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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Simplification
Subject:	Explanatory note - CS3D SIMPLIFICATION – 1st Presidency compromise

Delegations will find attached an explanatory note on the first Presidency compromise text for CS3D Simplification (circulated in doc. ST 7952/25), in preparation of the meeting of the Antici Group (Simplification) on 25 April 2025.

EXPLANATORY NOTE

CS3D SIMPLIFICATION – 1st Presidency compromise

Antici Group on Simplification (AGS)

25 April 2025, Friday

The purpose of this explanatory note is to provide delegations with additional information, clarifications and reasoning for the amendments proposed by the Presidency.

This document is for reference only.

ARTICLE	REASONING
Recital 20	The Presidency proposes to supplement the recital regarding the level of harmonisation with necessary changes to reflect the Commission proposal. It also serves to explain the intention behind introducing the second paragraph and introduce relevant examples.
Recital 21	The Presidency proposes to further explain the meaning of 'plausible information' referred to in the proposal for Article 8 of this directive. It intends to provide clearer examples of what could be the sources of plausible information and examples of information suggesting adverse impact. This change ensures that the meaning of plausible information is aligned with the OECD Due Diligence Guidance for Responsible Business Conduct and the information sources outlined in this document. Introducing a reference to this document ensures greater clarity and allows companies to use the Guidelines to better understand the concept and how to apply it. The proposed changes also introduce further explanation regarding an in-depth assessment so that companies can better understand the aim of this assessment and what it entails. This would allow the companies to better understand the due diligence process as a whole. The proposal also reflects the changes made in the proposal for Article 8(2a).
Article 3(1w)	The change introduces the definition of 'plausible information' to the directive's text.
Article 8(2a)	The proposed change introduces a new addition to the text of the first subparagraph to ensure that a constructive approach is applied as intended. A company should be familiar with certain issues that have the potential to arise in their sector or business setting;

	therefore, they should be able to include this information when applying the concept of plausible information. The changes in the second subparagraph aim to ensure a better understanding of the text and that it does not introduce any obligation on the companies. The third subparagraph proposes to replace contractual cascading obligation with a condition that if the company requests that their direct business partner creates an expectation of compliance with company's code of conduct and communicates it to the company's indirect business partners, the article 10(2) point (e) applies. It aims to ensure that SMEs can still get support outlined in Article 10(2) point (e) if such situation arises.
Article 8(5)	The change includes extending the provisions of this paragraph to direct business partners with fewer than 1000 employees. The Presidency proposes to introduce an obligation that the Commission issues relevant guidelines, which would ensure that all companies out of scope who are direct business partners of the company have guidance on what information is truly necessary, taking into account the size and business environment in which that business partner operates. The change aims to ensure that the company does not burden their business partners with additional requests for information other than necessary. The proposal replaces the VSME standard, which is based on the CSRD ESRS, with the dedicated guidelines to ensure that the provision can cover all direct business partners that are out of scope, and that there is no need for additional information resulting from VSME not being a standard that is appropriate to address all human right and environmental impacts outlined in the CS3D. It introduces a simplification by allowing the companies to use only the guidelines when requesting necessary information, without using both the VSME and requesting additional information from direct business partners.
Article 10(6) and Article 11(7)	The addition to the text specifies that the suspension should last only until the impact is addressed. The change in the order of points (b) and (c) aim at clarifying that the measures (a), (b) and (c) are meant to be introduced at the same time, so when the company decides to suspend business relationship. The change to Article 11(7) introduces a correction that in case of actual adverse impacts, the suspension is applied when such impact cannot be brought to an end to the extent to which it could not be minimised. In this situation, a corrective action plan should apply. It also introduces a correction in the text that the provisions of this Article refer to actual adverse impact as opposed to potential adverse impact.

	The changes also clarify that as long as the prevention action plan or corrective action plan is expected to succeed, the penalties referred to in Article 27 or liability referred to in Article 29 shall not apply.
Article 15	The proposed change replaces the 5-year monitoring period with 3 years to reduce the risk that the companies need to restart the due diligence process every 5 years, causing more burden for the companies as a result, and to reduce the need for more frequent *ad hoc* assessments. This proposal is introduced as a compromise between the demands to return to the original provisions outlined in the CS3D and the demands for providing relief for the companies. The proposed period of 3 years aims to reconcile the need to ensure good practice with the concerns regarding the potential burdens for companies.
Article 27(4)	The change involves returning to the original text, setting a 5% maximum limit of pecuniary penalties while improving the language to make the provision clear to the companies. This provision, combined with the guidance issued by the Commission, aims to ensure harmonised application of pecuniary penalties.
Article 5 of the draft amending Directive	The proposed change aims to ensure consistency between the deadline for transposition specified in Directive (EU) 2025/794 [the Stop-the-clock text published on 14/4/2025] and this draft amending Directive.