POTENTIAL LEGAL CHALLENGES UNDER EU LAW TO THE PROPOSED OMNIBUS DIRECTIVE AMENDING THE CRSD AND CSDDD

INTRODUCTION

Background

1. On 26 February 2025, the European Commission ("**the Commission**") presented the "Omnibus I" simplification package.[1] This package includes three Commission proposals:

   - A proposal[2] for a directive (the "**Omnibus Directive**") changing the content and scope of some sustainability reporting and due diligence requirements contained in the Corporate Sustainability Reporting Directive ("**CSRD**")[3] and in the Corporate Sustainability Due Diligence Directive ("**CSDDD**").[4]

   - A proposal for a directive delaying the application of reporting and due diligence rules (the "**Stop the Clock Directive**"),[5] which was later adopted in April 2025.[6]

   - A proposal for a Regulation amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism.[7]

2. The main proposed changes to the **CSRD** include:

   - **Reduction of the scope of reporting companies:** The reporting requirements would only apply to large undertakings with more than 1,000 employees and either a turnover above 50 million euros or a balance sheet above 25 million euros. This means that the

[1] European Commission, Omnibus I simplification package, 26 February 2025.

[2] Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, 26 February 2025, COM(2025)81 final.

[3] 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.

[4] 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.

[5] Proposal for a Directive of the European Parliament and of the Council 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, 26 February 2025, COM(2025)80 final.

[6] 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.

[7] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism, 26 February 2025, COM(2025)87 final.

number of companies falling within the scope of the CSRD's reporting obligation will be reduced by about 80%.[8]

- **"Value chain cap"**: For companies that will fall outside the scope of the CSRD (up to 1,000 employees), the Commission will adopt – by delegated act – a voluntary reporting standard, based on the standard for SMEs ("**VSME**") developed by the European Financial Reporting Advisory Group ("**EFRAG**"). In-scope companies will not be able to request out-of-scope companies to provide information that goes beyond the information set out in the VSME standard.

- **Commission's commitment to revise the European Sustainability Reporting standards ("ESRS")**: The Commission will revise the delegated act establishing the ESRS,[9] with the aim of substantially reducing the number of data points and clarifying provisions deemed unclear.

- **Removal of sector-specific standards requirement**: The proposal removes the Commission's empowerment to adopt sector-specific standards. Under the current text, the CSRD foresees three layers within the design of the sustainability reporting framework: sector-agnostic standards, sector-specific standards and entity-specific disclosures. This design sought to ensure that reporting can be harmonised and comparable, while also ensuring that the reporting can capture common aspects of the risks, opportunities and impacts faced by undertakings in specific sectors. To this end, the Commission was supposed to adopt sector-specific standards.

3. The main proposed changes to the **CSDDD** include:

- **Exclusion of indirect partners:** The proposal removes the obligation to systematically conduct in-depth assessments of adverse impacts that occur or may occur in value chains at the level of indirect business partners. In other words, it limits the obligations to the company's own operations, those of its subsidiaries and its direct business partners ("Tier 1"). It requires in-depth assessments with respect to indirect partners only where the company has "plausible information" (which the proposal defines vaguely) suggesting that adverse impacts have arisen or may arise at that level.

- **Stakeholders**: The proposal narrows the definition of "stakeholders" by restricting it to workers and their representatives, and to individuals and communities whose rights or interests are (in case of actual adverse impacts) or could be (in case of potential adverse impacts) "directly" affected by the products, services and operations of the company, its subsidiaries and its business partners. The proposal removes references to

[8] European Commission, Questions and answers on simplification Omnibus I and II, 26 February 2025.

[9] 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.

"groupings," "entities," and institutions such as national human rights and environmental bodies or civil society organisations. The amendments also limit the due diligence stages where companies must engage with stakeholders – now only required during risk identification, the development of (enhanced) action plans, and the design of remediation measures.

- **Reducing the frequency under which the effectiveness of due diligence measures is monitored**: The proposal extends the frequency of the periodic assessments – when a company is required to evaluate the implementation, the adequacy and the effectiveness of its due diligence measures – and the frequency of updating, if necessary, its due diligence policy and appropriate measures **from one to five years**. The proposal specifies that a company needs to assess the implementation of its due diligence measures and update them whenever there are reasonable grounds to believe that the measures are no longer adequate or effective.

- **Business relationships** with non-compliant suppliers:

    - The proposal removes the obligation to terminate (but not to suspend) the business relationship as a last resort.

    - Under the proposal, "[a]s long as 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 trigger the company's liability".

- **Information from companies:** The proposal limits the information that companies within the CSDDD's scope may request from their SME and small midcap business partners (i.e. companies with not more than 500 employees) to the information specified in the CSRD voluntary sustainability reporting standards[10] (VSME standard). This limitation applies unless the companies need additional information to carry out the mapping (for instance on impacts not covered by the standards) and they cannot obtain that information in any other reasonable way.

- **Removal of the harmonisation of conditions for civil liability**:

    - Deferring to the various national civil liability regimes by deleting the harmonised EU conditions for civil liability (Article 29(1)) and revoking the

[10] Under the proposed article, "Member States shall ensure that, for the reporting of sustainability information as required by this Directive, undertakings **do not seek to obtain** from undertakings in their value chain which, on their balance sheet dates, do not exceed the average number of 1000 employees during the financial year any information that exceeds the information specified in the standards for voluntary use referred to in Article 29ca, except for additional sustainability information that is commonly shared between undertakings in the sector concerned."

obligation for Member States regarding representative actions by trade unions or NGOs (Article 29(3)(d)).

- Deleting the obligation for Member States to make their national civil liability provisions prevail where the law applicable to compensation claims is the law of a third country.

- **Transition plans**:

  - The current text of the CSDDD requires companies to adopt and put into effect, on a best effort basis, a transition plan for climate change mitigation compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5°C in line with the Paris Agreement as well as the 2050 climate neutrality objective and the intermediate targets under the Regulation (EU) 2021/1119 of 30 June 2021 establishing the framework for achieving climate neutrality ("**EU Climate Law**").[11]

  - While companies will still be required to adopt such transition plans, the proposal removes the obligation to "put them into effect", focusing on the requirement for the plan to include "implementation actions".

- **Financial institutions exemption:** The proposal removes the obligation for the Commission to assess whether downstream activities of financial services should be included in the due diligence regime.

- **Expansion of maximum harmonisation**: The current directive contains a partial maximum harmonisation clause, which prevents Member States from introducing provisions that would go beyond certain CSDDD's requirements. The proposal extends the scope of maximum harmonisation to several additional provisions of the CSDDD, namely Articles 6 and 8, Article 10(1) to (5), Article 11(1) to (6) and Article 14. This includes the identification duty, the duties to address adverse impacts that have been or should have been identified, and the duty to provide for a complaints and notification mechanism.

