights conventions.
- Section 2 contains a list of international human rights and fundamental freedoms conventions and instruments that are covered by the text.
- **Part 2** deals with obligations and prohibitions contained in international environmental instruments.

ARTICLES OF THE CSDDD

*Articles that have been amended by the Omnibus 1 Directive

ARTICLE	TITLE	CONTENT
1*	Subject matter	Spells out the objectives of the Directive.
2*	Scope	Introduces the thresholds that define which companies fall within the scope of the Directive.
3*	Definitions	Defines the terms used throughout the text of the Directive.
4*	Level of harmonisation	Introduces exceptions to parts of the text that cannot be directly modified by Member States.
5	Due diligence	Spells out the constitutive elements of the due diligence obligations for companies covered by the Directive.
6*	Due diligence support at a group level	Specifies due diligence responsibilities for companies whose subsidiaries are also within the scope of the Directive.
7	Integrating due diligence into company policies and risk management systems	Mandates the steps companies need to take to integrate due diligence into their corporate policies and systems.
8*	Identifying and assessing actual and potential adverse impacts	Sets out the criteria and steps companies must take to identify and assess risks to human rights and the environment in their operations and chain of activities.
9*	Prioritisation of identified actual and potential adverse impacts	Sets out the criteria and steps companies need to take when they cannot address all potential adverse impacts at once.
10*	Preventing potential adverse impacts	Introduces criteria and appropriate measures that companies need to take in order to prevent adverse impacts in their operations, the operations of their subsidiaries and in their chain of activities.

ARTICLES OF THE CSDDD | CONTINUED

*Articles that have been amended by the Omnibus 1 Directive

ARTICLE	TITLE	CONTENT
11*	Bringing actual adverse impacts to an end	Introduces an obligation for companies to terminate adverse impacts in their operations, in the operations of their subsidiaries and in their chain of activities.
12	Remediation of actual adverse impacts	Introduces an obligation for companies to remedy adverse impacts.
13*	Meaningful engagement with stakeholders	Defines how and when companies must consult with stakeholders when carrying out their due diligence obligations.
14	Notification mechanisms and complaints procedure	Introduces an obligation for companies to establish fair and accessible procedures to receive complaints and be notified of concerns.
15*	Monitoring	Introduces an obligation for companies to monitor and assess the implementation of their due diligence obligations every 5 years.
16*	Communicating	Introduces an obligation for companies to communicate publicly through annual reporting on how they fulfil their due diligence obligations.
17*	Accessibility of information on the European Single Access Point (ESAP)	Establishes a duty to make due diligence reports publicly accessible online in human and machine-readable format via the European Single Access Point.
18*	Model contractual clauses	Tasks the Commission with developing model contractual clauses in order to assist companies with their due diligence compliance.
19*	Guidelines	Tasks the Commission with developing guidelines for companies on several topics addressed by the Directive.
20	Accompanying measures	Requires Member States to provide information and support to companies, their business partners and stakeholders (both inside and outside the EU) with specific attention to SMEs.
21	Single helpdesk	Requires the Commission to set up a single helpdesk for companies, with the assistance of Member States.
23	Authorised representative	Asks non-EU companies covered by the Directive to establish a legal representative in one of the Member States they operate in.
24*	Supervisory authorities	Tasks Member States with establishing one or more supervisory authorities to monitor and enforce the Directive's obligations.

ARTICLES OF THE CSDDD | CONTINUED

*Articles that have been amended by the Omnibus 1 Directive

ARTICLE	TITLE	CONTENT
25*	Powers of supervisory authorities	Defines the powers of supervisory authorities, including to receive complaints, carry out investigations and issue penalties.
26	Substantiated concerns	Details the ways in which natural and legal persons can submit substantiated concerns to supervisory authorities.
27*	Penalties	Sets out the penalties that supervisory authorities may impose on companies for non-compliance with their obligations.
28	European network of supervisory authorities	Mandates the Commission to create a network of supervisory authorities.
29*	Civil liability of companies and the right to full compensation	Introduces rules on the civil liability of companies that, as a result of their failure to comply with the due diligence obligations, have caused harm and establishes the victims' rights to full compensation. It also removes some barriers to justice for victims.
30	Reporting of breaches and protection of reporting persons	Protects whistleblowers who report breaches of the Directive.
31	Public support, public procurement and public concessions	Allows Member States to consider compliance with CSDDD as a criterion for the award of contracts in the context of public procurement.
32	Amendment to Directive (EU) 2019/1937	Protects whistleblowers who report breaches of the Directive.
33	Amendment to Regulation (EU) 2023/2859	Includes CSDDD reporting under the scope of the EU Regulation establishing the EU single access point.
34	Exercise of the delegation	Confers on the Commission the delegated powers necessary for the implementation of the Directive.
35	Committee procedure	Confers on the Commission the delegated powers necessary for the implementation of the Directive.
36*	Review and reporting	Mandates the Commission to monitor the implementation of the Directive and to review it by 26 July 2031 and every five years thereafter.
37*	Transposition	Sets out the terms and conditions for the transposition and implementation of the Directive by Member States.
38	Entry into force	Stipulates the entry into force of the Directive.

ARTICLES OF THE CSDDD | CONTINUED

ARTICLE	TITLE	CONTENT
Annex	Part I (human rights)	Lists the rights, prohibition and human rights conventions covered by the normative scope of the Directive.
Annex	Part II (environment)	Lists the prohibitions and obligations included in environmental instruments covered by the normative scope of the Directive.



2.2 Level of harmonisation

As a directive, the CSDDD is binding on Member States as to the result to be achieved, but it leaves the choice of form and methods to national authorities.²⁶ In other words, Member States must adopt national measures that achieve the objectives set by the CSDDD but they retain significant latitude to determine how they incorporate this Directive into national law.

As a general rule, the CSDDD establishes **a minimum level of harmonisation** by setting baseline standards that Member States must incorporate into their national legal systems. When transposing CSDDD provisions subject to minimum harmonisation into national law, Member States are entitled to introduce more stringent provisions, particularly where national rules provide stronger or more robust protections.

At the same time, EU legislators chose to subject a limited number of articles to **maximum (or full) harmonisation**. This rule, set out in Article 4, limits the ability of Member States to introduce more stringent obligations with respect to certain provisions of the Directive. However, this article does not change the nature of the instrument as a whole. Member States retain a degree of regulatory freedom, even with respect to those articles subject to maximum harmonisation.

In the original CSDDD, maximum harmonisation was limited to core aspects of the due diligence duty. The amendments to Article 4 under Omnibus I significantly expand the scope of maximum harmonisation. The following articles are now also subject to maximum harmonisation:

- Article 6 (due diligence at group level)
- Articles 8 and 9 (risk identification and prioritisation)
- Article 10 (1) to (5) (prevention)
- Article 11(1) to (6) (bringing impacts to an end)
- Articles 14 to 16 (notification and complaint mechanisms, monitoring, communicating)

2.2.1

Member States' regulatory discretion

As a general rule, Member States retain considerable discretion to introduce more stringent standards for the remainder of the Directive. For example, Member States are permitted to introduce more stringent provisions with respect to company and material scope, disengagement, remediation, stakeholder engagement and civil liability.

While national transposition measures relating to the articles subject to maximum harmonisation cannot be more stringent than what is set down in the Directive, Member States retain a degree of regulatory freedom which allows them to improve the clarity, functionality or coherence with national law, even if the provisions are subject to maximum harmonisation.²⁷

For example, Member States can clarify the types of information that companies may request from business partners for the purposes of the in-depth assessment provided for in article 8(2)(b) and the types of appropriate resources (e.g., independent reports) that companies are entitled to make use of when identifying, preventing, and bringing adverse impacts to an end under articles 8(4), 10(2) and (3), and 11(3) and (4).

In addition, certain maximum harmonisation provisions rely on definitions under Article 3. Member States retain flexibility to strengthen aspects of the due diligence process during transposition by expanding on certain definitions contained in Article 3.

The Directive is also clear that Member States are permitted to introduce more stringent provisions than contained in articles subject to maximum harmonisation "in order to achieve a different level of protection of human, employment and social rights, the environment, or the climate".²⁸ This situation covers provisions of national law that regulate specific adverse impacts or specific sectors of activity, including due diligence obligations targeting specific products, services, or situations and broader bodies of law such as environmental law or labour law. This would allow Member States to respond to emerging specific risks, especially when due diligence obligations might be important to address them.

Despite the expansion of the provisions subject to maximum harmonisation under the amended CSDDD, the Directive still provides considerable regulatory discretion to Member States. Member States should use this permitted flexibility during transposition to strengthen the due diligence duty, including by expanding the scope of definitions; expanding the company and material scope of the directive; and ensuring that consultation with stakeholders is mandatory at all key stages of the due diligence process.

²⁶ Article 288 TFEU.

²⁷ Recital 38 Omnibus I Directive.

²⁸ Article 4(2) CSDDD.

2.3 Non-regression

In addition to the non-regression obligations arising from international law²⁹ and EU Law (including the EU Charter of Fundamental Rights and the European Climate Law³⁰), the Directive itself also contains a general non-regression principle. Article 1(2) clarifies that Member States may not reduce the level of protection of human and environmental rights provided under existing national law when transposing the CSDDD provisions.

However, Omnibus I provides one exception to this general rule by allowing Member States to amend existing national corporate sustainability due diligence laws to increase or ensure their alignment with the amended CSDDD, with the intention of aligning the scope of existing national laws with the new CSDDD thresholds.

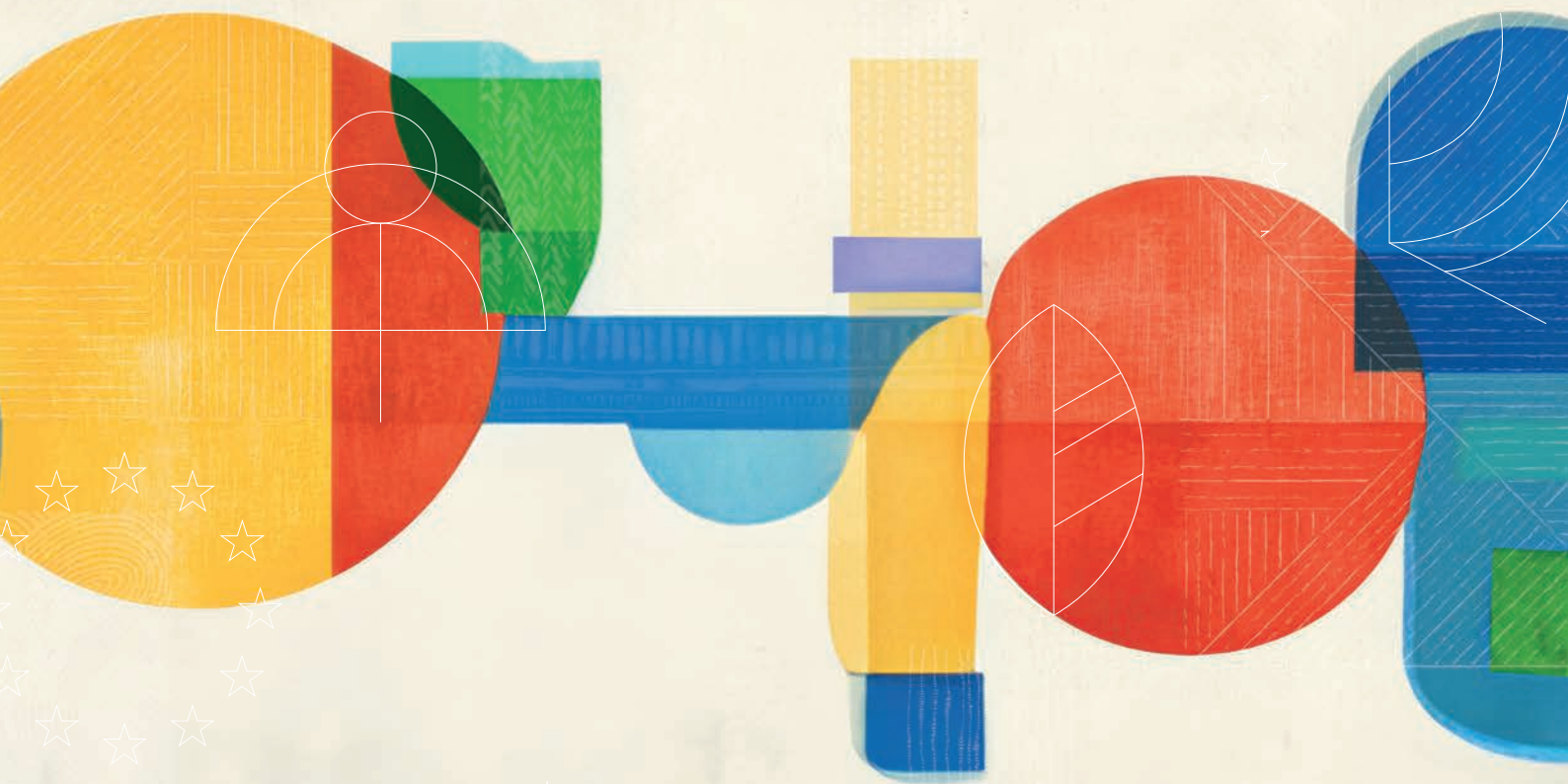
In addition, Omnibus I introduces Article 1(4), which provides that the CSDDD's due diligence rules do not affect EU or national law concerning human, employment or social rights, or the protection of the environment and climate change, other than general due diligence obligations. This means that the Directive only introduces specific due diligence obligations and does not modify or weaken other legislation touching on the above-mentioned topics, even if they include other forms of due diligence.

²⁹ See International Covenant on Economic, Social and Cultural Rights (ICESCR).

³⁰ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999.

PART 3

PERSONAL, MATERIAL & VALUE CHAIN SCOPE



3.1	Companies covered by the CSDDD	25
3.2	Material scope	28
3.3	What parts of the value chain are covered?	36

3.1 Companies covered by the CSDDDD

Unlike the CSDDDD, the international framework on business and human rights applies to all companies, irrespective of size, sector or form, ownership or (group) structure, operational context or place of operation. Under these standards, the responsibility to operate responsibly and respect human rights and the environment extends to all businesses. The international standards implicitly recognise that size is not necessarily correlated with risk, as smaller companies can sometimes generate significant risks and cause serious human rights and environmental impacts. They also do not distinguish between sectors; the same due diligence standard applies to companies in all sectors. In contrast, the CSDDDD obligations apply only to a limited group of companies.

The CSDDDD, as amended by the Omnibus I Directive, applies to limited and unlimited liability companies with a minimum of 5000 employees and an annual net turnover of €1.5 billion, certain regulated financial undertakings,³¹ and non-EU companies with an annual net turnover of €1.5 billion. The amended CSDDDD also applies to EU and non-EU franchise and licensing companies and groups exceeding a €75 million royalty threshold and a worldwide or EU turnover of €275 million.

By raising minimum thresholds, the Omnibus I Directive further reduced the already limited number of companies subject to the CSDDDD, restricting its application to a small group of very large companies.³² Under the new thresholds, **the Directive will now apply to approximately 2,900 companies** as opposed to 7,000 companies under the original instrument.³³

FIGURE 1
COMPANY SCOPE

	EU		NON-EU	
	COMPANIES & GROUPS	FRANCHISE & LICENCING COMPANIES	COMPANIES & GROUPS	FRANCHISE & LICENCING COMPANIES
	THRESHOLD			
CSDDDD	> €450 million net turnover worldwide > 1,000 employees	> €22.5 million in royalties > €80 million net turnover worldwide	> €450 million net turnover in the EU -	> €22.5 million in EU royalties > €80 million net turnover in the EU
OMNIBUS I	> €1.5 billion net turnover worldwide > 5,000 employees	> €75 million in royalties > €275 million net turnover worldwide	> €1.5 billion net turnover in the EU -	> €75 million in EU royalties > €275 million net turnover in the EU

31 Article 3(1)(a)(iii) CSDDDD.

32 Under the original Directive, limited and unlimited liability companies with a minimum of 1000 employees and an annual net turnover of €450 million, as well as some regulated financial undertakings, and certain non-EU companies

with an annual net turnover of €450 million, were subject to the obligations set down in the Directive. At those thresholds, the CSDDDD would have applied to approximately 7,000 companies, of which about 5,000 were based in the EU.

33 See SOMO CSDDDD Datahub, <https://www.somo.nl/csddd-datahub/>.

As a result, many companies with smaller workforces or turnover, but whose operations are closely linked to severe human rights and environmental risks, would fall outside the CSDDD's reach. Such an exclusion will undermine the Directive's effectiveness and its ability to incentivise responsible business conduct across value chains.

Under Article 36, the Commission is required to conduct a review of the implementation of the Directive and its effectiveness in reaching its objectives by 26 July 2031 and every 5 years thereafter. This presents a crucial opportunity for the Commission to re-assess the reduced company scope thresholds under Article 2 and to expand them to cover a wider range of companies.

TABLE 1
KEY DEFINITIONS

ARTICLE	TERM	DEFINITION
3(1)(a)(i), (ii)	Company	Legal persons or financial undertakings that can be subject to CSDDD obligations, provided they meet the thresholds set in Article 2. - Any company established in the EU in one of the legal forms listed in Annex I and II of the Accounting Directive,³⁴ including (public and private) limited liability companies and unlimited liability companies. - A company constituted in accordance with the law of a third country in a form comparable to a company that would be covered if it was established in the EU. - Regulated financial undertakings, regardless of their legal form, including credit institutions, investment firms and electronic money institutions. Alternative Investment Funds (AIFs) and undertakings for collective investments in transferable securities (UCITS) are not included.³⁵
3(1)(q)	Parent company	A company that controls one or more subsidiaries.
3(1)(r)	Ultimate parent company	A parent company that controls, either directly or indirectly in accordance with the criteria set out in Article 22(1) to (5) of Directive 2013/34/EU, one or more subsidiaries and is not controlled by another company.
3(1)(e)	Subsidiary	A legal person, as defined in Article 2(10) of Directive 2013/34/EU, ³⁶ and a legal person through which the activity of a controlled undertaking, as defined in Article 2(1)(f), of Directive 2004/109/EC ³⁷ of the European Parliament and of the Council, is exercised.
3(1)(s)	Group of companies, or Group	A parent company and all its subsidiaries.

34 For a list of legal forms by EU country, see [Annex I](#) and [Annex II](#) of the Accounting Directive.

35 For a comprehensive list of regulated financial undertakings covered under the CSDDD, see Article 3(1)(a)(ii).

36 Article 2(10) of the Accounting Directive defines subsidiary undertaking as 'an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking'.

37 Article 2(1) point (f) of Directive 2004/109/EC defines controlled undertaking as any undertaking (i) in which a natural person or legal entity has a majority of the voting rights; or (ii) of which a natural person or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or (iii) of which a natural person or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question; or (iv) over which a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control'.

