Corporate Environmental and Climate Due Diligence and Reporting in the EU

Updated legal analysis of the EU Directive on Corporate Sustainability Due Diligence and recommendations for effective transposition

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Executive summary and key recommendations

This guide explains how Member States can transpose the environmental provisions of the Corporate Sustainability Due Diligence Directive (as amended by Omnibus I Directive, the "CSDDD" or the "Directive") in a way that preserves the Directive's practical effect, strengthens legal coherence and supports meaningful implementation by companies. It focuses on three priorities: clarifying the relationship and synergies between the CSDDD and the Corporate Sustainability Reporting Directive ("CSRD"), maximising alignment with international due diligence standards, and drawing on emerging good practice to address legal ambiguities created by the Directive's legislative process.

In the following, we summarise our key recommendations for transposition:

Part I
Scope and obligations

Scope of companies

The amended CSDDD will apply to EU companies with more than 5,000 employees and a net worldwide annual turnover above EUR 1.5 billion, as well as to the ultimate parent companies of groups that meet those thresholds on a consolidated basis. Non-EU companies operating in the EU will also have to comply with the Directive where they meet the relevant conditions. As a result, 2,907 very large companies will be covered, significantly narrowing the scope compared with the CSDDD as adopted in 2024. It is notable that this approach departs from international standards, which expect all businesses, regardless of size, to conduct due diligence. Such limited coverage risks weakening the effectiveness of the CSDDD in addressing human rights abuses and environmental degradation.

In addition, by excluding a number of CSRD-covered companies from the scope of the CSDDD, the reduced scope undermines policy coherence and represents a missed opportunity to ensure a level playing field. (See Part I, Section A)

Recommendations for transposition

Article 2 scope of companies

Recommendation n°1: Expand the scope of companies to ensure a meaningful impact and to better align with international standards.

Scope of environmental impacts

The CSDDD defines environmental impacts through a twofold approach. First, it covers environmental impacts with human rights implications, reflecting the close connection between environmental degradation and human rights harm. (See Part I, Section B, sub-section 1.1)

Second, the CSDDD also covers environmental impacts without direct human rights implications, but defines them only by reference to a limited list of prohibitions and obligations derived from international environmental conventions. (See Part I, Section B, sub-section 1.2) This approach is inconsistent with the OECD Guidelines, which require due diligence in relation to a non-exhaustive list of environmental impacts, including climate change, biodiversity loss, pollution, and ecosystem degradation. The CSRD also sets out a clearer and larger list of environmental matters companies should report on. (See Part I, Section B, sub-section 2)

The CSDDD could provide a strong framework for addressing business contributions to the triple planetary crisis. However, the complexity of the CSDDD's definition of environmental impacts may lead companies to interpret the obligation differently, creating legal uncertainty and leaving important impacts unaddressed. (See Part I, Section B, sub-section 3)

Recommendations for transposition

Article 3(1)(b) definition of adverse environmental impacts	Annex, Parts I and II

Recommendation n°2: Remove or clarify ambiguous terms like "measurable" and "substantially" in Point 15, Annex Part 1, Section 1, and clarify that environmental degradation includes climate-related impacts.

Recommendation n°3: Ensure comprehensive coverage of environmental impacts, either by:

- **Option A –** Ensuring that the list of environmental conventions is complete and refers to their overall objectives or to all relevant provisions (See Section B, sub-section 1.2); or
- **Option B –** Defining environmental impacts primarily through a comprehensive list.

Value chain coverage

The CSDDD requires companies to identify and address impacts beyond their own operations across their entire supply chains, as well as in downstream distribution, transport and storage where those activities are carried out for or on behalf of the company. In this respect, the CSDDD departs from the CSRD and fall short of international standards, both of which require companies to address impacts across the full upstream and downstream value chain. (See Part I, Section C, sub-sections 1.1 and 1.2)

The definition of downstream activities leaves important gaps in relation to harm arising from the use, sale and disposal of a company's products which could leave significant human rights and environmental harms unaddressed. This limited coverage is particularly significant for financial services and investments, where many relevant impacts occur downstream and are therefore excluded from the due diligence obligations of investors and financial services providers. (See Part I, Section C, sub-section 1.3)

Recommendations for transposition

Article 3(1)(g)(ii) on the downstream value chain

Recommendation n°4: Simplify and adopt the definition of the downstream chain of activities that align with the CSRD and international standards by including all activities, in particular the use and disposal (waste management) of products and the provision of services.

Recommendation n°5: The definitions of downstream activities should align with international standards by removing the limitation that they must be performed "for the company or on behalf of the company".

Due diligence steps

The CSDDD's core due diligence steps have been retained, but the Omnibus I Directive introduced several limitations that weaken their practical effectiveness. The two-step process for identifying and assessing impacts – scoping followed by targeted in-depth assessments – broadly aligns with international practice. (See Part I, Section C, sub-section 2.1)

However, new limits on B2B information requests, longer monitoring intervals and the removal of responsible termination requirements collectively reduce effective harm prevention and remediation. Similarly, the narrowing of stakeholder definitions and the removal of engagement requirements at key stages of the due diligence cycle represent a step back from the continuous, inclusive process envisaged by international standards. (See Part I, Section C, sub-sections 2.2, 2.5, 2.7 and 2.8)

Recommendations for transposition

Article 10(6) and Article 11(7) on responsible suspension	Article 13 (3)(c) on stakeholder engagement
Recommendation n°6: Complement the duty of responsible suspension by reinserting a duty to terminate a business relationship responsibly in line with international standards as a last resort.	**Recommendation n°7:** Reintroduce stakeholder engagement when suspending (or terminating) a business relationship to allow for effective monitoring of corrective measures.

Climate transition plans

The original CSDDD required in-scope companies to adopt and put into effect climate transition plans under Article 22, with a view to aligning their strategies and operations with the 1.5°C Paris Agreement goal on a best-efforts basis. This obligation went beyond disclosure by establishing a behavioural expectation that companies actively decarbonise across their operations and value chains. Together with the CSRD's transparency requirements, Article 22 formed part of a coherent horizontal EU framework combining substantive climate action with reporting obligations, positioning the CSDDD as the key instrument for translating climate commitments into corporate conduct obligations.

The Omnibus I negotiations resulted in the complete deletion of Article 22. Far from simplifying the legal landscape, this deletion has created an arguably more uncertain regulatory environment for companies. Without a uniform standard in the CSDDD, companies remain exposed to climate transition obligations under sector-specific regulations, CSRD disclosure duties, and – critically – evolving judicial standards under national tort law. The removal also undermines the CSDDD's own stated objectives of supporting the energy transition and weakens the EU's capacity to meet its international climate obligations, a concern reinforced by the International Court of Justice's July 2025 Advisory Opinion clarifying States' duties to regulate private actors' greenhouse gas emissions. (See Part I, Section D)

Recommendations for transposition

Article 22 on climate transition plans
Recommendation n°8: Reintegrate an obligation to implement climate transition plans aligned with existing EU climate objectives including clear requirements for best-effort implementation.

Part II
Enforcement mechanisms

The CSDDD provides for two complementary enforcement mechanisms.

Administrative enforcement

National-level supervisory authorities are responsible for supervising companies' compliance with the due diligence obligations transposed under the CSDDD. Member States must ensure they are legally and functionally independent, adequately resourced and transparent. (See Part II, Section E, sub-sections 1 to 4)

The CSDDD gives supervisory authorities broad competences, including the power to request information, conduct investigations and carry out inspections. While authorities can act on their own initiative, they can also act upon substantiated concerns raised by third parties. In the event of non-compliance, the CSDDD empowers supervisory authorities to issue specific orders to companies, such as to refrain from or cease certain conduct, or to take interim measures in situations of imminent risk of severe and irreparable harm. (See Part II, Section E, sub-section 5)

Member States retain significant discretion to design the penalties that supervisory authorities are entitled to impose, but they must at least include fines and public statements in cases of non-payment (in addition to the publication of all decisions imposing penalties). (See Part II, Section E, sub-section 6)

The CSDDD also imposes a number of obligations designed to ensure that public authorities are accountable and that their activities are transparent. In particular, Member States must ensure that the decisions, actions, and omissions of these competent authorities are subject to an effective right of appeal to an independent administrative or judicial body. (See Part II, Section E, sub-sections 3)

The procedure for submitting substantiated concerns is an important tool for raising concerns and pointing out potential instances of non-compliance. (See Part II, Section E, sub-section 7)

However, in order for supervisory authorities to fully play their role in ensuring compliance, they must not use their monitoring power solely on an ad hoc, reactive basis when presented with information relating to a potential breach of the CSDDD. Instead, they will need to exercise their prerogatives in a proactive manner, using a risk-based approach to ensure that they cover, over time, a significant proportion of the companies under their jurisdiction, with a view to detecting non-compliance that would otherwise not be reported or identified by third parties.

Recommendations for transposition

Articles 24 to 27 on administrative enforcement

Recommendation n°9: Operationalise the independence, impartiality and transparency of supervisory authorities through structural safeguards, publication duties and effective review mechanisms.

Recommendation n°10: Guarantee sufficient, stable and secure resources, including dedicated budgets and adequate legal, investigative, and technical expertise.

Recommendations n°11 and 12: Clearly define investigative powers and require authorities to investigate where there is sufficient information indicating a possible breach.

Recommendation n°13: Make substantiated concern procedures accessible, transparent and subject to review, with clear guidance, timeframes and confirmation of submitters' legitimate interest.

Recommendations n°14 and 15: Strengthen deterrence through a broader sanctions toolbox and require proactive, risk-based annual monitoring and investigation plans.

Civil liability

Civil liability is pivotal to ensuring justice for those unduly harmed by breaches of the Directive: it enables victims to obtain legitimate compensation for environmental damage caused by a company's violation of its due diligence obligations under the CSDDD.

Although the CSDDD's civil liability provision has been substantially amended by the Omnibus I Directive, it still requires Member States to maintain a civil liability regime that enables victims to bring claims for compensation. Member States' regimes must include minimum features relating to the conditions for bringing claims, the remedies available and the procedural guarantees needed to ensure effective access to justice. These requirements flow both from the CSDDD itself and from general principles of EU law, including the principles of effectiveness and effective judicial protection. The Omnibus I amendments have made civil liability in cross-border cases excessively complex, unpredictable and unfair for both companies and victims. (See Part II, Section F)

Recommendations for transposition

Article 29 on civil liability

Obligation n°1: Provide a civil liability regime that allows victims to bring civil liability action before national courts to obtain compensation for the damages they have suffered as a result of a company's violation of its due diligence obligations.

Obligations n°2 to 9: Ensure effective access to justice by embedding substantive and procedural safeguards needed for victims to bring civil liability claims and obtain full compensation.

Recommendation n°16: Provide expressly in their national law that their national liability regime for breaches of the CSDDD is an overriding mandatory provision within the meaning of Article 16 of the Rome II Regulation.

List of acronyms

The following acronyms and abbreviations are used in this report:

CBD	Convention on Biological Diversity
CBAM	Carbon Border Adjustment Mechanism
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CITES	Convention on International Trade in Endangered Species
CSDDD	Corporate Sustainability Due Diligence Directive
CSRD	Corporate Sustainability Reporting Directive
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEA	European Environment Agency
EFRAG	European Financial Reporting Advisory Group
EIA	Environmental Impact Assessment
ENGOs	Environmental Non-Governmental Organisations
ESRS	European Sustainability Reporting Standards
ESMA	European Securities and Markets Authority
FAO	Food and Agriculture Organisation
GBF	Global Biodiversity Framework
GHG(s)	Greenhouse Gas(ses)
HCFCs	Hydrochlorofluorocarbons
HFCs	Hydrofluorocarbons
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IED	Industrial and Livestock Rearing Emissions Directive
IFRS	International Financial Reporting Standards

IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPCC	Intergovernmental Panel on Climate Change
ISSB	International Sustainability Standards Board
ITLOS	International Tribunal for the Law of the Sea
LRTAP	Long-range Transboundary Air Pollution
MARPOL	International Convention for the Prevention of Pollution from Ships
MEA	Millennium Ecosystem Assessment
MPLs	Maximum Permissible Limits
NFRD	Non-Financial Reporting Directive
NOx	Nitrogen oxide
ODS	Ozone-depleting Substances
PFAS	Per- and polyfluoroalkyl substances
PIC	Prior Informed Consent
PM2.5	Fine particulates
POPs	Persistent Organic Pollutants
SFDR	Sustainable Finance Disclosure Regulation
SOx	Sulphur oxide
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNWG	United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises (also referred to as the Working Group on Business and Human Rights)

Introduction

The Corporate Sustainability Due Diligence Directive (the **"CSDDD"** or the **"Directive"**) establishes a harmonised framework for corporate human rights and environmental due diligence across the European Union.[1] Its provisions are intended to ensure that large companies operating in the EU market identify, prevent and address adverse impacts on human rights and the environment arising from their own operations, those of their subsidiaries, and those of business partners in their value chains.

As Member States prepare to transpose the Directive into national law, important questions arise as to how these provisions should be implemented so as to preserve the Directive's practical effect and ensure coherence with the wider EU sustainability framework.

The CSDDD entered into force in July 2024 and it is the first cross-sectoral EU instrument to translate voluntary international sustainability due diligence standards into binding legal obligations for companies. The Directive is intended to operate alongside the Corporate Sustainability Reporting Directive (**"CSRD"**)[2] and the associated European Sustainability Reporting Standards (**"ESRS"**)[3] by linking corporate due diligence with sustainability reporting and by supporting greater coherence across the EU's broader corporate sustainability framework. On the one hand, the outcome of a due diligence process under the CSDDD will inform a company's assessment of its material risks and impacts to be reported under the CSRD.[4] On the other hand, once a company identifies a material impact under the CSRD (and thus needs to report on it), the impact should also be subject to due diligence obligations under the CSDDD.

In February 2025, shortly after the adoption of the CSDDD, the Commission proposed the first of several Omnibus legislative packages (the **"Omnibus I Directive"** or **"Omnibus I revision"**) as part of a wider simplification agenda.[5] The Omnibus I revision was formally adopted in February 2026 and introduced significant amendments to both the CSDDD and CSRD, including changes to their scope, application dates, due diligence obligations,

1 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 ("CSDDD").

2 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting ("CSRD"). In this analysis, references to specific Articles or Recitals in the CSRD should be understood to mean references to Directive (EU) 2022/2464, while references to the specific Articles or Recitals in the Accounting Directive should be construed as references to the corresponding Articles in Directive 2013/34/EU as modified by the CSRD ("Accounting Directive"). Non-specific references to the CSRD (for instance, "alignment to the CSRD") refer to the modifications in the Accounting Directive introduced by the CSRD in combination with the ESRS).

3 Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards ("ESRS"), as amended by Delegated regulation - C(2026)5010 and its Annex C adopted by the Commission on 3 July 2026 (currently in EU legislative scrutiny). In this analysis, the internal reference system of the ESRS is used. Therefore, references to the ESRS should be understood as references to the relevant parts of Annex I (ESRS) and Annex II (ESRS - Definitions) of Commission Delegated Regulation (EU) 2023/2772 as amended by Delegated regulation - C(2026)5010 and Annex C.

4 Ibid., Annex I, ESRS 1 Chapter 4 para. 58, p.18 "The outcome of the undertaking's sustainability due diligence process informs the assessment of its material negative impacts."

5 Omnibus I package - Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief - Finance.

climate transition plan requirements and reporting architecture.[6] Member States are required to transpose the CSDDD into national law by July 2028, with the requirements becoming applicable to companies from July 2029.

The legislative process leading to the adoption of the Omnibus I Directive has itself given rise to serious **rule of law concerns.** The proposal was developed without a proper impact assessment or meaningful stakeholder consultation, and without reliance on the climate-consistency assessment required under the European Climate Law. According to the European Ombudsman, these procedural deficiencies amounted to maladministration by the Commission.[7] These circumstances reinforce the need for careful transposition at national level, particularly where the Directive leaves legal ambiguities or risks weakening alignment with international standards.

Against this backdrop, this legal briefing is intended primarily to support actors involved in the CSDDD transposition process, in particular public authorities. It places a particular emphasis on understanding the **environmental dimension** of the EU due diligence and reporting framework.

The briefing first examines the scope of the CSDDD and its main obligations, including in light of the coherency with CSRD (**Part I**), before considering the enforcement mechanisms (Part II). It examines the core provisions of the CSDDD, with particular attention to their interaction with the CSRD and the wider EU sustainability framework. It focuses on the legal and practical implications of the amended Directive and sets out recommendations for transposing the CSDDD into national law.

These **recommendations** take account of the discretion available to Member States under EU law, including their ability to adopt or maintain more ambitious standards. They seek to support national implementation that preserves the effectiveness of the CSDDD, strengthens coherence with the CSRD and related EU legislation, and supports alignment with international standards like the UN Guiding Principles on Business and Human Rights (**"UNGPs"**) and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (**"OECD Guidelines"**).[8]

6 Directive (UE) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements ("Omnibus I").

7 European Ombudsman, Recommendation on the European Commission's compliance with 'Better Regulation' rules and other procedural requirements in preparing legislative proposals that it considered to be urgent 983/2025/MAS.

8 UN Guiding Principles on Business and Human Rights ("UNGPs") and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct ("OECD Guidelines").

Background

Corporate due diligence is a concept that has become mainstream over the last decades, in particular through the adoption of the UNGPs and the OECD Guidelines. It should be understood as a **responsibility and process** for identifying, preventing, mitigating and bringing to an end adverse impacts of a business as well as accounting for them, tracking the implementation and results of this process and communicating about how adverse impacts are addressed with respect to the enterprises' own operations, their value chains and other business relationships. When causing or contributing to adverse impacts, companies also have obligations to provide remediation, such as apologies, restitution or rehabilitation, or financial or non-financial compensation.

The **UNGPs** are recognised as a codification of the legal obligations on States and business enterprises to guarantee fundamental human rights in accordance with international human rights law. They, together with the **OECD Guidelines,** have played a pivotal role in promoting responsible business conduct around the world since their adoption by the UN Human Rights Council in 2011. Thousands of companies now use these frameworks to guide compliance with their human rights obligations, and have integrated due diligence standards into their operations. These initiatives have been instrumental in fostering a culture of responsible business conduct aimed at ensuring that companies uphold human rights, labour standards and environmental protection in their operations. However, despite significant progress by some companies, there is a need for scaling up the effort across sectors and creating a level-playing-field. Moreover, greater transparency, strengthened enforcement mechanisms and enhanced accountability measures are essential to strengthen the effectiveness of these frameworks.

There has been growing pressure from stakeholders asking the EU to establish mandatory due diligence rules for companies that are based in the EU or that provide goods or services in the EU market. This pressure comes not only from civil society organisations,[9] but also from businesses themselves[10] in light of the emergence of national due diligence legislation and the need to avoid fragmented rules across the EU.[11] One of the 10 actions in the Action Plan on Sustainable Finance that the Commission adopted in March 2018 was to foster sustainable corporate governance and attenuate

9 Civil society calls for human rights and environmental due diligence legislation, European Coalition for Corporate Justice, October 2019.
10 List of large businesses, associations & investors with public statements & endorsements in support of mandatory due diligence regulation, Business & Human Rights Centre, last updated in May 2024.
11 See existing due diligence legislations in Germany and France.

short-termism in capital markets.[12] This action plan led to a study on human rights and environmental due diligence commissioned by the Directorate-General for Justice and Consumers.[13] The study was followed by the launch of a legislative initiative on sustainable corporate governance in April 2020,[14] which ultimately resulted, after a four-year long legislative process, in the adoption of the Corporate Sustainability Due Diligence Directive on 24 May 2024,[15] before being reopened by the Omnibus I revision process six months later.

The CSDDD forms a key piece of the puzzle of the EU regulatory framework on business, human rights and the environment. As noted in Recital 25 of the CSDDD, "[t]his Directive is complemented by other legislative acts which also address negative adverse impacts in the field of human rights or environmental protection". The **corporate sustainability framework** of the EU contains a set of different legislations and enforcement measures which are designed, through different approaches, to achieve a common objective of responsible business conduct:

- **product-level legislation** (many including trade-related measures), such as the Timber Regulation, the Conflict-Minerals Regulation, the Deforestation Regulation and the Forced-Labour Regulation, the Batteries Regulation, the Ecodesign Regulation and the Critical Raw Materials Act;

- **sustainable finance legislation:** Sustainable Finance Disclosure Regulation, Green Taxonomy, ESG Rating Regulation;

- **company-based legislation:** CSRD (including ESRS), CSDDD.

Recital 25 of the original CSDDD further specifies that "[c]ompliance with this Directive should facilitate compliance with the provisions and objectives of these other legislative acts, and with the terms and conditions of the applicable authorisations implemented thereunder". Hence, CSRD and CSDDD both function as an enabler and guidance for related EU legislation as they define the standard of conduct on disclosure and due diligence.

12 Communication from the Commission, Action Plan: Financing Sustainable Growth, COM/2018/097 final, March 2018.

13 Study on due diligence requirements through the supply chain – Final report, European Commission, Directorate-General for Justice and Consumers, February 2020.

14 Sustainable Corporate Governance Initiative, European Commission, July 2020.

15 Corporate sustainability due diligence: Council gives its final approval, Council of the EU, 24 May 2024.

National transposition: non-regression and level of harmonisation

As an EU directive, the CSDDD leaves Member States significant **discretion** as to the form and methods by which its requirements are incorporated and transposed into their national legal systems.[16] Member States are, however, bound by the Directive as to the result to be achieved and the deadline for transposition.

As regards timing, **Article 37** of the CSDDD requires Member States to transpose the Directive by **26 July 2028.**

As regards the result to be achieved, the Directive seeks to harmonise corporate due diligence rules and related liability at EU level, thereby providing a level playing field and "ensuring that companies active in the internal market contribute to **sustainable development**".[17] In that context, Member States must transpose the CSDDD in accordance with the obligation to ensure a high level of protection of human rights and the environment under the EU Treaties, the EU Charter of Fundamental Rights and the European Convention on Human Rights.[18]

Moreover, the CSDDD includes two **limitations** on the flexibility enjoyed by Member States when transposing the Directive: **Article 1(2)** on non-regression and **Article 4** on maximum and minimum harmonisation.

Non-regression

In the original CSDDD, Article 1(2) provided that transposition could not constitute grounds for reducing the level of protection of human, employment and social rights, or of environmental or climate protection, already provided under Member State laws. While such non-regression clauses are not unprecedented in EU directives, their purpose is debated among academics.[19] For some, it constitutes a substantive prohibition on weakening the level of protection. For others, it merely constitutes a formal provision that does not prohibit national legislators from lowering the level of protection per se, but rather prevents them from using transposition as a pretext for doing so. In other words, national transposition of the CSDDD cannot justify any reduction of the level of protection provided by national laws in the areas concerned, namely human and social rights, and environmental and climate protection.

The Omnibus I Directive amended Article 1(2) to allow Member States to **"adjust"** any existing national due diligence laws in order to "align" with the CSDDD. The meaning and purpose of this newly added sentence is unclear. However, when trying to reconcile the objectives of the CSDDD and the Omnibus I Directive mentioned in the recitals, it appears difficult to interpret this new sentence as a general exception to the principle of non-regression. Rather, as confirmed by Recital 35 of the Omnibus I Directive, the alignment clause should be understood as clarifying that the non-regression requirement does not prevent Member States from adjusting existing due diligence laws when transposing the Directive "in order to increase or ensure their alignment with it, in particular their scope". This means that Member States could, for example, when transposing the legislation, amend the definition of the scope of their existing due diligence legislation to take

16 Article 288(3) of the Treaty on the Functioning of the European Union ("TFEU").

17 See both Recital 16 CSDDD and Recital 36 Omnibus I Directive.

18 Article 11 TFEU, Article 114(3) TFEU, Article 37 of the Charter of Fundamental Rights.

19 Memorandum: Implementation of the Corporate Sustainability Due Diligence Directive under the Omnibus I Directive in German law, Cosu Legal, February 2026.

into account not only the number of employees – if that was the criterion previously used, as is the case under French law – but also companies' turnover, with a view to aligning the criteria for application.

It is also important to add that any reduction in the level of protection afforded by existing due diligence legislations in France and Germany is likely to be closely scrutinised against EU Treaties and the EU Charter of Fundamental Rights. Several studies have already pointed out that the Omnibus I Directive and its implementation in national law could violate EU primary law and could be challenged on credible legal grounds, possibly leading to the invalidity of (part of) the Omnibus I Directive.[20]

Harmonisation

The degree of harmonisation required between national laws and the CSDDD varies according to the relevant provisions of the CSDDD. Article 4 establishes a so-called "full" or **"maximum" harmonisation** rule, which limits Member States' ability to diverge from, or go beyond, the Directive's standards in relation to specific provisions. This rule was already included in the original CSDDD, with the aim of ensuring harmonised transposition and application of due diligence obligations across the Union. The Omnibus I Directive significantly extended the scope of maximum harmonisation of the CSDDD, which now also covers the due diligence at group level (Article 6), the entirety of the provisions on risk identification and prioritisation (Articles 8 and 9), almost all of the provisions on prevention and bringing impacts to an end (Articles 10(1) to (5) and 11(1) to (6)), as well as the provisions on notification and complaint mechanisms (Article 14), monitoring (Article 15) and communication (Article 16). As a result, the provisions subject to maximum harmonisation now cover the entire due diligence process with the exception of responsible suspension of contracts and disengagement.

Regarding those provisions covered by maximum harmonisation, Member States cannot deviate from the obligations laid down in the Directive when introducing new provisions into national law.

It is settled case law that derogations and exceptions under EU law must be interpreted strictly. Accordingly, where an EU instrument establishes a regime of maximum harmonisation, it should be confined to the provisions expressly listed. Article 4(2) nevertheless clarifies that Member States may adopt more stringent provisions than those set out in the remaining provisions, under a **"minimum" harmonisation** approach, in particular for the regulation of specific products or services and the protection of human rights, the environment and the climate.

The consequence is that Member States are prohibited from weakening existing national legislation on the grounds that they are transposing the CSDDD, pursuant to the non-regression clause, while remaining free to align their national due diligence laws with the Directive. Maximum harmonisation applies only to the introduction of new legislation transposing CSDDD's requirements listed in Article 4(1). Member States may therefore maintain existing stricter provisions on due diligence obligations and may also introduce more stringent provisions in areas not subject to maximum harmonisation, for example as regards environmental scope.

Transposition into national law therefore represents a **pivotal opportunity** to secure a high level of environmental protection and to provide consistency between national laws and other EU legal frameworks, including the CSRD and other EU due diligence legislation, as well as international law on climate change, biodiversity loss, and human rights, and international standards on responsible business conduct, such as the OECD Guidelines and the UNGPs.

20 See notably on this : Potential Legal Challenges under EU Law to the Proposed Omnibus Directive Amending the CSRD and CSDDD, Baldon Avocats, June 2025; The Legal Validity of the Omnibus Package: A Charter Rights Analysis, Cirio Law Firm, May 2025.

Part I
Scope and obligations

A Scope of companies and timeline for application

All businesses, whether large or small, can have an impact on human rights and on the environment. Size is not strictly correlated with risk, as small companies can sometimes generate significant risks and impacts. The purpose of due diligence, as set out in the UNGPs and the OECD Guidelines, is to ensure respect for human rights and the environment by companies, regardless of their size, sector, operational context, ownership and structure, wherever they operate.

This briefing unpacks the company scope of the CSDDD **(Section 1)** and CSRD **(Section 2),** before commenting on the implications **(Section 3)**.

1. CSDDD

According to its **Article 2**, the CSDDD applies to three groups of companies.

Firstly, it applies to **very large EU companies** with over 5,000 employees and a net worldwide annual turnover exceeding EUR 1.5 billion.[21] It also applies to **third-country** companies with significant operations in the EU, i.e. those that generated a net turnover of at least EUR 1.5 billion in the Union.[22]

Secondly, the CSDDD applies to EU and non-EU companies that do not meet the above thresholds but are the ultimate **parent company of a group** that meets them. Where the ultimate parent company has as its main activity the holding of shares in operational subsidiaries and does not engage in taking management, operational or financial decisions affecting all or part of the group, it may designate (by application to the parent company's supervisory authority) an operational subsidiary to carry out its obligations under the Directive, giving it all the necessary means to effectively perform said duties.

Thirdly, the CSDDD also applies to companies or parent companies of groups with a net worldwide turnover exceeding EUR 275 million (or an equivalent EU net turnover in case of non-EU companies) that have entered into **franchising or licensing** agreements ensuring a common identity, a common business concept, and the application of uniform business methods in exchange for royalties of more than EUR 75 million with independent third-party companies.

Despite the significantly reduced scope, CSDDD recognizes that **SMEs** are part of the value chain of larger companies and provides measures to rebalance and clarify those responsibilities. Large companies are expected to allocate sufficient resources for the due diligence process and support business partners by providing capacity-building and targeted and proportionate financial support. So far, large companies have often been passing on responsibilities and paperwork to SMEs, but CSDDD intends to correct that practice and moreover requires companies to set

21 Article 2(1)(a) CSDDD.

22 Article 2(2)(a) CSDDD; calculation of turnover according to the Accounting Directive.

up fair purchasing practices to avoid unfair production deadlines or pulling out of orders at the last minute.

Member States must start applying the CSDDD to in-scope companies one year later after the deadline for transposition, starting on 26 July 2029.

2. CSRD

According to **Article 5** of the CSRD, the reporting requirements are implemented in stages.

For financial years starting between 1 January 2024 and 31 December 2026, reporting applies to **large public-interest companies and parent companies of large groups that are public-interest entities,** provided they exceed an average of 500 employees, € 25 million total balance sheet and/or o € 50 million net turnover (Wave 1 companies). With the Omnibus I Directive, large public-interest companies can use subsidiary exemption if the parent undertaking reports on a consolidated basis.

The scope initially required **all large EU companies (listed and unlisted)** to start reporting on or after 1 January 2025. However, the stop-the-clock Directive amended the reporting timeline introducing a two-year delay for these companies (Wave 2).[23] The CSRD, as amended by the Omnibus I Directive, also allows Member States to exempt undertakings that do not exceed a net turnover of EUR 450 million or an average of 1,000 employees for the financial years 2025 and 2026.[24]

Starting from financial years beginning on or after 1 January 2027, the mandatory reporting scope is permanently limited to only the largest undertakings and groups that exceed a net turnover of EUR 450 million and an average of 1,000 employees during the financial year.[25]

Listed SMEs (excluding micro-undertakings), which were originally included in the CSRD with an opt-out until 2028, have been entirely excluded from the mandatory sustainability reporting regime by the Omnibus I revision.

The CSRD reporting requirements also apply to **non-EU companies listed on EU regulated markets** (following the timeline and thresholds indicated above). Other non-EU companies with a **significant presence in the EU** (but are not listed on an EU market) are obliged to provide sustainability reports at the group level starting with the financial year 2028 following specific sustainability reporting standards for third-country undertakings.[26] Under the revised CSRD, this obligation applies if the third-country undertaking generated a net turnover in the Union of more than EUR 450 million for each of the last two consecutive financial years. Additionally, they must have either a subsidiary in the EU with a net turnover exceeding EUR 200 million or an EU branch that generated a net turnover exceeding EUR 200 million in the preceding financial year.

