

MAY 2022

Proposal for a Directive on Corporate Sustainability Due Diligence (CSDD)

Eurometaux's feedback to the Commission's public consultation

Eurometaux believes the European Commission's proposal for a Directive on Corporate Sustainability Due Diligence (CSDD), adopted on 23 February 2022, is an important milestone to strengthen sustainable and responsible sourcing of minerals and metals throughout global value chains. As such, we welcome its contribution to **our sector's key goal to ensure that the materials needed for Europe's twin transitions are sourced responsibly and ethically**, recognising the social and environmental risks in certain areas of global metals and minerals supply.

In February last year, Eurometaux drafted a [position paper](#) on "EU Due Diligence in Supply Chains" in which we called for a coherent and practical system, which ensures a **level playing field** for European companies while avoiding excessive burdens. As a reminder, here are our 10 key recommendations:

- Incorporate a "smart mix" of minimum requirements plus industry initiatives and incentives
- Promote alignment and cross-recognition of existing (multi-stakeholder) due diligence schemes
- Risk-based commitment leveraging internationally recognised standards and instruments
- Consider secondary raw materials separately as they are extremely difficult to trace
- Avoid loopholes regarding the approach and scope of due diligence. Value chain thinking does not mean that upstream economic operators should have endless responsibilities vis-à-vis their downstream partners
- Thresholds that limit the due diligence obligations to companies with a real impact on the field
- Avoid the risk of disengagement through continuous improvement, engagement, and empowerment
- Ensure transparency and business confidentiality
- Ensure efficient, impartial, and transparent enforcement mechanisms
- Strengthen international relations and responsible cooperation to improve the situation on the ground

Our assessment of the proposal

Overall, Eurometaux believes that the proposed text of the upcoming CSDD Directive provides a good initial basis to **ensure resilient and ethical supply chains for the raw materials that Europe's green and energy transitions will increasingly require**, including from resource-rich countries.

In particular, we welcome:

- Supporting companies in becoming more sustainable and in addressing risks that can occur in their supply chains
- Applying the due diligence based on the risk of adverse impacts on human rights and the environment
- Promoting a harmonised EU framework on due diligence also applicable to third-country companies operating in the EU
- Building on existing international frameworks and guidelines (UN/OECD)
- Flanking supporting measures, industrial schemes, and multistakeholder initiatives to reduce the cost of compliance for companies and promote cooperation.

However, **more clarifications and guidance** should be provided on some **definitions and concepts** used in the Commission's proposal, especially when it comes to responsibilities for companies and the specific approach to be



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adopted (e.g. value chain vs. supply chain). In addition, greater efforts should be done to ensure the future horizontal due diligence framework is **coherent with overlapping EU policies and regulations**, as well as with the international frameworks such as the **OECD MNE Guidelines and the UN Guiding Principles**. This, in turn, should guarantee legal certainty and a good level playing field for companies, and help the EU make a real impact on the ground.

Effective **enforcement** of the proposed measures by public authorities will be critical to ensuring **harmonised and consistent application** of today's multi-layered due diligence requirements and to creating a **level-playing field**. It is important to emphasize that European metals companies are already involved in responsible supply chain **initiatives and auditing schemes**, and support **multi-stakeholder programs**. As such, our shared priority is to implement **risk-based due diligence** in a dynamic way, fitted to real risk profiles on the ground. Building on our experience, we want to contribute our industry's perspective to the upcoming Directive, aiming for **continuous improvement and harmonisation** with EU and national initiatives.

Our 13 improvement points

We believe that there is still room to improve the Commission's proposal. In particular, we would like to stress **13 points that are important for our sector and that we would like to see improved** in the final legislative text of the Commission:

1. **Maintain the identification of companies in the scope of the directive by revenue and employee number thresholds:** to ensure a level playing field in the economy, it is very important that both upstream firms (for example, mining companies) and downstream firms (for example, manufacturers of electric vehicles and electronic equipment which use metals) are in scope of this directive. The proposed approach will **avoid loopholes** that would appear if manufacturers were not conducting due diligence (which is the case of the Conflict Minerals Regulation).
2. **Strengthen definitions:** some concepts, such as "direct and indirect established business relationships" and "severe adverse impact" are vague and should be explained in the final text of the Directive. Clear definitions and rules should enable an **easy and unambiguous understanding of the legal responsibilities and requirements placed on companies**, avoiding arbitrary interpretations that could create legal uncertainty and inconsistent implementation across the EU. For example, if the concept of "established business relationships"¹ is retained in its current form, more guidance on interpretation is required. The Preamble provides that *if the direct business relationship of a company is established, then all linked indirect business relationships should also be considered as established regarding that company*. However, that was not translated into the articles of the CSDD proposal. Further clarification is needed as to whether the linked indirect business relationships should also be "established" vis-à-vis the direct counterparty or whether any linked indirect "business relationships" of the direct counterparty would be considered "established". Clear rules on how and where to set boundaries are needed.
3. **Role of voluntary industry initiatives:** more clarity is needed on the "value chains of additional minerals" which will be subject to the due diligence provisions (as alluded to in the proposal's explanatory memorandum²). In this respect, our sector reiterates that **the Directive should build on efforts done under the Conflict**

