



Sustainability Due Diligence after the Omnibus: Legal Implications for the CSDDD



Introduction

The Corporate Sustainability Due Diligence Directive (the “CSDDD”) establishes a harmonised framework for corporate human rights and environmental due diligence across the European Union. Proposed by the European Commission (the “Commission”) in February 2022 and entering into force in July 2024, it is the first cross-sectoral EU law to translate voluntary international sustainability due diligence standards¹ into binding legal obligations for large companies operating in the EU market. Under the CSDDD, companies within scope are required to identify, prevent and address adverse impacts on human rights and the environment arising from their own operations, those of their subsidiaries, and those of business partners in their value chains.

In February 2025, shortly after the CSDDD was adopted, the Commission put forward a first Omnibus legislative package (the “Omnibus directive” or “Omnibus revision”), proposing various amendments presented as a mere simplification of the CSDDD requirements. Formally adopted one year later, in February 2026, through a rushed legislative procedure, the Omnibus revision in reality introduces substantive modifications to key provisions of the CSDDD. Member States are

required to transpose the CSDDD as amended by the Omnibus directive into national law by July 2028, with the new requirements becoming applicable to companies from July 2029.

The legislative process leading to the adoption of the Omnibus directive has itself given rise to serious rule of law concerns. The proposal was advanced without a proper impact assessment or meaningful stakeholder consultation, and without reliance on the climate-consistency assessment required under the European Climate Law. According to the European Ombudsman, these procedural deficiencies amounted to maladministration by the Commission².

Against this backdrop, this legal analysis examines the core provisions of the CSDDD in light of the amendments made by the Omnibus directive. It focuses in particular on the legal and practical implications of these changes, highlighting both the challenges they pose and the opportunities they may create. The analysis is intended to support the work of all stakeholders in understanding the revised law and its implications for corporate sustainability.

1. [UN Guiding Principles on Business and Human Rights](#) and [OECD Guidelines for Responsible Business Conduct](#).

2. Recommendation on the European Commission’s compliance with ‘Better Regulation’ rules and other procedural requirements in preparing legislative proposals that it considered to be urgent ([983/2025/MAS - the “Omnibus” case](#).)

Summary table: CSDDD before versus after the Omnibus Directive

Article	Original CSDDD	Omnibus Directive
Company scope Article 2	EU companies with > 1000 employees, €450 million net worldwide turnover and non-EU companies with net turnover in the EU market above same amount.	EU companies with > 5000 employees, €1.5 billion net worldwide turnover and non-EU companies with net turnover in the EU market above same amount. New review clause every five years (starting 2031).
Non-regression Article 1(2)	Prohibition on lowering levels of protection under existing national law when transposing the Directive.	Prohibition on lowering levels of protection under existing national law when transposing the Directive, except for aligning existing due diligence laws with the CSDDD, in particular to align their scope.
Harmonisation Article 4	Limited to risk identification (Article 8(1) and (2)), the prevention and mitigation obligation (Article 10(1)), and the obligation to bring adverse impacts to an end (Article 11(1)).	Expanded to the due diligence obligation at group level (Articles 6), risk identification and prioritisation (Article 8 and 9), certain provisions on prevention and bringing impacts to an end (Article 10(1) to (5) and Article 11(1) to (6)), as well as notification and complaint mechanisms (Article 14), monitoring (Article 15) and communication (Article 16).
Risk identification Article 8	Risk-based approach to identification of impacts: a) mapping of value chain and general areas; b) in-depth assessment.	Risk-based approach to identification of impacts: a) scoping of general areas; b) in-depth assessment. Certain limitations on information requests for business partners with < 5000 employees.
Prioritisation Article 9	Prioritisation allowed in case it is not feasible to address all identified impacts at once, based on the severity and likelihood of the impact.	Additional paragraph that prevents supervisory authorities from penalising companies that have correctly prioritised adverse impacts and sequenced their actions in accordance with Article 9.
Suspension and termination Articles 10(6) and 11(7)	Requirements for responsible suspension and termination as a measure of last resort.	Requirements only for responsible suspension as a measure of last resort.
Stakeholder definition Article 3(1)(n)	Wider definition of stakeholders, including company's employees, trade unions, affected communities, consumers, national human rights and environmental institutions and civil society organisations.	Deletion of consumers, national human rights and environmental institutions and civil society organisations.