Subsidiaries of third-country firms remain exempt if their information is included in a consolidated report that is equivalent to EU standards, though specific conditions regarding language and accessibility must be met. This means the parent must either use the European Sustainability Reporting Standards (ESRS) or standards deemed equivalent by the European Commission through formal implementing acts.

23 Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements ("Stop-the-clock Directive"), Article 1.

24 Article 3 (1c) Omnibus I Directive.

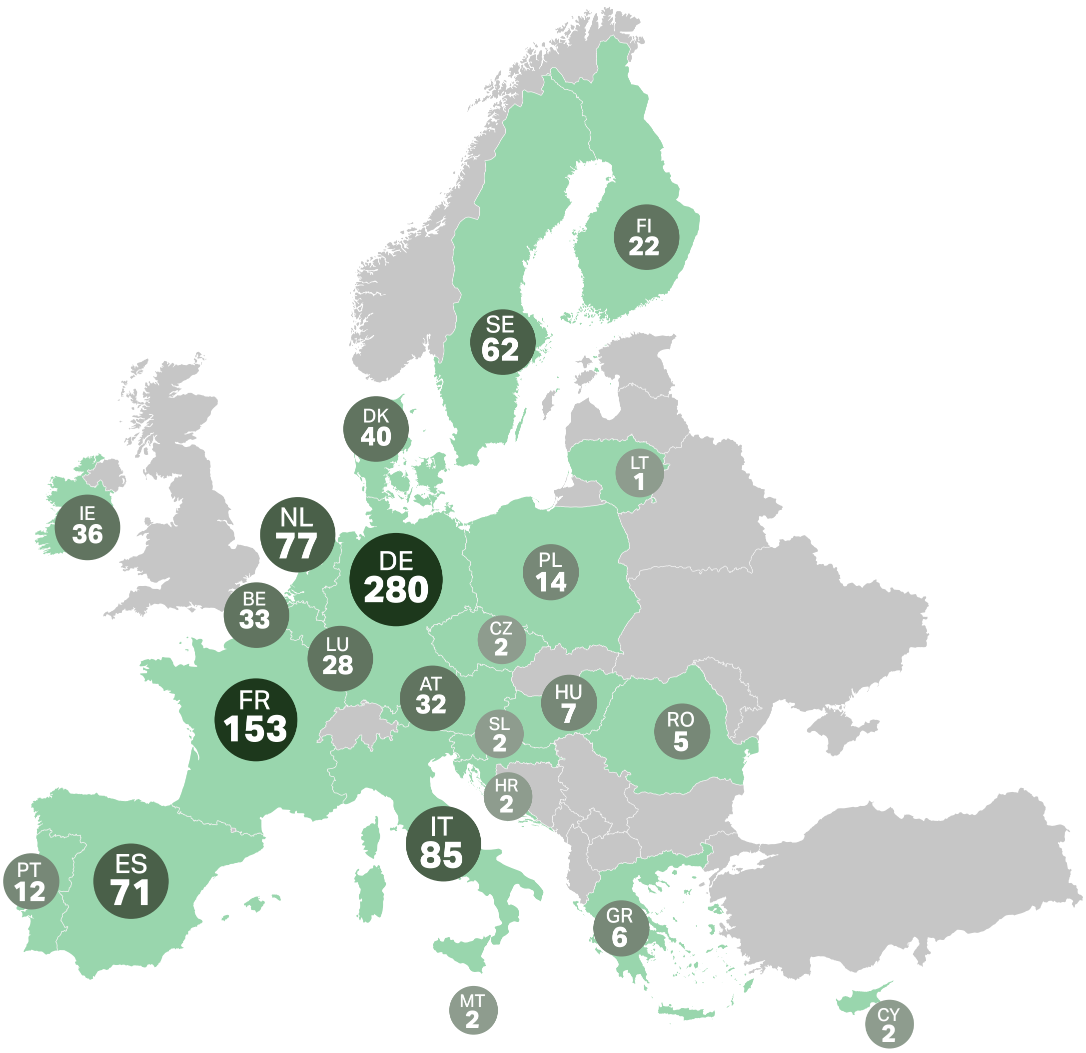
25 Article 3 (1a), (1b) Omnibus I Directive.

26 Article 2 (13) (a)(b)(c) Omnibus I Directive.

3. Commentary

The final scope of the CSDDD has been reduced significantly, with about **71 percent less coverage** of EU-based corporate groups compared to the original text adopted in 2024. Instead of 5,500 EU and non-EU companies initially in scope, the CSDDD will now cover an **estimated 2,907 companies** within **1,447 corporate groups.** Only 14 of the 27 EU Member States host more than ten corporations within scope, while four countries have no in-scope companies at all, for now. This clearly limits the impact such legislation is intended to have.

Figure 1: Corporate groups covered by the CSDDD in the EU



Source: SOMO, CSDDD Datahub, 2026.

By further **departing from international standards,** under which due diligence is a risk-based responsibility rather than one determined by company size, the Omnibus I revision excluded from the CSDDD a considerable number of businesses whose activities significantly harm human rights and the environment, particularly in high-risk sectors such as agriculture, construction, textiles and mining. In doing so, the Omnibus I revision directly undermines the CSDDD legislative intent to foster responsible corporate behaviour and ensure meaningful harmonisation across the internal market.

Moreover, this further undermines **policy coherence.** Many companies are already required to disclose information regarding their material impacts and their due diligence process in accordance with the CSRD. Given that due diligence is evidently intended to inform the materiality assessment, the CSDDD would assist those companies in performing and complying with their reporting requirements under the CSRD.

As a corollary to these limitations, **Article 36** provides for a **review** of the CSDDD scope by 26 July 2031, and every five years thereafter. This will provide a critical opportunity for the Commission to assess whether the CSDDD narrowed thresholds need to be revised to ensure the Directive's effectiveness in achieving its objectives and creating a level playing field.[27]

It was one the Commission's intentions in the Omnibus I revision process to limit the **trickle-down effect** of the CSRD on actors in the value chains. In light of the big scope reductions, it remains questionable as to how and whether this will be the effect in practice. The value chain cap in CSRD (see Section C) sets more stringent limitations when requiring data from suppliers, but for an effective implementation of CSDDD it is crucial that responsibilities are not simply pushed down the value chain. Instead, in-scope companies should develop a meaningful engagement with their business partners and implement due diligence measures in a shared responsibility.

Recommendations for transposition

- **Recommendation n°1: Expand the company scope of the CSDDD to ensure a meaningful impact and better align with international standards.** This will encourage a greater number of companies to adopt a responsible conduct and improve consistency across EU legislation.

27 Article 36(2)(b) CSDDD.

(B) Scope of environmental impacts

Companies, regardless of size or sector, can have wide-ranging environmental impacts through their operations and value chains, with effects extending far beyond their operations and home jurisdictions and contributing to the triple planetary crisis.

Given the seriousness of the triple planetary crisis (see Box 1), "environmental impact" for due diligence purposes should be understood as encompassing all business-related impacts on the environment that exacerbate that crisis. This is in line with international frameworks such as the UNGPs and OECD Guidelines. While the UNGPs do not explicitly mention the environment in their human rights' due diligence framework, they establish the responsibility of businesses to respect internationally recognised human rights, which includes protecting people from harm arising from environmental degradation. The 2023 revision of the OECD Guidelines defines adverse environmental impacts as "significant changes in the environment or biota which have harmful effects on the composition, resilience, productivity or carrying capacity of natural and managed ecosystems, or on the operation of socio-economic systems or on people".[28] It also includes a non-exhaustive list of adverse environmental impacts that should be assessed through due diligence, whether or not they affect people, including climate change, biodiversity loss, air, water, and soil pollution, degradation of land, marine and freshwater ecosystems, deforestation, and harmful generation and mismanagement of waste, including hazardous substances.[29]

The following sections are intended to guide the interpretation of the key terms and constituent elements of the provisions relating to environmental impacts under the CSDDD **(Section 1)** and the CSRD **(Section 2)**, and provide a better understanding of the categories of environmental impacts falling within their scope **(Section 3)**.

28 OECD Guidelines Commentary on Chapter VI, para. 68, p. 35.
29 OECD Guidelines Chapter VI, p. 33.

The triple planetary crisis and the importance for businesses to address environmental impacts

Climate change. Climate change is a systemic threat to social, economic, and financial systems, and its impacts are already being felt, with extreme weather, droughts, floods, and wildfires increasingly severe and frequent. The latest report by the Intergovernmental Panel on Climate Change ("IPCC") indicates that current global greenhouse gas reduction commitments will lead to median global warming of 2.8ºC, while currently implemented policies put the planet on track for 3.2ºC warming by 2100.[30] Unless we rapidly reduce global GHG emissions, climate hazards will have irreversible socio-economic consequences. The window for achieving the Paris Agreement objective of limiting global warming to 1.5ºC is rapidly closing. Although the energy sector remains the largest contributor to GHGs, others also contribute significantly. The private sector as a whole is therefore a pivotal player in the pursuit of limiting global temperature rise.

Biodiversity loss. Species extinction is accelerating, with one million species threatened with extinction within decades.[31] The ability of our ecosystem to reinvent itself is of fundamental importance for many companies, and biodiversity loss poses a medium-term existential threat to many business models, especially in our global food system, where ecosystems are essential to operations and value chains.[32] Businesses therefore have an important role in addressing biodiversity loss and in contributing to the achievement of the Global Biodiversity Framework ("GBF") targets, which require them to "assess and disclose biodiversity dependencies, impacts and risks, and reduce negative impacts".[33] Research by the World Benchmarking Alliance shows that corporate action remains both insufficient and fragmented in addressing this substantial challenge.[34]

Pollution. Air pollution, which causes an estimated 7 million deaths each year, is one of the most significant environmental threats to human health[35] and it is fundamentally altering the Earth's climate and ecosystems globally. Many of the drivers of air pollution are also sources of **greenhouse gas emissions** (e.g. combustion of fossil fuels).[36] Pollutants of major public health concern include fine particulates ("PM2.5"), nitrogen oxide ("NOx") and sulphur oxide ("SOx").[37] Likewise, soil and water pollution pose significant risks to both nature and humans. Key contributing sectors include chemical manufacturing and processing, textiles, mining, and intense agriculture, notably through the release of hazardous substances, waste, fertilisers, and pesticides. The production, use and disposal of plastics also contribute to soil and water pollution, while microplastics further aggravate these impacts by transporting harmful pollutants through soil and water.

30 AR6 Synthesis Report: Climate Change, IPCC, 2023.
31 Global Assessment Report on Biodiversity and Ecosystem Services, Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services ("IPBES"), 2019 and the UN Report: Nature's Dangerous Decline 'Unprecedented'; Species Extinction Rates 'Accelerating', United Nations Sustainable Development, 2019.
32 Legal risks related to biodiversity loss in the seafood and agriculture sectors, ClientEarth, September 2023.
33 The Kunming-Montreal Global Biodiversity Framework ("GBF"), Target 15.
34 Nature Benchmark, World Benchmarking Alliance, October 2023.
35 Why does air matter?, UNEP.
36 Air pollution, WHO.
37 Air Pollution, Our World in Data; Europe's air quality status 2024, European Environmental Agency.

1. CSDDD

The CSDDD requires companies to conduct due diligence in relation to actual and potential adverse impacts on both human rights and the environment. This legal analysis focuses only on adverse environmental impacts, which are defined in **Article 3(b)** as impacts resulting from breaches of the obligations and prohibitions listed in **Annex Part I, Section 1, Points 15 and 16** (environmental impacts with human rights implications) **and Annex Part II** (standalone environmental impacts).

1.1. Environmental impacts with human rights implications

The CSDDD covers two types of situations in which human rights and adverse environmental impacts interact.

1.1.1. Point 15: Environmental degradation with impact on people

Point 15 of Annex Part I reflects the inextricable and interdependent link between human rights and the environment. It recognises that environmental degradation can directly affect the enjoyment of rights such as the rights to food, water, sanitation, health, safety and property, as well as the right to a healthy environment.

15. The prohibition of causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions, excessive water consumption, degradation of land, or other impact on natural resources, such as deforestation, that:

(a) substantially impairs the natural bases for the preservation and production of food;

(b) denies a person access to safe and clean drinking water;

(c) makes it difficult for a person to access sanitary facilities or destroys them;

(d) harms a person's health, safety, normal use of land or lawfully acquired possessions;

(e) substantially adversely affects ecosystem services through which an ecosystem contributes directly or indirectly to human wellbeing;

interpreted in line with Article 6(1) of the International Covenant on Civil and Political Rights and Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

This section unpacks the different elements of this provision – the scope of environmental degradation, their human consequences, and the threshold for interference with human rights. It includes a specific focus on the meaning of harmful emissions and the inclusion of greenhouse gas emissions. It considers the normative content of the relevant human rights treaty provisions that should guide the interpretation of Point 15 and provides illustrative examples of situations falling within this category of human rights-related environmental impacts.

Scope of environmental degradation

Point 15 first requires "environmental degradation [...] or other impact on natural resources". This language should be interpreted **broadly.** The terms "any", "other" and "such as" make clear that the list of examples is illustrative rather than exhaustive. Accordingly, forms of environmental degradation not expressly listed may fall within Point 15 where they affect, or create a reasonably foreseeable risk of affecting, the protected interests set out in paragraphs (a) to (e).

Climate change should therefore be understood as falling within the scope of Point 15. First, because the provision is framed in open-ended terms and does not exclude climate-related impacts. Secondly, greenhouse gas emissions should be understood as "harmful emissions" where they contribute to climate change and thereby affect, or risk affecting, the enjoyment of the rights and interests protected by Point 15 (see Box 2).

This interpretation is consistent with international standards. The examples listed in Point 15 are closely aligned with the types of environmental impacts covered by the OECD Guidelines, including pollution, harmful emissions, degradation of land and natural resources, and biodiversity-related impacts.[38] The CSRD and ESRS categories also provide useful reference points for identifying relevant environmental impacts, including climate change, pollution, impacts on water and marine resources, biodiversity and ecosystems, and resource use (see Section 2).

The term **"measurable"** should not be interpreted as introducing a restrictive threshold for the environmental degradation falling within the scope of Point 15. The term "measurable" should be understood as any detectable change from the baseline conditions that can be quantified, estimated or compared.[39] In practice, modern environmental science allows environmental degradation to be quantified, evaluated, or estimated using data or metrics. It is difficult to identify an environmental degradation that would not be measurable, given that even a "small" impact could be calculated.

38 OECD Guidelines Chapter VI on Environment, p. 33: "a) climate change; b) biodiversity loss; c) degradation of land, marine and freshwater ecosystems; d) deforestation; e) air, water and soil pollution; f) mismanagement of waste, including hazardous substances".

39 See for example Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive, "ELD"). Article 2(2) defines "damage" as "measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly". The Commission also specified that "[m]easurable means that damage needs to be capable of quantification or estimation, and that the situation before and the situation after a damaging occurrence must be capable of being meaningfully compared". See the European Commission Guidelines providing a common understanding of the term 'environmental damage' under the ELD, 2021/C 118/01, April 2021.

Greenhouse gas emissions as harmful emissions

Point 15 includes the prohibition of causing measurable environmental degradation in the form of "harmful emissions". Although the CSDDD does not define that term, a textual, teleological and systematic interpretation, read in light of recent case law, strongly supports the conclusion that anthropogenic greenhouse gas emissions ("GHG emissions") contributing to climate change qualify as "harmful emissions".

The **text** of Point 15 makes an explicit distinction between "air pollution" and "harmful emissions" as different kinds of in-scope environmental degradation. "Harmful emissions" should therefore be understood as including emissions that would not conventionally be regarded as air pollutants but nevertheless cause environmental degradation, such as anthropogenic GHG emissions like CO2.[40]

The Paris Judicial Court recently adopted the same interpretation in its judgment of 25 June 2026 in a case against Total brought under France's Duty of Vigilance law.[41] The Court held that "environment" in Article L.225-102-1 of the Code de Commerce must be interpreted broadly, so as to include climate change caused by greenhouse gas emissions.[42] It expressly stated that this reading was supported by Point 15 of Part I of the Annex to the CSDDD, which "undeniably" includes greenhouse gas emissions.[43]

A **teleological** reading leads to the same conclusion. The CSDDD aims to prevent adverse human and environmental impacts arising from business activities and to ensure that companies contribute to sustainable development. The energy transition and the fight against climate change were central drivers of the Directive from the outset. The original CSDDD proposal stated that "the behaviour of companies across all sectors of the economy is key to succeed[ing] in the Union's transition to a climate-neutral and green economy in line with the European Green Deal".[44] That objective is reaffirmed in Recitals 10, 11 and 12 of the CSDDD, which refer to the Union's climate adaptation strategy and the objective of limiting global warming to 1.5°C. Moreover, Recital 32 states that the obligations and prohibitions listed in the Annex should be interpreted and applied in line with international law, at which level climate change is unarguably recognised as a human rights impact. It would therefore be difficult to reconcile the purpose and objectives of the CSDDD with an interpretation that excludes climate change from the concept of environmental degradation.

40 "Air pollution" means the presence in ambient air of pollutants likely to have harmful effects on human health or the environment, including, in particular, sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM10 and PM2.5), lead, benzene and carbon monoxide, as regulated under Directive 2008/50/EC (Ambient Air Quality Directive). This notion excludes greenhouse gas emissions, which are regulated under Regulation (EU) 2021/1119 (European Climate Law). See also Eurostat, Emissions of greenhouse gases and air pollutants, clearly distinguishing greenhouse gases from air pollutants.

41 Tribunal Judiciaire de Paris, 34ème chambre, Notre Affaire à Tous and others v. TotalEnergies SE, Judgment of 25 June 2026, N°RG 22/03403.

42 Ibid., para. 138.

43 Ibid., para 141-144.

44 European Commission Proposal for a Directive of the European Parliament and of the on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM(2022) 71 final, p. 1.

A **systematic** interpretation of EU law reinforces this approach. Instruments such as the European Climate Law, the EU Emissions Trading System Directive and the Industrial Emissions Directive all regulate "emissions" in a manner that encompasses GHG from anthropogenic sources,[45] consistently treating them as environmentally harmful impacts requiring prevention, reduction and control. The CSRD similarly treats climate-related impacts, risks and opportunities, including GHG emissions, as central sustainability matters. Interpreting "harmful emissions" under the CSDDD as excluding GHG emissions would therefore create inconsistency within the Union's legal framework, contrary to the requirement of coherence reflected in Article 7 of the Treaty on the Functioning of the European Union ("TFEU").

As mentioned above, climate change is now unequivocally recognised as **a human rights issue.** The United Nations Secretary-General has described it as an existential threat to life on Earth, particularly to humankind.[46] This assessment has since been consistently echoed by human rights bodies and experts, including the UN Special Rapporteur on human rights and the environment who has emphasised the urgent need to secure a safe climate.[47] At regional level, the European Environment Agency ("EEA") has likewise highlighted the growing risks to human health associated with the impacts of climate change on water quantity and quality.[48]

International and European courts and tribunals have also increasingly recognised climate change as a legally cognisable and justiciable harm capable of triggering duties of prevention, mitigation, and due diligence on the part of States, including through the regulation of private actors. This case law forms part of the relevant legal context in which the CSDDD must be interpreted and provides authoritative guidance supporting the interpretation of the notion of "harmful emissions" as including GHG emissions, particularly given Recital 32 requirement that the Annex be interpreted consistently with international law.

(a) Judicial recognition of climate change as a human rights harm

In a landmark ruling, the European Court of Human Rights ("ECtHR") held that "there are sufficiently reliable indications that anthropogenic climate change [...] poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention".[49] The Court found that Switzerland had breached the European Convention on Human Rights ("ECHR") due to deficiencies in its domestic regulatory framework for reducing GHG

45 See Article 1 Regulation (EU) 2021/1119 (European Climate Law), Article 3 point (b) and (c) Directive 2003/87/EC (EU Emissions Trading System Directive), Article 3 paragraph (4) and Article 9 Directive 2010/75/EU (Industrial Emissions Directive).

46 Climate Crisis Past Point of No Return, Secretary-General Says, Listing Global Threats at General Assembly Consultation on 'Our Common Agenda' Report, SG/SM/21173, 10 March 2022.

47 UNGA Safe Climate Report, A/74/161, 15 July 2019.

48 Responding to climate change impacts on human health in Europe: focus on floods, droughts and water quality, EEA, May 2024

49 European Court of Human Rights (ECtHR), Verein Klimaseniorinnen and Others v. Switzerland, Judgment of 9 April 2024, para. 436.

emissions, including its failure to meet applicable reduction targets.[50] The Court made clear that a State's failure to adequately regulate and control sources of GHG emissions, including those attributable to private actors, is capable of giving rise to a violation of human rights under the ECHR.[51]

These findings have been reinforced by recent advisory opinions of international courts. First, the Inter-American Court of Human Rights ("IACtHR"), in its 2025 Advisory Opinion on the impacts of climate change on human rights, affirmed the prohibition of anthropogenic conduct causing irreversible harm to the climate system as a prerequisite for the effective protection of fundamental rights.[52] It clarified that a failure by States to adopt effective measures to prevent climate-related harm may result in violations of internationally protected rights, including rights to life, personal integrity, health and non-discrimination.[53]

Similarly, the International Court of Justice ("ICJ") in its first Advisory Opinion on climate change[54] unanimously confirmed that the obligation to prevent significant harm extends to the climate system as an integral component of the global environment, "which must be protected for present and future generations."[55] The Court emphasised that harm may arise cumulatively from the conduct of both States and private actors within their jurisdiction, but also by individual conduct giving rise to significant transboundary effects.[56] Accordingly, States are required to "use all means" at their disposal to prevent such harm and protect the climate system, including through the regulation of public and private conduct.[57] This obligation constitutes a core due diligence duty under international law.[58]

(b) Judicial recognition of climate change as marine pollution and environmental harm

The UN Framework Convention on Climate Change ("UNFCCC") has long recognised that increased concentrations of GHG emissions resulting from human activities drive climate change and adversely affect natural ecosystems.[59] Building on this, the International Tribunal for the Law of the Sea ("ITLOS"), the world's highest court on the Law of the Sea, in its 2024 Advisory Opinion on climate change, unanimously held that anthropogenic GHG emissions constitute pollution of the marine environment within the meaning of Article 1(1)(4) UN Convention on the Law of the Sea ("UNCLOS"), recognising that their introduction into the

50 Ibid., para. 573.
51 Ibid., para. 435.
52 Inter-American Court of Human Rights (IACtHR), Advisory Opinion on the impacts of climate change on human rights, 29 May 2025, paras. 290–292.
53 Ibid., paras. 221–223, 228–230, 235, 293.
54 International Court of Justice (ICJ), Advisory Opinion on the obligations of states in respect of climate change, 23 July 2025.
55 Ibid., para. 273.
56 Ibid., para. 277.
57 Ibid., paras. 135 and 282.
58 Ibid., para. 403.
59 UN Framework Convention on Climate Change (UNFCC), first and second preambular paragraphs.

ocean results "in such deleterious effects as harm to living resources and marine life [...]."[60] By causing climate change, including ocean warming, sea level rise and ocean acidification, such emissions clearly "produce multiple deleterious effects on the marine environment and beyond."[61] As a result, parties to UNCLOS, including the EU and its Member States, are legally obliged to take "all measures that are necessary to prevent, reduce and control" GHG pollution "from any source".[62] This due diligence obligation requires States to regulate GHG-emitting activities through a national regulatory framework capable of achieving the intended objectives of reduction and control.[63]

In sum, anthropogenic GHG emissions, primarily driven by the private sector, constitute a **source of serious environmental and human rights harm.** In light of the resulting obligations under international and European human rights law, States incur liability when they fail to adequately regulate and reduce such emissions.

60 International Tribunal for the Law of the Sea (ITLOS), Advisory Opinion on climate harm in the marine environment, 21 May 2024, para. 178.
61 Ibid., para. 175.
62 Article 194(1) UNCLOS.
63 Ibid., paras. 233 and 235, as well as paras. 248 and 258.

Human consequences of environmental degradation

Paragraphs (a) to (e) specify the human consequences that bring environmental degradations or impacts on natural resources within the scope of Point 15. The provision is not concerned with environmental harm in the abstract. Rather, it addresses environmental degradation where it impairs access to food, water, sanitation, health, safety, land, lawfully acquired possessions, or ecosystem services contributing directly or indirectly to human well-being.

The closing words of Point 15 require paragraphs (a) to (e) to be "interpreted in line with" Article 6(1) ICCPR and Articles 11 and 12 ICESCR. Those provisions protect, respectively, the rights to life, an adequate standard of living, including food, water and housing, and the highest attainable standard of physical and mental health. They must be read in light of the established jurisprudence and authoritative interpretation of UN treaty bodies. The scope of Point 15 should therefore be guided by the contemporary understanding of these rights, including their environmental dimensions.

The normative content of each human right is described below and used to identify examples of environmental degradation that may interfere with these rights and that should be addressed by companies as part of their due diligence (see Table 2).

Table 1: Point 15 (a) to (e) and relevant human rights

Point 15 (a) to (e)	Relevant human rights
(a) substantially impairs the natural bases for the preservation and production of food	Right to food
(b) denies a person access to safe and clean drinking water	Rights to safe drinking water and sanitation
(c) makes it difficult for a person to access sanitary facilities or destroys them	
(d) harms a person's health, safety, normal use of land or lawfully acquired possessions	Rights to health, safety and property
(e) substantially adversely affects ecosystem services through which an ecosystem contributes directly or indirectly to human wellbeing	Right to a healthy environment

Right to food

Point 15 Paragraph (a) concerns interference with the right to food, explicitly enshrined in Article 11 ICESCR, which recognises the right to adequate food and to be free from hunger, and implicitly through other rights, including the right to life (Article 6 ICCPR) and the right to enjoy physical and mental health (Article 12 ICESCR).

The right to adequate food and freedom from hunger encompass both physical and economic access to adequate food or to the means for its procurement[64] and should correspond to the cultural traditions of the peoples to which the person belongs.[65]

Right to safe drinking water and right to sanitation

Point 15 Paragraphs (b) and (c) concern interference with the rights to safe drinking water and sanitation. The UN General Assembly has recognised these as human rights, derived from the right to an adequate standard of living under Article 11 ICESCR[66] and essential to the enjoyment of life, dignity, and health.[67]

The right to safe drinking water entitles everyone to have equitable access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. The human right to sanitation entitles everyone to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure and socially and culturally acceptable and consistent with privacy and dignity.[68]

Rights to health, safety and property

Paragraph (d) of Point 15 concerns interference with the rights to health, safety, and property.

The right to health is enshrined in Article 12 ICESCR which recognises the right of everyone to the "enjoyment of the highest attainable standard of physical and mental health". It extends to the underlying determinants of health, including access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition, housing, and healthy occupational and environmental conditions.[69] It is therefore closely linked to the rights to food, water and sanitation.

The right to safety is implicitly included in several international human rights treaties, including the right to life under Article 6 ICCPR and the protections afforded by Articles 11 and 12 ICESCR which collectively contribute to the right to safety.

The concept of lawfully acquired possessions is closely linked to the right to property, which encompasses rights to acquire, own use and dispose of property, including possessions, land and other assets. Lawfully acquired possessions are those assets or property that individuals or groups have obtained through legal means, in compliance with the right to property and other relevant legal frameworks.

Right to a healthy environment

Point 15 paragraph (e) concerns impacts on "ecosystem services through which an ecosystem contrib-

64 General Comment No. 12 on the right to adequate food, CESCR,E/C.12/1995/5, May 1999.

65 Fact Sheet No. 34: The Right to Adequate Food, OHCHR and FAO, April 2021.

66 UNGA Resolution on the human right to water and sanitation, A/RES/64/292, July 2010 and UNGA Resolution on the human rights to safe drinking water and sanitation.

67 Fulfilling the human rights of those living in poverty and restoring the health of aquatic ecosystems: two converging challenges - Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Pedro Arrojo Agudo, A/HRC/54/32, July 2023.

68 UNGA Resolution on the human rights to safe drinking water and sanitation, A/RES/70/169, paras. 1-2, December 2015.

69 General Comment No. 14 on the right to the highest attainable standard of health, CESCR, E/C.12/2000/4, August 2000.

utes directly or indirectly to human wellbeing". This wording is significant. It recognises that environmental degradation may harm people not only by causing immediate injury or depriving them of a specific resource, but also by weakening the ecological systems that make human life possible. Although ecosystems merit protection in and of themselves (see Section 1.2), paragraph (e) focuses on the human consequences of degrading the services they provide.

Ecosystem services are commonly understood as the benefits people derive from ecosystems and use in economic and other human activity.[70] The Millennium Ecosystem Assessment, a major UN-sponsored effort to analyse the impact of human actions on ecosystems and human well-being, identifies four broad categories: provisioning services, such as food, water and raw materials; regulating services, such as climate regulation, air quality, water filtration, pollination, soil fertility and flood protection; cultural services, including recreational, spiritual and cultural values; and supporting services that underpin the functioning of ecosystems themselves.[71] By referring to services that contribute "directly or indirectly" to human well-being, paragraph (e) deliberately captures both visible and less immediate forms of dependence on nature.

This makes paragraph (e) an important bridge between environmental protection and human rights. Many harms covered by paragraphs (a) to (d), including impacts on food, water, health, safety, land and property, may also fall within paragraph (e) where they undermine the capacity of ecosystems to provide the services on which people depend. At the same time, paragraph (e) has an independent function: it captures forms of degradation that may not fit neatly within those more specific categories, but which nevertheless substantially affect human well-being, such as the loss of pollination services, deterioration of soil fertility, biodiversity decline or climate change.

Paragraph (e) should therefore be read in light of the right to a clean, healthy and sustainable environment. That right gives legal expression to the dependence of human rights on functioning ecosystems. In 2022, the UN General Assembly recognised the right to a healthy environment and confirmed that climate change, pollution, the unsustainable use of natural resources, the mismanagement of chemicals and waste, biodiversity loss and ecosystem decline interfere with that right and threaten the enjoyment of human rights by present and future generations.[72] This understanding is reflected in the jurisprudence of UN human rights bodies, such as of the UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights.[73] The right to a healthy environment was also unanimously endorsed as a binding norm of international law by the ICJ in its Advisory Opinion of July 2025.[74]

The right to a healthy environment is generally understood to include procedural elements, such as access to information, public participation and access to justice, as well as substantive elements, including a safe climate, clean air, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food, and a non-toxic environment.[75] These substantive elements closely mirror the ecosystem services referred to in paragraph (e). In this

70 IPBES glossary: ecosystem services.

71 Millennium Ecosystem Assessment: Ecosystems and Human Well-being, 2005.

72 UNGA Resolution on The Human Right to a Clean, Healthy and Sustainable Environment, A/RES/76/300, 28 July 2022.

73 In its General Comment No. 36 on Article 6: right to life, CESCR, CCPR/C/GC/36, September 2019, the UN Human Rights Committee stated that environmental degradation, climate change, and unsustainable development are among the most serious threats to the right to life under Article 6 of the International Covenant on Civil and Political Rights ("ICCPR"). and Statement on Climate change and the International Covenant on Economic, Social and Cultural Rights, CESCR, October 2018. Likewise, the Committee on Economic, Social and Cultural Rights linked climate-related environmental degradation to violations of (inter alia) Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR").