FOCUS BOX 3

**FINANCIAL INSTITUTIONS
& FINANCIAL SERVICES
UNDER THE CSDDD**

As specified by the definition of “companies” in Article 3(1)(a), certain types of financial institutions, including but not limited to banks, investment firms and insurance companies, are required to comply with CSDDD obligations when they reach the thresholds specified in Article 2. In the Directive, these are referred to as “regulated financial undertakings” and are listed in Article 3(1)(a)(iii).

Therefore, financial institutions covered by the CSDDD are subject to the same obligations as other in-scope companies, and must set up and operate processes to identify and assess adverse impacts arising from their own operations, those of their subsidiaries, and those of their business partners in their chains of activities

However, due to the approach taken by the CSDDD in defining the downstream “chain of activities”, the provision of a number of financial services in the context of relationships with clients has been excluded from the scope of due diligence obligations, although this distinction between upstream and downstream may not always be as clear cut in practice.³⁸

Excluding the provision of a number of financial services from the scope of due diligence obligations is a major shortcoming of the Directive, as it opens space for financial institutions to disregard the human rights and environmental impacts arising from what is their core activity as businesses. Financial institutions hold the vast majority of financial assets in the EU.³⁹ Member States should rectify such a shortcoming in their national transposition measures by expanding the definition of chain of activities to include financial services among the downstream activities covered by the Directive (see also Section 3.3 below).

Recommendations

Member States should broaden the scope of companies to which the obligations apply:

- **By lowering the employee and turnover thresholds**
 - At minimum, align with the CSRD, which applies to companies that have 1000 or more employees and 450 million in net turnover, or that are listed. This would strengthen inter-Directive coherence.
 - Member States can also lower the thresholds for specific economic sectors with high-risk such as extractives, mining, garment, footwear, agriculture, construction, etc. This should be based on an assessment of which sectors pose increased risk by companies outside of the regulatory scope.
- **By extending the duty to all types of economic actors**

For example, economic actors, such as cooperatives, are not part of the CSDDD but not including them in transposition may result in unfair (dis)advantages between e.g. supermarkets taking the form of a limited liability company, and those supermarket groups structured in a cooperative.



³⁸ Elsa Savourey and Daniel Litwin, “[The Financial Sector and the Corporate Sustainability Due Diligence Directive \(CSDDD\): In or Out?](#)”, Oxford Business Law Blog (16 October 2024).

³⁹ See World Wildlife Fund (WWF), “[Banking on destruction: how European financial institutions fuel environmental crises](#)” (2023).

3.2 Material scope

The international business and human rights standards are built on an inclusive material scope, covering all human rights and environmental impacts associated with business activities.

UN Guiding Principle 12 defines internationally recognised human rights to contain “*at minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.*”

The OECD Guidelines call for due diligence over potential and actual adverse environmental impacts, broadly defined as “*significant changes in the environment or biota which have harmful effects on the composition, resilience, productivity or carrying capacity of natural and managed ecosystems, or on the operation of socio-economic systems or on people*”. The OECD Guidelines additionally identify an illustrative and non-exhaustive list of broad harmful impacts often linked to business activity, including climate change; biodiversity loss; degradation of land, marine, and freshwater ecosystems; deforestation; air, water and soil pollution; and mismanagement of waste including hazardous substances.

The CSDDD adopts a more limited approach to the material scope of the due diligence duty. Instead of referring to the entire existing body of rights, laws, and international instruments, it makes use of a limited list, which is included in the Annex of the Directive. Importantly, these lists are incomplete as they do not reflect the full body of human rights or relevant international instruments. As a result, the material scope of the legislation is fragmented, making it difficult for companies and stakeholders to identify which human rights impacts are covered and which are not.

The material scope is further restricted by how the Directive defines an adverse human rights impact. According to the Directive, for certain human rights to be abused, three additional conditions must be met (see Table 2 below). These unnecessary conditions create ambiguity and require sophisticated levels of analysis, significantly impacting readability and legal certainty for legislators, companies, stakeholders, regulators and judges alike.

TABLE 2
KEY DEFINITIONS

ARTICLE	TERM	DEFINITION
3(1)(c)	Adverse human rights impact	Impact on persons resulting from an “abuse” of: - Selected human rights and prohibitions listed in Section 1, Part I of the Annex; or - Other human rights enshrined in a list of international instruments in Section 2, Part I of the Annex, but only under the condition that: - The human right can be abused by a company; - The human right abuse directly impairs a legal interest protected in the human rights instrument; and - The company could have reasonably foreseen the risk that such human right might be affected.⁴⁰
3(1)(b)	Adverse environmental impact	Adverse impact on the environment resulting from the breach of the prohibitions and obligations listed in points 15 and 16 in Section 1 of Part I, and Part II of the Annex to this Directive, taking into account national legislation linked to the provisions of the instruments listed therein.

40 Article 3(1)(c) CSDDD.

3.2.1

Adverse human rights impacts

The CSDDD defines adverse human rights impact in two ways: first, resulting from the abuse of a selected right listed in Section 1, Part I of the Annex to the Directive, and second, resulting from the abuse of another human right if this right is enshrined in one of the international instruments listed in Section 2, Part I of the Annex, provided a set of conditions is fulfilled.

In practical terms, this means that transposing legislation and measures must cover the impact resulting from the abuse of any of the rights and disregard for prohibitions listed in Section 1, Part I of the Annex (see pp 32-33).⁴¹ These rights and prohibitions are selected and derived from the human rights instruments in Section 2, Part I of the Annex and must be interpreted according to international law. Consequently, for transposition as well as for later application, legislators, implementing authorities, companies and judges will need to take international jurisprudence and recommendations of treaty bodies into account. It is noteworthy too that the list in Section 1 also lists human rights impacts linked to environmental harm and thus bridges the two areas of the Directive's material scope.

This approach is in direct contradiction to the international standards, which recognise that companies can and do have a negative impact on the entire spectrum of internationally recognised human rights, and that their responsibility to respect applies to all such rights. Moreover, it contradicts the principle that all human rights are indivisible and interdependent. In practice, this fragmented and overly complicated approach to defining what constitutes a human rights abuse is likely to create legal uncertainty for companies, rightsholders, and national enforcing authorities and could ultimately undermine the Directive's effectiveness in preventing business-related human rights abuses.

Member States must also ensure that any abuse of a human right not listed in Part I, Section 1 of the Annex but which is enshrined in one of the human rights instruments listed in Part I, Section 2, of the Annex also constitutes an adverse human rights impact, if:

- The right concerned can be abused by a company or legal entity;
- The abuse directly impairs a legal interest protected in the human rights instrument; and
- The company could have reasonably foreseen the risk that such a human right may be affected, taking into account the circumstances of the specific case.

The list of human rights instruments contained in Part I, Section 2 does not reflect the full body of existing human rights instruments and, worryingly, certain core international human rights instruments are missing entirely.⁴² However, the absence of certain core international human rights instruments from the Annex of the Directive does not mean that the rights enumerated in these instruments do not fall under the scope of the CSDDD at all.⁴³ They are included in so far as they are covered by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which are listed in the Annex. Both instruments encompass a broad catalogue of rights and constitute the basis on which other thematic instruments are built, often adding nuance and depth to the original obligation.

Furthermore, the three conditions outlined under Article 3 (1)(c)(ii) lack clarity regarding regulatory purpose and introduce unnecessary complexity for determining a human rights abuse by companies. Member States will urgently need to address this during transposition to avoid legal uncertainty for companies and enforcement authorities.

The first of the three conditions requires that the right at risk "can be abused by a company". However, the UNGPs clarify that companies can have an adverse impact on the entire spectrum of internationally recognised human rights. Principle 12 of the UNGPs makes clear that a company can impact any human right. On this basis the first condition will always be met. Instead of engaging in an assessment of whether a right can be abused by a company, businesses will need to understand their involvement in the human rights impact at hand to identify appropriate measures.

41 Article 3(c)(i) CSDDD.

42 Including but not limited to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention of the Rights of Persons with Disabilities (CRPD), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the UN Convention against Corruption (UNCAC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the UN Declaration on Human Rights Defenders, ILO Convention 190 on Violence and Harassment in the World of Work, International Humanitarian Law.

43 Recital 33 of the original CSDDD clarifies that companies may need to consider additional standards to those listed in the Annex when carrying out due diligence, including taking into account specific contexts or intersecting factors such as gender, age, race, ethnicity, class, caste, education, migration status, and disability. In addition, Recital 42 of the original CSDDD clarifies that companies should carry out heightened due diligence in conflict affected and high-risk areas in a manner that is consistent with international humanitarian law.

The second of the three conditions requires that the abuse directly impairs a legal interest protected in the human rights instrument. However, the Directive is not clear how such a “legal interest” actually differs from the human right that has been, or potentially will be, abused. In addition, it requires the abuse to “directly impair” the legal interest without clarifying how this should be understood, or how it must be distinguished from the level of a companies’ involvement with the human rights impact (causing, jointly causing or being directly linked).

The third condition requires that the risk of human rights impact must have been foreseeable by the company. This approach contradicts the basic premise of due diligence - it is exactly one of the purposes of due diligence to identify actual and potential human rights risks. In other words, due diligence ensures foreseeability of risks. Foreseeability should therefore not be a condition for due diligence.

Member States will urgently need to address these unnecessary and complicated barriers to defining adverse human rights impacts during transposition, both to ensure that all human rights are covered and to avoid legal uncertainty for companies, enforcement authorities and rightsholders.

Recommendations



The CSDDD defines “adverse human rights impact” using a complex system that artificially distinguishes between two sets of human rights (Section 1 versus Section 2), and by applying to one set (Section 2) a test of complicated and unnecessary conditions.

To avoid gaps, misinterpretation, and application issues arising from the artificial distinction between two human rights categories in Article 3(c) and the Annex, Member States should take a broader approach to defining what constitutes an “adverse human rights impact”. Crucially, neither Article 3(c) nor the Annex are subject to maximum harmonisation. Member States therefore can and should go beyond the approach set out in the Directive during transposition.

Below are three complementary approaches through which Member States could improve on the normative human rights framework set by the CSDDD.

- **Inclusion of all internationally recognised human rights**

Member States should broaden the material scope when transposing the Directive into national law and require companies to conduct due diligence for impacts on all “internationally recognised human rights”, in line with the UNGPs and the OECD Guidelines.⁴⁴ There should be no conditions attached to recognising a human rights abuse as having an adverse human rights impact. The rights, prohibitions and instruments listed in Part I of the Annex should be made explicitly non-exhaustive and maintained for indicative purposes.

- **Removal of the restrictive conditions applying to Section 2 of Part I**

Member States should eliminate the effect of the artificial distinction between the two sets of human rights established by Sections 1 and 2 of the Annex by disregarding the conditions set by Article 3(1) (c) when transposing the Directive. This approach would prevent an overly restrictive definition of what constitutes a human rights abuse by a company.

- **Alternatively, address gaps in protection by including additional human rights instruments**

To ensure the effectiveness of the CSDDD in protecting internationally recognised human rights from corporate abuse, Member States should, at a minimum, include additional international human rights instruments and/or standards currently left out by the Annex.

⁴⁴ See UNGP 12 and its Commentary; OECD Guidelines, Chapter IV, paras 44-45.

International Labour Organisation instruments

Member States, especially those that have already ratified the ILO Convention 155 on Occupational Safety and Health and the ILO Convention 187 on a Promotional Framework for Occupational Safety and Health, should include both conventions as part of the material scope during transposition. Since June 2022, these conventions are considered fundamental ILO conventions, meaning that all ILO Member States now have an obligation to promote and realise the principles that they enshrine. Including these two conventions in the context of transposition will also increase legal certainty by proactively anticipating predictable modifications to the Annex, as the CSDDD mandates the Commission to add these ILO fundamental instruments to the Annex via delegated acts once all Member States have ratified them.⁴⁵

Other ILO instruments that should be included in national transposing measures are the Protocol of 2014 to the Forced Labour Convention, 1930 (P029); the Violence and Harassment Convention, 2019 (No. 190) as they build on the logic of the other instruments related to forced labour and Occupational Health and Safety. The addition of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) strengthens paragraph 16 of the Annex Part 1, Section I.

Conventions and instruments focusing on rightsholders

In line with international standards,⁴⁶ the CSDDD emphasises the need for companies to consider additional international instruments and standards in their due diligence processes, depending on the circumstances. In particular, companies should pay special attention to adverse impacts on individuals who may be at a higher risk due to marginalisation, vulnerability or other circumstances, either individually or as members of certain groupings or communities.⁴⁷ To ensure companies effectively pay attention to such impacts, Member States should, as a minimum, include international human rights instruments focusing on vulnerable categories of rightsholders.⁴⁸

⁴⁵ Recital 32 original CSDDD.

⁴⁶ OECD Guidelines, Chapter IV, para 44.

⁴⁷ Recital 33 original CSDDD.

⁴⁸ These include but are not limited to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the UN Declaration on Human Rights Defenders, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination

Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW), ILO Convention 190 on Violence and Harassment in the World of Work and the 4 Geneva Conventions.

RIGHTS, PROHIBITIONS & CONVENTIONS UNDER PART I OF THE ANNEX

Rights and prohibitions included in international human rights instruments (Section 1)

- The right to life, interpreted in line with Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR).
- The right to liberty and security, interpreted in line with Article 9(1) of the ICCPR.
- The right to privacy, interpreted in line with Article 17 of the ICCPR.
- The right to enjoy just and favourable conditions of work, including a fair and adequate living wage and income, as well as safe and healthy working conditions and reasonable limitation of working hours, interpreted in line with Articles 7 and 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Prohibition of restricting workers' access to adequate housing if the housing is provided by the company, as well as the prohibition of restricting workers' access to food, clothing, water and sanitation in the workplace, interpreted in line with Article 11 of the ICESCR.
- 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, interpreted in line with Articles 34 and 35 of the Convention of the Rights of the Child.
- The right to freedom of association, assembly and to organise, interpreted in line with articles 21 and 22 of the ICCPR, Article 8 of the ICESCR.
- The right to strike, to form and join trade unions and to collective bargain interpreted in line with the ILO Freedom of Association and Protection of the Right to Organise Convention (No 87), and the ILO Right to Organise and Collective Bargaining Convention (No 98).
- The right of individuals, groups and communities to lands and resources and to not be deprived of means of subsistence, interpreted in line with Articles 1 and 27 of the ICCPR and Articles 1, 2 and 11 of the ICESCR.
- Prohibition of torture, cruel, inhuman or degrading treatment, interpreted in line with Article 7 of the ICCPR.
- Prohibition of forced labour interpreted in line with Article 2(1) of the ILO Forced Labour Convention, (No 29).
- Prohibition of all forms of slavery and slave-trade interpreted in line with Article 8 of the ICCPR.
- Prohibition of arbitrary or unlawful interference with a person's privacy and family, interpreted in line with Article 17 of the ICCPR.
- Prohibition of interference with the freedom of thought, conscience and religion, interpreted in line with Article 18 of the ICESCR.

- Prohibition of the employment of a child under the age at which compulsory schooling is completed and, in any case, not less than 15 years old, interpreted in line with Article 2(4) and Articles 4 to 8 of the ILO Minimum Age Convention (No 138).
- Prohibition of the worst forms of child labour, including slavery, prostitution, illicit activities such as drug trafficking, interpreted in line with Article 3 of the ILO Worst Forms of Child Labour Convention (No 182).
- The prohibition of forced or compulsory labour including work resulting in debt bondage or human trafficking, interpreted in line with Article 2(1) of the ILO Forced Labour Convention (No 29).
- Prohibition of causing environmental degradation that impacts adversely on the enjoyment of specific rights, including the rights to food, water, sanitation, health, safety and the right to use land and lawfully acquired possessions.
- Prohibition of unlawful eviction or taking land or forests when developing or otherwise using land, forests and waters, including by deforestation, interpreted in line with Article 6(1) of ICCPR and Articles 11 and 12 of the ICESCR.
- Prohibition of unequal treatment in employment, in particular the payment of unequal remuneration for work of equal value and discrimination on grounds of national extraction, social origin, race, colour, sex, religion, political opinion, interpreted in line with the Articles 2 and 3 of the ILO Equal Remuneration Convention (No 100), Articles 1 and 2 of the ILO Discrimination Convention (No 111) and Article 7 of the ICESCR.

Human rights and fundamental freedoms instruments (Section 2)

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Rights of the Child
- The ILO's core/fundamental conventions
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No 98)
- Forced Labour Convention, 1930 (No 29) and its 2014 Protocol
- Abolition of Forced Labour Convention, 1957 (No 105)
- Minimum Age Convention, 1973 (No 138)
- Worst Forms of Child Labour Convention, 1999 (No 182)
- Equal Remuneration Convention, 1951 (No 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No 11)

