

# EU TO DECIDE ON NEW RULES TO STOP CORPORATE ABUSE

## What is happening?

The EU is set to agree on new rules to make companies accountable for the damage they cause to people and the planet: the Corporate Sustainability Due Diligence Directive (CSDDD).

The Council of the EU (representatives from the 27 EU countries), the European Parliament and the European Commission are currently discussing the Council's and Parliament's proposals to find an agreement on the law's final text (referred to as trialogues).

## What is at stake?

The rules being negotiated could:

- ✓ Exclude 99 percent of companies, as only the largest will have to comply;
- ✓ Allow banks and investors to continue to bankroll human rights abuses and environmental destruction with impunity;
- ✓ Let companies producing weapons and chemicals get off scot-free for the use of their products;
- ✓ Let oil and gas companies off the hook for the damage caused by their emissions;
- ✓ Prevent EU countries from being more ambitious in applying the rules;
- ✓ Put obstacles in the way of survivors of corporate abuse claiming justice in the courts;
- ✓ Delay the entry into force of the rules for nearly ten years.

## The key issues up for negotiation?

### How many and which type of companies will have to comply?

Between 1 – 2 percent of European companies.

The European Parliament's proposal trumps both the Commission's and the Council's – it covers nearly 7 times the number of companies than the proposal from EU countries. However, even the best deal on the table – the European Parliament's proposal - still excludes at least 98 percent of European companies.

The European Parliament's proposal covers less than 2 percent of European companies – an estimated 65,000 EU companies.

Companies falling under the scope:

- ✓ Companies headquartered in the EU with an annual turnover of at

The proposal from EU countries covers only 9,360 companies according to Commission estimates – less than 1 percent of companies in the EU.

The EU countries' proposal is similar to the Commission's, but the criteria must be met for two consecutive years.

<p>least 40 million euro and over 250 employees;</p> <ul style="list-style-type: none"> <li>✓ Companies headquartered outside of the EU but with a comparable turnover in the EU.</li> </ul> <p>Companies not falling under the scope:</p> <p>Foundations, e.g. FIFA.</p> <p>Small and medium-sized enterprises (under 250 employees) are not covered. This leaves sectors that rely on SMEs like agriculture, construction or textile off the hook. In the textile industry, eight out of ten people employed are women and women tend to be most at risk of unfair labour practices.</p> <p>The Parliament does not distinguish between high-risk sectors and other sectors as it lowers the threshold to include all companies with over 250 employees and a turnover of 40 million euros.</p>	<p>Companies falling under the scope:</p> <ul style="list-style-type: none"> <li>✓ Companies headquartered in the EU with an annual turnover of at least 150 million euro and over 500 employees;</li> <li>✓ Companies headquartered outside of the EU but with a comparable turnover in the EU;</li> <li>✓ Companies in sectors which are considered high-risk for corporate abuse (e.g. textiles, agri-business) with a lower threshold for employees (250 employees) and turnover (40 million euro).</li> </ul> <p>Limited liabilities companies and other types of corporate models, e.g. foundations (FIFA) or franchises (MacDonalds) are not covered.</p>
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Oxfam wants a due diligence law that holds all companies responsible for their damage to people and the planet, not one that leaves out 99 percent of companies.

### **Will the financial sector have to comply with the law?**

Some parts, but not all.

<p>The <u>European Parliament</u> sees the financial sector facing fewer due diligence obligations than other sectors.</p> <p>Banks will only have to carry out due diligence for their direct clients. Financial services for small and medium-sized companies will be exempt. Investors and asset managers would have a limited duty to engage with the companies they invest in to pressure them to stop activities with a negative impact on people and the planet.</p>	<p>According to <u>EU countries</u>, each EU government should decide whether limited due diligence obligations will apply to financial services. Investments would not be covered, and EU countries could exempt pension funds.</p> <p>Some countries like France are completely against the inclusion of banks and investors in this law.</p>
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In February, Oxfam and other NGOs sued the French bank BNP Paribas under the French due diligence law over its financing of fossil fuel companies and for its substantial contribution to the climate crisis. The case is still to be solved.

Major European banks, like UBS or Société Générale, are backing the mining giant Glencore's toxic legacy in Peru and Colombia according to a report published this

month. The company is responsible for severely damaging the environment and communities in these two countries with people suffering from health issues and being displaced. Between 2016 and 2023, nearly 50 percent of the loans and underwriting for Glencore came from European banks.