	Original CSDDD	Omnibus Directive
Stakeholder consultation Article 13(3)	Consultation of stakeholder at: • identification and prioritisation stage; • for prevention and corrective action plans (Article 10(2) and Article 11(3)), and enhanced prevention and corrective action plans (Article 10(6) and Article 11(7)); • responsible suspension and termination; • remediation; and • on indicators for monitoring (as appropriate).	Deletion of stakeholder consultation in the context of responsible suspension and termination, as well as monitoring.
Monitoring Article 15	Internal monitoring of the effectiveness of due diligence every twelve months.	Internal monitoring of the effectiveness of due diligence every five years.
Climate Transition Plans Article 22	Obligation to adopt and put into effect a plan: • though “best efforts”; and • ensuring compatibility with EU climate law and the Paris Agreement.	Climate transition plan requirement and guidance deleted; disclosure requirement retained in CSRD.
Public enforcement Article 27	Maximum limit of penalties: not less than 5% of net worldwide turnover.	Maximum limit of penalties: 3% of net worldwide turnover.
Civil liability Article 29	Harmonised EU civil liability regime: • mandatory application of the CSDDD standard of care; and • access to justice measures.	Civil liability under national law: • no mandatory application of the CSDDD standard of care; • reduced access to justice measures: no third party standing; and • new review clause.

Company scope

Reduction of the CSDDD company scope: One of the most significant rollbacks introduced by the Omnibus revision concerns the company scope of the CSDDD. Article 2 of the CSDDD is revised to apply to EU companies with more than 5,000 employees and EUR 1.5 billion in net worldwide turnover as well as third-country companies generating more than EUR 1.5 billion in turnover in the Union, compared to the original thresholds of 1,000 employees and EUR 450 million. While the CSDDD continues to apply at parent-company level, and to companies operating under franchising or licensing models, these regimes are now subject to substantially increased turnover and royalty thresholds.³ As a result, the scope of the CSDDD is reduced by approximately 70% compared to the original text, leaving the Directive applicable to about 1,000 corporate groups, or roughly 1,500 companies across the EU.⁴

This narrowed scope significantly limits the CSDDD's intended impact. By further departing

from international standards, under which due diligence is a risk-based responsibility rather than one determined by company size,⁵ it excludes a crucial number of businesses whose activities significantly harm human rights and the environment, particularly in high-risk sectors such as agriculture, construction, textiles and mining. In doing so, the Omnibus revision directly undermines the CSDDD's legislative intent to foster responsible corporate behaviour and ensure meaningful harmonisation across the internal market.

Review clause. As a corollary to these limitations, the amended Article 36 provides for a review of the CSDDD's scope by 26 July 2031, and every five years thereafter. This review clause constitutes a critical mechanism to assess whether the narrowed company scope undermines effective corporate accountability and a level playing field, and should be used by the Commission to revise Article 2 accordingly.

³. More specifically, the CSDDD applies to EU companies, and to non-EU companies generating turnover in the Union, with net turnover exceeding EUR 275 million (increased from EUR 80 million), where they have entered into franchising or licensing agreements with independent third-party companies in exchange for royalties exceeding EUR 75 million (increased from EUR 22.5 million), provided that the additional conditions set out in the Directive are met.

⁴. For estimates of the original CSDDD scope see: [CSDDD Datahub reveals law covers fewer than 3,400 EU-based corporate groups, SOMO, 2025](#). Estimates by SOMO on the Omnibus revision are based on that and amount to approximately 997 groups and roughly 1600 companies. See also: EU Omnibus: Challenges and Opportunities of the Parliament's Proposed Changes to the CSDDD, BSR, 2025.

⁵. UN Guiding Principles on Business and Human Rights, p.1 "These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure."

The non-regression principle

Article 1 clarifies not only the objective of the CSDDD, but also its relationship with existing national laws, including those on supply chain due diligence (Article 1(2)). In doing so, it reaffirms the general principle of non-regression, under which Member States may not lower the level of protection provided under existing national law when transposing the Directive. This principle is mainly relevant in areas such as national labour law, environmental and climate law, or product

and food safety laws, for example. However, the Omnibus directive introduces an exception to this principle: it allows Member States to adjust existing national corporate sustainability due diligence laws that are already in force, in order to align them with the CSDDD, in particular as regards to their scope.⁶ Such exceptions to this general principle of non-regression must, however, be interpreted narrowly in transposition.

Harmonisation of the due diligence framework

As an EU directive, the CSDDD sets the minimum standards that Member States must respect when transposing its provisions into national law. Generally speaking, Member States retain regulatory discretion to go beyond the standard a directive requires and adopt higher levels of protection, unless expressly constrained by EU law.

