Policy Deep Dive

What to Expect from the EU's Corporate Sustainability Due Diligence Directive?

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Introduction

The Council of the EU formally adopted the long-awaited [Corporate Sustainability Due Diligence Directive (CS3D)] on May 24, 2024, shortly before the European Parliament elections on June 6-9. The text was formally published in the Official Journal of the EU on June 13. This marks a major political breakthrough and a turning point for human rights and environmental due diligence in the European Union (EU).

The CS3D establishes obligations for large companies to undertake risk-based due diligence to identify, prevent, and mitigate adverse human rights and environmental impacts with their activities and broader business operations. This will be particularly relevant for large textile, apparel, footwear, and wider consumer goods companies that rely on intricate supply chains extending across regions. The directive would catalyze action from businesses across all sectors to address human rights and environmental challenges and serve as an international benchmark for responsible business conduct.

The legislation is the culmination of a long and contentious political process. The European Commission first published the proposal in February 2022, and trilogue negotiations initially concluded in December 2023. However, subsequent concerns about the directive's scope and its potential burden on businesses prompted Member States to restart negotiations on the legal text in late February 2024.

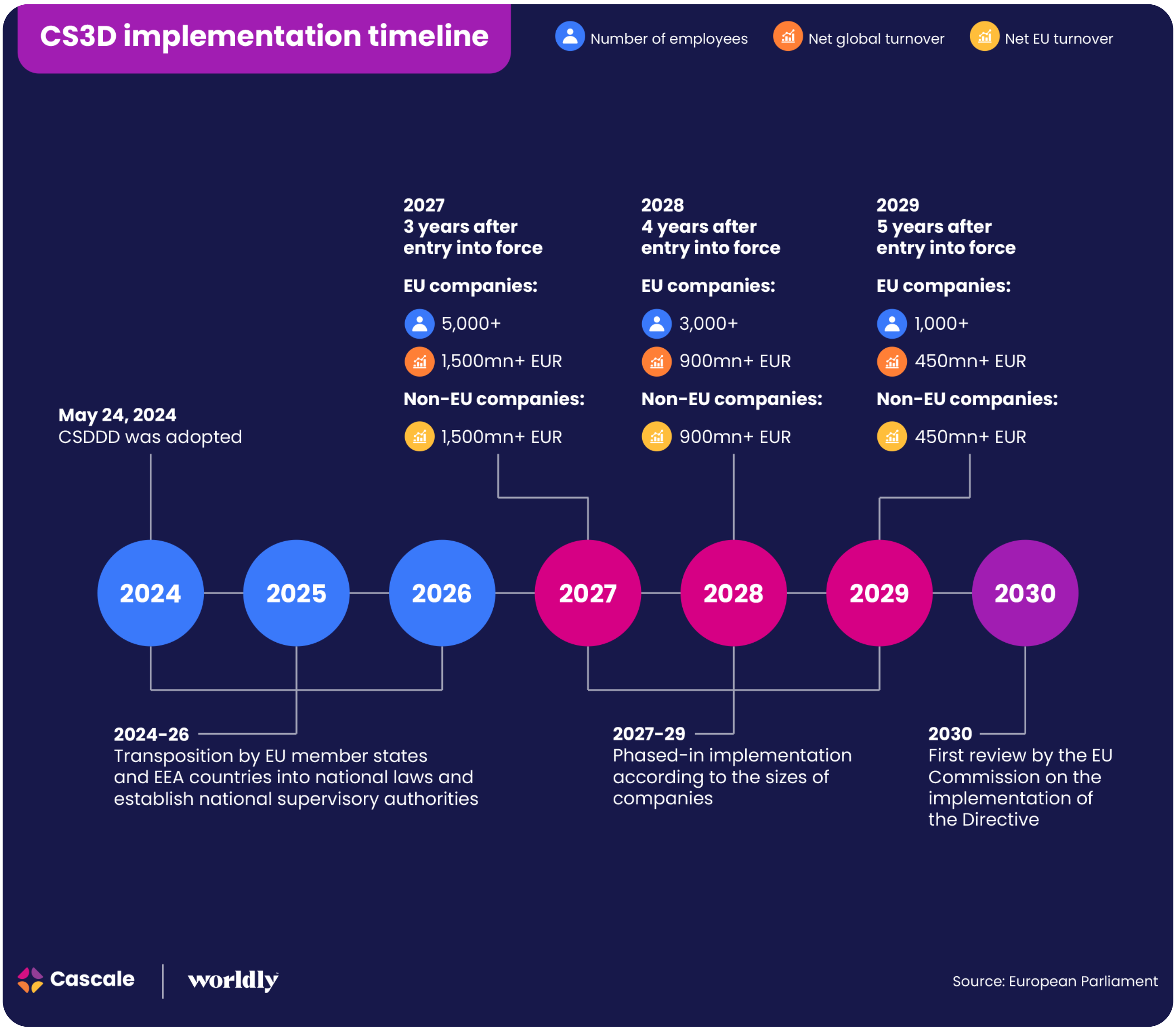
The final text is much watered down from its previous form. The scope has been reduced from EU companies with 500 employees and a turnover of 150 million EUR to those with 1,000 employees and a turnover of 450 million EUR. For the textile, apparel, footwear, and wider consumer goods sectors, which consist of a large number of smaller manufacturers and suppliers, this means that the majority of companies will not be directly included in the directive's scope.