74 ICJ Advisory Opinion of 23 July 2025, op. cit., para. 393.

75 Right to a healthy environment: good practices - Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/43/53, March 2019.

sense, an adverse impact on ecosystem services is not merely an ecological concern: it may amount to an impairment of the environmental conditions necessary for the effective enjoyment of human rights.

Thresholds for interference with human rights

Because Point 15 the does not prohibit environmental degradation in the abstract, the relevant question is therefore whether the environmental degradation is **sufficiently serious,** in its factual context, to impair the enjoyment of one or more of those rights or protected interests. That assessment should be guided by international human rights law and by general principles of Union environmental law, in particular the precautionary and prevention principles.

Human rights bodies and courts have consistently recognised that environmental degradation may interfere with rights such as life, health, private and family life, food, water and housing. Whether the threshold is met depends on the circumstances, including the **intensity and duration** of the harm, and its **physical or mental effects**.[76]

This is especially important for environmental impacts that unfold over time, including climate-related impacts, biodiversity loss and degradation of ecosystem services, and for impacts affecting future generations.

The evaluation of environmental degradation's impact on human rights is thus relative and context-specific. Moreover, it should not require proof of actual harm in every case. A **reasonably foreseeable** risk of interference should be sufficient to trigger due diligence, particularly where the impact may be serious, irreversible or affect vulnerable groups. This is especially important for environmental impacts that unfold over time and for impacts affecting future generations.

The terms **"substantially impairs"** in paragraph (a) and **"substantially adversely affects"** in paragraph (e) should be interpreted in this context. They should not be read as imposing an additional or unduly heightened threshold beyond the seriousness required for an interference with protected rights or interests. This is particularly important because the Directive does not define "substantially" in relation to paragraph (a), and because an overly restrictive interpretation could exclude environmental degradation that foreseeably affects access to food or ecosystem services supporting human well-being.

"Substantial" adverse effect on ecosystem services

In order to assess whether the damage to ecosystem services under Point 15(e) is "substantial", Recital 32 of the original CSDDD third paragraph provides that the following elements should be taken into account where relevant: "the baseline condition of the affected environment, whether the damage is long-lasting, medium term or short term, the spread of the damage, and the reversibility of the damage". Baseline conditions, durations of impacts, spatial extent and reversibility are common criteria for environmental impact assessment ("EIA") frameworks. For example, EU Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (the "EIA Directive") includes similar criteria for determining whether certain public and private projects should be subject to an EIA, including the expected onset, duration, frequency and reversibility of the impact and the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected).[77]

76 See notably ECtHR, Öneryildiz v Turkey (No. 48939/99), Judgment of 30 November 2004; ECtHR, Locascia and Others v Italy (No. 35648/10), Judgment of 19 October 2023; and ECtHR, Fadeyeva v Russia (No. 55723/00), Judgment of 9 June 2005.

77 See selection criteria regarding the type and characteristics of the potential impact in Annex III of Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

Legal thresholds and recognised **"safe levels"** may be relevant indicators where they exist, for example in relation to certain pollutants or emissions.[78] However, they should not be treated as exhaustive or decisive. Many environmental harms – including deforestation, biodiversity loss, degradation of ecosystem services, cumulative pollution, endocrine-disrupting chemicals or bioaccumulative substances – do not have clear or universally accepted thresholds. Instead, the precautionary and prevention principles should guide the assessment of whether an environmental impact may interfere with protected rights or interests and should therefore be addressed through due diligence.

Member States should transpose Point 15 in a way that gives full effect to its text, purpose and protective function.

National measures should make clear that the provision captures not only direct harm to identified individuals, but also impacts on ecosystem services where the human consequences are diffuse, cumulative or delayed, reflecting the contemporary understanding that human well- being, human rights and a healthy environment are mutually dependent. For that purpose, Member States should expressly recognise the right to a healthy environment in national transposition measures, drawing on relevant jurisprudence and authoritative guidance from UN treaty bodies.

To avoid doubt, transposition measures should expressly provide that "harmful emissions" include anthropogenic greenhouse gas emissions. Excluding such emissions would be inconsistent with the CSDDD's text, purpose and intent, weaken the Directive's effectiveness, create incoherence within the EU legal order, expose Member States to legal risk and generate avoidable uncertainty for in-scope companies.

Member States should avoid transposition wording that narrows Point 15. In particular, they should remove the terms "measurable" and "substantially" or, at a minimum, clarify that any detectable environmental impact capable of interfering with protected rights or prohibitions falls within the Directive's scope.

78 For example, maximum permissible limits (MPLs) for air pollution provide a quantifiable indicator to assess when environmental degradation infringes on human rights. In such cases, once pollution exceeds these limits, it is considered at a high enough level to affect health, thereby engaging relevant human rights.

Table 2: Examples of environmental impacts falling under Point 15 of Part I of the Annex

Examples of business practices	Environmental degradation and other impacts on natural resources	Impacts on human rights and ecosystems services
An aquaculture company operates farms in mangrove-rich areas, causing their destruction. Mangroves are critical marine ecosystems that provide fish habitat, protect against flooding and coastal erosion, and contribute to climate change mitigation.[79]	• Climate change: emission of greenhouse gases; destruction of sinks and reservoirs of greenhouse gases • Biodiversity loss: marine ecosystem degradation and habitats destruction	• Regulating services: climate regulation and water purification • Provisioning services: habitats of locally consumed fish • Rights to food, security, clean water and life of local communities
A fish farm operates in an area of high biodiversity value. The high density of fish, together with uneaten feed and chemical use, leads to the accumulation of organic matter on the seabed, creating anaerobic conditions and eutrophication. These impacts degrade marine resources and may contaminate seafood harvested by local communities, including fish, clams, mussels, and crabs.[80]	• Biodiversity loss: marine ecosystem degradation and habitat destruction; invasive alien species • Pollution: use of chemicals and substances of concerns, including persistent organic pollutants; plastics and microplastics; waste and wastewater disposal	• Regulating services: carbon sequestration; water filtration and purification; sediment stabilisation; habitat provision • Provisioning services: food • Rights to food, health, water • Right to culture
An agricultural company extracts large quantities of water from an aquifer to irrigate its crops, reducing water levels in local communities' shallow wells, and causing some dry up.[81] Note that the most water-intensive crops are cotton, rice, sugarcane, soya and wheat.[82]	• Biodiversity loss: extensive use of groundwater and surface water	• Regulating services: water regulation • Provisioning services: fresh water • Right to water, food, health, property

79 The hidden cost of farmed shrimp from Ecuador, ClientEarth, July 2023.

80 Farmed Salmon | Industries, WWF.

81 Groundwater levels are dropping fast all over the world, The New Scientist, January 2024; California's Farmers Are Pumping Too Much Water From Their Wells, NPR, July 2021.

82 Water usage in agriculture, Agremo, March 2022.

Examples of business practices	Environmental degradation and other impacts on natural resources	Impacts on human rights and ecosystems services
An agricultural company uses chemical herbicides and pesticides in its operations, which leads to a decrease in pollination and, in turn, to poor quality and quantity of crops.[83]	• Biodiversity loss: impact on species (decline of bee populations) • Pollution of soil and water	• Regulating services: pollination • Provisioning services: food • Right to food, water, health
An agricultural commodities trader purchases crops that have been grown on land which has recently been illegally deforested or converted.[84]	• Biodiversity loss: deforestation and loss of native ecosystem • Climate change: deforestation and forest degradation is the second largest source of greenhouse gas emissions globally	• Regulating services: climate and water regulation • Provisioning services: food, fresh water, medicine • Right to water, food, health, property, clean environment
A petrochemical plant releases hazardous substances into the environment through spills, leaks and improper waste disposal, contaminating drinking water, people and food sources.	• Climate change: emission of greenhouse gases • Pollution of soil and water	• Regulating services: water purification • Provisioning services: food, fresh water, • Rights to food, water, health
A manufacture releases toxic chemicals into rivers and waterways during production, contaminating drinking water and agricultural land with heavy metals, chemicals, and other toxic substances. This causes health risks and crop losses.[85]	• Biodiversity loss: freshwater-use change and degradation of freshwater ecosystems • Pollution of water: use of chemicals and substances of concern, including persistent organic pollutants	• Right to health, food, water, clean environment

83 Legal risks related to biodiversity loss in the seafood and agriculture sectors, ClientEarth, September 2023, p. 14.
84 Agricultural giant Cargill faces legal complaint over deforestation and human rights failings in Brazil, ClientEarth, May 2023.
85 A critical review of hazardous waste generation from textile industries and associated ecological impacts, ScienceDirect, January 2023.

1.1.2. Point 16: Environmental and human rights impacts due to eviction, land grabbing or natural resource appropriation

Like Point 15, Point 16 highlights the close link between environmental harm and human rights abuses. It goes further by explicitly linking environmental destruction to the abuse of both individual and collective rights to lands, forests, waters, and means of subsistence.

16. The right of individuals, groupings and communities to lands and resources and the right not to be deprived of means of subsistence, which entails the prohibition to unlawfully evict or take land, forests and waters when acquiring, developing or otherwise using land, forests and waters, including by deforestation, the use of which secures the livelihood of a person, interpreted in line with Article 1 and 27 of the International Covenant on Civil and Political Rights and Article 1, 2 and 11 of the International Covenant on Economic, Social and Cultural Rights.

This subsection examines the prohibition set out in Point 16 and its key constituent elements. It considers, in particular, the recognition of collective rights over lands, forests and resources, the types of environmental impacts arising from eviction and the taking of land, forests and waters, the meaning of "unlawful", and the scope of the terms "groups and communities". It also considers the normative content of the relevant human rights treaty provisions that should guide the interpretation of Point 16. Finally, the subsection provides illustrative examples of situations falling within this category of human rights-related environmental impacts.

Recognition of collective rights over lands, forests and resources

Many areas of environmental importance, such as forests, savannas, and mangroves, are held by and home to Indigenous Peoples and/or local communities with collective or customary land rights. These communities are frequently displaced for mining, logging or agricultural projects, often with severe environmental consequences.[86] International bodies, including the IPCC, the Food and Agriculture Organisation ("FAO"), and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services ("IPBES"), have recognised that when such communities retain control over their lands, they are often among the most effective stewards of forests and ecosystems protection.[87]

Point 16 precisely aims to address situations in which eviction or taking of land, forests, and waters, including through deforestation, and other activities affecting these areas, may result in environmental impacts that interfere with the human rights of individuals, groups and communities. Such environmental impacts are also likely to fall within the scope of Point 15, since environmental harm affecting persons under paragraphs (a) to (e) may likewise result in an abuse of the rights to lands and resources, and deprive people of their means of subsistence (see Table 3).

Eviction and taking of land, forests and waters

Point 16 prohibits "unlawful" eviction or taking of lands, forests, and waters. It addresses situations in which companies acquire or use land and natural resources without a valid legal basis, including through land grabbing for commercial purposes.[88]

86 See for example Beef, Banks and the Brazilian Amazon, Global Witness, December 2020.

87 Chapter 12: Central and South America | Climate Change 2022: Impacts, Adaptation and Vulnerability, AR6, IPCC, 2022; Global Assessment Report on Biodiversity and Ecosystem Services, IPBES, 2019.

88 For more information about the different ways a person who entity can have rights over land, see Defending Your Right to Use Your Land, Action 4 Justice.

The reference to "unlawful" should not be interpreted narrowly. Under international law, the protection against deprivation of means of subsistence extends more broadly to any eviction or taking that jeopardises human rights, whether formally lawful or not.

Groups and communities

The term "groupings and communities" must include **Indigenous Peoples, distinct cultural and ethnic groups and local communities** that self-identify based on their observance of shared customary norms and practices, and the special rights to land and resources that such groups and communities have under international law, including in the context of the right to self-determination.[89] Likewise, Recital 33 of the CSDDD states that "companies should pay special attention to any particular adverse impacts on individuals who may be at heightened risk due to marginalisation, vulnerability, or other circumstances, individually or as members of certain groups or communities, including Indigenous Peoples, as protected under the United Nations Declaration on the Rights of Indigenous Peoples, including in relation to Free, Prior and Informed Consent (FPIC)"

> Recognising the crucial role of Indigenous and tribal Peoples' rights to FPIC and self-determination in realising and protecting land and resource rights in Point 16, Member States should clarify that the term "groups and communities" includes Indigenous Peoples and add an explicit reference to their right to self-determination and FPIC, including to Articles 3, 10, 26 and 32 of UNDRIP.

Relevant human rights treaty provisions

Point 16 states that the obligation not to deprive individuals, groups and communities of the means of subsistence, particularly as it relates to their use of land, forests and water, should be "interpreted in line with" specific human rights: the right to self-determination, to culture, and to an adequate standard of living. This highlights the collective nature of the impacts. The normative content of these rights is explained below and should guide the interpretation and application of Point 16.

Right to self-determination

Enshrined in Article 1 of both ICCPR and ICESCR, the right to self-determination is a universal collective right under which peoples may determine their political status and pursue their economic, social and cultural development. For many groups and communities, and especially for Indigenous Peoples, its exercise depends on secure access to land, water and natural resources necessary for livelihoods, subsistence and the enjoyment of traditional and customary territories.[90]

89 UN Declaration on the Rights of Indigenous People ("UNDRIP"), inter alia, Articles 3, 5, 26 and 32; Indigenous and Tribal Peoples Convention, 1989 (No. 169), Articles 13 to 15; HRC, Poma Poma v Peru, Communication no. 1457/2006, CCPR/C/95/D/1457/2006, April 2009; HRC, Billy v Australia, CCPR/C/135/D/3624/2019, 22 September 2022; General Comment No. 24 on State obligations in the context of business activities, CESCR, E/C.12/GC/2423, June 2017 ; General Comment No. 26 on land and economic, social and cultural rights, CESCR, E/C.12/GC/26, December 2022; General Comment No. 7 on forced evictions, CESCR, 16 May 1997; General Recommendation No. 23 on the Rights of Indigenous Peoples, CERD, 1997; CERD, Lars-Anders Ågren et al. v. Sweden, CERD/C/102/D/54/2013, Decision of 18 November 2020; General Recommendation No. 39 on the Rights of Indigenous Women and Girls, CEDAW Committee, CEDAW/C/GC/39, October 2022; CEDAW Committee, Matson v Canada, Communication No. 68/2014, CEDAW/C/81/D/68/2014, 11 March 2022.

90 See General Comment No. 21 on the right of everyone to take part in cultural life, CESCR, E/C.12/GC/21, December 2009, para. 2, emphasising the interdependence of the right to take part in cultural life with other rights enshrined in the Covenant, including explicitly the right to self-determination (Article 1) and the right to an adequate standard of living (Article 11), the normative content of which are described in more detail below. It is worth noting that both self-determination and prohibition of racial discrimination are widely considered to be jus cogens: see the study prepared by Héctor Gros Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on The right to self-determination : implementation of United Nations resolutions, E/CN.4/Sub.2/405/Rev.1, 1980, paras. 70ff; Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), International Law Commission, A/77/10, 2022, Conclusion 23 and Annex.

The right to self-determination also informs the collective dimension of related ICCPR and ICECSR rights, including the right to culture under Article 27 ICCPR,[91] and has been used to interpret Indigenous Peoples' collective rights to land, resources, and FPIC.[92]

In that context, the rights recognised in the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") (mentioned in Recital 33, cited above) to give, modify, withhold or withdraw their FPIC in relation to activities affecting traditionally owned or used lands, territories and resources (Articles 10, 11.2, 19 and 29.2 UNDRIP) are an essential component of Indigenous Peoples' right to self-determination. As Recital 33 confirms, FPIC and the other specific rights recognised in UNDRIP may constitute additional standards to be considered in due diligence where adverse impacts on Indigenous Peoples or similarly situated communities are at issue.

Right to culture

Article 27 ICCPR recognises the right to culture. As with the right to self-determination, the rights to land, resources and subsistence have an evident cultural dimension, since the cultural life of many communities is closely related to land."[93]

Ways of life and livelihoods such as small-scale agriculture, fisheries, hunting, cultural rituals linked to the natural environment, and the use of medicines derived from local plants all depend on access to specific natural environments, resources, land and waters. For some communities, the relationship with a particular area of land or natural environment is central to cultural identity.[94]

The UN Committee on Economic, Social and Cultural Rights ("CESCR") has recognised this link, stating that participation in cultural life includes the right "to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage.[95] The connection between land, the natural environment and cultural rights has also been widely recognised in jurisprudence,[96] including by the UN Human Rights Committee.[97]

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91 HCR, Klemetti Käkkäläjärvi et al. v. Finland, CCPR/C/124/D/2950/2017, 2 November 2018, para. 9.9.

92 For example HRC; Concluding observations on the seventh periodic report of Norway, CCPR/C/NOR/CO/7, April 2018, para. 36; HRC, Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela, CCPR/C/VEN/CO/4, August 2015, para. 21; CESCR, Concluding observations on the third periodic report of Guatemala, E/C.12/GTM/CO/3, December 2014, para. 7.

93 Land and Human Rights: Standards and Applications, p. 60.

94 Ibid., p.60 and General Comment No. 26, para. 10.

95 General Comment No. 21, para 15(b).

96 See notably the African Commission on Human and Peoples' Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, communication No. 276/03, Decision, forty-sixth ordinary session, 11–25 November 2005, para. 241 ; Inter-American Court of Human Rights, Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of 31 August 2001, paras. 148–149 and 151, and Yakye Axa Indigenous Community v. Paraguay, Judgment of 17 June 2005, paras. 131–132 ; Human Rights Chamber for Bosnia and Herzegovina, The Islamic Community in Bosnia and Herzegovina v. The Republika Srpska, Case No. CH/96/29, Decision, 11 June 1999, paras. 182 and 187.

97 See Billy v Australia, para. 8.14; Australia violated Torres Strait Islanders' rights to enjoy culture and family life, UN Committee finds, September 2022.

This cultural dimension is often especially important for Indigenous Peoples and other local communities with traditional lifestyles.[98] For Indigenous Peoples in particular, the overlap between the right to culture and the collective right to self-determination is especially pronounced. As the CESCR has observed, the strong communal dimension of indigenous peoples' cultural life is "indispensable to their existence, well-being and full development and includes the right to the land, territories and resources.[99] Their ability to exercise the right to culture in relation to ancestral lands, resources and waters therefore depends on their ability to secure access to those lands, resources and waters, including as a means of subsistence.[100]

Right to an adequate standard of living

The right to an adequate standard of living, including adequate food, clothing and housing, is enshrined in Article 11(1) ICESCR.

Adequate food - Interpreted in line with the right to an adequate standard of living, Point 16 reinforces the link between communities' access to and use of land, resources, waters and forests, and the right to food. Secure and equitable access to, use of and control over land may be essential to eradicate hunger and poverty and to guarantee an adequate standard of living."[101] This is particularly so in rural areas where deprivation of land used for productive purposes may endanger the right to adequate food."[102]

Adequate housing - The CESCR has identified a number of factors relevant to the adequacy of housing.[103] Business activities may interfere with this right in several ways in the context of Point 16. For example, where Indigenous communities are displaced from their lands for mining, industrial agriculture, energy or infrastructure projects, and relocated to urban slums, they may lose access to traditional food sources, natural resources and safe drinking water. Likewise, the use of harmful chemicals in mining or pesticides in agriculture may contaminate soil and water, threatening the right to health and, in turn, the right to adequate housing.

98 General Comment No. 26, para. 10.

99 General Comment No. 21, para. 36.

100 Ibid.

101 General Comment No. 26, para. 6.

102 Ibid.

103 General comment No. 4: The right to adequate housing.

Table 3: Examples of environmental impacts falling under Points 16 of Part I of the Annex

Examples of business practices	Environmental impacts	Relevant human rights
An aquaculture company operates intensive fish farming in a coastal area inhabited by Indigenous communities. Its use of net pens generates significant pollution from fish waste, uneaten feed, and chemicals used to control diseases and parasites, contributing to water pollution and habitat degradation. These impacts interfere with traditional fishing practices on which Indigenous communities depend for subsistence and cultural identity, making it more difficult to fish using customary methods and thereby affecting, cultural practices, the transmission of knowledge, and the connection to ancestral lands and waters.	• Biodiversity loss: marine ecosystems degradation and habitats destruction • Pollution: use of chemicals and substances of concerns, including persistent organic pollutants; plastics and microplastics; waste and wastewater disposal	• Right to self-determination, including their right to freely dispose of their economic resources • Right to culture
An industrial waste facility operates near a local farming community and burns and buries waste. Emissions containing heavy metals and other pollutants settle over homes, rice fields, vegetable gardens, while ash and buried waste contaminate soil, drains, streams and the watershed. As a result, community members suffer respiratory, skin and other health problems; crops are contaminated, yields decline, and produce can no longer be sold due to fears of contamination. Their water supply is contaminated, and they must buy bottled water for drinking, cooking and washing. They are no longer able to use their land for farming, and many are left without a livelihood.	• Pollution of air, soil and water: waste and wastewater disposal	• Right to an adequate standard of living, incl. health, food, adequate housing

Examples of business practices	Environmental impacts	Relevant human rights
A multinational agribusiness company acquires vast areas of land in a rural area to establish extensive monoculture plantations for export crops such as soy, palm oil, or sugarcane, which require excessive water usage. This acquisition often involves the displacement of smallholder farmers and Indigenous communities.	• Biodiversity: land-use change, soil degradation, deforestation, destruction of habitats, depletion of water resources	• Right to land and resources • Right to self-determination, including the right not to be deprived of means of subsistence • Right to culture
A large industrial fishing company engages in overfishing in the coastal waters traditionally used by small-scale fishing communities for subsistence fishing.	• Biodiversity: depletion of fish stocks, destruction of marine ecosystems	• Right to marine resources • Right to self-determination • Right to culture

1.2. Environmental obligations and prohibitions derived from international environmental instruments

Environmental impacts also include those that result from the breach of sixteen environmental obligations and prohibitions under international environmental conventions listed in the Annex Part II of CSDDD.

__1. The obligation to avoid or minimise adverse impacts on biological diversity,__ interpreted in line with Article 10(b) of the 1992 Convention on Biological Diversity and applicable law in the relevant jurisdiction, including the obligations of the Cartagena Protocol on the development, handling, transport, use, transfer and release of living modified organisms and of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 12 October 2014;

__2. The prohibition to import, export, re-export or introduce__ from the sea any specimen included in the Appendices I to III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973 without a permit, interpreted in line with Articles III, IV and V of the Convention;

__3. The prohibition of the manufacture, import and export of mercury-added products__ listed in Annex A Part I of the Minamata Convention on Mercury of 10 October 2013 (Minamata Convention), interpreted in line with Article 4(1) of the Convention;

__4. The prohibition of the use of mercury or mercury compounds in the manufacturing processes__ listed in Annex B Part I of the Minamata Convention after the phase-out date specified in the Convention for the individual processes, interpreted in line with Article 5(2) of the Convention;

__5. The prohibition of the unlawful treatment of mercury waste,__ interpreted in line with Article 11(3) of the Minamata Convention and Article 13 of Regulation (EU) 2017/852 of the European Parliament and of the Council76;

__6. The prohibition of the production and use of chemicals__ listed in Annex A of the Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants (POPs Convention), interpreted in line with Article 3(1)(a), point (i) of the Convention and Regulation (EU) 2019/1021 of the European Parliament and of the Council77;

__7. The prohibition of the unlawful handling, collection, storage and disposal of waste,__ interpreted in line with Article 6(1)(d), points (i) and (ii) of the POPs Convention and Article 7 of Regulation (EU) 2019/1021;

__8. The prohibition of importing or exporting a chemical listed in Annex III__ of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) of 10 September 1998, interpreted in line with Articles 10(1), 11(1)(b) and 11(2) of the Convention and indication by the importing or exporting Party to the Convention in line with the Prior Informed Consent (PIC) Procedure;

__9. The prohibition of the unlawful production, consumption, import and export of controlled substances__ in Annexes A, B, C and E of the Montreal Protocol on substances that deplete the Ozone Layer to the Vienna Convention for the protection of the Ozone Layer, interpreted in line with Article 4B of the Montreal Protocol and licensing provisions under applicable law in relevant jurisdiction;

__10. The prohibition of exports of hazardous or other waste,__ interpreted in line with Article 1(1) and (2) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Basel Convention) and Regulation (EC) No 1013/2006 of the European Parliament and of the Council78:

(a) to a party to the Convention that has prohibited the import of such hazardous and other wastes, interpreted in line with Article 4(1)(b) of the Basel Convention;

(b) to a state of import that does not consent in writing to the specific import, in the case where that state of import has not prohibited the import of such hazardous wastes, interpreted in line with Article 4(1)(c) of the Basel Convention;

(c) to a non-party to the Basel Convention, interpreted in line with Article 4(5) of the Basel Convention;

(d) to a state of import if such hazardous wastes or other wastes are not managed in an environmentally sound manner in that state or elsewhere, interpreted in line with Article 4(8) the first sentence of the Basel Convention;

***11. The prohibition of the export of hazardous wastes from countries** listed in Annex VII to the Basel Convention to countries not listed in Annex VII for operations listed in Annex IV to the Basel Convention, interpreted in line with Article 4A of the Basel Convention and Article 34 and 36 of Regulation (EC) No 1013/2006;*

***12. The prohibition of the import of hazardous wastes** and other wastes from a non-party that has not ratified to the Basel Convention, interpreted in line with Article 4(5) of the Basel Convention;*

***13. The obligation to avoid or minimise adverse impacts on the properties delineated as natural heritage** as defined in Article 2 of the Convention Concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972 (the World Heritage Convention), interpreted in line with Article 5(d) of the World Heritage Convention and applicable law in the relevant jurisdiction;*

***14. The obligation to avoid or minimise adverse impacts on wetlands** as defined in Article 1 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat of 2 February 1971 (Ramsar Convention), interpreted in line with Article 4(1) of the Ramsar Convention and applicable law in the relevant jurisdiction;*

***15. The obligation to prevent the pollution from ships,** interpreted in line with the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as amended by the Protocol of 1978 (MARPOL 73/78). This includes:*

(a) the prohibition to discharge into the sea: (i) oil or oily mixtures as defined in Regulation 1 of Annex I of MARPOL 73/78, interpreted in line with Regulations 9 to 11 of Annex I of MARPOL 73/78; (ii) noxious liquid substances as defined in Regulation 1(6) of Annex II of MARPOL 73/78, interpreted in line with Regulations 5 and 6 of Annex II of MARPOL 73/78; and (iii) sewage as defined in Regulation 1(3) of Annex IV of MARPOL 73/78, interpreted in line with Regulations 8 and 9 of Annex IV of MARPOL 73/78;

(b) the prohibition of unlawful pollution by harmful substances carried by sea in packaged form as defined in Regulation 1 of Annex III of MARPOL 73/78, interpreted in line with Regulations 1 to 7 of Annex III of MARPOL 73/78; and

(c) the prohibition of unlawful pollution by garbage from ships as defined in Regulation 1 of Annex V of MARPOL 73/78, interpreted in line with Regulations 3 to 6 of Annex V of MARPOL 73/78;

***16. The obligation to prevent, reduce and control pollution of the marine environment by dumping,** interpreted in line with Article 210 of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and applicable law in the relevant jurisdiction.*

This section examines the conventions and provisions listed in Annex Part II by reference to the three dimensions of the triple planetary crisis: climate change **(Section 1.2.1),** biodiversity loss **(Section 1.2.1)** and pollution **(Section 1.2.3)**. For each category, it explains the purpose of the relevant conventions and the scope of the obligations and prohibitions incorporated into the CSDDD. It then assesses whether Annex Part II provides sufficiently comprehensive coverage of environmental impacts for due diligence purposes. Where gaps or omissions are identified, the section sets out recommendations for national transposition to strengthen the Directive's environmental scope.

1.2.1. Climate change

In relation to climate change, Annex Part II only refers to the **Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol,** which aims to protect human health and the environment against the effects of ozone depletion by phasing out the production and consumption of certain ozone depleting substances ("ODS"). Because ODS are potent greenhouse gases and are commonly used in various industrial processes, including for refrigeration, air conditioning, and solvents, their phase-out is critical for mitigating climate change. Annex Part II Point 9 contains a prohibition of unlawful production, consumption, import and export of ODS listed in Annexes A, B, C and E to the Montreal Protocol (i.e. CFCs, Halons, CTC, TCA, BCM, MB, HBFCs and HCFCs), interpreted in line with Article 4B of the Protocol. Article 4B requires contracting parties to set up a licensing system for the import and export of new, used, recycled and reclaimed ODS listed in these annexes.

Point 9 fails to refer to the obligation to reduce the consumption and production of hydrofluorocarbons ("HFCs") pursuant to Article 2J and Annex F of the Montreal Protocol. HFCs are the most common alternatives to hydrochlorofluorocarbons ("HCFCs"), and although they are non-ozone depleting substances, they have high global warming potentials.

The UNFCCC and the Paris Agreement are glaringly absent from Part II of the CSDDD Annex. The Paris Agreement sets a clear, legally-binding average global temperature objective under a well-established political process, to which all EU Member States as well as the European Union have committed themselves. While Annex Part I Point 15 covers greenhouse gas emissions (see above Section 1.1.1), the absence of the Paris Agreement from the list of relevant obligations and prohibitions for a company's human rights and environmental due diligence is surprising. This omission is arguably inconsistent with the Commission's own recognition that "[t]he behaviour of companies across all sectors of the economy is key to succeed in the Union's transition to a climate-neutral and green economy in line with the European Green Deal"[104] and the acknowledgement in Recital 73 that the CSDDD "is an important legislative tool to ensure corporate transition to a sustainable economy, including to reduce the existential harms and costs of climate change, to ensure alignment with 'global net zero' by 2050 [...] and to stop greenwashing, disinformation and fossil fuel expansion worldwide in order to achieve international and European climate objectives."

The Paris Agreement is an international instrument that has been adopted by private sector initiatives into concrete business practices. Recital 10 of the CSDDD also acknowledges the central role of the private sector to achieve the objectives of the UNFCCC and the Paris Agreement. This should not be limited only to human rights-based climate due diligence, but should explicitly include positive obligations to identify, assess and mitigate adverse impacts on climate change as such.

The **United Nations Convention on the Law of the Sea ("UNCLOS")** is also important in relation to climate change impacts, including ocean warming and sea level rise, and pollution of the marine environment. As recently recognised by the International Tribunal for the Law of the Sea ("ITLOS") in its Advisory Opinion and discussed above,[105] anthropogenic GHG emissions into the atmosphere constitute "pollution" of the marine environment within the meaning of Article 1, paragraph 1, subparagraph 4, of the Convention. While marine pollution from anthropogenic GHG emissions can be characterised as pollution from land-based sources (Article 207), pollution from vessels (Article 211), or pollution from or through the atmosphere (Article 212), Annex Part II Point 16 refers exclusively to Article 210 (pollution by dumping), which is not sufficient to cover GHG emissions.

104 Commission Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, 23 February 2022.

105 ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, AO No. 31, 21 May 2024.

Conclusion: Climate change impacts under Annex Part II are strictly limited to the prohibition of unlawful production, consumption, import and export of certain ODS.

