

The adoption of the [Directive \(EU\) 2024/1760 on corporate sustainability due diligence](#) – the Corporate Sustainability Due Diligence Directive (CS3D/Directive) – on May 24, 2024, by the Council of the EU (Council), following a favorable vote in the EU Parliament a few weeks before, put an end to months of lively debate on both the scope and the content of this regulation.

Although the goals of the CS3D are broadly shared by EU member states, its adoption was met with heated debates over its impact. The debates were ultimately marked by the blockage of countries that were concerned with preserving their national interests and maintaining their EU competitiveness.

The CS3D now further solidifies the ability of EU legislators to regulate the behavior of economic operators in the supply chain, as was also the case of the earlier adopted [Corporate Sustainability Reporting Directive](#) (CSRD), and a series of newly enacted sectoral legislations, including the [Deforestation Regulation](#), [the Forced Labour Regulation](#), and [the EU Batteries Regulation](#).

The legislation requires EU Member States to establish, by country-specific legislation, minimum requirements for corporate entities to identify, disclose, monitor and remediate any negative impacts of their chain of activities on the environment and human rights. By relying on the phrase “chain of activities,” the CS3D requires EU Member States to monitor the direct and indirect business relationships of their corporate entities’ supply chains regardless of the location of those entities (i.e., both inside and outside the EU). It also requires each Member State to set up complaint and reporting mechanisms, as well as the introduction of a fault-based liability regime in case of any noncompliance.

The introduction of a mandatory, harmonized framework of environment, social and governance (ESG) due diligence obligations into companies’ management, at the EU level, constitutes a remarkable development.

Still, some Member States, including France and Germany, which were previously at the forefront of the Council’s inner debates, have existing regulatory requirements. France and Germany have been defending their existing models, namely, France’s Law on the Duty of Vigilance (*Loi sur le devoir de vigilance – Loi n°2017/399*) (LDV) and Germany’s Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz*) (LkSG). With the adoption of the CS3D, France and Germany will now have to blend their existing national requirements with the harmonized framework prescribed by the Directive.

The changes that the Member States have to adopt and publish by July 26, 2026, should be carefully monitored by companies in order to adjust and update their journeys toward ESG compliance.

## 1. The New CS3D Compliance Regime and Scope

### a. Companies in Scope and Timeline

The Directive applies to entities or groups operating in the EU with differentiated thresholds, namely:

If Operations Are Conducted Through EU Entities or Groups	If Operations Are Not Conducted Through EU Registered Entities or Groups (Non-EU)
With more than 1,000 employees and a worldwide turnover above €450 million	With a turnover exceeding €450 million in the EU
With a worldwide turnover above €80 million, and that entered into franchising or licensing agreements with an independent third party in the EU in return for royalties exceeding €22.5 million	With an EU turnover above €80 million, and that entered into franchising or licensing agreements with an independent third party in the EU in return for royalties exceeding €22.5 million

The Directive will be gradually phased in over time between 2027 and 2029, according to the following thresholds:

Companies or Groups	Application Date
<ul style="list-style-type: none"> <li>• EU companies with more than 5,000 employees and a worldwide turnover exceeding €1.5 billion</li> <li>• Non-EU companies with a turnover exceeding €1.5 billion in the EU</li> </ul>	<p>From 26 July 2027</p> <p>Reporting obligations to start from 1 January 2028</p>
<ul style="list-style-type: none"> <li>• EU companies with more than 3,000 employees and a worldwide turnover exceeding €900 million</li> <li>• Non-EU companies with a turnover exceeding €900 million in the EU</li> </ul>	<p>From 26 July 2028</p> <p>Reporting obligations to start from 1 January 2029</p>
<ul style="list-style-type: none"> <li>• All other companies and groups above the CS3D thresholds</li> </ul>	<p>From 26 July 2029</p> <p>Reporting obligations to start from 1 January 2029</p>

Moreover, although not expressly concerned by those thresholds, every entity contracting, either directly or indirectly, with an undertaking subject to the CS3D, is likely to be impacted by the Directive.

