



Keller & Heckman

Keller and Heckman LLP Presents
REACH 30/30
a Webinar Series

Unpacking: Corporate Sustainability Due Diligence Directive and the EU Deforestation Regulation

16 October 2024

Ales Bartl, Ph.D.
Partner

Brussels
+32 (0) 26455085
bartl@khlaw.com

Alejandra Martínez Perea
Associate

Brussels
+32 (0) 26455041
martinezperea@khlaw.com



Ales Bartl

- ◆ Ales Bartl has a broad experience EU product regulatory law, including Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) regulation, the Classification, Labelling, and Packaging (CLP) regulation, Biocidal Products Regulation (BPR), medical devices, electronic products, and general product compliance and product safety. He advises on regulatory compliance of a broad range of products marketed in the EU and represents clients before EU and national competent authorities on compliance and enforcement issues, including product withdrawals and recalls.
- ◆ Ales also represents clients before the Court of Justice of the European Union and the Board of Appeal of European Chemicals Agency.



Alejandra Martínez Perea

- ◆ Alejandra Martínez Perea counsels clients on regulatory and compliance matters related to food and drug packaging, food and feed, medical devices, data sharing, and product safety. She also advises companies on REACH matters; the Classification, Labelling, and Packaging (CLP) Regulation; and the Biocidal Products Regulation (BPR).
- ◆ Alejandra also helps companies navigate the process of securing regulatory approvals for food contact materials within the European Union (EU) and at the level of individual Member States.





Corporate Sustainability Due Diligence Directive (CS₃D)



Scope

- ◆ The Corporate Sustainability Due Diligence Directive entered into force on 25 July 2024.
- ◆ CS3D will introduce mandatory human rights and environmental due diligence obligations for EU and non-EU companies.
- ◆ The scope of the directive:
 - ◇ EU companies and parent companies **with >1000 employees and >€450 million net annual global turnover**;
 - ◇ Non-EU companies and parent companies **with >€450 million net annual turnover in the EU**;
- ◆ In-scope companies' due diligence includes:
 - ◇ their own **operations**;
 - ◇ the operation of **their subsidiaries**;
 - ◇ the operations of their direct and indirect business partners, where related to their **chains of activities**.

Applicability

- ◆ The Directive will apply in a phased manner based on turnover and employee thresholds:
 - ◆ **For EU companies and parent companies:**
 - From 26 July 2027 for companies > 5,000 employees and a net worldwide turnover of > EUR 1.5 billion;
 - From 26 July 2028 if >3,000 employees and a net worldwide turnover of >EUR 900M;
 - From 26 July 2029 if >1,000 employees and a net worldwide turnover of >EUR 450M.
 - ◆ **For Non-EU companies and parent companies:**
 - From 26 July 2027 for companies >EUR 1.5 billion turnover generated in the EU;
 - From 26 July 2028 if > EUR 900M turnover generated in the EU;
 - From 26 July 2029 if > EUR 450M turnover generated in the EU.

Main Obligations

- ◆ All companies covered by the scope will be required to:
 - ◆ **Identify, assess, prevent, mitigate and remedy** adverse impacts on human rights and on the environment;
 - ◆ **Integrate into strategy and procedures a due diligence system;**
 - ◆ Provide clear communication of expectations and support structures for business partners;
 - ◆ Introduce a **complaints procedure** (notably for entities such as trade unions or NGOs), **and a notification mechanism;**
 - ◆ Monitor the effectiveness of their due diligence processes and publish annual reports on their websites detailing findings/actions taken (*unless already required to do so under the Corporate Sustainability Reporting Directive*);
 - ◆ For non-EU companies: **designate an “authorised representative”.**

Covered regulations

- ◆ Included in the Annex to the Directive
- ◆ Environment protection part: biodiversity, POPs, PIC, Ozone Layer, Transboundary Movements of Hazardous Wastes (Basel) and protection of marine environment.
- ◆ Human rights part: relates to any measurable environmental degradation (with enumerated impact on human life), including soil change, water or air pollution, harmful emissions, excessive water consumption, degradation of land, or deforestation.

Climate change plans

- ◆ The Directive sets out 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.

Enforcement, Liability (1)

- ◆ The Directive provides that Member States ‘shall ensure’ that the obligations set out in the Directive have been complied with.

- ◆ Penalties:
 - ◇ Maximum fines set by MS: not less than 5% of the net worldwide turnover.
 - ◇ Public announcements detailing the company and the nature of its violation (naming & shaming);
 - ◇ Exclusion from EU public procurement contracts.

Enforcement, Liability (2)

- ◆ Additional measures: MS obliging companies to:
 - ◇ Make necessary financial or non-financial investments;
 - ◇ If necessary and as a last resort, end business relations with business partners;
 - ◇ Carry out mandatory consultation with stakeholders.

