



Directive on Corporate Sustainability Due Diligence (CS3D) as amended by Omnibus I

- European Commission, DG Justice and Consumers

OBJECTIVE and CONTEXT: WHY a MANDATORY DUE DILIGENCE LAW? (I)

- **Objective (Article 1):**
 - **Obligations** to ensure that companies **identify** and **address** adverse human rights and environmental impacts in their **own operations**, those of their subsidiaries and in their **value chains**
 - **Rules on liability** for violations of these obligations
- **CS3D builds on international frameworks** such as UNGPs (2011), ILO Tripartite Declaration (1977) and OECD Guidelines (1976, 2011, 2023)
- **Voluntary due diligence and sustainability reporting** alone have proven **insufficient** to drive real-world change

OBJECTIVE and CONTEXT: WHY a MANDATORY DUE DILIGENCE LAW? (II)

- **Duties of care already exists** in many areas, due diligence as a (structured) **risk management tool** – familiar to many (large) businesses
- **Global trend** towards the **introduction of mandatory (HR) due diligence obligations** (generally or for certain risks, like forced labour) – including negotiations on a UN instrument
- **HR/environmental rights, obligations and prohibitions follow from global conventions** that are broadly recognized (e.g. ICCPR, ICESCR, ILO core conventions, Basel Convention, CITES)

STATE OF PLAY and TIMELINE

- **Omnibus I initiative**

- Amending directive covering sustainability reporting (Accounting Directive, CSRD, Audit Directive) and sustainability due diligence (CS3D)
- Simplification and burden reduction, without undermining core objectives
- Entry into effect 18 March 2026 (OJ L 1 of 26.2.2026, p. 35)

- **Deadline for Member States to transpose: July 2028**

- **Entry into application: July 2029**

- **Main guidelines and model contracts: July 2027**

PERSONAL SCOPE

PERSONAL SCOPE		"Anti-circumvention" / Level playing field
For each of the last two consecutive financial years	EU COMPANIES: LARGE LLCs & PARTNERSHIPS > 5 000 employees and > €1.5 billion net worldwide turnover	1. Groups of companies - ultimate parent company of group reaching the thresholds on consolidated basis 2. Franchising or licensing agreements - royalties >€75 million, and - net turnover >€275 million ww/in the EU (either alone or as ultimate parent company of a group)
	NON-EU COMPANIES: COMPARABLE FORM Duty to designate and notify representative empowered to cooperate with supervisory authorities	

Companies outside scope (in particular SMEs/SMCs): no duties, no public enforcement/sanctions and no liability under the Directive

MATERIAL SCOPE

- Identify and address adverse HR/environmental impacts in company's **own operations, those of its subsidiaries and, where related to its value chain(s), those of its business partners** (see Article 8(1))
- **Own operations:** due diligence (DD) includes **necessary modifications to company's business plan, overall strategy and operations**, including **purchasing practices, design and distribution practices**
- Value chain covers both **direct and indirect business partners**
- **Downstream value chain** more limited: **activities of partners “for or on behalf of company”** related to **distribution, transport and storage of its products**

WHICH DUTIES? (I)

CORPORATE DUE DILIGENCE

General principles:

- *Risk-based approach – risk factors*
- *Obligation of means – “appropriate measures”: effective, reasonably available & proportionate, considering all circumstances (incl. level of involvement, ability to influence)*
- **Integration of due diligence into company’s policies and risk management systems;** specific **DD policy** (including code of conduct)
- **Identification, assessment and prioritization** of actual or potential adverse impacts
 - **Scoping of risk areas → in-depth assessment** – using appropriate resources (incl. independent reports, digital tools, MSIs); scoping based on “reasonably available information”; limitations as regards requests for information from business partners
 - **Prioritization** based on severity and likelihood of impacts (where not all can be addressed at the same time to their full extent)

WHICH DUTIES? (II)

