



# Towards Effective Implementation of the Corporate Sustainability Due Diligence Directive (CSDDD)

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The Corporate Sustainability Due Diligence Directive (CSDDD)'s adoption on 24 May 2024 and its publication in the Official Journal of the EU in June mark the beginning of its transposition phase. In May 2024, the Rebalance team convened a roundtable in Brussels with policymakers and NGO leaders to share research findings and discuss implementation challenges and the potential effectiveness of the CSDDD. Rebalance is a collaboration between seven European universities and an international NGO aiming to provide new evidence, resources, and insights to help rebalance democracy and capitalism. The research conducted and the discussion in Brussels resulted in a set of recommendations addressed at national policymakers that aim to enhance the efficiency of CSDDD implementation across different national contexts:



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- 1. Promote Transparent and Inclusive Policymaking:** Transparent and inclusive policymaking, along with clear communication of potential impacts, will be crucial in the transposition phase.
- 2. Adapt to Diverse National Contexts:** Each EU Member State will need to implement the CSDDD differently due to varying factors, particularly their different rule of law environments.
- 3. Ensure On-the-Ground Monitoring and Stakeholder Inclusion:** Effective enforcement will require robust on-the-ground monitoring and the inclusion of relevant stakeholders.
- 4. Consider the State's Broader Human Rights Obligations, Particularly Under the European Convention for Human Rights (ECHR):** Although the CSDDD text does not explicitly reference the ECHR, to ensure comprehensive human rights protection, Member States should remain aware of their own human rights obligations under the ECHR during the transposition process and throughout the subsequent enforcement.
- 5. Recognize and Monitor Voluntary Measures:** Despite the mandatory nature of the CSDDD, voluntary measures remain important. The shift to mandatory regulation does not diminish the role of voluntary initiatives; instead, it amplifies their significance.

### Implementation Challenges of the Corporate Sustainability Due Diligence Directive

The adoption of the Corporate Sustainability Due Diligence Directive (CSDDD) has sparked widespread discussion and analysis. Much of the debate has focused on the text of the Directive, comparing different versions and assessing its implications for business operations within and outside the EU. Key points of contention include the scope of companies covered and the impact on their supply chains. However, several critical factors affecting the Directive's implementation have remained under-discussed.

The Rebalance roundtable in Brussels highlighted several key issues, including:

- The unexpected opposition from some national governments. The German government, subsequently supported by Italy, Sweden, and Austria, nearly derailed the entire adoption process. While opposition at the stage of the adoption of the CSDDD was overcome, it might however manifest itself again at the transposition stage. In this context, questions around the influence of the business community on national governments are particularly important;

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- Companies' expectations that compliance with certain industry voluntary standards should protect them from liability; and uncertainty on the role of private regulatory instruments (certification, audits, industry schemes) in the new human rights and environmental due diligence regime;
- The impact of the general rule of law environment on the implementation of the CSDDD, both in the EU (rule of law crisis in Hungary and Poland) and beyond. In the case of the CSDDD, there is a special challenge because the EU member-states are required to develop national implementation mechanisms taking into consideration that companies need to comply when operating abroad (beyond the EU) via subsidiaries;
- The lack of transparency and inclusiveness of policymaking creates additional opportunities for populist speculations. Discussions on the supposedly disproportionate impact of the CSDDD on SMEs, despite measures to effectively mitigate these, is a case in point;
- Uncertainty about the role, if any, of the European Convention on Human Rights system in business and human rights and corporate accountability discussions in the EU, e.g. in the CSDDD discussions.

### Overview of the Research

Rebalance is a collaboration between seven European universities and an international NGO aiming to provide new evidence, resources, and insights to help rebalance democracy and capitalism. In May 2024, the Rebalance team organized a roundtable in Brussels, bringing together policymakers and NGO representatives to explore these implementation challenges. The roundtable participants included individuals with diverse backgrounds and experiences in Business and Human Rights (BHR), some of whom were involved in drafting the CSDDD, while others led advocacy campaigns for its adoption. This policy brief distills the key findings and recommendations from the Rebalance research team, and the roundtable discussions to guide national policymakers in the effective transposition and implementation of the CSDDD.

### Key Findings and Recommendations

#### 1. Promote Transparent and Inclusive Policymaking

Transparent and inclusive policymaking, along with clear communication of potential impacts, is crucial. The CSDDD adoption process highlighted the significant influence of populist standpoints, underscoring the need for openness and clarity about the implications of the new rules. A good illustration of this issue is the discussion about their possible indirect impacts on small and medium enterprises (SMEs), where concerns have been raised that the CSDDD might disproportionately burden SMEs, echoing fears observed during the implementation of the German supply chain law. However, the final version of the CSDDD includes provisions to mitigate these burdens. This includes offering support to SMEs through information portals, financial assistance, and capacity-building initiatives. Some of these supporting measures, such as the provision of websites and informa-

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tion portals, are a clear responsibility of Member States, which should also consider measures of financial support in favour of SMEs indirectly impacted by the new rules. Despite these measures, opponents of the CSDDD continue to argue that it could negatively impact SMEs, a narrative that could hinder its effective transposition.