Article 4 provides a maximum harmonisation rule, which limits Member States' ability to go beyond the CSDDD's standard with regard to specific articles. This rule was already included in the original CSDDD adopted in 2024, with the aim of ensuring the harmonised transposition and application of due diligence obligations across the Union. In its initial formulation, Article 4 was limited to the risk identification step (Article 8(1) and (2)), the general prevention and mitigation obligation (Article 10(1)), and the general obligation to bring adverse impacts to an end (Article 11(1)).

The Omnibus directive significantly expands the scope of maximum harmonisation, which now also includes the obligation regarding due diligence at group level

(Articles 6), the entire Articles on risk identification and prioritisation (Article 8 and 9), almost the full Articles on prevention and bringing impacts to an end (Article 10(1) to (5) and Article 11(1) to (6)), as well as the Articles on notification and complaint mechanisms (Article 14), monitoring (Article 15) and communication (Article 16).

As a result, the Articles under maximum harmonisation now cover the entire due diligence process, with the exception of responsible suspension of contracts and disengagement. None of these Articles may be exceeded by Member States when transposing them into national law. In general, maximum harmonisation should always be strictly interpreted and limited to the provisions expressly listed. Article 4(2) nevertheless clarifies that Member States can set stricter rules than those set out in the remaining Articles, particularly with regard to regulating specific products or services and concerning the stricter protection of human rights, environment and climate.

⁶ For the debate in the German context prior to Omnibus, compare also: Mittwoch, A.-C., 2024, Possibilities and Limitations of Changing the Scope of Application of the Act on Corporate Due Diligence Obligations in Supply Chains (LkSG) when Implementing the Corporate Sustainability Due Diligence Directive (CSDDD), [summary](#) in English.

Risk-based identification of impacts and requests for information

The identification of potential and actual impacts is the crucial starting point of the due diligence process. Article 8 was intensively discussed during the negotiation of the Omnibus directive, in particular because of initial proposals to focus the identification on direct suppliers. Ultimately, policymakers decided to uphold the risk-based approach in line with international due diligence standards, thereby ensuring that the due diligence process remains both meaningful in its results and manageable in practice.

Original framework: The original CSDDD foresaw two steps for identification and assessment. First, a mapping of all business operations and partners that would allow an identification of general areas of negative impacts, and second, an in-depth assessment of those operations and business partners where impacts were identified as most likely to occur and most severe. For this identification exercise, companies were asked to make use of appropriate resources.

Omnibus revisions: scoping. The Omnibus directive keeps the two-step approach to risk identification, albeit clarifying and restricting the first step: in line with the OECD Guidelines, the first step is now called a “scoping exercise”. Scoping essentially requires companies to look at their own operations and value chains in order to identify “general areas” of potential or actual negative impacts. The term “areas” is not limited to a geographical area, and can also mean a specific segment of the value chain. Taking into

account the new definition of risk factors (Article 3(1)(u)),⁷ companies should consider sector and possibly product or service-specific risks, as well as risks related to the geography (country or region) of the business partner. In practical terms, companies are meant to gain an understanding of risks related to production countries or procurement categories. Special attention is required when operations take place in conflict-affected areas.⁸ Omnibus Recital 39 further explains that this first step does not require companies to assess every single impact at entity level.

For the purpose of the scoping exercise, companies in scope should rely only on information that is “reasonably available”. This primarily entails desk-based research drawing on various sources, for example independent reports, industry and multi-stakeholder initiatives, stakeholders, complaint mechanisms and internal sources rather than directly requesting information from business partners (see Article 8(4) and Omnibus Recital 42 on appropriate resources).

Omnibus revisions: in-depth assessments.

The requirement to carry out in-depth assessments following the first step has not been substantially altered by the Omnibus directive. However, the rules governing information requests for the purposes of in-depth assessments have been further specified. It is helpful to recall that in-depth assessments should enable companies to correctly prioritise identified impacts where needed and to develop appropriate measures

7. See Article 3(1)(u): “‘risk factors’ means facts, situations or circumstances that relate to the severity and likelihood of an adverse impact, including facts, situations or circumstances at the level of the business partner, such as whether the business partner is not a company covered by this Directive or other comparable mandatory sustainability due diligence legislation; at the level of geography and context, such as the level of law enforcement with respect to the type of adverse impact; and at the level of sectors, of business operations, and of products and service.”

8. Compare: UNDP, [Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide](#), June 16, 2022.

to address them. It is therefore important, as spelled out in Omnibus Recital 40, that companies obtain “accurate and reliable information, in particular about the nature and extent, causes, severity and likelihood of the identified adverse impacts”. At this stage, the assessment goes beyond headquarters-based desk research and generally requires engagement with business partners across the value chain.

