The EU Corporate Sustainability Due Diligence (EU CSDDD): The Final Text

Human Level Briefing Note

March 2024
Yes, we too have a feeling of ‘déjà vu.’ We wrote a similar piece when the European Parliament released its proposed text in March 2021. And then when the European Commission released its proposal in February 2022. And then again when the three-party political agreement between the European Commission, EU Council and European Parliament was announced in December 2023. And we’re skipping a few steps in between.

**But this time, it’s the real deal.**

Following months of negotiations, we have a final text for the EU Corporate Sustainability Due Diligence Directive (the Directive, the EU CSDDD, the CS3D or even, the CS-triple-D).

One that benefits from consensus from the EU Council (on 15 March 2024). One that benefits from sign-off from the European Parliament’s Committee on Legal Affairs (on 19 March 2024). And one that will benefit from final approval (as widely reported) by the full European Parliament on 24th April 2024.

You can find the full text here. This Briefing Note captures text from the Directive. The text has been summarised and condensed to enhance readability. This briefing note does not seek to delve into our analysis or commentary which we will feature on our website and Youtube channel. Note that the Recitals do not have legal force, but they are helpful to help interpret and understand the legal provisions.

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Human Level is a mission-driven organisation that propels companies and organisations to transition to a sustainable economy in a way that is grounded in human rights. To meet our mission, we operate both a consulting and a non-for-profit practice.

Although a number of us are former practising lawyers, we left the practice of law to work on developing and implementing the soft law related to environmental and human rights due diligence. This Briefing Note does not constitute legal advice.

We encourage all companies, and their lawyers, to interpret and apply the EU Corporate Sustainability Due Diligence Directive in light of the objective it has set itself, and the soft law contained in the UN Guiding Principles and the OECD Guidelines that it is grounded on. This law does not call for ‘business as usual’, and therefore cannot be interpreted by ‘lawyers as usual.’

We are in the midst of a climate, nature and inequality crisis. And, through this Directive, a level playing field for companies - based on the soft law expectations on environmental and human rights due diligence - is built. This can act as a springboard for all companies looking to navigate the rapidly changing world ahead.

The fact that the Directive doesn’t apply to as many companies as initially envisioned doesn’t matter. A much greater number of companies will be affected by this Directive, by virtue of how the Directive’s expectations will in turn shape contracts, investor questions, supply chain expectations, and other drivers for responsible business conduct.

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OBJECTIVE

The objective of the Directive is to “better exploit[] the potential of the single market to contribute to the transition to a sustainable economy and contribut[e] to sustainable development through the prevention and mitigation of potential or actual human rights and environmental adverse impacts in companies’ chains of activities.” (Directive, Recitals 71)

This objective “cannot be sufficiently achieved by Member States acting individually or in an uncoordinated manner”; the “addressed problems and their causes are of a transnational dimension”; and “individual Member States’ measures risk being ineffective and lead to fragmentation of the internal market.” (Directive, Recitals 71)

The Directive seeks to mandate companies to comply with existing international standards on responsible business conduct, namely the UN Guiding Principles on Business and Human Rights (the UN Guiding Principles) that recognises the responsibility of companies to exercise human rights due diligence (HRDD), and the OECD Guidelines for Multinational Enterprises (OECD Guidelines) that recognises the concept of HRDD, and extends the application of due diligence to environmental and governance topics. (Directive, Recitals 5-6)

Put differently: a wide range of environmental and human rights impacts are happening in companies’ operations and global supply chains. By conducting environmental and human rights due diligence, as those terms are understood by the UN Guiding Principles and the OECD Guidelines, companies can better manage and address their adverse impacts on people and planet – and contribute to sustainable development and the sustainability transition of economies and societies in the process. This in turn helps the European Union reach its green transition pathway captured in the Green Deal.