PROHIBITION & OBLIGATIONS INCLUDED IN ENVIRONMENTAL INSTRUMENTS UNDER PART II OF THE ANNEX

- The obligation to avoid or minimise adverse impacts on biological diversity, interpreted in line with Article 10, point (b) of the 1992 Convention on Biological Diversity and applicable law in the relevant jurisdiction, including the obligations of the Cartagena Protocol on the development, handling, transport, use, transfer and release of living modified organisms and of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 12 October 2014.
- The prohibition on the import, export, re-export or introduction from the sea of any specimen included in the Appendices I to III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973 without a permit, interpreted in line with Articles III, IV and V of the Convention.
- The prohibition of the manufacture, import and export of mercury-added products listed in Annex A Part I to the Minamata Convention on Mercury of 10 October 2013 (Minamata Convention), interpreted in line with Article 4(1) of the Convention.
- The prohibition of the use of mercury or mercury compounds in the manufacturing processes listed in Annex B Part I to the Minamata Convention after the phase-out date specified in the Convention for the individual processes, interpreted in line with Article 5(2) of the Convention.
- The prohibition of the unlawful treatment of mercury waste, interpreted in line with Article 11(3) of the Minamata Convention and Article 13 of Regulation (EU) 2017/852 of the European Parliament and of the Council.
- The prohibition of the production and use of chemicals listed in Annex A to the Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants (POPs Convention), interpreted in line with Article 3(1), point (a), point (i) of the Convention and Regulation (EU) 2019/1021 of the European Parliament and of the Council.
- The prohibition of the unlawful handling, collection, storage and disposal of waste, interpreted in line with Article 6(1), point (d), points (i) and (ii) of the POPs Convention and Article 7 of Regulation (EU) 2019/1021.
- The prohibition of the import or export of a chemical listed in Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) of 10 September 1998, interpreted in line with Article 10(1), Article 11(1), point (b) and Article 11(2) of the Convention and indication by the importing or exporting Party to the Convention in line with the Prior Informed Consent (PIC) Procedure.
- The prohibition of the unlawful production, consumption, import and export of controlled substances in Annexes A, B, C and E to the Montreal Protocol on substances that deplete the Ozone Layer to the Vienna Convention for the protection of the Ozone Layer, interpreted in line with Article 4B of the Montreal Protocol and licensing provisions under applicable law in relevant jurisdiction.
- The prohibition of the export of hazardous or other waste, interpreted in line with Article 1(1) and (2) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Basel Convention) and Regulation (EC) No 1013/2006 of the European Parliament and of the Council:
 - (a) to a party to the Convention that has prohibited the import of such hazardous and other wastes, interpreted in line with Article 4(1), point (b) of the Basel Convention;
 - (b) to a state of import that does not consent in writing to the specific import, in the case where that state of import has not prohibited the import of such hazardous wastes, interpreted in line with Article 4(1), point (c) of the Basel Convention;
 - (c) to a non-party to the Basel Convention, interpreted in line with Article 4(5) of the Basel Convention;
 - (d) to a state of import if such hazardous wastes or other wastes are not managed in an environmentally sound manner in that state or elsewhere, interpreted in line with Article 4(8) the first sentence of the Basel Convention.
- The prohibition of the export of hazardous wastes from countries listed in Annex VII to the Basel Convention to countries not listed in Annex VII for operations listed in Annex IV to the Basel Convention, interpreted in line with Article 4A of the Basel Convention and Article 34 and 36 of Regulation (EC) No 1013/2006.
- The prohibition of the import of hazardous wastes and other wastes from a non-party that has not ratified the Basel Convention, interpreted in line with Article 4(5) of the Basel Convention.
- The obligation to avoid or minimise adverse impacts on the properties delineated as natural heritage as defined in Article 2 of the Convention Concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972 (the World Heritage Convention), interpreted in line with Article 5, point (d) of the World Heritage Convention and applicable law in the relevant jurisdiction.
- The obligation to avoid or minimise adverse impacts on wetlands as defined in Article 1 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat of 2 February 1971 (Ramsar Convention), interpreted in line with Article 4(1) of the Ramsar Convention and applicable law in the relevant jurisdiction.
- The obligation to prevent the pollution from ships, interpreted in line with the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as amended by the Protocol of 1978 (MARPOL 73/78). This includes:
 - (a) The prohibition on the discharge into the sea of:
 - (i) oil or oily mixtures as defined in Regulation 1 of Annex I to MARPOL 73/78, interpreted in line with Regulations 9 to 11 of Annex I to MARPOL 73/78;
 - (ii) noxious liquid substances as defined in Regulation 1(6) of Annex II to MARPOL 73/78, interpreted in line with Regulations 5 and 6 of Annex II to MARPOL 73/78; and
 - (iii) sewage as defined in Regulation 1(3) of Annex IV to MARPOL 73/78, interpreted in line with Regulations 8 and 9 of Annex IV to MARPOL 73/78;
 - (b) The prohibition of unlawful pollution by harmful substances carried by sea in packaged form as defined in Regulation 1 of Annex III to MARPOL 73/78, interpreted in line with Regulations 1 to 7 of Annex III to MARPOL 73/78; and
 - (c) The prohibition of unlawful pollution by garbage from ships as defined in Regulation 1 of Annex V to MARPOL 73/78, interpreted in line with Regulations 3 to 6 to Annex V of MARPOL 73/78;
- The obligation to prevent, reduce and control pollution of the marine environment by dumping, interpreted in line with Article 210 of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and applicable law in the relevant jurisdiction.

3.2.2

Adverse environmental impacts

The Directive defines environmental adverse impacts in two ways.

Firstly, if environmental degradation impacts on certain human rights included in Section 1, Part I of the Annex (rights and prohibitions) discussed above. More specifically:

- Point 15 of Section 1, Part I of the Annex captures measurable environmental degradation or other impacts on natural resources that lead or may lead to negative impacts on one or more of the following: the rights to food, water, sanitation, health, safety and property, and ecosystem services contributing to human well-being.⁴⁹ The chapeau of Point 15 contains a non-exhaustive list of ways in which environmental degradation may occur (including harmful emissions).
- Point 16 of Section 1, Part I of the Annex captures unlawful land-grabbing or natural resource appropriation, including by deforestation, that leads or may lead to negative impacts on the rights of individuals, groups and communities to lands, water, and resources, or the right not to be deprived of means of subsistence.⁵⁰

In those cases, companies have an obligation to address potential and actual environmental degradation and the impacts on the human rights listed above. This is because point 15 prohibits the causation of environmental degradation, which may also be covered through Section 2, Part I of the Annex.

Secondly, adverse environmental impacts can result from breaches of a selection of international environmental obligations and prohibitions listed in Part II of the Annex.⁵¹

This approach to defining adverse environmental impacts unnecessarily narrows the definition of what constitutes environmental harm. The current fragmented patchwork of international environmental conventions does not provide sufficient coverage of impacts and the list in the Annex is missing key environmental conventions, including the Paris Agreement.

Recommendations

Member States should address these regulatory gaps during transposition to ensure a comprehensive approach to environmental harms.

To start with, the environmental impacts should be further aligned with the definition of environmental impacts under the CSRD⁵² and sector-specific due diligence legislation, such as the Batteries Regulation.⁵³ This would also bring the definition more in line with that of the OECD Guidelines, which as of June 2023 cover all impacts to the environment, including climate change.

Below are two alternative approaches through which Member States could improve on the definition of environmental harm and extend the range of environmental impacts covered by the CSDDD.

Option A: Define impacts on the environment primarily through a comprehensive list of environmental impacts, including:

- Climate change
- Biodiversity loss
- Air, water and soil pollution
- Degradation of land, marine and freshwater ecosystem
- Deforestation and forest degradation
- Overconsumption of material, water, energy and other natural resources
- Harmful generation and mismanagement of waste, including hazardous substances

In such a scenario, the Annex would serve to specify the obligations regarding specific types of environmental harm.

⁴⁹ Point 15, Section 1, Part I of the Annex to the CSDDD.

⁵⁰ See Point 16, Section 1, Part I of the Annex to the CSDDD.

⁵¹ See ClientEarth and Frank Bold, "Environmental Due Diligence and Reporting in the EU" (2024), p. 62.

⁵² Article 29b of the Accounting Directive provides that the delegated act on the ESRS specify the information that companies will have to disclose in relation to: (i) climate change mitigation, including as regards scope 1, scope 2 and, where relevant, scope 3 greenhouse gas emissions; (ii) climate change adaptation; (iii) water and marine resources; (iv) resource use and the circular economy; (v) pollution; and (vi) biodiversity and ecosystems.

⁵³ Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC. Annex X (2)(a) defines risk categories related to environment, climate and human health, considering direct, induced, indirect and cumulative effects, as including: "(i) air, including air pollution such as greenhouse gas emissions, (ii) water, including seabed and marine environment, and including water pollution, water use, water quantities (flooding or droughts) and access to water, (iii) soil, including soil pollution, soil erosion, land use and land degradation, (iv) biodiversity, including damage to habitats, wildlife, flora and ecosystems, including ecosystem services, (v) hazardous substances, (vi) noise and vibration, (vii) plant safety, (viii) energy use, (ix) waste and residues".

Option B: Ensure the list of prohibitions and obligations in the environmental conventions is complete by referring to all appropriate provisions.⁵⁴ Additionally, ensure that all environmental impacts are covered by adding the following Conventions to the Annex Part 2:

- Paris Agreement under the United Nations Framework Convention on Climate Change.
 - Article 2(1)(a), Article 4(1) and Article 4(2) – the obligation to reduce greenhouse gas emissions.
 - Article 5(1) – the obligation to conserve and enhance sinks and reservoirs of greenhouse gases.
- UN Water Convention (Convention on the Protection and Use of Transboundary Watercourses and International Lakes).
 - Article 2 – The obligation to take appropriate measures to prevent, control and reduce the impacts of water use and pollution, and to converse and restore ecosystems.

FOCUS BOX 4

STRENGTHENING THE PROTECTION OF INDIGENOUS PEOPLES UNDER THE CSDDD

Indigenous Peoples are disproportionately impacted by corporate abuse of human rights and the environment. However, the CSDDD fails to properly address the unique risks faced by indigenous communities seeking to uphold their rights, ancestral lands, cultures, and livelihoods.

When transposing the Directive, it is crucial that Member States ensure that specific attention is given to Indigenous Peoples. States have an obligation to obtain their Free, Prior, and Informed Consent (FPIC), before the approval of any projects that affect their lands, territories or resources, as outlined in the UNDRIP. Obtaining Indigenous Peoples' consent remains a state obligation and the company should not interfere (to ensure it remains Free), not commence the project before the consent has been given (to ensure it remains Prior), provide information in an accessible format (to ensure it remains Informed) and, in line with national and international law, not proceed with the project if consent is withheld (to ensure it respects Consent). International standards make it clear that when it comes to FPIC, companies developing, operating and financing these projects have a responsibility to ensure state-led FPIC processes are adequate, and must take additional steps to prevent contributing to human

rights abuses where states' processes fall short. It is therefore necessary, that FPIC verification forms part of companies ongoing due diligence processes.

In order to strengthen the protection of Indigenous Peoples under the Directive, Member States should adapt the material scope provided in the Annex to explicitly include references to indigenous peoples and their rights. Specifically:

- Clarify the distinction between a company's duty to engage meaningfully with stakeholders under Article 13 of the CSDDD and the State's duty to secure FPIC before approving projects affecting Indigenous lands, resources or cultural heritage, and particularly how engagement with stakeholders is different from securing FPIC.
- Add the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the list of human rights instruments in Annex Part I, Section 2.
- Clarify that Indigenous Peoples are included in the rightsholders mentioned in Part I, Section 1, point 16 of the Annex on the right to land and the prohibition of being unlawfully deprived or evicted of means of subsistence such as land, forest and water.
- Under the same point, explicitly include the right to Free, Prior and Informed Consent under the "right to land", which is only referred to as a Recital in the Directive⁵⁵

⁵⁴ For further details, please see ClientEarth and Frank Bold, "Environmental Due Diligence and Reporting in the EU" (2024), p. 52.

⁵⁵ Recital 33 original CSDDD.

3.3 What parts of the value chain are covered?

The international standards on business and human rights require companies to undertake human rights and environmental due diligence across their whole value chain. This includes carrying out due diligence on their own activities and those of their business relationships, both upstream and downstream across the entire value chain.⁵⁶

However, the CSDDD requires companies to carry out due diligence to identify and address adverse impacts arising only from their own operations, those of their subsidiaries, and those of their business partners in their **“chains of activities” – a new concept introduced by the Directive** that has no pre-existing defined basis under European or international law and diverges from the broader value chain concept as set out in the existing international standards.

TABLE 3
KEY DEFINITIONS

ARTICLE	TERM	DEFINITION
3(1)(g)(i), (ii)	Chain of activities	(i) Activities of a company's upstream business partners related to the production of goods or the provision of services by that company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of products and the development of the product or the service; and (ii) Activities of a company's downstream business partners related to the distribution, transport and storage of a product of that company, where the business partners carry out those activities for the company or on behalf of the company, and excluding the distribution, transport and storage of a product that is subject to export controls under Regulation (EU) 2021/821 or to the export controls relating to weapons, munitions or war materials, once the export of the product is authorised.
3(1)(f)(i)	Direct business partner	An entity with which the company has a commercial agreement related to the operations, products or services of the company or to which the company provides services pursuant to Article 3(1)(g)(i) and (ii).
3(1)(f)(ii)	Indirect business partner	An entity which is not a direct business partner but which performs business operations related to the operations, products or services of the company.

⁵⁶ UNGP 17; OECD Guidelines, Chapter II, para 17.

The term “**chain of activities**” is defined by distinguishing between upstream and downstream.⁵⁷

Activities of a company’s **upstream** business partners related to the production of goods or provision of services by the company are included in the scope of a company’s due diligence obligations. For illustrative purposes, the CSDDD provides a non-exhaustive list of typical activities that companies should consider.

However, activities of a company’s **downstream** business partners are explicitly covered if they fulfil the following two conditions:

- They are related to the distribution, transport and storage of a company’s products
- They are carried out “for the company or on behalf of the company”⁵⁸

The condition that downstream activities must be carried out “for the company or on behalf of the company” creates unnecessary and restrictive complications and fails to clarify how this relates to the Directive’s definition of business relationships, which covers both direct and indirect business partners.

Additionally, the Directive excludes two categories of downstream activities that would otherwise be included:

- The activities of a company’s downstream business partners related to the services of the company.⁵⁹
- Activities related to dual-use items under Regulation 2021/821, and weapons, munitions or other war materials subject to controls once the export of the product is authorised.⁶⁰

The definition of “business partners” in the CSDDD refers to both direct (i.e. contractual) relationships and indirect relationships. This also includes relationships with suppliers of products beyond tier one, for example, a textile mill providing cotton to a garment factory with which the company has a direct contractual relationship, or a mine that supplies a smelter or a subcontracting unit. Similarly, all types of entities in the value chain may be business partners of a company, insofar as they perform operations related to the company’s operations, products or services. Therefore, the definition of chain of activities includes both formal and, where present, informal aspects of the economy.

While the concept of “chain of activities” serves to establish what parts of the value chain are generally covered by the company’s due diligence obligations, there are a number of downstream impacts that can be caused or jointly caused by a company’s actions and omissions either in its own operations or as part of its upstream chain of activities, which companies must then address through appropriate measures. For example, where the impact stems from product design or composition, the company should take measures to modify those elements to prevent or end the harm.

Recommendations



When transposing the CSDDD, Member States should ensure that the definition of chain of activities is aligned with the international standards. This would better contribute to the Directive’s objective of preventing adverse impacts on human rights and the environment. Moreover, as existing examples of due diligence in the downstream value chain show, downstream due diligence is a feasible requirement.⁶¹

Below are three alternative approaches through which Member States could improve the value chain coverage during transposition.

Option A: Alignment with international standards

- Align the approach to the downstream value chain with that of the upstream. Include all downstream activities of a business partner and provide an illustrative, rather than exhaustive, list of downstream activities.
- Expand the definition of business partners to include non-commercial relationships. Companies may be involved in adverse impacts through all types of relationships, both of a commercial and non-commercial nature. For example, a company operating in a conflict-affected area and whose facilities are protected by state security forces may be connected to adverse impacts committed by the security forces when providing such protection.⁶²

⁵⁷ Article 3(1)(g)(i) and 3(1)(g)(ii) CSDDD.

⁵⁸ This distinction is separate from the distinction between direct and indirect business partners, and companies need to consider the activities of indirect partners in relation to distribution, transport and storage carried out for them or on their behalf.

⁵⁹ Recital 26 original CSDDD.

⁶⁰ Article 3(1)(g)(ii) CSDDD.

⁶¹ See Danish Institute for Human Rights, “Due Diligence in the Downstream Value Chain: Case Studies of Current Company Practices” (2024).

⁶² OHCHR, “The Corporate Responsibility to Respect Human Rights. An Interpretive Guide” (2012), pp. 41-42.

Option B: Targeted expansion of the definition

- Remove the limitation to only cover activities performed “for the company or on behalf of the company”. This additional, undefined concept should be deleted during transposition to avoid confusion and overlaps.
- At a minimum, explicitly expand the list of downstream activities to include key activities likely to be associated with adverse impacts.
 - **Waste management:**⁶³ in addition to harming human rights and the environment, (deficient) waste management may lead to large clean-up bills eventually being passed on to public authorities and taxpayers. Adding these activities to the definition of “chain of activities” would contribute to avoiding such outcomes. Moreover, producer responsibility in relation to end-of-life waste management is an established concept under EU law (see for instance Extended Producer Responsibility schemes), and the CSDDD should reinforce and complement such measures to ensure coherent regulation.
 - **Design and composition of the product:** the design and composition of the product are currently referred to in the definition of upstream chain of activities. However, their effects might be felt in the downstream part of the value chain and are dependent on the result of company choices. It is essential that the definition of “chain of activities” clarifies that impacts attributable to the design and composition stages of the value chain should be identified and addressed irrespective of the stage at which the adverse impacts occur.
 - **Use of goods:** the use of a company’s product is an important potential activity through which companies may be connected to adverse impacts. Companies already have an established practice of considering the (reasonably foreseeable) use of their products under product safety legislation. Similarly, eco-design legislation also includes references to certain environmental aspects of a product’s use. Including “use”, “intended use” and “foreseeable misuse” among downstream activities under the CSDDD would foster coherence with such legislation.

- Include the distribution, transport and storage of products subject to export control. Member States should not exclude products whose export have been authorised under export control and, where necessary, amend relevant national legislation on export controls to clarify that companies should carry out due diligence even when export authorisations have already been granted.

Option C: Clarify current ambiguities in the definition

- Clarify that companies are required to address downstream impacts arising from their own operations and those of their subsidiaries, as the exclusion of services from the downstream chain of activities applies only to business partners, and not to services the company itself or its subsidiaries provide.
- Clarify that business partners shall be considered as “business relationships” regardless of their formal or informal status and are an integral part of the chain of activities.
- Member States should clarify that companies are required to identify adverse impacts arising from the use of the services linked to their own operations and those of their subsidiaries, and make the necessary modifications to their business plan, overall strategies and operations, including the design, purchasing and distribution practices of their services.

63 The political agreement of December 2023 between the Council and European Parliament included the activities of downstream business partners related to the waste management of a company’s products. The agreement referred to “disposal of the product, including the dismantling, recycling, composting or landfilling [...] excluding the disposal of the product by consumers”. This reference was later removed due to last-minute pressure in Council by some Member States.

PART 4

CORPORATE OBLIGATIONS UNDER THE CSDDD

4.1	What is human rights & environmental due diligence?	40	4.5	Preventing potential adverse impacts & bringing actual impacts to an end (Articles 10 & 11)	47	4.9	Monitoring (Article 15)	59
4.2	Integrating due diligence into company policies & risk management systems (Article 7)	41	4.6	Remediating negative impacts (Article 12)	53	4.10	Communicating (Article 16)	60
4.3	Identification & assessment (Article 8)	41	4.7	Meaningful stakeholder engagement (Article 13)	55	4.11	The role of industry & multi-stakeholder initiatives & third-party audits in the CSDDD	61
4.4	Prioritisation (Article 9)	45	4.8	Notification mechanism & complaints procedure (Article 14)	58	4.12	Climate-related obligations	63

4.1 What is human rights & environmental due diligence?

HREDD is a methodology through which companies can operationalise their respect for human rights and the environment. The international standards require companies to undertake HREDD to identify, prevent, mitigate and account for harms linked to their operations. Where companies cause or contribute to harm, they are expected to provide or cooperate in providing remediation. Companies should also communicate, track, and monitor the impacts which they have identified or are addressing. The international standard for HREDD was set in 2011 with the adoption of the UNGPs and further reinforced by updates to the OECD Guidelines in 2011 and 2023.

The HREDD process under the CSDDD is inspired by international law standards but deviates in some key respects. The UNGPs and OECD Guidelines provide a useful guide for how the Directive's due diligence provisions should be interpreted, as indicated repeatedly by the recitals to the Directive.⁶⁴

Article 5 of the CSDDD outlines the practical steps that in-scope companies must carry out when conducting risk-based HREDD, including:

- Integrating due diligence into the company's policies and risk management systems (Section 4.2)
- Identifying and assessing actual or potential adverse impacts (Section 4.3) and, where necessary, prioritising actual and potential adverse impacts (Section 4.4)
- Preventing and mitigating potential adverse impacts and bringing actual adverse impacts to an end and minimising their extent (Section 4.5)
- Providing remediation for actual adverse impacts (Section 4.6)
- Carrying out meaningful engagement with stakeholders (Section 4.7)
- Establishing and maintaining a notification mechanism and a complaints procedure (Section 4.8)
- Monitoring the effectiveness of a company's due diligence policy and measures (Section 4.9)
- Publicly communicating on due diligence (Section 4.10)

⁶⁴ Recitals 6, 37, 51, 67 original CSDDD.

