Corporate Sustainability Due Diligence Directive Survives Despite Turbulent Negotiations

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Introduction

After weeks of uncertainty – as outlined in our previous client alert – the future of the Corporate Sustainability Due Diligence Directive (CSDDD) was secured when last minute amendments to the proposed law were eventually approved by Member States. The approved text proposes a narrower scope to what has been previously agreed in the trilogue negotiations. Meaning, fewer companies will eventually be required to comply with the rules.

On 15 March, EU27 Ambassadors agreed with the new compromise that was achieved in last minute negotiations with the European Parliament. The European Parliament's Legal Affairs Committee approved the revised compromise on 19 March, paving the way for the last step before the formal approval of the future law. Such approval remains conditional to the timely translation to all EU languages prior to a vote by the European Parliament in plenary.

Background

The CSDDD aims to shift corporate responsibility from a voluntary to a mandatory framework, intending to integrate Environment, Social and Governance (ESG) due diligence obligations for EU companies within its scope and, under certain conditions, outside the EU. Specifically, under the proposed rules, companies would be required to identify potential and actual adverse impacts on ESG related to their operations, subsidiaries and business partners within their value chain.

Due to its significant implications for large corporations, the CSDDD has garnered attention from stakeholders, including industries and non-governmental organizations (NGOs). This attention has influenced the legislative process, leading to last minute negotiations that jeopardizes the efficacy of the EU decision making machine and risking creating a dangerous precedent for future EU laws.

Key Elements of the Law as It Now Stands

As it happens with every legislative process, the final shape of the law differs significantly from the Commission's original proposal. One of the central elements that has altered the final version, relates to the revised scope where a high-risk categorization, a prominent feature of the original Commission proposal, is removed.

The revised scope, as agreed recently, now includes:

- EU-incorporated companies with more than 1000 employees and more than €450 million of net worldwide turnover
- Non-EU companies with more than €450 million turnover in the EU

The scope becomes more specific to both EU and non-EU companies:

- Where the ultimate parent company exceeds the above thresholds on a group level
- Where franchising or licensing agreements are established with more than €2.5 million royalties and more than €80 million worldwide turnover.

The companies captured by the revised scope will be subject to important due diligence obligations, to ensure that adverse environmental and human rights (including forced labor) impacts are prevented.

A risk-based approach will underpin those due diligence obligations for companies, to include more concretely:

- Adopting and maintaining up-to-date due diligence policies while ensuring effectiveness of such policies and measures taken
- Integrating due diligence into the company's policies and risk management systems
- Identifying and assessing possible adverse impacts from its own operations, as well as that of its subsidiary(-ies) and business partners
- Preventing and mitigating adverse impacts, while providing remediation to actual adverse impacts
- Meaningful stakeholder engagement on the company's due diligence process
- Establishing and maintaining a notification mechanism and complaint procedure
- Publicly disclosing due diligence efforts in an annual statement

It is worth noting that public disclosure obligations are complemented in another central piece of EU law, namely the Corporate Sustainability Reporting Directive (CSRD). Where companies fulfill their obligations through the CSRD, they shall be exempted from CSDDD disclosure requirements, provided that these would already be fulfilled.

While a prominent feature of the original proposal, i.e., on directors' duties, has been removed altogether from the final text, a civil liability regime remains clearly outlined. The distinction is however made whereby a company cannot be held liable where a damage is only caused by its business partners in its chain of activities. Civil liability would occur where a company fails to prevent potential adverse impacts and effectively end adverse impacts.

National authorities will have the discretion to impose penalties where companies fail to fulfil their obligations, not lower than 5% of their net worldwide turnover.

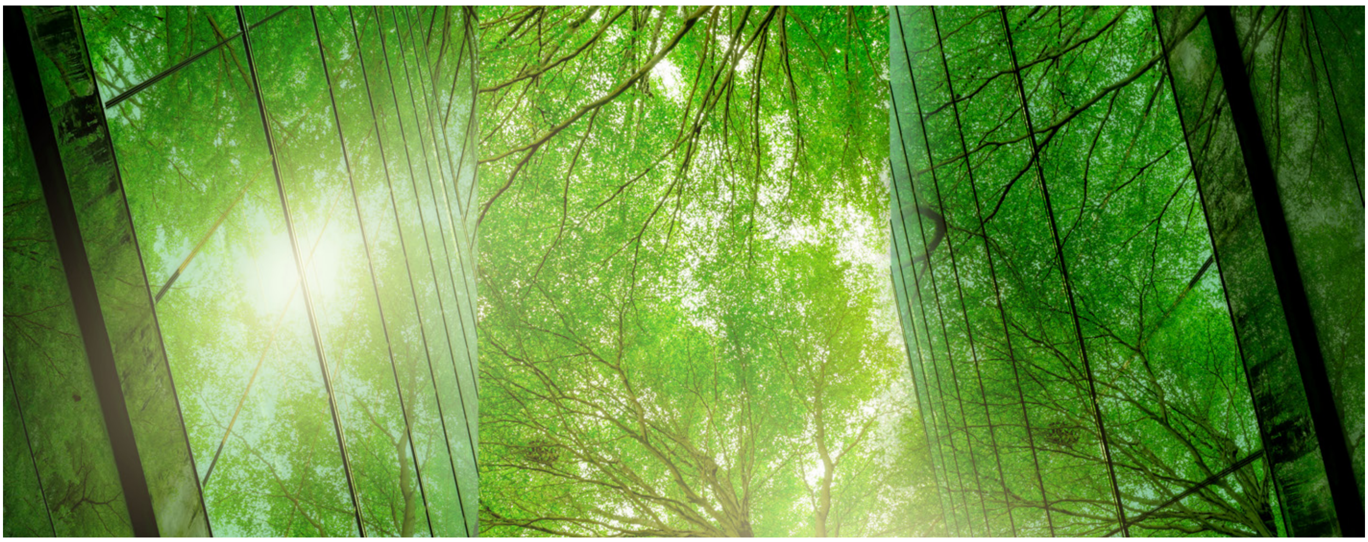
Next Steps

Assuming the procedural steps (i.e., translation to all EU languages) are completed, the European Parliament plenary is expected to formally adopt the law on 24 April, during the last plenary session of the current political mandate. The Council will follow suit at a Ministerial level, most likely by the end of May.

The text would then be submitted for publication in the Official Journal of the EU, entering into force 20 days after publication (estimated June/July 2024). However, Member States will have 2 years to transpose the CSDDD into national law (estimated July/August 2026).

Nevertheless, the applicability of the rules will take place gradually:

EU Companies in Scope		**Non-EU Companies in Scope**	
>5000 employees and > €1500 worldwide turnover	Rules applicable three years after entry into effect **BUT** Reporting obligations to start from 1 January 2028	> €1500 worldwide turnover	Rules applicable three years after entry into effect **BUT** Reporting obligations to start from 1 January 2028
>3000 employees and > €900 worldwide turnover	Rules applicable four years after entry into effect **BUT** Reporting obligations to start from 1 January 2029	> €900 worldwide turnover	Rules applicable four years after entry into effect **BUT** Reporting obligations to start from 1 January 2029
All Other Companies in Scope but Not Fulfilling the Above Thresholds			
Rules applicable five years after entry into effect **BUT** Reporting obligations to start from 1 January 2029			



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