Crunchtime for the due diligence law
The EU’s Corporate Sustainability Due Diligence Directive (CSDDD) is a piece of legislation that aims to make European companies responsible for any violations of human rights or environmental standards in their value chains.

Under the proposed rules, companies would have to introduce due diligence processes through which they will have to work towards reducing these risks across the board.

The CSDDD, first proposed by the European Commission in early 2022, is now in its final stretch of negotiations, under discussion between member state governments and the European Parliament.

However, the position of member state governments represented in the Council differs substantially from that of the Parliament.

The two co-legislators disagree on the scope of the due diligence law. Should SMEs be excluded? Should investors and lenders be excluded? Who will bear the burden of proof?

These questions will be decided in the following weeks and months.
Incarcerated for his advocacy, this activist puts his hopes on EU’s due diligence law

By János Allenbach-Ammann | Euractiv.com

As representatives of the European Parliament and EU countries negotiate the details of the Corporate Sustainability Due Diligence Directive (CSDDD) in Brussels, visiting Guatemalan human rights activist Bernardo Caal Xol has urged them to implement the directive, which would force European companies to behave more responsibly.

The CSDDD was first proposed by the European Commission in early 2022. Its purpose is to make large European companies responsible for environmental or human rights violations that happen along their entire value chains. Today, such harm can often be done with impunity in countries with weak judicial systems.

Caal Xol, a Guatemalan primary school teacher, has witnessed this firsthand.

When the Spanish Cobra Group started building hydroelectric dams on the 195km long Cahabon river in Guatemala, deviating the river into a canal for 50km of its length, the river bed all but dried up in the section. This struck the local Mayan communities hard as they traditionally relied on the river for fishing and agriculture.

“Our culture teaches us to love and respect Mother Earth and our environment, that's why we indigenous people take care of this environment,” Caal Xol told Euractiv in an interview on Monday (6 November) in Brussels, where he is currently telling EU lawmakers his story.

"However, there are people who only think about doing business with what Mother Earth has," he said, arguing that the deviation of the river into concrete canals left communities and entire ecosystems without water.

"And who do you think did that?" he asked rhetorically, before providing the answer himself: "European capital."

Caal Xol complained that his community had never been asked its opinion on the project. Instead, the Guatemalan government gave the Spanish Cobra Group the license to build multiple hydroelectric plants along the river, starting in 2012.

As one of the few people to speak Spanish in his community, Caal Xol led his community’s complaint against the project, and in 2016, a court ordered the preliminary suspension of the work on the hydroelectric plants.

Then began what Caal Xol calls a defamation campaign against him.

Guatemalan media called him a terrorist, published his picture and where he lived, and accused him of being anti-development.

And the situation got even worse. In what he calls fabricated charges, Caal Xol was accused of having participated in a robbery of a pickup truck together with 100 other people, and a court sentenced him to more than seven years in prison although no one else who allegedly participated in the robbery was brought to court.

“They never existed,” Caal Xol said.

Amnesty International classified Bernardo Caal Xol as a prisoner of conscience. "After reviewing the criminal case against Bernardo Caal Xol, Amnesty International found that there was no evidence of the crimes he was accused of,” the human rights organisation said in a statement.

For Caal Xol, who was released in 2022 after more than four years behind bars, it is clear that it is an alliance of government and business interests that has tried to silence him.

But what would be different with a European due diligence law in place?

“They would never have imprisoned me,” Caal Xol said. “The companies would have to act responsibly. They could not just run over the rights of individuals and of indigenous peoples.”

Asked whether he was in fact against economic development, as his critics claimed, he asked back: “Development for whom?” — arguing that the electricity generated by the hydropower stations did not even benefit the Mayan communities but was sent towards Mexico.

One of the arguments against the directive is that it might lead European companies to simply disinvest from areas with human rights risks.

Not only would this be a risk to economic growth, which has helped billions across the world escape poverty, but it would also leave the space open for less scrupulous foreign companies.