“This Directive aims to ensure that companies active in the internal market contribute to sustainable development and the sustainability transition of economies and societies through the identification and, where necessary, prioritisation, prevention and mitigation, bringing to an end, minimisation and remediation of potential or actual adverse human rights and environmental impacts, connected with companies’ own operations, operations of their subsidiaries and their business partners in the companies’ chains of activities, and ensuring that those affected by a failure to respect this duty have access to justice and legal remedies.” (Directive, Recitals 5-6)

COVERED COMPANIES

The Directive applies to:
• EU companies with more than 1,000 workers and with a global turnover surpassing €450m. (Before the recent European Council changes, these figures were 500 workers and €150m)
• Non-EU companies generating €450m turnover in the EU (with no worker threshold). (Before the recent European Council changes, this figure was €150m)

We no longer have in the text lower thresholds for companies in high-risk sectors (textiles, agriculture, extraction of minerals), although the Directive provides that these sectors could be incorporated at a later stage. The scope of the Directive is to be reviewed within six years of its entry into force, and every three years after that.

Discussions on scope indicate that around 5,300 companies will be covered by the current scope (as compared to 16,800 companies before the recent changes made by the European Council).

In practice, a much greater number of companies will be affected by this Directive, by virtue of how the Directive’s expectations will in turn shape contracts, investor questions, supply chain expectations, and other drivers for responsible business conduct.

**Timing of law**

This is a directive, and not a regulation, and therefore EU Member States will need to transpose the Directive into national law.

Assuming the final approval by the full European Parliament happens on 24th April 2024, the legislation will enter into force 20 days later – on 14th May 2024.

Member States will then have two years after its entry into force to transpose the Directive into national law.

There is a phased-in approach for companies, from between three and five years from the entry into force of the Directive. Assuming final approval happens as envisioned, the compliance dates will be:
• 2027 for the largest companies (5,000 individuals and a turnover of €1.5b),
• 2028 for companies with over 3,000 individuals and a turnover of €900m, and
• 2029 for companies with over 1,000 individuals and a turnover of €450m.

**Expectations**

A company is expected under the EU CSDDD to:
1. Integrate due diligence into its policies and risk management systems and at all relevant levels of operation;
2. Have in place a due diligence policy developed in consultation with the company’s workers and their representatives;
3. Identify and assess adverse human rights and environmental impacts;
4. Prioritise (where necessary) these adverse impacts based on their severity and likelihood;
5. Prevent and mitigate as well as bring to an end and minimise the extent of potential and actual adverse human rights and environmental impacts;
6. Provide remediation to actual adverse impacts;
7. Carry out meaningful engagement with stakeholders;
8. Establish and maintain a notification mechanism and complaints procedure;
9. Monitor the effectiveness of the measures taken;
10. Communicate publicly on the due diligence conducted; and
11. Adopt and put into effect a climate transition plan

The obligations in the Directive are an obligation of means, not an obligation of result. This means that companies are not expected to guarantee that adverse impacts will not occur, or that they will always be stopped. But they are expected to take “appropriate measures”: measures that are capable of achieving the objectives of due diligence – i.e., effectively addressing adverse impacts in a way that is commensurate to the salience of the adverse impact. The more severe and the more likely the impact, the greater the expectations with regard to the measures to take.

Timing of Due Diligence

- The timing of due diligence should take place in a dynamic way, and in regular intervals
- Specifically, the identification of adverse impacts should take place after a significant change occurs (e.g. when a company starts to operate in a new sector, or when there are changes to its corporate structure)
- The identification of adverse impacts should happen at least every 12 months
- The Directive provides for the same 12-month timeframe for periodic assessments of the implementation, adequacy and effectiveness of due diligence, as well as for making updates to the climate transition plan.

Basis for Impacts
The due diligence obligation covers potential and actual adverse human rights and environmental impacts.

The human rights due diligence is to be carried out in reference to adverse human rights impacts on persons resulting from the abuse of one of the rights enshrined in a wide range of international instruments listed in Annex I. These are based on internationally recognised human rights as well as the five fundamental principles and rights at work (as defined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work).

