

Evaluation of the Corporate Sustainability Due Diligence Directive

Q Corporate Sustainability Due Diligence Directive

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1. Introduction

Considering the recently published EU Corporate Sustainability Due Diligence Directive (CS3D) – and its entry into force on July 25, 2024¹ – ERCST has conducted an evaluation of the final text of the CS3D, building on its previous work resulting in the report “*The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls*”².

This analysis considers not only earlier elements from the legislative process, namely the two previous negative opinions from the European Commission’s Regulatory Scrutiny Board and the Commission Staff Working Document, as well as the Commission’s initial proposal. Focus is given to the directive’s key provisions and elements, as well as unresolved issues, such as inconsistencies with other directives (like CSRD), company concerns about due diligence, extraterritoriality, liability risks, administrative burdens and impacts on non-EU businesses.

In Section 2 of this paper, an overview of the background to the EU CS3D legislative initiative is presented. Section 3 analyzes the main findings of the European Commission Regulatory Scrutiny Board as outlined in its two negative opinions, along with the Commission’s Staff Working Document that addresses these findings. Section 4 examines the contents of the Directive, offering a comparison between the European Commission’s originally proposed text and the final version published in the Official Journal. Section 4 and 5 presents the main takeaways and key recommendations, respectively.

2. The Corporate Sustainability Due Diligence Directive

2.1. Background and Rationale

Over the past two decades, the obligations for multinational corporations to uphold human rights and environmental standards have significantly advanced, driven by the development of international soft law frameworks (i.e., voluntary guidelines, such as the UN Guiding Principles on Business and Human Rights³ and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct⁴) and the enactment of mandatory human rights and environmental due diligence (mHREDD) laws in several EU Member States

¹ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (“CS3D”). Available at: <https://eur-lex.europa.eu/eli/dir/2024/1760/oj>.

² See A. Marcu, M. Mehling and A. Ruiz, ‘*The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls*’, ERCST’ Paper, (2023). Available at: <https://ercst.org/the-eu-corporate-sustainability-due-diligence-directive-and-its-extraterritorial-effect-promise-and-pitfalls-2/>.

³ United Nations Guiding Principles on Business and Human Rights (2011), Implementing the United Nations “Protect, Respect and Remedy” Framework, New York and Geneva, 2011. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf. The UNGPs are widely acknowledged as a codification of the legal responsibilities of States and business enterprises to uphold fundamental human rights in line with international human rights law. Since their adoption by the UN Human Rights Council in 2011, they have, along with the OECD Guidelines, been instrumental in advancing responsible business conduct globally.

⁴ OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, chapter II – general policies, §11. Available at: <https://doi.org/10.1787/81f92357-en>.

– e.g., the UK’s Modern Slavery Act (2015)⁵, France’s Duty of Vigilance Act (2017)⁶, the Netherlands’ Child Labour Due Diligence Law (2019)⁷, Germany’s Supply Chain Due Diligence Act (2021)⁸, and Norway’s Transparency Act (2021)⁹.

Given that EU primary law mandates the Union to promote its objectives and values in global relations with the rest of the world – particularly by advancing human rights protection and sustainable development on an international scale¹⁰ – the CS3D was intended to establish a harmonised framework for corporate sustainability due diligence across the EU, in order to avoid fragmentation¹¹, provide greater legal certainty and ensure a level playing field for companies operating within the single market¹².

Against this backdrop, the CS3D is the first cross-sectoral legislation mandating large companies operating in the EU market to identify, prevent, and address both actual and potential adverse impacts on human rights and the environment. These obligations extend to their own operations, subsidiaries, and business partners across their chain of activities. Furthermore, companies must develop and implement a transition plan for climate change mitigation to align their business models and strategies with the transition to a sustainable economy and the global goal of limiting warming to 1.5°C.

2.2. Legislative Process

In the summer of 2020, the European Commission (hereinafter the “EC” or “Commission”) initiated a preparatory phase for a legislative procedure focused on sustainable corporate governance. The primary goal of this initiative was to enhance the regulatory framework of EU company law and corporate governance, with a particular emphasis on assisting companies in better managing sustainability-related aspects within their operations and value chains, including social and human rights, climate change, and environmental concerns¹³.

Following the open public consultation on the sustainable corporate governance initiative, launched by the EC on 26 October 2020, the European Parliament adopted: (i) a non-legislative own-initiative resolution

⁵ See Part 6, Sec. 54 referring to “*due diligence processes in relation to slavery and human trafficking in its business and supply chains*”. For the full citation and further discussion, see below, Section 3.2.1.3.

⁶ Loi n.° 2017-399, 27 March 2017 (“*relative au devoir de vigilance des sociétés mère et entreprises donneuses d’ordre*”). 7 Available at: <https://zoek.officielebekendmakingen.nl/stb-2019-401.html>.

⁷ Act of 24 October 2019 introducing a duty of care to prevent the supply of goods and services created using child labour (Child Labour Duty of Care Act). Available at: <https://zoek.officielebekendmakingen.nl/stb-2019-401.html>.

⁸ 2021 German Act on Corporate Due Diligence Obligations for the Prevention of Human Rights in Violations in the Supply Chain – *Lieferkettensorgfaltspflichtengesetz* (“LKSG” or “German Act”). Available at: https://www.bafa.de/EN/Supply_Chain_Act/Overview/overview_node.html#:~:text=In%202021%20the%20German%20Parliament,put%20on%20a%20legal%20footing.

⁹ 2021 Norwegian Act relating to enterprises’ transparency and work on fundamental human rights and decent working conditions. English translation available at: <https://www.regjeringen.no/contentassets/c33c3faf340441faa7388331a735f9d9/transparency-act-english-translation.pdf>.

¹⁰ Articles 3, §5 and 21 TEU. See the 2012 Action Plan of the Council of the EU on the EU Strategic Framework on Human Rights and Democracy and more recently the Joint Communication of the European Commission to the European Parliament and the Council titled “EU Action Plan on Human Rights and Democracy 2020-2024”, 25 March 2020.

¹¹ CS3D European Commission proposal, Explanatory Memorandum, p. 3.

¹² Cf. Stefano Spinaci, Briefing EU Legislation in Progress ‘*Corporate sustainability due diligence: How to integrate human rights and environmental concerns in value chains*’, EPRS | European Parliamentary Research Service, PE 729.424 (October 2023), p. 3.

¹³ See “Have your Say” (for published initiatives) webpage of the European Commission, topic “Sustainable corporate governance”. Available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en. Also, see Inception impact assessment – Ares (2020)4034032.

on sustainable corporate governance, on December 17, 2020¹⁴; and (ii) a Resolution recommending that the Commission initiate a legislative proposal concerning corporate due diligence and corporate accountability, on March 10, 2021¹⁵. Similarly, the Council in its conclusions called on the Commission to present a proposal for an EU legal framework on sustainable corporate governance, including cross-sector corporate due diligence along global value chains, on December 3, 2020.

The EC's legislative proposal for a Corporate Sustainability Due Diligence Directive, originally anticipated in the autumn of 2021, was eventually unveiled on February 23, 2022¹⁶. Prior to this, a preliminary impact assessment report on the Sustainable Corporate Governance initiative was submitted to the Commission's Regulatory Scrutiny Board (EC RSB) on April 9, 2021. After receiving a negative opinion, a revised impact assessment was submitted for a second review on November 5, 2021. Despite acknowledging substantial revisions made in response to its initial feedback, the EC RSB issued a second negative opinion on November 26, 2021¹⁷. Hence, the Commission presented its proposal for the CS3D not only accompanied by the revised impact assessment report but also further supported by a staff working document addressing the EC RSB's second negative opinion (see section 3).

In preparing the proposal, the EC also considered the broad base of evidence collected through two commissioned studies on directors' duties and sustainable corporate governance (July 2020)¹⁸ and on due diligence requirements in the supply chain (February 2020)¹⁹.

Following the publication of the EC's proposal, the proposed Directive underwent inter-institutional negotiations involving the Commission, the European Parliament (EP) and the Council of the European Union, aimed at reaching a compromise on the final text of the proposed Directive. At this stage, the Council and the Parliament each developed their own versions, or "mandates", of the Directive's text²⁰. Since February 2023, numerous rounds of informal political and technical negotiations – known as "trilogues"²¹ – have taken place.

On December 14, 2023, the Council and Parliament announced that they had reached a provisional agreement. However, in a surprising turn of events, the Council failed to secure enough votes to approve the final text. The provisional agreement on the CS3D was scheduled for a vote in the Committee of Permanent Representatives (Coreper) on February 9, 2024. However, just days before the vote, Germany

¹⁴ European Parliament resolution of 17 December 2020 on sustainable corporate governance ([2020/2137\(INI\)](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0372_EN.html)). Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0372_EN.html.

¹⁵ EP Resolution P9_TA(2021)0073, following the procedure 2020/2129(INL).

¹⁶ Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive EU 2019/1937, COM/2022/71 final [2022] [33] (hereafter "CS3D European Commission's proposal" or "EC's proposal"). Available at: <file:///Users/sharedercst/Downloads/090166e5e99ed98c.pdf>.

¹⁷ REGULATORY SCRUTINY BOARD OPINION, Proposal for a Directive of the European Parliament and of the Council on Sustainable Corporate Due Diligence and amending Directive (EU) 2019/1937, SEC(2022) 95. Available at: <file:///Users/sharedercst/Downloads/090166e5e99ed98f.pdf>.

¹⁸ See <https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en>.

¹⁹ See <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

²⁰ Amendments adopted by the European Parliament on 1.6.2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, P9_TA(2023)0209 [2023] [1] (hereafter "Parliament's mandate"). Proposal for a Directive of the European Parliament and Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 - General Approach, 15024/1/22 REV 1 [2023] [32] (hereafter "Council's mandate").

²¹ The aim of a trilogue is to reach a provisional agreement on a legislative proposal that is acceptable to both the Parliament and the Council, the co-legislators. This provisional agreement must then be adopted by each of those institutions' formal procedures. The Commission's role is to mediate between the parties. See EUR Lex: Glossary of Summaries, Trilogues. Available at: <https://eur-lex.europa.eu/EN/legal-content/glossary/trilogue.html>.

announced its intention to abstain from supporting the agreed-upon text. This development prompted concerns from several other Member States, including Italy, Austria, and Finland²². On the day of the vote, it became clear that the Directive would not gain approval in its current form. Consequently, the Belgian Presidency of the Council postponed the confirmation process. Over the following weeks, the vote was delayed no fewer than five times. During this period, support from additional Member States began to waver, with France notably joining the ranks of those expressing reservations²³.

The Belgian Presidency successfully renegotiated and revised key sections of the text, addressing many of the lingering concerns raised by Member States. These revisions, detailed further in section 4 below, included significant compromises on the personal scope of the Directive, additional amendments to the civil liability provisions, and adjustments to the definition of chain of activities under the material scope of the sustainability due diligence obligation. The effort ultimately secured the qualified majority needed for the agreement to pass, albeit by a narrow margin.

