

The Corporate Sustainability Due Diligence Directive (CS3D): what's new and what's next?

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Today's speakers



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Today's agenda: answering the burning questions



- Am I going to be in scope, and when do I need to comply?
- What does compliance involve?
- What's the risk to me?
- How does this fit alongside my other 'ESG due diligence' obligations?

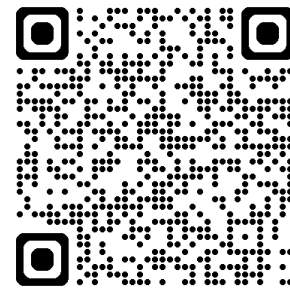
CS3D – scene setter

Requires organisations to ***identify, assess and act*** upon ***environmental and human rights*** impacts occurring as a result of their operations, those of their subsidiaries and in their ***chain of activities***, with a focus on obligations laid down in international laws.

**Am I in scope, and when
do I need to comply?**

1

What is the scope of the CS3D?



	Corporate Sustainability Due Diligence Directive	Corporate Sustainability Reporting Directive (CSRD)
EU companies	<p>> 1,000 employees <u>and</u> > €450m turnover</p> <p>Franchising/ licensing in EU, > €22.5 million royalties and > €80 million turnover</p> <p>Applies individually, and to parents of groups meeting the thresholds</p>	<p>Exceeds <u>two of</u>: €50m turnover, €25m balance sheet and 250 employees on individual or group basis</p> <p>Public interest entities, and certain other entities with EU listed securities</p>
Non-EU companies	<p>> €450m turnover generated in the EU (no employee threshold or requirement for EU presence)</p> <p>Franchising/ licensing in EU, > €22.5 million royalties and > €80 million EU turnover</p> <p>Applies individually, and to parents of groups meeting the thresholds</p>	<p>> €150m net turnover generated in the EU (individual or group basis) AND either an EU subsidiary itself in scope, or a branch turnover of > €40m</p> <p>Entities with EU listed securities</p>
Funds	<p>EU and non-EU AIFs and UCITS all out of scope</p> <p>Asset managers in scope</p>	<p>EU AIFs/UCITS out of scope; some non-EU AIFs/UCITS in scope (possibly an error)</p> <p>Asset managers in scope</p>

When will it apply?

Timing for entry into force

- (Finally) approved by the European Parliament on 24 April and EU Council on 24 May
- Approved version will enter into force 20 days after publication in the Official Journal – still awaited, usually 1-2 months after approval
- Entry into force is expected in mid-July
- Member States then have two years from the entry into force to transpose CS3D into national law – likely **mid-2026**

Timing for compliance*

2027 (3 years from effective date)	2028 (4 years from effective date)	2029 (5 years from effective date)
EU: turnover of at least €1.5 billion and 5,000 employees Non-EU: EU turnover of at least €1.5 billion	EU: turnover of at least €900 million and 3,000 employees Non-EU: EU turnover of at least €900 million	All other in-scope entities

*Assumes Directive *enters into force* before the end of 2024

What am I responsible for?

- In scope companies have obligations regarding actual and potential adverse impacts arising from:
 - their own operations
 - the operations of their “subsidiaries”; and
 - the operations of “business partners” in their “chain of activities”
- Subsidiary (equity or control)
- Business partners
 - Direct, with whom the company has an agreement
 - Indirect, including sub-contractors
- Chain of activities
 - Upstream business partners related to the production of goods or the provision of services
 - Downstream business partners, relating to distribution, transport and storage of products
 - Downstream does not include customers’ use or disposal of products, nor does it include services



Financial firms and parent companies



Are financial firms in scope?

- Yes, regulated financial firms – banks, fund managers, ... – are in scope
- Downstream services omitted from “chain of activities” (and note the Recital)
- Note the definition of subsidiary

Can parent companies delegate to subsidiaries?

