

Corporate sustainability due diligence directive

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Eva Berlaus
Country Managing
Partner, Latvia

Topics for discussion

- Status of the Directive
- Companies subject to the Directive
- Sustainability due diligence obligations imposed by the Directive
- Future plans
- Impact to board members' liability



Corporate sustainability due diligence directive: **status**



- Planned to be adopted until end of 2023 /beginning of 2024
- Transposition within 2 years (year 2026)
- Large companies to comply as of year 2026, other – as of 2028
- Implementation to be covered by non-financial reports

Corporate sustainability due diligence directive: **companies subject to regulation**

More than 500 employees and turnover exceeding € 150m globally (EU companies)	Irrespective of business activity
More than 250 employees and turnover exceeding € 40m globally (EU companies)	At least 50% of turnover in business activities having material impact on environment: -manufacture of textiles, leather and related products (including footwear), wholesale of textiles, clothing and footwear -agriculture, forestry, fisheries (including aquaculture), manufacture of food products, wholesale of agricultural raw materials, live animals, wood, food, beverages -extraction of mineral resources, wholesale of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products)
Companies in third countries (turnover criteria fulfilled in the territory of EU)	Same as EU companies

Corporate sustainability due diligence directive: **obligations imposed I**

- **Currently** planned to cover human rights and environment (compliance with international conventions)
- All obligations apply to **own activities, activities of subsidiaries, established business relationships in value chain** (irrespective of geographical location, direct & indirect, upstream & downstream)
- Obligation to **integration due diligence in company's policies**
- Obligation to **identify actual or potential adverse impact** (including consultations with stakeholders)
- Obligation to **prevent or mitigate potential adverse impact**

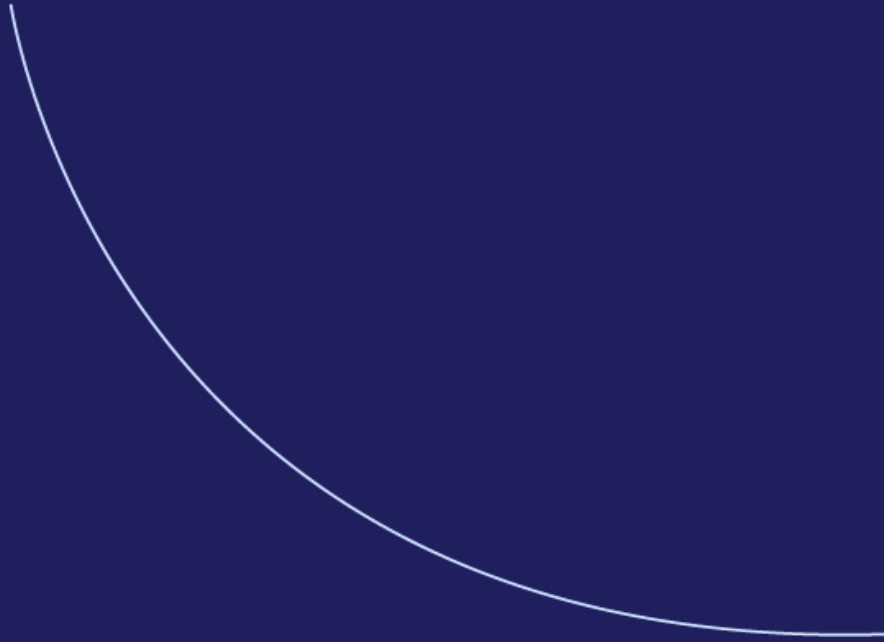


Corporate sustainability due diligence directive: **obligations imposed II**

- Obligation to **bring to end or minimize actual impact**
- Obligation to **maintain complaints procedure**
(persons affected or reasonable grounds to believe the person is affected; trade unions, other employees' representatives; civil society organisations)
- Obligation to monitor effectiveness of due diligence policy and measures
- Obligation to **communicate publicly on due diligence** (including, in non-financial reports)



Corporate sustainability due diligence directive: **contractual relations with supply chain**



- Reasonable support to SME in preventing or minimizing adverse impact
- If not possible, member states to ensure companies have legal grounds to suspend contractual relationship until improvements are made or in case of material adverse impact – to terminate the contractual relationship



Human rights & environment: **examples of prohibitions and rights covered by Directive**

- Violation of the right to enjoy just and favourable conditions of work including a fair wage, a decent living, safe and healthy working conditions and reasonable limitation of working hours
- Violation of the prohibition to restrict workers' access to adequate housing, if the workforce is housed in accommodation provided by the company, and to restrict workers' access to adequate food, clothing, and water and sanitation in the work place
- Violation of the prohibition of the handling, collection, storage and disposal of waste in a manner that is not environmentally sound in accordance with the regulations in force in the applicable jurisdiction

