WHITE & CASE

# Mind the Gap: A Comparative Analysis of the CSRD, the CSDDD and the SFDR as Green Deal 2.0 (2024 to 2029) unfolds

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The European Green Deal[1] is a suite of new EU laws designed to support a just transition, first to reduce CO2 emissions by 55% by 2030 and with the ultimate aim of achieving climate neutrality by 2050 whilst at the same time supporting economic growth along the way (the "**Green Deal**"). The four key constituents of the Green Deal are (i) the Sustainable Finance Disclosure Regulation (the "**SFDR**"),[2] (ii) the Taxonomy Regulation (the "**TR**"),[3] (iii) the Corporate Sustainability Reporting Directive (the "**CSRD**"),[4] and (iv) the Corporate Sustainability Due Diligence Directive (the "**CSDDD**").[5] The constituents of the Green Deal are intended to work hand-in-hand, however, the competing policy objectives which have emerged since the pandemic and the war in Ukraine have resulted in some divergence between the constituent parts, notably between the CSDDD as finally adopted in 2024 and the CSRD which became effective in 2023. The June 2024 elections for the European Parliament are reflective of this recalibration of EU policy with defence, immigration and economic growth moving alongside the Green Deal as the focus for the next term of the EU institutions (2024 to 2029). We consider this divergence in this client alert and how clients may approach implementation of the Green Deal against the background of an evolving political situation.

## Sustainability defined

The SFDR and the TR define 'sustainable investments' to mean economic activities which contribute to (i) 'environmental objectives' (as further defined in the TR), or (ii) social objectives (as further defined in the SFDR). The SFDR also introduced a regime of mandatory sustainability disclosures for larger (500 or more employees) financial institutions regulated in the EU, as well as creating a voluntary framework for funds which elect to promote environmental or social objectives, or which have sustainability investing as their core objective (so called Article 8 funds and Article 9 funds). The CSRD is set to dramatically expand the universe of sustainable investments as it represents the first meaningful global law intended to impose significant sustainability obligations on big businesses globally including most notably the requirement to have Paris Agreement aligned transition plans and the requirement to recalibrate strategy and operations to benefit all stakeholders. The first audited CSRD reports are due from many public companies by 30 June 2025 and from many private companies by 30 June 2026. The CSDDD is the final part of the Green Deal, and its final form was heavily negotiated: CSDDD was announced to have been politically agreed in December 2023 before it was renegotiated by the Council in spring 2024. There is significant overlap between the CSRD and the CSDDD though the latter is more detailed in terms of the requirement for companies to develop detailed plans to mitigate and then eliminate adverse impacts on the environment and on human rights, both from their own operations and throughout their value chains. Together, these constituents of the Green Deal create a coherent framework that makes it easier for investors, companies and the public to understand, compare and make informed decisions about sustainable financial products and the sustainability profile of businesses more generally.

## CSRD, CSDDD and SFDR Compared

Whilst the CSRD focuses on expanding sustainability reporting and the SFDR ensures that financial products are assessed and presented transparently, the CSDDD emphasises the need for companies to actively engage in responsible behaviour, particularly in social and environmental matters.

### Complementary approaches without complete synchronicity

The CSRD, the CSDDD and the SFDR share the common goal of enhancing corporate accountability and transparency related to sustainability matters. However, whilst the core objectives of the constituents of the Green Deal are aligned, there is divergence in both applicability and the detailed substantive requirements which has caused some confusion in the market not least in areas of potential overlap. The table below looks at the differences in applicability thresholds and some of the key substantive differences.

| | CSRD | CSDDD | SFDR |
|---|---|---|---|
| **Which entities are in scope?** | Includes:<br>• Companies with equity securities listed or traded in the EU<br>• Large entities meeting two or more of the following criteria:<br>1. > 250 employees<br>2. > EUR 50m turnover<br>3. > EUR 25m balance sheet total<br>• Non-EU parent company with:<br>• (i) an EU-established subsidiary; or (ii) an EU branch in each case with > EUR 150m net turnover and at least one subsidiary or branch in the EU | EU companies with:<br>1. > 1000 employees and<br>2. > EUR 450m worldwide net turnover[6]<br><br>Non-EU Companies with > EUR 450m net turnover in the EU[7] | Financial market participants[8] and financial advisers[9] each as defined in Article 2 of the SFDR |
| **Objectives** | Aims to facilitate the EU's green transition away from fossil fuels and reaching climate neutrality by 2050[10] | Aims to introduce mandatory human rights and environmental due diligence for large companies operating in the EU[11] | Aims to facilitate "the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products"[12] |
| **Obligations** | Report on sustainability matters in line with a detailed set of disclosure standards known as the European Sustainability Reporting Standards (ESRS) | Identify and where possible mitigate or eliminate potential adverse human rights and environmental impacts in a company's own | In-scope entities must:<br>1. disclose the adverse impacts of investment decisions on sustainability factors; |