The new text has also removed the 'high-risk sector' approach. The initial scope included EU companies with more than 250 employees and at least half of their above-40 million Euro worldwide turnover coming from a high-risk sector, including the manufacture and wholesale of textiles. With the CS3D no longer specifically targeting the textiles industry, the European Commission would instead issue sector-specific guidelines for companies to manage their sectoral risk factors.

Dynamics of National Transposition

EU Member States will have two years to implement the regulations and administrative procedures to comply with the CS3D. This process is known as transposition. Companies depending on their sizes and turnover will have a time window of three to five years to comply with the CS3D. The CS3D also applies to the European Economic Area (EEA), which includes Norway, Iceland, and Liechtenstein.

The following graphic shows the timeline for transposition and the phased-in implementation of the CS3D.



Existing Due Diligence Laws

Several Member States have adopted or proposed environmental and human rights due diligence laws. Amendments to these national frameworks are probably needed to align them with the latest CS3D requirements.

In **France**, a national due diligence law was legislated in 2017. The Corporate Duty of Vigilance Law requires large companies to manage their human rights and environmental risks. However, its threshold of applicability significantly varies from that of the CS3D. The French law applies to companies with more than 5,000 employees in France or 10,000 employees worldwide. While this threshold is close to the 2027 figure for the CS3D, the CS3D threshold is significantly more stringent in future years. This means that amendments to the national law are probably needed.

Germany introduced the Corporate Due Diligence Obligations in Supply Chains Act in 2023. The initiative aims to improve the respect for human rights and environmental standards in global supply chains. Businesses in Germany are required to meet certain due diligence requirements. If companies fail to comply with their legal obligations, administrative fines amounting to 8 million EUR or up to 2 percent of annual global turnover can be levied.

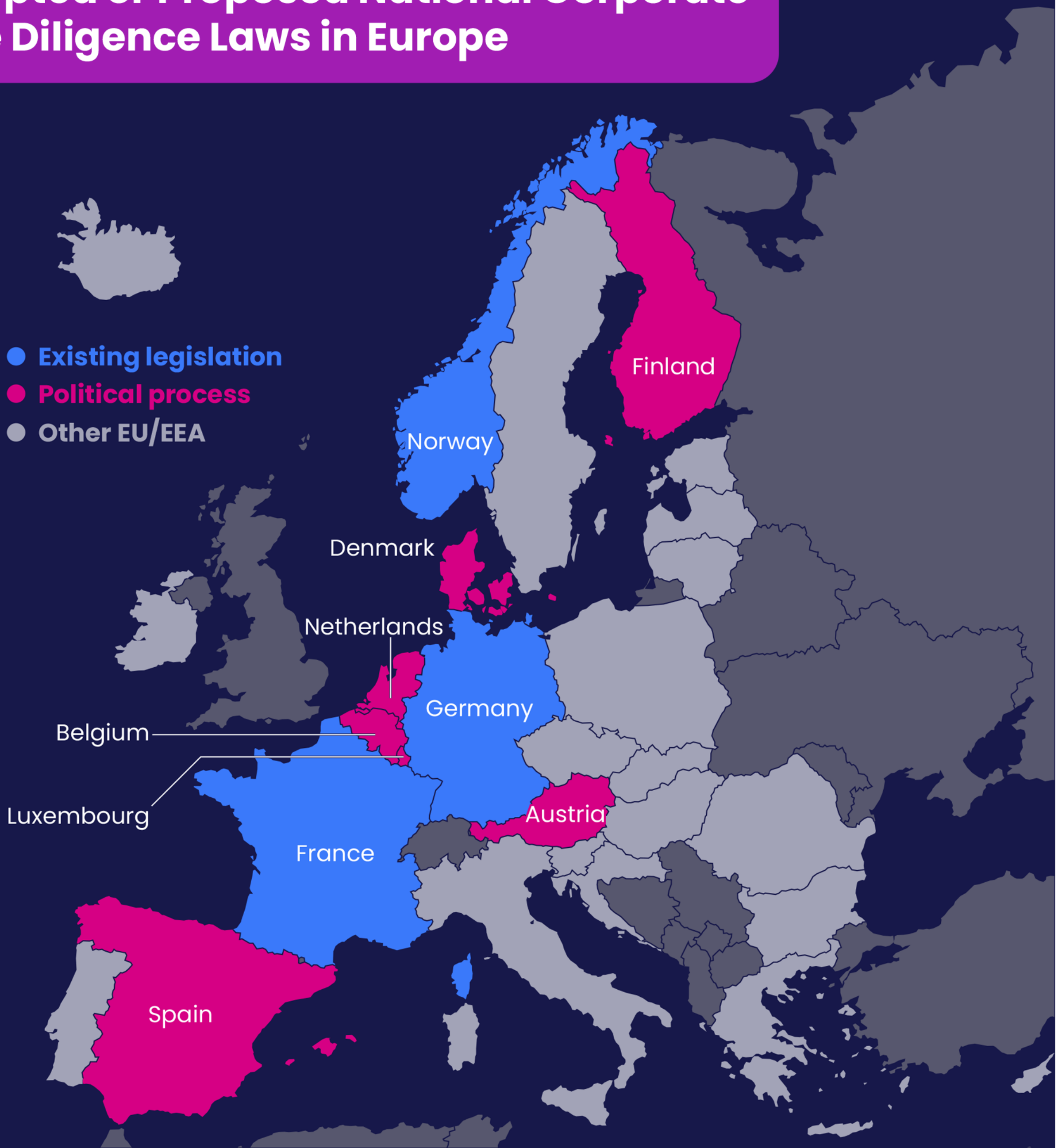
For other EU members, such as the **Netherlands**, proposals on national due diligence laws have been submitted to parliaments. The final shapes of these bills will likely take into account the requirements of the CS3D.

