Position Paper
2 May 2025

Cefic comments to the Omnibus I Part II – Amendments to key content provisions in the Corporate Sustainability Due Diligence Directive (CS3D) and the Corporate Sustainability Reporting Directive (CSRD)

Executive summary

Cefic, the European Chemical Industry Council, welcomes the Commission proposals in the context of the Omnibus I on sustainability, while highlighting the following needs.

Corporate Sustainability Due Diligence Directive (CS3D):

- Further expansion of the level of harmonisation to Arts. 3, 6, 8, 9, 10, 11, 14, and 22; and removal of Art. 4(2) to avoid gold-plating provisions during the transposition process
- Extend the risk-based approach to mapping obligations in Article 8(1)
- Ensure consistency between the scope of in-depth assessments and further specification of the notion of "plausible information"
- On transition planning, delete reference to "implementing actions", require "reasonable efforts", and avoid supervision of the transition plan for those companies already reporting one under the CSRD
- Ensure proportionality of remaining civil liability elements in Arts. 29(4) and 29(5)
- Ensure adequate flexibility regarding the suspension of the business relationship
- Further clarification on the substantiated concerns mechanism

Corporate Sustainability Reporting Directive (CSRD):

- Ensure proper involvement of industry stakeholders in the set 1 ESRS simplification process
- Avoid enforcement of assurance-related sanctions during first three reporting cycles
- Address remaining value chain challenges
- Align reporting boundaries with financial reporting
- Postpone digital tagging obligations by 3 years
- Improve provisions on confidentiality of information

On 26 February 2025, the European Commission adopted a legislative proposal to amend key provisions in the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CS3D) in the context of burden reduction and simplification.

Sustainability reporting and sustainability due diligence are among the six policy areas identified by Cefic as in need of corrective measures, or more pragmatic and more predictable implementation.

Cefic overall welcomes the changes proposed to key content provisions of the CS3D and the CSRD and acknowledges the Commission's efforts to achieve an ambitious burden reduction exercise even though concerns remain on several key areas. This paper aims to identify and address these outstanding issues to ensure the effectiveness of the omnibus' intended purpose.

Amendments to the Corporate Sustainability Due Diligence Directive (CS3D)

Cefic supports the following changes to the CS3D:

- Extension of the scope of maximum harmonisation
- Focus on direct business partners
- Removal of certain aspects of the civil liability regime
- Removal of the requirement to terminate a business relationship
- Streamlining of the definition of "stakeholders" and limitation of the due diligence stages requiring stakeholder engagement
- Extended frequency of monitoring obligations
- Advancement of adoption of due diligence guidelines
- Removal of the "minimum cap" and reference to companies' turnover for pecuniary penalties

However, some of the proposals require further work in order to properly address remaining implementation issues, as presented in the following sections.

Level of harmonisation (Article 4)

Cefic welcomes the proposal to expand the level of harmonisation of the due diligence provisions included in the CS3D but notes that **several key elements of the Directive still risk a fragmented transposition** (e.g. scope in Art. 2, definitions in Art. 3, due diligence support at group level in Art. 6, prioritisation of identified actual and potential adverse impacts in Art. 9, suspension of contracts in Arts. 10(6) and 11(7), notification mechanism and complaints procedure in Art. 14 transition plans in Art. 22 – where these provisions are retained in the final text).

Achieving a harmonized framework on corporate due diligence across Member States must be a priority. Art. 4(2) and Recital 31 raise concerns in this regard as it allows Member States to set out more stringent provisions in their national laws transposing the Directive, other than for those Articles covered by Art. 4(1). Full harmonization does not prevent companies from going beyond said obligations.

Focus on direct business partners (Article 8)

Cefic has previously expressed concerns about the lack of workability of due diligence obligations across the extent of the value chain covered. Companies in the chemical sector are often part of long, global, and complex value chains (e.g. a company with more than 37.000 direct business partners encompassing from the sourcing of the raw material to the end product). Challenges will arise when companies operate in countries where obtaining the required information may not be possible, or when suppliers resist providing information about their own suppliers as they see a commercial risk in doing so.

Cefic members welcome the focus on direct business partners as regards identifying and assessing actual and potential adverse impacts, but some clarification is required in key aspects.