A [report](#) by Fair Finance International showed that European banks, pension schemes and insurance companies invested people's savings into almost half of the financing of construction and hospitality companies in Qatar.

Oxfam wants rules that hold investors accountable for human rights violations and environmental destruction in the projects they bankroll.

### **Will companies have to carry out due diligence for the entire value chain?**

The [European Commission's proposal](#) covers the entire value chain, but both [EU countries](#) and the [European Parliament](#) want to limit due diligence obligations downstream, meaning before the sale of the product or providing of services.

<p>The <a href="#">European Parliament's</a> position is only slightly better than the EU countries' proposal: it adds the sale of products but excludes their use.</p> <p>This means companies producing harmful chemicals could continue to do so without being held accountable for the damage to the planet caused by using their products.</p>	<p><a href="#">EU countries</a> want to limit due diligence obligations downstream.</p> <p>Only the distribution, transport, storage, and disposal of products will fall under the scope of the law. They labelled this limited reach as the 'chain of activities'.</p> <p>This means European companies would not be held accountable for the harm to workers and the environment caused by their products even, for example, when they export pesticides banned in the EU outside the EU.</p>
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We need a law that covers the full value chain of companies, it should cover all those affected by the company's business, including those using their products and services.

### **Will due diligence obligations cover business' damage to the climate?**

Not really – climate has been largely sidelined by the [EU countries](#) and the [Commission](#) while the [Parliament](#) has pushed to include it.

<p>The <a href="#">European Parliament's</a> text includes a reference to companies' obligations to address their damage to the climate by mentioning <a href="#">the Paris Agreement</a> and <a href="#">European Climate Law</a> in the legal framework guiding the due diligence obligations.</p> <p>This means that oil companies like Repsol will have to take steps to prevent, mitigate and stop the impacts of their</p>	<p><a href="#">EU countries</a> follow the <a href="#">EU Commission's</a> lead and turn a blind eye to the vast impact of companies' emissions on the planet.</p> <p>They only included a loosely worded obligation for very large companies to adopt a climate transition plan in line with the 1.5°C Paris Agreement objective and the emission reduction objectives.</p>
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business on the planet, e.g. their carbon emissions.	<p>EU countries will not have to police these plans.</p> <p>According to this approach, oil companies like Repsol won't be accountable for the impact of their carbon emissions on the planet.</p>
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If companies' obligations to protect the planet are not clear in this new EU law, other key issues like survivors' access to justice, will be watered down. For example, even if the law covers banks and investors but there are no clear climate obligations, they will still be able to bankroll environmental destruction with impunity.

A recent [report](#) by the London School of Economics (LSE) shows that while 82 percent of companies in sectors ranging from food to oil and gas, reported long-term emissions strategies, only 1 percent of the companies aligned their future spending with their goals to decarbonise.

Oxfam wants rules that force companies to identify, prevent and end damage caused to the climate. Companies must be held responsible for their damage to the planet, including the impact of their products and emissions.

### **Will companies be responsible for ensuring people earn a living income?**

<p><u>EU parliamentarians</u> introduced a major improvement to the Commission's proposal. They want companies to review their business model and how they engage with their suppliers to ensure workers in their supply chain earn a living wage or a living income.</p> <p>For example, in sectors like the production of coffee, tea or flowers, companies pay workers per amount produced or harvested (e.g. 1 kg) not per hour worked. That means that if a coffee harvest fails because of extreme weather, the coffee farmer is not paid.</p> <p>The <u>European Parliament</u> also requires companies to engage with stakeholders in a gender-sensitive manner. This is important as women workers are the most at risk of not receiving a living income.</p>	<p><u>EU countries</u> want companies to address the risk of workers in their supply chains not earning a living wage. By not including a reference to a living income, self-employed workers or casual labour are left out.</p> <p>This means that in sectors like coffee, cocoa, sugar, cane, rice, vanilla or cotton, where the workforce consists mainly of self-employees or day labourers, companies won't have to take steps to prevent them from being at risk of not earning an adequate remuneration.</p> <p>This approach leaves women especially unprotected as they are more dependent on casual work. For example, they represent 70 percent of the labour force in the coffee sector.</p>
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The [chocolate sector is one of the examples](#) where big companies like the European cocoa giants, Nestle and Lindt, are raking in huge profits while 9 in 10 cocoa farmers struggle to survive.

