

EFB's Position Paper on the Corporate Sustainable Due Diligence

The application of the CSDDD must be done in such a way that will not adversely affect the competitiveness of family businesses.

EXECUTIVE SUMMARY

The Corporate Sustainability Due Diligence (CSDDD) proposal, which is currently under discussion, seeks to ensure that the European Business Ecosystem takes human rights and environmental protection into everything it does. As such, it is an important proposal, the premise of which EFB fully supports.

However, there are points of particular concern which arise when analysing the proposal in greater depth. Hence, European Family Businesses has come up with the following proposals to ensure that the CSDDD, when applied, is done so effectively:

- a) Existing online tools ought to be made available to ensure companies are not faced with an entirely new costly and complicated system for reporting.
- b) Making sure the terminology of the CSDDD is consistent with existing international standards.
- c) Clarity as to the Directors' duties when incorporating the CSDDD and stakeholders' interests.
- d) Ensuring that large enterprises have a clear set of guidelines to determine if SMEs are in jeopardy and how to help them with auditing costs.
- e) There is a limit to passing on the burden to SMEs on reporting if they are part of a large company's value chain. This 'limit' needs to be clearly identified so that SMEs may have clear protection against taking on a large proportion of the burden.
- f) The European Commission should consider creating an expert advisory group to answer questions on the CSDDD once the text is adopted so that member states have a port of call when companies in their jurisdictions have questions.

The European Family Businesses perspective on the CSDDD

The Corporate Sustainability Due Diligence (CSDDD) proposal, which is currently under discussion, seeks to ensure that the European business ecosystem takes human rights and environmental protection into everything it does. As such, it is an important proposal, the premise of which EFB fully supports.

EFB believes that the [Corporate Sustainability Due Diligence \(CSDDD\)](#)¹ proposal is crucial to ensure Europe achieves its goal of [carbon neutrality by 2050](#).² Corporate participation when seeking to apply the [EU Green Deal](#)³ will be crucial as the EU seeks to ensure that businesses foster sustainable and responsible behaviour in their businesses.

However, there are points of particular concern which arise when analysing the proposal in greater depth. These issues include: the scope of the entire value chain, potential liability for actions of the entire value chain which companies may have limited visibility past a certain point, the director's duties, the potential passing on of the reporting burden to SMEs within the value chain of larger companies which must complete the due diligence report, the lack of cohesion when it comes to the language of the proposal when compared with other international standards from the OECD and UN on due diligence. Furthermore, this proposal comes at a time when the Corporate Sustainability Reporting Directive has already been approved and is set to be applied as of the 1st of January 2024. Amid times of economic pressure and increasing costs of living, the latter brings one to question the extent to which the CSDDD proposal is needed.

In this context, EFB would like to propose that reporting tools exist for companies to apply the CSDDD without further administrative costs. EFB also highlights that there ought to be a taskforce formed by the EU Commission to address any questions that member states have from their companies once the proposal becomes a directive. Last, EFB believes that the scope of the proposal be reconsidered and adapted from the entire value chain to the supply chain. These are amongst some of the recommendations EFB puts forth to ensure that the CSDDD's application is effective and does not produce excessive administrative burden.

Ensuring a responsible business ecosystem in Europe is crucial. Family businesses operate with this in mind as they seek to be present for generations and add to their local communities. Hence, European Family Businesses support the European institutions' efforts to ensure that European companies bear due diligence in mind as they operate. However, as companies seek to navigate toward applying a sustainability strategy, they are being challenged by the length of these guidelines and the volume of guidelines emerging at once, arguably causing more red tape.

With the proposal for the [Corporate Sustainability Reporting Directive \(CSRD\)](#)⁴ and now the CSDDD emerging simultaneously, one has to consider where one starts and the other ends. It can be argued that applying the two will be overwhelming for companies to put into practice effectively, especially if the scope, proportionality and language of the proposals are not in line with one another. Therefore, EFB would like to respectfully suggest that more clarity is brought to the language within the proposed directives.

¹ [Corporate Sustainability Due Diligence \(CSDDD\)](#)

² [2050 long-term strategy \(europa.eu\)](#)

³ [A European Green Deal | European Commission \(europa.eu\)](#)

⁴ CSRD EU Commission Proposal [IMMC.COM%282021%29189%20final.ENG.xhtml.1_EN_ACT_part1_v9.docx \(europa.eu\)](#)

It is crucial that the CSDDD is in line with international guidelines while being simple to navigate for companies and for companies' suppliers, to ensure that competitiveness is not impacted while guaranteeing a level playing field for companies in the EU.

Scope, proportionality, and liability throughout the supply chain

Although SMEs are not in the scope of the proposal per se, they are directly impacted. To shed further light on the present European business ecosystem, here are some important statistics: Family Businesses make up approximately 60%⁵ of all European businesses, with 99 per cent being SMEs.⁶ EFB thus feels that the potential impact of the CSDDD on these companies must be considered.

In addition, one must question the point of the proposal if the SMEs are not included in the scope as there is a strong argument put forth that since 99% of European companies are SMEs, not including them would, to some extent, nullify the impact the CSDDD seeks to have. As such, to act in a pre-emptive manner, it is crucial that the proposal is clear on the costs it brings and how it can be simplified so that SMEs may be included without a disproportionate impact on their daily business operations.