Mapping and risk-identification obligations in Articles 8(1) and (2) should also follow a risk-based approach, according to severity and likelihood-criteria. Companies in scope of the CS3D should not be required to check every entity in their chain of activities and identify every risk. As introduced in Recital 41, this is relevant in the context of direct business partners located in the EU, which are presumed to comply with high environmental and human rights standards and are under comparable levels of enforcement. Current implementation of the German Supply Chain Act, which follows the proposed approach, has led to companies over focusing on all tier 1 business partners. This should be avoided in the CS3D.

The obligation set out in the proposed paragraph 2a should further specify that the required in-depth assessment should also be based on the company's risk-based mapping and prioritisation. This would follow the approach for the requirement to carry out the general in-depth assessment including direct business partners in paragraph 2(b), where it is specified that the in-depth assessment must be carried out "in the areas where adverse impacts were identified to be most likely to occur and more severe". Additionally, Cefic notes that paragraph 2a should be further aligned with the obligations in paragraph 1 and 2, where companies are required to take appropriate measures (as defined in Article 3(1)(o)).

The notion of "plausible information" as referred to in the newly proposed paragraph 2a should be further clarified in order to establish a more precise threshold for triggering a company's obligation to go beyond its direct business partners regarding the requirement to carry out an in-depth assessment. If adopted, the notion of "plausible information" will have relevant enforcement and liability-related implications, therefore its specification should be as clearly defined as possible.

To increase legal certainty and consistency across due diligence provisions, the CS3D could refer to existing standards, such as Regulation (EU) 2024/3015 on prohibiting products made with forced labour on the Union market (i.e. Forced Labour Regulation - FLR). In the context of the FLR, a "substantiated concern" *means a reasonable indication based on objective, factual and verifiable information […]*. Other provisions in the FLR refer to *reliable and verifiable* information or evidence. In addition, it should be also made clear that the information or evidence in question should be specific and linked to the sector or to the value chain of the company.

Several Cefic members have raised concerns regarding the changes proposed in Article 8 to limit "trickle-down" effects on companies with less than 500 employees. **Combined with the reduced number of companies in scope of the CSRD, this could lead to challenges in accessing the necessary reliable data for CS3D compliance.** It is therefore essential that the CS3D retains the safeguard in this regard as included in paragraph (4)(d) of Article 4 of the Commission proposal.

Transition plans (Article 22)

The EU Chemical Industry fully supports the objective of reaching climate neutrality by 2050. With the regulation introduced under the European Green Deal, several regulatory requirements are now in place to ensure this goal materialises, for example the obligation to disclose detailed climate transition plans under the CSRD (including GHG emission reduction targets for Scope 1, 2, and 3 GHG emissions aligned with the Paris Agreement) or the revised Industrial Emissions Directive which requires industries to describe how their installation will progress towards decarbonisation, zero pollution, and a circular economy (to name a few).

The replacement of the obligation to "put into effect" for adopting "implementing actions" does not address the underlying concerns as regards the transition plan for climate change mitigation. In practice, the suggested wording does not entail any simplification or burden reduction for companies in scope, since it can be understood as an implicit requirement to implement the transition plan. Art. 22 therefore remains a source of uncertainty for in-scope companies since most of its key concerns remain unaddressed.

Art. 22 requires companies to adopt a transition plan for climate change mitigation which ensures that the business model and strategy of the company are compatible with the goals of the Paris Agreement (i.e. limiting global warming to 1.5 ºC). However, it is worth pointing out the potential limitations of this requirement since it entails a simple translation of emission reduction objectives from the state to company level. This inconsistency is acknowledged in *Application Requirement 2* (AR 2) in *ESRS E1 – Climate Change*. **The requirement in Art. 22 establishes a significantly restrictive and unrealistic framework for companies**, taking into account that current Nationally Determined Contributions (NDCs) from Paris Agreement signatories point towards a temperature increase of 2.1-2.8 ºC by 2100. Additionally, Art. 22 sets out an excessively high legal threshold, since companies are required to comply on a "best efforts" basis. **Art. 22 requirements therefore risk leading to extended litigation aimed at companies in scope of the CS3D** in a context where no secure, recognized framework determines the expected conduct regarding transition planning and emission reduction. In turn, this could deter third-country undertakings from entering EU markets, therefore affecting the EU's global competitiveness and investment attractiveness.

