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Implementation guidelines for the Corporate Sustainability Due Diligence Directive (CS3D)

Recommendations for Implementation Guidelines

Introduction & Executive Summary

Eurometaux, the European non-ferrous metal association (link), believes that the recently adopted **EU Corporate Sustainability Due Diligence Directive** ("CS3D") could be an important landmark to ensure resilient and ethical supply chains for raw materials.

However, this legislation, which adds to existing due diligence legislation under the Green Deal, is particularly ambitious and creates challenging obligations for businesses operating in Europe. As such this can lead to significant market disturbances and be an important hinder to competitiveness.

The Draghi Report identifies the EU's sustainability and due diligence framework as a major source of regulatory burden for companies and will entail a major compliance cost.[1] Clear and consistent guidelines become crucial to streamline implementation and ensure coherent transposition among Member States, easing the excessive regulatory burdens on companies resulting from the complexity of the due diligence requirements of this Directive.

The European Commission is expected to publish several implementation guidelines (general and sector-specific) and accompanying measures to assist companies in effectively complying with the new legal framework. As a directive, the CS3D must be transposed into the domestic legal systems of the EU Member States by 2026.

It is paramount that this implementation phase is focused on providing burden relief and simplification with guidelines and secondary legislation designed to provide practical solutions for companies.

Eurometaux believes that the following recommendations should be taken into account:

- Guidelines and secondary legislation should be made available in a timely manner, and should promote a harmonised implementation within the EU, that secures alignment with other horizontal due diligence legislation;
- Guidance should be principle-based, non-prescriptive, and it should clarify the expectations on companies for a reasonable implementation of risk-based due diligence requirements;
- Guidelines and secondary legislation should clarify the due diligence requirements to be met related to the identification and assessment of actual and potential adverse impacts. They should ensure a pragmatic approach towards voluntary sustainability and due diligence standards and promote as much as possible alignment with existing international frameworks;

[1] "The future of European competitiveness", Part B, page 318, September 2024.

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- Guidelines and secondary legislation should clarify the framework for engaging with stakeholders and appropriate measures for providing remediation;
- Guidelines should provide clarity on the reporting and disclosure requirements for companies;
- Guidelines should provide clarity over what is considered as sufficient exercise of influence and remedy for wrongdoings in the chain of activities for impacts to which a company is 'directly linked to' including in situations where companies have exercised reasonable leverage to influence responsible business conduct;
- Guidelines and secondary legislation should establish comprehensive instructions for the design of the climate transition plan, ensuring consistency with other legislative requirements (e.g. under the Industrial Emissions Directive) and avoiding double regulation;
- The European Commission and member states should develop a single helpdesk and multistakeholder platforms for information sharing before the directive starts to apply to avoid duplication of work and ensure alignment between member states;
- Multi-stakeholder dialogue for assessment and monitoring;
- The role of authorised representatives for non-EU companies should be clarified.

Our Key Recommendations

The official text of the CS3D confirms a balanced approach towards the EU's due diligence and sourcing laws to support the responsible sourcing of minerals and metals and ensure sustainability at each stage of the global value chain.

The CS3D represents a major piece of EU legislation.[2] Given the complexity of the new obligations and the breadth of challenges stemming from the implementation exercise by 27 Member States, the 2026 deadline is tight. Companies will need to dedicate significant time and resources to adjust their due diligence strategies to ensure full compliance with the directive.

Eurometaux welcomes and underlines the steps taken towards administrative burden relief and simplification.[3]

[2] Companies will need to identify, assess and address any actual or potential harm they have caused, either individually or jointly, and provide remediation if necessary.
[3] (i) The risk-based nature of due diligence's requirements to identify and prioritise human rights and environmental adverse impacts that are more severe and likely to occur.
(ii) The streamlined definitions of some of the main provisions (i.e. the chain of activities) increase the workability of the Directive and simplify compliance.
(iii) The important role of the industry and multi-stakeholder initiatives to support the fulfilment of due diligence duties.
(iv) The guidelines and supporting tools that the Commission and national authorities will develop to help companies comply with the Directive requirements.
(v) The alignment between the obligations of this Directive and the OECD MNE Guidelines and the UN Guiding Principles (i.e. responsible disengagement, risk-based approach.

