

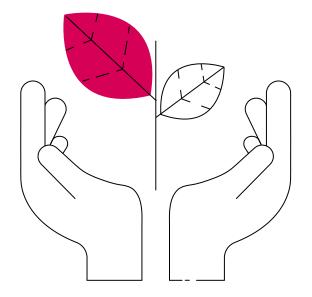
The EU Corporate Sustainability Due Diligence Directive

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 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 affect behavioural changes in support of a sustainable and just economy. Applicability criteria mainly relate to turnover in the last financial year for which annual financial statements have or should have been adopted.

The Directive applies to companies established in the EU with over 1000 employees and a net worldwide turnover over €450million. It also applies to a company which did not meet these two thresholds, but is the ultimate parent company of a group that reaches the thresholds in the last financial year for which consolidated annual financial statements have been or should have been adopted.

It has extra-territorial applicability, catching thirdcountry companies, i.e. those established outside the EU, with over €450 million of turnover in the EU in the financial year preceding the last financial year. It also applies to a third-country company which did not meet this turnover threshold, but is the ultimate parent company of a group that did in the financial year preceding the last financial year.

There are further criteria related to franchising and licensing agreements in the EU with a specific thresholds of royalties in excess of ≤ 22.5 million combined with a net worldwide turnover or turnover within the EU of ≤ 80 million (depending on whether the company is formed in an EU member state or a third country).

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 impacts due diligence in all corporate policies and risk management systems;



Develop and maintain a notification mechanism and complaints procedure;

Monitor, review, assess and verify the effectiveness' and implementation of their riskbased due diligence policies and measures; and



Disclose and report.

A further key provision is the requirement to use best efforts 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 Paris Agreement temperature goal. This includes requiring the company to set time-bound climaterelated targets, and where appropriate, absolute emissions reduction targets for greenhouse gases for scope 1, 2 and 3 emissions.

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:



Hilary Ross UK&I Regional Managing Partner Hilary.Ross@dwf.law



Tracey Groves Head of Sustainable Business & ESG

Tracey.Groves@dwf.law



Nadine Robinson

ESG & Sustainability Director

Nadine.Robinson@dwf.law

dwfgroup.com

© DWF, 2024. DWF is a global legal services, legal operations and professional services business operating through a number of separately constituted and distinct legal entities. The DWF Group comprises DWF Group Limited (incorporated in England and Wales, registered number 11561594, registered office at 20 Fenchurch Street, London, EC3M 3AG) and its subsidiaries and subsidiary undertakings (as defined in the UK's Companies Act 2006). For further information about these entities and the DWF Group's structure, please refer to the Legal Notices page on our website at www.dwfgroup.com. Where we provide legal services, our lawyers are subject to the rules of the regulatory body with whom they are admitted and the DWF Group entities providing such legal services are regulated in accordance with the relevant laws in the jurisdictions in which they operate. All rights reserved. This information is intended as a general discussion surrounding the topics covered and is for guidance purposes only. It does not constitute legal advice and should not be regarded as a substitute for taking legal advice. DWF is not responsible for any activity undertaken based on this information and makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability or suitability of the information contained herein. Ref 5555 260324