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General Secretariat

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## **MEETING DOCUMENT**

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| From:    | General Secretariat of the Council        |
| To:      | Simplification                            |
| Subject: | Omnibus package on sustainability - CSDDD |

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Delegations will find attached a presentation on the Omnibus package on sustainability - CSDDD prepared by the Commission for the meeting of the Antici Group (Simplification) of 18 March 2025.



# Omnibus 1

Corporate Sustainability Due Diligence Directive

# Extension of harmonisation level

1. Without prejudice to Article 1(2) and (3), Member States shall not introduce, in their national law, provisions within the field covered by this Directive laying down human rights and environmental due diligence obligations diverging from those laid down in Articles 6 and 8, Article 10(1) to (5), Article 11(1) to (6) and Article 14.

2. Notwithstanding paragraph 1, this Directive shall not preclude Member States from introducing, in their national law, more stringent provisions diverging from those laid down in provisions other than Articles 6 and, 8, Article 10(1) to (5), Article 11(1) to (6) and Article 14, or provisions that are more specific in terms of the objective or the field covered, including by regulating specific products, services or situations, in order to achieve a different level of protection of human, employment and social rights, the environment or the climate.'



# Identification, in depth assessment: tier 1

- CSDDD requires companies to conduct due diligence on their entire value chain
- Omnibus 1 limits the in-depth assessment of adverse impacts to **direct business partners (tier 1)**

Change to Article 8 (2):

‘(b) based on the results of the mapping as referred to in point (a), carry out an in-depth assessment of their own operations, those of their subsidiaries and, where related to their chains of activities, those of their **direct business partners**, in the areas where adverse impacts were identified to be most likely to occur and most severe.’



# Exceptions 1: plausible information and circumvention

‘2a. Where a company has plausible information that suggests that adverse impacts at the level of the operations of an indirect business partner have arisen or may arise, it shall carry out an in-depth assessment.

What is plausible information?

*Recital: Plausible information means information of an objective character that allows the company to conclude that there is a reasonable likelihood that the information is true. This may be the case where the company concerned has received a complaint or is in the possession of information, for example through credible media or NGO reports, reports of recent incidents, or through recurring problems at certain locations about likely or actual harmful activities at the level of an indirect business partner.*

The company shall always carry out such an assessment where the indirect, rather than direct, nature of the relationship with the business partner is the result of an artificial arrangement that does not reflect economic reality but points to a circumvention of paragraph 2, point (b). Where the assessment confirms likelihood or existence of the adverse impact, it is deemed to have been identified.



# Exceptions 2: pre-selection and contractual cascading

The first subparagraph is without prejudice to the company considering available information about indirect business partners and whether those business partners can follow the rules and principles set out in the company's code of conduct when selecting a direct business partner.

Notwithstanding the first subparagraph, irrespective of whether plausible information is available about indirect business partners, a company shall seek contractual assurances from a direct business partner that that business partner will ensure compliance with the company's code of conduct by establishing corresponding contractual assurances from its business partners. Article 10(2), points (b) and (e) shall apply accordingly.'



# Information requests: SMC shield

- Regular information requests to SME/SMC business partners as part of the value chain mapping limited to the **vSME standard**
- **Exceptions**
  - in light of indications of likely adverse impacts **or** because the standard does not cover relevant impacts, **and**
  - where such additional information cannot reasonably be obtained by other means



# Termination of business relationship

Last resort requirement under CSDDD in case of severe adverse impacts when all other due diligence measures fail

- Omnibus 1 **deletes** the **termination requirement** but maintains requirement to adopt enhanced action plan (as long as there is still a reasonable prospect of change) and to **suspend** the business relationship when other measures fail





# Termination of business relationship

‘6. As regards potential adverse impacts as referred to in paragraph 1 that could not be prevented or adequately mitigated by the measures set out in paragraphs 2, 4 and 5, the company shall, as a last resort: (a) refrain from entering into new, or extending existing, relations with a business partner in connection with which, or in the chain of activities of which, the impact has arisen, (b) where the law governing its relation with the business partner concerned so entitles it, adopt and implement an enhanced prevention action plan for the specific adverse impact without undue delay, provided that there is a reasonable expectation that those efforts will succeed, and (c) use or increase its leverage through the suspension of the business relationship with respect to the activities concerned.

As long as there is a reasonable expectation that the enhanced prevention action plan will succeed, the mere fact of continuing to engage with the business partner shall not trigger the company's liability.



# Stakeholder engagement

- **Definition of stakeholders** limited to:
  - the company's **employees**, the employees of its subsidiaries and of its business partners, plus their trade unions and **workers' representatives**
  - individuals or communities whose rights or interests are or could be **directly affected** by the products, services and operations of the company, its subsidiaries and its business partners, and the legitimate representatives of those individuals or communities
- **Clarification** that **engagement only with “relevant” stakeholders**
- **Scope of stakeholder engagement** further reduced



# Stakeholder engagement

in Article 13, paragraph 3 is amended as follows:

- (a) the introductory wording is replaced by the following: 'Consultation of relevant stakeholders shall take place at the following stages of the due diligence process:';
- (b) points (c) [termination and suspension] and (e) [developing indicators for monitoring] are deleted



# Less frequent monitoring

- CSDDD requires companies to carry out annual assessments of their own operations, those of subsidiaries and business partners to monitor the effectiveness of the due diligence measures or when new risks arise
- Omnibus 1 reduces this frequency to 5 years + **ad hoc assessment** whenever there are **reasonable grounds to believe that the measures are no longer adequate or effective**



# Commission guidelines

‘3. The guidelines referred to in paragraph 2, point (a) [guidance on best practices on how to conduct due diligence, in particular identification, prioritization, purchasing practices, responsible disengagement, remediation, stakeholder engagement, notification] shall be made available by 26 July 2026, those referred to in paragraph 2, points (d) and (e), by 26 January 2027, and those referred to in paragraph 2, points (b), (f) and (g), by 26 July 2027.’;



# Transition plan for climate change mitigation

- **Duty to implement** the climate plan is modified: in line with CSRD requirements, the climate plan needs to include specific **implementing actions** [*recital*: planned and taken]

‘Member States shall ensure that companies referred to in Article 2(1), points (a), (b) and (c), and Article 2(2), points (a), (b) and (c), adopt a transition plan for climate change mitigation, **including implementing actions**, which aim to ensure, through best efforts, that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119, including its intermediate and 2050 climate neutrality targets, and where relevant, the exposure of the company to coal-, oil- and gas-related activities.’;



# Penalties

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- Link of the pecuniary penalty with the turnover is removed
- Minimum maximum cap removed

‘4. The Commission, in collaboration with Member States, shall issue guidance to assist supervisory authorities in determining the level of penalties in accordance with this Article. Member States shall not set a maximum limit of pecuniary penalties in their national law transposing this Directive that would prevent supervisory authorities from imposing penalties in accordance with the principles and factors set out in paragraphs 1 and 2.’;



# Liability

- **EU liability regime removed**, liability has to be established under conditions of national law; prohibition for overcompensation maintained
- Access to justice: requirement to allow **representative action removed**
- Requirement to ensure “**overriding mandatory application**” of the liability provisions **removed**, private international law rules determine applicable law (i.e. typically the law where the damage occurred applies, MS remain free to declare OMP under conditions developed by the ECJ)





# Review

- Deletion of the review clause regarding a possible targeted due diligence regime for financial services

