

The Corporate Sustainability Due Diligence Directive: Scope and Company Obligations

John Gaffney*

Introduction

Directive (EU) 2024/1760 on corporate sustainability due diligence (the “CSDDD”) was published in the *Official Journal of the European Union* on 5 July 2024 and entered into force on 25 July 2024.¹

The CSDDD sets out rules:

- (i) for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and those of their business partners in their value chains;
- (ii) on corporate liability for violations of those obligations; and
- (iii) on companies’ obligation to adopt and put into effect a transition plan for climate change mitigation in line with the Paris Agreement.

This article reviews the background to, scope of, and obligations arising under the CSDDD.²

Background

The background to and objectives of the CSDDD are set out in the Explanatory Memorandum that accompanied the Commission’s proposal for the Directive.³ The behaviour of companies across all sectors of the economy is viewed by the European Commission as key to the success of the EU’s transition to a climate-neutral and green economy in line with the European Green Deal and in delivering on the UN Sustainable Development Goals, including on its human rights and environment-related objectives.⁴ This requires implementing comprehensive mitigation processes for adverse human rights and environmental

impacts in their value chains, integrating sustainability into corporate governance and management systems, and framing business decisions in terms of human rights, climate and environmental impact, as well as in terms of the company’s resilience in the longer term.⁵

EU companies rely on global value chains. Considering the significant number of their suppliers in the EU and elsewhere and the overall complexity of value chains, EU companies, including the large ones, may encounter difficulties in identifying and mitigating risks in their value chains linked to respect for human rights or environmental impacts.⁶ Using the existing international voluntary standards on responsible business conduct, an increasing number of EU companies are using value chain due diligence as a tool to identify risks in their value chain and build resilience to sudden changes in the value chains, but companies may also face difficulties when considering the use of value chain due diligence for their activities. Such difficulties can be due, for instance, to a lack of legal clarity regarding corporate due diligence obligations, the complexity of value chains, market pressure, information deficiencies, and costs. Consequently, the benefits of value chain due diligence are not widespread among European companies and across economic sectors.⁷

Moreover, voluntary action does not appear to have resulted in large-scale improvement across sectors, thus giving rise to negative externalities from EU production and consumption both inside and outside the EU. Certain EU companies have been associated with adverse human rights and environmental impacts, including in their value chains. Adverse impacts include human rights issues such as forced labour, child labour, inadequate workplace health and safety, exploitation of workers, and environmental impacts such as greenhouse gas emissions, pollution, or biodiversity loss and ecosystem degradation.⁸

In the last years, emerging legal frameworks on corporate due diligence in some Member States reflect the increasing desire to support companies in their endeavour to perform due diligence in their value chains and foster business conduct that respects human rights, children’s rights and the environment. On the other hand, they also lead to fragmentation and risk undermining legal certainty and a level playing field for companies in the single market.⁹

Against this background, the CSDDD aims to ensure that:

“companies active in the internal market contribute to sustainable development and the sustainability transition of economies and societies through the identification, and where necessary, prioritisation, prevention and mitigation, bringing to an end,

* Partner, Beauchamps LLP.

¹ 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, 2024/1760, 5.7.2024. EU Member States have until 26 July 2026 to transpose the Directive into national law.

² For reasons of space, this article does not address other issues covered by the CSDDD, including model contractual clauses, guidelines, accompanying measures, authorised representatives, supervisory authorities and the powers of supervisory authorities, the European Network of Supervisory Authorities, public support, public procurement and public concessions, and review and reporting.

³ Explanatory Memorandum to COM (2022) 71 - Corporate Sustainability Due Diligence (the “Explanatory Memorandum”).

