

Proposal of the European Commission on Corporate Sustainability due diligence

Tips for your company in preparation of entry into force of the Directive

Introduction

On 23 February 2022, the European Commission published a proposal for a directive on Corporate Sustainability Due Diligence (hereafter: the 'Proposal').¹ Corporate Social Responsibility (hereafter: CSR) entails the thought that companies should not let their pursuit of profit come at the expense of people and the environment. Companies play a key role in building a sustainable economy and society. For a long time, it was left to companies themselves to determine if and how they incorporate CSR in their business practices. The United Nations came up with 'the Guiding Principles on Business and Human Rights' (hereafter: UNGP)² as guidance for companies. The UNGP applies to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. However, the UNGP has a non-binding nature (soft law). In recent years, various EU-member states started to implement more binding regulations as to CSR. For example, in the Netherlands, the 'Rijksdienst voor Ondernemend Nederland' (RVO) expects your company to be CSR compliant when applying for a grant or funding.

The Proposal is a clear indication that more strict, binding conditions on CSR are here to stay and this will probably affect your company in the near future.

What to expect?

According to article 1 of the Proposal *'the Directive lays down rules on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with whom the company has an established business relationship.'* In other words: companies will be required to identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights.

The Proposal has a limited scope: it applies to companies who meet the conditions laid down in article 2 of the Proposal. In short, the Proposal will apply to EU companies with a net turnover of more than €150 million worldwide and 500+ employees. Besides this, the Proposal will also be applicable to some other limited liability companies operating in defined high impact sectors.

But just because the Proposal has a limited scope, as indicated above, does not mean that you, as a smaller company, will not be affected by its obligations. As a smaller company you might have a business relationship with a company which falls within the scope of the Proposal. Such business relationships need to be identified in order to prevent actual and potential adverse human rights impacts and adverse environmental impacts in the whole chain. So, 'big' companies are expected not only to be mindful of their own operations, but also need to take into account operations of their

¹ Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (online accessible: [EUR-Lex - 52022PC0071 - EN - EUR-Lex \(europa.eu\)](#))

² United Nations, Guiding Principles on Business and Human Rights (online accessible: [guidingprinciplesbusinesshr_en.pdf \(ohchr.org\)](#))

subsidiaries, their value chains and their established business relationships. In order for these 'big' companies to comply with such obligations, they might seek contractual assurances from their business relationships or impose audit rights to ensure compliance with applicable CSR rules and regulations.

Consequences

According to the Proposal each Member State has to designate one or more supervisory authority to supervise compliance with the obligations laid down in the national provisions adopted pursuant to article 6 to 11 of the Proposal.

In case of non-compliance, the supervisory authority can impose pecuniary sanctions, impose administrative sanctions, order cessation of infringements and adopt interim measures to avoid the risk of severe end irreparable harm.

Companies can also be held liable by the victims for damages according to civil law, if they fail to comply with the obligations and -as a result- the damages occur, for example by failing to take appropriate precautions.

Tips for your company

To avoid costly CSR-integration later on, make sure you start thinking of possibilities to integrate sustainability into your daily business operations and start observing the elements of human rights, climate and environmental impact, when taking business decisions. The importance of integrating sustainability in corporate governance can also be found in chapter 1 of (updated) Dutch Corporate Governance Code of 2022.³

In addition, CSR may also grant you with opportunities: such as increased customer trust, higher employee commitment, improved risk management (including reputational risk) and adaptability, as well as better access to financial sources.

Make sure your company keeps monitoring and taking into account the relevant developments when it comes to CSR and the upcoming Corporate Sustainability Due Diligence Directive. Check the roadmap of 'Sociaal-Economische Raad' (SER) to see if your company is CSR-proof. These steps can also help you to improve your company's CSR.⁴

Of course, Hermans Peters Law will continue to follow the developments of this Corporate Sustainability Due Diligence Directive. Check our [blog](#) regularly to stay informed and updated on recent developments on a variety of topics!

³ Monitoring Commissie, Corporate Governance Code, 20 december 2022 (online accessible: [Corporate Governance Code 2022 | Code | Monitoring Commissie Corporate Governance \(mccg.nl\)](#))

⁴ SER, 'IMVO-risicomanagement in 6 stappen', (online accessible: <https://www.ser.nl/nl/thema/imvo/imvo-risicomanagement/MVO-risicomanagement-in-6-stappen>)

WHAT ARE THE BENEFITS OF THESE NEW RULES?

FOR CITIZENS



- ✓ Better protection of human rights, including labour rights
- ✓ Healthier environment for present and future generations
- ✓ Products and services made in sustainable way
- ✓ Increased trust in businesses
- ✓ More transparency and informed choices
- ✓ Better access to justice for victims

FOR COMPANIES



- ✓ Harmonised legal framework in the EU, creating legal certainty and level playing field
- ✓ Greater customers' trust and employees' commitment
- ✓ Greater awareness of negative impacts
- ✓ Better risk management (including reputational risks) and adaptability
- ✓ Better access to finance

FOR DEVELOPING COUNTRIES



- ✓ Better protection of human rights and the environment
- ✓ More awareness about sustainability issues
- ✓ Sustainable investment
- ✓ Improved living conditions for people



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