

EU Corporate Sustainability Due Diligence Directive (Draft) – recent developments

Europe Newsletter

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On 14 December 2023, the Council of the European Union (the “**Council**”) and the European Parliament each issued a press release^{1 2} announcing that a “provisional agreement” regarding the draft Corporate Sustainability Due Diligence Directive (“**CSDDD**”) has been reached. While formal endorsement and adoption by both institutions is still outstanding, the announcements nevertheless mark a major step forward in the inter-institutional negotiations at the core of the EU’s legislation process.

I Background

On 23 February 2022, the European Commission submitted a proposal for a CSDDD³ to the European Parliament and to the Council. By obligating large companies and other companies in the scope of the proposal to conduct corporate sustainability due diligence and disclose relevant information, the proposed directive aims to enhance the protection of human rights and the environment in the EU and globally.

II Key statements in the press releases by the Council and the European Parliament

While the final wording of the provisional agreement between the European Parliament and the Council has not been published, the press releases provide an overview of what to expect, namely with regard to the scope of the directive, the penalties for non-compliance and the specific rights and prohibitions that companies should respect.

1. Scope

According to the press releases, for EU companies, it has been agreed to fix the scope of the directive as large companies that have more than 500 employees and a net worldwide turnover of more than EUR 150 million. According to the press release by the European Parliament, the directive will also apply to EU companies with more than 250 employees and with a turnover of more than EUR 40 million if at least EUR 20 million is

¹ Council of the European Union, Press Release “Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights” dated 14 December 2023 <<https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/>>.

² European Parliament, Press Release “Corporate due diligence rules agreed to safeguard human rights and environment” dated 14 December 2023 <<https://www.europarl.europa.eu/news/en/press-room/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment>>.

³ European Commission, Proposal for a Directive on corporate sustainability due diligence and annex <https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en>.

generated in certain high-risk sectors, such as textiles, clothing, footwear, forestry, fishery, mining and construction.

For non-EU companies, the scope will be non-EU companies and parent companies with equivalent turnover in the EU, albeit that the Council's press release states that non-EU companies are within the scope only if they have such net turnover in the EU, three years after the entry into force of the CSDDD.

The financial sector will be excluded from the scope of the directive temporarily but will be subject to inclusion depending on impact assessment.

2. Penalties

Each EU member state will be obligated to designate a supervisory authority to monitor companies' compliance with the directive, launch inspections and investigations, and impose penalties on non-compliant companies, including "naming and shaming" and fines of up to 5% of the violators' net worldwide turnover.

3. Definitions

The agreement contains a list of specific rights and prohibitions that shall be deemed to constitute an adverse human rights impact when they are abused or violated. The list refers to international instruments that have been ratified by all EU member states and that set sufficiently clear standards that can be observed by companies. It also refers to UN conventions such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural rights, and the Convention on the Rights of the Child.

In terms of the environment, the directive will cover measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions, excessive water consumption, or other impacts on natural resources.

III Next Step

The provisional agreement needs to be endorsed and formally adopted by the Council of the European Union and the European Parliament. The concrete timeline is not clear based on the press releases. We will update you again once the agreed-upon text is published.

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