The rights listed in Annex I include:

- The right to life
- The right to enjoy just and favourable conditions of work. This right is named as including a fair wage and an adequate living wage for employed workers and an adequate living income for self-employed workers and smallholders, which they earn in return from their work and production. This right also includes a decent living, safe and healthy working conditions and reasonable limitations of working hours
- The right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development
- The prohibition of forced or compulsory labour
- The right to freedom of association, assembly, the rights to organise and collective bargaining
- 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 the health, safety, the normal use of land or lawfully acquired possessions of a person; or (e) substantially adversely affects ecosystem services through which an ecosystem contributes directly or indirectly to human wellbeing.
- The rights of individuals, groups and communities to lands and resources and to not be deprived of means of subsistence, which entails the prohibition to unlawfully evict or take land, forests and waters, including by deforestation, where the use of this land, forests or waters secures a person’s livelihood.

Note here the inter-connections that have been made in this Annex I between human rights and the environment.

The adverse environmental impacts in scope are listed in Annex II. These are intended to support companies to preserve and restore biodiversity and improve the state of the environment, in particular the air, water and soil – including to better protect human rights. Annex II does
not include climate-related expectations – thus, these are not explicitly covered in the due diligence obligations, but indirectly through the other environmental impacts listed, as well as explicitly in the climate transition plan expectation (contained in Article 15 and further described below).

**SCOPE OF DUE DILIGENCE**

The due diligence obligation applies to:
- A company’s own **operations**
- The operations of a company’s **subsidiaries**
- Operations carried out by its business partners in its **chain of activities** – these are:
  - The activities of a company’s **upstream** business partners related to the production of goods or the provision of services by the company (including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or part of the products and development of the product or the service)
  - The activities of a company’s **downstream** business partners related to the distribution, transport and storage of the product – where the business partners carry out those activities for the company or on behalf of the company. We no longer have downstream indirect business relations in scope. Disposal of the product, activities of a company’s downstream business partners related to the services of the company, as well as products governed by export control are viewed as out of scope of due diligence. (There are some additional considerations for the downstream part of financial firms that we do not delve into here).

Note the language of “chain of activities” to capture the upstream and downstream elements that are in scope for the Directive’s due diligence obligations.

Note also that although the disposal (e.g., the recycling, composting, landfilling, dismantling) of a company’s product is not included in the downstream element of a company’s due diligence obligations, this disposal is in scope under other regimes (e.g. other similar laws, the UN Guiding Principles, and Scope 3 expectations).

**POLICIES AND RISK MANAGEMENT SYSTEMS**

A company is expected to:
- Integrate due diligence into its policies and risk management systems and at all relevant levels of operation; and
- Have in place a due diligence policy

This due diligence policy should:
• Ensure a risk-based due diligence, based on the likelihood and the severity the risks to people
• Be developed in prior consultation with the company’s employees and their representatives
• Contain a description of the company’s approach to due diligence, including in the long term
• Contain a code of conduct which describes the rules and principles that are to be followed throughout the company
• Describe the processes put in place to integrate due diligence into the relevant policies and to implement due diligence (which includes how the company verifies compliance with its code of conduct, and how it extends the code’s application to business partners)
• Be updated whenever there is a significant change, and at a minimum every 24 months, building on the results of the due diligence conducted to date

IDENTIFYING AND ASSESSING IMPACTS

General

Companies are expected to take appropriate measures to:
• Map their own operations, those of their subsidiaries and, where related to their chains of activities (i.e., in scope for upstream and downstream), those of their business partners. This mapping is conducted to help them identify general areas where adverse impacts are most likely to occur, and the most severe
• This higher-level mapping then forms the foundation for an “in-depth assessment” in the areas where adverse impacts were identified to be most likely and most severe (Directive, Article 6 – 1a)
• Companies are expected to use both qualitative and quantitative information in this process
• Information to be relied on also includes information gathered through the notification mechanism and complaints procedure that companies are asked to put in place (further described below) – alongside independent reports and other inputs.

