

Non-paper on Responsible Business Conduct legislation, CSDDD guidelines and transposition - by Germany, Sweden and Kingdom of The Netherlands

The Omnibus I negotiations have been finalized and a revised CSDDD has entered into force. The focus of EU member states is now shifting to the transposition of the Directive into national law, and to the establishment of supervision and enforcement mechanisms. Businesses, partner countries, supervisory authorities and member states should all benefit from swift and clear transposition, including accompanying guidelines, support measures and other tools. By continuing our collective efforts, the EU can make the CSDDD implementation a global success story, setting an ambitious bar for future instruments and responsible business conduct worldwide, as well as Sustainable Development Goals. In a context of mounting geopolitical tensions, climate change, food and resource scarcity, responsible business conduct in global value chains is indispensable for a resilient European economy, for the protection of people and the environment and the EU's long-term competitiveness. Due diligence helps companies to identify vulnerabilities in value chains, mitigate risks and secure the supply of critical resources. At the same time, a balance must be struck with the need to avoid overburdening companies, and the revised CSDDD can be considered a success in that regard.

The Netherlands, Germany and Sweden await the Commission's first guidelines, expected in July 2027 at the latest, that should provide clarification, and practical guidance including best practices in applying the CSDDD. Uniform transposition by member states supported by clear guidelines is crucial to ensure that the Directive will be effective in reaching its policy objectives and will safeguard a level playing field. The countries listed draw attention to the following topics for due consideration by the European Commission.

CSDDD guidelines

- **Public consultation of the guidelines:** We commend the Commission for organising an open public consultation for the upcoming guidelines, which contains a questionnaire on all guidelines as a first step. In addition, we would specifically appreciate targeted ex ante consultations on draft guidelines. The experiences and input from companies, civil society organisations, and other stakeholders, including in third countries, are crucial for effective implementation, avoiding unnecessary regulatory burdens and making tangible impact. We would welcome practical testing of draft guidelines with companies, including SMEs, as well as supervisory authorities. Such testing should assess whether the guidance is workable, while preventing unnecessary administrative burdens and without leading to divergent or excessive information requests or other practical implications and unintended impacts that are not foreseen. In addition, companies need guidance on voluntary model contractual clauses as soon as possible.
- **Coherence across EU Legal Due Diligence Instruments:** We deem it crucial that coherence and clarity is established across various EU due diligence requirements stemming from different legal instruments. The Commission has an important responsibility in this regard. The guidelines should clarify how the obligations under the CSDDD interact with those under the other EU instruments and how the due diligence requirements from several *lex specialis* instruments relate to the CSDDD aiming at less burdens for companies. In particular, an analysis should be made to ensure there are no contradictions in the implementation of the resulting obligations for companies, and that all instruments involve the same understanding of crucial principles explaining the approach to due diligence. Companies also need clarification about which rules take precedence in case of overlap. This can provide companies with a coherent, predictable and workable regulatory framework, instead of fragmented, overlapping obligations. This should include guidance for supervisory authorities on how to ensure coherence and alignment through cooperation and coordination. Parallel or double sanctioning under multiple regimes should be avoided, and clarity about which supervisory authority is competent is needed to provide legal certainty to both companies and supervisory authorities.
- **Building on Existing International Due Diligence Standards and Guidance:** We deem it important that the guidelines take into account on existing international due diligence standards and practices, especially the vast body of sector-specific and generic guidance generated by the

OECD and UN through years of collecting best practices negotiating in multi-stakeholder setting. This is important because i) companies are currently already basing their due diligence efforts on them, ii) these standards are also relevant beyond EU borders and inspire legislation in other jurisdictions, including partner countries outside of the EU, especially in the Global South, and iii) the OECD and UN Guidelines, to which the regulations refer directly, can serve as a core element to ensure the coherence of instruments in the field of due diligence. Sticking to these standards is therefore also in the interest of setting an international standard to ensure a global level playing field.

