



Analysis

Potential Impacts of EU Due Diligence Obligations on Companies' Suppliers in Developing Countries

2023

Summary

This report aims to clarify how EU legislative acts on due diligence might impact EU companies' suppliers in developing countries. This report focuses on the Corporate Sustainability Due Diligence Directive, the Corporate Sustainability Reporting Directive, the Regulation on Deforestation-free Products, the Ecodesign for Sustainable Products Regulation, and the Regulation on Prohibiting Products Made with Forced Labour.

We find that it will strain resources for both EU companies and their suppliers to comply with the explicit and implicit due diligence obligations in the EU legislative acts. This is especially so if EU companies are encompassed within several of them. Many of the legislative acts' obligations require EU companies to obtain information from their suppliers for the purpose of monitoring their value chains and supply chains to avoid being party to adverse human rights or environmental impacts. As some of the information requirements are extensive, suppliers may struggle to provide the necessary information to the EU companies, which could jeopardize their relationships with the EU companies. This may incentivise suppliers to obscure the facts concerning on what the real situation on the ground is. This in turn risks that these EU legislative acts will have the opposite effect of their objectives, i.e., enhancing human rights protections and the protection of the environment.

Thus, we conclude our report with recommendations to the European Commission, EU companies, and their suppliers.

Recommendations to the European Commission

- Conduct an impact assessment on how the EU legislative acts together could affect EU companies and their suppliers in developing countries.
- Aim to publish guidelines and implement support measures, such as technical and financial aid, capacity building, promotion of skills and EU-import facilitation measures, to those that are directly and indirectly covered by the EU legislative acts as quickly as possible.

Recommendations to EU companies

- Review your operations and those of your subsidiaries, your value chains and supply chains, your suppliers and contracts, your code of conduct and try to identify if you have any risks in accordance with the EU legislative acts.
- Inform and involve the relevant departments in your operations, including your suppliers and start preparing for the EU legislative acts.

Recommendations to EU companies' suppliers in developing countries

- Deepen your knowledge about the upcoming EU legislative acts, try to identify which of your business partners could be covered and initiate a dialogue with them.
- Try to prepare your operations and establish relations and dialogue with your local and national governmental authorities, as you might need their assistance in gathering information.

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1 Introduction

The European Commission adopted a proposal for a new Directive, the Corporate Sustainability Due Diligence Directive (CSDDD) in February 2022, with the aim to establish a horizontal legal framework and to minimise the fragmentation on the European Union market.¹ The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, which has influenced the CSDDD, explain that carrying out due diligence is the processes through which companies can identify, prevent, mitigate, and account for how they address their actual and potential adverse impacts.²

However, the CSDDD is not the first EU legislative act that contains due diligence obligations, they can also be found in for example the EU's Regulation on Deforestation-free Products (EUDR). There are also implicit due diligence obligations, or expectations on EU companies to carry out due diligence in their operations in several either adopted or proposed EU legislative acts, such as the Corporate Sustainability Reporting Directive (CSRD), the Regulation on Ecodesign for Sustainable Products (ESPR) and the Regulation on Prohibiting Products made with Forced Labour on the Union (FLR).³

As the EU legislative acts place an expectation on EU companies to carry out due diligence in their value chains or supply chains, they also affect EU companies' business partners, such as suppliers in developing countries, which might not have the same resources as EU companies. Due to similarities between the EU legislative acts in terms of the obligations placed on EU companies, it may be difficult to envisage how these relate to one another and how they will impact both EU companies and suppliers in developing countries.

1.1 Purpose and scope

Against the background that it is not entirely clear to EU companies and their suppliers in developing countries what these legislative acts will mean in practice for them, this report aims to clarify how EU legislative acts concerning due diligence could impact EU companies' suppliers in developing countries. We will clarify and illustrate how companies' obligations in the selected EU legislative acts relate to each other, pointing out both similarities and differences. Our ambition is to map out what EU companies could require their suppliers to do to comply and, demonstrate what the overall impact could be. Thus, we attempt to answer the following questions:

¹ European Commission, "Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains," European Commission, retrieved 20 August 2023, [Corporate sustainability due diligence \(europa.eu\)](https://ec.europa.eu/economy_finance/just-sustainable-economy-commission-lays-down-rules-companies-respect-human-rights-environment-global-value-chains_en).

² OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, 2023, general policies para 11, OECD Publishing: Paris, <https://doi.org/10.1787/81f92357-en>.

³ The National Board of Trade Sweden's own abbreviation of the proposed Forced Labour Regulation.

1. How companies' obligations relate to each other in the
 - Corporate Sustainability Due Diligence Directive (CSDDD),
 - Corporate Sustainability Reporting Directive (CSRD),
 - Regulation on Deforestation-free Products (EUDR),
 - Ecodesign for Sustainable Products Regulation (ESPR), and
 - Regulation on Prohibiting Products made with Forced Labour (FLR).

2. What suppliers in developing countries could be required to do by EU companies that are covered by the above-mentioned EU legislative acts and what the potential impacts on such suppliers are.

We conclude our analysis with recommendations towards the European Commission, EU companies and their suppliers in developing countries regarding how they can address the adopted and proposed EU legislative acts.

1.2 Methodology

Throughout this report, we have used a legal analysis method which has allowed us to describe and interpret applicable law and explore its impacts.⁴ In Chapter 2, we will interpret the adopted and proposed EU legislative acts and analyse how the due diligence obligations in these instruments relate to each other. We do this, while recognising that the final versions of the Corporate Sustainability Due Diligence Directive (CSDDD), the Regulation on Ecodesign for Sustainable Products (ESPR), and the Forced Labour Regulation (FLR) may change as they are currently being negotiated.

We have chosen to look closer at the following directives and regulations: the CSDDD and the Regulation on Deforestation-free Products (EUDR) since both of them have explicit due diligence obligations for EU companies. We chose the CSRD since it was adopted before the CSDDD, but still included implicit due diligence obligations. The FLR was chosen because it was proposed after the CSDDD and has implicit due diligence obligations based on the CSDDD, but none of these legislative acts are yet in force. We chose the ESPR to see how other EU legislative acts with obligations on EU companies, however without being due diligence obligations, can impact suppliers in developing countries.

Each legislative act has been summarised in a table with the following categories: purpose, scope, status, and the due diligence steps. Key points are highlighted where we have mainly commented on differences between the CSDDD and the EU legislative acts in terms of scope, due diligence, and any other significant differences. We chose to compare the CSDDD with the other EU legislative acts as the CSDDD will become the overall legal framework for due diligence. Each summary is

⁴ Claes Sandgren, *Rättsvetenskap för uppsatsförfattare: Ämne, material, metod, argumentation och språk*, 5 ed. (Stockholm: Norstedts Juridik AB, 2021), 54–55.

concluded with answers to questions of relevance based on the due diligence obligations:

- What suppliers in developing countries could be required to do by an EU company that is covered by the [legislative proposal].
- What the potential impacts of the [legislative proposal] on suppliers in developing countries are.
- What tools the Member States/EU will provide to ease the burden on suppliers in developing countries.

In Chapter 3, we present a hypothetical case that illustrates what type of information suppliers in developing countries could be required to disclose by an EU company that is covered by several of the EU legislative acts. Our intention is to demonstrate how the legislative acts relate to each other, and the extent of the demands that could be placed on suppliers. Thus, the case is based on an EU company that would be encompassed by as many of the EU legislative acts as possible in order to see extent of the demands placed on suppliers. Thereafter, conclusions and recommendations are presented based on our analysis.

