

European Union Corporate Sustainability Due Diligence Directive **(“CSDDD”)**

As Approved by EU Council March 15, 2024:

Summary

Caveats: *The Directive must still be approved by the EU Parliament. This summary is based on an unofficial text of the Directive. The summary is not exhaustive, does not constitute legal advice, and is provided for general information only.*

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Short Summary: The EU Corporate Sustainability Due Diligence Directive (“CSDDD”) will impose legally enforceable obligations on large EU companies, and on large non-EU companies generating significant revenue in the EU, to carry out human rights and environmental due diligence, to prevent or mitigate potential adverse impacts, and to end or minimize actual adverse impacts on human rights and the environment. The due diligence provisions will be enforceable by substantial administrative penalties and enforcement orders, and by civil liability for damages caused by failures to comply.

The Directive will also require large companies to adopt climate change transition plans compatible with the Paris agreement average global warming target and with EU climate neutrality goals.

Companies Covered Generally:

- ***Large Companies:*** Five years after entering into force, the Directive will cover:
 - ***EU Companies and ultimate parent companies*** with more than 1000 employees and worldwide annual turnover higher than €450 million for each of the last two financial years.
 - ***Non-EU companies*** and ultimate parent companies with more than €450 million net turnover generated in the EU, in the financial year preceding the last financial year.
 - Larger companies will be covered sooner, beginning three years after entry into force.
- ***SMEs:*** Although not covered by the Directive, SMEs could be impacted as contractors or subcontractors to covered companies. Provision of information and support by EU Member States may include financial support to SMEs.

Public Sector Implementation:

- **National laws:** The Directive will be implemented by national laws, supervisory authorities, penalties and civil liability. National laws may be more stringent or specific.
- **EU Guidelines:** Within three years of entry into force, the European Commission must issue guidelines, both generally on due diligence, risk factors and other matters, and for specific sectors or specific adverse impacts.

General Obligations of Companies:

- **Due Diligence:** Companies must integrate risk-based human rights and environmental due diligence into their policies and risk-management systems. They must adopt due diligence policies describing their approach, processes and code of conduct. Due diligence to identify and address actual or potential adverse impacts should cover the six steps defined by the OECD *Due Diligence Guidance for Responsible Business Conduct*. These include: (1) integrating due diligence into policies and management systems, (2) identifying and assessing adverse impacts, (3) preventing, ceasing or minimizing actual and potential adverse impacts, (4) monitoring and assessing the effectiveness of measures, (5) communicating, and (6) providing remediation.
- **Mapping:** Companies must map their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in order to identify general areas where adverse impacts are most likely to occur and to be most severe. Companies must then carry out in-depth assessments of those areas.
- **Company Activities:** Companies must act to prevent or, where prevention is not possible or not immediately possible, adequately mitigate potential adverse impacts caused by themselves or their subsidiaries. They must also act to end or, where the adverse impact cannot immediately be brought to an end, minimize actual adverse impacts.
- **Business Partners:** Companies must aim to use their influence to prevent or mitigate abuses by their business partners and, if necessary, aim to increase that influence.
- **Value Chain:** Portions of value chains covered by the Directive are termed a company's "chain of activities." Due diligence must address risks of adverse impacts in a company's upstream chain of activities. *Upstream* activities include the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts, and development of the company's product or service. *Downstream* risks are covered only with regard to business partners engaged in distribution, transport and storage of the product for or on behalf of the company. The chain of activities does not include disposal of the product.
- **Means, Not Ends:** The main obligations are obligations of means, not ends. Companies should take appropriate measures capable of effectively addressing adverse impacts, in a manner commensurate to their severity and likelihood. Account should be taken of the

circumstances of the specific case, the nature and extent of the adverse impact and relevant risk factors.

- ***Investments and Measures:*** Companies may be required to make investments, seek contractual assurances, improve business plans, or provide training or capacity-building to SME partners. Contractual assurances should share responsibilities appropriately between the company and its business partners. They are not sufficient by themselves. Purchase policies should not encourage potential adverse impacts on human rights or the environment, for instance through deadlines or specifications imposed by the company.
- ***Consultations, Complaints, Communications and Monitoring:*** Companies must meaningfully engage with those affected by their actions, whether directly or through industry or multi-stakeholder initiatives; introduce a complaints mechanism; communicate on their due diligence policies; and regularly monitor their effectiveness.
- ***Living Wage and Income:*** Companies should use their influence, including through purchase policies, to contribute to an adequate standard of living in their “chains of activities.” This entails a living wage for employees and a living income for self-employed workers and smallholders earned from their work and production.
- ***Terminating Business Relationships:*** Termination must be a last resort, where the company sets an appropriate timeframe in its prevention or corrective action plan, and termination is assessed as to whether it would cause manifestly more severe adverse impacts.

