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The Corporate Sustainability Due Diligence Directive: European Neo-Imperialism or an Innovative Approach to Tackling Abuses in Global Supply and Value Chains?

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La directive sur le devoir de diligence en matière de durabilité des entreprises: néo-impérialisme européen ou approche novatrice pour lutter contre les abus dans les chaînes d’approvisionnement et de valeur mondiales?

La Directiva relativa al deber de diligencia empresarial en materia de sostenibilidad: ¿neoliberalismo europeo o enfoque innovador para enfrentar los abusos en las cadenas de suministro y valor globales?

A Diretiva relativa ao dever de diligência das empresas em matéria de sustentabilidade: Neoliberalismo europeu ou uma abordagem inovadora para enfrentar abusos nas cadeia globais de abastecimento e valores?

企业可持续发展尽职调查指令：欧洲新帝国主义，抑或应对滥用全球供应链和价值链之创新举措？

* Associate Professor, Università di Trento. This article is current as of January 1, 2025 and was written as part of the PRIN 2022 Project “Tackling social- and green-washing: is the current EU regulatory framework enough?” (Project Code: 2022SL3RRM), financed by the European Commission Next Generation EU. Following the debates mentioned in section III, the European authorities continued to reevaluate their approach to sustainability in order to promote competitiveness. On January 29, 2025, the Commission published the *Competitiveness Compass for the EU* communication (COM(2025) 30 final), referencing Directive (EU) 2024/1760. This was followed by the publication of the Omnibus I simplification package on February 26, 2025. Regarding Directive (EU) 2024/1760, the package included two proposals. The first proposal (COM(2025) 80 final) postponed the entry into force of the CSDDD. This postponement was formally adopted in April 2025 and became Directive (EU) 2025/794. The second proposal (COM(2025)

Résumé

La directive récemment adoptée sur le devoir de vigilance des entreprises en matière de durabilité vise à faire en sorte que les sociétés exerçant leurs activités dans l'Union européenne contribuent au développement durable des économies et des sociétés, en s'attaquant aux incidences négatives sur les droits humains et sur l'environnement. Cet article présente les principales caractéristiques de la directive et examine certaines de ses implications pratiques. J'y analyse en particulier l'équilibre délicat que ce texte législatif cherche à établir entre la nécessité de limiter les nouvelles contraintes imposées aux entreprises européennes et non européennes et l'efficacité de la directive dans la protection des droits humains et de l'environnement.

Resumen

La directiva recientemente adoptada sobre el deber de diligencia empresarial en materia de sostenibilidad tiene por objeto asegurar que las compañías que operan en la Unión Europea contribuyan al desarrollo sostenible de las economías y las sociedades, abordando los impactos negativos sobre los derechos humanos y el medio ambiente. En este artículo se expo-

Abstract

The recently adopted corporate sustainability due diligence Directive aims to ensure that companies operating in the EU contribute to the sustainable development of economies and societies by addressing adverse human rights and environmental impacts. This article outlines the main features of the Directive and explores some of its practical implications. In particular, I examine the delicate balance that this piece of legislation strikes between the need to limit new burdens on EU and non-EU companies and its effectiveness in protecting human and environmental rights.

Resumo

A diretiva recentemente adotada relativa ao dever de diligência das empresas em matéria de sustentabilidade visa a assegurar que as empresas que operam na UE contribuam para o desenvolvimento sustentável das economias e sociedades, abordando impactos negativos sobre os direitos humanos e o meio ambiente. Este artigo descreve as principais característi-

81 final), which is still under discussion, aims to simplify several key aspects of the CSDDD. Without going into detail, it is important to highlight the proposed revisions to Articles 8 and 29 of the CSDDD. The amendments to Article 8 narrow the obligations relating to mapping and in-depth assessments of companies' operations. The amendments to Article 29 eliminate the harmonized approach to civil liability and the requirement for civil liability rules to have overriding mandatory application. Finally, it should be noted that the European Parliament and the Council of the European Union have recently indicated their intention to limit the scope of the Corporate Sustainability Due Diligence Directive to larger companies and groups (i.e., those with more than 5,000 employees and an annual turnover exceeding EUR 1,500,000,000).

nen las principales características de la directiva y se examinan algunas de sus implicaciones prácticas. En particular, se analiza el delicado equilibrio que este texto legislativo busca establecer entre la necesidad de limitar las nuevas obligaciones impuestas a las empresas —tanto europeas como no europeas— y la eficacia de la directiva en la protección de los derechos humanos y del medio ambiente.

cas da diretiva e examina algumas de suas implicações práticas. Em particular, examino o delicado equilíbrio que este texto legislativo busca estabelecer entre a necessidade de limitar os novos ônus impostos às empresas europeias e não europeias e sua eficácia em proteger direitos humanos e ambientais.

摘要

最近获得通过的企业可持续发展尽职调查指令，其旨在确保在欧盟境内运营的公司可为经济和社会可持续发展做出贡献，并解决给人权和环境带来的不利影响。本文概述了该指令的主要特点，并探讨了一些实际应用。其中值得一提的是，本人考察了这项立法在限制对欧盟和非欧盟公司的新负担与有效保护人权和环境权利之间所取得的微妙平衡。

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Two years after the publication of the European Commission’s proposal,¹ Directive (EU) 2024/1760 on corporate sustainability due diligence (also known as CSDDD or CS3D)² has finally been adopted after lengthy negotiations. This legislation is certainly one of the most emblematic pieces of European Union legislation in the wake of the Action Plan Financing Sustainable Growth³ and will undoubtedly have a significant impact not only on companies incorporated in the European Union but also on non-EU companies. However, this initiative was not universally welcomed, and at one point in the discussions some prominent scholars even argued that the imposition of human rights standards “might even be seen by some as an instrument for hegemony or even European neo-imperialism”.⁴

In the following pages, I will outline the main features of this Directive and explore some of its practical implications for companies, focusing in particular on the balance this piece of legislation strikes between the need to limit new burdens on EU and non-EU companies and its effectiveness in protecting human and environmental rights. I will begin with a brief overview of the discussions that led to the adoption of the Directive and then present the actual content of this initiative, focusing on its personal scope, the timeframe for implementation, its substantive scope, the obligations imposed on companies, the enforcement mechanism, and the implementing measures that will accompany the entry into force of the Directive. I will then outline the current state of the debate on the CSDDD following the recent EU elections and make some concluding remarks.

¹ EUROPEAN COMMISSION, *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937*, COM(2022) 71 final, Brussels, February 23, 2022, online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0071>>.

² *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 Series, July 5, 2024, online: <<https://eur-lex.europa.eu/eli/dir/2024/1760/oj/eng>>.

³ EUROPEAN COMMISSION, *Action Plan: Financing Sustainable Growth*, COM(2018) 97 final, Brussels, March 8, 2018, online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52018DC0097>>.

⁴ EUROPEAN COMPANY LAW EXPERTS GROUP, *The European Parliament’s Draft Directive on Corporate Due Diligence and Corporate Accountability*, 2021, 18, online: <<https://financialinstitute.ugent.be/wp-content/uploads/wps/WP2021-01.pdf>>.

