

*Launch Event*

# *Omnibus Simplification Package: on CSRD and CS3D*

ERCST, February 7, 2025

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# 1) Background

- EU aims to reduce reporting burdens by 25% without compromising policy objectives (Long-term competitiveness of the EU: looking beyond 2030” Communication, 2023).
- The Budapest Declaration (Nov 2024) called for a “simplification revolution.”
- Omnibus Regulation proposed to streamline EU Taxonomy Regulation, CSRD, and CSDDD.
- Goal: Reduce bureaucratic burdens while maintaining core policy content.

## 2) Scope: content and meaning of “*simplification*”

- Focuses on sustainability reporting but may include additional legislative texts under evaluation.
- Simplification types:
  - - Technical: Legal wording, harmonization, streamlining obligations.
  - - Political: Revisiting sustainability reporting for competitiveness.
  - - Cosmetic: Delays without actual reduction in reporting burdens.

### 3) Key issues for consideration in the Omnibus package

#### 1. “What”, not “How”

- The EU has enacted extensive regulations and constraints to meet its ambitious climate targets and align its regulatory framework with the European Climate Law.
- While these measures reflect a commitment to addressing climate change, achieving these goals should rely on a market-based and technology-neutral approach that encourages innovation and entrepreneurship.
- In a market economy, determining the “how” of achieving climate objectives should remain the prerogative of corporate management and Boards, guided by fiduciary responsibility and a deep understanding of their business operations.
- Therefore,

### 3) Key issues for consideration in the Omnibus package (cont.)

#### 1. “What” not “How” (cont.)

- Mandating rigid, long-term corporate plans for climate change mitigation compatible with limiting the increase in the global average temperature to 1.5°C above pre-industrial levels, that need to be reviewed and approved by national authorities, inserts an element of central planning and level of state intervention that goes beyond what is expected in a market economy, even one with strong social-democratic tendencies.
- Companies require flexibility to adapt to rapidly evolving technological, economic, and market conditions, and state intervention in management does not seem compatible with these realities.
- In addition, the role of supervisory authorities should not extend to overseeing compliance and securing management decisions, as it risks stifling creativity, innovation, and competitiveness.
- Imposing time-bound targets extending as far as 2050 can similarly constrain management decisions, preventing them from responding flexibly to new opportunities or unforeseen challenges.

### 3) Key issues for consideration in the Omnibus package (cont.)

## 2. Alignment with the Paris Agreement

- The Paris Agreement, negotiated under the UNFCCC, is an international treaty that binds its Parties, which are sovereign states, to collective climate action.
- Its primary goals, including reaching net zero emissions and achieving temperature targets, are intended as global objectives to be pursued through coordinated efforts at the national level.
- It is also important to note that the Agreement's goals are not focused on limiting warming to 1.5°C; instead, the aim is to “hold the increase in the global average temperature to well below 2°C, while pursuing efforts to limit the increase to 1.5°C.”
- The Paris Agreement operates on the principle of nationally determined contributions (NDCs), enabling each Party to set its own targets and methods for achieving them based on local conditions and priorities.
- This nuanced approach, underpinning the negotiated and adopted Paris Agreement, recognizes the challenges of balancing ambition with feasibility across diverse national contexts.
- Therefore,

### 3) Key issues for consideration in the Omnibus package (cont.)

## 2. Alignment with the Paris Agreement (cont.)

- Disaggregating global targets to individual enterprises undermines the spirit of the Agreement, as it shifts the burden from governments to private entities – a move that is both inappropriate and impractical.
- EU directives that extend these responsibilities to enterprises effectively apply EU regulations extraterritorially, a practice that diverges from the EU's commitment to addressing climate change through multilateral cooperation and intervenes in how Parties to the Paris Agreement make decision under their NDCs. After all, requirements of EU directives may diverge significantly from what Parties see as priorities in their own NDCs.
- This is contrary to the letter and spirit of the Paris Agreement and risks creating tensions with international partners, complicating global efforts to combat climate change.

### 3) Key issues for consideration in the Omnibus package (cont.)

## 3. Extraterritoriality

- This approach is not without challenges, raising concerns about regulatory overreach, implications for international trade, and potential conflicts with national sovereignty.
- Furthermore, the effectiveness of the Brussels Effect relies on the EU maintaining both its regulatory leadership and market power - power comes from economic power.
- There has been and will continue to be the reality of the extraterritorial application of legislation and regulation, but it has always been a matter of degrees. In this case, in our view, mandating reporting duties and certain types of corporate behavior crosses a line into conflicts with significant international norms and agreements.
- Other EU regulations with territorial extension beyond the EU borders, such as the attempted inclusion of international aviation in the EU ETS, the REACH regulation on chemical safety, sustainability criteria for timber and biofuels, and the recently adopted CBAM, have similarly sought to promote high social and environmental standards beyond the EU, yet their implementation has been complicated – and at times thwarted – by diplomatic tensions and resistance due to concerns over national sovereignty and practical enforceability, and has also been accompanied by a number of unintended effects.
- Therefore,



### 3) Key issues for consideration in the Omnibus package (cont.)

### 3. Extraterritoriality (cont.)

- The CSRD and CSDDD's implications may collide, for instance, not only with fundamental principles of national sovereignty under the UN Charter as well as Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) under the UNFCCC and Paris Agreement, but also with the fact that defining sustainable development was initially a national prerogative as envisioned by the Rio Declaration on Environment and Development. This should be defined by every country according to its local conditions.
- Namely, Article 40a presents a compliance challenge for subsidiaries and branches of non-EU parent companies, as they are obligated to report on behalf of their non-EU parent in addition to their own reporting obligations. The extraterritorial reach of the EU, requiring entities to report on activities controlled by their (ultimate) parents in other geographic locations, creates legal and operational complexities and constitutes regulatory overreach.

