Council of the European Union

Brussels, 22 May 2025
(OR. en)

8855/25

Interinstitutional File: 2025/0045(COD)

LIMITE

SIMPL 26
ANTICI 31
ECOFIN 530
EF 144
DRS 41
COMPET 357
FIN 502
COH 70
CODEC 584

PUBLIC

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	COM(2025) 81 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements - *Guidance for further work*

I. BACKGROUND

1. In October 2024, with the aim of enhancing the Union's competitiveness and achieving the full potential of the Single Market, the European Council called "on all EU institutions, Member States and stakeholders, as a matter of priority, to take work forward, notably in response to the challenges identified in the reports by Enrico Letta ('Much more than a market') and Mario Draghi ('The future of European competitiveness')"[1]. The Budapest declaration of 8 November 2024 subsequently called for "launching a simplification revolution ensuring a clear, simple

[1] ST 25/24, point 31.

and smart regulatory framework for businesses and drastically reducing administrative, regulatory and reporting burdens, in particular for SMEs"[2].

2. On 26 February 2025, as a follow-up to EU Leaders' call, the Commission put forward two 'Omnibus' packages, aiming to simplify existing legislation in the fields of sustainability and investment respectively. The first Omnibus package notably contained the proposal on the so-called 'stop-the-clock' mechanism, postponing the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements in order to provide companies with the necessary legal certainty as regards the date of entry into force of these requirements. At the same time, the Commission put forward the 'content' proposal aiming at simplifying the framework of corporate sustainability reporting (CSRD) and due diligence (CS3D) requirements by reducing reporting and related administrative burdens as well as limiting the trickle down of obligations on smaller companies.

3. On 20 March 2025, the European Council urged the co-legislators to take work forward on the Omnibus simplification packages "as a matter of priority and with a high level of ambition, with a view to finalising them as soon as possible in 2025", highlighting that the 'stop-the-clock' mechanism on sustainability reporting and due diligence should be adopted "without delay and at the latest by June 2025". Following a swift procedure applied with the utmost priority by both co-legislators, the 'stop-the-clock' text was adopted by the Council on 14 April and published on 16 April as Directive (EU) 2025/794.

4. The work on the content proposal has in the meantime been taken forward by the Presidency with the intention to advance the discussion as much as possible. After several discussions held at Working Party level, including on the basis of Presidency compromise proposals, some key issues of the proposal require particular attention. Further work and political guidance thereon is needed to advance the legislative process on the amendments to CSRD and CS3D.

II. STATE OF PLAY

5. The Antici Group on Simplification (AGS), the dedicated group set up on 21 February 2025 to work on the simplification proposals[3], met on 3, 18 and 24 March, on 4 and 25 April as well as

[2] SN 53/24.
[3] ST 6340/25.

on 19 May to examine the Commission proposal and prepare the Presidency compromise text, with the second Presidency compromise text [4] having been discussed on 19 May.

Key issues for discussion

Corporate Sustainability Reporting Directive (CSRD)

Scope

6. The Commission proposal reduces by about 80% the number of undertakings subject to sustainability reporting by aligning the employee threshold with CS3D (1000 employees) and removing listed SMEs from the scope. While some delegations called for further limiting the CSRD scope by adding the turnover threshold of over EUR 450 million net turnover, thus equating the key thresholds use to define the CSRD and CS3D scopes, some others sought to widen the scope in comparison to the Commission proposal, proposing to subject to sustainability reporting obligations all large undertakings over 500 employees or all large undertakings, without imposing a minimum employee threshold.

7. In light of the above, the Presidency considers that the Commission's proposal offers a balanced approach, preserving the policy objective of answering the market demand for sustainability information while significantly alleviating the reporting burden on undertakings. Delegations are invited to indicate whether they could support the Presidency's approach, maintaining the Commission proposal.

Corporate Sustainability Due Diligence (CS3D)

Identification and assessment of actual and potential adverse impacts (Art. 8)

8. To reduce the burden on companies falling within the scope of the CS3D, the Commission proposes to limit the identification requirements, as a general rule, to company's own operations, those of its subsidiaries and those of its direct business partners (so-called tier 1). Under the Commission's proposal, it is only when a company has plausible information indicating adverse impacts at the level of an indirect business partner that the company needs to conduct an in-depth assessment at that level.

[4] Doc. 8465/25.

