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FAQs: The EU Corporate Sustainability Due Diligence Directive

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Following a roller-coaster legislative process started in February 2022, the new Directive on Corporate Sustainability Due Diligence (CSDDD or CS3D) was published in the Official Journal of the EU on 5 July 2024. The EU Member States need to adopt implementation acts by 26 July 2026 that will apply from mid-2027 to mid-2029 to in-scope companies depending on their size.

In this compendium, we summarise the main changes large companies operating in the EU and their business partners need to prepare for.

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In a nutshell

The CSDDD is a real game changer for sustainable business in the EU. Most importantly, in-scope companies will

- be subject to far-reaching due diligence obligations covering the adverse human rights and environmental impacts of their own operations as well as those of their subsidiaries and their upstream and downstream "chain of activities", and
- have to adopt and implement transition plans for climate change mitigation, in line with the Paris Climate Agreement.

To ensure compliance with its provisions, the CSDDD relies on public and private enforcement.

What's the background?

The EU Commission tabled the CSDDD legislative proposal on 23 February 2022 to advance respect for human rights and the green transition and to create a level playing field for companies within the EU (read more here). The EU Parliament and the Council adopted their negotiating positions on the proposal, respectively, on 1 December 2022 (see here) and 1 June 2023 (see here). Difficult political and technical discussions followed in the context of the so-called "trilogues". A provisional political deal was announced on 14 December 2023 (read more here), but it failed to achieve final approval in the Council on 28 February 2024 (read more here). On 15 March 2024, in another U-turn and following intense political pressure (in particular from the EU Parliament), the Council eventually accepted a new compromise proposed by the Belgian Council Presidency which significantly watered down the original compromise to win the required majority of EU Member States (read more here). The EU Parliament adopted this compromise text on 24 April 2024 (read more here), with the Council following suit one month later (read more here). The publication of the CSDDD in the Official Journal of the EU triggered a transposition period for the Member States of two years as well as staggered transition periods for companies (read more here).

Which companies will be covered?

During the legislative process, the thresholds for application of the CSDDD have been increased to ensure that smaller and medium companies do not directly fall under its scope, which has been one of the most critical aspects for some Member States. Originally, the CSDDD was supposed to apply to EU companies with 500 employees and net worldwide turnover of more than EUR 150 million and non-EU companies of net turnover in the EU of more than EUR 150 million, with lower thresholds for so-called high-risk sectors. The CSDDD eventually sets up the following thresholds:

- The thresholds for EU companies have been increased to 1,000 employees on average and a net worldwide turnover of EUR 450 million in the last financial year.
- For non-EU companies, no employee threshold is provided for, and the EUR 450 million turnover threshold should be reached in the EU, in the year preceding the last financial year. The competent Member State will then be the Member State in which the non-EU company has a branch. In case of branches in several Member States, or the absence of branch in the EU, the competent Member State will be that in which the company generated the highest net turnover. Non-EU companies will have to appoint an authorised representative domiciled or established in one of the Member States where it operates.
- Ultimate parent companies of groups that reach these thresholds on the basis of their consolidated annual financial statements are also in scope. Holding companies that do not engage in taking management, operational or financial decisions affecting the group or one or more of its subsidiaries may be exempted if one of the ultimate parent company's subsidiaries established in the EU is designated to fulfil the CSDDD obligations.
- Specific thresholds are also provided for franchising and licensing agreements: royalties of more than EUR 22,5 million in the last financial year (in the EU, for non-EU companies), provided that the group had a net worldwide turnover of more than EUR 80 million in the last financial year.
- The high-risk sectors approach has been abandoned, but a review provision retains the possibility to pick this up at a later stage, if necessary.
- AIFs and UCITS are excluded altogether. As discussed below, financial services are also excluded from the scope of the downstream chain of activities covered by the supply chain obligations.

Where a parent company and one or several of its subsidiaries fall under the scope of the CSDDD, the parent company may fulfil the Directive's obligations on behalf of its subsidiaries if this ensures effective compliance. The subsidiaries remain subject to the exercise of the competent supervisory authority's powers.

