

ESG & SUSTAINABILITY

Corporate Sustainability Due Diligence Directive

Latest developments

7 MIN READ

Following a prolonged period of intense negotiations, the Council of the EU reached agreement on the text of the Corporate Sustainability Due Diligence Directive (**CSDDD**) on 15 March 2024. This was quickly followed on 19 March 2024 by approval from the European Parliament's Legal Affairs Committee of the text that the Council had endorsed. Formal approval of the text is still required before CSDDD will be signed and published in the Official Journal of the EU. Consideration of this matter has been included on the agenda for the plenary session of the Parliament on 24 April 2024.

While the key obligations being introduced by CSDDD have not changed, the scope has been narrowed with higher financial and employee thresholds to be met. In addition, certain franchising and licensing arrangements have been brought into scope. In this update, we provide an overview of the key obligations being introduced, the thresholds to be met and the proposed implementation timelines.



Due Diligence Obligations

The main focus of CSDDD is on conducting due diligence on actual and potential human rights and environmental impacts in respect of:

- the in scope company itself
- its subsidiaries, and
- its direct and indirect business partners throughout its chain of activities.

“Business Partner” (Article 3(1)(e))	“Chain of activities” (Article 3(1)(g))
<p><i>An entity</i></p> <ul style="list-style-type: none"> i. <i>with whom the company has a commercial agreement related to the operations, products or services of the company or to whom the company provides services pursuant to point (g) [see definition of “chain of activities”] (‘direct business partner’), or</i> ii. <i>which is not a direct business partner but which performs business operations related to the operations, products or services of the company (‘indirect business partner’)</i> 	<ul style="list-style-type: none"> i. <i>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</i> ii. <i>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 the distribution, transport, storage of the product being subject to the export control under the Regulation (EU) 2021/821 of the European Parliament and of the Council or the export control relating to weapons, munition or war materials, after the export of the product is authorised</i>

In scope companies will be required to conduct risk based human rights and environmental due diligence by:

<p>Integrating due diligence into their policies and risk management systems</p>	<ul style="list-style-type: none"> Have a due diligence policy that has been developed in consultation with employees and their representatives. 	<ul style="list-style-type: none"> Ensure the policy is reviewed and if necessary updated at least every 2 years or after a significant change occurs.
<p>Identifying and assessing actual or potential adverse impacts and, where necessary, prioritising specific potential and actual adverse impacts</p>	<ul style="list-style-type: none"> Conduct a mapping exercise to identify general areas where adverse impacts are most likely to occur and to be most severe. Based on this exercise carry out an in-depth assessment in areas where adverse impacts were identified to be most likely to occur and most severe. 	<ul style="list-style-type: none"> Where not feasible to prevent, mitigate, bring to an end or minimise all identified adverse impacts at the same time to their full extent, prioritise based on severity and likelihood for the adverse impacts.
<p>Preventing and mitigating potential adverse impacts, bringing actual adverse impacts to an end and minimising the extent of such impacts</p>	<ul style="list-style-type: none"> Take appropriate measures to prevent, or where prevention is not possible or not immediately possible, adequately mitigate potential adverse impacts. Appropriate measures include developing a prevention action plan; seeking contractual assurances; providing support to SME business partners. 	<ul style="list-style-type: none"> Take appropriate measures to bring actual adverse impacts to an end and where such impacts cannot immediately be brought to an end, take steps to minimise the extent of the impact.
<p>Providing remediation to actual adverse impacts</p>	<ul style="list-style-type: none"> Where a company has caused or jointly caused an actual adverse impact, that company shall provide remediation. 	<ul style="list-style-type: none"> Where caused only by the company's business partner, voluntary remediation may be provided. The company may also use its ability to influence the business partner causing the adverse impact to enable remediation.
<p>Carrying out meaningful engagement with stakeholders</p>	<p>Consultation with stakeholders shall take place:</p> <ul style="list-style-type: none"> to gather the necessary information on actual or potential adverse impacts. to develop prevention and corrective action plans. in respect of a decision to terminate or suspend a business relationship. 	<ul style="list-style-type: none"> in relation to the adoption of appropriate measures to remediate adverse impacts. as appropriate, when developing qualitative and quantitative indicators for the monitoring.
<p>Establishing and maintaining a notification mechanism and complaints procedure</p>	<p>Establish a procedure for the submission of:</p> <ul style="list-style-type: none"> complaints where there are legitimate concerns regarding actual or potential adverse impacts with respect to the company's own operations, the operations of its subsidiaries or the operations of its business partners in its chains of activities. 	<ul style="list-style-type: none"> notifications of information or concerns regarding actual or potential adverse impacts with respect to the company's own operations, the operations of its subsidiaries or the operations of its business partners in its chains of activities.
<p>Monitoring the effectiveness of their due diligence policy and measures</p>	<ul style="list-style-type: none"> Periodically assess implementation and monitor the adequacy and effectiveness of the identification, prevention, mitigation, bringing to an end and minimising the extent of any adverse impacts. 	<ul style="list-style-type: none"> Such assessment should be carried out at least every 12 months or after a significant change occurs.
<p>Publicly communicating on this due diligence</p>	<ul style="list-style-type: none"> Publish an annual statement on the website. 	

