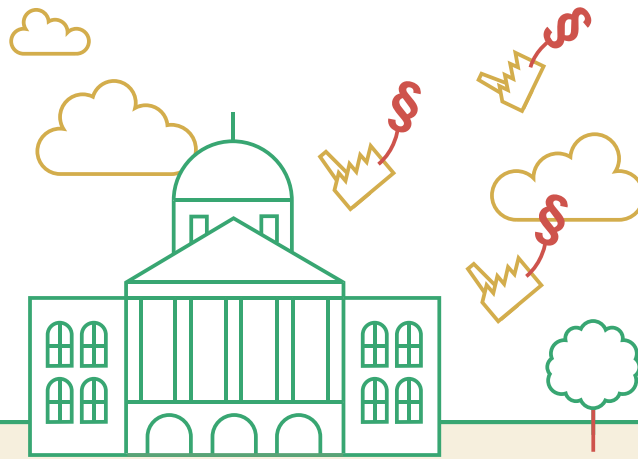
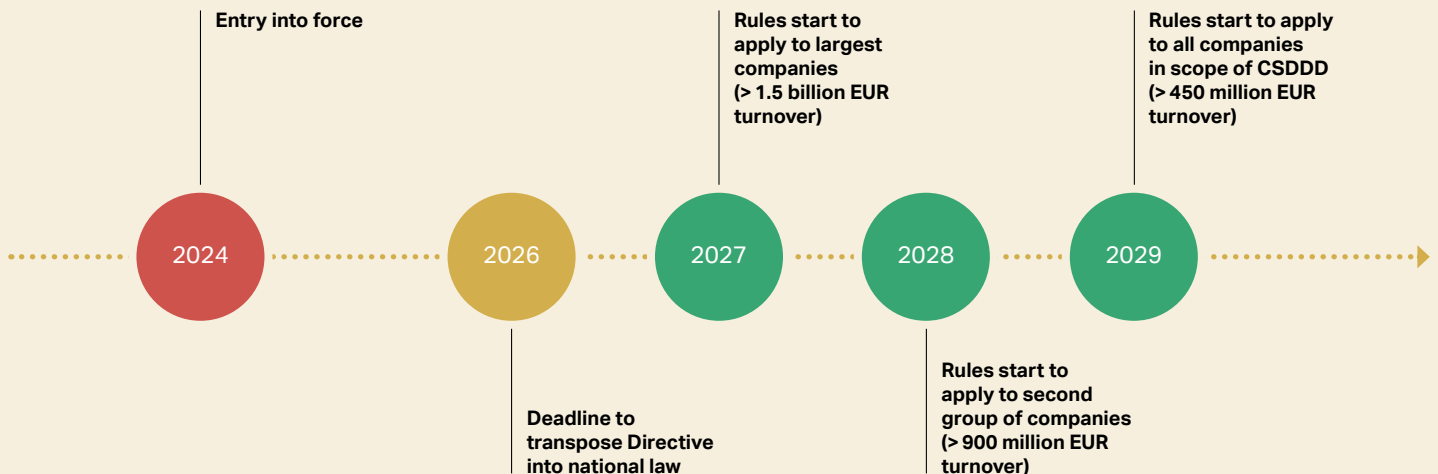


# Corporate Sustainability Due Diligence Directive (CSDDD): What do the new EU sustainability due diligence obligations mean for Swiss companies?



On 26th of July 2024, the [EU Corporate Sustainability Due Diligence Directive \(CSDDD\)](#) entered into force and introduced new obligations for companies regarding adverse impacts on human rights and the environment.<sup>1</sup>

EU member states must transpose the Directive into national law by July 2026. The new rules will start to apply to companies in a staggered approach in July 2027, July 2028 and July 2029, depending on their size:



<sup>1</sup> To mark the entry into force of the CSDDD, the European Commission published initial guidance on the Directive in the form of Frequently Asked Questions (FAQs).