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

minimisation and remediation of actual or potential adverse human rights and environmental impacts connected with companies' own operations, operations of their subsidiaries and of their business partners in the chains of activities of the companies, and ensuring that those affected by a failure to respect this duty have access to justice and legal remedies."¹⁰

Substantive and Temporal Scope of the CSDDD

The CSDDD applies to companies incorporated in the EU that fulfil one of the following conditions:

- The company had more than 1,000 employees¹¹ on average and had a net worldwide turnover of more than EUR 450 million in the last financial year.
- The company did not reach the foregoing thresholds but is the ultimate parent company of a group that reached those thresholds in the last financial year.
- The company entered into (or is the ultimate parent company of a group that entered into) franchising or licensing agreements in the EU in return for royalties with independent third-party companies, provided:
 - the agreements ensure a common identity, a common business concept and the application of uniform business methods,
 - in the last financial year, the royalties amounted to more than EUR 22.5 million and the company had or is the ultimate parent company of a group that had a net worldwide turnover of more than EUR 80 million.¹²

The CSDDD will also apply to companies incorporated outside the EU that fulfil similar conditions.¹³

¹⁰ Recital (16) of the CSDDD.

¹¹ The number of part-time employees is to be calculated on a full-time equivalent basis. Temporary agency workers and other workers in non-standard forms of employment, provided they fulfil the criteria for determining the status of worker as established by the Court of Justice of the European Union, must be included in the calculation of the number of employees in the same way as if they were workers employed directly for the same period by the company (Article 2(4)).

¹² Where a company meets the conditions summarised above, the CSDDD will only apply if those conditions are met in two consecutive financial years (Article 2(5)).

¹³ The Member State competent to regulate matters covered by the CSDDD in respect of companies incorporated outside the EU is the Member State in which that company has a branch. If a company does not have a branch in any Member State, or has branches located in different Member States, the competent Member State is that in which that company generated the highest net turnover in the EU in the financial year preceding the last financial year (Article 2(7)). Thus, Ireland will have regulatory authority under the CSDDD in respect of non-EU in-scope companies having a branch or generating the highest net turnover in the EU in the Republic of Ireland.

Temporally, EU Member States, including Ireland, will be required to apply the CSDDD from:

- **26 July 2027:** EU companies that have more than 5,000 employees on average and generated a net worldwide turnover of more than EUR 1.5 billion in the last financial year preceding 26 July 2027;
- **26 July 2028:** EU companies that have more than 3,000 employees on average and generated a net worldwide turnover of more than EUR 900 million in the last financial year preceding 26 July 2028;
- **26 July 2027:** non-EU companies that generate a net turnover of more than EUR 1.5 billion in the EU, in the financial year preceding the last financial year preceding 26 July 2027;
- **26 July 2028:** non-EU companies that generate a net turnover of more than EUR 900 million in the EU, in the financial year preceding the last financial year preceding 26 July 2028;
- **26 July 2029:** all other companies referenced above.¹⁴

Due Diligence Obligations of In-Scope Companies¹⁵

Companies will be required to conduct risk-based human rights and environmental due diligence by:

- integrating due diligence into their policies and risk management systems (Article 7);
- identifying and assessing actual or potential adverse impacts (Article 8) and, where necessary, prioritising actual and potential adverse impacts (Article 9);
- preventing and mitigating potential adverse impacts (Article 10);
- bringing actual adverse impacts to an end and minimising their extent (Article 11);
- providing remediation for actual adverse impacts (Article 12);
- carrying out meaningful engagement with stakeholders (Article 13);
- establishing and maintaining a notification mechanism and a complaints procedure (Article 14);
- monitoring the effectiveness of their due diligence policy and measures (Article 15);
- publicly communicating on due diligence (Article 16).¹⁶

¹⁴ Article 37. An exception applies to the measures necessary to comply with Article 16 (see below), which Member States must apply to those companies a year later to each of the foregoing dates.

¹⁵ All references to "companies" in this article are to companies falling within the scope of the CSDDD.

¹⁶ Article 5(1).

