VAN BAEL & BELLIS

Corporate Sustainability Due Diligence Directive-update

| 20 March 2024

On 19 March 2024, the European Parliament's Legal Affairs Committee approved a new compromise text of the Corporate Sustainability Due Diligence Directive ("CSDDD"). The CSDDD is now put forward for a vote in the European Parliament's plenary session on 24 April 2024. On 14 December 2023, the Council of the EU and the European Parliament had reached a provisional agreement on the CSDDD. However, following last-minute concerns from certain Member States, a new compromise agreement, envisaging a CSDDD with a reduced scope of application, was reached in COREPER on 15 March 2024. This client alert presents the key elements of the new compromise text of the CSDDD, compared to the Commission's proposal.

	Commission's CSDDD proposal	New compromise text of CSDDD
Covered entities	EU companies: • with **500+ employees** and net worldwide turnover of **EUR 150 mln +; or** • with more than **250 employees** and net worldwide turnover of **EUR 40 mln** if more than 50% of that turnover was generated in high-impact sectors Non-EU companies • with net **EU** turnover of **EUR 150 mln +; or** • with net **EU** turnover of **EUR 40 mln+** if more than 50% of that turnover (**EUR 20 mln**) was generated in high-impact sectors	EU companies: • with **1000+ employees** and net worldwide turnover of **EUR 450 mln+**; or • which enter into certain franchising or licensing agreements where the royalties amount to more than **EUR 22,5 million** and with a net worldwide turnover of **EUR 80 million+**; or • ultimate parent companies of groups that fall within these thresholds Non-EU companies • with net **EU** turnover of **EUR 450 mln+**; or • which enter into certain franchising or licensing agreements where the royalties amount to more than **EUR 22,5 million** and with an EU turnover of **EUR 80 million+**; or • ultimate parent companies of groups that fall within these thresholds Indicative list of non-EU companies subject to the CSDDD to be published
	Applies to regulated **financial undertakings**	Financial undertakings included (if they meet one of the criteria listed above) but only concerning their **upstream** activities. **Review clause** on potential additional sustainability due diligence requirements tailored to regulated financial undertakings
Scope of the obligations	Applies to the related activities of **upstream and downstream** "established business relationships"	Applies to **upstream** and **partially to downstream** business partners in the covered entities' "chain of activities" (i.e. distribution, transport and storage)

	Commission's CSDDD proposal	New compromise text of CSDDD
Main obligations	• **integrate** due diligence into covered companies' policies • identification, prevention, termination and mitigation of actual and potential **adverse impacts** resulting from violations of international human rights and environmental agreements • establish a **complaints** procedure • **monitor** and **communicate** due diligence policy • **annex** listing specific rights and prohibitions which constitute adverse impacts when violated • large companies required to adopt and put into effect a **transition plan** for climate change mitigation	• **integrate** due diligence into covered companies' policies and risk management systems • identification, assessment, prevention, termination, mitigation and remedying of actual and potential **adverse impacts** resulting from violations of international human rights and environmental agreements. Adverse impacts may be **prioritised** based on their severity and likelihood. • establish a **notification** and **complaints** procedure • **monitor** and **communicate** due diligence policy • amended **Annex** listing specific rights and prohibitions which constitute adverse impacts when violated • companies required to adopt and put into effect a **transition plan** for climate change mitigation
Directors' Obligations	**Duty of care** to take sustainability matters into account as well as an **obligation** to put in place and oversee due diligence actions	**No obligations** on directors
Civil liability	• Member States must establish civil liability for failure to comply with the due diligence obligations when this results in adverse impacts leading to damage • no liability for indirect established business relationships if reasonable due diligence measures were taken	• Member States must establish civil liability for damage caused intentionally or negligently by natural and legal persons who fail to comply with the due diligence obligations • no liability for damage caused only by a covered company's business partners in its chain of activities • limitation period of at least five years
Penalties	• Member States must provide for effective, proportionate and dissuasive sanctions • where fines are imposed by a Member State, they must be based on the covered company's turnover	• Member States must provide for effective, proportionate and dissuasive penalties, including pecuniary penalties • where fines are imposed by a Member State, they must be based on the covered company's net turnover, the maximum limit of these pecuniary penalties must not be less than 5% of the company's net worldwide turnover. If fines are not paid, a public statement will be made • sets out more detailed list of factors to consider when imposing penalties

For further information, please see our previous client alerts on the proposal and the key issues discussed during the trilogue negotiations.

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