¹ Preamble to the Commission's proposal, recital 20 ([link](#)) and Art. 3f ([link](#)): "For the purpose of this Directive, established business relationships should mean such direct and indirect business relationships which are, or which are expected to be lasting, in view of their intensity and duration and which do not represent a negligible or ancillary part of the value chain."

² Explanatory Memorandum to the Commission's proposal, page 6 ([link](#)): "The due diligence provisions of this Directive address also environmental adverse impacts and will apply to value chains of additional minerals that are not covered in the Conflict Minerals Regulation but produce human rights, climate and environmental adverse impacts"



Minerals Regulation, as well as on the voluntary due diligence schemes developed by our industry. The recognition of industry initiatives is of critical importance to ensure efficiency and effectiveness and to avoid the formulation of additional standards to address the requirements of the proposed Directive. As such, we believe that existing due diligence approaches and schemes in the metals sector should remain the basis of any efforts towards increased transparency in responsible sourcing¹.

4. **Building on international standards: the language of the Directive should be consistent with that of the OECD MNE Guidelines and the UNGPs, to ensure the greatest possible harmonisation.** Otherwise, there are risks of conceptual confusion in terms of the analogy of concepts and will require extensive gap analyses to be performed. Moreover, achieving the recognition of existing international standards will be an important step toward credible and effective due diligence legislation. This should be done in a coherent way, avoiding inefficiencies and duplication of work. Realistic timeframes in the review and adaptation of standards to show compliance with the requirements formulated in the Directive will also be crucial. Guidelines shall be developed by the Commission in consultation with stakeholders.
5. **Consider secondary raw materials separately:** the traceability of the secondary raw materials is extremely difficult and costly, as a purchaser can no longer determine the origin of the metal once the material has been melted.
6. **Harmonisation of the application of the Directive across the EU:** we regret that the law was proposed in the form of a Directive rather than a Regulation. Should a form of a Directive be maintained, measures are needed to ensure as uniform transposition of the directive as possible to avoid undesirable consequences such as “due diligence shopping” because of various levels of liability in the different EU Member States (e.g. differences between the scope, requirements, and sanctions of the 2017 French Duty of Vigilance and the 2021 German Supply Chain Act). **Stronger policy coherence between the existing and future requirements is needed to ensure that due diligence is applied as uniformly as possible across the EU Member States.** The Commission should elucidate the role of public authorities to enable the effective implementation of due diligence requirements by the business. In addition, it is also necessary to avoid discrepancies among various pieces of legislation containing due diligence requirements, which have already managed to appear (Conflict Minerals Regulation, the proposed Battery Regulation, Corporate Sustainability Reporting Directive, and Corporate Sustainability Due Diligence Directive). In December 2021, together with other associations from the JAR Group, we have published a [joint statement](#) calling for a harmonised approach to due diligence across the EU. To enable this, **more guidance should be provided on how those overlapping EU legislations will interface in practice:** the CSDD Directive is without prejudice to the application of other requirements in the areas of human rights, protection of the environment, and climate change under other EU legislation and in the event of a conflict, the EU legislation providing for more extensive or more specific obligations should prevail². However, it remains unclear what this means in practice in relation to other EU sector-specific disclosure and due diligence obligations, especially since the CSDD Directive aims at covering high-impact sectors.

¹ As outlined in [Eurometaux's position paper](#), such efforts may include: i) alignment and cross recognition of existing (multi-stakeholder) initiatives; ii) wider adoption by international actors; iii) methodology reducing double work by companies; iv) cover material risks and avoid fragmentation; and v) increased transparency in responsible sourcing.

² Explanatory Memorandum, pages 7-8 ([link](#)). Therefore, the Conflict Minerals Regulation (more specific) will continue to apply and the due diligence provisions of the CSDD will apply to value chains of additional minerals that are not covered in the Conflict Minerals Regulation but produce human rights, climate and environmental adverse impacts (page 6, [link](#)). The CSDD will complement the Batteries Regulation by introducing a value chain due diligence related to raw materials that are not covered in that Regulation but without requiring certification for placing the products on the EU market (page 7, [link](#)).