4. Several EU institutions, trade associations, investor groups, academic experts and civil society organisations have voiced serious concerns regarding the "simplification" measures proposed in the Omnibus Directive.[12]

[11] 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.

[12] These concerns were raised, for example, by the European Central Bank (ECB), the European Economic and Social Committee (EESC), the Office of the High Commissioner for Human Rights (OHCHR), several Member States, as well

Aim of the legal analysis

5. In this context, ClientEarth commissioned a legal analysis to identify and assess potential legal challenges under EU law arising from the proposed amendments to the CSDDD and the CSRD within the Omnibus Directive.

6. The following assessment is based on the Commission's proposal. Most of the amendments submitted to the Council of the EU (the "**Council**") by the Polish Presidency – circulated in the latest available compromise text of 21 June –[13] align with or go beyond the Commission's proposal in lowering the scope and requirements of the CSRD and the CSDDD, including narrowing the scope of the CSRD and restricting the obligations on companies to the adoption of climate transition plans, with no requirement to implement them. We therefore believe that these amendments not only fail to resolve the legal challenges identified in our assessment, but may also reinforce them.

Admissibility of a potential legal action

7. Although NGOs and private operators cannot directly challenge EU directives under Article 263 of the Treaty on the Functioning of the European Union ("**TFEU**") nor initiate "failure to act" proceedings under Article 265 TFEU due to standing limitations,[14] such actions may be brought by Member States – and potentially by EU institutions such as the European Central Bank ("**ECB**").[15]

8. NGOs and private operators may also indirectly trigger judicial review either by initiating proceedings before national courts against companies in breach of their due diligence or sustainability reporting obligations, or by challenging national implementing measures. In both scenarios, national courts may refer to the European Court of Justice ("**ECJ**") preliminary questions on the validity of the Omnibus Directive under Article 267 TFEU. Indeed, where applicants cannot directly challenge EU measures of general application before the ECJ, they may still access EU judicial review by raising the issue in national courts. Since these courts

as by the European Sustainable Investment Forum (Eurosif), the Principles for Responsible Investment (PRI), BusinessEurope, the civil society organisations, and Cirio Law Firm.

[13] *See* Document No. ST 10276/25 entitled "Proposal for A Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements - Mandate for negotiations with the European Parliament".

[14] To establish legal standing, individual applicants – such as NGOs and private operators – must demonstrate that they are directly and individually concerned by the contested act. The ECJ has adopted a restrictive interpretation of these criteria, which effectively bars those operators from challenging EU measures of general application. *See* for a presentation of this case-law, Advocate General Emiliou's recent opinion on Case C-731/23 P calling for a re-examination of this restrictive approach.

[15] According to Article 263(3) TFEU, the ECB may bring an action for annulment solely for the purpose of protecting its prerogatives. Here, the ECB has emphasised that access to high-quality sustainability-related information is essential for exercising its prerogatives under the TFEU, which include the prudential supervision of credit institutions (Art. 127(6)), the contribution to the smooth conduct of policies relating to financial stability (Art. 127(5)), and the implementation of monetary policy (Art. 127(2) and 282(1)) (*See* Opinion of the European Central Bank of 8 May 2025 on proposals for amendments to corporate sustainability reporting and due diligence requirements).

cannot themselves declare EU measures invalid, they can refer the question to the Court of Justice for a preliminary ruling on their validity.[16]

Structure of the legal analysis and main conclusions

9. As developed further, we have identified credible legal grounds under EU law that could support legal challenges of the proposed amendments to the CSRD and CSDDD. Thus, the potential for litigation poses legal risks that should not be underestimated.

10. This analysis identifies several potential grounds for challenging the Omnibus Directive in both an annulment action under Article 263(2) TFEU and a preliminary reference on validity under Article 267 TFEU, including possible infringements of the principle of proportionality, Article 52 of the Charter of Fundamental Rights (CFR), the principles of legal certainty and legitimate expectations, the principle of coherence, and Article 11 TFEU read in conjunction with Article 37 CFR, as well as breaches of essential procedural requirements (**1**).

    In addition, the Commission's failure to conduct a climate impact assessment under Article 6(4) of the EU Climate Law, as well as a broader impact assessment under its own Rules of Procedure, may be raised in proceedings under Article 265 TFEU (**2**).

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[16] ECJ, Judgment of 25 July 2002, Case C-50/00 P, *Unión de Pequeños Agricultores*, para. 40. For instance, preliminary references have been made to the Court at the requests of civil society organisations in cases related to the validity of the Directive 2006/24/EC on data retention (ECJ, Judgment of 8 April 2014, Cases C-293/12 and C-594/12, *Digital Rights Ireland*) and the General Data Protection Regulation (ECJ, Judgment of 21 June 2022, Case C-817/19). In France, the CSRD was transposed through a Decree-law No. 2023-1142 of 6 December 2023 and a Decree No. 2023-1394 of 30 December 2023. The law transposing the Omnibus with regard to CSRD obligations would not be directly challengeable, but an NGO could challenge the administrative decree applying this law and modifying the Decree No. 2023-1384.

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1. POTENTIAL LEGAL GROUNDS CHALLENGING THE VALIDITY OF THE OMNIBUS DIRECTIVE UNDER EU LAW

11. The ECJ may be called to assess the validity of the Omnibus Directive in both an annulment action under Article 263(2) TFEU and a preliminary reference on validity.

12. Under Article 263(2), EU acts may notably be annulled on grounds of "infringement of the Treaties or any rule of law relating to their application" or "infringement of an essential procedural requirement". In a preliminary referral, the Court is not limited to the grounds specified for the action for annulment – it may assess the compatibility of the contested provisions with the EU Treaties, the Charter of Fundamental Rights ("**CFR**"), and the general principles of EU law, which include fundamental rights of the European Convention on Human Rights.[17]

13. Both substantive (**1.1**) and procedural (**1.2**) grounds of invalidity may therefore be raised, and the arguments below are relevant in either context.

1.1. Substantive grounds of incompatibility

14. The Omnibus Directive could be challenged – in whole or in part – on the grounds of infringement of the principle of proportionality (**1.1.1**), Article 52 of the CFR (**1.1.2**), the principles of legal certainty (**1.1.3**) and legitimate expectations (**1.1.4**), the principle of coherence (**1.1.5**), as well as Article 11 TFEU, read in conjunction with Article 37 of the CFR (**1.1.6**).

1.1.1. Principle of proportionality

15. Article 5(4) of the Treaty on European Union provides that "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties".

16. In addition, under Article 5 of Protocol No 2, "draft legislative acts must take account of the need for any burden falling upon economic operators to be minimised and commensurate with the objective to be achieved".[18]

17. The ECJ has consistently held that EU acts must be "appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them".[19] The ECJ has also affirmed that the principle of proportionality, "as a general

[17] K. Lenaerts et al., *EU Procedural Law*, Oxford University Press, 2nd ed, 2023, para. 10.14.