PUBLIC

9. Several delegations pointed out that the proposed entity-based approach, despite the tier-1 limitation, might be in fact more burdensome for companies and lead to a misallocation of their resources. This is because these provisions require companies to focus their efforts on identifying and assessing actual and potential adverse impacts on *all* direct business partners, even if such impacts are unlikely to occur at that level. Some delegations also raised concerns over the clarity of the new concept of "plausible information", which may add further uncertainty for companies (i.e. a risk of misinterpretation). On this basis, some delegations called for a return to focusing identification and assessment of actual and potential adverse impacts on areas where these impacts are most likely to occur (the so-called "risk-based approach"). Specifically, these delegations proposed that companies should no longer be required to carry out a comprehensive *mapping* exercise (entity-level analysis), but instead, conduct a more general *scoping* exercise, which would cover also indirect business partners. Such an approach would also make the proposed provisions on "plausible information" redundant, as information collection would be a part of the scoping exercise. Finally, it would better align the CS3D requirements with relevant international standards, such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines) and the UN Guiding Principles on Business and Human Rights. The Presidency proposes to agree on this approach as the way forward.

10. Moreover, delegations sought clarifications on what information companies are to base their due diligence processes on and in particular the extent to which companies are obliged to gather such information. In response, the Presidency proposes to clarify that, for the purposes of identifying and assessing adverse impacts, companies should only be required to take measures that are reasonably available to them. As for information gathering, this would consist of making use of appropriate sources of information, such as the ones outlined in the OECD Guidelines. The guidelines to be issued by the Commission will help clarify the extent of due diligence information that is necessary to obtain from company's business partners to comply with the CS3D requirements. The Presidency also proposes to adjust relevant safeguards protecting business partners from overly burdensome information requests, providing that for the purposes of the scoping exercise, companies only seek to request information from business partners where that information is necessary and, in case of business partners with fewer than 1000 employees, cannot reasonably be obtained by other means.

11. Delegations are invited to indicate whether they could support the Presidency's approach, as outlined above.

Combating climate change: transition plan for climate change mitigation (Art. 22)

12. The Commission's proposal simplifies the provisions on transitions plans for climate change mitigation by aligning them textually with the provisions of the CSRD. Moreover, the CS3D requirement to put into effect these plans is replaced by a clarification that the obligation of companies to adopt a transition plan includes outlining implementing actions (planned and taken).

13. Most delegations seem to consider that the Commission's proposal adequately balances the simplification ambition with the EU's climate goals. Still, few delegations consider the provided amendments as unsatisfactory in terms of clarity and/or burden reduction, with the proposed alternative solutions including a removal of the relevant provision altogether (it is only the CS3D that obliges companies to adopt transition plans, as under the CSRD/ESRS regime, if companies do not have a plan they can simply report that fact and indicate whether and when they intend to have one), a reduction of the scope of the plans in question or replacing the description of the required content of the plans in the CS3D with a reference to the relevant provisions of the CSRD.

14. In light of the above, the Presidency proposes to maintain the Commission's proposal while introducing further textual alignments with the CSRD, in particular to clarify that the relevant plans under both Directives are the same ones and thus there is no doubling of obligations.

Delegations are invited to indicate whether they could support the Presidency's approach as outlined above.

Civil liability (Art. 29)

15. The Commission's proposal removes the EU harmonised liability regime provided for in Article 29(1) of the CS3D, but maintains the requirements for effective access to justice, including by applying the right to full compensation (which excludes overcompensation) to all cases where a company is held liable for a failure to comply with the due diligence requirements under this Directive, in accordance with national law, and where such failure caused damage. Furthermore, the proposal removes the requirement for Member States to ensure that their liability rules are of overriding mandatory application in cases where the applicable law is not

PUBLIC

the national law of the Member States (under private international law, the applicable law in case of human rights violations is that of the place where the damage occurred).

16. The technical-level discussion has not allowed it to gain a clear view of Member States positions, as majority of Delegations have not expressed their opinions or placed scrutiny reservations. Therefore, the Presidency wishes to determine whether delegations consider that the existing, specific harmonised civil liability regime should remain, or rather whether this should be governed by national law as well as whether the overriding mandatory application of the relevant rules should be preserved.

III. CONCLUSION

17. The Permanent Representatives Committee is invited to provide political guidance on the way forward regarding the above-mentioned issues, with a view to advancing the file as much as possible before the end of the Polish Presidency.

PUBLIC