Europe's Corporate Sustainability Due Diligence Directive

Center Forward Basics

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Overview

In 2024, the European Parliament and Council of the European Union enacted broad legislation to enhance European competitiveness in global markets and impose standards on large multinational enterprises (MNEs) conducting business in the European Union (EU). This law, the Corporate Sustainability Due Diligence Directive (CS3D), aims to set a standard for companies to perform due diligence duties regarding impacts on human rights and the environment. This standard extends to a company's subsidiaries and business partners in the value chain. The CS3D also establishes "an obligation for large companies to adopt and put into effect, through best efforts, a transition plan for climate change mitigation aligned with the 2050 climate neutrality objective of the Paris Agreement as well as intermediate targets under the European Climate Law."

The CS3D effectively codifies an array of international conventions and associated obligations, many of which have not been ratified by the U.S. Other agreements made binding by the CS3D are the U.N. Guiding Principles on Business and Human Rights, OECD's Guidelines for Multinational Enterprises on Responsible Business Conduct and Due Diligence Guidance for Responsible Business Conduct, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

U.S.-based MNEs with at least €450 million net turnover (revenue) in the EU are subject to CS3D's requirements, regardless of corporate presence in Europe. Fines would be imposed on non-EU parent companies and subsidiaries if they fail to comply, with the maximum limit of penalties amounting to no less than 5% of companies' net worldwide turnover (revenue).

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Center Forward brings together members of Congress, not-for profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

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Since its enactment, the CS3D has raised concerns among some industry stakeholders and policymakers. While Europe seeks to strengthen its competitiveness in global markets, the EU's exertion of extraterritorial regulation over other nations' businesses has caused consternation among some MNEs and national governments. Challenges around the workability of its requirements, potential for significant fines, and exposure to litigation in multiple European jurisdictions are among the key drivers for growing concern.

Issue of Regulatory Sovereignty

The CS3D would supersede other nations' laws by subjecting businesses outside European jurisdictions to the same requirements placed on European companies. Critics argue legislative and regulatory authority in the U.S. resides with Congress and federal agencies, not international entities such as the European Parliament. While some U.S. policymakers may generally support certain CS3D principles, it is Congress' role to consider the implications and legislate, and for the Executive Branch to propose rules rooted in U.S. statute to guide enforcement.

Perspectives from Key Stakeholders

The European Commission engaged former European Central Bank president Mario Draghi to report on European competitiveness. The "Draghi Report," released after the CS3D's enactment, cited many factors leading to Europe's declining competitiveness and specifically noted "[t]he EU's sustainability reporting and due diligence framework [as] a major source of regulatory burden, magnified by a lack of guidance to facilitate the application of complex rules and to clarify the interaction between various pieces of legislation."

While agreeing with the objective of improving sustainability in global supply chains, the U.S. Chamber of Commerce has also expressed concerns with the CS3D, not only regarding questions of jurisdiction, but key elements causing potential harm to U.S. competitiveness. The Chamber cites complexity in implementation, legal risks, and a mandate for climate transition plans, among other concerns. Retaliatory measures against the EU, it says, could include "blocking regulations" to prevent companies from complying with the CS3D's obligations.

The American Council for Capital Formation (ACCF) has underscored the risk of litigation that CS3D amplifies. It states that virtually anyone can sue companies if any part of their supply chain is alleged to have harmed the environment or human rights—even if the non-EU-based company follows local regulations. The ACCF also maintains that authority over such legislation resides with U.S. lawmakers.

In an interview with the Financial Times published on December 22, 2024, Qatar's Energy Minister Saad al-Kaabi indicated adamant opposition to CS3D and threatened to halt gas sales to the EU. Qatar's concerns signal a potential for broader divestment from the European market and, thus, energy supply concerns.

Some companies have been vocal in their support of the CS3D and applaud its processes. This perspective believes the directive is imperfect, but one EU-wide requirement is preferable to different requirements in each member state.

