

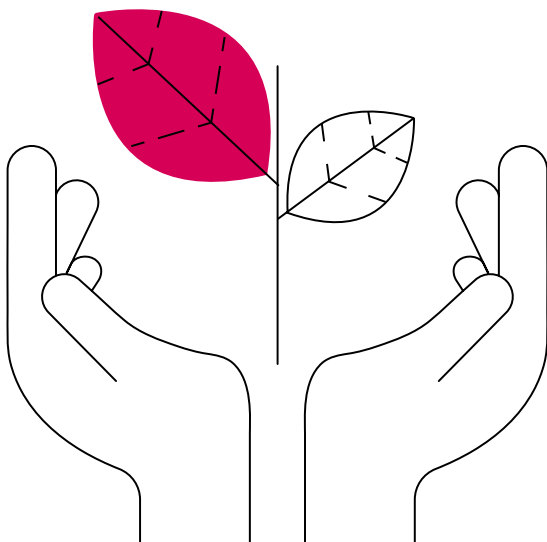
# The EU Corporate Sustainability Due Diligence Directive

## 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 third-country 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 €22.5million combined with a net worldwide turnover or turnover within the EU of €80million (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 risk-based 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 climate-related targets, and where appropriate, absolute emissions reduction targets for greenhouse gases for scope 1, 2 and 3 emissions.

## 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

## 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>

**dwfgroup.com**