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Corporate Sustainability Due Diligence

2022

Corporate Sustainability Due Diligence

ESG is no longer a buzz word. It is to be expected that attention there to will only increase in the coming years. Companies are more and more forced to assess and evaluate whether or not their activities are sustainable; not only pursuant to legislation but also under pressure of stakeholders and society in general.

If companies must or wish to disclose certain sustainability related information, such as the adverse impact their activities could have on society, it is key for them to perform a sustainability analysis.

In February 2022, a proposal for a European Directive on Corporate Sustainability Due Diligence **(CSDD)** was published.

Once adopted and implemented into national law, large companies active in the EU will be obliged to identify, prevent, terminate or mitigate any adverse effects caused by their activities on (i) **human rights** (such as child labour and exploitation of employees) and (ii) the **environment** (such as climate change, pollution and loss of biodiversity). This due diligence and accompanying obligations will apply on a company's entire value chain, both upstream (design, assemble, create, transport, deliver,... goods or services required for the company's activities) and downstream (receive, use, transport, storage, recycle,... goods or services of the company).

By imposing these obligations, the EU strives to stimulate responsible corporate behavior throughout the value chain and to advance the green transition of its economy and to protect human rights in the EU as well as in third countries.

The proposal is currently undergoing the EU legislative process. Once adopted, Member States will have two years to transpose the Directive into national law.

Who will be subject to these CSDD-requirements?

The following **EU companies** will be subject to the CSDD-requirements:

- Group 1: all EU companies of substantial size (with > 500 employees and > EUR 150 million in net turnover worldwide); and
- Group 2: other companies operating in defined high impact sectors (such as manufacturing and wholesale of textiles, agriculture and the extraction of mineral resources), which do not meet the cumulative Group 1 thresholds, but have > 250 employees and a net turnover of > EUR 40 million worldwide. For these companies, to the requirements will apply as of two years after those for Group 1.

In addition, the rules will apply to **non-EU established companies** which are active in the EU and which meet the thresholds of Group 1 or 2 (however the net turnover must be generated in the EU)

What will companies subject to the CSDD-requirements have to do?

The obligations of companies subject to the CSDD-requirements can be summarised as follows:

01. Integration of the due diligence into corporate policies
A **code of conduct** and, if required, a **prevention action plan** must be drafted and imposed throughout the value chain. A variety of topics can be covered in this code of conduct such as diversity, human rights, privacy, whistleblower protection, climate impact,...

02. **Identification** of actual and potential impact on human rights and the environment.
The Annex of the CSDD contains an exhaustive list of adverse impacts on both human rights and the environment. Any such **adverse impact** of a company's activities (throughout its value chain) must be identified. This identification can take place by performing a social and environmental due diligence.

03. **Prevention, mitigation and/or remediation** of such impact
Once the actual and potential adverse impacts have been identified, a company must take action to prevent, mitigate and remedy these impacts, by e.g.:

- Enforcement of the company's code of conduct and prevention action plan (including contractual cascading, meaning that you need to have contractual assurances from your business partner that it in its turn, will enforce the same compliance from its respective partners (to the extent that their activities are part of your value chain))

- Financial compensation to affected persons and/or communities

- Refrain from concluding new agreements/suspend or terminate existing agreements which cause an adverse impact

04. Establish and maintain **complaints procedures**
Companies must establish appropriate procedures to deal with complaints relating to the company's own operations, those of its subsidiaries, as well as its value chains.

05. Effectiveness of due diligence policies and measures
Periodic assessments must be performed at least every 12 months to ensure that the company's framework is still up to date and effective.

06. Publicly communicate on due diligence
The company must publish an **annual declaration** regarding its compliance with the CSDD-requirements.

Impact on remuneration

A company must take the CSDD-legislation into account when setting up variable remuneration schemes. If the variable remuneration of a director is linked to its contribution to (i) business strategy and (ii) long term interests and sustainability, the evaluation thereof must include compliance with following obligations:

- compatibility of the business model and strategy with (i) the transition to a sustainable economy and (ii) the limiting of global warming to 1.5° C in line with the Paris Agreement;

- If climate change is one of the identified adverse impacts: emission reduction objectives must be put in place

Why Deloitte Legal?

Our climate & energy team has a clear focus on sustainability requirements in all aspects of law and has extensive experience in all of the areas covered by the CSDD legislation such as drafting codes of conduct and agreements and performing social and environmental due diligence. Assisting companies with the structure of its remuneration policy and implementation thereof (including variable remuneration schemes) is also one of the areas of expertise of Deloitte Legal.

Taking into account the extensive scope of the due diligence to be performed (being both the potential international scope and the variety of subjects to be analysed), Deloitte Legal is very well placed to assist you in this respect.