February 2025 "Omnibus" Modifications

Modifications to the CS3D recently proposed by the EC as part of "omnibus" legislation do not go far enough according to U.S. business interests. The recently proposed changes include, among others, postponing the deadline for transposing the CS3D into EU member state laws, limiting obligations to conduct comprehensive assessments of adverse impacts to "Tier 1" suppliers (with some exceptions), eliminating civil liability provisions, and limiting the information that "in-scope" companies may request from their smaller business partners. The omnibus did not address concerns over extraterritoriality or climate transition plan requirements, which are not supported by existing policies or technologies. Companies are still required to adopt climate transition plans, with implementing actions in line with the Paris Agreement, despite the Paris Agreement not having been intended for companies. Specific industry sectors would conceivably need to curtail their European operations and activity to avoid noncompliance.

The U.S. Chamber of Commerce has said that the modifications represent "an important first step in demonstrating the EU's commitment to reduce the regulatory burden that is sapping the continent's economic vitality," and calls for additional modifications.

U.S. Legislative Relief Based on Bipartisan Precedent

Congressional efforts are underway to block enforcement of the CS3D and similar extraterritorial legislation directed toward U.S. businesses. On March 12, 2025, Senator Bill Hagerty (R-TN) introduced S. 985, the Prevent Regulatory Overreach from Turning Essential Companies into Targets (PROTECT USA) Act of 2025, which "prohibits certain U.S. entities from being forced to comply with any foreign sustainability due diligence regulation, prohibits the taking of any adverse action against such an entity for action or inaction related to the regulation, and establishes a private right of action for such entities to bring civil actions when aggrieved."

Legislation preventing EU extraterritorial regulatory reach is rooted in firm bipartisan precedent. In 2012, President Barack

Obama signed legislation to block EU enforcement of its Emissions Trading Scheme targeted toward U.S. airlines. Then-Senator Claire McCaskill (D-MO), a co-sponsor of the bill introduced by Senator John Thune (R-SD), stated that “[i]t never made a bit of sense for European governments to tax our citizens for flying over our own airspace – and with the passage of this law we've got the tools we need to prevent it from happening and protect American jobs.” The Senate passed the bill by unanimous consent.

Conclusion

The CS3D’s extraterritorial reach has attracted international attention and invited discussion over what types of regulations oriented toward improving sustainability are realistic, practical, or counterproductive. While well-intentioned, intending to improve sustainability across supply chains, CS3D requirements present many challenges for MNEs and open the door to broad interpretation that can result in significant fines and litigation in multiple European jurisdictions. The European Commission has made an effort to address multiple concerns through omnibus legislation, but critics say additional modifications are necessary and remain opposed to its extraterritorial reach. U.S. legislators are challenging the extraterritoriality, holding that such legislation and regulatory authority reside with U.S. officials.

Links to Other Resources

- American Bar Association – The EU Due Diligence Directive: Implications for U.S. Companies
- American Council for Capital Formation – New EU directive puts global supply chains and sovereignty at risk
- American Council for Capital Formation – Chairman French Hill on the EU Corporate Sustainability Directive’s Impact on U.S. Businesses (webinar)
- CEEMET – Towards EU due diligence that works for all
- EuractivReuters – Obama shields US airlines from EU’s carbon scheme
- European Commission – Corporate sustainability due diligence
- European Commission – The future of European competitiveness: Report by Mario Draghi
- U.S. Chamber of Commerce – Coalition Letter to Congress Voicing Concerns Over EU Corporate Sustainability Due Diligence Directive
- U.S. Chamber of Commerce – What the EU’s Corporate Sustainability Due Diligence Directive Means for Business
- U.S. Chamber of Commerce – Europe’s Competitiveness Challenge: Pathways to Renewed Growth
- U.S. Congress – S.1956 - European Union Emissions Trading Scheme Prohibition Act of 2011
- Senator Bill Hagerty – “Hagerty Introduces Legislation to Protect U.S. Businesses from European Regulators’ Power Grab”