Stakeholder engagement

Stakeholders are defined as “the company’s employees, the employees of its subsidiaries, trade unions and workers’ representatives, consumers; and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its
Companies are expected to carry out effective engagement with stakeholders. This engagement entails ongoing consultation with stakeholders that allows for genuine interaction and dialogue at the appropriate level (e.g., project or site level). The stakeholder consultation process is expected to take place throughout the life cycle of due diligence: as part of the first step to gather the necessary information; as part of the development of prevention and corrective action plans; as part of any decisions related to terminating or suspending a business relationship; as part of the adoption of appropriate measures to remediate impacts; and (as appropriate) when developing qualitative and quantitative indicators for monitoring effectiveness. There are a range of criteria for meaningful engagement (e.g., ensuring stakeholders are free from retaliation and retribution; paying attention to the need of vulnerable stakeholders and to overlapping vulnerabilities and intersecting factors; taking into account potentially affected group or communities).

Where meaningful engagement is not possible, or where additional perspectives are helpful, companies should consult with experts such as civil society organisations or individuals/organisations that are defending human rights or the environment. This engagement is not intended to affect the rights of workers and their representatives under existing EU and national laws, as well as collective agreements. Industry or multi-stakeholder initiatives can be relied on for consultations—so long as they are appropriate to support effective engagement and do not replace consultation with workers and their representatives. (There are other specificities related to industry and multi-stakeholder initiatives, further described below.)

**Complaints procedure and notification mechanism**

Companies will need to create a complaints procedure to enable persons who are affected or have reasonable grounds to believe they might be affected (as well as their legitimate representatives and
relevant civil society organisations) to submit complaints to them related to impacts

• This procedure needs to be “fair, publicly available, accessible, predictable and transparent” (Directive, Article 9 - 3). These terms are to be “understood in line with principle 31 of the UN Guiding Principles …” (Directive, Recitals 42)

• Those submitting complaints are entitled to request timely and appropriate follow-up, and to meet with the company’s representatives at an appropriate level to discuss the complaint and potential remediation

• Companies will also need to create a mechanism for

notifications to be submitted by persons and organisations that have information or concerns related to impacts

• Companies may participate in collaborative complaints procedures and notification mechanisms – for instance created by a group of companies, through industry associations, multi-stakeholder initiatives or global framework agreements

• The non-judicial remediation mechanism is not intended to replace the right to freedom of association and collective bargaining, and should not undermine the role of legitimate trade unions or workers’ representatives in addressing labour-related disputes

**Prioritising impacts**

The Directive provides for risk-based due diligence, aligned with the UN Guiding Principles’ focus on severity and likelihood. The Directive’s Preamble also references the UN Guiding Principles Reporting Framework – which provides further guidance on how to prioritise based on salience (severity and likelihood).

Where it is not feasible to address all of their identified impacts, companies are entitled to prioritise their impacts for action based on their severity and likelihood:

• The severity of an impact is assessed based on the scale, scope or irremediable character of the adverse impact. This entails taking into account the gravity of the impact, including the number of individuals that are or will be affected, the extent to which the environment 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 the situation prior to the impact within a reasonable period of time

• The Recitals to the Directive specify that business-related factors should not factor into the prioritisation of impacts: a company’s potential liability, a company’s proximity to the subsidiary or business partner, the level of involvement of the
Prevent, mitigate, bring to an end and minimize the extent

General

Companies are expected to:
- **Prevent** impact
- **Mitigate** impacts
- **Bring impacts to an end** (where there are actual impacts)
- **Minimise the extent of impacts** (where there are impacts that cannot be brought to an end)

Minimisation of the impact entails requiring an outcome that is the closest possible to bringing the adverse impact to an end.

Companies should develop and implement a prevention action plan, and a corrective action plan where adverse impacts cannot immediately be brought to an end.