But for Caal Xol, this argument does not hold. He hopes that the CSDDD will serve as an example for other countries as well. “This would open the way for others to follow. But someone has to start.”

The directive is currently in trilogue negotiations between the European Parliament and the EU Council. While this and next week will see discussions among member state negotiators, the next trilogue with Parliament negotiators will take place on 22 November.

The aim is to get a deal over the line before spring 2024, before European elections in early June 2024 put a pause on legislative activities.
Ugandan activists call on EU to move forward on due diligence law

By János Allenbach-Ammann | Euractiv.com

Uman rights lawyer Maxwell Atuhura and environmental activist Nick Omonuk have called on EU lawmakers to decide on a strong due diligence law so that they have an avenue to justice that is barred to them due diligence law so that they have an avenue to justice that is barred to them due diligence law so that they have an avenue to justice that is barred to them due diligence law so that they have an avenue to justice that is barred to them due diligence law so that they have an avenue to justice that is barred to them due diligence law so that they have an avenue to justice that is barred to them due diligence law so that they have an avenue to justice that is barred to them. Atuhura and Omonuk to Brussels. Flawed justice system Atuhura is a human rights defender in the Ugandan Albertine region, who has closely followed the development of the Ugandan oilfields and of the East African Crude Oil Pipeline (EACOP) and its effects on the region. The French oil company Total Energies is a majority shareholder in the project. Representing people who have lost the grazing land of their animals to the pipeline project, Atuhura has found it impossible to gain fair access to the justice system for him and the people he represents. After his petitions to the company and to authorities were disregarded, he said that the last option was to go to court. “It is really hard to get justice in Uganda because the president has a lot of say in the decisions of the court,” Atuhura said, pointing to a case involving a refinery that was simply never heard. Moreover, several of his colleagues had suffered from repression from authorities, for example through a revocation of operating licenses, he said. Disillusioned with the Ugandan justice system, the case was brought to a French court, as France has had a duty of vigilance law since 2017 and the involved company was headquartered in France. To Atuhura’s disappointment, however, the case was rejected by the French court. According to ECCJ’s Lupin, the judge had argued that the duty of vigilance law was too vague and didn’t provide him with enough detail and guidance to apply the law. “As a French-trained lawyer, I believe that this is where the directive can bring an answer. Especially the Parliament’s position has a lot more details, a lot more criteria that could help in applying the law to these cases,” Lupin said. Finance and the CSDDD The Parliament’s and the Council’s positions on the CSDDD not only differ in detail and criteria, they also differ in their treatment of the financial sector. While the Parliament wants investors and lenders to be held accountable for environmental and human rights risks in their investments, the Council wants to keep them outside the scope. Omonuk, an environmental activist from Uganda, is focused on this particular aspect. “There are so many interlinkages between the banks and these projects,” he said, mentioning the example of the Austrian Erste bank that helped finance Total Energies. Like Atuhura, he has seen colleagues be intimidated and repressed for protesting against the pipeline project that is being developed in a national park. “It’s important for you to know about our struggles so that you know how important such laws like the due diligence directive are to us to fight for justice,” he told journalists in Brussels. Economic development or exploitation? The two activists also had little patience for the argument sometimes brought forward by European companies that a strict CSDDD might impose such outsize risks and costs on companies that they might withdraw from risky countries and thus hurt their economic development. Omonuk said that many of the Western projects were extractive in nature, like a crude of pipeline that goes straight to a port for export without any value-adding processes that might create good jobs. The wealth from such projects ends up highly concentrated, landing in the hands of an elite few – while a much larger population must shoulder the environmental consequences, he argued. Atuhura agreed, calling this model “total exploitation” and urging the EU to take a bold step in the opposite direction with the CSDDD. “Europe has much influence on the globe since law from Europe matters everywhere,” he said, adding that he hopes the EU would set “the path for the entire world to follow.”