To further illustrate the similarities and differences between the EU legislative acts, with the ambition of illustrating the challenge of comprehending how they relate to one another, in Annex I of this paper we have tried to identify and define similar terms⁵ that are used regarding companies' obligations.

⁵ The terms are “due diligence;” “actual or adverse impact;” “adverse environmental/human rights impact;” “severe adverse impact;” “business relationship;” “the subject of the legislative act;” “value chain/supply chain;” “making available on the market” and “placing on the market.”

2 How the CSDDD relates to the EU's legislative acts

2.1 The Corporate Sustainability Due Diligence Directive

Table 1. Summary of the CSDDD

Corporate Sustainability Due Diligence Directive (CSDDD)	
Purpose	The proposal aims to better exploit the potential of the single market to contribute to the transition to a sustainable economy and contribute to sustainable development through the prevention and mitigation of potential or actual human rights and environmental adverse impacts in companies' value chains. ⁶
Status	Trilogue negotiations began in June 2023.
Scope	<ul style="list-style-type: none"> • EU companies with more than 500 employees⁷ on average, a net worldwide turnover of more than €150 million in the last financial year, or • EU companies with more than 250 employees on average, a net worldwide turnover of more than €40 million in the last financial year, where at least €20 million was generated in one of the listed high-impact sectors⁸ or, • Third-country companies that fulfil one of the following conditions: <ol style="list-style-type: none"> 1. Generated a net turnover of more than €150 million in the Union in the financial year preceding the last financial year; or 2. Generated a net turnover of more than €40 million but no more than €150 million in the Union in the financial year preceding the last financial year, provided that at least €20 million was generated in one or more of the listed sectors.⁹
Due diligence	<ol style="list-style-type: none"> 1. Integrating due diligence into policies and management systems. 2. Identifying actual or potential adverse impacts. 3. Preventing and mitigating potential adverse impacts and bringing actual adverse impacts to an end and minimising their extent. 4. Establishing and maintaining a complaints procedure. 5. Monitoring the effectiveness of their due diligence policy and measures. 6. Publicly communicating on due diligence.¹⁰

⁶ COM (2022) 71 final of 23 February 2022, 45, para 71.

⁷ The number of part-time employees and temporary agency workers shall be included in the calculation of the number of employees in the same way as if they were workers employed directly for the same period by the company.

⁸ **Textile** which includes the manufacture of textiles, leather and related products such as footwear, and the wholesale trade of textiles, clothing and footwear; **Agriculture** which includes forestry, fisheries such as aquaculture, the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages; and **Minerals** which includes the extraction of mineral resources, including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products including metals and metal ores, construction materials, fuels, chemicals, and other intermediate products.

⁹ See footnote 8.

¹⁰ COM (2022) 71 final of 23 February 2022, Article 4.

Key points
<p>Scope</p> <p>The current scope criteria are expected to cover about 13,000 EU companies, which corresponds to about 1 per cent of all EU-registered companies and 4,000 third-country companies.¹¹ Micro companies and SMEs are excluded from the scope.</p>
<p>Due diligence</p> <p>The proposal introduces directors' duties and corporate management systems to set up and oversee the implementation of due diligence and to integrate it into their corporate strategy. Directors are expected to comply with the duty of care to act in the best interest of the company and they should systematically take into account sustainability matters in their decisions. Member States existing national laws would be enforced if directors' do not comply with their obligations set out in the CSDDD.¹²</p>
<p>Worth highlighting</p> <ul style="list-style-type: none"> - The human rights and environmental impacts that companies must consider in their due diligence are listed through international conventions, such as the International Convention on Civil and Political Rights and the Stockholm Convention on Persistent Organic Pollutants, in the CSDDD's Annex I.¹³ This could potentially expand dualistic Member States' national courts' jurisdiction to judge international conventions, even if they have not been incorporated into domestic law. - A company can be held liable for damages if Member States' competent authorities consider that the company intentionally or negligently failed to comply with the due diligence obligations. This is without prejudice to the civil liability of its subsidiary or of any direct and indirect business partners in the company's value chains.¹⁴

2.1.1 The CSDDD and suppliers in developing countries

What suppliers in developing countries could be required to do by an EU company that is covered by the CSDDD:

- Suppliers may be obligated to disclose information to EU companies, as covered EU companies are required to take appropriate measures to identify actual and potential adverse human rights and environmental impacts arising from their own operations or those of their subsidiaries, and where related to their value chains, from their established business relationships. What type of information is not specified but it could be both quantitative and qualitative information.¹⁵
- Suppliers that are direct business partners to EU companies may also have to give contractual assurances that they will ensure compliance with the EU companies Code of Conduct, and, where necessary, a prevention action plan, including by seeking corresponding contractual assurances from its own partners to the extent that their activities are part of EU companies value chains.¹⁶

¹¹ COM (2022) 71 final of 23 February 2022, 16.

¹² COM (2022) 71 final of 23 February 2022, Articles 25–26.

¹³ Annex to COM (2022) 71 final of 23 February 2022, 4–5.

¹⁴ COM (2022) 71 final of 23 February 2022, Article 22.

¹⁵ COM (2022) 71 final of 23 February 2022, Article 6. One example is given regarding environmental impacts, and that is that EU companies should obtain information about baseline conditions at higher-risk sites or facilities in their value chains, see COM (2022) 71 final of 23 February 2022, para 30.

¹⁶ COM (2022) 71 final of 23 February 2022, Article 7(2)(b) and Article 8(3)(b).

What the potential impacts of the CSDDD on suppliers in developing countries are:

- EU companies could terminate contracts with their suppliers if they cannot ensure compliance with the company’s Code of Conduct or a prevention action plan¹⁷, meaning that suppliers might lose their business relationships.
- EU companies are required to refrain from entering new or extending existing relationships with suppliers if potential adverse impacts arise, and those could not be prevented or adequately mitigated.¹⁸
- EU companies could temporarily suspend their business relationship with suppliers if they have a reasonable expectation that the pursuit of prevention and minimisation efforts will succeed in the short term.¹⁹ This could entail additional costs and loss of revenues for suppliers.
- If suppliers’ potential and adverse human rights and environmental impacts are severe, EU companies may terminate the business relationship (disengagement).²⁰ Disengagement clauses could be seen as incentives for suppliers to obscure any human rights or environmental impacts in their operations, regardless of the actual conditions on the ground.²¹ However, EU companies should use disengagement as a last-resort action.²²
- Business relationships between suppliers and EU companies could deteriorate as it is possible for EU companies to restructure their “established business relationships,” into a myriad of shorter, fewer, and less “intense” ones, in order to avoid attracting due diligence obligations and liabilities. This could mean that suppliers will have a harder time finding long-term relationships with EU companies, which in turn can harm the viability of the company.²³
- EU companies may want to diversify away from high-risk contexts, where due diligence obligations may prove more challenging. Suppliers in developing countries often operate in high-risk conditions and risk being at an added disadvantage if this is the case.

What tools the Member States/ EU will provide to ease the burden on suppliers in developing countries:

- Member States will be required to set up and operate individually or jointly dedicated websites, platforms, and portals, to provide information and support to companies and their partners with whom they have established business relationships in their value chains.²⁴ Member States should ensure that such support will be made accessible, and where necessary adapted and extended to upstream economic operators in third countries.²⁵

¹⁷ COM (2022) 71 final of 23 February 2022, Article 7(3) and Article 8(4).

