

On 1st December, the **Council has adopted its general approach on the Corporate Sustainability Due Diligence Directive (CSDDD)**. Notably, the Czech Presidency stated that although the general approach is here, there is **no common position among the countries**, with general approach being 'a highest common denominator making everyone equally unhappy'. The biggest disagreements remain on the topics of **scope, value chain and liability**.

- Council somewhat restricted the extent of the value chain companies will have to cover in their due diligence obligations, by **limiting the downstream activities**, i.e., excluding the use and disposal of the product by consumers.
- Extent of civil liability has also been made narrower – companies **can't be held liable unless they had a direct link with the damage** (i.e., can't be held liable if damage occurred only through the actions of its business partners).
- The final version of the compromise confirmed that **directors' duties are removed** from the proposal, climate plan is extended to **EU Climate Law** and timeline for application of rules is pushed back.

Please see below **summary of the Council's position** with regards to the most important elements of the proposal. We have also updated the comparison table (see attached) to reflect on the final text and the key **differences compared to the Commission's proposal**.

Let us know if you have any questions.

Key highlights

- Scope
 - **Companies with 'full' obligations**: maintained Commission's thresholds for both EU and non-EU companies (*Article 2 paragraph 1a, 2a*)
 - **Companies with 'limited' obligations**: the condition of having at least 50% of companies' net turnover generated in a high-impact sector replaced with having at least **EUR 20 million** generated in a high-impact sector – other thresholds same as in the Commission's proposal (*Article 2 paragraph 1b, 2b*)
 - **Manufacture of beverages** added to the list of high-impact sectors (*Article 2 paragraph 1b-ii*)
- Key definitions
 - 'Established business relationship' changed to '**business relationship**' (*Article 3ea*) – now meaning simply 'relationship of the company with its business partner'.
 - 'Value chain' replaced with '**Chain of activities**', meaning activities of companies' **upstream** business partners and **downstream** business partners (when they carry out downstream activities on behalf of the company), **excluding the use, and disposal of the product by consumers** (*Article 3g*)
 - In the definition of 'stakeholder', explicitly added trade unions and other workers' representatives (*Article 3n*)

- Group level due diligence (Article 4a)
 - Parent companies under scope are allowed to **fulfil the due diligence obligations (Articles 5 – 11 and 15) on behalf of their subsidiaries**, if their subsidiary fulfils all of the conditions set by the Article 4a.
- Due diligence obligations
 - Due diligence should be integrated in **'policies and risk management systems'**, and due diligence policy is to be updated every **24 months** (instead of 12) (*Article 5 paragraph 1 & 2*)
 - In an effort to align the text with international standards, in particular those on risk-based approach to due diligence, companies now have to **prioritize identified adverse impacts** when fulfilling their obligations related to preventing and mitigating the impacts (*Article 6a*)
 - The prioritization is **based on severity and likelihood** of adverse impact happening (*Article 6a*).
 - When assessing which appropriate measures to take to prevent adverse impacts, company must take into account whether the adverse impact was caused **individually or jointly**, if it occurred in the **operations of a business partner or subsidiary**, and the **ability of a company to influence** its business partners (*Article 7 paragraph 1*)
 - Safeguards have been introduced to prevent companies to be obliged to terminate their business relationships, if the termination would result in **even more severe adverse impact** or if there are **no available alternatives** to that business relationship – in line with UN and OECD standards of 'disengagement as a last resort' (*Articles 7 paragraph 7, 8 paragraph 8*).
 - In any case, obligation to terminate business relationship won't **apply to agreements concluded before the end of transposition** period of CSDDD (*Articles 7 paragraph 8, 8 paragraph 9*).
- Climate due diligence
 - Companies need to adopt a plan, including **implementing actions and investment plans**, to ensure that their business model and strategies are comparable with – additionally to the Paris Agreement – the **EU Climate Law** and exposure of the undertaking to **coal, oil and gas-related activities** (*Article 15 paragraph 1*)
 - Link to the variable remuneration of directors **removed**
- Civil liability & right to a compensation
 - Company is to be held liable if it **intentionally or negligently** failed to comply, when the obligations / prohibitions of Annex I are aimed at protecting natural persons, and as

- a result **damage occurred to the legal interest** of a natural or legal person (*Article 22 paragraph 1*)
- Company **can't be held liable for indirect damage**, i.e., that which it didn't cause or contribute to.
 - Right of victims to a **full compensation for damage** introduced (*Article 22 paragraph 2*)
- Article prohibiting companies from applying to public support in case of sanctions and article regulating director's duties **deleted** (*Article 24*)
 - Application of the rules (*Article 30*)
 - **3 years from entry into force** for EU companies with more than 1000 employees and a turnover of EUR 300 million and non-EU companies with a turnover of EUR 300 million;
 - **4 years from entry into force** for all companies with 'full obligations', and;
 - **5 years from entry into force** for all companies with 'limited obligations'.

Next steps

- **23 March 2023**: Adoption of report in JURI
- **May 2023 (tbc)**: Adoption in plenary
- **June / July 2023 (tbc)**: Beginning of trialogues

Q4 2023 (tbc): Adoption of the proposal