

Source: Midjourney AI-generated image.
 Prompt: "/imagine prompt: Back of person with lots of papers under his arm moving toward factory --ar 3:5"

Due Diligence Directive

Business as Usual Will Not Do

By Priscilla Haring-Kuipers (The Netherlands)

Currently rolling through the EU is the Corporate Sustainability Due Diligence Directive or CSDDD [1]. The EU Parliament just voted generally to accept these new rules, and will continue to negotiate some of the finer points for another year. Things are about to change.

Our Sustainable Development Goals include the promotion of sustained, inclusive and sustainable economic growth. In the Paris Agreement, we promised to keep global warming within 1.5°C, and the private sector, with all their investments, must be in line with this if we are to keep our promises. Under the European Climate Law, we are committed to being climate-neutral by 2050 and to reduce our emissions by at least 55% in 2030. All of this means that there must be a change in the way companies produce and procure. Business as usual will not do.

Many issues in our global supply chains would be hard to tackle by any one company or even one country. These new due diligence rules intend to even the playing field within the EU market and prevent fragmentation in law. Germany already has a Supply Chain Act or "Lieferkettensorgfaltspflichtengesetz" [2], while other EU countries have limited requirements. By connecting all the big companies of many



countries under common EU legislation, the power to effectively and sufficiently address environmental concerns and social inequality can be combined. Moving together is better.

The Ask

This directive concerns big EU companies with hundreds of employees and millions in turnover, as well as non-EU companies that make millions in the EU market. At its core, the CSDDD [3] is a way to force these big companies to take responsibility "by carrying out the following actions:

- (a) integrating due diligence into their policies
- (b) identifying actual or potential adverse impacts
- (c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimizing their extent;
- (d) establishing and maintaining a complaint procedure;
- (e) monitoring the effectiveness of their due diligence policy and measures;
- (f) publicly communicating on due diligence"

Companies will need to investigate themselves and their entire supply chain. When uncovering 'adverse impacts,' they must create corrective action plans with clear timelines and qualitative as well as quantitative metrics for improvement. Workers, unions and civil society organizations must be able to make human



rights violations or negative environmental impacts known. Companies have to provide a complaint procedure to support this, and inform relevant parties, as well as provide appropriate followup. Companies need to check on the implementation and effectiveness of their policies and on those of their business partners continuously. Such check-ins must be done at least once a year, or when new issues arise in the supply chain. All of this must be done transparently and communicated publicly.

Sanctions are mentioned in the directive, but it is left to every EU country to enforce them in line with national laws and proportional to the company's revenue. In the EU, they will set up a European Network of Supervisory Authorities to help and oversee countries do this.

A director of such a big company has a duty to oversee the corporate due diligence, to establish a code of conduct and to integrate this into the corporate strategy. The CEO must ensure that sustainability, human rights, climate change, and environmental consequences are properly considered in the short, medium, and long run. Making a profit is not a valid counterargument.

Adjust to Size

Big companies will be liable if they fail in their due diligence and preventable bad things happen or continue to happen. This does not mean that companies have to guarantee that bad things will never happen. Companies must take measures appropriate to their level of power in the chain and respond to human and environmental rights violations when they find them (and they are obligated to look).

The CSDD protects human and environmental rights throughout the lifecycle of a product and throughout the entire chain. This should mean that big digital companies are going to have to include the manufacturing of their hardware as part of their responsibility.

Small and medium-sized enterprises (SMEs), which make up 99% of all companies in the EU, are not included in the CSDDD. However, big companies will

have demands of any SME they work with in order to be able to fulfil their own due diligence duties. EU countries are expected to support their SMEs by setting up dedicated websites, portals, and platforms — and perhaps provide financial support to build capacity. Big companies are expected to invest in the SMEs with whom they work, in order to help them to comply.

More Moral

I think this directive is a good example of how law slowly becomes a formal version of the values we hold as a society. Of course, you don't have to wait around for laws to be established, and it makes good business and moral sense to be ahead of the curve. One example of this is RS Group, providers of industrial and electronics products to engineers. They have already started to build an ethical supply chain seriously [4].

Many SMEs will soon discover what power (if any) they have in their supply chain, and, perhaps for the first time, undertake an ethical examination of their companies' actions. This forced self-reflection will likely come with compulsory forms to fill, new reporting practices and self-certifying quality control marks, along with big companies usurping more parts of the supply chain in order to maintain control and fulfil their legal responsibilities. If you are part of an SME that works with bigger companies, yesterday would be a good time to start investigating and reporting on your due diligence. Many will already have made many moral business choices. Now, these need just be formalized and communicated. ◀

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Source: Midjourney
AI-generated image.
Prompt: "imagine
prompt: EU Parliament
with EU flags --ar 5:3"

WEB LINKS

- [1] EU CSDDD portal: <https://bit.ly/43MAiUu>
- [2] Supply Chain Act (Wikipedia): https://en.wikipedia.org/wiki/Supply_Chain_Act
- [3] Actual CSDDD: <https://bit.ly/43Pg1Oa>
- [4] WEEF 2022 - Building an Ethical and Sustainable Supply Chain with Andrea Barrett: <https://youtu.be/tuu88ePQwYQ>