Human rights lawyer Maxwell Atuhura and environmental activist Nick Omonuk have called on EU lawmakers to decide on a strong due diligence law so that they have an avenue to justice that is barred to them in Uganda. The Corporate Sustainability Due Diligence Directive (CSDDD) was first proposed by the EU Commission in early 2022. Its purpose is to make large European companies responsible for environmental or human rights violations that happen along their value chains. The directive is currently in trilogue negotiations between the European Parliament and the EU Council. The directive is now at a make-it-or-break-it moment,” European Coalition for Corporate Justice (ECCJ) policy officer Marion Lupin told journalists, noting that the positions of the Council and the Parliament were still very far apart.

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Strong corporate climate obligations are a win-win-win for the environment, economy and EU. Here’s why.

By Daniel Toran, Julia Otten and Paul de Clerck
European Coalition for Corporate Justice

See, this law could set out in stone what most of us already know is obvious.

It is obvious, for example, that nobody in the world should find their home destroyed, their rivers filled with oil or their forests cut down by reckless corporations seeking profit. The current draft text is a step towards the human right to a clean, healthy and sustainable environment as recognised by the United Nations. It requires European companies to assess, mitigate and remedy all potential harms throughout their value chains in the EU and abroad.

It is also obvious that the EU is not on track to reach the Paris Agreement goals. Not just not on track, but going in the opposite direction according to climate science. The EU committed to cut carbon emissions to zero by 2050. A recent UN Environment report indicates that current policies implemented would put the planet on course for 3.2ºC of warming by 2100. And we don’t need to speak of harm in future tense: most of us reading this spent the summer sweltering under the heat of another record-breaking European heatwave.

Governments are failing to take climate change seriously: To curb company emissions at the scale needed to rapidly decarbonise across Europe, the CSDDD could be a crucial tool by setting in stone that businesses must cut their emissions.

Companies are responsible for the vast majority of greenhouse gas emissions worldwide. Since that statistic was published in 2017, voluntary corporate commitments for a climate-friendly industry transition have become as prevalent as air pollution. And yet the EU fossil and banking sectors are currently preparing to spend $103m a day for the rest of the decade on ‘carbon bomb’ projects that blast through the EU’s own estimated carbon budget.

Major fossil fuel companies have invested millions in climate denial advertising, lobbying to water down climate legislation, and 97% of short-term expansion plans involve further oil and gas exploration.

The current CSDDD text proposes that companies have to develop a transition plan, but there is no obligation for them to actually implement it. While the European Parliament wants to require companies to implement these plans, some national governments like France and Germany are resisting efforts to make the implementation mandatory. To most of us this might sound absurd: you oblige a company to make a plan, but they are free to ignore the plan afterwards. This way the Council is setting up the CSDDD to be yet another greenwashing exercise.

An effective CSDDD must include a duty for companies to implement climate transition plans including reductions for all emissions linked to a company’s business operations (including upstream and downstream) in line with the Paris Agreement targets and other key elements mentioned in Article 15 of the Parliament’s proposal. And crucially, they must be subject to civil liability if they don’t implement said plans. People affected should be able to take companies to court for failing to reduce their emissions. Again, the Council is blocking this and wants to let free-riders off the hook.
These plans must be for an absolute reduction in emissions. Promising and claiming to offset is easy – Shell has turned it into a sport – but no amount of talking or half-hearted, greenwashed tree-planting exercise will offset the 640bn tonnes of CO2 they’re planning to pump into the air. Relying on offsetting is like calling the firefighters just before lighting a match in an arid forest. A climate-friendly company does not assume its own activities will need damage control.

A strong climate commitment in the CSDDD would also level the playing field for companies by aligning climate responsibilities across sectors. It also mitigates considerable long-term costs and credit risks for firms and banks. The European Central Bank puts it: “Not expediting green transition drags down firms’ profitability.”

Companies and governments can play hot potato with climate obligations while the temperature rises, but mitigating global heating is a lighter responsibility to bear when it is shared. The climate crisis is not up for negotiation. When politics compromises between a liveable planet and short-term business interests, we all lose.

The EU must place climate and human rights obligations first and foremost throughout the CSDDD and all political and corporate strategies. That is the only way for our ecosystem to thrive, and the only way for us and our children to survive.