

MYTHS

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Debunking 7 Misconceptions on the EU's Due Diligence Law

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Introduction

In December 2023, EU decision-makers struck an agreement on a law designed to introduce EU-wide standards on business conduct, the Corporate Sustainability Due Diligence Directive (CSDDD). The CSDDD aims to hold companies operating in the EU market accountable for human rights and environmental abuses that occur throughout their global value chains.

This directive has the potential to be a milestone in minimising the negative impacts of companies on workers, communities and the environment worldwide, and advancing corporate accountability and justice. But the process continues encountering challenges and obstacles.

Six United Nations agencies, including UNDP, UNEP, UNICEF and OHCHR have called for the adoption of the CSDDD, reminding EU Member States and businesses that the law could be a “positive force in strengthening the protection of human rights and contributing to climate and environmental objectives”. OECD³ and European Commission⁴ studies show that companies which undertake due diligence are more economically resilient and prepared to address potential risks. Studies show that the most sustainable companies are also the most profitable.

In this briefing, we address some of the main myths around the CSDDD and lay out the importance of this law in finally holding European corporations accountable.

¹See the draft law text published at the end of January. Since then the pushback campaign has forced the Belgian Presidency to propose significant changes to the text.

²Joint statement by OHCHR, UNDP, UNEP, UNFPA, UNICEF and UNOPS on the EU Corporate Sustainability Due Diligence Directive, February 2024.

³Quantifying the Costs, Benefits and Risks of Due Diligence for Responsible Business Conduct, OECD, June 2016.

⁴Study on due diligence requirements through the supply chain, European Commission, 2020.

MYTH #1

The CSDDD will make foreign trade virtually impossible. It will make the necessary diversification of supply chains (such as for raw materials) much more complicated and will lead to companies withdrawing from difficult markets due to unimplementable requirements.

Withdrawal and disengagement are seen as last-resort options for preventing and mitigating human rights violations or environmental damage under the CSDDD. Articles 7 and 8 of the text require companies to prove that they exhausted all other options first.

Companies must also evaluate and prove that termination of operations or withdrawal causes less harm than the problem they have identified. This is already a standard practice for most companies.

By placing binding obligations on companies, **the CSDDD could balance asymmetric power relations between EU companies and foreign markets**, which have long enabled EU companies to plunder resources and then leave without accountability. This pattern can be observed from mining in resource-rich countries, fossil fuel extraction in the Niger Delta, to fast fashion factories in South-East Asia.

The CSDDD also incentivises closer relations with partners (through cooperation, knowledge-sharing, capacity building etc.). This could help companies and countries establish a pool of trusted partners around the world, improve the reputation of European companies, and build stronger trade relations.

Article 7: preventing potential adverse impacts
Article 8: ending adverse impacts

MYTH #2

The CSDDD provisions for environmental damage and climate action are disproportionate to what a business can reasonably control.

Big companies have a disproportionately large role in driving the climate and biodiversity crises. 107 out of 425 of the world's biggest fossil fuel extraction projects are operated by EU-based companies.⁵ Despite this, there is still no comprehensive European or international corporate accountability legislation. **Stronger climate and environmental obligations for companies are necessary to get companies to do their fair share.**

The CSDDD is an opportunity to bring company conduct in line with the EU climate and environmental commitments. **Article 15 of the law requires companies to adopt a climate transition plan and bring their business model in line with the Paris 1.5 degree goal.** A big win for civil society was securing concrete wording on the content of transition plans; companies' transition plans need to include time-bound targets based on scientific evidence, which should entail emissions reduction targets for Scopes 1, 2 and 3 of greenhouse gas emissions. While requiring the implementation of transition plans, **Article 15 is only a minimum requirement for companies' climate actions.**

However, the **CSDDD still stops short of comprehensive environmental protection.** 'Adverse environmental impacts' are defined according to insufficient and fragmented international environmental frameworks. This means that CSDDD leaves out many environmental impacts that companies can cause but are not yet covered by international conventions. Besides Article 15, the CSDDD does not introduce new climate obligations.

Article 15: combatting climate change

⁵Carbon Bombs report, CAN Europe and Friends of the Earth Europe, October 2023.

