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Corporate Sustainability Due Diligence Directive – Initial Agreement of Final Text

Regulatory & Compliance on **December 15, 2023**

On 14 December 2023, there was an initial agreement by the EU Parliament and the EU Council on the final text of the Corporate Sustainability Due Diligence Directive ("CSDDD").

CSDDD is a significant and impactful piece of legislation that will require in-scope companies to carry out due diligence and mitigate actual and potential adverse impacts on human rights and the environment.

We cover here some of the key requirements that have been keenly negotiated and now agreed upon based on the publications released so far with the final compromise text not yet available:

- Financial services firms will at least temporarily not have within scope their downstream activities but are required to report on own operations, upstream value chain and climate transition plans. This is temporary as there will be a review clause for possible future inclusion.
- EU companies with more than 500 employees and a net global turnover above €150 million and non-EU companies with more than €300 million net EU turnover will be subject to the new rules. Further clarity is required on the non-EU capture, and it may be aligned with the Corporate Sustainability Reporting Directive for non-EU entities, i.e., that there needs to be an EU subsidiary or branch.
- Certain companies operating within specified high-risk sectors will also fall within scope of reporting with a lower threshold of 250 employees and €40 million turnover in the EU. High-risk sectors include textiles, clothing and footwear manufacture and wholesale trade, agriculture including forestry and fisheries, manufacture of food and trade of raw agricultural materials, extraction and wholesale trade of mineral resources or manufacture of related products and construction.

- The key requirement is to apply due diligence by identifying, assessing, preventing, mitigating, ending and remedying any negative impact on human rights and the environment (as defined by an annex to the directive).
- Large companies will need to adopt and implement a climate transition plan, aligned to the Paris Agreement of 1.5 degrees Celsius (this aligns with Corporate Sustainability Reporting Directive requirements).
- For companies with over 1000 employees, directors' variable remuneration may be linked to the climate transition plan.
- There is a widened scope on human rights with new elements added, particularly on vulnerable groups and ILO core conventions.
- Non-compliant companies may face penalties totalling 5% of the company's net turnover.
- Persons affected and concerned by adverse impacts, including trade unions and civil society organisations, can bring a claim for a period of up to five years after the damage occurred. This is where there was a case of damage caused by a company through intent or negligence, provisions on the disclosure of evidence, injunctive measures and the cost of the proceedings.
- As a last resort, if a company identifies adverse impacts on environment or human rights by some of their business partners, they will have to end those relationships when the impacts cannot be prevented or ended.

In terms of next steps, there still needs to be endorsement and formal adoption by both the European Parliament and European Council before CSDDD will be published in the Official Journal and enter into force 20 days later.

Timing will need to be reviewed in the final text, however, early review of the requirements is recommended to help ensure compliance and particularly with consideration to the sanctions provisions included.

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