Integrating Due Diligence into Company Policies and Risk Management Systems (Article 7)

In-scope companies will have to integrate due diligence into all their relevant policies and risk management systems and have in place a due diligence policy that ensures risk-based due diligence.¹⁷ The policy will have to be developed in prior consultation with the company's employees and their representatives, and contain all of the following:

- a description of the company's approach, including in the long term, to due diligence;
- a code of conduct describing rules and principles to be followed throughout the company and its subsidiaries, and the company's direct or indirect business partners; and
- a description of the processes put in place to 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 referred to above and to extend that code's application to business partners).¹⁸

Companies will be required to update their due diligence policies without undue delay after a significant change occurs, and review and, where necessary, update them at least every 24 months.¹⁹

Identifying and Assessing Actual and Potential Adverse Impacts (Article 8)

Companies will be required to take appropriate measures to identify and assess actual and potential adverse impacts arising from their own operations or those of their subsidiaries and, where related to their chains of activities, those of their business partners. In this regard, companies will have to take appropriate measures to:

- map their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, to identify general areas where adverse impacts are most likely to occur and to be most severe; and
- based on the results of such mapping, carry out an in-depth assessment of their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in the areas where adverse impacts were identified to be most likely to occur and most severe.²⁰

Companies will be entitled—for the purposes of identifying and assessing the adverse impacts based on, where appropriate, quantitative and qualitative information—to

make use of appropriate resources, including independent reports and information gathered through the notification mechanism and the complaints procedure provided for in Article 14.²¹

Where information necessary for the in-depth assessment can be obtained from business partners at different levels of the chain of activities, the company will have to prioritise requesting such information, where reasonable, directly from business partners where the adverse impacts are most likely to occur.²²

Prioritisation of Identified Actual and Potential Adverse Impacts (Article 9)

Where it is not feasible to prevent, mitigate, end or minimise all identified adverse impacts at the same time and to their full extent, companies will have to prioritise adverse impacts identified to prevent potential adverse impacts or bring actual adverse impacts to an end, based on the severity and likelihood of the adverse impacts.²³

Preventing Potential Adverse Impacts (Article 10)

Companies will be required to take appropriate measures to prevent, or where prevention is not possible or not immediately possible, adequately mitigate, potential adverse impacts that have been, or should have been, identified.²⁴ To determine the appropriate measures, due account must be taken of:

- whether the potential adverse impact may be caused only by the company;
- whether it may be caused jointly by the company and a subsidiary or business partner, through acts or omissions; or whether it may be caused only by a company's business partner in the chain of activities;
- whether the potential adverse impact may occur in the operations of a subsidiary, direct business partner or indirect business partner; and
- the ability of the company to influence its business partner that may cause or jointly cause the potential adverse impact.²⁵

Furthermore, companies will be required to take the following appropriate measures, where relevant:

- where necessary due to the nature or complexity of the measures required for prevention, develop and implement without undue delay a prevention action plan, with reasonable and clearly defined timelines for the implementation of appropriate measures and qualitative and quantitative

¹⁷ Article 7(1).

¹⁸ Article 7(2).

¹⁹ Article 7(3).

²⁰ Article 8(2).

²¹ Article 8(3).

²² Article 8(4).

²³ Article 9(1) and (2).

²⁴ Article 10(1).

²⁵ *Ibid.*

indicators for measuring improvement;²⁶

- seek contractual assurances from a direct business partner that it will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by establishing corresponding contractual assurances from its partners to the extent that their activities are part of the company's chain of activities;
- make necessary financial or non-financial investments in, adjustments or upgrades of, for example, facilities, production or other operational processes and infrastructures;
- make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations, including purchasing practices, design and distribution practices;
- provide targeted and proportionate support to an SME which is a business partner of the company, where necessary considering the resources, knowledge and constraints of the SME; and
- in compliance with EU law, including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to prevent or mitigate the adverse impact, in particular where no other measure is suitable or effective.²⁷

Moreover, companies will be entitled to take, where relevant, appropriate measures such as engaging with a business partner about the company's expectations regarding preventing and mitigating potential adverse impacts, or providing or enabling access to capacity-building, guidance, administrative and financial support such as loans or financing, while taking into consideration the resources, knowledge and constraints of the business partner.²⁸

As regards potential adverse impacts that cannot be prevented or adequately mitigated by the measures listed above, the company may seek contractual assurances from an indirect business partner, with a view to achieving compliance with the company's code of conduct or a prevention action plan.²⁹

Where the potential adverse impacts cannot be prevented or adequately mitigated by the measures set out above, the company will, as a last resort, be required to refrain from entering into new or extending existing relations with a business partner in connection with which,

²⁶ Companies may develop their action plans in cooperation with industry or multi-stakeholder initiatives and the prevention action plan must be adapted to companies' operations and chains of activities (Article 10(3)(b)).