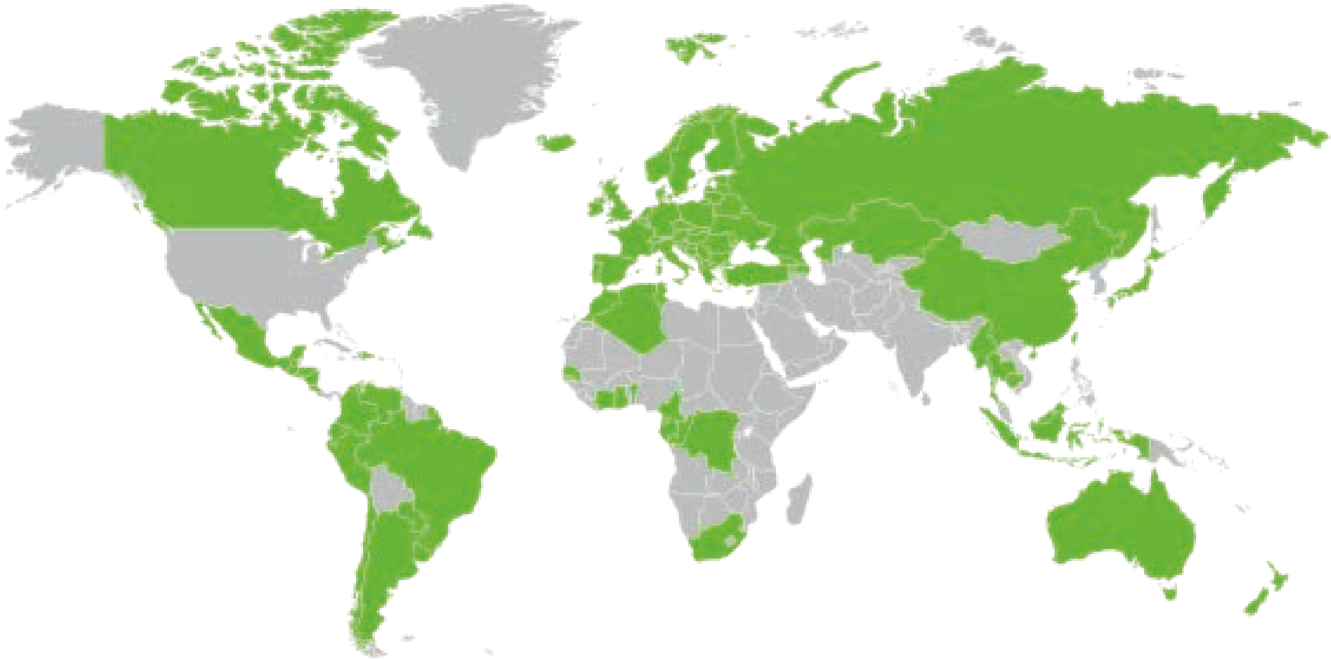
We are part of the Deloitte Legal's international network of law firms, allowing us to serve as your point of contact and coordinate with law firms in almost every country in the world in order to perform the due diligence throughout your (international) value chain.]

In addition to our global legal advisory practice, our **Deloitte Legal Operate** team provides you with the ultimate **technology-powered extension of your in-house legal team.**

Provided by a **dedicated team** with extensive legal and para-legal expertise, **fit-for-purpose technology** and our extensive process and project management competencies, we invest in a flexible and scalable long-term partnership and aim to become the trusted extension of your in-house team.

Cross border coordination and a single point of contact

It can be enormously challenging to manage numerous legal services providers around the world and issues can slip into the cracks. As one of the global leaders in legal services , Deloitte Legal works with you to understand your needs and your vision, and to coordinate delivery around the world to help you achieve your business goals.



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3.Argentina	17.Chile	31.Estonia	45.Italy	59.Nicaragua	73.Spain
4.Armenia	18.China	32.Finland	46.Ivory Coast	60.Norway	74.Sweden
5.Australia	19.Colombia	33.France	47.Japan	61.Paraguyay	75.Switzerland
6.Austria	20.Congo,Rep.Of	34.Gabon	48.Kazakchstan	62.Peru	76.Taiwan
7.Azerbaijan	21.Costa Rica	35.Georgia	49.Kosovo	63.Poland	77.Thailand
8.Belarus	22.Croatia	36.Germany	50.Latvia	64.Portugal	78.Tunisia
9.Belgium	23.Cyprus	37.Greece	51.Litchuania	65.Romania	79.Turkey
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11.Bosnia	25.Dem rep of Congo	39.Honduras	53.Malta	67.Senegal	81.Uruguyay
12.Brazil	26. Denmark	40.Honk Kong	54.Mexico	68.Serbia	82.United Kingdom
13.Bulgaria	27. Dominican Republic	41.Hungary	55.Montenegro	69.Singapore	83.Venezuela
14.Cambodia	28.Ecuador	42.Iceland	56.Marocco	70.Slovakia	

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