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Corporate Sustainability Due Diligence Directive: the European legal framework for due diligence practices in global chains of activity

Luxembourg Chamber of Commerce
Service Legal & Tax

On 5 July 2024, the Corporate Sustainability Due Diligence Directive (referred to hereafter as the "Directive" or "CS3D")[1] was published in the Official Journal of the European Union. The Directive entered into force on 25 July 2024, that being 20 days after its publication, and must be transposed by Member States into national law by 26 July 2026. Co-legislators finally opted for a phased application process, whereby in-scope companies will begin applying its provisions gradually from 2027, depending on their reaching certain thresholds outlined in the Directive.

CS3D's publication and its entry into force conclude a legislative process, which began over two years ago, with the presentation of the European Commission's (referred to hereafter as the "Commission") proposal on 23 February 2022, following a series of calls from the Council and the European Parliament[2].

The aforementioned Commission's proposal was intended to impose new obligations on EU and non-EU companies falling within its scope to establish and implement due diligence policies aimed at identifying, preventing or mitigating, and ultimately ending adverse impacts of their activities, and those of their subsidiaries and business partners, on human rights and the environment across their value chains. Additionally, the proposal introduced specific obligations related to climate change, and intended to revise directors' duty of care pertaining to sustainability matters for in-scope EU companies, coupled with a civil liability regime of in-scope companies, both actionable by a large circle of stakeholders. The Commission's proposal having been discussed and amended by both the Council and the European Parliament, was further negotiated during the trilogues before reaching its current form.

1 *This document is based on, and reproduces excerpts of the published Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (OJ L, 2024/1760, 5.7.2024, ELI: http://data.europa.eu/eli/dir/2024/1760/oj). Please refer to the official version of the Directive for your complete information on the subject matter.*

2 *See the Commission's proposal: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071*

The Luxembourg Chamber of Commerce has actively monitored, and contributed to, the legislative process and public debate on the Directive. In alignment with its institutional role, it has undertaken a series of actions and initiatives[3] with the view to contributing to the adoption of a balanced and effective legal instrument. It continues to closely follow the legislative developments, anticipating active participation in the national transposition process.

Accordingly, this document serves as a summary of the obligations under the Directive and is part of a series of publications to be followed by others dedicated to the transposition of the CS3D into Luxembourg law.

3 *E.g., see our published joint position paper with Fedil: https://www.cc.lu/toute-linformation/actualites/detail/joint-position-paper-on-the-proposal-for-a-directive-on-corporate-sustainability-due-diligence?tx_ccnews_news%5Bpage%5D=8&cHash=b562ae7df9f014f053a6e9d518005cd5; Evgenia Kyriakaki's presentation during the conference organised by Larcier, JurisNews Droit de l'Environnement, on November 24, 2022; Eurochambres' position paper dated June 1, 2022, elaborated also with the contribution of the Luxembourg Chamber of Commerce alongside the other Eurochambres' members: https://www.eurochambres.eu/publication/eurochambres-position-on-the-proposal-for-corporate-sustainability-due-diligence/; our contribution to the joint business statement dated January 19, 2023 here: https://www.eurochambres.eu/wp-content/uploads/2023/01/23-01-19-Joint-Business-Statement-onthe-due-diligence-proposal-CS3D_final.pdf and https://www.cc.lu/toute-linformation/actualites/detail/corporatesustainability-due-diligence-declaration-commune-des-representants-du-monde-des-entreprises-sur-la-proposition-dedirective-pour-un-devoir-de-vigilance-des-entreprises-en-matiere-de-durabilite*

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1 What does the Directive cover?

1.1 The new obligations for in-scope companies

The Directive lays down rules for in-scope companies , on the following matters:

a) obligations regarding actual and potential human rights adverse impacts and environmental adverse impacts;

b) liability for violations of the above obligations; and

c) obligation to adopt and put into effect a transition plan for climate change mitigation.

1.2 Perimeter of the due diligence obligations

The new due diligence obligations shall be carried out regarding:

a) in-scope companies' own operations;

b) operations of their subsidiaries; and

c) operations carried out by their business partners in such companies' chains of activities.

1.3 More about the perimeter of due diligence obligations: "business partners" of in-scope companies in their "chain of activities"

As indicated above (cf. section 1.2, item c)), in-scope companies are required to conduct their due diligence also with respect to their business partners in their chain of activities, both on the upstream and on the downstream sides, with certain partners and activities being however excluded (**Table 1**, and **Figure 1**).