Levels of involvement

- The level of involvement of the company in an adverse impact in line with the UN Guiding Principles and the OECD Guidelines is relevant to assess the appropriate measures to take when an impact has occurred.
- The Directive’s Recitals explain that the Directive is using the same levels of involvement and the same expected actions that exist under the soft law captured in the UN Guiding Principles (cause, contribute, direct linkage), but the text has captured these three modes of involvement with terminology of ‘causing’. This is to avoid “confusion with existing legal terms in national legal systems while covering the same causal relations as described in these [international] frameworks.” (Directive, Recitals 38)
- Where a company causes by itself (causing) or causes jointly with subsidiaries or business partners (contribution) the impact, it is expected to take appropriate measure to bring an end or minimise the extent of the adverse impact.
- Where a company is not causing or contributing to the impact, but the adverse impact is caused only by its business partner in its chain of activities (directly linked), then a company is expected to use its influence to bring to an end or minimise the extent of the impact, or increase its influence to do so.

Categories of influence
There are two categories of influence (leverage) referenced:

- The company’s ability to persuade a business partner to bring to an end or minimise the extent of the adverse impacts (e.g. through market power, pre-qualification requirements or linking business incentives to human rights and environmental performance)
- The degree of influence (leverage) that the company could reasonably exercise (e.g. through cooperation with the business partner or engagement with another company which is the direct business partner of the business partner associated with the adverse impact)

**Contracts**

- Companies should seek to obtain contractual assurances from a direct business partner that it will ensure compliance with the code of conduct and the prevention action plan – and request that this partner seek corresponding assurance from its partners.
- Contracts should be designed in a way that ensures that “responsibilities are shared appropriately by the company and the business partners.” (Directive, Recitals 39)
- Contracts should be accompanied by appropriate measures to verify compliance
- Where the range of other measures contained in the Directive cannot prevent or address the impacts, the company can also seek contractual assurances from the indirect business partner (related to its code of conduct and action plan). In this case, if the indirect business partner is an SME, the company needs to accompany the contractual measures with appropriate measures for SMEs – which includes bearing the cost of verification conducted at the SME’s work place
- The European Commission is asked (in Article 12) to provide guidance to companies on model contract clauses. These clauses can be used voluntarily by companies. This guidance “should aim to facilitate a clear allocation of tasks between contracting parties and ongoing cooperation, in a way that avoids the transfer of the obligations of this Directive to a business partner and automatically rendering the contract void in case of a breach. The guidance should reflect the principle that the mere use of contractual assurances cannot, on its own, satisfy the due diligence standards of this Directive” (Directive, Recitals 45)

**Other actions**

Other actions that the Directive provides for are:

- Undertaking financial or non-financial investments, adjustments or upgrades
• Adapting the company’s own business plans, overall strategies and operations, including purchasing practices, design and distribution practices. The Recitals further state that companies should “develop and use purchase policies that contribute to living wages and incomes for their suppliers, and that do not encourage potential adverse impacts on human rights or the environment” (Directive, Recitals 39). The Recitals further note the particular need to “address the power imbalances in the agricultural sector and ensure fair prices at all links in the food supply chain and strengthen the position of farmers” (Directive, Recitals 39)

• Collaborating with another company or other entities

• Engaging with a business partner about the company’s expectations

• Providing or enabling access to capacity-building, guidance, administrative and financial support

Support to SMEs

Specific actions are expected where a company’s business partners are SMEs. Companies are expected to:

• Provide targeted and proportionate support for SMEs which are business partners of the company – for instance by providing or enabling access to capacity-building, training or upgrading management systems.