Member States should address the gaps and ensure an effective coverage of relevant international conventions and provisions related to climate change by introducing the following complementary references in Annex Part II, in line with Article 4(2) of the CSDDD:

- **Articles 2(1)(a), 4(1), 4(2) and 5(1) of the Paris Agreement** in order to resolve the inconsistency created by the failure to include the Paris Agreement and the UNFCCC;
- **Article 2J and Annex F of the Montreal Protocol,** to ensure HFCs and their global warming potentials are also addressed;
- **Articles 207, 211 and 212 of UNCLOS,** in order to cover climate change impacts on the marine environment as clarified by the ITLOS Advisory Opinion;
- **Articles 6(a), 7(c) and 8(l) of the CBD,** in light of the mutually reinforcing nature of climate and biodiversity protection.

1.2.2. Biodiversity loss and ecosystem degradation

The Convention on Biological Biodiversity ("CBD") is the principal international agreement on the conservation of biological diversity, the sustainable use of its components and the equitable sharing of genetic resources.[106] Annex Part II Point 1 refers to the obligation to avoid or minimise adverse impacts on biological diversity, interpreted in line with Article 10(b) of the CBD. That provision concerns the "sustainable use of components of biological diversity", with paragraph (b) requiring each Party to take the necessary measures to avoid or minimise adverse impacts on biological diversity. The "use" of components of biological resources includes gathering, harvesting or hunting animals and plants, including fishing and logging, converting a forest to grazing land, draining a wetland for a road, exploiting seabed for minerals, and pumping freshwater to produce crops.[107]

The obligation to avoid or minimise adverse impacts on biological diversity under the CSDDD should therefore be understood as covering situations where companies, through their use of biological resources, adversely impact habitats, species and ecosystems. For example, when an agriculture company clears land for crop production (e.g. a monoculture palm oil plantation), thereby harming native habitats and species. The operations of seafood, mining and infrastructure development companies also often lead to habitat destruction and harm to surrounding ecosystems.

The conservation of biological diversity is the other important objective of the CBD. However, by solely referring to Article 10(b) on sustainable use, that objective is not referred to in the Annex Part II.

In relation to wildlife, the **Convention on International Trade in Endangered Species ("CITES")** aims to ensure that international trade (import and export) in listed species does not threaten their survival in the wild. This is primarily achieved through a system of permits and certificates. Point 2, Part II of the CSDDD Annex refers to the prohibition of importing and exporting any CITES specimen without the required permit, as regulated by Articles III, IV and V.

This obligation may be relevant for industries using exotic animal materials, including the luxury goods, fashion and cosmetic sectors, where products are often sourced through illegal or unregulated wildlife trade affecting endangered species.

In relation to marine ecosystems, **UNCLOS** establishes a comprehensive legal framework governing marine and maritime activities, including the use of marine resources, the conservation of living resources, and the preservation of the marine environment.[108]

106 Article 1 CBD.

107 Guide on the Convention on Biological Diversity, IUCN, 1994, p. 57.

108 Part XII UNCLOS specifically deals with the protection and preservation of the marine environment.

However, Annex Part II Point 16 only refers to pollution caused by "dumping", interpreted in line with Article 210 UNCLOS (see Section 1.2.3). This narrow focus does not reflect the broader objectives of UNCLOS in relation to the protection and preservation of our planet's oceans and resources.

In relation to freshwater ecosystems, Annex Part II Point 14 refers to the obligation to avoid or minimise adverse impacts on wetlands as defined in Article 1 of the **Convention on Wetlands of International Importance ("the Ramsar Convention"),** interpreted in line with Article 4(1), which requires the promotion of wetland conservation whether or not the wetland is listed. Wetlands are broadly defined as: "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres".[109] Wetlands provide indispensable ecosystem services, including freshwater supply, food, flood control, groundwater recharge, and climate change mitigation.

Business activities affecting wetlands includes the construction and development of infrastructures, agriculture, mining and extractive operations, logging and forestry, all of which may degrade habitats, alter hydrological systems and contaminate water bodies.

Annex Part II Point 13 refers to the obligation to avoid or minimise adverse impacts on natural heritage sites as defined in Article 2 of the **Convention Concerning the Protection of the World Cultural and Natural Heritage ("the World Heritage Convention"),** interpreted in line with Article 5(d). These include: (1) places that hold outstanding universal value from either an aesthetic or scientific perspective; (2) areas that constitute the habitat of threatened species of animals and plants, which are of exceptional value from a scientific or conservation standpoint; and (3) areas of outstanding universal value from the point of view of science, conservation or natural beauty. Article 5(d) refers to the adoption of appropriate measures for the identification, protection, conservation, presentation and rehabilitation of cultural and natural heritage. Business activities, including tourism and infrastructure development, may adversely affect such sites through direct and indirect impacts on landscapes, ecosystems, and cumulative environmental degradation.

Other relevant international instruments are not included in Part II of the CSDDD Annex. In particular, **the Convention on the Protection and Use of Transboundary Watercourses and International Lakes ("the Water Convention"),** which aims to protect and ensure the quantity, quality and sustainable use of transboundary surface water and groundwater resources, is absent despite the central importance of water to business operations and value chains. This omission is significant given the scale of business dependence on water, especially in sectors such as agri-food, oil, gas, and mining.[110]

Conclusion: Biodiversity-related impacts under the CSDDD include impacts on the sustainable use of biological diversity, wetlands, and natural heritage sites, as well as impacts resulting from the prohibited import and export of endangered species.

To ensure more complete coverage of biodiversity and ecosystem harms, Member States should introduce the following complementary references in Annex Part II, in line with Article 4(2) of the CSDDD:

- **Article 8(d) and Article 8(f) of CDB,** in order to promote proactive improvement of degraded ecosystems by companies, which is key to avoid ecosystem collapse and maximise ecosystemic contributions in the fight against climate change;

109 What are wetlands? Ramsar Information Paper no. 1, January 2007.

110 Chart: Globally, 70% of Freshwater is Used for Agriculture, World Bank, March 2017.

- **Article 192 of UNCLOS,** which encompasses both the protection and preservation of the marine environment from pollution, as well as the conservation of marine living resources;[111]
- **Article 2 of the Water Convention,** in order to explicitly address the need to prevent, control and reduce the impacts of companies on transboundary surface water and groundwater resources.

1.2.3. Pollution of air, soil and water

In relation to marine pollution, Annex Part II Point 15 refers to **UNCLOS.** However, as noted above, that reference is limited to the obligation to prevent, reduce and control pollution of the marine environment by dumping under Article 210. UNCLOS defines dumping as: (i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea; (ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea.[112] Annex Part II therefore fails to cover other important sources of marine pollution, including land-based sources,[113] seabed activities, vessels and pollution from or through the atmosphere.[114] This is inconsistent with UNCLOS's broader definition of pollution of the marine environment: "the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities".[115]

Annex Part II Point 16 additionally refers to the obligation to prevent pollution from ships interpreted in line with the **International Convention for the Prevention of Pollution from Ships ("MARPOL"),** the principal international convention addressing ship-source pollution from operational or accidental causes. This includes prohibitions on the discharge of oil, noxious liquid substances[116], sewage and garbage, including plastics, into the sea.[117] It also refers to the obligation to prevent pollution by harmful chemical substances carried by sea in packaged form.[118]

In relation more specifically to chemical pollution, Annex Part II refers to several prohibitions under substance-specific international instruments.

Mercury: Annex Part II Points 3, 4 and 5 refer to the prohibition on the manufacture, import and export of mercury-added products, the use of mercury compounds in manufacturing processes, and the unlawful treatment of mercury waste under **the Minamata Convention on Mercury** (Articles 4(1), 5(2) and 11(3)). The Minamata Convention aims to protect human health and the environment from releases of mercury and mercury compounds into air, water and soil. Mercury is a highly toxic heavy metal that persists in the

111 ITLOS, The Republic of Philippines v. The People's Republic of China, PCA case No. 2013-19, Award on Jurisdiction and Admissibility, 29 October 2015, para. 70.

112 Article 1(5)(a) and (b) UNCLOS.

113 Article 194 (3)(a) and Article 207 UNCLOS. Pollution from land-based sources would include greenhouse gases contributing to climate change, see Legal Analysis on the Request for an Advisory Opinion from the International Tribunal for the Law of the Sea, ClientEarth, March 2023.

114 See Articles 194(3)(a) and (b), 207, 211 and 212 UNCLOS.

115 Article 1(4) UNCLOS.

116 As defined in Regulation 1 of Annex I of MARPOL 73/78 and Regulation 1(6) of Annex II of MARPOL 73/78.

117 Under MARPOL Annex V, garbage includes all kinds of food, domestic and operational waste, all plastics (including fishing gears), cargo residues, incinerator ashes, and animal carcasses generated during the normal operation of the ship and liable to be disposed of continuously or periodically. See the Simplified overview of the discharge provisions under MARPOL Annex V.

118 As defined in Regulation I of Annex III of MARPOL 73/78.

environment for very long periods and can travel over long distances. Major sources of mercury pollution include artisanal and small-scale gold mining, coal-fired power plants, waste incineration of batteries and electronic waste, and chemical manufacturing. Human exposure occurs primarily through seafood, in which mercury bioaccumulates .[119]

Persistent organic pollutants ("POPs"): Annex Part II Points 6 and 7 refer to the prohibition on the production, use, handling, collection, storage and disposal of POPs waste under **the Stockholm Convention** (Article 3(1)(a)(i) and Article (6(1)(d)(i) and ii)). The Stockholm Convention aims to protect human health and the environment from POPs, which are hazardous because they persist in the environment, accumulate in living organisms, and can travel across borders, including to remote regions. POPs include certain pesticides (such as dichlorodiphenyltrichloroethane, an insecticide), industrial chemicals (such as polychlorinated biphenyls, which were widely used in electrical equipment), and unintentional by-products of industrial processes or combustion (such as dioxins and furans).[120] However, the Stockholm Convention does not ban all problematic POPs. In particular, it includes only a limited number of per- and polyfluoroalkyl substances ("PFAS"), a family of more than 14,000 synthetic fluorinated chemical compounds according to the latest counts,[121] such as PFOS, PFOA, PFHxS.[122] As a result, many PFAS remain outside the Convention's scope and continue to be manufactured, marketed and used in a wide range of industrial and consumer applications.

Hazardous chemicals: Annex Part II Point 8 refers to the prohibition on the import and export of hazardous chemicals without prior informed consent ("PIC") under **the Rotterdam Convention** (Articles 10(1), 11(1)(b) and 11(2)). The Rotterdam Convention aims to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals and pesticides, protect human health and the environment and contribute to their environmentally sound use by facilitating information exchange. It applies only to 52 hazardous chemicals and pesticides and does not cover all hazardous substances. For example, bisphenols, which are widely used in plastics and resins and are recognised as endocrine disruptors, fall outside its scope.[123]

Hazardous waste: Annex Part II Points 10, 11 and 12 refer to the prohibition on the import and export of hazardous wastes and other wastes under **the Basel Convention.** The Basel Convention aims to minimise transboundary movements of hazardous waste, ensure environmentally sound disposal as close as possible to the point of origin, and reduce the generation of hazardous waste. Although regulated waste trade is an important component of a circular economy, it should follow efforts to prevent waste prevention,

119 Mercury: a persistent threat to the environment and people's health, EEA.

120 The POPs, Stockholm Convention; Understanding POPs, ECHA.

121 See the Zürich II Statement on Per- and Polyfluoroalkyl Substances (PFASs): Scientific and Regulatory Needs, Environmental Science & Technology Letters, American Chemical Society, April 2024.

122 For the PFASs listed under the Stockholm Convention, see the Stockholm Convention Overview; On understanding PFAS, see Per- and Polyfluoroalkyl Substances (PFASs), UNEP, and Per- and polyfluoroalkyl substances (PFAS), ECHA.

123 See Bisphenols, ECHA; EU Court delivers final blow to plastics industry on BPA, ClientEarth, March 2023; CJEU, PlasticsEurope v European Chemicals Agency (ECHA), Case C119/21 P, Judgement of 9 March 2023.

consistent with the EU's Waste Hierarchy.[124] However, Points 10, 11 and 12 fail to refer to the Convention's broader objectives of sound waste management and waste minimisation, which are central to the protection of human health and the environment.

The table below provides a summary of the scope, main provisions, or key pillars of the aforementioned international conventions.

Table 4: Overview of the Minamata, Stockholm, Rotterdam and Basel Convention

	Minamata	Stockholm	Rotterdam	Basel
Scope	• Mercury (including mercury compounds and products containing mercury)	• Persistent organic pollutants (POPs), most frequently found in pesticides and industrial chemicals	• Pesticides and industrial chemicals that have been banned or severely restricted for health and environmental reasons by the Parties (incl. POPs)	• Hazardous wastes that are explosive, flammable, reactive, poisonous, infectious, corrosive, (eco)toxic; as well as other wastes (including household and plastic waste) (incl. POPs)
Pillars/key provisions	• Restrictions on mining and trade (Article 3) • Phase-out and phase-down of mercury use in products and processes (Articles 4, 5 and 6, Annexes A and B) • Regulation of artisanal and small scale gold mining (Article 7, Annex C) • Control measures on emissions and releases (Articles 8 and 9, Annex D) • Storage, waste and contaminated sites (Articles 10, 11 and 12)	• Prohibition and/or elimination (Article 3; Annex A) • Restriction (Article 3; Annex B) • Reduction or elimination (Article 5; Annex C)	• Prior Informed Consent (PIC) procedure for export/import (Annex III) • Exchange of information on a broad range of potentially hazardous chemical	• Minimization of waste generation (Article 4) • Environmentally sound management of wastes (Article 4) • Controlling of transboundary movements of wastes (conditions and PIC procedure, Article 6) • Preventing and combating illegal traffic (Article 9)
EU Regulation	• Mercury Regulation (Regulation (EU) 2017/852)	• POPs Regulation (Regulation (EU) 2019/1021)	• PIC Regulation (Regulation (EU) 649/2012)	• Waste Shipment Regulation (Regulation (EU) 2024/1157). Transitionally, parts of Regulation (EC) 1013/2006 may continue to apply until May 2027.

124 See Article 4 of the Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives ("Waste Framework Directive").

Finally, it is important to note that Part II of the CSDDD Annex does not refer to international commitments in the field of air pollution control, notably **the UNECE Convention on Long-range Transboundary Air Pollution ("LRTAP"),** the most important agreement in the area of air pollution, which aims at gradually reducing and preventing air pollution, including long-range transboundary air pollution. Over the years, the number of substances covered by the LRTAP Convention and its protocols has been gradually extended, notably to ground-level ozone, POPs, heavy metals and particulate matter. This omission creates loopholes and it is unfortunate that the CSDDD does not translate those obligations for the purpose of defining its environmental scope.

Conclusion: The impact on air, soil and water pollution under Annex Part II is limited to pollution of the marine environment by dumping and by ships, the prohibited production, use, import and export and unlawful disposal of mercury and certain POPs, the prohibited import and export of certain hazardous chemicals and pesticides without PIC, and the prohibited import and export of hazardous wastes. However, a number of chemicals remain outside the scope of existing international conventions and therefore outside the scope of the Annex.[125]

Member States should introduce at least the following additional references in Annex Part II, in line with Article 4(2) of the CSDDD:

- **Article 207, 211 and 212 of UNCLOS,** in order to cover other marine pollution sources caused by companies;
- **Article 4(2)(a) of the Basel Convention,** in order to minimise the generation of waste by companies in the first place and align more closely with EU legislation.

2. CSRD

Companies in scope of the CSRD are required to disclose information necessary to understand their actual and potential adverse impacts on sustainability matters and how sustainability matters affect the company (double materiality). **Article 29b** of the Accounting Directive provides that the delegated act on the ESRS will specify the information that companies will have to disclose in relation to: (i) climate change mitigation, including as regards scope 1, scope 2 and, where relevant, scope 3 greenhouse gas emissions; (ii) climate change adaptation; (iii) water and marine resources; (iv) resource use and the circular economy; (v) pollution; (vi) biodiversity and ecosystems.

ESRS 1, Application Requirement (AR) 16 stipulates that, when conducting a materiality assessment, the undertaking must consider the list of sustainability matters, as outlined in the topical ESRS (see Table 5).[126] The use of this list is not intended to replace the process of determining material matters. Rather, it is a tool to support the undertaking's materiality assessment. The level of granularity of the matters to be considered ranges from topic to sub-topic level and, in some cases, to sub-sub-topic level.

125 See notably the European Commission Restrictions Roadmap under the Chemicals Strategy for Sustainability, April 2022, which lists some of the chemicals that should be regulated in the coming years. See also the SIN List of very hazardous chemicals used in a wide variety of products and manufacturing processes around the globe. The SIN List is developed by non-profit ChemSec, in close collaboration with scientists and technical experts. The list is based on credible, publicly available information from existing databases and scientific studies. Inclusion on the SIN List is based on the same criteria as the EU's legislative framework for chemicals — REACH. Therefore, a substance being put on the SIN List is a strong signal that it will be placed on the REACH Candidate List, facing strict regulation in the EU. As an additional dimension, the production of POPs (Persistent Organic Pollutants) listed in the Stockholm Convention, PIC (Prior Informed Consent) substances listed in the Rotterdam Convention, and Highly Hazardous Pesticides, HHP, as identified by the Pesticide Action Network, have been included.

126 ESRS 1, AR 16. AR have the same authority as other parts of the ESRS, and are therefore mandatory (as per ESRS 1, para. 16).

ESRS 1, section 3.2.1, specifies that the materiality assessment of impacts is based on severity and likelihood, severity being determined by the following criteria:

> *(a) scale: how grave the negative impact is or how beneficial the positive impact is for people or the environment;*
>
> *(b) scope: how widespread the negative or positive impacts are. In the case of environmental impacts, the scope may be understood as the extent of environmental damage or a geographical perimeter. In the case of impacts on people, the scope may be understood as the number of people adversely affected; and*
>
> *(c) irremediable character: whether and to what extent the negative impacts could be remediated, i.e., restoring the environment or affected people to their prior state.*[127]

Table 5: Sustainability matters covered in topical ESRS

Topic	Sub-topic
Climate change (ESRS 1)	• Climate change adaptation • Climate change mitigation • Energy
Pollution (ESRS 2)	• Pollution of air • Pollution of water • Pollution of soil • Pollution of living organisms and food resources • Substances of concerns • Substances of very high concerns (with additional phase-in of 1 year) • Primary microplastics
Water and marine resources (ESRS E3)	• Water • Marine resources
Biodiversity and ecosystem (ESRS E4)	• Direct impact drivers of biodiversity loss • Impacts on the state of species • Impacts on the extent and condition of ecosystems • Impacts and dependencies on ecosystem services
Circular economy (ESRS E5)	• Resources inflows, including resource use • Resource outflows related to products and services • Waste

127 ESRS 1, AR 22 for paras. 40 - 41.

3. Commentary

A narrow and fragmented definition of environmental impacts

The definition of environmental impacts in Article 3(b) of the CSDDD rightly adopts an integrated human rights and environmental approach. By including Points 15 and 16 of Part I of the Annex, the Directive recognises that environmental degradation and human rights harm are often mutually reinforcing and cannot always be assessed in isolation.

That said, subjecting environmental harm to due diligence obligations should not depend on an immediate or clearly identifiable human rights impact in order to fall within the scope of due diligence. Many environmental impacts are cumulative, diffuse and intergenerational; they may be significant even before they translate into a concrete harm to identifiable rights-holders.

Against that background, the approach taken in Article 3(b) is unduly restrictive. For environmental impacts that do not have direct human rights implications, the Directive relies almost exclusively on a closed list of prohibitions and obligations drawn from the international environmental conventions listed in Part II of the Annex.

This is problematic because international environmental law remains sectoral and fragmented. A number of significant business-related environmental impacts are not yet comprehensively addressed by binding international conventions, including plastic pollution and soil degradation. Part II is also incomplete: important instruments, most notably the Paris Agreement, are omitted, while several listed instruments are incorporated only partially.

As a result, the Directive risks failing to capture the full environmental footprint of corporate activity. It also risks creating an uneven playing field, because companies and sectors whose most material environmental impacts fall outside the listed conventions may face a narrower due diligence obligation than those whose impacts happen to be covered by the Annex.

The narrow scope of Part II also sits uneasily with the CSRD. Under the ESRS, due diligence informs the materiality assessment and is intended to support a broader understanding of sustainability impacts.[128]

Member States should promote a more coherent and comparable definition of environmental impacts across the CSDDD and the CSRD. Greater alignment would reduce complexity for companies subject to both regimes and support more effective implementation.

Table 6 below shows that, unlike the OECD Guidelines and the, CSRD, Part II of the CSDDD Annex captures only a very narrow set of environmental impacts relating to climate change, pollution and waste (see in red).

Interpreting environmental obligations without reducing due diligence to legal compliance

This restrictive approach also creates legal uncertainty. Many provisions in Part II are framed by reference to State obligations to prohibit or regulate specific activities, substances, products or species (Points 2 to 13). Others derive from State obligations to adopt regulations or take measures to protect the environment (Points 1 and 13 to 16). This drafting makes it unclear how those State-facing obligations should be translated into corporate due diligence duties.

128 ESRS 1, paras. 58-59.

Two clarifications are therefore essential. First, the environmental norms referenced in the CSDDD should be understood as defining the field within which companies must conduct due diligence; they should not be read as wwwmaking companies directly bound by international environmental obligations in the same way as States. Second, companies should not treat the CSDDD as applying only where a specific treaty rule or national law has already been breached. Such an interpretation would be inconsistent with the preventive purpose of due diligence.

Moreover, references to national law should be treated as interpretative guidance on expected business conduct (particularly where domestic legislation implementing international instruments provides more detailed standards or a higher level of environmental protection), not as a threshold requirement that a breach of national law must be established before an environmental impact falls within the CSDDD. Otherwise, the already limited scope of Part II would be narrowed even further.

That reading is consistent with the UNGPs, which make clear that the corporate responsibility to respect human rights goes beyond, compliance with domestic law.[129] The central question is therefore not only whether a company has breached applicable law, but whether it has taken appropriate due diligence measures to identify, prevent, mitigate and bring to an end its actual and potential impacts.

In conclusion, the CSDDD creates an important opportunity to address corporate impacts on human rights and the environment in an integrated way. However, its treatment of standalone environmental impacts is narrower and more fragmented than the approaches reflected in the OECD Guidelines and the CSRD.

Companies should apply Part II purposively and in light of the preventive nature of due diligence, ensuring that significant environmental impacts are identified, prioritised and addressed before they materialise or worsen.

129 UNGP Interpretive Guide, Q7, p. 13.

Recommendations for transposition

The complexity of the CSDDD underscores the need for Member States to adopt a comprehensive and clear approach when transposing the definition of environmental impacts into national law. To ensure that the CSDDD appropriately fulfils its objective of protecting human rights and the environment and aligns with international frameworks, Member States must consider the following in transposition:

- **Recommendation n°2: Ensure an integrated approach to human rights and environment by recognising the connection between human rights and environmental protection. protection.** It should be clarified that "environmental degradation" in Point 15 includes climate-related impacts. Point 15 should be further strengthened by explicitly including the right to a healthy environment in addition to the rights already referred to (rights to life; the enjoyment of the highest attainable standard of physical and mental health; an adequate standard of living; adequate food; safe drinking water and sanitation; housing; and cultural rights).

  It is recommended that the terms "measurable" and "substantially" be removed from the text, as the aforementioned analysis demonstrates that there is no compelling reason for their inclusion in order to enhance clarity. The notion of "groups and communities" in Point 16 should be clarified to explicitly include indigenous people and add an explicit reference to their right to self-determination and FPIC, including to Articles 3, 10, 26 and 32 of UNDRIP.

- **Recommendation n°3: Ensure a comprehensive coverage of environmental impacts.**

  Option A - Ensure the list of environmental conventions is complete and refer to their overall objectives instead of specific provisions. In case referring to specific provisions, Member States should ensure that all relevant provisions are covered (see Table 7 below).

  Option B - Define impacts on the environment primarily through a comprehensive list of environmental impacts. The definition should include a list of adverse environmental impacts including biodiversity loss and ecosystem degradation, air, water and soil pollution (including through chemicals, hazardous substances and production of waste), and climate change (including greenhouse gas emissions). The definition should ensure it covers, at a minimum, the categories already covered by existing frameworks (OECD Guidelines, CSRD, EU Taxonomy, EU Batteries Regulation). This would provide alignment across EU legislation and with international standards. It would also offer a good and clear understanding of what a company will be expected to identify, assess, prevent, mitigate and account for in terms of adverse environmental impacts.

The table below illustrates the range of environmental impacts and impacts drivers that should be covered by a comprehensive definition of environmental impacts as well as relevant international legal frameworks that can serve as benchmarks for understanding and specifying expectations.

Table 6: Comparison of environmental impacts covered by the OECD Guidelines, CSRD and CSDDD

Impacts under OECD Guidelines	Impacts under CSRD	Impacts under CSDDD (Annex Part II)
Climate change	✓ ESRS E1 Climate change: climate adaptation; mitigation; energy	✗ Ozone Depleting Substances
Biodiversity loss; **Degradation of land, marine and freshwater ecosystems;** **Deforestation**	✓ ESRS E4 Biodiversity and ecosystem, including: land-use change, fresh-water use change and sea-use change; direct exploitation, invasive alien species; impacts on the states of species; impacts on the extent and conditions of ecosystems; Impacts and dependencies on ecosystem services	✓ Impacts on the sustainable use of biological diversity, wetlands, endangered species, and natural heritage sites
	✓ ESRS E3 Water and marine resources: Water consumption, withdrawals, discharges and extraction of marine resources	
Air, water and soil pollution	✓ ESRS E2 Pollution of air, water, soil, living organisms and food resources	✗ Pollution of the marine environment by dumping and by ships
	✓ Substances of concern and very high concerns	✗ • Mercury • Certain PoPs • Certain hazardous chemicals
	✓ Primary microplastics	
Harmful generation and mismanagement of waste including hazardous substances	✓ ESRS E5 Circular economy: resources inflows and outflows; waste	✗ Hazardous waste

✓ Environmental impacts covered.

✗ Limited environmental impacts covered.

Table 7: Overview of environmental impacts and relevant international legal frameworks

Environmental impacts	Impact drivers	Relevant international legal framework and their overarching objectives
Climate change	Generation/emission of Greenhouse Gas and Ozone Depleting Substances	• The UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement: aims to limit the temperature increase to 1.5 °C above pre-industrial levels. • The Vienna Convention for the Protection of the Ozone Layer: aims to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer. • The Montreal Protocol on Substances that Deplete the Ozone Layer: aims to protect the Earth's ozone layer by phasing out the chemicals that deplete it. • The UN Convention on the Law of the Sea (UNCLOS): establishes a legal framework for all marine and maritime activities.
	Destruction of sinks and reservoirs of greenhouse gases	• UNFCCC and Paris Agreement: aims to limit global warming to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius.
Biodiversity loss	Land-use change and degradation of land, including deforestation	• The Convention on Biological Diversity (CDB): aims at the conservation of biodiversity and the sustainable use and equitable sharing of genetic resources. • The Ramsar Convention on Wetlands: ensures the conservation and wise use of all wetlands through local and national actions and international cooperation. • The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (the Water Convention): aims to protect and ensure the quantity, quality, and sustainable use of transboundary water resources. • The Convention on International Trade of Endangered Species (CITES): ensures that international trade (import and export) in specimens of animals and plants included in its annexes does not threaten the survival of the species in the wild. • The Bonn Convention on Migratory Species: aims to conserve terrestrial, aquatic and avian migratory species throughout their range.
	Freshwater-use change and degradation of freshwater ecosystems	
	Degradation of marine ecosystems	
	Habitats destruction	
	Excessive water consumption and water withdrawals	
	Overexploitation and extraction of natural resources	
	Impacts on the state of species	
	Invasive alien specifies	

Environmental impacts	Impact drivers	Relevant international legal framework and their overarching objectives
Pollution of air, soil and water	Emissions or release of chemicals and substances of concerns	• The UNECE Geneva Convention on Long-range Transboundary Air Pollution (LRTAP): aims to reduce and prevent air pollution, including long-range transboundary air pollution. • UNCLOS: aims to regulate the use of marine resources and promote the conservation of living resources and preservation of the marine environment. • The International Convention for the Prevention of Pollution from Ships (MARPOL): aims to prevent the pollution of the marine environment by ships from operational or accidental causes. • The Minamata Convention on Mercury: aims to protect human health and the environment from the release of mercury and mercury compounds into the air, water and soil. • The Stockholm Convention on POPs: aims to protect of human health and the environment from the release of persistent organic pollutants (POPs). • The Rotterdam Convention on PIC: promotes shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange.
	Generation and use of plastics and microplastics	• There is currently no multilateral agreement addressing the generation and use of plastics and microplastics. Negotiations on an international instrument to address plastic pollution were initiated in 2022, under the auspices of the United Nations Environmental Assembly.
	Waste and wastewater disposal	• The Basel Convention: aims to minimise the cross-border movement of hazardous waste, ensuring the environmentally sound disposal of hazardous waste close to the point of origin, reducing the amount of hazardous waste produced.

C Due diligence obligations

The CSDDD establishes a set of substantive due diligence obligations that companies must integrate into their policies, risk management systems, and operations. These obligations are grounded in international soft law standards and are structured around a continuous cycle of identification, prevention, mitigation, remediation, monitoring, and communication. The following Section examines how these obligations apply from an environmental perspective, with particular focus on the scope of value chain coverage **(Section 1)**, the key due diligence steps as modified by the Omnibus I Directive **(Section 2)**, and their interaction with reporting requirements under the CSRD.

1. Value chain coverage

According to the international soft law standards (OECD Guidelines and UNGPs), due diligence covers the whole value chain, including the material sourcing and production as well as the end of life of the product, such as its reuse, recycling, repurposing, recovery or disposal. The environmental impact of the goods and services we use every day can only be captured if it is assessed holistically across their life cycle.

1.1. CSDDD

According to **Article 1(a)** of the CSDDD, companies' due diligence obligations apply to their own operations, those of their subsidiaries and the activities of their **business partners in their chains of activities** (a subset of value chains as understood in the CSRD, the UNGPs and the OECD Guidelines).

Therefore, the two concepts of "business partners" and "chain of activities" are central to understanding the value chain coverage of the Directive.

"Business partners" comprise both **direct and indirect relationships.** Under **Article 3(1)(f),** 'business partner' means an entity:

> *(i) with which the company has a commercial agreement related to the operations, products or services of the company or to which the company provides services pursuant to point (g) ('direct business partner'); or*
>
> *(ii) which is not a direct business partner but which performs business operations related to the operations, products or services of the company ('indirect business partner').*

According to **Article 3(1)(g)(i),** activities of a company's **upstream** business partners relate to the production of goods or the provision of services by the company, for instance the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and development of the product or the service. Both direct and indirect business partners are covered.

According to **Article 3(1)(g)(ii),** activities of **downstream** business partners that companies must exercise due diligence on are limited to those related to the distribution, transport, and storage of a product, where the business partners carry out those activities for or on behalf of the company subject to the CSDDD. While this covers both direct and indirect business partners involved in the distribution, transport and storage, the requirement for the business partners to be acting "for the company or on behalf of the company" introduces a limitation to the activities covered under this definition. Recital 25 of the CSDDD clarifies that the Directive does not apply to impacts arising out of the disposal of the product by a company's business partners and Recital 26 further clarifies that the chain of activities should not include the activities of a company's downstream business partners related to the "services" of the company.

