

Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights

The Council and the European Parliament today reached a provisional deal on the corporate sustainability due diligence directive (CSDDD), which aims to enhance the protection of the environment and human rights in the EU and globally. The due diligence directive will set obligations for large companies regarding actual and potential adverse impacts on human rights and the environment, with respect to their own operations, those of their subsidiaries, and those carried out by their business partners.

Obligations for companies

The due diligence directive lays down rules on obligations for large companies regarding actual and potential adverse impacts on the environment and human rights for their business chain of activities which covers the upstream business partners of the company and partially the downstream activities, such as distribution or recycling.

The directive also lays down rules on penalties and civil liability for infringing those obligations; it requires companies to adopt a plan ensuring that their business model and strategy are compatible with the Paris agreement on climate change.

Main elements of the agreement

The provisional agreement reached today between the two co-legislators frames the scope of the directive, clarifies the liabilities for non-compliant companies, better defines the different penalties, and completes the list of rights and prohibitions that companies should respect.

Scope of the directive

The agreement fixes the scope of the directive on large companies that have more than 500 employees and a net worldwide turnover over €150 million. For non-EU companies it will apply if they have over €150 million net turnover generated in the EU, three years from the entry into force of the directive. The Commission will have to publish a list of non-EU companies that fall under the scope of the directive.

Financial Sector

According to the deal reached today, financial services will be temporarily excluded from the scope of the directive, but there will be a review clause for a possible future inclusion of the financial downstream sector based on a sufficient impact assessment.

Climate change and civil liability

The compromise struck today strengthens the provisions related to the obligation of means for large companies to adopt and put into effect, through best efforts, a transition plan for climate change mitigation.

On civil liability, the agreement reinforces the access to justice of persons affected. It establishes a period of five years to bring claims by those concerned by adverse impacts (including trade unions or civil society organisations). It also limits the disclosure of evidence, injunctive measures, and cost of the proceedings for claimants.

As a last resort, companies that identify adverse impacts on environment or human rights by some of their business partners will have to end those business relationships when these impacts cannot be prevented or ended.

Penalties

For companies that fail to pay fines imposed on them in the event of violation of the directive, the provisional agreement includes

several injunction measures, and takes into consideration the turnover of the company to impose pecuniary penalties (i.e. a minimum maximum of 5% of the company's net turnover). The deal includes the obligation for companies to carry out meaningful engagement including a dialogue and consultation with affected stakeholders, as one of the measures of the due diligence process.

Public procurement

The deal establishes that compliance with the CSDDD could be qualified as a criterion for the award of public contracts and concessions.

Definitions

The provisional agreement clarifies the obligations for companies described in Annex I, a list of specific rights and prohibitions which constitutes an adverse human rights impact when they are abused or violated. The list makes references to international instruments that have been ratified by all member states and that set sufficiently clear standards that can be observed by companies.

The compromise adds new elements to the obligations and instruments listed in the Annex as regards human rights, particularly for vulnerable groups. Core International Labour Organisation (ILO) Conventions can also be added to the list, by delegated acts, once they have been ratified by all member states.

The provisional agreement also introduces in the annex references to other UN conventions, such as the International covenant on civil and political rights or the International covenant on economic, social and cultural rights, or the Convention on the rights of the child. Likewise, the compromise clarifies the nature of environmental impacts covered by this directive as any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions or excessive water consumption or other impacts on natural resources.

Next steps

The provisional agreement reached with the European Parliament now needs to be endorsed and formally adopted by both institutions.

Background

On 23 February 2022, the Commission submitted to the European Parliament and to the Council a proposal for a directive on corporate sustainability due diligence. The Council adopted its general approach on 1 December 2022.

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