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In this context, we would like the European Commission and Member States to consider our key recommendations provided in this paper on behalf of the metal sector for the effective implementation and transposition of the CS3D.

I. Guidelines and secondary legislation should be made available in a timely manner, and should promote a harmonised implementation within the EU, that secures alignment with other horizontal due diligence legislation.

- **Guidelines and secondary legislation should be adopted in a timely manner, at least two years before compliance with legislation becomes mandatory or the transition period should be extended.**

  A 2-year period is essential for companies to prepare internally to comply with the sustainability requirements in the CS3D legislation, especially as this impacts contractual relationships with suppliers in and outside of Europe. Without critical guidance or secondary legislation, this exercise cannot be conducted in a reasonable manner.

  Any delay in the adoption of guidelines and relevant secondary legislation may hinder companies' compliance efforts, ultimately causing significant disruptions in companies' operations.

  We, therefore, urge the new European Commission to devote sufficient human resources to ensure the swift delivery of guidance, secondary legislation, the single helpdesk and other supporting measures at least two years before legal obligations kick in for companies.

- **During the Transposition Phase, the maximum level of harmonisation across member states needs to be secured in order to avoid inconsistencies as well as the expansion of due diligence obligations.**

  Uniformity and interoperability of due diligence provisions are crucial to ensure a level playing field and a more sustainable and competitive Europe.

  It is of utmost importance that the European Commission promotes and secures as much alignment as possible among Member States to the agreed obligations in the Directive when transposing into national law. This will avoid excessive regulatory burden on companies and further fragmentation in the EU Single Market, which could put at risk the new EU strategy to revamp its competitiveness.

  Guidance and secondary legislation at the national level should first and foremost be designed to provide companies with practical instructions and tools to comply with the new rules. They must not introduce further legal responsibilities on companies or de facto extend the scope of the CS3D.

  Guidance should be principle-based and not be prescriptive as to structure and resourcing modalities. Guidelines should also focus on programmatic elements that are reasonably capable of demonstrating a risk-based third-party risk management due diligence program.

  Furthermore, integration and alignment with existing national compliance legislation must be achieved, to avoid double burdens on companies (f.i. on risk management systems, risk assessment etc.) In particular, it will be

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crucial to ensure a streamlined and coherent reporting approach on both national and European levels. This should include the use of similar formats and standards, as well as promoting the use of data already gathered under national law.

The centralised helpdesk (and/or other support tools) should support companies that transition from national to CS3D compliance.

Therefore, it will be important for the European Commission to monitor the transposition measures and coordinate with Member States to ensure that divergence with the directive is avoided and that national and European legal frameworks are closely harmonised.

- **Consistent application of the wide range of due diligence legislative initiatives is critical, to avoid regulatory overlap and inconsistency and ensure a harmonised EU framework on due diligence.**

The Directive complements other recent EU initiatives aimed at protecting human rights and the environment. The strict interaction between this Directive and other EU legislative initiatives (i.e. the Corporate Sustainability Reporting Directive (CSRD), the Battery Regulation, the Conflict Minerals Regulation, and the EU Forced Labour Regulation) requires a uniform implementation of these laws to ensure a coherent EU due diligence framework.

Consistency and uniformity should be ensured in terms of scope, definitions (f.i. value chain vs chain of activities), due diligence requirements throughout the value chain, and corporate coverage to simplify companies' compliance and reduce the regulatory burden.