## b. Key Elements of the CS3D

The Directive establishes minimum requirements for companies to identify, disclose, monitor and remediate any negative impacts that their activities may have on the environment and on human rights. These requirements are identified by reference to specific obligations and prohibitions laid down by international treaties and conventions that are annexed to the Directive.<sup>1</sup>

Member states are also left with discretion to maintain or introduce more stringent or more specific provisions to achieve a higher level of protection of human, employment and social rights, as well as for the environment and the climate.<sup>2</sup>

### • Carrying Out of Due Diligence

Companies are required to conduct risk-based due diligence<sup>3</sup> by carrying out meaningful engagement with stakeholders,<sup>4</sup> a key notion of the CS3D. This includes the integration of due diligence into their own policies and management systems.

Companies are also required to identify and assess actual and potential adverse impacts on human rights and the environment arising from their operations, those of their subsidiaries, as well as “where related to their chains of activities, those of their business partners.”<sup>5</sup>

Through the addition of “business partner,” the CS3D targets a broad range of entities, including both direct and indirect partners.<sup>6</sup> “Direct partners” refers to entities with whom the company has concluded commercial agreements. Indirect partners (with whom the company has not concluded commercial agreements) are defined as entities engaging in activities relating to the company’s operations, products or services.

**Takeaway** – A suggested first step is to conduct a risk-mapping exercise, as well as a compliance gap analysis (benchmark of existing procedures and policies against standards listed as an addendum to the CS3D) to identify where internal procedures and policies should be strengthened or augmented. Companies must track measures to prevent and mitigate the potential impacts of their activities, and those of their subsidiaries and of their business partners. Companies are required under certain circumstances to bring to an end and remediate actual impacts, which is likely to trigger significant complexity in daily operations, as well as a long-term strategy (i.e., ability to replace a supplier, contractual risks resulting from the termination, impact on the negotiation of a long-term contract or contractor, ability to source in one jurisdiction or location, etc.).<sup>7</sup>

1 [Annex of the CS3D](#) includes reference to the following international treaties and conventions:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The International Labour Organization Conventions
- The Convention on Biological Diversity
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora.
- The Stockholm Convention on Persistent Organic Pollutants.

2 Article 4 of the CS3D

3 Article 5 of the CS3D

4 The CS3D defines stakeholders and requires Member States to ensure that companies take appropriate measures to carry out effective engagement with stakeholders (i) when gathering the necessary information on actual or potential adverse impacts, in order to identify, assess and prioritize adverse impacts; (ii) when developing prevention and corrective action plans; (iii) when deciding to terminate or suspend a business relationship, (iv) when adopting appropriate measures to remediate adverse impacts; and (v) when developing qualitative and quantitative indicators for the monitoring.

5 Article 8 of the CS3D

6 Article 3(f) of the CS3D

7 Articles 8-11 of the CS3D

Since the CS3D requires companies to monitor the effectiveness of their due diligence policies, a robust compliance assessment should be undertaken to reflect the best practices available (i.e., incentives of executives, targeted questionnaire, regular monitoring, etc.).<sup>8</sup>

### • **Definition of a climate transition plan**

The CS3D puts a particular emphasis on the need for companies to align with the climate objectives of the Paris Agreement by imposing a distinct obligation to create a climate transition plan.<sup>9</sup> The plan is to be aimed at ensuring, through the company's best efforts, that their business model and strategy are compatible with:

- The transition to a sustainable economy
- Limiting of global warming to 1.5°C in line with the Paris Agreement
- The objective of achieving climate neutrality by 2050

The plan must also include:

- Deadlines related to climate change for 2030 and in five-year increments to 2050 based on “conclusive scientific evidence” and, “where appropriate,” absolute emission reduction targets for greenhouse gas<sup>10</sup> emissions
- A description of decarbonization levels identified, and key actions planned
- An explanation and quantification of the investments that will be made in support of the plan
- A description of the administrative, management and supervisory roles related to the transition plan

This new requirement enshrines into law something that is an already existing, voluntary practice of many companies. It may also duplicate, to a certain extent, climate reporting requirements imposed by the CSRD, although the scope of the latter's reporting requirement is much broader. In this regard, companies already fulfilling their disclosure requirements related to climate change under the CSRD are exempted from this additional obligation.