- All companies that qualify are in scope in their own right, even if their parent also qualifies
- Parent companies are responsible for all subsidiaries, irrespective of size, and including non-EU subsidiaries
- Where qualifying parent is only a holding company, may be able to delegate fulfilment to subsidiary, but remains accountable
- Conversely, parents can manage compliance for group

What will I need to do?

2

Adverse impacts

Adverse impacts are breaches of prohibitions and obligations of environmental law or human rights abuses

Environment

- Biodiversity (1992 Convention)
- Over-exploitation of the sea (CITES)
- Mercury – substance, product or waste (Minamata Convention)
- Persistent Organic Pollutants (Stockholm Convention)
- Hazardous chemicals (PIC under Rotterdam Convention)
- Ozone depleting substances (Montreal Protocol)
- Hazardous waste (Basel Convention)
- Natural heritage sites (World Heritage Convention)
- Wetlands (Ramsar Convention)
- Pollution from ships (MARPOL)



Human rights

- Right to life, liberty, security
- Protection from torture
- Interference with privacy
- Freedom of thought and religion
- Working conditions, fair wages, employee accommodation
- Rights of the child – health, standard of living, child labour
- Forced labour
- Freedom of association
- Equal treatment in employment including pay
- Environmental acts (including deforestation) impacting persons

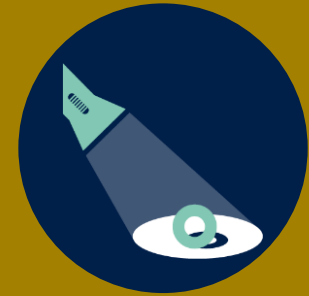
plus foreseeable abuses of fundamental freedoms



Due diligence

... Must be risk based, includes the steps outlined in Article 5 to be carried out in accordance with Articles 7-16

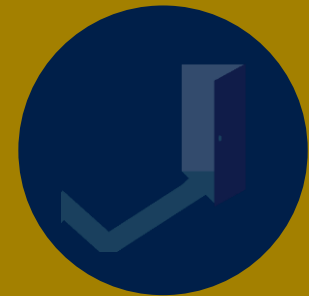
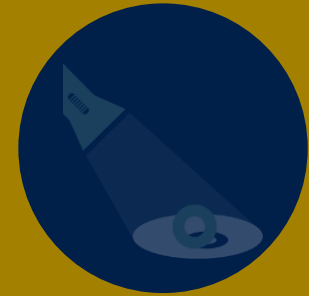
- 1 Integrating due diligence into policies and management systems
- 2 Identifying and assessing adverse human rights and environmental impacts
- 3 Preventing, ceasing or minimising actual and potential adverse impacts
- 4 Monitoring and assessing the effectiveness of measures
- 5 Communicating
- 6 Providing remediation



Policies

Integrating due diligence into company policies and risk management systems

- Have in place a due diligence policy
- The company's approach including in the long term to due diligence
- Code of conduct describing rules and principles to be followed by the company, its subsidiaries and (where impacts exist) the company's direct or indirect business partners
- Description of implementation processes including verification of compliance
- Refresh every 2 years



Identify, assess and prioritise impacts

Map own operations, those of subsidiaries and business partners in the chain of activities to identify risk areas

Identify

- In-depth assessment
- Areas of highest risk

Assess

- Severity and most likely to occur
- ... but eventually all

Prioritise



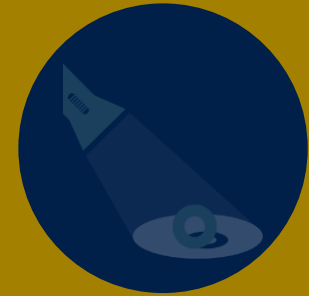
Prevent, cease, minimise, mitigate

“... take appropriate measures to prevent or ...adequately mitigate...”

- Who caused it?
- Where does it occur?
- How much influence does the company have?