Which human rights and environmental mandatory due diligence obligations will apply?

Scope of the chain of activities

The due diligence obligations are applicable to the in-scope companies' own activities, those of their subsidiaries and of their upstream and downstream chain of activities.

The chain of activities encompasses:

- the activities of a company's upstream business partners related to the production of goods or the provision of services by the company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and development of the product or the service; and
- the activities of a company's downstream business partners related to the distribution, transport and storage of the product, where the business partners carry out those activities for the company or on behalf of the company (excluding those subject to the Dual-Use Regulation for the military sector).

Business partners are defined as entities with whom the in-scope company has a commercial agreement related to the operations, products or services of the company or to whom the company provides services (direct business partners) or which perform business operations related to the operations, products or services of the company (indirect business partners).

Carve-out of the financial services

For regulated financial undertakings, the chain of activities does not include downstream business partners that are receiving their services and products. As regards regulated financial undertakings, the Directive covers only the upstream part of their chain of activities.

Nonetheless, regulated financial undertakings should continue monitoring the developments under the CSDDD: The Directive foresees that the EU Commission should submit a report to the EU Parliament and to the Council on the necessity to lay down additional sustainability due diligence requirements tailored to regulated financial undertakings at the earliest opportunity after the Directive's entry into force, but no later than two years after that date. Moreover, regulated financial undertakings must already under the current CSDDD adopt and implement transition plans. It is also worth noting that regulated financial undertakings must report on their due diligence with regard to actual and potential adverse impacts on human rights and the environment under the CSRD.

Due diligence steps

In-scope companies must conduct human rights and environmental due diligence in accordance with the following six steps:

1. **Integrate due diligence into companies' policies and risk management systems**

   In-scope companies are required to integrate due diligence into all their relevant corporate policies and risk management systems, and have in place a due diligence policy. The due diligence policy must be risk-based, developed in prior consultation with employees and their representatives, and at least contain a description of the due diligence approach, a code of conduct (for employees, subsidiaries and business partners), and a description of the processes put in place to implement the due diligence policy in practice (including the measures taken to verify compliance with the code of conduct). The due diligence policy must be updated without undue delay after a significant change occurs, and review and, where necessary, update it a least every 24 months.

2. **Identify and assess actual and potential adverse human rights and environmental impacts**

   Adverse human rights and environmental impacts refer to adverse impacts on protected persons or the environment resulting from the violation of one of the rights, prohibitions or obligations covered by the Annex to the Directive. These include forced labour, child labour, inadequate workplace health and safety, exploitation of workers, as well as greenhouse gas emissions, pollution, biodiversity loss and ecosystem degradation.

   In-scope companies are required to take appropriate measures to identify and assess actual and potential adverse human rights and environmental impacts resulting from (i) their own operations; (ii) those of their subsidiaries; and (iii) where related to their chain of activities, those of their business partners. Companies must take appropriate measures to map these operations and, based on the mapping's results, conduct an in-depth assessment of the activities in the areas where adverse impacts were identified to be most likely to occur and most severe. Quantitative and qualitative information should be gathered to that end, including independent reports and information gathered through grievance mechanisms.

   The Directive recognises the need to allow for prioritisation of action where there are multiple identified actual and potential impacts which cannot all be addressed at once. In that case, companies should prioritise the most likely and harmful adverse impacts.

3. Prevent, cease or minimise actual and potential adverse human rights and environmental impacts

In-scope companies are required to take appropriate measures to prevent or mitigate potential and to end or minimise actual adverse human rights and environmental impacts. What measures are appropriate must be evaluated by taking into account the circumstances of the specific case, including the measure's reasonable availability, the nature and extent of the adverse impact and relevant risk factors. Companies shall be required to take, where relevant, the following appropriate measures:

- develop and implement a prevention/corrective action plan (with reasonable and clearly defined timelines for action, qualitative and quantitative indicators for measuring improvement);
- seek contractual assurances from business partners that they will ensure compliance with the company's code of conduct and prevention action plan;
- make necessary financial or non-financial investments, adjustments or upgrades such as into facilities, production or other operational processes and infrastructures;
- make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations, including purchasing practice, design and distribution practices;
- provide targeted and proportionate support for SME business partners;
- cooperate with other undertakings, in compliance with competition law (see more here); and
- as a last resort, in case potential adverse impacts would not be prevented or adequately mitigated, refrain from entering into new, or extending existing relations, with business partners.