¹⁸ COM (2022) 71 final of 23 February 2022, Article 7(5).

¹⁹ COM (2022) 71 final of 23 February 2022, Article 8(6)(a).

²⁰ COM (2022) 71 final of 23 February 2022, Article 7(5)(b) and Article 8(6)(b).

²¹ Shift, *Designing an EU Due Diligence Duty that Delivers Better Outcomes*, Shift, 2023. [Policing-to-Partnership-May-2023.pdf \(shiftproject.org\)](#), 5.

²² COM (2022) 71 final of 23 February 2022, para 32.

²³ Christopher Patz, “The EU’s Draft Corporate Sustainability Due Diligence Directive: A First Assessment”, *Business and Human Rights Journal* 7 (2022): 292.

²⁴ COM (2022) 71 final of 23 February 2022, Article 14(1).

²⁵ COM (2022) 71 final of 23 February 2022, para 47.

- The Commission may complement Member States' support measures on existing Union action to support due diligence in the Union and in third countries and may devise new measures, including facilitation of joint stakeholder initiatives.²⁶
- Member States are encouraged to continue working in partnerships with third countries to support upstream economic operators build the capacity to effectively prevent and mitigate adverse human rights and environmental impacts of their operations and business relationships and paying specific attention to smallholders' challenges.²⁷

2.2 The Corporate Sustainability Reporting Directive (CSRD)

Table 2. The differences between the CSRD and the CSDDD

Corporate Sustainability Reporting Directive (CSRD)	
Purpose	The CSRD aims to help investors, civil society organisations, consumers, and other stakeholders to evaluate the sustainability performance of companies by requiring covered companies to publish regular reports on their potential and actual social and environmental impacts. ²⁸
Status	Entered into force on 5 January 2023.
Scope	Large undertakings and/or SMEs which are public-interest entities. ²⁹ These must at least meet two of the following three criteria: <ol style="list-style-type: none"> 1. €40M in net turnover. 2. A balance sheet total of €20M or more. 3. Having over 250 employees. Some third-country undertakings that have significant business activity in the territory of the Union are also encompassed here. ³⁰
Due diligence	A description of: <ul style="list-style-type: none"> - The implemented due diligence process by the undertaking. - The principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain, including its products and services, its business relationship and its supply chain, action taken to identify those impacts, and other adverse impacts which the undertaking is required to identify pursuant to other Union requirements on undertakings to conduct a due diligence process. - Any actions to prevent, mitigate, remediate, or bring an end to actual or potential adverse impacts, and the results of such actions.³¹

²⁶ COM (2022) 71 final of 23 February 2022, Article 14(3).

²⁷ COM (2022) 71 final of 23 February 2022, para 49.

²⁸ European Commission, "Corporate Sustainability Reporting", *European Commission*, retrieved 23 August, 2023, [Corporate sustainability reporting \(europa.eu\)](https://european-council.europa.eu/media/en/press-room/pages/press-room-detail.aspx?lang=en).

²⁹ Directive (EU) 2022/2464, 17, para 17, see Directive 2013/34/EU, Article 3(3).

³⁰ See more details in Directive (EU) 2022/2464, Article 40(a) amending Directive 2013/34/EU.

³¹ Directive (EU) 2022/2464, Article 1(4).

Differences compared to the CSDDD
<p>Scope</p> <p>The CSRD encompasses some SMEs, unlike the CSDDD. The CSRD also encompasses companies with fewer employees compared to the CSDDD, which encompasses companies with more than 500 employees, or has more than 250 employees but with €40M net turnover in a listed high-risk sector.</p>
<p>Due diligence</p> <p>The CSRD does not impose any explicit due diligence obligations on large undertakings and SMEs, compared to the CSDDD. However, there is an assumption that covered companies have implemented a due diligence process as the CSRD requires EU companies to describe their implemented due diligence process in their sustainability reports.</p>
<p>Worth highlighting</p> <ul style="list-style-type: none"> - The CSRD obliges EU companies to describe their implemented due diligence process, where applicable, in line with Union requirements in their sustainability, but the Union requirements are not specified.³² The effect could be that EU companies that are covered by several of the legislative acts, will be obliged to report on different due diligence processes. This could increase EU companies' administrative burden and make it more difficult for investors, civil society organisations, costumers, etcetera, to compare sustainability performance of EU companies, which is the purpose of the CSRD. - Covered EU companies are to report the information in accordance with European Sustainability Reporting Standards (ESRS) which are currently being drafted. The ESRS will differ, depending on the EU companies' sizes.³³

2.2.1 The CSRD and suppliers in developing countries

What suppliers in developing countries could be required to do by an EU company that is covered by the CSRD:

- As the CSRD does not place any explicit due diligence obligations on EU companies, it could be assumed that the suppliers will not be required to do anything by the EU companies. However, if EU companies are encompassed by other EU legislative acts that place explicit due diligence obligations on them, it could be assumed that EU companies could require their suppliers to comply with those legislative acts and then report about it in accordance with the CSRD.

What the potential impacts of the CSRD on suppliers in developing countries are:

- It could be assumed that the CSRD's impact on suppliers is rather small since the CSRD does not put any explicit due diligence obligations on EU companies.

³² Directive (EU) 2022/2464, Article 1(4).

³³ Directive (EU) 2022/2464, para 38.

2.3 The Regulation on Deforestation-free Products (EUDR)

Table 3. The differences between the EUDR and the CSDDD

Regulation on Deforestation-free Products (EUDR)	
Purpose	The aim of the EUDR is to fight climate change and biodiversity loss and combat deforestation and forest degradation. ³⁴
Status	Entered into force on 29 June 2023.
Scope	The EUDR encompasses all operators and traders who either export from the Union market or place and/or make available on the Union market, the following products and commodities: palm oil, cattle, wood, coffee, cocoa, rubber, and soy. If these are not deforestation free, have been produced in accordance with the relevant legislation of the country of production and are covered by a due diligence statement, the products are prohibited to be placed or made available on the market or exported from the Union market. ³⁵
Due diligence	<ol style="list-style-type: none"> 1. Information requirements which include a due diligence statement.³⁶ 2. Risk assessment.³⁷ 3. Risk mitigation measures.³⁸

Differences compared to the CSDDD
<p>Scope</p> <p>The EUDR does not distinguish the subject (the operators and traders) based on its net turnover and employees like the CSDDD, but instead includes all operators working with the above-mentioned products and commodities.</p>
<p>Due diligence</p> <p>The third due diligence step (risk mitigation measures) is only necessary if the risk assessment (step two) reveals that there is a risk that the relevant products intended to be placed on the market or exported are non-compliant with the EUDR.³⁹ In addition, the EUDR's due diligence applies to EU companies <i>supply chains</i>, while the CSDDD's due diligence applies to EU companies <i>value chains</i>. However, it should be noted that the EUDR does not define "supply chain" or the extent of EU companies supply chain due diligence.⁴⁰</p>
<p>Worth highlighting</p> <ul style="list-style-type: none"> - EU companies due diligence obligations vary depending on the country of production's risk category (low risk, standard risk, and high risk)⁴¹, while the CSDDD requires all covered companies to conduct due diligence regardless of the country of origin of their products or input materials. - If EU companies are non-compliant with the EUDR's provisions, their products could be hindered from entering the Union market or having the products removed – as contrasted with the CSDDD, where violating the CSDDD's provisions could result in the EU company being held civilly liable.