I. The Preparatory Work for the Directive

The discussion that led to the CSDDD can be traced back to international and national initiatives, notably the United Nations Guiding Principles on Business and Human Rights of 2011,⁵ the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, last updated in 2023,⁶ the French law on the “devoir de vigilance”⁷ and the German Act on Corporate Due Diligence Obligations in Supply Chains (LkSG)⁸ of 2021. At the European level, the discussion started in December 2016, when the Commission established the High-Level Expert Group on sustainable finance (HLEG), which published its final report entitled “Financing a Sustainable European Economy”⁹ on January 31, 2018. A few months later, in March 2018, the Commission published the Action Plan on Financing Sustainable Growth, which details its strategy to promote sustainable finance policies. Among these policies, Action 10 on “Fostering sustainable corporate governance and attenuating short-termism in capital markets” is particularly noteworthy, as it elaborates on the possibility of requiring “corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout the supply chain, and measurable sustainability targets” and clarifying “the rules according to which directors are expected to act in the company’s long-term interest”.¹⁰ It should be stressed, however, that these corporate governance initiatives were only a small part of the Commission’s wider efforts to promote sustainable finance.¹¹

A few months later, the Commission commissioned two studies, one on supply chain due diligence requirements¹² and one on directors’ duties and

⁵ See Recital 5 of the CSDDD.

⁶ See Recital 6 of the CSDDD.

⁷ *Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre*, JO, 28 March 2017, 74, online: <<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>>.

⁸ *Lieferkettensorgfaltspflichtengesetz vom*, July 16, 2021, online: <<https://www.gesetze-im-internet.de/lksg/>>.

⁹ HIGH-LEVEL EXPERT GROUP ON SUSTAINABLE FINANCE, *Financing a Sustainable European Economy*, January 31, 2018, online: <https://finance.ec.europa.eu/publications/high-level-expert-group-sustainable-finance-hleg_en>.

¹⁰ EUROPEAN COMMISSION, *supra* note 3, 11.

¹¹ For a detailed presentation of the strategies envisaged by the Commission in this area, see the Annex I of the Action Plan (EUROPEAN COMMISSION, *ibid.*, 14).

¹² EUROPEAN COMMISSION, *Study on due diligence requirements through the supply chain*, Final Report, 2020, online: <<https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>>.

sustainable corporate governance.¹³ This was followed by a public consultation in which some vocal respondents were particularly critical of the second study. At the same time, the Council¹⁴ and the European Parliament¹⁵ were also considering the issues to be addressed by the CSDDD.

After further discussions and delays within the European Commission, in particular by the Regulatory Scrutiny Board, the proposal that will become the CSDDD was finally presented on February 23, 2022.¹⁶ In this initial document, much emphasis was placed on due diligence requirements, while only a few provisions were reserved to deal with company law in the strict sense and directors' duties. Specifically, the Commission's proposal included provisions to link directors' remuneration to the implementation of companies' climate change policies, to require directors to consider the impact of their decisions on sustainability issues, and to make directors responsible for establishing and overseeing due diligence.¹⁷ The final text of the Directive, however, does not include any of these provisions.

II. Content of the Directive

The main focus of the CSDDD is the establishment of a risk-based due diligence process. However, the Directive also touches on other issues such as the adoption of a transition plan, the enforcement of due diligence and the implementation of accompanying measures by the Commission, Member States and companies to give effect to the Directive. Before analyzing

¹³ EUROPEAN COMMISSION, *Study on directors' duties and sustainable corporate governance*, Final Report, 2020, online: <<https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en>>.

¹⁴ See COUNCIL OF THE EUROPEAN UNION, *Council Conclusions on Human Rights and Decent Work in Global Supply Chains*, December 1, 2020, 13512/20, online: <<https://www.consilium.europa.eu/media/46999/st13512-en20.pdf>>.

¹⁵ See *European Parliament resolution of 17 December 2020 on sustainable corporate governance (2020/2137(INI))*, OJ, C 445/94, Oct. 29, 2021, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2021_445_R_0013>; *European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL))*, OJ, C 474/11, Nov. 24, 2021, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2021_474_R_0003>.

¹⁶ Some additional information on the concerns raised by the Regulatory Scrutiny Board can be found in the explanatory memorandum of the proposal in the impact assessment section (see *supra* note 1).

¹⁷ The reference is to Articles 15(3), 25 and 26 of the original proposal (see *supra* note 1).

these different aspects of the CSDDD, it is necessary to examine the personal scope of the Directive and the timeframe for its implementation, both of which were agreed only in the final stages of the negotiations.

A. The Personal Scope of the Directive

When analyzing the content of the CSDDD, the first important aspect to consider is its personal scope. Identifying the personal scope answers the question of which types of companies are required to comply with the Directive. However, as the Directive requires companies to apply sustainability and human rights standards to their subsidiaries and business partners, identifying the personal scope of the Directive is only the first step in determining which companies are actually bound by the obligations imposed by the Directive.

Importantly, the CSDDD applies to both EU and non-EU companies. For the purposes of the Directive, the definition of “company” includes public and private limited liability companies, partnerships and a long list of financial institutions, regardless of their legal form.¹⁸ In addition, these entities must meet certain size thresholds. For EU companies, the Directive applies only if a company has more than 1,000 employees and a worldwide turnover of more than EUR 450,000,000.¹⁹ For non-EU companies, only the net turnover threshold of EUR 450,000,000 is relevant, with the requirement that this turnover must be generated in the EU.²⁰

In order to prevent circumvention of the Directive through group structuring, these thresholds should also be assessed on a group basis. Thus, even if a company individually does not fall within the scope of the CSDDD, the Directive will apply if it is the ultimate parent company of a group that meets these thresholds. However, this does not necessarily mean that companies belonging to a group whose parent company falls within the scope of the CSDDD are also directly within the scope of the Directive, although

¹⁸ See Article 3(1)(a) and cf. Recital 18 of the CSDDD.

¹⁹ Article 2(1)(a) and Recital 28 of the CSDDD.

²⁰ Article 2(2)(a) and Recital 29 of the CSDDD. In order to enable effective monitoring and, where necessary, enforcement of this Directive, non-EU companies should designate a representative in the Union who should also act as a point of contact for compliance with the Directive (Article 23 and Recital 74 of the CSDDD).

they are certainly indirectly subject to the obligations imposed by the Directive.²¹

The Directive also applies to companies or ultimate parent companies operating under a franchising model (the so-called “McDonald’s provision”). These are defined as companies, or ultimate parent companies of a group, which have entered into franchising or licensing agreements in return for royalties, where these agreements ensure a common identity, a common business concept and the application of uniform business methods, provided that these royalties amount to more than EUR 22,500,000 worldwide in the case of an EU company, or within the Union in the case of a non-EU company, and provided that the company has a net turnover (again worldwide or within the Union) of more than EUR 80,000,000.²²

In any case, the CSDDD makes it clear that it is not directly applicable to small and medium-sized enterprises (SMEs). Indeed, the potential impact of this legislation on SMEs was one of the main concerns discussed in the final phase of the negotiations. However, these companies could be affected by the Directive as contractors or subcontractors of companies falling within the scope of the CSDDD. Therefore, in order to reduce the financial or administrative burden on SMEs, Member States should provide assistance to these companies. Such assistance could also be made available and, where necessary, adapted and extended to upstream economic operators in third countries.²³ Furthermore, companies falling within the scope of this Directive whose business partners are SMEs are also encouraged to provide assistance to these companies in complying with due diligence measures.²⁴

A final important aspect of the personal scope of the CSDDD concerns the position of financial institutions whose activities, as explained in more detail in the following pages, are not normally covered by the Directive.²⁵

²¹ Article 2(1)(b), (2)(b) and Recitals 28 and 29 of the CSDDD.