The final version of the CS3D was approved at the Coreper meeting on March 15, 2024. Notably, this approval came on the last possible day for the proposal to proceed to a vote in the EP before the current mandate expired ahead of the next parliamentary elections. The final text of the Directive was adopted in plenary by the EP on April 24, 2024, and the Council formally adopted the text of the Directive on May 24, 2024. Subsequently, on June 13, 2024, the President of the European Parliament and the President of the Council signed the final version. The Directive was published in the EU Official Journal on July 5, 2024, and came into force on July 25, 2024.

2.3. Context: ERCST's 1st Project

During the trilogues, ERCST actively participated in the extensive discussions surrounding CS3D, influencing the debate on the specific topic of its extraterritorial effects²⁴ – an aspect that, as shown below, has been largely overlooked.

It has been argued²⁵ that focusing on impacts and activities outside the EU does not constitute genuine extraterritorial regulation. Instead, it represents a “territorial extension” of EU policymaking, designed to gain regulatory influence over activities occurring abroad and govern transactions that do not primarily involve EU territory. While the EU may pursue internationally agreed objectives rather than merely seeking to export its own norms, its chosen approach increasingly shapes the nature and content of third-country and international law. In fact, in the past, the EU has criticized other countries – notably the United States – for deploying unilateral measures with extraterritorial or global reach. However, 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 attractiveness.

²² J. Schickler, ‘German vacillation puts corporate sustainability law in doubt’, Euronews, EU Policy (2024). Available at: <https://www.euronews.com/green/2024/02/08/german-vacillation-puts-corporate-sustainability-law-in-doubt>.

²³ J. McGowan ‘Vote on EU corporate sustainability due diligence law falls short, March 15 deadline looms’, Forbes (2024). Available at: <https://www.forbes.com/sites/jonmcgowan/2024/02/28/vote-on-eu-corporate-sustainability-due-diligence-law-falls-short-march-15-deadline-looms/>.

²⁴ See A. Marcu, M. Mehling and A. Ruiz, ‘The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls’, ERCST Paper, (2023). Available at: <https://ercst.org/the-eu-corporate-sustainability-due-diligence-directive-and-its-extraterritorial-effect-promise-and-pitfalls-2/>.

²⁵ J. Scott “The Global Reach of EU Law”, in Marise Cremona, and Joanne Scott (eds), *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law*, Oxford University Press (2019) 21-63.

In its work ERCST argued that CS3D embodies another example of the EU's effort to influence global corporate practices through legislation with extraterritorial reach, often referred to as the "Brussels Effect." However, prior examples of such legislation and Member States' efforts to establish local supply chain diligence obligations suggest that the CS3D may lead to significant consequences, potentially challenging fundamental principles of EU governance and international cooperation. Specifically, the Directive's implications may intersect with core principles of national sovereignty under the UN Charter and the concept of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) outlined in the UNFCCC and Paris Agreement (PA).

The Directive might fundamentally reshape Member States' obligations under the PA and other international treaties by effectively converting collective national duties into individual corporate obligations at both domestic and international levels. This approach departs from the PA's original intent, which is premised on nationally determined contributions (NDCs) as part of a collective effort. The EU's strategy might be perceived as undermining this multilateral commitment by unilaterally enforcing sustainability standards, potentially challenging the cooperative essence of the agreement²⁶.

In light of its in-depth analysis, ERCST outlined, at the time, several key recommendations to optimize CS3D while mitigating potential challenges. It emphasized the need:

- for effectively consistent EU-wide due diligence standards to prevent legal fragmentation among Member States. Hence, a unified transposition would reduce compliance costs, particularly for SMEs, which often lack the resources to navigate disparate regulatory requirements across Member States. Harmonization would also promote legal certainty and operational efficiency for businesses operating in multiple jurisdictions.
- for policymakers to carefully evaluate the global impact of the CS3D, especially on developing countries. Without proper consideration, the Directive could inadvertently create trade barriers or exacerbate inequalities, undermining sustainable development goals. Efforts must ensure that the implementation of due diligence standards does not disproportionately affect countries with fewer resources or impede international cooperation.
- for well-defined enforcement methods to minimize excessive litigation and legal uncertainty. ERCST recommended clarifying the roles and responsibilities of civil society in monitoring compliance, ensuring that these efforts are effective without overburdening businesses. Transparent and proportionate enforcement mechanisms would help balance accountability with practical business realities.
- to balance ambitious regulations with economic pragmatism. Policymakers must remain mindful of the potential economic impacts of compliance costs, particularly for SMEs. Excessive regulatory burdens could lead to offshoring or deter investment in the EU, potentially undermining the Directive's objectives.
- for active engagement with stakeholders, both within and outside the EU, would be critical to foster alignment and cooperation. Collaborative dialogue would ensure that regulatory efforts are sustainable, economically viable, and considerate of the diverse perspectives and challenges faced by affected parties. This approach would help balance environmental and social goals with business competitiveness and innovation.

²⁶ From a political and trade perspective, it may be argued that the EU's imposition of sustainability standards on non-EU countries risks clashing with the principle of sustainable development as a national prerogative, as established in the Rio Declaration. Such actions could frame sustainable development as a tool of developed nations, infringing on the sovereignty of developing countries and provoking resistance. Historical precedents, such as the U.S. ban on airline compliance with the EU Emissions Trading Scheme (EU ETS) in aviation, highlight the potential for backlash against extraterritorial mandates.

3. European Commission Regulatory Scrutiny Board

3.1. Overview

Back in 2015, the EC transformed the Impact Assessment Board²⁷ into an independent Regulatory Scrutiny Board (hereinafter “EC RSB” or “the Board”) to enhance the existing system of quality control²⁸. This change followed the adoption of the “Better Regulation for Better Results – An EU Agenda”²⁹, which outlined the Commission’s new approach.

The EC RSB, composed by nine members³⁰, is an independent body within the Commission that advises the College of Commissioners. It provides central quality control and support for Commission impact assessments and evaluations at early stages of the legislative process. The Board’s work on impact assessments strengthens subsequent evaluations, and vice versa³¹.

The Board’s role is to provide quality assurance of Commission impact assessments, ‘fitness checks’ of multiple policies and laws, and major evaluation reports³² to the political level of the Commission, enabling it to take decisions on the basis of best available information and stakeholders’ views. The Board does not decide on initiatives or on policy objectives: that role belongs to the College of Commissioners.

It is important to emphasize that the EC RSB opinions are an assessment of the quality of the impact assessment rather than an assessment of the substance of the related legislative proposal itself, which are presented and decided later. The Board opinions contain recommendations for Commission services on how to improve draft reports.

Under the Working Methods of the European Commission³³, any initiative requiring an impact assessment must secure a positive opinion from the EC RSB before proceeding to Inter-Service Consultation. However, the Vice President for Inter-Institutional Relations and Foresight may authorize the continuation of preparations for an initiative that has received a second negative opinion from the EC RSB, before the College decides whether or not to go ahead with the initiative³⁴.

²⁷ Established in 2006, the Impact Assessment Board aimed to enhance the quality of the Commission's impact assessments. Over the years, it has reviewed more than 700 assessments with rigorous scrutiny, requiring resubmission in over 40% of cases.

²⁸ See “*Communication to the Commission – Regulatory Scrutiny Board: Mission, tasks and staff*”, Strasbourg, 19.5.2015, C(2015)3262 final. Available at: https://commission.europa.eu/document/download/a56c4562-6ce2-477a-9caf-c2a0c7141e4a_en?filename=communication-on-the-regulatory-scrutiny-board-mission-tasks-and-staff_may2015_en.pdf.

²⁹ Cf. COM(2015)215.

³⁰ Cf. Article 1 (Composition) of the ‘Rules of Procedure of the Regulatory Scrutiny Board’. Adopted pursuant to Article 5(3) of the Decision of the President of the European Commission on an independent Regulatory Scrutiny Board (P(2020)2 of 23.1.2020). Available at: https://commission.europa.eu/document/download/6f90ad20-4eb9-4888-ac72-ac7e9ff49223_en?filename=2%20RSB%20Rules%20of%20procedure-%20revision%202023%20signed.pdf.

³¹ See “How the Regulatory Scrutiny Board works, its role and composition, members, reports and rules”, available at https://commission.europa.eu/law/law-making-process/regulatory-scrutiny-board_en.

³² Cf. Article 7 (Functioning) of Rules of Procedure of the Regulatory Scrutiny Board.

³³ Cf. “*Communication from the President to the Commission: The Working Methods of the European Commission*”, Brussels, 1.12.2019, P(2019)2. Available at: https://commissioners.ec.europa.eu/document/download/0dbda7ed-b7fb-4d7e-9e62-6c8b0f54be62_en?filename=working-methods.pdf.

³⁴ Ibid. p. 10.

3.2. The Case of the CS3D

Against this backdrop, with the agreement of Vice-President for Inter-Institutional Relations and Foresight, Maroš Šefčovič, the EC has deemed it appropriate to proceed with the CS3D initiative not only because it was included in the 2022 Joint Political Priorities by the European Parliament, the Council, and the Commission, but also for the following stated reasons³⁵:

- (i) *Political importance*: The initiative aligned with the Commission's priority of "*An economy that works for people*," supporting the Sustainable Finance package and the European Green Deal.
- (ii) *Urgency of action*: Prompt action was required in the field of supply chain due diligence to facilitate the sustainability transition, mitigate the risk of Single Market fragmentation, and address growing demands for legislative clarity.
- (iii) *Addressed shortcomings*: Additional clarifications and evidence was provided to address the EC RSB's concerns – by the accompanying Staff Working Document – and these were considered incorporated into the revised legal proposal.

After the analysis of the EC RSB's findings and the consideration of the additional clarifications and evidence provided, the Commission argued that the proposal, significantly revised compared to the policy options outlined in the impact assessment, provided a robust framework to move decisively toward its overarching objectives: (i) maximizing the Single Market's potential to support the transition to a sustainable economy; and (ii) and promoting long-term sustainable and responsible corporate behavior.

As stated in the Explanatory Memorandum, the revised Directive adopted a more focused and targeted approach than the preferred option in the draft impact assessment. Its core element is the due diligence obligation, with directors' duties significantly streamlined and more closely aligned with this obligation. Additionally, the scope of due diligence has been adjusted to enhance its effectiveness.

3.3. Negative Opinions: Main Findings

The EC RSB noted that significant shortcomings persisted in both the preliminary and revised impact assessment reports (IAR), namely³⁶: (i) lack of clarity and vague problem definition; (ii) limited analysis of policy options; (iii) imbalanced impact assessment; (iv) insufficient justification of proportionality of the preferred option; and (v) imbalanced stakeholders views. These issues will be developed below.