4 For the definition of a "company" under the Directive and the thresholds requisite for such companies to be included in the personal scope, please refer to Articles 3 (1)(a) and 2 of the Directive, respectively.

TABLE 1

DETAILED PRESENTATION OF THE PERIMETER OF THE DUE DILIGENCE OBLIGATIONS UNDER THE DIRECTIVE, AND EXCLUDED ACTIVITIES

BUSINESS PARTNERS AND ACTIVITIES INCLUDED

Value chain – Side	Business partner	Type of activity
Upstream	Direct (Tier-1) or indirect (Tier-N)	Activities related to the production of goods or the provision of services by the company, incl.: • design • extraction • sourcing • manufacture • transport • storage and supply, of raw materials, products or parts of products, and • development of the product or the service
Example[5]: *For instance, for a clothing manufacturer the example of an upstream business partner would be a textile factory that produces fabric used in the manufacturing of cloths. For a car manufacturer, a direct upstream business partner might be a tyre producer, an indirect upstream business partner might be a producer of rubber that is used in the production of those tyres.*		
Downstream	Business partners that carry out the relevant activities for the in-scope company or on its behalf	Only: • distribution • transport • storage of the product
Example[6]: *Using the same clothing manufacturer example, a downstream business partner might be a retail store that sells the finished clothing products to consumers.*		

ACTIVITIES EXCLUDED

Sales by the company (both B2B and B2C)
Disposal of products (incl. dismantling, recycling, composting, landfilling)
Distribution, transport, storage and disposal of dual use products subject to export control of a Member State, or weapons, munition or war material under national export controls, once the export is authorized

5 Example from the Commission's "Frequently Asked Questions" dated 25 July 2024 to be found on the following link: https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en#documents

6 Idem as above.

1.4 Due diligence for the financial sector

For regulated financial undertakings, the definition of the term "chain of activities" does not include downstream business partners that are receiving their services and products. Thus, as regards regulated financial undertakings, only the upstream (incl. IT systems, equipment, supplies, etc.), but not the downstream part (e.g., deposits, loans, investments) of their chain of activities, is covered by the Directive.

1.5 The due diligence obligations qualify as "obligations of means"

The Directive **does not require in-scope companies to guarantee in all circumstances** that adverse impacts will never occur, or that they will be stopped (for instance, in the case where adverse impacts result from State intervention with respect to business partners). Consequently, the relevant obligations are "obligations of means".

1.6 Appropriate measures to be taken by in-scope companies to comply with the new rules

Irrespective of the fact that due diligence obligations under the Directive qualify as "obligations of means", in-scope companies are required to take "appropriate measures" for the purposes of complying with their obligations introduced by the Directive.

A few points of attention for further reading

- ***How can companies know if their measures meet CS3D standards?***

  *Under CS3D, **«appropriate measures»** are those that:*

  - *can achieve due diligence objectives by addressing adverse impacts based on their severity and likelihood > **Effectiveness***
  - *are reasonably available to the company, considering the specific circumstances, including the nature and extent of the adverse impact and relevant risk factors > **Feasibility***

  When fulfilling obligations to prevent or minimize adverse impacts, companies should also consider:

  - *the specifics of their business operations and activity chain*
  - *the sector or geographical area where their business partners operate*
  - *their ability to influence direct and indirect business partners*
  - *potential ways to increase their influence over these partners*