We therefore urge the Commission to take a holistic approach across the different Directorates-General involved in the drafting of secondary legislation and guidelines on all these interconnected legislations, in order to address overlaps, inconsistencies and even contradictory requirements. The compliance deadline for the potential new omnibus legislation must allow at least two years for companies to prepare for the changes.

II. Guidelines and secondary legislation should clarify the due diligence requirements to be met. They should ensure a pragmatic approach towards voluntary sustainability and due diligence standards and promote as much as possible alignment with existing international frameworks.

- **Guidelines and secondary legislation should clarify how companies are expected to identify and assess actual and potential adverse impacts in the chain of activities and prioritise them based on severity and likelihood.**

The Guidelines should clarify the detailed steps for identifying and assessing actual or potential adverse human rights and environmental impacts (art. 8) in the chain of activity and prioritise them. More clarification is also needed for which cases related to companies' chains of activities, they should identify and assess an adverse impact arising from their business partners' operations. Examples should be provided of upstream and downstream business partners that are within and out of the scope.

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The due diligence requirements laid down in the directive follow a risk-based approach. Companies should therefore be able to prioritise their actions, resources and time based on severity and likelihood of adverse impact. This necessarily also means that they are allowed to de-prioritise non-urgent or non-sever risks and violations. A strong risk-based approach should be maintained during the implementation phase, to ensure an effective due diligence system.[4]

Guidelines should contain clear criteria to help companies identify activities with a higher likelihood of adverse impact. This will facilitate the companies' prioritisation of actual and potential adverse impacts according to their severity and likelihood. More clarity should also be given on expectations as regards companies' own operations.

In addition, there should be guidance on the assessment that companies have to carry out of their business operations, geographic and contextual, product and sector risk factors to simplify the identification and assessment of adverse impacts in this context, alignment with existing legislation such as the Critical Raw Material act should be achieved.

In addition, the Commission should recognise ESG performance schemes/standards.

- **Guidelines and secondary legislation should ensure a flexible approach to the broad landscape of Voluntary Sustainability and Due Diligence Standards.**

For the non-ferrous metal industry, it is important that the guidelines and secondary legislation build on existing efforts and significant experience, accumulated by businesses over previous decades.

These voluntary sustainability and due diligence standards will allow companies to pool resources, act jointly, and thus increase their leverage to effect meaningful positive change across their value chains.

When developing fitness criteria and a methodology for companies to assess the fitness of industry and multi-stakeholder initiatives, the Commission should consult not only the Member States but also relevant stakeholders such as scheme owners and users (companies), and intergovernmental bodies. The EU Commission should ensure clear criteria and alignment for using voluntary sustainability and due diligence standards among the due diligence frameworks. This process should be developed in a coherent and timely manner.

We note that under the Conflict Minerals Regulation, EU Battery Regulation and the Critical Raw Material Acts, voluntary sustainability and due diligence standards will be recognised. For consistency, the same standards should also automatically achieve recognition under the CS3D.

[4] As part of the obligation to identify impacts, taking into account relevant risk factors, companies are required to take appropriate measures to:
(a) map their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in order to identify general areas where adverse impacts are most likely to occur and to be most severe;
(b) based on the results of such mapping, carry out an in-depth assessment of their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in the areas where adverse impacts were identified to be most likely to occur and most severe. Following identification, where companies are not able to address all identified impacts at the same time, they are required to prioritise among them, taking into account their severity and likelihood.

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- **Guidelines and secondary legislation should ensure alignment on responsible sourcing and due diligence requirements with internationally recognised standards and principles, such as the OECD MNE Guidelines and the UN Guiding Principles.**

  Internationally recognised frameworks for responsible sourcing practices set out practical due diligence steps to help companies identify, prevent, mitigate and assess their actions to address actual and potential adverse impacts in their operations and supply chains. They also provide consistent guidance for clear determination and consideration of a contribution of adverse impacts caused by a company.