## How does this affect Swiss companies and what do they need to get ready for the implementation of the new requirements?

1. Which Swiss companies are directly covered by the CSDDD – and how?
2. Which Swiss companies are indirectly covered by the CSDDD – and how?
3. What does it mean to implement sustainability due diligence?
4. What elements of the value chain are covered by the due diligence obligations?
5. What adverse human rights, environmental and climate impacts does a company need to address under the CSDDD?
6. How is a company required to identify its potential and actual adverse impacts under the CSDDD?
7. What actions is a company required to take to address the identified adverse impacts?
8. What new obligations and liability risks for the board does the CSDDD introduce?
9. What are enforcement mechanisms and potential sanctions in case of non-compliance with the CSDDD?
10. How can a Swiss company get ready for the CSDDD?

### 1. Which Swiss companies are **directly** covered by the CSDDD – and how?

A company established under Swiss law is covered by the CSDDD if the company:

- has a turnover of more than EUR 450 million in the EU; or
- is the ultimate parent company of a group that reached the aforementioned threshold on a consolidated basis; or
- entered into franchising or licensing agreements in the EU in return for royalties of more than EUR 22.5 million in the EU and has a turnover of more than EUR 80 million in the EU; or
- is the ultimate parent company of a group that exceeds the aforementioned thresholds.

A directly covered Swiss company must fulfil the obligations of the CSDDD with respect to its **own operations**, the **operations of its subsidiaries** (including non-EU subsidiaries), and the **operations carried out by its business partners in its so-called “chain of activities”** (see Q4). In a group of companies, in principle, each company that is in scope of the CSDDD must also apply its requirements. If certain conditions are met, an in-scope parent company can fulfil the obligations on behalf of its in-scope subsidiaries.

### 2. Which Swiss companies are **indirectly** covered by the CSDDD – and how?

A Swiss company that does not fall within the scope of the CSDDD may nevertheless be affected by the Directive if it is a **subsidiary or a (direct or indirect) business partner of an in-scope company**.

For example:

- A subsidiary receives instructions from its parent company with regard to implementing due diligence, e.g. in the form of a code of conduct.

- A business partner is requested to contractually commit to ensure compliance with the in-scope company's code of conduct and, as necessary, its prevention action plan.
- A business partner receives a request to engage with the in-scope company about its expectations with regard to preventing and mitigating potential adverse impacts and is offered access to capacity-building.

The in-scope company is not obliged to seek contractual assurances from all of its business partners. It is only required to take measures vis-à-vis the business

partners and areas in the value chain<sup>2</sup> covered by the CSDDD, where it has identified and prioritised an adverse impact.