The Omnibus directive introduces stricter conditions on information requests by in-scope companies, with the aim of protecting out of scope companies from overwhelming and overly broad information requests, including blanket questionnaires. As a result, companies are required to make their requests more targeted, to base them on the knowledge gained during the scoping exercise, and to request information only where it is “necessary”. Where those requests concern business partners with less than 5000 employees, they should reach out “only when the information cannot reasonably be obtained by other means”. In practice, this is likely to be the case for many in-depth assessments and, if done meaningfully, may be the entry point for good engagement with business partners throughout the due diligence process.

The Omnibus revision also introduces an additional specification on the assessment of impacts: Article 8(3)(c) allows companies to exceptionally prioritise the in-depth assessment of those potential and actual impacts that are linked to their direct business partners only where the potential and actual adverse impacts identified under Article 8(2)(a) are “equally likely to occur or equally severe *in several areas*” (emphasis added).

In practice, this still means that companies need to develop a thorough understanding of the potential and actual impacts beyond tier-one⁹ business partners to be able to determine whether risk areas *already identified* through the scoping are indeed equally likely and severe.¹⁰ Given the potentially different nature of the harms, it seems difficult to demonstrate that identified potential or actual harms are equally severe or likely.

Moreover, prioritisation relates to the sequencing of the in-depth assessments, hence, in case companies can assess tier-one business partners first, they must follow-up with the other severe and likely impacts afterwards. Omnibus Recital 40 emphasises that this constitutes a best-efforts obligation and must be interpreted in line with the CSDDD definition of ‘appropriate measures’ (Article 3(1)(o)). Appropriateness is defined as being “capable of achieving the objectives of due diligence by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the adverse impact”. Becoming effective in assessing those potential and actual negative impacts that are most severe and likely in order to prevent and stop them is the essence of the exercise set out in Article 8.

Lastly, due diligence is a continuous improvement process, yet the Directive does not specify the frequency of the identification exercise. Established good practice suggests conducting an assessment when entering a new relationship or following every significant change in business partners, production locations or at product or service level, but in any event at least every two years.¹¹

9. Tier-one business partners are direct business partners in the value chain with whom the company has a direct relationship.

10. Even if Article 8(3)(c) allows for the prioritisation of the in-depth assessment at direct business partners under these specific circumstances, it seems difficult for companies to demonstrate that the potential or actual impact at tier-one level is equally severe and likely in several areas compared to impacts further down in the value chain. Companies need a thorough understanding beyond mere scoping to be able to make such an assessment.

11. Compare: [BAFA, 2022: Identifying, weighting and prioritizing risks](#). Guidance on conducting a risk analysis as required by the German Supply Chain Due Diligence Act.

Suspension of a business relationship

Articles 10 and 11 both address the situation in which a company has exhausted all its due diligence measures, and adverse impacts still cannot be prevented, adequately mitigated or brought to an end. Prior to the Omnibus revision, these Articles spelled out detailed requirements on both suspension and responsible termination of a business relationship. The Omnibus directive no longer requires termination as a last resort, but simply spells out requirements on responsible suspension. There are several consequences of this change.

Responsible suspension (or not entering into new relations) should continue to be understood as a measure of last resort. At the same time, these measures are important for building leverage, and the lack of a clear disengagement obligation may, in certain situations, render the leverage companies can exert less impactful. Articles 10(6) and 11(7) nevertheless reaffirm that “using or increasing its leverage” to effectively address identified impacts is one main reason for suspension (Article 10(6)(b)). Companies also have to adopt and implement an enhanced prevention action plan, or an enhanced corrective action plan, albeit with less detailed requirements attached to each, immediately when suspending a business relationship.

In practice, there are situations in which such action plans are unlikely to lead to meaningful improvements, such as in situations of state-imposed forced labour or armed conflicts. The CSDDD now leaves a gap on how responsible disengagement should be carried out, effectively leaving companies to rely on existing international standards for guidance.¹² Companies will also, in practice, continue to terminate contracts, and it is regrettable that the CSDDD no longer sets out clear requirements for doing so responsibly.