- ◆ The Commission is going to issue a set of guidance documents for specific sectors or specific adverse impacts.

- ◆ However, these documents will be non-binding. So, the national authorities will likely keep an important level of discretion.
 - ◇ Specific requirement that the Member States' actions must be proportionate.

Risk of class actions?

- ◆ Recent EU Class Actions Directive 2020/1828 that makes class actions easier in general.
- ◆ E.g., recent civil litigation against companies related to the climate change mitigation.

Final thoughts

- ◆ The Directive may give a powerful tool to the national enforcement authorities (and indirectly to the citizens) to enforce the green deal goals directly against the companies, on an ad-hoc basis and based on rather blurred criteria.
- ◆ Industry should advocate with the European Commission adoption of guidance documents that will set clear and proportionate compliance measures (based on the best effort principle), and that would set clear boundaries to national enforcement.



EU Deforestation Regulation (EUDR)



EU Deforestation Regulation (EUDR)

- ◆ On 29 June 2023, the Regulation on deforestation-free products (EUDR) entered into force
 - ◆ Previous EU Timber Regulation (Regulation (EU) No 995/2010) remains applicable to timber products produced before 29 June 2023 and placed on the market until 31 December 2027.
- ◆ EUDR prohibits traders and operators from placing on (or exporting from) the EU market products from recently deforested land or have contributed to forest degradation (Article 3 prohibition).
- ◆ New EC documents from 2 October (**to be approved by EP and Council*):
 - ◆ Obligations to “Non-SMEs” applicable from 30 December 2024 -> **30 Dec. 2025**
 - ◆ Obligations for SMEs from 30 June 2025 -> **30 June 2026**

EUDR – Products under the scope

- ◆ EUDR applies to an extensive list of products (List in Annex I of the EUDR – to be reviewed and updated regularly): cattle, cocoa, coffee, palm oil, rubber, soya, wood and paper products, etc.
- ◆ Excludes those made entirely from waste.
- ◆ For composite products: to conduct due diligence only on the main commodity and (derived) products deemed relevant under the EUDR, this being the commodity contained in the left column of [Annex I](#).

Article 3

Prohibition

Relevant commodities and relevant products shall not be placed or made available on the market or exported, unless all the following conditions are fulfilled:

- they are deforestation-free;
- they have been produced in accordance with the relevant legislation of the country of production; and
- they are covered by a due diligence statement.

EUDR – Due diligence statement

- ◆ From 30 December 202⁵ (*if extension is approved), operators and non-SME traders selling relevant products must submit a due diligence statement to competent authorities through a dedicated European Register.
 - ◇ To certify “No risk” or only “negligeable risk”
 - ◇ Annex II provides the template for the due diligence statement for both operators and traders.
- ◆ Conducting due diligence is not subject to any exemption (specific case of SME traders)
- ◆ Due diligence should be conducted:
 - ◇ **Collecting detailed information** demonstrating compliance with EUDR.
 - ◇ **Carrying out a risk assessment** evaluating risk of non-compliance with EUDR (includes country risk category set out by the EC: high risk, standard risk, low risk).
 - ◇ **Mitigating risks.**

EUDR – Reporting obligations

- ◆ **Art. 9:** collect, organise and keep for **five years** from the date of the placing on the market or export of the relevant commodities and products, the information gathered accompanied by evidence (i.e. description, quantities, country of production, geolocation, etc.).
- ◆ **Art.10.4 and 11.3:** Operators should demonstrate how due diligence was carried out and what mitigation measures were put in place if risk was identified.
- ◆ Member States have the obligation to carry out checks within their territory to establish if operators and trader are compliant.

EUDR – Breach

- ◆ **All operators and traders** retain responsibility for the compliance of the relevant product they place on the market, make available, or export.
- ◆ Breach of the Regulation = if products have already entered the market or in case information is not properly disclosed by the operator), each actor of the supply chain concerned by the placing or making available on the market or the export of a relevant product retains responsibility and may be held liable.
- ◆ The internal organisation and due diligence policy of a group of companies (a mother company and its subsidiaries) is not governed by the Regulation.

EUDR – Next steps and recent updates

- ◆ Recent FAQ published and additional [Guidance Documents](#)
- ◆ Additional 12 months period to be approved by the EU Parliament and Council, making the law applicable on:
 - 30 December 2025 for large companies;
 - 30 June 2026 for SMEs.
- ◆ Implementing Act to be finalised by 30 June 2025 to finalize the country benchmarking system.
- ◆ Guidelines provide further details on interpretation of definitions (i.e. “forest degradation”), traceability obligations, penalties, etc.

Thank You

Any questions?

Ales Bartl, Ph.D.

Partner

Brussels

+32 (0) 26455085

bartl@khlaw.com



Alejandra Martínez Perea

Associate

Brussels

+32 (0) 26455041

martinezperea@khlaw.com

