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From:	General Secretariat of the Council
To:	Simplification
Subject:	Omnibus I - Corporate Sustainability Due Diligence Directive (CSDDD)

Delegations will find attached the presentation made by the Commission at the meeting of the Antici Group (Simplification) on 4 April 2025.



Omnibus I

Corporate Sustainability Due Diligence Directive (CSDDD)

European Commission

Maximum harmonization

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- CSDDD is a **cross-sectoral framework directive** that sets out a **general duty of care** regarding business activities
- **Broad scope**: identify and address adverse impacts on human rights, including labor rights, and the environment
- **Legal and political limits to maximum harmonization**, in particular to avoid conflict with national corporate governance and liability rules
- Member States must be able to **regulate more specific duties** in these areas as long as they go beyond the general due diligence process, e.g. product- or substance-related regulation

Overview: identification and prioritisation

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- General: concept of **"appropriate measures"** (Art 3(1)(o) (effective, proportionate to risk, reasonably available) (see also Arts 10(1), 11(1))
- **Identification of adverse impacts**, Art 8

  Appropriate measures to identify and assess impacts, Art 8(1):
  - **Mapping**, Art 8(2)(a): mapping of the value chain and of high-risk areas, taking into account relevant risk factors
  - **In-depth assessment** (= appropriate measure subject to reasonableness)
    - Direct business partners: in areas identified through mapping (Art 8(2)(b))
    - Indirect business partners: in case of "plausible information" suggesting adverse impact at level of operations of indirect partner (Art 8(2a))
  - **Information requests**, Art 8(3) to (5): alternative sources, prioritization, SMC shield
- **Prioritization of identified impacts based on risk**, Art 9

Identification, Art 8 (I)

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Limitation of in-depth assessment to direct business partners as the general rule, **Art 8(2)(b)** – does not change the situation of direct partners compared to *status quo* (previous slide), moreover SMC shield will reduce information requests

Exception in case of circumvention (Art 8(2a), first subpara): important because Omnibus allows focus on tier 1

Exception in case of "plausible information" suggesting adverse impact at the level of indirect business partner, **Art 8(2a), first subpara**

- Rationale:
  - Most of the adverse impacts arise further away in the supply chain (SWD), but that is also where due diligence becomes more complex/burdensome

    → No **systematic/pro-active assessment** of indirect business partners, but **trigger for in-depth assessment cannot depend on already verified information/proof** → plausibility is sufficient
  - Builds on DE Supply Chain Act

Identification, Art 8 (II)

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- **Notion of "plausible information"**
  - Further clarified in **recital 21**: "information of an objective character that allows company to conclude that there is a reasonable likelihood that the information is true" → does not require complex assessment
  - **Not possible to provide exhaustive definition/closed list** of relevant sources and types of information
  - Unlike for Art 8(2)(b) does not only build on mapping of **high-risk areas**, but on plausible information that suggests an **adverse impact** → has to be followed up even if impact arises in generally lower-risk area
  - Only in-depth assessment will show whether information is actually "**reliable**"; "**relevance**" already covered by reference to plausible information "that suggests that adverse impacts … have arisen or may arise"

Identification (Art 8) (III)

- Information must be linked to operations of indirect business partner, **not just general risk areas**; however, in certain cases, **information about specific risk factors** may be sufficient (e.g., use of a particular production process involving high risks; geographic risk factor that is particularly relevant for the sector concerned)
- **Objective notion** (perspective of reasonable observer with sector-specific information), subject to interpretation/adjudication by supervisory authorities and courts
- Company “has” plausible information when it is in its possession, or when it is **accessible to the company** and it **can reasonably be expected to access or know about it** (taking into account all circumstances, incl. sector-specific knowledge)
- Clarification that **“plausible information” does not amount to identification**, Art 8(2a), first subpara, 3rd sentence: similar to Art 14(3), second subpara

Identification, Art 8 (IV)

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Selection of direct business partner, Art 8(2a), second subpara

- **No new obligation**, but **clarification** that limitation of in-depth assessment to tier 1 does not exclude that company considers available information about indirect business partners when selecting direct business partner
- Part of **proper risk management**: in the interest of the company as “problematic” value chain can later-on trigger need for mitigating actions and public/private enforcement
- Linked to the duty to ensure **respect for code of conduct** (Arts 7(2)(b), 10(2)(b), 11(3)(c)) and to use **responsible purchasing practices** (Art 10(2)(d), Art 11(3)(e))