²² Article 2(1)(c), (2)(c) and Recitals 28 and 29 of the CSDDD.

²³ Article 20(1), (2) and Recital 69 of the CSDDD.

²⁴ This could include providing or facilitating access to capacity building, training or improvement of management systems and, in some cases, targeted and proportionate financial assistance, such as direct financing, low interest loans, guarantees for continued sourcing, or assistance in securing financing (Articles 10(2), 11(3) and Recitals 46 and 54 of the CSDDD).

²⁵ See *infra* note 45, and related text.

This outcome was one of the many delicate aspects of the negotiations leading to the adoption of the CSDDD. However, the Directive requires the Commission to prepare a report as soon as possible after July 25, 2024, but no later than July 26, 2026, highlighting the need for additional sustainability due diligence requirements tailored to regulated financial institutions.²⁶

B. Timeframe for Implementation of the Directive

An issue closely related to the personal scope of the Directive is the timing of the implementation of its provisions, which will follow a staggered schedule that will make this legislation applicable first to companies with a larger dimension in terms of turnover and employees. The Directive itself entered into force on July 25, 2024, while EU Member States are required to adopt the laws, regulations and administrative provisions to transpose the Directive into national law by July 26, 2026.²⁷

In general, the phase-in of the Directive's provisions requires Member States to apply the new measures from July 26, 2027, with respect to EU companies that have both more than 5,000 employees and a worldwide net turnover of more than EUR 1,500,000,000. On the same date, the Directive will also apply to non-EU companies with a net turnover in the Union of more than EUR 1,500,000,000, irrespective of the number of employees.²⁸

Both of the above thresholds for EU companies will be reduced from July 26, 2028, and the rules will apply to EU companies that have both more than 3,000 employees and a worldwide net turnover of more than EUR 900,000,000. From July 26, 2028, the EU net turnover threshold will also be reduced to EUR 900,000,000 for non-EU companies.²⁹

The final phase of the Directive's entry into force will take place on July 26, 2029, when it will apply to all EU companies with more than 1,000 employees and a worldwide net turnover of more than EUR 450,000,000 and to non-EU

²⁶ This assessment will focus in particular on the provision of financial services and investment activities. On the basis of these findings, the Commission may propose new legislative measures (Article 36(1) of the CSDDD).

²⁷ According to Article 1(2) of the CSDDD, Member States should not use the implementation of the Directive as an opportunity to reduce the level of protection of human and environmental rights provided for by their national law or by collective agreements.

²⁸ Article 37(1)(a) and (c) of the CSDDD.

²⁹ Article 37(1)(b) and (d) of the CSDDD.

companies with an EU net turnover of more than EUR 450,000,000.³⁰ It should be noted that, from the same date, the Directive will also apply to companies falling within the scope of the McDonald's provision of the Directive.³¹ In short, the CSDDD will not apply to all companies within its scope until 2029.³²

C. The Material Scope of the Directive

The primary objective of the CSDDD is to ensure that companies take proactive responsibility for human rights and environmental sustainability. To achieve this goal, the Directive requires companies within its scope to identify and address both potential and actual adverse impacts on human rights and the environment. To define these impacts, the Directive refers to international law in its Annexes. This obligation extends to all levels of business operations, including the company's own activities, those of its subsidiaries and those of its business partners. The extensive due diligence requirements are designed to integrate responsible practices and promote sustainable development.

1. Relevant Adverse Human Rights Impacts

In the area of human rights, the material scope of the CSDDD is based on international conventions and includes a comprehensive list of human rights and prohibitions as set out in key international instruments, which form the primary list of rights and prohibitions contained in Part I, Section I of the Annex to the Directive.³³ Part I, Section II of the Annex to the

³⁰ Article 37(1)(e) of the CSDDD.

³¹ *Ibid.*

³² By July 26, 2030, the Commission must also submit a report to the European Parliament evaluating the implementation and effectiveness of the Directive. This report will analyze the impact of the CSDDD on SMEs, the appropriateness of the scope of the Directive in terms of companies covered, the appropriateness of the employee and net turnover thresholds and the need to introduce a special approach for high-risk sectors (Article 36(2) of the CSDDD).

³³ The detailed list of rights and prohibitions contained in international human rights instruments includes the right to life; the prohibition of torture and cruel, inhuman or degrading treatment; the right to liberty and security; the prohibition of arbitrary or unlawful interference with a person's privacy, family, home or correspondence; the prohibition of interference with freedom of thought, conscience and religion; the right to just and favorable conditions of work (including fair wages and a living income), to

Directive also recognizes other protections provided by human rights and fundamental freedoms instruments that are not specifically listed in the primary list, which may be abused by a company and which directly undermine a legal interest protected by these human rights instruments.³⁴ In addition, the CSDDD allows the Commission to amend the list of international instruments on similar issues once they have been ratified by all EU Member States, thus allowing the material scope to evolve with global standards. Among these instruments, the Directive explicitly mentions the possibility of adding some International Labour Organization (ILO) instruments, such as those on occupational safety and health.³⁵

2. Relevant Adverse Environmental Impacts

In addition to human rights, the material scope of the CSDDD also includes environmental considerations. In this area, the international instru-

a decent life, to safe and healthy working conditions and to reasonable limitation of working hours; the prohibition of restrictions on workers' access to adequate housing, food, clothing and water and sanitation at the place of work; the rights of the child; the prohibition of the employment of minors; the prohibition of the worst forms of child labor and forced or compulsory labor; the prohibition of all forms of slavery and slave trade; the right to freedom of association, assembly, and the right to organize and collective bargaining; the prohibition of unequal treatment in employment; the prohibition of causing measurable environmental degradation that affects a person (for example health, normal use of land or possessions, drinking water, food production, ecosystem services); and the right of individuals, groups and communities to lands and resources and not to be deprived of the means of subsistence (Annex, Part I, Section 1 and Recitals 32 and 34 of the CSDDD).

³⁴ With respect to other protections provided by human rights and fundamental freedoms instruments that are not specifically included in the primary list, the Directive refers to the *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 UNTS 171, online: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>; the *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, 993 UNTS 3, online: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>; the *Convention on the Rights of the Child*, Nov. 20, 1989, 1577 UNTS 3, online: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>; and the International Labour Organization's core/fundamental conventions on freedom of association and protection of the right to organise; the right to organise and collective bargaining; forced labor; the abolition of forced labor; the minimum age; the worst forms of child labor; equal remuneration; and discrimination (Annex, Part I, Section 2 and Recital 32 of the CSDDD).

³⁵ Article 3(2) and Recital 32 of the CSDDD.

ments listed in Part II of the Annex to the Directive refer only to a specific set of prohibitions and obligations contained in environmental instruments. There is therefore no secondary list of environmental rights that could be abused by a company. Again, the power given to the Commission to amend the list of instruments once they have been ratified by all EU Member States can be used to amend this Part of the Annex.³⁶

It should be emphasized that some of the human rights mentioned in the previous section, such as the prohibition of causing measurable environmental degradation that affects a person and the right of individuals, groups and communities to lands and resources and not to be deprived of the means of subsistence, clearly also have an indirect environmental dimension.