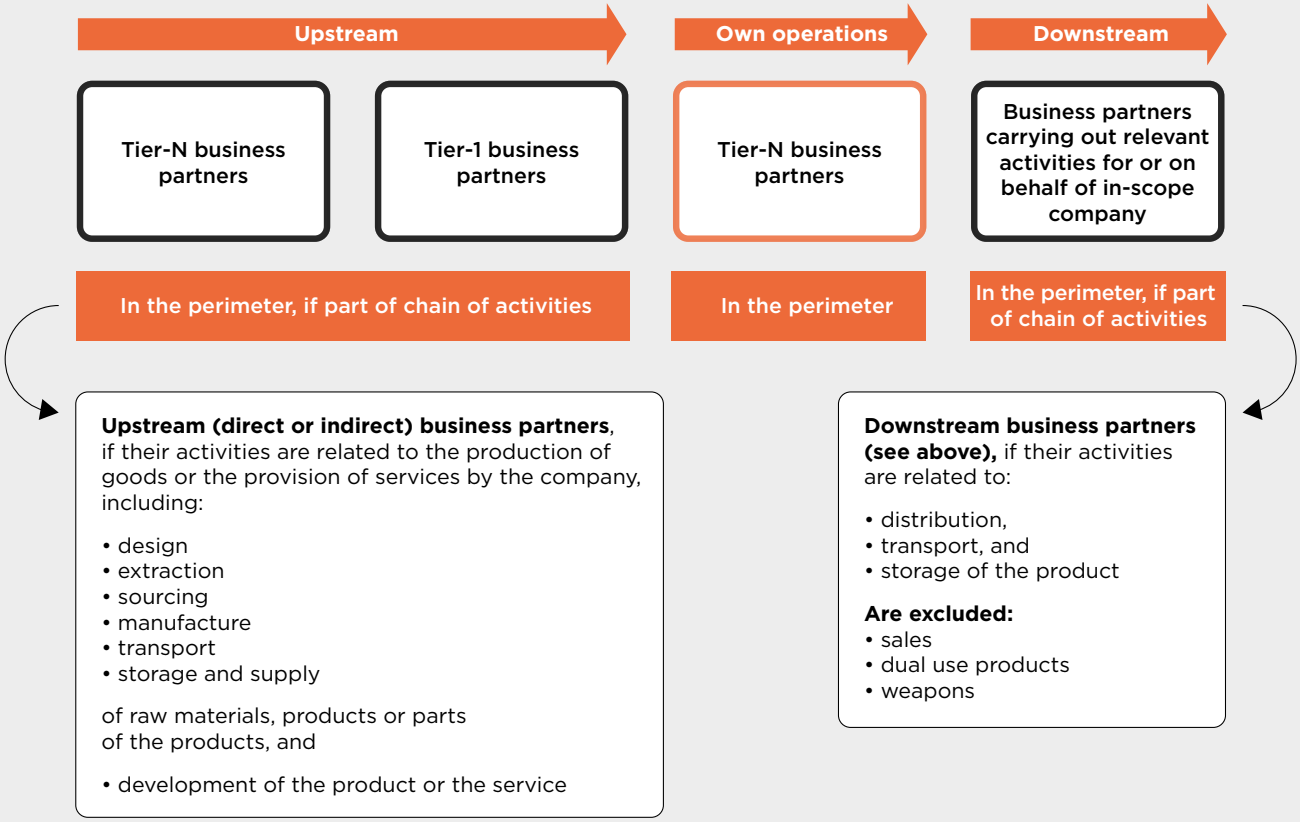
1.7 Trade secrets and unavailable information: what happens if the company cannot obtain the necessary information from its business partners?

Another issue to be considered with respect to the ability of in-scope companies to effectively comply with their due diligence obligations pertains to the actual availability of necessary information.

Hence, **if necessary information** (including information that is deemed to be a trade secret), **cannot be reasonably obtained due to factual or legal obstacles** (e.g., because a business partner refuses to provide information and there are no legal grounds to enforce this), **such circumstances cannot be held against the company**. Nonetheless, the company in question **should be able to explain why such information could not be obtained, and should take the necessary and reasonable steps to obtain it as soon as possible**.

FIGURE 1

SCHEMATIC REPRESENTATION OF THE PERIMETER OF THE DUE DILIGENCE OBLIGATIONS UNDER THE DIRECTIVE



2 Level of harmonization and significant leeway left to Member States

2.1 The Directive provides for minimum protection of human rights, employment and social rights, the environment and climate

The Directive establishes minimum thresholds for protection of human rights, employment and social rights, and of the environment and the climate. Consequently:

- **The Directive does not constitute grounds for reducing the level of protection** of human, employment and social rights, or of protection of the environment or the protection of the climate **provided for by the law of Member States, or applicable collective agreements at the time of the adoption of the Directive**.
- The Directive shall apply **without prejudice to obligations** in the areas of human, employment and social rights, protection of the environment and climate change **under other Union legislative acts**[7]. In the event of conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act shall prevail to the extent of the conflict and shall apply to those specific obligations.

2.2 Internal market clause and derogations

Without prejudice to the above section 2.1, Member States shall not introduce, in their national law, provisions within the field covered by the Directive, laying down human rights and environmental due diligence obligations diverging from those laid down in Article 8(1) and (2), Article 10(1) and Article 11(1). Notwithstanding such prohibition, Member States are allowed to introduce more stringent national provisions, diverging from those laid down in articles other than the articles mentioned hereinabove (for instance, see Section 8 below regarding civil liability), or provisions that are more specific in terms of the objective or the field covered, in order to achieve a different level of protection of human, employment and social rights, the environment or the climate.

