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COMPLYING WITH CS3D

Overlooking environmental
concerns is a high-risk strategy



BACKGROUND

The incorporation of complex environmental and climate impacts from business operations and supply chains into human rights impact assessments and governance models is proving to be a major challenge for businesses. Uncertainty about the precise scope of obligations to assess such impacts has meant that companies are struggling to assess environmental and climate impact in a systemic way, which exposes businesses to future liability under the Corporate Sustainability Due Diligence Directive (the “**CS3D**” or “**Directive**”). There are notable exceptions – we have seen examples of cement manufacturers, food and beverages companies and forestry companies demonstrate a clear understanding of the environmental dimension, or “lens”, but more generally, businesses need to gear up now to ensure they have in place defensible compliance strategies.

Much of the attention given to CS3D so far has focused on the “pure” human rights aspects of the Directive. In this briefing we shine a light on the obligations in CS3D as they relate to the identification and management of environmental and climate change risk. In doing so, we assess the intersection between human rights impacts and environmental impacts (including climate change). It should be noted though that not all environmental matters are elevated to being subject to the full force of the CS3D’s due diligence requirements. Instead, the legislation is specific about sources of environmental law that apply.

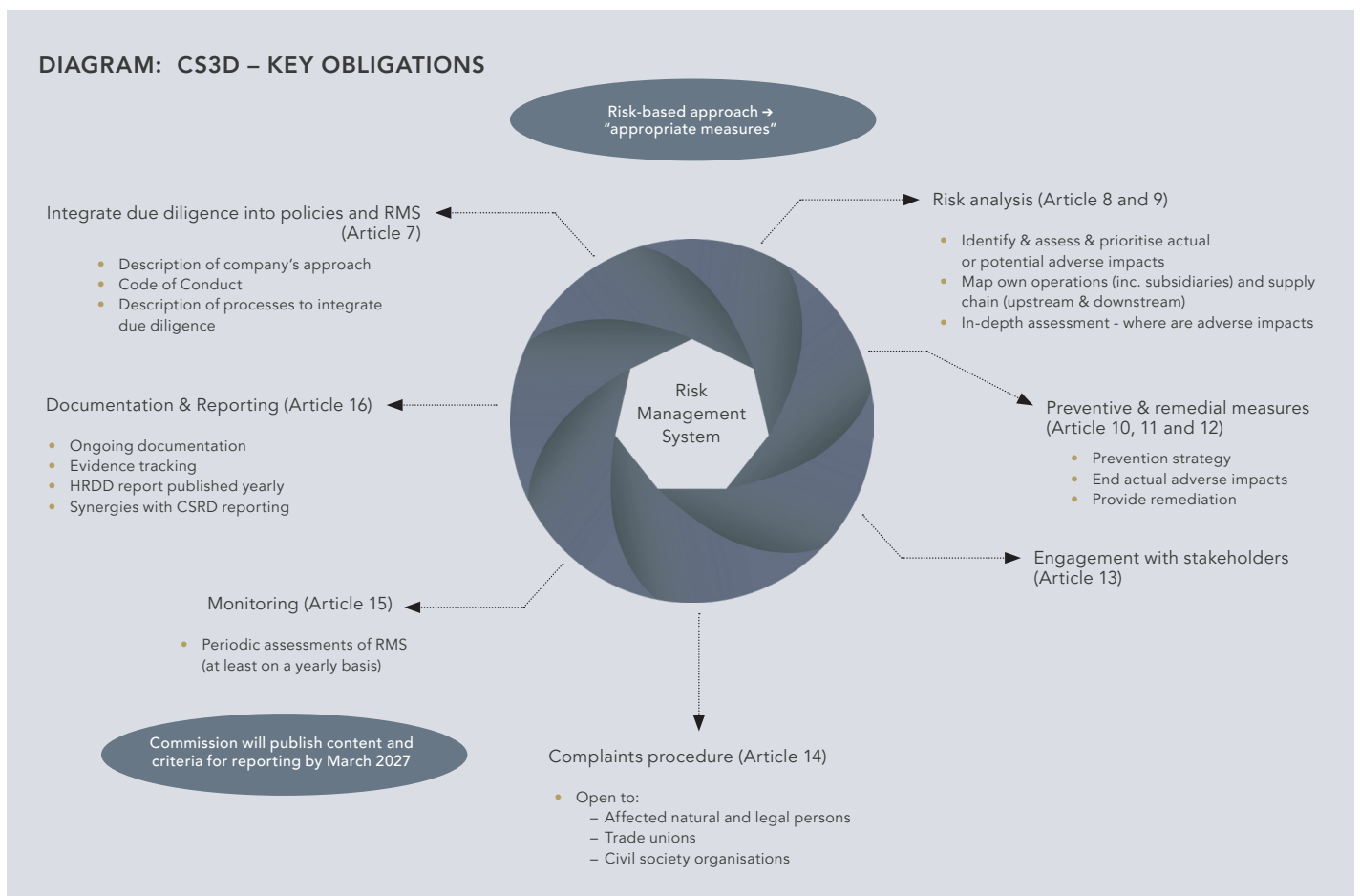
In summary, there are three key areas of environmental matters which are in scope of the CS3D:

