

CSDDD and EUDR

Crafting an Integrated Compliance Strategy

28 May 2024

This briefing is the third in a series on the Corporate Sustainability Due Diligence Directive (CSDDD), where BLOMSTEIN addresses the key aspects that (in)directly affect businesses both within and outside the EU, explores its interplay with the existing legislation in Germany (LkSG) and examines interactions with other recently adopted EU legislation (e.g., EUDR and CSRD) which partially set overlapping obligations.

In today's briefing we explore the main differences and points of convergence of the CSDDD and the European Union Regulation on Deforestation-free products (EUDR), particularly which companies might be affected by both and how to leverage synergies when implementing compliance procedures.

Companies affected: turnover vs relevant products

Although the EUDR and the CSDDD use different criteria to determine their scope, certain companies are directly or indirectly covered by both acts. While the CSDDD adopts a company size approach (turnover-based/number of employees), the EUDR applies to all companies supplying and placing specific products in the EU.

For EU companies:

- (1) The CSDDD applies
 - a. directly to companies with > 1,000 employees and a worldwide turnover of > EUR 450 million, and
 - b. indirectly to companies that are part of the value chain of the directly liable companies (e.g., suppliers and direct distributors).
- (2) The EUDR **directly** applies to any company, regardless of size, that make available and commercialize the relevant products (e.g., coffee, meat, leather, soya, cocoa, chocolate, rubber, tyres, wood, and articles made of wood) on the Union market (i.e., importers, distributors, retailers). More stringent due diligence requirements and liability are set for those defined as 'Operators', since they are responsible for placing the products on the market for the first time. Normally the Operator will be the importer, but there are situations where an imported relevant

product is transformed into another relevant product within the EU, e.g. cacao into chocolate. In this case, the chocolate manufacturer is the Operator.

For non-EU companies:

- (1) The CSDDD applies
 - a. directly to companies with an EU turnover > EUR 450 million, and
 - b. indirectly to companies that are part of the value chain of directly liable companies (e.g., suppliers and direct distributors).
- (2) The EUDR applies **indirectly** to the producers and to any company exporting the relevant products to the European Union market. They have to provide EU importers with the necessary documents and proof that their products comply with the requirements.

In summary, non-EU suppliers of the products within the scope of the EUDR who also meet the CSDDD turnover threshold are affected and need to be aware and adapt their business practices to the requirements set out in both standards. The main difference in the CSDDD is that the non-EU supplier will be directly liable to the obligations set forth in the Directive.

Suppliers which do not meet the CSDDD thresholds could still be indirectly affected by it, as relevant EU buyers (e.g., manufacturers, traders and large retailers) as well as their subsidiaries set outside the EU will often meet these thresholds and be required to monitor their value chain and call for the compliance by their business partners.

Human Rights

Both acts address human rights comprehensively, but the CSDDD provides a more explicit delineation of rights and prohibitions.

The EUDR mentions that the relevant products must be produced in accordance with the relevant legislation of the country of production, and expressly includes labour rights, human rights protected under international law and the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples. Critics argue that the rights covered are too broad, consequently that it is hard to provide concrete proof of compliance (i.e., there are no specific certificates covering all human rights).

The CSDDD outlines human rights more explicitly than the EUDR, covering: (1) Right to life; (2) Prohibition of torture, cruel, inhuman or degrading treatment; (3) Right to liberty and security; (4) Prohibition of arbitrary or unlawful interference with a person's privacy, family, home or correspondence, and unlawful attacks on their honour or reputation; (5) Prohibition of interference with the freedom of thought, conscience and religion; (6)

Right to enjoy just and favourable conditions of work, including a fair wage; (7) Prohibition to restrict workers' access to adequate housing when provided by the company; (8) Prohibition to restrict workers' access to adequate food, clothing, and water and sanitation in the workplace; (9) Rights of the child, including protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development; (10) Prohibition of the employment of a child under the age at which compulsory schooling is completed and, in any case, is not less than 15 years, with specific exceptions; (11) Prohibition of forced or compulsory labour, all forms of slavery and practices akin to slavery or other forms of oppression in the workplace; (12) Right to freedom of association, of assembly, and the rights to organise and collective bargaining; (13) Prohibition of unequal treatment in employment (e.g., payment of unequal remuneration for work of equal value, discrimination on grounds of national extraction or social origin, race, colour sex, religion, and political opinion); (14) Prohibition of causing any measurable environmental degradation that substantially harms human wellbeing; (15) Rights of individuals and groups to land and resources, and the right not to be deprived of means of subsistence.

