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EU DIRECTIVE CS3D: COMPANIES' DILIGENCE IN SUSTAINABILITY

In July 2024, the European Union approved Directive (EU) 2024/1760, known as the Corporate Sustainability Due Diligence Directive (CS3D), which introduces binding obligations for large companies in the field of sustainability.

The law follows the evolution of ESG practices and complements instruments such as the CSRD and the Regulations on forced labour, deforestation and Taxonomy, establishing a common regulatory framework for due diligence in the areas of human rights, the environment and governance.

Business Team



INTRODUCTION

The ESG (Environmental, Social and Governance) concept emerged in 2004 as part of the United Nations Global Compact, which set out principles relating to human rights, labour practices, environmental protection and the fight against corruption. These principles were joined by the 17 Sustainable Development Goals, approved in 2015 and in force since 2016, within the framework of the United Nations resolution "Transforming our world: 2030 Agenda for Sustainable Development".

ESG practices are based on three essential dimensions:

- ✓ environmental, which aims to preserve and mitigate negative impacts on the environment
- ✓ social, which includes human rights, working conditions and the company's responsibility towards workers and communities
- ✓ governance, related to transparency and good corporate management practices

EUROPEAN UNION LEGISLATIVE BACKGROUND

Before the approval of Directive 2024/1760 (CS3D), the European Union had already adopted relevant legislation on sustainability, such as the Sustainability Reporting Directive (CSRD), the Forced Labour Regulation, the Deforestation Regulation and the Taxonomy Regulation.

The new CS3D Directive does not replace these measures, but is clearly complementary: while the CSRD focuses on the disclosure of sustainability information, the CS3D establishes the due diligence duties that will enable the production of this information; while the Taxonomy Regulation defines criteria for identifying sustainable economic activities, and it is up to the CS3D to create the obligations necessary for their realisation.

SCOPE

The Directive applies to large companies established in the Union, namely those which, for two consecutive financial years, employ an average of more than 1,000 workers and have a net turnover of more than 450 million euros. It also covers companies from third countries that reach that turnover threshold in the Union, as well as companies under franchising or licensing arrangements when the royalties received in the Union exceed 22.5 million euros and the overall turnover is more than 80 million euros.

In the case of groups, it is sufficient that the ultimate parent company fulfils the above conditions. By contrast, the Directive expressly excludes micro-enterprises, SMEs, alternative investment funds and undertakings for collective investment in transferable securities.

ESSENTIAL OBLIGATIONS

Covered companies must integrate sustainability due diligence policies into their codes of conduct and internal practices. These policies must allow for the identification, assessment, prevention, cessation and mitigation of actual or potential negative impacts in terms of human rights and the environment.

The Directive also requires the creation of mechanisms for stakeholder participation, the implementation of accessible complaint and grievance channels and the annual disclosure of information on the fulfilment of these duties through publication on the company's website. These commitments are in line with international instruments such as the Paris Agreement of 2015 and the Glasgow Climate Pact of 2021.

SUPERVISION AND MONITORING

Monitoring implementation is primarily the responsibility of the companies themselves, which must carry out periodic assessments of their operations, subsidiaries and business partners, particularly whenever there is a well-founded risk of non-compliance. At the same time, each member state must designate competent authorities to ensure external supervision, reinforcing the effective fulfilment of the obligations laid down.

SANCTIONING REGIME

The CS3D provides for a robust sanctioning framework, the implementation of which falls to the member states. The measures include administrative financial penalties of up to 5% of the company's worldwide net turnover, the imposition of corrective measures by the supervisory authorities, exclusion from access to public tenders and contracts, as well as civil liability towards victims of human rights or environmental violations, ensuring their right to reparation for the damage suffered.

TRANSPOSITION AND PHASED APPLICATION

Member States must transpose the Directive by 26 July 2026. The scheme will apply in phases: from 26 July 2027, to companies with more than 5,000 employees and a turnover of more than 1.5 billion euros; from 26 July 2028, to companies with more than 3,000

employees and a turnover of more than 900 million euros; and finally, from 26 July 2029, to companies that exceed the minimum thresholds of 1,000 employees and 450 million euros in turnover.

CONCLUSIONS

The entry into force of the CS3D should bring significant benefits, including enhanced protection of human rights and the environment, the promotion of fairer and safer working conditions, improved transparency and increased consumer confidence.

However, the Directive has been criticised, particularly regarding implementation costs and the administrative burden imposed on companies. Recognising these concerns, the European Commission presented the so-called "Omnibus Proposal", aimed at simplifying due diligence without compromising the Directive's core objectives.

The CS3D is a legislative milestone in the integration of sustainability into European company law. Despite the inherent challenges and costs, it represents a decisive step in reinforcing the responsibility of companies in the transition to a sustainable, transparent and socially responsible economy, consolidating the role of the European Union as an international regulatory benchmark in this field.

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