### 3. What does it mean to **implement** sustainability due diligence?

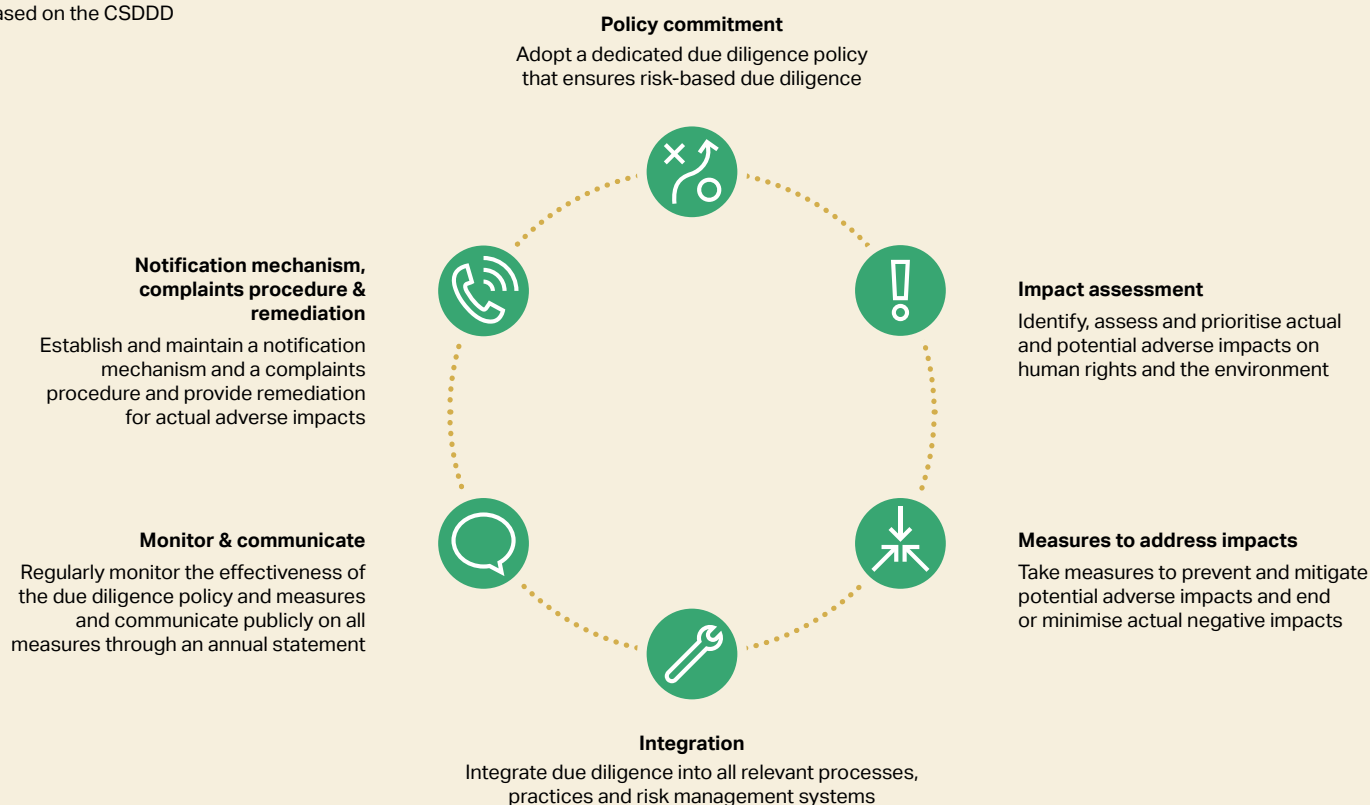
Conducting sustainability due diligence means implementing a **management system that aims at identifying and addressing actual and potential adverse impacts** on human rights and the environment along the value chain. Due diligence is an ongoing process

that requires continuous improvement of the company's policies, processes and practices to manage its social and environmental impacts.

According to the CSDDD, sustainability due diligence requires the implementation of the following aspects:

#### Key Elements of Due Diligence

based on the CSDDD



Under the CSDDD, companies are required to carry out meaningful **engagement with stakeholders**, in particular with the people whose rights are or could be affected.

<sup>2</sup> For the purpose of this Q&A, we use the term **value chain** as it is typically used in sustainability management to describe the "full life cycle of a product or process, including material sourcing, production, consumption and disposal/recycling processes." (WBCSD, 2011, p. 3). The company's value chain thus covers all upstream activities, its own operations and subsidiaries, and all downstream activities. As explained in Q4, CSDDD obligations do **not** cover the full downstream value chain.