Phase-in:

- States will have two years from entry into force of the Directive to enact implementing legislation. Companies with more than 5000 employees and €1.5 billion annual turnover will have three years from entry into force to comply; companies with 3000 employee and €900 million annual turnover will have four years; and companies with 1000 employees and €450 million annual turnover will have five years.

Climate Change:

- ***Plans:*** Companies must adopt and put into effect a transition plan for climate change mitigation, including for their scope 3 emissions. The plan must aim to ensure, through best efforts, that their business model and strategy are compatible with the Paris agreement goal to limit global warming to 1.5°C, and with EU objectives of achieving climate neutrality. Contents of plans must be aligned with the EU *Corporate Sustainability Reporting Directive* (CSRD). Companies complying with CSRD climate change reporting, and companies covered by a parent company’s plan, are deemed to have met the obligation to adopt a climate transition plan.
- ***Subsidiaries:*** When a parent company fulfils the obligations on combatting climate change on behalf of a subsidiary, the subsidiary should act in accordance with the parent

company's plan adapted to its business model and strategy. If the subsidiary is not itself covered by the Directive, the parent should address operations of the subsidiary as part of its own due diligence. If the subsidiary falls under the Directive but the parent does not, they may share resources and information within their group of companies, but the subsidiary remains responsible to carry out due diligence.

Financial Sector:

- **Coverage:** Due diligence obligations of financial services companies, such as banks, insurance companies and asset managers, are limited to their own operations and their upstream supply chains, not their downstream value chains.
- **Climate Plans:** Banks and other financial services companies are covered by climate change plan requirements.
- **Review:** The Commission will report to the European Parliament and Council on the need for additional due diligence requirements tailored to the financial sector, as well as their impacts, no later than two years after the entry into force of the Directive.

Holding companies:

- In general, ultimate parent companies are subject to the same coverage criteria and phase-in timetables as other companies.
- However, an ultimate parent company may be exempted from due diligence obligations if its main activity is to hold shares in operational subsidiaries and it does not take management, operational or financial decisions affecting the group or its subsidiaries. This exemption is subject to the condition that one of its EU subsidiaries is designated to fulfil the due diligence obligations on behalf of the ultimate parent company, including with respect to activities of its subsidiaries.

Franchises:

- Companies and ultimate parent companies of groups with franchising or licensing agreements in the EU in return for royalties with independent third-party companies, where the agreements ensure a common identity, common business concept and uniform business methods, are covered if the royalties were more than €22.5 million, and the net turnover in the EU was more than €80 million, in the financial year preceding the last financial year. Coverage begins five years after entry into force of the Directive.

Information Sharing:

- **Parent Companies and Subsidiaries:** Companies may share resources and information within their respective groups of companies. Parent companies covered by the Directive can fulfil some of the due diligence obligations also on behalf of their subsidiaries covered by the Directive, “if this ensures effective compliance”. However, the

subsidiaries remain subject to the exercise of the supervisory authority's powers and to civil liability under the Directive.

- **Trade Secrets:** Business partners need not disclose trade secrets to a company carrying out due diligence under the Directive, except for the identities of direct and indirect business partners, or essential information needed to identify potential or actual adverse impacts. However, business partners may use the mechanisms under EU Directive 2016/943 to protect unlawful acquisition or disclosure of trade secrets. In addition, they are not obliged to disclose classified information or other information which would cause a risk to essential interests of a State's security.

Administrative Supervision, Investigations and Fines:

- Each EU Member State will designate a supervisory authority to monitor whether companies comply with their human rights and environmental due diligence obligations. They will be able to launch inspections and investigations, receive substantiated concerns, order cessation or remediation, and impose penalties on non-compliant companies, including “naming and shaming” and fines of up to 5% of their net worldwide turnover. These bodies must also supervise the adoption and design of the climate transition plans.

