

Alignment at Risk:

How the Omnibus threatens alignment with the OECD Guidelines and diminishes impact

Introduction

OECD Watch is deeply disappointed with the EU Commission’s recent proposals to “simplify” the *Corporate Sustainability Due Diligence Directive* (CSDDD) through the first Omnibus Simplification Package.

OECD Watch has closely followed the EU’s efforts to draft binding due diligence, repeatedly assessing and offering recommendations to ensure alignment between the CSDDD and *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (Guidelines), the leading international standard on effective and impactful human rights and environmental due diligence.

Unfortunately, the Omnibus’ misguided attempt at simplification would deviate seriously from the OECD Guidelines’ tested framework, limiting impact for affected people while increasing corporate burden. The below table and analysis identify and discuss the new shortcomings.

We call on policymakers to switch course and ensure that simplification efforts assure greater, instead of lesser, alignment with the OECD Guidelines so as to help companies meaningfully prevent and address human rights and environmental harms in their value chains. Member states must also be given flexibility to pursue greater impact through increasing alignment between their national legislation and the international norms.

Table Assessing Alignment

OECD GUIDELINES	ELEMENT	EU CSDDD	OMNIBUS
	PERSONAL SCOPE		
✓	Covers companies of all sizes	✗	✗
✓	Covers all sectors	✓*	✓*
✓	Covers companies of all forms	~	~
	VALUE CHAIN SCOPE		
✓	Covers all upstream business relationships	✓	✗
✓	Covers all downstream business relationships	✗*	✗*
	MATERIAL SCOPE		
✓	Covers all human rights	~	~
✓	Covers all environmental impacts	~	~
	CLIMATE		
✓	Covers climate change as an environmental impact	~	~
✓	Requires implementation and monitoring of climate plan covering scope 1, 2, and 3	~	✗

OECD GUIDELINES	ELEMENT	EU CSDDD	OMNIBUS
	DUTY		
	1. EMBED		
✓	Requires embedding of due diligence into policies	✓	✓
✓	Ensures senior level oversight	✗	✗
	2. IDENTIFY AND ASSESS		
✓	Requires initial broad scoping to identify risks and impacts	✓	✗
✓	Requires in-depth assessment of prioritised risks and impacts	✓	✗
✓	Bases prioritisation on severity; no "prioritisation haven"	✓*	~
	3. ADDRESS		
✓	Bases company's response on involvement in impact	✓	✓*
✓	Provides no closed list of measures to address risks and impacts	✓*	✓*
✓	Disengagement can be appropriate but must be responsible	✓*	~
✓	4. MONITOR	✓	✗
✓	5. COMMUNICATE	~	~
	6. REMEDIATE		
✓	Ensures companies causing or contributing provide remedy*	✓	~
✓	Ensures companies directly linked participate in remedy*	~	~
	ELEMENTS CROSS-CUTTING THE DUTY		
✓	Ensures MSIs and schemes don't absolve company of responsibility	✓	✓
✓	Ensures no over-reliance on MSIs and schemes	~	~
✓	Seeks meaningful stakeholder engagement throughout due diligence	~	✗
✓	Ensures prioritisation of engagement with impacted stakeholders	✗	✗

Note: A few topics are given an asterisk where evaluation of alignment requires more nuance, provided in our earlier analysis Alignment Within Reach linked at the end of this brief.

Analysis

The above table evaluates the CSDDD's and Omnibus' alignment with the due diligence framework agreed by governments in the OECD Guidelines. See further analysis below.

VALUE CHAIN SCOPE

ALL UPSTREAM BUSINESS RELATIONSHIPS COVERED ❌

The **OECD Guidelines** expect companies to conduct due diligence on impacts across all upstream and downstream business relationships in a risk-based manner.

While ostensibly maintaining the CSDDD's prior value chain scope, the **Omnibus'** new limitations on identifying risks (discussed below) effectively narrow due diligence to target risks related to direct, Tier-1, business partners only. This approach will cause companies to overlook most, and often the most severe, impacts that usually occur deeper in the value chain. Additionally, the Omnibus worsens the CSDDD's already controversial exclusion of the financial sector from downstream due diligence requirements, by removing a clause that at least required policymakers to review the exclusion within two years.

CLIMATE (MATERIAL SCOPE)

IMPLEMENTATION AND MONITORING OF CLIMATE PLAN REQUIRED ❌

The **OECD Guidelines** expect companies to implement and monitor climate change adaptation and mitigation plans covering scopes 1, 2, and 3.

The **Omnibus** does not require companies to implement climate plans at all, only adopt them on paper. This short-sighted exemption hurts people and the planet, while disincentivising companies from implementing vital steps now to protect their business from real and looming climate change threats.

