

European Metals Updated Position Paper on CS3D Guidelines

1. Introduction & Executive Summary

European Metals, the European non-ferrous metals association, welcomes the European Commission Public Consultation on the upcoming guidelines of the Corporate Sustainability Due Diligence Directive (CS3D).

Our sector is fully committed to operating in transparent and ethical value chains and supports the development of clear and explanatory guidelines based on existing international principles set by the UN Guiding Principles and the OECD framework (i.e. OECD MNE Guidelines and OECD Due Diligence Guidance for Responsible Business Conduct) to promote consistency and legal certainty.

The guidelines should provide practical guidance on the implementation of the CS3D due diligence obligations, including clear examples, at both cross-sectoral and sector-specific levels, clarifying how a company can demonstrate compliance with the requirements.

It is crucial that the European Commission engages with industry and other stakeholders throughout the whole process of drafting guidelines. This will allow the adoption of workable and effective guidelines.

In this context, we call on the Commission to take into account the following key recommendations in the forthcoming guidelines:

- **Ensure harmonisation in Member States transposition and alignment with other EU due diligence pieces of legislation**
- **Recognise the role of voluntary sustainability and due diligence standards**
- **Design guidelines that are compatible with business realities and preserve a meaningful risk-based approach**
- **Bring more clarification on environmental adverse impacts**

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- **Clarify which actions can be taken in case of national regulatory limitations that may affect compliance with the CS3D**
- **Clarify expectations in stakeholders' engagement and remediation**
- **Recognise that continued engagement should be preferred over disengagement**
- **Clarify the role of the supervisory authorities**

2. Detailed Key Recommendations

- **Ensure harmonisation in Member States transposition and alignment with other EU due diligence pieces of legislation.**

It is essential that the Commission promotes and ensures the greatest possible harmonisation in the transposition of the Directive in the Member States. This will prevent excessive and/or differing requirements on companies and further fragmentation of the EU Single Market, thereby safeguarding the EU's industry competitiveness.

Guidance and secondary legislation should primarily focus on providing companies with the practical guidance and tools necessary to facilitate compliance with the new rules. They should neither introduce additional legal obligations for companies nor expand the scope of the CS3D.

In addition, the guidelines should be developed keeping in mind the close interaction between the CS3D and other EU pieces of legislation – such as the Corporate Sustainability Reporting Directive (CSRD), the Batteries Regulation, the Conflict Minerals Regulation, and the EU Forced Labour Regulation – making sure they provide a coherent and consistent EU diligence framework.

Therefore, uniformity should be secured in terms of definitions (i.e. value chain vs chain of activities), due diligence requirements, and corporate coverage.

- **Recognise the role of voluntary sustainability and due diligence standards.**

Companies in the non-ferrous metals sector have a long-lasting experience in relying on Voluntary Sustainability Standards (VSS) and responsible sourcing frameworks to demonstrate that their value chains are ethical.

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Guidelines should recognise the important role that these standards play in supporting compliance with the Directive's requirements, in particular for the following: the Copper Mark (including the Molybdenum, Nickel and Zinc Marks)[1], the Joint Due Diligence Standard[2], the LBMA Responsible Gold Guidance[3], the LBMA Responsible Silver Guidance[4], the Responsible Minerals Initiative (RMI)[5], the RMI All Minerals Standard[6], and its Facility Standard, the Initiative for Responsible Mining Assurance (IRMA)[7], the Aluminium Stewardship Initiative (ASI)[8], the ICMM's Performance Expectations[9], and the forthcoming Consolidated Mining Standard Initiative (CMSI)[10].

These initiatives are widely recognised by market actors and rely on independent third-party assurance. They are also underpinned by years of industry experience and technical expertise and have been widely adopted by companies across the sector.

Additionally, the VSS recognised under other EU due diligence initiatives, such as the Batteries Regulation and the Conflict Minerals Regulation, should also be recognised under the guidelines of the CS3D to ensure alignment and regulatory consistency.