The CSDDD should ensure proportionality when establishing the scope of companies included in the due diligence reporting. Larger enterprises may burden SMEs and Mid-Caps and have them do the reporting throughout the value chain. This will bring about additional costs to these smaller companies who may not have the administrative or monetary capability to fill the due diligence accounting for the value chain to the same extent as larger companies.

Since the proposal aims to bring cohesiveness into how EU member states apply due diligence requirements for their countries' companies, ensuring that the EU provides a strong position and simple method of application will help ensure the CSDDD's success. Provided that EU companies have ensured that their suppliers have implemented safeguards to ensure the safety of workers in their value chain and conducted reasonable checks as to the due diligence compliance of their suppliers upon entering into business with them, then EU companies ought not to be held liable to the extent present in the proposal. However, it ought to be considered that EU companies may have little to no visibility into a third countries' value chains. Therefore, the liability claims that EU companies would potentially face under the proposal, as it stands, may lead to EU companies having increased liability throughout their entire value chain for which they have limited to no visibility into. In addition, this may result in an uneven playing field which will affect EU's competitiveness upon the global economic stage.

Implementing the CSDDD in practice, European Family Businesses' recommendations:

Furthermore, the CSDDD proposal will be time-consuming and administratively costly, in particular for SMEs. As such EFB would like to respectfully advice that the following suggestions be considered:

⁵ [Family business \(europa.eu\)](https://europeanfamilybusinesses.eu)

⁶ [SMEs \(europa.eu\)](https://europeanfamilybusinesses.eu)

- a) There are already simple tools in place for auditing such as the digital platform that FBN has created with UNCTAD, so that Family Businesses could do a self-assessment on their compliance with the SDG's. EFB proposes that a similar, existing online tool be made available to ensure companies are not faced with an entirely new overpriced complex system.
- b) The CSDDD proposal is complex as it utilises new terminology, which may make the procedure more time consuming. EFB would like to propose that the EU Commission makes the due diligence exercise clear and accessible by utilising terminology from existing international standards set by the OECD and the UN's Due Diligence guidelines and other sustainability taxonomy directives and proposals such as the CSRD. This will help to reduce the complexity companies are faced with when seeking to apply the CSDDD and increase the quality of data collected.
- c) The need for clarity as to the duties of directors when incorporating the CSDDD and stakeholder's interests needs to be addressed further.
- d) As per the proposal, SMEs will be exposed to some of the costs and burdens of reporting if they are part of the large companies' value chain. If SMEs and Mid-Caps are exposed to these costs, they ought to be borne by large companies. This is why the proposal stated that *'Companies whose business partner is an SME, are also required to support them in fulfilling the due diligence requirements, in case such requirements would jeopardise the viability of the SME.'*⁷ For this to occur, large enterprises need to have a clear set of guidelines as to how to apply this in practise.
- e) Moreover, the CSDDD proposed states the , *'... measures to limit the passing on of the burden from those large companies to the smaller suppliers in the value chain and to use fair, reasonable, non-discriminatory and proportionate requirements vis-a-vis SMEs.'*⁸ Although there are measures limiting the passing of burden from large companies to the smaller suppliers in those companies value chains, there needs to be a set of clearly defined step by step rules providing information on how to put this in practise. Large enterprises needed to know what support is in place for SMEs falling within their value chain. This is equally important for SMEs so that they may be informed on where they can obtain support if there in the case of a larger company passing on its due diligence reporting burdens to them.
- f) The EU Commission could potentially consider making an expert advisory group to answer questions on the CSDDD once the text is adopted so that member states have a port of call when companies in their jurisdictions have questions. This will ensure that the quality of information obtained in the summation of the due diligence report is accurate and timely in its delivery. This will also decrease red tape for companies as they implement the CSDDD.

⁷ CSDDD EU Commission Paper page 14 [EUR-Lex - 52022PC0071 - EN - EUR-Lex \(europa.eu\)](#)

⁸ CSDDD EU Commission Paper page 14 [EUR-Lex - 52022PC0071 - EN - EUR-Lex \(europa.eu\)](#)

Conclusion

In conclusion, EFB reiterates its support for the goal of the CSDDD in ensuring responsible environmental and humanitarian practices across all businesses operating in the single market. However, EFB would like the following proposals to be considered:

- a) Existing online tools ought to be made available to ensure companies are not faced with an entirely new costly and complicated system for reporting.
- b) Making sure the terminology of the CSDDD is consistent with existing international standards.
- c) Clarity as to the Directors' duties when incorporating the CSDDD and stakeholders' interests.
- d) Ensuring that large enterprises have a clear set of guidelines to determine if SMEs are in jeopardy and how to help them with auditing costs.
- e) There is a limit to passing on the burden to SMEs on reporting if they are part of a large company's value chain. This 'limit' needs to be clearly identified so that SMEs may have clear protection against taking on a large proportion of the burden.
- f) The European Commission should consider creating an expert advisory group to answer questions on the CSDDD once the text is adopted so that member states have a port of call when companies in their jurisdictions have questions.

EFB feels that if these proposals are considered and applied, they can help the CSDDD have the desired effect of ensuring a positive change in corporate behaviour. In addition, the proposals made above will also enable good collection of data on the due diligence practises across the single market and help to create an informed analysis of the state of play.

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European Family Businesses (EFB) is a federation of national family businesses associations. Our aim is to make political decision makers aware of the contribution of family businesses to society at large and to promote policies that are conducive to long term entrepreneurship. Our members represent turnover in excess of one trillion Euro, 10% of European GDP.