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THE “OMNIBUS” PACKAGE: WHAT ARE THE EU’S NEW SUSTAINABILITY RULES?

European Law | 28/02/25 | Bernard Cazeneuve Pierre Sellal Marc Mossé David Zygas Anaïs Coviaux



On February 26, the European Commission presented a series of proposals aimed at simplifying the sustainability rules placed on in-scope companies. As per the Commission, these proposals to “recalibrate” some European rules in a growth-friendly manner will enable more “cost-effective” delivery of the policy objectives reaffirmed by the European Union, in line with the recommendations made in the Draghi report.

This “*omnibus*” package includes:

- a proposal to amend the CSRD and CS3D directives;
- a draft delegated act amending the current delegated acts in the field of taxonomy;
- a proposal amending the carbon border adjustment mechanism regulation; and
- a proposal to amend the Invest EU regulation.

This briefing note will focus on the main proposed changes to the CSRD and CS3D directives, as well as to the European green taxonomy.

Changes to be made to the CSRD directive

- Only large European companies with more than 1,000 employees and turnover of at least €50 million (or a balance sheet of more than €25 million) would be under the reporting requirements. Non-EU companies with net turnover over €450 million and with either a large EU subsidiary (meeting the above criteria), or a branch in the EU with annual net turnover exceeding €50 million, will also be concerned. Thus, its scope of application would align more closely with that of the CS3D directive, the Commission estimating that this reform would exclude approximately 80% of the companies initially in scope.
- Companies no longer in scope of the directive could choose to report, based on simplified voluntary standards to be adopted by the Commission at a later stage.
- The implementation schedule of the reporting requirements is postponed by two years for companies that have not yet started implementing the directive, and for listed SMEs (wave 2 and 3 of the current directive), that is to say until 2028 instead of 2026 for wave 2 and until 2029 instead of 2027 for wave 3 companies.
- Via a future delegated act, the Commission plans to introduce a “*shield*” limiting the information that companies subject to the directive can solicit from companies in their value chain, but not in



scope (“*value chain cap*”).

- ESRS (European sustainability reporting standards) will be “*substantially*” reduced in terms of number and “*clarified*”. In addition, the Commission will no longer be able to adopt sector-specific standards. In contrast, the core concept of double materiality remains but could, for example, be the subject of clarifications.
- The possibility, previously open to the Commission, of moving from a limited assurance[1] to a “*reasonable*” assurance requirement has been removed.

Changes to be made to the CS3D directive

- The deadline for the directive's transposition by Member States would be pushed back by a year, until July 26, 2027, as would its application to the largest companies (over 5,000 employees and €1.5 billion in turnover), which would be postponed until July 2028.
- The requirement to assess the adverse impacts of the company's operations along its value chain is limited to its direct or tier 1 business partner, barring specific situations.[2]
- The requirement to terminate business relationships in case of actual or potential adverse impacts is dropped.[3]. Companies would now be encouraged to take a more nuanced approach, opting for the temporary suspension of the business relationship rather than its termination, which would remain a last resort.[4].
- The definition of the notion of stakeholder[5] and the consultation of stakeholders in the due diligence process[6] is framed more restrictively by the Commission.
- The frequency of required periodic assessments has been extended from every year to every five years.[7]
- In a spirit comparable to the “*value chain cap*” introduced in the CSRD, a limit is introduced to the information that can be requested by a large company from their SME or small mid-cap (i.e., companies with less than 500 employees) business partners.
- The provisions of the directive on a harmonized civil liability regime would be eliminated.[8]
- The climate transition plan requirements for companies would be aligned with those in the CSRD (those contained in the initial CS3D having been significantly more stringent).
- The provision on a review of the directive in view of the future inclusion of financial services has been dropped.

Changes to be made to the green taxonomy



The proposal contemplates amending the CSRD directive to make reporting under the green taxonomy voluntary for companies within its scope of application but with a net turnover below €450 million. In other words, some companies will no longer be required to report on the alignment of their activity.

- Companies having made progress towards the sustainability objective may report on the partial alignment of their activity. The Commission will prepare delegated acts to ensure standardization in the presentation and content of the reporting.
- The Commission will also publish, for consultation, draft amendments to delegated acts 2021/2178 and 2021/2139. These drafts simplify the reporting templates, and should reduce the number of data points to be published by almost 70%, and include a new concept of materiality to exempt companies from the assessment of eligibility and of alignment of their economic activities that are not financially material (i.e., not exceeding 10% of their total turnover, capital expenditure, or total assets).
- Changes to the main key performance indicators of financial institutions, especially the Green Asset Ratio (GAR) for banks, are also suggested. Under the proposal, banks would be able to exclude from the denominator of the GAR exposures relating to companies not falling within the future scope of the CSRD.

Outlook

- The changes proposed by the Commission will have to be adopted by the Parliament and the Council of the European Union under the codecision or ordinary legislative procedure. To be effective, quick adoption in 2025 is needed, especially as concerns the postponement of the initial implementation schedules. Naturally, Member States, whether within the Council or Parliament, will retain the power to amend all aspects of the simplification proposal presented by the Commission.
 - France, which is among the Member States having already transposed the CSRD directive, will have to amend (and, as the case may be, abrogate) the legislative and regulatory instruments having transposed it, to bring them in line with the provisions of the directive once effectively amended. **In point of fact, for the time being, French companies remain subject to the provisions of national law having transposed the original directive.**
 - The transpositions into French law of the amended directives will need to take into account, so as to ensure a satisfactory level playing field withing the single market, the additional discretion or options that will be left to Member States as a result of the contemplated changes and simplifications. This point of attention concerns in particular the civil liability regime for companies, since the amended CS3D directive would abandon any objective of harmonizing national regimes in this area.
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[1] By way of reminder, recital 60 of the current version of the CSRD indicates that the conclusion of a limited assurance engagement “is usually provided in a negative form of expression by stating that no matter has been identified by the practitioner to conclude that the subject matter is materially misstated”.

[2] The Commission has substantially amended Article 8(2), (4) and (5) of the CS3D along these lines and added an Article 8(2 bis).

[3] The Commission has amended 10(6) of the CS3D along these lines.

[4] The Commission has amended 10(6) of the CS3D along these lines.

[5] The Commission proposes a new definition of “*stakeholder*” in Article 3(1)(n).

[6] This stems from the new drafting of Article 13(3) of the CS3D resulting from the draft directive.

[7] The Commission has amended Article 15 of the CS3D.

[8] Article 29(1) and (2) of the CS3D directive would be deleted: “*Member States shall ensure that a company can be held liable for damage caused to a natural or legal person [...]*”.
