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DISABILITY INCLUSION IN THE EU:
A LEGAL ANALYSIS TO GUIDE CORPORATE RESPONSIBILITIES UNDER NEW EU DISABILITY INCLUSIVE LEGISLATION

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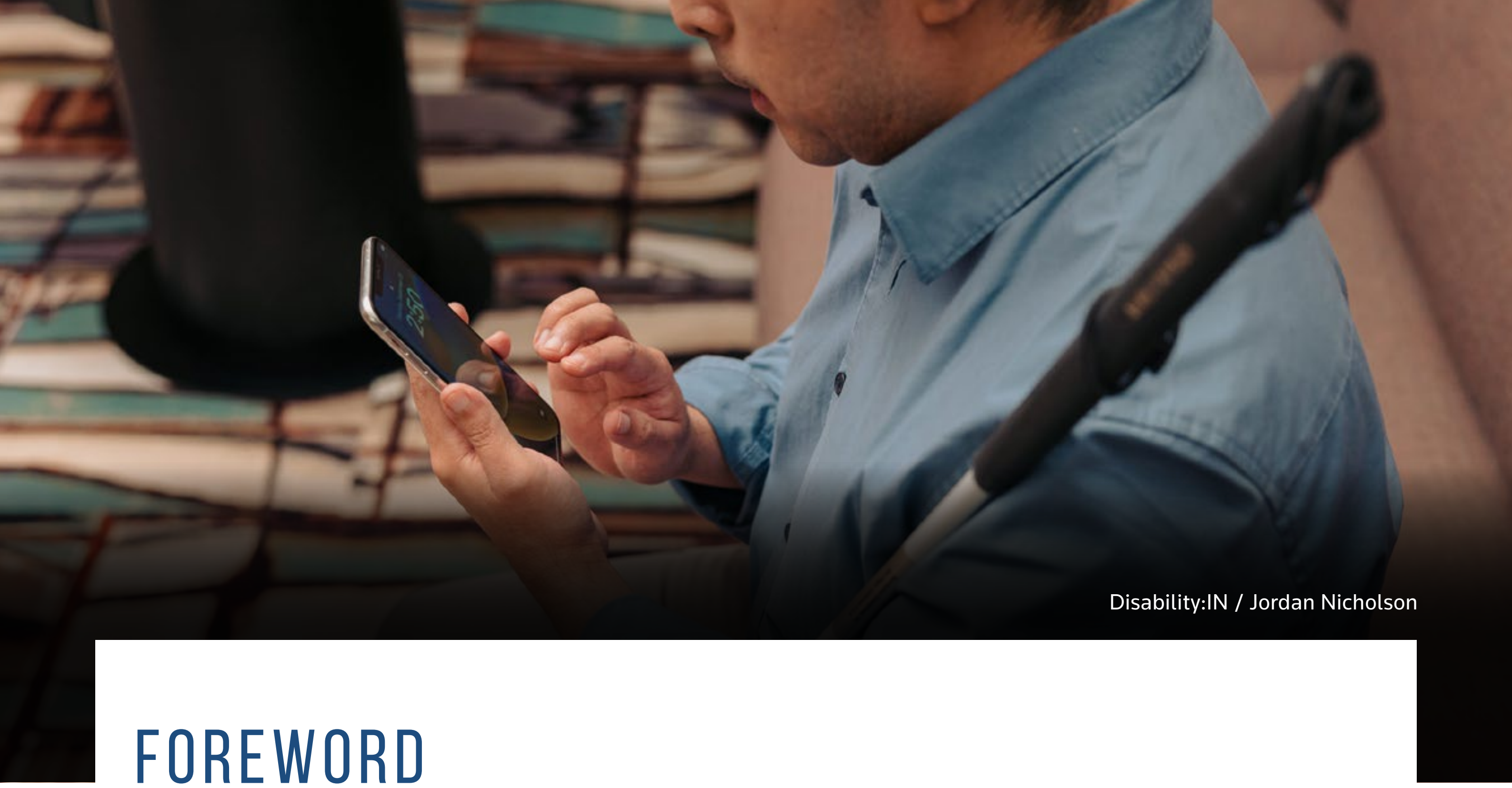

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FOREWORD

In recent years, disability has received increased attention in global discourse on corporate social responsibility and the economic inclusion of underrepresented populations. In response, the European Union (EU) has advanced several new directives to increase the economic participation of persons with disabilities. These directives are the European Accessibility Act (EAA), the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDDD). The concept of disability inclusion, defined herein, encompasses broad organizational initiatives designed to increase the inclusion of persons with disabilities with regard to employment, procurement, and consumer engagement.

This report provides a high-level overview of the EAA, CSRD, and CSDDD as they pertain to advancing the inclusion of persons with disabilities in business.[1] The purpose of this analysis is to provide multinational corporations with information regarding the requirements under these evolving statutes, enabling them to proactively prepare for their implementation.

It is essential to clarify what this report is not: it does not constitute legal advice, nor does it serve as a compliance guide. It does not delve into individual accountability mechanisms, as these aspects have yet to be developed at the national level within EU member states. Any reader seeking legal advice on the matters reviewed herein should consult with appropriate counsel.

Furthermore, it is important to note that the EU's robust legislative framework is subject to interpretation and application by individual EU Member States as they transpose these directives into national law. This means complexity is all but guaranteed as the EU's attempt to harmonize standards is implemented across diverse European contexts.

As the legislative landscape evolves, the EAA, CSRD, and CSDDD are set to enhance ongoing corporate initiatives, fostering equitable frameworks inclusive of persons with disabilities in the EU and beyond.

Jill Houghton,
President and CEO Disability:IN

1 National transposition tracker by EUR-lex, see here: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32022L2464

ABOUT DISABILITY:IN

Disability:IN is a global organization driving disability inclusion and equality in business. More than 550 corporations partner with Disability:IN to create long-term business and social impact through the world's most comprehensive disability inclusion benchmarking and reporting tool, the Disability Equality Index; best-in-class conferences and programs; expert counsel and engagement; and public policy leadership. Disability:IN's Supplier Diversity Program is the nation's recognized third-party certification program for disability-owned businesses, including businesses owned by service-disabled veterans. To learn more, visit http://disabilityin.org

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ACKNOWLEDGEMENTS & DISCLAIMER

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This report was completed on July 15, 2024, and does not account for subsequent developments. Analysis and conclusions reached in this report are not exhaustive and limited to the date of this report's completion.