3.3.1. Vague problem definition

The EC RSB found that the IAR provided limited concrete evidence regarding the scale and evolution of environmental and sustainability issues directly linked to the apparent lack or insufficient application of corporate sustainability management practices by EU companies, which the initiative aimed to address. It argued that the report effectively highlighted the competitive, financial, and reputational advantages companies would gain from adopting corporate sustainability practices, but it did not identify and substantiate the barriers preventing businesses from implementing such practices. Furthermore, the EC RSB stated that the IAR needed to:

³⁵ Explanatory Memorandum, CS3D European Commission's proposal, pp. 20-21.

³⁶ Regulatory Scrutiny Board Opinion, n. 17.

- a) demonstrate more convincingly why the market and competitive dynamics, along with the evolution of corporate strategies and risk management systems, were deemed inadequate to address these challenges.
- b) better substantiate the assumed causal relationship between the use of corporate sustainability tools and their tangible impact on addressing these problems.
- c) include a more comprehensive and balanced dynamic baseline scenario, integrating: (i) the growing trend in the adoption of corporate sustainability practices; (ii) the wide range of related measures already in place and the parallel regulatory initiatives being developed, including sectoral and sustainable product due diligence requirements; (iii) the extensive suite of sustainability measures under the Green Deal; and (iv) the expected developments in third countries, such as the adoption of sustainability sub-standards resulting from their own commitments and substantial EU and international trade and development support programs.

3.3.2. Limited analysis of policy options

The EC RSB found that the IAR lacked clarity on the necessity of regulating directors' duties in addition to due diligence requirements. Additionally, it argued that the IAR should have: (i) better explained the added value of the regulation; and (ii) justified why stand-alone options for either directors' duties or due diligence were not considered or compared to the combined approach.

Regarding enforcement, the RSB opined that the IAR dismissed mandatory due diligence options without civil liability regimes without substantiating their ineffectiveness. It highlighted that, considering stakeholders favour administrative supervision (a model also adopted by some Member States), the IAR should have compared all enforcement options, including stand-alone administrative supervision. Additionally, in the EC RSB opinion, the IAR should have (i) provided more detail on the efficiency and effectiveness of sanctions (e.g., market withdrawal, public procurement exclusion), particularly for non-compliant third-country companies; and (ii) clarified the feasibility and impacts of overriding mandatory provisions on applicable law, including unintended consequences.

Furthermore, according to the Board, the inclusion of medium-sized companies in high-impact sectors required stronger justification, supported by evidence. Clear, objective criteria for defining high-impact sectors should have been presented, alongside an analysis of policy choices for selecting and phasing in these companies. Safeguards to prevent large companies from imposing unjustified compliance burdens on SMEs should have also been specified.

To enhance regulatory coherence, the Board argued that the IAR should have better aligned the personal scope with parallel initiatives like the Corporate Sustainability Reporting Directive (CSRD). It should have discussed how coherence with sectoral and product due diligence initiatives would be achieved and assessed whether these might have become redundant.

The EC RSB also underlined that the IAR should have ensured that the initiative does not unduly extend specific EU commitments (e.g. from the Climate Law) to third countries.

For companies without an EU establishment, according to the EC RSB's opinion, the IAR should have: (i) justified the proposed turnover threshold (e.g., EUR 350 million) or evaluated alternatives; (ii) estimated the number of affected foreign companies and clarified whether all their global activities or only those linked to EU turnover would be covered. Similarly, for EU-based companies, the IAR should have specified

whether global operations under their control (e.g., products made in China and sold in the US) were included.

The Board also mentioned that the description of directors' duties should have clarified how directors address conflicting stakeholder and sustainability interests. The IAR should have also specified whether a company's long-term interests may override certain stakeholder or sustainability considerations.

The IAR did not: (i) justify mandatory science-based targets for climate change and biodiversity mitigation; (ii) explain their purpose in filling legislative gaps, and (iii) clarify how they will be set, validated, and enforced. It should have also explained why target-setting was linked to company size rather than emissions scale and why it was part of directors' duties rather than due diligence.

Finally, the role of public authorities in verifying corporate strategies and scientific targets required more detail, in the Board's opinion. The IAR should have clarified which national authorities are best suited to address non-compliance by third-country companies, how they would coordinate effectively, and the role of an EU cooperation mechanism in launching investigations and imposing sanctions.

3.3.3. Imbalanced impact assessment

The EC RSB found that the IAR should have provided a more balanced and comprehensive analysis of potential impacts on competition, innovation, agility, and litigation risks. It stated that, while stricter sustainability requirements may encourage innovation, these could also reduce company dynamism and agility, particularly in highly concentrated sectors with few suppliers. In the Board's opinion, the IAR should have: (i) evaluated whether the proposed measures might hinder certain industries from diversifying suppliers or strengthening supply chain resilience; (ii) assessed the potential competition impacts, such as increased vertical integration or risks from sharing commercially sensitive information during joint due diligence efforts; and (iii) considered whether a rise in (unsuccessful) litigation could further constrain the agility of EU companies.

Additionally, the EC RSB emphasized that the IAR should have accounted more thoroughly for potential negative impacts on third countries, especially in developing regions, including realistic risks, costs, and the effectiveness of soft mitigation measures. Concomitantly, the Board argued that the risk of "*sustainability leakage*" – i.e., where EU companies withdrawing from non-compliant suppliers might result in third-country competitors taking over those suppliers, gaining a competitive edge without improving human rights or environmental outcomes – should have been explored.

The EC RSB opinionated that the IAR should have analyzed more thoroughly how the options might affect the global level playing field and the competitiveness of EU companies, particularly SMEs, based on a clarification of the personal scope. Many EU SMEs in high-impact sectors (e.g., those with turnover above EUR 8 million) would fall within scope, unlike their competitors in neighboring third countries, where the turnover threshold of EUR 350 million is unlikely to be met. This could place EU SMEs at a competitive disadvantage. Similarly, as directors' duties would apply only to EU-established companies, the IAR should have evaluated whether this might lead to a loss of competitiveness or incentivize companies to relocate their headquarters to third countries.

Finally, according to the Board's opinion, the IAR did not assess how the proposed EU corporate sustainability governance rules aligned with the diverse national corporate governance models across Member States, given the national focus of company law.

3.3.4. Insufficient justification of proportionality

While the revised IAR offered improved clarity on the substantial costs associated with the initiative, the Board argued that it did not adequately account for the significant uncertainty surrounding whether the estimated benefits will materialize on a scale sufficient to outweigh these costs. According to the EC RSB's opinion, to strengthen the proportionality assessment of the preferred option(s), the IAR should have reassessed the justification for including medium-sized EU companies in high-impact sectors and the broad scope of mandatory measures. Additionally, the comparison of policy options in terms of effectiveness did not analyse the expected achievement of the specific objectives identified in the objectives section, in the Board's opinion.

3.3.5. Imbalanced Stakeholder Views

The EC RSB concluded that the IAR should have presented more systematically the perspectives of different stakeholder groups, ensuring a balanced representation of both supportive and critical views. The specific views of SMEs should have been highlighted to provide better context for discussions on scope and policy options.

3.4. Commission Staff Working Document: Follow-up to the Second Opinion of the RSB

Against this backdrop, the Commission produced a 55 page document³⁷ – i.e., the Commission Staff Working Document (CSWD) – providing additional evidence and explanations in response to the Board's main findings and suggestions detailed above. This document complemented the impact assessment which was not revised in substance for the sake of transparency³⁸. A summary of the explanations is provided in this section.

3.4.1. Problem description

As stated in the CSWD, which refers to the 2021 EcoVadis Business Sustainability Risk and Performance Index, sustainability performance is improving across regions and industries, with Europe leading the way³⁹. However, according to the Commission, gaps persisted. Less than 35% of surveyed companies were found to have policies for sustainable procurement and supply chain due diligence. Supply chain risk analysis was found underutilized, and industry federations, while embracing sustainability agendas, often lacked concrete actions like target-setting or leading impact projects. Significant disparities were found to exist among sectors, suggesting further measures are needed to mainstream sustainable practices. Therefore, according to the CSWD, mandatory action would be necessary to provide clear due diligence standards, reduce transaction costs, and create a level playing field, benefiting companies, investors, and consumers.

The further CSWD clarified that the initiative intended to complement existing and planned EU sector-specific regulations, such as the Conflict Minerals Regulation, the Deforestation Proposal, and the Batteries

³⁷ Commission Staff Working Document: "Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/37" (SWD(2022)42).

³⁸ Ibid. p. 1.

³⁹ For example, the use of supplier codes of conduct and supplier assessments doubled from 14% and 24% in 2016 to 26% and 33% in 2020, respectively.

Proposal, which target sustainability concerns in specific industries or products. Unlike these measures, the CS3D initiative was intended to set horizontal requirements, covering broader sustainability issues like deforestation or environmental risks in mining, and establishes civil liability mechanisms for harm in value chains. Thus, the initiative would be aligned with the European Green Deal, supporting its goals of climate neutrality and environmental protection. It would complement Green Deal measures like the Fit for 55 package, Zero Pollution Action Plan, and Farm-to-Fork Strategy, extending their scope to address external environmental and social impacts across industries. It also would contribute to the Biodiversity Strategy by requiring businesses to mitigate biodiversity-related impacts globally. Furthermore, it would be aligned with international agreements like the Paris Agreement, requiring large companies to adopt climate plans tied to Union climate commitments. It would support evolving global biodiversity standards, such as the Post-2020 Global Biodiversity Framework under the UN Convention on Biological Diversity, which calls for businesses to reduce biodiversity-related impacts.

3.4.2. Policy options

The CSWD clarified that the preferred option was adapted to become more focused in content and targeted in scope. The “personal scope” of the proposal was significantly reduced in response to the RSB’s feedback, particularly regarding the exclusion of SMEs and the proportionality of the preferred option. Specifically: (i) SMEs had been completely excluded from the scope of the directive; (ii) coverage now applied only to companies with more than 250 employees and €40 million worldwide net turnover operating in high-impact sectors, while larger companies (exceeding 500 employees and €150 million turnover) were included regardless of sector.

The high-impact sectors were explicitly defined in the text, incorporating the Board’s suggestions on legislative clarity. These sectors focus on areas with a high risk of adverse impacts and for which OECD guidance exists. For midcap companies in high-impact sectors, obligations will be phased in after a two-year transition period, allowing additional time for adaptation. Additionally, the due diligence obligations for these companies were restricted to addressing severe impacts specific to their sector.

To achieve the initiative’s objectives, the scope of the proposal extends to non-EU companies with direct links to the Union market. These companies are subject to the same turnover thresholds as EU companies but within the Union market.

Recognizing the indirect impacts on SMEs within the value chain, the proposed Directive calls for accessible and practical support measures, including: tools such as hotlines and training, and possibly the establishment of an observatory to assist with implementation. A review clause explicitly includes the possibility of revising the scope of the Directive based on practical application, ensuring flexibility and responsiveness. Companies in the Directive’s scope are also required to adopt measures to minimize indirect impacts on SMEs.

