



EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

A 10 POINT CHECKLIST FOR GENERAL COUNSEL OF NON-EU ENERGY COMPANIES

INTRODUCTION

The EU's Corporate Sustainability Due Diligence Directive ("**CS3D**") came into force on 25 July 2024 and imposes significant obligations on large companies based inside as well as outside of the EU, including those in the energy sector, that generate substantial turnover within the EU. These companies must now conduct comprehensive and extensive due diligence to identify, prevent, and mitigate adverse human rights and environmental impacts across their operations and value chains. Failure to comply carries risk of significant fines and claims being brought against non-compliant entities.

The main obligations in the CS3D are obligations of "means" rather than of "results". This implies that companies are expected to adopt a proportionate approach towards addressing these "adverse impacts". Specifically, companies are expected to take appropriate measures in a manner that corresponds to the degree of severity and the likelihood of the adverse impact. In other words, it is essential to conduct a comprehensive risk assessment that identifies the main areas of concern and prioritises these appropriately.

Energy companies are at the heart of the global transition towards a low carbon economy. Whereas compliance with the CS3D may appear as a significant burden, the early adoption of a pro-active approach towards due diligence, sustainable development and environmental protection can offer significant competitive advantages. Such an approach will also enable companies to benefit from synergies with increasingly prevalent ESG-reporting obligations where relevant, such as those imposed by the EU's Corporate Sustainability Reporting Directive ("**CSRD**").

For non-EU energy companies in particular, compliance with the CS3D presents both challenges and opportunities. Mayer Brown assists companies in navigating these complexities, including through:

1. **Scoping Analysis:** Assisting companies in identifying whether the CS3D's obligations apply to them, and/or any of their group companies, based on their activities.
2. **Compliance Strategy Development:** Assisting companies in developing robust compliance frameworks that align with the CS3D's requirements, including risk assessment and management systems.
3. **Due Diligence Implementation:** Guiding the implementation of due diligence processes to identify and address potential human rights and environmental risks in their supply chains.
4. **Legal Risk Mitigation:** Advising on strategies to mitigate legal risks, including potential civil liabilities and penalties for non-compliance.

KEY IMPLEMENTATION STEPS

1. Initial risk assessment and gap analysis
2. Due diligence system design and development
3. Implementation and training
4. Monitoring and review
5. Continuous improvement

CS3D – A 10 POINT PREPAREDNESS CHECK

This checklist format provides a practical framework for General Counsel to ensure comprehensive CS3D compliance while maintaining alignment with broader corporate sustainability goals.

<p>✓/ Scope analysis</p>	<p>The Corporate Sustainability Due Diligence Directive (CS3D) applies to large non-EU energy companies that generate substantial turnover within the EU. General Counsel should determine if their company falls within the scope of the CS3D by conducting a scoping analysis to identify relevant activities and turnover thresholds.</p> <ul style="list-style-type: none"> • Confirm if company meets EU turnover threshold of €450 million net turnover generated in the EU or ultimate parent company of a group that meets this threshold on a consolidated basis • Map EU operations and subsidiaries • Document assessment of scope applicability
<p>✓/ Value Chain Mapping</p>	<ul style="list-style-type: none"> • Map entire value chain operations • Identify high-risk areas and activities • Document supplier and contractor relationships • Establish traceability systems
<p>✓/ Risk assessment and risk management</p>	<p>The obligations under the CS3D are obligations of “means” rather than “results”. Companies are expected to take appropriate measures proportionate to the severity and likelihood of adverse impacts. This means adopting a tailored approach to due diligence that aligns with the specific risks identified.</p> <ul style="list-style-type: none"> • Develop risk assessment criteria and methodology • Identify potential adverse human rights impacts • Identify potential adverse environmental rights impact • Prioritize risks based on severity and likelihood
<p>✓/ Due Diligence Framework</p>	<p>Implementing due diligence processes involves identifying and addressing potential human rights and environmental risks in the supply chain. This requires setting up mechanisms for continuous monitoring and evaluation of these risks.</p> <ul style="list-style-type: none"> • Establish comprehensive due diligence system • Implement monitoring and review procedures • Set up documentation and record-keeping systems
<p>✓/ Compliance Systems, Training and Awareness</p>	<p>Developing a robust compliance framework and ensuring that employees are aware and trained is crucial. General Counsel should ensure that their company has a clear strategy for compliance that is regularly reviewed and updated. They should also ensure that relevant personnel are well-informed about their roles and responsibilities under the directive.</p> <ul style="list-style-type: none"> • Create compliance management system • Establish internal policies and procedures • Implement training programs • Set up reporting mechanisms
<p>✓/ Stakeholder Engagement</p>	<p>Engaging with stakeholders, including employees, suppliers, and local communities, is a key component of effective sustainability due diligence. General Counsel should ensure that their company has mechanisms in place for meaningful stakeholder engagement and feedback.</p> <ul style="list-style-type: none"> • Identify key stakeholders • Establish consultation procedures • Document engagement activities • Create grievance mechanisms and procedures