³⁴ European Commission, "Deforestation-free products", *European Commission*, retrieved 30 August, 2023, [Regulation on deforestation-free products \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic_deforestation-free-products_en.pdf).

³⁵ Regulation (EU) 2023/1115, Article 3.

³⁶ Regulation (EU) 2023/1115, Article 9(1–2).

³⁷ Regulation (EU) 2023/1115, Article 10(1–4).

³⁸ Regulation (EU) 2023/1115, Article 11(1–3).

³⁹ Regulation (EU) 2023/1115, Article 11(1).

⁴⁰ See Annex I of this report.

⁴¹ Regulation (EU) 2023/1115, Article 29.

2.3.1 The EUDR and suppliers in developing countries

What suppliers in developing countries could be required to do by an EU company that is covered by the EUDR:

- It can be assumed that suppliers are required to provide some of the information, documentation, and data that the EU operators and traders need, in order for those companies to be able to fulfil the EUDR's due diligence obligations.⁴²

What the potential impacts of the EUDR on suppliers in developing countries are:

- Many of the EUDR's covered products are important export products for developing countries, thus suppliers in these countries risk facing these demands to a higher degree than suppliers in higher income countries.
- There is a risk that suppliers will not be able to comply with the information requirements, which could entail losing their business relationships with the EU companies and not being able to sell their products to the Union market anymore. Consequently, suppliers face many of the potential impacts listed in section 2.1.1.
- As the EUDR will classify all third countries according to a 3-tier risk system, this could mean that EU companies withdraw from the high-risk countries and/or that suppliers in those countries could be excluded from trading with EU companies.

What tools the Member States/ EU will provide to ease the burden on suppliers in developing countries:

- The Commission will carry out a general review no later than 30 June 2028. It will evaluate the impact on farmers, in particular smallholders, indigenous peoples and local communities and the possible need for additional support for the transition towards sustainable supply chains and for smallholders to meet the requirements of the EUDR.⁴³
- The Commission and interested Member States shall engage in a coordinated approach with producer countries and parts thereof that are covered by the EUDR, through existing and future partnerships, and other relevant cooperation mechanisms to jointly address the root causes of deforestation and forest degradation. The Commission will develop a comprehensive Union strategic framework for such engagement.⁴⁴

⁴² Regulation (EU) 2023/1115, Article 9.

⁴³ Regulation (EU) 2023/1115, Article 34(6).

⁴⁴ Regulation (EU) 2023/1115, Article 30(1).

2.4 The Regulation on Ecodesign for Sustainable Products (ESPR)

Table 4. The differences between the ESPR and the CSDDD

Regulation on Ecodesign for Sustainable Products (ESPR)	
Purpose	The objective of the ESPR is to make sustainable products the norm on the EU market and reduce their overall environmental and climate impacts. ⁴⁵
Status	Trilogue negotiations began 30 August 2023. ⁴⁶
Scope	The ESPR will apply to all products placed on the EU market, whether produced inside or outside the EU. ⁴⁷
Due diligence	The ESPR does not have any explicit due diligence obligations. However, the ESPR has ecodesign requirements, which include that parties along products' value chains need to provide information and performance requirements.

Differences compared to the CSDDD	
Scope	The ESPR's subjects are economic operators along the value chain, i.e., product manufacturers, EU importers, distributors, dealers (retailers, sellers), and fulfilment service providers. ⁴⁸ Whereas the CSDDD is limited to large EU companies.
Due diligence	The ESPR's ecodesign requirements are similar to the due diligence obligations in the CSDDD and the EUDR, even if they are not explicitly called "due diligence" obligations. This is supported by the wording of the ESPR, which states that social due diligence requirements are intentionally excluded as those are instead covered by the CSDDD. ⁴⁹ There is also an assumption in the ESPR that the CSDDD covers the remaining environmental due diligence objectives, that the ESPR does not address. ⁵⁰
Worth highlighting	<ul style="list-style-type: none"> - The ESPR is a Regulation Framework. This means that we will not know the specific ecodesign requirements for the relevant product groups until the Commission has adopted the delegated acts.⁵¹ - The Commission has not made an analysis of the ESPR's compatibility with the WTO rules. We have previously expressed our concern regarding this and encourage the Commission to conduct such an analysis, including taking into consideration what the ESPR's impact could be on EU's trade from developing countries based on the Sustainable Development Goals and Agenda 2030 as a context.⁵²

⁴⁵ European Commission, "Questions and Answers: Sustainable Products Initiative", *European Commission*, retrieved 24 July 2023, [Questions and Answers: Sustainable Products Initiative \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/inter-institutional-dialogue/2023/07/01/01_en.pdf).

⁴⁶ European Parliament, "Eco-design requirements for sustainable products," *European Parliament*, retrieved 23 October 2023, [Carriages preview | Legislative Train Schedule \(europa.eu\)](https://www.europarl.europa.eu/media-press/infographic/inter-institutional-dialogue/2023/10/01/01_en.pdf).

⁴⁷ European Commission, "Ecodesign for Sustainable Products Regulation," *European Commission*, retrieved 24 July 2023, [Ecodesign for sustainable products \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/inter-institutional-dialogue/2023/07/01/01_en.pdf).

⁴⁸ REACHLaw, "The Ecodesign for Sustainable Products Regulation (ESPR)," *REACHLaw*, retrieved 27 July 2023, [The Ecodesign for Sustainable Products Regulation - REACHLaw](https://www.reachlaw.com/the-ecodesign-for-sustainable-products-regulation-espr/).

⁴⁹ COM (2022) 142 final of 30 March 2022, 8.

⁵⁰ COM (2022) 142 final of 30 March 2022, 4.

⁵¹ COM (2022) 142 final of 30 March 2022, Article 4.

⁵² National Board of Trade, Yttrande om Europeiska kommissionens förslag till förordning om ekodesign för hållbara produkter, Dnr 2022/00712-3, 10.

2.4.1 The ESPR and suppliers in developing countries

What suppliers in developing countries could be required to do by an EU company that is covered by the ESPR:

- It could be assumed that suppliers will need to provide some information relevant to the ecodesign requirements that the EU economic operators need to comply with.⁵³

What the potential impacts of the ESPR on suppliers in developing countries are:

- Ahead of every delegated act, an impact assessment will be carried out which will assess in detail the impacts expected, including on third-country operators, also in light of their WTO notification.⁵⁴
- If suppliers cannot prove that they comply with the ecodesign requirements, for example they lack documentation or traceability of their products, there is a risk that suppliers are excluded from the Union market even if they in practice are complying with the ecodesign requirements.⁵⁵ Smaller suppliers could especially be affected.⁵⁶

What tools the Member States/EU provide will to ease the burden on suppliers in developing countries:

- The Commission shall, where appropriate, accompany the delegated acts with guidelines covering specificities of SMEs active in the product or product group sector affected for facilitating the application of the ESPR by SMEs.⁵⁷ However, it is unclear if these guidelines will be tailored towards SME suppliers in developing countries.
- Member States shall also take appropriate measures to help SMEs apply the delegated acts ecodesign requirements. These measures shall at a minimum include ensuring the availability of one-stop shops or similar mechanisms to raise awareness and create networking opportunities for SMEs to adapt to the requirements.⁵⁸ However, it is not stated if these measures will be available for suppliers in developing countries.