²⁷ Article 10(2).

²⁸ Article 10(3).

²⁹ Article 10(4).

or in the chain of activities of which, the impact has arisen and must, where the law governing their relations so entitles them, take the following actions, as a last resort:

- adopt and implement an enhanced prevention action plan for the specific adverse impact without undue delay, by using or increasing the company's leverage through the temporary suspension of business relationships with respect to the activities concerned;
- if there is no reasonable expectation that those efforts would succeed, or if the implementation of the enhanced prevention action plan has failed to prevent or mitigate the adverse impact, terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.³⁰

Prior to temporarily suspending or terminating a business relationship, the company will have to assess whether the adverse impacts from doing so can be reasonably expected to be manifestly more severe than the adverse impact that cannot be prevented or adequately mitigated. Should that be the case, the company will not be required to suspend or to terminate the business relationship and must be in a position to report to the competent supervisory authority about the duly justified reasons for such decision.³¹

Where the company decides to temporarily suspend or to terminate the business relationship, it will be required to take steps to prevent, mitigate or end the impacts of the suspension or termination, must provide reasonable notice to the business partner concerned, and must keep that decision under review.³²

Where the company decides not to temporarily suspend or terminate the business relationship pursuant to this Article, it will have to monitor the potential adverse impact and periodically assess its decision and whether further appropriate measures are available.³³

Bringing Actual Adverse Impacts to an End (Article 11)

Companies will be required to take appropriate measures to bring actual adverse impacts that have been or should have been identified to an end.³⁴

In order to determine the appropriate measures, due account must be taken of:

- whether:
 - a. the actual adverse impact is caused only by the company;
 - b. the actual adverse impact is caused jointly by the company and a subsidiary or business

³⁰ Article 10(6).

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ Article 11(1).

- partner, through acts or omissions; or
- c. the actual adverse impact is caused only by a company's business partner in the chain of activities;
- whether the actual adverse impact occurred in the operations of a subsidiary, direct business partner or indirect business partner; and
 - the ability of the company to influence the business partner that caused or jointly caused the actual adverse impact.³⁵

Where the adverse impact cannot immediately be ended, companies will have to minimise the extent of that impact and will be required to take the following appropriate measures, where relevant:

- neutralise the adverse impact or minimise its extent; such measures must be proportionate to the severity of the adverse impact and to the company's implication in the adverse impact;
- where necessary because the adverse impact cannot be immediately brought to an end, without undue delay develop and implement a corrective action plan with reasonable and clearly defined timelines for the implementation of appropriate measures and qualitative and quantitative indicators for measuring improvement;
- seek contractual assurances from a direct business partner that it will ensure compliance with the company's code of conduct and, as necessary, a corrective action plan;
- make necessary financial or non-financial investments in, adjustments or upgrades of, for example, facilities, production or other operational processes and infrastructures;
- make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations;
- provide targeted and proportionate support to an SME which is a business partner of the company, where necessary considering the resources, knowledge and constraints of the SME;
- in compliance with EU law, including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end or minimise the extent of such impact, in particular where no other measure is suitable or effective;
- provide remediation.³⁶

³⁵ Ibid.

³⁶ Article 11(3).