Recital 25 also explains that the more limited value chain coverage denoted by the term "chain of activities" does not affect the understanding of "value chain" or "supply chain" in other Union legislation.

1.2. CSRD

Article 19a(2)(f)(ii) of the Accounting Directive requires companies to report on the impacts connected to their own operations and value chains, including their products and services, their business relationships, and their supply chains. The reference to supply chain information as part of value chain information must be read in conjunction with Recital 33 of the CSRD, which states that "[r]eported sustainability information should [...] contain information about the undertaking's whole **value chain"** (emphasis added).[130]

The ESRS further clarify the definition of value chain, which comprises "the **full range** of activities, resources and relationships related to the undertaking's business model[131] and the external environment in which it operates" (emphasis added). Therefore, all activities, resources and relationships that "the undertaking uses and relies on to create its products or services from conception to delivery, consumption and end-of-life" are included. The definition further clarifies that a company's value chain "includes actors upstream and downstream from the undertaking".[132] The ESRS use the term 'value chain' in the singular, although it is recognised that undertakings may have multiple value chains.

"Business relationships" under the CSRD are understood to be "[t]he relationships the undertaking has with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services".[133] As such, business relationships under the CSRD include indirect relationships beyond the first tier and shareholding positions in joint ventures or investments.[134]

From a practical implementation perspective, companies should in particular identify their suppliers beyond Tier-1, the users of their services and goods, how the goods are treated at end-of-life, and potentially affected individuals and communities.[135]

1.3. Commentary

The value chain coverage of the CSDDD is more limited than that of the CSRD and fails to align with the international standards in three key respects.

First, while **value chains** in the ESRS are defined as covering "activities, resources and relationships" related to the system of the company to transform inputs into outputs,[136] the CSDDD more clearly focuses on the activities carried out by business partners in relation to the company's product or service. This can be seen in the definition of chain of activities,[137] as well as looking at the references to the chain of activities in the different provisions laying down the due diligence duty.[138]

Second, the CSDDD has a potentially more limited understanding of **business relationships** than the CSRD. Under the CSRD, any "entity" (be it a business partner, an entity in the value chain or other State or non-State entities) is considered a business relationship insofar as it is linked to the business' operations, products or services.[139] Therefore, rather than the nature of the relationship (commercial or not), the underlying criterion to determine what constitutes a business relationship for CSRD purposes is the

130 CSRD, Recital 33.
131 ESRS define a company's business model as "The undertaking's system of transforming inputs through its activities into outputs and outcomes that aims to fulfil the undertaking's strategic purposes and create value over the short-, medium- and long-term. ESRS use the term "business model" in the singular, although it is recognised that undertakings may have more than one business model". See ESRS - Annex II, Table 2, p. 158.
132 Ibid., p. 181 and 184.
133 Ibid., p. 158.
134 Ibid. For financial assets, compare Implementation Guidance 2: Value Chain, EFRAG, May 2024, paras. 100-103.
135 Compare also: Implementation Guidance 2: Value Chain, EFRAG, May 2024, para. 97.
136 See the definition of value chain in ESRS (ESRS Annex II, Table 2, p. 183), in combination with the definition of business model (p. 181)
137 Article 3(1)(g) CSDDD.
138 Compare, for example, Article 10 (1)(a), Article 10(2)(b), or Article 14 (2)(b) CSDDD.
139 See, ESRS, Annex II, Table 2, p. 158.

existence of a **linkage** to the company. As a result, business partners – direct or indirect – are only a subset of business relationships in the CSRD, in line with international due diligence standards.[140]

The third and most important way in which the CSDDD differs from the CSDDD as well as international due diligence standards is the exclusion of most **downstream** activities from the scope of due diligence. While the upstream categories listed in Article 3(1)(g)(i) of the CSDDD are of an illustrative nature, Article 3(1)(g)(ii) takes the opposite approach and lists some specific categories included in the chain of activities ("distribution, transport and storage").

Member States should address three significant **limitations** in the CSDDD's downstream coverage when transposing the Directive into national law:

- The exclusion of **disposal, sale and use of products** from the downstream chain of activities means numerous adverse impacts will remain unaddressed. However, companies will still be expected to be transparent about how they manage their impacts in these parts of their value chain under the CSRD. The fact that disposal and use are not covered presents an issue also for Member States responsibility. Indeed, this lacuna means that cleaning costs may be more likely to end up being borne by States or their local water and waste disposal authorities, thereby undermining the polluter pays principle.

The cost of cleaning up PFAS

The chemical industry is an illustrative example. While the impacts are not easy to quantify, some health-related costs for exposure to per- and polyfluoroalkyl substances ("PFAS") across Europe have been estimated at EUR 52-84 billion per year, for potential consequences such as liver damage, decreased fertility, and cancer. EUR 10-20 billion is a plausible figure for European environmental clean-up costs.[141] Claims have also been filed in respect of diminished property values because of the presence of PFAS in soil and water systems, and for the costs of remediating water and soil where PFAS have been detected.[142] Another example is how the plastics industry has created a widespread perception that its products can or will be recycled, thereby shifting the financial burden of waste management to local authorities, sub-contractors or waste collectors.[143]

- The narrow definition of the downstream chain of activities excludes **financial services** from the scope of the CSDDD when considered from the perspective of financial service providers (who are otherwise obliged to comply with the Directive).[144]

140 See UNGPs, commentary to Principle 13, p. 15 and OECD Guidelines, commentary on Chapter II: General Guidelines, para. 17.
141 PFAS are forever?, Corporate European Observatory, July 2023.
142 PFAS litigation risks mount as EU claims rise, Kennedys Law, November 2023.
143 The-Plastic-Recycling-Deception, Planet Tracker, April 2024.
144 See to this effect Recital 26 CSDDD, and Article 3(1)(a) CSDDD.

Regulated financial undertakings will only need to comply with due diligence obligations in their own operations and upstream value chains, leaving a gap in their downstream operations (their clients) which is particularly relevant for the financial sector as this is where most of their adverse impacts arise.

- By excluding their downstream activities, the financial sector is largely excluded from human rights and environmental due diligence obligations under the CSDDD, in clear conflict with international standards such as the UNGPs and the OECD Guidelines. The (positive or negative) impact of financial institutions on human rights and the environment through their financing, underwriting and advisory activities cannot be overstated.[145] By the same token, as the UN has recognised,[146] financial institutions wield unparalleled ability to influence companies to act responsibly and respect human rights and the environment. The UN has stated time and again[147] that, under existing human rights standards, all financial institutions are subject to human rights obligations just like any other business, and that carve-outs and exemptions for the sector are unjustified and damaging, stating recently that "all financial institutions, of every type, have the same responsibility to respect human rights, and creating carve outs or presumptions for the financial sector in the [then] draft Corporate Sustainability Due Diligence Directive would be inconsistent with international standards on business and human rights".[148]

- Finally, the additional requirement that the activities included in the definition of downstream chain of activities be performed **"for the company or on behalf of the company"** strongly deviates from the international standards. The way a company is involved in an adverse impact should be considered at a later stage when determining the appropriateness of measures taken. It is important to note that CSDDD does not use the word "indirect" to define this exclusion. Hence, the distinction to act "for the company or on behalf of the company" should not be interpreted as excluding indirect relationships from downstream distribution, transport and storage. Overall, these terms make the downstream definition very convoluted and unclear.

The table below summarises the types of relationships covered under the CSDDD as compared to the CSRD and international due diligence standards, as well as the areas of the value chain that are covered in the same instruments. While companies are expected to conduct due diligence on their own operations and those of their subsidiaries under all frameworks, requirements differ when it comes to business partners in the value chain.

145 See, for example, the Case Studies by Fair Finance International, which demonstrate the role of financial institutions in financing companies and projects causing human rights violations and environmental damage.

146 See para. 77 of the Human Rights Council Report: UN Guiding Principles at 10 - Taking stock of the first decade, April 2021.

147 See, for instance, the Office of the High Commissioner for Human Rights position on the financial sector.

148 Statement of the UN Working Group on Business and Human Rights on 'Financial Sector and the European Union Corporate Sustainability Due Diligence Directive', July 2023.

Table 8: Value chain coverage and terminology

<table>
<tr><th colspan="2">Due diligence should be exercised towards:</th><th colspan="2">Due diligence should be exercised in: (Value chain coverage)*</th></tr>
<tr><th>Business relationships (CSRD/UNGPs/OECD)</th><th>Business partners (CSDDD)</th><th>CSRD/ UNGPs/ OECD**</th><th>CSDDD</th></tr>
<tr><td>Business partners</td><td>Direct business partners</td><td rowspan="3">Along the entire value chain</td><td rowspan="2">In the chain of activities, which comprises:
• Entire upstream value chain
• Distribution, transport and storage “for the company or on behalf of the company” in the downstream value chain</td></tr>
<tr><td>Entities in the value chain</td><td>Indirect business partners</td></tr>
<tr><td>Other entities (non-commercial relationships)</td><td>NA</td><td>NA</td></tr>
</table>

* This table refers solely to value chain coverage and business relationships. In all cases, companies are required to perform due diligence on their own operations and those of their subsidiaries.

** The CSRD does not require companies to take action with regards to a company’s impacts, but the process to determine material information requires companies to identify and assess actual and potential impacts along the entire value chain.

Recommendations for transposition

To ensure that the CSDDD appropriately fulfils its objective of protecting human rights and the environment and aligns with international frameworks, Member States should consider the following in transposition:

- **Recommendation n°4: Bring the definition of downstream chain of activities in line with the CSRD and international standards by including all activities.** The CSDDD introduces an artificial and complex limitation of the value chain that prevents a truly risk-based approach. Any consideration of leverage has to be placed in the context of determining appropriate measures. With its limited downstream approach, the CSDDD takes a step backwards from the international practice of progressive companies.[149] In particular, Member States should consider adding the use and waste management of products and the provision of services among the downstream activities covered in their national legislations.

- **Recommendation n°5: Clarify the scope of downstream activities by deleting the requirement that they must be performed "for the company or on behalf of the company".** This strongly deviates from the international standards and introduces additional concepts for which no guidance is provided elsewhere in the Directive, seemingly with the intention to import proximity and leverage into the definition of value chain. However, both proximity and leverage are already included among the factors to be considered when determining appropriate measures under Articles 10(1) and 11(1), in line with international standards.

149 See for example Due diligence in the downstream value chain: case studies of current company practice, The Danish Institute for Human Rights, May 2024.

2. Due diligence on environmental impacts under the CSDDD

Companies are required to take appropriate due diligence steps as laid out in **Articles 7 to 16** of the CSDDD. The Omnibus I revisions made several substantive changes to these due diligence requirements – underlined below. The CSDDD now requires in-scope companies to:

(i) Integrate a due diligence policy into **company policies and risk management system.**

(ii) **Identify and assess** actual or potential negative impacts on human rights and the environment arising from their own operations, those of their subsidiaries and those of their business partners where related to their chain of activities.[150] <u>This includes: (a) scoping their own operations, those of their subsidiaries and those of their business partners where related to their chain of activities in order to identify general areas where adverse impacts are most likely to occur and to be most severe; and (b) an in-depth assessment based on this scoping (Article 8(2)). Article 8 now allows companies to exceptionally prioritise the in-depth assessment of relevant impacts that are linked to their direct business partners where the impacts identified under the scoping are "equally likely to occur or equally severe in several areas" (emphasis added); and it adds specifications to make requests for information to business partners more targeted.</u>

(iii) **Prioritise.** If necessary, the company should sequence its due diligence measures based on the severity of identified impacts (scale, scope, irremediability) and their likelihood. Article 9(4) now prevents supervisory authorities from penalising companies that have correctly prioritised and sequenced their actions in accordance with <u>Article 9, even where this results in less severe impacts not being addressed at an initial stage.</u>

(iv) **Take appropriate measures to prevent or mitigate** potential impacts and bring actual impacts to an end or at least minimise their extent, taking the level of involvement of the company in the adverse impacts into account (whether they caused or jointly caused the impacts, or they were caused only by the business partners in the chain of activities). <u>Termination of business relationships is no longer required as a last resort and Article 10 now only spells out requirements on responsible suspension.</u>

(v) **Remediate** harm the company has caused or caused jointly and consider voluntarily remediating harm caused only by a business partner.

(vi) **Monitor** progress and effectiveness of the due diligence policy and measures. <u>The periodic monitoring interval has been extended from twelve months to five years. Regardless of this interval, companies remain obliged to assess their measures if significant changes occur or new risks arise.</u>

(vii) **Communicate** through annual statements (for companies covered by CSRD, within CSRD reporting).

(viii) **Meaningfully engage with stakeholders** throughout most stages of the due diligence process. <u>The Omnibus I Directive removed two of these stages: stakeholder engagement in the context of responsible disengagement and in the development of indicators for monitoring purposes. The definition of stakeholders has also been narrowed and places greater focus on "directly affected" stakeholders.</u>

150 Article 4(6) Omnibus I Directive.

As noted above, Member States must not deviate from these provisions when transposing them into national law. The sections below discuss key concepts in the due diligence process: identification and assessment; prioritisation; appropriate measures; suspension and termination; a company's level of involvement in adverse impacts; stakeholders engagement; and reporting.

2.1. Identification and assessment of impacts

In line with international standards on due diligence, the CSDDD encourages a **risk-based** approach to due diligence.[151] This means that companies should focus their attention where it is actually needed. Companies should focus on the most severe and likely potential and adverse impacts in their value chains (or chain of activities), regardless of where they are in their value chain or how many "tiers" there may be.

The Omnibus I Directive keeps the **two-step approach** to identification, albeit clarifying and restricting the first step. In line with the OECD Guidelines, the first step is now called a **"scoping exercise".** Scoping essentially requires companies to look at their own operations and value chains in order to identify "general areas" of potential or actual negative impacts. The term "areas" is not limited to a geographical area and can also mean a specific segment of the value chain. Taking into account the new definition of risk factors (Article 3(1)(u)),[152] companies should consider sector and possibly product or service-specific risks, as well as risks related to the geography (country or region) of the business partner.

In practical terms, companies should gain an understanding of risks related to production countries, sourcing areas, and intermediate processing and manufacturing locations and operations.

The requirement to carry out **in-depth assessments** following the first step has not been substantially altered by the Omnibus I Directive. It is helpful to recall that in-depth assessments should enable companies to correctly prioritise identified impacts where needed and to develop appropriate measures to address them. It is therefore important, as spelled out in Recital 40 of the Omnibus I Directive, that companies obtain "accurate and reliable information, in particular about the nature and extent, causes, severity and likelihood of the identified adverse impacts".

Already at this initial stage, the assessment requires companies to go beyond desk research and engage with business partners across the value chain.

The Omnibus I Directive introduced stricter conditions on **information requests** by in-scope companies to their business partners. For the in-depth assessments, companies are required to make their requests more targeted, to base them on the knowledge gained during the scoping exercise, and to request information only where it is "necessary".[153] Where those requests concern business partners with less than 5,000 employees, they should reach out "only when the information cannot reasonably be obtained by other means" (see Section 2.2).[154]

The Omnibus I revision also introduced an additional specification on the assessment of impacts: Article 8(2)(c) allows companies to exceptionally **prioritise** the in-depth assessment of those potential and actual impacts that are linked to their **direct business partners** only where the potential and actual adverse impacts

151 Articles 5 and 7 CSDDD.
152 See Article 3(1)(u) CSDDD: "'risk factors' means facts, situations or circumstances that relate to the severity and likelihood of an adverse impact, including facts, situations or circumstances at the level of the business partner, such as whether the business partner is not a company covered by this Directive or other comparable mandatory sustainability due diligence legislation; at the level of geography and context, such as the level of law enforcement with respect to the type of adverse impact; and at the level of sectors, of business operations, and of products and service;".
153 Article 4 (6)(b) Omnibus I Directive.
154 Ibid.

identified under Article 8(2)(a) are "equally likely to occur or equally severe in several areas" (emphasis added). In practice, this still means that companies need to develop a thorough understanding of the potential and actual impacts beyond tier-one[155] business partners to be able to determine whether risk areas already identified through the scoping are indeed equally likely and severe at multiple points in their chain of activities.[156] Given the potentially different nature and significance of adverse impacts at different points in a chain of activities, it would seem difficult to demonstrate that potential or actual harms identified with direct business partners are equally severe or likely as those identified with indirect business partners.

Moreover, this prioritisation relates to the **sequencing** of the in-depth assessments – the prioritisation of mitigation and remediation measures must be done according to the severity and likelihood of the adverse impacts. In cases where companies can prioritise the in-depth assessment of tier-one business partners first, they must follow-up with an in-depth assessment of other severe and likely impacts further down their chain of activities before prioritising the adverse impacts to be addressed across their chain of activities. Recital 40 of the Omnibus I Directive must be interpreted in line with the CSDDD definition of "appropriate measures" (Article 3(1)(o)). Appropriateness is defined as being "capable of achieving the objectives of due diligence by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the adverse impact". The effective assessment of potential and actual negative impacts that are most severe and likely across a company's chain of activities is the essence of the identification and assessment exercise set out in Article 8.

Lastly, while due diligence is a continuous process, the Directive does not specify the **frequency** of the identification exercise. Established good practice suggests conducting an assessment when entering a new relationship or following every significant change in business partners, production locations or at product or service level, but in any event at least every two years.[157]

2.2. Limitations to B2B information requests under the CSRD and CSDDD

The Omnibus I Directive has recalibrated the rules governing sustainability-related information requests between companies, introducing two parallel regimes under the CSRD and the CSDDD. Understanding their scope, limits, and interaction is critical.[158]

2.2.1 The CSRD value chain cap

The revised CSRD introduces an information cap for undertakings with **fewer than 1,000 employees** ("protected undertakings").[159] Companies in scope of the CSRD may only require these partners to provide information **up to the level specified in the voluntary standard** for CSRD reporting purposes.[160] The voluntary standard is the reporting standard for all companies outside of CSRD scope.[161] Any request beyond that

155 Tier-one business partners are direct business partners in the value chain with whom the company has a direct relationship.
156 Even if Article 8(3)(c) allows for the prioritisation of the in-depth assessment at direct business partners under these specific circumstances, it seems difficult for companies to demonstrate that the potential or actual impact at tier-one level is equally severe and likely in several areas compared to impacts further down in the value chain. Companies need a thorough understanding beyond mere scoping to be able to make such an assessment.
157 Compare: BAFA, 2022: Identifying, weighting and prioritizing risks. Guidance on conducting a risk analysis as required by the German Supply Chain Due Diligence Act.
158 Compare also: B2B Information Requests Under the Revised CSRD and CSDDD, Frank Bold, July 2026.
159 During the previous financial year and based on a self-declaration.
160 Article 2(4)(b) Omnibus I Directive.
161 See Commission Adoption of Delegated regulation - C(2026)5011 and especially Annex - C(2026)5011. The voluntary standard is currently within legislative scrutiny period.

threshold triggers specific obligations: the requesting company must identify where its requirements go beyond the voluntary standard, inform the partner of its statutory right to refuse, and refrain from embedding such requests in contractual terms. Crucially, this cap applies **exclusively to CSRD reporting purposes.** It does not restrict requests for other regulatory purposes (e.g., CSDDD, prudential regulation, EU Taxonomy), voluntary data-sharing, or procurement criteria.[162]

Hence, data that is excluded by the voluntary standard (such as Scope 3 emissions, or climate risk exposure, pollution data, water withdrawals in water stressed areas, materials use, number of temporary agency workers or convictions for corruption and bribery) can still be requested and **shared voluntarily.**

2.2.2 Targeted information requests according to CSDDD

The CSDDD imposes its own, functionally different, limitations. Under **Article 8** of the CSDDD, identification and assessment of adverse impacts follows a two-step risk-based approach: (1) a scoping exercise using **reasonably available information,** during which direct requests to business partners should generally be avoided;[163] and (2) targeted in-depth assessments, where requests to partners with fewer than 5,000 employees must be **targeted, reasonable, proportionate,** and made only when information cannot reasonably be obtained by other means.[164] These conditions apply solely to the Article 8 identification and assessment phase, not to prevention, mitigation, remediation, or stakeholder engagement activities.

"Reasonably available information"

"Reasonably available information" that provides the basis for the scoping exercise is not comprehensively defined in the CSDDD. The OECD Due Diligence Guidance uses this phrase and defines it in practical terms: It entails desk-based research drawing on various sources, for example public reports (from UN organisations, media, civil society, government agencies, trade unions, business associations, National Human Rights Institutions, etc.), information obtained collaboratively in industry and multi-stakeholder initiatives; or information stemming from stakeholders directly, for example via complaint or grievance mechanisms and internal sources.[165] Companies should verify the accuracy and credibility of the information they use by verifying and considering the reliability of its source, by comparing information from different sources for consistency, and engaging with stakeholders to test and corroborate it.

Most importantly, the CSRD value chain cap mentioned above (see sub-section 2.2.1) does not constrain information requests made for due diligence purposes, and vice versa. A CSDDD in-depth assessment may legitimately require data **exceeding** the voluntary standard.

162 Recital 12 Omnibus I Directive.

163 Article 4(6) and Recital 39 Omnibus I Directive.

164 Article 4(6) and Recital 40 Omnibus I Directive.

165 OECD Due Diligence Guidance for Responsible Business Conduct ("OECD Guidance"), 2018, p.63.

Companies should integrate their reporting and due diligence workflows to avoid duplicative engagement and clearly frame each data request by its specific legal purpose to distinguish, for instance, between data collected for sustainability reporting, GHG management, risk assessment, or due diligence. Voluntary data-sharing arrangements with key suppliers remain a viable and needed strategy for maintaining necessary information flows while fully respecting both regimes.

Table 9: Interaction between the two regimes

	CSRD (Reporting)	CSDDD (Due Diligence)
Companies that need special treatment	Value chain partners with < 1,000 employees	Business partners with < 5,000 employees
Limitations	Information requests capped by the voluntary standard; statutory right to refuse additional information	All requests for the in-depth assessments must be targeted, reasonable, and proportionate; requests to companies with < 5,000 employees only when information cannot be obtained by other means
Scope of limitation	Only for CSRD reporting purposes	Only for Article 8 identification and assessment
Application	Spring 2027 (with adoption of the voluntary standard)	July 2029

The Commission's proposed voluntary standard[166] excludes critical data categories (Scope 3 emissions, climate risk exposure, pollution data, materials use) from the cap. This risks undermining the effectiveness of both due diligence screenings and voluntary sustainability efforts, and creates confusion particularly for financial institutions subject to independent prudential data-collection obligations. Less information will be "readily available" for companies to identify risk hotspots and prioritise suppliers, forcing them to seek data through alternative, possibly less efficient channels.

2.3. Prioritisation

Prioritisation is a key characteristic of a risk-based approach to due diligence. In line with the UNGPs and OECD, **Article 9** provides that where a company cannot prevent or address all the identified impacts at the same time and to the full extent, it should prioritise its response based on the **severity** and likelihood of impacts. The most severe and most likely impacts should be addressed with the highest priority.

Article 3(1)(v) clarifies that severity "means the scale, scope or irremediable character of the adverse impact, taking into account the gravity of an adverse impact, including the number of individuals that are or may be affected, the extent to which the environment

166 See Commission Adoption of Delegated regulation - C(2026)5011 and Annex - C(2026)5011. The voluntary standard is currently within legislative scrutiny period.

is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact within a reasonable period of time".

However, dealing with most severe impacts first does not imply that other impacts should not be addressed. Prioritisation is about **sequencing** a company's response in the event that all impacts cannot be addressed simultaneously. A company remains accountable for addressing all its actual and potential impacts. In that sense, Article 9(3) also specifies that "[o]nce the most severe and likely adverse impacts are addressed in reasonable time, the company should address less severe and less likely adverse impacts."

In line with international standards, severity is the predominant factor but the **likelihood,** or "probability" in the language of the UNGPs, may be relevant. Indeed, if an adverse impact is potential rather than actual, standard approaches to risk management suggest that the probability of it occurring becomes a primary factor, alongside its severity.

Importantly, Recital 44 of the CSDDD makes clear that the level of involvement of the company in the adverse impact, the company's influence on (actual or potential) impacts or its proximity to its business partners should not factor into the prioritisation of impacts per se. It is only when designing the "appropriate measures" to address impacts, that companies should factor in the capability of "achieving the objectives" (Article 3(1)(o)).

The Omnibus I Directive introduced new paragraph (4) into Article 9, which prevents supervisory authorities from penalising companies that have correctly prioritised adverse impacts and sequenced their actions in accordance with Article 9, even where this results in less severe impacts not being addressed at an initial stage. Conversely, companies may be subject to **sanctions for incorrect prioritisation,** for example when assessments are based on the company's own leverage rather than on the likelihood and severity of the adverse impact, or where less severe impacts are addressed first. Liability may also still arise where such incorrect prioritisation leads to harm.

Moreover, paragraph 9(4) clarifies that companies might have identified more likely and severe impacts than they can manage to address at once. In such cases, they should still correctly identify those impacts and communicate how they are sequencing the actions taken in line with Article 9. In other words, they should not exclude or conceal adverse impacts solely because they are not immediately able to address them.

2.4. Appropriate measures

The other key characteristic of a risk-based approach to due diligence concerns the requirement for companies to take appropriate measures to fulfil their due diligence. **Articles 10(1) and 11(1)** clarify that to determine appropriate measures, companies must take into account: (a) the level of involvement of the company in the adverse impact, (b) whether it may occur or has occurred in the operations of a subsidiary, direct business partner or indirect business partner, and (c) the company's leverage or ability to influence the business partner that is causing or contributing to the impact.

Articles 10(2) and Article 11(2) set out the actions companies should be required to take for addressing their potential and actual adverse impacts, including:

- **develop and implement a preventive or corrective action plan;**
- **seek to obtain contractual assurances** that are designed to ensure that the responsibilities are shaped appropriately by the company and the business partners; make financial or non-financial investments adjustments or upgrades;
- **adapt business plans,** overall strategies and operations, including purchasing practices;
- and **make necessary modifications of, or improvements** to their design and distribution practices.

The United Nations Development Programme ("UNDP") and United Nations Working Group ("UNWG") on Business and Human Rights list a number of practical examples of appropriate measures to prevent and address land, air and water pollution, climate change and biodiversity loss.[167] These should inform the appropriate measures required under national legislation and internal corporate risk management procedures.

167 See the UNDP and UNWG Human Rights Due Diligence and the Environment: A practical Tool for Business, 2024, Box 13, p. 73.

2.5. Suspension and termination

Articles 10(6) and 11(7) require companies to take several actions where an adverse impact could not be prevented, mitigated, brought to an end or minimised through appropriate due diligence measures. They should:

- refrain from entering into new or extending existing relations with this business partner in connection with which, or in the chain of activities of which, the impact has arisen (Article 10(6) and Article 11(7));
- use or increase their leverage through the suspension of the business relationship with respect to the activities concerned if: (1) suspending the business relationship would not be manifestly more harmful than staying engaged with the business partner in question, (2) they adopt and implement an enhanced prevention or corrective action plan for the specific adverse impact, (3) there is a reasonable expectation that its efforts will succeed, (4) they take steps to address the impacts of the suspension, and (5) the law governing its relation with the business partner concerned so entitles it.

Prior to the Omnibus I revision, Articles 10 and 11 spelled out detailed requirements on both suspension and responsible termination of a business relationship. The Omnibus I Directive removed the requirement for termination as a last resort. There are several consequences of this change.

Responsible suspension (or not entering into new relations) should continue to be understood as a measure of last resort. At the same time, suspension remains an important tool for building or increasing leverage over a business partner. However, in the absence of a clear obligation to disengage where suspension does not lead to meaningful improvement, that leverage may be less effective in certain situations. Articles 10(6) and 11(7) nevertheless reaffirm that using or increasing its leverage to effectively address identified impacts is one main reason for a company to suspend a business relationship (Article 10(6)(b)).

Companies must still adopt and implement an **enhanced prevention action plan,** or an enhanced **corrective action plan** when suspending a business relationship, albeit with less detailed requirements attached to each. In practice, however, there are situations in which such action plans are unlikely to lead to meaningful improvements, such as in situations of state-imposed forced labour or armed conflicts.

With the removal of provisions on responsible disengagement, the CSDDD is now silent on how **responsible disengagement** should be carried out. This effectively leaves companies reliant on existing international standards for guidance.[168] Companies will also, in practice, continue to terminate contracts, and it is regrettable that the CSDDD no longer sets out clear requirements for doing so responsibly.

Moreover, the Omnibus I Directive introduced an additional and problematic **exclusion from penalties and liability** where an enhanced prevention action plan or enhanced corrective action plan is adopted. Article 10(6), with a similar provision in Article 11(7), provides that where "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 expose the company to penalties pursuant to Article 27 or to liability under Article 29".

Importantly, "reasonable expectation" does not mean merely wishful thinking and implies a standard of objectivity based on a fair assessment of the circumstances and all the information available to the company at the time. It is a standard that allows for judicial scrutiny.

Expectations can also change as circumstances change or new information becomes available. If a once

168 See "disengagement" in: UNGPs, p.22; OECD Guidelines, Commentary on Chapter II: General Policies No. 25, as well as OECD Guidance, 2018, p.30.

reasonable expectation can no longer be considered reasonable, the continued engagement with the business partner may expose the company to penalties and liability. However, in the absence of a corresponding obligation to terminate the relationship, companies will need to manage the legal, operational and financial risks associated with the potential liability of ongoing engagement within the terms of their business relationship. They may still seek to increase leverage by making clear to business partners that failure to implement corrective action plans could expose the company itself to penalties and liability, thereby incentivising compliance.

Member States should clarify that the exemption from penalties and liability under Articles 10(6) and 11(7) constitutes an exception that must be interpreted strictly. A "reasonable expectation" of success should be established only on the basis of verifiable and documented evidence demonstrating that the enhanced prevention or corrective action plan is capable of preventing, mitigating or bringing the adverse impact to an end within a reasonable timeframe. The mere existence of a plan or commitments by a business partner should not suffice.

Companies should therefore carefully document their efforts to increase leverage and exercise particular caution when assessing whether an enhanced prevention/corrective action plan is realistically capable of preventing, mitigating or bringing the adverse impact to an end, and review this assessment as circumstances change.

The general safeguards attached to suspension otherwise remain unchanged from the original CSDDD: companies must assess when a suspension has more severe consequences than continuing the relationship, they must give reasonable notice and monitor the impacts to reassess their decision over time.

2.6. Involvement framework

According to **Articles 8, 10, 11 and 12**, different types of involvement in adverse human rights and environmental impacts require different responses.[169] This is known in CSDDD as the "level of involvement", in line with international standards, and determines what action the company is required to take to address the impact. To avoid confusion with existing terms in certain national laws, the CSDDD uses different terminology than the international standards but clarifies that the content of the categories is the same.[170] Therefore, the levels of involvement under the CSDDD correspond to the following categories:

- **Causation:** "caused only by the company". The company's actions or omissions are sufficient to result in adverse impacts.[171] This is known as "causation" under the UN and OECD standards.

- **Joint causation:** "caused jointly by the company and a subsidiary or business partner". The company's actions or omissions cause the impact in combination with those of other entities, or cause, facilitate or incentivise other entities to cause the impact.[172] This is not limited to equal causation. All actions or omissions that cause an impact in combination with the acts or omissions of others constitute joint causation, and a company may cause an impact jointly with an indirect business partner.[173] Such a situation is referred to as "contribution" under the UN and OECD standards.