⁵³ COM (2022) 142 final of 30 March 2022, Articles 5–7.

⁵⁴ COM (2022) 142 final of 30 March 2022, para 18.

⁵⁵ National Board of Trade Sweden, Yttrande om Europeiska kommissionens förslag till förordning om ekodesign för hållbara produkter, Dnr 2022/00712–3, 9–10.

⁵⁶ National Board of Trade Sweden, Yttrande om Europeiska kommissionens förslag till förordning om ekodesign för hållbara produkter, Dnr 2022/00712–3, 9.

⁵⁷ COM (2022) 142 final of 30 March 2022, Article 19(2).

⁵⁸ COM (2022) 142 final of 30 March 2022, Article 19(3).

2.5 The Regulation on Prohibiting Products made with Forced Labour (FLR)

Table 5. The differences between the FLR and the CSDDD

Regulation on Prohibiting Products made with Forced Labour (FLR)	
Purpose	The proposal aims to prohibit the placing and making available on the EU market and the export from the EU of products made with forced labour, including forced child labour.
Status	The Parliament is expected to vote on its draft report in plenary in November 2023. The Council is still discussing the file (last checked November 2023).
Scope	The proposal covers all products, including parts of products, made available in the Union market, meaning both products made in the EU for domestic consumption and for export, as well as imported goods.
Due diligence	The FLR does not have any explicit due diligence obligations. However, it incentivises economic operators to carry out due diligence.

Differences compared to the CSDDD
<p>Scope</p> <p>All economic operators, including micro-enterprises and SMEs that are placing or making available products on the Union market or exporting from the Union, are covered by the FLR while the CSDDD only pertains to large companies.⁵⁹</p>
<p>Due diligence</p> <p>The FLR incentivises EU companies to carry out due diligence since this is taken into consideration by the competent authorities while they are assessing if there is a well-founded suspicion that the EU companies' products have been made by forced labour.⁶⁰ This can be compared to the CSDDD, which explicitly requires companies to conduct due diligence.</p>
<p>Worth highlighting</p> <ul style="list-style-type: none"> - If EU companies are non-compliant with the FLR's provisions, their products could be hindered from entering the Union market or having the products removed – as contrasted with the CSDDD, where violating the CSDDD's provisions could result in the EU company being held civilly liable. - The burden of proof that a product has been made by forced labour rests on the competent authorities and not on the company being investigated.⁶¹ - The Commission has not made an impact assessment of the proposal, which they usually do when presenting a draft for a legislative proposal.⁶²

⁵⁹ COM (2022) 453 final of 14 September 2022, Article 2(1)(h).

⁶⁰ European Commission, "Questions and Answers: Prohibition of Products made by Forced Labour in the Union Market", *European Commission*, retrieved 10 September, 2023, [Q&A: Prohibition of products made by forced labour \(europa.eu\)](https://ec.europa.eu/qa/prohibition-of-products-made-by-forced-labour).

⁶¹ COM (2022) 453 final of 14 September 2022, Article 6(3).

⁶² COM (2022) 453 final of 14 September 2022, 8.

2.5.1 The FLR and suppliers in developing countries

What suppliers in developing countries could be required to do by an EU company that is covered by the FLR:

- It could be assumed that suppliers whose products or inputs are sold to EU companies that import them to the Union market, could be required to provide information about how the products or inputs at any stage of its supply chain have been extracted, harvested, produced, manufactured, or processed.

What the potential impacts of the ESPR on suppliers in developing countries are:

- If the EU competent authorities cannot exclude that a product has been made by forced labour, for example due to EU companies lack of due diligence, suppliers might not be able to sell to the Union market.⁶³ If so, suppliers could face many of the potential impacts listed in section 2.1.1.
- The Commission will create a publicly available database with information on forced labour risks in specific geographic areas or with respect to specific products which could impact suppliers who operate within these geographic areas. For example, the database could help EU companies avoid “problematic suppliers.”⁶⁴

What tools the Member States/EU will provide to ease the burden on suppliers in developing countries:

- The Commission may engage and exchange information with, among others, authorities of third countries. This international cooperation will take place in a structured way as part of the existing dialogue structures with third countries, or, if necessary, specific ones that will be created on an ad hoc basis. This may also result in accompanying measures to support the efforts of partner countries and local available capacities in tackling forced labour.⁶⁵

⁶³ COM (2022) 453 final of 14 September 2022, Article 6(2).

⁶⁴ COM (2022) 453 final of 14 September 2022, 7.

⁶⁵ COM (2022) 453 final of 14 September 2022, Article 26.

3 Analysis

To illustrate the interaction between the different EU legislative acts summarised in the preceding chapter, we have created the following hypothetical scenario from the point of view of a supplier in a developing country.

The supplier, who operates in a ‘high-risk’ country⁶⁶, is a supplier and part of an EU-company’s value chain and/or supply chain.⁶⁷ The supplier is a forester, who produces wood inputs⁶⁸ and supplies wood to a local company, who in turn exports the products to an EU company (importer). The importer is a large EU company with more than 500 employees, a net worldwide turnover of more than €150 million in the last financial year and operates within the agricultural sector.⁶⁹

The national competent authorities have requested the EU importer to provide information on their due diligence process. As part of the EU importer’s due diligence process and in accordance with several of the EU legislative acts⁷⁰, the EU importer has to collect information from their business partners since the EU importer is placing these wood inputs and products on the Union market. Besides gathering information, the EU importer could also be required to prove it, by presenting evidence to the competent authorities how they have managed to minimise potential and actual adverse impacts, including how they have brought them to an end. EU companies covered by the CSDDD, could for example require their suppliers to give contractual assurances that they agree to comply with the EU companies’ Code of Conduct. However, since this was addressed in Chapter 2, we will not take this discussion any further here. Thus, this case only focuses on what type of information, if specified in the EU legislative act, the supplier could be required to provide by the EU importer.

Table 6. Summary of what information an EU importer might request

The EU legislative acts’ information requirements on an EU company	
CSDDD	Potentially disclose both quantitative and qualitative information regarding their own operators and business relationships related to potential adverse human rights and environmental impacts. ⁷¹
CSRD	The CSRD does not place any explicit obligations on EU companies to gather information from their suppliers.

⁶⁶ The EUDR establishes a three-tier system for the assessment of countries or parts thereof. If a supplier wants to sell products that come from a high-risk country to an EU company, the EUDR states that the competent authorities shall apply enhanced scrutiny to the relevant products.

⁶⁷ The CSDDD, the ESPR and the FLR cover EU companies value chains while the EUDR covers EU companies supply chains.

⁶⁸ The EUDR covers products made or partly made with wood while the ESPR and FLR cover all products that are made available or being placed on the Union market.

⁶⁹ The CSDDD cover these companies and the agricultural sector which for example includes forestry and wholesale trade of wood.

⁷⁰ The CSDDD, the EUDR and potentially the ESPR and the FLR.

⁷¹ The CSDDD does not specify what type of information suppliers could be required to disclose.