The material scope retains a cross-cutting framework addressing both human rights and environmental impacts, which reflected the consensus among stakeholders for a horizontal framework to tackle the identified problems comprehensively.

To address lack of clarity regarding the need to regulate directors’ duties alongside due diligence obligations, the CSWD clarified that:

- (i) Directors' duties have been incorporated to ensure alignment with due diligence processes: these include setting up and overseeing corporate due diligence measures, establishing codes of conduct, and integrating due diligence into corporate strategies.
- (ii) The general duty of care for directors – common to the company law of all Member States – has been clarified to ensure directors consider sustainability matters, including human rights, climate change, and environmental impacts, across short-, medium-, and long-term horizons.
- (iii) More extensive specific directors' duties proposed in earlier drafts were not retained, balancing the proposal's objectives with proportionality.

Finally, the proposal emphasized civil liability as a critical enforcement tool for corporate due diligence obligations, complementing administrative supervision. The CSWD explained that while some stakeholders prefer administrative oversight alone, existing frameworks in France and Germany demonstrate that civil liability can coexist with general liability provisions to strengthen compliance and enforcement. Aligning with international standards like the UN Guiding Principles on Business and Human Rights, the proposal combined administrative and civil mechanisms to enhance effectiveness. As the Commission further argued, this dual approach mirrors established EU practices, such as in competition law, creating a robust enforcement system. A proportionate civil liability regime benefits businesses by providing legal clarity to victims by expanding access to remedies, including non-monetary outcomes like land restitution. Civil liability provisions were made universally applicable, ensuring victims' access to remedies regardless of jurisdiction. As seen by the European Commission, concerns about increased litigation are mitigated by evidence showing limited claims under similar laws and safeguards like unchanged burden-of-proof rules.

3.4.3. Assessment of impacts

3.3.3.1. Costs

The CWSD explained that compliance costs were recalculated to reflect the significantly narrower scope of the proposal compared to the preferred option outlined in the impact assessment. Substantive compliance costs included two primary components: procedural costs, which covered the establishment and operation of due diligence processes, and transition costs, which involved investments for harm mitigation and sustainability transitions. While the impact assessment quantified only the procedural costs, it suggested that transition costs could ultimately approach zero or even become profitable. With the revised scope, the CWSD stated that procedural compliance costs for all EU businesses covered by the directive were estimated at EUR 760 million annually and EUR 220 million in one-off expenses, a reduction from EUR 1.72 billion and EUR 500 million, respectively, in the previous assessment. Administrative costs, mainly linked to public reporting, were also expected to decrease significantly. The CWSD underlined that companies within the scope of this directive would already be required to disclose sustainability and due diligence-related information under the CSRD. Thus, since the CSRD applies to a broader range of EU companies than this initiative, most administrative costs, such as reporting and data analysis, are already accounted for. Consequently, the reduced scope ensures that no substantial additional administrative costs will arise under this directive.

For non-EU companies, procedural compliance costs were estimated at EUR 240 million annually and EUR 70 million in initial one-off expenses, based on the recalculated number of affected companies and the cost benchmarks established for large EU firms. Supervisory costs for Member States, associated with public authorities tasked with monitoring and enforcing compliance, would also be lower under the revised scope. Recurring supervisory costs in the EU are projected at EUR 5.55 million annually, with initial setup costs estimated at EUR 130,000.

3.3.3.2. Proportionality

The CWSD clarified that the proposal carefully considered the support SMEs – often involved in the supply chains of larger companies – and mitigated the indirect effects of the due diligence legislation. For instance, large companies are encouraged to provide targeted assistance to their SME suppliers, including financial support for independent on-site checks and ensuring that the due diligence requirements placed on SMEs are not unfair or disproportionate. Additionally, a comprehensive package of support measures was considered, such as model contractual clauses, hotlines, training programs, databases, observatories for supply chain transparency, development policy projects, self-assessment methodologies, and multi-stakeholder initiatives. These initiatives, supported by both Member States and the EU, could help SMEs in both the EU and third countries navigate the due diligence obligations.

For mid-cap companies in high-impact sectors, the due diligence obligations would be simplified: being required to address severe adverse impacts only.

Considering these adjustments, according to the CSWD, the revised proposal significantly reduced the compliance and supervisory costs for businesses, thus making it more efficient, proportionate, and ultimately better suited to the practical challenges faced by businesses.

3.3.3.3. Third countries

The CSWD recognized that the proposed directive significantly impacts both EU and non-EU businesses by requiring companies to extend due diligence efforts across global value chains, addressing severe human rights and environmental impacts often occurring outside the EU. This external dimension influences economies in third countries and aligns with EU trade and development policies to minimize adverse effects while ensuring coherence with international frameworks on responsible business conduct.

The CSWD underlined that assessing the full impact on third-country companies was complex due to limited legislative precedents and mostly voluntary standards. While positive outcomes are expected, risks such as undue burdens on companies and local economies are mitigated by safeguards. These include encouraging local engagement, shared costs for sustainable transitions, and prioritizing prevention and mitigation over business disengagement.

The CSWD acknowledged that the directive would likely have the greatest impact – both positive and negative – on developing countries supplying high-risk products or services to the EU. EU companies' limited leverage in certain sectors would be counterbalanced by the EU's market size and commitments to sustainability investments. To minimize risks, the proposal promotes collaboration through industry schemes and multi-stakeholder initiatives. It supports third-country governments in strengthening governance and sustainable practices, aligning with the EU's focus on sustainable development over mere economic growth. Disengagement from suppliers is discouraged unless driven by illegal or unsustainable practices, ensuring alignment with international commitments to human rights and environmental protection.

3.3.3.4. Contribution of potential soft mitigation measures

The CSWD clarified that the proposal incorporated safeguards to mitigate unintended consequences and highlighted the importance of targeted accompanying measures to enhance implementation. It also encouraged companies to leverage industry schemes and multi-stakeholder initiatives, supported by the

Commission and Member States in disseminating information about these tools. These efforts aimed to strengthen compliance, foster regulatory environments, and address systemic issues, especially in third countries.

The CSWD stated that the EU, through development cooperation, assists public authorities and companies in tackling root causes and building capacity. Instruments like the Neighbourhood, Development, and International Cooperation Instrument and Team Europe initiatives help align third-country legislation with international labor standards and support suppliers in meeting sustainability requirements. A mapping of EU-funded initiatives identified approximately 75 actions, totaling €660 million, primarily from development cooperation instruments. In the 2021–2027 Multiannual Financial Framework, supply chain sustainability was a priority for about two-thirds of partner countries in cooperation with the EU. These initiatives underscore the EU’s commitment to promoting sustainable practices and ensuring that third-country stakeholders are prepared to implement due diligence measures effectively.

3.3.3.5. Impact on competition

The Commission’s analysis indicated that cooperation aimed at achieving sustainability goals or the limited exchange of necessary information was unlikely to result in anti-competitive behavior. This concern was addressed through the revision of the Horizontal Block Exemption Regulations for Research & Development and Specialization, along with accompanying Horizontal Guidelines. These guidelines, which include provisions on sustainability agreements, aimed to provide clarity and create a safe harbor for sustainability standards, contingent on procedural safeguards such as voluntary participation, transparency, and proper vetting mechanisms for suppliers.

According to the CSWD analysis, mandatory due diligence was also considered unlikely to trigger anti-competitive behavior through vertical integration. While there were concerns that firms may acquire suppliers in sectors with limited options, thus restricting competitors’ access, such actions were expected to be rare due to their high costs. Existing literature suggested that companies are more likely to focus on strengthening supply chain risk management, including enhanced communication and monitoring, rather than acquiring suppliers. Though vertical integration may increase in some cases, supplier integration is generally less effective than improving internal controls within firms or among groups of firms. Similarly, customer integration is expected to have a weaker impact, further reducing the likelihood of anti-competitive effects.

Additionally, EU merger control rules, which apply when companies reach specific turnover thresholds, would help safeguard against anti-competitive vertical integration, addressing concerns like input or customer foreclosure. Many third countries also have robust merger control regimes that help mitigate such risks internationally. While individual instances of supplier integration may limit availability for competitors, literature suggests that stronger due diligence requirements and associated costs alone are insufficient to drive such acquisitions. Firms that acquire suppliers risk losing the benefits of specialization and facing increased operational complexity. The CSWD further explains that vertical integration by EU companies, whether through acquisitions compliant with competition rules or by internalizing certain inputs, could enhance market share and stimulate investments in sustainable products and technologies. These actions would align with market demand, fostering competition in sustainable goods and services, and contributing to the transition to a more sustainable economy.

3.3.3.6. Impact on competitiveness

The CWSD stated that the initiative was designed to minimize negative impacts on EU competitiveness, including setting clear criteria for civil liability and applying strict conditions for value chain relationships beyond first-tier suppliers. Support measures for both EU companies and suppliers in producing countries aim to mitigate challenges, with disengagement from high-risk suppliers being a last resort for severe adverse impacts.

According to the EC's analysis, while some companies may face higher costs when sourcing alternatives, especially if they abandon high-risk suppliers, these risks are mitigated by applying similar requirements to third-country competitors. The initial costs of implementing due diligence will vary based on company size and capacity. Large companies, already subject to non-financial reporting or new sustainability rules, are better equipped to absorb transition costs, invest in sustainability, and gain medium- to long-term benefits, such as improved corporate governance and risk management.

The impact assessment emphasized the financial and operational benefits of adopting sustainable practices, including better risk management, reduced reliance on critical resources, and opportunities for collaboration with business partners. The initiative aimed promoting investments that support long-term sustainable development, align corporate operations with societal expectations, and reduce legal and reputational risks related to unethical practices such as forced or child labor. By addressing exploitative practices and promoting a level playing field for companies that adhere to ethical standards, the proposal strengthened the resilience of EU businesses and aligned with European values. In addition, monitoring mechanisms will evaluate the legislation's impact on companies and stakeholders over time.

The CSWD reinforced that although some uncertainty remains regarding the uniform realization of benefits, the initiative is expected to offer competitive advantages, including enhanced risk management, improved reputation, and the ability to provide sustainable products, contributing to the long-term resilience and competitiveness of EU businesses. Lessons from similar laws, like the French Duty of Vigilance law, suggest that proper implementation of due diligence can reduce litigation risks.

3.4.4. Proportionality of the Preferred Option

As stated in the CSWD, the preferred option was revised to ensure greater proportionality in achieving the initiative's goals through several key adjustments. First, all SMEs were excluded from the proposal, protecting them from unfair and disproportionate demands from their business partners. Second, the number of midcap companies in high-impact sectors was reduced by narrowing the definition of such sectors and their associated obligations. Third, the scope of third-country companies covered under the proposal was aligned with that of EU companies to ensure consistency. Finally, specific conditions for civil liability have been introduced to address damages arising from indirect established business relationships. These changes have resulted in a significant reduction in the number of affected companies, now estimated at approximately 13,000 EU companies and an additional 4,000 non-EU companies. Notably, the latter figure was not included in the initial impact assessment.