Civil Damages:

- Companies are liable for intentional or negligent failure to prevent and mitigate potential adverse impacts, or to end and minimize actual adverse impacts. Natural and legal persons have the right to be compensated for damages caused by such failures.
- Where a company cannot address all risks simultaneously, and prioritizes them based on severity and likelihood, the company will not be liable for damage stemming from any less significant adverse impacts that were not yet addressed. However, the “correctness” of the company’s prioritization may be reviewed. Punitive damages and other “overcompensation” are not allowed.
- Civil liability of companies is without prejudice to liability of subsidiaries. Companies are not liable for damages caused by business partners.
- Statutes of limitations should allow at least five years to bring claims. Burdens of proof are left to national law. The Directive addresses representation of claimants by trade unions, non-governmental organizations, or national human rights institutions; disclosure of evidence; injunctive measures; and cost of the proceedings for claimants.
- Civil liability is not provided for failure to comply with a climate change plan under the Directive.

Public Contracts and Concessions:

- Compliance with due diligence obligations can be used as part of the award criteria for public and concession contracts.

Other EU Directives:

- Where other EU legislation pursues the same objectives and provides for more extensive or more specific obligations, the other act prevails to the extent of the conflict.
- Examples include EU regulations on conflict minerals, batteries, and deforestation-free supply chains.
- Several other legislative acts aim to mitigate environmental impacts of products throughout their whole lifecycle, including by setting ecodesign requirements based on their sustainability and circularity aspects. Compliance with the CSDDD Directive should facilitate compliance with those other legislations and authorizations thereunder. Exporters should take into account the results of their due diligence findings under the CSDDD Directive in complying with those other acts.

EU Sanctions Regimes:

- **Arms:** The chain of activities under the Directive does not encompass distribution, transport, storage and disposal of products subject to export control by a Member State under EU Regulation 2021/821 or under national export controls of weapons, munitions or war material, after export of the product is authorized.
- **Cyber-Surveillance:** EU Regulation 2021/821 covers *inter alia* software and technologies that can be used for cyber-surveillance. Member States should consider in particular the risk of such goods being used for internal repression or for serious violations of human rights and international humanitarian law.
- **Capital Punishment or Torture:** EU Regulation 2019/125 prohibits or regulates export of goods such as chemicals that are or could be used for capital punishment or for torture and other cruel, inhuman or degrading treatment or punishment.

Human Rights:

- **Listed in Annex:** Human rights covered by the Directive refer to those in international instruments ratified by all EU Member States and that set sufficiently clear standards that can be observed by companies, as listed in the Annex. Among others, these include the main UN conventions, such as the international covenant on civil and political rights; the international covenant on economic, social and cultural rights; and the convention on the rights of the child.
- **Labor Rights:** Human rights under the Directive also include all five fundamental principles and rights at work (freedom of association and right to collective bargaining,

no forced or compulsory labor, no child labor, non-discrimination, and a safe and healthy working environment) as defined in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. ILO occupational safety and health conventions will be included once ratified by all EU Member States. Company due diligence policies should be developed in prior consultation with employees, including temporary and other workers in non-standard employment, and their representatives.

- **Other Human Rights:** Even if not listed in the Annex, human rights are covered if they can be abused by a company and the abuses directly impair a legal interest protected by the instruments in the Annex, provided the company could reasonably foresee the risk of such abuse.
- **Specific Circumstances:** Depending on circumstances, companies may need to consider additional standards. For instance, as part of gender- and culturally responsive due diligence, companies should pay special attention to adverse impacts on individuals or communities at heightened risk due to marginalization, vulnerability or other circumstances. These may include Indigenous Peoples, as protected under the United Nations *Declaration on the Rights of Indigenous Peoples*, including in relation to Free, Prior and Informed Consent. Where relevant, companies may need to consider international instruments such as United Nations conventions on racial discrimination, discrimination against women, and the rights of persons with disabilities.

Environmental Rights:

- **Healthy Environment:** Environmental due diligence should encompass avoiding environmental degradation that results in adverse health effects such as epidemics, and respect for the right to a clean, healthy and sustainable environment.
- **Listed in Annex:** Adverse environmental impacts are covered if they result from the violation of a prohibition or obligation listed in the Annex, taking into account national legislation linked to the instruments listed therein. Prohibitions and obligations should be interpreted in line with international and EU general principles of environmental law.
- **Substantial Impairment:** Prohibitions include causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions, excessive water consumption, degradation of land, or other impact on natural resources, such as deforestation, that *substantially impairs* the natural bases for the preservation and production of food, or that denies a person access to safe and clean drinking water, or that makes it difficult for a person to access sanitary facilities or destroys them, or that harms the health, safety, the normal use of land or lawfully acquired possessions of a person, or that substantially adversely affects ecosystem services through which an ecosystem contributes directly or indirectly to human wellbeing.