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with an adviser?

DZP's legal and tax alerts.

European Parliament approved the agreement reached on the Corporate Sustainability Due Diligence Directive (CSDDD, also as CS3D)

On 24 April 2024, the European Parliament officially approved the agreement reached on the final text of the Corporate Sustainability Due Diligence Directive (CSDDD). As a next step, the Council must formally approve the text (expected in May) before it can then be published in the EU Official Journal (expected in June). Member states, including Poland, will have two years to transpose the new rules into their national laws.

CSDDD requires firms and their upstream and downstream partners, including supply, production and distribution to prevent, end or mitigate their adverse impact on human rights and the environment. Such impact will include slavery, child labour, labour exploitation, biodiversity loss, pollution or destruction of natural heritage.

Details

CSDDD requires companies to identify and assess environmental and human rights impacts across their chain of activities. Due diligence should cover human rights and environmental adverse impacts generated throughout the majority of the life-cycle of production, distribution, transport and storage of a product or provision of services, at the level of companies' own operations, operations of their subsidiaries and of their business partners in their chains of activities.

The chain of activities should cover activities of a company's upstream business partners related to the production of goods or the provision of services by the company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and development of the product or the service, and activities of a company's downstream business partners related to the distribution, transport and storage of the product, where the business partners carry out those activities for the company or on behalf of the company.

Companies will be obliged to:

- integrate due diligence into their policies and risk management systems;
- identify and assess actual or potential adverse impacts;
- prevent and mitigate potential adverse impacts, and bring actual adverse impacts to an end and minimize their extent;

- carry out meaningful engagement with stakeholders;
- establish and maintain a notification mechanism and a complaints procedure;
- monitor the effectiveness of their due diligence policy and measures;
- publicly communicate on due diligence.

Companies shall take appropriate measures to:

- map their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in order to identify general areas where adverse impacts are most likely to occur and to be most severe;
- based on the results of the mapping, carry out an in-depth assessment of their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in the areas where adverse impacts were identified to be most likely to occur and most severe.

Member states will create or designate a supervisory authority to investigate and impose penalties on non-complying companies. These will include “naming and shaming” and fines of up to 5% of companies’ net worldwide turnover.

Company can also be held liable for damage caused to a natural or legal person resulting from failure to comply with due diligence obligations.

Entry into force

The rules will apply to EU companies and parent companies with over 1000 employees and a worldwide turnover higher than 450 million euro. It will also apply to companies with franchising or licensing agreements in the EU ensuring a common corporate identity with worldwide turnover higher than 80 million euro if at least 22.5 million euro was generated by royalties.

The new rules (except for the communication obligations) will apply gradually to EU companies (and non-EU companies reaching the same turnover thresholds in the EU):

- from 2027 to companies with over 5000 employees and worldwide turnover higher than 1500 million euro;
- from 2028 to companies with over 3000 employees and a 900 million euro worldwide turnover;
- from 2029 to all the remaining companies within the scope of the directive (including those over 1000 employees and worldwide turnover higher than 450 million euro).

Member State competent to regulate matters covered by CSDDD shall be the member state in which that company has a branch. If a company does not have a branch in any member state, or has branches located in different Member States, the Member State competent to regulate matters covered CSDDD shall be that in which that company generated the highest net turnover in the EU in the financial year preceding the last financial year.

Recommendation

CSDDD leaves out any specific details on how companies should map their own operations. Companies will need to develop their own methodology, which means changes to compliance system and relation between companies and stakeholders. Although the European Commission is expected to publish guidelines on how to identify adverse impacts, the guidelines will not be available until six months before the rules start to apply. Companies should therefore not rely on waiting until the guidelines from the Commission are available since mapping out the value chain is crucial. Also it is important to identify the general areas where the most severe and probable impacts are likely to occur.

Who will my adviser be?



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She has extensive experience in advising both public and private entities on projects carried out in the traditional form (public procurement) and those based on partnership structures in the broad meaning of the term (PPP, concessions). She also advises clients in the waste management sector, including on infrastructure investments.



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Specializing in managing and supporting foreign investors for a soft landing in Poland and Ukraine, he guides clients through the initial steps of entering the Polish and Ukrainian markets and continues to provide support throughout their ongoing business operations.