7. **Supporting measures and incentives:** next to the recognition of industry schemes and initiatives, our sector suggests adopting a **“smart mix” of minimum requirements plus incentives to frontrunners** (to opt to go beyond those minimum requirements). Further measures could be introduced in resource-rich countries to verify whether similar high standards to those in the EU are implemented in third countries’ strategic supply chains. Moreover, support should be provided to on-the-ground mining projects with a focus on labour and human rights, environment, health, and governance standards, avoiding duplication of standards.
8. **Corporate governance and sustainability objectives:** Guidance and clarity are necessary with regard to some definitions under the corporate governance part of the proposal. While it is very important that these international conventions remain the basis, it would be also extremely important to define the concepts of ‘severe adverse impact’¹ ‘large’, ‘irreversible’, and ‘difficult to remedy’. Otherwise, companies using it will be faced with a huge number of uncertainties, having potential risks for implementation. Also, it should be better clarified what the legal responsibilities of companies are in relation to environmental due diligence and the related sustainability obligations for companies². For instance, the **1.5 °C global warming compatibility target does not reflect businesses’ varying ability to influence emissions or competition considerations in markets with unfit regulations**. Moreover, it should be clarified how the due diligence provisions of this Directive plan address environmental adverse impacts and how this translates in practice for the metals industry, for instance in relation to the “value chains of additional minerals” (mentioned under point 3). In this regard, our sector suggests **linking the due diligence requirements to other legislative requirements in place to prevent/minimise environmental impacts** (e.g. Industrial Emissions Directive’s permits, Seveso requirements, upcoming OECD environmental due diligence handbook, etc.). This could help companies in demonstrating that their operations already comply with strict EU requirements. Also, we suggest, that if the climate plan is to be considered as a stand-alone requirement of each individual company in scope, it could be fulfilled by reference to the equivalent climate plan of a parent company encompassing that subsidiary in scope rather than each company in scope having to have a separate plan.
9. **Clarify the support for SMEs:** the role of SMEs under the future Directive should be better clarified. The planned **support programs for SMEs must be designed practically to be a real relief**, avoiding excessive burden due to parallel demands from large customers. However, the potential application of the due diligence provisions to SMEs should not be excluded in the future, as due diligence practices evolve and obligations expand to more players, including at the global level. Currently, only 1% of EU companies are covered by the proposal, mostly big companies that are already actively working on showing compliance. However, **environmental, social and governance (ESG) risks are not limited to big companies operating in those sectors, as they can occur in all value chains and in companies of all sizes**. Thus, for due diligence to be effective, we believe that it should apply to the entire value chain in an inclusive way (regardless of sectors and company size but adapted to real risk profiles on the ground)³.
10. **High-impact sectors vs. very large companies:** the distinction between the scope of due diligence for high impact sectors vs. very large companies may create **difficulties where there are companies falling into both groups in the same value chain**. To ensure a proportionate burden, CSDD requires companies operating in

¹ Article 31

² Explanatory Memorandum to the Commission’s proposal, page 4 ([link](#)): “this Directive will set obligations for companies to have in place the plan ensuring that the business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement on which the CSRD requires to report.”

³ In line with our recommendation n.7 from [Eurometaux’s position paper](#): “Avoid the risk of disengagement: due diligence should aim for continuous improvement, engagement and empowerment.”



such high-impact sectors to comply with more targeted due diligence focusing on ‘severe’ adverse impacts¹. All other companies in scope need to identify actual and potential adverse impacts relevant to their operations, subsidiaries, and, where related to their value chains, established business relationships **regardless of severity**. It should be clarified **how this distinction might affect the due diligence obligations of very large companies**, which have subsidiaries or established business partners that are large high impact sector companies.

11. **Ban of forced labour products**: the upcoming EU instrument² to ban goods made with forced labour from entering the EU market **should be aligned with this Directive**. The Commission should clarify the scope of its new instrument, which goods are covered both inside and outside the EU, how it will be implemented in combination with a robust enforcement framework and how it will complement existing horizontal and sectoral EU initiatives, in particular, the due diligence and transparency obligations.
12. **Simplify the personal scope for non-EU companies**, as it poses practical difficulties for groups of companies. Utmost harmonization between the laws of Member States is required because a **group of companies that are all non-EU based may simultaneously fall within the scope of several different national legal frameworks**. This creates an unduly high administrative burden of having to deal with potentially various EU supervisory authorities and different transposing legislation by the various EU Member States. Our sector suggests that where at least an EU company in scope is part of the group, the non-EU companies should be able to opt for the same regime and the same supervisory authority as an EU company that is part of the group regardless of where they generate most of their EU turnover. The CSDD is silent on **jurisdiction for civil liability claims against non-EU companies**. However, our sector fears uncertainties with regard to enforcement, such as identifying the relevant jurisdiction for potential civil liability claims, where they are not caught by the Rome I Regulation. As for the **net turnover of non-EU companies**, this should be calculated on a stand-alone basis³ but not include inbound intra-group turnover. If non-EU companies are selling to their group companies in the EU only rather than having third party business, the upstream and downstream value chain of the group will be in scope by virtue of the EU company that is in the scope of the CSDD and thus there is no need to impose obligations on non-EU companies that come into the scope of the CSDD only by virtue of selling to a member of the same group of companies. Furthermore, **potential burdens for non-EU companies as a consequence of extraterritorial EU legislation** should be clarified. Supervisory authorities will have the power to request information and to carry out investigations related to compliance with the CSDD and they may issue sanctions. In practice, it may be difficult to align with blocking statutes of non-EU countries that prohibit a company in scope from requesting or disclosing information for the purposes of providing evidence for use in foreign judicial or administrative proceedings. This may create legal issues and burdens for the non-EU companies in scope depending on the laws of their home state. Finally, our sector requests a clarification around the **designation and change of supervisory authorities for non-EU companies in scope**. We suggest that a group of companies among which there are several subsidiaries which all would have a different supervisory authority based on their turnover in member states or by virtue of having several branches in the