4. Provide remediation

Where an in-scope company has caused or jointly caused an actual adverse impact, that company must provide remediation, i.e. the restitution of the affected person or persons, communities or environment. The Directive also sets forth that where the actual adverse impact is caused only by the company's business partner, the company may offer voluntary remediation and use its ability to influence the business partner to enable remediation.

5. Monitor and assess the effectiveness of measures

In-scope companies must carry out periodic assessments (at least annually) of their own operations and measures, those of their subsidiaries and, where related to the chain of activities of the companies, those of their business partners, to assess the implementation and to monitor the adequacy and effectiveness of the above measures.

They are also required to provide the possibility for persons and specific organisations to submit complaints to them where they have legitimate concerns regarding actual or potential adverse impacts (in this context, the requirements prescribed by the Whistleblowing Directive must also be taken into account).

In-scope companies must also take appropriate measures to carry out effective engagement with stakeholders (the Directive sets forth details in this regard, in particular, what information must be provided to stakeholders and in what steps of the due diligence process stakeholders must be consulted).

6. Communicate

In order to avoid duplicating reporting obligations, the Directive does not introduce any new reporting obligations in addition to those under the CSRD. However, in-scope companies that do not fall under the CSRD should publish on their website an annual statement in respect of their activities (whose exact content should be defined by the EU Commission through a subsequent implementing act). Such a statement would be required to be published by the date of publication of the annual financial statement.

Further guidance

The EU Commission is required to issue guidelines, including general guidelines and for specific sectors or adverse impacts, as well as guidance about voluntary model contract clauses. On 25 July 2024, it published initial guidance in the form of Frequently Asked Questions (read more here). The Commission will also have to establish a single helpdesk through which companies may seek information, guidance and support.

Member States are required to set up and operate individually or jointly dedicated websites, platforms or portals in order to provide information and support to companies, their business partners and stakeholders, especially for SMEs present in the chains of activities of in-scope companies.

Which rules will apply as regards transition plans?

In-scope companies are required to adopt and put into effect a transition plan for climate change mitigation. The plan must aim to ensure, through best efforts, that the business model and strategy of the company are compatible with the transition to a sustainable economy and with limiting global warming to 1.5 °C. Where relevant, the plan should address the exposure of the company to coal-, oil- and gas-related activities.

The transition plan will have to be updated yearly, and must contain:

- time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and including, where appropriate, absolute emission reduction targets for greenhouse gas for scope 1 (companies' own emission), scope 2 (emission entailed by the company's energy consumption) and scope 3 (emissions for which the company is indirectly responsible in its upstream and downstream supply chain) greenhouse gas emissions for each significant category;
- a description of decarbonisation levers identified and key actions planned to reach targets, including where appropriate changes in the company's product and service portfolio and the adoption of new technologies;
- an explanation and quantification of the investments and funding supporting the implementation of the transition plan; and
- a description of the role of the administrative, management and supervisory bodies with regard to the plan.

The transition plan must be updated every 12 months and contain a description of the progress the company has made towards achieving the targets.

Companies that report a transition plan in accordance with the CSRD, or are included in the transition plan of their parent undertaking, are deemed to have complied with the adoption obligation.

How will the CSDDD be enforced?

The CSDDD also prescribes certain requirements to ensure effective enforcement of national measures implementing the CSDDD. The Directive's implementation shall be ensured with the help of both public and private enforcement mechanisms.

Public enforcement by supervisory authorities

EU Member States are required to designate one or more authorities to supervise compliance with the Directive's obligations (with respect to both due diligence obligations and the transition plans). They will have the power to request information and carry out investigations, on their own motion or as a result of substantiated concerns submitted to them by any natural or legal person who has reasons to believe a company is not complying. They will also have the power to order the cessation of infringements, impose administrative fines (with a maximum of no less than 5% of the net worldwide turnover of the company in the financial year preceding the fining decision), and adopt interim measures in case of imminent risk of severe and irreparable harm. Decisions of the supervisory authority shall be published and a judicial remedy against these decisions shall also be provided for under national law.