  Therefore, guidance should be consistent with the existing international principles set by the UN Guiding Principles and the OECD framework (i.e. OECD MNE Guidelines and OECD Due Diligence Guidance for Responsible Business Conduct) to ensure legal clarity and avoid conceptual confusion.

  The International Labour Organization's (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy is another international framework that provides key recommendations on due diligence.

- **Guidelines and secondary legislation should include a list of high-risk areas (as mentioned in Article 19 of the directive).**

  In developing guidelines to assess sectoral risk factors associated with conflict-affected and high-risk areas[5], the EU Commission should include a list of high-risk areas in alignment with similar lists included in other legislation (i.e. the Conflict Minerals Regulation) to avoid overlaps and duplication of work.

- **Include effective guidance on the termination of the business relationship to ensure responsible disengagement.**

  According to the directive, disengagement is only required in case of severe impacts and only as a "last resort" measure when all other measures have failed.

  In particular, before disengaging, the company has to assess whether the negative impacts of disengagement on human rights and the environment can reasonably be expected to be manifestly more severe than the adverse impacts to be addressed. In case of disengagement, the company needs to take steps to prevent or at least mitigate the adverse impacts of disengagement, and to provide reasonable notice to the business partner before termination.

  The European Commission should establish guidelines to clarify the exact conditions for responsible disengagement to avoid withdrawal from conflict-affected and high-risk areas that can cause severe socio-economic consequences.

  Clear guidance is needed for companies to know until what point they should engage with suppliers to address human rights issues rather than disengage – especially in countries where legislation is lacking.

[5] Article 19, paragraph 2(d) reports that guidelines issued by the EU Commission should assess sectoral risk factors, including those associated with conflict-affected and high-risk areas.

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In particular, the European Commission should clarify the inconsistency in the concept of disengagement between the OECD RBC (which recommends first trying to manage/mitigate risks before disengaging) and the OECD Minerals guidance (which specifies very specifically for what type of risk to disengage).

III. Guidelines and secondary legislation should clarify the framework for engaging with stakeholders and appropriate measures for providing remediation.

The EU Commission should make clear which information companies should provide to carry out a transparent engagement with stakeholders.

The European Commission should also provide guidance on how companies can make use of the existing voluntary due diligence standards for the metal sector to ensure meaningful engagement with stakeholders. In addition, guidance should clarify in which cases companies cannot reasonably carry out effective engagement with stakeholders and have to consult further with other experts, and how companies should act if stakeholders are not interested or willing to engage.

Guidance is also needed to allow multi-stakeholder initiatives/cooperation in the field of human rights and environmental due diligence, in a way that is fully compliant with EU antitrust regulations. The European Commission should deliver guidance on how companies can, in alignment with antitrust legislation, form a collective action to address adverse impacts on human rights and the environment.

Guidelines should also clarify how companies should develop and implement the corrective action plan when the prevention of a potential adverse impact has a certain level of complexity and when the actual adverse impact cannot be immediately ended (art. 10(2)(a)). Guidance is also needed on what the reasonable expectations are for expected support to SMEs, what are considered key elements to include in a prevention action plan vs an enhanced prevention action plan, as well as the circumstances under which a company would be required to seek contractual assurances from indirect business partners.

Clear and specific guidance is needed for cases when companies are required to seek contractual assurances from indirect business partners when potential adverse impacts cannot be prevented or adequately mitigated (art. 10(4)).

Finally, best practices should be made available for monitoring and evaluating the effectiveness of remediation actions.

IV. Delegated acts on the reporting and disclosure requirements for companies should be aligned with the CSRD.

The Directive establishes that companies shall publish an annual statement to report on the due diligence provisions laid down in this Directive.[6]

[6] Article 16 on how companies have to communicate on their due diligence.

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The European Commission should adopt delegated acts to clarify the content and criteria for the reporting requirements, before the deadline set by the Directive of 31 March 2027.