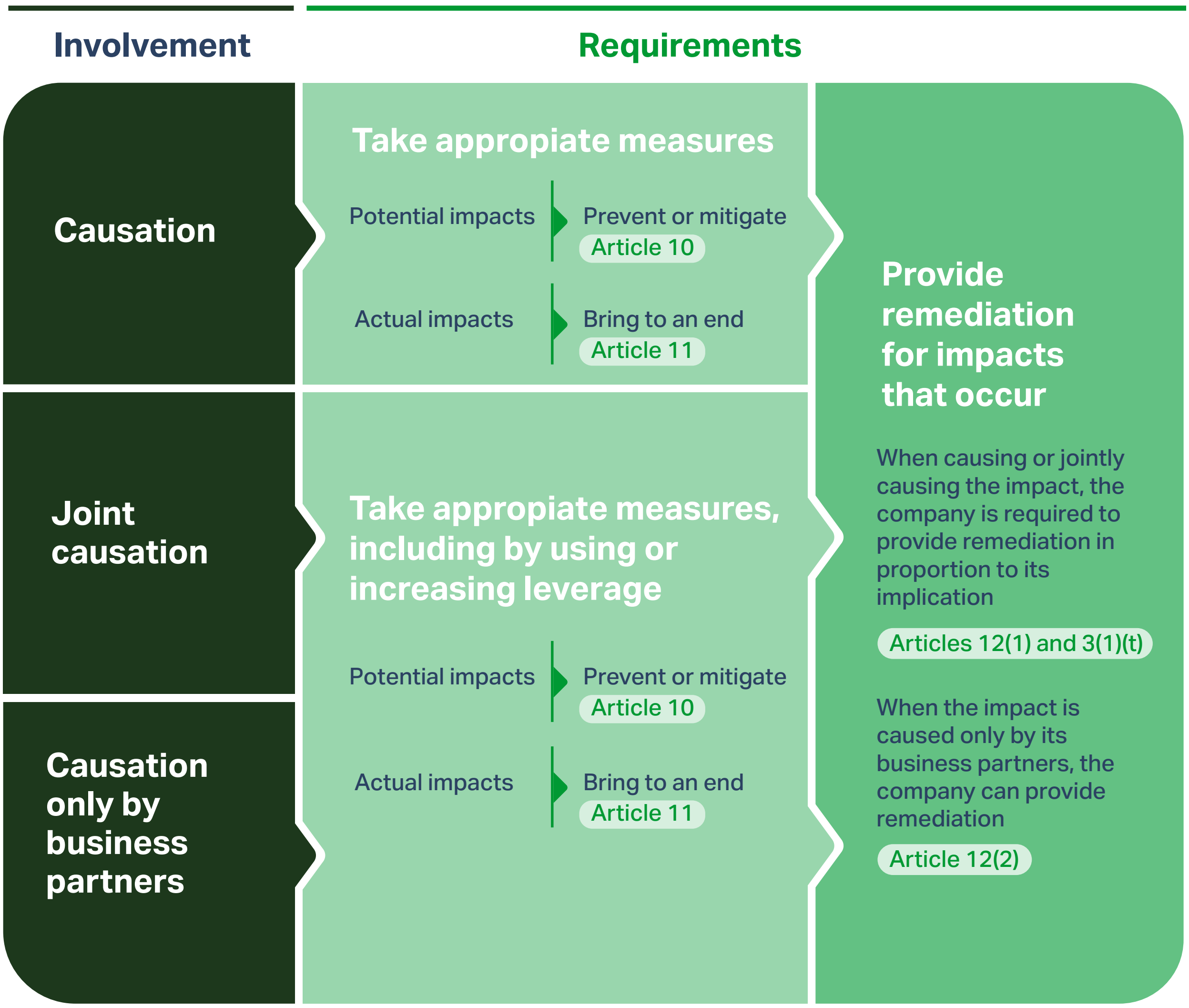
- **Direct link:** "caused only by a business partner in the chain of activities". The adverse impact is related to the company's operations, products or services by a business relationship.[174] Known as

169 See also Recitals 45 and 53 CSDDD.
170 Recital 45 CSDDD.
171 UNGP Interpretive Guide, p.15; OECD Guidance, 2018, p. 70.
172 Ibid.
173 CSDDD Recital 45.
174 UNGP Interpretive Guide, p. 15; OECD Guidelines, Commentary on Chapter II, para. 16, p. 17.

"direct linkage" in the UN and OECD standards. Importantly, a company can move from being directly linked to an adverse human rights impact to contributing to ("causing jointly" in CSDDD) that impact if it does not take action to prevent or mitigate it, including by undertaking human rights due diligence.[175]

The level of involvement with the impact determines the level of responsibility for addressing it (what outcome the company should pursue). Meanwhile, aspects pertaining to the relationship to the business partner – such as a business partner's proximity to the company or the influence wielded over a business partner – are relevant when determining how a company should discharge that responsibility (what measures a company is expected to take when working towards the pursued outcome).[176] Figure 1 below illustrates the relationship between the level of involvement and requirements under the CSDDD.

Figure 1: Level of involvement and associated requirements under CSDDD



175 See UN Special Rapporteurs Communications to Saudi Arabia, Japan, France, USA, and the UK, and 13 financial institutions concerning Saudi Aramco's business activities in the fossil fuel sector, June 2023.
176 See, to this effect, Articles 10(1) and 11(1) CSDDD.

2.7. Stakeholder engagement

Meaningful stakeholder engagement is a crucial element of effective human rights and environmental due diligence. Under the original CSDDD, the concept of stakeholders was defined broadly, with a particular focus on affected stakeholders (Article 3(1)(n) and Recital 65). By contrast, the Omnibus I revision narrowed the definition of stakeholders and excludes consumers, national human rights and environmental institutions as well as civil society organisations. As a result, the revised framework places greater focus on **"directly affected" stakeholders** (see also Recital 45 of the Omnibus I Directive). Although the revised definition lists certain categories of stakeholders, the notion of individuals who are directly affected is non-exhaustive and should be interpreted to also include, for example, informal or home-based workers in the value chain that can potentially be directly affected by adverse impacts.

The UN Guiding Principles and the OECD Guidelines consider stakeholder engagement as an **ongoing process** throughout the due diligence cycle. This involves establishing a meaningful dialogue and ensuring the quality, accessibility, and continuity of such exchanges. The CSDDD reflects this approach and specifies in Article 13(3) several stages when stakeholder engagement is required, although these were reduced from five to three by the Omnibus I Directive, which removed stakeholder engagement in the context of responsible disengagement, and in the development of indicators for monitoring purposes.

Stakeholder engagement means drawing on **external expertise,** including local experts, trade unions, and community-based groups, and especially those rights-holders who are directly affected as their lives and livelihoods depend on the land, water, air (e.g., being and/or working outside), climate (e.g., being/working outside or inside with no cooling systems), and biodiversity, as well those who are entitled to the lands, territories, and resources (with or without official titles), in the geographical locations of a company's own activities and in the chain of activities. National human rights and environmental institutions as well as civil society organisations can still serve as important proxies and can allow companies to identify the directly affected stakeholders.

From an environmental perspective, it is important to consult (potentially) affected stakeholders located within the full extent of areas (potentially) affected by adverse impacts from land, water, or air pollution, (mal) adaptation to climate change, and biodiversity loss. This engagement may help companies to verify and complement quantitative scientific data with qualitative data on lived experiences.[177]

When it is impossible to directly consult (potentially) affected stakeholders (for instance such engagement endangers the stakeholders' security), companies should consult experts that can provide credible insights into the potential or actual impacts.[178]

2.8. Communication – reporting under the CSRD

In essence, communication is a crucial component of the due diligence process, as it enables the company to build trust, demonstrate good faith, and provide transparency around its actions and decisions. It is essential for the company to account for how it identifies and addresses actual or potential adverse impacts, and to communicate this information accordingly. The company should ensure that the communicated information is accessible and sufficient for the intended audiences, such as stakeholders, investors, and consumers. **Article 16(1)** sets out the obligation to report annually on the "matters covered by this Directive" and refers to the ESRS for specifying this obligation.

Article 16(2) exempts those companies covered by the CSRD from reporting under the CSDDD, which is the majority of all companies in scope. For non-CSRD companies, the CSDDD establishes that the Commission shall adopt a delegated act specifying the "content

177 See notably on this Human Rights Due Diligence and the Environment: A practical Tool for Business, op. cit., p. 34-36.
178 Article 13(4) CSDDD.

and criteria" of reporting and that this should include "sufficiently detailed information on the description of due diligence, actual and potential adverse impacts identified, and appropriate measures taken with respect to those impacts".[179]

Thus, generally speaking, companies must report on their implementation of the CSDDD via the sustainability reporting as set out by the CSRD disclosures.[180] There is no duplication of reporting requirements. Analysis shows that the vast majority of disclosures that would be relevant for the CSDDD can be fitted into the CSRD disclosure requirements.[181] However, companies must disclose in a sufficient level of detail: Recital 63 asks for information on how companies implement their due diligence as per the CSDDD, therefore blanket references would be insufficient.

Recommendations for transposition

To ensure that the CSDDD appropriately fulfils its objective of protecting human rights and the environment and aligns with international frameworks, Member States should consider the following in transposition:

- **Recommendation n°6: Complement the duty to responsible suspension by reinserting a duty to terminate a business relationship responsibly** in line with the international standards and as a last resort. This part of the Article is not under maximum harmonisation.
- **Recommendation n°7: In line with the international standards, reintroduce stakeholder engagement when suspending (or terminating) a business relationship** to allow for effective monitoring of corrective action measures taken – which is hardly possible without engaging relevant stakeholders

179 Article 16(3) CSDDD.
180 See also Recital 63 CSDDD.
181 Corporate environmental reporting: Compatibility of Due Diligence laws and the European Sustainability Reporting Standards (ESRS), German Environment Agency, April 2024.

D Climate transition plans

Climate transition plans are a key tool through which companies set their strategies and actions to decarbonise in line with the 1.5°C temperature goal and the objective of climate neutrality.

Building on voluntary international and market-based standards, the EU has progressively introduced climate transition planning requirements across various regulatory regimes.[182] Prior to the Omnibus I revision, and beyond sector-specific obligations, the combined framework of the CSRD and the original CSDDD established a horizontal regime mandating companies not only to disclose, but also to substantively engage in climate transition planning. **Article 22** of the original CSDDD required companies to adopt and use their best efforts to implement a climate transition plan setting to adapt their strategy and operations and reduce their GHG emissions consistently with the 1.5°C temperature goal set out in the Paris Agreement.

This section examines the consequences of removing Article 22 and analyses the resulting gaps and fragmentation in the EU regulatory landscape **(Section 1)**. It then turns to the CSRD and revised ESRS as the remaining framework for company-level climate transition plan disclosures, assessing both the key elements on which companies must report **(Section 2)**. Some concluding comments are given on how climate impacts nevertheless remain relevant for the environmental due diligence required under the CSDDD as amended by the Omnibus **(Section 3).**

1. Consequences of the deletion of the CSDDD transition plan obligation

In the course of the Omnibus I negotiations, Article 22 faced considerable opposition, driven in particular by foreign governments[183] and industry stakeholders from the fossil fuel sector. The latter mounted intensive lobbying efforts to protect private interests and business models dependent on the production and sale of oil and gas.[184] This position found support among a majority of far-right and right parties in the European Parliament, ultimately resulting in the complete deletion of the climate transition plan obligation from the CSDDD. Recital 47 of the Omnibus I Directive justifies this deletion on grounds of preventing disproportionate burdens and legal uncertainty for companies.

In practice, however, the removal of Article 22 created gaps in the EU climate framework by contributing to an increasingly **fragmented landscape** of climate-related obligations for companies.[185] Concretely, conduct requirements to take measures to reduce the overall climate impacts of a business are not specified anymore. Some companies will remain bound to climate transition planning under sector-specific regulations, disclosure duties, and evolving standards established by courts under various longstanding laws, including tort law. Given the increasing willingness of courts to scrutinise

182 See Sustainability Legislation: A guide to obligations, implementation and interoperability for businesses, Frank Bold, May 2025.

183 See, for instance, U.S. Energy Secretary and Qatari Energy Minister Letter to EU Regarding Proposed Corporate Climate Regulations, October 2025.

184 How Big Oil kills sustainability and climate legislation, SOMO, October 2025 and The secretive cabal of US polluters that is rewriting the EU's human rights and climate law, SOMO, December 2025.

185 See Legal Scholars: Abandoning Article 22 CSDDD Risks Policy Incoherence and Litigation Risk, November 2025; Tim Bleeker, Corporate Climate Transition Planning after the Omnibus Overhaul A Six-Question Guide, October 2025; Federica Agostini and Nicolò Galasso, "Transition Plans Are Dead, Long Live Transition Plans?": The Rise, Fall and Persistence of Climate Transition Plans in the EU, June 2026.

corporate climate inaction[186] and the integrity of climate transition claims,[187] this patchwork of different requirements is likely to increase rather than reduce exposure to liability and climate-related litigation. Article 22 addressed this fragmentation by providing a single, cogent, EU-wide standard. Its removal has therefore complicated, rather than simplified, both the applicable legal requirements and companies' exposure to legal risk.

Moreover, deleting mandatory climate transition plans directly undermines the CSDDD's stated objectives of supporting the **energy transition** and contributing to achieving international and European **climate objectives.**[188] The removal of climate transition planning also runs counter to EU Member States' obligations under international law to regulate private actors in a manner capable of reducing greenhouse gases emissions, as recently clarified by the International Court of Justice.[189] Current policies of most states are inadequate to achieve the 1.5 degree target (see also Figure 2). The deletion of Article 22 arguably undermines the EU's and its Member States' ability to meet their existing obligations under international law, including their emission reduction targets,[190] which may increase States' exposure to climate-related litigation and prolong reliance on fossil fuels, to the detriment of energy security and independence.

186 See, among others, the Hague Court of Appeal, Shell Plc v. Stitching Milieudefensie and Others, Judgment of 12 November. 2024, in which the Court confirmed that Shell is subject to an independent duty of care to mitigate its GHG emissions in line with the Paris Agreement.

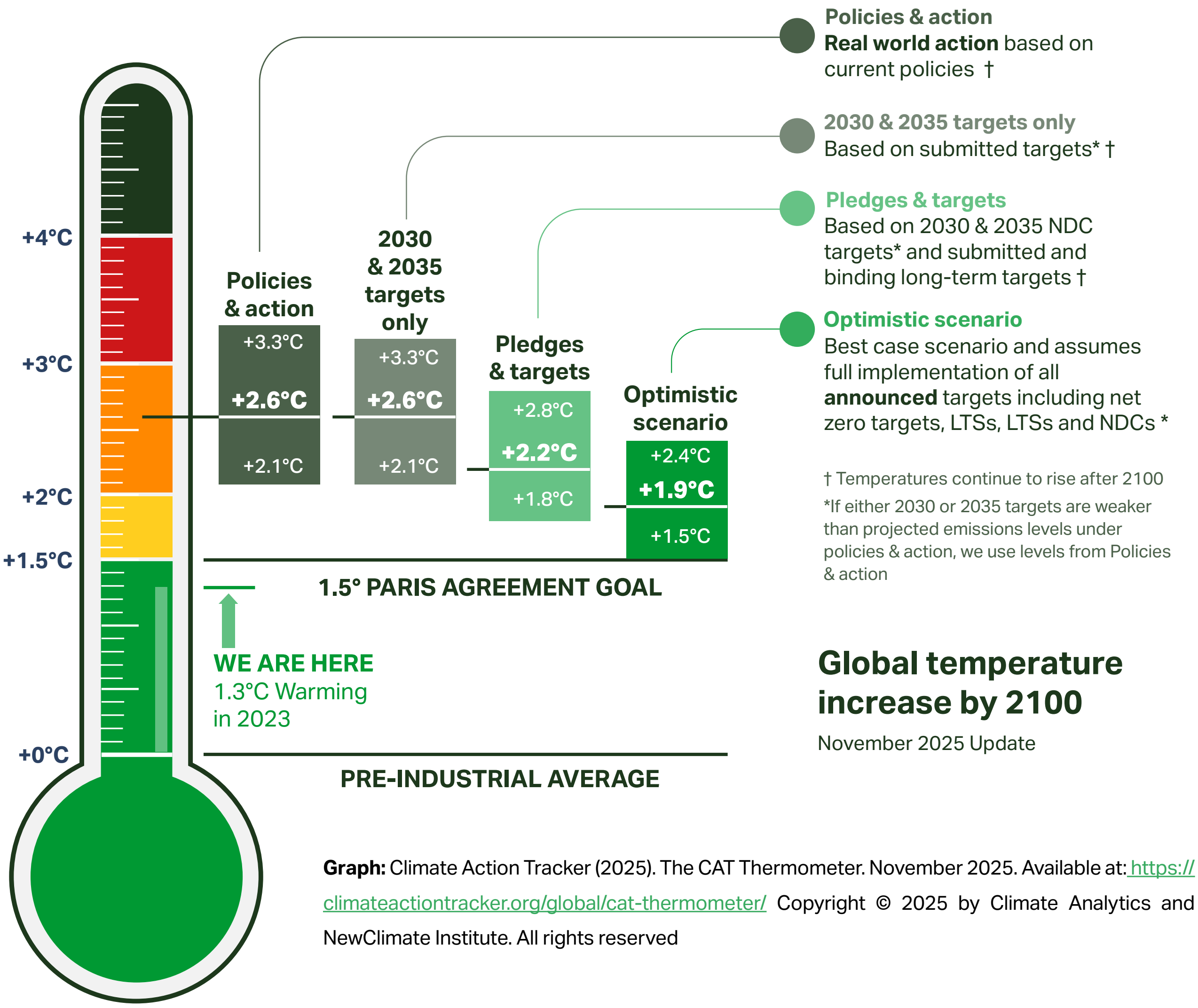
187 Tribunal Judiciaire de Paris, 34ème chambre, Greenpeace and Others v. TotalEnergies, Judgment of 23 October 2025, N°RG 22/02955, in which the Court found that TotalEnergies was responsible for misleading commercial practices due to its claims of achieving climate neutrality by 2050 and its contribution to the energy transition.

188 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law), Articles 2 and 4.

189 ICJ, Advisory Opinion on the obligations of states in respect of climate change, op.cit., paras. 95, 252, 282, 427 and 428. See also The Omnibus I Negotiations in light of the ICJ Advisory Opinion on Climate Change, ClientEarth and others, October 2025.

190 European Climate Law, Articles 2 and 4.

Figure 2: **Projected temperature increases according to existing government policies and commitments**



Graph: Climate Action Tracker (2025). The CAT Thermometer. November 2025. Available at: https://climateactiontracker.org/global/cat-thermometer/ Copyright © 2025 by Climate Analytics and NewClimate Institute. All rights reserved

2. Reporting on climate transition plans

Several EU laws include corporate GHG emission accounting and transition planning obligations, albeit differing in scope, methodology, and purpose. These **different obligations** are meant to achieve different outcomes. It is therefore too simplistic to say that there are too many climate transition plan requirements in EU law. The CSRD and the original CSDDD, as well as sustainable finance legislation, addressed climate transition planning as a central part of responsible business strategy and risk management,[191] whereas the EU Carbon Border Adjustment Mechanism (CBAM) requirements are product-based and Industrial Emissions Directive (IED) is addressing the installation level.

191 Compare references in CSRD, ESRS and SFDR, as well as in Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks ("Capital Requirements Directive"), and agreed amendments to Directive 2009/138/EC (the Solvency II Directive, on the taking-up and pursuit of the business of Insurance and Reinsurance).

The **CBAM** requires product-level embedded emissions calculations pursuant to its specific methodologies, while the **IED** focuses on installation-level emissions for permitting and regulatory control purposes. Neither the CBAM nor the IED obligations substitute for CSRD/ESRS disclosure requirements, though overlaps exist, particularly with EU ETS climate neutrality plans, which cover only Scope 1 emissions at installation level and serve as a basis for broader corporate-level CSRD climate transition plans.

Separately, the IED requires operators of energy-intensive installations to develop climate transformation plans by 30 June 2030, setting out a 2030–2050 transition strategy towards a climate-neutral, circular, and resource-efficient economy. These plans are broader in scope than ETS climate neutrality plans, as they also encompass circular economy and resource efficiency objectives. However, the Commission's Environmental Omnibus VIII Proposal seeks to repeal this requirement.[192] Since this repeal has not yet been adopted and remains subject to potential changes, the IED transformation plan obligations currently remain legally relevant and may serve as complementary building blocks for CSRD/ESRS climate transition plan disclosures.

The Omnibus I Directive introduced significant changes to this landscape. Most notably, it withdrew the obligation under the CSDDD for in-scope companies to adopt and put into effect a climate transition plan, although the CSRD/ESRS transparency obligations on climate transition plans remain intact for a broader group of companies. Additionally, the Omnibus I Directive modified GHG emission accounting rules under the CBAM, while leaving the IED requirements unchanged.

The CSRD and revised ESRS provide the **central reference** to company-level climate transitions plans in the EU. Companies for which climate change is material must calculate their GHG emissions, including material Scope 3 categories, and disclose their climate transition plan if one has been adopted. When a company adopts a climate transition plan, it should make sure that all relevant categories of reported GHG emissions (i.e. across Scope 1, 2, and 3) are covered, with corresponding targets and actions. Under the ESRS, companies need to report on the following key elements of a climate transition plan:[193]

(1) decarbonisation targets and key levers,

(2) assessment of locked-in emissions and any external factor that could jeopardise the achievement of their climate targets, and

(3) the financial resources allocated or planned to support such implementation.

The Omnibus I Directive did not change the CSRD or ESRS requirements for climate transition plans. However, the EU Commission's draft Delegated Regulation to adopt the revised ESRS proposes concerning changes to climate-related disclosures, particularly regarding how companies calculate their greenhouse gas emissions.[194] By allowing companies to choose between three GHG accounting Protocols (financial control, operational control, and equity share) without any required justification or reconciliation, the draft Delegated Act risks **undermining comparability** across key climate metrics. EFRAG's technical advice in November 2025 limited the choice to financial and operational control, subject to clear criteria. The Commission's proposal increases risk and difficulty for users to compare corporate GHG footprints across the EU market, and creates loopholes that enable companies to report artificially lower climate impacts. Worryingly, the Corporate Standard Technical Working Group currently revising the GHG Protocol published in December 2025 a progress update recommending aligning with the flawed approach.[195]

192 Compare Directive (EU) 2024/1785 (Industrial Emissions Directive (2.0)); European Commission proposal for a Directive amending Directives 2008/98/EC, 2010/75/EU, (EU) 2015/2193 and (EU) 2024/1785; Regulation (EU) 2024/1244 (Industrial Emissions Portal Regulation (IEPR)); European Commission proposal for a Regulation amending Regulation (EU) 2023/1542 and Regulation (EU) 2024/1244.
193 See ESRS E1, para. 12.
194 Compare ESRS E1, AR 19 for para. 30.
195 Corporate Standard Revisions, Phase 1 Progress Update, Greenhouse Gas Protocol, December 2025.

The European Central Bank (ECB) has raised **concerns** about exemptions in the revised ESRS that allow financial institutions to omit absolute GHG reduction targets, as well as the removal of mandatory climate scenario analysis, which diverges from both industry standards and the international IFRS/ISSB reporting framework.[196] Both the ECB and the European Securities and Markets Authority (ESMA) also noted this inconsistent approach to climate scenario analysis, as well as its limitation to qualitative data, with regret.[197]

A second concern relates to climate transition plans. The revised ESRS allow companies to set targets that are not aligned with the 1.5°C Paris Agreement goal, as long as they explain how their targets compare to the 1.5°C pathway.[198] This unjustifiably flexible approach creates a real risk of **greenwashing,** as the current wording could give the impression of climate credibility where none exists. Given the trajectory of increasingly rigorous State obligations to orchestrate the corporate climate transition, the Commission should have instead strengthened the requirements so that companies must explain why their current plan falls short of the Paris objective and how they intend to develop a credible transition plan that remedies that shortfall.

3. Commentary

The CSDDD's due diligence framework has direct and underappreciated implications for corporate climate action that remain notwithstanding the deletion of Article 22. As discussed in Section B above, GHG emissions constitute adverse environmental impacts falling squarely within the scope of the CSDDD's due diligence obligations. Companies are therefore required, under Articles 10 and 11, to take appropriate measures to prevent, mitigate, bring to an end, or minimise their GHG emissions as part of their due diligence obligations. In practice, this obligation cannot be meaningfully discharged without establishing a comprehensive inventory of GHG emissions across the value chain (covering Scope 1, 2, and Scope 3 emissions). This approach is consistent with the OECD Guidelines[199] and the UN Working Group's guidance on business and human rights in the context of climate change,[200] both of which identify GHG emission reductions as a core component of the appropriate measures companies are expected to take to address their climate-related impacts. The ICJ's Advisory Opinion of July 2025 also reinforced this interpretation by confirming that States must ensure that private actors take effective steps to reduce emissions in line with international climate goals.

Against this background, the adoption and implementation of a climate transition plan should not be seen merely as a voluntary governance tool or a disclosure obligation under the CSRD: it represents, in substance, the most coherent and operationally credible form of the "appropriate measures"[201] that due diligence requires in response to the adverse impacts arising from a company's GHG emissions. Target setting, the identification of decarbonisation levers, the allocation of financial resources, and the articulation of a trajectory towards climate neutrality, in other words, the very elements that the ESRS require companies to disclose when a climate transition plan has been adopted, are the natural outputs of a rigorous climate due diligence process. The CSRD's disclosure requirements thus serve as an important accountability mechanism, ensuring that companies demonstrate how their transition planning translates into concrete action (compare also Figure 3 on the mapping of targets and decarbonisation levers).

196 ECB staff opinion on the revised European Sustainability Reporting Standards (ESRS), ECB, February 2026).

197 Opinion on EFRAG's technical advice on revised European Sustainability Reporting Standards (ESRS), ESMA, February 2026.

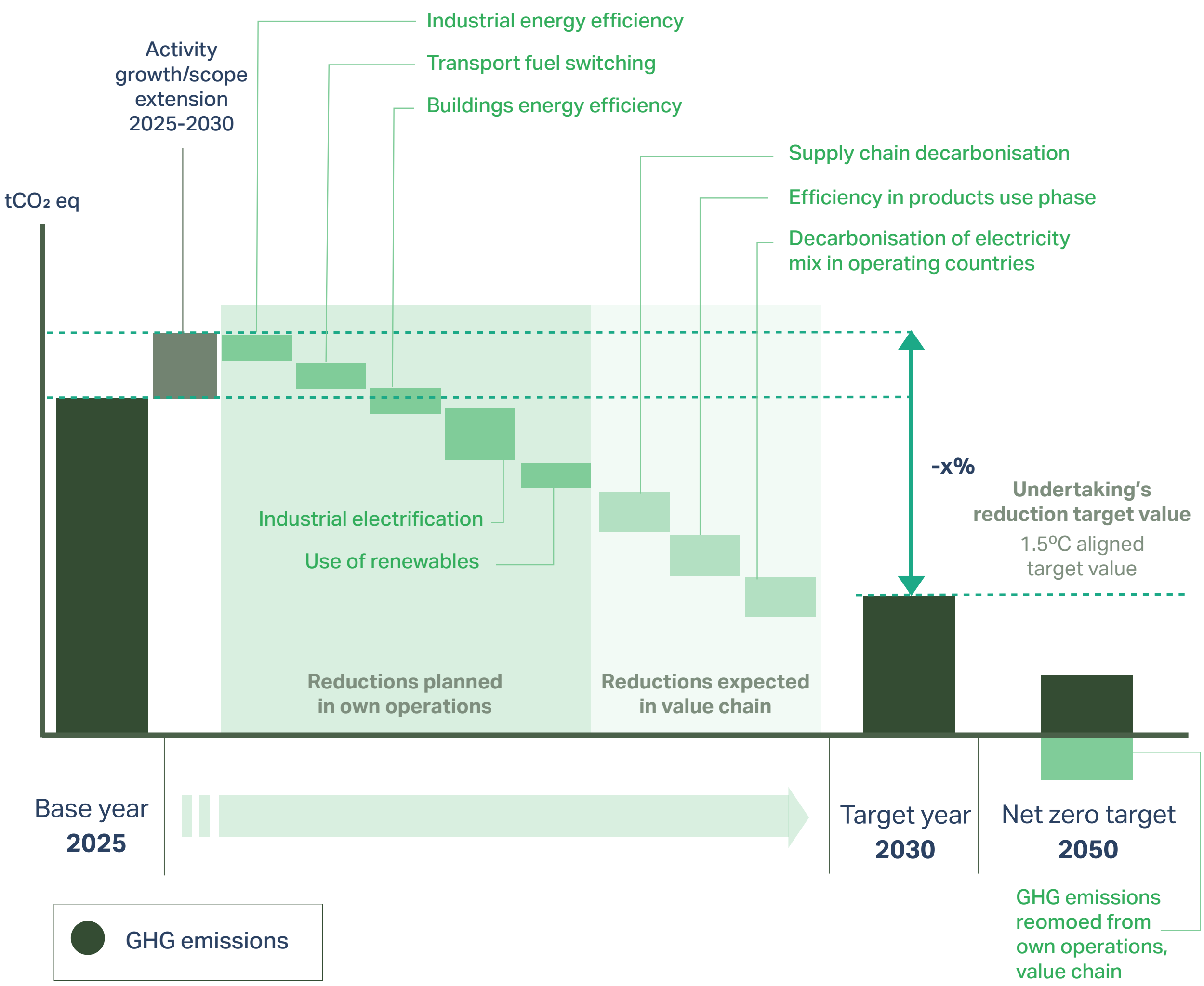
198 Compare: ESRS E1, AR 2 for para.12(a).

199 OECD Guidelines, Chapter VI, p. 33.

200 OHCHR, Working Group on the issue of human rights and transnational corporations and other business enterprises (June 2023), Information Note on Climate Change and the Guiding Principles on Business and Human Rights.

201 Article 3(1)(o) CSDDD.

Figure 3: **Example of mapping the pathway for targets and decarbonisation levers**



Source: Based on: Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/ EU of the European Parliament and of the Council as regards sustainability reporting standards, ESRS E1 AR 31.

Recommendations for transposition

To ensure that the CSDDD appropriately fulfils its objective of protecting human rights and the environment and aligns with international frameworks, Member States should consider the following in transposition:

- **Recommendation n°8:** Reintegrate the obligation to adopt and make best efforts to implement a climate transition plan that is consistent with the existing EU climate framework, the Paris Agreement 1.5 degree target and the EU climate neutrality objective.

Part II
Enforcement

The establishment of robust and comprehensive national enforcement change in architectures is a precondition for the effective enforcement of any law. The CSDDD provides for two complementary enforcement mechanisms: national supervisory authorities will oversee the implementation by companies of all due diligence steps (public enforcement); and companies may be found liable under civil law for damage arising from the failure to take appropriate measures to address actual or potential impacts (private enforcement). To promote compliance by companies, ensure the achievement of the Directive's change in objectives, and secure access to remedy for victims of human rights abuses and environmental harms, Member States should carefully consider the transposition of provisions regarding both public and private enforcement mechanisms.