CORPORATE DUE DILIGENCE

- **Appropriate measures to prevent/mitigate** potential impacts or **bring to an end/minimize the extent** of actual impacts
 - Prevention/corrective **action plan** (in complex cases), **contractual assurances** on fair & reasonable terms, (non-)financial **investments**, **modifications** to strategies/operations (incl. design, **purchasing**/distribution practices), **support** for SMEs (incl. capacity building, training, financial support), **collaboration** with other entities
 - In case of actual adverse impact that company has (jointly) caused: **remediation**
- **Meaningful stakeholder engagement** (only) at certain DD stages, **complaints procedure** (for affected persons, trade unions, envtl CSOs) and **notification mechanism** (incl. anonymously)
- **Monitoring the effectiveness** of due diligence (every 5 years, ad hoc assessments in certain cases) and **public reporting** (CSRD)

In particular: measures of last resort

- Obligations that apply when **all other DD measures have failed**
- **No extension** of existing relationship with business partner, **no new business relationship**
- **Suspension until impact is addressed**, unless prior assessment indicates that consequences “manifestly more severe” than impact to be addressed
 - If suspended: company shall (i) take steps to address the impacts of the suspension, (ii) provide reasonable notice to the business partner, (iii) keep that decision under review
 - If not suspended: company shall (i) “be in a position” to report to supervisory authority about the justified reasons for not suspending, (ii) monitor the adverse impact, (iii) periodically assess its decision and whether further appropriate measures are available
- Adoption and implementation of **“enhanced action plan”** for the specific impact (provided there is a reasonable expectation of success)

PUBLIC ENFORCEMENT

- **Independent supervisory authorities** with adequate **investigatory powers** (incl. inspections) and **enforcement powers** (incl. injunctions and penalties), acting on their own motion or based on complaints
- **European Network of Supervisory Authorities** to ensure EU-level coordination and cooperation
- **Administrative fines**: level determined by number of **factors** (in particular, gravity and duration) and principle of “**effective, proportionate and dissuasive**” fines; no fine may exceed 3% of global turnover

PRIVATE ENFORCEMENT: LIABILITY (I)

- **Article 47 Charter** (with Article 19(1) TEU): right to an effective remedy before a tribunal, ensuring effective protection in the fields covered by EU law – may require disapplication of conflicting natl provisions, incl. in disputes between private parties (principle of effectiveness)
- **Article 2(3) ICCPR**: right to an effective remedy and reparation; States must remove impediments that limit ability of victims to vindicate their rights (see General Comment No. 31)
- **Article 9(3) Aarhus Convention**: right to an effective remedy under fair and timely procedures (Implementation Guide); requires judicial protection when read with Article 47 Charter (see Case C-873/19)

→ reference point in recital 49 of the Omnibus

PRIVATE ENFORCEMENT: LIABILITY (II)

- **No EU-wide harmonisation** of liability conditions, specific conditions (“how”) left to national law – **respect for different legal traditions**
- EU Member States must ensure that victims of adverse impacts have **effective access to justice** and guarantee their **right to an effective remedy and full compensation** in case of non-compliance with dd duty
 - National (tort) law needs to reflect (EU-level) dd duty
 - Prohibition of overcompensation maintained
- **Principles of effectiveness and equivalence**, developed in case law; cover both procedural and substantive liability conditions (e.g., causality)
- **Access to justice safeguards**: limitation periods, disclosure of evidence, injunctions, cost of proceedings

WHAT CHANGED WITH THE OMNIBUS?