Identification, Art 8 (V)

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Contractual cascading, **Art 8(2a), third subpara**

- Direct link to Art 8(2)(b),(2a): **partly compensates for the more limited scope of the identification exercise**; builds on DE Supply Chain Act
- Different from Arts 10(2)(b), 11(3)(c): different moment (entering into business relationship) and **prior to identification** of impacts (which company will no longer systematically check)

  → Notions of “appropriate measure” and “where relevant” do not fit as they presuppose prior identification of impacts; without such information, not possible to choose between measures, only possibility is to seek contractual assurances

- **Only cascading**, no obligation for the direct partner to comply with the code of conduct; **SME support** (Art 10(2)(e)) to limit trickle-down effect

Identification, Art 8 (VI)

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SMC shield, **Art 8(5)**

- Because of Art 8(3), (4), information requests should only be used where they are **necessary** and do not create undue burden (to be elaborated in guidelines); new Art 8(5) does not change this
- **In many cases, mapping will not require** information requests (desk research)
- Where information must be requested directly from business partner, **SMC shield** applies
- **Exception** necessary as **vSME standard does not cover all impacts** relevant for CSDDD and company must be able to ask additional questions in case of indications that reported information is wrong/incomplete

Suspension, Arts 10(6), 11(7) (I)

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- Difficulties/obstacles in carrying out due diligence are the very reason for the rules on suspension/termination (= measures of last resort)
- **Three (last-resort) measures** (Arts 10(6), first subpara, 11(7), first subpara) pursue **different objectives** and thus **apply cumulatively** (e.g., refraining from extending/entering into new contract does not address contribution to harm from ongoing business relationship, hence need to suspend)
- Once due diligence measures (Arts 10(2), 11(3)) have failed, **company cannot continue "business as usual"** → suspension until adverse impact addressed, "critical input" exception would not be in line with intl obligations to respect HR/envt and national tort laws

Suspension, Arts 10(6), 11(7) (II)

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- **Different from termination**, both legally (no possibility to continue business relationship) and in terms of signal sent to business partner
- **Clarification** (Art 10(6), second subpara, 11(7), second subpara) that continued engagement – even in case of ongoing, severe impacts – should not be viewed as a contribution to the harm caused, given suspension → **no liability**, **no public enforcement**

Stakeholder engagement, Arts 3(1)(n), 13

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- **Definition of stakeholders**
  - Individuals/communities "**directly affected**": close link to the operations, products, services (see Omnibus, recital 24 and p. 17 of EM)
  - CSO can be "**legitimate representative**", but only if (i) there are **individuals or communities** whose rights or interests are or could be **directly affected** and (ii) **CSO acts, and is recognized to act, on behalf** of those individuals or communities
  - Companies are not prevented from also consulting other stakeholder groups where they deem this useful
- **Scope of stakeholder engagement**
  - Clarification that engagement only with **"relevant"** stakeholders (see Omnibus, recital 24: "link to the specific stage of the dd process")
  - Stakeholder engagement **essential** (also in the interest of the company) **for certain due diligence steps** (e.g., identification, remediation)
  - Proposal to **remove obligation for steps that**, following Omnibus, **will have a reduced scope** (no termination duty, less frequent monitoring)

Monitoring, Art 15 (I)

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- Objective pursued with Omnibus: **burden reduction** for both in-scope companies and business partners
- Obligations for **periodic monitoring** (at least every 5 years) and **ad hoc assessments** pursue **different objectives** and are therefore cumulative
  - **Periodic monitoring**: ensure proactive re-assessment at certain intervals of whether situation has evolved and measures taken to address impacts are still adequate and effective; companies free to do so more often
  - **Ad hoc assessments**: to ensure effectiveness of due diligence in case of more rapid change; more reactive and targeted, e.g. whenever there are reasonable grounds to believe that measures taken are no longer adequate/effective or that new risks may arise
- **Likely consequences**: fewer regular, more ad hoc assessments, but **on balance less monitoring** (less systematic, more reactive)

Monitoring, Art 15 (II)