3. The Personal Scope of the Obligations Imposed by the Directive

Once a company falls within the personal scope of the CSDDD, the obligations relating to actual and potential adverse human rights and environmental impacts apply to its own operations, those of its subsidiaries, and those of its business partners.³⁷ Therefore, in order to understand which companies are affected by the obligations imposed by the Directive, it is necessary to clarify what a subsidiary is and when a company is part of a company's chain of activities.

³⁶ The detailed list of these rights and prohibitions includes the obligation to avoid or minimize adverse impacts on biological diversity; the prohibition of the import, export, re-export or introduction from the sea of specimens of endangered species; the prohibition of the production, import, export, use and treatment of mercury; the prohibition of the production, use, import or export of certain chemical products; the prohibition of the unlawful handling, collection, storage, disposal, import and export of waste; the prohibition of the unlawful production, consumption, import and export of certain controlled substances; the obligation to avoid or minimize adverse impacts on properties designated as natural heritage; the obligation to avoid or minimize adverse impacts on wetlands; the obligation to prevent pollution from ships; the obligation to prevent, reduce and control pollution of the marine environment by dumping (Annex, Part 2 and Recital 32 of the CSDDD).

³⁷ Under certain circumstances, the obligations imposed by the Directive may be fulfilled by parent companies on behalf of their subsidiaries (Article 6 and Recitals 21 and 22 of the CSDDD).

a. Subsidiaries

The answer to the first question is easily found in the CSDDD, which refers to other Directives. These instruments define a subsidiary as an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking, or an undertaking either (i) in which a natural person or legal entity has the majority of the voting rights; (ii) of which a natural person or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder or member; (iii) of which a natural person or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking in question; or (iv) over which a natural person or legal entity has the power to exercise, or actually does exercise, dominant influence or control.³⁸

b. Business Partners in the Chain of Activities

The CSDDD also imposes obligations on direct and indirect business partners that are part of a company's supply or value chain. The terminology used in the Directive, which refers to the concept of "chain of activities", is a compromise between two possible approaches to the treatment of business partners that were discussed during the negotiations for the adoption of the Directive. Indeed, the Commission's original proposal referred to the concept of "value chain", which was defined as the "activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal

³⁸ In particular, Article 3(1)(e) of the CSDDD refers to the concept of "subsidiary undertaking" as defined in Article 2(10) of Directive 2013/34/EU (*Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC*, OJ, L 182/19, June 29, 2013, online: <<https://eur-lex.europa.eu/eli/dir/2013/34/oj/eng>>) and to the concept of "controlled undertaking" as defined in Article 2(1)(f) of Directive 2004/109/EC (*Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC*, OJ, L 390/38, Dec. 31, 2004, online: <<https://eur-lex.europa.eu/eli/dir/2004/109/oj/eng>>).

of the product as well as the related activities of upstream and downstream established business relationships of the company”.³⁹ This concept broadly covered both upstream and downstream activities. However, during the negotiations it was proposed to narrow the concept by considering only those business partners that are part of the “supply chain” in the strict sense. The practical effect of this approach would have been to include only upstream and not downstream business partners in the definition. The reference to the “chain of activities” is the result of a compromise between the two different views and includes upstream activities and, to a limited extent, some downstream activities.

On the one hand, activities with upstream business partners relate to the production of goods or provision of services by the company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials or products, and the development of the product or service.⁴⁰ On the other hand, downstream activities include the activities of business partners involved in the distribution, transport and storage of a company’s products. In any case, downstream activities are only relevant if they are carried out for or on behalf of the company.⁴¹ In addition, the Directive clarifies that the disposal of the product is not included in the definition of the chain of activities and, again in relation to downstream activities, provides specific exemptions for dual-use items and products subject to export controls.⁴²

An important practical implication of this definition of “chain of activities” is that the provision of financial services is excluded from the scope of downstream activities⁴³ for the time being, although, as mentioned above, the Commission is mandated to assess whether additional due diligence requirements specific to the financial sector are necessary.⁴⁴ This is also

³⁹ See Article 3(g) and Recital 18 of the proposal (see *supra* note 1).

⁴⁰ See Article 3(1)(g)(i) and Recital 25 of the CSDDD.

⁴¹ See Article 3(1)(g)(ii) and Recital 25 of the CSDDD. The coordination between the reference to activities carried out on behalf of companies and the definition of indirect business partner is not entirely clear.

⁴² *Ibid.* Similarly, recycling is not mentioned in the final text of the Directive. In addition, the CSDDD makes no reference to the sale of products, which was included in earlier versions of the Directive.

⁴³ However, financial institutions fall within the scope of the Directive for their upstream activities.

⁴⁴ See *supra* note 26, and related text.

clarified in a recital of the Directive, which states that the definition of “chain of activities” does not include the activities of a company’s downstream business partners in relation to the company’s services and, for regulated financial institutions, does not include downstream business partners who receive their services and products.⁴⁵ Therefore, for regulated financial institutions, only the upstream and not the downstream parts of their chains of activities will normally be covered by the Directive.

D. Obligations Imposed by the Directive

As mentioned above, the Directive imposes several obligations on companies falling within its scope. Some of these are closely related to the establishment of a risk-based due diligence process in the chain of activities. However, the CSDDD also requires companies to ensure stakeholder engagement, establish a notification mechanism, comply with reporting requirements, and prepare a transition plan to address climate change.

1. Due Diligence and Risk Management Obligations under the Directive

The CSDDD requires companies to identify, assess and address human rights and environmental risks in their operations and value chains, and to integrate due diligence into their policies and management systems.⁴⁶ These obligations, referred to as “obligations of means”,⁴⁷ require the adoption of a risk-based approach. In particular, companies must adopt a due diligence policy in consultation with the company’s employees and their representatives. The policy must include a description of the company’s approach to due diligence, a code of conduct describing the rules and principles to be followed throughout the company and its subsidiaries and direct or indirect business partners, and a description of the processes put in place to

⁴⁵ See Recital 26 of the CSDDD.

⁴⁶ The provisions on some aspects of the due diligence process, in particular in relation to the identification, assessment, prevention and bringing to an end of actual and potential adverse impacts, should not be implemented by Member States laying down human rights and environmental due diligence obligations different from those set out in the Directive (Article 4(1) of the CSDDD). In any case, with regard to other aspects, Member States may introduce more stringent provisions in their national law to achieve a different level of protection of these rights (Article 4(2) of the CSDDD).

⁴⁷ Recital 19 of the CSDDD.

integrate due diligence into the company's relevant policies and to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to business partners.⁴⁸

Identifying and assessing potential or actual adverse impacts on human rights or the environment are key elements of this process. The first step is a comprehensive mapping of potential risks throughout the chain of activities. This is followed by an in-depth assessment focusing on areas with the highest likelihood and severity of adverse impacts.⁴⁹ Companies are required to prioritize the most significant negative impacts.⁵⁰ For upstream business partners, the Directive clarifies that not all activities are relevant, but only those "related to the production of goods or the provision of services".⁵¹

The next step in this process, consistent with the adoption of a risk management framework, requires companies to take steps to prevent, mitigate, bring to an end, or minimize identified adverse impacts. Preventive measures may include the development of an action plan, contractual assurances on

⁴⁸ Article 7(2) and Recital 39 of the CSDDD.