- **General environmental requirements.** These are set out in Part 2 of the Annex to CS3D: In overview, these cover biodiversity protection and protected species and flora, certain types of hazardous waste and the manufacture of certain types of hazardous products (e.g., ozone-depleting substances).
- **Adverse environmental impacts arising from human rights abuses.** These are set out in paragraphs 15 and 16 of the Annex to CS3D: In overview, these are “measurable environmental degradation” impacting food production, access to clean water and sanitary facilities, health and safety or ecosystem degradation arising from human rights abuses (e.g., the right to life or a good standard of health).
- **Adverse human rights impacts arising from environmental harm.** In overview, these are a residual category of human rights abuses where the environmental harm was “reasonably foreseeable” having regard to the economic sector concerned and the operational and geographic context, where there is direct harm to a protected right and the abuse is capable of being caused by a commercial operator.

We unpick this in more detail below.

What do you need to do? The **CS3D** came into force in the EU on 25 July 2024. Member States have until 26 July 2026 to implement it in national law. However, businesses are already drawing up compliance strategies and many businesses purport to adhere to the UN Guiding Principles which foreshadow many of the requirements of the CD3D. Given the clear direction of travel and potential exposure to human rights and environmental liabilities, we suggest that even businesses that are out of scope start to develop an environmental and human rights due diligence policy and procedures.

Our [blog](#) summarises the main requirements of CS3D, setting out which companies (both EU and non-EU) are within its scope, as well as an overview of the obligations to assess and manage human rights and environmental impacts across the supply chain. These are summarised in the diagram below:



Many businesses are already looking to build on their compliance with the German Supply Chain Due Diligence Act or French duty of vigilance legislation¹ in order to comply with CS3D. Broadly, general environmental requirements set out in the Annex to CS3D (which we refer to below) are aligned with the German supply chain law. They provide further clarity on the scope of adverse impacts on "human rights and fundamental freedom, health and safety of people and the environment" that the French duty of vigilance seeks to address. However, the CS3D goes beyond the existing German and French requirements.

¹ See more at [German Supply Chain Due Diligence BAFA issues first handout on risk analysis | Insights | Mayer Brown](#), and [Business and Human Rights: First French case-law on the Duty of Vigilance – judges adopt a cautious approach to avoid judicial interference in corporate management | Insights | Mayer Brown](#)

While the CS3D is largely aligned with the duty of vigilance, it will substantially extend the number of in-scope companies, clarify their obligations and introduce administrative supervision and liability mechanisms. However, it is noteworthy that the civil liability mechanism foreseen under the duty of vigilance has already been relied on in pursuit of environmental objectives and such matters are currently the subject of pending litigation. Claims raised under the duty of vigilance have concerned topics ranging from climate change, deforestation, plastics use, water contamination, biodiversity and water resources.