### 3) Key issues for consideration in the Omnibus package (cont.)

## 4. Competitiveness

- Specifically, one of the major challenges stems from the extensive information requirements imposed by recent legislation, such as the CSRD/ESRS and CSDDD.
  - These frameworks demand a level of detail and supply chain transparency that raises concerns about confidentiality and economic feasibility.
  - The necessity of sharing sensitive information throughout the supply chain could discourage suppliers, as enterprises might opt to withdraw from EU markets in favor of less restrictive environments. This would undermine the ability of businesses to secure the most economically advantageous supply options, potentially leading to higher costs and reduced competitiveness. Finally, SMEs will be vulnerable in their relationship with large customers with the dilemma to respond or not respond and potentially damage an important business relationship.
  - Moreover, requiring European businesses to align with a 1.5°C pathway introduces significant competitive pressures, as these enterprises may face higher compliance costs and operational constraints compared to counterparts in regions not subject to such stringent requirements.
  - This is likely to place European companies at a competitive disadvantage, potentially driving investment and business activity outside the EU's jurisdiction, undermining its own economic and environmental objectives.
- Therefore,

### 3) Key issues for consideration in the Omnibus package (cont.)

## 4. Competitiveness (cont.)

- An assessment of competitiveness implications and sector-specific impacts in light of geopolitical and economic developments, ensuring robust stakeholder engagement inside and outside the EU, should be conducted first.
- Until the full implications of these legislative measures are clearly understood, their implementation should be paused.
- Premature implementation risks exacerbating the very issues of overregulation and economic inefficiency that the EU is striving to address, while simultaneously triggering international conflicts in an already increasingly hostile geopolitical context. A measured, evidence-based approach that carefully evaluates the economic and operational consequences is essential to ensure that these regulations do not unintentionally hinder EU competitiveness while pursuing broader sustainability goals.

### 3) Key issues for consideration in the Omnibus package (cont.)

## 5. Practicalities

- The sheer volume of data required under the new regulations has been criticized for being overwhelming and imposing significant costs on both EU and non-EU entities that fall within their scope.
- The financial and operational burden of compliance is expected to be substantial.
- Additionally, the requirement for listed subsidiaries of parent companies already subject to CSRD to produce their own sustainability reports is unnecessarily duplicative, adding further inefficiencies.
- Other issues include the broad and ambiguous definition of the chain of activities.
- The mandate to engage with a large number of stakeholders is excessive and potentially unmanageable.
- Therefore,

### 3) Key issues for consideration in the Omnibus package (cont.)

## 5. Practicalities (cont.)

- These obligations could disproportionately affect small and medium-sized enterprises (SMEs) in these regions and potentially limiting their access to the EU market.
- Such outcomes would undermine the inclusion of smaller enterprises and exacerbate inequalities.
- Furthermore, the assessment of transition plans poses significant challenges, particularly in balancing the fiduciary responsibilities of corporate management and boards with the regulatory oversight of authorities.
- Without clear guidelines on how to achieve this balance, there is a risk of undermining the autonomy of corporate governance and creating additional layers of complexity in compliance.

## 4. Overall takeaways

Given the uncertainty arising from current geopolitical circumstances, as well as concerns about the economic competitiveness of the EU – which may cast doubt on the viability of its industrial base – ERCST recommends the following actions:

- Pause the entry into force of the CSDDD: A temporary pause should allow for necessary adjustments to be made, including:
  - (i) Ensuring the legislator’s intention that the main obligations under CSDDD are effectively interpreted as “*obligations of means*”;
  - (ii) Introducing thresholds that are more aligned with the companies’ capacities to implement due diligence;
  - (iii) Assessing the viability and rationale of transition plans for climate change mitigation compatible with the 1.5°C target, and, if necessary, revisiting their existence;
  - (iv) Centralizing risk identification and management to encourage the application of due diligence at the group level;
  - (v) Ensuring the harmonization of supervisory practices across the EU; and
  - (vi) Reducing the scope of non-EU companies to which the CSDDD is applicable (e.g., to those legal entities operating in or conducting direct business with the EU (below the monetary thresholds).
- Simplify CSRD Reporting Obligations: Simplification of the reporting requirements under CSRD by reducing the number of indicators, thereby alleviating the burden on companies; and a similar extraterritorial reduction as suggested above for CSRD. Redesign the CSRD reporting obligation to start from a position of alignment and integration with existing global standards to ensure consistency, efficiency, and clarity for reporting entities.