- **Design guidelines that are compatible with business realities and preserve a meaningful risk-based approach.**

Guidelines should further clarify what constitutes a meaningful risk-based approach, in line with existing international frameworks, taking into account that companies are responsible for determining and prioritising actual and potential adverse impacts in their value chains based on their own reasonable assessment. It is important to recognise that risk assessments conducted by different actors may reach different conclusions; however, they would still be equally valid if based on robust processes. In these terms, guidelines should clarify that the focus remains on the prioritisation of the most severe and likely risks, avoiding creating the same expectations across the entire value chain regarding risk prioritisation.

Practical and non-exhaustive examples are needed to clearly define "actual adverse impacts", distinguishing between risk indicators, allegations, potential impacts and actual

[1] The Copper Mark (link), the Molybdenum Mark (link), the Nickel Mark (link), and the Zinc Mark (link).
[2] The Joint Due Diligence Standard (link)
[3] The LBMA Responsible Gold Guidance (link)
[4] The LBMA Responsible Silver Guidance (link)
[5] The Responsible Minerals Initiative (link)
[6] The RMI Global Responsible Sourcing Due Diligence Standard for Mineral Supply Chains All Minerals (link).
[7] The Initiative for Responsible Mining Assurance (link)
[8] The Aluminium Stewardship Initiative (link)
[9] The ICMM's Performance Expectations (link)
[10] The Consolidated Mining Standard Initiative (link)

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impacts requiring action or reporting. Sector-specific guidelines, specifically, should recognise that the non-ferrous metals sector faces different operational realities compared to other sectors. The inclusion of a list of conflict-affected and high-risk areas in alignment with similar lists included in other legislation (i.e. the CAHRAs list in the Conflict Minerals Regulation) can be helpful in identifying the most severe adverse impacts.

Guidelines should also provide a clear definition of "reasonably available information" for the initial scoping exercise. Companies need practical expectations regarding documentation, verification and evidence required to support due diligence decisions. Particularly, clarity is needed on what evidence is required before requesting additional information from business partners. This is important because the Directive requires supplier information requests to be necessary and, for smaller business partners, only where the information cannot reasonably be obtained by other means.

Therefore, guidelines should clarify what level of information is proportionate, including how companies should balance compliance expectations with cost, effort and supplier burden. Concrete examples are needed for cases when companies can rely only on reasonably available internal and external information to identify higher-risk areas and cases when they have to seek additional information, where necessary, from business partners for the in-depth assessment. Identifying indirect business partners is challenging, as this information is often commercially sensitive, especially for raw materials. Guidelines should also take into account the size of the business partners, avoiding excessive burdens on small and medium-sized enterprises (SMEs).

Guidelines should also explain how to assess the quality and reliability of the data and information that companies receive and screen. Companies would benefit from clarity on how to identify and apply high-quality, reliable, and transparent screening criteria.

Moreover, guidelines should clarify what constitutes sufficient leverage, specifically what "increasing leverage over time" means and when reasonable efforts have been exhausted. It is important to reflect the limits of leverage in complex supply chains, such as those for the non-ferrous metals sector, since it can take time to develop. Guidelines should acknowledge that leverage affects what "prevention and mitigation" can realistically look like.

Critical raw materials value chains are often dynamic, and companies may have limited or no ongoing leverage over former suppliers once contractual relationships have ended, with implications for how prevention, mitigation and continuous improvement expectations can be applied in practice. By recognising the dynamic nature of supply chains, guidelines should give a certain degree of flexibility for companies to consider frequent and significant suppliers' changes over a short amount of time.

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Lastly, guidelines should explain how companies can streamline information requests to their suppliers, avoiding unnecessary duplication, repeated audits and repeated and disproportionate information requests.

- **Bring more clarification on environmental adverse impacts.**

The Directive Annex (Part III) includes legal reference points regarding prohibitions and obligations included in existing environmental instruments without providing practical risk indicators or supplier evidence.

Guidelines should explain how companies are required to assess environmental severity and likelihood with concrete examples.

