



The Corporate Sustainability Due Diligence Directive expert briefing

July 2024

About the CSDDD

- The Corporate Sustainability Due Diligence Directive (CSDDD) was adopted on 24 May 2024 in the EU. On 5 July 2024 the law was published in the Official Journal of the EU and will enter into force on 26 July 2024. It will apply from 2027.
- The CSDDD will require in-scope companies to conduct due diligence to identify, prevent and mitigate the adverse environmental and human rights risks and impacts of their business operations and supply chains.
- It will require companies to adopt and implement a net zero transition plan in line with the 1.5°C target in the Paris Agreement.
- The rules will apply to large EU and non-EU companies meeting specific turnover and employee thresholds.
- Companies that fail to comply risk large regulatory fines with a maximum level of no less than 5% of the company's net worldwide turnover (as opposed to profit) and/or civil claims.
- This is a monumental step for corporate social responsibility in the EU and for companies with significant exposure to the EU market.

What are the key obligations under the CSDDD?

Due diligence

The CSDDD requires companies to conduct risk-based due diligence to identify, prevent and mitigate adverse human rights and environmental risks and impacts in their own operations, those of their subsidiaries and their “chain of activities”. This includes their upstream business partners and downstream business partners (limited to distribution, transport and storage). Business partners include entities with whom they have a commercial agreement and those which perform business operations related to the company’s operations, products or services.

The due diligence requirements apply to specific human rights and environmental impacts listed in the CSDDD, including forced labour, child labour, pollution, waste management, biodiversity loss and ecosystem degradation.

In summary, in-scope companies must:

- integrate human rights and environmental due diligence into all relevant policies and risk management systems and have a standalone due diligence policy which is updated at least every two years
- identify and assess adverse human rights and environmental risks and impacts in their business operations and supply chains by mapping their supply chains to identify general areas of risk, and then conducting a more in-depth assessment of the highest risk areas based on the severity and likelihood of the impact
- take “appropriate measures” to prevent, mitigate or end the adverse risks and impacts identified (prioritising the highest risks areas). The specific measures required depend on whether the impact is/could be caused by the company directly or by an entity in its supply chain (and, if the latter, the company’s ability to influence that entity). These measures could include:
 - developing preventative or corrective action plans
 - seeking contractual assurances of compliance from business partners
 - making necessary investments and changes to the company’s business plan, strategy, and operations
 - providing targeted and proportionate support for SMEs in the supply chain to facilitate compliance
 - as a last resort, suspending or terminating the relevant business relationship
- provide remediation for adverse human rights and environmental impacts they have caused
- set up fair and accessible notification mechanisms and complaints procedures to enable individuals and representative bodies to raise concerns about human rights and environmental risks and impacts
- carry out annual assessments of the measures above to monitor their effectiveness
- publicly report on their due diligence procedures.

Climate transition plans

The CSDDD requires companies to adopt and implement a net zero transition plan in line with the 1.5°C target in the Paris Agreement. The transition plan must:

- contain time-bound greenhouse gas emission reduction targets at five-yearly intervals up to 2050 across the company’s full supply chain
- describe the company’s decarbonisation levers, key actions planned to reach the targets and the investments and funding to support this
- describe the company’s governance in relation to the transition plan
- be updated every 12 months to assess progress towards the targets.

The European Commission will provide further guidance on the transition plan requirements within three years from the CSDDD's entry in force. These requirements are not harmonised, meaning different approaches could emerge across EU Member States.

Which companies are in scope?

The CSDDD will apply to:

- EU companies with >1,000 employees and >€450m net worldwide turnover in the last financial year
- non-EU companies with >€450m net turnover generated in the EU in the year preceding the last financial year
- EU and non-EU companies that have entered into franchise or licensing agreements in the EU and earned >€22.5m royalties in the last financial year, and where the group had a net worldwide turnover of >€80m (for non-EU companies the royalty/turnover thresholds relate to the EU and the year preceding the last financial year).

Companies must meet these thresholds for two consecutive years to fall within scope of the CSDDD. For ultimate parent companies, the above thresholds are aggregated across the group.

When will the new rules apply?

Once in force, the CSDDD will be transposed into Member States' national law. The obligations will start applying to in-scope companies from 2027 according to the following phases but require attention now to prepare:

- **three years after entry into force (July 2027):** EU companies with >5,000 employees and >€1.5bn net worldwide turnover, and non-EU companies with >€1.5bn net EU turnover
- **four years after entry into force (July 2028):** EU companies with >3,000 employees and >€900m net worldwide turnover, and non-EU companies with >€900m net EU turnover
- **five years after entry into force (July 2029):** EU companies with >1,000 employees and >€450m net worldwide turnover, and non-EU companies with >€450m net EU turnover.

What are the risks of non-compliance?

National regulators will have the power to investigate potential breaches of the CSDDD and impose penalties, including "naming and shaming" non-compliant companies and relevant individuals, and issuing significant fines (with a maximum level of no less than 5% of the company's net worldwide turnover).

Member states must also establish a civil liability regime to ensure companies can be held liable for damage suffered by victims due to the company's intentional or negligent breach of its due diligence obligations. There is a five-year limitation period on such claims.

What should companies do to prepare?

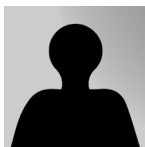
Your company's existing due diligence framework may already serve as a solid foundation for compliance with the CSDDD. However, given the scope of the CSDDD, we expect that significant enhancements and changes may be needed to ensure compliance. Proactive preparation is therefore critical. Our expert team can help you navigate the new requirements. As a starting point you should consider the following next steps.

- 1. review and update due diligence processes:** review your existing due diligence systems and processes (eg for anti-bribery and corruption) and map these against the requirements of the CSDDD to identify gaps. Build human rights and environmental risks/impacts into your company's existing due diligence systems including policies, risk assessments, supplier questionnaires, codes of conduct, audits and internal training
- 2. conduct a risk assessment:** conduct a risk assessment to identify potential and actual adverse impacts on human rights and the environment in your operations and supply chains and prioritise next steps accordingly to get CSDDD ready
- 3. review supplier contracts:** review and update your supply contracts and supplier codes of conduct to ensure they contain relevant contractual assurances, enforcement mechanisms, and penalties for breaches. They should provide for enforcement mechanisms that can be realistically and quickly implemented against non-compliant suppliers
- 4. refer to guidance:** pending formal guidance from the European Commission, companies can refer to the "OECD Due Diligence Guidance for Responsible Business Conduct" and the "United Nations Guiding Principles on Business and Human Rights" as helpful benchmarks for setting up robust human rights and environmental due diligence processes
- 5. ensure governance processes are in place:** ensure that your company has robust internal governance processes to support CSDDD compliance, including board-level oversight and a centralised cross-functional ESG/sustainability committee to ensure business-wide collaboration and efficiency
- 6. invest in the right technology:** consider whether alternative technological solutions are needed to support CSDDD compliance, in particular supply chain mapping technology to flag high risk areas.

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