

CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

By Amine Moughanime and Paola Paoli

On February 23, 2022, the European Commission introduced the proposal of a Corporate Sustainability Due Diligence Directive (“CSDDD”) as part of their ongoing efforts to fight climate change and protect human rights.

The proposal has been approved by the European Parliament on June 1, 2023, and is currently undergoing the approval process. In the framework of the European Green Deal (that aims to reduce greenhouse gas emissions by at least 55% by 2030 and reach zero climate impact by 2050) the proposal of CSDDD will require companies to adhere to the EU's new sustainable policies in areas such as climate, energy, transport, and taxation. Other initiatives under the European Green Deal include the Corporate Sustainability Reporting Directive, the EU Regulation 2020/852 on taxonomy, the EU Regulation 2019/2988 Sustainable Finance Disclosure Regulation, as well as the Carbon Border Adjustment Mechanism and the Green Claims Directive.

While the proposed CSDDD is still subject to negotiations during the EU negotiation process, it is expected to be fully approved by 2024. Once approved, the directive will be subject to transposition by EU Member States

OBJECTIVES

The main goal of the CSDDD is to encourage sustainable and responsible corporate behaviours, and to ensure that the respect for human rights and environment is an integral part of corporate governance. This is done through the implementation of due diligence procedures, which aim to prevent, mitigate, and account for any adverse impacts on human rights and the environment, caused by the activity of companies, in their subsidiaries, and in their value chains. In other words, the CSDDD holds companies accountable and promotes sustainable corporate governance throughout the supply chain, identifying actual or potential risks to human rights and the environment and establishing processes to mitigate those risks.

Through this new directive, the EU intends to harmonize the law of the Member States related to ESG due diligence, also in order to ensure its proper functioning in the EU market.

Some EU member states and jurisdictions have already implemented ESG due diligence requirements. For instance, in Germany, corporate due diligence obligations in supply chains (*Lieferkettensorgfaltspflichtengesetz*) have been in force since January 2023 for German and non-German companies registered in Germany with over 3,000 employees. This law also provides for a commitment to human rights and the environment. Non-compliance with this law can result in fines of up to 2% of the company's global turnover. Similarly, the French law on supervision (*Loi de Vigilance*), adopted in 2017, requires companies with over 5,000 employees in subsidiaries based in France, or with over 10,000 employees in direct and indirect subsidiaries globally, to conduct environmental and human rights due diligence and develop a plan to identify and address violations throughout the supply chain. The *Loi de Vigilance* is enforced through sanctions and provisions on civil liability. Other EU member states such as Belgium, the Netherlands, Luxembourg, and Sweden have also proposed new laws related to supply chain due diligence.

SUBJECTS AND SECTORS INVOLVED

The CSDDD encompasses a range of companies and sectors, including European companies that have achieved a worldwide net turnover of over 150 million euros in the previous financial year and employ more than 500 individuals. In addition, companies operating within high-impact sectors with over 250 employees and a global turnover of over 40 million euros are included. These sectors include the manufacturing and wholesale of fabrics, clothing, and footwear, as well as agriculture, forestry, fisheries, and food and beverage manufacturing and wholesale. The extraction of mineral resources and metal production, among other non-metallic minerals and quarry products, is also included. Non-European companies that operate within the European Union with comparable turnover thresholds are also included. Small and medium-sized companies are not directly affected by the legislation, but they may be indirectly impacted as suppliers of larger companies.

APPLICATION AND OBLIGATIONS

The Commission has put forward three mechanisms to enforce the CSDDD, which each Member State is required to incorporate into their own regulations. These mechanisms include:

1. **administrative oversight mechanism:** provides that the Member States must appoint an authority to supervise and enforce effective, proportionate sanctions, such as fines and compliance orders. The Commission will establish a European Network of Supervisors to coordinate the efforts of national authorities;

2. **civil liability mechanism:** aims to ensure that the victims of negative impacts obtain compensation for damages resulting from non-compliance with the new proposal;
3. **incentive mechanism:** provides financial incentives to directors who have successfully fulfilled their business plans.

The CSDDD requires companies to take several measures, including:

- integrating the duty of care into company policies and creating related procedures and codes of conduct, which include measures to confirm compliance with them;
- identifying current and potential negative effects on the environment and human rights, and preventing, mitigating, or eliminating them;
- establishing and maintaining a complaint procedure for different stakeholders in case of regulation violation;
- forming specific contractual guarantees with commercial partners to ensure compliance with the code of conduct and verifying compliance;
- monitoring and publicly communicating matters regulated by the CSDDD;
- preparing plans to reduce emissions that are compatible with the transition to a sustainable economy;
- introducing variable remuneration for directors linked to their contribution to the corporate strategy, long-term interests, and sustainability of the companies.

INNOVATION, SUSTAINABILITY AND GREEN ECONOMY

The innovation team of Eptalex, led by Amine Moughanime and specialized in sustainability and green economy, deliver expert guidance on ESG and sustainability matters. The team's strength lies in conducting ESG due diligence and supply chain evaluation, with a sharp focus on emerging economies. The team offers comprehensive solutions for businesses seeking to enhance their governance, sustainability strategies, ESG management, and sustainability reporting, while also extending their support to the digital innovation sector.

We remain at your disposal for any clarification or provide further insights as needed.

Best regards.

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