E Administrative supervisory authorities

Given the ultimately ex post nature of civil liability, it is essential that supervisory authorities take a broad and proactive approach to public enforcement. Such an approach will ensure that the Directive fulfils its objective of preventing environmental degradation and contributing to more sustainable business practices. The sections below unpack the different requirements Member States must meet to comply with their obligations under Articles 24 to 27 of the CSDDD.

1. Designation of supervisory authorities

Article 24 of the CSDDD creates a legal obligation on Member States to designate one or more authorities in charge of monitoring compliance with the obligations laid down in national provisions adopted pursuant to Articles 7 to 16 (due diligence). Member States must inform the Commission of the names and contact details of their supervisory authorities by 26 July 2028.[202] The Commission will publish a list of supervisory authorities on its website.

The competent authority that is responsible to supervise an **EU company** shall be that of the Member State in which the company has its registered office.[203] In the case of a **non-EU company**, it will be that of the Member State in which that company has a branch or, if it does not have a branch or has branches in several Member States, where the company generated most of its net turnover.[204]

When a **parent company** fulfils the obligations resulting from this Directive on behalf of its subsidiaries in accordance with Article 6, the competent supervisory authority of the parent company shall cooperate with the one competent for supervising the subsidiary's compliance with its obligations.[205]

202 Article 24(7) CSDDD.
203 Article 24(2) CSDDD.
204 Article 24(3) CSDDD.
205 Article 24(4) CSDDD.

2. Functional and institutional independence

Article 24(9) of the CSDDD specifies criteria which Member States must ensure their supervisory authorities satisfy: independence, impartiality and transparency. In particular, Member States shall ensure that the authority is "legally and functionally independent, free from external influence whether direct or indirect", from public or private actors, "including from the companies falling within the scope of this Directive or other market interests, that its staff and the persons responsible for its management are free of conflicts of interest and that they refrain from any action incompatible with their duties".[206]

These are common and essential requirements for national agencies responsible for the implementation and/or enforcement of EU legislation.[207]

Legal and functional independence requires, for example, that supervisory authorities are a separate legal entity without institutional or organisational links to other bodies that would risk directly or indirectly influencing the authority's performance of its regulatory functions, they carry out their regulatory tasks without being exposed to any external influence or instruction, and they take their own decisions autonomously and solely in the public interest.[208]

In practice, this means that the regulatory framework in each Member State must not only provide that the supervisory authority enjoys **formal independence** in the performance of its functions, but also that its **governance, powers and access to resources** ensure its actual independence and do not directly or indirectly compromise that independence.

Member States should enact structural safeguards to ensure that any government supervision or oversight of a supervisory authority, including in relation to its decision-making procedures, budget, staff, resources or management, does not compromise its functional independence.

3. Accountability and transparency of supervisory authorities

Importantly, while supervisory authorities must be functionally independent, some form of government supervision may be needed to hold a supervisory authority accountable for the proper performance of its regulatory functions. In this regard, Member States shall ensure that the decisions, actions and omissions of their supervisory authorities are subject to an effective right of appeal to an independent administrative or judicial body. Article 25(7) and Article 26(6) require that:

- each natural or legal person has the right to an effective judicial remedy against a legally binding decision by a supervisory authority concerning them, in accordance with national law;

- persons who submit a substantiated concern and have in accordance with national law, a legitimate interest in the matter, shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority (see sub-section 1.7 below).

206 Article 24(9) CSDDD.

207 See for example: Article 26(1) of the European Data Governance Regulation (Regulation (EU) 2022/868) which requires that designated national competent authorities are "legally distinct from, and functionally independent of, any data intermediation services provider or recognised data altruism organisation"; Article 57(4) of the Directive on Common Rules for the Internal Market for Electricity (Directive (EU) 2019/944) which requires that designated national regulatory authorities are "legally distinct and functionally independent from other public or private entities" when carrying out the regulatory tasks conferred upon them by that Directive and related legislation; Article 39(4) of the Directive on Common Rules for the Internal Market in Natural Gas (Directive 2009/73/EC) which requires that designated national authorities are "legally distinct and functionally independent from any other public or private entity" when carrying out the regulatory tasks conferred on them under that Directive and related legislation; Article 22 of the Railway Safety Directive (Directive (EU) 2016/798) which requires that designated national investigative bodies are "functionally independent from the national safety authority, from the [European Union Agency for Railways] and from any regulator of railways."

208 CJEU, Case 718/18 European Commission v Federal Republic of Germany, Judgment of 2 September 2021, par. 109.

In order to be consistent with their obligations under Article 9(4) of the Aarhus Convention, Member States should also ensure that any such procedure is fair, equitable, timely and not prohibitively expensive, and that it provides adequate and effective remedies, including injunctive relief where appropriate.

In addition to review mechanisms that ensure the accountability of public authorities, the Directive also contains provisions aimed at guaranteeing the transparency of their action. Members States shall ensure that supervisory authorities:

- publish and make accessible online an annual report of their enforcement activities under the CSDDD;[209]
- keep records of any investigations, in particular information about their nature and result, as well as records of any enforcement action;[210] and
- publish any decision containing penalties related to the infringement of national transposing laws, make it publicly available for at least five years and send it to the European Network of supervisory authorities.[211]

Member States should further enhance transparency by specifying the information that annual reports under Article 24(10) must contain, including, in particular, the number and results of investigations carried out and, in cases of non-compliance, the corrective action taken and penalties imposed.

Disclosure of information by public authorities is also a powerful tool to incentivise companies to comply with the Directive. To capitalise on these potential benefits, Member States should ensure national laws require the publication of any decision finding non-compliance and ordering remedial action, rather than only decisions imposing pecuniary penalties, as currently provided under Article 27(5).

4. Adequate resources

According to Recital 75 and Article 25(1) Member States shall ensure that their supervisory authorities have the necessary **human and financial resources** for the effective performance of their tasks and exercise of their powers.[212] Adequate resources are also a precondition for ensuring that supervisory authorities enjoy functional independence and are able to exercise the powers and take the actions required of them under the CSDDD.

While the concept of "adequate resources" is not further defined in the CSDDD, clarity can be drawn from the 2018 CJEU judgement in European Commission v Republic of Poland,[213] where the Court held that, while a requirement of "organisational independence" did not prohibit the relevant agency being supported by government staff or budgets or require the agency to have a separate budget, from the relevant government ministry, it was nevertheless "imperative that access to such resources be guaranteed [...] under clear rules that may not be amended by the [responsible minister] alone... [and] that independent access for that body to the financial resources that must be granted to it for carrying out its tasks are guaranteed" (paras. 99-100, emphasis added).

209 Article 24(10) CSDDD.
210 Article 25(8) CSDDD.
211 Article 27(5) CSDDD.
212 See also Recital (75) CSDDD.
213 CJEU, Case C530/16 European Commission v Republic of Poland, Judgment of 13 June 2018.

Member States should ensure that resourcing is not only sufficient, but also stable and secure, so that a supervisory authority's access to resources is not conditional or subject to external influence or intervention. Resources should, for example, anticipate the minimum number and volume of checks, including on-site and field audits, based on the number of companies that the supervisory authority is required to supervise.

Member States should also ensure that adequate resourcing includes staff with the necessary knowledge, experience and technical expertise to effectively enforce human rights and environmental due diligence requirements.

5. Adequate powers

5.1. Investigative powers

Article 25(1) requires Member States to ensure supervisory authorities have adequate powers to carry out the tasks assigned to them. In that regard, supervisory authorities shall be "empowered" to require companies to provide information and carry out investigations related to compliance with the obligations set out in Articles 7 to 16.

A supervisory authority "may" initiate an investigation on its own motion or following a substantiated concern submitted by third parties pursuant to Article 26, where it considers that it has sufficient information indicating a possible breach of the obligations in Articles 7 to 16.[214]

Member States should require national laws transposing the CSDDD to impose an obligation on supervisory authorities to initiate an investigation where they have sufficient information indicating a possible breach by a company of its obligations under the CSDDD, rather than providing a mere option. This would help avoid arbitrary application of the CSDDD and ensure a level playing field in enforcement and fair competition across the EU.

Supervisory authorities shall also have the power to conduct inspections.[215] This should include spot checks and field audits, carried out with prior warning to the company except where prior notification may hinder the effectiveness of the inspection. In practice, advance notice of compliance checks is likely to undermine the ability of supervisory authorities to reliably check company performance and identify and gather evidence of non-compliance.

Member States should reverse the logic of Article 25(3) in national law by making inspections without prior warning the rule rather than the exception, in order to protect the effectiveness of checks and avoid the concealment of evidence of non-compliance.

Member States should ensure that national laws include, at the very least, powers to conduct on-site inspections, to compel the disclosure of information and documents (including, if necessary under the national legal framework of the Member State, by allowing the supervisory authority to request a court order to compelling such disclosure), to hear company staff and any other relevant stakeholders or participants in the value chain, and to obtain opinions from experts in all fields relevant to the conduct of an investigation (e.g. climate, sector-specific expertise, economics, etc.).

214 Article 25(2) CSDDD.
215 Article 25(3) CSDDD, see also Recital (75).

Where, as part of its investigation, a supervisory authority wishes to carry out an inspection on the territory of a Member State other than its own, it shall seek assistance from the supervisory authority in that Member State pursuant to Article 28(3).[216] Where a supervisory authority needs to conduct investigations in other non-EU countries, it will need to seek cooperation from the authorities in the third country.

5.2. Remedial action and other powers

If a company fails to comply with its due diligence obligations, supervisory authorities shall have the power to require the company to take remedial action, if such action is possible. Remedial action does not prevent the authority also imposing penalties or avoid civil liability in case of damages, in accordance with Articles 27 and 29.[217]

In accordance with Article 25(5) of the CSDDD, supervisory authorities shall be empowered to order at least:

> *(i) the **cessation** of infringements of the relevant national provisions by performing an action or ceasing a conduct;*
>
> *(ii) the **abstention** from any repetition of the relevant conduct; and*
>
> *(iii) where appropriate, to provide **remediation** proportionate to the infringement and necessary to bring it to an end.*

Supervisory authorities shall also have the power to impose penalties and to adopt interim measures in case of imminent risk of severe and irreparable harm.[218]

> Member States should provide in national transposing laws that, where a non-compliant company fails to take the remedial action within an appropriate time under Article 25(4), or where such action is impossible, the supervisory authority must make use of the powers listed in Article 25(5).

6. Penalties

Article 27 obliges Member States to lay down national rules establishing a penalty regime applicable to instances of non-compliance.

While Member States retain significant discretion as to the design of those rules (and their subsequent implementation), the CSDDD requires that, at a minimum, they shall include the following penalties: (a) **pecuniary penalties** (turnover-based fines); (b) a **public statement** indicating the company responsible and the nature of the infringement if the company fails to comply with the decision imposing a pecuniary penalty within the applicable time limit (naming and shaming).

> To further dissuade companies from non-compliance, Member States should introduce other forms of penalties, such as temporary exclusion from public procurement processes and from access to public funding, including tendering procedures, grants and concessions. This is the approach taken, for example, under Section 22 of the German due diligence law.[219] Member States should similarly consider introducing a temporary prohibition on making specific goods available on the market or providing certain services in the event of a serious or recurrent infringement relating to particular goods or services.

216 Article 25(3) CSDDD.
217 Article 25(4) CSDDD.
218 Article 25(5) CSDDD.
219 Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten), Section 22. THe Federal Ministry of Labour and Social Affairs makes available an English translation of the law.

The penalties provided for must be **effective, proportionate and dissuasive.** These concepts are common requirements for sanctions under EU law, and the CJEU has clarified these concepts in numerous cases.[220]

In deciding whether to impose penalties and, if so, in determining their nature and appropriate level, due account shall be taken of:

> *"(a) the nature, gravity and duration of the infringement, and the severity of the impacts resulting from that infringement;*
>
> *(b) any investments made and any targeted support provided pursuant to Articles 10 and 11;*
>
> *(c) any collaboration with other entities to address the impacts concerned;*
>
> *(d) where relevant, the extent to which prioritisation decisions were made in accordance with Article 9;*
>
> *(e) any relevant previous infringements by the company of national provisions adopted pursuant to this Directive found by a final decision;*
>
> *(f) the extent to which the company carried out any remedial action with regard to the concerned subject-matter;*
>
> *(g) the financial benefits gained from or losses avoided by the company due to the infringement;*
>
> *(h) any other aggravating or mitigating factors applicable to the circumstances of the case concerned."*[221]

While the Commission will develop guidance to assist supervisory authorities in determining the level of penalties, the **maximum** pecuniary penalty is set at 3% of the net worldwide turnover of the company in the financial year preceding the fining decision. With regard to EU and non-EU parent companies of a group that reaches the thresholds referred to in Article 2(1), point (a) and Article 2(2), point (a), pecuniary penalties are 3% of the net consolidated worldwide turnover calculated at the level of the ultimate parent company. Member States remain free to set a higher maximum.

7. Substantiated concerns

Article 26 requires Member States to ensure that natural and legal persons are entitled to submit substantiated concerns through easily accessible channels to any supervisory authority when they have reasons to believe, on the basis of objective circumstances, that a company is failing to comply with the national provisions adopted pursuant to the CSDDD. The substantiated concern mechanism provides a route to flag potential non-compliance with supervisory authorities, which can then open investigations.

Supervisory authorities must assess substantiated concerns in a timely manner and, where appropriate, exercise their powers as outlined in Article 25.[222] They must also inform "as soon as possible" the person of the outcome of their assessment of their substantiated concern and provide a rationale for it. The supervisory authority must also inform persons who submit a substantiated concern and have a "legitimate interest" in the matter of their decision to accept or refuse any request for action, as well as a description of the further steps and measures, and practical information on access to administrative and judicial review procedures.[223] However, the vague time limits for the handling substantiated concerns and communicating

220 See for example: CJEU, Case C-418/11 Texdata Software Judgment of 26 September 2013, para. 50; CJEU, Case C-382/09 Stils Met, Judgment of 7 October 2010, para. 44; CJEU Case C-40/04 Yonemoto, Judgment of 8 September 2005, para. 59; CJEU, Case C-382/92 Commission v United Kingdom, Judgment of 8 June 1994, para. 55.
221 Article 27(2) CSDDD.
222 Article 26(4) CSDDD.
223 Article 26(5) CSDDD.

their outcomes in Article 26 risk allowing unduly long timeframes for competent authorities to address potential breaches of the law.[224]

Member States should provide in national law for a specific period of time within which their supervisory authority must assess substantiated concerns and inform the submitter of the result of the assessment and any follow-up action pursuant to Article 26(4) and (5), rather than referring only to an "appropriate period of time" or "as soon as possible".

As noted above, persons submitting a substantiated concern "and having, in accordance with national law, a legitimate interest in the matter" must have access to administrative or judicial review of the legality of the decisions, acts or failure to act of the supervisory authority.[225]

Member States should confirm in national law that persons who have submitted a substantiated concern have a legitimate interest in its appropriate examination and follow-up, and should therefore be provided with confirmation of their submission, information about next steps and access to administrative or judicial review.

Moreover, Member States should also ensure national law provides that where the supervisory authority fails to assess a substantiated concern within a specific period of time, this should be considered as a "failure to act" under that provision and persons submitting substantiated concerns shall have access to Court pursuant to Article 26(6).

Finally, Member States should ensure supervisory authorities provide clear and publicly available practical guidance on the procedures for submitting substantiated concerns, including information about the format of the submission and to whom the substantiated concerns should be addressed (including all relevant contact details and email addresses). This information should be publicly available (in different languages) and easy to find. Procedural rules should address barriers to exercising this right, including by ensuring that the public has easy access to a list of in-scope companies and suppliers, as well as the ability to submit complaints in multiple languages and, where requested, with effective identity protection.

8. Commentary

To ensure the CSDDD effectively prevents environmental impacts and promotes sustainable business practices, supervisory authorities must adopt a broad and proactive enforcement approach. To ensure the effectiveness of investigations, the investigative powers of supervisory authorities must be clearly defined.

The procedure for substantiated concerns represents a crucial instrument for enabling rightsholders and other stakeholders to oversee companies' compliance with the CSDDD and to voice their concerns. However, for it to be fully effective and not merely a formality, it must be coupled with robust procedural guarantees and obligations. These include the requirement for supervisory authorities to be bound by clearly defined timeframes and to automatically investigate cases brought to them where there is sufficient information indicating a possible breach of due diligence obligations. It is also imperative that supervisory authorities can be held accountable for their decisions, actions, and omissions, notably by ensuring that all legal or natural persons who have submitted a substantiated concern are granted access to a court competent to review the supervisory authority's decisions. Transparency and disclosure about the

224 See for example Two years of the German Supply Chain Act: An Interim Assessment. Why a Strong Supply Chain Law is Essential and How It Can Be Effectively Implemented, ECCHR and others.
225 Article 26(6) CSDDD.

activities of supervisory authorities is essential in this regard, which can be achieved through the publication of all findings of non-compliance and orders for remedial action (which can in turn provide additional incentives for companies to comply).

Ultimately, the effectiveness of enforcement is contingent upon the approach adopted by each supervisory authority. A passive approach to monitoring compliance by companies is insufficient. It is important that supervisory authorities do not rely on their monitoring power solely on an ad hoc, reactive basis when they obtain information relating to a potential breach of the Directive. Instead, the supervisory authority should be proactive and make use of its monitoring prerogatives to ensure that, with time, it covers a significant share of the companies falling under its jurisdiction, with a view to closing any potential gaps in compliance with the CSDDD that would not be otherwise reported or brought to its attention by third parties. To this end, the supervisory authority should establish annual plans selecting the companies to be investigated. These plans should be established following a risk-based approach. Risk criteria shall be identified based on an analysis of risks of non-compliance, prioritising companies for investigation on the basis of factors such as the prevalence and severity of impacts in the company's sector and past non-compliances.

Recommendations for transposition

To ensure that the Directive fulfils its objective of preventing environmental degradation, improving corporate accountability and promoting sustainable business practices, Member States should ensure that national transposition laws establish supervisory authorities that are independent, impartial, transparent, adequately resourced, technically competent, and equipped with effective powers that they are required to use where the legal conditions are met.

- **Recommendation n°9: Operationalise the independence, impartiality and transparency of supervisory authorities**. National transposition laws should establish supervisory authorities that are legally and functionally independent, free from direct or indirect external influence, and protected against both political interference and corporate capture. Any governmental supervision or oversight, including over budgets, staffing, procedures or management, should be designed so that it cannot compromise the authority's functional independence. Member States should also ensure transparency through the publication of annual enforcement reports, records of investigations and enforcement actions, and all decisions finding non-compliance or ordering remedial action, not only decisions imposing penalties.

- **Recommendation n°10: Guarantee sufficient, stable and secure resources, including specialised expertise.** Member States should ensure that supervisory authorities have guaranteed access to sufficient human and financial resources under clear rules that cannot be altered unilaterally by government or are otherwise vulnerable to external influence. Resources should be commensurate with the number and risk profile of companies under supervision and should enable proactive monitoring, on-site and field checks, the assessment of substantiated concerns, advisory activities and enforcement. Staffing should include or have access to adequate legal, human rights, environmental, climate, sector-specific and investigative expertise, so that authorities can assess effectiveness of due diligence measures.

Recommendations for transposition

- **Recommendation n°11: Clearly define supervisory authorities' investigative powers.** Transposition laws should expressly empower supervisory authorities to conduct on-site inspections, to obtain the compulsory disclosure of company information and documents, to hear persons related to the case, and to obtain opinions from experts relevant to the investigation. Member States should also consider making inspections without prior warning the rule, rather than the exception.

- **Recommendation n°12: Limit enforcement discretion.** To avoid arbitrary or uneven enforcement and to ensure a level playing field, national law should require supervisory authorities to open an investigation where they have sufficient information indicating a possible breach of due diligence obligations, including following a substantiated concern, rather than leaving this open to discretion ("may" in Article 25(2)). Similarly, where a company fails to adopt required remedial action within an appropriate period of time, or where remedial action is impossible, supervisory authorities should be required to use the enforcement powers available under Article 25(5).

- **Recommendation n°13: Make substantiated concerns accessible, transparent and subject to review.** Member States should establish accessible procedures for submitting substantiated concerns, including clear public guidance, contact points, multilingual options where appropriate and effective identity protection were requested. Supervisory authorities should be required to assess concerns and inform submitters of the outcome and follow-up within clearly defined timeframes. National law should confirm that persons submitting substantiated concerns have a legitimate interest in their appropriate examination and follow-up, and should guarantee access to administrative or judicial review of the authority's decisions, acts or failure to act, including where the authority fails to respond within the applicable timeframe.

- **Recommendation n°14: Increase deterrence through a complete sanctions toolbox.** Member States should provide for penalties beyond pecuniary sanctions, including temporary exclusion from public procurement and access to public funding, and, for serious or repeated infringements linked to specific goods or services, temporary restrictions on placing those goods or services on the market.

- **Recommendation n°15: Require proactive, risk-based annual monitoring and investigation plans.** Supervisory authorities should not rely solely on ad hoc or reactive enforcement. National laws should require them to establish annual monitoring and investigation plans, prioritising companies for investigation on the basis of factors such as the prevalence and severity of sectoral and value chain risks, size and scale of operations, and past non-compliances.

F Civil liability and access to justice

Article 29 of the CSDDD provides for the civil liability of companies that have failed to comply with their due diligence obligations where this breach has led to damage suffered by a victim.

Initially, Article 29(1) introduced a harmonised civil liability regime across all Member States: it laid down requirements that all Member States establish uniform conditions for a company to be liable to compensate victims for damages resulting from that company's breach of its due diligence obligations. Article 29(2) obliged liable companies to provide victims full compensation for the damage suffered. To ensure victims effective access to justice to bring civil liability claims, Article 29(3) set out five procedural guarantees: a five-year statute of limitations; affordable cost of proceedings; the availability of court orders to cease due diligence violations (known as injunctive measure); the ability for courts to order companies to disclose evidence; and the possibility for victims to authorise a third party (a trade union, human rights or environmental NGOs ("ENGOs") with or a human rights institution) to bring a civil liability action on their behalf (known as representative action). Article 29(5) and (6) governed ancillary aspects of civil liability such as joint liability between companies. Finally, in cross-border cases (when the company is not located in the same country where the harm occurred), Article 29(7) – known as the "overriding mandatory provision clause" ("OMP") – ensured that when a civil liability action was brought before the court of a Member State, the Directive's civil liability regime and procedural guarantees applied mandatorily before that court, instead of foreign law that might otherwise be applicable according to rules of international private law.

The Omnibus I Directive amended several of these provisions in the CSDDD. Article 4(12) of the Omnibus I Directive deleted: (a) the harmonised civil liability regime in Article 29(1); (b) the possibility for victims to have recourse to representative actions under Article 29(3); and (c) the OMP. The remainder of Article 29 subsists in the CSDDD currently in force.

Taking the changes made by the Omnibus I Directive into account, this section describes Member States' legal obligations when transposing the CSDDD's civil liability rules **(Sections 1 and 2)** and makes recommendations to simplify those rules and improve their efficiency **(Sections 3 and 4).**

1. Mandatory civil liability regime

The CSDDD still requires Member States to have a civil liability regime to hold companies liable to pay victims compensation for breaches of their due diligence obligations. This is clear from many provisions in the CSDDD:

- **Article 29** unequivocally requires the "civil liability of companies" for breaches of their due diligence obligations, as stated in the title of this article. Article 29 contains provisions that leave no doubt as to the obligation for Member States to provide for the civil liability of in-scope companies within their Member State. Article 29(2) requires Member States to provide victims with the right to "full compensation" in cases "where a company is held liable pursuant to national law for damage caused to a natural or legal person by a failure to comply with the due diligence requirements under this Directive". Article 29(3) lays down several procedural guarantees that must apply to civil liability actions brought before Member States' courts (statute of limitations, cost of proceedings, the availability of injunctive measures, and procedures for the disclosure of evidence). Article 29(5) deals with the joint and several liability of a company and its subsidiary or business partner in cases where the damage was caused jointly. Finally, Article 29(6) refers expressly to "the civil liability rules under this Directive" and confirms that the CSDDD sets out a "floor" in terms of civil liability and does not prevent Member States from enacting more stringent civil liability rules.

- **Article 1(1)(b) and Recital 16** clearly state that the CSDDD has as its subject matter laying down rules on companies' liability for violations of their due diligence obligations with the aim of ensuring that victims affected by such violations have access to legal remedies.
- Other provisions explicitly concerning civil liability are found in **Articles 1(1), 2(3) third subparagraph** (liability of parent companies), **6(1)** (liability of subsidiaries), **14(7)** (excluding the submission of a notification or complaint to the company as a precondition for civil liability action), **25(4)** (liability of companies that have taken remedial actions imposed by supervisory authorities) and **25(9)** (liability of a company following a decision of supervisory authorities on its non-compliance with due diligence obligations).
- In addition, the obligation to have a civil liability regime for breaches of the due diligence obligations in the CSDDD is imposed by international and EU law, as acknowledged in **Recital 49** of the Omnibus I Directive.

All Member States must provide in their national law a civil liability regime that allows victims to bring civil liability action in court to obtain compensation for the damages they have suffered due to companies' violation of their due diligence obligations under the CSDDD.

2. Minimum requirements

Member States have some freedom as to how they fulfil the civil liability regime obligation, either by (a) applying their existing civil liability regime, such as their general tort/non-contractual civil liability regime already in place, to actions for damages under the CSDDD; or (b) enacting a new ad hoc civil liability regime specifically applicable to actions for damages under the national law transposing the CSDDD.

Whichever option Member States choose, their civil liability regime must meet certain minimum requirements, some of which are set out in the CSDDD, some of which are required under international norms and principles of EU law. These minimum requirements relate to both the substantive conditions for holding a company liable to pay compensation (see **Section 2.1** below) and the procedural guarantees that apply in proceedings brought by victims before national courts (see **Section 2.2** below).

This means Member States will either have to adapt their existing regime (whether set out in legislation or developed through national case law) to ensure that it includes a number of minimum features when it applies to CSDDD civil liability claims or ensure that the new regime for the purpose of the CSDDD includes those features.

2.1. Substantive conditions of civil liability claims

2.1.1. Conditions expressly provided for in the CSDDD

Legal standing: The legal standing to bring a civil liability action under the CSDDD is governed by Article 29(2), which states that both legal and natural persons can bring such action against a company for breach of its due diligence obligations. This includes any individual (natural person) and any entity that has legal personality under the law of its country of origin (legal persons) such as associations, NGOs (such as ENGOs), companies and other groups of people that enjoy legal personality in their home country (including local or indigenous communities in certain countries). In addition, this provision does not restrict the status of victim under the CSDDD to any condition related to their **nationality or location:** any person located or originated from an EU or non-EU country can hold the status of victim.

Member States' national civil liability regimes must therefore grant legal standing to all legal and natural persons, regardless of their country of origin.

Constitutive elements of civil liability: These elements are set out in Article 29(2) CSDDD and Omnibus Recital 49. They follow the traditional structure of liability in civil law, consisting of three cumulative elements: (a) wrongdoing by the company, (b) damage and (c) causality between the wrongdoing and the damage.

(a) Wrongdoing. According to Article 29(2) CSDDD and Omnibus Recital 49, the wrongdoing that triggers civil liability is the failure by a company to comply with its due diligence obligations under the CSDDD, as set out in Articles 5 to 16. This includes where a company:

- fails to take appropriate measures to identify and assess an adverse human rights or environmental impact under Article 8 (with the consequence that it fails to prevent, mitigate, bring to and end or minimise this adverse impact pursuant to Articles 10 to 12);
- identifies an adverse impact under Article 8 but fails to take appropriate measures to prevent, mitigate, bring to and end or minimise this adverse impact pursuant to Articles 10 to 12;
- identifies an adverse impact under Article 8 but fails to prioritise it according to Article 9;[226] or
- fails to reassess and update its due diligence measures pursuant to Article 15, with the consequence that the identification of adverse impacts and the measures to prevent, mitigate, bring to an end and minimise the adverse impacts are no longer appropriate.
- Member States' national laws must therefore ensure that any one of these failures can trigger a company's civil liability. To that end, they must ensure that national judges apply the right standard of review: when assessing the existence of a wrongdoing, national judges must not limit themselves to verifying whether the company has adopted due diligence measures. They must also assess concretely, on a case-by-case basis and in light of all the circumstances, the appropriateness of those measures to achieve the objectives of due diligence, as required by Article 3(1)(o).

(b) Damage. Article 29(2) merely mentions in very general terms "damage caused to a natural or legal person". This provision does not qualify in any way the types or nature of damages that must be compensated. Accordingly, Member States' national laws must ensure that any type of damage suffered by a victim, whatever its nature may be (bodily, material, moral, financial, economic, etc), can be compensated.

(c) Causality. Article 29(2) and Omnibus Recital 49 require a causal relationship between the company's wrongdoing and the damage suffered by the victim. Two comments must be made here:

- Regarding adverse environmental impacts specifically, under Articles 3(1)(b) and 29(2) read together in light of CSDDD Recital 99,[227] causality requires that the following chain of causes and effects must be established to hold a company liable: (1) a breach by that company of one or more of its due diligence obligations has the effect of failing to end, minimise,[228] prevent, or mitigate[229] (2) an actual adverse impact on the environment within the categories listed in Part I, Section I, points 15 and 16 and Part II of the Annex to the CSDDD, which in turn causes (3) the damage suffered by the victim.
- Regarding the level at which the adverse impact must arise for causality to be established under

226 See also Recital 80 CSDDD: the company can only be held non-liable if it is demonstrated that it was not possible to address at the same time to the full extent all adverse impacts it had identified. If the company was able to address at the same time all the adverse impacts identified, it cannot choose to prioritise some of these impacts over others.

227 Article 29(2), first sentence, defines the constitutive elements of civil liability under the CSDDD, which include causality. Article 3(b) defines the concept of adverse environmental impact. CSDDD Recital 99 sets out the change with objectives of the CSDDD.

228 This will be the case where the company did not take the due diligence measures required by Article 11, with the result that it failed, where it was possible to immediately bring an actual adverse impact to an end, to avoid the actual adverse impact continuing or, where it was not possible to immediately bring it to an end, to avoid this actual adverse impact continuing to an extent unminimized.

229 This will be the case where the company did not take the due diligence measures required by Article 10, with the result that it failed, where prevention of a potential adverse impact was possible, to avoid the potential adverse impact becoming actual or, where prevention was not possible, to avoid the adverse impact becoming actual to an extent unmitigated.

the CSDDD, the Directive expressly envisages the civil liability of companies whose operations have caused the adverse impact resulting in the damage, including when those operations jointly caused the adverse impact together with the operations of their subsidiaries or those of their direct or indirect business partners.[230] However, the Directive does not contain an express provision regarding the civil liability of companies with respect to adverse impacts arising exclusively from the operations of their subsidiaries or those of their business partners. This matter is nevertheless not left to the discretion of Member States' national laws, as explained in Section 2(b)(iii) below.