4.2 Integrating due diligence into company policies & risk management systems (Article 7)

Article 7 of the CSDDD requires companies to integrate due diligence into all their relevant policies and risk management systems and have in place a due diligence policy that ensures risk-based due diligence.

The due diligence policy must be developed in consultation with the company's employees and their representatives. The policy must, as a minimum, define the company's approach to due diligence and set out a code of conduct for the company, its subsidiaries, and its business partners. The policy must also describe how the company is putting due diligence into effect and how it is verifying compliance with its code of conduct both internally and with its business partners.

Companies are further required to update their due diligence policies without undue delay after a significant change occurs. They are also required to review and update their due diligence policies at least every two years.⁶⁵ Note that those obligations under Article 7 are distinct from the monitoring obligations under Article 15, which require companies to carry out periodic assessments of their due diligence obligations (see Section 4.9).

Recommendations



Member States should:

- **Ensure that companies embed their due diligence responsibilities into their policies and management systems**, including by requiring formal approval by senior management.

4.3 Identification & assessment (Article 8)

The international standards on business and human rights require companies to identify and assess actual and potential adverse impacts with which they may be involved either through their own activities or as a result of their business relationships,⁶⁶ or actual and potential adverse impacts associated with the company's operations, products or services.⁶⁷

Companies should begin by carrying out a broad scoping exercise to identify where risks are most likely to be present and most significant across its operations and business relationships, including in its supply chains.⁶⁸ This first step allows companies to collect data about sectoral, geographic, product and enterprise risk factors, including known risks the enterprise has faced or is likely to face.⁶⁹

Having completed the broad scoping, the company should then conduct in-depth assessments of prioritised operations, suppliers, and other business relationships in order to identify and assess specific actual and potential adverse impacts.⁷⁰ When performing such assessments, companies should use a methodology that is fit to identify the risks and impacts that can be expected in their chain of activities.

Companies should also assess their involvement with the actual or potential adverse impacts identified in order to determine the appropriate responses. Specifically, they should assess whether the enterprise caused (or would cause) the adverse impact or contributed (or would contribute) to the adverse impact; or whether the adverse impact is (or would be) directly linked to its operations, products or services by a business relationship.⁷¹

⁶⁵ Article 7(3) CSDDD.

⁶⁶ UNGP 18.

⁶⁷ OECD Guidelines, Chapter II, para 15; OECD Due Diligence Guidance for RBC, Section II, Chapter 2.

⁶⁸ OECD Due Diligence Guidance for RBC, Section II, Chapter 2, para 2.1.

⁶⁹ OECD Due Diligence Guidance for RBC, Section II, Chapter 2, para 2.1.

⁷⁰ OECD Due Diligence Guidance for RBC, Section II, Chapter 2, para 2.2.

⁷¹ OECD Due Diligence Guidance for RBC, Section II, Chapter 2, para 2.3.

TABLE 4
KEY DEFINITIONS

ARTICLE	TERM	DEFINITION
3(1)(d)	Adverse impact	An adverse environmental impact or adverse human rights impact.
3(1)(f)	Business partner	an entity: (i) with which the company has a commercial agreement related to the operations, products or services of the company or to which the company provides services pursuant to point (g) ("direct business partner"); or (ii) which is not a direct business partner but which performs business operations related to the operations, products or services of the company ("indirect business partner").
3(1)(l)	Severe adverse impact	Adverse impact that is especially significant on account of its nature, such as an impact that entails harm to human life, health or liberty, or on account of its scale, scope or irremediable character, taking into account its gravity, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact, within a reasonable period of time.
3(1)(o)	Appropriate measures	Measures that are capable of achieving the objectives of due diligence by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors.
3(1)(u)	Risk factors	Facts, situations or circumstances that relate to the severity and likelihood of an adverse impact, including facts, situations or circumstances at the level of the business partner, such as whether the business partner is not a company covered by this Directive or other comparable mandatory sustainability due diligence legal acts; at the level of geography and context, such as the level of law enforcement with respect to the type of adverse impact; and at the level of sectors, of business operations, and of products and services.
3(1)(v)	Severity of an adverse impact	The scale, scope or irremediable character of the adverse impact, taking into account the gravity of an adverse impact, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact within a reasonable period of time.

4.3.1

Identification & assessment of impacts

Under Article 8 of the CSDDD, companies have the obligation to take “appropriate measures” to identify and assess actual and potential adverse impacts arising from their own operations, as well as the operations of their subsidiaries and business partners in their chains of activities.

The obligation includes 2 steps, amended by Omnibus I (Article 8.2):

- A. Carry out a **scoping exercise** to identify general areas across the company's own operations and those of its subsidiaries and business partners where adverse impacts are most likely to occur and to be most severe. The CSDDD does not require companies to systematically identify adverse impacts at the entity level, but rather to scope general areas;
- B. Based on the results of the scoping exercise, carry out **an in-depth assessment** in the areas where adverse impacts were identified to be most likely to occur and most severe.

For both steps, companies should take into account “relevant risk factors”, defined as “facts, situations or circumstances that relate to the severity and likelihood of an adverse impact”. More specifically, risk factors include facts, situations or circumstances:

- at the level of the business partner, such as whether the business partner is not a company covered by the CSDDD or other comparable mandatory sustainability due diligence legal acts;
- at the level of geography and context, such as the level of law enforcement with respect to the type of adverse impact; and
- at the level of sectors, of business operations, and of products and services.⁷²

The term “areas” should not be interpreted restrictively to mean only geographic areas. On the contrary, it refers to the broad categories or segments of the operations of the company, its subsidiaries and its business partners in the company's chain of activities (for instance, specific jurisdictions, value chain stages or types of relationships) where adverse impacts are most likely to occur or be most severe.

When identifying and assessing adverse impacts, companies should also identify and assess the impact of a business partner's business model and strategies, including trading, procurement and pricing practices.⁷³

Furthermore, companies should consider that human rights abuses are more likely to occur and be severe in conflict-affected and high-risk areas (as defined in Regulation (EU) 2017/821, also known as the Conflict Minerals Regulation). As a result, when performing in-depth assessments as part of the identification and assessment process, they should take into account that such situations constitute particular geographic and contextual risk factors.⁷⁴ This stems from the requirement that companies tailor their due diligence to conflict-affected and high-risk areas, in accordance with international humanitarian law.⁷⁵ In such a case, companies are expected to implement heightened human rights due diligence which entails conducting an assessment which looks beyond the individual business partner.⁷⁶

Regarding the frequency of the impact identification, Recital 41 of the original CSDDD clarifies that the identification of adverse impacts should be done in an iterative way that can regularly respond to significant changes and at least every twelve months. The iterative nature of the identification process extends to its results. If companies cannot obtain some of the necessary information in their chain of activities, they should be able to provide reasons for such an outcome and are required to take the necessary steps to obtain it.⁷⁷ The Directive specifies that companies can participate in industry initiatives or multi-stakeholder initiatives (MSIs) or can use the services of third-party verifiers as a support in carrying out these processes (see Section 4.11).

4.3.2

Access to information

The amended CSDDD makes information requests by companies to their business partners more targeted and collaborative.⁷⁸ This approach seeks to protect small and medium-sized business partners from excessively general, wide-ranging, and standardized information requests and questionnaires.⁷⁹ However, overly strict application of this approach may undermine the effectiveness of the due diligence process and companies' genuine efforts to prevent human rights and environmental harm. Fortunately, Member States can address some of the shortcomings of this approach during transposition or when guiding companies on CSDDD implementation.

⁷² Article 3(1)(u) CSDDD.

⁷³ Recital 42 original CSDDD.

⁷⁴ Recital 42 original CSDDD.

⁷⁵ As laid out in the Geneva Conventions of 1949 and their additional protocols.

⁷⁶ Companies can rely on the Commission's guidance on the assessment of risk factors associated with conflict-affected and high-risk areas, which should take into account the UN Working Group on Business and Human Rights and UN Development Programme's guidance “[Heightened Human Rights Due Diligence](#)

[for Business in Conflict-Affected Contexts: A Guide](#)” (2022). See also ECCHR, “[Funding Conflict: Heightened human rights due diligence in conflict-affected areas, with a case study on Lafarge and its investors](#)” (2023).

⁷⁷ Recital 41 original CSDDD.

⁷⁸ For a comparison with the CSRD, see Frank Bold, “[B2B Information Requests Under the Revised CSRD and CSDDD](#)” (2026).

⁷⁹ OECD Watch, “[Updated – Alignment within Reach: Remaining Opportunities to Align the EU CSDDD with the OECD Guidelines](#)” (2026), p. 27.

Scoping exercise

During the **scoping exercise**, companies should rely solely on “reasonably available information”, meaning “information that is reasonably available to them”. While the CSDDD does not define the concept of “reasonably available information”, companies have a degree of flexibility in judging what information is reasonably available to them. Recital 39 of the Omnibus I Directive provides that, as a general rule, this precludes companies from requesting information from business partners. However, companies are allowed to derogate from this rule, especially in light of the objectives of due diligence. For example, the OECD Due Diligence Guidance gives examples of “reasonably available information”, including information in the company’s possession, as well as information in the public domain (e.g., reports of international organisations, OSINT analysis, risk mapping & analysis tools available on the market, etc.).

In-depth assessment

The **in-depth assessment** should be aimed at obtaining accurate and reliable information, in particular about the nature, extent, causes, severity and likelihood of the identified actual or potential adverse impacts. This should enable the company to conduct, where relevant, the prioritisation of identified actual or potential adverse impacts and adopt appropriate measures to address them.⁸⁰ At the same time, Omnibus I introduces limitations on how companies may request information from business partners during the in-depth assessment phase.

First, companies should not be required to request any information from business partners where no likely and severe risks were identified.⁸¹ Furthermore, companies can request information from business partners only where that information is necessary and, for partners with fewer than 5,000 employees, only when the information cannot reasonably be obtained by other means.⁸² In addition, where the necessary information can be obtained from different business partners, companies should prioritise requesting information, where reasonable, directly from the business partner(s) where the adverse impacts are most likely to occur.⁸³ In general, any request should be targeted, reasonable and proportionate.⁸⁴

Finally, where adverse impacts are identified as equally likely to occur or equally severe in several areas, companies may sequence the assessment by focusing on areas which involve direct business partners first.⁸⁵ However, this does not give companies permission to focus solely on direct partners during the in-depth assessment. It only allows companies to prioritise assessing areas involving direct business partners if an objective analysis demonstrates that impacts in different areas are truly equivalent (*equally likely or equally severe*). This, in practice, seems to be an unlikely scenario given the composite and qualitative nature of severity. There can therefore be no prioritisation without substantiated equivalence.

Appropriate resources during scoping and in-depth assessment

The CSDDD requires Member States to ensure that during the identification and assessment phases, companies should make use of “appropriate resources”.

For the scoping exercise, these can include “independent reports, digital solutions, industry and multi-stakeholder initiatives and information gathered through the notification mechanism and the complaints procedure”. While companies should be able to obtain the necessary information through industry and multi-stakeholder initiatives to avoid duplicative requests, they also remain free to obtain the information individually.

Appropriate resources for the scoping exercise can cover significant sources of information. For example, the OECD Due Diligence Guidance lists a wide range of information sources for desk-based research, such as contracts, licenses, baseline studies/impact assessments, data produced by government bodies on employment, poverty levels, health and education standards, wages, conditions of work and occupational health and safety, studies and indices by academics, NHRIs, government agencies and industry bodies, NGO reports, and so on.⁸⁶

For the in-depth assessment, the type of appropriate resources changes. The OECD Due Diligence Guidance identifies a wide range of measures that are available, including on-site inspections, document reviews, worker interviews, focus group discussions, and stakeholder engagement.⁸⁷ Importantly, the scoping exercise will also inform the nature of the appropriate resources deployed. For example, if a high risk to freedom of association is identified, worker interviews can be an appropriate action, whereas risks to occupational health and safety may require other identification strategies.

Recommendations



Member States should:

- **Define “reasonably available information” in a non-exhaustive and open-ended manner** that is consistent with the OECD Due Diligence Guidance. Member States should clarify that companies may need to request information from business partners in certain circumstances, such as when companies judge that this information is reasonably available to them and can be requested in a targeted manner that increases efficiency.
- **Facilitate and encourage open data initiatives to map supply chains** and to identify risks and types of adverse impacts across sectors and countries in order to avoid duplications, to ease the burden for all companies regardless of their capacities, and to facilitate access to this information for SMEs in particular.

⁸⁰ Recital 40 Omnibus I Directive.

⁸¹ Recital 40 Omnibus I Directive.

⁸² Article 8(2a)(a) CSDDD.

⁸³ Article 8(2a)(b) CSDDD.

⁸⁴ Recital 41 Omnibus I Directive.

⁸⁵ Article 8(2a)(c) CSDDD.

⁸⁶ OECD Due Diligence Guidance for RBC, Annex, pp-63-64.

⁸⁷ OECD Due Diligence Guidance for RBC, Annex, p. 67.

4.4 Prioritisation (Article 9)

The international standards on business and human rights provide that, while companies should address all of their adverse human rights and environmental impacts, it may not always be possible to do so simultaneously. Where it is not feasible to address all identified potential and actual adverse impacts at once, companies should prioritise the order in which they take action based on the severity and likelihood of adverse impacts.⁸⁸ Nonetheless, once the most significant impacts are addressed, companies must move on to address less significant impacts.⁸⁹

Similarly, under the CSDDD, where it is not feasible to prevent, mitigate, bring to an end, or minimise all identified adverse actual and potential impacts at the same time and to their full extent, companies should prioritise their efforts.⁹⁰ This prioritisation must be based on the severity and likelihood of the impacts.⁹¹

The definition of “severity” and “likelihood” is aligned with the UN and OECD standards, although the international standards prioritise severity over likelihood. The severity of an adverse impact should be assessed based on its scale, scope, or irremediable character, including “the number of individuals that are or will be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact within a reasonable period of time”.⁹²

Specific company-related factors, such as “actual or potential influence of the company on its business partners, the level of involvement of the company in the adverse impact, the proximity to the subsidiary or the business partner, or its potential liability” cannot be considered relevant in the prioritisation of adverse impacts.⁹³

TABLE 5
KEY DEFINITIONS

ARTICLE	TERM	DEFINITION
3(1)(l)	Severe adverse impact	Adverse impact that is especially significant on account of its nature, such as an impact that entails harm to human life, health or liberty, or on account of its scale, scope or irremediable character, taking into account its gravity, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact, within a reasonable period of time.
3(1)(v)	Severity of an adverse impact	The scale, scope or irremediable character of the adverse impact, taking into account the gravity of an adverse impact, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact within a reasonable period of time.

⁸⁸ UNGP 24; OECD Guidelines, Chapter II, para 19.

⁸⁹ OECD Due Diligence Guidance for RBC, Section II, Chapter 2, para 2.4.

⁹⁰ Article 9(1) CSDDD. Conversely, if it is possible to address all impacts at the same time, companies are not allowed to prioritise.

⁹¹ Article 9(2) CSDDD.

⁹² Recital 44 original CSDDD.

⁹³ Recital 44 original CSDDD.

Importantly, Article 9 makes it clear that prioritisation does not relieve companies of their obligation to address all identified adverse impacts. Prioritisation should instead operate as a **sequencing mechanism** that applies when it is not possible to address all impacts at the same time. Companies must therefore deal with less severe and less likely adverse impacts once the most severe and most likely ones have been addressed “within a reasonable time”.⁹⁴ Moreover, once companies have taken or put in place appropriate measures to address a prioritised impact, they do not need to wait for this impact to be fully or actually addressed before initiating measures to address impacts that have been deemed less severe and less likely.

Omnibus I introduced a new paragraph 4 into Article 9 of the CSDDD. This provision clarifies that where prioritisation decisions are made in accordance with Article 9, the mere fact of not having addressed a less significant adverse impact shall not expose the company to penalties under Article 27.⁹⁵ It recognises that a company should not be sanctioned because lower-priority impacts remain pending while more severe risks are being addressed. **However, this provision should be understood as establishing conditional and temporal protection from penalties. This protection does not apply where prioritisation does not comply with Article 9.** For instance, a company will still face penalties if:

- Prioritisation decisions are not based on the Directive’s severity and likelihood criteria;
- Lower-priority impacts are addressed too late because the company did not address the most severe and most likely adverse impacts within a reasonable time; or
- Less significant adverse impacts are never addressed, despite the company having already dealt with the most severe and most likely impacts.

Recommendations



Member States should:

- **Ensure that companies properly and accurately document and justify their prioritisation decisions.**

Companies should document and justify why some impacts were addressed first and why others were deemed less urgent to address initially, as well as the expected and actual time needed to appropriately and meaningfully address various impacts according to their prioritisation schedule. Such documentation and justification will ensure transparency and help national authorities and courts assess the appropriateness of prioritisation decisions.⁹⁶

⁹⁴ Recital 44 original CSDDD.

⁹⁵ Article 9(4) CSDDD.

⁹⁶ Article 27(2)(d) CSDDD; Recital 80 original CSDDD.

4.5 Preventing potential adverse impacts & bringing actual impacts to an end (Articles 10 & 11)

4.5.1

A company's involvement in the adverse impact

Under the international framework on business and human rights, companies are expected to cease, prevent, and mitigate adverse impacts. A company's level of involvement in an adverse impact determines the scope of actions the company should take to address the harm. Consequently, companies must understand their involvement in relation to a given impact:

- Companies **cause** an impact where their own activities result in that impact.
- Companies **contribute** to an impact where their activities, in combination with other actor(s), cause the harm, or where their activities facilitate another actor to cause the harm.
- Companies are directly **linked** to an impact where there is a link between the harm and their products, services, or operations through business relationships with other actors.

However, the CSDDD uses a different terminology to determine the level of relevant involvement of a company in an adverse impact:

- A company may have exclusively **caused** the impact;
- A company may have contributed to an impact by **causing it jointly with a subsidiary or a business partner** (this extends to both acts and omissions, including those where a company facilitates or incentivises a business partner to cause an adverse impact);⁹⁷
- An impact may be present in a company's chain of activity but be **exclusively caused by a business partner**.

The type of actions that a company may take to address such impacts – as well as the level of legal expectations – will depend on which one of these three categories of involvement applies.

Despite diverging from the terminology set out under the international standards, Recitals 45 and 53 of the original CSDDD explicitly equate the different involvement categories under the CSDDD with those used in the international frameworks. However, the CSDDD focuses on subsidiaries or business partners when describing joint causation and ascribes direct linkage only to cases in which the impact has been caused exclusively by a business partner.