The failure to include the Paris Agreement as one of the environmental instruments also perpetuates a false distinction between the environment and the climate, and exempts due diligence procedures from considering climate. This is contrary to existing international standards and current practice on impact assessment.

The CSDDD requires companies to police all their activities and business relationships. **MYTH #3**

The draft law mainly covers the **upstream value chain activities of companies.** This includes design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and development of the product or the service.

Regarding the downstream value chain, only the distribution, transport, storage and waste management of products must be included in a company's due diligence processes. **The directive fails to require companies to perform due diligence on the use of their products.**

The draft law takes a **risk-based approach** to human rights and environmental due diligence. This means that rather than expecting companies to investigate and respond to risks in every single business relationship, **the CSDDD requires them to focus on areas in their chain of activities that pose the most severe risks** or where harm is most likely to occur and carry out due diligence in a way that is commensurate with their role in the supply chain.

MYTH #4

The finance sector is sufficiently covered in the CSDDD.

Financial institutions have no obligations to restrict their financial services, including investments in fossil fuels, under the CSDDD. This is a major loophole and renders the law's provisions insufficient.

Financial institutions' obligations under the CSDDD cover a negligible part of their operations. Financial institutions (including banks, investors, and insurers) will have to ensure that the advertisement leaflets they publish or the paper cups they use are produced in a way that does not harm the environment, but in the meantime, they can continue to legally throw money to fuel the climate crisis. Tailored rules for financial institutions should be applied to impose due diligence obligations for the financial services they provide.

The Council and Parliament's negotiated text in December 2023 asks for a review of extending downstream due diligence obligations to the financial sector and a joint statement on the matter. It remains to be seen whether tailored due diligence obligations for the financial sector will be discussed or even introduced at a later date.

MYTH #5

CSDDD means an additional reporting burden.

Communicating on the implementation of due diligence is a key part of international standards.⁶ To this end, the CSDDD requires companies to annually report on their implementation of the directive.

To avoid double-reporting, **the CSDDD exempts all companies covered by the Corporate Sustainability Reporting Directive (CSRD) from preparing an additional report.** These companies fulfil their obligation to report on actions taken to implement CSDDD through their CSRD disclosures, which already include information on due diligence processes and measures. **The majority of CSDDD companies fall under this exemption.**

Article 11: communicating due diligence

⁶ OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD, June 2023.

For the minority of companies that are within the scope of the CSDDD but not within the CSRD, the Commission will prepare acts on how to report, ensuring alignment with the European Sustainability Reporting Standards (ESRS) and avoiding duplication with existing disclosures.

MYTH #6

The CSDDD exposes companies to huge legal risks and will make companies legally liable for their entire supply chain.

Companies will not be liable for damage that occurs throughout their entire supply chain. While companies could face civil lawsuits under the CSDDD, the law sets high standards for such proceedings, which limits the risks for companies.

The company must have intentionally or negligently failed to comply with a limited number of due diligence obligations (those outlined in Articles 7 and 8), rather than all of the due diligence obligations under the directive.

This failure to comply must cause harm to the specific legal interests of natural or legal persons. This means that a company's liability cannot be based solely on a failure to comply with due diligence obligations, and only certain types of damage will trigger a company's civil liability.

A company also cannot be held liable if the damage was caused only by its business partners in its chain of activities.

Article 22: civil liability of companies and a right to full compensation

MYTH #7

The CSDDD does not provide a realistic or operational framework for implementing due diligence obligations and companies are already struggling to comply with existing national laws.

Since the announcement of a political deal in December 2023 and the availability of the final text, numerous businesses and their associations⁷ have voiced support for CSDDD, many calling its requirements "appropriate and feasible".

The CSDDD is explicit about which companies its rules apply to, which institutions are responsible for oversight and enforcement, and the timeline for implementation with great attention to burden sharing.

The CSDDD also provides more clarity by introducing a consistent set of standards, rather than companies having to navigate a legal labyrinth of existing national laws, and gives companies ample time to prepare for implementation. The first companies will need to comply from mid-2027, and some companies will not be covered until 2029.

Article 30: transposition

⁷ Most recent business statements in support of mandatory due diligence & the CSDDD, Business and Human Rights Centre, February 2024.

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