### • **Communicating**

Companies caught by the CS3D will be required to publicly communicate the measures they have implemented to address their noncompliance. The communication will be made in the form of an annual statement published on the company's website. The detailed content of this statement will be put into place by delegated act which will be adopted by March 31, 2027.

### • **A New Supervisory Authority**

The CS3D requires the creation of a national authority in each member state, which will supervise compliance and must be effective in the member states by 26 July 2026.<sup>11</sup>

Each national authority will have the power to request information, carry out investigations, order companies to cease infringements and provide remediation. The authority can also order injunctions and impose financial penalties.

### • **Civil Liability, Penalties and Complaint Procedures**

Despite contentious discussions on this aspect, the CS3D does in fact introduce a fault-based civil liability regime similar to the French regime already in place.

A company can be held liable for the damage caused to a natural or legal person if the claimant is able to demonstrate that:

- The company intentionally or negligently failed to comply with its obligations under the CS3D.
- As a result of said failure, a damage to its interests (protected under national law) was caused.

A full compensation of the damage caused shall be granted.<sup>12</sup>

A company cannot be held liable for damage that has solely been caused by its business partners. However, if the damage is caused jointly by the company and its subsidiary or business partner (direct or indirect), both will be jointly and severally liable.

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8 Article 15 of the CS3D

9 Article 22 of the CS3D

10 The Greenhouse Gas (GHG) Protocol Corporate Standard classifies a company's GHG emissions into three “scopes”:

- Scope 1 emissions are direct emissions from owned or controlled sources.
- Scope 2 emissions are indirect emissions from the generation of purchased energy.
- Scope 3 emissions are all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.

11 A European Network of Supervisory Authorities will ensure a coordinated approach among national authorities and allow for cooperation in enforcement cases and information sharing.

12 Article 29 of the CS3D

The Directive also introduces two complaint mechanisms:

- An internal complaint mechanism, enabling stakeholders to submit complaints within organizations<sup>13</sup>
- A complaint mechanism before supervisory authorities, allowing natural and legal persons to submit substantiated concerns when they have reasons to believe that a company is not compliant with the CS3D requirements.<sup>14</sup>
- Last but not least, penalties and sanctions in cases of infringement are partly left to the discretion of the member states. The CS3D provides that the penalties shall be “effective, proportionate and dissuasive”<sup>15</sup> and based on the company’s or group’s worldwide turnover. The maximum limit of penalty shall be not less than 5% of the net worldwide turnover or consolidated turnover.

## 2. Impact of the CS3D on Existing National French and German Laws

### a. Overlap and Differences Between the LDV and LkSG and the CS3D in Terms of the Personal Scope of Application

#### • French Law

The French LDV is applicable to companies or groups that have, during two consecutive years, more than 5,000 employees in France or more than 10,000 employees worldwide (directly or within direct or indirect subsidiaries).

All companies that currently fall within the scope of the LDV and meet the employee threshold of the Directive and, therefore, also fall within the scope of CS3D, provided that they also meet the turnover threshold of the Directive relevant at the given time.

In addition to the existing companies operating under the existing law, new French companies will be subject to CS3D obligations as of 2028, as the number of employees and turnover requirement will be gradually lowered.

#### • German Law

The LkSG, in its current version, is applicable to companies (i) whose head office, principal place of business, administrative or statutory seat is in Germany, or, in the case of foreign companies, that have a registered branch in Germany, and (ii) employ at least 1,000 employees in Germany.