Conversely, contribution under the international standards includes the situation in which a company causes harm either directly in combination with another actor or through some outside entity (e.g., business, government, or other third-party). Equally, linkage under the international framework requires the company to be linked to an impact through a business relationship but does not require the impact to be exclusively caused by the business partner. Member States should address these discrepancies during transposition to ensure full alignment with international standards.

Importantly, according to the international standards, a relationship between a company and an impact is not static but can evolve over time. For example, according to the OECD Due Diligence Guidance,⁹⁸ when a company is linked to an impact in its chain of activities but repeatedly fails to address it over time despite being aware of it, its degree of involvement can evolve. For example, by consistently failing to address an adverse impact linked to a business partner, it can be considered that the company is condoning, facilitating or even incentivising the business partner. The company's level of involvement can therefore evolve from being directly linked to an impact to contributing to an impact, which can consequently affect how a company's responsibility is evaluated.⁹⁹

⁹⁷ Recital 53 original CSDDD. It must be noted that, under international standards, 'incentivising' a business partner does not require intention but merely the increase of the risk of an adverse impact (see OECD Guidance, page 70). As per Recital 53, the CSDDD must be interpreted in line with said standards.

⁹⁸ OECD Due Diligence Guidance for RBC, Annex, p. 71.

⁹⁹ See Clean Clothes Campaign, ECCHR, Public Eye and SOMO, "Respecting rights or ticking boxes? Legislating human rights due diligence" (2023).

The international standards base their expectation for companies to respond to impacts on their level of involvement in (or relationship to) them. Companies causing the impact should cease or prevent the impact and remedy it. Companies contributing to the impact should cease or prevent their contribution and remedy the impact to the extent to which the company contributed to the impact. Companies contributing to the impact should also use leverage to mitigate remaining impacts and prevent future impacts and use leverage to encourage remedy of any remaining impacts. Finally, companies directly linked to impacts should use their leverage to influence the responsible entity(ies) to cease, mitigate, and remedy the harm.

The CSDDD defines a similar way in which companies must prevent (Article 10), bring to an end to (Article 11), and remediate impacts (Article 12) depending on their level of involvement. This is to reflect the fact that potential and actual adverse impacts may be caused by a company alone, jointly with one or more actors, or by their business partners only, as well as the fact that adverse impacts may happen at different points in a company's chain of activities.

FIGURE 2
**DEGREE OF INVOLVEMENT
UNDER THE CSDDD**

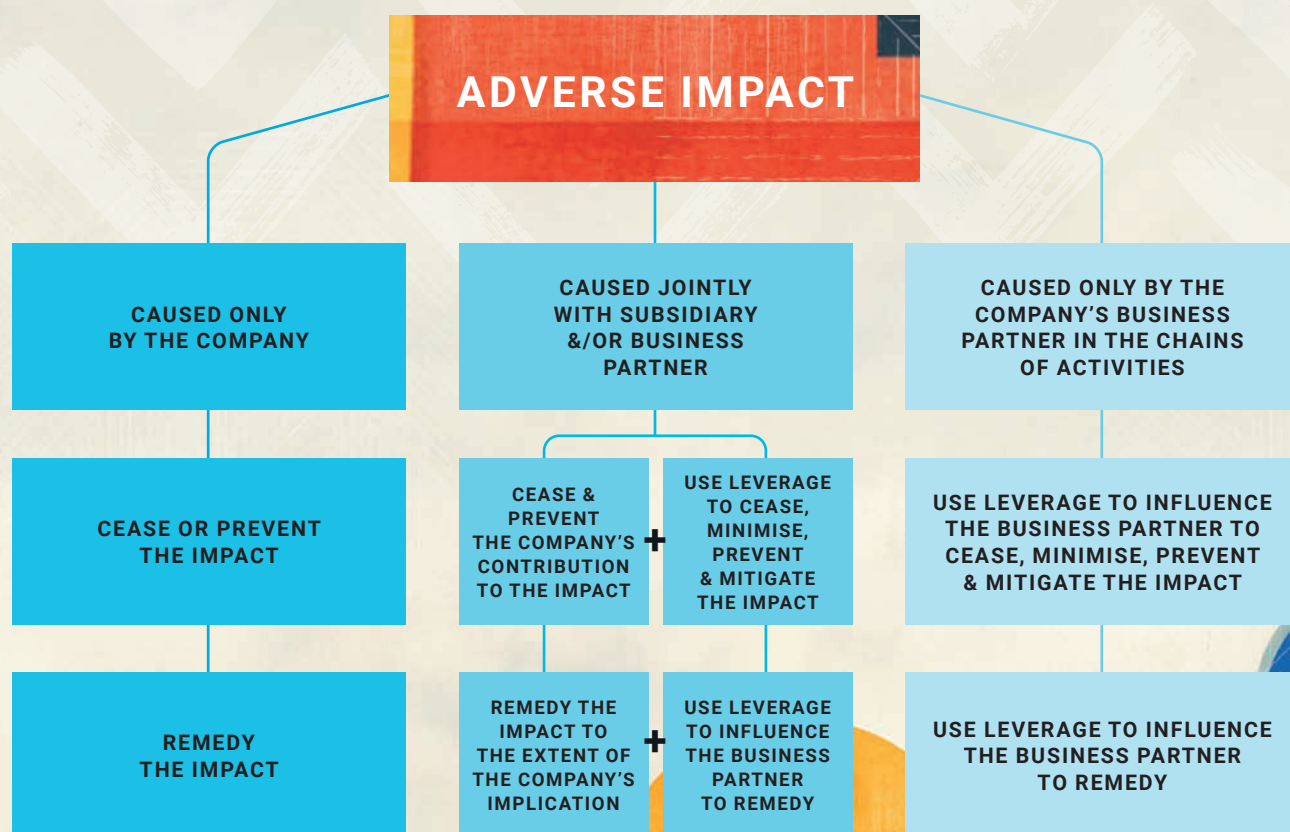


TABLE 6
KEY DEFINITIONS

ARTICLE	TERM	DEFINITION
3(1)(i)	SME	Micro, small or a medium-sized undertaking, irrespective of its legal form, that is not part of a large group, as those terms are defined according to Article 3(1), (2), (3) and (7) of the Accounting Directive.
3(1)(l)	Severe adverse impact	Adverse impact that is especially significant on account of its nature, such as an impact that entails harm to human life, health or liberty, or on account of its scale, scope or irremediable character, taking into account its gravity, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact, within a reasonable period of time.
3(1)(o)	Appropriate measures	Measures that are capable of achieving the objectives of due diligence by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors.
3(1)(u)	Risk factors	Facts, situations or circumstances that relate to the severity and likelihood of an adverse impact, including facts, situations or circumstances at the level of the business partner, such as whether the business partner is not a company covered by this Directive or other comparable mandatory sustainability due diligence legal acts; at the level of geography and context, such as the level of law enforcement with respect to the type of adverse impact; and at the level of sectors, of business operations, and of products and services.

4.5.2

Preventing potential adverse impacts

Once potential adverse impacts have been identified and prioritised according to Articles 8 and 9, the company has an obligation to take appropriate measures to prevent them (Article 10). When prevention is not possible, the company has an obligation to adequately mitigate potential adverse impacts. This obligation pertains to both impacts that have been or should have been identified.

4.5.3

Bringing actual impacts to an end

Having identified and prioritised actual adverse impacts according to Articles 8 and 9, the company must take appropriate measures to end them (Article 11). In every situation in which an impact cannot be immediately brought to an end, the company has an obligation to minimise its extent.

4.5.4

Appropriate measures under Articles 10 & 11

The prevention, mitigation, and termination of impacts are achieved by the company taking “appropriate measures” to those ends. Articles 10 and 11 determine “appropriate measures” in combination with Article 3(1)(o), which clarifies that those measures are capable of achieving the objectives of due diligence and are capable of effectively addressing the impacts at hand. Appropriate measures must therefore be effective in preventing or terminating adverse impacts. They must be commensurate to the likelihood and severity of the impact and must be reasonably available to the company.

Both Articles 10 and 11 foresee that the appropriate measures should take into account the relations between the company and the impact (causing, jointly causing or causation exclusively by a business partner) and introduce a number of categories of measures to be taken. Several of the categories of measures focus on addressing the company's own actions, such as neutralising the impact or minimising its extent, making financial or non-financial investments into facilities or processes and making modifications or improvements to the company's plans, strategies, and operations, including purchasing practices and design and distribution practices. Others guide the company in strengthening its due diligence engagement with business partners, such as by seeking contractual assurances that the partner will comply with the company's prevention action plan, or by providing financial or other support to a partner that is a small or medium-sized enterprise (SME). In addition, Articles 10(3) and 11(4) note that companies may take, where relevant, measures in addition to those listed. These two provisions helpfully signal that in certain contexts, companies will need to go beyond the broad measures suggested by the Directive to effectively address the impacts. The definition in Article 3(1)(o) will again be of guidance for companies to determine which measures will be expected as appropriate.

Recital 66 of the original CSDDD clarifies that, while contractual assurances can be an important tool to request that business partners respect human rights and the environment, carry out due diligence and prevent harm, a company cannot transfer its own responsibilities to its business partners. Otherwise, this so-called “contractual cascading” would threaten accountability and effective change across chains of activities.

Article 3(1)(o) states that appropriate measures must “be reasonably available to the company”. However, the article does not clarify which constraints to the availability of a certain measure the company should consider, nor does it set expectations regarding the financial resources a company should devolve to address risks connected to its operations and business relationships.

Finally, the Directive specifies that companies can participate in MSIs or can use the services of third-party verifiers as a support to these processes (see Section 4.11). It is noteworthy that consultation through MSIs can be helpful to determine broad or general risks of negative impacts, for example, at country or sectoral level. However, they cannot and must not replace consultation with stakeholders directly affected by the operations or relationship, for instance at factory or site level.

Recommendations



Member States should:

- **Clarify that measures carried out by companies must not only meet the requirements of Article 10 and 11 but also reflect Article 3(1)(o)**, namely, to be effective in preventing or terminating adverse impacts, commensurate to their likelihood and severity, and reasonably available to the company. These articles therefore need to be read together.
- **Require companies to build financial and technical capacities and competences** to ensure appropriate measures to address the risks linked to their chain of activities are available to them.
- **Clarify that companies must develop a preventive or corrective action plan** addressing the actual or potential harm in consultation with affected stakeholders and/or their representatives including NGOs, trade unions and other stakeholder organisations. Given the specific nature of impacts, the added value of MSIs can be limited and should not replace consultation with affected stakeholders at the level where the impact takes place.
- **Ensure companies identify the root causes of why some impacts could not be prevented, mitigated or brought to an end** when documenting their due diligence process and corrective action plans, and explain how they are addressing such issues, and if not, why that is the case.
- **In relation to contractual assurances, clarify that the allocation of tasks** between contracting parties must not amount to a cascading transfer of due diligence obligations to a business partner.

4.5.5

Responsible disengagement

In certain cases, international standards on business and human rights require that the appropriate response to prevent, mitigate, or cease an impact may include temporary suspension of a business relationship while pursuing ongoing risk mitigation or, as a last resort, disengagement from the business relationship altogether. Disengagement is often envisioned after failed attempts at prevention or mitigation, or where the company deems this is not feasible, or because of the severity of the adverse impact.¹⁰⁰ However, in such situations, like systemic State-Imposed Forced Labour, disengagement may be considered an appropriate measure in its own right. Companies should also take into account potential social, environmental, and economic adverse impacts when considering taking the decision to disengage.¹⁰¹

Under Articles 10(6) and 11(7) of the CSDDD, disengagement is also defined as a last resort. When a potential or actual adverse impact cannot be prevented, mitigated, brought to an end, or minimised, a company must comply with the following requirements:

- A. Refrain from entering into new, or extending existing relationships with the business partner involved in the impact;
- B. Suspend the business relationship to use or increase leverage; and
- C. Adopt and implement an enhanced prevention¹⁰² or corrective¹⁰³ action plan without undue delay and provided that there is a reasonable expectation that such efforts will succeed.

The suspension of the business relationship is designed to be **temporary**, as it “should end once the adverse impact is addressed”.¹⁰⁴ The decision to suspend a business relationship should also consider potential social, environmental, and economic adverse impacts that may arise as a consequence. If suspending the relationship would likely result in more severe adverse impacts occurring than would be the case by maintaining the relationship, the company is not required to suspend it. However, the company is required to be prepared to justify its decision to a supervisory authority.

When a company chooses to suspend a business relationship, it must take steps to prevent, mitigate, or bring to an end the impacts of the suspension, provide reasonable notice to the business partner, and keep its decision under review.

The Omnibus I Directive removed the original requirement to terminate a business relationship, as well as the requirement to consult stakeholders when deciding to suspend a business relationship. However, since Articles 10(6) and 11(7), as well as Article 13 on stakeholder engagement are not subject to maximum harmonisation under Article 4 of the CSDDD, **Member States can re-introduce this stakeholder engagement requirement during transposition**. Furthermore, the CSDDD still requires companies to consult with relevant stakeholders when developing enhanced prevention and corrective action plans.¹⁰⁵

Both Articles 10(6) and 11(7) set out that Member States should provide for an option to suspend the business relationship in contracts governed by their laws.

Where the company decides **not** to suspend the business relationship pursuant to Articles 10(6) and 11(7), it must:

- Monitor the potential or actual adverse impact;
- Periodically assess its decision and whether further appropriate measures are available.

As a result of the amendments introduced by the Omnibus I Directive, a company will not face penalties under Article 27 or liability under Article 29 when it continues to engage with a business partner as long as there is a reasonable expectation that the enhanced prevention or corrective action plan will succeed.¹⁰⁶ For enforcement purposes, the standard of success should be interpreted as an objective, evidence-based rather than a company's subjective belief.

¹⁰⁰ OECD Guidelines, Chapter II, para 25. Commentary to UNGP 19 also provides that “There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.”

¹⁰¹ OECD Guidelines, Chapter II, para 25.

¹⁰² Article 10(6) CSDDD.

¹⁰³ Article 11(7) CSDDD.

¹⁰⁴ Recital 44 Omnibus I Directive.

¹⁰⁵ Article 13(3)(b) CSDDD.

¹⁰⁶ Articles 10(6) and 11(7) CSDDD.

FOCUS BOX 5

WHEN RESPONSIBLE TERMINATION MIGHT BE NECESSARY

In accordance with international standards on business and human rights, the original CSDDD required companies to terminate their relationship with business partners involved in a severe adverse impact in specific situations (e.g. if the implementation of the enhanced action plan had failed). The original Directive made it clear that this was the case for situations involving state-imposed forced labour (SIFL), in which disengagement is not a last resort measure but the appropriate approach from the start. The same approach could be used in certain cases of armed conflict or in relation to authoritarian regimes.¹⁰⁷ However, after the Omnibus I amendments, such a scenario would now result in a long-term suspension.

Nonetheless, since Articles 10(6) and 11(7) are not subject to maximum harmonisation under Article 4 of the CSDDD, Member States can fill this gap by clarifying responsible disengagement, including how to terminate a business relationship responsibly in specific situations. This approach would not only improve alignment with international standards, but it would also provide companies with clarity on to how to handle situations where adverse impacts continue, despite having complied with the amended CSDDD's responsible disengagement provisions. It would also help companies mitigate the reputational, financial, and legal consequences of maintaining the problematic business relationship.¹⁰⁸

Recommendations

Member States should:

- **(Re-)introduce an obligation for companies to terminate business relationships in specific situations**, such as after failed attempts at preventing or mitigating severe impacts, when adverse impacts are irremediable, where there is no reasonable prospect of change, or when the entity causing the severe adverse impacts does not take immediate action to prevent or mitigate them. Guidance can be taken from the OECD Due Diligence Guidance.¹⁰⁹
- **Require companies to engage in a timely, effective, and meaningful manner** with stakeholders impacted by a potential decision to disengage before that decision is taken to properly identify the risks associated with disengagement, and address the adverse impacts related to the decision to disengage in consultation with them.
- **Ensure that their transposition measures integrate the Directive's specific provisions¹¹⁰** in relation to situations where there is no likelihood of success, for example in the context of state-imposed forced labour, as well as certain situations of armed conflict, or when operating in authoritarian regimes. To define this, guidance can be taken from the OHCHR.¹¹¹



¹⁰⁷ For further understanding of challenging contexts, such as in the case of armed conflict, guidance can be taken from the OHCHR. See OHCHR, "Business and Human Rights in Challenging contexts" (2023).

¹⁰⁸ Commentary to UNGP 19.

¹⁰⁹ See OECD, "OECD Due Diligence Guidance for Responsible Business Conduct" (2018).

¹¹⁰ Recitals 50 and 57 original CSDDD.

¹¹¹ See OHCHR, "Business and Human Rights in Challenging Contexts" (2023).

4.6 Remediating negative impacts (Article 12)

International standards on business human rights require companies to provide for or cooperate in the remediation of impacts that they have caused or contributed to. Companies are also expected to use leverage to encourage business relationships to remediate impacts to which the company is only directly linked to.¹¹²

Remediation must be adequate, effective and prompt.¹¹³ Concretely, and where possible, companies must restore the affected person or persons to the situation they would be in had the adverse impact not occurred and enable remediation that is proportionate to the significance and scale of the adverse impact. Remedy can take different forms, including apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition, depending on the nature and extent of the adverse impact.¹¹⁴

Under the CSDDD, companies are obliged to provide remediation in cases where they caused or jointly caused an adverse impact. Companies may choose to voluntarily remedy impacts that have been caused only by business partners or use their ability to influence the business partner that is causing the adverse impact to provide remediation.

Remediation is defined in Article 3(1)(t) as restoring affected person(s), communities, or the environment to a situation equivalent to or as close as possible to one in which the impact had not occurred. It should include financial or non-financial compensation, as well as cover the costs incurred by public authorities for any necessary remedial measures. However, the responsibility for bearing the cost of the remediation should be proportionate to the company's implication in the adverse impact. When adopting remedial measures, companies must consult with relevant stakeholders,¹¹⁵ including victims of adverse impacts.

TABLE 7

KEY DEFINITIONS

ARTICLE	TERM	DEFINITION
3(1)(t)	Remediation	Restoration of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would have been in had an actual adverse impact not occurred, in proportion to the company's implication in the adverse impact, including by financial or non-financial compensation provided by the company to a person or persons affected by the actual adverse impact and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures.

¹¹² UNGP 22; OECD Guidelines, Chapter II, paras 15, 16, 23; OECD Guidance for RBC, Section II, Chapter 6.

¹¹³ See OHCHR, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (2005).

¹¹⁴ Commentary to UNGP 25.

¹¹⁵ Article 13(3)(d) CSDDD.

Member States should improve the definition of remediation by aligning it more closely with the international standards on remedy. For example, remediation should be commensurate to the nature and extent of the harm suffered by the victim. The definition could also expressly reflect the different substantive forms of remedy recognised under the international normative framework.¹¹⁶ Member States can equally make references to the preventative measures in Article 10 to include harm prevention through, for example, guarantees of non-repetition.¹¹⁷

In practice, companies could be encouraged to establish, as early as possible in the buyer/supplier relationship or as part of contractual arrangements, a framework for joint responsibility based on the involvement framework (causing, contributing, directly linked). This could help avoid delays when a forced labour case is identified, for instance.