[18] Protocol (No 2) on the application of the principles of subsidiarity and proportionality, Article 5.

[19] ECJ, Judgment of 8 June 2010, Case C-58/08, *Vodafone*, para. 51; ECJ, Judgment of 18 June 2015, Case C-508/13, *Estonia v EP and Council*, para. 28; ECJ, Judgment of 7 July 2009, Case C-558/07, *S.P.C.M. and Others*, para. 41.

principle of European Union law, is [...] a criterion for the lawfulness of any act of the institutions of the Union".[20]

18. While the EU legislature enjoys a wide margin of discretion in areas involving complex assessments (e.g. the adoption of a directive),[21] this discretion is not unlimited. The EU legislature must take into consideration "all the relevant factors and circumstances of the situation the act was intended to regulate" and must "at the very least be able to produce and set out clearly and unequivocally the basic facts which had to be taken into account as the basis of the contested measures of the act and on which the exercise of their discretion depended".[22]

19. In this respect, the absence of an impact assessment – except in exceptional cases where the EU legislature is in a particular situation requiring it to be dispensed with and has sufficient information enabling to assess the proportionality of an adopted measure – can constitute a breach of the principle of proportionality, exposing the act to annulment.[23] **Recently, the Court annulled part of a regulation due to the absence of an impact assessment, despite the EU legislature's broad discretion in the matter. The annulment was based on the fact that the EU legislature lacked sufficient information to assess the proportionality of the measures**.[24]

20. Moreover, the Court requires that, "when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued".[25] Even "substantial negative economic consequences for certain operators" must be duly justified in light of the objectives pursued by the measure.[26]

> ***Possible violations of the principle of proportionality***
>
> **Lack of impact assessment**
>
> In the present case, the Commission chose not to conduct an impact assessment, citing the importance and urgency of the initiative, as well as the fact that it amends existing legal acts

[20] ECJ, Judgment of 29 June 2010, Case C-441/07, *Alrosa*, para. 36.

[21] In areas in which the Union institutions, bodies, offices, and agencies have a broad discretion, the legality of a measure "*can be affected only if the measure is manifestly or obviously inappropriate having regard to the objective which the competent institution is seeking to pursue*". *See* ECJ, Judgment of 8 June 2010, Case C-58/08, *Vodafone*, para. 52; ECJ, Judgment of 10 January 2006, Case C-344/04, *IATA and ELFAA*, para 80; ECJ, Judgment of 10 July 2008, Case C-413/06, *Bertelsmann*, paras 69 and 144; ECJ, Judgment of 8 July 2010, Case C-343/09, *Afton Chemical Limited*, para. 46.

[22] *A contrario* reading of ECJ, Judgment of 3 December 2019, Case C-482/17, *Czech Republic v. Commission*, para 85.

[23] ECJ, Judgment of 3 December 2019, Case C-482/17, *Czech Republic* v *Parliament and Council*, para 85.

[24] ECJ, Judgment of 4 October 2024, Joined Cases C-541/20 to C-555/20, *Lithuania and others v. Commission and Council of the EU*, paras 718-738. *See* also ECJ, Judgment of 7 September 2006, Case C-310/04, *Spain v. Council*, para. 97.

[25] ECJ, Judgment of 13 November 1990, Case C-331/88, *Fedesa*, para. 13; ECJ, Judgment of 5 May 1998, Case C-180/96, *United Kingdom* v *Commission*, para. 96; ECJ, Judgment of 8 July 2010, Case C-343/09, *Afton Chemical Limited*, para. 45.

[26] ECJ, Judgment of 13 November 1990, Case C-331/88, *Fedesa*, para. 17.

that have already been subject to impact assessments, and invoking a derogation under the Better Regulation Guidelines.[27]

Moreover, the Commission itself acknowledged that it has "not been possible to undertake an ex-post evaluation or fitness check of either piece of legislation" of either the CSDDD or the CSRD, arguing that the CSDDD "has not yet been transposed or applied by companies" and that the CSRD "has been applied by a first set of companies who are publishing their first sustainability statements mainly in the first half of 2025".[28]

As a result, the legislature lacked sufficient information to properly assess the proportionality of the adopted directive.

This exposes the act to annulment for breach of the principle of proportionality.

Disproportionate disadvantages with regard to the objectives pursued

The deregulation introduced through the Omnibus Directive significantly undermines the ability of the relevant regulatory frameworks (CSDDD, CSRD) to achieve their core objectives – namely, the protection of human rights, the promotion of environmental sustainability, and the fostering of responsible business conduct. The Commission itself acknowledges that the Omnibus Directive would "partially diminish" the positive impacts of the CSRD on fundamental rights.[29] In light of the objectives of administrative and organisational simplifications for companies, this constitutes a disproportionate interference with fundamental rights and public interest objectives.

In particular, several provisions of the Omnibus Directive raise serious proportionality concerns:

- **Limitation of due diligence requirements to Tier 1 suppliers in the CSDDD**: While current due diligence standards apply across entire supply chains, the Commission's proposal seeks to restrict obligations to direct (Tier 1) suppliers. Such a restriction would weaken the effectiveness of the directive by excluding from scrutiny the segments of the value chain where the most serious human rights and environmental violations typically occur. The Commission itself has acknowledged

[27] Commission's Explanatory Memorandum to the Proposal COM(2025) 81 final, p. 12: "The issue of competitiveness is of critical urgency as it directly influences the European Union's ability to achieve sustainable economic growth and maintain its position in the global market. […] Given this urgency, the proposal does not allow for an impact assessment. However, it is important to note that this initiative involves amendments to existing legal acts, which have already undergone comprehensive impact assessments. The insights and evidence gathered from those previous assessments, together with input from stakeholders and discussions with practitioners, have helped to shape the current proposal. For that reason, and given the importance and urgency of this initiative, a derogation was granted under the Commission's Better Regulation Guidelines. Accordingly, no full-fledged impact assessment has been prepared […]."

[28] *Ibid*., p. 10.

[29] *Ibid*., p. 13.

the risks associated with such a limitation. In its explanatory memorandum, it recognises that "adverse human rights impacts often arise in indirect business relationships" and that, under the proposed approach, companies' "obligations to proactively identify such impacts will be reduced to avoid burdens from systematically addressing all parts of often complex value chains".[30]

- **Removal of implementation requirements for transition plans in the CSDDD**: Deleting these requirements removes key safeguards for climate and human rights objectives. Less intrusive alternatives exist, and the justification provided appears insufficient to warrant such a reduction in protection.

- **Extension of the scope of the maximum harmonisation clause in the CSDDD**: This extension leaves no freedom to Member States for setting higher standards in matters covered by the maximum harmonisation clause.[31] This could undermine national efforts to strengthen corporate accountability. Maximum harmonisation being a particularly restrictive form of harmonisation, the EU legislature would need a strong justification that its objectives related to the Single Market – namely, avoiding fragmentation through different national rules and ensuring a level playing field across the EU – cannot be achieved by any other means, such as narrowing the scope of the maximum harmonisation clause or opting for a minimum harmonisation approach.