Certain steps the company must take:

- Preventative action plan
- Contractual assurances
- Invest in, adjust or upgrade processes and infrastructure
- Modify or improve the company’s business plan, strategy and/or operations
- Support SMEs
- Collaborate to increase the company’s leverage over the impact
- **Terminate?**



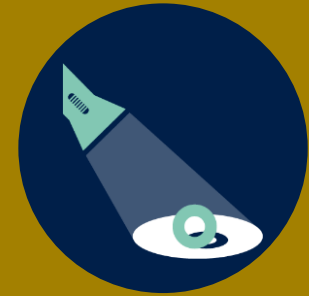
Monitor, assess, remediate

- Dynamic
- Adequacy and effectiveness of each step

Monitor and assess

- Depends who has caused the impact

Remediation



Communication

Stakeholder engagement

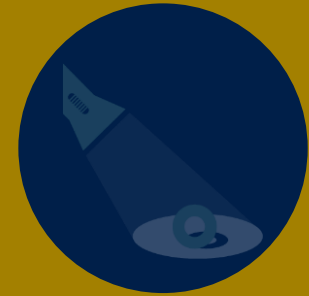
- Throughout the process
- May include industry groups
- Company determines appropriate stakeholders

Notification and complaints

- Must adopt a transparent complaints procedure
- Broad range of complainants
- “Substantiated concerns”