All companies that currently fall within the scope of the LkSG will also meet the employee threshold of the Directive (subject to deviations due to a slightly different calculation of the number of employees) at the latest from July 26, 2029, and, therefore, also fall within the scope of CS3D, if they meet the turnover threshold of the Directive relevant at the given time. However, companies that do not fall within the scope of the LkSG due to the number of employees employed in Germany may fall within the scope of the CS3D if they meet the employee threshold of the Directive, taking into account the employees employed abroad.

Furthermore, the turnover threshold of the CS3D is likely to mean that the number of companies being subject to both the LkSG and the CS3D will be relatively low (especially compared to the originally envisaged thresholds of 500 employees and €150 million).

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<sup>13</sup> Article 14 of the CS3D

<sup>14</sup> Article 26 of the CS3D

<sup>15</sup> Article 27 of the CS3D

b. Comparison of Certain Material Aspects of the LDV and the LkSG and the CS3D

CS3D	LDV	LkSG
<p><b>Extended due diligence obligations and meaningful engagement with stakeholders</b></p>	<p>The obligations provided by the LDV are similar to the obligation required by the Directive.<sup>16</sup></p> <p>The Directive is detailed on the due diligence and remediation measures, including details on mitigation actions, adoption of a code of conduct or specific human rights and environmental provisions of international conventions.</p> <p>The Directive also defines stakeholders as needing to be “involved,” which the LDV did not define, which is a pivotal issue for organizations.</p>	<p>The CS3D provides broader obligations than the LkSG, particularly with regard to the environment: new additions include chemical-related obligations and obligations to protect biodiversity, endangered species, specially protected areas and the oceans.</p>
<p><b>Climate transition plan</b></p>	<p>No climate transition plan is expressly required by the LDV.</p>	<p>No climate transition plan is expressly required by the LkSG.</p>
<p><b>Extended responsibility regarding business partners in the chain of activities (downstream and upstream)</b></p>	<p>The supply chain within the LDV is limited to the company’s own business area and affiliates, as well as subcontractors or suppliers with whom an established commercial relationship exists.</p>	<p>The supply chain, within the meaning of the LkSG, is limited to the company’s own business area and direct suppliers.</p>
<p><b>Extended liability: civil liability and minimum fine of 5% net worldwide turnover or consolidated turnover</b></p>	<p>Undertakings are exposed to civil liability.</p>	<p>The LkSG provides a maximum fine of 2% of the average annual turnover but does not provide civil liability.</p>
<p><b>Monitoring: creation of an empowered EU coordinated supervisory authority</b></p>	<p>No supervisory authority is provided under LDV.</p>	<p>The LkSG empowered the Federal Office of Economics and Export Control (BAFA) responsible for monitoring compliance with the LkSG.</p>

<sup>16</sup> The LDV lists five mandatory components of the Vigilance Plan to identify and prevent risks of severe violations of human rights and fundamental freedoms, to the health and safety of people, and to the environment, in their entire sphere of influence:

- A risk mapping
- A procedure for a regular assessment of the situation of subsidiaries, subcontractors or suppliers
- Adapted due vigilance measures to mitigate risks and prevent serious harm
- A mechanism for alerting and collecting reports
- A mechanism to monitor and evaluate the effectiveness of measures taken

### 3. Transposition of the CS3D Into National Law

#### • German Law

In view of the LkSG, which has been in force since January 1, 2023, the German legislator now has two options for transposing the CS3D into national law:

- **Option 1** – The LkSG is amended, i.e., adapted to the requirements of the CS3D.
- **Option 2** – The LkSG is repealed and replaced by a new law that meets the requirements of the CS3D.

Which path the legislator will take depends not least on the political situation at the time. In September 2025 (if not earlier), there will be German federal elections – with speculation that a change of government is on the cards. It would come as no surprise if a CDU/CSU-led government were to “collect” the LkSG, as the CDU/CSU parliamentary group, currently in opposition, only recently tabled a bill to this effect in the German federal parliament (Bundestag). This is due to the acceptance of the LkSG as a low impact to the economy. The confusing and “difficult to understand” law is widely regarded as regulatory overreach and a “bureaucracy monster.” Not even BAFA, which is responsible for monitoring compliance with the LkSG, seems to know exactly how the LkSG is to be interpreted and applied. In fact, BAFA was unable to answer a question from the authors about the personal scope of application of the LkSG, and only stated that the personal scope of application of the LkSG was “currently under review.”