Subject to the specific conditions set out in Article 4a, due diligence support may be provided at group level resulting in parent companies being able to fulfil the above obligations on behalf of their subsidiaries. Companies are entitled to share resources and information within their respective groups and with other legal entities. Companies may use independent third party verification on and from companies in their chain of activities to support the implementation of due diligence obligations to the extent that such verification is appropriate to support the fulfilment of the relevant obligations.

In addition, the European Commission has been tasked with:

- Adopting guidance relating to voluntary model contractual clauses.
- Issuing guidelines relating to the due diligence obligations including general guidelines as well as relating to specific sectors and specific adverse impacts.
- Establishing a helpdesk through which companies can seek information, guidance and support on how to fulfil their obligations under CSDDD.

Member States are also required to set up either individually or jointly dedicated websites, platforms or portals to provide information and support to companies relating to the resources being prepared by the European Commission.

Climate Transition Plans

The other key obligation being introduced by CSDDD is that in scope companies adopt and put into effect a transition plan for climate change mitigation which aims 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 (a **Climate Transition Plan**). Specific details on the contents of the Climate Transition Plan are set out in Article 15 and include:

- time-bound targets with absolute emission reduction targets for scope 1, 2 and 3 greenhouse gas emissions for each significant category
- a description of decarbonisation levers
- an explanation and quantification of the investments and funding supporting the implementation of the plan
- details on the role of the board or equivalent with regards to the plan



Scope

CSDDD will apply to companies that are formed in accordance with the legislation of a Member State (**EU companies**) that meet one of the following:

1. an individual company or group that had:
 - » on average more than 1000 employees
 - » a net worldwide turnover of more than €450m, both in the last financial year.
2. an individual company or group that had a net worldwide turnover of more than €80m in the last financial year and entered into franchising or licensing agreements in the EU 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
 - » these royalties amount to more than €22.5m in the last financial year

CSDDD will also apply to companies which are formed in accordance with the legislation of a third country (**Non-EU companies**) that meet one of the following:

1. an individual company or group that had a net turnover of more than €450m in the EU in the financial year preceding the last financial year
2. an individual company or group that had a net turnover of more than €80m in the EU in the financial year preceding the last financial year and entered into franchising or licensing agreements in the EU 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
 - » these royalties amount to more than €22.5m in the EU in the financial year preceding the last financial year

Ultimate parents will typically be responsible for complying with these obligations on behalf of a group where individual

subsidiaries do not meet the above thresholds. There are exemptions for ultimate parents that are holding companies that do not engage in management, operational or financial decisions affecting the group, where certain conditions are met.

CSDDD does not apply to certain types of entities, for example, certain types of pension institutions and investment funds. For those entities that meet the regulated financial undertaking definition, the term 'chain of activities' does not include downstream business partners that are receiving their services and products. For such entities, only the upstream part of their chain of activities is covered initially, although the European Commission is required to submit a report to the European Parliament and the Council of the EU no later than two years after CSDDD enters into force on the inclusion of additional due diligence requirements for regulated financial undertakings.

Proposed implementation timeline

Member States are required to adopt implementing legislation within two years of CSDDD entering into force. Obligations will be introduced on a phased basis as follows:

3 years after CSDDD enters into force (likely 2027)

EU companies, including ultimate parents with an average of more than 5,000 employees that generate a net worldwide turnover of more than €1.5bn in the last financial year, with the exception of the publication of the annual statement which will apply for financial years starting on or after 1 January 2028.

Non-EU companies, including ultimate parents, that generated a net turnover of more than €1.5bn in the EU in the financial year preceding the last financial year, with the exception of the publication of the annual statement which will apply for financial years starting on or after 1 January 2028.

4 years after CSDDD enters into force (likely 2028)

EU companies, including ultimate parents with an average of more than 3,000 employees that generate a net worldwide turnover of more than €900m in the last financial year, with the exception of the publication of the annual statement which will apply for financial years starting on or after 1 January 2029.

Non-EU companies, including ultimate parents, that generated a net turnover of more than €900m in the EU in the financial year preceding the last financial year, with the exception of the publication of the annual statement which will apply for financial years starting on or after 1 January 2029.

5 years after CSDDD enters into force (likely 2029)

EU companies, including ultimate parents with an average of more than 1,000 employees that generate a net worldwide turnover of more than €450m in the last financial year, with the exception of the publication of the annual statement which will apply for financial years starting on or after 1 January 2029.

Non-EU companies, including ultimate parents, that generated a net turnover of more than €450m in the EU in the financial year preceding the last financial year, with the exception of the publication of the annual statement which will apply for financial years starting on or after 1 January 2029.

EU companies that have entered into or are the ultimate parent company of a group that entered into franchising or licensing agreements in the EU in return for royalties that satisfy the requirements set out in the sub-paragraph 2 of the “EU companies” paragraph in the section entitled “Scope” above.

Non-EU companies that have entered into or are the ultimate parent company of a group that entered into franchising or licensing agreements in the EU in return for royalties that satisfy the requirements set out in the sub-paragraph 2 of the “Non-EU companies” paragraph in the section entitled “Scope” above.

Key contacts



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Resources



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