We would also like to point out **existing inconsistencies as to the alignment with the transition plan requirements under the CSRD**. Paragraph 34(d) in *Disclosure Requirement E1-4* on *targets related to climate change mitigation and adaptation* requires GHG emission reduction targets to at least include values for 2030 and, if available, for the year 2050. It is also clarified that from 2030, target values shall be set every five-year period thereafter. This is different from the content requirement set out in Art. 22(a) of the CS3D, which requires the design of the transition plan to contain time-bound targets for 2030 and in five-year steps up to 2050.

As regards supervision, Art. 22(2) states that companies that report a transition plan in accordance with the CSRD are exempted from adopting a transition plan under the CS3D. However, the supervision of the 'design', understood as the content of the transition plan, under Art. 25 is contradictory with such equivalence clause. A company reporting a transition plan under the CSRD is already subject to assurance and verification requirements, therefore the supervision of the design under the CS3D would be overlapping. In any case, **assessing the compatibility of the plan with Paris Agreement and the EU climate objectives would raise serious concerns** as to how such requirements might be supervised in the absence of regulatory or generally accepted methodology for determining the compatibility of a company strategy with a given temperature goal.

If Article 22 is to be maintained in the final text, the elements mentioned above should be addressed to ensure the feasibility of the requirements:

- **The addition of "and implementing actions" should be removed, while retaining the deletion of "and put into effect"**.
- Considering the potential limitations from translating emission reduction objectives from the state to the company, as flagged in the ESRS, **transition plans under the CS3D should be required on a "reasonable efforts" basis**, which should also take into account the company's resilience and economic viability.

- CS3D provisions on transition plans should avoid prescribing divergent requirements and **ensure total alignment with the CSRD**.
- Companies reporting a transition plan under the CSRD and therefore exempt to adopt a transition plan under the CS3D should not be subject to transition plan-related supervision under the CS3D

Suspension of the business relationship (Articles 10 & 11)

Cefic agrees with the removal of the requirement to terminate a business relationship as a last resort measure as it raised concerns over supply access and the competitiveness of EU companies. However, concerns remain on the requirement to suspend a business relationship, which could have potential negative impacts for the company in case of limited suppliers, and for the EU competitiveness as it could hamper access to critical raw materials essential for the green transition. **The CS3D should therefore allow companies in scope more flexibility in this regard.**

In addition, the newly proposed Arts. 10 (6) and 11(7) establish that a company's liability will not be triggered if it continues engagement with a business partner (where the adverse impact could not be prevented or adequately mitigated) "as long as there is a reasonable expectation that the enhanced prevention action plan will succeed".

This provision implies that the liability of a company could be triggered under other circumstances, and also contains an implicit expectation for an unlimited suspension in situations where there is not a reasonable expectation a company's enhanced prevention action plan will succeed, which is similar to an obligation to terminate the business relationship. More clarity on the notion of "reasonable expectation" is therefore required.

On Articles 10 and 11, more clarity and guidance are required on the implementation of cascading contractual assurances, given the large number of company codes in complex value chains.

Civil liability (Article 29)

Cefic welcomes the proposed removal of the EU-wide specific civil liability regime in Article 29, especially the provisions in Article 29(3)(d) allowing representative actions, and the extraterritorial effect in Article 29(7).

However, we note how some elements remain, such as rules on limitation periods in Article 29(3)(a), on disclosure of evidence in Article 29(3)(e), on compliance with industry standards and use of independent verification in Article 29(4), and on joint and several liability in Article 29(5). This contradicts the goal of the proposals, which aim to account for the different legal systems in each Member State.

If said provisions are deemed to be retained in the text, they should be amended to address current implementation issues.

- The provision in Article 29(4) is especially concerning since it could be interpreted to disregard any efforts from companies participating in such industry or multi-stakeholder initiatives or using independent third-party verification or contractual clauses to support implementation of CS3D requirements, while these are strongly encouraged throughout the Directive. The provision in **Article 29(4) should therefore better reflect the consideration of such engagements when determining liability in accordance with national law.**

- As regards the provision in Article 29(5), **further clarification should be provided to properly account for the level of involvement of each entity in case of joint liability**, in order to ensure proportionality.