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| developed by the European Financial Reporting Advisory Group (EFRAG). | operations, that of subsidiaries and throughout a company's value chain. | 2. disclose whether a sustainability event could negatively impact material investment; and<br>3. provide additional disclosures where a product is marketed as an Article 8 or Article 9 product. |

## Mind the Gap

**CSRD – reporting focus:**

The sustainability reporting requirements under the CSRD are wide-ranging and include detailed reporting requirements relating to:

- **The Environment:** including reporting relating to climate change mitigation and adaptation, water and marine conservation, resource use and the circular economy, pollution and biodiversity.
- **Human Rights:** including reporting relating to equal treatment and opportunities, employment and inclusion of people with disabilities, adequate working conditions and adherence to a wide range of international human rights treaties.
- **Governance:** including reporting relating to the role of management and the board in setting and implementing the sustainability strategy of the business; internal control and risk management systems, access to third-party sustainability expertise (auditors, lawyers and consultants).

## SFDR - greenwashing prevention

The SFDR disclosure requirements have anti-greenwashing at their core and can be divided into organisation-level reporting and fund/product-level reporting.

**At the organisational level, firms must at least disclose:**

- the potentially negative impacts an investment decision may have on ESG factors, such as by way of water usage, energy consumption, or through processes which impinge human rights or are harmful to biodiversity;
- whether they consider such ESG risks in their investment decision-making process (this is obligatory for firms with 500 or more employees); and
- how remuneration policies align with the integration of sustainability risk.

**At the fund/product level, organisations must at least disclose:**

- how sustainability risks might impact financial performance;
- whether and how the product considers potentially negative impacts on sustainability risk; and
- how products labelled as sustainable investments monitor, measure and assess their sustainability impact.

In scope entities (unless they are exempt)[13] must produce annual **Principal Adverse Sustainability Impact Statements** ("**PASIS**"). A PASIS consists of 18 mandatory indicators, and two elective ones chosen from 46 options. These indicators consist of quantitative questions about the potentially negative impact of a fund or organisation on ESG factors. These disclosures apply at both the fund and entity level.

### CSDDD diligence and liability:

All three acts address sustainability matters comprehensively, but the CSDDD provides a more explicit delineation of rights and prohibitions.

- The CSDDD is primarily concerned with the operational practices of companies and their value chains. It mandates that companies actively manage and mitigate their adverse environmental and human rights impacts. This involves conducting thorough due diligence to identify, mitigate and ultimately prevent potential and actual adverse impacts on human rights and the environment, ensuring that companies not only comply with legal standards but also uphold ethical responsibilities across their operations and value chains.
- Whilst the banks' institutional clients and asset managers' investee companies were ultimately carved out of the initial CSDDD due diligence scope (this was part of the Council's retrade in spring 2024) this decision will be reviewed and in any event, some aspects of this due diligence remain in scope for financial institutions when carrying out their materiality assessments under CSRD.
- Whilst enforcement under the CSRD depends upon enforcement action by Member States; the CSDDD, in addition to enforcement by Member States, will introduce enforcement via stakeholders through the courts. Earlier national analogues of the CSDDD, such as the French Duty of Vigilance Law in 2017, have been relied on already by NGOs in bringing claims against companies both for environmental harms and for human rights violations.

## Conclusion

The SFDR, the CSRD and the CSDDD serve distinct, complimentary and sometimes overlapping purposes in enhancing corporate accountability for sustainability disclosure, reporting and due diligence. The final text of each piece of the Green Deal can be seen as reflective of the relative political support for the Green Deal at each applicable point in time over the last four years. The third quarter in 2024 looks set to be key for clients to gain a better perspective on the likely direction and tone for the Green Deal over the next five years and whilst "it's tough to make predictions, especially about the future" (Yogi Berra), if confirmed for a second term in July 2024, Ursula von der Leyen is likely to keep a keen focus on the Green Deal though with a shift in tone, focusing on the economic dimensions of the Green Deal.

1 https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_encreated

2 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R2088

3 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0852

4 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464

5 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071

6 Article 2(1) CSDDD

7 Article 2(2), CSDDD

8 FMPs are defined in Article 2(1) SFDR as: an insurance undertaking, an investment firm, an institution for occupational retirement provision, a manufacture of a pension product, an alternative investment fund manager, a pan-European personal pension product provider, a manager of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013, a manager of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013, a management company of an undertaking for collective investment in transferable securities and a credit institution which provides portfolio management.

9 FAs are defined in Article 2(11) SFDR as: an insurance intermediary which provides insurance advice, an insurance undertaking which provides insurance advice, a credit institution which provides investment advice, an investment firm which provides investment advice, an AIFM which provides investment advice and a UCITS management company which provides investment advice.

10 Recital 1, 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.
11 Recital 5, CSDDD.
12 Article 1, SFDR.
13 Financial market participants with less than 500 employees are not required to produce a PAI statement however, they do have to comply or explain.