

# ACHIEVING ALIGNMENT:

## Syncing EU due diligence legislation with the updated OECD Guidelines

OECD Watch has released a new paper explaining why and how EU policymakers should align draft EU due diligence legislation with the updated OECD Guidelines. The executive summary and a table summarizing key findings are provided below. The full-length analysis can be read [here](#).

### EXECUTIVE SUMMARY

The three European Union (EU) institutions - the Commission, Council, and Parliament - have begun tripartite negotiations, known as 'trilogues', to reconcile their positions for a Corporate Sustainability Due Diligence Directive (CSDDD). **A priority of many EU policymakers, businesses, and civil society has been to achieve impactful and workable due diligence while avoiding a proliferation of conflicting expectations for enterprises. The key to this is ensuring coherence between the proposed CSDDD and existing authoritative international norms on due diligence.**

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct ('the Guidelines') - which are, along with the UN Guiding Principles on Business and Human Rights (UNGPs), the leading international norm on due diligence - have recently been updated. The update was undertaken through a three-year multi-stakeholder process involving 51 states (including 25 EU members), businesses, unions, and civil society. The updated Guidelines remain fully aligned with the UNGPs and were unanimously endorsed by the full OECD Council on 8 June 2023. **Given the broad buy-in and high degree of authority of the updated OECD Guidelines, it is crucial that the proposed CSDDD be aligned with them.**

In a new [paper](#), OECD Watch evaluates the degree to which the three EU institutions' proposals on the CSDDD align with or diverge from the updated OECD Guidelines on four key aspects:

1. *Personal scope* of covered enterprises;
2. *Material scope* of human rights and environmental impacts, including *climate change*;
3. *Value chain scope* over related business relationships; and
4. *Due diligence duty* expected of corporations.

As is shown in Table 1 below, while none of the three EU institutions' position is fully in line with the OECD Guidelines, **the European Parliament's position is most closely harmonised, and all three institutional positions have their own opportunities for further alignment.** Regarding *personal scope*, the Parliament's position should be followed as it is closest to the Guidelines, covering the greatest number of enterprises among the three, including the financial sector at least to some degree, without exemptions for other sectors. In terms of *material scope*, the Parliament's position includes the most comprehensive and expansive list of protected human rights and international instruments, and the Parliament is best aligned with the updated OECD Guidelines regarding environmental issues, including *climate change*. Meanwhile, the Council proposal usefully proposes a wider range of concrete instruments. With regard to *value chain scope*, the Parliament's position is again most aligned with the Guidelines because it covers a broad range of business relationships both upstream and downstream in the value chain, though it also falls short of the Guidelines' standard on coverage of downstream use and financial value chains. Finally, regarding the *due diligence duty*, both the Council and Parliament shift toward a risk-based, context-specific duty as laid out in the updated OECD Guidelines, and the Parliament does so most fully.

**OECD Watch recommends that the EU institutions agree on directive text maximising alignment with the updated OECD Guidelines.** Based on this paper's evaluation, **in most cases, this will mean adopting the European Parliament's position, occasionally following elements of the other two institutions' positions.** By seeking alignment with the updated OECD Guidelines, EU lawmakers can avoid a proliferation of conflicting

norms and laws and achieve the correct balance between providing companies and rightsholders with sufficient legal certainty and allowing companies enough flexibility to ensure the due diligence duty is workable, proportionate, and responsive to actual human rights and environmental risks and impacts.

**TABLE 1: ALIGNMENT OF EU INSTITUTIONS' PROPOSALS ON CSDDD WITH UPDATED OECD GUIDELINES**

ELEMENT		UPDATED OECD GUIDELINES	EU COMMISSION	EU COUNCIL	EU PARLIAMENT
PERSONAL SCOPE	Covers companies of all sizes	✓	✗	✗	~
	Covers companies of all forms	✓	~	~	~
	Covers all sectors	✓	~	✗	~
MATERIAL SCOPE	Covers all human rights	✓	~	✗	~
	Covers broad selection of environmental impacts	✓	✗	~	✓
CLIMATE	Covers climate change as an environmental impact	✓	✗	✗	✓
	Requires development of climate plan covering scope 1, 2, and 3	✓	~	~	✓
VALUE CHAIN	Covers all business relationships	✓	✗	~	✓
	Covers full upstream & downstream value chain	✓	✓	✗	~
DUTY	Requires initial broad scoping to identify risks & impacts	✓	✗	~	✓
	Requires in-depth assessment of prioritised risks & impacts	✓	✓	✓	✓
	Prioritisation based on severity; no "prioritisation haven"	✓	✗	~	~
	Response based on relationship to & severity of impact; no closed list of measures	✓	✗	~	✓
	Views MSIs/schemes as piece, not proxy, for due diligence	✓	~	~	✓
	No over-relying on audits	✓	~	~	✗
	Seeks meaningful stakeholder engagement throughout DD	✓	✗	✗	✓
	Considers a broad range of stakeholder	✓	✗	✓	✓
	Disengagement can be appropriate but must be responsible	✓	~	✗	~
	Requires remediation of harm	✓	~	~	✓

### About OECD Watch

OECD Watch is a global network with more than 130 members in over 50 countries. Membership consists of a diverse range of civil society organisations bound together by their commitment to ensuring that victims of corporate misconduct have access to remedy, that business activity contributes to sustainable development and poverty eradication, and that corporations are held accountable for their actions around the globe.

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