05 November 2024

Towards EU due diligence rules that work for all

The European Green Deal is now moving into the implementation and transposition phases which present significant complexity and therefore uncertainty. The Corporate Sustainability Due Diligence Directive ("CS3D"), undoubtedly the flagship legislation adopted under the Green Deal, is particularly ambitious in terms of its scope thereby creating challenging and impactful new obligations for businesses with global value chains and in some instances rife unintended repercussions for the real economy in the EU and in third countries.

As Mario Draghi rightly notes, Europe's ambitious climate targets need to be matched by a coherent plan for competitiveness[1]. Joint efforts will be required to help position Europe as more competitive and innovative on the global stage and build a prosperous economy for all European citizens, while ensuring that sustainability principles are respected.

We, the undersigned European associations representing companies and sectors impacted by the CS3D, welcome the European Commission's intention to put administrative burden relief and simplification at the heart of its agenda[2]. Focusing these upcoming interventions on the CS3D as a matter of priority is essential to support the competitiveness of businesses operating in the EU, in particular SMEs, which will be indirectly but considerably affected by the legislation.

Not doing so will create an uneven playing field, and potentially a race to the bottom. In addition, negative repercussions will also cascade down to value chain operators, most of which are in third countries that are already struggling to comply with the requirements of other Green Deal legislation.

With this in mind, the undersigned business associations call for the following priority actions:

1. **Immediately launch a comprehensive competitiveness assessment of CS3D in consultation with businesses and their business associations, to identify and address priority areas where simplification, clarification and burden reduction should be achieved within upcoming implementing legislation and guidance.**

Mario Draghi identifies the EU's sustainability reporting and due diligence framework as a major source of regulatory burden, magnified by a lack of guidance to facilitate the application of complex rules that can generate overlap and inconsistencies[3]. The impact assessment on the cost of doing business in the EU and of doing business with companies operating in the EU has been largely underestimated as resources needed to comply with these legislations are significantly higher.

The competitiveness assessment should ensure that upcoming implementing legislation[4] and guidance are designed to help companies effectively comply with the new rules and that practical solutions are co-developed to address gaps or excessively burdensome provisions, rather than introduce additional layers of complexity or de facto extend the scope of the CS3D.

Businesses have accumulated decades-long practical expertise working with their global value chains and have longstanding experience embedding due diligence policies, including human

[1] "The future of European competitiveness", Part A, pages 7 & 65 September 2024
[2] This is strongly emphasised in the European Commission President Political Guidelines
[3] "The future of European competitiveness", Part B, page 318, September 2024
[4] e.g. on reporting and model contractual clauses.

rights, supply chain management, and corporate social responsibility, on a voluntary basis. They have a granular overview and on the ground experience of the opportunities but also challenges they face on a daily basis in countries around the world when implementing social and environmental sustainability standards. Involving businesses early in this process is therefore essential to anchor the directive in a way that is manageable for companies and their broader value chains.

Much of the ESG reporting and due diligence legislations adopted so far[5] are all interconnected, yet companies currently preparing to comply are facing different and even sometimes conflicting requirements[6]. These inconsistencies could have long-term unintended consequences and negatively impact companies operating and investing in Europe, in particular SMEs who have more limited internal resources. As a result, it is imperative to take a holistic and un-siloed approach across the different Directorates-General who will now be involved in the preparation of implementing legislation and guidelines on all these interconnected legislations.

We therefore strongly urge the European Commission to provide horizontal oversight and leadership during the competitiveness assessment of CS3D by:

- Putting in place new processes to support and complement internal inter-Directorates-General systems to identify and address the overlaps and inconsistencies between due diligence legislation adopted under the EU Green Deal as identified in the assessment. Directorates such as DG TRADE and DG GROW that have relevant expertise on aspects of the implementation should be fully included in the process to ensure that Better Regulation Principles are observed and that the negative impact on third countries is minimised.
- Working, from an early stage, in partnership with businesses (including SMEs) and business organisations to collect their feedback and expertise throughout the process of drafting implementing legislation and guidelines but also identify priority areas where simplification and clarification is needed.
- Creating multistakeholder platforms to support companies align their internal procedures and methodologies with legal requirements.