- **Increase of the threshold in CSRD to 1,000 employees**: This change excludes many companies with potential high sustainability impacts. It ignores existing data gaps and impairs the capacity to identify and mitigate human rights risks.[32] It ultimately undermines the CSRD's ability to achieve core objectives such as environmental and consumer protection.

Finally, from the perspective of the burden placed on economic operators, the changes introduced by the Omnibus Directive to both the CSDDD and the CSRD are likely to adversely affect companies that have already made significant investments to comply with the previous requirements (See below Section **1.1.4**), thereby raising concerns as to the proportionality of the resulting instruments.

[30] *Ibid*.

[31] *See* J. Tomkin, M. Kellerbauer, and M. Klamert, *Commentary on the EU Treaties and the Charter of Fundamental Rights*, Oxford University Press, 2019, p. 1237; Baldon Avocat's website, The Corporate Sustainability Due Diligence Directive (CSDDD) Under the Omnibus Package: Key Changes and Timeline, March 2025.

[32] *See* Business Human Rights Journal Blog, The Simplification Omnibus and the Rule of Law: Undermining Corporate Sustainability in the EU and Beyond?, Olena Uvarova, 12 March 2025.

1.1.2. Article 52 of the Charter of Fundamental Rights

21. Article 52(1) CFR lays down five cumulative conditions that any limitation upon CFR rights and freedoms must satisfy. The limitation must (i) be provided for by law, (ii) respect the essence of the rights and freedoms concerned, (iii) meet objectives of general interest recognised by the Union, (iv) be necessary to achieve the objective of general interest or to protect the rights and freedoms of others, and (v) observe the principle of proportionality.

22. The ECJ has already annulled a directive by considering that the EU legislature had not laid down "clear and precise rules" governing the extent of the interference with the fundamental rights enshrined in the CFR.[33] Absent such guarantees, the directive could not qualify as "necessary" or "proportionate", notwithstanding the legitimate objective of the prevention of offences and the fight against crime.

Non-compliance with Article 52(1) CFR safeguards

In the present case, the Omnibus Directive appears to interfere with rights protected by the CFR, as it seeks to amend both the CSRD and the CSDDD – two instruments which, in their respective recitals, expressly aim to uphold interests safeguarded by the CFR.[34]

The CFR rights expressed in these acts include: the right to life and to physical integrity (Articles 2 and 3), the right to respect for private and family life (Article 7), the right to fair and just working conditions (Article 31) and the right to an effective remedy (Article 47).

The Omnibus Directive, which partly withdraws obligations laid down in the CSDDD and the CSRD, could therefore be viewed as a limitation within the meaning of Article 52(1) of the CFR, when considered through the lens of a **non-regression principle**.[35]

The proposal would thus need to satisfy the Article 52(1) CFR requirements regarding legality, respect of essence of the rights, objectives of general interest, necessity and proportionality.

In this case, the conditions of legality and the pursuit of general interest objectives would likely be fulfilled. While the respect for the essence of the rights could arguably be questioned, the most critical hurdles concern the necessity and proportionality requirements

[33] ECJ, Judgment of 8 April 2014, Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland Ltd v Minister for Communications and Others*. The directive (2006/24/EC) concerned the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks.

[34] *See* CSDDD, Recital 1; CSRD, Recital 49.

[35] *See* for instance ECJ, Judgment of 20 April 2021, Case C-896/19, *Repubblika v Il-Prim Ministru*.

– particularly in light of the absence of impact assessments and the lack of consideration of less restrictive alternatives (See above).

In this regard, legal experts have recently emphasised that the Omnibus Directive's amendments – notably the Tier 1 limitation and the removal of the implementation requirement for climate transition plans – would likely not withstand scrutiny under the test set out in Article 52 of the CFR.[36]

1.1.3. Principle of legal certainty

23. The principle of legal certainty, a general principle of EU law derived from ECJ jurisprudence, aims to ensure that situations and legal relationships governed by EU law remain foreseeable.[37] It requires that rules be "clear and precise and predictable in their effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law".[38]

24. To that end, the principle of legal certainty imposes that:

- legislative texts be drafted in a **clear and precise** manner, notably when they impose an obligation on economic operators;[39]
- amendments to existing laws, which affect individual situations, be adopted only in accordance with the **rules on competence and procedure**;[40]
- EU institutions **avoid**, as a matter of principle, **inconsistencies** that might arise in the implementation of the various provisions of EU law, particularly when those provisions pursue the same objective, such as undistorted competition in the common market.[41]

Possible violation of the principle of legal certainty

There are reasonable grounds to argue before the ECJ that the Omnibus Directive violates the principle of legal certainty.

- **Removing the obligation to "put into effect"** climate transition plans creates ambiguity as to whether economic operators are required to implement their plans.[42]

[36] *See* Cirio Law Firm, The legal validity of the Omnibus package: a Charter rights analysis, May 2025.

[37] ECJ, Judgment of 15 February 1996, Case C-63/93, *Duff and Others*, para. 20.

[38] ECJ, Judgment of 12 February 2015, Case C-48/14, *European Parliament v. Council,* para. 45

[39] ECJ, Judgment of 9 July 1981, Case 169/80, *Gondrand Frères*, para. 17.

[40] General Court, Judgment of 21 October 1997, Case T-229/94, *Deutsche Bahn v. Commission*, para 113.

[41] General Court, Judgment of 22 April 2016, Case T-50/06 RENV II, *Ireland v. European Commission*, para. 59.

[42] European Central Bank, Own-initiative opinion on proposals for amendments to corporate sustainability reporting and due diligence requirements, 8 May 2025, para. 4.1.2, available here.

- **Reducing the scope of stakeholders** that companies should engage with by inserting the word "relevant" causes more uncertainty than it relieves companies from unnecessary administrative "burden".[43]
- **Limiting the scope of due diligence** to direct business partners unless there is "**plausible information**" that suggests that adverse impacts have arisen or may arise creates greater uncertainty, as companies will be required to arbitrarily make legal determination about whether information is "plausible".[44]

In addition, the Omnibus Directive seems to violate the principle of legal certainty in at least one other aspect: the legislative proposals were not adopted in accordance with the Commission's rules of procedures (See below Section **1.2.2**).