Substantiated concerns (Article 26)

Even though not addressed in the Commission's proposal, Cefic's considerations on the substantiated concerns mechanism being misused remain**. It should be clarified that substantiated concerns can only be submitted by or on behalf of a person whose protected legal interests have been infringed** as a consequence of breach by the company of its obligations under this Directive.

Amendments to the Corporate Sustainability Reporting Directive (CSRD)

Cefic supports the following changes to the CSRD:

- Removal of the requirement for reasonable assurance engagements and advancement of targeted assurance guidelines
- Removal of sector-specific ESRS
- Simplification of set 1 ESRS

However, some of the proposals require further work and additional issues need to be addressed to ensure meaningful simplification and burden reduction, as presented in the following sections.

Simplification of set 1 ESRS

Cefic looks forward to the announced simplification and clarification of the provisions and disclosures and datapoints included under the sector-agnostic ESRS. This exercise should i) identify and prioritise those disclosure requirements essential for sustainability information users, especially financial market participants and regulators, and those that are generally accepted industry-wide; ii) prioritise quantitative disclosure requirements; and iii) overall streamline the number of mandatory datapoints and their level of granularity (e.g. site-level information can be of limited use and comparability) while further differentiating voluntary ones to facilitate assurance processes.

In this context, we ask the Commission to ensure a proper due process, including involvement of industry practitioners during the simplification exercise of the first set of ESRS, which is expected to be carried out by EFRAG in a short period of time (i.e. deadline on 31 October 2025). As stated in Article 49 of the Accounting Directive, the Commission must take into consideration the technical advice from EFRAG as long as such advice has been developed with proper due process, public oversight and transparency, with the expertise and balanced participation of relevant stakeholders.

Overall, the experience of companies under the first wave of CSRD reporting and those wave 2 companies already preparing their reports will be essential to identify current implementation challenges and potential streamlining areas in the sector-agnostic ESRS.

Assurance requirements

Cefic welcomes the Commission's proposal on the removal of reasonable assurance engagements and the commitment to adopt targeted assurance guidelines by 2026. However, some companies are facing overly restrictive interpretations from their assurance providers, with auditors requesting an excessive amount of evidence. This can be linked to administrative fines and even criminal liability.

Assurance and audit-related sanctions should therefore not be enforced during the initial 3 years of CSRD implementation, until reporting practices become more harmonised and consistent and until expertise on sustainability reporting assurance becomes more available.

Value chain

Companies in the chemical industry are often part of global and complex value chains, with thousands of direct and indirect business partners covering from the sourcing of the raw material to the use of the end product. Obtaining information from business partners in jurisdictions where comprehensive environmental and social data is not regarded (e.g. emerging economies) is extremely challenging. Besides, ESRS 1 section 3.3 on double materiality clarifies that: "In identifying and assessing the impacts, risks and opportunities in the undertaking's value chain to determine their materiality, the undertaking shall focus on areas where impacts, risks and opportunities are deemed likely to arise, based on the nature of the activities, business relationships, geographies or other factors concerned". Companies in the chemical industry already use systemic risk assessments (e.g. Together for Sustainability) to determine high-risk suppliers and/or high-risk value chains.

The full value chain coverage required by the ESRS should be addressed, since this is one of the major burden sources for reporting undertakings. **The CSRD and the ESRS should further leverage the risk-based approach outlined in ESRS section 3.3.** Additionally, the ESRS could **streamline those disclosure requirements with a value chain perspective**. Companies should have more flexibility in this regard in order to reduce their reporting burden. The ESRS should better address any value chain data gathering challenges that companies may face, which could be not limited to the first three reporting exercises as stated in the transitional provision 10.2 in ESRS 1.

Additionally, for large companies with non-EU activities, the report will require data collection across multiple non-EU geographies. Some of this information is already available or could be collected with a reasonable effort. However, not all information is available, particularly for pollution. In general, the data required by the ESRS is based on European regulations, assuming that similar technical standards or capabilities exist in non-EU countries, which is not always the case and could lead to excessive costs for EU companies and their subsidiaries. Therefore, **introducing flexibility in data collection from non-EU countries (or new topics introduced after double materiality update), based on reasonable efforts for non-EU data is essential**. This flexibility should be based on reasonable efforts to gather non-EU data, allowing companies to make progress without incurring excessive costs. Articles 19a, 23(9) and 29a(1) should be amended.