For the remaining Member States, transposition work will gradually commence in the next two years. Once the process begins, transposition might encounter delays, particularly if national governments conduct consultations and open the field for public debate.

Based on the transposition state of play of another EU directive, the Corporate Sustainability Reporting Directive (CSRD), national due diligence proposals in some EU countries might not emerge until the end of the transposition phase. For the CSRD, some Member States, such as **Malta** and **Portugal**, have not yet published any national draft in the final two months before the deadline. The delayed publication of national guidelines could slow down businesses' preparation for setting up corporate due diligence plans.

Another potential source of delay might come from the growing influence of far-right parties in some European Member States. With right populist parties tending to prioritize industry interests, some, such as Austria's far-right FPO and Germany's AfD, have publicly opposed corporate due diligence laws. A victory of these parties in the upcoming national legislative elections (September 2024 in **Austria** and before late October 2025 in **Germany**) could lead to delays in national parliaments adopting corporate due diligence proposals. Also, the center-right European People's Party (EPP) has called for a halt to implementation of CS3D as well as CSRD reporting duties for companies. Their most recent draft of the 'EPP Commission Work Programme 2024-2029' proposes substantially reducing reporting burdens after a review. However, this proposal may be more of a political aspiration than an actual impact on the directives' implementation.

Adopted or Proposed National Corporate Due Diligence Laws in Europe



Existing legislation:

France: Duty of Vigilance Law, effective in 2017

Germany: German Supply Chain Due Diligence Act, effective in 2023

Netherlands: Child Labor Due Diligence Act, adopted in 2020 but has never entered into force; to be replaced by the Responsible and Sustainable International Business Conduct Act (still in the political process)

Norway: Transparency Act, effective in 2022

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Sources: Business & Human Rights Resources Centre, European Coalition for Corporation Justice; Oxford Analytica

Implications for Businesses

The CS3D has now set forth minimum standards for corporate conduct and due diligence duty for human rights and environmental issues in a company's own operations, subsidiaries, and chain of activities.

Obligations

Companies directly included in the scope of CS3D, including those in the textile, apparel, footwear, and wider consumer goods sectors will have to fulfill six main due diligence measures:

1. Integrate due diligence into risk management
2. Identify and assess actual or potential adverse impacts
3. Prevent and mitigate potential adverse impacts
4. Establish a notification mechanism and complaints procedures
5. Monitor the effectiveness of the measures
6. Publicly communicate on due diligence

These companies will also have to outline a transition plan for adapting business models in line with the Paris Agreement's goal of limiting global warming by 1.5 degrees Celsius. The reporting requirements of the CS3D are aligned with that of the CSRD to avoid double reporting.

