

June 2025

What the Omnibus Package I would mean for the minerals and metals sector

On February 26, the EU Commission introduced a proposal for a so-called 'Omnibus Simplification Package' aimed at streamlining key EU sustainability legislation on sustainability reporting, due diligence and taxonomy. This package would bring significant changes to the original text of the Corporate Sustainability Due Diligence Directive (CSDDD) adopted by the EU last year that would weaken it substantially and risks undermining the EU's credibility and strategic leadership in responsible sourcing and corporate accountability. Furthermore, this process lacked meaningful consultation and had little regard for policy coherence. Below we provide a brief overview of what the envisaged changes under the Omnibus Package I would mean for the minerals and metals sector, identifying three focal aspects:

Firstly, the wording of the Omnibus proposal suggests that limiting **corporate due diligence obligations to direct (Tier 1) suppliers** would be sufficient to fulfill their due diligence obligations. However, this is a false assumption, as mining is a high-risk sector therefore representing an exception to the tier one limitation and there is vast and well-documented evidence of human rights and environmental violations frequently occurring upstream in the supply chain.

If companies were restricting due diligence to immediate business partners, it would reduce the process to a mere box-ticking exercise, shifting the burden onto direct business partners rather than conducting a meaningful risk-based due diligence. The misleading wording regarding the limits of due diligence obligations in the proposal is very likely to lead to misunderstandings, uncertainty and resentment by companies. The original CSDDD stipulated due diligence assessment for tier-n, meaning identifying risks along the whole supply chain and prioritizing the most severe risks - a risk-based approach aligned with the United Nations Guiding Principles on Business and Human Rights (UNGPS) and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines). Under the Omnibus proposal, the burden of proof seems to a large extent being shifted onto civil society organizations, affected communities, and rights holders to present 'plausible information' to compel companies to extend their due diligence beyond Tier 1 besides that companies also will have to pro-actively look out for media reports amongst others. Yet often violations are only taken up by the media if rights holders and their representatives alert them. The Omnibus proposal (p.35)), acknowledges the supply chain due diligence along the whole supply chain for the positive effects of resilience and competitive advantage from better value chain engagement. Weakening these obligations would contradict that logic.

Secondly, the Omnibus proposal **restricts stakeholder engagement** in two ways that make it significantly less effective and meaningful for human rights protection especially in the minerals sector. :

A) It places limits on the stages of due diligence during which companies should engage with stakeholders, removing the requirement when taking the decision to disengage from a business relationship and when developing monitoring indicators to measure the effectiveness of due diligence. Only affected rights holders can properly judge when a preventive measure has successfully contained a risk or whether a remedial measure has successfully remedied a human rights violation. Success indicators for due diligence in mining must be tailored to the specific local context and can only be developed and measured together with rights holders. For example, minimising the risk of hazardous work requires very different measures in artisanal cobalt mining in the DRC than in an industrial gold mine in Mexico, and the rights holders and their close representatives possess the

expert knowledge in this regard. This is particularly true for the far-reaching decision to terminate a business relationship with a mine.

B) The Omnibus proposal narrows the definition of stakeholder, essentially limiting engagement to those who are, or may be, directly affected by the actions of the company, its subsidiaries or business partners. Restricting the definition of stakeholders in this way limits the ability of a company to properly map its risks and understand broader contextual factors which are critical to designing effective appropriate measures. Upstream communities, including Indigenous Peoples and other land-connected local communities, are most exposed to the environmental, social, and cultural harms associated with mining operations. 54% of energy transition minerals are found on or near Indigenous Peoples' lands. In mining in particular - both in formal and informal mining, in industrial and artisanal mining - highly marginalised, poverty-stricken people are affected by human rights violations. These people generally have very little capacity to advocate for their rights in stakeholder processes. This makes it all the more important for them to be represented by trade unions, human rights organisations or environmental organisations respectively. Which organisations are suitable for this, varies greatly around the world. It is therefore essential to keep the definition of stakeholders inclusive.

This is also necessary to protect the rights holders. Given the high levels of violence—ranging from persecutions and threats to murder—faced by human rights and environmental defenders in the mining sector, it is crucial that individuals not directly affected can represent those who are in due diligence processes and grievance mechanisms, to help protect vulnerable communities.

Thirdly, the Omnibus proposal represents a **regression in terms of civil liability** compared to the CSDDD. It eliminates the obligation for Member States to introduce a harmonized civil liability regime for human rights and environmental violations caused by corporations within the EU and removes the possibility of representative actions. This leaves enforcement to the discretion of individual Member States, drastically reducing access to justice before EU courts for victims of corporate abuse. As a result, litigation under the CSDDD risks becoming fragmented, with rights holders having to navigate different legal systems and sue companies individually rather than through bundled procedures. However, whilst this fragmentation is not ideal, it is also important for claimants that harm can be litigated on the basis of the legal system in which the harm is brought to court (e.g. French law), rather than where the harm occurs (e.g. country outside the EU), as some Member States may also maintain stricter liability regimes, making the decision on where to bring a case a complex, case-by-case assessment and requiring a high level of national legal expertise. This increases costs and legal uncertainty for both companies and rights holders. Moreover, by removing the possibility of representative actions, NGOs and trade unions can no longer represent communities in civil liability cases. Thus, the proposal severely limits access to justice, particularly for communities affected by mining, who often lack the resources to pursue lengthy and costly legal proceedings on their own. Without third-party representation, access to justice becomes even less likely. Again, these risks turn corporate due diligence into a mere box-ticking exercise, with no real consequences for harm caused – rendering the law toothless.

Mining-related human rights and environmental abuse allegations have been growing, and the mining sector has consistently been identified as the most dangerous sector for Human Rights Defenders raising concerns about corporate practices. The Omnibus package represents a significantly weaker take on due diligence, affecting particularly high-risk sectors such as the metals and minerals industry in a negative way. Furthermore it represents also a weakening of human and environmental rights in general compared to the previously adopted text of the CSDDD and it also weakens rights compared to international standards and norms like the OECD guidelines previously agreed upon by governments. Moreover, it would decrease companies' resilience and competitive advantage (e.g. through improved risk management) by limiting the engagement along the supply

chain. Ultimately, the package undermines the EU's previous leadership in holding companies accountable on responsible sourcing and risks disincentivizing EU investors from engaging in responsible supply chains.

A key argument in the European Commission's broader narrative has been the need to "secure supply chains" for strategic minerals. By weakening due diligence standards, the proposal undermines the very objective of securing resilient, responsible supply chains. It increases exposure to legal liability, community resistance, investor withdrawal, and reputational damage. It is in the EU's strategic interest to uphold rigorous, inclusive due diligence standards.

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