

Effective Environmental and Climate Protection in the CSDDD: Challenges and Priorities

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Companies have played a major role in creating the environmental challenges we face today, and we are at a more critical point than ever in terms of the need to address these harms. This briefing addresses two main challenges for the Trilogues negotiations in order to allow for effective environmental and climate protection in the Corporate Sustainability Due Diligence Directive (CSDDD): 1. Listing environmental conventions does not provide adequate protection, and 2. tackling climate change is a critical part of environmental due diligence.

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Challenge: Listing environmental conventions does not provide adequate protection.

- Due to the **fragmentation of international environmental law**, it is inappropriate to define adverse environmental impacts only in relation to environmental agreements. For instance, there are **no treaties addressing plastic pollution or soil degradation**, and several existing frameworks have failed to avert environmental degradation. Moreover, even where frameworks exist, the included provisions represent only a small subset of the conventions. This fails to reflect their overall purpose and spirit, severely limiting the environmental protection they seek to afford.
- Therefore, environmental impacts should first be defined comprehensively, such as the European Parliament does by introducing **environmental impact categories** reflecting a broader range of environmental impacts (similar to the approach in the CSRD, EU Taxonomy, and Batteries Regulation). Using impact categories would enable an effective **risk-based approach** and promote alignment across EU legislation. It would also better reflect the complex interconnections between different environmental crises, enabling a comprehensive approach to avoiding, mitigating or ceasing environmental impacts.

- › One of the key international standards, the **OECD Guidelines for Multinational Enterprises, in its 2023 update** defines environmental due diligence on the basis of such categories. Aligning the CSDDD with international standards would clarify the obligations for companies both across sectors and jurisdictions, as well as build on the existing tools and experience of implementing due diligence. Moreover, this is also the approach followed by the EU Environmental Impact Assessment Directive, which relies on environmental categories.
- › The list of **conventions should serve as a specification of the material scope** wherever relevant and possible.
- › Incorporating environmental impact categories that describe the adverse impact on nature offers a substantial advantage in terms of legal certainty. By adopting this approach, the determination of an adverse environmental impact becomes more objective and concrete, relying on tangible elements and specific analysis. This enables companies to precisely define the scope of their obligations under the Directive, leading to a clearer framework for compliance and reducing ambiguity in environmental assessments. Moreover, the provisions on the duties of companies under Articles 6 to 8 further clarify the standard of conduct they must adhere to.

Table: Comparison of the Commission, Council and Parliament approach to defining adverse environmental impacts against the EU Environmental Action Programme priorities:

8th EAP priority objectives (as formulated in the Monitoring Framework)	Commission Proposal	Council General Approach	EP Report (Annex, Part II)
Climate change	Montreal Protocol (HFCs a minor subset of GHGs)	Montreal Protocol (HFCs a minor subset of GHGs)	(a) - Climate change, specified by: <ul style="list-style-type: none"> • Montreal Protocol • Paris Agreement
A regenerative circular economy	Basel Convention	Basel Convention	(g) - Harmful generation and mismanagement of waste, including hazardous substances, specified by: <ul style="list-style-type: none"> • Basel Convention
Zero pollution and a toxic free environment	Minamata Convention on Mercury Stockholm Convention (POPs) Rotterdam Convention Basel Convention Montreal Protocol	Minamata Convention on Mercury Stockholm Convention (POPs) Rotterdam Convention Basel Convention Montreal Protocol MARPOL UNCLOS	(c) - Air, water and soil pollution, specified by: <ul style="list-style-type: none"> • UNCLOS • UN Water Convention • Minamata Convention • Stockholm Convention (POPs) (g) - Harmful generation and mismanagement of waste, including hazardous substances, specified by: <ul style="list-style-type: none"> • Minamata Convention • Stockholm Convention • Basel Convention
Biodiversity and ecosystems	CBD (biodiversity) CITES (biodiversity)	CBD (biodiversity) CITES (biodiversity) World Heritage Convention (limited to World Heritage sites?) Ramsar Convention (limited to wetlands)	(b) - Biodiversity loss, specified by: <ul style="list-style-type: none"> • CITES (d) - Degradation of land, marine and freshwater ecosystem (e) - Deforestation
Environmental and climate pressures related to EU production and consumption			(e) - Deforestation (f) - Overconsumption of material, water, energy and other natural resources

- No coverage or severely limited coverage. The objective is not addressed, or only minor aspects of it.
- Limited coverage. Some aspects of the objective are not included, or are included only in a partial manner.
- Adequate coverage. While gaps may remain, all the major aspects of the objective are addressed.

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Challenge: Tackling climate change is a critical part of environmental due diligence.

Achieving the climate objectives of the Paris Agreement and the European Green Deal to keep global warming to 1.5°C requires action towards decarbonisation by all actors across sectors. The latest IPCC report indicates that current country commitments lead to median global warming of 2.8°C, while policies implemented put the planet on track for a 3.2°C warming by 2100. Deep, rapid and sustained mitigation actions before 2030 would reduce the negative aspects of climate change on humans and the environment.