REUTERS/ Yves Herman

EXECUTIVE SUMMARY:

This report analyzes corporate disclosure requirements concerning disability in the EU Corporate Sustainability Reporting Directive ("**CSRD**"), the EU Corporate Sustainability Due Diligence and Amending Directive ("**CSDDD**"), and the European Accessibility Act ("**EAA**"). All three directives contain guidelines, whether contained in accompanying reporting standards, national transposed legislation or otherwise, that encourage and in some cases mandate that companies disclose their actions and impacts of said actions on persons with disabilities in their supply chains. A summary of the key findings is set out below:

CSRD

- **Objective:** To promote transparency and accountability in corporate sustainability, specifically including the treatment and inclusion of persons with disabilities.
- **Key Obligations:**
  - Reporting Requirements: Companies must disclose information on the inclusion of persons with disabilities in their workforce. This includes policies related to non-discrimination, diversity, and inclusion.
  - Data Collection: Companies need to collect and report data on the percentage of employees with disabilities, their inclusion in leadership roles, and the measures taken to prevent discrimination.
  - Policy Implementation: Entities must outline their policies aimed at promoting equal opportunities and mitigating discrimination against persons with disabilities.
  - Accessibility in Reporting: The CSRD requires companies to ensure that sustainability reports are accessible to persons with disabilities, with an assessment report due to be issued by the European Commission ("**Commission**") by April 30, 2029.
- **Status:** Must be implemented by the EU Member States by July 6, 2024, with various deadlines up to 2028 depending on company size and turnover.

CSDDD

- **Objective:** To ensure that companies respect human rights and the environment throughout their supply chains, with a broad focus on human rights which indirectly impacts the treatment of persons with disabilities. However, the CSDDD does not include specific obligations explicitly targeting the treatment of persons with disabilities. Instead, the CSDDD focuses broadly on human rights and environmental due diligence, which can indirectly affect the rights and treatment of persons with disabilities.
- **Key Obligations:**
  - Human Rights Due Diligence: Companies must identify, prevent, and mitigate adverse human rights impacts, broadly defined to include issues that can affect persons with disabilities.
  - Non-Discrimination: The CSDDD emphasizes the prohibition of unequal treatment in employment, including equal remuneration and promotion opportunities, which implicitly supports the rights of persons with disabilities.
  - Risk Assessments: Companies are required to conduct thorough risk assessments that consider potential adverse impacts on all human rights, including those of persons with disabilities as part of broader human rights considerations.
  - Reporting: In-scope companies must publish annual statements on their websites detailing their due diligence practices and impacts on human rights, which can include impacts on persons with disabilities.
- **Status:** Must be implemented by the EU Member States by 2026, with phased application starting from 2027, with various deadlines up to 2029 depending on the company size and turnover.

EAA

- **Objective:** To improve the accessibility of products and services for persons with disabilities within the EU market.
- **Key Obligations:**
  - Product and Service Accessibility: Companies must ensure that their products and services meet specific accessibility requirements, making them usable by people with disabilities.
  - Compliance and CE Marking: Manufacturers must conduct conformity assessments and obtain CE marking to demonstrate compliance with accessibility standards.
  - Technical Documentation: Companies need to prepare and maintain technical documentation that evidences compliance with accessibility requirements.
  - Ongoing Monitoring: Once a product is on the market, companies must continuously monitor and ensure it remains compliant with accessibility standards.
  - Corrective Actions: In cases of non-compliance, companies must take corrective measures, including product withdrawal if necessary, and cooperate with market surveillance authorities.
- **Status:** Adopted by all EU Member States, except Bulgaria.

The CSRD, CSDDD, and EAA collectively establish a robust framework to enhance the inclusion and protection of persons with disabilities within the EU. Companies are required to implement comprehensive policies, conduct diligent risk assessments, and ensure product and service accessibility. By adhering to these directives, companies can contribute to a more inclusive and equitable business environment. Compliance will not only mitigate legal risks but also enhance corporate reputation and foster a more inclusive society.

Each chapter begins with a summary who the directives impact and when the directives came/will come into effect. This report further considers the application of each directive in example EU jurisdictions.

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CHAPTER 1. OVERVIEW OF THE CSRD, CSDDD AND EAA

1.1 CORPORATE SUSTAINABILITY REPORTING DIRECTIVE ("CSRD")

1.1.1 INTRODUCTION

On January 5, 2023, the CSRD entered into force, with the aim of facilitating the European Union's ("**EU**") green transition away from fossil fuels and reaching climate neutrality by 2050.[1] The CSRD requires in-scope companies to report on sustainability related issues in line with a detailed set of disclosure standards known as the European Sustainability Reporting Standards ("**ESRS**") developed by the European Financial Reporting Advisory Group ("**EFRAG**"). Information reported under the CSRD is subject to audits. The CSRD also requires in-scope entities to align their strategies and governance structures with international environmental and human rights treaties (such as the Paris Climate Agreement).[2]

1 Recital 1, Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

2 Chris McGarry et al., Corporate Sustainability Reporting: New EU rules for large companies and listed SMEs, White & Case, see here: https://www.whitecase.com/insight-alert/corporate-sustainability-reporting-new-eu-rules-large-companies-and-listed-smes

1.1.2 WHEN DOES THE CSRD GO INTO EFFECT?

Article 1 of the CSRD outlines the sustainability reporting requirements, and Article 5 of the CSRD sets deadlines for these reporting requirements as applicable to five categories of companies:

	IN-SCOPE ENTITIES	CRITERIA	IMPLEMENTATION DATE (REPORTING DUE FROM)
(1)	Large EU "public interest entities"[3]	Must be a large EU undertaking which (i) is a "public interest entity"; and (ii) has more than 500 employees during the financial year ("FY").	2025 for FY 2024
(2)	Large EU undertakings and EU parent undertakings of large groups	Must meet two of the following criteria (either as a single entity or on a consolidated group basis): • Balance sheet total: EUR 25 million; • Net turnover: EUR 50 million; and/or • Average number of employees during the FY: 250.	2026 for FY 2025
(3)	EU small and midsize enterprises ("SMEs") that are listed on EU regulated markets	Must (i) have securities listed on a regulated EU market; and (ii) meet two of these criteria: • Balance sheet total: EUR 5 million; • Net turnover: EUR 10 million; and/or • Average number of employees during the FY: 50.	2027 for FY 2026

3 The definition of "public interest undertaking" includes EU companies that are either: (i) listed on a regulated EU stock market; (ii) a specific form of financial services company; or (iii) have been specifically designated a public interest entity by their country of incorporation.

