



## Corporate Sustainability Due Diligence Directive approved by the European Parliament

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Yes, no? Yes! - The draft directive on the Corporate Sustainability Due Diligence Directive (CSDDD) was approved yesterday following a vote in the European Parliament. Despite the rejection of the draft by Germany on the final straight, the politically controversial draft directive on the CSDDD received the required Member States majority vote in the European Council. Following this turbulent time, the draft directive was accepted by the European Parliament on 24 April 2024.

### 1 Background

The CSDDD will enable the EU to pursue its objective of obliging businesses operating in the EU to take greater responsibility for compliance with human rights and environmental protection requirements, throughout their entire supply chain. The requirements of the Directive relate, in particular, to protection against child labour and forced labour, protection against land grabbing, workplace health and safety, the right to fair wages, the right to form trade unions, and protection against environmental violations.

### 2 Act on Corporate Due Diligence Obligations in Supply Chains in Germany

The Act on Corporate Due Diligence Obligations in Supply Chains (LkSG), which has been in force in Germany since 1 January 2023, standardises due diligence and monitoring obligations in the supply chain. The obligations set out in secs. 4 et seq. of the LkSG include, in particular, the creation of an internal risk management system to carry out risk analyses, the regular publication of reports on compliance with the Directive, as well as the establishment and implementation of preventive and remedial measures to avoid violations of due diligence obligations or to eliminate violations.



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These obligations apply to both the company's own business sphere and, depending on the relationship with the company, to the actions of any contractual partners and the actions of other (indirect) suppliers. This means that, the entire supply and value chain is covered, right up to the finished product. However, unlike the CSDDD, the scope of protection does not include any environmental-related due diligence obligations. Since 1 January 2024, the obligations set out in the German LkSG must be fulfilled by all businesses with their central administration, principal place of business, administrative headquarters, registered office or a subsidiary in Germany, that employ at least 1,000 members of staff.

### 3 European Corporate Sustainability Due Diligence Directive

In contrast to the LkSG, the CSDDD provides for additional due diligence requirements for the value chain downstream of the company's product. Firstly, companies must identify, assess and prioritise the risks in their supply chains (see Art. 7, 8, 9 of the CSDDD). In addition, processes for compliance with due diligence obligations must be established. Furthermore, measures must be taken to prevent or minimise potential violations or to remedy violations of human rights and damage to the environment that have already occurred (see Art. 10, 11, 12 of the CSDDD). These measures must be monitored, evaluated and, if necessary, adapted, whenever there are reasonable grounds to believe that new risks have arisen, but at least every 12 months (see Art. 15 of the CSDDD). Furthermore, a complaints channel must be set up for persons in the supply chains (see Art. 14 of the CSDDD). All of the aforementioned measures must be recorded and published in an annual report (see Art. 16 of the CSDDD). As the measures not only relate to violations of human rights, but also to the prevention of impacts to the environment, the obligations here also go well beyond those of the German LkSG.

The obligation to provide for the above measures applies to all businesses established in accordance with the provisions of a Member State, provided that they have at least 1000 employees and have an annual net turnover generated worldwide of at least EUR 450 million (see Art. 2 para. 1 of the CSDDD). Secondly, businesses established under the legislation of a third country are also covered if they have a net turnover of at least EUR 450 million generated in the EU in one year, regardless of the number of their employees (see Art. 2 para. 2 of the CSDDD). Finally, businesses are covered if they have concluded franchise or licence agreements in the EU and the fees for these are in excess of EUR 22.5 million and, if the business was founded in accordance with the legislation of a third country, has achieved a net turnover of more than EUR 80 million generated in the EU. Fines for breach of the obligations are to be based on the business' net worldwide turnover and are to be determined by the individual Member States (see Art. 27 of the CSDDD). In addition, civil liability exists in terms of injured parties in the event of deliberate or negligent breaches of the obligations to take preventive and remedial measures in order to enable compensation for the damage caused (see Art. 29 of the CSDDD). Member States must enable such actions for damages to be brought.

### 4 Conclusion

The CSDDD goes well beyond the existing obligations of the LkSG. Businesses who have already implemented the obligations under the LkSG must also be prepared for further compliance obligations under the CSDDD. Both the group of businesses concerned and the scope of the obligations will be significantly expanded. Member States have two years to implement the Directive. Until then, the existing LkSG will continue to apply in Germany. The time until the CSDDD is implemented should be used to gain an overview of the new obligations and to take initial measures.