Moreover, companies will be entitled to take, where relevant, appropriate measures, such as engaging with a business partner about the company's expectations regarding bringing actual adverse impacts to an end or minimising the extent of such impacts, or providing or enabling access to capacity-building, guidance, administrative and financial support such as loans or financing, while taking into consideration the resources, knowledge and constraints of the business partner.³⁷

As regards actual adverse impacts that cannot be ended or the extent of which cannot be adequately minimised by the appropriate measures listed above, the company may seek contractual assurances from an indirect business partner, with a view to achieving compliance with the company's code of conduct or a corrective action plan.³⁸

Furthermore, as regards actual adverse impacts that cannot be brought to an end or the extent of which cannot be minimised, the company will have to, as a last resort, be required to refrain from entering into new or extending existing relations with a business partner in connection with which, or in the chain of activities of which, the impact has arisen. And where the law governing their relations so entitles them, take similar actions as those enumerated in respect of Article 10 as a last resort.³⁹

Prior to temporarily suspending or terminating a business relationship, the company will have to assess whether the adverse impacts of doing so can be reasonably expected to be manifestly more severe than the adverse impact that cannot be ended or the extent of which cannot be adequately minimised. Should that be the case, the company will not be required to suspend or to terminate the business relationship.⁴⁰

Companies may temporarily suspend or terminate the business relationship in contracts except for contracts where the parties are obliged by law to enter into them. Where the company decides to temporarily suspend or to terminate the business relationship, the company will have to take steps to prevent, mitigate or end the impacts of the suspension or termination, provide reasonable notice to the business partner and keep that decision under review. Where the company decides not to temporarily suspend or terminate the business relationship, the company will be required to monitor the actual adverse impact and periodically assess its decision and whether further appropriate measures are available.⁴¹

Remediation of Actual Adverse Impacts (Article 12)

Where a company has caused or jointly caused an actual adverse impact, the company will have to provide remediation. Where the actual adverse impact is caused only by the company's business partner, voluntary

³⁷ Article 11(4).

³⁸ Article 11(5).

³⁹ Article 11(7).

⁴⁰ Ibid.

⁴¹ Ibid.

remediation may be provided by the company. The company may also use its ability to influence the business partner that is causing the adverse impact to provide remediation.⁴²

Meaningful Engagement with Stakeholders (Article 13)

Companies will be required to take appropriate measures to carry out effective engagement with stakeholders.⁴³

Consultation of stakeholders will have to take place at the following stages of the due diligence process:

- when gathering the necessary information on actual or potential adverse impacts;
- when developing prevention and corrective action plans and developing enhanced prevention and corrective action plans;
- when deciding to terminate or suspend a business relationship;
- when adopting appropriate measures to remediate adverse impacts;
- as appropriate, when developing qualitative and quantitative indicators for monitoring.⁴⁴

Where it is not reasonably possible to carry out effective engagement with stakeholders to the extent necessary to comply with the requirements of the CSDDD, companies will have to consult additionally with experts who can provide credible insights into actual or potential adverse impacts.⁴⁵

In consulting stakeholders, companies will have to identify and address barriers to engagement and must ensure that participants are not the subject of retaliation or retribution, including by maintaining confidentiality or anonymity.⁴⁶ Companies will have to be allowed to fulfil their obligations through industry or multi-stakeholder initiatives, as appropriate. However, the use of industry and multi-stakeholder initiatives will not be sufficient to fulfil the obligation to consult the company's own employees and their representatives.⁴⁷

Notification Mechanism and Complaints Procedure (Article 14)

Companies will have to enable the following persons and entities to submit complaints to them where those persons or entities have legitimate concerns regarding actual or potential adverse impacts with respect to the companies' own operations, the operations of their subsidiaries or the operations of their business partners in the chains of activities of the companies:

- natural or legal persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact, and the legitimate representatives of such persons on behalf of them, such as civil society organisations and human rights defenders;
- trade unions and other workers' representatives representing natural persons working in the chain of activities concerned; and
- civil society organisations that are active and experienced in related areas where an adverse environmental impact is the subject matter of the complaint.⁴⁸

Companies will be required to establish a fair, publicly available, accessible, predictable and transparent procedure for dealing with the complaints, including a procedure where a company considers a complaint to be unfounded, and inform the relevant workers' representatives and trade unions of that procedure.⁴⁹

Companies will have to take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organisation submitting the complaint, in accordance with national law. Where information needs to be shared, it is to be in a manner that does not endanger the complainant's safety, including by not disclosing that complainant's identity.