	IN-SCOPE ENTITIES	CRITERIA	IMPLEMENTATION DATE (REPORTING DUE FROM)
(4)	Non-EU parent company with: (i) an EU-established large subsidiary or a listed SME subsidiary; or (ii) a large EU branch	Meet the following criteria: • Net turnover of EUR 150 million in the EU for each of the last two consecutive financial years; and • At least one subsidiary or branch in the EU which: ° For a subsidiary: meets the criteria for categories (2) or (3) above; or ° For a branch: has a turnover of more than EUR 40 million.	2029 for FY 2028
(5)	Non-EU and EU issuers with debt or equity securities listed on an EU regulated market	Non-EU and EU issuers which are: (a) "large undertakings" with more than 500 employees; (b) "large undertakings"; or (c) SMEs.	(a) 2025 (for FY 2024) (b) 2026 (for FY 2025) (c) 2027 (for FY 2026)

1.1.3 MECHANISMS OF ENFORCEMENT

As an EU directive, the CSRD must be incorporated into the national laws of each EU Member State. EU Member States had until July 6, 2024, to transpose the CSRD into their national laws. France transposed the CSRD into its national laws on December 6, 2023, and Germany commenced the relevant legislative process in March 2024. An overview of EU Member States that have transposed the CSRD can be found on the official Eur-Lex website.[4]

Penalties for non-compliance with the CSRD should be "effective, proportionate and dissuasive"[5] For example, France's penalties for non-compliance include fines for various infringements up to EUR 75,000 and the additional threat of up to five years in prison for directors of in-scope entities.[6]

4 National transposition tracker by EUR-lex, see here: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32022L2464

5 Article 30 para. 2, Directive 2006/43/EC.

6 Mary Foley, France Introduces Possible Jail Time As Penalty For Non-Compliance With Sustainability Disclosure, Forbes, see here: https://www.forbes.com/sites/maryfoley/2023/12/21/france-introduces-possible-jail-time-as-penalty-for-non-compliance-with-sustainability-disclosure/?sh=7bcaddd034db.

1.2 CORPORATE SUSTAINABILITY DUE DILIGENCE AND AMENDING DIRECTIVE (EU) 2019/1937[7] ("CSDDD")

1.2.1 INTRODUCTION

The CSDDD aims to introduce mandatory human rights and the environment due diligence for large companies operating in the EU, in their operations, supply chains, and other business relationships.[8] The directive was formally adopted by the Council of the European Union ("EU Council") on May 24, 2024. The CSDDD was published in the Official Journal of the EU on July 5, 2024 and will enter into force on July 25, 2024.

1.2.2 WHO DOES THE CSDDD IMPACT?

The CSDDD is intended to apply to certain large companies operating within the EU, as well as to non-EU companies selling goods or providing services within the EU's market. It primarily targets companies with a significant presence in the EU that meet defined turnover and number of employees thresholds.

1. Company

The due diligence obligations set out in the CSDDD only apply to "**companies**", defined as a legal person taking one of the legal forms listed in Annex I and Annex II to Directive 2013/34/EU[9] of the European Parliament and of the EU Council. The Annexes list various legal forms including companies with limited liabilities, stock corporations and partnerships.

If a company is not constituted in accordance with the laws of an EU Member State but instead organized under the laws of a third country, the CSDDD may still apply if its form is comparable with the legal forms listed in the Annexes.[10]

2. Number of employees and net turnover

The CSDDD applies only to companies that meet specific criteria that relate to their number of employees and net turnover as set out in Article 2 of the CSDDD:

7 So-called Whistleblower Directive.

8 Recital 5, CSDDD.

9 So-called Accounting Directive.

10 Article 3, CSDDD.

	CATEGORY	CRITERIA
1.	Large EU companies	A large EU company which has (i) more than 1,000 employees, and (ii) a net worldwide turnover of more than EUR 450 million in the last financial year for which annual financial statements have been or should have been adopted ("**last financial year**"). However, if the company did not reach this threshold but is the ultimate parent company of a group that reaches the thresholds in the last financial year, the CSDDD shall also apply. Further, regardless of reaching the threshold, the CSDDD shall apply to companies that have entered into franchising or licensing agreements in the EU, where these agreements ensure a common identity, a common business concept and the application of uniform business methods. Additionally, it requires their royalties to amount to more than EUR 22.5 million in the last financial year and the company to generate a net turnover of more than EUR 80 million in the last financial year.
2.	Large third country companies	With regard to third country companies, the CSDDD shall also apply to companies which (i) are formed in accordance with the legislation of a third country, and (ii) had a net turnover of more than EUR 450 million in the EU in the financial year preceding the last financial year. If the company does not reach this threshold, the CSDDD shall still apply if the respective company is the ultimate parent company of a group that reaches the threshold. Further, regardless of reaching the threshold, the CSDDD shall apply to third country companies that have entered into franchising or licensing agreements in the EU, where these agreements ensure a common identity, a common business concept and the application of uniform business methods. Additionally, it requires the royalties to amount to more than EUR 22.5 million in the EU in the financial year preceding the last financial year and the company to generate a net turnover of more than EUR 80 million in the EU in the financial year preceding the last financial year.
3.	Financial Services	The CSDDD will temporarily exempt financial services from its scope. However, a review clause will be included to consider the potential inclusion of the financial downstream sector in the future, pending a thorough impact assessment.[11]

11 Council of the EU, Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights, see here: https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/

1.2.3 WHEN DOES THE CSDDD GO INTO EFFECT?

After approval of the Council on May 24, 2024, the CSDDD was published in the Official Journal of the European Union on July 5, 2024. The directive will become effective under EU law on July 25, 2024, and EU Member States are required to transpose the CSDDD into their national laws by July 26, 2026. While EU Member States will have the customary two years to adopt measures to transpose the directive into their national law, the phased application of the CSDDD will not be delayed by the transposition period. Application will follow a staggered approach based on the company's size[12] (see below Chapter 1:1.2.5). National authorities will be responsible for enforcing and implementing the directive in their respective jurisdictions.

1.2.4 WHAT WAS THE LEGISLATIVE PROCEDURE TO INTRODUCE THIS LAW?

The Commission presented a proposal for a directive on corporate sustainability due diligence to the European Parliament and the EU Council on February 23, 2022. On December 1, 2022, the EU Council adopted the Commission's general approach. A provisional agreement on the CSDDD was reached by the EU Council and the European Parliament on December 14, 2023, with the goal of strengthening environmental and human rights protection within the EU and worldwide.[13] Concerns were then expressed by, among others, Germany and Italy in early 2024, leading to a compromise text in March 2024 that modified the scope and application of the obligations. Members of the European Parliament voted in favor of the compromise text on April 24, 2024, and the Council approved the compromise text on May 24, 2024.