Non-Compliance

The consequences of non-compliance include 'naming and shaming,' fines of up to five percent of business's annual worldwide turnover, as well as civil liability for damages caused by breaching their due diligence obligations and full compensations for those affected.

The CS3D does not require companies to guarantee that the adverse impacts would not occur in all circumstances. Rather, the main emphasis is placed on the 'obligations of means,' meaning that a company should take appropriate measures that are commensurate with the degree of severity and the likelihood of the adverse impact.

Challenges for the Consumer Goods Industry

A major challenge for brands and retailers in the textile, apparel, footwear, and wider consumer goods sectors relates to CS3D's applicability to a broad set of business activities. CS3D requires companies to take due diligence measures not only concerning their own operations and those of subsidiaries but also their indirect business partners through the chain of activities.

A company's chain of activities includes activities of its 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 and finished products. For downstream activities, they refer to business partners related to the distribution, transport, and storage of goods.

The supply chains of the textile and apparel sectors are often complex, wide-reaching, and fragmented across geographies. The need to engage with multiple stakeholders along the chain of activities will require time and financial investments. The need to obtain contractual assurances from direct business partners that they will ensure compliance with responsible business conduct would also impose additional administrative costs.

Small and medium-sized enterprises (SMEs)

Smaller manufacturers and suppliers, while they are not directly included in the scope of the directive, could be affected by their capacity as contractors or subcontractors to brands and retailers that are within its scope. They will likely face information requests from the companies to which they provide goods or services for due diligence purposes. Stronger labor and environmental practices will also have to be exercised due to the requirements of customers. That said, manufacturers and suppliers that fall under the category of SMEs will likely be supported for their due diligence compliance by the companies to which they provide goods or services, according to the requirements imposed on the latter by the CS3D.

High-risk partners

A potential consequence of the CS3D is that brands and retailers might disengage from higher-risk partners. Four out of the five top textile exporting countries in 2022 — China, Bangladesh, Vietnam, and India — are located outside of the EU. Businesses in these jurisdictions, in general, are regulated by less vigorous environmental and labor protection rules. As a result, EU companies may choose to replace suppliers that are vulnerable to due diligence violations and move some upstream business activities closer to home. Initial studies of existing due diligence laws indicate a likelihood of this trend.

With the first phase of CS3D implementation set to begin as early as 2027, early planning of a corporate due diligence program can prepare businesses for the changes to come. These preparatory actions may include developing human resources plans, mapping the company's chain of activities, reviewing existing supply chain contracts, and collating data on the company's environmental and social performance for monitoring purposes. Cascale will continue to work closely with the Policy Hub to feed into the European Commission's Guidelines on due diligence implementation in the textile sector.

To map out their environmental and social impacts along the supply chain, companies in the textile, apparel, footwear, and wider consumer goods sectors could use data tools to track their sustainability performance. The Higg Index suite of tools is the leading value chain environmental and social impact measurement methodology that is developed and owned by Cascale (formerly the Sustainable Apparel Coalition) and exclusively available on Worldly, the most comprehensive sustainability data and insights platform. The tools are constantly evolving based on feedback from industry experts to ensure they meet evolving standards and needs.

Initially designed as industry-specific assessment tools to evaluate sustainability performance, the Higg Index tools have evolved through the deep collaboration between Cascale and Worldly. This partnership aims to make informed decisions that drive social and environmental improvements and prepare for regulatory reporting. A key focus is aligning the industry standard with global frameworks while introducing new features to continuously strengthen data accuracy and improve the user experience.

Questions?
Contact us at policy@cascale.org

Cascale is the global nonprofit alliance empowering collaboration to drive equitable and restorative business practices in the consumer goods industry. Formerly known as the Sustainable Apparel Coalition, Cascale owns and develops the Higg Index, which is exclusively available on Worldly, the most comprehensive sustainability data and insights platform. Cascale unites over 300 retailers, brands, manufacturers, governments, academics, and NGO/nonprofit affiliates around the globe through one singular vision: To catalyze impact at scale and give back more than we take to the planet and its people.

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Worldly is the planet's most comprehensive sustainability data and insights platform, trusted by 40,000+ major brands, retailers, and manufacturers in fashion, outdoor, home goods, toys, and more. Worldly uniquely collects high-resolution primary data specific to companies' value chains, operations, and products, providing insight into true impacts across carbon, water, chemistry, and labor. Featuring the most comprehensive source of ESG data for global manufacturers and the largest library of materials and product impacts, Worldly empowers businesses to scale responsibility into their global operations, faster and more accurately. Hosting, connecting with, and supporting the leading industry solutions and methodologies, including ZDHC, Bluesign, and

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