4. Final Text *vis-à-vis* the Proposal of the European Commission

The adopted text reflects substantial and significant changes from the European Commission’s original proposal, particularly following the last-minute amendments introduced in March 2024. This section examines the content of the proposed Directive on an article-by-article basis, highlighting key differences between the initial draft and the final version of the text, and providing commentary on their implications⁴⁰.

4.1. Subject Matter (Article 1)

Article 1 of the CS3D encloses the subject matter of the proposed Directive, mandating companies to carry out human rights and environmental due diligence across their own business activities, those of their subsidiaries, and the activities of their “*business partners*”⁴¹ within their “*chain of activities*”.⁴² This terminology – i.e., “*business partners*” and “*chain of activities*” – marks a notable shift from the Commission’s initial proposal, which used the more contentious term “*established business relationships*”.

According to Article 3(1)(g), the term ‘*chain of activities*’ encompasses activities of a company’s upstream business partners related to the production of goods or the provision of services by the company, for instance the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and development of the product or the service. Both direct and indirect business partners are covered. The activities of downstream business partners that companies must exercise due diligence on are limited to those related to the distribution, transport, and storage of a product, where the business partners carry out those activities for or on behalf of the company subject to the CS3D. One of the last-minute changes was to exclude “disposal” from the downstream chain of activities.

While this encompasses both direct and indirect business partners involved in distribution, transport, and storage, the requirement that business partners act “*for the company or on behalf of the company*” introduces a limitation to the scope of activities covered by this definition. Recital 25 clarifies that the CS3D does not apply to impacts arising from the disposal of products by a company’s business partners. Similarly, Recital 26 specifies that the chain of activities excludes the activities of a company’s downstream business partners related to the company’s “services.” Furthermore, Recital 25 emphasizes that the narrower value chain coverage implied by the term “chain of activities” does not alter the interpretation of “value chain” or “supply chain” in other Union legislation (e.g., CSRD)⁴³.

Beyond the due diligence obligations and corresponding liability provisions, Article 1 also introduces the requirement for companies “*to adopt and put into effect*” a transition plan for climate change mitigation⁴⁴. While this obligation was included in the Commission’s original proposal, it was not explicitly mentioned

⁴⁰ This section builds upon, and changes, the work of Silvia Ciacchi, “The newly-adopted Corporate Sustainability Due Diligence Directive: an overview of the lawmaking process and analysis of the final text”, in ERA Forum (2024) 25:29–48; <https://doi.org/10.1007/s12027-024-00791-y>. Copy of the licence: <https://creativecommons.org/licenses/by/4.0/deed.en>.

⁴¹ “*Business partners*” comprise both direct and indirect relationships. Under Article 3(1)(f), ‘business partner’ means an entity: i) with which the company has a commercial agreement related to the operations, products or services of the company or to which the company provides services pursuant to point (g) (‘direct business partner’); or (ii) which is not a direct business partner but which performs business operations related to the operations, products or services of the company (‘indirect business partner’).

⁴² Art. 1(1)(a) CS3D. The term “chain of activities” is a subset of value chains as understood in the CSRD, the UNGPs and the OECD Guidelines.

⁴³ Client Earth and Frank Bold, “Corporate Environmental Due Diligence and Reporting in the EU: Legal analysis of the EU Directive on Corporate Sustainability Due Diligence and policy recommendations for transposition into national law”, September 2024, p. 22.

⁴⁴ Art. 1(1)(c) CS3D.

in Article 1. In the final text, climate change assumes a more prominent position, now featured as the third core pillar of the Directive⁴⁵.

4.2. Personal Scope (Article 2)

Article 2 of the final CS3D text, which outlines the scope of application of the proposed Directive, was the article that underwent the most significant revisions during the emergency renegotiations in February and March 2024.

Initially, the Directive aimed to cover two categories of companies: “large” EU and non-EU companies, and “midcap” EU and non-EU companies operating in high-impact sectors. The inclusion of a lower threshold for companies in high-risk sectors had been a consistent feature of all prior drafts, including the December 2023 provisional agreement. However, this provision was completely removed in the final adopted text. Additionally, the thresholds for classifying “large companies” based on employee numbers and turnover were increased as part of last-minute amendments. Consequently, the final version of the Directive redefines the criteria for companies falling within its scope as follows:

- EU companies with more than 1000 employees (previously 500), with a net world-wide turnover of EUR 450 million or above (previously 150) in the last financial year⁴⁶.
- Non-EU companies having generated EUR 450 million or above in the Union (previously 150)⁴⁷.
- Companies that do not meet the above threshold but are the “ultimate parent company” of a company group that does⁴⁸.

Article 2(5) CS3D specifies that the Directive applies only to companies that meet the established thresholds for two consecutive financial years⁴⁹. Additionally, it provides clarifications regarding its applicability to company groups, as well as franchising and licensing agreements⁵⁰.

The final scope of the CS3D, adopted in May 2024, was reduced by around 60 to 70 percent – i.e., expected to cover around 5 500 businesses in total – compared to the text agreed on in December 2023 (which would cover around 16 800 companies⁵¹). In more than half of all EU countries, CS3D applies to less than 100 companies⁵².

As mentioned above, following the Board’s negative opinions, the Commission excluded SMEs from the Directive’s personal scope to avoid imposing excessive financial and administrative burdens on firms lacking pre-existing due diligence frameworks. Nevertheless, the Commission acknowledged a spillover effect, as SMEs often engage with larger companies covered by the Directive. The latest amendments to the thresholds further reflect efforts to minimize the burden on SMEs.

⁴⁵ This formulation of Art. 1 of the adopted text is taken from the Council’s mandate. The obligation to adopt and implement climate transition plans is not based on the concept of a chain of activities. Instead, it relies on greenhouse gas (GHG) emission scopes, which include, among other elements, the use of sold products under scope 3.

⁴⁶ Article 2(1)(a) CS3D.

⁴⁷ Article 2(2)(a) CS3D.

⁴⁸ Article 2(1)(b) and 2(2)(b) CS3D.

⁴⁹ This clause was introduced in the Council’s mandate.

⁵⁰ See Recitals 28 and 29 and Art. 2(1)(c) and 2(2)(c) CS3D.

⁵¹ 13,000 was the number originally anticipated under the European Commission’s initial proposal. See: CS3D European Commission proposal, Explanatory Memorandum, p. 14.

⁵² Cf. Client Earth and frank bold, n43, p. 20.

4.3. Material Scope

To fully grasp the boundaries and substance of the proposed Directive’s material scope, it is essential to first examine Article 3 of the CS3D, which addresses “definitions.” In addition to the concepts of “business partner” and “chain of activities” clarified above (see 4.1.), the following definitions offer critical context for understanding the due diligence obligations detailed later in the text.

Article 3 of the CS3D defines “*adverse environmental impact*” and “*adverse human rights impact*” as violations of the international environmental and human rights treaties and conventions listed in the Annex to the Directive⁵³. The definition of “*adverse human rights impact*” extends to include non-listed human rights abuses, provided they satisfy three criteria: the human right in question is capable of being abused by a company or legal entity; it must relate to a legal interest protected by one of the instruments outlined in Part I, Section 2 of the Annex; and the company could have reasonably foreseen the risk of such an impact⁵⁴. Recital 32 emphasizes some of the international instruments now incorporated into the Annex of the adopted text, such as the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

Finally, Article 3(1)(o) defines “*appropriate measures*” as actions a company takes to “*effectively*” address adverse human rights and environmental impacts. The “*appropriateness*” of these measures is determined by the likelihood and severity of the harm, as well as the specific circumstances of each case.

4.3.1. Due diligence (Article 5)

Article 5 of the CS3D outlines the content of the sustainability due diligence obligations, summarizing the provisions detailed in Articles 7 to 16. The wording of the final text emphasizes the *risk-based* nature of the due diligence obligations, aligning more closely with the international soft law framework for human rights due diligence⁵⁵. This alignment reflects a more comprehensive and developed material scope compared to earlier versions of the Directive. Notable additions, primarily derived from the European Parliament’s mandate, include new language on risk management, prioritization of harms and risks, provisions for remediation, and a stronger emphasis on stakeholder engagement.

Article 5(3) of the CS3D incorporates language from the Council’s mandate, stipulating that compliance with the Directive’s disclosure requirements shall affect the ability of business partners to safeguard their trade secrets or other sensitive information. Additionally, the final text introduces a new provision, Article 6, which focuses on “*due diligence support at group level*.” This article highlights the importance of coordination and assistance within company groups to effectively implement due diligence obligations⁵⁶. Compared to the EC’s proposal, the final adopted text places greater emphasis on the role of company groups and the coordination between parent companies and subsidiaries.

Article 7 of the CS3D establishes the obligation to integrate sustainability due diligence into a company’s policy and risk management system. Beyond introducing updated terminology on risk management, the

⁵³ Article 3(1)(b) and (c) CS3D.

⁵⁴ Article 3(1)(c)(i) and (ii) CS3D. Art. 3(1)(l) provides parameters to delineate “severe adverse impacts”. These include the nature of the object of the damage and its nature, (in terms of *inter alia* scale, scope and irreversibility) – See also Article 3(1)(v) CS3D.

⁵⁵ The risk-based approach is especially championed by the UNGPs. The European Commission text had been criticised for lacking alignment with the Principles and the international soft law framework at large in this respect. See e.g., G. Holly, S. Andreasen Lysgaard, “Legislating for impact: analysis of the proposed EU corporate sustainability due diligence directive”, the Danish Institute for Human Rights (2022) p. 11–12.

⁵⁶ The text of the article is primarily taken from the Parliament’s mandate. However, the Council’s mandate had a very similar provision as well.

article provides more detailed guidance on how companies should implement their due diligence policies. Specifically, Article 7(2) CS3D explicitly requires employee consultation during the policy's development. Additionally, the policy must outline a long-term sustainability due diligence strategy, include the adoption of a code of conduct, and present a detailed implementation plan.