7 A few examples: obligations in the Regulation (EU) 2017/821 of the European Parliament and of the Council (Conflict Minerals Regulation); obligations in the Regulation (EU) 2023/1542 of the European Parliament and of the Council (Batteries Regulation); obligations in the Regulation (EU) 2023/1115 of the European Parliament and of the Council (Regulation on deforestation-free supply chains).

3 Companies to which the Directive applies

3.1 Companies which are formed in accordance with the legislation of a Member State

- **Limited liability companies and partnerships with more than 1,000 employees** on average and a **net worldwide turnover of more than EUR 450 million** in the last financial year for which annual financial statements have been or should have been adopted.
- **A company that did not reach the above thresholds but is the ultimate parent company of a group that reached those thresholds** in the last financial year for which consolidated annual financial statements have been or should have been adopted.
- The **company** entered into **(or is the ultimate parent company of a group that entered into) franchising or licensing agreements in the Union in return for royalties with independent third-party companies**, where:
    - these agreements ensure a common identity, a common business concept and the application of uniform business methods, and
    - these **royalties amount to more than EUR 22.5 million in the last financial year** for which annual financial statements have been or should have been adopted, and
    - provided that the company had or is the ultimate parent company of a group that had **a net worldwide turnover of more than EUR 80 million** in the last financial year for which annual financial statements have been or should have been adopted.

3.2 Companies which are formed in accordance with the legislation of a third country

- Companies of a legal form **comparable to LLCs/partnerships** that generated **a net turnover of more than EUR 450 million in the Union** in the financial year preceding the last financial year.
- **A company that did not reach the above thresholds but is the ultimate parent company of a group that reached those thresholds** in the last financial year for which consolidated annual financial statements have been or should have been adopted.
- The **company** entered into **(or is the ultimate parent company of a group that entered into) franchising or licensing agreements in the Union in return for royalties with independent third-party companies**, where:
    - these agreements ensure a common identity, a common business concept and the application of uniform business methods, and
    - these **royalties amount to more than EUR 22.5 million in the Union in the last financial year, and**
    - provided that the company generated or is the ultimate parent company of a group that generated **a net turnover of more than EUR 80 million in the Union** in the last financial year.

A few points of attention for further reading

Reference period for scope thresholds

- *The scope criteria must be met for 2 consecutive financial years.*

Holding companies - Important exemption

- *If the ultimate parent company mainly holds shares in operational subsidiaries and does not make management, operational, or financial decisions for the group or its subsidiaries, an exemption applies.*
- *In such cases, an operational subsidiary within the EU must be designated to fulfil the due diligence obligations (Articles 6 to 16 and 22 of the Directive) on behalf of the ultimate parent company. This includes the obligations of the ultimate parent company concerning the activities of its subsidiaries, provided certain conditions are met.*

Financial sector entities

- *The Directive does not apply to pension institutions operating social security systems under applicable Union law. Where a Member State has chosen not to apply Directive (EU) 2016/2341 in whole or in part to an institution for occupational retirement in accordance with Article 5 of that directive, the Directive does not apply to those institutions. It does not apply to AIFs or UCITs either.*

3.3 The position of SMEs

SMEs do not directly fall under the personal scope of the Directive. Consequently, they cannot be subject to public enforcement or civil liability under the Directive, but they will be affected as business partners (contractors, subcontractors, etc.) in the chains of activity of in-scope companies.

3.4 Competent Member States to regulate matters covered in the Directive

For companies formed in a Member State:

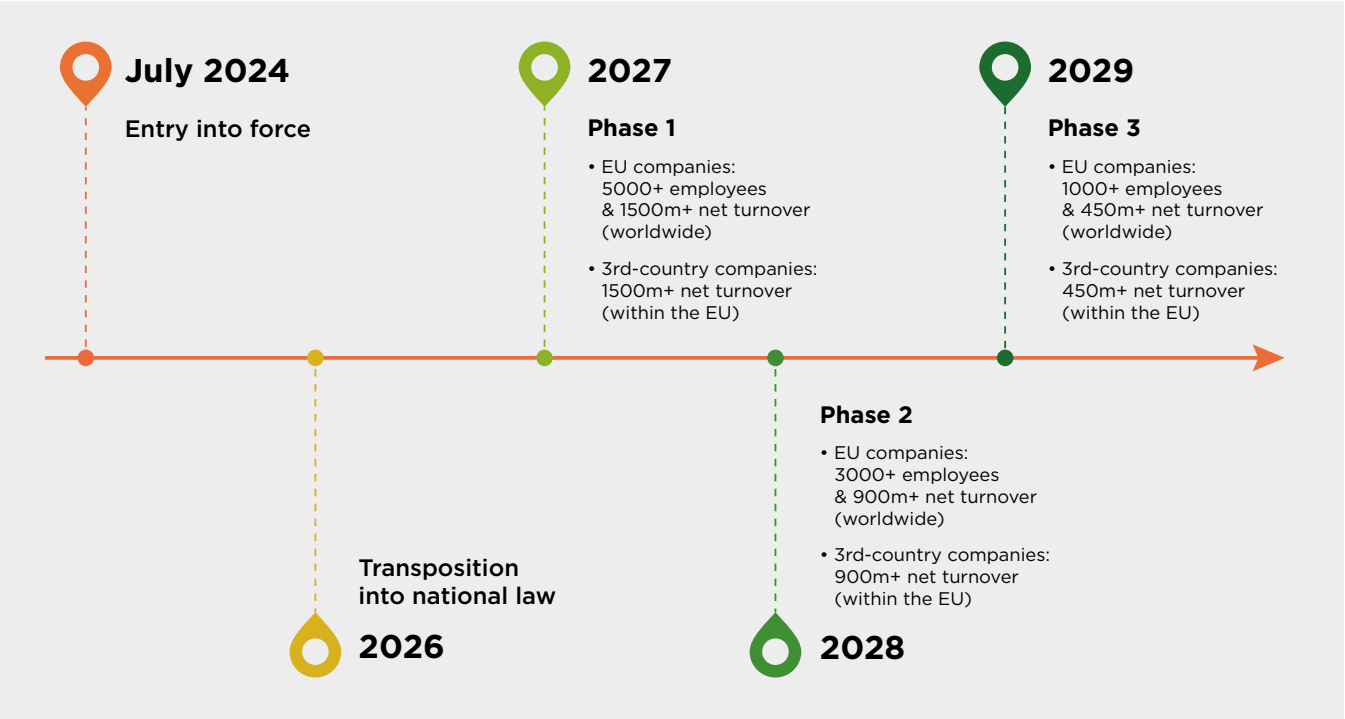
The Member State responsible for regulating matters covered by the Directive is the one where the company has its registered office.

For companies formed in a third country:

The Member State responsible is the one where the company has a branch. If the company has no branch in any Member State, or has branches in multiple Member States, the responsible Member State is the one where the company generated the highest net turnover in the EU in the financial year before the last financial year.

4 Timeline of application

4.1 Phased application



** Except for the measures necessary to comply with Article 16*

5 Corporate sustainability due diligence & SME support

The due diligence process set out in the Directive should cover the six steps defined by the OECD Due Diligence Guidance for Responsible Business Conduct.

5.1 Due diligence at group level under certain conditions

Parent companies falling under the scope of the Directive may fulfil the obligations on behalf of their in-scope subsidiaries, if effective compliance is ensured, and provided specific conditions are met in terms of exchange of necessary information, cooperation, etc.; where the parent company fulfils the obligation to adopt and put into effect a transition plan for climate change mitigation set out in Article 22 on behalf of the subsidiary, the subsidiary shall comply with the obligations laid down in Article 22 in accordance with the parent company's transition plan accordingly adapted to its business model and strategy.

5.2 Due diligence actions

In-scope companies must conduct risk-based human rights and environmental due diligence by carrying out the following actions[8]:

1) **Integrating due diligence into policies and risk management systems.** In-scope companies should have a due diligence policy in place ensuring risk-based due diligence:

   - to be developed in prior consultation with the company's employees and their representatives;
   - to contain a description of the company's approach (incl. in the long term), a code of conduct and a description of processes for integration and implementation of due diligence; and
   - to be updated after every significant change and reviewed and updated at least every 24 months, based on experience gathered from the implementation of the CS3D.

2) **Taking appropriate measures to identify and assess actual and potential adverse impacts.**

   Companies shall:

   - map their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, by prioritising them according to their likelihood and severity; and
   - carry out in-depth assessment of such impacts.

   To this effect, companies shall:

   - make use of qualitative and quantitative information, and appropriate resources (incl. public/independent reports, information gathered through the notification mechanism and complaints procedures under the Directive);
   - prioritize requesting the necessary information to this effect, where reasonable, directly from the business partners where the adverse impacts are most likely to occur.