⁴⁹ Article 8 and Recital 41 of the CSDDD. The risk-based approach requires companies not only to focus on tier-1 business partners, but also to identify and assess the risks for tier-n business partners. In general, this scoping exercise should take into account some specific dimensions of the risk of human and environmental rights violations, such as company-level risk factors, whether the business partner is a company not covered by the Directive; business operations risk factors; geographic and contextual risk factors, the level of law enforcement with respect to the type of adverse impacts; product and service risk factors; and sectoral risk factors. In any case, the adopted version of the Directive does not refer to specific high-impact sectors that would merit special attention and regulation. Some indication of which sectors might be more problematic can be found by examining the various preliminary versions of the Directive discussed during the legislative process. Furthermore, the mapping of the chain of activities does not oblige business partners to disclose trade secrets (Article 5(3) and Recital 23 of the CSDDD). Finally, this activity should be approached with caution as an exchange of information could have antitrust implications (see *Guidelines on the applicability of Article 101 of the TFEU to horizontal cooperation agreements for the horizontal dimension*, C(2023)4752 final, OJ, C 259/1, Brussels, July 21, 2023, para. 372, online: <[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0721\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0721(01))>, for the treatment of this exchange of information from a horizontal perspective).

⁵⁰ Article 9 and Recital 44 of the CSDDD.

⁵¹ See Article 3(1)(g)(i) and Recital 25 of the CSDDD. This precision certainly limits the number of business partners to be assessed.

fair and reasonable terms, financial or non-financial investments, changes in plans, strategies or operations, and support for SMEs.⁵²

If a company's activities cause actual harm, it must take remediation measures. These should restore affected persons, communities, or the environment to a situation equivalent to — or as close as possible to — what would have existed had the harm not occurred. Temporary suspension or termination of business relationships may be used as a last resort, only in cases of severe impacts, and only after assessing whether the adverse impacts of termination are more severe than the adverse impacts being addressed.⁵³

Another important step in the process is to periodically assess the operations and measures of companies, subsidiaries and business partners that are part of the chain of activities to monitor the adequacy and effectiveness of the identification, prevention, mitigation, termination, and minimization of adverse impacts.⁵⁴

A fundamental aspect of the Directive is that, in line with the international framework, when preventing, mitigating and bringing to an end or minimizing adverse impacts, the so-called “level of involvement” of the company in the adverse impacts should be assessed.⁵⁵ From this perspective, adverse impacts can either be caused or jointly caused by the company,⁵⁶ or they can only be caused by a business partner.⁵⁷ In the first two cases, companies should take appropriate measures to bring to an end or minimize the extent of the adverse impacts they cause or jointly cause. In the latter case, where an adverse impact is caused solely by the business partner,

⁵² See Article 10 and Recitals 45 to 51 and 56 of the CSDDD on preventive measures.

⁵³ Article 11 and Recital 57 of the CSDDD.

⁵⁴ Article 15 and Recital 61 of the CSDDD.

⁵⁵ Recitals 45, 53 of the CSDDD.

⁵⁶ *Ibid.* The Directive clarifies that when it refers to a company alone “causing” an adverse impact, the reference is to the concept of “causing” an adverse impact as elaborated in the international framework. Similarly, the concept of “jointly causing” has features in common with the concept of “contributing” to an adverse impact. The Directive also adds that “jointly causing” an adverse impact should cover all cases where the company's acts or omissions cause the adverse impact in combination with the acts or omissions of subsidiaries or business partners, including where the company substantially facilitates or incentivizes a business partner to cause an adverse impact, that is, excluding minor or trivial contributions.

⁵⁷ *Ibid.* In the international framework, this situation is comparable to the concept of “being directly linked to” an adverse impact.

companies should use their influence, leverage or incentives over the partner to bring to an end or minimize the adverse impacts caused by their business partners, or increase their influence to achieve this goal. Similarly, where a company has caused or jointly caused an actual adverse impact, the company should provide remediation, whereas where the actual adverse impact is caused solely by the company's business partner, the company may provide remediation on a voluntary basis or use its ability to influence the business partner to provide such remediation.⁵⁸

2. Other Due Diligence Obligations

In addition to the duties mentioned in the previous sections, which are closely related to the normal risk analysis process based on identifying, measuring, mitigating and monitoring risks,⁵⁹ the CSDDD also imposes other duties on companies, namely the duty to engage with stakeholders, the duty to establish and maintain a notification mechanism and complaints procedure, reporting obligations and the need to prepare a transition plan to combat climate change.

a. Stakeholder Engagement

The need to ensure effective stakeholder engagement in the due diligence process is an important aspect of the CSDDD that could have an indirect impact on the corporate governance of companies. The definition of "stakeholders" for the purposes of the Directive focuses primarily on the employees, trade unions and workers' representatives of the company to which the Directive applies, as well as its subsidiaries and business partners in the chain of activities. In order to avoid misunderstandings about the possible implications of this obligation, the CSDDD clarifies that the engagement with employees is without prejudice to EU national law in the field of employment and social rights and to applicable collective agreements. A second group of stakeholders considered by the Directive are consumers, individuals, groups, communities or entities whose rights or interests are

⁵⁸ Article 12 and Recital 58 of the CSDDD.

⁵⁹ In fact, the Directive (Recital 20 of the CSDDD) explicitly refers to the six-step due diligence process defined in the OECD Guidance for Responsible Business Conduct (OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, online: <https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/02/oecd-due-diligence-guidance-for-responsible-business-conduct_c669bd57/15f5f4b3-en.pdf>).

or may be affected by the products, services and operations of the company, its subsidiaries and its business partners. A final group of stakeholders mentioned in the Directive are national human rights and environmental institutions, civil society organizations whose objectives include the protection of the environment, and their legitimate representatives.⁶⁰

Companies subject to the Directive should consult with such persons at various stages of the due diligence process, when gathering the necessary information about actual or potential adverse impacts, when identifying, assessing and prioritizing adverse impacts, when developing preventive and corrective action plans, when deciding to terminate or suspend business relationships, when taking appropriate measures to remediate adverse impacts and, where appropriate, when developing qualitative and quantitative indicators for monitoring. The need to carry out these consultations may prove burdensome for companies. For this reason, the Directive allows companies, where it is not reasonably practicable to engage effectively with stakeholders, to consult with experts who can provide credible insights into actual or potential adverse impacts. In addition, the CSDDD allows companies to meet the obligation to engage with stakeholders through industry or multi-stakeholder initiatives, provided that the consultation strategy is not sufficient to meet the obligation to consult the company's own employees and their representatives.⁶¹

b. The Establishment of a Notification Mechanism

Companies falling within the scope of the Directive are also required to establish and maintain a notification mechanism. On the one hand, companies should enable natural or legal persons who are or may be affected by an adverse impact, trade unions and workers' representatives, as well as civil society organizations, to submit complaints to them where these persons or entities have legitimate concerns about actual or potential adverse impacts related to the operations of the companies, their subsidiaries or their business partners in the chains of activities. On the other hand, companies are required to establish an accessible mechanism for the submission of notifications by persons and entities that have information or

⁶⁰ Article 3(1)(n) of the CSDDD.