The core components of the due diligence obligation are detailed in Articles 8, 10, and 11 CS3D:

- (i) Article 8 establishes the duty to identify and assess actual and potential adverse impacts. This obligation applies to a company's own activities, as well as those of its subsidiaries and business partners throughout their chain of activities. To comply, companies are required to adopt "appropriate measures," as previously defined. The final text further specifies that these measures should include mapping the company's own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, and conducting an in-depth risk assessment based on this mapping⁵⁷.
- (ii) Building on this, Article 9 CS3D introduces a complementary provision on the prioritization of adverse impacts. When companies cannot feasibly assess all sustainability risks and harms within the company's own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, they must prioritize these risks and harms based on their severity and likelihood⁵⁸.
- (iii) Articles 10 and 11 address the prevention and cessation of adverse impacts, respectively. To prevent potential impacts and cease ongoing ones, companies must implement "appropriate measures," informed by an analysis of: (a) whether the harm is or was caused solely by the company, its subsidiaries, business partners, or a combination thereof; (b) where the harm occurs or has occurred (within the company's operations, those of its subsidiaries, or its business partners); and (c) the company's ability to influence the behavior of its business partners when they are responsible for the adverse impact⁵⁹.

Both articles⁶⁰ provide non-exhaustive lists of appropriate measures, including stakeholder engagement, contractual assurances⁶¹, and capacity building. Furthermore, both articles outline specific approaches for applying these measures when working with SMEs⁶². As a final measure, companies are required to consider the termination of business relationships with relevant partners if adverse impacts cannot be prevented or mitigated⁶³.

Compared to the Commission's proposal, the final text introduces two additional articles: Articles 12 and 13. Article 12(1) and (2) of CS3D requires companies that have caused or jointly caused an adverse impact to provide remediation to the affected parties. Companies not directly responsible for the adverse impact – caused only by the business partner – may still engage in voluntary remediation and/or leverage their influence over responsible business partners to facilitate remediation. Article 13 of CS3D highlights the importance of meaningful stakeholder engagement when implementing appropriate measures. These

⁵⁷ Article 8(2)(a) and (b) CS3D.

⁵⁸ Article 9(2) CS3D.

⁵⁹ Article 10(1) and 11(1) CS3D adopted text. These formulations originate from the Council's mandate.

⁶⁰ Article 10(2) and 11(3) CS3D.

⁶¹ A model clause to aid companies in the drafting of contractual assurances will be prepared by the Commission in consultation with Member States and stakeholders, by 26 January 2027, as per Article 18 CS3D.

⁶² Article 10(5) and 11(6) CS3D.

⁶³ Article 10(6) and 11(7) CS3D.

provisions underscore the text's closer alignment with the international soft law framework on human rights due diligence⁶⁴.

The subsequent articles further elaborate on key obligations under the proposed Directive: (i) Article 14 mandates the establishment of mechanisms for notifications and complaints; (ii) Article 15 requires companies to monitor and regularly evaluate the adequacy of their due diligence policies; and (iii) Article 16 outlines the obligation to report on compliance with the Directive's requirements.

4.3.2. Combating climate change (Article 22)

Article 22 of the CS3D introduces specific obligations aimed at combating climate change, positioning this issue as a central element of the proposed Directive, as reflected in its inclusion in Article 1. The provision requires companies to “*adopt and put into effect*” a transition plan for climate change mitigation (“TPCCM”) aiming to ensure, through *best efforts*, that the company's business model and strategy are compatible with the transition to a sustainable economy and a goal of limiting global warming to 1.5°C – referencing the Paris Agreement – and the objective of achieving climate neutrality as established by the EU Climate Law, including its intermediate and 2050 climate neutrality targets⁶⁵.

The final text notably excludes provisions requiring companies to link climate transition targets to variable executive remuneration or the use of financial incentives to achieve these goals. These elements, present in earlier drafts, had been sources of considerable controversy and resistance, leading to their removal in the adopted text. This content was initially included in Article 15(3) of the European Commission's proposal, but its exclusion is not surprising, given the strong opposition it faced during the trilogue negotiations.

Compared to the Commission's original proposal, the adopted text this offers more detailed guidance on the structure and content of the TPCCM, however doubts persist⁶⁶.

4.3.2.1. Obligation to adopt, disclose and implement

While under CSRD the emphasis is, *prima facie*, on the disclosure/ report of the TPCCM, the formulation of the legal obligation in Article 22 of the CS3D is explicitly twofold: (i) the duty “*to adopt*”, which implies the existence of a formal internal approval of the plan; and (ii) the duty “*to put into effect*”, which adds to the *adoption* a duty directed towards implementation.

⁶⁴ See, for example, Principle 22 of the UNGPs on remediation, and the frequent mentions of “*stakeholder engagement*” throughout the text of the Principles.

⁶⁵ Art. 22(1)(a)–(d) CS3D. This TPCCM shall contain: (a) time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and, where appropriate, absolute emission reduction targets for GHG for scope 1, scope 2 and scope 3 GHG emissions for each significant category; (b) a description of decarbonisation levers identified and key actions planned to reach the targets, including, where appropriate, changes in the product and service portfolio of the company and the adoption of new technologies; (c) an explanation and quantification of the investments and funding supporting the implementation of the transition plan for climate change mitigation; and (d) a description of the role of the administrative, management and supervisory bodies with regard to the transition plan for climate change mitigation. The wording of Article 22 of the CS3D is largely drawn from the CSRD/ESRS. As a result, the content requirements are essentially aligned.

⁶⁶ The tool of transition planning is not novel and the concept resonates (or is connected) with other plans at different levels (i.e., installation, company, sector, or member state), e.g., the “*Climate Neutrality Plan*” under the EU-Emissions Trading System (EU-ETS), the “*Transformation Plan*” under the Industrial Emissions Directive (IED), the “*Specific Plan*” under the Capital Requirements Directive (CRD), the “*CapEx Plan*” under the EU Taxonomy, and even the “*National Energy and Climate Plan*” foreseen in the Regulation on the Governance of the Energy Union and Climate Action or the “*Sectoral Roadmaps*” of the EU Climate Law.

The duty to implement a TPCCM must be understood within the context of Article 22(1)(c), which identifies “*investments and funding supporting the implementation of the transition plan*” as a core element of the TPCCM’s design as well as other critical elements for implementation, including decarbonisation strategies, key actions, potential changes to product and service portfolios, the adoption of new technologies, investments and funding, and oversight by administrative, management, and supervisory bodies. Recital 73 reinforces this by stating that the TPCCM “*should outline actions aimed at achieving the company’s climate targets*”.

4.3.2.2. Obligation of conduct vs result

Clarifying the nature of obligations is crucial for understanding the type of conduct expected from a subject of law (in casu, a company). Due diligence obligations are considered obligations of conduct or means, linked to the concept of risk and characterised by a degree of flexibility. Due diligence rules typically include obligations and duties aimed at avoiding a risk from arising (obligations to prevent; obligations to protect); obligations aimed at ensuring the realisation of particular goals; and other primary rules like duties to negotiate or cooperate⁶⁷.

In this sense, the last part of the CS3D TPCCM obligation, i.e., the duty to implement, is explicitly phrased (i.e., the wording “through best efforts”) as an obligation of conduct or means. The “best efforts” refers to the goal, and the goal is ensuring 1.5°C compatibility – not that 1.5°C is the result of any individual company’s actions. But if doubts existed, Recital 73, clarifies: “Such requirements should be understood as an obligation of means and not of results. Being an obligation of means, due account should be given to the progress companies make, and the complexity and evolving nature of climate transitioning. While companies should strive to achieve the greenhouse gas emission reduction targets contained in their plans, specific circumstances may lead to companies not being able to reach these targets, where this is no longer reasonable.”

It should, however, be underlined that hierarchically “best efforts” imposes a higher obligation surpassing “reasonable effort”. This implies that companies must exhaust all viable avenues to compatibility.

4.3.2.3. Presumption of compliance in relation to CSRD

According to Article 22(2)⁶⁸, companies which are complying with the CSRD disclosure obligations and follow the ESRS E1 requirements on climate transition planning have complied with their duty to adopt such a plan under Article 22(1) of the CS3D. A *contrario sensu*, companies still have an additional obligation to put these plans into effect and update them annually describing their process according to Article 22(3) of the CS3D. Recital 73 of the CS3D importantly explains this reasoning: “*While the adoption obligation will be considered to have been met, companies should still abide by their obligation to put that transition plan for climate change mitigation into effect and to update it every 12 months to assess progress made towards its targets.*”

⁶⁷ A. Ollino, ‘The Nature of Due Diligence Obligations’, in *Due Diligence Obligations in International Law*. Cambridge: Cambridge University Press, (2022) pp. 64–130.

⁶⁸ Cf. “2. Companies that report a transition plan for climate change mitigation in accordance with Article 19a, 29a or 40a, as the case may be, of Directive 2013/34/EU shall be deemed to have complied with the obligation to adopt a transition plan for climate change mitigation referred to in paragraph 1 of this Article.

Companies that are included in the transition plan for climate change mitigation of their parent undertaking reported in accordance with Article 29a or 40a, as the case may be, of Directive 2013/34/EU, shall be deemed to have complied with the obligation to adopt a transition plan for climate change mitigation referred to in paragraph 1 of this Article.”

Finally, the CS3D incorporates key elements from both the CSRD and ESRS E1 regarding the actions companies must take for climate transition planning. It's important to note that ESRS E1 provides specific guidance on the various disclosures required for sustainability reporting. Crucially, the CS3D does not introduce any additional disclosure obligations for climate transition plans; these are fully covered by the CSRD and detailed in the ESRS. For the limited number of companies that fall under the CS3D but are not subject to the CSRD, the Commission is authorized, under Article 34 of the CS3D, to draft a Delegated Act to establish reporting requirements.

4.3.2.4. Compatibility with limiting global warming to 1.5°C

While both CSRD and CS3D refer to the Paris Agreement (1.5°C goal) and the EU Climate Law (climate neutrality by 2050), the CS3D also explicitly includes a reference to the intermediate targets set out in the EU Climate Law: i.e., a reduction of 55% by 2030, and a proposed 90% reduction target for 2040.

According to the application requirements (ESRS E1 AR2⁶⁹ and AR26⁷⁰) – which have the same authority as other parts of the ESRS, and are therefore mandatory (ESRS 1, para. 16) –, current approaches suggest that companies should benchmark their efforts against the 1.5°C target. This benchmark should be based on a sectoral decarbonisation pathway, if available for the company's sector, or on an economy-wide scenario, acknowledging its limitations. However, without clear methodologies or sector-specific pathways established by public policies, companies, especially those operating across multiple sectors, may face significant challenges.

Therefore, to meet their TPCCM obligation, companies must outline how their plans and actions will align with the goals of the Paris Agreement and the EU climate law targets, through a credible scenario or pathway to illustrate how their business model and strategy are compatible with these objectives. This requires companies to set an objective of achieving net-zero GHG (Scopes 1–3) by 2050 at the latest, depending on their sector, consistent with a 1.5°C pathway.