Complainants will be entitled to:

- request appropriate follow-up on the complaint from the company with which they have filed a complaint;
- meet with the company's representatives at an appropriate level to discuss actual or potential severe adverse impacts that are the subject matter of the complaint, and potential remediation;
- be provided by the company with the reasons a complaint has been considered founded or unfounded and, where considered founded, with information on the steps and actions taken or to be taken.

Companies will be required to establish an accessible mechanism for the submission of notifications by persons and entities where they have information or concerns regarding actual or potential adverse impacts with respect to their own operations, the operations of their subsidiaries and the operations of their business partners in the chains of activities of the companies.⁵⁰

The mechanism will have to ensure that notifications can be made either anonymously or confidentially in accordance with national law. Companies must take

⁴² Article 12(1) and (2).

⁴³ Article 13(1).

⁴⁴ Article 13(3).

⁴⁵ Article 13(4).

⁴⁶ Article 13(5).

⁴⁷ Article 13(6).

⁴⁸ Article 14(1) and (2).

⁴⁹ Article 14(3).

⁵⁰ Article 14(4).

reasonably available measures to prevent any form of retaliation by ensuring that the identity of persons or entities that submit notifications remains confidential, in accordance with national law. The company may inform persons or entities that submit notifications about steps and actions taken or to be taken, where relevant.⁵¹

Companies will have to be allowed to fulfil their obligations through participation in collaborative complaints procedures and notification mechanisms, including those established jointly by companies, through industry associations, multi-stakeholder initiatives or global framework agreement.⁵²

Monitoring (Article 15)

Companies will be required to:

- carry out periodic assessments of their own operations and measures, those of their subsidiaries and, where related to the chain of activities of the company, those of their business partners; and
- assess the implementation and to monitor the adequacy and effectiveness of the identification, prevention, mitigation, ending and minimisation of the extent of adverse impacts.⁵³

Such assessments are to be based, where appropriate, on qualitative and quantitative indicators and be carried out without undue delay after a significant change occurs, but at least every 12 months and whenever there are reasonable grounds to believe that new risks of the occurrence of those adverse impacts may arise.⁵⁴ Where appropriate, the due diligence policy, the adverse impacts identified and the appropriate measures that derived must be updated in accordance with the outcome of such assessments and with due consideration of relevant information from stakeholders.⁵⁵

Communicating (Article 16)

Generally, companies will have to report on the matters covered by the CSDDD by publishing on their website an annual statement:

- in an official EU language or in a language that is “customary in the sphere of international business”;
- within a reasonable period, but no later than 12 months after the balance sheet date of the financial year for which the statement is drawn up (or, for companies voluntarily reporting in accordance with Directive 2013/34/EU, by the date of publication of the annual financial statements);

⁵¹ Article 14(5).

⁵² Article 14(6).

⁵³ Article 15.

⁵⁴ Ibid.

⁵⁵ Ibid.

- in the case of a non-EU incorporated company, the statement must also include the information regarding the company's authorised representative.⁵⁶

Transition Plan for Climate Change Mitigation (Article 22)

Companies will have to adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through best efforts, that the business model and strategy of the company will be compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality.⁵⁷

The design of the transition plan for climate change mitigation will have to contain:

- time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and, where appropriate, absolute emission reduction targets for greenhouse gas for scope 1, scope 2 and scope 3 greenhouse gas emissions for each significant category;
- a description of decarbonisation levers identified and key actions planned to reach the targets referred to above, including, where appropriate, changes in the product and service portfolio of the company and the adoption of new technologies;
- an explanation and quantification of the investments and funding supporting the implementation of the transition plan for climate change mitigation; and
- a description of the role of the administrative, management and supervisory bodies regarding the transition plan for climate change mitigation.⁵⁸