The German BAFA, the authority in charge of enforcing the German Supply Chain Due Diligence Act, has initiated investigations into the conduct of companies allegedly hampering access to clear drinking water and contaminating soil within Germany – which has raised questions about whether such conduct should not rather be prosecuted under the applicable German environmental protection regulations (which include criminal sanctions). In any event, it underlines that supply chain due diligence does have – besides the social aspect – a significant environmental angle to it.

In practice, businesses within the scope of CS3D have a legal duty to integrate environmental and climate impacts into their due diligence policies and risk management systems. When identifying their business risks and carrying out a risk assessment, they need to consider environmental and climate risks (extending across their chain of activities), and build an appropriate response into their documentation, reporting and preventability and remedial measures.

The starting point is to identify what environmental matters a business needs to be concerned with. This requires a detailed analysis of the CS3D. We have done this below.

DUE DILIGENCE – “ADVERSE ENVIRONMENTAL IMPACTS” AND “ADVERSE HUMAN RIGHTS IMPACTS”

The Directive introduces the obligation for companies to conduct due diligence with respect to their operations, operations of their subsidiaries, and operations of their business partners in companies’ chains of activities. This duty applies in respect of both “adverse environmental impacts” **and** “adverse human rights impacts.” Both terms are defined at Art 3 of the Directive and both terms are relevant when designing a compliance strategy for assessing and managing any in-scope company’s environmental and climate impacts (as well as those of its supply chain).

Moreover, “adverse environmental impacts” and “adverse human rights impacts” are defined by reference to the breach of either specific environmental obligations recognised in international treaties or human rights abuses recognised in international law arising from environmental harm or climate impacts.

It is therefore fundamental to consider environmental impacts as well as those in respect of human rights. The Directive does not elevate human rights concerns above environmental ones. And in any event, as we will see, the two categories of concerns are interlinked.

In addition, and to the extent that climate-related matters can be disassociated from general environmental matters, the Directive contains specific climate-related provisions. We review these in detail below. However, they include a requirement to put in place a climate transition plan. The actions set out in a climate transition plan will clearly be a significant source of mitigation of a business’s climate impacts.



GENERAL ENVIRONMENTAL REQUIREMENTS UNDER PART 2 OF THE ANNEX TO CS3D

Environmental protections in international law have developed in a piecemeal fashion. There is no overriding general treaty provision guaranteeing freedom from environmental harm, or defining what constitutes such harm.

Instead, individual treaties have been entered into in response to particular issues or events which the international community has regarded as tier one issues. These are principally environmental issues with a transboundary dimension.

A list of international environmental obligations relevant to the scope of the duty of diligence required by the Directive is set out at Part 2 of the Annex to CS3D (“Annex Part 2”). The relevant obligations broadly cover the following matters:

- adverse impacts on biodiversity;
- the import and export of endangered species of flora and fauna;
- the manufacture of, import and export of certain mercury-added products;
- the unlawful management of mercury waste;
- the production and use of certain persistent organic pollutants (“POPs”) and the management of POP waste;
- the import and export of certain hazardous substances;
- the production, use, import or export of certain ozone-depleting substances;
- the transboundary shipment of certain wastes;
- adverse impacts on natural and cultural heritage;
- adverse impacts on certain protected wetlands; and
- shipping and marine pollution.



PRACTICAL IMPLICATIONS:

These obligations are very broad.

However, they do not cover, for instance, climate impacts or pollution or emissions generally, nor any aspect of natural resource consumption, to name but a few potential “missing” categories of environmental harm. None the less, even on their own, these obligations mean that businesses will need to give serious consideration to a broad range of environmental factors, including “biodiversity”, when reviewing the impacts of their operations and their supply chain. They will then need to comply with the gamut of Directive requirements, including taking steps to prevent, cease or minimise such actual and potential adverse impacts. For many businesses, this will present new challenges.

HUMAN RIGHTS AND ENVIRONMENTAL AND CLIMATE IMPACTS

The environmental implications of the Directive are not limited to the international obligations above.