⁶¹ Article 13(3), (4), (6) and Recital 65 of the CSDDD.

concerns about actual or potential adverse impacts related to the operations of the same subjects.⁶²

Again, the CSDDD seeks to limit the burdens imposed on companies by the establishment of the notification system and requires Member States to allow companies to meet these obligations by participating in collaborative complaint procedures and notification mechanisms, including those established jointly by companies, industry associations, multi-stakeholder initiatives or global framework agreements.⁶³

c. Reporting

With regard to the reporting requirements imposed by the CSDDD, companies should publish annually on their website a statement on the matters covered by the Directive. The outline of the content and criteria for the reporting will be set out in delegated acts of the Commission by March 31, 2027, and will include, in particular, sufficiently detailed information on the description of the due diligence process, the actual and potential adverse impacts identified and the appropriate measures taken in relation to those impacts.⁶⁴

An important concern of the CSDDD is to coordinate the reporting requirements of the Directive with those of Directive (EU) 2022/2464 on corporate sustainability reporting (CSRD)⁶⁵. One aim of this coordination is to align the reporting requirements of these two instruments as far as possible. In this respect, arguably the most important reporting provision in the CSDDD is the exemption from reporting requirements for companies that are already subject to sustainability reporting under the CSRD. Given the respective scope of the CSRD and the CSDDD, this exemption is likely to be used frequently.⁶⁶

⁶² Article 14 and Recital 59 of the CSDDD.

⁶³ Article 14(6) and Recital 59 of the CSDDD.

⁶⁴ Article 16(1), (3) and Recital 62 of the CSDDD.

⁶⁵ *Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting*, OJ, L 322/15, Dec. 16, 2022, online: <<https://eur-lex.europa.eu/eli/dir/2022/2464/oj/eng>>.

⁶⁶ Article 16(2), and Recitals 62 and 63 of the CSDDD. In short, the specific reporting requirements of the Directive are more likely to apply to some non-EU companies. It should also be stressed that companies complying with the CSDDD will normally have more information to report under the CSRD.

d. The Transition Plan

One of the most interesting provisions of the CSDDD relates to climate change and requires companies to adopt a transition plan towards a sustainable economy. In the context of the Directive, this provision is peculiar because it is not strictly related to due diligence obligations and is not directly aimed at protecting human rights or the environment.

Specifically, companies falling within the scope of the Directive are required to adopt and implement a climate change mitigation transition plan, which should aim to ensure that the company's business model and strategy are compatible with the transition to a sustainable economy and the limitation of global warming to 1.5°C, in line with the Paris Agreement⁶⁷ and the objective of achieving climate neutrality as set out in EU legislation. The climate change mitigation transition plan, which should be updated every twelve months, should include time-bound climate change related targets for 2030 and in five-year steps up to 2050, based on conclusive scientific evidence and, where appropriate, absolute greenhouse gas emission reduction targets, a description of the identified decarbonization levers and key actions planned to achieve the intended targets, an explanation and quantification of the investments and financing supporting the implementation of the plan, and a description of the role of the administrative, management and supervisory bodies in relation to the plan.⁶⁸

Again, the Directive views these requirements as obligations of means rather than of result.⁶⁹ In addition, similar to the rules on reporting, the most relevant provision on climate change is probably the exemption from the requirement to adopt a transition plan if a company reports a transition plan for climate change mitigation under the CSRD.⁷⁰

E. Enforcement

In order to ensure compliance with the provisions of the CSDDD, a detailed set of provisions is laid down for monitoring the application of the

⁶⁷ *Paris Agreement to the United Nations Framework Convention on Climate Change*, TIAS No. 16-1104, Dec. 12, 2015, online: <<https://www.un.org/en/climatechange/paris-agreement>>.

⁶⁸ Article 22(1), (3) and Recital 73 of the CSDDD.

⁶⁹ Recital 73 of the CSDDD.

⁷⁰ Article 22(2) and Recital 73 of the CSDDD.

Directive and for its enforcement. The Directive relies on both public and private enforcement mechanisms: on the one hand, it requires Member States to designate supervisory authorities to monitor compliance with the obligations imposed on companies; on the other hand, it provides that failure to comply with due diligence obligations may also give rise to civil liability.

1. Supervisory Authority

In order to ensure compliance with the provisions of the CSDDD, the Directive establishes detailed monitoring and enforcement mechanisms. The supervisory authorities, which each Member State must designate to monitor compliance with the due diligence and transition plan obligations, play a central role in this respect. These authorities must be given adequate powers and resources to carry out the tasks assigned to them, including the power to require companies to provide information and to carry out investigations relating to compliance with the due diligence obligations set out in the Directive. The same authorities must also oversee the adoption and design of the transition plan for climate change mitigation.⁷¹

The supervisory authorities will have the power to open an investigation if they consider that they have sufficient information indicating a possible breach by a company of its obligations under the Directive. The supervisory authorities will also be the point of contact for natural and legal persons exercising their right, recognized by the CSDDD, to submit substantiated concerns where they have reason to believe, on the basis of objective circumstances, that a company is failing to comply with the obligations imposed by the Directive.⁷² In carrying out their duties, the supervisory authorities will in particular have the power to order the company to cease an infringement and to impose penalties.⁷³

⁷¹ Articles 24, 25 and Recital 75 of the CSDDD. Article 28 of the CSDDD also requires the Commission to establish the European Network of Supervisory Authorities to facilitate cooperation between supervisory authorities and their coordination and alignment of regulatory, investigative, sanctioning and supervisory practices.

⁷² Articles 25(2), 26 and Recital 75 of the CSDDD.

⁷³ Article 25(5) of the CSDDD.

2. Penalties

With regard to the public enforcement of the Directive in the event of infringement of its provisions, Member States are required to adopt rules on penalties and to take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.⁷⁴ The Directive only refers to two types of sanctions, but Member States may also introduce other types of sanctions.⁷⁵ The first is a pecuniary penalty, while the second would apply only where a company fails to comply with a decision imposing a pecuniary penalty and would consist of a public statement identifying the company responsible for the infringement and the nature of the infringement.⁷⁶ The amount of the penalty would be based on the company's worldwide net turnover, with a maximum of no less than 5% of that turnover.⁷⁷ Where a company falls within the scope of the Directive because it is the ultimate parent company of a group, the pecuniary penalties will be calculated on the basis of consolidated turnover.⁷⁸

3. Civil Liability and Right to Full Compensation

The CSDDD requires Member States to ensure that companies can be held liable for damage caused by their intentional or negligent failure to prevent or bring to an end adverse impacts where the rights, prohibitions or obligations listed in the Annex to the Directive are intended to protect natural or legal persons and those persons that have suffered damage. Although the Directive excludes the possibility of a company being held liable where the damage is caused solely by business partners, where the damage is caused jointly by the company and its subsidiaries or direct or

⁷⁴ Article 27(1) and Recital 76 of the CSDDD.

⁷⁵ The Directive makes no reference to trade bans, exclusion from public tenders, criminal sanctions or director's liability. However, with regard to trade bans, it should be noted that the Regulation on prohibiting products made with forced labor (*Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937*, OJ, L Series, Dec. 12, 2024, online: <<https://eur-lex.europa.eu/eli/reg/2024/3015/oj/eng>>) does not allow economic operators to export, place or make available in the Union products made with such labor.

⁷⁶ Article 27(3) and Recital 76 of the CSDDD.

⁷⁷ Article 27(4) and Recital 76 of the CSDDD.