Reporting boundaries

EFRAG's value chain implementation guidance clarifies that reporting boundaries are set according to the undertakings' "operational control". However, this is not in line with financial reporting (i.e. IFRS 11 – Joint arrangements) and may result in companies reporting information on assets over which they have no operational control.

Several companies have pointed out challenges in this regard during the first CSRD reporting cycle, especially from auditors requesting to include companies within groups that do not need to be considered in the annual financial statements. Such intra-group companies generally have an insignificant impact on the financial and sustainability performances, so the necessary costs and efforts for additional data collection are therefore potentially disproportionate to the expected benefit.

Following the financial consolidation method would improve the consistency of the information reported by companies. Some companies have also highlighted incompatible timings between the financial and the sustainability report, therefore conflicting with the obligation of including the sustainability statement withing the management report of the company. Companies have also raised data-gathering challenges in the context of recent business acquisitions; the ESRS could foresee a phased-in integration of such sites in the sustainability report.

Digital tagging

The omnibus proposal clarifies that companies should not be required to markup their sustainability reporting in the electronic reporting format until the respective rules are not adopted. Digital tagging is expected to be mandatory by 2026 (for 2025 information).

However, considering the simplification and burden reduction measures currently under discussion, including the 2-year postponement of reporting obligations for certain undertakings, **digital tagging requirements should be postponed accordingly until reporting practices are further developed and consistent. Companies should therefore be exempted from digital tagging obligations during their initial three reporting cycles under the CSRD.** At the initial stage of implementing ESRS requirements, digital tagging increases the reporting burden without enhancing data quality and comparability. The primary focus should be on streamlining and clarifying ESRS reporting requirements to ensure market data becomes comparable.

Indeed, the implementation of the XBRL taxonomy should be preceded by a thorough evaluation of the initial application of the ESRS by companies and an assessment of its potential benefits against its expected costs. In the meantime, AI-based tools already in place are currently supporting users in analysing and comparing sustainability-related information from companies. The postponement could be complemented with a phased-in implementation of the different levels of tagging regarding narrative disclosure requirements and datapoints. In time, digital tagging could avoid extensive data requests from ESG providers since companies' annual reports would be available in a standardised digitally readable format.

Confidentiality of information

Section 7.7 in ESRS 1 is directly quoting Art. 2 from the Trade Secret Directive in paragraph 106 conditions (a)-(c), which aligns more clearly with existing EU law than the previous draft from EFRAG. However, the text is still qualifying this to be limited to information "corresponding to intellectual property, know-how or the results of innovation", which is narrowing down the scope and excludes other commercially sensitive information protected by the Trade Secret Directive.

The quoted wording should therefore be deleted to **ensure consistency and alignment with the EU Trade Secret Directive**.

Some members also point out challenges when a value chain partner does not provide requested information alleging confidentiality concerns. Some examples of disclosure requirements that trigger confidentiality concerns are E1-3 Actions and resources in relation to climate change policies, E1-4 Targets for climate change mitigation and adaptation (i.e. companies disclosing scope 3 GHG emission targets both in absolute and intensity values), E1-5 – Energy consumption and mix, E2-3 – Targets related to pollution, G1-3 – Prevention and detection of corruption and bribery (for ongoing investigations).

Members also highlight confusion and unclarity when reporting confidential information, especially justifying its omission to auditors.

Additionally, the ESRS could provide for more flexibility in this regard, **following the approach in the GRI Standards**. GRI 1 includes “confidentiality constraints” as a permitted reason for omission, and the reporting undertaking is required to explain the reasons for such omission.

It should also be considered that **publication of detailed data on sites** required (including coordinates and types of processes performed at the sites) **could be subject to confidentiality, business competition, or trade secrets**.

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About Cefic
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On behalf of its members, Cefic’s experts share industry insights and trends, and offer views and input to the EU agenda. Cefic also provides members with services, like guidance and trainings on regulatory and technical matters, while also contributing to the advancement of scientific knowledge.