Moreover, the Omnibus directive introduces an additional problematic exclusion from penalties and liability. Article 10(6) provides that where “there is a reasonable expectation that the enhanced prevention action plan will succeed, the mere fact of continuing to engage with the business partner shall not expose the company to penalties pursuant to Article 27 or to liability under Article 29” (with a similar provision in Article 11(7)). In practice, this requires companies to carefully document their efforts to increase leverage and exercise particular caution when assessing whether or not their enhanced plan is capable of actually preventing, mitigating or stopping the adverse impact. As a result, once the expectation that action plans will succeed can no longer be considered reasonable, the continued engagement with the business partner may expose the company to penalties and liability. However, in the absence of a corresponding obligation to terminate the relationship, companies bear the legal, operational and financial risks associated with this assessment and decision. They may still seek to increase leverage by making clear to business partners that failure to implement corrective action plans could expose the company itself to penalties and liability, thereby incentivising compliance. Given the highly context-specific nature of this assessment, and in order to enable public authorities to apply the “reasonable expectation” standard independently and consistently, the Commission should provide a meaningful definition of this concept in the CSDDD guidelines, together with workable criteria to assist authorities in assessing whether the condition is met.

The general safeguards attached to suspension otherwise remain unchanged from the original CSDDD: companies have to assess when a suspension has more severe consequences than continuing the relationship, they have to give reasonable notice and monitor the impacts to reassess their decision over time.

¹² See “disengagement” in: UN Guiding Principles on Business and Human Rights, p.22; OECD Guidelines, Commentary on Chapter II: General Policies No. 25, as well as OECD Due Diligence Guidance, p.30

Meaningful stakeholder engagement

Meaningful stakeholder engagement is a crucial element of effective human rights and environmental due diligence. Under the original CSDDD, the concept of stakeholders was defined broadly, with a particular focus on affected stakeholders (Article 3(1)(n) and Recital 65). By contrast, the Omnibus revision narrows the definition of stakeholders and excludes consumers, national human rights and environmental institutions as well as civil society organisations. As a result, the revised framework places greater focus on “directly affected” stakeholders (see also Omnibus Recital 45). Although the revised definition lists certain categories of stakeholders, the notion of individuals who are directly affected is non-exhaustive and should be interpreted to also include, for example, informal or home-based workers in the value chain that can potentially be directly affected by adverse impacts.

The UN Guiding Principles and the OECD Guidelines consider stakeholder engagement as an ongoing

process throughout the due diligence cycle. This involves establishing a meaningful dialogue and ensuring the quality, accessibility, and continuity of such exchanges. The original CSDDD already reflected this approach by identifying a list of stages at which stakeholder engagement was required (see Article 13(3)(a) to (e)). The Omnibus directive removes two of these stages, namely stakeholder engagement in the context of responsible disengagement, and in the development of indicators for monitoring purposes. From a practical perspective, stakeholder engagement is particularly critical in situations involving the responsible suspension of business relationships. Companies must closely monitor the effectiveness and impacts of their enhanced prevention or corrective action plans, which in practice is hardly possible without engaging with stakeholders. Companies should continue viewing stakeholder engagement as one of the most effective tools for meaningful due diligence, rather than a procedural burden.

Monitoring

The Omnibus revision extends the periodic monitoring interval from twelve months to five years. Regardless of this interval, companies remain obliged to assess their measures if significant changes occur or new risks arise. This means that the internal monitoring of due diligence implementation, particularly in relation to the adequacy and effectiveness of the due diligence process, is no longer aligned with the external communication and reporting obligations under Article 16, which must be carried out annually. Meanwhile, companies remain responsible for ensuring that the measures taken are

effective (Article 3(1)(o)) and would therefore be well advised not to wait five years to monitor compliance with their due diligence requirements.

It is important to clarify that this extended period only applies to the overall monitoring and not to the risk analysis or other specific requirements. Monitoring is essentially about tracking the implementation and the effectiveness of the company's due diligence and its results. The aim is to gather lessons-learned and to improve the due diligence outcomes.

Climate transition plans

Climate transition plans, first developed in corporate practice in response to the Paris Agreement, have emerged as a key governance tool through which companies set their strategies and commitments to decarbonise in line with the 1.5°C temperature goal and the objective of climate neutrality.

Original EU framework: Building on international voluntary standards, the EU legal framework has progressively introduced climate transition planning requirements across various regulatory regimes. Prior to the Omnibus revision, and beyond sector-specific obligations, the combined framework of the Corporate Sustainability Reporting Directive (the “CSRD”) and the CSDDD established a horizontal regime mandating companies not only to disclose, but also to substantively engage in climate transition planning. The original CSDDD required companies to adopt and put into effect a climate transition plan setting out how they would, on the basis of a best-efforts obligation, adapt their strategy and operations and reduce their GHG emissions consistently with the 1.5°C temperature goal set out in the Paris Agreement (Article 22).