⁷⁸ Article 27(4) and Recital 77 of the CSDDD.

indirect business partners, these parties are jointly and severally liable.⁷⁹ In any case, the Directive does not regulate the establishment of causality, nor does it regulate who should bear the burden of proof or the conditions under which civil proceedings can be initiated, as these issues are left to national law.⁸⁰ The Directive also states that where a company is held liable, the injured party is entitled to full compensation for the damage, but this should not lead to overcompensation, for example through punitive damages.⁸¹

From a procedural point of view, the Directive recognizes the power of injured parties to authorize organizations such as trade unions, non-governmental human rights or environmental organizations to bring actions to enforce their rights to damages.⁸² Also from a procedural point of view, courts may, under certain conditions, order the disclosure of evidence held by companies, provided that claimants present a reasoned justification based on facts and evidence sufficient to support the plausibility of their claim for damages.⁸³ The limitation period for bringing an action for damages should not be shorter than that provided for by national rules on general civil liability and should in any event not be less than five years.⁸⁴

Finally, particular importance should be attached to the requirement that Member States make the rules implementing civil liability of overriding mandatory application where the law applicable to claims is not the national law of a Member State.⁸⁵ By imposing this requirement, the CSDDD indirectly preempts Article 4(1) of Regulation (EC) No 864/2007 on the law

⁷⁹ Article 29(1), (5) and Recitals 79 and 87 of the CSDDD.

⁸⁰ Recitals 79 and 81 of the CSDDD. The interaction between national and EU law on civil liability is particularly delicate as the Directive does not seek to achieve detailed harmonization of tort law.

⁸¹ Article 29(2) and Recital 79 of the CSDDD. The Directive also states that its rules on civil liability are without prejudice to Union or national rules on civil liability for adverse human rights or environmental impacts which provide for liability in situations not covered by the Directive or which provide for stricter liability than the Directive (Article 29(6) and Recital 88 of the CSDDD).

⁸² Article 29(3)(d) and Recital 84 of the CSDDD. The wording of the Directive therefore suggests that these organizations do not have autonomous standing, but can only act if they are authorized by the alleged injured parties.

⁸³ Article 29(3)(e) and Recital 83 of the CSDDD.

⁸⁴ Article 29(3)(a) and Recital 85 of the CSDDD.

⁸⁵ Article 29(7) and Recital 90 of the CSDDD.

applicable to non-contractual obligations (Rome II)⁸⁶, which provides that, unless otherwise provided, the law applicable to a non-contractual obligation arising out of a tort/delict is the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country in which the indirect consequences of that event occur.

F. Implementing Actions

The legislative work of the CSDDD does not end with its adoption. Certainly, the actual content of the Directive will have to be tested in the light of its implementation by the Member States. However, it should also be noted that the Directive requires the Commission to prepare delegated acts, guidelines and guidance on model clauses. More generally, the Commission, Member States, companies and stakeholders will also be involved in the adoption of accompanying measures to give effect to and facilitate the application of the Directive.

1. Reporting and Model Clauses

On the basis of the delegated acts referred to above, the Commission shall, by March 31, 2027, define the content and criteria for reporting.⁸⁷ Similarly, by January 26, 2027, the Commission should, in consultation with Member States and stakeholders, provide guidance on model contractual clauses that can be used voluntarily by companies as a tool to help them meet their obligations to prevent and bring to an end adverse impacts. The guidance should aim to facilitate a clear allocation of responsibilities between the contracting parties in a way that avoids shifting the obligations set out in the CSDDD to business partners and should reflect the principle that the mere use of contractual assurances cannot in itself satisfy the due diligence standards set out in the Directive.⁸⁸

⁸⁶ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ, L 199/40, July 31, 2007, online: <<https://eur-lex.europa.eu/eli/reg/2007/864/oj/eng>>.

⁸⁷ See *supra* note 64, and related text.

⁸⁸ Article 18 and Recital 66 of the CSDDD.

2. Guidelines

The Commission should, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, the European Labour Authority and, where appropriate, international organizations and other bodies, issue guidelines on how companies should implement their due diligence obligations in practice. In particular, by January 26, 2027, the Commission should publish guidelines on, for example, how to carry out the different stages of the due diligence process set out in the Directive and how to assess risk factors at company level in relation to business operations, geographical and contextual risks, product and service risks and sectoral risks. By the later date of July 26, 2027, the Commission is required to publish, inter alia, guidelines on the transition plan and stakeholder engagement.⁸⁹

3. Accompanying Measures

Accompanying measures require Member States to set up and operate specific websites, platforms or portals to provide information and assistance to companies and their business partners and stakeholders. Member States could also provide financial support to SMEs and stakeholders to facilitate the exercise of rights under the Directive.⁹⁰

In the private sector, companies can participate in industry and multi-stakeholder initiatives to support the implementation of due diligence obligations. For example, companies may use or participate in relevant risk analyses carried out by industry or multi-stakeholder initiatives and take or join effective appropriate measures through such initiatives. Companies may also use independent third-party verification on and from companies in their chains of activities to support the implementation of due diligence obligations. Such verification may also be carried out by other companies or by industry or multi-stakeholder initiatives.⁹¹

The Commission is also required to establish a single helpdesk for companies to obtain information, guidance and assistance in fulfilling their obligations.⁹² The Commission may also complement Member States' support

⁸⁹ Article 19 and Recital 67 of the CSDDD.

⁹⁰ Article 20(1), (2) and Recital 69 of the CSDDD.

⁹¹ Article 20(4), (5) and Recital 52 of the CSDDD.

⁹² Article 21 and Recital 70 of the CSDDD.

measures by facilitating industry or multi-stakeholder initiatives, issuing guidance in cooperation with Member States, setting out fitness criteria and a methodology for companies to assess the fitness of such initiatives, and facilitating the dissemination of information on such initiatives and their results.⁹³

III. Current Debate on Corporate Sustainability Due Diligence

The debate within the EU institutions on corporate sustainability due diligence did not stop after the final agreement on the CSDDD was reached just a few weeks before the European Parliament elections, in which some of the parties supporting the Directive received lukewarm results. Indeed, in the aftermath of these elections, the compatibility of sustainable finance initiatives with the objective of advancing the EU project to ensure its competitiveness on the global stage was hotly debated.

A. The Letta and Draghi Reports

To move the EU project forward, two former Italian prime ministers, Enrico Letta and Mario Draghi, were asked to prepare two reports on the future of the internal market and the competitiveness of the European Union.⁹⁴ The Letta report makes no direct reference to due diligence obligations, but stresses the importance of reducing the regulatory burden on companies by reassessing reporting and compliance obligations.⁹⁵ The Draghi report is less cryptic on this issue, concluding that the “EU’s sustainability reporting and due diligence framework is a major source of regulatory burden, magnified by a lack of guidance to facilitate the application of complex

⁹³ Article 20(3), (4) and Recitals 52 and 71 of the CSDDD.

⁹⁴ Enrico LETTA, *Much More Than a Market. Speed, Security, Solidarity. Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens*, 2024, online: <https://european-research-area.ec.europa.eu/sites/default/files/documents/2024-05/LETTA%20Report%20-%20Much%20more%20than%20a%20market_April%202024.pdf>; Mario DRAGHI, *The future of European competitiveness*, 2024, online: <https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf>.