Targets cannot be decoupled from TPCCM. The CS3D, in line with the ESRS, further specifies that companies should prioritise absolute emission reduction targets for Scopes 1, 2, and 3, which mandates that absolute impact reduction targets take precedence over relative ones⁷¹. The inclusion of Scope 3 is clarified

⁶⁹ AR 2. “Sectoral pathways have not yet been defined by the public policies for all sectors. Hence, the disclosure under paragraph 16 (a) on the compatibility of the transition plan with the objective of limiting global warming to 1.5°C should be understood as the disclosure of the undertaking's GHG emissions reduction target. The disclosure under paragraph 16 (a) shall be benchmarked in relation to a pathway to 1.5°C. This benchmark should be based on either a sectoral decarbonisation pathway if available for the undertaking's sector or an economy-wide scenario bearing in mind its limitations (i.e., it is a simple translation of emission reduction objectives from the state to undertaking level). This AR should be read also in conjunction with AR 26 and AR 27 and the sectoral decarbonisation pathways they refer to.”

⁷⁰ AR 26. “When disclosing the information required under paragraphs 34 (d) and 34 (e), the undertaking shall present the information over the target period with reference to a sector- specific, if available, or a cross-sector emission pathway compatible with limiting global warming to 1.5°C. For this purpose, the undertaking shall calculate a 1.5°C aligned reference target value for Scope 1 and 2 (and, if applicable, a separate one for Scope 3) against which its own GHG emission reduction targets or interim targets in the respective Scopes can be compared.”

⁷¹ ESRS 2, AR 24: “When disclosing targets related to the prevention or mitigation of environmental impacts, the undertaking shall prioritise targets related to the reduction of the impacts in absolute terms rather than in relative terms [...]”. ESRS 2 AR 24 specifies the way in which the Minimum Disclosures Requirements on Targets (MDR-T) are to be fulfilled. As per ESRS 2, par. 70, the information requirements in MDR-T and its AR must be applied together with the topical disclosures related to targets (in the case of GHG targets, ESRS E1-4). Regarding absolute targets in the context of transition plans, the UN HLEG (see n209) notes in p.17 that “Non-state actors must have short-, medium- and long-term absolute emissions reduction targets and, where appropriate, relative emissions reduction targets[...].” Likewise, the Race to Zero Expert Peer Review Group clarifies that absolute targets are the default, whereas intensity ones may of relevance in specific circumstances (such as when a company's activities are central to decarbonisation), see point 7.a: “In most cases, absolute emissions targets are necessary for ensuring real-world

within the climate standard’s disclosure requirements for climate targets: “GHG emission reduction targets shall be disclosed for Scope 1, 2, and 3 GHG emissions, either separately or combined. [...] The undertaking shall explain how the consistency of these targets with its GHG inventory boundaries is ensured (as required in Disclosure Requirement E1-6). The GHG emission reduction targets shall be gross targets, meaning that the undertaking shall not include GHG removals, carbon credits, or avoided emissions to meet GHG reduction goals.”⁷² Furthermore, Disclosure Requirement E1-6 on GHG inventories emphasizes that, for many companies, Scope 3 emissions constitute the largest portion of their GHG inventory and are a significant factor in transition risk⁷³.

As scenarios continue to evolve and improve in line with the latest climate science, companies are required to update their transition plans annually.

4.4. Enforcement

4.4.1. Supervisory Authorities

The adopted text elaborates on the appointment and powers of supervisory authorities in Articles 24 and 25 of the CS3D. Article 26 introduces a mechanism allowing individuals to submit “*substantiated concerns*” to these authorities. Furthermore, Article 27 mandates Member States to establish penalties for breaches of national laws implementing the Directive, ensuring that these penalties are effective, proportionate, and dissuasive. Article 27(4) provides criteria for determining the appropriate level of penalties, including a stipulation that monetary fines shall not exceed 5% of the company’s net worldwide turnover from the previous financial year.

4.4.2. Civil Liability (Article 29)

Article 29 of CS3D incorporated significant changes compared to the European Commission’s original proposal, namely the emphasis on the “*right to full compensation*”. These revisions reflect negotiations and adjustments made throughout the legislative process.

Under this provision, a company may incur in civil liability if two conditions are met: (a) the company negligently or intentionally failed to meet the obligations of Art. 10 and 11 CSDDD, “*when the right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person*”, and (b) as a result of said failure “*a damage to the natural or legal person’s legal interest protected under national law was caused*”⁷⁴.

A notable addition from the Council is the clause stipulating that a company “*cannot be held liable if the damage was caused only by its business partners in its chain of activities*”⁷⁵. In principle, this introduces

reductions. However, there are certain areas in which intensity-based metrics are also appropriate, such as for sectors for which absolute growth is needed to drive decarbonization (e.g. renewable energy)”.

⁷² ESRS E1-4, para. 34(b).

⁷³ ESRS E1-6 para. 45(c)

⁷⁴ See Article 29(1)(a) and (b) CS3D. The inclusion of the phrases “*aimed at protecting the natural or legal person*” and “*damage to the natural or legal person’s interests protected under national law*” was added by the Council’s mandate.

⁷⁵ Article 29(1) CS3D.

an exclusion of liability for damages caused solely by a company's direct or indirect business partners. In contrast: (i) the Commission's proposal foresaw a limitation of liability for damages caused by indirect business partners; (ii) the Parliament's mandate did not include any limitations on liability in this context. In this sense, the final text establishes a relatively restrictive civil liability regime compared to earlier drafts.

Paragraph 2 specifies that while individuals harmed under Paragraph 1 are entitled to full compensation, this does not permit "*overcompensation*" through punitive or multiple damages.

Paragraph 3, derived from the Parliament's mandate, adds procedural details including rules on limitation periods, injunctive relief, and third-party legal standing. A particularly notable clause in Paragraph 3(e)⁷⁶ which addresses one of the strongest criticisms of the civil liability provision in the Commission's proposed text: i.e., the exceedingly high evidentiary burden on potential victims of human rights and environmental harm to prove their case in court under the proposed Directive⁷⁷. The provision does not reverse the burden of proof but aims to ease the evidentiary burden on victims of human rights and environmental harms. Companies can be ordered by the court to disclose material information if the claimant proves that the company is in control of additional evidence that is relevant to the case. The paragraph does stress the importance of limiting the disclosure of information to what is strictly necessary and proportionate (to be determined on a case-by-case basis) and to protect the information which is disclosed (cf. Article 29(3)(e) CS3D).

Finally, a key amendment from the February and March 2024 renegotiations involves the removal of the term "*in their own capacity*" from the section addressing the legal standing of organizations authorized to act on behalf of victims (cf. Article 29(3)(d)⁷⁸).

4.5. Level of Harmonisation (Article 4)

The published text includes a key provision regarding the level of harmonization. Article 4 of the CS3D prohibits Member States from enacting sustainability due diligence legislation that deviates from the Directive's provisions, except when introducing more stringent or more specific measures. This provision, which originates from the European Parliament's mandate, designates the proposed CS3D as a minimum harmonization directive. This approach ensures a consistent baseline of due diligence standards across the EU while allowing Member States to implement higher standards if desired.

⁷⁶ "(e) when a claim is brought, that a claimant presents a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of its claim for damage and has indicated that additional evidence lies in the control of the company, courts are able to order that such evidence be disclosed by the company in accordance with national procedural law. [...]"

⁷⁷ On the topic see, e.g., European Parliament Think Tank: Corporate sustainability due diligence: How to integrate human rights and environmental concerns in value chains? (2023). Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729424/EPRS_BRI\(2022\)729424_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729424/EPRS_BRI(2022)729424_EN.pdf); and Alessio Paces, "Supply Chain Liability in the Corporate Sustainability Due Diligence Directive Proposal", in the ECGI Blog (2022). Available at: <https://www.ecgi.global/publications/blog/supply-chain-liability-in-the-corporate-sustainability-due-diligence-directive>.

⁷⁸ "(d) Member States shall provide for the reasonable conditions under which any alleged injured party may authorise a trade union, non-governmental human rights or environmental organisation or other non-governmental organisation, and, according to national law, national human rights' institutions, based in a Member State to bring actions to enforce the rights of the alleged injured party ~~in their own capacity~~, without prejudice to national rules of civil procedure. [...]" [emphasis added].

4.6. Other Provisions

The European Commission's original proposal had two provisions related to corporate governance: Article 25 on directors' duty of care and Article 26 on "*setting up and overseeing due diligence*." Article 25 proposed that directors of in-scope companies would have a duty of care, requiring them to "*take into account [...] sustainability matters*" when acting in the best interests of the company⁷⁹. Together, these provisions would have established a framework for personal liability, potentially enabling directors to be sued individually for failing to fulfill this duty⁸⁰.

However, these provisions were entirely removed from the final text, as Council strongly opposed their inclusion throughout the negotiations. This was also something that raised concerns to the EC RSB.

5. Takeaways

The legislative process preceding adoption of the CS3D was marked by friction and delays, reflecting a series of institutional, political, and procedural challenges. As outlined in Section 2, the path to adoption of the CS3D evidenced extensive setbacks, including substantial criticism from stakeholders and the RSB, which repeatedly identified shortcomings in the initial drafts, such as vague problem definitions, imbalanced stakeholder engagement, and insufficient justification of proportionality. These critiques also reflected broader dissatisfaction among key Member States, notably Germany and Italy as well as eventually France, whose eroding support exacerbated the political deadlock.

The protracted trilogue negotiations further underscored these tensions. The Council and the European Parliament, initially at odds over key provisions, only reached agreement at the last opportunity in the previous institutional cycle. This final push, driven by insistence to progress this file before the legislative window closed, imbued the CS3D with a sense of urgency that has to some extent compromised the deliberative rigor typically associated with such sweeping legislation. This compressed timeline raises concerns about the extent to which stakeholder input has been adequately considered along with the economic and geopolitical implications of the CS3D.

On the level of principles, a genuine shortcoming of the CS3D is its requirement for covered companies to adopt transition plans compatible with limiting global warming to 1.5°C, which is described as being "in line with the Paris Agreement". While ostensibly projecting alignment with global climate objectives the EU has committed to, this requirement introduces profound uncertainty at the level of individual enterprises. For one, reference to 1.5°C in the Paris Agreement, while politically salient, is not in itself a target – Article 2(1)(a) of the Paris Agreement merely calls on Parties to "pursue efforts" to limit the temperature increase to 1.5°C – and, more importantly, is not readily translatable into actionable obligations for specific non-state actors, such as private companies. In effect, inclusion of this target in the Paris Agreement was not unanimously welcomed among Parties, who acknowledged that it was intended to guide collective international ambition rather than impose binding duties on individual countries, let alone on

⁷⁹ Art. 25(1) European Commission proposal.

⁸⁰ Depending on national corporate law, directors' duties can be enforced by shareholders or other entities internal to the company – i.e. the supervisory board. For more on directors' duties in the European Union. See C. Gerner-Beuerle, P. Paech, E. P. Schuster, "Study on directors' duties and liability", LSE Research Online Documents on Economics 50438, London School of Economics and Political Science, LSE Library (2013).

private actors. Compounding this challenge is the likelihood that the 1.5°C threshold will be breached imminently, further undermining its suitability as a benchmark for corporate obligations.