1.2.5 WHICH JURISDICTIONS HAVE ADOPTED THIS LAW?

The CSDDD stipulates that EU Member States must transpose the directive into national law within two years of its entry into force. The requirements of the CSDDD will have to be implemented gradually, starting in 2027 for EU companies with more than 5,000 employees and a net turnover of more than EUR 1,500 million, and starting in 2028 for EU companies with more than 3,000 employees and a net turnover of more than EUR 900 million. From 2029 on the CSDDD enters into force as regards all other in-scope companies, with EUR 450 million revenue and 1000 employees.[14]

1.2.6 WHAT PROBLEM DOES THE CSDDD SOLVE?

The CSDDD aims to address several issues related to corporate activities, particularly in global supply chains. The CSDDD aims to tackle the environmental impacts of corporate decisions by requiring companies to check and ameliorate the consequences of their activities on the environment, promoting

12 Article 37, CSDDD.

13 Council of the EU, Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights, see here: https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/

14 Article 30, CSDDD.

more eco-friendly practices. The CSDDD encourages companies to assess their exposure to human rights violations to stop these abuses by identifying, preventing, mitigating and remedying risks to human rights in their operations and supply chains.[15]

Overall, the CSDDD seeks to promote responsible business conduct, protect the environment, and uphold human rights by addressing the shortcomings of current corporate practices and promoting more sustainable and ethical behavior.

1.2.7 WHAT DOES CSDDD REQUIRE COMPANIES TO DO?

Companies covered by the CSDDD will be required to identify, prevent, mitigate, and account for the actual and potential adverse impacts of their operations and business relationships on human rights, the environment, and good governance by thorough assessment.

This includes evaluating their supply chains for risks such as forced labor, child labor, environmental pollution, and corruption. Further, the CSDDD requires companies to be transparent about their due diligence processes and the measures taken to address identified risks. They must report publicly on their sustainability efforts, enabling stakeholders to assess their performance and hold them accountable for their social and environmental impacts.[16]

The measures that companies must take to prevent, mitigate, and remediate adverse impacts include:[17]

(i) Implementing a prevention action plan when necessary.

(ii) Seeking contractual assurances from direct business partners.

(iii) Making any necessary investments.

(iv) Making any necessary modifications to business plans and strategies.

(v) Providing support to SME business partners where necessary.

(vi) Collaboration with other entities to prevent, mitigate, and remediate adverse impacts.

(vii) Neutralisation or minimisation of the adverse impact.

(viii) Providing remediation for impacts caused by companies. When the adverse impact is caused by a business partner, companies may provide voluntary remediation.

15 Council of the EU, Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights, see here: https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/.

16 Article 5, CSDDD.

17 Articles 10-12, CSDDD.

1.2.8 HOW IS THE CSDDD ENFORCED?

The CSDDD includes provisions for enforcement and penalties for non-compliance. EU Member States will be responsible for establishing effective mechanisms to ensure compliance with the CSDDD, and sanctions will be imposed on companies that fail to fulfill their due diligence obligations.

EU Member States will designate a supervisory authority to supervise and impose effective sanctions, including fines and compliance orders.[18] At the European level, the Commission will set up a European Network of Supervisory Authorities that will bring together representatives of the national bodies to ensure a coordinated approach.

EU Member States will implement rules on penalties, applicable to infringements of national provisions adopted pursuant to the CSDDD. These penalties should be effective, proportionate and dissuasive. Fines, determined by turnover, can reach a maximum of 5% of worldwide turnover.[19] Further, a system of "naming and shaming" must be implemented where the names of the sanctioned companies are to be published for at least five years and transmitted to the European Network of Supervisory Authorities..

Additionally, companies can be held liable for damage caused to a natural or legal person due to their failure to comply with the obligations under the CSDDD. EU Member States must create "reasonable conditions" for injured parties to authorize NGOs or other national human rights institutions to bring actions to enforce their rights. NGOs shall have the opportunity to submit complaints to company-owned complaint mechanisms focused on restitution, even if they are not directly affected.[20]

1.3 EUROPEAN ACCESSIBILITY ACT ("EAA")

1.3.1 INTRODUCTION

The EAA[21] is designed to enhance the functioning of the European internal market to promote accessible products and services, benefiting businesses, individuals with disabilities, and the elderly. This directive encompasses a range of products and services, including computers, ATMs/ticketing machines, telephone services, television broadcasts, banking services, e-books, and e-commerce.[22]

18 Article 24, CSDDD.

19 Council of the EU, Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights, see here.

20 Article 29, CSDDD.

21 Directive (EU) 2019/882 of the European Parliament and of the Council of April 17, 2019, on the accessibility requirements for products and services.

22 Article 2, EAA.

1.3.2 WHO DOES THE EAA IMPACT?

The EAA is primarily intended to benefit people with disabilities by making more accessible products available on the market at more competitive prices. It is also to be expected that more jobs will become available in which accessibility expertise is required. Additionally, businesses may benefit from the EAA, since there will be more market opportunities for accessible products and services, as well as easier and more cost effective cross-border trading.[23]

1.3.3 WHEN DOES THE EAA GO INTO EFFECT?

The directive came into force on April 17, 2019, but it applies only to products placed on the EU market after June 28, 2025.[24]

1.3.4 WHAT WAS THE LEGISLATIVE PROCEDURE TO INTRODUCE THIS LAW?

The EAA was enacted by the European Parliament and the EU Council at the proposal of the Commission.

1.3.5 WHAT JURISDICTIONS HAVE ADOPTED THE EAA?

The EAA is an EU directive that does not have direct effect in EU Member States. EU Member States must transpose the directives (such as the EAA) into their respective national legal systems.

The deadline to transpose the EAA into national law elapsed on June 28, 2022.[25]

All EU Member States, except Bulgaria, have transposed the EAA into their national laws.[26] Bulgaria is nevertheless obliged to enact corresponding laws for the enforcement of the directive and to apply them onwards from June 28, 2025.

