

CSDDD

COMPANIES SUBJECT TO NEW HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE RULES

VdA EXPERTISE

July 2024



Directive (EU) 2024/1760 ("CSDDD") on Corporate Sustainability Due Diligence requires companies to integrate adverse impacts on human rights and the environment into their policies and risk management systems. The directive was published on 5 July 2024.

Background

The CSDD breaks new ground in two dimensions: (i) the **due diligence** towards human rights and the environment, which covers the operation of companies, their subsidiaries and their business partners throughout the value chains, (ii) the adoption and implementation of a **transition plan** to mitigate climate change.

The CSDDD applies to:

- i. EU and non-EU companies, including parent companies, with more than 1,000 employees and a turnover of more than 450 million euros;
- ii. franchises with a turnover of more than 80 million euros, provided that at least 22.5 million are generated by royalties.

The directive allows for stricter or more specific obligations in national legislation.

Due diligence

Due diligence covers the areas of: (i) human rights and (ii) the environment.

Companies should notably:

- i. integrate due diligence into all of their risk management policies and systems, ensuring risk-based due diligence, taking into account actual and potential adverse impacts on human rights and the environment with regard to their own operations and those of their subsidiaries and, when related to their value chains, also the operations of their upstream and downstream business partners;
- ii. identify and assess actual and potential adverse impacts and prioritize them, if necessary, according to their severity;
- iii. prevent or, where this is not possible, mitigate potential adverse impacts, notably by drawing up a prevention action plan and obtaining contractual guarantees from direct trading partners;
- iv. stop the actual adverse impacts or, if this is not possible, neutralize or minimize the extent of the impacts, notably through a corrective plan and by obtaining contractual guarantees from direct trading partners;

- iii. if they failed to succeed in preventing or adequately mitigating the potential adverse impacts or in bringing to an end or minimize the actual adverse impacts, refrain from establishing new or extended relations with the partner in whose value chain the adverse impact has occurred, and temporarily suspend relations or, in the event of a serious impact, terminate the business relationship with respect to the activities concerned;
- iv. repair the actual adverse impacts it has caused, individually or collectively;
- v. collaborate constructively with stakeholders, creating and maintaining a notification mechanism and a complaints procedure to be used whenever there are legitimate concerns about these actual or potential adverse impacts;
- vi. monitor the effectiveness of their due diligence policy and measures and publicly communicate information on due diligence by publishing an annual statement on its website.

Transition plan

Companies must adopt and execute a transition plan to ensure, through their best efforts, that their business model and strategy are consistent with the transition to a sustainable economy and the goal of limiting the global temperature increase to 1.5° C. The obligation extends to the financial sector, which is not covered by due diligence.

The Plan must include:

- (i) the company's specific targets and deadlines for dealing with climate change;
- (ii) a description of the decarbonization levers identified and the strategic measures to achieve these goals, notably amendments to the portfolio of products and services and the adoption of new technologies;
- (iii) an explanation and quantification of the investments and financing that support the implementation of the plan;
- (iv) a description of the role of the administrative, management and supervisory bodies with respect to the plan.

Impact for large business falling under the scope of the Directive

Parent companies may carry out due diligence obligations on behalf of their subsidiaries falling under the scope of the CSDDD. Subsidiary companies remain subject to the powers of the supervisory authorities and are still civilly liable.

Companies that fail to comply with due diligence obligations will be held responsible and required to repair the actual adverse impacts, in which case the civil liability regime shall apply to the full repair of damages.

The civil liability regime provides for a broad legal standing for civil society organizations, limited procedural costs and specific rules on evidence and precautionary measures.

Although the direct liability of directors has not been provided for, they can be held indirectly liable for failing to comply with the company's rules.

The breach of the obligations provided for under the directive may result in fines of up to 5% of the company's net worldwide turnover.

Large businesses are not responsible for repairing damage caused exclusively by business partners, but they can provide voluntary remediation.

Companies reporting under the CSRD must incorporate the information the CSDDD now requires into their sustainability report and are exempt from a separate annual statement.

What the CSDDD means for small and medium-sized enterprises (SMEs)

Although the Directive only applies directly to large companies, SMEs may be affected insofar as they are included in the chain of activities, as contractors or subcontractors of companies falling within the scope of the Directive.

Obligations of large business towards SMEs:

In the context of the obligations pertaining to the actual and potential adverse impacts arising from the commercial activities included in their chain of activities, large companies shall:

- provide specific and proportionate support to business partner SMEs, giving them access to capacity-building activities, training or updating of management systems; and

- if compliance with the codes of conduct or preventive or corrective action plans jeopardizes the viability of the SME, provide specific financial support, notably direct financing, low-interest loans, standing guarantees or assistance in obtaining financing.

Accompanying measures for SMEs:

- Member States will set up and operate specific websites, platforms and portals with the aim of providing information and support to businesses, in particular SMEs, in order to facilitate and ensure compliance with the Directive;
- Without prejudice to State aid, Member States may provide financial support to SMEs in order to mitigate the financial and administrative burdens on SMEs as a result of the indirect application of the CSDDD.

Phased Temporal Application

	26.07.2027	26.07.2028	26.07.2029
N.º de trabalhadores	> a 5000	> a 3000	> a 1000
Volume de Negócios M€	> a 1500	> a 900	> a 450

Next steps

At Member State level:

- Transposition until July 26, 2026
- Appointment of national supervisory authorities
- Creation of websites, platforms or portals to provide information and support to companies

At the level of the European Commission:

- Creation of the European Network of Supervisory Authorities
- Adoption of guidelines on voluntary model contractual clauses
- In conjunction with other entities, issuing guidelines on how to comply with due diligence obligations
- Issuing delegated acts on the content of reporting

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