¹ EU companies with more than 250 and up to 500 employees and more than EUR 40 million and up to EUR 150 million worldwide net turnover and non-EU companies with a net turnover of more than EUR 40 million up to 150 million in the EU, in the financial year preceding the last financial year and which operate in one or more high-impact sectors (over 50% of net turnover generated) are only required to identify actual and potential “severe” adverse impacts relevant to their high-risk sectors, on the basis that this ensures a proportionate burden on companies in this category.

² The ban was announced as part of the Commission’s [Communication on Decent Work Worldwide](#), published on the same day of the CSDD proposal. It is currently being developed by DG Trade as a separate instrument.

³ The Preamble provides that to ensure identification of the relevant turnover of companies concerned, the methods for calculating net turnover for non-EU companies as laid down in Directive (EU) 2013/34 as amended by Directive (EU) 2021/2101 should be used. The definition of turnover should be based on Directive 2013/34/EU which has already established the methods for calculating net turnover for non-EU companies, as turnover and revenue definitions are similar in international accounting frameworks too.



EU, should be able to apply to be subject to one and the same supervisory authority and this should be a reason based on which a change of a supervisory authority may be requested.

13. **Clarify the exact conditions for disengagement:** while we agree that “this Directive should ensure that disengagement is a last-resort action, in line with the Union’s policy of zero-tolerance on child labour”¹, improvement is needed in **specifying the processes to assess whether disengagement may lead to severely adverse impacts and should thus be avoided**. As the preamble foresees, “terminating a business relationship in which child labour was found could expose the child to even more severe adverse human rights impacts”. Therefore, such considerations need to be backed with guidance on how this can work in practice to avoid misuse of the legislation and disproportionate measures. Also, there is some vagueness in the scope of actors with whom business relationships can be terminated, even as last-resort-only action. For example, Art. 7 para. 3 foresees disengagement possibility for indirect-only relationships, whereas Art. 7 para. 5 and Art. 8 para. 6 expand the disengagement rules for business relations “with or in the value chain”, which shall be misinterpreted as including also direct business relationships. Our sector calls on the European Commission to **provide guidance to companies and the Member States** about how to implement termination provisions in their contract, including clear examples of how to identify not recoverable red lines. Without this support, there is the risk that the disengagement options might be considered at the same level as other due diligence practices such as improvement, engagement, and empowerment. Such guidance should also include mitigation of adverse impacts of disengagement, given that disengagement could have a negative impact both for EU and non-EU companies.

Final remarks

In conclusion, Eurometaux believes that the CSDD legislative proposal adopted by the Commission in February 2022 is a good starting point to **make responsible and ethical sourcing of metals and minerals an essential part of EU policy**. This was the central argument of our position paper in favour of a binding due diligence framework in the EU.

However, with a view to developing horizontal and workable legislation, we believe that more efforts should be taken by the Commission to **improve the proposed definitions**, ensure **alignment with international standards** and **coherence with other EU policies and national initiatives** (adopted or ongoing) to avoid duplication and uneven application of the due diligence requirements across the EU. Realistic timeframes and clear guidelines by the Commission will also be crucial for the implementation.

Several metals are already covered by EU due diligence requirements, including gold, tin, tantalum, and tungsten in the Conflict Minerals Regulation, and lithium, nickel, cobalt, and graphite in the European Commission’s proposed Batteries Regulation. The metals industry has consistently advocated for a **proportionate risk-based due diligence** in these policies, having as wide coverage as possible to **avoid any loopholes**.

In conclusion, we believe that an effective due diligence framework should encourage the use of sustainably produced and responsibly sourced metals and minerals in value chains while ensuring a level playing field and fair-trade relations with our international partners.

¹ Preamble to the Commission’s proposal, recital 32 ([link](#))