8 Articles 7 to 16 of the Directive.

ATTENTION:

- Assessments are to be carried out in a dynamic way and in regular intervals.
- If, despite having taken all appropriate measures to identify, companies do not have all the necessary information regarding their chain of activities, they should be able to explain why this information could not be obtained and should take the necessary and reasonable steps to obtain it as soon as possible.

3) **Taking appropriate measures to prevent, mitigate, or stop adverse impacts.** Companies must take appropriate measures to prevent or mitigate potential impacts, end or minimize actual impacts, that have been identified or should have been identified, in accordance with the prioritization principle. To determine such measures, due account shall be taken, *inter alia*, of the level of involvement of the company in an adverse impact, the ability of the company to influence the business partner causing or jointly causing the adverse impact. If a company has caused or jointly caused an actual adverse impact, the company provides remediation.

The Directive provides for a series of "appropriate measures" that in-scope companies are required to take (where relevant)[9]:

- **develop and implement action plans** without undue delay; companies may develop their action plans in cooperation with industry or multi-stakeholder initiatives;
- **neutralize or minimize the extent of the adverse impact**;
- **seek contractual assurances from a direct business partner**, the latter being also allowed to establish corresponding contractual assurances from its own partners to the extent that their activities are part of the in-scope company's chain of activities;
- **invest** in necessary process and infrastructure adjustments and upgrades;
- **make necessary modifications of, or improvements to, the company's own business plan**, overall strategies and operations, including purchasing practices, design and distribution practices;
- **provide operational support (e.g., capacity building) to their SME business partners and, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME** (i.e., causing bankruptcy or making it imminent), **financial support**;
- in compliance with Union law, including competition law, **collaborate with other entities**, including, where relevant, to increase the company's ability to prevent, mitigate or bring an adverse impact to an end (in particular, if no other measure is suitable or effective).

9 *The relevant appropriate measures listed for both Article 10 and Article 11 of the Directive referenced here should be read in light of the differences in the objectives between these two articles (i.e. prevention or stop of adverse impacts).*

A few points of attention for further reading

Additional measures for companies

In addition to the measures already mentioned, companies may also take further steps, such as:

- *engaging with business partners to communicate the company's expectations;*
- *providing or enabling access to capacity-building programs, guidance, and administrative or financial support.*

Handling potential or unmitigated adverse impacts

- *If the appropriate measures fail to prevent, mitigate, or stop adverse impacts, in-scope companies may seek contractual assurances from their indirect business partners.*

Contractual assurances with SMEs

- *When seeking and obtaining contractual assurances from SMEs, the terms must be fair, reasonable, and non-discriminatory. Companies should assess if such contractual assurances should be accompanied by any targeted operational or financial support measures.*

Verifying compliance

When seeking contractual assurances, companies must also implement measures to verify compliance, such as:

- *independent third-party verification, including through industry or multi-stakeholder initiatives;*
- *the company will cover the cost of independent verification unless the SME requests to share the cost, in which case the SME may share the verification results with other companies.*

Last resort measures

If all else fails, companies must:

- *refrain from entering into new or extending existing relationships with the business partner;*
- *implement an enhanced prevention action plan, using temporary suspension as leverage while seeking alternatives;*
- *terminate the relationship if proven necessary; however, if temporary suspension or termination is expected to cause more severe adverse impacts, the company is not required to proceed. Instead, they must report to the competent supervisory authority with justified reasons for their decision.*

4) **Carrying out meaningful engagement with stakeholders.** Companies shall be allowed to fulfil such an obligation through appropriate industry or multi-stakeholder initiatives (save for employees or their representatives for which such schemes do not replace the requisite meaningful engagement).

5) **Notification mechanism and complaints procedure.** Establish procedures for persons and organizations to report concerns, with a possibility to participate in collaborative complaint procedures. The complaints mechanism and the internal reporting procedure under Directive (EU) 2019/1937 may co-exist.

6) **Monitoring and verifying effectiveness.** Companies must carry out periodic assessments to assess the implementation and to monitor the adequacy and effectiveness of the measures taken. They must update due diligence policies and measures based on assessments. Financial undertakings should carry out periodic assessment of their own operations, those of their subsidiaries and those of their upstream business partners.

7) **Communicating (documentation & reporting).** Companies must publicly communicate on due diligence by publishing on the company's website an annual statement, unless the company is subject to the sustainability reporting requirements of Directive 2013/34/EU. The annual statement should be submitted to the designated collection body for the purpose of making it accessible on the European Single Access Point (ESAP) as established by Regulation (EU) 2023/2859.