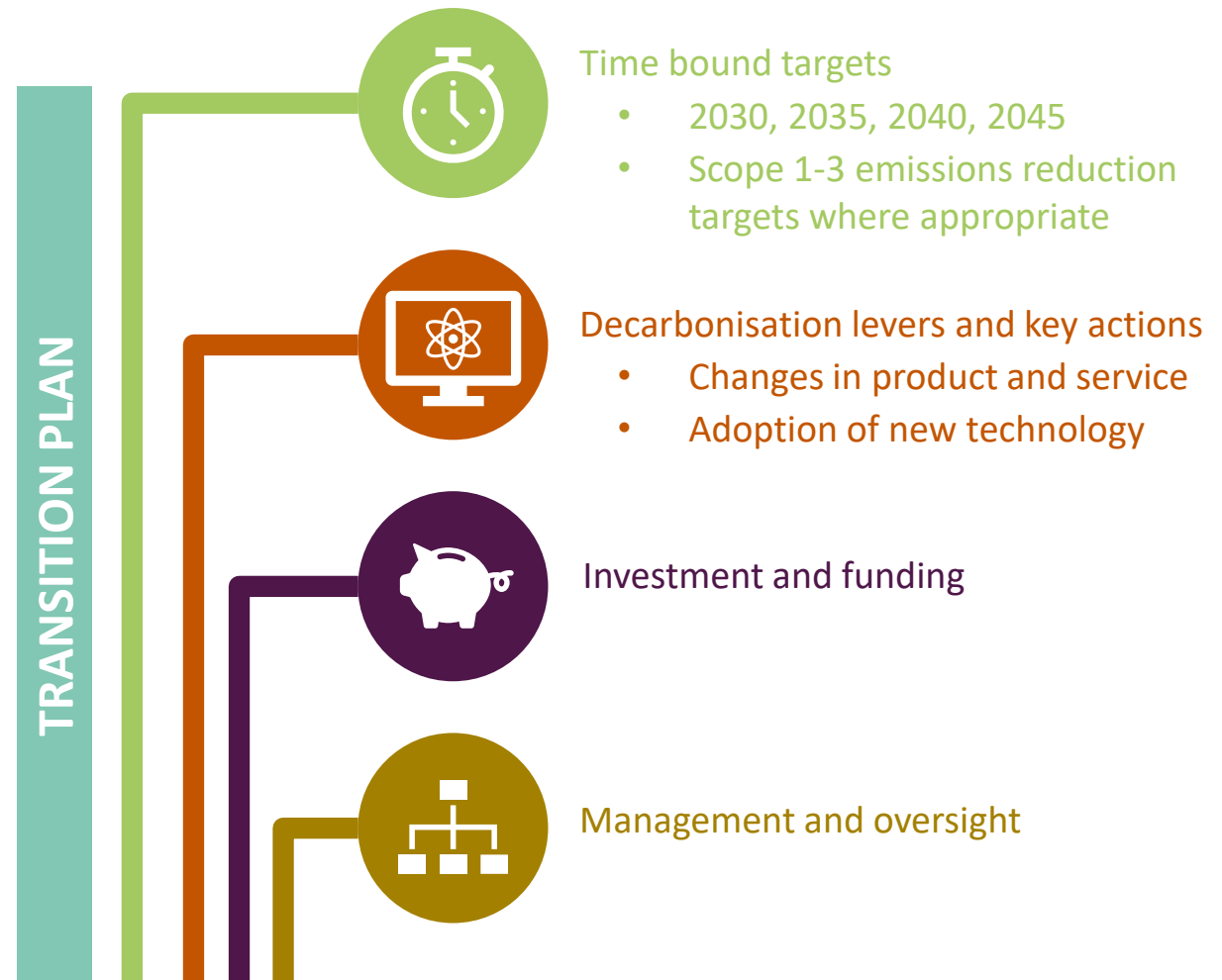
Reporting

- In scope of CSRD?
- Other format



Climate Transition Plan

- Companies must adopt and put into effect a climate mitigation transition plan compatible with
 - 1.5 degree warming
 - EU climate neutrality by 2050
 - Limiting exposure to coal, oil and gas related activities
- Best efforts
- Updated every 12 months



What is the risk to me?

3

Consequences

Regulatory

- Member States to establish – but max. penalty of not less than 5 % of worldwide turnover
- No provision (within CS3D) for criminal liability
- Civil liability where damage caused to natural / legal person
 - if intentional or negligent
 - not where ‘only caused’ by business partners
- Grievance mechanisms
- Cross-default risk with CSRD



Commercial

- May have to end, or renegotiate less cost-favourable, business relationships
- Risk to winning new work (e.g. breach could disqualify from public procurements)
- Competition risk may arise from multi-stakeholder efforts to comply
- CSRD / other transparency regimes could amplify reputational impact

**How does it fit with other
ESG due diligence
obligations?**

4

Roots in OECD and UNGP



Key common concepts:

- Risk-based approach
- Prioritisation
- Involvement framework – cause / contribute / link
- Collaboration

EU Member State Regimes

German Supply Chain Due Diligence Act

- German HQ, and >1,000 employees in Germany
- Prescriptive human rights and environment DD regime

Netherlands – Child Labour (Proposed)

- Proposed Child Labour Act focused on specific human rights abuses
- Potential expansion to cover wider DD on hold, pending CS3D – current status unclear

Norway Supply Chain Transparency Act

- Norwegian domiciled companies (c.£5m t/over, £2.5m b/s; >50 employees) and companies selling goods and services there
- Human rights focused due diligence regime

France – Duty of Vigilance

- France HQ and >5,000 employees in France, or >10,000 international
- Law itself brief and high level
- Relatively high number of cases, seen relatively broad interpretation

Interface Risk

Tension between single market, and desire to not dilute protection seen in Art.4 of CS3D – Member States must not diverge from fundamental duties (identify and assess, prevent and end impacts); yet can impose more stringent requirements elsewhere

EU Sector Regimes

Deforestation

- Applies to companies placing commodities (e.g. cattle, wood) and derived products (e.g. furniture) on EU market
- Must undertake due diligence to ensure 'deforestation-free'

Carbon Border Adjustment Mechanism

- Carbon levy on certain carbon-intensive products brought into the EU
- Requires supply chain investigations in practice

Batteries

- Applies to companies placing batteries, and related raw materials, on EU market
- Must develop and implement diligence policies and systems re environmental and social impacts

Forced Labour

- Prohibits the sale, import, and export of goods to/from EU made using forced labour
- No active obligation to do due diligence, but natural consequence

More onerous prevails

Article 1(3) CS3D suggests that, to the extent CS3D conflicts with more extensive or more specific obligations in these type of regimes, the latter will prevail

Please let us know if you have any questions

Get in touch



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