Recommendations



Member States should:

- **Align the definition of remediation** under the CSDDD with the international standards on remedy.
- **Clarify that companies must provide adequate, effective and prompt remediation**, which may entail different forms of remedy, such as:
 - Cessation of violation(s);
 - Full restitution or reparation, namely restoration of pre-violation status;¹¹⁸
 - Compensation for quantifiable damages (medical costs, lost earnings, material and moral harm). In addition, and subordinate to full restitution, compensation for the part that could not be fully restituted;
 - Rehabilitation;¹¹⁹
 - Satisfaction;¹²⁰
 - Guarantees of non-repetition.¹²¹
- **Require companies to use their influence over the business partner** causing the adverse impact to provide remediation in cases where the actual adverse impact is caused only by the company's business partner.

¹¹⁶ See Human Rights Committee, "General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 15; European Court of Human Rights (ECtHR), *El-Masri v The Former Yugoslav Republic of Macedonia* App No 39630/09 (Grand Chamber, 13 December 2012); ECtHR, *Kudła v Poland* App No 30210/96 (Grand Chamber, 26 October 2000); ECtHR, *Đorđević v Croatia* App No 41526/10 (24 July 2012); ECtHR, *Van Oosterwijk v Belgium* App No 7654/76 (6 November 1980).

¹¹⁷ Commentary to UNGP 25.

¹¹⁸ For example, through release, return of property, reinstatement. This should be, where possible, a *restitutio in integrum* and if not possible, be as close as possible to full restitution.

¹¹⁹ For instance, physical, psychological, and legal/social support (therapy, job training, legal aid).

¹²⁰ This can include apologies, public truth disclosure, memorials, and judicial sanctions.

¹²¹ This can include institutional reforms to prevent recurrence.

4.7 Meaningful stakeholder engagement (Article 13)

The international standards on business and human rights require companies to engage meaningfully with stakeholders either throughout the due diligence process¹²² or at key stages of the process.¹²³

Under the OECD Guidelines, meaningful stakeholder engagement is a key component of the due diligence process and, in some cases, a right in and of itself. It is defined as being ongoing (continuous), two-way, conducted in good faith by participants on both sides, and responsive to stakeholders' views. It should be timely, accessible, appropriate, and safe for stakeholders. Companies should remove potential barriers to engagement for people in positions of vulnerability or marginalisation.¹²⁴

The international standards define stakeholders¹²⁵ broadly but accord particular importance to affected stakeholders. According to the UNGPs, not all stakeholders should be given equal weight. For example, affected stakeholders should take priority during the engagement process.¹²⁶

Accordingly, the sequence for engagement should be as follows:

- 1. Affected stakeholders** – i.e. individuals, workers, communities, human rights defenders, or other groups whose rights are or may be adversely affected by the company's activities, operations, products, services, or business relationships.
- 2. Legitimate representatives of affected stakeholders** – i.e. trade unions, community representatives, workers' representatives, Indigenous representative institutions, or other actors chosen by or accountable to affected stakeholders.
- 3. Credible proxies** – i.e. organisations or individuals with direct knowledge of the perspectives and circumstances of affected stakeholders, such as local civil society organisations, community-based organisations, or other trusted intermediaries, particularly where direct engagement is not feasible or may expose stakeholders to risks.
- 4. Experts and other relevant stakeholders** – i.e. academic experts, national human rights institutions, and other actors with relevant insights but at arms-length from affected stakeholders.

TABLE 8
KEY DEFINITIONS

ARTICLE	TERM	DEFINITION
3(1)(n)	Stakeholders	The company's employees, the employees of its subsidiaries and of its business partners, and their trade unions and workers' representatives, and individuals or communities whose rights or interests are or could be directly affected by the products, services and operations of the company, its subsidiaries and its business partners and the legitimate representatives of those individuals or communities.

¹²² OECD Guidelines, Chapter II, para 28; OECD Due Diligence Guidance for RBC, Annex, p. 50.

¹²³ UNGPs 18 & 20.

¹²⁴ OECD Guidelines, Chapter II, para 28; OECD Due Diligence Guidance for RBC, Annex, p. 50.

¹²⁵ See definition of "stakeholder/affected stakeholder" in OHCHR, "The Corporate Responsibility to Respect Human Rights. An Interpretive Guide" (2012), p. 9; OECD Guidelines, Chapter II, para 28; OECD Due Diligence Guidance for RBC, Annex, p. 48.

¹²⁶ Commentary to UNGP 18.

The definition of stakeholders,¹²⁷ which was amended by the Omnibus I Directive, includes:

- Employees, trade unions and workers' representatives of the company and its subsidiaries and business partners; and
- Individuals or communities whose rights or interests are or could be directly affected by products, services and operations of the company and its subsidiaries and business partners (and their legitimate representatives).

This revised definition reads much narrower than the original CSDDD, and key actors, including national human rights and environmental institutions, are no longer expressly included. However, Recital 65 of the original CSDDD explicitly refers to additional stakeholder and rightsholder groups, such as Indigenous Peoples and human rights defenders (HRDs). For the second category of stakeholders, Recital 45 of the Omnibus I Directive also explicitly includes *"individuals or communities in the neighbourhood of plants operated by business partners where those individuals or communities are directly affected by pollution, or indigenous people whose right to lands or resources are directly affected by how a business partner acquires, develops or otherwise uses land, forests or waters"*.

In addition, the definition of "stakeholders" is not subject to maximum harmonisation under Article 4. This means that **Member States can adopt a broader, more expansive definition of "stakeholders" during transposition.**

Under Article 13(3) of the CSDDD, a company is required to consult relevant stakeholders at the following stages of the due diligence process, namely:

- When gathering the necessary information on adverse impacts, during the identification, assessment and prioritisation phases;¹²⁸
- When developing prevention and corrective action plans,¹²⁹ as well as enhanced prevention and corrective action plans, during the prevention and cessation phases;¹³⁰ and
- When adopting remediation measures.¹³¹

The original CSDDD required stakeholder consultation at additional stages of the due diligence process, including when deciding to terminate or suspend a business relationship and when monitoring the effectiveness of due diligence activities. However, the Omnibus I Directive removed those requirements. Nevertheless, because Article 13 is not subject to maximum harmonisation under Article 4, **Member States retain discretion to expand the number of stages of the due diligence process at which stakeholders should be consulted during transposition, in alignment with international standards.** Engagement with stakeholders should, at a minimum, be mandatory across all phases of developing, implementing, and reviewing the due diligence steps.

Companies must respect several procedural obligations when consulting stakeholders. They must identify and address barriers to engagement and ensure that participants are not subjected to retaliation or retribution, including by maintaining confidentiality or anonymity.¹³² Furthermore, where effective stakeholder engagement is not reasonably possible, such as in situations of state-imposed forced labour, companies are required to consult additional experts capable of providing credible insights into actual or potential adverse impacts.¹³³

Article 13(6) allows companies to participate in MSIs in support of their obligation to engage with stakeholders. While industry initiatives may be useful to identify the most risk-prone areas of a company's chain of activities, Recital 65 of the original CSDDD states that they cannot and should not replace meaningful and direct engagement with stakeholders, and that relying on such an initiative alone is not sufficient (see Section 4.11 on the role of MSIs).

127 Article 3(1)(n) CSDDD.

128 See Articles 8 and 9 CSDDD.

129 See Articles 10(2) and 11(3) CSDDD.

130 See Articles 10(6) and 11(7) CSDDD.

131 See Article 12 CSDDD.

132 Article 13(5) CSDDD.

133 Article 13(4) CSDDD.

Recommendations



Member States should:

- **Clarify the definition of stakeholders** by explicitly including “workers throughout the chain of activities”,¹³⁴ to ensure that supply chain workers, informal workers, home-based workers, and other workers in non-standard forms of employment are covered.
- **Explicitly recognise Indigenous Peoples and human rights defenders** as potentially affected stakeholders to be consulted under Article 13 of the CSDDD.¹³⁵
- **Require companies to carry out meaningful stakeholder engagement throughout the entire due diligence process**, in line with the OECD Guidelines. At a minimum, stakeholder engagement should be mandatory across the development, implementation, and review phases of the due diligence process.
- **Prioritise engagement with affected stakeholders and the legitimate representatives** they have chosen, in line with international standards. Companies should prioritise direct engagement with rightsholders and stakeholders (potentially) impacted by their action or omission, typically at the location of the activity, with early and continuous involvement to enable the concerns of affected stakeholders to be addressed preventively rather than reactively.
- **Require companies to consult elected, independent and representative trade unions**, when they exist, instead of other forms of worker “representatives”, to reduce the risk of union-busting and “yellow unions”. Where trade unions do not adequately represent all categories of workers (particularly in situations of systemic discrimination, such as caste-based discrimination), companies should also engage with worker representatives of those discriminated groups.
- **Require companies to adopt specific and tailored measures when engaging with vulnerable stakeholders**, including consideration of linguistic and cultural factors. Companies should consider the needs and barriers faced by vulnerable stakeholders,¹³⁶ including overlapping vulnerabilities, specific contexts and intersecting factors¹³⁷ (such as gender, age, race, ethnicity, class, caste, education, migration status, disability and social and economic status), as part of a culturally and gender-responsive approach to due diligence. The nature and gravity of the (potential) impact further shapes factors such as the frequency of the engagement.
- **Ensure that companies adopt appropriate measures to protect stakeholders from retaliation** when engaging in consultation or exercising their right to submit complaints.
- **Clarify that stakeholder consultation is distinct from the state obligation to obtain Indigenous Peoples’ Free Prior and Informed Consent** (see Focus Box 4).

¹³⁴ Article 3(1)(n) CSDDD.

¹³⁵ This should be done in line with the interpretative guidance from Recitals 33 and 65 of the original CSDDD.

¹³⁶ Recital 65 original CSDDD.

¹³⁷ Recital 33 original CSDDD.

4.8 Notification mechanism & complaints procedure (Article 14)

The international standards on business and human rights require companies to provide for, or cooperate in, remediation for impacts that they cause or contribute to, including by cooperating in good faith with legitimate grievance mechanisms and with judicial and non-judicial mechanisms.¹³⁸ Companies are also required to establish an operational-level grievance mechanism for direct claims.

The CSDDD requires Member States to ensure that companies establish a notification mechanism and complaints procedure pursuant to Article 14. Through the notification mechanism any person and entity may inform the company of concerns regarding actual or potential adverse impacts. Companies must ensure confidentiality in order to prevent any form of retaliation.¹³⁹ Complaints may be submitted directly to the company by natural or legal persons affected by an adverse impact and their representatives (such as CSOs, trade unions and other workers' representatives).¹⁴⁰ CSOs may also submit complaints in relation to adverse environmental impacts.¹⁴¹ The procedure to assess and respond to such complaints must be fair, public, available, accessible, predictable and transparent.

Those submitting complaints must be entitled to request an appropriate follow-up by the company, be provided with the reasons for a complaint to be considered unfounded or founded and, when founded, be informed about the steps taken or planned to address it. Moreover, when an impact is severe, the complainants have the right to meet with company representatives to discuss the complaint, any potential or actual adverse impacts, and any potential remediation.¹⁴²

The Directive also requires companies to take measures to prevent retaliation by ensuring the anonymity of the person or organisation submitting the complaint, in accordance with national law. Where information needs to be shared, this must be done in a way that does not endanger the complainant's safety.¹⁴³

Recommendations



Member States should:

- **Ensure the notification and complaints mechanisms address submissions promptly and effectively**, in line with international standards.
- **Require companies to take due account of accessibility barriers**, such as gender, language, and culture.¹⁴⁴

¹³⁸ UNGPs 22 and 29; OECD Guidelines, Chapter II, paras 12 & 15; Chapter IV, para 51.

¹³⁹ For recent and documented instances of retaliation faced by human rights and environmental defenders for their work to defend human rights, their land, and the environment, see Global Witness, "[Roots of resistance: Documenting the global struggles of defenders protecting land and environmental rights](#)" (2025).

¹⁴⁰ Article 14(2)(a) and (b) CSDDD.

¹⁴¹ Article 14(2)(c) CSDDD.

¹⁴² Article 14(4) CSDDD.

¹⁴³ Article 14(3) CSDDD.

4.9 Monitoring (Article 15)

The international standards on business and human rights expect companies to monitor the implementation and effectiveness of their due diligence activities.¹⁴⁵ This involves the company tracking its own internal commitments, activities, and goals on due diligence, by periodically carrying out internal reviews and assessing business relationships to verify that adverse impacts have actually been prevented or mitigated. To do so, engagement with impacted stakeholders during the tracking and monitoring phase is crucial. Lessons learned from the monitoring process should feedback into the whole due diligence process.

The CSDDD largely echoes these expectations. Under Article 15 of the Directive, companies are required to assess the implementation and monitor the adequacy and effectiveness of their own operations and measures, those of their subsidiaries and those of their business partners regarding the identification, prevention, mitigation, bringing to an end, and minimisation of the extent of adverse impacts.

The CSDDD foresees monitoring in the following instances:

- Without undue delay after a significant change occurs;
- At least every 5 years;
- Whenever there are reasonable grounds to believe the measures are no longer adequate or effective, and;
- Whenever there are reasonable grounds to believe that new risks of the occurrence of those adverse impacts have arisen or may arise.

The Directive incorporates a learning element, calling on companies to update their due diligence policy, the identified adverse impacts, and the derived “appropriate measures” based on insights gained through monitoring.

However, it is important to note that the monitoring cycle of the overall due diligence process is 5 years. In addition, the Directive imposes a bi-annual cycle to keep the due diligence policy up to date and relevant. The Directive also includes at minimum annual cycles to identify and assess impacts as part of the continuous nature of the duty. Similarly, the public reporting (and underlying assessment) also follows annual cycles.

Article 5(4) requires Member States to ensure that companies retain documentation of the actions carried out to fulfil their due diligence obligations for the purpose of demonstrating compliance. Such documentation should include at least the following:¹⁴⁶

- the identified impacts and in-depth assessments;¹⁴⁷
- the prevention and/or corrective action plan;¹⁴⁸
- contractual provisions obtained or contracts concluded;¹⁴⁹
- verifications;¹⁵⁰
- remediation measures;
- periodic assessments as part of the company's monitoring obligation; and
- notifications and complaints.

Recommendations



Member States should:

- **Ensure that companies use a broad range of qualitative and quantitative indicators**, including feedback from notification and complaint mechanisms under Article 14 for monitoring.
- **Clarify the distinction between monitoring under Article 15 and updating due diligence policies under Article 7**, as they reflect different review requirements.

¹⁴⁴ In line with Recital 59 of the original CSDDD and international standards, including UNGP 31.

¹⁴⁵ UNGP 20; OECD Guidelines, Chapter IV, para 50; OECD Due Diligence Guidance for RBC, Section II, Chapter 4, p. 32 and Annex, pp. 81-84..

¹⁴⁶ Recital 61 original CSDDD.

¹⁴⁷ Pursuant to Article 8.

¹⁴⁸ Pursuant to Articles 10(2)(a), and 11(3)(b).

¹⁴⁹ Pursuant to Articles 10(2)(b), 10(4) and 11(3)(c) and 11(5).

¹⁵⁰ Pursuant to Articles 10(5) and 11(6).

4.10 Communicating (Article 16)

The international standards on business and human rights require that companies communicate how adverse impacts are addressed.¹⁵¹ This involves communicating externally relevant information on all due diligence steps of the company. The information should be published in a way that is easily accessible and appropriate, such as on the enterprise's website, at the enterprise's premises, and in local languages. The guidance explains that, for human rights impacts that the enterprise causes or contributes to, the company must "communicate with impacted or potentially impacted rightsholders in a timely, culturally sensitive and accessible manner information that is specifically relevant to them."¹⁵²

The CSDDD's communication requirements under Article 16 reduce communication narrowly to reporting. Companies subject to sustainability reporting under the Accounting Directive can discharge this step by compliance with the sustainability reporting requirements.¹⁵³

Companies not subject to reporting requirements under the Accounting Directive shall report on matters covered by the CSDDD by publishing an annual statement on their website. The statement must be published in at least one official language of the EU Member State of the supervisory authority designated under the CSDDD (see Section 5.1) and, where different, in a language common in the sphere of international business. It should be published within 12 months after the financial year's balance sheet date or, for companies voluntarily reporting under the Accounting Directive, by the annual financial statements' publication date. By 31 March 2029, the Commission will adopt delegated acts specifying detailed reporting content and criteria, aligning them with sustainability reporting standards under the Accounting Directive and ensuring no duplication with reporting requirements for companies subject to the Sustainable Finance Disclosure Regulation (SFDR).¹⁵⁴

Recommendations



Member States should:

- **Ensure that, based on their reporting, companies communicate about their due diligence efforts** in a way that effectively reaches (potentially) affected rightsholders, not only other businesses, investors, or regulators. Such communication should be timely, accessible, culturally sensitive, and provided in formats and languages that are understandable by rightsholders.
- **Ensure that, when supervising the implementation of CSRD, the application of the European Sustainability Reporting Standards enables the disclosure** of information on companies' due diligence efforts in a way that is accessible to (potentially) impacted rightsholders.

¹⁵¹ UNGP 21; OECD Guidelines, Chapter IV, para 50, 72; OECD Due Diligence Guidance for RBC, Section II, Chapter 5, p. 33 and Annex, pp. 85-87.

¹⁵² OECD Guidelines, Chapter III, pp. 21-24.

¹⁵³ The Accounting Directive has been amended by the CSRD to entail sustainability reporting requirements.

¹⁵⁴ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

4.11 The role of industry & multi-stakeholder initiatives & third-party audits in the CSDDD

TABLE 9
KEY DEFINITIONS

ARTICLE	TERM	DEFINITION
3(1)(h)	Independent third-party verification	Verification of the compliance by a company, or parts of its chain of activities, with human rights and environmental requirements resulting from this Directive by an expert that is objective, completely independent from the company, free from any conflicts of interest and from external influence, has experience and competence in environmental or human rights matters, according to the nature of the adverse impact, and is accountable for the quality and reliability of the verification.
3(1)(j)	Industry and multi-stakeholder initiatives	A combination of voluntary due diligence procedures, tools and mechanisms, developed and overseen by governments, industry associations, interested organisations, including civil society organisations, or groupings or combinations thereof, that companies may participate in in order to support the implementation of due diligence obligations.