**Recommendation:** Policymakers should take effective supportive measures accompanying implementation of the CSDDD and communicate such measures clearly to counteract populist misinformation. Emphasizing these provisions can alleviate fears and garner broader support for the Directive. Highlighting these provisions can counteract populist rhetoric and build a more informed and supportive environment for the CSDDD's implementation.

### 2. Adapt to Diverse National Contexts

The implementation of the CSDDD will vary across the EU, reflecting each Member State's legal and socio-economic context, particularly their different rule of law environments. This diversity is both a challenge and an opportunity. Effective implementation requires a nuanced approach that considers the specific conditions and needs of each country while maintaining the Directive's overarching objectives. National mechanisms should be designed to address the distinct rule of law environments across the EU and beyond.

Additionally, business activities in non-EU countries will be impacted by the CSDDD as well. In transposing the Directive, national authorities must take into account the specificity of the Member State's legal system without falling short of the Directive's requirements. Third countries whose companies might be directly or indirectly impacted by the CSDDD should also consider adopting supporting measures to facilitate compliance.

**Recommendation:** In transposing the Directive, national authorities must take into account the specificity of the Member State's legal system and socio-economic contexts without falling short of the Directive's requirements. National implementation strategies should be flexible enough to address the diverse rule of law environments encountered in global supply chains. Third countries whose companies might be directly or indirectly impacted by the CSDDD should also consider adopting supporting measures to facilitate compliance.

### 3. Ensure On-the-Ground Monitoring and Stakeholder Inclusion

Effective enforcement of the CSDDD requires robust on-the-ground monitoring and the inclusion of local communities as equal stakeholders. Without these elements, the Directive's implementation will be ineffective and might give rise to unintended effects. Civil society organizations and local communities play a pivotal role in this process, providing critical insights and ensuring that corporate activities align with sustainability and human rights standards. The Directive contains strong provisions on meaningful stakeholder engagement throughout the due diligence process. Yet, such engagement needs to be planned in a way that ensures its effectiveness and inclusivity without jeopardizing the relevant stakeholders.

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**Recommendation:** Policymakers should integrate mechanisms for community engagement and grassroots monitoring into the national implementation frameworks, providing guidance for meaningful stakeholder engagement throughout the due diligence process, and particularly in the monitoring phase. Collaborating with civil society organizations can enhance the credibility and effectiveness of these efforts, ensuring that the voices of affected communities are heard and addressed. National mechanisms should prioritize these aspects to ensure effective and inclusive implementation.

### 4. Consider the State's Broader Human Rights Obligations, Particularly Under the European Convention for Human Rights (ECHR)

Member States should remain aware that their obligations under the CSDDD must be considered at all times in the light of their broader human rights obligations, particularly under the ECHR. The ECHR, although not explicitly mentioned in the CSDDD, offers significant potential for enhancing the Directive's enforcement. The ECHR's focus on state responsibilities, particularly positive obligations to regulate private actors, aligns well with the CSDDD's objectives. Existing jurisprudence under the ECHR supports the notion that states must ensure access to justice, which can be leveraged to enforce the CSDDD's provisions.

**Recommendation:** Policymakers should explore the potential role of the ECHR in the enforcement of the CSDDD, using the ECHR as a complementary framework to strengthen human rights protections. Integrating ECHR principles can strengthen the Directive's human rights protections and provide a robust legal basis for holding states accountable for ensuring corporate compliance with the CSDDD.

### 5. Recognize and Monitor Voluntary Measures

The research conducted within the Rebalance Project revealed an unexpected finding: companies from countries with mandatory human rights due diligence laws (like France and Germany) did not necessarily favor the CSDDD more than others. The key determinant of corporate support was their experience with sustainability practices and the assurance that they would not face regulatory fragmentation. Voluntary measures remain crucial in this landscape. They help companies transition smoothly to mandatory regulations, build necessary capacities, and foster a culture of compliance that aligns with the CSDDD's objectives and, potentially, exceeds them. These measures are not redundant but complementary to mandatory regulations, facilitating smoother adaptation and greater acceptance among businesses.

Companies are likely to intensify the application of voluntary measures to prepare for upcoming obligations, as well as meet heightened expectations from investors and society. The CSDDD should be considered as a point of departure, not of arrival; companies should be incentivized to adopt best practices that go beyond their legal requirements. At the same time, the compatibility of voluntary initiatives with the CSDDD's requirements must be continuously assessed and monitored.

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**Recommendation:** National policymakers should promote a “smart mix” of mandatory and voluntary measures. Encouraging voluntary initiatives can facilitate the legitimization of mandatory regulations and support companies in meeting the heightened expectations from investors and society. At the same time, the CSDDD should not be seen as a ‘ceiling’, but as a starting point for companies to promote practices potentially exceeding the Directive’s legal requirements and leading the path for other companies. Such efforts and best practices should be recognized and rewarded by national authorities, including through incentive schemes.

### Conclusion

The successful implementation of the CSDDD requires a multifaceted approach that balances mandatory and voluntary measures, addresses populist misinformation, adapts to diverse national contexts, ensures robust monitoring and stakeholder inclusion, and leverages existing human rights frameworks like the ECHR. By adopting these recommendations, national policymakers can enhance the efficiency of the CSDDD, fostering a more sustainable and accountable corporate landscape across the EU and beyond.



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