1.1.4. Principle of legitimate expectations

25. As a corollary to the principle of legal certainty, the **principle of legitimate expectations** holds that legal persons who act reasonably and in good faith based on existing EU law – either as it is or as it appears to be – should not suffer from the frustration of those expectations.[45]

26. The ECJ has consistently held that this principle protects any person with regard to whom an EU institution has given rise to **justified hopes**[46] through precise, unconditional and consistent information coming from authorised and reliable sources.[47]

27. However, the EU legislature enjoys **broad discretion** where its action involves political, economic and social choices and where it is called on to undertake complex assessments and evaluations.[48] Consequently, the legislature may alter an existing situation in the exercise of this discretionary power.[49] In addition, the principle of legitimate expectations may not be relied upon if the adoption of the contested measure could have been foreseen by a "prudent and circumspect economic operator".[50]

[43] Principles for Responsible Investment, "EU Omnibus I – European Commission Proposal", Position Paper, May 2025, p. 14.

[44] OHCHR Commentary on the Omnibus Proposal, EU proposal risks backsliding on historic Corporate Sustainability Directive, May 2025, p. 3; BusinessEurope, Omnibus I CS3D, CSRD And Taxonomy Position Paper, May 2025, p. 6.

[45] U. Bernitz, J. Nergelius, C. Cardner, *General Principles of EC Law in a Process of Development*, Kluwer law International, 2008, p. 54. *See* ECJ, Judgment of 14 March 2013, Case C-545/11, *Agrargenossenschaft Neuzelle eG*, para. 24.

[46] ECJ, Judgment of 14 March 2013, Case C-545/11, *Agrargenossenschaft Neuzelle eG*, para. 24.

[47] ECJ, Judgment of 21 June 2018, Case C-5/16, *Poland v. European Parliament and Council*, para. 110.

[48] ECJ Judgment of 16 December 2008, Case C-127/07, *Arcelor Atlantique et Lorraine and others*, para. 57.

[49] ECJ, Judgment of 28 October 1982, Case 52/81, *Faust v. Commission,* para. 27.

[50] ECJ, Judgment of 7 September 2006, Case C-310/04, *Spain v. Council*, para. 83.

Possible violation of the principle of legitimate expectations

A compelling case could be made before the ECJ arguing that economic operators[51] cultivated legitimate expectations that the sustainability due diligence and reporting framework, as adopted under the CSDDD and the CSRD, would not be substantially altered within such a short timeframe:

- In Article 36(2) of the CSDDD, the Commission expressly commits to reporting to the Council and the Parliament on the implementation and effectiveness of the directive by 26 July 2030. The focus areas of this report align with the key provisions amended by the Omnibus Directive, especially those concerning the scope of the directive including thresholds, the definition of "chain of activities", the rules governing climate transition plans, the provisions on civil liability, etc. Similarly, the CSRD Commission review is planned for mid-2029.[52]

  It could be argued that economic operators relied on these provisions to invest in due diligence and reporting obligations with the expectation that they would be subject to these obligations until, at least, 2030.

- This is further supported by the **years-long negotiations process** leading to the adoption of the CSDDD, which reasonably led stakeholders to believe that the resulting rules were well thought-out and would remain stable in the near future.[53]

  In a letter sent to the Commission in January 2025, right before the adoption of the Omnibus Directive, major businesses and business associations highlighted that a great deal of effort had been made by all parties during the negotiation of the CSDDD to ensure that the legislation supplemented the CSRD without creating any overlapping requirements.[54]

- Similarly, expectations that CSRD rules would apply were reinforced by the publication of a Commission Notice on the interpretation of certain legal provisions of the CSRD in November 2024,[55] along with three guidance documents from EFRAG.[56]

Based on these expectations, businesses have already invested substantial resources in systems, processes, and expertise preparing for and complying with the obligations of both texts.[57] It is worth noting that businesses have allocated supplementary resources towards ESG processes and reporting, not only to comply with their obligations but also to respond to investors' expectations created by the CSDDD and CSRD.[58]

Thus, it could be argued that the Omnibus Directive breaches the principle of legitimate expectations.

1.1.5. Principle of coherence

28. Article 7 of the TFEU provides that "[t]he Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers". This principle may be invoked before the ECJ,[59] although its review is limited to the examination of whether the competent institutions have **manifestly exceeded their discretion –** for example, if the EU legislature, when adopting a measure in one policy area, did not seek to coordinate its content with measures in other policy areas or clearly disregarded such coordination. This principle therefore requires that, in a given policy area, EU legislation refrains from **duplicating or contradicting** itself and **considers the objectives of other policy areas**.[60]

29. In addition, the Commission promotes, in its Better Regulation guidelines,[61] **coherent legislation** as a tool to achieve greater efficiency of EU initiatives. Policy coherence involves

[51] Although the ECJ usually applies this principle with regards to economic operators, according to established case-law that "that right applies to any individual in a situation in which an EU institution, body or agency, by giving that person precise assurances, has led him to entertain well-founded expectations" (ECJ, Judgment of 13 June 2013, Cases C-630/11 P to C-633/11 P, *HGA and Others* v *Commission*, para. 132). This would therefore also include civil society organisations and other stakeholders, provided that they have been given precise, unconditional and consistent assurances from EU authorities.

[52] CSRD, Article 6(1).

[53] The proposal was adopted in February 2022. A first provisional agreement in trilogues was reached in December 2023 but three Member States withdrew their support for this text, reopening negotiations which ended with another compromise text in March 2024.

[54] Letter from companies and industry associations titled "Business views on the EU omnibus proposal", January 2025.

[55] Commission Notice on the interpretation of certain legal provisions in Directive 2013/34/EU (Accounting Directive), Directive 2006/43/EC (Audit Directive), Regulation (EU) No 537/2014 (Audit Regulation), Directive 2004/109/EC (Transparency Directive), Delegated Regulation (EU) 2023/2772 (first set of European Sustainability Reporting Standards, 'first ESRS delegated act'), and Regulation (EU) 2019/2088 (Sustainable Finance Disclosures Regulation, 'SFDR') as regards sustainability reporting, 13 November 2024, C/2024/6792.

[56] These documents are available here.

[57] *See* the letter from C3D to the Commission, January 2025. *See* also the 2024 PwC survey, showing that more than 90% of the respondents were confident that they will be able to report by the required date. For instance, although wave 1 companies were not targeted by the Stop the Clock Directive, the Commission proposes to implement a two-year delay for the phase-in provisions under the ESRS. This freeze would apply to companies who had already developed internal capabilities and set up ESD data systems, double materiality assessments, to prepare for reporting on financial year 2024.

[58] Human Level, The business risks of reopening Level 1 of the EU CSDDD, Briefing note February 2025.

[59] The justiciability of Article 7 TFEU is being debated. In its *Front Polisario* judgment (10 December 2015, Case T-512/12), the Court hinted that this principle may be justiciable but did not clarify what a violation of this principle would entail besides stating that "[t]he supposed 'inconsistency' of an act with the policy of the European Union in a given area necessarily implies that the act concerned is contrary to a provision, a rule or a principle which governs that policy. That fact alone, if it were established, would be sufficient to lead to the annulment of the act concerned, without it being necessary to rely on Article 7 TFEU."