Exclusion of certain types of defences: The Directive excludes certain types of defences, on which a company cannot rely to escape civil liability:

- Companies who have relied on industry or multi stakeholder initiatives or independent third-party verification (pursuant to Articles 10(2)(a) and (5), 11(3)(b) and (6) and 20(4)-(5)) or contractual clauses (pursuant to Articles 10(2)(b) and (4), 11(3)(c) and (5), and 18) to conduct their due diligence can nevertheless be held liable if these measures are not considered appropriate to address the adverse impact.[231] This avoids any attempt by companies to "delegate" their responsibilities under the Directive to other actors in their value chain or third parties through contractual practices.

- The absence of submission of a notification or complaint by a victim to the company pursuant to the procedure under Article 14 is not an obstacle to the admissibility of a civil liability claim against that company.[232] Likewise, the previous submission of substantiated concerns under Article 26 is not a prerequisite for bringing a civil liability action before the courts.

- Decisions of supervisory authorities regarding a company's compliance with its due diligence obligations are not binding on a court having to adjudicate a civil liability claim.[233] This means that a supervisory authority's decision that a company has not breached its due diligence obligations will not prevent a court from finding otherwise and holding this company liable to compensate the victim.

- Similarly, a company taking remedial actions, including remediation, pursuant to a decision of a supervisory authority does not preclude this company from being held liable for compensation.[234]

Full compensation: According to Article 29(2), if the conditions above are met, a company must be held liable to fully compensate the damage incurred by the victim. This means that victims must be awarded compensation that fully covers their damage and puts them in the situation in which they would have been had the damage not occurred. Article 29(2) excludes overcompensation, for example by means of punitive damages.

Joint and several liability: The Directive envisages several situations where more than one company may be liable:

- The fact that a company subject to the Directive is held liable for damages under Article 29 does not exclude the potential civil liability of its subsidiaries or of any direct or indirect business partners in its chain of activities, if the latter have committed or participated in a wrongdoing (whether or not it constitutes a breach of the due diligence obligations under the Directive) that led to the victim incurring those damages.[235]

230 Article 29(5) CSDDD.
231 Article 29(4).
232 Article 14(7).
233 Article 25(9).
234 Article 25(4).
235 Article 29(5) and Recital 87 CSDDD.

- In the situation where the damage was caused jointly by the company and its subsidiaries or business partners, they are liable jointly and severally.[236] This means that victims must be able to claim compensation for the entirety of their damage from the non-compliant company, even if its subsidiaries or business partners also contributed to the damage.

- Where the EU-established subsidiary of an ultimate parent company fulfils the due diligence obligations on behalf of the latter pursuant to Article 2(3), the ultimate parent company remains jointly liable with this subsidiary for a failure to comply with its due diligence obligations.[237]

- Where a parent company fulfils the due diligence obligations on behalf of a subsidiary pursuant to Article 6, this is without prejudice to this subsidiary's civil liability under the Directive. The subsidiary can be held liable for damage that occurred, irrespective of whether the due diligence obligations were carried out by the subsidiary itself or by the parent company on its behalf.[238]

In addition to these requirements in the CSDDD, Member States' national civil liability regimes must meet certain conditions required by principles of EU law.

2.1.2. Conditions required by general principles of EU law

(i) The principles of effectiveness and effective judicial protection

Recital 49 of the Omnibus I Directive states that the principles of effectiveness and the right to an effective remedy must apply to the civil liability regime required by the CSDDD.

Both principles circumscribe the principle of **national procedural autonomy,** according to which, in the absence of specific EU rules, Member States remain free to determine the remedies and procedures for enforcing EU-derived rights.

The principle of **effectiveness** is a general legal principle developed in long-established case law by the CJEU which requires that national rules and procedures should not render virtually impossible or excessively difficult the exercise of rights conferred by EU law.[239]

Effective judicial protection is another general legal principle stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, which is now reaffirmed by Article 47 of the EU Charter of Fundamental Rights (enjoying the same legal status as the EU Treaties and constitutionalising

236 Article 29(5) and Recital 87 CSDDD. According to Recitals 45 and 53 CSDDD, 'causing jointly' covers the situation where the company subject to the CSDDD causes the adverse impact jointly with its subsidiary or direct or indirect business partner. Jointly causing the adverse impact is not limited to equal implication of the company and its subsidiary or business partner in the adverse impact, but should cover all cases of the company's acts or omissions, causing the adverse impact in combination with the acts or omissions of subsidiaries or business partners, including where the company substantially facilitates or incentivises a business partner to cause an adverse impact, that is, excluding minor or trivial contributions.

237 Article 2(3), third subparagraph.

238 Article 6(1) and Recitals 21 and 22 CSDDD.

239 Judgment of 11 July 2002, Case C-62/00, Marks & Spencer plc v Commissioners of Customs & Excise, para. 34. Judgment of 16 December 1976, Case 33/76, Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland. Judgment of 8 March 2001, C-397/98 and C-410/98, Metallgesellschaft Ltd and Others et als v. Commissioners of Inland Revenue et als, para. 85. Judgment of 19 December 2019, Case C-752/18, Deutsche Umwelthilfe eV v Freistaat Bayern, para. 33.

the right to an effective remedy)[240] and Article 19(1) of the TEU (requiring Member States to ensure effective judicial protection for individuals under EU law).[241] Its purpose is to ensure the protection of individuals to enforce their rights and obtain the redress to which they are entitled under EU law.[242]

These requirements are a practical expression of the principle of primacy of Union law and seek to ensure the effective application and enforcement of Union law in the legal order of the Member States. [243]

According to the CJEU, the principles of effectiveness and effective judicial protection may require Member States to **modify or even suppress** elements constitutive of civil liability under national law to guarantee real and effective protection to individuals whose rights under EU law have been affected by other individuals.[244] In its case law, the CJEU has not shied away from requiring Member States to significantly modify the substantive conditions of civil liability under national law for breaches of EU law (for example in Decker[245] and Kone,[246] discussed below).

In light of the case law of the CJEU, national courts will be required to interpret national rules on civil liability, as far as possible, in a way that is consistent with the CSDDD and EU law more generally – including the principles of effectiveness and effective judicial protection. This includes departing from their existing case law where it is based on an interpretation that is incompatible with the objective of the Directive.[247] If national rules on civil liability cannot be interpreted consistently with EU law and would undermine the effectiveness of the CSDDD, courts must set them aside or ignore them.[248]

Given that the first judicial procedures to apply and interpret (and potentially set aside) the national civil liability rules applicable under the CSDDD may take years to unfold (including appeals to higher and supreme courts), Member States should avoid uncertainty and, from the

240 Judgment of 21 December 2021, Case C-497/20, Randstad Italia SpA v Umana SpA et als, para 56-57. The principle of effective judicial protection which limits the principle of national procedural autonomy has been consistently upheld by the CJEU since the Judgment of 10 April 1984, Case 14/83, Von Colson and Kamann v Land Nordrhein-Westfalen (see para. 23). Colson concerned a German domestic compensation regime applicable to breaches of Directive 76/207/EEC on of 9 February 1976 on equal treatment for men and women. The Court held that in light of the principle of real and effective judicial protection, where a Member State chooses to sanction breaches of the directive by the award of compensation, that compensation must be adequate in relation to the damage sustained. Accordingly, national provisions could not limit the right to compensation of victims of breaches of the directive to a purely nominal amount. See also Judgment of 19 December 2019, Case C-752/18, Deutsche Umwelthilfe eV v Freistaat Bayern, para. 34.

241 See for example: Judgment of 7 July 2022, Case C-261/21, Hoffmann-La Roche Ltd et als v Autorità Garante della Concorrenza e del Mercato, para. 43; Judgment of 26 March 2020, Cases C-558/18 and C-563/18, Miasto Łowicz v Skarb Państwa - Wojewoda Łódzki, para. 32.

242 P. Craig and G. de Búrca, EU Law, Text, Cases, and Materials (7th edition, UK Version), 2020, Oxford University Press, p. 278. K. Lenaerts, K. Gutman and J. T. Nowak, EU Procedural Law (2nd edition), 2023, Oxford University Press, pp. 118-119.

243 K. Lenaerts, K. Gutman and J. T. Nowak, EU Procedural Law (2nd edition), 2023, Oxford University Press, p. 118.

244 See for example Judgment of 3 June 2021, Case C-910/19, Bankia SA v UMAS, para. 45-48, concerning the national civil liability rules applicable to claims for damages under for breach of Directive 2003/71/EC on prospectus to be published when securities are offered to the public. The Court held, in light of the principle of national procedural autonomy, that these national civil liability rules may take into consideration if the investor claimant was aware of the economic situation of the issuer of the offer of shares to the public but on the condition, pursuant to the principle of effectiveness, that these rules do not in practice make it impossible or excessively difficult to bring an action for damages.

245 Judgment of 8 November 1990, Case C-177/88, Decker v VJV Centrum Plus, para. 22-25.

246 Judgment of 5 June 2014, Case C-557/12, Kone AG et als v ÖBB-Ifrastruktur AG.

247 Judgment of 17 April 2018, Case C-414/16, Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV, para. 71-72.

248 Judgment of 19 June 1990, Case C-213/89, The Queen v Secretary of State for Transport (Factortame I), para. 20-21.

outset, enact transposing legislation that ensures their national civil liability rules under the CSDDD meet the specific requirements imposed by the principles of effectiveness and effective judicial protection. These requirements are twofold: national liability regimes must allow for (a) the liability of a company for non-intentional (or negligent) breaches of its due diligence obligations; and (b) the liability of a company for damage resulting from adverse impacts arising solely from the activities of that company's subsidiary or business partner. The requirements are explained further below.

(ii) Civil liability for non-intentional breaches of due diligence obligations

While the CSDDD requires a wrongdoing in the form of a breach of due diligence obligations to trigger civil liability, it does not specify whether this breach must be intentional.

This is particularly relevant with respect to negligent violations of due diligence obligations. Due to their very nature, compliance with these obligations requires an active behaviour from companies (the adoption and implementation of due diligence measures) and their violation will therefore more often result from an omission (lack of action) rather than an intentional act.

In practice, many companies may not actively or intentionally seek to ignore or conceal adverse impacts in their activities or those of their subsidiaries or business partners. Nor will they aim at taking inappropriate due diligence measures, or intentionally fail to implement due diligence measures they have chosen. Rather, non-compliance will often result from negligent omissions and failures such as: weak governance mechanisms; insufficient resources or expertise; over-reliance on checklist-based procedures; inadequate mapping of supply chains beyond direct business partners; inadequate monitoring and follow-up after impacts are identified; limited stakeholder engagement; incorrect prioritisation or conflicting commercial incentives; inappropriate measures taken; and over-reliance on audits, certifications, contractual clauses or third-party initiatives.

Excluding negligent breaches would therefore leave many victims without redress. As the Court found in Decker, such a situation would considerably weaken the principle of effective protection under the CSDDD.[249]

Therefore, in the absence of an express rule, the principles of effectiveness and effective judicial protection require Member States to broaden the concept of wrongdoing that triggers civil liability under national law to cover non-intentional or negligent breaches of their due diligence obligations.

(iii) Civil liability for adverse impacts arising solely from the operations of a subsidiary or business partner

As explained in Section 2.1(a) above, the CSDDD does not expressly state that liability arises where the damage suffered results solely from the operations of a company's subsidiary or business partner – rather than from the company's own operations.

However, Article 29(2) must be interpreted as requiring civil liability in this situation.[250] This follows, first, from the objectives of the CSDDD; Recitals 16 and 99, read together with Article 1(1), provide that the Directive aims to address adverse impacts arising at the level of a company's subsidiaries or business partners, and to ensure legal remedies for victims of such impacts. Secondly, several due diligence obligations specifically require companies to take measures with respect to

249 Judgment of 8 November 1990, Case C-177/88, Decker v VJV Centrum Plus, para 24, which shows that the principles of effectiveness and effective judicial protection can require Member State to broaden the concept of wrongdoing that triggers civil liability under national law to cover violations of EU law without a 'fault'.

250 As explained in Section 2 above, the case law of the CJEU requires that when a provision of EU law is being interpreted, account must be taken of its context and the objective pursued by the legislation in question (see for example: Court of Justice, Judgment of 29 October 2009, NCC Construction Danmark A/S v Skatteministeriet, C-174/08, para. 24-26; Court of Justice, Judgment of 20 October 2011, Interedil Srl v Fallimento Interedil Srl and Intesa Gestione Crediti SpA, C-396/09, para. 42).

the operations of their subsidiaries,[251] but also those of their direct and indirect business partners.[252] Recitals 45 and 53 further confirm that companies are expected to prevent adverse impacts caused exclusively by their business partners.

The same conclusion follows from the principles of effectiveness and effective judicial protection.

As the CJEU held in Kone, the principle of effectiveness may require national civil liability regimes to apply a broad conception of causality that encompasses an indirect causal link between the wrongdoing and the damage.[253] Applied to the CSDDD, excluding liability where due diligence breaches result in adverse impacts solely at the level of a business partner would make it virtually impossible, in many cases, for victims to exercise their right to compensation under Article 29(2).[254]

For the same reason, it would also undermine effective judicial protection by preventing victims from obtaining redress in such situations.

> Consequently, Member States must ensure that their national civil liability regimes under the CSDDD allow for the liability of a company for breaches of its due diligence obligations where the adverse impact leading to the damage occurred exclusively in that company's subsidiaries' operations, or its business partners' operations related to its chains of activities.

2.2. Procedural conditions of civil liability proceedings

2.2.1 Procedural safeguards expressly required in the CSDDD

Article 29(3) sets out the minimum procedural guarantees for civil liability actions which Member States must transpose in their national laws to address certain practical and procedural barriers to justice for victims of adverse impacts.[255] In a nutshell, these include:

- limitation period of at least five years;[256]
- the guarantee that costs of proceedings are not prohibitively expensive;[257]
- the possibility for claimants to seek injunctive measures, definitive or provisional, to cease infringements of the due diligence obligations, including through summary proceedings;[258] and
- the possibility to seek an order compelling a company to disclose evidence in its control, including confidential information, upon a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of a claim for damages.[259]

251 Article 8(1) requires companies to identify and assess adverse impacts arising from the operations of their subsidiaries. Articles 10(1)(b) and 11(1)(b) require companies to adapt their due diligence measures to the fact that the adverse impact occurs in the operations of its subsidiary.

252 Article 8(1) requires companies to identify and assess adverse impacts arising from the operations of their business partners. Articles 10(1)(c) and 11(1)(c) require companies to adapt their due diligence measures to the fact that the adverse impact arises from the activities of a business partners. Article 10(2)(b) and (5) and Article 11(3)(c) and (6) require companies to seek contractual assurances from a direct business partner and to verify that they are complied with. Articles 10(2)(e) and 10(3)(f) require companies to provide support for business partners that are SMEs. Articles 10(6) and 11(7) require companies to refrain from entering into new, or extending existing, relationships with a business partner and to suspend the business relationship with that business partner in view of implementing an enhance prevention or corrective action plan.

253 Judgment of 5 June 2014, Case C-557/12, Kone AG et als v ÖBB-Ifrastruktur AG.

254 Judgment of 11 July 2002, Case C-62/00, Marks & Spencer plc v Commissioners of Customs & Excise, para. 34; Judgment of 16 December 1976, Case 33/76, Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarlan; Judgment of 8 March 2001, C-397/98 and C-410/98, Metallgesellschaft Ltd and Others et als v. Commissioners of Inland Revenue et als, para. 85; Judgment of 19 December 2019, Case C-752/18, Deutsche Umwelthilfe eV v Freistaat Bayern, para. 33.

255 Recital 82 CSDDD.

256 Article 29(3)(a) and Recital 85 CSDDD.

257 Article 29(3)(b) .

258 Article 29(3)(c) and Recital 86 CSDDD.

259 Article 29(3)(e) and Recital 83 CSDDD.

The CSDDD provisions requiring these procedural guarantees are self-explanatory. Nevertheless, several important details should be noted:

- To give full effect to the requirement in Article 29(3)(c) for **definitive injunctive measures,** Member States must ensure that courts can order companies, in a final judgment, to adopt and implement specific due diligence measures. Courts should not be limited to issuing general orders to comply with the CSDDD and leaving to non-compliant companies the task of deciding the detail of such measures. They must be able to decide the nature, scope and details of the measures required, including concrete measures under Articles 10, 11 and 12.

- The full effectiveness of provisional injunctive measures under Article 29(3)(c) also requires that national judges have the ability to order as a **provisional measure,** pending a judgment on the merits, the suspension of a company's participation, directly or through a subsidiary, in activities allegedly carried out in breach of its due diligence obligations. They should also be able to order the suspension of a direct or indirect relationship with a business partner that carries out such activities. This is necessary to prevent the company's breach and the damage suffered by the victim from worsening before a final judgment is delivered.

- To ensure the enforceability of both definitive and provisional injunctive measures, national judges should be able to order **penalty payments** applicable in case of late enforcement by the company subject to the measures.

- Article 29(3)(e) expressly empowers national courts to order the **disclosure of evidence** that "lies in the control of the company" (emphasis added). In parallel, the definition of "subsidiary" in Article 3(1)(e) refers to Article 2(10) of Directive 2013/34/EU,[260] which defines a subsidiary as "an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking" (emphasis added). Read together, these provisions require Member States to enable their national courts to order a company to disclose, in a civil liability action brought under the CSDDD, all relevant evidence of which that company is itself in possession, but also evidence in the possession of its direct and indirect subsidiaries.

2.2.2. Procedural safeguards required by general principles of EU law: representative actions

The initial CSDDD required Member States to provide for **representative actions,** allowing victims to authorise a trade union, NGO or similar body to bring a civil liability action on their behalf.[261] Although that specific provision was deleted by the Omnibus I Directive, Member States must still provide for this type of action for at least two reasons.

First, where national law already allows representative actions, these must also be available for CSDDD civil liability claims. Omnibus Recital 49 expressly states that "such deletion [of the rules on representative actions in the initial CSDDD] is without prejudice to any provision of the applicable national law allowing a trade union, a non-governmental human rights or environmental organisation, any other non-governmental organisation or a national human rights institution to bring actions to enforce the rights of the alleged injured party, or to support such actions brought directly by such party."

This is also required by the principle of equivalence; a well-established general principle of EU law which limits Member States national procedural autonomy and requires that the national rules governing remedies

260 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.
261 Article 29(3)(d) in the initial CSDDD.

must not, in situations governed by EU law (such as civil liability actions under the CSDDD) be less favourable than in similar domestic situations.[262]

Secondly, representative actions are also required by the principles of effectiveness and effective judicial protection.

As explained above, one of the objectives of the CSDDD is to ensure access to justice and remedies for people harmed by adverse impacts connected with the operations of a non-compliant company's subsidiaries and business partner.[263] In practice, due to the increasing globalisation of value chains, a substantial proportion of the activities covered by the CSDDD take place in countries outside the EU. This means most adverse impacts arising at the level of a company' subsidiaries and business partners will often occur outside the EU.

Consequently, many victims will be located outside the Member State where proceedings can be brought (and will often be located outside the EU) and may lack the resources to sue companies on their own. Without representative actions, these victims may have no realistic access to national courts, even where the CSDDD gives them a right to compensation. The consequence would be the denial of justice for many victims whom the Directive aims to protect. This constitutes a clear breach of the principle of effectiveness of EU law and a violation of the principle of effective judicial protection.

The case law of the CJEU requires that Member States' national laws provide in certain circumstances a specific remedy for the violation of EU law, in particular when it is necessary to ensure the full effectiveness of EU legislation.[264] Accordingly, where the absence of representative actions would make it virtually impossible or excessively difficult for victims to enforce their CSDDD rights, Member States must make such actions available.

3. Jurisdiction and applicable law in cross-border cases

Cross-border cases under the CSDDD are cases where a non-compliant company, the adverse impact and/or the resulting damage are located in different countries.

As these cases involve several countries, they raise two important questions. First, it is necessary to determine which court has jurisdiction to adjudicate the civil liability claim. Secondly, once the competent court has been identified, judges must determine which country's law applies to the claim. This section explains why these two distinct questions create complexity and uncertainty in CSDDD civil liability regime, and proposes solutions to make the system clearer and more predictable for companies, victims and courts.

3.1. Jurisdiction

In a cross-border case, the first question is which court has jurisdiction to hear the civil liability claim. Jurisdiction is determined by the application of specific rules, known as 'rules of jurisdiction'.

262 See for example Judgment of 7 July 2022, Case C-261/21, Hoffmann-La Roche Ltd et als v Autorità Garante della Concorrenza e del Mercato, para. 44; Judgment of 11 July 2002, Case C-62/00, Marks & Spencer plc v Commissioners of Customs & Excise, para. 34.

263 Article 1(1)(b) and Recital 16 CSDDD.

264 Judgment of 17 September 2002, Case C-253/00, Muñoz y Cia SA v Superior Fruiticola SA, para. 28-30, where the Court required that Member States' national law provide for civil proceedings to enable traders to enforce Regulation (EEC) No 1035/72 of the Council of 18 May 1972 and Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables against a competitor. See also Judgment of 19 June 1990, Case C-213/89, The Queen v Secretary of State for Transport (Factortame I), where the Court held that Member States' national law on remedies must make interim relief available in cases concerning EU law.

The CSDDD does not contain jurisdiction rules. As a result, jurisdiction must be determined under the rules applicable in the country of the court where the claim has been filed. Outside the EU framework, these rules vary from country to country based on national legislation, case law, and international instruments, which creates a highly fragmented legal framework and uncertainty.

Within the EU, the rules of jurisdiction of Member States' courts in cross border cases have been partially harmonised by the Brussels I Regulation.[265] For CSDDD claims **against companies domiciled in the EU,** the main rules are:

- A Member State's national courts have jurisdiction to hear civil liability actions under the CSDDD against companies that are domiciled (i.e. that have their statutory seat, central administration or principal place of business) in that Member State.[266]

- A Member State's national courts can also hear a case against a company domiciled in another Member State if the adverse impact or the resulting damage occurred on its territory.[267]

For companies **not domiciled in the EU,** the Brussels I Regulation does not set any rules of jurisdiction.[268] Jurisdiction then depends on each Member State's national rules. This makes civil claims under the CSDDD against non-EU companies more uncertain, because the possibility of bringing such claims before EU courts varies from one Member State to another.

3.2. Applicable law

Once the competent court has been identified, the second question is which law applies to the civil liability action. In cross-border cases, a court does not necessarily have to apply its own national law. It must determine the applicable law under the so-called 'conflict-of-laws rules', which also vary from country to country. In the EU, the Rome II Regulation harmonises these rules for non-contractual liability:[269]

- Member States' national courts must in principle apply the civil liability law of the country in which the **damage** occurred, even if this law is the law of another country (EU or non-EU).[270]

- In the specific case of damage resulting from environmental harm, the victim has the possibility to opt instead for the application of the civil liability law of the country in which the adverse **environmental impact** occurred.[271] Again, this can be the law of a country other than the Member State whose courts have jurisdiction over the matter.

If the applicable law is that of another EU Member State, the courts will have to apply the civil liability rules for breaches of the CSDDD of that Member State. Conversely, if the applicable law is that of a non-EU country, which by definition has not transposed the CSDDD in its national law, the courts will have to apply the civil liability regime of that country, which will not provide for civil liability for breaches of the CSDDD but may provide for other forms of civil liability.

265 Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I).
266 Articles 4(1) and 63(1) of the Brussels I Regulation.
267 Article 7(2) of the Brussels I Regulation.
268 Article 6(1) of the Brussels I Regulation.
269 Regulation (EC) 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).
270 Article 4(1) of the Rome II Regulation.
271 Article 7 of the Rome II Regulation.

	Jurisdiction	Applicable law
EU-based companies	• Courts of the EU Member State in which the company is domiciled OR • of another EU Member State if the adverse impact or the resulting damage occurred in that other Member States	• Civil liability law of the country in which the damage occurred OR • in the case of environmental harm, of the country in which the adverse environmental impact occurred • IF it occurred in an EU Member State: civil liability regime of that Member State transposing the CSDDD • IF it occurred in a non-EU country: liability depending on the national civil liability regime of that country (where the CSDDD does not apply). **This scenario likely represents the vast majority of cases**
Non-EU based companies	Courts of an EU Member State *only if* the national rules of jurisdiction provide for it	Same as for EU-based companies
	Courts of non-EU countries (such as the country where they are domiciled, or the country where the damage occurred) depending on the national rules of jurisdiction of those countries	Depends on the conflict-of-law rules of that country

3.3. Commentary

The uncertainties regarding jurisdiction and applicable law are unsatisfactory for all relevant stakeholders – companies, victims and judges – both in terms of complexity, predictability, effectiveness of EU law and justice. The challenges posed by these uncertainties are explained below.

- **Complexity and unpredictability of the current system:** As described above, the determination of the courts with jurisdiction to hear civil liability actions under the CSDDD and of the law applicable to these actions is complex and fluctuate on a case-by-case basis depending on highly variable criteria such as the domicile of the company, the locations where the adverse environmental impact and the damage occur and the diversity of national jurisdiction and conflict-of-laws rules in EU Member States and non-EU countries. Regarding the law to be applied to cross-border civil liability claims brought in the EU , EU companies and non-EU companies operating in the EU with global value chains may be exposed to a multitude of civil liability regimes depending on the location of adverse impacts along their supply chains and where any related damages occurs. Companies subject to the CSDDD are therefore potentially exposed to no less than 206 different national civil liability regimes (without taking into account divergences that exist between different states within a federal country).[272] In a globalised economy, this generates significant uncertainty for all companies who may want to assess their exposure to civil liability risk under the CSDDD with respect to the activities of their subsidiaries and business partners worldwide. In these conditions, legal and financial risk management becomes increasingly difficult and unreliable: risks will vary depending on the jurisdictions connected to a company's chain of activity and the applicable rules on jurisdiction and conflict-of-laws.
- **Effectiveness of EU law and considerations of justice:** The likelihood that, as explained above, the law applicable to civil liability actions brought in the EU under the CSDDD will often be the law of a non-EU country that has not transposed the CSDDD has two consequences. First, in those cases, the CSDDD will not apply to regulate the consequence of corporate breaches of the rules it lays down. Instead, the national law of the non-EU country, including its civil liability regime, will apply to determine if the company has committed a wrongdoing and should be liable to compensate victims. Secondly, if the law of that country does not impose due diligence rules or a duty of care equivalent to the due diligence obligations in the CSDDD, or does not provide a civil liability regime that allows victims of violations of these rules to obtain compensation for their damage, victims of breaches of the CSDDD will in effect be denied their right to compensation and left unjustly uncompensated. Furthermore, EU courts will be put in the difficult position of both recognising the victim's right to compensation under their national law transposing the CSDDD and potentially deciding to deny that right if the applicable law offers no remedy.

This situation compromises the effective application of the CSDDD and goes against both the principle of effectiveness and the principle of effective judicial protection of EU law.

3.4. Overriding mandatory provision

In the initial version of the CSDDD, Article 29(7) ensured that, wherever the damage or adverse environmental impact occurred (even in a non-EU country), Member State's national courts hearing a civil liability claim for breach of the CSDDD would apply the civil liability regime under the CSDDD, instead of the civil liability rules of another country that would be otherwise applicable under the Rome II Regulation. This overriding mandatory provision (so called "OMP") was deleted by the Omnibus I Directive.

272 See for example G. Van Calster, Legal opinion: how the Omnibus creates uncertainty on civil liability for companies, May 2025.

It is, however, possible for Member States to independently simplify the civil liability regime in their own jurisdiction and adopt an equivalent clause when transposing the CSDDD. This can be done by expressly providing in their national law that their national liability regime for breaches of the CSDDD is an **overriding mandatory provision** within the meaning of Article 16 of the Rome II Regulation.[273] As long as the courts of this Member State have jurisdiction to hear the civil liability claims brought before them under the CSDDD, a national statutory OMP would "trump" the preceding conflict-of-laws rules that would otherwise apply foreign law.

If implemented by Member States, this would **simplify** their national civil liability systems and create a **constant standard** of civil liability for companies before EU courts, offering complete **predictability** of the potential legal risks for companies subject to the CSDDD across their entire chain of activities, wherever they are located. It would also guarantee **victims' right to compensation** under the CSDDD, instead of victims being subject to the civil liability regimes of non-EU countries that may not recognise such a right.

The CSDDD allows Member States may designate their national civil liability regimes as an overriding mandatory provision:

- **Articles 4(2) and 29(6), and Recital 88** expressly allow Member States to adopt more ambitious civil liability rules, providing for liability in situations not covered by or providing stricter liability than the Directive.

- **Omnibus Recital 49 states that deleting Article 29(7)** does not prevent Member States from providing that the national provisions transposing the CSDDD are overriding mandatory provisions within the meaning of the Rome II Regulation, where the law otherwise applicable to the claim is not the law of a Member State.

- **Member States have previously treated national legal provisions as overriding mandatory provisions,** including in comparable due diligence legal frameworks. For example, the Paris Judicial Tribunal held that the French civil liability regime for breaches of the French Duty of Vigilance Law (Loi sur le devoir de vigilance)[274] constituted an overriding mandatory provision according to Article 16 of the Rome II Regulation.[275]

273 Article 16 of the Rome II Regulation: "Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation."
274 French Law No. 2017-399 of 27 March 2017, codified in Articles L. 225-102-1 and L. 225-102-1 of the French Commercial Code.
275 Tribunal Judiciaire de Paris, Association Sherpa et als v S.A. Laboratoires de Biologie Végétale Yves Rocher, Judgment of 12 March 2026, N°RG 22/04017.

Recommendations for transposition

In order to meet their legal obligations under the CSDDD and EU law more generally, Member States must meet the following requirements when transposing the CSDDD into national law:

- **Obligation n°1: Provide in national law a civil liability regime** that allows victims to bring civil liability action before national courts to obtain compensation for the damages they have suffered as a result of a company's violation of its due diligence obligations.
- **Obligation n°2:** Provide expressly in their national law that **all legal and natural persons, regardless of their country of origin,** including associations, NGOs, as well as other groups of people that enjoy legal personality in their home country (such as local or indigenous communities) **have legal standing** to bring civil liability claims.
- **Obligation n°3:** Provide for civil liability for **non-intentional or negligent breaches** of the due diligence obligations.
- **Obligation n°4:** Provide for the liability of a company for breaches of its due diligence obligations **where the adverse impact** leading to the damage **occurred exclusively in that company's business partners' operations** related to its chains of activities.
- **Obligation n°5:** Grant national courts the prerogative to order, in a final judgment on the merits against a company in breach of its due diligence obligations, **definitive injunctive measures to effectively adopt and implement specific due diligence measures determined by the judge.**
- **Obligation n°6:** Grant national courts the prerogative to order **provisional injunctive measures** that include the suspension by a company of its participation (directly or through a subsidiary) in activities or projects, or the suspension of a (direct or indirect) relationship with a business partner.
- **Obligation n°7:** Grant national courts the prerogative to combine definitive and provisional injunctive measures with **penalty payments.**
- **Obligation n°8:** Grant national courts the prerogative under Article 29(3)(e) to order a company to **disclose** all relevant evidence of which that company is itself in possession, but also **evidence in the possession of its direct and indirect subsidiaries.**
- **Obligation n°9:** Provide for **representative actions** at the very least for claimants based outside the European Union.

In addition, and with a view improving the efficiency of their national civil liability regimes to tackle environmental harms under the CSDDD, Member States should consider the following when transposing the Directive:

Recommendation n°16: Provide expressly in their national law that their national liability regime for breaches of the CSDDD is an overriding mandatory provision within the meaning of Article 16 of the Rome II Regulation.

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