1.3.6 WHAT PROBLEM DOES THE EAA SOLVE?

The EAA addresses issues of limited accessibility in the European internal market for various products and services. It aims to solve the challenges faced by businesses, individuals with disabilities, and the elderly in accessing essential services and products.[27] In this regard, the EAA aims to standardize the requirements for accessibility in the EU Member States to meet the high demand for accessible products and services.[28]

23 European Commission, Policies and activities, European Accessibility Act, see here.

24 Article 2 para. 1 and Article 31, EAA.

25 Article 31, EAA.

26 National transposition tracker by EUR-lex, see here: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32019L0882.

27 Recitals 1 to 4, EAA.

28 Recitals 5 to 10, EAA.

The accessibility requirements differ across the EU Member States, which leads to a fragmentation of the European internal market and therefore increase the burden on industry for making accessible products and services. Moreover, the demand for accessible products and services is already high and the number of EU citizens with disabilities is likely to increase with the ageing of the population.[29]

1.3.7 WHAT DOES THE EAA REQUIRE COMPANIES TO DO?

The EAA imposes obligations on manufacturers,[30] importers,[31] service providers[32] and distributors.[33] Companies are obliged to design and manufacture products and services in such a way that they can be used to the maximum by people with disabilities, for example by making them available to be used with more than one sensory organ or providing them with assistive technologies for barrier-free communication.

1. Manufacturers

The directive requires that manufacturers ensure their products meet specific accessibility requirements by carrying out a conformity assessment before being placed in the market. This includes preparing technical documentation,[34] conducting a conformity assessment, and if compliant, issuing an EU declaration of conformity and affixing the CE marking.[35] Additionally, manufacturers are required to retain this documentation for five years after the product has been placed on the market and continuously ensure that ongoing production remains compliant with the EAA, adapting to any changes in product design or relevant standards.

Products must have identifiable markers for tracking (or identification information on packaging or accompanying documents) and must display the manufacturer's contact details clearly. Instructions and safety information should be provided in a language easily understood by consumers and end-users.

In cases of non-compliance, manufacturers must take corrective actions (including possible withdrawal), inform national authorities, maintain a register of non-compliant products, and upon request, provide authorities with necessary documentation and cooperation to demonstrate conformity and address non-compliance issues.

29 Council of the European Union, Accessibility to products and services for people with a disability and older people, see: https://www.consilium.europa.eu/en/policies/accessibility-goods-services/.

30 Article 7, EAA.

31 Article 9, EAA.

32 Article 13, EAA.

33 Article 10, EAA.

34 As per Annex IV, EAA.

35 In accordance with Regulation (EC) No 765/2008 ("CE Mark Regulation"), by affixing the CE marking to a product, the manufacturer declares that the product is in conformity with all applicable accessibility requirements and that the manufacturer takes full responsibility therefor. The CE marking shall be subject to the general principles set out in Article 30, CE Mark Regulation.

2. Importers

Importers are required to ensure that only compliant products are placed on the market. Before doing so, they must verify that the manufacturer has completed the conformity assessment (see above), including the preparation of technical documentation, and affixing of the CE marking. Importers are also responsible for ensuring that products are accompanied by the necessary documents, and that the manufacturer had (i) included identifiable markers for tracking (or identification information on packaging or accompanying documents) and (ii) displayed the manufacturer's contact details clearly. If an importer believes a product does not meet the EAA's accessibility requirements, they must not place on the market the product until it is compliant and must inform both the manufacturer and market surveillance authorities.

Additionally, importers must display their name, trade name, or trademark, and contact address on the product, its packaging, or accompanying documents in a language understandable to end-users and authorities. They must also ensure that products come with easily understandable instructions and safety information in the language specified by the EU Member State. Importers are responsible for maintaining product compliance during storage and transport and must keep a copy of the EU declaration of conformity for five years, making technical documentation available to authorities upon request.

In cases where a marketed product is found non-compliant, importers must take corrective measures (including possible withdrawal), inform national authorities, maintain a register of non-compliant products, and cooperate with authorities to address any non-compliance issues.

3. Distributors

Distributors are required to exercise "due care" in compliance with the EAA when placing products on the market. This includes verifying that each product has the CE marking, is accompanied by necessary documents, instructions, and safety information in a language understandable to consumers in the EU Member State where the product will be available. They must also ensure that the manufacturer had (i) included identifiable markers for tracking (or identification information on packaging or accompanying documents) and (ii) displayed the manufacturer's contact details clearly. They must also ensure that the importer had indicated their name, trade name, or trademark, and contact address on the product, its packaging, or accompanying documents in a language understandable to end-users and authorities. If a distributor suspects that a product does not meet the EAA's accessibility requirements, they are obliged not to place on the market the product until it is compliant, and they must inform the manufacturer or importer and market surveillance authorities about the non-compliance. Additionally, distributors are responsible for maintaining the compliance of products during storage and transport.

In cases of non-compliance, distributors must take corrective actions (including possible withdrawal), inform national authorities, maintain a register of non-compliant products, and upon request, provide authorities with necessary documentation and cooperation to demonstrate conformity and address non-compliance issues.

4. Service Providers

Service providers must prepare and publicly provide information, in both written and oral formats including accessible options for persons with disabilities, detailing how their services meet these requirements[36]. This information must be maintained for the duration of the service's operation. Additionally, service providers must implement procedures to ensure ongoing conformity with the EAA, considering any changes in service characteristics, accessibility requirements, and relevant standards or technical specifications.

In instances of non-conformity, service providers are required to take corrective actions to align their services with the EAA's accessibility requirements. If a service fails to comply, the service provider must promptly inform the competent national authorities, providing specific details about the non-compliance and the corrective measures taken. Moreover, service providers must respond to requests from competent authorities by providing all necessary information to demonstrate the service's compliance and collaborate with these authorities in any actions required to address non-compliance issues.

1.3.8 HOW IS THE EAA ENFORCED?

Each individual EU Member State must implement adequate and effective means to ensure compliance with the EAA. Therefore, the enforcement of the EAA may vary from one jurisdiction to another. In this regard, national market surveillance authorities inspect the products and services. In the event of non-compliance with the accessibility requirements, the EAA establishes measures, prohibiting the product or restricting its availability on the market.

The EU Member States shall also specify penalties for infringements. In Germany, for example, non-compliance can result in a fine of up to EUR 100,000.[37] In Spain, non-compliance can result in measures to restrict or prohibit the placing on the market of the product or to ensure that it is withdrawn from the market.[38]

36 As per Annex V, EAA.

37 Section 37 para. 2, Accessibility Reinforcement Act (Barrierefreiheitsstärkungsgesetz, BFSG).

38 Article 22 para. 4, Ley 11/2023 of May 8, 2023.

Disability:IN / Jordan Nicholson

CHAPTER 2. QUESTIONS CONCERNING THE IMPACT OF THE CSRD, CSDDD, AND EAA

2.1 CSRD

2.1.1 HOW DOES THE CSRD IMPACT THE WAY COMPANIES ACCOUNT FOR DISABILITY (IN THE WORKFORCE, IN CORPORATE GOVERNANCE)?

Prior to the implementation of the ESRS as drafted by EFRAG (as defined in Chapter 1:1.1.1), there was no common definition of a person with disabilities or rule for how all in-scope entities under the CSRD should account for disability. Each EU Member State has or will have its own guidelines once the CSRD is transposed into the national laws, which will mean that each company's reporting requirements under the CSRD will vary from one EU Member State to another.[39] However, at a broader EU level, the CSRD provides a general guide on how companies should interact with disability.