4.11.1

Industry & multi-stakeholder initiatives

The CSDDD foresees that industry and multi-stakeholder initiatives can be called upon by in scope companies to support the implementation of their duties under Articles 7 to 16, as long as these MSIs and other industry initiatives are appropriate to do so.¹⁵⁵ Companies are thus required to assess the appropriateness of MSIs before resorting to them as a support in upholding their due diligence obligations.¹⁵⁶

In-scope companies may use MSIs to:

- Identify and assess adverse impacts (by using resources from industry and MSIs);¹⁵⁷
- Cooperate in the development of their prevention and corrective action plans to address potential and actual impacts;¹⁵⁸
- Verify compliance of contractual assurances;¹⁵⁹
- Support, but not replace, consultation with stakeholders, provided that industry and MSIs meet the CSDDD consultation requirements;¹⁶⁰
- Use or establish collaborative complaints procedures, notification mechanisms and grievance mechanisms.¹⁶¹

¹⁵⁵ Article 20(4) CSDDD.

¹⁵⁶ Article 20(4) CSDDD.

¹⁵⁷ Article 8(3) CSDDD.

¹⁵⁸ Articles 10(2)(a) and 11(3)(b) CSDDD.

¹⁵⁹ Articles 10(5) and 11(6) CSDDD.

¹⁶⁰ Article 13(6) CSDDD. Article 13(6) clarifies that using MSIs is not in itself sufficient to fulfil the obligation to consult workers and their representatives.

¹⁶¹ Article 14(6) CSDDD.

The Commission, in collaboration with Member States, is required to issue guidance setting out fitness criteria and a methodology for companies to assess the fitness of industry and MSIs.¹⁶²

Importantly, participation in industry or MSIs does not relieve companies of their own responsibility and legal liability with regard to their due diligence obligations.¹⁶³ Article 13(6) allows companies to participate in MSIs in order to support their engagement with stakeholders. While industry or MSIs may be useful to identify the most risk-prone areas of a company's chain of activities, Recital 65 of the original CSDDD states that they cannot and should not replace meaningful and direct engagement with stakeholders, and that relying on such initiatives alone is not sufficient.

4.11.2

Third-party verifiers

When assessing the compliance of business partners with their codes of conduct, and to verify the compliance of their own due diligence policy and practices with the Directive,¹⁶⁴ companies may make use of third-party verifiers. Third-party verification can be conducted by MSIs, by private auditing companies or by other initiatives such as, for instance, through mechanisms introduced by enforceable binding agreements between companies, stakeholders (such as trade unions) and civil society. According to Article 3(h), providers of third-party verification must fulfil the following criteria:

- They must be an expert in the field of human rights and environmental due diligence and have experience in the impact(s) at hand.
- They must conduct their work objectively and be completely independent from the company.
- They must be free from any conflict of interest and from external influences.
- They must be accountable for the quality and reliability of the information they provide.

Article 29(4) reiterates that although companies may use third-party verifiers or contractual clauses as a support in the implementation of their due diligence operations, they remain liable for the fulfilment of their obligations under the Directive.

Recommendations



Member States should:

- **Provide that, when determining penalties under Article 27, supervisory authorities should consider participation in an MSI** for the purpose of misleading stakeholders or supervisory authorities as an aggravating factor under Article 27(2)(h) (see Section 5.1.4).
- **Operationalise the accountability of third-party verification** by pro-actively scrutinising third-party verifiers and allowing stakeholders and rightsholders to challenge their expertise, objectivity, independence, freedom of conflict of interest, quality and reliability.
- **Clearly provide that cooperation with an MSI or other industry initiative does not relieve companies of their own responsibility and legal liability to comply** with their due diligence obligations but may support them in fulfilling their obligations.¹⁶⁵
- **Clarify that stakeholder consultation through MSIs or other industry schemes cannot replace meaningful and direct engagement** with rightsholders and their representatives (including NGOs, trade unions, and other stakeholder organisations). Reliance on such initiatives alone should not be considered sufficient to fulfil stakeholder engagement obligations.

¹⁶² Article 20(4) CSDDD.

¹⁶³ Article 29(4) CSDDD.

¹⁶⁴ See also Recital 52 original CSDDD.

¹⁶⁵ In line with Articles 13(6) and 20(4) CSDDD.

4.12 Climate-related obligations

The tool of transition planning emerged from company practice in response to the Paris Agreement and is already referenced in other EU laws.¹⁶⁶ The OECD Guidelines also require companies to ensure that their Greenhouse Gas (GHG) emissions are consistent with internationally agreed-upon global temperature goals, including through the adoption and implementation of transition plans on climate change mitigation and adaptation.¹⁶⁷

Article 22 of the original CSDDD obliged companies to reduce their GHG emissions through the adoption of a climate transition plan (CTP). It formulated two distinct duties on companies: first to adopt a CTP, and second, to put that plan into effect. The purpose of the CTP was to set out how a company would adapt its business model and strategy and reduce its emissions to be compatible with the goal of limiting global warming to 1.5°C in line with the Paris Agreement. All companies within the CSDDD scope were supposed to comply with Article 22, including financial institutions, as defined in Article 3(1)(a) (iii). National authorities were also required to supervise the adoption and design of CTPs.¹⁶⁸

Unfortunately, Omnibus I deleted Article 22 and all CTP-related provisions. As a result, companies are no longer required to adopt and put into effect a CTP under the CSDDD.

However, this does not preclude companies from fulfilling their climate transition plan reporting under CSRD and assessing climate-related harm that leads to human rights impacts under the CSDDD.

First of all, as part of their due diligence obligations under the CSDDD, companies will continue to be required to address climate-related adverse human rights and environmental impacts arising from their own operations, as well as those of their subsidiaries and business partners in their chain of activities. Even though the Paris Agreement is not included in Part II of the CSDDD Annex, the Directive includes obligations to take appropriate measures on the human rights impacts related to harmful emissions.

Member States also retain the regulatory freedom to incorporate, into their national legal frameworks, CTP obligations that reflect Article 22 of the original CSDDD or are aligned with international standards, such as the OECD Guidelines.¹⁶⁹ This approach would ensure that Member States comply with their international legal obligations to address climate change. In its Advisory Opinion of July 2025, the International Court of Justice clearly stated that States have a legal obligation under international law to regulate the activities of private actors, such as companies, as part of their international obligations to reduce GHG emissions, prevent climate-related harm, and protect the climate system.¹⁷⁰ A State may be held responsible for failing to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of GHG emissions caused by private actors under its jurisdiction. It should be noted that amendments introduced to Article 22 by the Omnibus I Directive have raised concerns regarding their alignment with EU law and other relevant international legally binding standards (see Focus Box 1).

Finally, companies are still required to report a CTP, including implementing actions, under the CSRD (see Focus Box 6 below).

166 Direct and indirect references in CSRD, ESRS, CSDDD and SFDR, as well as in [Directive \(EU\) 2024/1619](#) of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches and environmental, social and governance risks ('Capital Requirements Directive'), and [agreed amendments to Directive 2009/138/EC](#) (the Solvency II Directive, on the taking-up and pursuit of the business of Insurance and Reinsurance), which are pending formal confirmation by the Council of the EU.

167 OECD Guidelines, Chapter VI, paras 76-79.

168 Article 25(1) original CSDDD.

169 See the Spanish approach: [Real Decreto 214/2025, de 18 de marzo, por el que se crea el registro de huella de carbono, compensación y proyectos de absorción de dióxido de carbono y por el que se establece la obligación del cálculo de la huella de carbono y de la elaboración y publicación de planes de reducción de emisiones de gases de efecto invernadero](#) (18 March 2025).

170 See International Court of Justice, [Advisory Opinion on the Obligations of States in Relation to Climate Change](#) (23 July 2025) para 428.

FOCUS BOX 6

**CTP OBLIGATIONS
UNDER THE CSRD**

Large, small, and medium-sized undertakings (as well as parent undertakings of a large group) must include in their management report their plans, including implementing actions and related financial and investment plans, to ensure that their business model and strategy are compatible with the transition to a sustainable economy and with limiting global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality by 2050 as established in the European Climate Law.

Where relevant, undertakings must also disclose their exposure to coal-, oil- and gas-related activities.¹⁷¹ Under the CSRD, companies are required by the sustainability reporting standards to disclose information on climate change mitigation, including as regards scope 1, scope 2 and, where relevant, scope 3 GHG emissions, as well as climate change adaptation.

Recommendation

Despite the removal of CTP obligations from the CSDDD, companies are still required to address climate-related adverse human rights and environmental impacts under the Directive and are subject to CTP requirements under the CSRD and international standards. In this context, national transposition of the CSDDD provides an opportunity for Member States to clarify how the CSDDD addresses climate issues and to adopt additional provisions to meet their international obligations.

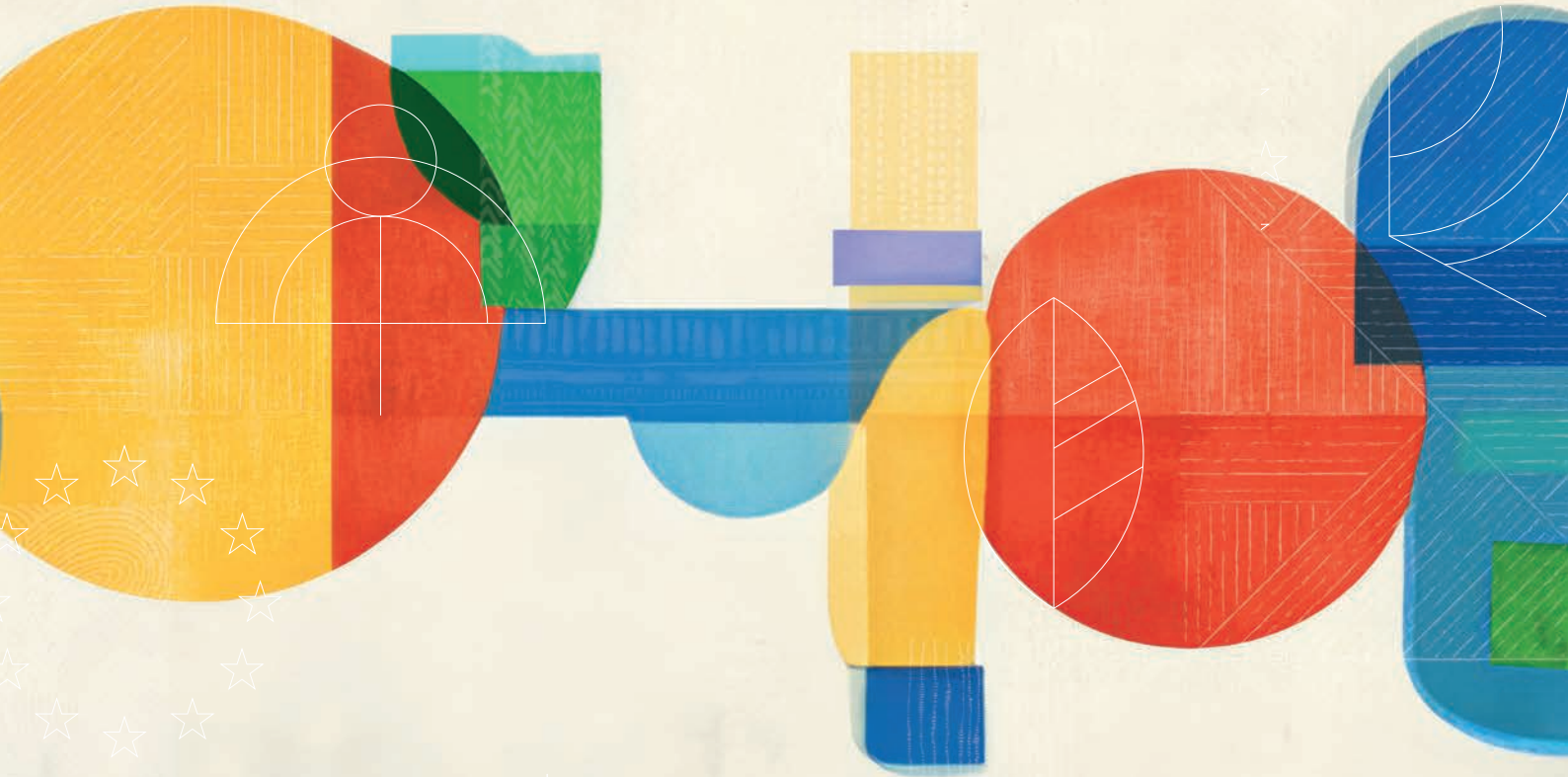
Member States should:

- **Require companies to adopt and implement a CTP** in line with international standards, or as per the original CSDDD, and ensure adequate supervision by national authorities. The fact that Omnibus I removed CTP-related obligations does not prevent Member States from introducing their own national requirements, particularly where this is necessary to comply with their international obligations.

¹⁷¹ Articles 19a & 29a Accounting Directive.

PART 5

ENFORCEMENT



5.1	Administrative enforcement	66
5.2	Civil liability of companies & the right to full compensation	70

Articles 23 to 32 of the CSDDD deal with administrative enforcement, civil liability, and access to justice. Enforcement under the CSDDD can be divided into two main categories: administrative enforcement (Articles 23-28) and judicial enforcement (Article 29).

All enforcement provisions (including administrative enforcement and civil liability) are not subject to maximum harmonisation under Article 4, allowing Member States to adopt more stringent transposition measures.

5.1 Administrative enforcement

The CSDDD establishes a system of administrative enforcement by requiring Member States to designate supervisory authorities (SAs) to monitor compliance with the transposed obligations of the Directive. Each Member State can create or appoint one or more SA,¹⁷² which can receive complaints, carry out investigations and issue penalties. Member States must appoint a SA and notify the European Commission by the end of the transposition period (26 July 2028). Companies that are not headquartered in the EU should, for this purpose, establish a legal representative in one of the Union's 27 Member States,¹⁷³ notifying the competent authority responsible for supervising the company, which is the SA of the country where it has a branch or – if the company has no branches in the EU or has branches in more than one Member State – where it realises most of its turnover in the Union.¹⁷⁴

Importantly, public enforcement is without prejudice to civil liability provisions (see Section 5.2).¹⁷⁵ Consequently, victims having suffered harm may seek to hold the company liable even where it has already been sanctioned by public authorities.

5.1.1

Nature & status of SAs

Member States retain significant discretion when determining the number and nature of SAs. However, the CSDDD requires that they are of a public nature, legally and functionally **independent**,¹⁷⁶ and free from external influence (direct or indirect).¹⁷⁷ This entails that the SAs should not be subject to influence from companies covered by the CSDDD or other market interests and that the staff and management should be free from personal conflicts of interest.¹⁷⁸ The CSDDD clearly states that SAs should “neither seek nor take instructions from anybody”.¹⁷⁹

If more than one SA is designated, Member States are required to ensure that their competences are clearly delineated and that they cooperate effectively.¹⁸⁰ The CSDDD does not explicitly establish which criteria to use when more than one SA is designated. This possibility allows for the use of existing specialised authorities to implement the CSDDD as part of their mandate (e.g., financial regulators or labour inspectorates).¹⁸¹

The Directive also requires SAs to publish an annual report on their activities,¹⁸² which must at least include the “most serious breaches identified”.¹⁸³ The CSDDD does not provide further detail in relation to the content of the report.

¹⁷² Article 24(1) CSDDD.

¹⁷³ Article 23(1) CSDDD.

¹⁷⁴ Article 24(3) CSDDD.

¹⁷⁵ Article 25(9) CSDDD.

¹⁷⁶ For an overview of how the concept of “functional independence” has developed in EU law, including through its interpretation by the CJEU, see OECD, “Organisation of public administration: agency governance, autonomy and accountability” (2021), pp. 20 and ff.

¹⁷⁷ Article 24(9) CSDDD and Recital 75 original CSDDD.

¹⁷⁸ Article 24(9) CSDDD and Recital 75 original CSDDD.

¹⁷⁹ Recital 75 original CSDDD.

¹⁸⁰ Article 24(5) CSDDD.

¹⁸¹ Recital 75 of the original CSDDD establishes that “[...] Where competent authorities under sectoral legislation exist, Member States could identify those as responsible for the application of this Directive in their areas of competence [...]” Article 24(6) lays down an explicit possibility for financial supervisors.

¹⁸² Article 24(10) CSDDD.

¹⁸³ Recital 75 original CSDDD.

5.1.2

Role & powers of SAs

The role of SAs is to supervise compliance with Articles 7 to 16 (human rights and environmental due diligence).¹⁸⁴

The CSDDD establishes minimum powers that Member States must provide to SAs to appropriately fulfil their roles. Member States can choose whether these powers are exercised directly (by the SAs themselves or in cooperation with other authorities) or indirectly (by application to judicial authorities).¹⁸⁵

SAs must have adequate powers and resources to carry out the tasks assigned to them, including the power to require companies to provide information and carry out investigations on compliance.¹⁸⁶

Investigations may be initiated by SAs on their own initiative or as a result of a substantiated concern (see Section 5.1.3). The investigations may include on-site inspections carried out in accordance with national law.¹⁸⁷ As a rule, inspections should be announced in advance, except where “prior warning would hinder the effectiveness of the inspection”.¹⁸⁸ Investigations may also include the hearing of “relevant stakeholders”.¹⁸⁹

When, as a result of the investigation, SAs consider that a company is non-compliant with its obligations,¹⁹⁰ they may order it to:

- Cease the non-compliance (e.g., by taking action or ceasing certain conduct);
- Abstain from repeating the conduct;
- Provide proportionate remediation;
- Adopt interim measures where there is a risk of severe and irreparable harm.

None of these remedial actions which may be taken by the company preclude the imposition of penalties or civil liability.¹⁹¹

Finally, the Directive establishes certain minimum procedural guarantees that Member States must provide. Persons (natural or legal) concerned by a binding decision must have access to effective judicial remedy.¹⁹² Member States must also ensure that SAs keep records of investigations and of enforcement actions taken, including but not limited to sanctions.¹⁹³

5.1.3

Submitting substantiated concerns to the SA

Article 26 requires Member States to ensure that SAs can receive “substantiated concerns” through easily accessible channels. Such concerns can be submitted by any natural or legal persons when they have reasons to believe that a company is failing to comply with the Directive’s provisions.¹⁹⁴ The CSDDD does not require that the non-compliance results in an adverse impact, nor that the person submitting substantiated concerns is directly affected by such an impact. The only requirement for the submission of concerns is a belief that the company is not appropriately fulfilling its obligations, based on objective circumstances.¹⁹⁵ Anonymity must be ensured when requested by the person(s) submitting substantiated concerns,¹⁹⁶ and the channels to submit concerns must be free of charge, or with a fee limited to covering administrative costs only.¹⁹⁷

The Directive does not lay down binding timelines for SAs to assess substantiated concerns and respond to persons submitting substantiated concerns, but it requires that the assessment is done “in an appropriate period of time”¹⁹⁸ and persons submitting substantiated concerns be informed “as soon as possible” of the result of the assessment.¹⁹⁹ This risks undermining predictability for the person or entity submitting the concern, as the process may, depending on the case, take a considerable amount of time. It is equally problematic that persons submitting substantiated concerns will only be informed about the result of the assessment, without receiving updates in the interim.