<p>✓ Documentation and Reporting</p>	<p>Establishing robust monitoring and reporting mechanisms is essential for ongoing compliance. General Counsel should ensure that their company has systems in place to track progress, report on due diligence activities, and make necessary adjustments based on findings.</p> <ul style="list-style-type: none"> • Establish documentation systems • Create reporting templates • Set up data collection processes • Implement verification procedures
<p>✓ Synergies with ESG Reporting</p>	<p>Early adoption of a proactive approach towards due diligence can offer competitive advantages and synergies with ESG-reporting obligations, such as those imposed by the EU’s Corporate Sustainability Reporting Directive (CSRD). General Counsel should leverage these synergies to enhance the company’s overall sustainability profile.</p> <ul style="list-style-type: none"> • Align with ESG reporting (CSRD) • Integrate with environmental management systems • Coordinate with health and safety procedures • Link to existing compliance frameworks for sanctions, AML and ABC
<p>✓ Legal Risk Management</p>	<p>Advising on strategies to mitigate legal risks is essential. This includes understanding potential civil liabilities and penalties for non-compliance and taking steps to minimize these risks through proactive measures and legal safeguards.</p> <ul style="list-style-type: none"> • Assess potential civil liabilities • Review contractual assurances • Review insurance coverage • Establish legal response procedures • Document risk mitigation measures
<p>✓ Continuous Improvement</p>	<ul style="list-style-type: none"> • Schedule regular reviews • Plan updates to systems and procedures • Monitor regulatory changes, also in respect of related instruments such as the EU Forced Labour Regulation • Document improvement actions