As environmental adverse impacts are often difficult to assess due to their technical complexity, cumulative impacts and long-term effects, guidelines should also clarify what evidence is sufficient for environmental due diligence in supply chains, particularly where existing local environmental laws, permits, approvals or management systems are sufficient to demonstrate compliance versus where additional CS3D-specific assessment is expected. This will be important for reviewing and adopting mitigation actions.

- **Clarify which actions can be taken in case of national regulatory limitations that may affect compliance with the CS3D**

Due to the global nature of non-ferrous metals value chains, regulatory developments in key sourcing jurisdictions, particularly where there are foreseeable restrictions on supply chain data collection, sharing, or verification activities, will impact the implementation of the due diligence directive requirements.

In particular, China's Provisions on the Security of Industrial Chains and Supply Chains introduce measures that may restrict or scrutinise supply chain-related information gathering and cross-border data sharing, as well as impose potential countermeasures in response to foreign regulatory actions. Companies can also face legal constraints on supply chain data collection and sharing under other jurisdictions' frameworks (e.g. export control or national security-related rules), which can limit transparency and the level of evidence that can be provided.

Therefore, guidelines should provide clear explanations on how companies should act in case of third countries' regulatory limitations.

- **Clarify expectations in stakeholders' engagement and remediation.**

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Guidelines should preserve a meaningful stakeholders' engagement that respects business relationships. Stakeholders' engagement should be conducted in a way that is appropriate to the company's role and relationship with the relevant business partner, rather than disrupting or bypassing existing contractual or commercial relationships.

Guidelines also need to identify concrete cases in which companies cannot reasonably carry out effective stakeholder engagement and therefore need to consult other relevant experts. They should also explain how companies should proceed when stakeholders are unable or decline to participate in the engagement process.

Guidelines should recognise that some information can be commercially sensitive and business partners might be reluctant to share such information, which can create significant legal, financial, and strategic risks, undermining business relationships.

Furthermore, guidelines should clarify expectations for the remediation of actual adverse impacts in supplier relationships with practical examples on proportional responsibility, shared responsibility and when remediation can reasonably be considered complete.

- **Recognise that continued engagement should be preferred over disengagement**

While the Directive no longer requires companies to terminate a business relationship as a last-resort measure, as it emphasises suspension of the relationship and continued engagement until the adverse impact is addressed, it is important that guidelines include examples where continued engagement produces better outcomes than disengagement.

It should be recognised that there are situations where sourcing alternatives are limited and sectors where suppliers can't realistically be replaced without creating negative consequences for the business partners. Particularly, withdrawal from conflict-affected and high-risk areas that can cause severe socio-economic consequences should be avoided.

Clear guidance is also needed to clarify under which circumstances companies should continue engaging with suppliers to address human rights issues, particularly in jurisdictions with weak or inadequate legal frameworks, where local laws may not sufficiently protect workers, communities, or the environment. If companies simply withdraw from these markets or suspend relationships with suppliers as soon as risks are identified, human rights problems often remain, or may even worsen.

- **Clarify the role of the supervisory authorities.**

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It is necessary that supervisory authorities, as established in Article 24 of the Directive, have sufficient expertise in due diligence, value chains and industrial operations to ensure consistent implementation.

The Directive leaves significant discretion to Member States regarding their designation, organisation, and enforcement practices. As a result, different Member States may assign responsibility to different types of bodies, potentially leading to inconsistent implementation and uncertainty for companies operating across the EU.

Therefore, guidelines should clarify how supervisory authorities are designed and ensure alignment between Member States regarding the type of bodies selected. The competent supervisory authorities should include members with practical expertise in corporate due diligence, including experience from industry, while ensuring their independence and impartiality.

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European Metals *is an umbrella association representing the interests of the combined non-ferrous metals industry towards EU policy makers. We bring together the companies and associations shaping Europe's non-ferrous metals ecosystem: from upstream mining and refining to downstream use and high-quality recycling. By connecting technical expertise with policy action, we ensure that the importance of the metals sector is recognised, valued, and that our sector's future is secured. For more information, visit our website: https://european-metals.eu/*