This misalignment between aspirational climate goals and their operationalization at the corporate level raises significant practical and ethical questions. How should a global target be disaggregated to reflect sectoral or geographic responsibilities? What metrics and methodologies are appropriate for assessing compliance at the company level? Without clear guidance, the risk of fragmented implementation and unequal burdens across Member States is heightened, undermining the harmonization objectives of the CS3D. These issues reflect broader critiques of the ability of the CS3D to balance ambition with feasibility, a tension evident in the compromises that characterized its final revisions.

Despite these revisions, which reduced both the personal and material scope of the directive, the CS3D remains poised to impose significant costs on the European economy. Proponents of the directive argue that these costs are justifiable in light of the anticipated environmental and social benefits, including enhanced corporate accountability, improved sustainability outcomes, and alignment with global regulatory trends. However, such benefits must be weighed against an evolving economic and geopolitical context that complicates implementation of the CS3D and amplifies its potential risks. Already, indications of compliance costs under other legislation, such as the CSRD, suggest that the European Commission may have underestimated the cost of implementing the CS3D. Similarly, arguments made in the CSWD that existing national supply chain laws have not resulted in increased litigation should be carefully evaluated against the emerging case law – including foreign claimants – under these still relatively new due diligence regimes, such as the German Supply Chain Due Diligence Act (LkSG).

The European Commission’s Staff Working Document accompanying the CS3D outlines expected impacts of the directive on competitiveness, emphasizing its potential to level the playing field within the EU and drive innovation in sustainable practices. Yet, this analysis, finalized before the publication of the Draghi report on European competitiveness, must now be revisited in light of heightened economic and geopolitical rivalries. Trade partners such as China and the United States, leveraging greater fiscal capacity and more amenable political economies, have intensified market interventions through expansive subsidy regimes and strategic deregulation. China’s “Made in China 2025” and the U.S. Inflation Reduction Act exemplify such subsidy- and public-support-driven approaches to industrial policy that contrast sharply with the regulatory focus in the EU.

This divergence has material implications for Europe’s attractiveness as a location for business. The Draghi report paints a dire picture of EU competitiveness, highlighting structural barriers, fiscal constraints, and the disproportionate economic burden borne by companies conducting business in Europe. The CS3D, by imposing additional compliance costs, may exacerbate these challenges, particularly for small and medium-sized enterprises (SMEs) operating in high-impact sectors. The extraterritorial reach of the CS3D and its stringent disclosure requirements further complicate implementation, raising concerns about trade tensions and the potential for regulatory arbitrage.

These economic concerns are compounded by the evolving security landscape. Geopolitical rivalries, exemplified by the ongoing technological and economic competition between the United States and China, have heightened the strategic importance of maintaining a resilient and competitive European economy. In this context, the potential of the CS3D to disincentivize investment and innovation within the EU cannot be ignored. As Europe grapples with rising energy costs, supply chain disruptions, and fiscal pressures, the cost-benefit calculus needs to be reassessed, taking into account the latest information on the expected cost of implementing and complying with the CS3D, including for large multinational companies with complex international supply chains as well as – in relative terms – for SMEs.

In light of these observations, it becomes evident that the CS3D embodies both promise and peril. Its ambition to embed sustainability into corporate governance and harmonize due diligence standards across the EU represents a laudable step toward addressing global challenges. Its proponents – including, most recently, Michael McGrath, Commissioner-designate for the Democracy, Justice and the Rule of Law portfolio – have argued that the CS3D can also influence foreign trade partners to follow a similar approach, reflecting an expectation that the EU will leverage its market power and diplomatic leadership to exert a “Brussels Effect” that diffuses European regulatory ideas across the globe. Yet that may prove overly optimistic in the current international context. Implementation of the CS3D will have to navigate an increasingly complex web of economic, political, and institutional constraints that risk undermining its effectiveness. Success of the CS3D will ultimately depend on the ability of policymakers to balance these competing imperatives, crafting an overall regulatory framework that advances sustainability objectives without imposing unsustainable burdens on the European economy.

Our consultations with decision-makers and stakeholders have shown a shared recognition of these challenges. While there is general support for the overarching goals of the CS3D, concerns about its practical implications persist. These concerns, coupled with the procedural and political constraints outlined above, inform the recommendations presented in Section 6.

6. Recommendations

Building on the analysis presented in this report, and drawing on consultations with decision-makers and stakeholders, this section offers a set of recommendations aimed at addressing the foregoing challenges identified in the context of the CS3D. Specifically, these recommendations aim to reconcile the ambitious objectives of the CS3D with the economic and political concerns articulated in Section 5. These concerns, including the fraught and ultimately rushed legislative process, limited stakeholder engagement, and significant economic implications in an evolving economic and geopolitical context, call for both immediate and long-term measures to refine the approach of the CS3D and enhance its implementation.

Some stakeholders have suggested the EU could delay the implementation of the CS3D, similar to how implementation of the Regulation on Deforestation-free products (EUDR) stands to be pushed back by a year. However, the legislative and institutional processes set out in the EU Treaties, coupled with the partially progressed implementation of elements of the CS3D in several Member States, may render such a near-term halt to its operationalization impractical. Therefore, while the overall approach, timeline, and requirements of the CS3D should be fundamentally reassessed as part of the broader review of EU policies and regulations announced in the Political Guidelines of European Commission President Ursula von der Leyen for the current institutional cycle, including its emphasis on a Clean Industrial Deal and a renewed focus on EU competitiveness, and in light of the findings of the Draghi Report, which has underscored the need to strengthen Europe’s economic resilience in the face of evolving geopolitical and economic challenges, a series of immediate, minimum steps should be considered to address pressing concerns and prevent unintended negative outcomes.

A useful precedent for addressing immediate challenges while pursuing longer-term reforms can be found in the EU Emissions Trading System (EU ETS). A decade ago, systemic reform of the EU ETS was achieved through the introduction of the Market Stability Reserve, a measure designed to address structural issues that required formal legislation and thus inevitable lead time. In the interim, however, a more immediate intervention – the backloading of emission allowance auctions – was implemented to avert

immediate negative consequences. This dual approach offers valuable lessons for the CS3D, which could similarly benefit from a dual-track response: immediate measures to address short-term challenges and more systemic reforms to ensure long-term effectiveness. As an immediate step, the EU should conduct a new review of the CS3D and its anticipated impacts, considering its competitiveness implications in light of recent geopolitical developments and the renewed focus on economic resilience outlined in the Draghi Report.

Specifically, such a review should incorporate perspectives from a broader array of stakeholders, including SMEs, institutional investors, and non-EU partners who may be indirectly affected. It also should provide a granular assessment of the expected impacts of CS3D implementation across sectors and geographies, ensuring that its provisions do not disproportionately burden specific industries or regions. Doing so can also help address concerns that marred the legislative process preceding adoption of the CS3D, such as limited stakeholder engagement and insufficient impact assessments, and also foster greater awareness for its goals and thus public support for EU governance. It would also allow for greater consideration of issues highlighted by the RSB, such as the role of alternative enforcement options, or concerns about extraterritorial application.

Selectively delaying the enforcement of particularly contentious provisions until a robust competitiveness assessment is conducted could further help mitigate immediate risks without undermining the overall objectives of the CS3D.

One of the most pressing issues associated with the CS3D is the feared impacts on the competitiveness of European companies and, more generally, of the EU as a location to conduct business. Abstract references in the CS3D to climate neutrality and the 1.5°C temperature threshold, coupled with uncertainties around liability and litigation risks, create a challenging operating environment for affected companies. These challenges are particularly pronounced in an increasingly fragmented and competitive global economy, where trade partners such as China and the United States have resorted to aggressive subsidy-driven strategies intended to catalyze investment and strengthen their competitive positions. To help mitigate these risks in the near term, the European Commission should issue clarifying guidance on the directive's implementation well before the two-year transposition deadline. If the problematic reference to the 1.5° temperature threshold in the Paris Agreement – which never was intended to translate into individual obligations for non-party stakeholders – cannot be omitted from the CS3D, at the very least the EU needs to provide clear criteria for assessing compatibility with this abstract goal, taking into account the inherent uncertainties of climate modeling and the lack of consensus on disaggregated corporate targets. Similarly, it should offer greater clarity on the scope of liability under the CS3D, particularly concerning the obligations of companies in relation to their supply chains. Such guidance can help reduce the litigation risks associated with ambiguities in the text of the CS3D.

While immediate measures are necessary to address pressing concerns, the CS3D also calls for medium- to long-term adjustments to ensure its alignment with broader EU priorities. A key priority in this regard is the streamlining and consolidation of regulatory obligations. The proliferation of overlapping and inconsistent requirements across various EU legislative acts –including the CS3D, the Corporate Sustainability Reporting Directive (CSRD), and the Energy Efficiency Directive – adds to the compliance burden facing covered companies and contributes to regulatory uncertainty and associated risk. To address this issue, the EU must accelerate efforts to simplify its regulatory landscape. Recent announcements regarding a new initiative to consolidate environmental, social, and governance (ESG) reporting obligations into a single regulation (the so-called “*Omnibus*” regulation) are a step in the right direction. These efforts should align with the commitments outlined in the Budapest Declaration on the New European Competitiveness Deal, which emphasizes the need for a “simplification revolution” to establish a clear,

simple, and smart regulatory framework in the EU. By eliminating redundancies and ensuring consistency across legislative acts, these measures can reduce regulatory burdens and enhance compliance.

Finally, the success of the CS3D depends on its ability to balance ambition with feasibility. While the overarching goals of the CS3D are laudable, its implementation must reflect the diverse capacities and circumstances of the companies it seeks to regulate. Overall, the EU should consider a more flexible approach that differentiates requirements based on company size, sector, and geographic context, reducing burdens on SMEs and high-risk sectors, and that allows companies to prioritize their efforts based on the materiality of risks and their specific contexts. Effective implementation of the CS3D will also require significant investments in administrative capacity at both the EU and Member State levels, and can benefit from training programs for regulators and corporate compliance officers to ensure consistent interpretation and enforcement of the directive, as well as development of digital tools and platforms to facilitate reporting and data sharing, reducing the administrative burden on companies. Finally, given the extraterritorial implications of the CS3D, the EU should intensify efforts to engage with stakeholders abroad, including collaboration with trade partners and multilateral institutions to align sustainability standards and avoid regulatory arbitrage.

In conclusion, the recommendations outlined in this section aim to address the challenges associated with the CS3D while preserving its core objectives. By adopting a pragmatic and iterative approach, the EU can enhance the directive's effectiveness, safeguard its competitiveness, and reinforce its commitment to sustainability. As Europe navigates an increasingly complex global landscape, the CS3D has the potential to serve as a model for sustainable governance – provided that it is implemented thoughtfully and is allowed to adapt to evolving circumstances.