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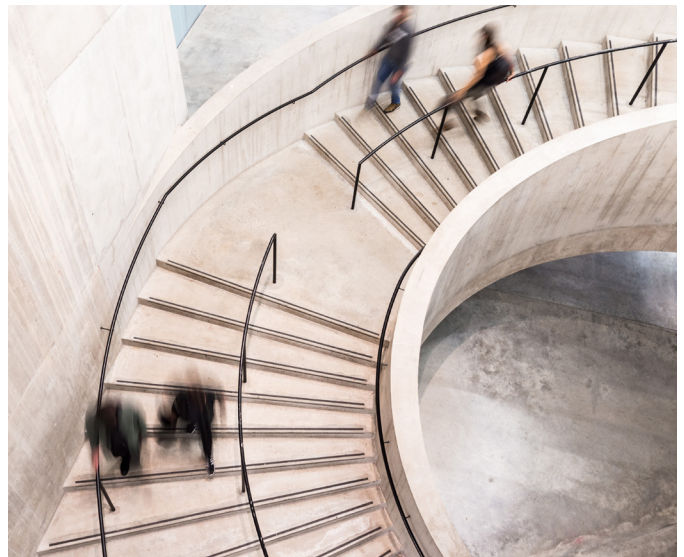
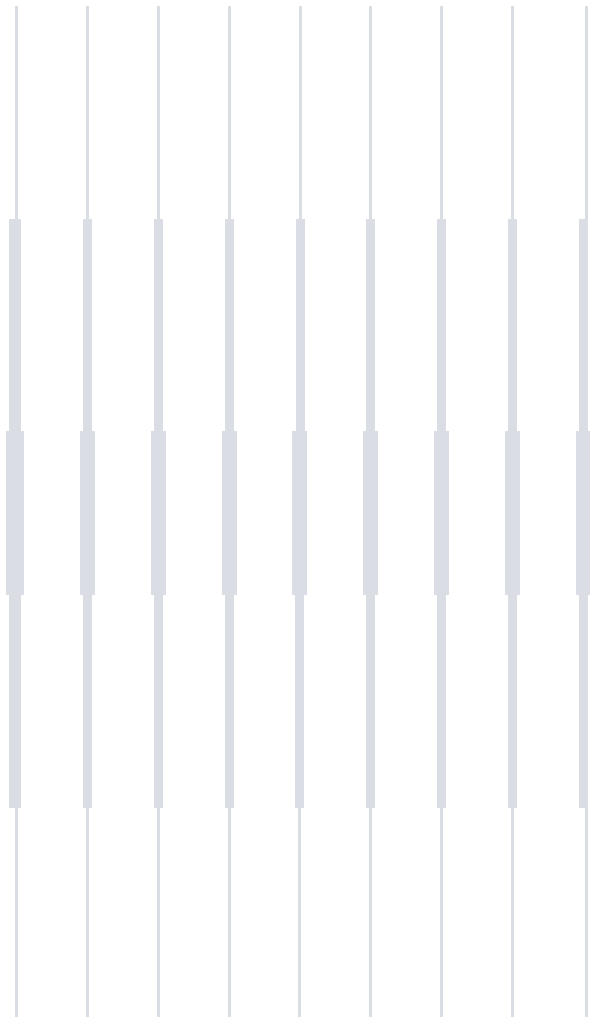
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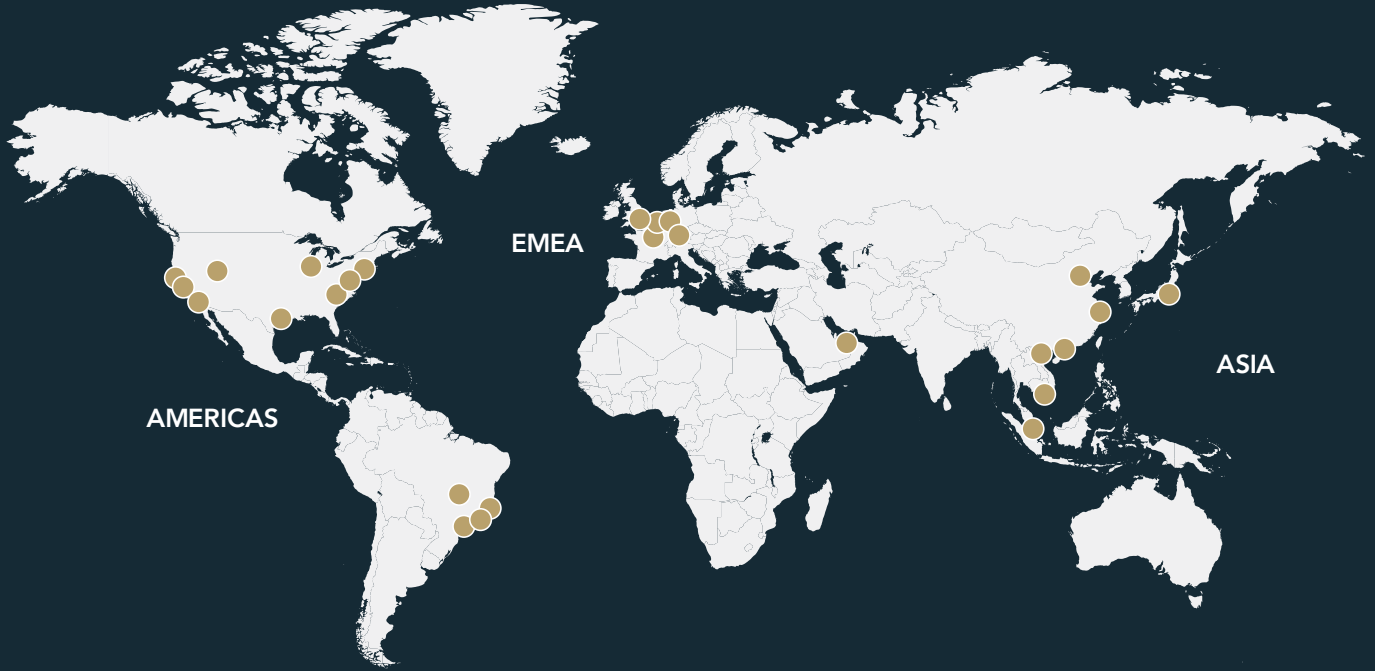


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