

Corporate Sustainability Due Diligence Directive

After a volatile political journey, the Council of the European Union, on 24 May 2024, finally endorsed the new Corporate Sustainability Due Diligence Directive (“**CS3D**”). CS3D will require EU member states to introduce laws requiring in-scope companies to significantly enhance environmental and human rights due diligence in their business conduct. Companies within the scope of CS3D could be liable for damage caused by any failure to comply with its obligations under this directive and also be exposed to significant monetary penalties.

Due diligence requirements

This approved final version, is materially different from the version initially proposed by the European Commission (the “**Commission**”) in February 2022. In particular, aspects of the proposed CS3D were cut back, in light of concerns raised by several EU member states about the possible administrative burden for companies in their jurisdictions. Under this finalised version, in-scope companies will be required to:



- integrate due diligence into their policies and risk management systems and to have a due diligence policy that ensures risk-based due diligence;



- identify and assess actual or potential adverse environmental or human rights impacts arising from their own operations or those of their subsidiaries or, where relating to their “*chains of activities*”, those of their business partners;



- take appropriate measures to prevent (or where not possible, adequately mitigate) potential adverse environmental or human rights impacts;



- take appropriate measures to bring actual adverse environmental or human rights impacts to an end;



- remediate actual adverse environmental human rights impacts that the company has caused; and



- adopt and put into effect a transition plan for climate change mitigation, which aims to ensure, through best efforts, that the business model and strategy of the company are compatible with the transition to a sustainable economy and limiting global warming to 1.5°C in line with the Paris Agreement.

Scope of application

CS3D will apply to EU-incorporated companies with more than 1,000 employees and net worldwide turnover of more than €450 million (including when consolidated with any subsidiaries) and non-EU incorporated companies that have generated more than €450 million of net turnover in the EU in two consecutive financial years. CS3D also includes provisions designed to capture companies that do not meet these thresholds but enter into certain franchising or licencing agreements. The legislation also includes certain carve-outs for the financial services sector: alternative investment managers and certain investment funds are entirely out of scope, while CS3D envisages that companies in the financial services sector will only be required to perform due diligence in respect of their ‘upstream’ chain of activities (ie, excluding their customers).

It should be noted however, that CS3D will apply on a phased basis over three years, starting with the largest companies in 2027. Significantly fewer companies will come into scope for CS3D than under the related Corporate Sustainability Reporting Directive. However, given that businesses all over the world are likely to fall within the supply chains of larger businesses that are directly in-scope, CS3D will likely have far reaching implications for many EU businesses.

Enforcement and Penalties

Each EU member state will be required to designate a national supervisory authority, which will have enforcement powers. Member states will be required to introduce penalties for non-compliance; the upper limit for these penalties must be at least 5% of the net world turnover. The CS3D will also introduce a new civil liability regime: those affected by a company’s breach of due diligence obligations will be able to seek damages from the company.

National Transposition and Timing

The text of CS3D will be published in the Official Journal of the European Union and will enter into force 20 days after its publication. EU member states will have two years from the date of publication of CS3D in the Official Journal to transpose the new rules into national law.

Guidance

Guidelines are due to be issued from the Commission in due course, to help companies navigate their responsibilities under CS3D.

We are continuously monitoring developments in this area and if you have any questions please reach out to one of the contacts below or your usual Matheson contact.



Garret Farrelly

Partner | Head of the Energy and Infrastructure Group

E: garret.farrelly@matheson.com

T: +353 1 232 2074



Susanne McMenamin

Partner | Corporate and Commercial

E: susanne.mcmenamin@matheson.com

T: +353 1 232 2266



Ursula McMahon

PSL | Corporate and Commercial

E: ursula.mcmahon@matheson.com

T: +353 1 232 2432



Michael Sinnott

Senior Associate | Corporate and Commercial

T: +353 1 232 2413

E: michael.sinnott@matheson.com