Oxfam wants to hold companies responsible if they fail to ensure workers in their supply chain earn a living income.

### **Will company directors get off scot-free?**

The Parliament's version of the legislation echoes the Commission's proposal to make directors responsible for doing due diligence.

<p>The <u>Parliament</u> wants to make directors responsible for overseeing due diligence.</p> <p>Companies would have to tie a share of their financial incentives in their remuneration to the company's sustainability performance.</p>	<p><u>EU countries</u> deleted the Commission's proposal to make directors responsible for ensuring companies do due diligence.</p>
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Oxfam wants to tie directors' remuneration to the responsible behaviour of the company.

### **Will companies be held responsible for the harm they cause?**

The current proposals on the table lack teeth.

<p>The <u>European Parliament</u> wants to hold companies legally responsible for the harm caused by failure to do due diligence. This means that if a company does not comply with this law, it can face administrative sanctions and civil liability.</p> <p>But it sidelines the Commission's proposal to make parent companies responsible if their subsidiaries failed to carry out the appropriate due diligence.</p> <p>The only exception is if the parent company intentionally dissolved its subsidiary to avoid liability.</p> <p>In addition, there is a risk that companies escape liability if they choose not to "prioritise" risks in the value chain. That means that if a company prioritises the risk assessment of forest fires over landslides and then a landslide occurs, they could escape accountability.</p>	<p><u>EU countries</u> only want to hold companies legally responsible when they directly violate people's rights.</p> <p>As a result, it's not clear whether a company would have to pay compensation to a family of a worker who died due to a company violating its safety standards.</p> <p>EU countries also want to allow companies a free pass to escape liability if they choose not to prioritise risks in the value chain.</p>
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Oxfam wants rules with teeth to hold companies responsible for the damage they cause to people and the planet.

## **Will survivors of corporate abuse be able to access justice?**

The proposal for negotiations will continue to see survivors struggle to access justice due to numerous obstacles.

<p>The <u>European Parliament</u> text removes some obstacles, for example, by extending the time limit to launch a claim to ten years and allowing organisations working in the public interest to bring claims to the courts.</p> <p>However, a major obstacle remains: survivors will still have the main responsibility to prove that companies have not fulfilled their due diligence obligations instead of companies having to provide evidence that they complied.</p> <p>An example: One year ago in Peru, a massive oil spill devastated the ecosystem of the coast, killing fish and stripping 10,000 families from fishing and making a living. Civil society organisations <u>filled a lawsuit</u>, but they face a major obstacle: it is them who must prove that Repsol failed to fulfil its obligations, instead of the company having to provide evidence that they complied with its obligations.</p>	<p>The <u>Commission's</u> proposal and the <u>EU countries'</u> position do little to improve the right of survivors of corporate abuse to go to the courts if a company violates their rights.</p> <p>EU countries only want to protect the rights of individuals and legal entities. This means that Indigenous people collectively will not be able to hold companies accountable if they pollute the land or the environment where they live.</p>
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Oxfam wants rules without obstacles so survivors of corporate abuse can access justice.

## **How did we get here?**

1. In April 2020, the EU's Justice Commissioner, Didier Reynders, announced plans for new rules to make businesses accountable for their activities impacting people or the planet. He called them a 'game-changer'.
2. In March 2021, the European Parliament unveiled its blueprint proposal to influence the Commission's proposal. Oxfam called it a welcome step.
3. In February 2022, the European Commission presented its proposal for the new rules. Oxfam labelled it a far cry from what is needed.
4. In December 2022, EU countries agreed their position on the legislation, watering down the Commission's proposal.
5. In June 2023, the European Parliament agreed on its position, one that sent a mixed message to survivors of corporate abuse. EU Parliamentarians slightly improved the Commission's proposal.

## **What happens next?**

### EU countries implement the rules.

After the EU agrees on the rules, the European Parliament and Council will rubberstamp the rules.

EU countries will then implement them into their national law. EU governments and the European Parliament want to delay the law's entry into force from 3 to 5 years depending on the company size.

This means most companies will not have to comply with these rules before the end of the decade.

## **Contact information**

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