



The Corporate Sustainability Due Diligence Directive: how to make it work?

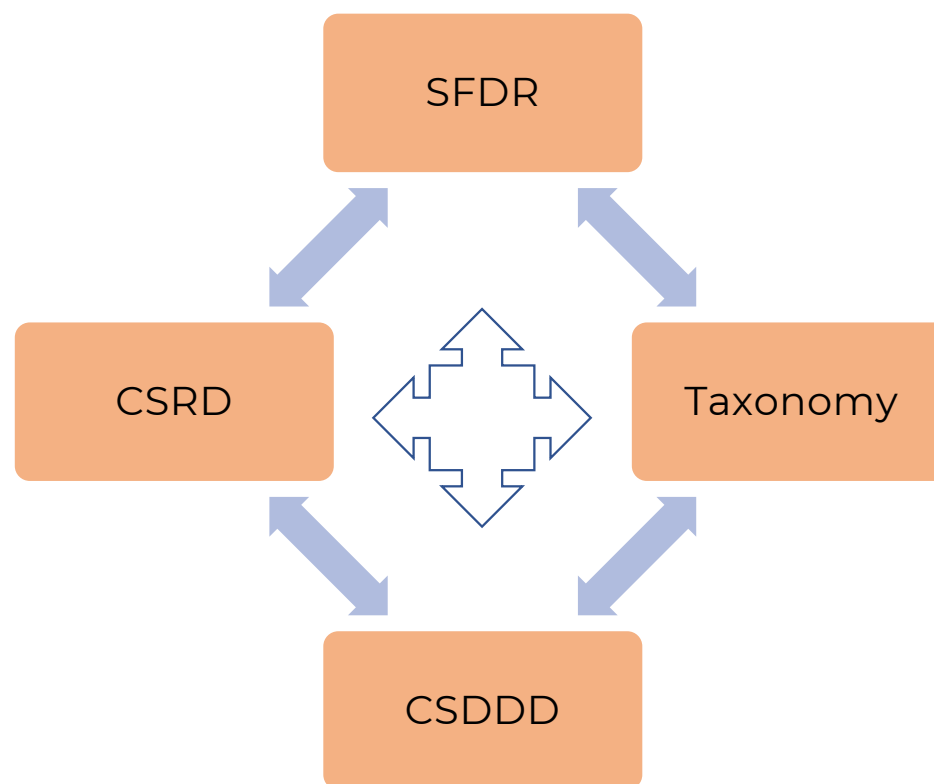
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ERCST

Roundtable on
Climate Change and
Sustainable Transition

The EU corporate sustainability framework



Sustainable Finance Disclosure Regulation (2021)

What is it? Transparency requirements for **“sustainable” financial products**

Who? **Financial market participants** (banks, investment funds, asset managers, financial advisors)

When? In force since 2021

SFDR refers to the concepts from the **Taxonomy** (definition of sustainable investment) and **CSRD** (sustainability factors, double materiality)

The EU Taxonomy (2020) I

What is it?

Classification of economic activities contributing significantly to climate & environment (six objectives)

Obligatory reporting by non-financial undertakings and financial market participants based on the Taxonomy

Main features:

Taxonomy-alignment requires meeting jointly three conditions:

1. Significant contribution to a specific climate or environmental objective
2. **Minimum Social Safeguards** (UNGP, OECD)
3. Do No Significant Harm to other climate or environmental objectives

Frequent "green" **reference in many EU policies**

The EU Taxonomy (2020) II

Disclosure: Revenue, capital expenditure, and operating expenses

Plan to align the company with the Taxonomy in max. 10 years

Who: Large (500+ employees) listed undertakings
Extension to 250+ employees (also non-listed) and all listed undertakings (incl. SMEs) (same as NFRD/CSRD)

When: 2022 reporting on the Taxonomy-eligibility – attributing company's economic activities to those described by the Taxonomy

2023 reporting on the Taxonomy-alignment by non-financial undertakings - to what extent a company meets the screening criteria

2024 reporting by financial market participants on the Taxonomy-alignment of their investment portfolio

Corporate Sustainable Reporting Directive (2022)

What is it?

Detailed reporting about **impact of the company** and **risks to the company** related to environment, human rights, social standards, governance (so called double materiality)

The reported information is supposed to **correspond with the requirements of SFDR**

Corporate Sustainable Reporting Directive (2022) II

Disclosure

Impacts, risks and opportunities related to **climate** and **environment, social** (e.g. treatment of employees, respect for human rights), and **governance** (e.g. anti-corruption, diversity on boards), including:

Company's strategy, business model and targets in relation to those factors

Governance and organisation – incl. **role of the board and management** in relation to sustainability

Implementation measures (policies, targets, actions, plans, allocation of resources)

Performance metrics and **source of reported information**

Transition plans to align with the Paris Agreement objectives

An explanation of the role of and **the plans for future Taxonomy alignment**

Corporate Sustainable Reporting Directive (2022) III

Other features:

ESRS: detailed **reporting standards** i.a. **incorporating the Taxonomy indicators** - to be adopted in 2023

All matters mentioned in ESRS are presumed to be material and need to be reported – subject to rebuttal by the reporting company

All (potentially) affected stakeholders, **upstream and downstream value chain of business relationship**, over the short-, to long term

Inclusion of considerations about deploying prevention, mitigation, adaptation and other **management measures** (ESRS)

Corporate Sustainable Reporting Directive (2022) IV

Who:

Large (500+ employees) listed undertakings ➡ will extend to 250+ employees (also non-listed) and all listed undertakings (incl. SMEs)

Non-EU companies generating 150 EUR mn turnover and having a subsidiary or branch in the EU

When:

2022 – formal adoption by co-legislators

2024 – reporting starts for companies currently subject to NFRD

2025 – reporting starts for all large companies (also non-listed)

2026 – reporting starts for listed SMEs

Corporate Sustainable Due Diligence Directive: the Commission proposal

What is it?

Beyond reporting: obligation of companies to identify, prevent, end, mitigate and publicly inform on risks for **human rights** and **environment** along their value chain, also outside EU

Who?

Large, limited liability companies: 500+ employees and 150 mn EUR revenue

Extension to 250+ employees and 40 mn EUR revenue in 2 years (in high-risk sectors, like agriculture, textiles, minerals)

Indirect effect on SME being part of **value chains**

Corporate Sustainable Due Diligence Directive II

Scope:

Adverse impacts and requirements are based on **international standards** and **conventions**

Integrating due diligence into company's policies, incl. establishing complaints procedure

Director's duty to set up, implement and oversee due diligence

Director's **remuneration** linked to the fulfilment of the corporate climate plan; responsibility for **breach of director's duties**

Civil **liability of the company** for failure to comply in case of adverse impact; possibility to claim **compensation for damages**, also for **operations of subsidiaries** and of **established business partners**

Administrative orders and fines for failure to comply – implemented at Member States level

Transition plans to align with the Paris Agreement objectives

The EU Council's position (Dec 2022)

Key elements:

Inclusion of **financial sector** depends on the decision of a Member State

Financial sector needs to monitor and make efforts to address the adverse impact but **no obligation to end a business relationship** (e.g. insurance)

"Chain of activities" : leaves out the use of the company's products or provision of services

Limiting the application of CSDD (1000 employees and EUR 300 mn turnover)

Limiting the companies' liability to adverse impacts which they or their business partners directly (and jointly) cause

Possibility to **prioritize most negative effects**

Transition plans: **connecting the CSDDD with the CSRD**; reporting on **exposure to coal-, oil- and gas-related activities**

Deleted **director's duty to care and remuneration** linked to sustainability

The EP position: in the making

Who: Legal affairs (JURI) - leading committee

Eight committees asked for an opinion (ITRE, ECON, INTA, DEVE, ENVI, IMCO, AFET, EMPL)

When: Voting in JURI - March 2023 (tbc)

Voting in plenary - May 2023 (tbc)

The JURI draft report

L. Wolters,
S&D:

Expanding the scope of the CSDDD application to companies of 250 employees and EUR 40 mn turnover

After 2 years: 50 employees and EUR 8 mn turnover for the high-impact sectors or **publicly listed companies**

Enlarging the list of **high-impact sectors**

Expanding the notion of (“good governance”) adverse impacts, i.a. on the proper functioning of public administration, the rule of law, electoral systems

Coverage of full value chain (incl. marketing and advertising)

Prioritisation of adverse impacts based on the risk assessment

Expansion and detailing the requirements concerning **the transition plans**

The Batteries Regulation (2023): due diligence obligations

What:

Requirement to develop and implement a **due diligence policy on the sourcing, processing and trading of raw materials** and secondary raw materials.

Who:

All economic operators placing batteries on the EU market, with the exception of SMEs

Obligations for entities in the value chain

Commentary

Principle of law-making: regulate only when and what is **absolutely necessary** and with **absolute clarity**

The EU corporate sustainability due diligence framework is a **deep regulatory intervention** in the corporate objectives and governance

It entails **pro-active managing the impacts and risks** along the value chain with sanctions involved

It is **highly demanding** – possibly beyond what can be manageable by the company

Lack of legal certainty and clarity on many issues

All the elements of the corporate framework are interrelated, and their **boundaries are blurred**

It interplays also with existing **international voluntary** standards, **national due diligence** schemes (FR, DE, NL) and **sectoral** due diligence (e-batteries)

Its effect **spills over SME** (being part of corporate value chains)

Guiding questions

To what extent the regulation, rather than the market, should influence objectives of companies beyond making profit?

What are the legitimate reasons and the consequences of such a choice?

Transition plans to align with the Paris Agreement - is the regulation clear enough?

How to reconcile various voluntary, national and multinational due diligence schemes?

What are the key elements of the EU due diligence framework necessary to make it work?