• Provide targeted and proportionate financial support to SMEs, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing, when complying with the due diligence expectations could cause a bankruptcy of the SME

Audits

• The Directive’s Recitals point to the “shortcomings of ineffective audits” (Directive, Recitals 37)

• Companies can use independent third-party verification in their chain of activities. These audits need to be appropriate to support the company’s ability to meet its due diligence obligations

• There are a number of conditions provided for third-party verifiers, including that they have experience and competence in environmental or human rights matters

• The European Commission is asked to issue guidance providing fitness criteria and a methodology for companies to assess the fitness of third-party verifiers, and guidance for monitoring the accuracy, effectiveness and integrity of third-party verification

Industry and multi-stakeholder initiatives

• Companies can participate in industry and multi-stakeholder initiatives to support their due diligence implementation. This can include risk analysis as well as measures carried out by
industry or multi-stakeholder initiatives – or members of these initiatives

- These initiatives need to be “appropriate” to support fulfilling the company’s obligations, and companies need to continue to monitor the effectiveness of measures taken (Directive, Article 14 – 4)
- Companies also need to continue to take its own appropriate measures, where necessary, to support its due diligence

Termination of relationships

- The Directive specifically expects companies to prioritise engagement with business partners in their chain of activities instead of terminating business relationships
- Termination of a business relationship is viewed as a last resort action – where efforts to prevent and mitigate have been unsuccessful
- At the same time, temporary suspension of a business relationship is provided for as a measure to increase a company’s leverage, where the company can in parallel work with the business partner to address impacts

Remediation

- Remediation refers to the “restitution of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would have been in had the actual adverse impact not occurred ...” (Directive, Article 3 – 1 qe)

- The European Commission is asked to issue guidance providing fitness criteria and a methodology for companies to assess the fitness of industry and multi-stakeholder initiatives
- Companies can consult with stakeholders through industry or multi-stakeholder initiatives - so long as they are appropriate to support effective engagement and do not replace consultation with workers and their representatives
- Where efforts with a business partner are unsuccessful, or where there is no reasonable expectation that these efforts can succeed (the Recitals reference state-imposed forced labour as an example of this), and where the potential impact is severe, companies are required to terminate the business relationship
- Companies are also expected to assess the adverse impacts created by the termination or suspension, and put relevant measures in place to prevent, mitigate or bring these impacts to an end
• Companies are expected to provide remediation when they cause (cause) or jointly cause (contribute to) an actual adverse impact
• Remediation is proportionate to the company’s implication in the impact
• Remediation can include financial or non-financial compensation and reimbursement of the costs incurred by public authorities for remedial measures taken
• If companies do not provide remediation, the Member State’s supervisory authority has the power (on its own motion or following from the communication of substantiated concerns – further described below) to order the company to provide remediation
• In the situation of direct linkage, the company may provide voluntary remediation and may use its influence with its relevant business partner to enable remediation to take place

Monitoring effectiveness

• Companies are expected to monitor the implementation and effectiveness of their due diligence measures
• This entails periodic assessments to assess the implementation and to monitor the adequacy and effectiveness of due diligence efforts
• As referenced above, there is a 12-month timeframe for periodic assessments of the implementation, adequacy and effectiveness of due diligence

Public communication

• The Directive calls for an annual statement to be published that communicates relevant information on due diligence policies, processes and activities conducted to identify and address adverse impacts – including the findings and outcomes of those activities
• There is a connection made with other relevant EU reporting regimes: the Corporate Sustainability Reporting Directive (CSRD) which entered into force on 5 January 2023 – as well as the EU Sustainable Finance Disclosure Regulation (SFDR). Companies that are subject to the CSRD will meet their communication obligations that way – they don’t in addition need to communicate regarding their compliance with this Directive
• The European Commission is called upon to adopt delegated acts related to the content and criteria for the reporting – specifying in particular sufficiently detailed
CLIMATE TRANSITION PLANS

- The Directive has a stated objective “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, to avoid any misleading claims regarding such alignment and to stop greenwashing, disinformation and fossil fuels expansion in order to achieve international and European climate objectives” (Directive, Recitals 50)
- Companies are asked to (1) adopt and (2) put into effect a transition plan for climate change mitigation
- This climate transition plan “aims to ensure, through best efforts, that the business model and strategy of the company are 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 and the objective of achieving climate neutrality ... including its intermediate and 2050 climate neutrality targets” (Directive, Article 15 - 1)
- Where relevant, the plan should address the exposure of the company to coal-, oil- and gas-related activities
- The plan should include time-bound targets related to their climate objective for 2030, and in five-year steps up to 2050.