The delegated acts should include detailed information on the format and standards of the annual reporting in full alignment with the reporting requirements set out by the CSRD in order to avoid inconsistencies and duplication of work.

Clear guidelines are also essential for sectorial guidance on contractual obligations to facilitate compliance with the obligations to prevent or end potential or actual adverse impacts.[7]

V. Guidelines on the climate transition plan should clarify 'best efforts' and be compatible with the CSRD and other legislation approach.

Companies have a legal obligation to adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through "best efforts", that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5° C in line with the Paris Agreement and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119 (European Climate Law), including its intermediate and 2050 climate neutrality targets.

In the practical guidance that the Commission is mandated to develop on the transition plan, concrete examples should be provided of how companies can demonstrate that they have used their "best efforts", and alignment should be ensured with other pieces of legislation.[8]

For companies that publish a transition plan in accordance with the Corporate Sustainability Reporting Directive (CSRD), the obligation to "adopt" a plan is considered to be met. The Commission's guidance on the transition plan should be compatible with the approach taken under the CSRD as well as the delegated act for the transformation plan under the Industrial Emissions Directive (IED), and no additional requirements should be introduced through secondary legislation.

VI. The European Commission and Member States should develop a Single Helpdesk and multistakeholder platforms for information sharing before the directive starts to apply.

The European Commission and Member States should work in partnership with industry, to create multistakeholder platforms to support companies align their internal procedures and methodologies with legal requirements.

Member States should set up, individually or jointly, dedicated websites, platforms or portals to disseminate guidance. This should include supporting tools such as hotlines, databases, capacity-building, training, as well as

[7] The Directive dedicates Article 18 to the Model Contractual Clauses.
[8] For instance, according to Article 27d of the newly adopted Industrial Emissions Directive (link), by 30 June 2030 operators will be required to include in their EMS an indicative transformation plan. The transformation plan shall contain information on how the operator will transform the installation to contribute to the emergence of a sustainable, clean, circular, resource-efficient and climate-neutral economy by 2050. With this regard the Commission will by 30 June 2026, adopt a delegated act specifying the content for the transformation plans.

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funding. Common templates for the supplier questionnaire (like the CMRT for conflict minerals) should be made available. However, it should be voluntary for companies to choose tools and platforms.

A dedicated EU helpdesk related to the Directive should be established to assist companies and stakeholders in fulfilling their obligations.

VII. Multi-stakeholder dialogue for assessment and monitoring.

Consistent guidelines shall be ensured on the assessment that companies should carry out of their operations and measures to monitor the effectiveness of the due diligence requirements of this Directive.[9] Specifically, it is crucial to specify the qualitative and quantitative factors that should constitute the basis of this assessment.

Clear guidelines should also specify the criteria and methodology that companies should follow to assess the third-party audits that can carry out the independent third-party verification of the companies' chains of activities.

VIII. Clarifications on the role of Authorised Representatives for non-EU companies

According to Article 23, non-EU companies in scope are expected to designate an Authorised Representative to communicate with supervisory authorities in the Member States and provide them with relevant information.

If the non-EU company does not have a subsidiary/branch in any Member State, the competent supervisory authority shall be that of the Member State in which the company generated most of its net turnover in the EU.

The European Commission should provide clarifications regarding the applicable supervisory authority for non-EU companies.

More clarification is needed on the process for designating a single supervisory authority for non-EU company groups with multiple legal entities across Member States, each potentially subject to different authorities based on EU turnover.

Non-EU groups with entities across the Member States, each under different authorities due to EU turnover, should have a process to consolidate these under one authority for simplicity.

To avoid the situation where a non-EU company's supervisory authority changes from year to year, companies with varying EU turnover across Member States should not have to switch authorities annually.

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About Eurometaux: Eurometaux is a trade association representing the collective European non-ferrous metals industry, including miners, smelters, refiners, fabricators and recyclers.

[9] As specified in Article 15 of this Directive.

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