EUDR	<ul style="list-style-type: none"> - A description of the common name of the wood species and their full scientific name. - The country of production⁷² and, where relevant, parts thereof. - The geolocation⁷³ of all plots of land⁷⁴ where the relevant commodities⁷⁵ that the product contains, or has been made using, were produced, as well as the date or time of production.⁷⁶ - The name, postal address and e-mail address of any business or person from whom they have been supplied with the relevant products. - The name, postal address, and e-mail address of any business, operator, or trader to whom the relevant products have been supplied. - Adequately conclusive and verifiable information⁷⁷ that the relevant products are deforestation-free.⁷⁸ - Adequately conclusive and verifiable information that the relevant commodities have been produced in accordance with the relevant legislation of the country of production⁷⁹, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.
ESPR⁸¹	<ul style="list-style-type: none"> - Provide available information related to their supplies or services that is relevant to verify compliance with ecodesign requirements. - The name of the substance of concern present in the wood product.
FLR	Potentially disclose information on how their products, as a whole or in part at any stage of its extraction, harvest, production, or manufacture, including working or processing related to a product at any stage of its supply chains, have been made.

⁷² The country of production means the country or territory where the relevant commodity or the relevant commodity used in the production of, or contained in, a relevant product was produced, see Article 2(24) of Regulation (EU) 2023/1115.

⁷³ The geolocation means the geographical location of a plot of land described by means of latitude and longitude coordinates corresponding to at least one latitude and one longitude and using at least six decimal digits; for plots of land of more than four hectares used for the production of the relevant commodities other than cattle, this is to be provided using polygons with sufficient latitude and longitude points to describe the perimeter of each plot of land, see Article 2(28) of Regulation (EU) 2023/1115.

⁷⁴ Plot of land means land within a single real-estate property, as recognised by the law of the country of production, which enjoys sufficiently homogeneous conditions to allow an evaluation of the aggregate level of risk of deforestation and forest degradation associated with relevant commodities produced on that land, see Article 2(27) of Regulation (EU) 2023/1115.

⁷⁵ Relevant commodities mean cattle, cocoa, coffee, oil palm, rubber, soya, and wood, see Article 2(1) of Regulation (EU) 2023/1115.

⁷⁶ Where a relevant product contains or has been made with relevant commodities produced on different plots of land, the geolocation of all different plots of land should be included, see Article 9(1)(d) of Regulation (EU) 2023/1115.

⁷⁷ The EUDR does not specify what 'adequately conclusive and verifiable information' means.

⁷⁸ Deforestation-free means that the relevant products contain, have been fed with or have been made using, relevant commodities that were produced on land that has not been subject to deforestation after 31 December 2020, and in the case of relevant products that contain or have been made using wood, that the wood has been harvested from the forest without inducing forest degradation after 31 December 2020, see Article 2(13)(a-b) of Regulation (EU) 2023/1115.

⁷⁹ Relevant legislation of the country of production means the laws applicable in the country of production concerning the legal status of the area of production in terms of: land use rights, environmental protection, and forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting, third parties' rights, labour rights, human rights protected under international law, the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples and tax, anti-corruption, trade and customs regulations, see Article 2(40)(a-h) of Regulation (EU) 2023/1115.

⁸⁰ According to Article 10(3) of Regulation (EU) 2023/1115, wood products which fall within the scope of Regulation (EC) No 2173/2005 that are covered by a valid FLEGT license from an operational licensing scheme, shall be deemed to comply with Article 3(b) of this Regulation, which states that relevant products shall not be placed or made available on the market or exported, unless they have been produced in accordance with the relevant legislation of the country of production.

⁸¹ It should be noted that since the ESPR is a product regulation framework, the products will most likely be covered by other EU legislative acts that specifically regulates other parts of the products.

Table 6 summarises what type of information a forestry supplier could be required to disclose to an EU importer. There are however additional aspects of how the EU legislative acts relate to each other, which are worth highlighting.

At first glance, Table 6 shows that a supplier could be required to provide information to the EU importer in accordance with the CSDDD, the EUDR, the ESPR and the FLR. However, as we explained in Chapter 2, the CSRD, the ESPR and the FLR do not include any explicit due diligence obligations for EU companies. Instead, the legislative acts indirectly expect, or assume, that EU companies carry out due diligence. For example, the CSRD requires EU companies to report on their due diligence, the ESPR includes ecodesign requirements for EU companies, which are similar to due diligence obligations, and it could be conducive for EU companies that are covered by the FLR, to carry out due diligence to import their products to the Union market.

Since these EU legislative acts have similar obligations but different objectives, it seems like they are designed to complement each other. Thus, if EU companies are covered by several of the legislative acts, it is possible that the EU companies and their suppliers' administrative burden and costs increase. To illustrate this, we will once again use our hypothetical case of a forestry supplier as an example. The ESPR states that it will not cover products that are covered by other existing EU legislative acts unless those legislative acts do not sufficiently address the environmental sustainability aspects⁸² of the products.⁸³

Since the EUDR's objective is to combat deforestation and forest degradation, and covers wood products, one could think that the EUDR sufficiently addresses the environmental sustainability of the wood products. Based on this, it could be assumed that EU companies importing wood products are only covered by the EUDR and not the ESPR.

However, the ecodesign requirements are not only about the environmental impact of the raw materials (in this case, wood), but also of the wood products entire life cycle. Since neither the EUDR nor the ESPR have addressed whether the EUDR's obligations sufficiently address the wood products' environmental sustainability, it could initially mean that the administrative burden for the EU importer would increase, as they need to collect information from their suppliers in accordance with both the EUDR and the ESPR. This in turn implies that the forestry supplier would have to disclose information in accordance with both these legislative acts as well. However, it remains unclear if the EU importer can streamline and "merge" the information gathering from their suppliers so that the EU importer complies with both the EUDR and the ESPR.

Table 6 shows that the EUDR's information requirements "only" focus on if the wood products are deforestation-free and not if the products are made with forced labour.

⁸² Here, both long-term sustainability and reducing climate and environmental impact from products is included.

⁸³ COM (2022) 142 final of 30 March 2022, 2.

This could mean that the EU importer requires the forestry supplier to disclose information in accordance with the EUDR, the ESPR and the FLR, which could then increase the EU importer and the supplier's administrative burden and costs.

However, since the FLR does not explicitly require EU companies placing products on the Union market to carry out due diligence, even if it could be conducive for them to do so to import their wood products, it seems like the FLR and the CSDDD are intended to complement each other. Besides the fact that the FLR expects EU companies to carry out due diligence, the CSDDD also states that it plays an essential role in tackling forced labour.⁸⁴ Meaning that the EU importer could be encompassed within by the EUDR, the ESPR, the FLR and the CSDDD.⁸⁵ This in turn could then entail, as shown above, that the forestry supplier will be required to provide information in accordance with all four legislative acts, which would probably increase both the EU importer and the supplier's administrative burden and costs.

However, as already touched upon briefly in the previous sections, one wonders if an EU importer covered by several of the legislative acts, could streamline and “merge” some of the information gathering from the supplier to reduce the administrative burden and costs for both parties. Let us focus on the EUDR and the CSDDD, who both put explicit due diligence obligations on EU companies. Since the EUDR's due diligence obligations apply to EU companies *supply chains* and the CSDDD's obligations apply to EU companies *value chains*, one could assume that some of the information that the EU importer gathers from its supply chain, could be used if the EU importer is also required to gather information from its value chain.