The impact of the Omnibus revision: In the course of the Omnibus negotiations, Article 22 faced considerable opposition, driven in particular by foreign governments¹³ and industry stakeholders from the fossil fuel sector, the latter of whom mounted intensive lobbying efforts to protect private interests and business models dependent on the production and sale of oil and gas.¹⁴ This position found support

among a majority of far-right and right parties in the European Parliament, ultimately resulting in the complete deletion of climate transition plans from the CSDDD. Omnibus Recital 47 justifies this deletion on grounds of preventing disproportionate burdens and legal uncertainty for companies.

In practice, however, the removal of Article 22 deepens legal uncertainty by contributing to an increasingly fragmented landscape of climate-related obligations for companies.¹⁵ Companies remain bound to climate transition planning under a patchwork of sector-specific regulations, disclosure duties, and evolving standards established by courts under various longstanding laws, including tort law – a configuration that is likely to increase, rather than reduce, exposure to liability and climate-related litigation. Recent case law reflects an increasing willingness of courts to scrutinise corporate climate inaction¹⁶ and the integrity of their climate transition claims,¹⁷ underscoring that the deletion of Article 22 has complicated, rather than simplified, both the applicable legal requirements and companies’ exposure to legal risk.

Moreover, deleting mandatory climate transition plans directly undermines the CSDDD’s stated objectives of supporting the energy transition and contributing to achieving international and European climate objectives.¹⁸ The removal of climate transition planning also runs counter to States’ obligations under international law to regulate private actors in a manner capable of reducing greenhouse gases emissions, as recently clarified by the International Court of Justice.

¹³ See, for instance, [U.S. Energy Secretary and Qatari Energy Minister Letter to EU Regarding Proposed Corporate Climate Regulations](#), October 2025.

¹⁴ [How Big Oil kills sustainability and climate legislation](#), SOMO, October 2025 and [The secretive cabal of US polluters that is rewriting the EU’s human rights and climate law](#), SOMO, December 2025.

¹⁵ On this point, see [Legal Scholars: Abandoning Article 22 CSDDD Risks Policy Incoherence and Litigation Risk](#), November 2025.

¹⁶ See, among others, the Hague Court of Appeal, 12 November 2024, Judgment [Shell Plc v. Stichting Milieudefensie and Others](#), in which the Court confirmed that Shell is subject to an independent duty of care to mitigate its GHG emissions in line with the Paris Agreement.

¹⁷ Paris Civil Court of Justice, 23 October 2025, Judgment [Greenpeace and Others v. TotalEnergies](#), in which the Court found that TotalEnergies was responsible for misleading commercial practices due to its claims of achieving climate neutrality by 2050 and its contribution to the energy transition.

¹⁸ [Regulation \(EU\) 2021/1119](#) of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’), Articles 2 and 4.

¹⁹ The removal of the harmonised climate transition planning requirement arguably undermines the EU's and its Member States' ability to meet their existing obligations under international law, including their emission reduction targets,²⁰ which may increase states' exposure to climate-related litigation and prolong reliance on fossil fuels, to the detriment of energy security and independence.

The climate dimension of the Human Rights and Environmental Due Diligence: Against this backdrop, the removal of Article 22 should not be understood as a complete exclusion of climate obligations from the CSDDD. Companies' due diligence requirements across the value chains continue to encompass both potential and actual adverse impacts on the environment and on human rights. Under Part I, Section 1, of the Annex to the CSDDD, which identifies internationally recognised prohibitions and obligations whose violation constitutes punishable environmental degradation, point 15 refers to "harmful emissions".

Given that "water or air pollution" is addressed separately, the notion of "harmful emissions" must be interpreted as encompassing anthropogenic GHG emissions contributing to climate change. European and international human rights law²¹ recognises anthropogenic climate change as a serious and far-reaching threat to human rights, and since the CSDDD expressly integrates human rights due diligence obligations, Member States implementing the Directive are required to treat climate-related harm as falling within its material scope.²²

In sum, the deletion of Article 22 does not extinguish companies' responsibility to conduct climate-related due diligence, but rather removes a key provision governing how those obligations are to be operationalised, thereby undermining both the effectiveness of the CSDDD and the legal certainty it was designed to deliver.

¹⁹. International Court of Justice, 23 July 2025, [Advisory Opinion on the obligations of states in respect of climate change](#), paras. 95, 252, 282, 427 and 428. See also ClientEarth and others, [The Omnibus I Negotiations in light of the ICJ Advisory Opinion on Climate Change](#), October 2025.

²⁰. [Regulation \(EU\) 2021/1119](#) of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), Articles 2 and 4.

²¹. See, among others, European Court of Human Rights, 9 April 2024, Judgment [Verein KlimaSeniorinnen Schweiz and Others v. Switzerland](#), para. 436 and UN Human Rights Committee, General Comment No. 36 (2018) on the right to life (Article 6 ICCPR), para. 62..