The supervisory authorities will cooperate in the context of a newly established European Network of Supervisory Authorities to ensure the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, sharing of information among them.

Also, compliance with the Directive may be taken into account as part of the award criteria for public and concession contracts, and as an environmental or social condition that contracting authorities may lay down in relation to the performance of public and concession contracts.

Private enforcement and civil liability

In-scope companies may be held liable for damages caused to a natural or legal person provided that (i) the company intentionally or negligently failed to comply with their obligations to prevent, mitigate, end or minimise adverse impacts, when the protected right, prohibition or obligation is aimed to protect the person; and (ii) the failure caused a damage to the person's legal interest protected under national law.

A company will not be liable for damages caused only by its business partner. The Directive emphasises that companies that have participated in industry or multi-stakeholder initiatives, or used third-party verification or contractual clauses to support the implementation of due diligence obligations can still be held liable.

A number of further procedural aspects are also tackled by the CSDDD, as Member States will, inter alia, have to ensure that:

- the limitation period is at least five years and, in any case, not lower than the limitation period laid down under general national regimes;
- the cost of proceedings are not prohibitively expensive for claimants to seek justice;
- claimants may seek injunctive measures (including through summary proceedings);
- an alleged injured party may reasonably authorise trade unions or human rights or environmental non-governmental organisations to bring the injured party's claim;
- courts may require appropriate disclosure of additional evidence that lies in the control of the company and is not accessible to the claimant (with appropriate protective measures); and
- the provisions of national law transposing the CSDDD's requirements on civil liability are of overriding mandatory application in cases where the applicable law is not the Member State's law.

How does the CSDDD relate to other EU regimes?

The CSDDD is the "default" EU due diligence regime. It expressly provides that its obligations are without prejudice to other, more specific EU regimes (see our previous blog posts on, e.g., the Conflicts Minerals Regulation, the De-forestation Regulation, the Batteries Regulation and the Forced Labour Ban Regulation), meaning that if a provision of the CSDDD conflicts with another EU regime providing for more extensive or specific obligations, the latter prevails.

What's next?

The instrument being a directive (rather than a regulation), the publication in the Official Journal of the EU triggered a transposition period of two years for the Member States. The Directive allows Member States to adopt or leave in place more stringent provisions, except with respect to specific due diligence obligations, namely the identification and assessment of the actual and potential adverse impact, the prevention of potential adverse impact, and the obligation to bring actual adverse impacts to an end. It remains to be seen whether, and how, the two key existing national regimes in the EU, the French *Loi relative au devoir de vigilance des sociétés mères et entreprises donneuses d'ordre* (focused on private enforcement, read more here) and the German *Lieferkettensorgfaltspflichten-gesetz* (focused on public enforcement, read more here), will be adapted.

Moreover, transition periods will apply based on a staged approach:

Transition period	In-scope EU companies	In-scope non-EU companies
26 July 2027	More than 5,000 employees and EUR 1,500 million worldwide net turnover	More than EUR 1,500 million net turnover in the EU
26 July 2028	More than 3,000 employees and EUR 900 million worldwide net turnover	More than EUR 900 million net turnover in the EU
26 July 2029	All other in-scope companies	

However, despite the application of transposition and transition periods, in-scope companies and their business partners will already have to start assessing the impact this landmark legislation will have on their activities.

Key contacts

Linklaters' global ESG practice has been at the forefront of legislative developments in the area of business and human rights at EU and domestic level. In particular, we have provided comprehensive advice to our clients on domestic due diligence regimes in France (*Loi relative au devoir de vigilance des sociétés mères et entreprises donneuses d'ordre)* and Germany (*Lieferkettensorgfaltspflichtengesetz)*, where domestic regimes have been applicable for several years. Our experts are available for any questions – please do reach out to your usual Linklaters contact or any of the lawyers below.

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