Although, it should be pointed out, as we highlighted in Table 3, that the EUDR does not define “supply chain due diligence.” Thus, it is unclear whether an EU importer, encompassed by both the EUDR and the CSDDD, could merge its information gathering from its supply chain and value chain. However, if we were to use the ESPR's definitions of supply chain (from the supplier of raw materials to the end-user)⁸⁶ and value chain (from the supplier of raw materials to the disposal of the product including both upstream and downstream activities through the established business relationship)⁸⁷, it could be assumed that the supply chain due diligence cover parts of the value chain due diligence. Thus, making it possible for EU companies to “merge” some of the information gathering in accordance with the EUDR's and CSDDD's due diligence obligations.

However, it is stated in the EUDR that if other EU legislative acts provide for more specific provisions or add requirements to the provisions laid down in the EUDR, such provisions should be applied *in conjunction* with the EUDR.⁸⁸ The EUDR also states

⁸⁴ COM (2022) 71 final of 23 February 2022, 7.

⁸⁵ This could be because the EUDR covers the wood products, the ESPR covers the wood products sustainable performance throughout their life cycle, the FLR covers if the wood products at any stage have been made with forced labour and the CSDDD addresses the human rights and environmental impacts of the wood products value chain.

⁸⁶ Based on the ESPR's definition of supply chain, see Annex I.

⁸⁷ Based on the CSDDD's definition of value chain, see Annex I.

⁸⁸ Regulation (EU) No 995/2010, para 56 (own emphasis).

that nothing in its text should exclude the application of other Union legal acts that include requirements regarding value chain due diligence.⁸⁹ This could be interpreted as EU companies covered by the EUDR and the CSDDD, will have to carry out both due diligence processes, i.e., not be able to “merge” parts of them, which could potentially lead to twice as much work for both EU companies and their suppliers.

Using our example of a small forestry supplier in a developing country, we have highlighted important aspects of how the EU legislative acts relate to each other and their potential impacts on suppliers in developing countries. We have also demonstrated that there are some issues related to these acts that remain unclear. Since the CSDDD, the ESPR and the FLR have not been adopted yet at the time of writing (November 2023), there is still time for the EU institutions to clarify problematic aspects and solve any nascent issues.

What is already clear however, is that these legislative acts are difficult to understand, and their implementation will have wide-ranging consequences. Besides the more obvious risk of increasing the administrative burden on both EU companies and third-country suppliers, there is a possibility that EU companies and their suppliers cannot prove that the products comply with these legislative acts, which could lead to decreased imports to the Union market of the products concerned.

Another reason why these legislative acts are difficult to understand, which has just briefly been touched upon here, is that the legislative acts are either inconsistent with how they define specific terms that are important for EU companies to understand to carry out due diligence, or the legislative acts does not define the terms at all. For example, the EUDR expects EU companies to carry out supply chain due diligence but does not define the extent or meaning of “supply chain.” Whereas, remarkably, the ESPR defines both what “supply chain” and “value chain” are despite having no due diligence obligations, albeit ecodesign requirements.⁹⁰

In addition to this, we have also established in Chapter 2 that should suppliers in developing countries lose their business relationships with EU companies, i.e., the EU companies terminate contracts or disengage from the markets where the suppliers are based, this may result in the suppliers having to lay off employees, offer less stable employment contracts, or even fail or lose any incentives to report on adverse human rights and environmental issues. To avoid such a situation, suppliers might withhold and, or obscure any human rights or environmental impacts in their operations, regardless of the actual conditions on the ground.⁹¹ As a consequence, it could instead worsen the situation for human rights and environment in the affected countries and thus, the EU legislative acts could have the opposite effect on their intended objectives.

Lastly, if EU companies are not able to “merge” some of the explicit and implicit due diligence obligations that are placed on them, it could be difficult for both EU

⁸⁹ Regulation (EU) No 995/2010, para 56.

⁹⁰ For more information, see Annex I of this report.

⁹¹ Shift, *Designing an EU Due Diligence Duty that Delivers Better Outcomes*, 5.

companies and suppliers to implement and streamline processes to collect and provide the necessary information required. If the administrative burden becomes too high for suppliers in developing countries, this could also result in those suppliers choosing to sell their raw materials and products to other companies, i.e., outside the EU instead.

4 Conclusions and recommendations

We have identified both similarities and disparities between the CSDDD and the other selected EU legislative acts in terms of their due diligence obligations. The CSDDD and the EUDR have explicit due diligence obligations while the CSRD and the FLR expect EU companies to carry out due diligence. The ESPR does not contain any explicit due diligence obligations. However, the ESPR's ecodesign requirements are similar to the due diligence obligations in the EUDR and the CSDDD, in terms of the information EU companies are required to obtain about their products.

We have also established that implementing the due diligence obligations set out in the EU legislative acts will probably strain resources and increase EU companies and their suppliers' administrative burden and costs. The EU legislative acts require, indirectly or directly, covered EU companies to gather information from their suppliers in order to continue their business relationship. The CSDDD's due diligence obligations could also entail that EU companies require additional measures from their suppliers, such as complying with their Code of Conduct and signing contractual assurances.

We have established that there is a possible evident risk that not all suppliers can fulfil the EU companies due diligence obligations, which could result in that suppliers will lose their business relationship and/or cannot sell their products to the Union market. This in turn could be enough incentives for suppliers to withhold information from the EU companies on the actual human rights and environmental situation on the ground. If so, the most striking consequence of the EU legislative acts could be that their combined impact could have the opposite effect to their purpose, i.e., enhance human rights and the environment. If suppliers cannot comply with the EU companies' due diligence obligations or find it too complicated to have business relationships with EU companies, these suppliers could choose to sell their raw materials and products to other companies outside the EU, which could impact the EU's trade with third countries. The mere fact that these legislative acts use inconsistent terminology or do not define important aspects of the due diligence obligations, may be enough for suppliers to find other business partners. Thus, we would like to suggest the following recommendations to be considered:

Recommendations to the European Commission:

- Conduct an impact assessment on how the EU legislative acts together could affect EU companies and their suppliers in developing countries.
- Aim to publish guidelines and implement support measures, such as technical and financial aid, capacity building, promotion of skills and EU-import facilitation measures, to those that are directly and indirectly covered by the EU legislative acts as quickly as possible.

Recommendations to EU companies:

- Review your operations and those of your subsidiaries, your value chains and supply chains, your suppliers and contracts, your Code of Conduct and try to identify if you have any risks in accordance with the EU legislative acts.
- Inform and involve the relevant departments in your operations, including your suppliers and start preparing for the EU legislative acts.

Recommendations to EU companies' suppliers in developing countries:

- Deepen your knowledge about the upcoming EU legislative acts, try to identify which of your business partners could be covered and initiate a dialogue with them.
- Try to prepare your operations and establish relations and dialogues with your local and national governmental authorities, as you might need their assistance in gathering information.