39 Please note that the collection and further processing of personal data (i.e., any information relating to an identified or identifiable natural person) must comply with the applicable data protection legislation, notably the EU General Data Protection Regulation ("GDPR"). Under the GDPR, personal data concerning health is a "special category of data," which can only be processed on the basis of strictly limited legal grounds. In the present context, this means that unless the collection and further processing of personal data concerning disabilities for purposes of reporting under the CSRD is specifically authorized by a national law implementing the CSRD, such collection and further processing will require the explicit consent of the affected individuals under the GDPR. In particular, consent must be given freely and on an informed basis. As an alternative, in-scope entities could consider collecting and reporting on disability data on a fully anonymous basis (e.g., through an anonymous survey) that does not (directly or indirectly) reveal any information relating to an identified or identifiable natural person. See also https://www.efrag.org/sites/default/files/sites/webpublishing/SiteAssets/ESRS%20S1%20Delegated-act-2023-5303-annex-1_en.pdf

The CSRD specifically includes the following references to disability:

- Sustainability reporting standards should specify information including the human rights and standards established under the UN Convention on the Rights of Persons with Disabilities and the definition of persons with disabilities mentioned therein.[40] The ESRS defines "persons with disabilities" as persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

- Disability-related sustainability standards should specify information on accountability measures taken by in-scope entities.[41]

- Disability should be a factor that is considered in diversity policies of the entity's administrative, management and supervisory bodies.[42]

- Sustainability reporting standards should specify the information that entities need to disclose for the equal treatment[43] and opportunities for all, including the employment and inclusion of persons with disabilities.[44]

- The Commission should assess as part of a report due by April 30, 2029, whether and how to ensure the accessibility for persons with disabilities to the sustainability reports published by in-scope entities.[45]

In-scope entities under the CSRD are required to report on their existing practices, or outline a plan to put in place practices, for the inclusion of persons with disabilities and other marginalized groups. This reporting requirement is subject to a double materiality threshold, meaning that each in-scope entity must report on impact materiality (covering information on an entity's impact on sustainability matters) and financial materiality (covering information about risks and opportunities for entities resulting from sustainability matters).

While the CSRD reporting standards on disability do not create a legal obligation for in-scope entities to change operational habits, there is an element of accountability obliging transparency in reporting existing practices. The list above on the references to disability within the CSRD can provide a framework for the business areas that companies should be working on in terms of disability as the increased transparency will allow stakeholders to hold companies accountable.

40 Recital 49 and Article 29b, CSRD.

41 Recital 49 and Article 29b, CSRD.

42 Article 20 para. 1, Directive 2013/34/EU.

43 "Equal treatment" is addressed in COMMISSION DELEGATED REGULATION (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202302772#d1e3467-3-1: The principle of equal treatment is a general principle of European law which presupposes that comparable situations or parties in comparable situations are treated in the same way. In the context of ESRS S1, the term "equal treatment" also refers to the principle of non-discrimination, according to which there shall be no direct or indirect discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

44 Article 29b, CSRD.

45 Recital 81 and Article 6, CSRD.

2.1.2 WHAT IS THE MECHANISM FOR REPORTING ON DISABILITY?

The CSRD requires that sustainability standards specify information on accountability measures taken by in-scope entities, including in relation to disability.[46] An in-scope company will be required to explain how data is collected on the following topics:[47]

- Diversity within the leadership of the company;
- The percentage of employees with disabilities;
- An outline of the company's policies on eliminating discrimination and advancing diversity and inclusion with a specific focus on whether disability is covered in these policies;
- Positive impacts of actions for end-users that improve accessibility for persons with disabilities;
- Whether or not employees are covered by social protection against the loss of income after acquiring a disability;
- How the company gains (or intends to gain) insight into the perspective of its workers who may be vulnerable to impacts of actions taken by the company in relation to disability or may be marginalized;
- Examples of action for diversity within the company;
- An optional addition includes whether the entity has or plans to have adjustments to the physical environment to ensure health and safety for all end-users with disabilities.

2.1.3 WHAT ARE THE SPECIFIC STANDARDS THAT AFFECT DISABILITY?

In addition to the general guidance on interactions with disability contained in the CSRD, the ESRS, as drafted by the EFRAG, addresses persons with disabilities in ESRS S1, ESRS S2, and ESRS S4. Importantly, there are disclosure requirements under the ESRS that apply to employees of the in-scope company as well as requirements relating to non-employees and workers in its value chain.

46 European Disability Forum, Companies in the EU will have to report on disability inclusion, European Disability Forum (Feb. 23, 2024, 3:47pm), https://www.edf-feph.org/companies-in-the-eu-will-have-to-report-on-disability-inclusion/

47 European Disability Forum, Companies in the EU will have to report on disability inclusion, European Disability Forum (Feb. 23, 2024, 3:47pm), https://www.edf-feph.org/companies-in-the-eu-will-have-to-report-on-disability-inclusion/

1. ESRS S1-1 – Policies related to own workforce

i. *24. The undertaking shall disclose:*

(a) *whether it has specific policies aimed at the elimination of discrimination, including harassment, promoting equal opportunities[48] and other ways to advance diversity and inclusion;*

(b) *whether the following grounds for discrimination are specifically covered in the policy: racial and ethnic origin, colour, sex, sexual orientation, gender identity, disability, age, religion, political opinion, national extraction or social origin, or other forms of discrimination covered by Union regulation and national law;*

(c) *whether the undertaking has specific policy commitments related to inclusion or positive action for people from groups at particular risk of vulnerability in its own workforce and, if so, what these commitments are; and*

(d) *whether and how these policies are implemented through specific procedures to ensure discrimination is prevented, mitigated and acted upon once detected, as well as to advance diversity and inclusion in general.*

2. ESRS S1-2 – Processes for engaging with own workforce and workers' representatives about impacts

i. *28. Where applicable, the undertaking shall disclose the steps it takes to gain insight into the perspectives of people in its own workforce who may be particularly vulnerable to impacts and/or marginalised (for example, women, migrants, people with disabilities).*

ii. *29. If the undertaking cannot disclose the above required information because it has not adopted a general process to engage with its own workforce, it shall disclose this to be the case. It may disclose a timeframe in which it aims to have such a process in place.*

3. ESRS S1-11 – Social Protection

i. *74. The undertaking shall disclose whether all its employees are covered by social protection, […] against loss of income due to […] (a) sickness; […] (c) employment injury and acquired disability […].*

ii. *76. The undertaking may also disclose the information specified in this disclosure requirement with regard to non-employees in its workforce.*

48 The term "equal opportunities" is defined as "Equal and non-discriminatory access, among individuals, to opportunities for education, training, employment, career development and the exercise of power without their being disadvantaged on the basis of criteria such as gender, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation." See COMMISSION DELEGATED REGULATION (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards: L_202302772EN.000101.fmx.xml (europa.eu).