In July 2022, the UN General Assembly resolved to recognise the right to a “clean, healthy and sustainable environment.”² However, this resolution is **not** legally binding and it should be noted, in the context of the CS3D, that the EU emphasised the **political** effect of the resolution and observed that it “lays the ground” for further action in this area – presumably, by the adoption at some point of a legally binding Treaty right to a clean environment.

That said, limited “derivative” rights to a clean environment have been legally recognised. So, for example, the right to life can be said to imply a right to a clean environment. This intersectionality between human rights and environmental protections is explicitly recognised in CS3D, notably in Recitals (36) and (89) and paragraphs 15 and 16 of the Annex to the Directive (discussed below). It results in two categories of human rights impacts with an environmental dimension that must be considered when designing a CS3D compliance strategy.

- The first category can be characterised as **adverse environmental impacts arising from human rights abuses**.
- The second category can be described as **adverse human rights impacts arising from environmental harm**.



² [With 161 Votes in Favour, 8 Abstentions, General Assembly Adopts Landmark Resolution Recognizing Clean, Healthy, Sustainable Environment as Human Right | Meetings Coverage and Press Releases \(un.org\)](#)

CATEGORY 1 – ADVERSE ENVIRONMENTAL IMPACTS FROM HUMAN RIGHTS ABUSES

Paragraph 15 of Part 1 of the Annex of CS3D specifically provides that “adverse environmental impacts” include any breach of the right to life (in Art 6 of the International Covenant on Civil and Political Rights (“**ICCPR**”)) or the right to an adequate standard of living (Art 11 of the International Covenant on Economic, Social and Cultural Rights (“**ICESCR**”)) or the right to the highest standard of health (Art 12 ICESCR), resulting from “measurable environmental degradation” (e.g., harmful soil change, pollution, excessive water consumption, land degradation or other impact on natural resources”). This only applies to such degradation if it:

- substantially impacts the natural bases for food preservation and production;
- denies a person access to safe and clean drinking water;
- makes it difficult for a person to access sanitary facilities or destroys them;
- harms a person’s health, safety or the normal use of land or possessions; or
- substantially adversely affects ecosystems which contribute to human well-being.

The Commission’s legislative approach, which requires interpreting general human rights so as to imply a “derivative” right to a clean environment, is a new and developing phenomenon. As such, businesses should proceed with care when determining whether or not their activities may stray into this uncharted territory.

By way of background:

- One authority has stated that the right to life includes “appropriate measures to address the general conditions in society that might give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity”.³ One of the general conditions is freedom from “degradation of the environment”.
- Another notes that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of past and future generations to enjoy their right to life”.⁴
- Another states that “the sustainable use of land is essential to ensure the right to a clean, healthy and sustainable environment”. This is specifically tied to Arts 11 and 12 of the ICESCR, which are referred to in the CS3D.⁵
- In *Caceres v. Paraguay* (2019),⁶ it was determined that the right to life included an obligation on States to provide protection to a group of peasant farmers from excessive agrochemicals spraying in breach of local law.
- In *Teitista v. New Zealand* (2019),⁷ the right to life was, in principle, found to include a right to access to freshwater, land for housing and freedom from violent disputes occurring from increasing sea levels caused by global warming.

3 The ICCPR and ICESCR each have UN Treaty bodies (Committees) which issue General Comments/Recommendations on the interpretation of their respective Treaties. These are regarded, in international law, as “presumptive” interpretations (i.e., not binding, but close to that). Of particular interest in the context of CS3D General Comments, is the UN Human Rights Committee (“HRC”) General Comment No. 36, on Art 6 (right to life) ICCPR.