When deciding whether and how to proceed with the substantiated concern, the SA is required to provide the reasoning behind the chosen course of action and to inform the company of the substantiated concern.²⁰⁰ Persons submitting substantiated concerns need to be informed whether the SA has accepted or refused any request for action and must have access to an impartial review, judicial or otherwise, of the decision concerning both the process and the substance and action or inaction by the SA.²⁰¹

184 Article 24(1) CSDDD.

185 Article 25(6) CSDDD.

186 Article 25(1) CSDDD.

187 Article 25(3) CSDDD.

188 Article 25(3) CSDDD.

189 Recital 75 original CSDDD. See Article 3(1)(n) for a definition of stakeholders.

190 Article 25(4) and (5) CSDDD.

191 Article 25(4) CSDDD.

192 Article 25(7) CSDDD.

193 Article 25(8) CSDDD.

194 Article 26(1) CSDDD.

195 Article 26(1) CSDDD.

196 Article 26(2) CSDDD.

197 Recital 75 original CSDDD.

198 Article 26(4) CSDDD.

199 Article 26(5) CSDDD.

200 Article 26(5) CSDDD.

201 Article 26(6) CSDDD.

5.1.4

Penalties under the CSDDD

Article 27 lays down the main rules governing penalties under the CSDDD. Member States must establish the rules on penalties applicable to infringements of national transposing measures and take all necessary measures to ensure their implementation. Penalties must be effective, proportionate, and dissuasive.²⁰²

As a minimum, Member States must provide for two types of penalties:

- Pecuniary penalties (fines), and;
- If a company fails to pay the fine in time, a public statement indicating the company responsible for the infringement and the nature of the infringement.²⁰³

The CSDDD establishes certain criteria to be taken into consideration when deciding whether to impose penalties (both pecuniary and other) as well as their extent (see Focus Box 7).

As a result of the changes introduced by the Omnibus I Directive, Article 27(4) now requires that the maximum limit of pecuniary penalties is set at 3% of the net worldwide turnover of the company in the financial year preceding that of the decision to impose the fine. In the case of ultimate parent companies, this maximum limit must be 3% of the net consolidated worldwide turnover calculated at the level of the ultimate parent company. This approach differs from the original CSDDD, which required that the maximum limit of pecuniary penalties shall be not less than 5% of the company's net worldwide turnover. The Commission, in collaboration with Member States, will issue guidance to assist SAs in determining the level of penalties.

An example of a non-pecuniary penalty is a time-limited exclusion from public procurement for companies having been found to be in non-compliance and fined as a consequence.²⁰⁴ To ensure transparency, SA decisions imposing penalties must be published and remain publicly available for at least 5 years.²⁰⁵

FOCUS BOX 7

AGGRAVATING & MITIGATING CIRCUMSTANCES FOR ADMINISTRATIVE LIABILITY

Article 27(2) CSDDD establishes the following criteria to take into account when deciding whether to impose penalties and, if so, determining their nature and extent:

- The nature, gravity and duration of the infringement, and the severity of the impacts resulting from that infringement.
- Any investments made and any targeted support provided pursuant to Articles 10 [Duty to take appropriate measures to prevent or mitigate potential impacts] and 11 [Duty to take appropriate measures to bring to an end or minimise actual impacts].
- Any collaboration with other entities to address the impacts concerned.
- Where relevant, the extent to which prioritisation decisions were made in accordance with Article 9.
- Any relevant previous infringements by the company of the provisions of national law adopted pursuant to this Directive found by a final decision.
- The extent to which the company carried out any remedial action with regard to the subject matter concerned.
- The financial benefits gained or losses avoided by the company due to the infringement.
- Any other aggravating or mitigating factors applicable to the circumstances of the case concerned.

202 Article 27(1) CSDDD.

203 Article 27(3) CSDDD.

204 At the time of writing, the German Supply Chain Act had a similar non-pecuniary penalty. See Lieferkettensorgfaltspflichtengesetz (LkSG), Section 22. Additionally, minimum fine amounts are required according to the obligation that the company has failed to comply with (for fine tranches according to non-compliances, refer to LkSG, Section 24).

205 Article 27(5) CSDDD.

Recommendations



As the CSDDD defines public enforcement relatively broadly, important choices are left to Member States during transposition and implementation. In this context, it is important that decision-makers further refine the mandate and functioning of the SAs while not unduly restricting their ability to function effectively. To this end, several aspects relating to the submission of substantiated concerns, the sanctions regime, and annual reporting by SAs require further specification to enable effective public enforcement and enhance predictability.

Supervisory authorities' independence, expertise, and transparency

Member States should:

- Ensure that supervisory authorities are adequately staffed and funded with dedicated human rights expertise, including professionals with human rights, labour rights and environmental backgrounds. National transposing measures should ensure the representation of experts, including representatives from CSOs and trade unions, on the SA's governing board or standing advisory council.
- Require SAs to develop a robust science-based and rightsholder-informed expertise and methodology across various sectors, risks, and regions, as part of Member States' obligation to ensure that they have adequate powers and resources to fulfil their tasks under the CSDDD.
- Ensure that SAs enjoy a high degree of independence from both governments and companies, and that they neither seek nor take instructions from any external actor.
- Require SAs to report publicly and in detail on their enforcement activities (including through the publication of annual reports and decisions). Annual reports should describe their approach to assessing and ensuring company compliance with due diligence obligations, their enforcement strategies, and all concrete enforcement actions taken, including all identified cases of non-compliance, remedial measures ordered, and sanctions imposed.

Substantiated concerns

Member States should:

- Ensure that the submission of substantiated concerns is free of charge to guarantee the accessibility of the mechanism.
- Ensure that the concept of "legitimate interest" is interpreted in line with the interests of affected rightsholders and stakeholders, allowing trade unions and communities to submit substantiated concerns

concerning violations of their members' individual rights, and environmental organisations to submit substantiated concerns relating to environmental risks or harms.

- Introduce clear deadlines for the assessment of substantiated concerns, including within deadlines for their completion.
- Ensure that all persons submitting substantiated concerns are involved in the investigation procedure and informed of both the progress and outcome of the SA's assessment and have access to an effective review mechanism.
- Ensure that SAs must act upon "substantiated concerns" when there is sufficient information indicating a possible breach by a company and the person submitting the concern has a legitimate interest in the matter and that there is only discretion as regards the specific measures to be taken thereafter.

Investigation and enforcement practices

Member States should:

- Require SAs to consult relevant stakeholders as part of their investigation process, where applicable, taking into account the barriers faced by affected communities and ensuring that any information provided is handled safely and anonymously.
- Introduce specific timeframes for handling requests for interim measures.
- Clarify that SAs should interpret "appropriate measures" considering their effectiveness in addressing adverse impacts.
- Ensure the dissuasive effect of pecuniary penalties by providing for sufficiently high minimum amounts, without prejudice to the SA's discretion under Article 27(2) to increase penalties based on relevant aggravating factors.
- Expand the list of possible penalties under Article 27(3) to include additional sanctions that SAs may impose in response to infringements of the due diligence obligations, including exclusion from public procurement procedures, in line with Article 57(4)(a) of the Public Procurement Directive.²⁰⁶
- Limit SA's discretion or provide clear guidance when granting companies additional time to take remedial action, given that companies are required to provide remediation under Article 12.
- Ensure that SAs have oversight powers over social auditors and MSIs operating within their national jurisdiction, including the power to investigate and de-accredit such bodies.

²⁰⁶ See Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

5.2 Civil liability of companies & the right to full compensation

5.2.1

Civil liability

To ensure effective access to justice and compensation for victims, Article 29 of the CSDDD originally established the framework under which companies falling within its scope could be held liable before EU Member State courts for damage resulting from breaches of their due diligence obligations. In particular, Article 29(1) laid down harmonised conditions for a dedicated EU-wide civil liability regime under the CSDDD. However, the Omnibus I Directive removed Article 29(1), citing the need “to better achieve the principle of subsidiarity”.²⁰⁷

Crucially, the deletion of Article 29(1) does not remove Member States’ obligation to ensure civil liability under the CSDDD. On the contrary, civil liability remains an integral part of the Directive’s architecture, as reflected in Article 1(1)(b).²⁰⁸ Member States are still required to transpose Article 29, which governs companies’ civil liability and the right to full compensation. In particular, Article 29(2) refers to the obligation of Member States to ensure that victims have a right to full compensation “where a company is held liable pursuant to national law for damage caused to a natural or legal person by a failure to comply with the due diligence requirements under this Directive”. Additionally, Article 29(3) establishes access to justice obligations for civil procedure, which would serve little purpose if civil liability claims under the CSDDD were not possible. As a result, **Member States must ensure civil liability mechanisms exist to hold companies liable for harm arising from non-compliance with the CSDDD.**

In practice, the deletion of Article 29(1) means that the CSDDD does not establish harmonised conditions for a civil liability regime across the EU anymore. Instead, Member States are responsible for determining how civil liability for CSDDD-related cases should operate within their respective national legal systems. In other words, **while Member States must ensure that civil liability is available for CSDDD-related cases, they retain discretion to define the specific conditions and modalities of such liability regimes.**

However, this discretion is constrained by the principle of “*effet utile*”, which requires Member States to ensure the practical effectiveness of EU law. Accordingly, when transposing the Directive, Member States must design civil liability regimes that effectively enable companies to be held liable for damage caused by their failure to comply with the Directive’s due diligence requirements. For that purpose, Member States should assess whether their existing national civil liability regimes are capable of fulfilling this objective or whether additional, tailored regimes are needed.²⁰⁹ Furthermore, Member States are no longer limited to the restrictive conditions of the now-deleted Article 29(1) and can therefore establish civil liability in cases of companies’ failure to comply with all due diligence requirements, including identification and assessment (Article 8), prioritisation (Article 9), remediation (Article 12) and meaningful stakeholder engagement (Article 13).

Following Omnibus I, the amended CSDDD still retains some of its original additional rules regarding civil liability.

The civil liability of a company for damages under national law, as referred to in Article 29, is without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners within its chain of activities. This clarifies that the liability of companies falling within the CSDDD scope remains distinct from, and does not replace or exclude, the separate liability that may arise for subsidiaries or business partners. When the damage was caused jointly by a company and its subsidiary, or by a company and its business partners, both should be jointly and severally liable. This does not affect the conditions of joint and several liability or the rights of recourse under national law.²¹⁰

Importantly, the civil liability rules under the CSDDD cannot limit companies’ liability under Union or national legal systems. They should also have no bearing on Union or national civil liability rules governing adverse human rights or environmental impacts that provide for liability in situations not covered by or providing for stricter liability than the CSDDD.²¹¹

Moreover, it is explicitly stated that participation in industry or MSIs, as well as the use of third-party audits or contractual clauses, does not protect a company from being held liable under the CSDDD.²¹²

207 Recital 49 Omnibus I Directive.

208 According to Article 1(1)(b), the CSDDD lays down rules on liability for violations of the due diligence obligations.

209 To ensure that victims of adverse impacts have effective access to justice and compensation, Member States should pay particular attention to the rules governing standing. In practice, national civil liability rules differ in determining who has standing to bring a claim. Moreover, national definitions of “victims” under civil liability are not always aligned with the realities of human rights

harms in transnational contexts. They may fail to recognize forms of secondary victimhood (e.g. harm suffered by family members) or harm affecting communities. Such concepts may not be present or correctly reflected in national law but are highly relevant in the business and human rights context.

210 Article 29(5) CSDDD.

211 Article 29(6) CSDDD.

212 Article 29(4) CSDDD.

Recommendations



Member States should:

- **Establish civil liability mechanisms** that allow companies to be held to account for damage caused by a failure to comply with the due diligence requirements under the CSDDD.
- **Clarify that liability should apply in case of a failure to comply** with all the due diligence requirements under the CSDDD (in particular, companies' obligations to identify and assess adverse impacts, prevent and end adverse impacts, remediate, engage meaningfully with stakeholders, and establish notification and complaint mechanisms).
- **Assess whether existing national legal frameworks can ensure that victims of adverse impacts have effective access to justice and compensation** through effective corporate liability, or whether additional, tailored liability regimes are needed.
- **Guarantee the right to full compensation to victims** where a company is held liable pursuant to national law for damage caused to a natural or legal person by a failure to comply with the due diligence requirements under the CSDDD.
- **Ensure a broad definition of "victim"**, covering not only directly affected individuals but also persons who suffer harm as an indirect consequence of the adverse impact, such as dependents or family members.
- **Ensure that group rights (i.e., rights that are collectively exercised as opposed to pertaining to a specific natural or legal person) are protected** under the civil liability regime(s) of the CSDDD.

5.2.2

Applicable law & jurisdiction

Article 29(7) of the original CSDDD required Member States to ensure that the CSDDD's civil liability rules would be of overriding mandatory application in cases where the law otherwise applicable to claims was not the national law of a Member State. In practice, this meant that, in civil proceedings brought under the CSDDD, national courts would have applied the domestic rules transposing the CSDDD's provisions on civil liability and access to justice (see Sections 5.2.1 and 5.2.3), even when existing private international law, at either EU²¹³ or national level, would normally designate another applicable law.

The Omnibus I Directive subsequently deleted Article 29(7), "[i]n view of the different rules and traditions that exist at national level".²¹⁴ However, Recital 49 of the Omnibus I Directive clarifies that this deletion does not prevent Member States from designating national provisions transposing the CSDDD as overriding mandatory provisions, within the meaning of the Rome II Regulation, in cases where the law otherwise applicable to claims is not that of a Member State.

It is crucial that Member States ensure their national transposing measures are of overriding mandatory application in cases where the law applicable to claims is not the national law of a Member State. Otherwise, there is a risk that foreign law, under which equivalent due diligence obligations may not exist, rather than their national civil liability regime(s) would apply. In such a case, companies could be subject to the application of multiple and potentially conflicting liability regimes and norms of conduct across jurisdictions, requiring them to assess compliance across numerous jurisdictions for the same due diligence obligations. This would significantly increase legal uncertainty and compliance costs, including the need to rely on foreign-law experts in litigation, while also creating barriers to access to justice for victims, who may face complex and fragmented legal frameworks to enforce their rights.²¹⁵

The CSDDD does not address the question of jurisdiction of Member States' courts over third-country companies in civil claims. In the absence of comprehensive EU rules on jurisdiction on this matter (both within the CSDDD and the Brussels I Regulation),²¹⁶ each Member State's rules on jurisdiction will determine whether national courts can effectively exercise jurisdiction over non-EU companies.

Recommendations



Member States should:

- **Designate their national law provisions transposing the CSDDD** as of overriding mandatory application in cases where the law applicable to claims is not the national law of a Member State.
- **Ensure that their private international rules of jurisdiction allow non-EU companies** falling within the scope of the Directive to be sued in their national courts.

²¹³ See Regulation 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II Regulation).

²¹⁴ Recital 49 Omnibus I Directive.

²¹⁵ See Geert Van Calster, "Legal opinion: how the Omnibus creates uncertainty on civil liability for companies" (May 2025).

²¹⁶ Regulation 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I Regulation).

5.2.3

Access to justice

To ensure the right to an effective remedy, the CSDDD addresses some, though not all, practical and procedural barriers to justice for victims of adverse impacts.²¹⁷ These measures aim to tackle the duration of limitation periods, prohibitive costs of civil liability proceedings, difficulties in accessing evidence, and the need to provide timely judicial mechanisms to ensure compliance with the Directive. However, Omnibus I deleted the original Article 29(3)(d) on third-party representation.

The CSDDD clarifies that national rules on limitation periods should not hamper the bringing of civil claims. The limitation period for bringing civil liability claims under the CSDDD must be set at a minimum of five years by Member States and, in any case, cannot be less than the limit already set by national civil liability regimes.²¹⁸ The Directive also specifies the conditions that must be met for limitation periods to begin to run. Such periods cannot start before the infringement has ceased and the claimant knows, or can reasonably be expected to know, about the behaviour and that it constitutes an infringement, the damage resulting from it and the identity of the infringer.²¹⁹ The cost of proceedings should also not be prohibitively expensive, so that claimants can effectively seek justice.²²⁰

Moreover, claimants should be able to seek injunctive measures before national courts (both definitive and provisional) to quickly put an end to violations of due diligence obligations, by requiring companies to perform an action or cease a conduct.²²¹

The CSDDD does not address the question of the burden of proof, leaving it to Member States to decide which party bears it in the case of proceedings. This represents a significant obstacle for claimants, as traditional procedural rules on the burden of proof are often a major barrier to justice in civil cases. Shifting the burden of proof to companies, by requiring them to demonstrate compliance with their due diligence obligations under the CSDDD, for example, could help overcome this obstacle.

Nonetheless, Article 29 foresees the possibility for national courts to mandate a company to disclose information in its possession. If the claimants provide sufficient information indicating that additional evidence is within the company's control, national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages. The CSDDD limits evidence disclosure to what is necessary and proportionate.

Recommendations

Member States should:

- **Allow for the reversal of the burden of proof** in civil claims under the CSDDD. For instance, companies could bear the burden of proving compliance with their due diligence obligations under the CSDDD in civil liability proceedings. This is paramount to address the asymmetry of power and resources between claimants and defendants in transnational cases of corporate abuse.
- **Extend the time limitation** to bring claims before national courts to a minimum of 10 years to properly account for the international character of corporate abuse cases.²²²
- **Ensure that organisations having the protection or advancement of human rights and/or the environment explicitly mentioned as their goal**, for example in their statutes, are considered organisations able to represent victim plaintiffs.
- **Set reasonable conditions under which alleged victims are able to authorise trade unions, human rights organisations, NGOs and human rights institutions** based in the EU to bring civil liability actions to enforce their rights.²²³
- **Ensure that victim plaintiffs can authorize non-governmental organizations or trade unions** that are based outside of the EU to bring claims on their behalf, under the same conditions as organisations based in the Union.
- **Adopt accompanying measures to assist claimants with the costs of proceedings.** Member States should review legal aid rules to ensure that they take into account the high costs of civil litigation. They should also reconsider or mitigate the application of the "loser pays" principle to CSDDD-related civil claims in light of the resource disparity between the parties by, for example, providing for maximum court fees or legal aid.
- **Clarify co-defendants rules** to ensure that a company and its foreign subsidiary and business partner can be sued together by plaintiffs in the case that the damage was caused jointly under Article 29(5).

²¹⁷ Article 29(3) CSDDD.

²¹⁸ Article 29(3)(a) CSDDD.

²¹⁹ Article 29(3)(a)(i), (ii), (iii) CSDDD.

²²⁰ Article 29(3)(b) CSDDD.

²²¹ Article 29(3)(c) CSDDD.

²²² Most national limitation periods for tort claims are traditionally based on the assumption that the claimant and the defendant are located in relatively close geographical proximity. By contrast, claims brought under the CSDDD are likely to be transnational in nature, involving additional practical and procedural complexities, and therefore warrant longer limitation periods.

²²³ This was required in Article 29(3)(d) of the original CSDDD, which was deleted by the Omnibus I Directive.



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The background is a complex abstract composition. It features large, overlapping shapes in red, green, blue, and yellow. The green and blue areas are filled with fine, repeating patterns. White geometric lines, including circles and arcs, are overlaid on the composition. In the top right, there are several white star outlines. The overall aesthetic is modern and graphic.

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