

May 3, 2024

EU Parliament Adopts Corporate Sustainability Due Diligence Directive

On April 24, 2024, the European Parliament voted to adopt the Corporate Sustainability Due Diligence Directive (the “*Directive*”). **Once transposed into law by European Union (“EU”) member states and phased in, the Directive will require all companies with significant activities in the EU – not only companies organized or headquartered in the EU – to undertake human rights and environmental due diligence within their global operations and supply chain.** In-scope companies will then be required: to eliminate, or mitigate and remediate, any adverse impacts that are identified during the due diligence process; and, to **adopt and implement a transition plan to reduce greenhouse gas (“GHG”) emissions** in line with the Paris Agreement’s and EU’s objectives.

The Directive requires all 27 EU member states to transpose its requirements into law within two years, and contemplates a phase-in of these laws’ application from 2027 to 2029. This fact sheet provides a high-level overview of the scope of the Directive, what the laws will require in-scope companies to do (including details on climate transition plans), when the obligations will commence and the potential consequences of non-compliance.

<p>Who must comply?¹</p>	<ul style="list-style-type: none"> Initially, all EU companies with over 5,000 employees and net global turnover above €1.5 billion, and non-EU companies (irrespective of employee headcount) with net EU-wide turnover² above €1.5 billion (calculated on a stand-alone or group basis). Once fully phased in, all EU companies with over 1,000 employees and net global turnover above €450 million, and all non-EU companies (irrespective of employee headcount) with group EU net turnover above €450 million. EU companies with annual EU franchising fees or royalties of at least €22.5 million and net turnover above €80 million, and non-EU companies meeting the same revenue threshold in the EU. The ultimate parent company of a corporate group that satisfies the relevant thresholds on a consolidated basis, unless it is a holding company and one of its EU subsidiaries fulfills the obligations of the parent company.
<p>What obligations are imposed?</p>	<p>In summary, companies subject to the Directive’s requirements must:</p> <ul style="list-style-type: none"> develop and adopt a human rights and environmental risk-based due diligence policy,

¹ Companies will need to comply if they meet the stated thresholds for the past two consecutive financial years.

² Net turnover means revenues from the sale of products and services after deducting sales rebates, value added tax and other sales taxes.

	<p>which must be updated, where necessary, at least every 24 months;</p> <ul style="list-style-type: none"> • conduct risk-based human rights and environmental due diligence on their entire group and business partners in their upstream and downstream “chain of activities”; • integrate due diligence into all of their relevant policies and risk-management systems; • identify and assess any adverse human rights or environmental impacts, actual or potential, in their own global operations and in those of their business partners, and where necessary-- based on severity and likelihood, and inability to mitigate-- prioritize potential and actual adverse impacts; • prevent or, if that is not possible, adequately mitigate and remediate all adverse impacts that have been or should have been identified, including by implementing preventive or corrective action plans, seeking contractual assurances from direct business partners, making financial investments, or modifying business plans, including any purchasing, design and distribution practices; • meaningfully engage with stakeholders, including employees, trade unions and workers’ representatives, consumers, civil society organizations and representatives of affected persons; • develop a company-level notification and complaints procedure for stakeholders to report concerns regarding actual or potential adverse impacts of the companies’ own operations or the operations of business partners in the companies’ chain of activities; • remediate any actual adverse human rights or environmental impacts caused by their corporate group, anywhere in the world; • monitor the effectiveness of their due diligence policy and measures through annual assessments; • publish an annual statement regarding their due diligence processes, potential and actual adverse impacts identified, and steps taken to eliminate, mitigate and/or remediate those impacts (unless subject to the Corporate Sustainability Reporting Directive “CSRD”, in which case the disclosure would be included in CSRD-mandated reports); and • adopt a transition plan for climate change mitigation (see below).
<p>What are climate transition plans and what is required?</p>	<p>In-scope entities’ transition plans must aim to ensure, through best efforts, that the business model and strategy of the company are compatible with (i) the Paris Agreement’s objective of limiting global warming to 1.5°C and (ii) the EU’s climate neutrality targets. The transition plan must:</p> <ul style="list-style-type: none"> • contain time-bound targets related to climate change for 2030, then in five-year incremental steps up to 2050, including absolute emission reduction targets for Scope 1, Scope 2 and Scope 3 GHG emissions, as well as a description of decarbonization levers identified and key actions planned to reach those targets, explanations and quantifications of investments and funding supporting transition plans; and

	<ul style="list-style-type: none"> • be updated every 12 months, together with a progress report.
When do the obligations commence?	<p>Requirements will be phased-in as follows:</p> <ul style="list-style-type: none"> • From 2027, to companies with over 5,000 employees and net global turnover above €1.5 billion, on a group-wide basis; • From 2028, to companies with over 3,000 employees and net global turnover above €900 million on a group-wide basis; and • From 2029, to all remaining in-scope companies.
What are the consequences of non-compliance?	<p>Non-complying companies will be investigated and can be penalized by a supervisory authority, which each member state will designate or create. Penalties include “naming and shaming,” and fines of up to 5% of a company’s net worldwide turnover. Even for the smallest companies on the Fortune 500 list, that would translate into potential penalties of over \$350 million.</p> <p>Companies may also be held liable for actual damages associated with the adverse human rights and/or environmental impacts from their global operations. Direct claims may be brought by adversely affected person(s), or alternatively by a non-governmental organization or other legitimate representative acting on their behalf.</p>
What are the next steps?	<p>The Directive needs to be formally adopted by the European Council, which is expected to be a straightforward process that could be completed as soon as late May 2024. It will then enter into force 20 days after it is signed and published in the <i>EU Official Journal</i>.</p> <p>Member states will then have two years to transpose the Directive into their national laws. While the Directive creates a floor, it does not create a ceiling; member states can choose to exceed the Directive’s minimums and adopt more robust requirements for in-scope entities.</p> <p>For further information on the Directive and its implications, refer to this Paul, Weiss update.</p>

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Melinda Haag

+1-628-432-5110

mhaag@paulweiss.com

Christodoulos Kaoutzanis

+1-212-373-3445

ckaoutzanis@paulweiss.com

David K. Lakhdir

+44-20-7367-1602

dlakhdir@paulweiss.com

Randy Luskey

+1-628-432-5112

rluskey@paulweiss.com

Raphael M. Russo

+1-212-373-3309

rrusso@paulweiss.com

Daniel J. Toal

+1-212-373-3869

dtoal@paulweiss.com

Mark S. Bergman

+1-202-223-7300

mbergman@paulweiss.com

Annise Maguire

+1-202-223-7402

amaguire@paulweiss.com

Frances F. Mi

+1-212-373-3185

fmi@paulweiss.com

David Curran

+1-212-373-2558

dcurran@paulweiss.com

Sustainability & ESG Advisory Practice Director Madhuri Pavamani, law clerk Amber Kennedy and Practice Management Consultant Jane Danek contributed to this Client Memorandum.