EU ministers to decide on new EU rules to stop corporate abuse

What is happening?
EU Justice ministers will meet next Thursday, 1 December, to agree on the EU’s new rules to make companies accountable for the damage they cause to people and the planet. The law lost most of its teeth during negotiations between EU countries and risks being a far cry from what is needed.

What has happened until now?
In April 2020, the EU’s Justice Commissioner, Didier Reynders, announced plans for new rules to make businesses accountable for their activities impacting people or the planet. He called them a ‘game-changer’.

In March 2021, the European Parliament came out with its blueprint proposal to influence the Commission’s proposal. Oxfam called it a welcome step.

In February 2022, the European Commission came out with its proposal for the new rules. Oxfam labelled it a far cry from what is needed.

EU countries are currently amending the Commission’s proposal. They are expected to reach an agreement next Thursday.

What happens next?
The European Parliament decides on a position
The European Parliament is currently negotiating its position. Lara Wolters, Member of the Parliament leading on the file, has put forward a report. Oxfam welcomes Wolters’ draft as it fixes many key issues in the European Commission’s proposal.

Now, MEPs from different political groups will discuss this report and table amendments. They will vote on these amendments at different committee levels – the legal affairs (JURI) committee being the most important. The JURI committee is expected to vote on the file at the end of March.

The European Parliament will vote on its final position in May 2023.

Trilogues
The EU Council, European Commission and European Parliament will discuss the Council and Parliament’s proposal and agree on the final text of the law.

EU countries implement the law
EU countries will implement the rules into their national law.

EU governments want to delay the entering into force of the law from 3 – 5 years depending on the size of the company. This means, in practice, most companies will not have to comply with these rules before the end of the decade.
What are the key issues in the draft up for discussion?
It covers less than 1 percent of companies in Europe
It covers:
- Big companies on the EU market: companies with an annual turnover of over 150 million euro and over 500 employees.
- Limited liability companies (companies that protect individuals from being liable for financial loss or debt): other types of undertakings like Foundations, e.g. FIFA, or franchises, e.g. McDonalds, are not covered.

Business interests trump human rights and the environment
Companies can evade responsibility as they do not have to terminate harmful business relationships if there is “no available alternative” for raw materials, products and services “essential to the company”. This means business interests come first and preventing damage to people or the planet comes second.

Obligations limited to a narrow ‘chain of activities’ instead of the full value chain
EU governments are debating how far due diligence obligations reach in the value chain of companies.

The European Commission’s proposal covered the entire value chain (company’s operations, their subsidiaries and ‘established business relationships’ both upstream and downstream). But EU governments have limited it downstream. In the most recent draft, only the distribution, transport, storage and disposal of products will be under the scope of the law. The proposal will exclude downstream and goods subjected to export controls, such as weapons. This limited reach is now labelled as the ‘chain of activities’.

An example: European companies can export dangerous pesticides, which are banned in the EU, outside of Europe and not be held accountable for the harm to workers and the environment caused by their products.

The rules mostly exempt the financial sector
Each EU country will decide whether limited due diligence obligations will apply to financial players: obligations will apply before they provide a service, such as insurance. Investments will not be covered, and EU countries can exempt pension funds.

These rules will fail to hold investors accountable for human rights violations in projects they bankroll. An example: European banks, pension schemes and insurance companies are currently investing people’s savings into almost half of the financing of construction and hospitality companies in Qatar.

Includes a limited list of human rights violations
The current draft does not include many human rights conventions such as the Convention on the Rights of the Child as EU countries removed the “catch-all” clause included in the original proposal.

Climate obligations: no protection for the planet
Companies do not have to take action to identify, prevent and end business impact on the climate. There is only a loosely worded obligation for very large companies to adopt a climate transition plan in line with 1.5°C objective of the Paris Agreement. This is
accompanied with emission reduction objectives. EU countries will not have to police these plans.

This turns a blind eye to the vast impacts of companies’ emissions on the planet.

Directors get off scot-free

Nothing remains of the proposal to make directors responsible for overseeing due diligence. The proposal no longer includes tying director’s salary to the company’s sustainability performance.

Endless exemptions for company harm

Several EU countries have tried to exempt companies from liability for the harm they cause. Germany pushed to introduce safe havens for companies who join voluntary industry sustainability schemes or have “obtained certification from an independent certifying body” that it is complying with its obligations. Under the German proposal, these companies would only be liable “in cases of gross negligence”.

The German proposal was rejected but EU countries agreed to narrow down the liability of companies for harm so they will only be held accountable when they directly violate people's rights. According to the deal, which the ministers are expected to endorse on December 1, companies would not be liable when damage is indirect. As a result, it’s not clear whether a company would have to pay compensation to a family of a worker who died due to a company violating its safety standards.

No access to justice for survivors of corporate injustice

The current proposal does nothing to improve the access of survivors of corporate harm to justice, going to the courts, if a company violates their rights.

The law lacks basic guarantees to file claims in court, such as:

- Reasonable time limits;
- The reversal of the burden of proof (companies must provide evidence showing they have complied with their due diligence obligations if the allegation is credible); and
- The possibility for large groups to claim common compensation.

In short: survivors of corporate abuse will continue to struggle to access justice.

Contact information

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