IDENTIFY AND ASSESS ADVERSE IMPACTS

INITIAL BROAD SCOPING TO IDENTIFY RISKS AND IMPACTS ❌

The **OECD Guidelines** expect companies to consult a range of sources to create an initial, high-level picture of risks related to them as a result of their sector, geographies of operation, and business-specific factors. OECD guidance describes a risk-driven information collection process that may not need to consult business partners extensively.

In an ineffective attempt to alleviate regulatory burden on SMEs, the **Omnibus** prevents companies from asking direct business partners with fewer than 500 employees to share information beyond disclosures based on the VSME. However, an effective mapping should be based on risk profiles, not company sizes, and the proposed use of the VSME standard is not fit for the purpose of identification in a context of due diligence. Effective risk mapping may anyway not necessitate information collection from each and every direct business partner. The Commission could more effectively reduce burden by clarifying the correct, risk-driven creation of a risk mapping.

IN-DEPTH ASSESSMENT OF PRIORITISED RISKS AND IMPACTS ❌

The **OECD Guidelines** expect detailed assessment of prioritised risks and impacts. OECD guidance emphasises assessment of risks beyond the first-tier contractual relationships.

The **Omnibus** puts an artificial limitation on such assessment by requiring companies to identify risks primarily related to direct (Tier-1) business partners, unless there is plausible information of impacts occurring elsewhere in the value chain or in case of circumvention. Allowing companies to wait for reports of adverse impacts beyond Tier-1 makes the duty reactive rather than pro-active and puts the burden (and ownership) of risk management on the public, instead of companies. Further, the many risks and impacts that go unreported, often those that are most severe deeper in the value chain, will be missed altogether.

PRIORITISATION BASED ON SEVERITY ~

The **OECD Guidelines** expect companies to prioritise impacts across all upstream and downstream business relationships based on severity, while progressively addressing all impacts.

The **Omnibus** does not formally change the grounds for prioritisation. However, by narrowing the perimeter in which risks are initially mapped and assessed, as described above, the Omnibus will effectively result in overprioritisation of risks associated with Tier-1 suppliers, severely curtailing impact without reducing corporate burden.

ADDRESS ADVERSE IMPACTS

RESPONSIBLE DISENGAGEMENT ~

The **OECD Guidelines** enable companies to disengage responsibly from a business relationship either after failed attempts at mitigation, where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. Disengagement, while a last resort, is a critical step to avoid harm and incentivise improvements at business partners and within an industry.

The **Omnibus** removes the obligation for companies to terminate business relationships with serious impacts that cannot otherwise be prevented or mitigated by the company. Although in serious cases the Omnibus requires suspension of business until improvement is seen, the elimination of a disengagement duty could perpetuate risky business where only minor improvement occurs.

MONITORING X

The **OECD Guidelines** envision due diligence as a continuous process involving ongoing monitoring and feedback of lessons learned.

The **Omnibus** threatens this goal of continuous improvement by rotely requiring reviews every five years, a span of time too long to ensure measures meaningfully address harm and improve company practices. While the Omnibus also adds an ad-hoc trigger to review when measures are no longer adequate or effective, it is not clear how that can become known without ongoing monitoring.

REMEDATION

ENSURE COMPANIES CAUSING OR CONTRIBUTING PROVIDE REMEDY ~

The **OECD Guidelines** expect companies to provide for or cooperate with legitimate grievance mechanisms, including by cooperating in good faith with judicial and non-judicial mechanisms. Separately, the UN Guiding Principles found a state duty to ensure remedy for business-related human rights abuse.

The **Omnibus** maintains this expectation. However, by removing harmonised EU conditions for civil liability, as well as the obligation to allow representative actions by trade unions or non-governmental organisations (NGOs), the Omnibus risks allowing states to choose whether or not to ensure a judicial remedy at all, and significantly weakens accessibility for community and worker complainants that rely on support of trade unions and NGOs.

ELEMENTS CROSS-CUTTING THE DUTY

MEANINGFUL STAKEHOLDER ENGAGEMENT THROUGHOUT DUE DILIGENCE X

The **OECD Guidelines** expect meaningful stakeholder engagement throughout all steps of due diligence and identify a wide array of stakeholders to engage while ensuring prioritisation of engagement with impacted rightsholders.

The **Omnibus** exempts companies from engaging stakeholders during various steps in the due diligence cycle. It also excludes several key groups from the definition of stakeholder, including civil society. This attempt to relieve the corporate consulting burden will instead just lead companies to skip stakeholder engagement at critical moments, denying rightsholders and advocates the ability to speak on critical matters, and leaving companies vulnerable to missing key information regarding risks.



Read full analysis of alignment between the CSDDD and Guidelines, June 2024

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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