Develop a prevention and mitigation plan

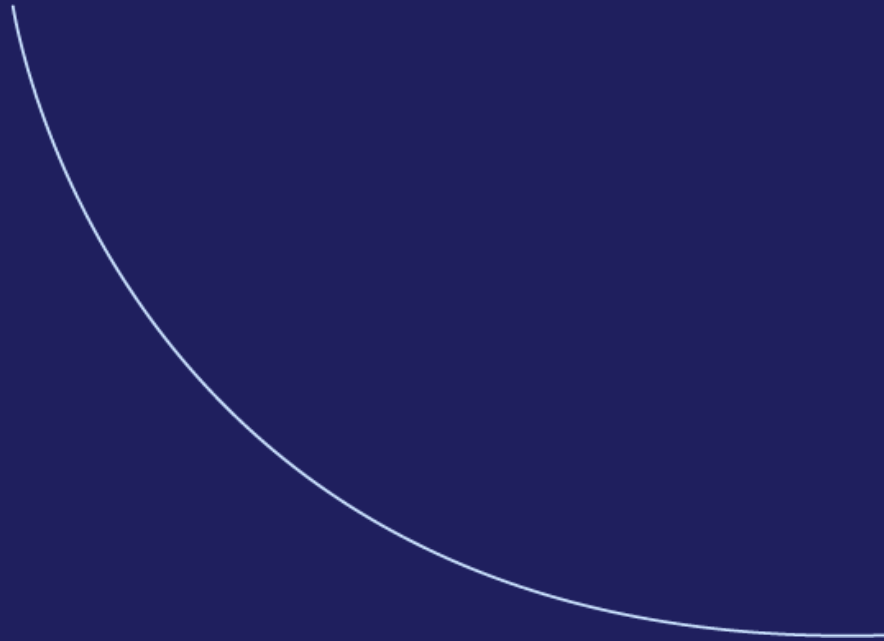
Seek contractual assurance from value chain that they will comply with the plan

Make necessary investments, such as into management or production processes

Proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME

Example: prevention or mitigation of possible adverse impact

Corporate sustainability due diligence directive: impact on value chain companies



- capability to provide necessary information
- capability to ensure compliance (additional expenses – including as regards lower value chain support?)
- potential changes to contracts
- consequences in case of non-compliance)



Corporate sustainability due diligence directive: **enforcement**

- **Financial sanctions depending on the turnover of company** (to be established by member states)
- Right of third parties to submit **complaints to supervisory authority** (substantiated concerns)
- Right of supervisory authority to initiate **investigations** at its own initiative
- Cooperation among EU supervisory authorities
- **Access to justice** for persons having substantiated concerns
- **Civil liability of companies** (and **respective board liability**)

Corporate sustainability
due diligence directive:
civil liability for damages

- Obligations established by Directive have not been complied with
- As a result, an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised occurred and led to damage
- No liability for damage caused by an indirect partner if necessary actions established by Directive were taken, unless it was unreasonable to believe that such actions would be adequate
- Company's efforts, including investments made shall be taken into account

Transposition
to national
law

Model contractual
clauses to be suggested
by EU Commission
(voluntary)

Guidelines for
implementation by EU
Commission; other
potential support

Corporate sustainability due
diligence directive: what to
expect next

Financial support to
SMEs allowed by
Member States



Board liability?

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Executive and non-executive board: due diligence obligations as regards supply chain management

- Balancing of stakeholders' interests (reasonability, proportionality, transparency)
- Due diligence as regards understanding «status quo» (providing objective information to shareholders, investors, employees, third parties)
- Value chain risks to be covered by corporate strategy
- Due diligence as regards establishing right process & risk management within company and value chain (including data verification, supply chain audits, etc.)
- Due diligence as regards ensuring right capabilities (expertise, financing, know-how) within company (or outsourced)



Executive and non-executive board: due diligence obligations as regards supply chain management

- Due diligence as regards setting the right investment limit
- Supply chain partners: contracts ensuring reasonable freedom
- Active communication & consultations with stakeholders
- Active communication & consultations with supply chain
- Active communication within industry and supervisory institutions

Contact us



Eva Berlaus

Country Managing Partner, Latvia

M. +371 29 199 293

T. +371 67 365 014

eva.berlaus@sorainen.com

sorainen.com

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