4 Para 62 of the General Comment

5 The Committee on Economic, Social and Cultural Rights (the UN body for the ICESCR) in their General Comment 26 at paragraph 1

6 <https://ccprcentre.org/decision/16994>

7 <https://juris.ohchr.org/casedetails/2798/en-US>

Two potential important limiting characteristics of these derivative human rights should be noted:

- First, in each of these two cases (see further below), the right-holder has been a protected category of persons: indigenous communities, peasant farmers, children, asylum-seekers, etc. The special vulnerability of each group has enabled decision-makers to extend human rights protections from toxic products, pollution and the effects of climate change. So far, at least, the jurisprudence does not extend those derivative environmental protections to wider society, though, in this dynamic legal environment, this may change. Whether or not this limitation restricts the scope of the requirements under the CS3D is unclear.
- Second, as mentioned above, the CS3D also requires the impacts to be “measurable” for the due diligence duty to be engaged. In the context of climate change impacts (which are of course only one kind of possible impact), this could prove to be a significant limiting factor. The measurability of such impacts may be difficult to assess.



PRACTICAL IMPLICATIONS:

We envisage that due diligence obligations associated with this category of “environmental impacts” will be difficult to implement. These environmental considerations should inform self-assessments, risk assessments, workshops, employee surveys, community and broader stakeholder engagement – and a company’s approach to its suppliers. The practical reality is that where a business or its supply chain has any impact, such as pollution, which harmfully and substantially impacts food production, drinking water or ecosystems generally (or one of the other indicators mentioned above), this will be brought within the compliance mechanism of the Directive, and the business will need to grapple with them, including taking steps to prevent, cease or minimise such actual and potential adverse impacts.

It should also be noted that Paragraph 16 of Part I of the Annex to the Directive specifically includes within the definition of “adverse environmental impacts” the rights of individual communities and groupings to land and resources and the right not to be deprived of the means of subsistence.⁸ These rights could be engaged, for example, where deforestation takes place impacting indigenous communities.

⁸ As interpreted in line with Art 1(2) ICCPR and Art 1 (ICESCR) (right to dispose of natural resources and right not to be deprived of means of subsistence) and Art 27 ICCPR and Art 2 ICESCR (non-discrimination on protected grounds) and Art 11 ICESCR (right to adequate standard of living) (see further above).

CATEGORY 2 – ADVERSE HUMAN RIGHTS IMPACTS FROM ENVIRONMENTAL HARM

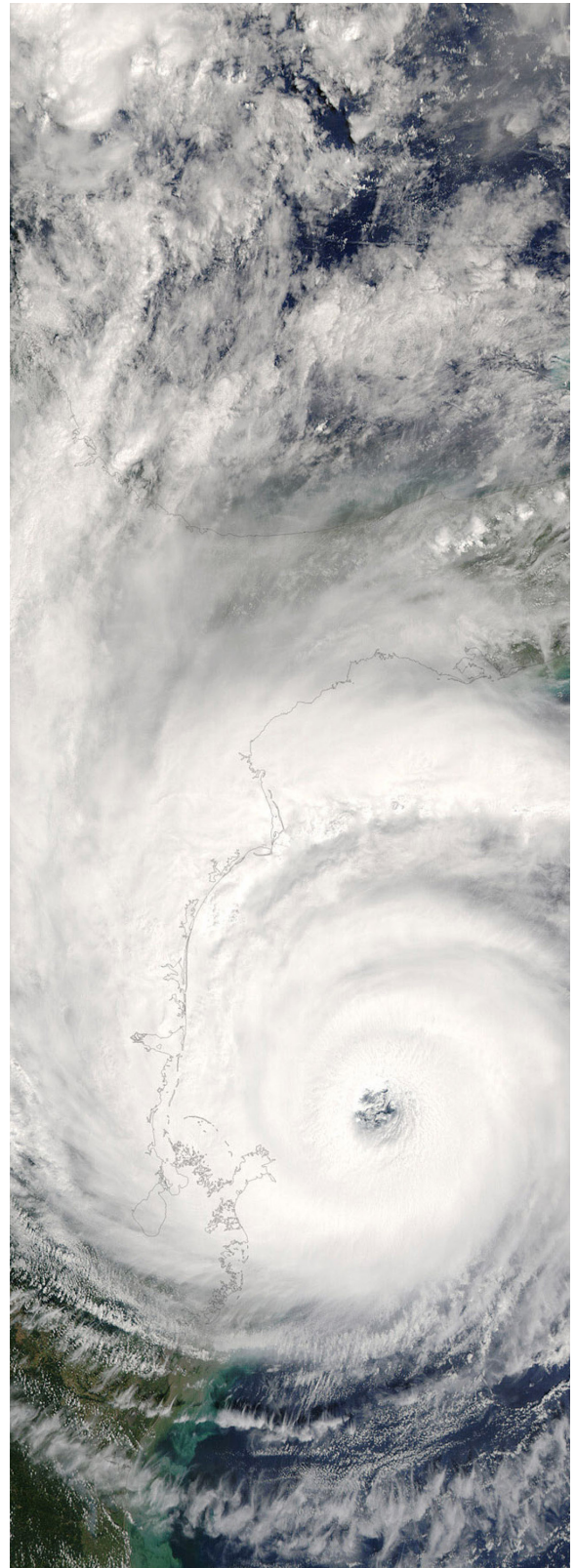
There is a second (and overlapping) category of matters which engages the due diligence duty set out in the Directive, in this case because they constitute adverse human rights impacts which arise from environmental harm.