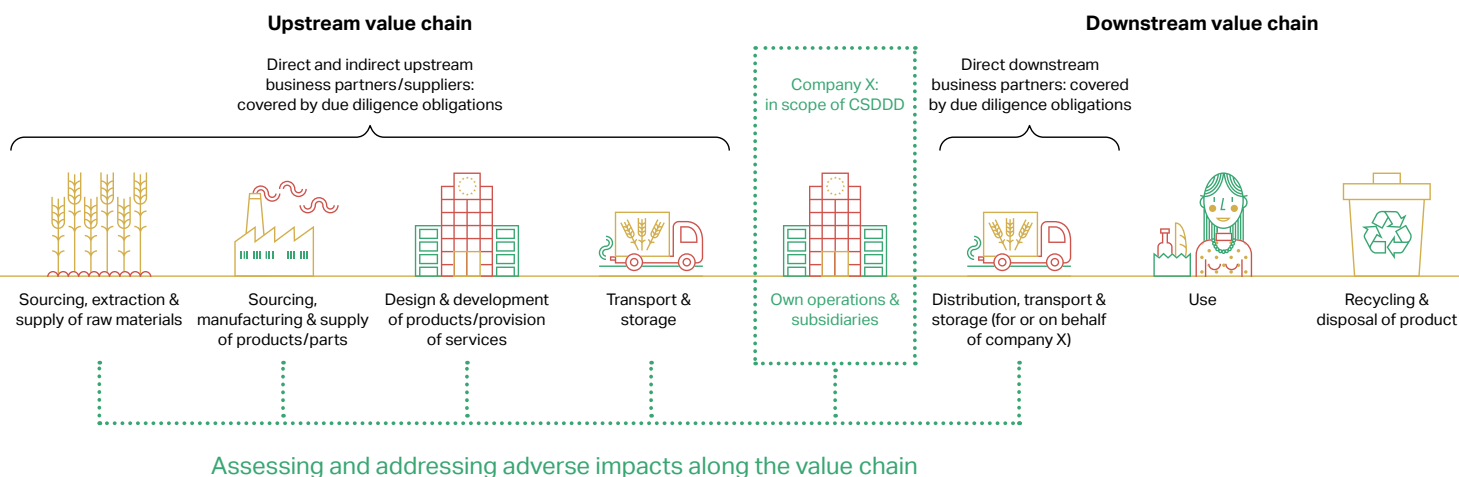
#### 4. What **elements of the value chain** are covered by the due diligence obligations?

The due diligence obligations of the CSDDD must be fulfilled with respect to the **company’s own operations**, the **operations of its subsidiaries** and the operations of its business partners in its so-called “chain of activities”:

- The due diligence obligations of the CSDDD cover the **entire upstream part of the company’s value chain**. More precisely, it includes the activities of a company’s upstream business partners related to the production of goods or the provision of services by that company – starting from the sourcing, extraction and supply of raw materials. Upstream due diligence obligations relate to both **direct and indirect business partners**, i.e. to contractual partners and other business partners which perform business operations related to the operations, products or services of the company, including those further up the supply chain.

- The **downstream part of the value chain** covered by due diligence obligations, in contrast, is fairly limited. It covers the activities of a company’s downstream **business partners related to the distribution, transport and storage of a product** of the company – provided that the business partners carry out those activities for or on behalf of the company.

#### Value chain elements covered by the CSDDD



## 5. What adverse **human rights, environmental and climate impacts** does a company need to address under the CSDDD?

The obligations of the CSDDD cover the following three issue areas:

Human Rights	Environment	Climate
<p data-bbox="437 555 730 584" style="text-align: center;"><b>Due diligence obligations</b></p> <p data-bbox="178 629 587 880">In a nutshell, all internationally recognized human rights are covered by the CSDDD. In Annex – Part I, the CSDDD lists the most important UN human rights conventions and international labour conventions that are covered by the Directive.</p>	<p data-bbox="596 629 995 1037">A broad range of environmental impacts are covered by the CSDDD, including impacts on biodiversity, natural heritage properties and wetlands, restrictions on the trade of endangered species, prohibitions and restrictions on the use of certain chemicals and hazardous waste as well as the prevention of pollution of the marine environment. In Annex – Part II, the CSDDD lists the international environmental conventions covered.</p>	<p data-bbox="1023 555 1377 584" style="text-align: center;"><b>Climate change transition plan</b></p> <p data-bbox="1007 629 1407 943">The CSDDD introduces an obligation for companies to implement a transition plan for climate change mitigation to ensure that the company's business model and strategy are compatible with limiting global warming to 1.5 °C in line with the Paris Agreement and the EU objective of achieving climate neutrality by 2050.</p>