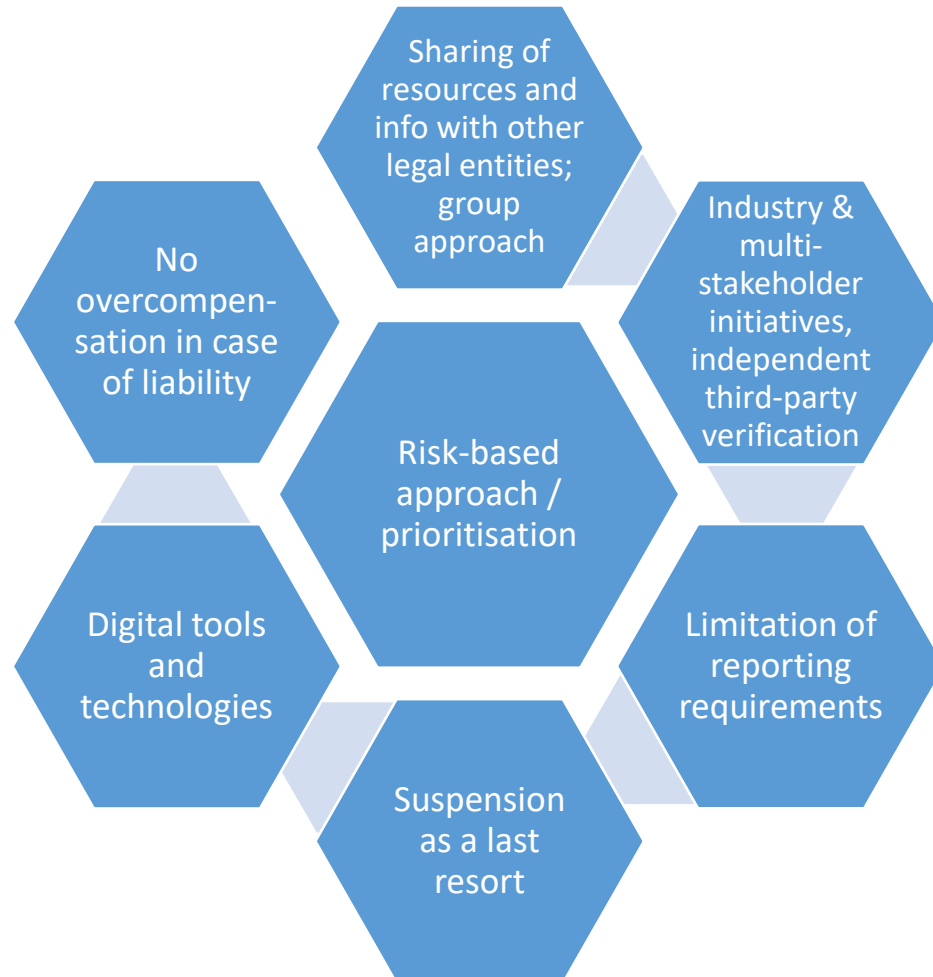
- **Personal scope:** significant increase in thresholds, leaving around 1,600 EU and 300 non-EU companies in scope
- **Identification duty:** simplification and limitations to information requests
- **Responsible disengagement:** limited to suspension (no termination duty)
- **Stakeholder engagement, monitoring:** simplification/burden reduction
- **Climate transition plan:** deleted
- **Administrative fines:** no longer based on turnover, lower cap (3%)
- **Civil liability:** no EU-harmonized liability regime (but: right to compensation)
- **Entry into application:** delay by 2 years + guidelines 2 years in advance

IMPACTS IN A NUTSHELL

- **Human rights protection** (including better working conditions, living wages and income) and **protection of the environment** (as part of the protection of individuals & as a public good) – **driving sustainability transition** and **preventing questionable goods from entering market**
- **Increased competitiveness** of companies (consumer confidence, strengthened stakeholder relationships, better access to finance, protection against risks, more resilient supply chains, resource efficiency and innovation, etc.) (UNDP, DG GROW)
- **Level playing field**: reduce risks that responsible businesses are undercut
- **Stronger and fairer relationship with business partners** (purchasing practices, support & capacity-building) – **responsible engagement**

HELPING COMPANIES COMPLY

Burden limitation for companies in scope



Safeguards to limit trickle-down effect on SMEs

Risk-based approach, incl. for identification

Limitations for information requests

Adaptation of purchasing practices

Investment duty

Targeted and proportionate support, incl. financial

Fair, reasonable and non-discriminatory contract terms

No passing-on of costs of verification, possibility to re-use reports

(Financial) support (MS, EU)

Information and capacity-building

SUPPORT (I)

Guidelines

How to conduct due diligence, in particular identification, prioritization, adaptation of purchasing practices, responsible disengagement, remediation, engagement with stakeholders

Sector-specific guidance

Assessment of **risk factors**, incl. those associated with conflict-affected and high-risk areas

Data/information sources for carrying out DD duties, guidance about **digital tools** to facilitate and support compliance

Sharing of resources and information (in line with competition law, trade secrets rules)

Information for stakeholders on **how to engage**

Model contractual clauses



RESOURCES

Text of the Directive:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401760

Text of the Omnibus:

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202600470