Art 3 of the Directive defines adverse human rights impacts as including any abuse of a protected human right (see below) provided that:

- (a) the human right can be abused by a company or legal entity;
- (b) the human right abuse directly impairs a “protected legal interest”;⁹ and
- (c) the company could reasonably have foreseen such a human right would be affected, taking into account the nature and extent of the company’s business operations and chain of activities, characteristics of the economic sector and geographical and operational context.

The human rights covered are any of those protected by the 12 major UN conventions including the ICCPR, the IEC SR and the Convention of the Rights of the Child (“**CRC**”). This potentiality opens up a much wider consideration of environmental impacts under the due diligence duty. Two examples illustrate this:

- First, the CRC is the only major UN human rights convention to expressly acknowledge the need to protect children against “the dangers of and risks of environmental pollution”. The CRC Committee has issued a General Comment No. 26 which asserts that “[a] clean, healthy and sustainable environment is both a human right in itself and necessary for the full enjoyment of a broad range of children’s rights.” It emphasises that this affects “in particular children in disadvantaged situations as children living in regions that are particularly exposed to climate change.” The CRC adopted a decision in 2021 in *Sacchi and others*¹⁰ against five States on the impacts of climate change and the protections in the CRC of the rights of children.



⁹ “a legal interest protected in the human rights instruments listed in Part I, Section 2, of the Annex to the Directive”

¹⁰ <https://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/>

- Second, in another important case, *Billy et al. v Australia*¹¹ from 2022, the HRC determined that the failure of the State to protect the rights of indigenous communities from the effects of climate change was an abuse of their rights to privacy (Art 17 of the ICCPR) and the right to culture (Art 27, ICCPR).

More broadly, the rights (amongst others) to life, privacy, family and home life can be engaged where local communities are impacted. Whether this, in turn, engages the duty of diligence is a two-fold test:

- First, this will depend on a judgment as to whether the rights are under an imminent threat, the degree of harm caused and whether there is a pressing need to protect those alleged to be impacted.
- If so, then the Directive then requires consideration of (a) whether the rights concerned are capable of being abused by a company (as opposed to the State); (b) whether the abuse concerned is “directly” impairing that protected right; and (c) whether that abuse was “reasonably foreseeable” having regard to the specifics of the case.

It can be seen that this second “category” is particularly important in the context of climate change, and in particular, the extent to which a company or its supply chain breaches or may breach treaty rights as a result of climate change.

It might well be the case that the notions of “direct impairment” and “reasonable foreseeability” exclude consideration of climate impacts on the wider community, but it is unlikely (following the case of *Milieudefensie et al. v Royal Dutch Shell*¹²), that the largest global emitters of greenhouse gases will be able to avoid consideration of their climate impacts. How significant an emitter a particular entity needs to be will be a potentially nuanced judgment and critically, will need to be evidenced and reported on as part of a transparent risk assessment process.