[60] *See* J. Tomkin et al, *Commentary on the EU Treaties and the Charter of Fundamental Rights*, Oxford University Press, 2019, p. 88 et seq.; *See* also H. Karnell and T. Konstadinides, "The Rise and Expressions of Consistency in EU Law: Legal and Strategic Implications for European Integration", *Cambridge Yearbook of European Legal Studies*, 2013.

[61] Commission Staff Working Document, Better Regulation Guidelines, SWD(2021) 305 final.

reducing conflicts and promoting synergies between different policy areas with the aim of achieving shared outcomes aligned with jointly agreed policy objectives.[62]

30. The EU Climate Law further recalls that coherence of EU instruments is paramount to achieving greenhouse gas emission reductions targets and mandates that any draft measure or legislative proposal be subject to a consistency check with climate objectives (See below Section **1.2.2** and Section **2**).[63]

Failure to comply with the principle of coherence

It could be argued that the Omnibus Directive fails to comply with the principle of legal coherence, for it reinforces and even creates contradictions within the ESG obligatory framework:

- The Taxonomy,[64] the CSDDD[65] and CSRD[66] were adopted to **steer private investment towards environmental, climate and human-rights compatible activities**. Despite this stated objective, the Omnibus Directive strives to effectively prevent companies from making informed business decisions and directing their investment towards these types of activities:
    - In-scope companies under the CSRD will not be able to request out-of-scope companies information that goes beyond the information set out in the VSME standard. Such companies will therefore lack the means to assess whether their suppliers are on the right track regarding their transition

[62] M. Nilsson et al, "Understanding Policy Coherence: Analytical Framework and Examples of Sector-Environment Policy Interactions in the EU", *Environ. Policy Gov.*, 2012, 22, pp. 395-423.

[63] Recital 31 of the EU Climate Law provides that "[i]mproving climate resilience and adaptive capacities to climate change requires shared efforts by all sectors of the economy and society, as well as policy coherence and consistency in all relevant legislation and policies"[63] and Recital 39 adds that "coherence of the Union instruments as regards greenhouse gas emission reductions should be sought".

[64] This is recognised in Recitals 6 ("The action plan recognises that the shift of capital flows towards more sustainable activities has to be underpinned by a shared, holistic understanding of the environmental sustainability of activities and investments."), 9 ("Achieving the SDGs in the Union requires the channelling of capital flows towards sustainable investments. It is important to fully exploit the potential of the internal market to achieve those goals"), 11 ("Making available financial products which pursue environmentally sustainable objectives is an effective way of channelling private investments into sustainable activities").

[65] *See* for example CSDDD, Recitals 9 ("The private sector could play an important role in promoting sustained, inclusive and sustainable economic growth, while avoiding the creation of imbalances on the internal market") and 10 ("[…] the role of the private sector, in particular its investment strategies, is also considered central to achieve these objectives.")

[66] *See* for example, CSRD Recital 2 : "In its Communication of 8 March 2018 […], the Commission set out measures to achieve the following objectives: reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth, manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues, and foster transparency and long-termism in financial and economic activity. The disclosure by certain categories of undertakings of relevant, comparable and reliable sustainability information is a prerequisite for meeting those objectives."

pathway, and will be prevented from better orientating their choice in suppliers based on this data.[67]

- **Investors'** access to transparent, high-quality and comparable sustainability data will be hampered by the proposed changes in the CSRD (e.g. value chain cap, reduction of personal scope) and the CSDDD. This will prevent investors from conducting informed investment risks analysis and ultimately channeling capital towards climate and human-rights compatible companies and activities.[68]

- The CSDDD, in its Recital 2,[69] explicitly recognises that the instrument was adopted to pursue the **objective of a high level of environmental protection** as enshrined in Article 191 TFEU. The proposed changes to the CSDDD undermine this objective, for reasons presented below (See Section **1.1.6**).[70] This leads to an incoherent directive, which claims to strive to implement one objective while effectively preventing any meaning progress towards it.

- The Omnibus Directive goes directly against the results of the in-depth impacts assessments conducted before the adoption of the CSDDD. As highlighted in ClientEarth's complaint to the Ombudswoman regarding the Omnibus proposal,[71] the impact assessments **discarded certain regulatory options** such as limiting the due diligence duty to value chain direct business partners – as proposed in the Omnibus Directive – "due to [their] ineffectiveness".[72]

1.1.6. Breaches of Article 11 TFEU, read in conjunction with Article 37 of the CFR

31. Article 11 TFEU provides that "[e]nvironmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development". This principle is completed by the protection clause of the third paragraph of Article 114 TFEU – one of the legal bases of the Omnibus

[67] The limitation in the information that companies may request from SME and midcap companies under the CSDDD will have the same effect.

[68] *See* for example the concerns raised in Principles for Responsible Investment, Position Paper EU Omnibus I – European Commission Proposal, May 2025.

[69] CSDDD, Recital 2: "In line with Article 191 of the Treaty on the Functioning of the European Union (TFEU), a high level of protection and improvement of the quality of the environment and promoting European core values are among the priorities of the Union, as set out in the communication of the Commission of 11 December 2019 on A European Green Deal. These objectives require the involvement not only of public authorities but also of private actors, in particular companies."

[70] These reasons relate *inter alia* to the limitation of the risk assessments to Tier 1 business partners and the extension of the scope of the harmonisation clause.

[71] ClientEarth and others, Complaint to the European Ombudsman. Maladministration of the Commission in the preparation of the 2025 proposal to amend the CSDDD as part of the Omnibus I package, April 2025, p. 17.

[72] Commission Staff Working Document Executive Summary of the Impact Assessment Report, SWD(2022) 43 final, p1

Directive – which expressly requires that, in achieving harmonisation, a high level of protection of the environment should be guaranteed.[73]

32. Moreover, under Article 37 of the CFR, "[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development."

33. The Court has confirmed that Article 11 TFEU, read in conjunction with Article 37 CFR, is horizontally applicable, which entails that the EU legislature must incorporate environmental protection requirements into the EU's policies and activities, and may therefore serve as a **standard for reviewing the legality** of EU legislation.[74]

34. However, where the legality review concerns an EU act through which the EU legislature is required to strike a balance between various interests and objectives, an infringement of Article 11 TFEU cannot be established solely on the ground that the act, taken in isolation, has significant negative environmental impacts. The Court must also consider the **broader EU regulatory framework within the relevant policy area**, including other measures adopted by the EU to mitigate negative environmental impacts.[75]

Possible violation of Article 11 TFEU, read in conjunction with Article 37 CFR

The adoption of the Omnibus Directive would undermine the EU's environmental objective to uphold a high level of environmental protection, as well as the EU's commitments to reach climate neutrality by 2050 and to reduce net greenhouse gas emissions by at least 55% compared to 1990 by 2030, as enshrined in the EU Climate Law.[76] Several of the concerns mentioned in this memorandum support this allegation – among other things:

- **Limiting risk assessments to Tier 1 business partners** prevents businesses from addressing the most serious adverse human rights and environmental impacts, as

[73] ECJ, Judgment of 22 June 2017, Case C-549/15, *E.ON Biofor Sverige AB*, para 48. A reduction in the level of protection in certain cases is acceptable as long as the general result is a considerable improvement in the protection of the interests at stake (The EU treaties, Article 114 para. 36; *See*, to this effect regarding consumer protection, ECJ, Judgment of 13 May 1997, Case C-233/94, *Germany v EP and Council*, para 48).