²². When implementing Union law, Member States must comply with the Charter of Fundamental Rights pursuant to Article 51(1) and, under Article 52(3), interpret corresponding Charter rights consistently with the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.

Guidelines

Article 19 empowers the Commission to adopt guidelines clarifying the scope and content of companies' diligence obligations. These guidelines are intended to support companies in implementing their obligations and to assist Member State authorities in transposing the Directive and supervising compliance with Articles 7 to 16.

Apart from the deletion of guidance on climate transition planning, the revised provision preserves the Commission's mandate to issue guidance on key elements of the due diligence process. These include: guidance outlining how to carry out the necessary due diligence steps laid down in the Directive, guidance on the assessment of the relevant risk factors to identify adverse impacts arising along the value

chain, and guidance on data sources and digital tools to support compliance Articles 19(2)(a), (d) and (e) respectively). These guidelines are to be adopted by 26 July 2027. Guidance on the protected sharing of compliance resources and stakeholder engagement in due diligence (Articles 19(2)(f) and (g)) is to follow by 26 July 2028, while no timeline is specified for sector-specific guidance (Article 19(2)(c)). By addressing core elements of the due diligence process, the guidelines constitute a key vehicle for stakeholder engagement and for ensuring that the CSDDD's due diligence obligations are implemented in a manner capable of delivering effective identification, prevention and remediation of adverse human rights and environmental impacts in practice.

Penalties

Under Articles 24 to 26, Member State supervisory authorities must monitor companies' compliance with their due diligence obligations, including by carrying out investigations. Those authorities have the power to impose, directly or through their national courts, penalties on infringing companies, including fines.

Article 27(4) and Recital 76 initially required these fines to be commensurate with the infringing company's net worldwide turnover. There was no obligation, however, to base the fines solely on turnover, and Article 27(2) set out eight factors that authorities should take into account to determine their appropriate level, including the nature, gravity and duration of the infringement, or any relevant previous infringements by the company. In terms of the upper limit, the maximum fine available to

Member State authorities could *not be less than* 5% of this turnover (with the possibility for Member States to provide for a higher maximum amount).

Article 4(11) of the Omnibus directive amends these provisions. First, fines no longer need to be based on the infringing company's turnover. Nevertheless, Omnibus Recital 48 makes clear that, when determining the amount of fines, authorities must still take appropriate account of turnover, alongside the factors listed in Article 27(2). In addition, the Commission is now tasked with developing guidelines to assist Member State authorities in determining the level of penalties. Second, the maximum fine available is set at 3% of the company's turnover. Member States remain free to set a higher maximum if they so choose.²³

²³ This is because Article 4 CSDDD, even as amended by the Omnibus, does not restrict the possibility for Member States to go beyond the Directive when transposing Article 27 regarding penalties.

Companies' civil liability

Initial CSDDD provisions: Article 29(1) introduced a harmonised civil liability regime across all Member States, ensuring that a company can be held liable to compensate victims for damages they have suffered as a result of that company's breach of its due diligence obligations.²⁴ Under Article 29(2), the liable company must provide victims full compensation for the damage suffered. To ensure victims an effective access to justice, Article 29(3) set out five procedural guarantees: a five-year statute of limitations; affordable cost of proceedings; the availability of court orders to cease due diligence violations (known as injunctive measure); the ability for courts to order companies to disclose evidence; and the possibility for victims to authorise a third party (a trade union, human rights or environmental NGO, or human rights institution) to bring an action to enforce their right to compensation (representative action). Finally, Article 29(7) – the so-called overriding mandatory provision clause (OMP) – ensured that when a civil liability action was brought before the court of a Member State, the Directive's civil liability regime and procedural guarantees applied mandatorily before that court.

Omnibus amendments: Article 4(12) of the Omnibus directive deletes (a) the harmonised civil liability regime in Article 29(1), (b) the possibility for victims to have recourse to representative actions and (c) the OMP. These changes have several important consequences.