PRACTICAL IMPLICATIONS:

The breadth of this residual category of environmental impacts is potentially significant. It will be critical for any companies assessing the scope of their obligations under this category to explain clearly why they have made any decisions to exclude any potential impacts and this can be done by reference, in particular, to the concept of “reasonable foreseeability”. The company’s documented reflection on this concept will be essential to resisting any future challenge to the scope of the impact assessment undertaken.



¹¹ <https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/>

¹² <https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>

OTHER CLIMATE CHANGE OBLIGATIONS UNDER CS3D

BROADER CONSIDERATIONS

So can causing climate change constitute an “adverse environmental impact”? Based on the above, we think, yes.

This is an important consideration, particularly for those entities that are high emitters. We note that a number of entities have already identified climate change as a salient human rights issue for their business. This is generally on the basis that their own activities give rise to high emissions and/or that their upstream and / or downstream supply chains give rise to high emissions. Typically, “climate change” is identified alongside other environmental factors such as biodiversity, noise or emissions.

The reality is that large entities engaged in “heavy” industries and their supply chains are likely to have significant impacts in respect of not only the climate, but also other environmental factors, across the globe and both upstream and downstream. To what extent does this engage the provisions of the Directive?



TRANSITION PLANS

It is important to appreciate that the Directive treats adverse environmental impacts differently from adverse climate impacts.

Climate change is specifically dealt with at Article 22 of the CS3D. The principal obligation is on Member States to ensure that in-scope companies “adopt and put into effect” a transition plan for climate mitigation which aims to ensure the transition to a sustainable economy in line with limiting global warming to 1.5°C as set out in the Paris Agreement. Though theoretically possible, the Directive does not require a broader plan to transition away from human rights and environmental harms.

In summary, transition plans must contain:

- time-bound targets related to climate change for 2030 and every 5 years to 2050 based on conclusive scientific evidence and, where appropriate, absolute emissions reduction for scope 1, 2 and 3 emissions;
- a description of de-carbonisation levers and key actions to reach the targets referred to above;
- an explanation and quantification of the investments and funding supporting the implementation of the transition plan; and
- a description of the governance systems in place with regard to the transition plan.

Transition plans should be updated annually and there are requirements related to public reporting of the plan.

Many will doubtless be wondering how to go about building a climate transition plan. The good news is that the UK’s Transition Plan Taskforce has some helpful guidance on this. See our blog here.¹³

Wider environmental impacts as outlined above are subject to the corporate due diligence duty, which requires the assessment of adverse environmental impacts, their mitigation and, in some cases, remediation.

¹³ <https://www.mayerbrown.com/en/insights/blogs/2022/11/climate-disclosure-the-uks-transition-plan-taskforce-launches-gold-standard-for-climate-transition-plans>

ENFORCEMENT

The differentiated environmental and climate change obligations in CS3D are also backed by differentiated enforcement mechanisms. The Directive provides for Competent Supervisory Authorities (“CSAs”) in Member States to supervise compliance with these respective obligations. However, Art 25 of the Directive distinguishes the powers available to CSAs depending on whether the impacts covered are environmental or relate to climate change.

Whereas the power of CSAs in respect of the duty of diligence (*i.e.*, environmental impacts) must include the power to require companies to provide information and carry out investigations relating to compliance with the duty of due diligence (which necessarily includes investigations into “appropriate measures” to mitigate and, possibly, remediate such impacts), the supervisory powers in relation to transition plans extend only to the adoption and design (not implementation) of the plan.¹⁴ This can be understood to mean that the EU is shying away from ensuring that private actors actually implement net zero strategies, at least for the time being!

The Directive also establishes a civil liability regime for in-scope companies for intentionally or negligently failing to comply with the duty of diligence in certain circumstances.

Civil liability is not available in relation to any breach of the transition plan obligation set out at Art 22 of the CS3D, though we address civil liability for breach of human rights resulting from adverse environmental or climate impacts below.

The reason for the differentiated treatment of environment on the one hand, and climate matters on the other, likely arises from the different characteristics of the impacts involved and the role of individual businesses in causing them.