## 6. How is a company required to **identify** its potential and actual adverse impacts under the CSDDD?

The CSDDD requires companies to identify potential and actual adverse impacts that arise from their own business activities as well as from the activities of their subsidiaries and business partners along the value chain. The risk assessment must be regularly updated and conducted at two levels:

- **High-level assessment:** first, companies need to map their value chain to identify general areas where adverse impacts are most likely to occur and most severe.
- **In-depth assessment:** second, and based on the high-level mapping, companies need to carry out in-depth assessments in the “hotspot” areas where risks were identified to be most likely and most severe.

Identifying risks along the value chain means **looking beyond tier 1 suppliers**. It involves mapping or tracing back the value chain to the very first stages of raw material production. Full traceability of the value chain is typically not given, and also not needed in order to conduct the high-level risk assessment. Where information is currently lacking, the risk assessment can rely on research-based assumptions and gaps can be filled over time.<sup>3</sup> In line with the risk-based approach of the CSDDD, the identified impacts must be **prioritised based on their severity and likelihood**.

<sup>3</sup> Refer to focusright's explanation video for a short introduction on how to conduct a human rights risk assessment.

## 7. What **actions** is a company required to take to address the identified adverse impacts?

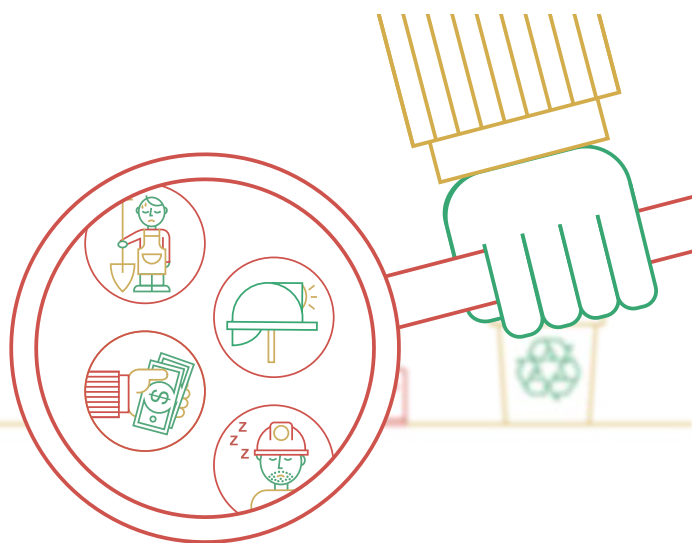
A company in scope of the CSDDD is required to put actions in place to prevent and mitigate **potential negative impacts**, and to end, minimise and remedy **actual negative impacts**. In order to do so, the company must adopt and implement **prevention and/or corrective action plans** with clearly defined timelines and qualitative/quantitative indicators to measure improvements.

Measures to address the identified impacts may include:

- Modifications of the company's business plan, strategies and operations (incl. changes to purchasing practices).
- Making investments in, and adjustments or upgrades of, facilities, production or other operational processes/infrastructures.
- Requesting contractual assurances from business partners, accompanied by measures to verify compliance (e. g. through third-party verification).

- Providing support to business partners that are SMEs.
- Engaging with business partners on the company's expectations, or providing or enabling access to capacity-building, guidance, administrative and financial support.
- Collaborating with others to increase leverage, e. g. in the form of multi-stakeholder initiatives.

The obligation to **provide remedy** to affected persons is limited to cases where the company has caused or jointly caused an actual negative impact. Where an adverse impact is caused only by the company's business partner, the company may use its ability to influence the business partner to provide remediation.