Transition plans for climate change mitigation will have to be updated every 12 months and contain a description of the progress the company has made towards achieving the targets referred to above.⁵⁹

Penalties, Civil liability of Companies and the Right to Full Compensation (Articles 27 and 29)

EU Member States will be required to lay down the rules on penalties, including pecuniary penalties, applicable to infringements of the provisions of national law adopted pursuant to the CSDDD, and will have to take all measures necessary to ensure that they are implemented. The

⁵⁶ Article 16(1); companies that are subject to sustainability reporting requirements in accordance with Article 19a, 29a or 40a of Directive 2013/34/EU, including those that are exempted in accordance with Article 19a(9) or Article 29a(8) of that Directive, are exempted.

⁵⁷ Article 22(1).

⁵⁸ Ibid.

⁵⁹ Article 22(3).

penalties provided for are to be effective, proportionate and dissuasive.⁶⁰

A company will be held liable for damage caused to a natural or legal person, provided that:

- the company intentionally or negligently failed to comply with the obligations laid down in Articles 10 and 11, when the right, prohibition or obligation listed in the Annex to the CSDDD is aimed at protecting the natural or legal person; and
- because of such failure, damage to the natural or legal person's legal interests that are protected under national law was caused.⁶¹

A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.⁶²

Where a company is held liable, a natural or legal person must have the right to full compensation for the damage, in accordance with national law. Full compensation under the CSDDD may not lead to overcompensation, whether by means of punitive, multiple or other types of damages.⁶³

Conclusion

As may be seen, the CSDDD establishes a general horizontal framework (*lex generalis*) for sustainability due diligence for very large EU and non-EU companies. Sectoral laws pursuing the same objectives but providing for more extensive or more specific obligations (*lex specialis*) supersede the Directive's general requirements in case of conflict. Furthermore, the CSDDD makes cross-reference to existing legislation for certain duties.⁶⁴ For instance, as regards public communication on due

diligence, the Directive relies on the reporting under the Corporate Sustainability Reporting Directive (CSRD),⁶⁵ thereby avoiding duplication for companies in the scope of both sets of rules.⁶⁶

As a result of the CSDDD, the European Commission expects that companies operating in the EU will benefit from a harmonised legal framework in the EU (and resulting certainty and a level playing field), greater customer trust and employee commitment, better awareness of negative human rights and environmental impacts, better risk management, enhanced resilience, increased innovation and competitiveness, and increased attractiveness for employees who prioritise sustainability performance and for sustainability-oriented investors.⁶⁷

The Commission also suggests that the CSDDD will benefit individuals through better protection of human rights, a healthier environment for present and future generations, including climate change mitigation, involvement in corporate decision-making through meaningful stakeholder engagement, more rights to hold companies to account (through complaints processes, supervisory authorities or courts), and better access to remedies for victims of human rights or environmental abuses, through judicial (civil liability) and non-judicial mechanisms (complaints mechanisms established by the companies).⁶⁸

It remains to be seen if the CSDDD will fulfil these great expectations, such that companies will integrate sustainability considerations into their business operations and value chains and thereby improve risk management, resilience, innovativeness, and overall competitiveness.

⁶⁰ Article 27(1).

⁶¹ Article 29(1).

⁶² *Ibid.*

⁶³ Article 29(2).

⁶⁴ European Commission, "Directive on Corporate Sustainability Due Diligence Frequently asked questions" (see: https://commission.europa.eu/document/download/7a3e9980-5fda-4760-8f25-bc5571806033_en?filename=240719_CSDD_FAQ_final.pdf).

⁶⁵ Implemented in Ireland by the European Union (Corporate Sustainability Reporting) Regulations 2024 (S.I. No. 336 of 2024).

⁶⁶ European Commission, "Directive on Corporate Sustainability Due Diligence Frequently asked questions" (see: https://commission.europa.eu/document/download/7a3e9980-5fda-4760-8f25-bc5571806033_en?filename=240719_CSDD_FAQ_final.pdf).

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*