Climate change is a collective problem and it is difficult to attribute damage caused by greenhouse gas emissions to any individual company, still less establish by how much a given company should reduce its emissions. That is clearly not the case with other environmental harms, such as the release of pollutants where the impacts will generally be identifiable in a defined geographic area.

It would be tempting to assume that, for this reason, the obligations on companies under CS3D are restricted to adopting and designing a transition plan when it comes to climate change impacts. As can be seen, making such assumptions would be a mistake.

This is for a number of reasons, but critically because the Directive explicitly acknowledges the intersectionality of international human rights and environmental impacts and at the time of its adoption, environmental impacts had definitively been shown to include climate impacts.

¹⁴ Art 25(1) of the Directive.

WHAT DO I DO NOW?

There are a number of steps that businesses need to take as a first stage in order to identify what environmental and climate impacts fall to be assessed under the duty of due diligence. These steps should be incorporated in the wider corporate CS3D compliance strategy being developed by in-scope entities. We have set these out below (noting that these only deal with the identification of environmental and climate impacts and not compliance with the due diligence duty once that is engaged):

- identify from public data sources and internal audits/reports relevant operations/facilities with the potential to give rise to material environmental impacts, being (a) operations regulated under the international environmental obligations set out above; (b) environmental impacts from emissions to land, water or air, waste streams, noise or other nuisance (e.g., dust) or water or other natural resource consumption; and (c) greenhouse gas emissions;
- establish known or suspected history of material non-compliances, complaints, litigation or remediation events;
- for operations/facilities assessed as higher risk (based on the above) consider likely receptors (i.e., known internationally or nationally protected sites/resources/species, ecosystems and vulnerable groups/communities);
- for climate impacts, consider the materiality of greenhouse emissions on a national, international and sectoral basis to establish whether (prima facie) such impacts could meet the tests of “direct impairment” and “reasonable foreseeability” (referred to above);
- for all environment and climate impacts consider (prima facie) immediacy of threat to any rights, degree of intensity of impact and whether there is a pressing need to protect that right;
- carry out a sectoral analysis to establish a benchmark for scoping; and
- carry out risk assessment of supply chain using existing supplier codes of conduct (if any) and internal auditing. A gap analysis may be required to upgrade existing protocols to make these “fit for purpose” in relation to the CS3D.

The above are just the preliminary steps an in-scope organisation might take before embarking on potentially costly and time-consuming site-specific assessments aimed at honing the above risk assessment and identifying “measurable environmental degradation”.

Senior management should have oversight of human rights and environmental matters, including ensuring that where “triggers” (set out in this article) have been met, that adequate due diligence has been carried out and responses are implemented. This is likely to require additional resource and expertise.

It is worth noting though that CS3D does not require all environmental issues to be “solved”. Compliance is largely a matter for Member States, but the focus should be on taking appropriate measures which are 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.

Putting in place proper procedures is essential, though. Equally, identification of adverse impacts should include assessing the environmental context in a dynamic way and at least every 12 months, throughout the life cycle of an activity or relationship, and whenever there are reasonable grounds to believe that new risks may arise.



FINAL THOUGHTS

The starting point in designing a robust CS3D compliance strategy on the duty of diligence as regards environment and climate impacts, has to be identifying the obligations and prohibitions against which the duty is benchmarked.

In the case of CS3D, those benchmarks begin with some very specific international environmental obligations, but also contemplate a broad range of human-rights based abuses resulting in environmental degradation. Given the uncertainty inherent in the scoping of these obligations, it is essential that any determinations on their limits which impact the scope of the duty of diligence are properly reasoned and documented, to mitigate against later challenge. That said, a risk-based approach reflecting the nature of the business (and its supply chain), the sector and geographies concerned is appropriate, with priority being given to impacts on protected groups and vulnerable communities in line with jurisprudence to date. Those involved in this process should also be aware of the dynamic and fast-evolving nature of these rights and may need to build in some expectations on future developments given the long lead-in times associated with implementing the due diligence process.

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