[74] ECJ, Judgment of 4 October 2024, Cases C-541/20 to C-555/20, *Lithuania and others v. European Parliament and Council*, paras 423 et seq. *See* also the General Advocate's opinion delivered on 14 November 2023, paras. 569-583.

[75] In, Cases C-541/20 to C-555/20, the ECJ ruled that "the review of the legality of point 6(d) of Article 1 of Regulation 2020/1054 which the Court is called upon to carry out […] concerns an EU act through which the EU legislature is required to ensure […] a balance between the various interests and objectives involved. / In those circumstances, even if the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, considered in isolation, were to have significant negative effects on the environment, it is necessary to take account of other measures undertaken by the EU legislature to limit the negative effects of road transport on the environment and to attain the overall objective of reducing polluting emissions, in order to determine whether there must be a finding that Article 11 TFEU, read in conjunction with Article 37 of the Charter, has been infringed" (paras. 437 and 438).

[76] EU Climate Law, Articles 2(1) and 4(1).

these most often arise from the activities of indirect business partners in value chains outside the EU.

- **Extending the scope of the maximum harmonisation clause** prevents Member States from establishing more ambitious rules, effectively capping the level of corporate accountability and contribution to energy and environmental transition.

- **Removing the duty to "put into effect" climate transition plans** renders these plans mere tick-box exercises without any real effect on business strategies.

- **Reducing the frequency of monitoring** the effectiveness of due diligence measures from every year to every 5 years will hinder companies' ability to adapt their due diligence measures to evolving environmental and climate risks.

Thus, it could be considered that the Omnibus Directive breaches Article 11 TFEU, read in conjunction with Article 37 CFR.

1.2. Procedural grounds of incompatibility: the infringement of essential procedural requirements

35. In the context of an action under Article 263(2) TFEU, the infringement of an "essential procedural requirement" is a ground for annulment. An "essential procedural requirement" is a procedural rule "intended to ensure that the measures concerned are formulated with all due care and prudence".[77]

36. The fact that an essential procedural requirement has been breached in the preparation or adoption of a Union act may constitute a ground for annulment if:

- in the absence of the irregularity in question, the contested act might have been substantively different;[78] or
- the irregularity makes judicial review impossible; or

[77] General Court, Judgment of 22 April 2015, Case T-554/10, *Evropaïki Dynamiki v. Frontex*, para. 80; General Court, Judgment of 18 May 2022, Case T-479/20, *Eurobolt and Others v Commission*, para. 73.

[78] ECJ, Judgment of 29 October 1980, Joined Cases 209 to 215 and 218/78, *Van Landewyck v. Commission,* para. 47; ECJ, Judgment of 23 April 1986, Case 150/84, *Bernardi v. European Parliament*, para. 28; ECJ, Judgment of 11 March 2020, Case C-56/18, *Commission v. Gmina Miasto Gdynia et Port Lotniczy Gdynia Kosakowo*, para. 80; General Court, Judgment of 2 June 2021, Case T-854/19, *Franz Schröder v EUIPO-RDS Design*, para. 29.

- the act in question breaches a fundamental institutional rule (e.g. consultation of the European Parliament).[79]

1.2.1. Legal duty to state reasons

37. Article 296 TFEU requires that legal acts state the reasons on which they are based. According to settled case-law, the statement of reasons is an **essential procedural requirement** which "must be appropriate to the act at issue and must disclose in a **clear and unequivocal fashion** the reasoning followed by the institution which adopted the measure in question in such a way as to **enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review**".[80]

38. In this regard, the ECJ held that "**insufficient reasons are equivalent to absence of reasons**", and that decisions failing to state their factual and legal bases "do not permit review by the Court".[81]

39. Moreover, in *Commission v Council*, the Court dismissed arguments that the constraints relating to **time-limits** could excuse the lack of reasoning.[82]

> ***Possible infringement of the essential procedural requirement to state reasons***
>
> Since the Omnibus Directive departs from the previously adopted CSDDD and CSRD, it must provide explicit and detailed reasoning to justify this departure, rather than relying on mere summary explanations.
>
> As previously mentioned, the Commission, in its Explanatory Memorandum to the Proposal, notes that it has not been possible to carry out an ex-post evaluation or a fitness check of either the CSDDD or the CSRD (See above Section **1.1.1**).[83] It follows that its statement of reasons fails to disclose in a "clear and unequivocal" manner the reasons why the current legislation is inadequate. As a result, it does not enable the Court to exercise its power of review – that is, to assess whether the changes proposed through the Omnibus Directive are necessary and proportionate.
>
> Thus, it could be considered that the Omnibus Directive fails to provide adequate reasoning.

[79] ECJ, Judgment of 29 October 1980, Case 138/79, *SA Roquette Frères v Council of the European Communities*, para. 33; ECJ, Judgment of 29 October 1980, Case 139/79, *Maizena v Council*, para. 34.

[80] ECJ, Judgment of 30 September 2003, Case C-76/01, *Eurocoton*, para. 88; General Court, Judgment of 19 March 2013, Case T-301/1, *Sophie in 't Veld v. Commission*, para. 214;. *See* also ECJ, Judgment of 30 September 1982, Case 108/81, *G.R. Amylum v Council of the European Communities*, , para. 19.

[81] ECJ, Judgment of 20 March 1959, Case 18-57, *Firme v High Authority of the European Coal and Steel Community*.

[82] ECJ, Judgment of 1 October 2009, Case C-370-07, *Commission v Council*, para. 53.

[83] Commission's Explanatory Memorandum to the Proposal, COM(2025) 81 final, p. 10.

1.2.2. Failure to carry out extensive consultations, ex post evaluations and impact assessments

40. Procedural requirements aim to guarantee that the EU legislature is sufficiently informed to evaluate whether the principles of proportionality and subsidiarity are upheld in the adoption of an act:

- Article 2 of Protocol No 2 on the application of the principles of subsidiarity and proportionality provides that: "**Before proposing legislative acts, the Commission shall consult widely**. […] In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal."