2. Guidelines and implementing legislation should be adopted at least two years before compliance with legislation becomes mandatory or the transition period should be extended.

Companies need to plan today their investments for the coming decade and beyond[7]. This is particularly the case in the field of sustainability where investments carry significant levels of risk and uncertainty.

It takes at least two years for companies to prepare internally to comply with legislation, even more so when this involves revising the broader contractual relationships with suppliers in Europe and globally. The CS3D intends to encourage companies to work in partnership with their

[5] Such as the Corporate Sustainability Reporting Directive (CSRD), the Conflict Minerals Regulation, the Batteries Regulation, the Deforestation Regulation, the Corporate Sustainability Due Diligence Directive (CSDDD), and the Forced Labour Regulation.
[6] For example, CSDDD considers ‘chain of activities’ while the other laws consider ‘supply chain’ (minerals, batteries, forced labour) or ‘value chain’ under the CSRD. Consistency between these laws must be a priority for the new Commission.
[7] European Commission President, Statement at the European Parliament Plenary, 18 July 2024

suppliers to ensure full compliance. This takes time and cannot be accomplished if critical guidance and implementing legislation (e.g. on model contractual clauses) is not available in due time. Even more so, Member States can introduce different rules, for example on definitions, scope, and penalties.

Clarity and legal certainty on how the CS3D will apply and to what specific entities are of paramount importance, particularly given the civil liability provisions. Companies, big and small, cannot make business decisions based on "interpretations" of what their legal obligations are. A delay in the delivery of critical implementing legislation and authoritative EU guidance[8] will not only cause significant disruptions and disproportionate resource allocation/costs; it will also divert companies' planned decarbonisation investments into compliance and ultimately stifle sustainable innovation.

As a result, we ask the European Commission to devote the necessary human resources and governance to ensure the timely delivery of guidance, implementing legislation[9], the single helpdesk, and other supporting measures,[10] at least two years before legal obligations kick in for companies, or otherwise anticipate the need to provide an extended transition period for companies.

3. **Harmonisation and interoperability of rules should remain key pillars in this phase to support Europe's competitiveness and ensure a well-functioning Single Market**

Ensuring uniformity, clarity, and simplicity during implementation and transposition is essential. Further fragmentation of the EU Internal Market should be avoided as it will ultimately make companies operating in the EU less competitive. This is why we strongly advocate for the European Commission to ensure that EU Member States remain as aligned as possible to the agreed EU framework when transposing the Directive into national law.

Without clear and consistent guidelines to streamline implementation and coherent national transposition and enforcement, the CS3D may impose excessive regulatory burdens on companies due to the complexity of its due diligence requirements, as mentioned in the Draghi report[11].

We therefore call on the European Commission to closely monitor transposition measures whilst coordinating with the Member States to ensure that divergence with the Directive is minimised.

[8] Currently estimated to be delivered in a best-case scenario 6 months before the first wave of companies have to start complying.
[9] including model contract clauses, disengagement and remediation, certification standards, sector-specific guidelines
[10] e.g. Single Helpdesk
[11] "The future of European competitiveness", Part B, page 318, September 2024.

List of signatories

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CEFIC – European Chemical Industry Council; https://cefic.org/

CLEPA – European Association of Automotive suppliers; https://clepa.eu/

COPA-Cogeca – European Voice of Farmers and Agri-Cooperatives; https://copa-cogeca.eu/

DIGITALEUROPE; https://www.digitaleurope.org/

EBF – European Banking Federation; https://www.ebf.eu/

EcoDa – The European Voice of Directors; https://ecoda.eu/

ECEG – European Chemicals Employers Group; https://www.eceg.org/

EFFA – European Flavour Association ; https://effa.eu/

EFPIA – European Federation of Pharmaceuticals Industries and Associations; https://www.efpia.eu/

ESIA – European Semiconductor Industry Association; https://www.eusemiconductors.eu/esia

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EUROMETAUX; https://eurometaux.eu/

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FoodDrink Europe; https://www.fooddrinkeurope.eu/

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