

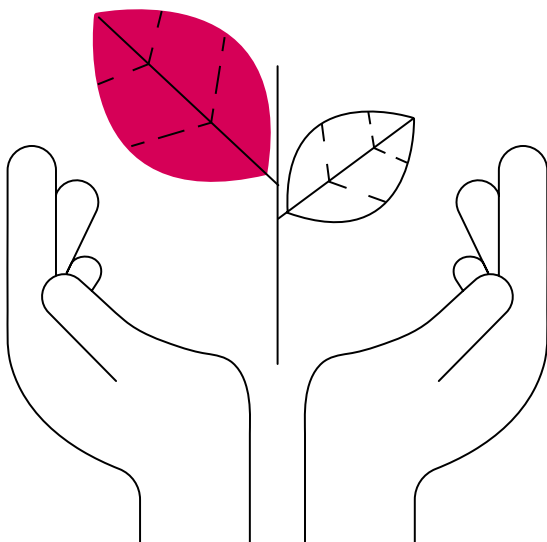
The EU Corporate Sustainability Due Diligence Directive

What you need to know



Once implemented, the EU's proposed **Corporate Sustainability Due Diligence Directive** (CS3D) will impose an extensive corporate governance duty on many companies based within the EU and beyond. Unlike most other sustainability obligations in force, this will not be a 'complain-explain' but a 'comply or be liable' obligation. It requires action beyond reporting and comes with regulatory, civil enforcement and compensation mechanisms.

CS3D aims to foster responsible corporate behaviour by establishing risk-based environmental and human rights due diligence. This includes identifying, managing, prioritising, preventing, mitigating and eliminating adverse impacts of chains of activities on human rights and the environment by a company's operations, their subsidiaries and business partners.



Will this apply to your company?

Companies falling within scope will help to create a critical mass of the business market to effect behavioural changes in support of a sustainable and just economy. Applicability criteria mainly relate to average employee size and turnover over two consecutive years. There are further criteria related to franchising and licensing agreements in the EU.

The Directive applies to companies established in the EU with over 500 employees and a net worldwide turnover over €150million. It also applies to those companies established within the EU with over 250 employees, and a net worldwide turnover of between over €40 million and €150 million whereby at least €20 million is generated in certain economic sectors listed in an Annex to the Directive (e.g. textile manufacture and wholesale; agriculture, forestry, fisheries and food product and beverage manufacture and wholesale trade; and extraction and wholesale of mineral resources, and manufacture of metal and non-metal products; and construction).

It has extra-territorial applicability, catching companies established outside the EU with over €150 million of turnover in the EU. CS3D applies to those with a net turnover in the EU of over €40 million to €150 million, if €20 million falls within one of the classified economic sectors stated above.

The key requirements for your company

In addition to identifying, preventing, minimising, mitigating, prioritising and ceasing adverse impacts (and potential adverse impacts in the case of human rights), companies must also:



Integrate environmental and human rights due diligence in all corporate policies;



Develop and maintain notification mechanisms and complaints procedure;



Monitor, review, assess and verify the effectiveness and implementation of their risk-based due diligence policies and measures; and



Disclose and report.

A further key provision is the requirement to design and implement a transition plan ensuring the company's business model and strategy are aligned to the transition to a sustainable economy and the 1.5°C temperature goal. This includes requiring the company to set time-bound climate-related targets, where appropriate, for scope 1, 2 and 3 emissions. Companies with over 1000 employees on average should have an appropriate policy to promote implementation of the transition plan, including through financial incentives.

What are the implications of non-compliance?

Not adhering to the requirements will come at a cost to companies, with potential consequences of:



Fines (up to 5% of net global turnover);



Being disadvantaged in award criteria for EU public procurement;



Removal of goods from the market; and



Potential civil liability claims/ class actions arising from a failure to comply with the due diligence process.

CS3D also introduces a new network of supervisors within EU Member States to ensure compliance with each national authority able to call for remedial actions and impose penalties.

What's next?

The proposed Directive continues to go through the process for creating new legislation following agreement of the final text in early 2024. Whilst the precise timing of its entry into force is presently unknown, the Directive cements the existing emphasis on addressing adverse environmental and human rights impacts already codified in multiple voluntary guidelines on responsible business conduct (e.g. the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct).

For more on CS3D, see: <https://dwfgroup.com/en/services/environmental-social-and-governance>

Contact

If you would like help in developing your strategic response to CS3D, please contact our team:



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