- **Due diligence in complex situations:** The guidelines should include guidance for companies on how they are expected to conduct due diligence in complex situations in which they face difficulties or in which they are actively obstructed. For example in case local legislation conflicts with due diligence obligations, or where host governments actively hinder the due diligence process (we have seen recent examples of this). The guidelines should provide guidance for companies on what is expected from them in such contexts and for regulatory authorities how to enforce in these specific situations.
- **Best practices & standardizing formats for information requests:** The guidelines should include guidance on best practices of information requests by companies to business partners further in the value chain. The revised CSDDD includes limitations to information requests as such, but does not provide rules on the design or format of such requests. Many companies, especially SMEs, receive information requests from in-scope companies which differ substantially per request. This can make the regulatory burden for business partners in the chain unnecessarily high. Uniform standards, best practices and references to existing standards that companies already use can prevent this and ensure that the effective impact of the CSDDD in value chains can be increased. In particular, the guidelines should provide clarity and alignment, particularly regarding the similarities and differences compared to other standards for information requests, such as the voluntary sustainability reporting standard (VSME), without prejudice to CSDDD provisions, and while safeguarding the necessary flexibility for companies in line with the risk-based approach enshrined in the CSDDD. In line with the principle of 'report once, use many times', the Commission should promote standardized and interoperable formats for information requests, allowing companies, especially SMEs, to reuse existing information where possible.
- **Digital supporting tools:** The Commission should also stimulate innovation with regards to (digital) tools, facilitate reliable, interoperable and open source data systems and infrastructure. This can help companies with the collection of relevant and reliable information.
- **Guidance on open norms:** The guidelines should provide guidance to ensure clarification of various open norms and definitions subject to varying interpretation included in the CSDDD. It is essential that this is done at EU-level to ensure uniform interpretation in view of a level playing field and uniform supervision, while also allowing sufficient flexibility for companies.

CSDDD implementation

- **Uniform and burden-light transposition:** The Commission should support Member States in a uniform and burden-light transposition of the Directive, including through early Q&A documents, transposition guidance and exchange of best practices. This should help prevent fragmentation and diverging supervisory practices across the internal market.
- **The European Network of Supervisory Authorities:** We also encourage uniform standards of enforcement, by encouraging the Commission to set up the EU network of supervisory authorities, foreseen in the directive, as early as possible. This will contribute to uniform supervision and enforcement strategies amongst EU members states and a level playing field.
- **Identification of in-scope franchises and third-country companies:** In order to ensure effective supervision of companies under CSDDD as well as their preparedness for new obligations, the European Commission should lead efforts in mapping and targeting in-scope franchises and third-country companies. This will help those companies prepare to comply with the CSDDD implement it in their specific business context.

- **Engagement with third countries:** During the CSDDD negotiations, we have called on the Commission and EEAS to proactively engage with partner countries to discuss the CSDDD, to clear up misunderstandings, and explore collaborative approaches in order to maximise positive impact, including through development policies. Reaching out to trade partners remains of importance, also to those countries critical of the CSDDD. Member states can support these efforts and ensure that the EU sends a coherent message and extends a hand of partnership to our trading partners.
- In order to build further support for the CSDDD and its implementation in partner countries, it is crucial that the EU and its member states discuss RBC policy and laws with production countries, and that they adopt accompanying measures to assist countries with making value chains more sustainable. We point to the OECD Inclusive Platform on Due Diligence Policy Cooperation as an excellent forum to bring together government officials from OECD and partner countries to discuss coherent and effective RBC policies and laws.
- **Ensuring Coherent Alignment Between National and EU-Level Support Structures/tools:** Lastly, we welcome the Team Europe Initiative on Sustainable Value Chains, as well as the launch of the EU Due Diligence Navigator and the EU Due Diligence Portal and future initiatives. It remains important that different national and EU helpdesks are aligned.