5.3 Model contractual clauses

The Commission, in consultation with Member States and stakeholders, will provide guidance on model contractual clauses, which can be used voluntarily by companies as a tool to help them fulfil their obligations to seek contractual assurances from direct business partners in the context of contractual cascading, and in particular facilitate a clear allocation of tasks between contracting parties and ultimately prevent from transferring obligations to a business partner. **The Commission shall adopt them by 26 January 2027**.

5.4 Guidelines

The Commission, in consultation with various stakeholders and authorities, will issue additional guidelines (general guidelines and guidelines for specific sectors or specific adverse impacts) to support companies in fulfilling due diligence obligations practically. In particular, the Commission shall issue:

- guidelines for (a) carrying out the due diligence process (identification of adverse impacts, prioritisation thereof, appropriate measures to adapt purchasing practices, responsible disengagement, remediation and meaningful engagement with stakeholders), (b) assessment of risk factors, (c) data and information resources, digital tools and technologies available for compliance, **by 26 January 2027**; and
- (a) practical guidance on the transition plan for combating climate change, (b) information on resource sharing, and (c) information for stakeholders and their representatives on how to engage throughout the due diligence process, **by 26 July 2027**.

The Directive does not set out a specific timeline for the issuance of sector-specific guidance.

5.5 Accompanying measures

5.5.1 Websites, platforms or portals

Member States shall 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. Specific consideration shall be given, in that respect, to the SMEs that are present in the chains of activities of companies.

These websites, platforms or portals shall give access to:

- the content and criteria for reporting as they shall be determined by the Commission;
- the Commission's guidance about voluntary model contractual clauses and guidelines;
- the dedicated EU helpdesk (see Section 5.6 below); and
- information for stakeholders and their representatives on how to engage throughout the due diligence process.

5.5.2 Financial support for SMEs

Without prejudice to applicable State aid rules, Member States may financially support SMEs. Member States may also provide support to stakeholders for the purpose of facilitating the exercise of the rights laid down in the Directive.

5.5.3 Commission's complementary measures

The Commission may complement Member States' support measures building on existing Union action to support due diligence in the Union and in third countries and may devise new measures, including facilitation of joint stakeholder initiatives to help companies fulfil their obligations.

5.5.4 *Industry or multi-stakeholders' initiatives*

Companies may, after having assessed their appropriateness[10], rely on such initiatives to support implementation of due diligence obligations, whilst continuing to monitor and take appropriate measures if needed. The Commission and the Member States may facilitate the dissemination of information on such initiatives and their outcome. It goes the same for third-party verification which may be carried out by other companies or via an industry or multi-stakeholder initiative.

The Commission shall report (inter alia) on the impacts of the Directive on SMEs, together with an assessment of the effectiveness of the different measures and tools for support provided to SMEs by the Commission and the Member States.

5.6 Single helpdesk

The Commission shall establish a single helpdesk through which companies may seek information, guidance and support about how to fulfil their obligations under the Directive. Relevant national authorities in each Member State shall collaborate with the single helpdesk in order to assist in tailoring the information and guidance to national contexts and its dissemination.

5.7 Climate plan

Companies should adopt a climate plan aiming to ensure, through best efforts, compatibility of the business model and strategy of the company with the transition to a sustainable economy and with the limiting of global warming to 1.5°C. Climate plans must be annually updated and contain a description of the progress made. Companies that publish a transition plan in accordance with the Corporate Sustainability Reporting Directive shall be deemed to have complied with the obligation to adopt the climate transition plan provided for in the Directive.

5.8 Substantiated concerns

Individuals and legal persons shall be able to submit concerns about non-compliance through easily accessible channels. Authorities must inform the concerned parties with legitimate interest in the matter of the decisions and their right to recourse or review and provide appropriate measures to protect their identities.

10 The Commission, in collaboration with Member States, shall issue guidance setting out fitness criteria and a methodology for companies to assess for themselves and under their control the fitness of industry schemes and multi-stakeholder initiatives.

6 Penalties

Member States shall lay down the rules on penalties, including pecuniary penalties, applicable to infringements of national provisions adopted pursuant to the Directive, and shall take all measures necessary to ensure that they are implemented.

CS3D merely sets out a few rules on the matter:

- penalties shall be effective, proportionate and dissuasive;
- pecuniary penalties shall be based on the company's net worldwide turnover (max. 5% of the net worldwide turnover of the company in the financial year preceding the fining decision);
- decisions of the supervisory authorities imposing penalties shall be published, remain publicly available for at least 5 years and be sent to the European Network of Supervisory Authorities.

