



## Corporate Sustainability Due Diligence Directive – Key issues under discussion

In the context of the European Green Deal, the EU institutions are negotiating a compromise text of a Corporate Sustainability Due Diligence (CSDD) Directive, which will introduce mandatory and enforceable due diligence obligations for certain EU and non-EU companies. Following the European Commission's formal proposal, the Council of the European Union and the European Parliament have now adopted their respective positions on the proposal, paving the way for so-called 'trilogue' negotiations. This client alert presents the key issues under discussion.

## INTRODUCTION

On 23 February 2022, the European Commission ("*Commission*") released its [proposal](#) for a CSDD Directive. In essence, the CSDD Directive will introduce mandatory due diligence obligations for certain EU and non-EU large and medium-sized companies and establish the basis for those companies to incur liability for violating those obligations. The due diligence obligations will include the requirements to identify actual and potential adverse human rights and environmental impacts in the covered companies' supply chain, to prevent and mitigate potential adverse impacts, as well as to establish and maintain a complaints procedure.

The CSDD proposal requires approval from the Council of the European Union ("*Council*") and the European Parliament ("*Parliament*"). On 1 December 2022, the Council adopted its [General Approach](#) on the Commission's proposal. The General Approach aims to narrow – in certain respects – the scope of application of the proposed CSDD Directive. On 1 June 2023, the Parliament adopted its [position](#), which introduces certain important amendments. Following the approval of the Parliament's position, trilogue negotiations are expected to start in the following weeks. The EU institutions intend to complete negotiations and adopt the final version of the text before June 2024. The CSDD Directive will become applicable, at the earliest, 2 years after its adoption, expectedly in 2026.

Key contentious issues in the trilogue negotiations include:

- The types of entity needing to comply with the CSDD, namely the applicable thresholds and the inclusion of undertakings offering financial services.
- The scope of the applicable obligations, including the scope of an "established" business relationship and adverse impacts, the application of obligations to downstream companies and Director's duties.
- The enforcement of the obligations, including, the applicable civil liability rules and sanctions.

The table below offers a brief comparative summary of the positions of the Commission, the Council and the Parliament on the key elements of the CSDD Directive.

Topic	Commission's Proposal	Council's General Approach	European Parliament's Position
Covered entities	<p><u>EU companies</u>:</p> <ul style="list-style-type: none"> <li>with more than <b>500 employees</b> and a net worldwide turnover of <b>EUR 150 mln</b> ("min turnover threshold")</li> <li>with more than <b>250 employees</b> and a net worldwide turnover of <b>EUR 40 mln</b> if more than 50% of that turnover (<b>EUR 20 mln</b>) was generated in high-impact sectors ("high-impact threshold")</li> </ul> <p><u>Non-EU companies</u></p> <ul style="list-style-type: none"> <li>with a net EU turnover of <b>EUR 150 mln</b> ("min turnover threshold")</li> <li>with a net EU turnover of <b>EUR 40 mln</b> if more than 50% of that turnover (<b>EUR 20 mln</b>) was generated in high-impact sectors ("high-impact threshold")</li> </ul>		<ul style="list-style-type: none"> <li><u>EU companies</u> with more than <b>250 employees</b> and over <b>EUR 40 mln</b> in net worldwide turnover</li> <li><u>Non-EU companies</u> with a net worldwide turnover of <b>EUR 150 mln</b> provided that more than <b>EUR 40 mln</b> was generated in the EU (incl. turnover generated by third party companies with which they concluded a vertical agreement in the EU in return for royalties)</li> <li><u>EU parent companies of a group</u> having <b>500 employees</b> and a net worldwide turnover of <b>EUR 150 mln</b> and, in the case of <u>non-EU parent companies</u>, at least <b>EUR 40 mln</b> was generated in the EU</li> </ul>
	Applies to <b>regulated financial undertakings</b>	Member states to decide whether to include <b>regulated financial undertakings</b> during the transposition	Applies to <b>regulated financial undertakings</b> (but the obligations only extend to the activities of a <b>direct</b> client and its corporate group that has activities linked to the contract in question). Scope may be widened in the future.
Scope of the obligations	Applies to " <b>established business relationships</b> " i.e. direct and <i>indirect</i> business relationships which are expected to be lasting, in view of their intensity or duration, and which do not represent a negligible or merely ancillary part of the value chain	Applies to " <b>business partners</b> " i.e. companies which have a commercial agreement with or perform business operations for the covered entities	Applies to " <b>business relationships</b> " i.e. a direct or <i>indirect</i> relationship of the company in their value chain with which the company has a commercial agreement or to which it provides financial services and that performs business operations related to the products or services of the company
	Applies to covered entities' "value chains" i.e. the related activities of <b>upstream and downstream</b> (incl. the <b>use</b> and <b>disposal</b> of the product) established business relationships of the company	Applies to covered entities' "chain of activities" i.e. activities of a company's <b>upstream and downstream business partners</b> , where the downstream business partners carry out those activities for the company or on behalf of the company, <b>excluding the disposal of the product by consumers</b>	Applies to covered entities' value chain i.e. activities of a company's business relationships <b>upstream and downstream</b> (incl. the waste management, transport and storage of the product, and <b>excl. the waste management and use of the product by individual consumers</b> ). Special rules for the value chain of regulated financial undertakings