During CS3D negotiations, Germany pushed for the originally envisaged application thresholds to be raised in order to prevent additional requirements for German small and medium-sized enterprises (SMEs) going beyond those under the LkSG. If the intention remains to avoid further burdening German SMEs, it can be assumed that the LkSG adapted to the requirements of the CS3D (or a new law replacing the LkSG) will only apply to those companies that must be covered under the Directive. That would be welcome, as the CS3D brings with it significantly more stringent requirements than the LkSG.

#### • French Law

The LDV, the first of its kind within the EU, has been in force in France since March 29, 2017. The implementation of the CS3D in France will trigger a need to adapt and perfect the LDV to CS3D provisions.

The implementation of the CS3D in France will be made on a proposal of the Ministry of Justice (Chancellerie), which will submit its proposition of text to the newly elected French Parliament.<sup>17</sup>

This implementation could also take place, as it was the case for the CSRD, by way of an executive order (ordonnance) of the government, upon habilitation by the Parliament.

Since its adoption, the LDV has taken a specific place within the French legal landscape. Both companies subject to the LDV and those indirectly affected by it are aware of its provisions and are increasingly taking it into account in their corporate behavior. Moreover, since its first implementation in 2018, the LDV has been the subject of numerous court cases involving major French listed companies, including decisions as recent as June 2024, which allowed clarifications on matters such as a competent court and the methodology used to assess risks.

In addition, related litigations now have a dedicated chamber at the Paris Court of Appeal where matters related to the LDV, as well as the CSRD, will be judged by the Emerging Litigation Chamber – Duty of Vigilance and Ecological Liability. It is expected to also judge matters related to the CS3D.

For these reasons, an amendment of the LDV seems a likely scenario for the implementation of the CS3D. Although similarities exist between the obligations under LDV and CS3D, the latter provides clarifications on various obligations, a broader scope, and clear (and severe) penalties.

France has already taken a proactive stance by incorporating the CSRD into its national legislation as of December 2023. A similar scenario could take place for the CS3D. However, this will be highly dependent on the national political agenda, including the formation of a new government.

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<sup>17</sup> Elected in July 2024

• **Outlook**

French and German companies meeting the CS3D thresholds (or likely to do so in the future) should actively monitor developments at EU and national level. They should ensure that the (organizational) measures required to meet the requirements of CS3D can be implemented in good time.

As the CS3D relates to the entire supply chain, the effort involved is likely to be considerable. Each company's own compliance system should also be reviewed and, if necessary, optimized with a view to avoiding potential civil liability for breaches of corporate obligations under the CS3D.

In Germany, due to the effort and liability risk associated with the CS3D, it is to be hoped that the German legislator will proceed with a sense of proportion when implementing the Directive into national law and take the opportunity to correct the technical weaknesses of the LkSG. In particular, there must be no ambiguities in the personal scope of application in the future.

In France, the appointment of a supervisory authority, as well as the introduction of public enforcement and a corporate civil liability risk, will be key to putting this matter at the top of the priority list for affected companies. The implementation of the CS3D into French law should also give the opportunity to the French legislator to clarify different aspects of the LDV, in particular on the nature of due diligence and remediation measures to be adopted by companies.

Finally, companies subject to the CS3D will also fall within the scope of the CSRD. The CS3D cross-references existing legislation for certain obligations. For example, with regard to the public communication on due diligence, the CS3D relies on the CSRD reporting, thereby avoiding duplication for companies in the scope of both sets of rules. For the small number of companies that are not already covered under the CSRD, it compliments existing rules by providing a simplified and aligned reporting ESG compliance framework.

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