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Annex I

Table 7. Summary of the definitions of selected terms in the EU legislative acts

Terms	Definitions				
	CSDDD	CSRD	EUDR	ESPR	FLR
Due diligence	The process that undertakings carry out to identify, monitor, prevent, mitigate, remediate, or bring an end to the principal actual and potential adverse impacts connected with their activities and identifies how undertakings address those adverse impacts. The due diligence process concerns the whole value chain of the undertaking including its own operations, its products and services, its business relationships, and its supply chains.	The process that undertakings carry out to identify, monitor, prevent, mitigate, remediate, or bring an end to the principal actual and potential adverse impacts connected with their activities and identifies how undertakings address those adverse impacts. The due diligence process concerns the whole value chain of the undertaking including its own operations, its products and services, its business relationships, and its supply chains.	The due diligence shall include: the collection of information, data and documents needed to fulfil the requirements, risk assessment measures and risk mitigation measures.	The term is not clearly defined or is missing in the proposal.	Due diligence in relation to forced labour means the efforts by economic operators to implement mandatory requirements, voluntary guidelines, recommendations, or practices to identify, prevent, mitigate, or bring to an end the use of forced labour with respect to products that are to be made available on the Union market or to be exported.
Actual or potential adverse impact	The term is not clearly defined or is missing in the proposal.	A principal impact where it ranks among the greatest impacts connected with the undertaking's activities based on the gravity of the impact on people or the environment; the number of individuals that are or could be affected, or the scale of damage to the environment; and the ease with which the harm could be remediated, restoring the environment, or affected people to their prior state.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.

Adverse environmental impact	An adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II.	Sustainability matters means environmental, social, and human rights, and governance factors, including environmental, social, and employee matters, respect for human rights, anti-corruption, and anti-bribery matters.	The term is not clearly defined or is missing in the proposal.	Environmental impact means any change to the environment, whether adverse or beneficial, wholly, or partially resulting from a product during its life cycle.	Environmental impacts include climate change, biodiversity loss, degradation of land, marine, and freshwater ecosystems, deforestation, air, water and soil pollution and mismanagement of waste, including hazardous substances.
Adverse human right impact	An adverse impact on protected persons resulting from the violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in the Annex, Part I, Section 2.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.
Severe adverse impact	An adverse environmental or human rights impact that is especially significant by its nature or affects a large number of persons or a large area of the environment, or which is irreversible, or is particularly difficult to remedy as a result of the measures necessary to restore the situation prevailing prior to the impact.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.

Business relationship	A relationship with a contractor, subcontractor, or any other legal entity ("partner") with whom the company has a commercial agreement or to whom the company provides financing, insurance, or reinsurance, or that performs business operations related to the products or services of the company for or on behalf of the company.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.
The subject of the legislation	Company , which is a legal person constituted as one of the legal forms listed in Annex I to Directive 2013/34/EU.	Large undertakings and or small- and medium-sized undertakings , which are public-interest entities.	Operator means any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them. Trader means any person in the supply chain other than the operator who, in the course of a commercial activity, makes relevant products available on the market.	Economic operator means the manufacturer, the authorised representative, the importer, the distributor, the dealer, and the fulfilment service provider.	Economic operator means any natural or legal person or association of persons who is placing or making available products on the Union market or exporting goods. These could be manufacturers, producers, product suppliers, importers, and exporters.
Supply chains	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	All upstream activities and processes of the value chain of the product, up to the point where the product reaches the end-user.	The term is not clearly defined or is missing in the proposal.

Value chains	Activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company.	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	All activities and processes that are part of the life cycle of a product, as well as its possible remanufacturing.	The term is not clearly defined or is missing in the proposal.
Making available on the market	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	Any supply of a relevant product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return of payment or free of charge.	Any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge.	Any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge and in the case where the product is offered for sale online or through other means of distance sales, the making available on the market is deemed to take place when the offer for sale is targeted at users in the Union.
Placing on the market	The term is not clearly defined or is missing in the proposal.	The term is not clearly defined or is missing in the proposal.	The first making available of a relevant commodity or relevant product on the market.	The first making available of a product on the Union market.	The first making available of a product on the Union market.

Sammanfattning på svenska Summary in Swedish

Denna rapport syftar till att synliggöra hur olika EU-lagstiftningar som innehåller “due diligence”-krav kan påverka EU-företags leverantörer i utvecklingsländer. De EU-lagstiftningar som rapporten fokuserar på är: Corporate Sustainability Due Diligence Directive, Corporate Sustainability Reporting Directive, Deforestation Regulation, Regulation on Ecodesign for Sustainable Products och Regulation on Prohibiting Products made with Forced Labour on the Union.

Vi kan konstatera att det kommer vara resurskrävande för både EU-företag och deras leverantörer för att kunna uppfylla “due diligence”-kraven i dessa EU-lagstiftningar. Särskilt om EU-företagen omfattas av flera av dem. Flera av EU-lagstiftningarna kräver att EU-företagen att inhämta information från deras leverantörer för att övervaka deras värdekedjor och leveranskedjor från negativa effekter för mänskliga rättigheter och negativa miljöeffekter. Leverantörerna kan ha svårt att få fram den nödvändiga informationen till EU-företagen, vilket skulle kunna äventyra leverantörernas relation med dem. Detta skulle kunna ge incitament till leverantörerna att undanhålla information om vad som faktiskt händer i deras verksamhet. Detta i sin tur riskerar att EU-lagstiftningarnas syfte får motsatt effekt, det vill säga främja och stärka mänskliga rättigheter och miljön.

Således, avslutar vi vår rapport med rekommendationer till EU-kommissionen, EU-företag och deras leverantörer om hur man kan börja hantera dessa lagstiftningsakter:

Rekommendationer till EU-kommissionen:

- Genomför en konsekvensanalys av vad den samlade effekten på EU-företag och deras leverantörer i utvecklingsländer kan bli av dessa EU-lagstiftningar.
- Sträva efter att så snart som möjligt publicera och implementera stödåtgärder, såsom tekniskt och ekonomiskt bistånd, kapacitetsuppbyggnad, kompetensfrämjande åtgärder och åtgärder för att underlätta EU:s import för dem som direkt och indirekt påverkas av dessa EU-lagstiftningar.

Rekommendationer till EU-företag:

- Se över er verksamhet och era dotterbolags verksamhet, era värdekedjor och leveranskedjor, era leverantörer och avtal, er uppförandekod och försök identifiera om ni har några risker i enlighet med dessa EU-lagstiftningar.
- Informera och involvera de berörda avdelningarna i er verksamhet, inklusive era leverantörer, och börja förbereda er inför dessa EU-lagstiftningar.

Rekommendationer till EU-företags leverantörer i utvecklingsländer:

- Fördjupa er kunskap om dessa EU-lagstiftningar, försök identifiera vilka av era affärspartners som kan komma att omfattas och inled en dialog med dem.
- Försök förbereda er verksamhet och etablera dialog med era lokala och nationella myndigheter eftersom ni kan behöva deras hjälp att inhämta information.

The National Board of Trade Sweden is the government agency for international trade, the EU internal market and trade policy. Our mission is to facilitate free and open trade with transparent rules as well as free movement in the EU internal market.

Our goal is a well-functioning internal market, an external EU trade policy based on free trade and an open and strong multilateral trading system.

We provide the Swedish Government with analyses, reports and policy recommendations. We also participate in international meetings and negotiations.

The National Board of Trade, via SOLVIT, helps businesses and citizens encountering obstacles to free movement. We also host several networks with business organisations and authorities which aim to facilitate trade.

As an expert agency in trade policy issues, we also provide assistance to developing countries through trade-related development cooperation. One example is Open Trade Gate Sweden, a one-stop information centre assisting exporters from developing countries in their trade with Sweden and the EU.

Our analyses and reports aim to increase the knowledge on the importance of trade for the international economy and for the global sustainable development. Publications issued by the National Board of Trade only reflect the views of the Board.

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