Topic	Commission's Proposal	Council's General Approach	European Parliament's Position
Main companies' obligations	<ul style="list-style-type: none"> <li>Integrate due diligence into company's policies</li> <li>Identify actual and potential adverse human rights and environmental impacts resulting from violations of international human rights and environmental agreements</li> <li>Take measures to prevent, stop or mitigate these adverse impacts</li> <li>Establish a complaints procedure</li> </ul>	<ul style="list-style-type: none"> <li>Integrate due diligence into company's policies</li> <li>Identify actual and potential adverse human rights and environmental impacts</li> <li>Risk-based approach: map and prioritise certain potential and actual adverse impacts (likelihood and severity of adverse impacts), if not possible to address all simultaneously</li> <li>Prevent, stop, mitigate adverse impacts</li> <li>Establish a complaints procedure</li> </ul>	<ul style="list-style-type: none"> <li>Integrate due diligence into company's policies</li> <li>Identify and assess actual and potential adverse impacts</li> <li>Risk-based approach: map and prioritise certain potential and actual adverse impacts (likelihood and severity of adverse impacts), if not possible to address all simultaneously</li> <li>Prevent, stop, mitigate and remedy adverse impacts</li> <li>Establish or participate in a notification and non-judicial grievance mechanism</li> <li>Consult and engage with affected stakeholders</li> </ul>
Directors' Obligations	<ul style="list-style-type: none"> <li>Duty of care to take sustainability matters into account</li> <li>Obligation to put in place and oversee due diligence actions, including due diligence policy</li> <li>Directors' variable remuneration linked to company's business strategy and long-term interests and sustainability with a view to combating climate change</li> <li>Penalties for non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>No provisions on directors' duty of care or remuneration</li> </ul>	<ul style="list-style-type: none"> <li>Duty of care to take sustainability matters into account</li> <li>Obligation to oversee development and implementation of a transition plan for combating climate change</li> <li>Directors' variable remuneration partially linked to company's transition plan if company has 1000+ employees</li> <li>Penalties for non-compliance according to Member States' laws</li> </ul>
Civil Liability	<ul style="list-style-type: none"> <li>Member States must establish civil liability for failure to comply with the due diligence obligations and when the adverse impact results in damage</li> <li>No liability for indirect established business relationships if reasonable due diligence measures were taken</li> </ul>	<ul style="list-style-type: none"> <li>Member States must establish civil liability for failure to comply with the due diligence obligations, subject to four conditions: (i) breach of an obligation that aims to protect natural or legal person; (ii) damage (iii) causality and (iv) fault (intention or negligence).</li> <li>No liability if the damage was caused only by company's business partners in its chain of activities</li> </ul>	<ul style="list-style-type: none"> <li>Member States must establish civil liability for failure to comply with the due diligence obligations, if this caused or contributed to an actual adverse impact and led to damage</li> <li>Additional procedural rules (limitation periods, injunctive measures, standing and disclosure)</li> <li>No defence of reasonable due diligence for damage caused by indirect established business relationships</li> </ul>

## Lawyers to contact



**Isabelle Van Damme**  
Partner  
ivandamme@vbb.com



**Tetyana Payosova**  
Senior Associate  
tpayosova@vbb.com



**Antigoni Matthaïou**  
Associate  
amatthaiou@vbb.com

## **VAN BAEL & BELLIS**

### **BRUSSELS**

Glaverbel Building  
Chaussée de La Hulpe 166  
B-1170 Brussels, Belgium

Phone: +32 (0)2 647 73 50  
Fax: +32 (0)2 640 64 99

### **GENEVA**

26, Bd des Philosophes  
CH-1205 Geneva  
Switzerland

Phone: +41 (0)22 320 90 20  
Fax: +41 (0)22 320 94 20

### **LONDON**

Holborn Gate  
330 High Holborn  
London, WC1V 7QH  
United Kingdom