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From policy to practice: The European Union Corporate Sustainability Due Diligence Directive

By George Porter

On June 1, the European Parliament agreed on its negotiating position for the much-discussed European Union (EU) Corporate Sustainability Due Diligence Directive (EUCSDDD).[1] The directive will expand on the requirements of previous laws and introduce new responsibilities to act on—not just report on—for issues such as environmental degradation, human rights violations, and carbon emissions. With the agreement currently in a position to be discussed over the coming months and possibly implemented as early as the end of this year, many are wondering exactly how the directive could affect how businesses work and how the act aligns with other common environmental, social, and governance (ESG) goals.

What may be required to align with this directive, who exactly is affected, and how can conducting due diligence help? This article examines the specifics of the new directive, including potential due diligence requirements, navigating negative impacts in your supply chain, and ongoing requirements.

An overview of the EUCSDDD

While this latest directive is a significant step up in how the EU bloc attempts to foster sustainable and responsible corporate behavior, this is the latest evolution of ESG- and supply chain-focused laws that have come into place over the last few years. The roots of the current directive were laid long ago, with EU regulations first requesting voluntary reporting on ESG factors, then compelling mandatory reporting. The time has come to switch to compelling due diligence to confirm the validity of reporting, which—along with the change to evaluating a company's whole value chain—is a significant evolution in how ESG goals are approached across the bloc. Prior to the EUCSDDD, the German Supply Chain Due Diligence Act (SCDDA), which took effect January 1, compelled firms over a certain size (3,000 employees based in Germany at present, with organizations with more than 1,000 employees coming into scope in 2024) to establish risk management systems and preventive measures in their supply chains against issues like child labor, forced labor, and soil pollution.

While the German SCDDA is wide-ranging and affects any company with enough employees within the country, it's still a law passed at a national level as opposed to an EU-wide regulation. There have been previous ESG initiatives across the EU; however, these have either been sectoral—like the Conflict Minerals Regulation or Deforestation Regulation, which mandates supply chain due diligence for imports of specific metals or wood—or have been mainly focused on classifying and reporting risks, like the Sustainable Finance Disclosure Regulation or Taxonomy Regulation. In contrast, the EUCSDDD goes beyond simply identifying or classifying risks. Affected companies are required to not only identify but also take steps to prevent, end, or at least mitigate, activities that can harm human rights or the environment. Where previous acts were limited in scope to the subject company itself and its suppliers, the EUCSDDD requires companies to cover for human rights and environmental issues "throughout the life-cycle of production and sale and waste management of product or provision of services, at the level of own operations, subsidiaries and in value chain."

While the human rights elements of the directive focus on areas that have often been focused on bylaws at a national level (like modern slavery and child labor), the environmental elements of the EUCSDDD are unlike anything passed before. The current wording of the proposal requires companies to implement plans to help keep global warming within 1.5 degrees Celsius, and large companies with over 100 employees will have director bonuses directly tied to how well they keep to this target.

It's not just the requirements that are comprehensive, but the potential punishment for failure too. The current wording of the directive outlines "consequences including civil liability for those companies that cause or contribute to harm by failing to carry out due diligence." Those consequences include bans on participating in public procurement, goods being taken off the market, or fines of at least 5% of net worldwide turnover. Given that the directive also states a commitment to "ensuring that those affected by a failure to respect this duty have access to justice and legal remedies," the potential for civil liability is a real scenario.