4. ESRS S1-12 – Persons with Disabilities

i. *77. The undertaking shall disclose the percentage of its own employees with disabilities.*

ii. *78. The objective of this Disclosure Requirement is to enable an understanding of the extent to which persons with disabilities are included among the undertaking's employees.*

iii. *79. The undertaking shall disclose the percentage of persons with disabilities amongst its employees subject to legal restrictions on the collection of data.*

iv. *80. The undertaking may disclose the percentage of employees with disabilities with a breakdown by gender.*

5. ESRS S1-13 – Training and skills development metrics

i. *81. The undertaking shall disclose the extent to which training and skills development is provided to its employees.*

ii. *82. The objective of this Disclosure Requirement is to enable an understanding of the training and skills development-related activities that have been offered to employees, within the context of continuous professional growth, to upgrade employees' skills and facilitate continued employability.*

iii. *85. The undertaking may also disclose the information specified in this disclosure requirement with regard to non-employees in its workforce.*

6. ESRS S1-17 – Incidents, complaints and severe human rights impacts

i. *100. The undertaking shall disclose the number of work-related incidents*[49] *and/or complaints and severe human rights*[50] *impacts within its own workforce, and any related material fines, sanctions or compensation for the reporting period.*

ii. *102. The disclosure required by paragraph 100 shall include, subject to the relevant privacy regulations, work-related incidents of discrimination on the grounds of gender, racial or ethnic origin, nationality, religion or belief, disability, age, sexual orientation, or other relevant forms of discrimination involving internal and/or external stakeholders across operations in the reporting period. This includes incidents of harassment as a specific form of discrimination.*

49 The reach of the term "work-related incidents" includes disclosure of the status of incidents and/or complaints and actions taken with reference to the following: (a) incidents reviewed by the undertaking; (b) remediation plans being implemented; (c) remediation plans that have been implemented, with results reviewed through routine internal management review processes; and (d) incidents no longer subject to action.

50 Severe human rights incidents include instances of lawsuits, formal complaints through the undertaking or third-party complaint mechanisms, serious allegations in public reports or the media, where these are connected to the undertaking's own workforce, and the fact of the incidents is not disputed by the undertaking, as well as any other severe impacts of which the undertaking is aware.

i. 103. The undertaking shall disclose (a) the total number of incidents of discrimination, including harassment, reported in the reporting period […].

ii. 104. The undertaking shall disclose the following information regarding identified cases of severe human rights incidents (e.g., forced labour, human trafficking or child labour):

(a) the number of severe human rights incidents connected to the undertaking's workforce in the reporting period, including an indication of how many of these are cases of nonrespect of the UN Guiding Principles on Business and Human Rights, ILO Declaration on Fundamental Principles and Rights at Work or OECD Guidelines for Multinational Enterprises. If no such incidents have occurred, the undertaking shall state this; and

(b) the total amount of fines, penalties and compensation for damages for the incidents described in (a) above, and a reconciliation of the monetary amounts disclosed in the most relevant amount in the financial statements.

7. ESRS S2-2 – Processes for engaging with value chain workers about impacts

i. 23. Where applicable, the undertaking shall disclose the steps it takes to gain insight into the perspectives of workers that may be particularly vulnerable to impacts and/or marginalised (for example, women workers, migrant workers, workers with disabilities).

8. ESRS 2 SBM-3 – Material impacts, risk and opportunities and their interaction with strategy and business model

i. 10. When fulfilling the requirements of paragraph 48[51], the undertaking shall disclose whether all consumers and/or end-users who are likely to be materially impacted by the undertaking, including impacts connected with the undertaking's own operations and value chain, including through its products or services, as well as through its business relationships, are included in the scope of its disclosure under ESRS 2. In addition, the undertaking shall disclose the following information: […] (c) in the case of material positive impacts, a brief description of the activities that result in the positive impacts (for example, product design that improves its accessibility for persons with disabilities) and the types of consumers and/or end-users that are positively affected or could be positively affected; the undertaking may also disclose whether the positive impacts occur in specific countries or regions […].

51 Disclosure Requirement SBM-3 with regard to material impacts, risks and opportunities and their interaction with strategy and business model: 48. The undertaking shall disclose: (a) a brief description of its material impacts, risks and opportunities resulting from its materiality assessment […], including a description of where in its business model, its own operations and its upstream and downstream value chain these material impacts, risks and opportunities are concentrated; (b) the current and anticipated effects of its material impacts, risks and opportunities on its business model, value chain, strategy and decision-making, and how it has responded or plans to respond to these effects, including any changes it has made or plans to make to its strategy or business model as part of its actions to address particular material impacts or risks, or to pursue particular material opportunities; (c) with reference to the undertaking's material impacts: i. how the undertaking's material negative and positive impacts affect (or, in the case of potential impacts, are likely to affect) people or the environment; […].

9. ESRS S4-2 – Processes for engaging with consumers and end users about impacts

i. *21. Where applicable, the undertaking shall disclose the steps it takes to gain insight into the perspectives of consumers and/or end-users that may be particularly vulnerable to impacts and/or marginalised (for example, people with disabilities, children, etc.)*

10. ESRS S4-5 – Targets related to managing material negative impacts, advancing positive impacts, and managing material risks and opportunities

i. *AR 44. The undertaking may also distinguish between short, medium and long-term targets covering the same policy commitment. For example, the undertaking may have as a main objective to make its online services accessible to people with disabilities, with the long-term goal of having adapted 100% of its online services by 2025, and with the short-term objective of adding x number of accessible features every year up and until 2025.*

11. ESRS GOV-1 – The role of the administrative, management and supervisory bodies

i. *19. The undertaking shall disclose the composition of the administrative, management and supervisory bodies, their roles and responsibilities and access to expertise and skills with regard to sustainability matters.*

ii. *21. The undertaking shall disclose the following information about the composition and diversity of the members of the undertaking's administrative, management and supervisory bodies: [...] (d) percentage by gender and other aspects of diversity that the undertaking considers. [...]*

2.1.4 CSRD AND ESRS IMPLEMENTATION IN FRANCE AND GERMANY

This section examines the implementation of the CSRD and ESRS standards in France and Germany, the two leading economies of the European **Single Market**. France completed implementation late last year, while in Germany the legislative process commenced in early March 2024.