Environmental protection

Likewise for human rights, both acts also cover environmental protection in a very broad manner, with some overlapping requirements, but different focuses.

The EUDR requires the relevant products to be:

1. **Deforestation-free**, meaning that they must not contain, have been fed or have been made using commodities produced on land that has been subject to deforestation after 31 December 2020.
2. Produced in accordance with the **relevant legislation of the country of production relating to environmental protection** and, where directly related to wood harvesting, in accordance with forest-related rules, including forest management and biodiversity conservation.

The CSDDD requires:

1. **The responsible use and disposal of waste and hazardous substances:** In accordance with a series of international conventions and protocols, these substances include mercury, hazardous chemicals like asbestos and substances that contribute to the depletion of the ozone layer, such as chlorofluorocarbons

(CFCs). It also requires compliance with acts that regulate the import/export of hazardous waste and measures to prevent pollution from ships.

2. The conservation of biological diversity and protection of endangered species.
3. A transition plan for climate change mitigation consistent with the transition to a sustainable economy and which is consistent with the limiting of global warming to 1.5 °C in line with the Paris Climate Agreement.
4. Refrain from causing ‘measurable environmental degradation’, which includes soil change, water or air pollution, and degradation of land and deforestation, when degradation substantially impairs the basis for food production, prevents humans from access to drinkable water and sanitary facilities, or harms a person’s health, safety, normal use of land or lawfully acquired possessions.

Due Diligence system

Both acts mandate that directly affected companies establish an appropriate due diligence system, generally including a comprehensive risk assessment and mitigation plan.

The CSDDD requires companies to identify and assess actual and potential adverse impacts arising from their own operations and those of their subsidiaries and business partners, basing the risk assessment on the specifics of each company's chain of activities. Conversely, the EUDR's risk assessment for operators focuses on the country of origin or parts thereof, considering factors such as the risk category defined by the European Commission (low, standard, or high), the presence of forests and indigenous people, and the prevalence of deforestation or forest degradation. Additionally, supplier-specific considerations include the complexity of the supply chain and the stage of processing of the relevant products.

Regarding risk mitigation, the CSDDD suggests setting an action plan (which can involve industry or multi-stakeholder initiatives), seeking contractual assurances from direct business partners, and supporting these partners in their efforts to comply with the Directive's provisions. The EUDR, being stricter in this regard, requires risk mitigation procedures that ensure no or only negligible risk, including an independent audit function to verify internal policies, controls, and procedures. For low-risk countries, these procedures can be more streamlined.

Non-compliance: Ban vs Active Engagement

The enforcement systems established by these acts take markedly different approaches. The EUDR establishes a framework that unequivocally blocks non-compliant products from the EU market. In contrast, the CSDDD emphasizes active engagement between directly liable companies and their (in)direct business partners to address crit-

ical issues appropriately. The CSDDD explicitly mentions the possibility of providing targeted and proportionate support, such as capacity-building, training, and financial assistance, and leveraging existing commercial relationships to encourage business partners to comply with standards.

Unlike the EUDR, the CSDDD considers terminating the contractual relationship with a non-compliant supplier as a last resort. This measure is only applicable if the potential adverse impact is severe and after all efforts to prevent and mitigate the impacts have failed. The Directive, in its preambles, underscores the importance of maintaining business relationships with partners to achieve the Directive's objectives. There is nothing comparable in the EUDR.

Key Takeaways

Businesses directly and indirectly affected by the EUDR and CSDDD should assess and address the requirements in an integrated manner. By identifying overlapping requirements, companies can streamline their efforts in information gathering, risk assessment, and mitigation processes, thereby enhancing overall efficiency of their compliance procedures.

BLOMSTEIN will continue to closely monitor and assess the developments and practical application of the CSDDD. If you have any questions on the topic and the EUDR, [Dr. Roland Stein](#), [Bruno Galvão](#) and [Carolina Vidal](#) will be happy to assist you.

Stay tuned: In our next CSDDD briefing - to be published around 06 June - we will explore the interaction with the Corporate Sustainability Reporting Directive (CSRD).