## 8. What new obligations and liability risks for the **board** does the CSDDD introduce?

The **responsibility of the board** (management or board of directors) **is not explicitly addressed** in the CSDDD. Provisions to that effect proposed by the European Commission were deleted from the draft during the legislative procedure. However, the board will, pursuant to the applicable national law and a potential contract with the company, need to make sure that the in-scope company complies with the CSDDD.

**Two obligations** will be particularly relevant for the board, although they are addressed to the company:

- Obligation to integrate due diligence into company policies and risk management systems.
- Obligation to adopt and put into effect a transition plan for climate change mitigation.

Because of their strategic nature, these two obligations will require more board involvement than other duties.

As a consequence of the duty to ensure compliance with the CSDDD, there is a corresponding **liability risk for board members vis-à-vis the company**: if the board member fails to ensure that adequate measures

are taken to comply with the CSDDD, and the company (due to this failure) must pay a penalty to the supervisory authority or damages to the victim of a human rights violation, the company may be entitled to take recourse against the board member under the applicable national law or the potential contract with the board member.

## 9. What are **enforcement mechanisms and potential sanctions** in case of non-compliance with the CSDDD?

**Penalties** for infringements of the CSDDD (as transposed into national law) must be determined by each EU member state. However, the CSDDD contains a few standards which the EU member states must adhere to. The most striking is that **pecuniary penalties of up to 5% of the net worldwide turnover** of the company can be imposed. EU member states are free to set a higher maximum limit than 5%.

The CSDDD enforcement mechanisms also bear **reputational risks** for in-scope companies: any decision of the supervisory authorities concerning penalties must be published. Furthermore, if a company fails to comply with a decision imposing a pecuniary penalty within the applicable time limit, a statement indicating the com-

pany and the nature of its infringement must be published. This is commonly known as “naming and shaming” and may have a more significant impact on the company than the penalty itself.

Finally, non-compliance can result in **civil liability**. A company is only liable where damage to a natural or legal person was caused by the company’s failure to prevent or stop an adverse impact. Moreover, the liability is fault-based: the company can only be held liable if the failure was intentional or negligent. The burden of proof in civil liability cases is governed by national law. However, based on the CSDDD, courts can order the company to disclose (internal) evidence if the claimant meets certain requirements.

## 10. How can a Swiss company **get ready** for the CSDDD?

To get ready for the CSDDD, a Swiss company needs to look both at the **due diligence processes** and **sustainability topics** it is currently working on and should consider taking the following measures:

- To prepare for the human rights and environmental due diligence obligations, the company is advised to conduct a **due diligence gap analysis** to identify the current implementation status and main gaps in its sustainability due diligence management system compared to the requirements of the CSDDD. Based on this analysis, the necessary policies, processes and practices can be adopted to close the identified gaps.
- As a basis for the prevention and corrective action plans, companies need to find out which human rights and environmental impacts are most likely to occur and most severe along their value chain. The company should start by mapping its value chain to **identify the salient human rights and environmental issues** that need to be prioritised going forward.

- To get ready for the **transition plan for climate change mitigation, the company should calculate its full CO<sub>2</sub> footprint** in scope 1, 2 and 3. The calculations allow the company to identify its key decarbonization levers and define the first set of science-based emission reduction targets for 2030.

**For more information on the CSDDD, please feel free to reach out to:**

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Concept and content	focusright ltd, <a href="https://focusright.ch">focusright.ch</a> & CMS, <a href="https://cms.law">cms.law</a>
Design	Joël Walser. ArtWork., <a href="https://joelwalser.com">joelwalser.com</a>
Illustrations	Natalia Gianinazzi, <a href="https://natalia-gianinazzi.ch">natalia-gianinazzi.ch</a>
Publication	August 2024
Editor and copyright	focusright ltd, <a href="https://focusright.ch">focusright.ch</a> & CMS, <a href="https://cms.law">cms.law</a>