First, Member States must still have a civil liability regime in place. Although the CSDDD no longer requires a harmonised civil liability regime across Member States, Member States remain obliged to have a regime to hold companies that breach their due diligence obligations liable and order them to compensate victims. Indeed, Omnibus Recital 49 expressly states that, under international and EU law, Member States must ensure that victims of adverse human rights or environmental impacts have effective access to justice and guarantee their right to an effective remedy. In addition, even after the Omnibus revision, the CSDDD retains several provisions confirming the obligation for Member States to have a civil liability regime for companies failing to conduct due diligence.²⁵

Second, civil liability regimes will differ across Member States. The conditions for ordering a company to compensate victims of its due diligence violations will vary from one jurisdiction to another. Nevertheless, national civil liability regimes must meet certain minimum requirements. In particular, as per Omnibus Recital 49 they must ensure effective access to justice and remedy to victims of adverse human rights or environmental impacts resulting from a company's failure to conduct due diligence. According to Article 29(2), this includes ensuring that these victims are able to receive full compensation. In addition, Member States' national laws must make available to victims

²⁴ A company's *civil liability* is the obligation for that company to compensate victims for the damage they have suffered as a result of its wrongdoing. A *civil liability* action or action for damages is the legal action that these victims can bring against the company before a court to ask for compensation (also known as damages).

²⁵ This is in particular: Article 29(2), which obliges Member States to ensure that victims have a right to full compensation where a company is liable under national law for damage caused by a failure to comply with its due diligence obligations; the four procedural guarantees that Member States must continue to provide to victims under Article 29(3). To give effect to these provisions, Member States must necessarily have in place in their national laws a civil liability regime for breaches by companies of their due diligence obligations. Other provisions include: Article 1(1) and (4), including in light of Recital 16; Article 6(1) (see also Recital 21); Articles 10(6) and 11(7); Article 25(9); Article 29(5).

the four procedural guarantees remaining in Article 29(3), with the exception of representative actions.²⁶

Third, due to the suppression of the OMP, the applicable civil liability regime may vary significantly. When handling civil liability actions against companies established in its Member State, an EU court will not necessarily apply its national law that transposed the CSDDD. Instead, the applicable law will be determined by another instrument, the Rome II Regulation, which compels EU courts to apply the civil liability regime of the country where the damage occurred.²⁷ Given the global nature of companies' operations and value chains, there is a risk that this country will often be a non-EU country – and therefore a risk that EU courts will apply the civil liability regimes of non-EU countries that do not allow victims to be compensated for CSDDD violations.²⁸ While Rome II contains several adjustments that EU courts can use

to apply their own national laws²⁹ this may not always be the case.

The deletion of the OMP therefore causes significant unpredictability and is unsatisfactory for all stakeholders. It generates: an unfair difference of treatment for victims of CSDDD breaches depending on their country of living (which is often where their damage occurs); a high level of uncertainty for companies mapping their legal (and financial) risks across their global value chains; an uneven playing field among companies depending on the jurisdictions affected by their respective value chains; and sheer complexity for EU courts having to apply foreign civil liability regimes from all over the world. To mitigate these risks, Omnibus Recital 49 allows Member States to make the application of their national civil liability regime mandatory by their courts, by making it an OMP as a matter of national law.

²⁶. While the Omnibus suppresses representative actions from the list of procedural guarantees for victims, CSDDD Articles 4(2) and 29(6) state that the CSDDD only sets a harmonisation floor, rather than a ceiling, on civil liability. This allows Member States to go beyond the minimum requirements of the Directive when they transpose it and allow representative actions. Omnibus Recital 49 confirms this.

²⁷. Article 4(1) of the [Regulation \(EC\) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations](#), known as the *Rome II Regulation*.

²⁸. See, for instance, Prof. Geert Van Calster, [Legal opinion: how the Omnibus creates uncertainty on civil liability for companies](#), May 2025.

²⁹. In particular, an EU court must take into account the rules of conduct of the country where the event giving rise to the liability occurred, even if this is not the same country as the one where the damage occurred (Rome II Article 17). In addition, victims of environmental impacts specifically can choose the application of the civil liability regime of the country where the event giving rise to the environmental damage occurred, instead of the regime of the country where the *damage* occurred (Rome II Article 7).



Conclusion

The decision-making process leading to the adoption of the Omnibus directive, marked by procedural deficiencies and conducted under unprecedented political pressure and lobbying, ultimately resulted in a weakened text of the CSDDD. The substantial reduction in scope undermines the CSDDD's intended impact and regulatory predictability, while the removal of climate transition plan requirements erodes legal certainty for businesses and weakens Europe's capacity to meet its binding climate targets. Taken together, the Omnibus revisions risk weakening the Directive's impact at scale

and undermining the coherence of the Union's broader sustainable governance framework. Even with its limited scope, however, the CSDDD remains a pivotal instrument for corporate accountability in relation to environmental harm and human rights violations throughout global value chains. Companies retain the opportunity to go beyond existing requirements and demonstrate leadership, particularly in anticipation of the forthcoming review of key provisions of the Directive, including its scope.

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Frank Bold is a Czech-European public interest law organisation with expertise in law, green finance, clean energy, responsible corporate conduct, ESG and sustainability.

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