⁹⁵ E. LETTA, *ibid*, 130 f.

rules and to clarify the interaction between various pieces of legislation”.⁹⁶ The framework referred to in the report includes, among others, the taxonomy Regulation⁹⁷, the CSRD, the sustainable finance disclosure Regulation⁹⁸ and the corporate sustainability due diligence Directive.⁹⁹ On this issue, the report concludes that “[d]ue to value chain effects, the sustainability reporting and due diligence framework does not adequately differentiate SMEs from larger companies” and that there is a “need to better consider the size of companies affected by regulation, using appropriate mitigation measures in line with the proportionality principle”.¹⁰⁰

B. The EU Commission’s Approach to Corporate Sustainability Due Diligence

Looking at the political signals coming from the Commission, the ideas expressed in the Letta and Draghi reports have been well received. Already in her political guidelines published in July 2024, the President of the EU Commission stated that “[e]ach Commissioner will be tasked with focusing on reducing administrative burdens and simplifying implementation: less red tape and reporting, more trust, better enforcement, faster permitting”,¹⁰¹ and a few weeks later she confirmed these ideas by asking all Commissioners to “ensure that existing rules are fit-for-purpose and focus on reducing administrative burdens and simplifying legislation”.¹⁰² In particular, the

⁹⁶ M. DRAGHI, *supra* note 94, *Part B. In-depth analysis and recommendations*, 318 f, online: <https://commission.europa.eu/document/download/ec1409c1-d4b4-4882-8bdd-3519f86bbb92_en?filename=The%20future%20of%20European%20competitiveness_%20In-depth%20analysis%20and%20recommendations_0.pdf>.

⁹⁷ *Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088*, OJ, L 198/13, June 22, 2020, online: <<https://eur-lex.europa.eu/eli/reg/2020/852/oj/eng>>.

⁹⁸ *Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector*, OJ, L 317/1, Dec. 9, 2019, online: <<https://eur-lex.europa.eu/eli/reg/2019/2088/oj>>.

⁹⁹ M. DRAGHI, *supra* note 94, note 20.

¹⁰⁰ *Ibid.*, 321.

¹⁰¹ Ursula VON DER LEYEN, *Europe’s Choice. Political Guidelines for the Next European Commission 2024–2029*, Strasbourg, 2024, 7, online: <https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf>.

¹⁰² All mission letters addressed to the Commissioners-designate included this request; see, for example, Ursula VON DER LEYEN, *Mission Letter. Michael McGrath*, 2024, 4,

new Commissioners are asked to “contribute to reducing reporting obligations by at least 25% - and for SMEs at least 35%”.¹⁰³ In line with the ideas outlined in the Letta and Draghi reports, closely related to these objectives is probably the idea of “introducing a new category of small midcaps and assess whether existing regulation unjustifiably hinders their development”.¹⁰⁴

The CSDDD was mentioned several times during the hearings of the new European Commissioners. In particular, during Commissioner McGrath’s hearing, MEP Lara Wolters, one of the most vocal supporters of the due diligence initiative, after saying that “some are still trying to discredit this piece of legislation”,¹⁰⁵ asked how to ensure the timely and effective implementation of the Directive. The Commissioner replied that the “directive is there, it must be transposed and it must be implemented” and that “[i]n doing so, we do have to provide as much support and assistance as possible to ensure it can be done seamlessly and efficiently”.¹⁰⁶ Furthermore, during the hearing, the Commissioner added that his priority is “to ensure a timely and effective implementation”, that “[t]here should not be any reason for delay” and that the focus of his action “will be on delivering the implementation support measures foreseen in the Directive to facilitate compliance and to support companies in their sustainability transition”, which “will include various guidance documents, model contract clauses for companies for their due diligence efforts and a single help-desk to provide dedicated advice to the questions that will nevertheless arise” in order to “bring additional clarity and legal certainty to companies”.¹⁰⁷

online: <https://commission.europa.eu/document/download/907fd6b6-0474-47d7-99da-47007ca30d02_en?filename=Mission%20letter%20-%20McGRATH.pdf>.

¹⁰³ *Ibid.*

¹⁰⁴ This idea is only mentioned in Ursula VON DER LEYEN, *Mission Letter. Stéphane Séjourné*, 2024, 7, online: <https://commission.europa.eu/document/download/6ef52679-19b9-4a8d-b7b2-cb99eb384eca_en?filename=Mission%20letter%20-%20S%C3%89JOURN%C3%89.pdf>.

¹⁰⁵ See *Hearing of Michael McGrath, Commissioner-designate (Democracy, Justice and the Rule of Law)*, Nov. 5, 2024, 35, online: <https://hearings.elections.europa.eu/documents/mcgrath/mcgrath_verbatimreportheating-original.pdf>.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*, 34 f., 40 f.

C. Recent Developments

The latest development in the discussions on how to move forward with corporate sustainability due diligence came at the beginning of November 2024, when the President of the Commission stated that the European institutions are planning to propose an omnibus legislative proposal focusing on taxonomy, CSRD and CSDDD to reduce the reporting burden in all the different areas, which will reopen the thorny discussions on these initiatives. In addition, the President of the Commission stated that the current content of the legislation is good and that the Council supports this conclusion, so the aim of this proposal will be to reduce the administrative burden without changing the correct content of the existing legislation.¹⁰⁸

Needless to say, these few words have already sparked a debate about whether the EU could turn its back on the sustainability acquis in the coming years. Moreover, given the current political and economic landscape, the preparation of this new omnibus legislation and the reopening of discussions on the CSDDD could hardly lead to a more restrictive legal framework.¹⁰⁹ Indeed, this new trend has already been confirmed by a recent vote in the European Parliament, which decided to postpone the entry into force of the EU Deforestation Regulation¹¹⁰.

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¹⁰⁸ Ursula von der Leyen announced these intentions at the press conference of the Informal Meeting of Heads of State or Government in Budapest on November 7-8, 2024 (the recording of the press conference is available online: <<https://www.youtube.com/watch?v=wZUzRlSyDr8>>) and confirmed them before the European Parliament on November 27, 2024 (the text of this speech is available online: <https://neighbourhood-enlargement.ec.europa.eu/news/speech-president-von-der-leyen-european-parliament-plenary-new-college-commissioners-and-its-2024-11-27_en>).

¹⁰⁹ See, for example, Sophie ROBINSON-TILLET, “An EU omnibus will not solve the reporting problem”, *Real Economy Progress*, November 25, 2024, online: <<https://real-economy-progress.com/an-eu-omnibus-will-not-solve-the-reporting-problem/>>.

¹¹⁰ *Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010*, OJ, L 150/206, June 9, 2023, online: <<https://eur-lex.europa.eu/eli/reg/2023/1115/oj/eng>>.

In this article, I have provided an analysis of the CSDDD, starting with the discussions that led to its adoption and examining some of the key details and implications of this initiative. As noted in the previous pages, given current political developments within the European Union, the pendulum of sustainable finance will likely swing back to more cautious approaches over the next few years. Certainly, the burden on companies has been gradually reduced since the inception of this initiative, and it is likely that this process will continue in the coming years. It remains to be seen how effective this Directive will be in protecting human and environmental rights and whether, even in this increasingly watered-down form, it could still be perceived outside the EU as an act of neo-imperialism. In any case, the fact that this legislation has been adopted is already remarkable and could pave the way for future initiatives aimed at ensuring that global supply and value chains cannot be used as tools to circumvent core societal values.