

# EU Corporate Sustainability Due Diligence Directive

## Moving forward but pared back

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**The EU's Corporate Sustainability Due Diligence Directive (CSDDD) has taken another step forward after the European Parliament's Committee on Legal Affairs (JURI) voted to approve the Directive on 19 March 2024.**

UK businesses that fall within the CSDDD's financial thresholds for non-EU companies should be keeping a close eye on developments in this area. In particular, the requirements for reporting that may not end up being consistent with UK law. There are some thorny legal issues that will require consideration, particularly around enforcement. A continued focus on aligning reporting requirements for large global organisations in this vital area is key.

## Background

When the Council of the EU failed to reach the majority required to endorse the provisional agreement reached on the CSDDD last month, many commentators considered that there was little chance of revival. However, a compromise [text](#) was adopted by the EU Council on 15 March 2024 and approved by the JURI Committee on 19 March 2024. It has now been put forward to the EU Parliament for approval.

Political lobbying in Brussels over the CSDDD has been intense. As a result, there has been a significant increase in the scope of the thresholds, which effectively reduces the number of companies that will be subject to the CSDDD's requirements. The revised text has therefore come as a disappointment to some environmental and human rights campaigners who were hoping for a more extensive regime.

The EU Council has confirmed that if the EU Parliament adopts the revised text (listed on the plenary agenda for 24 April 2024), it will also adopt the text. The JURI Committee has last week approved the revised text, providing a strong indication that the CSDDD will finally be given a green light.

## What do UK businesses need to know?

We consider some of the key questions below.

### 1. What is the Corporate Sustainability Due Diligence Directive?

The CSDDD forms part of the EU's wider Green Deal initiative, alongside other Directives such as the Corporate Sustainability Reporting Directive (CSRD). Unlike the CSRD, which focuses on general transparency and ESG reporting requirements, the CSDDD sets out:

- obligations on companies relating to

*‘actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in companies’ chains of activities’;*

- liability for violations of these obligations; and
- an obligation to adopt and put into effect a transition plan for climate change mitigation.

In practice, an in-scope company will have a duty to identify, prevent and eradicate (or mitigate) the adverse impact its activities have on human rights and the environment, including slavery, child labour, labour exploitation, biodiversity loss, pollution and destruction of natural heritage. It is worth pointing out that the previous text extended this duty to “indirect” relationships within the supply chain, but this has now been narrowed to business partners that carry out activities directly for the company.

## 2. Which companies are likely to be caught?

Initially the CSDDD was designed to apply to EU companies with a minimum of 500 employees and a turnover of €150 million. However, the revised text increases the thresholds to a minimum of 1000 employees and a net turnover of €450 million. As a consequence, a significant number of companies (reported to be almost 70%) will no longer be caught by the proposed rules.

The revised text has also dropped the previous approach of specifically targeting businesses with a higher risk of environmental or social harm.

As the CSDDD is designed to have extra-territorial effect, non-EU companies with high turnover generated in the EU are also within scope.

Jurisdiction	In-scope companies
Inside the EU	<p>Art 2(1):</p> <ul style="list-style-type: none"> <li>• 1000+ employees and &gt; €450 million (net) <b>worldwide</b> turnover;</li> <li>• a company that does not reach the thresholds but is the ultimate parent company of a group that reaches the thresholds; or</li> <li>• a company (or its parent) that has entered into franchising or licensing agreements in the EU where royalties &gt; €22.5 million and turnover worldwide &gt; €80 million.</li> </ul>
Outside the EU	<p>Art 2(2):</p> <ul style="list-style-type: none"> <li>• generated a net €450 million+ <b>EU</b> turnover;</li> <li>• a company that does not reach the thresholds but is the ultimate parent company of a group that reaches the thresholds; or</li> <li>• a company (or its parent) that has entered into franchising or licensing agreements in the EU where royalties &gt; €22.5 million <b>in the EU</b> and turnover worldwide &gt; €80 million.</li> </ul>

### 3. What will in-scope companies have to do?

Based on the revised text, companies that are within scope of CSDDD would need to carry out the following human rights and environmental due diligence measures:

- implement a **due diligence policy** that is updated annually (including a code of conduct to be followed by the company's employees and subsidiaries) (Article 5);
- **identify** actual or potential adverse impacts in their **own operations, in their subsidiaries** and, where **related to their chains of activities, those of their business partners** (Article 6);
- **prevent** potential, or **end** actual, adverse impacts, or to adequately **mitigate** those impacts where immediate prevention/eradication is not possible (Articles 7 and 8);
- establish a **complaints procedure** in respect of concerns regarding potential and/or actual adverse impacts (Article 9);
- **periodically assess** (at least every 12 months) the effectiveness of the due diligence measures to ensure that adverse impacts are properly identified and prevented/corrected/minimised (Article 10);
- **publicly report** on the due diligence findings (if they are not already subject to reporting requirements under the CSRD) (Article 11); and
- adopt a plan to ensure that their business model is compatible with the goal to limit global warming to 1.5 °C in line with the Paris Agreement (Article 15).

### 4. Penalties and enforcement

The CSDDD states that Member State enforcement must ensure dissuasive and proportionate enforcement. Member states will need to designate a supervisory authority in charge of investigating and imposing penalties, which can include fines of up to 5% of companies' net worldwide turnover.

Additionally, the CSDDD will potentially increase the litigation risk exposure for in-scope companies by providing direct compensation rights for victims. Member States will be required to lay down rules governing the civil liability of companies for damages caused to a natural or legal person, provided that the company intentionally or negligently failed to prevent and mitigate potential adverse impacts. Limitation periods for bringing civil liability claims for damages should be at least five years.

## 5. When will the CSDDD come into force?

As noted above, the revised text will be considered by the EU Parliament at the end of April 2024. Member States will have up to two years to adopt and publish regulations to comply with the CSDDD. The revised text has added a staged approach for compliance in order to allow companies longer to get ready for the new rules (that is, a period of between three to five years from the entry into force of the Directive, depending on the size of the company).

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