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Due Diligence Directive: Agreement between the European Parliament and the Council of the EU on its final content

The Corporate Sustainability Due Diligence Directive (“**CSDDD**”) has taken a crucial step towards its final adoption: the Council of the EU and the European Parliament have reached a Provisional Agreement on its content in the course of the latest round of negotiations between the two institutions (trilogues).

1. Content of the Provisional Agreement

The provisional agreement reached last week between the two bodies establishes the scope of the Directive, clarifies the consequences for companies that do not comply with it, outlines the different sanctions and completes the list of rights and prohibitions that companies must observe. In this respect, although the final draft of the future CSDDD has not yet been fully finalised and the detailed content of the Political Agreement reached last Friday is not yet known, below we have provided some details of the future Directive, which have been published by the European institutions¹:

- **Scope:** the Directive will apply to (i) EU companies and parent companies with more than 500 employees and a worldwide turnover of more than EUR 150 million; (ii) companies with more than 250 employees and a turnover of more than EUR 40 million if at least EUR 20 million is generated in one of the following sectors: manufacturing and wholesale trade of textiles, clothing and footwear, agriculture including forestry and fishing, food manufacturing and trade of raw agricultural materials, extraction and wholesale trade of mineral resources or manufacturing of related products and construction; and (iii) non-EU companies if they generate a net turnover of EUR 300 million in the EU².
- **Financial sector:** although the press release published by the Council states that the financial sector would be temporarily excluded from the scope of the Directive and that the Directive will include a review clause for the possible future inclusion of this sector, at the press conference on the agreement, the European co-legislators explained that some obligations would be established for financial institutions, including the obligation to have a climate transition plan and comply with the rest of the obligations established by the Directive regarding their activity and upstream activity.
- **Obligations:** the obligations to be fulfilled by the companies to which the CSDDD applies concerning the actual and potential adverse impacts of their activities on the environment and human rights and those of their business chain of activities, which covers the company's initial business partners and, to some extent, the subsequent activities, such as distribution or recycling, are provided in detail.

A risk-based due diligence obligation has been planned, with the due diligence process being harmonised in Articles 6-8 of the CSDDD. Thus, companies will have to identify, assess, prevent, mitigate, stop and remedy the negative impact of these activities on people and the planet. To do so, they will have to make investments, seek contractual guarantees from partners, improve their business plan or provide support to their small and medium-sized business partners.

¹ For more information, please consult the press releases published by the European Parliament (see [here](#)) and by the Council of the EU (see [here](#)).

² The Legal Briefing analysing the potential impact of the CSDDD outside the EU is available [here](#).

Companies are also required to adopt a climate change mitigation transition plan that ensures that their business model and strategy are compatible with the Paris Agreement.

- **Business partners:** it further provides, as a last resort, that companies that identify adverse environmental or human rights impacts by their business partners must terminate those business relationships where these impacts cannot be prevented or stopped.
- **Transparency:** companies will have to establish an internal grievance procedure, properly communicate their due diligence policies and regularly monitor their effectiveness.
- **Climate change and civil liability:** last week's agreement strengthens the provisions on the obligation of means for large companies to adopt and implement a climate change mitigation transition plan. In addition, it establishes a five-year period for those affected by adverse impacts (including trade unions or non-profit organisations) to submit complaints and limits the disclosure of evidence, injunctive relief and the cost of proceedings for claimants.
- **Directors' liability:** although the European co-legislators' press releases are silent on this issue, it appears that the provisions on this matter will be removed from the final version of the CSDDD. However, the level of compliance of directors with their obligations in this area will affect their remuneration.
- **Supervision and sanctioning regime:** each Member State will designate a supervisory authority to monitor compliance with these obligations by companies within its scope of application. These bodies will exchange best practices and cooperate at EU level within the European Network of Supervisory Authorities established by the Commission. They will be able to initiate inspections and investigations and impose financial penalties on companies that fail to comply with their due diligence obligations of up to 5% of their worldwide net turnover.
- **Public procurement:** The agreement provides that compliance with the CSDDD may be taken into account as a criterion for the award of public contracts and concessions.

2. What are the next steps for the CSDDD?

- Following the provisional agreement, the regulatory process of the CSDDD is not complete. It should be noted that this agreement has been reached in the framework of "trilogues", informal negotiations between the Parliament and the Council prior to the "formal" legislative procedure, in the course of which both institutions discuss their different positions on the content of a piece of legislation that has been proposed by the European Commission. The last trilogue on the CSDDD began last Wednesday and, after 17 hours of meetings, ended with this provisional agreement, or Political Agreement, on its content. The technical aspects of the final draft of the CSDDD will be finalised in the coming weeks.
- Once all the content has been finalised, this final draft will have to be confirmed by both institutions and undergo a legal-linguistic review before it is approved by the European Parliament and adopted by the Council.
- Once this process has been completed, it can be published in the OJEU. We are not sure when this will happen, but we can safely assume that it will be in the spring of 2024, and in any case before the European Parliament elections, which will take place from 6 to 9 June 2024.
- Bearing in mind that this is a Directive, we will also have to wait for its transposition into national legislation to learn of the final scope of the rule.

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