However, this is a rapidly closing window of opportunity that requires involvement from all actors in society, including the private sector. Therefore, mandating the private sector to conduct due diligence, set targets and implement transition plans remains crucial to achieving the EU's and EU Member States' climate and environmental ambitions. Fossil fuel companies and financial institutions based and operating in the EU are still investing in carbon-intensive projects that would result in enormous additional amounts of CO₂ emissions, exceeding current reduction plans for the EU and its Member States. A reduction obligation would therefore also greatly help the EU and its Member States to achieve their climate obligations. Companies' actions complement public resources, and are indispensable for the achievement of public policy objectives. To this end, the effective implementation of climate transition plans is an essential tool to mandate action on climate change.

CSDDD must define climate due diligence within the overall approach to environmental due diligence.

- › The climate transition plans envisaged in Article 15 of the CSDDD must be embedded within the general due diligence duty. While climate transition plans refer to a forward-looking strategic framework describing a company's action path towards a low-carbon and climate-resilient future (against defined time-bound targets), climate due diligence focuses on assessing and preventing potential and actual impacts, including climate ones. This can include taking measures to address impacts on carbon sinks, on demand management, energy and materials efficiency, circular material flows, or transformational changes in production processes.¹
- › In fact, the due diligence obligation to identify the impacts associated with a company's activities provides the analysis necessary to inform the development of a transition plan. By including climate change among the definition of adverse environmental impacts, the CSDDD can ensure that climate change contributions are identified, prevented or mitigated, and accounted for.² This will also ensure effective enforcement of the preventive actions, including transition plans.
- › Furthermore, it helps level the playing field for companies by aligning climate responsibilities across sectors, and provides enforceable legal options in case companies' commitments fall short of their obligations. In this way, companies that implement transition plans aligned with the Paris Agreement are not disadvantaged compared to those that do not.

1. IPCC (2023): Climate Change 2023 Synthesis Report, Summary for Policymakers (AR6 SYR SPM), p. 29.

2. UN Working Group on Business and Human Rights (June 2023): [Information Note on Climate Change and the Guiding Principles on Business and Human Rights](#), point 17.

CSDDD has to spell out key requirements and the obligation to implement transition plans.

- › Transition plans have to ensure that the business model and strategy of the company are **aligned** with the objectives of the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement and the EU Climate Law.
- › Article 15 must clarify that key components of the plans are **(i) setting time-bound short-, medium- and long-term targets for scope 1, 2 and, where relevant, 3 emissions, (ii) identifying and explaining the exposure of the company to coal-, oil- and gas-related activities, (iii) including implementing actions and financial and investment plans, and (iv) describing the role of supervisory bodies.**³ It is crucial that the wording links to the precise requirements spelt out in the CSRD and does not refer to the transition plans in general - as they broadly refer to sustainability matters in CSRD and are linked to the double materiality assessment.
- › The plans should not rely on offsets and negative emissions technologies to achieve emission reduction targets.
- › So far, evidence shows that companies have fallen short of effectively aligning their scope 1, 2 and 3 emissions with a 1.5°C trajectory.⁴ A 2023 review of the 24 biggest companies within the Race to Zero campaign showed that, of those, 15 companies had transition plans of “low or very low integrity”, with two companies achieving a “high integrity” rating and presenting best practices.⁵ Some of the recurring problems identified are unclear, insufficient or inexistent emissions reduction targets; lack of resources for implementation; and overreliance on future hypothetical offsetting and carbon capture technologies. Broader reviews in the sectors of oil and gas, construction, transport, automotive, and electric utilities have consistently shown the same results.⁶
- › **Specifying the content of transition plans will prevent greenwashing, contribute to legal certainty, improve comparability and facilitate a level-playing field in terms of implementation and enforcement.**

3. Based on wording from the Report of the European Parliament and the Council General Approach on the CSDDD.

4. Notre Affaire À Tous (2023), “Benchmark de la vigilance climatique des multinationales - Rapport 2023”, https://notreaffaireatous.org/wp-content/uploads/2023/06/Benchmark2023_Maquette20230607_versionIMPRESSON_compressed-1.pdf?utm_source=brevo&utm_campaign=Benchmark%202023&utm_medium=email.

5. New Climate Institute and Carbon Market Watch (2023), “Corporate Climate Responsibility Monitor 2023 - Assessing the transparency and integrity of companies’ emission reduction and net-zero targets” https://newclimate.org/sites/default/files/2023-04/NewClimate_CorporateClimateResponsibilityMonitor2023_Feb23.pdf, pp. 5-12.

6. World Benchmarking Alliance, Climate and Energy Benchmarks on construction, oil and gas, transport, automotive, and electric utilities sector, <https://www.worldbenchmarkingalliance.org/climate-and-energy-benchmark/>.