- The Rules of Procedure of the Commission provide that:

- "For the purposes of implementing Article 9(1) of Regulation (EC) No 1367/2006 the Commission shall ensure **public participation** in accordance with the Communication 'General principles and minimum standards for consultation of interested parties by the Commission".[84]

- "The Commission shall make available to citizens the legislative proposals it submits to the European Parliament and/or the Council, accompanied by the **impact assessments** and the Regulatory Scrutiny Board opinions, as well as information on expert groups and committees, **public consultations** and beneficiaries of Union funds."[85]

    - Regarding the formal interservice consultation: "The services consulted shall be given **at least ten working days**, starting from the date on which the documents are made available, in which to submit their opinions, with or without comments."

- Article 6(4) of the EU Climate Law contains an obligation for the Commission to **assess the consistency of any draft measure or legislative proposal with the climate-neutrality objective** and the Union climate targets (See below Section **2**). It also

[84] Rules of Procedure of the Commission (C(2000) 3614), Detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to community institutions and bodies, Article 2.

[85] Commission Decision (EU) 2024/3080 of 4 December 2024 establishing the Rules of Procedure of the Commission and amending Decision C(2000) 3614, Article 63.

provides that this assessment must be **included in any impact assessment** accompanying such measures or proposals.[86]

- The Interinstitutional Agreement, of 13 April 2016, between the European Parliament, the Council and the Commission on Better Law-Making underline the importance of **wide consultations, ex post evaluations of existing legislation and impact assessments**.[87]

41. Recently, the EU General Court has ruled that "**wide consultations, ex post evaluations of existing legislation and impact assessments** are intended to ensure the quality of legislation and to enable the various actors involved in the legislative procedure to make an informed assessment having regard, according to their respective competences, to the principles of subsidiarity and/or proportionality".[88]

42. As a result, the EU General Court suggested that the absence of extensive consultations specifically on the proposal for a directive prior to its adoption, as well as the lack of a separate evaluation of the existing legislation and of a detailed impact assessment, could affect the legality of the contested directive on the grounds of infringement of essential procedural requirements – even though the Court found that this was not the case in the matter at hand.[89]

> ***Possible infringement of the essential procedural requirements to conduct extensive consultations, ex post evaluations and an impact assessment***
>
> In the present case, it is common ground that the Commission **did not conduct extensive consultations** for the preparation of the Omnibus Directive. Moreover, the Commission launched an Interservice Consultation on the Omnibus Directive with a deadline of 24 hours.
>
> Next, in the explanatory memorandum to the Omnibus Directive, the Commission affirms that it has not been possible to carry out an ex-post evaluation or a fitness check of either the CSDDD or the CSRD (See above Section **1.1.1**). It has thus not been able to assess the **quality of the existing** legislation.
>
> Also, in the same explanatory memorandum, the Commission explained that its proposal did not require an impact assessment (See above Section **1.1.1**).

[86] 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"), Article 6(4).

[87] Interinstitutional Agreement of 13 April 2016, between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ 2016 L 123, p. 1).

[88] General Court, Judgment of 27 November 2024, Case T-526/19 RENV, *Nord Stream 2 AG*, para. 283.

[89] *Ibid*., para. 322.

Finally, the Commission did not publish, nor even conduct, a climate consistency assessment for the Omnibus Directive.

The legislature therefore lacked sufficient information to properly assess either the proportionality of the directive (See above Section **1.1.1**) or its consistency with its climate objectives (See below Section **2**). Thus, it could be considered that the Omnibus Directive breaches essential procedural requirements.

2. POTENTIAL ACTION FOR FAILURE TO CONDUCT A CLIMATE-CONSISTENCY ASSESSMENT

43. Under Article 265 TFEU, an action for failure to act may be brought against a Union institution, body, office or agency that has unlawfully failed to take action.

44. The key conditions for a successful action for failure to act are:[90]

- the Union institution, body, office, or agency was under an obligation to act;
- the Union institution, body, office, or agency must have failed to act.

45. The reference in Article 265(1) TFEU to an "infringement of the Treaties" does not imply that only obligations explicitly laid down in the Treaties can give rise to an action for failure to act. Such an action may also be based on any provision of Union law that is binding on the relevant entity and imposes a duty to act.[91]

46. Furthermore, where an action is brought by a Member State or another EU institution, the omitted act does not necessarily need to be legally binding in itself. The Court has recognised that such actions may relate to both binding and non-binding acts. A typical example is the failure to take necessary steps in an interinstitutional decision-making procedure.[92]

47. Under **Article 6(4) of the EU Climate Law**, the Commission is mandated to assess the consistency of any draft measure or legislative proposal, regardless of their legal basis and content, with the 2050 climate-neutrality objective and the Union climate targets:

> "The Commission shall assess the consistency of any draft measure or legislative proposal, including budgetary proposals, with the climate-neutrality objective set out in Article 2(1) and the

[90] K. Lenaerts et al., *EU Procedural Law*, Oxford University Press, 2nd ed, 2023, para. 8.03.

[91] *See* General Court, Judgment of 20 September 2011, Case T-400/04 and T-402/04 to T-404/04, *Arch Chemicals and Others v Commission*, para. 57 (referring to a provision or general principle of Union law); General Court, Judgment of 16 December 2015, Case T-521/14, *Sweden v Commission* (referring to a regulation, only available in French and Swedish). *See* also K. Lenaerts et al., *EU Procedural Law*, Oxford University Press, 2nd ed, 2023, para. 8.04.

[92] *See* for example ECJ, Order of 11 July 1996, Case C-445/93, *Parliament v. Commission* ; ECJ, Judgment of 12 July 1988, Case 377/87, *Parliament v. Council*.

> Union 2030 and 2040 climate targets before adoption, and include that assessment in any impact assessment accompanying these measures or proposals, and make the result of that assessment publicly available at the time of adoption. The Commission shall also assess whether those draft measures or legislative proposals, including budgetary proposals, are consistent with ensuring progress on adaptation as referred to in Article 5. When making its draft measures and legislative proposals, the Commission shall endeavour to align them with the objectives of this Regulation. In any case of non-alignment, the Commission shall provide the reasons as part of the consistency assessment referred to in this paragraph."

48. Moreover, the Commission's Rules of Procedure provide that it must conduct impact assessments:

> "The Commission shall make available to citizens the legislative proposals it submits to the European Parliament and/or the Council, accompanied by the **impact assessments** and the Regulatory Scrutiny Board opinions, as well as information on expert groups and committees, public consultations and beneficiaries of Union funds."[93]

49. In the present case, the Commission was therefore legally required to carry out and publish both a climate-consistency assessment and a broader impact assessment for its Omnibus Directive. Yet, as previously mentioned, it did neither: no such assessments were conducted or made public (See Section **1.2.2** above).

50. Accordingly, the Commission's failure to carry it out constitutes an unlawful omission within the meaning of Article 265 TFEU. Any Member State or EU institution may therefore call on the Commission to act and, if the Commission fails to define its position within two months of the request, challenge its inaction before the Court.

*

[93] Commission Decision (EU) 2024/3080 of 4 December 2024 establishing the Rules of Procedure of the Commission and amending Decision C(2000) 3614, Article 63.