

No need for EU to regulate director's liability



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The EU already has diverse rules on directors' liability across its member states, which appear to function reasonably well within their respective legal systems. Adding a new layer of directors' duties in the Corporate Sustainability Due Diligence Directive (CS3D) would create confusion and complexity. ecoDa therefore welcomes the prospect that the trilogue negotiations should drop the articles on directors' duties from the draft directive.

A new survey from Allen & Overy and ecoDa shows that there are many different approaches to directors' liability across the fifteen jurisdictions investigated. This multi-jurisdiction survey on directors' liabilities tends to analyse what directors' liability exactly entail in the different jurisdictions.

As stated by Bart De Bock, Senior Associate at Allen & Overy *"it appears that many diverse liability frameworks apply different rules on the damage requirement, on causal link, on the burden of proof, on how to make derivative claims, and to initiate tort liability cases"*.

The need to withdraw articles explicitly referring to directors' duties from the CS3D makes all the more sense for Pascal Durand-Barthez, Chair of ecoDa's Advocacy Committee since that *"in most jurisdictions, the law does not distinguish between mismanagement wrongdoings which specifically relate to sustainability or other causes"*.

However, it goes without saying that the significant increase in environmental and social obligations related obligations for companies, are or at least should be, an important concern for directors.

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Notes to editors

About the European Confederation of Directors Associations (ecoDa)

The European Confederation of Directors Associations (ecoDa) is a not-for-profit association founded in December 2004 under the laws of Belgium. Through its 20 national institutes of directors (the main national institutes existing in Europe), ecoDa represents approximately 55,000 board directors from across the EU. ecoDa's member organizations represent board directors from the largest public companies to the smallest private firms, both listed and unlisted.