7 National supervisory authorities and European Network of Supervisory Authorities

The Directive sets out the obligation for Member States to designate one or more national supervisory authorities to supervise compliance with the obligations laid down in national provisions adopted pursuant to Articles 7 to 16 and Article 22 of the Directive. It further establishes a European Network of Supervisory Authorities to be set up by the Commission, composed of representatives of the national supervisory authorities.

A few points of attention for further reading

- ***Supervision of groups of companies***

  Where the in-scope parent company fulfils the obligations resulting from CS3D on behalf of its (also in-scope) subsidiaries (Article 6 of the Directive), the competent supervisory authority of the parent company shall cooperate with the competent supervisory authority of the subsidiary. The European Network of Supervisory Authorities shall facilitate cooperation, coordination and mutual assistance (Article 28 of the Directive).

- ***Supervision of 3rd country companies within the EU***

  Member States shall cooperate with the Network to identify the companies within their jurisdiction, in particular by providing all necessary information in order to assess whether a third country company fulfils the criteria laid down by the Directive. The Commission shall set up a secured system of exchange of information regarding the net turnover generated in the Union by such companies, that do not have a branch in any Member States or that have branches in more than one. Based on the information provided, the Commission shall notify the Member State where the Member State concerned, that the company is subject to the provisions of the Directive and that the supervisory authority of that Member State shall be competent in accordance with Article 24 (3) of the Directive. The Network shall publish an indicative list of third country companies subject to the Directive, as well as the decisions of the national supervisory authorities containing imposed penalties.

8 Civil liability of in-scope companies and right to full compensation

- **When shall a company be held liable under the Directive?**

  Member States must lay out detailed rules on civil liability for companies in breach of their due diligence obligations set out in national law and in accordance with CS3D. Under the CS3D, an in-scope company can be held liable for a damage caused to a natural or legal person, provided that:

  (a) the company **intentionally or negligently failed to comply** with the obligation to prevent, mitigate or put an end to adverse impacts (cf. Articles 10 and 11), when the right, prohibition or obligation listed in Annex I is aimed to protect the natural or legal person; and

  (b) as a result of such failure to comply, **a damage to the natural or legal person's legal interest protected under national law was caused**.

- **Right to full compensation for the victims of the violation**

  In the event a company is held liable for damages and under the conditions listed above, a natural or legal person shall have the right to full compensation for the damage occurred in accordance with national law. Full compensation shall not lead to overcompensation, for example through punitive damages.

- **By when victims can bring actions for damages under the Directive?**

  The statutes of limitations for bringing actions for damages should be **at least of 5 years**. Members States shall define the maximum time within which legal proceedings may be initiated, however such time cannot be shorter than that laid down under general civil liability national regimes[11].

- **Minimum harmonization**

  These civil liability rules constitute a minimum threshold of liability. National legal systems may provide for enhancements and other Union acts may continue to cover aspects outside the scope of the Directive or providing for more stringent liability rules.

A few points of attention

- ***A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.***
- ***Companies that have participated in industry or multi-stakeholder initiatives or used third-party verification or contractual clauses to support the implementation of their due diligence obligations, can still be held liable in accordance with the Directive.***
- ***If the company caused the damage jointly with its subsidiary, or business partners, liability shall be joint and several*** *(without prejudice to the provisions of national law relating to the precise conditions of such liability and rights of recourse available).*

11 The Directive sets out specific requirements regarding the various aspects of calculation of the statutes of limitations to be applied by Member States when transposing the Directive.

9 Review and reporting: What might change in the future, and when?

- **Additional sustainability due diligence requirements tailored to regulated financial undertakings**

  By 26 July 2026 at the latest, the Commission should submit a report to the European Parliament and Council, which will be published. The report will assess the need for additional sustainability due diligence requirements tailored to regulated financial undertakings, with respect to the provision of financial services and investment activities. It will consider the impacts and options for such requirements, taking into account the objectives of the Directive and other Union legislative acts. If necessary, this report should be accompanied by a legislative proposal.

- **Other issues to be reviewed and revisited in the future**

  By 26 July 2030, and every 3 years thereafter, the Commission should report on the Directive's implementation and its effectiveness in achieving its objectives, especially in addressing adverse impacts. The first report should cover, among others:

  - the impacts on SMEs
  - the scope of application in terms of the companies covered
  - the definition of "chain of activities"
  - the effectiveness of the rules on civil liability
  - whether changes to the level of harmonisation are required to ensure a level-playing field for companies in the internal market.

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