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- **Scope**: monitoring covers **all due diligence measures**, including as regards indirect business partners (**no limitation to tier 1**)
- **Trigger for ad hoc assessments**: see **recital 61** + where necessary, further elaboration in general guidelines

Climate transition plan, Art 22 (I)

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- **Crucial instrument for achieving the EU's climate objectives**, in line with intl commitments under **Paris Agreement** and the **obligation to protect human rights** (see e.g. ECtHR, *Verein Klimaseniorinnen*)
- **Alignment with related transition/transformation plans** under CRD (cf. Arts 76(2), 87a), Solvency (cf. Art 44(2b)), IED (installation level plans)
- **Full alignment with CSRD/ESRS definitions and requirements in terms of content** (see also Art 22(2))

  → instead of a separate duty to implement, climate plan needs to include specific **implementing actions** (cf. Art 19a(2)(a)(iii) CSRD), both planned and taken (= together with targets **core element** of any plan)

  → plan/implementing actions aim to ensure, **"through best efforts"**, compatibility with 1.5°C/net zero objective

Climate transition plan, Art 22 (II)

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- **Duty to <u>adopt</u> transition plan with required <u>"design"</u>** (content), subject to independent supervision (CSRD only requires to report a plan where it exists)
- As part of **supervision of the plan's design**, authorities competent to check implementing actions to **assess whether plan is plausible** (planned actions) **and company is on track** (actions taken; cf. Art 22(3): description of progress made)

  → **failure to implement** might result in **need to adapt the plan**
- **Further clarification through guidance**

Sanctions, Art 27 (I)

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- **Importance of ensuring adequate sanctions and level playing field**
  - overarching principles (Art 27(1)) and mandatory factors (Art 27(2))
  - European Network of Supervisory Authorities to ensure coordination
- **Removal of turnover link**
  - expresses no doubt as to the legality of such a link
  - but considered unnecessary given the principles of "proportionality" and "dissuasiveness" (Omnibus, recital 27), which mean that turnover will remain a relevant factor, even if not the only one
- **Fines cap**
  - **Current text: 5% "minimum cap"** (= lower limit of any ceiling), taking into account that Directive covers very serious impacts (e.g. forced labour), including in own operations
  - **Removal of cap, but prohibition to undermine principles/factors** to ensure adequate sanctions

Sanctions, Art 27 (II)

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- **Level of the fine**:
  - determined in the first place by the **principles/factors in Art 27(1), (2)**, which Member States need to reflect in national law (ensures predictability)
  - **guidelines** to **further clarify their application** and **develop** (as much as possible) a **common fining methodology**, thereby contributing to level playing field; successfully used in other areas of EU law (e.g., competition law)

Liability, Art 29 (I)

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- **EU liability conditions** (current Art 29(1)) **removed**, but **requirement for MS to ensure full compensation** for victims harmed due to a company's failure to comply with its due diligence obligations under the Directive ("whether") – necessary as civil liability is about ensuring that victims have **access to remedy**, itself a **human right recognized in intl/EU/MS law**
- Specific **liability conditions** ("how") left to the **national law of each MS**
  - respect for different legal traditions, no EU-wide harmonization
  - national tort law needs to reflect (EU-level) due diligence duty
  - prohibition for overcompensation maintained
- **Safeguards** to ensure effective access to remedy maintained with the exception of **representative action** (different MS traditions); does not prevent CSOs from assisting – and financially supporting – victims with their claims

Liability, Art 29 (II)

- Requirement to ensure **"overriding mandatory application"** of liability provisions (Art 29(7)) **removed** (respects different MS traditions)
  - **Jurisdiction**: forum of the defendant (**MS court**), therefore MS law determines rules of procedure
  - **Applicable law** determined by rules of **private international law**
    → for human rights abuses the **law where the damage occurred** (includes grounds for liability, types of harm covered, burden of proof, level of compensation, limitation periods, exhaustion rules, etc.)
  - MS to decide whether to declare OMA, taking into account that right to remedy is a human right and the consequences applying foreign law would have
    - **compensation depends on whether foreign law recognizes liability of ultimate buyer** for violation of duty of care (→ if no due diligence law in third country, likely no liability)
    - need for the **victim** and **defendant company** (and their lawyers) to make/defend their case under foreign law
    - need for **MS court** to apply foreign law (typically with expert input), which will therefore vary from case to case (no legal precedent)