

Social Economy & Human Rights

European Corporate Sustainability Due Diligence Directive Proposal

VdA EXPERTISE



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In April 2020, the EU Justice Commissioner announced that the European Union was committed to legislate on mandatory human rights and environmental due diligence. In March 2021, the European Parliament approved a legislative proposal for the Commission to legislate on that matter and on 23 February 2022, the European Commission has adopted a proposal for a Directive on corporate sustainability due diligence.

The **Corporate Sustainability Due Diligence Directive** seeks to ensure that companies active in the EU single market contribute to the sustainable development and sustainability transition of economies and societies by preventing and mitigating potential or actual adverse human rights and environmental impacts connected with companies' production processes, products, and services. The proposal for a Directive accordingly imposes obligations on companies, including an obligation to implement human rights and environmental due diligence measures, which is characterized as an input-based obligation or "obligation of means".

SCOPE OF APPLICATION

Article 2 establishes that the proposal for a Directive applies to companies incorporated under Member States' law and satisfying at least one of the following conditions:

- Have more than 500 employees on average and a net worldwide turnover greater than €150 million in the last financial year; or
- Have more than 250 employees on average and a net worldwide turnover greater than €40 million in the last financial year, if at least 50% of this turnover is connected with one or more of the following sectors:
 - Manufacture of textiles, leather and related products (including footwear), and wholesale trade of textiles, clothing and footwear;

- Agriculture, forestry, fisheries (including aquaculture), manufacture of food products, and wholesale trade of agricultural raw materials, live animals, wood, food, and beverages;
- Extraction of mineral resources regardless from where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as any other, non-metallic minerals and quarry products), manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals, and other intermediate products).

The rules in the proposal for a Directive come into force for the latter companies two years after becoming effective for the first companies set out above.

This proposal will also apply to non-European Union companies if they:

- Have generated a net turnover of more than €150 million in the EU in the financial year preceding the last financial year; or
- Have generated a net turnover of more than €40 million and no more than €150 million in the UE in the financial year preceding the last financial year, if at least 50% of their net worldwide turnover was generated in sector mentioned above.

“The behavior of companies across all sectors of the economy is key to success in the EU’s sustainability objectives as EU companies, especially large ones, rely on global value chains” (Directive’s 4th Recital).”

OBLIGATIONS

Under this proposal, Member States must ensure that companies conduct human rights and environmental due diligence, by:

- Integrating due diligence into their policies, meaning that companies must have a due diligence policy (updated annually) where they: (i) describe the company’s approach in the long term, (ii) have in place a code of conduct describing the rules and principles which the company’s employees and subsidiaries must follow, and (iii) describe the processes put in place to implement the due diligence (including measures to verify compliance with the code of conduct and to extend its application to established business relationships);
- Identifying actual and potential adverse impacts arising from their own operations or those of their subsidiaries and, where related to their value chains, from their established business relationships;
- Preventing and mitigating potential adverse impacts, and ending actual adverse impacts, and minimising their extent in accordance with the Directive;
- Establishing and maintaining a complaints procedure for (i) anyone affected or with reasonable grounds to believe that they might be affected by an adverse impact, (ii) trade unions and other workers’ representatives, or individuals of the value chain concerned, and (iii) civil society organizations active in areas related to that value chain;
- Monitoring the effectiveness of their due diligence policy and measures, by carrying out periodic assessments; and
- Publicly communicating the due diligence.

In addition, companies who had more than 500 employees on average and a net worldwide turnover greater than €150 million in the last financial year, need to have a plan to ensure that their business strategy contributes towards limiting global warming to 1.5 °C, in line with the Paris Agreement.

ENFORCEMENT MECHANISMS

National administrative authorities appointed by Member States will be tasked with supervising these new rules. Member States can impose pecuniary sanctions on any companies failing to comply with the new act, which must be based on the company’s turnover. Companies can additionally be held liable for damages if: (i) they fail to comply with their obligations to prevent and minimise potential adverse impacts and end actual adverse impacts, and (ii) as a result of their failure, an adverse impact that should have been identified, prevented, mitigated, brought to an end, or its extent minimised through the appropriate measures, led to damages.

OTHER INFORMATION

Although small and medium enterprises (SMEs) are excluded from the scope of the Directive according to the proposal, they might find themselves subject to its rules anyway when acting as contractors or subcontractors of companies falling within the Directive’s scope.

It will also be possible for any natural or legal persons to submit their “substantiated concerns” to any supervisory authority, when they have objective reasons to believe that a company is failing to comply with the national provisions adopted to transpose this Directive.

Member States must further ensure that the concept of duty of care for these companies' directors is revisited, so that when they act in the best interest of the company, they do so taking into account the consequences of their decisions in terms of sustainability including, where applicable, human rights, climate change, and environmental issues, in the short, medium, and long term.

NEXT STEPS

This proposal will be tabled to the European Parliament and the Council for approval. Once adopted, Member States will have two years to transpose the Directive into national law and communicate the relevant national acts to the Commission.

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