These targets should be based on conclusive scientific evidence and (where appropriate) absolute emission reduction targets for GHG for scopes 1, 2 and 3
- The plan should also include a description of the decarbonisation levers identified by the company, and key actions planned to reach the company’s time-bound targets. This may entail changes to the company’s product and service portfolio and the adoption of new technologies
- The plan’s implementing actions should be based on conclusive scientific evidence: this is evidence with independent scientific validation that is consistent with the limiting of global warming to 1.5°C (as defined by the IPCC)
- The plan should also include an explanation and quantification of the money (investments and funding) needed to support the plan’s implementation, as well as the oversight and governance of the plan (the role of the relevant administrative, management and supervisory bodies)
- This is viewed as an obligation of means and not of results: the focus is on the progress companies make. The Directive recognises that, while companies should strive to
meet their GHG emission reduction targets, specific circumstances may hinder the ability to meet these targets
• Supervisory authorities will oversee the adoption and design (and updates) of the plan
• Companies that are reporting on their climate transition plans already under the CSRD do not need to adopt another plan to meet this Directive. However, this Directive adds the expectation of putting the transition plan into effect, and updating it every 12 months to assess the progress made towards the climate plan’s targets

**MONITORING, ENFORCEMENT AND LIABILITY**

**National supervisory authorities**

• EU Member States will have national supervisory authorities to monitor and enforce the Directive
• These authorities will be able to carry out investigations – either on their own initiative, or based on substantiated concerns that are raised by stakeholders. These investigations can include on site inspections and hearing from relevant stakeholders
• These supervisory authorities are expected to create an accessible mechanism that enables individuals and organisations to lodge substantiated claims of breach of the due diligence obligation
• These supervisory authorities can impose “persuasive, proportionate and effective penalties” – which are calculated in a way that is commensurate to the company’s worldwide net turnover (Directive, Article 20 - 1)
• The Directive’s Recitals recognises that there may also be import bans that apply under other pieces of legislation, which would hinder the ability of companies to place certain products in the EU market (e.g. the EU Deforestation Regulation)

**Civil liability**

• Member States are asked to ensure that victims of adverse impacts have “effective access to justice and compensation” (Directive, Recitals 56)
• Civil liability for damages will be possible in instances where the company “intentionally or negligently” failed to prevent and mitigate impact, or to bring the impacts to an end and minimise their extent, and where this led to damage. (Directive, Article 22) Regular rules for civil liability apply – and civil liability does not extend to situations of direct linkage. National law governs
the right to compensation for the damage

- The courts will assess the company’s prioritisation – and whether it was conducted correctly – when considering the adequacy of measures taken
- Member States can decide the conditions under which trade unions, civil society organisations and national human rights institutions can bring collective redress mechanisms on behalf of victims (they can no longer bring a claim in their own capacity, and States are not expected to extend their laws related to representative actions to claims made under this Directive)
- The Directive touches upon some of the barriers to justice that exist for victims of adverse impacts: difficulties in accessing evidence, limited duration of limitation periods, the absence of adequate mechanisms for representative actions, and prohibitive costs of civil liability proceedings

**Public contracts and director duties**

- Member States are asked to ensure that compliance with this due diligence obligation qualifies as an environmental or social aspect that contracting authorities may take into account as part of the award criteria for public and concession contracts
- There are no specific directors’ duties provided for – these will be based on existing director duties
- The proposed requirement for companies with over 1,000 employees to offer financial incentives for managers linked to promoting the implementation of climate transition plans has been removed