1. Implementation in France

The CSRD was transposed into French law through Ordinance No. 2023-1142, dated December 6, 2023, which relates to the "publication and certification of sustainability information and environmental, social and corporate governance obligations of commercial companies".

This ordinance was in turn ratified by decree no. 2023-1394, dated December 30, 2023, and by two additional rulings, dated December 28, 2023, which (i) amend the French Commercial Code on its provisions relating to auditors and their duties, and (ii) implement a grandfathering clause applicable to auditors that already have performed non-financial reporting audits.

The aforementioned ordinance and rulings allow for direct application of the standards set forth in ESRS S1-11. These standards have been adopted by a delegated regulation and are therefore directly applicable in French law.

2. Implementation in Germany

Germany is currently in process of implementing the CSRD and the associated ESRS standards into national law.

As of early March 2024, a ministerial draft of an implementing law was published for comment by legislators and economic stakeholders, and is expected to be passed over the summer. The draft foresees amendments to the German Commercial Code (Handelsgesetzbuch), the Limited Liability Companies Act (Gesetz betreffend die Gesellschaften mit beschränkter Haftung) and the German Stock Corporation Act (Aktiengesetz), and certain ancillary laws that would embed the reporting obligations under the CSRD and the ESRS into the annual accounts of German companies, while providing several exceptions for SMEs.

The ESRS reporting obligations themselves are expected to be transposed into German law with essentially the same scope as in their corresponding EU Regulation. However, the proposed legislation is not yet final and may be amended in the coming months. The CSRD stipulates "only" reporting obligations, and the current draft transposition act does not envisage any direct amendments to Germany's healthcare laws.

2.2 CSDDD

Currently, it is difficult to predict how the CSDDD will be implemented in EU Member States. EU Member States must adopt and publish the regulations to comply with the directive within two years from its entry into force, which is expected in 2024. EU directives are only binding as to their objectives but leave the means and form of implementation to EU Member States. The provided answers in this chapter, therefore, depend on the specific implementation of the CSDDD by each EU Member State.

The impact of the CSDDD on persons with disabilities is uncertain. As explained above in Chapter 1:1.2.5, the CSDDD will be implemented gradually and will affect in-scope companies starting from 2027. Therefore, the following information is subject to change and is not exhaustive.

2.2.1 HOW DOES THE CSDDD AFFECT THE WAYS COMPANIES INTERACT WITH DISABILITY? HOW IS DISABILITY IMPLICATED IN THE "HUMAN RIGHTS" STATUTE OF CSDDD? ARE THERE ENUMERATED "HUMAN RIGHTS VIOLATIONS" OR "RISKS" THAT ARE SPECIFIC TO DISABILITY?

1. Direct impact

The direct impact of the CSDDD on the ways companies interact with disability is limited. Article 5 of the CSDDD requires companies to conduct risk-based human rights and environmental due diligence as laid down in Articles 7 through 16 of the CSDDD. Essentially, companies must:

- Identify and assess actual and potential adverse impacts arising from their own operations or those of their subsidiaries and, when related to their chains of activities, those of their business partners;[52]
- Prevent potential adverse impacts;[53]
- Bring actual adverse impacts to an end;[54]
- Remedy actual adverse impacts.[55]

These due diligence obligations require adverse impacts. Article 3 para. 1 lit. d) of the CSDDD defines adverse impact as an adverse environmental impact and adverse human rights impact. Adverse human rights impact means an abuse of one of the human rights listed in the Annex, Part I Section 1, or included in the human rights instruments in Section 2 of the CSDDD, if additional requirements are met.[56] The following human rights may – if interpreted broadly – have a direct impact on persons with disabilities:

52 Article 8, CSDDD.

53 Article 10, CSDDD.

54 Article 11, CSDDD.

55 Article 12, CSDDD.

56 Article 3 para. 1 lit. c), CSDDD.

HUMAN RIGHT	POTENTIAL INTERACTION WITH DISABILITY
The right to enjoy just and favorable conditions of work (Annex Part 1 Section 1 no. 6 of the CSDDD)	i. Fair wages and equal renumeration without distinction of any kind for employees with disabilities. ii. Equal opportunity for employees with disabilities to be promoted in his/her employment to an appropriate higher level.
The prohibition of unequal treatment in employment (Annex Part 1 Section 1 no. 14 of the CSDDD)	i. Prohibition of payment of unequal remuneration to employees with disabilities for work of equal value. The CSDDD does not define what exactly is meant by "work of equal value". When relating to the prohibition of unequal treatment in employment the CSDDD refers to the International Labor Organization Equal Remuneration Convention, 1951 (No. 100), the International Labor Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the International Covenant on Economic, Social and Cultural Rights. However, none of these conventions contains any further explanation of the work of equal value. The International Covenant on Economic, Social and Cultural Rights merely states in Article 7 lit. a) i) that equal pay shall be granted for equal work, without specifying the requirements for equality. In the absence of European legislation, it is therefore up to national legislators or courts to define this term more precisely. ii. Prohibition of the discrimination on grounds of disability. Although the term "disability" is not literally specifically mentioned in Annex 1 Part 1 Section 1 no. 14 of the CSDDD, this interpretation could be derived from recital 33 of the CSDDD, which refers to the Convention on the Rights of Persons with Disabilities as an additional due diligence standard for companies.

2. Indirect impact

The indirect impact of the CSDDD on persons with disabilities could be multifaceted, and may include changes to companies' accessibility standards, inclusive employment practices, and supply chains. Recital 33 of the CSDDD states that companies should take additional standards into account as part of their risk-based human rights and environmental due diligence and refers to the Convention on the Rights of Persons with Disabilities. This is the only place in the CSDDD where explicit reference is made to disabilities. While the recitals are not operative, binding provisions, they do serve to interpret the directive.

Article 27 of the Convention on the Rights of Persons with Disabilities, which regulates the treatment of persons with disabilities in the workplace in general by – inter alia – prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment and protecting the rights of persons with disabilities, on an equal basis, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value, may be particularly relevant in this context. However, also the Convention on the Rights of Persons with Disabilities similarly does not provide a clear definition of the term "work of equal value". Accordingly, the CSDDD may indirectly influence corporate behavior with regard to persons with disabilities in several ways:

i. Accessibility Standards

The directive may encourage companies to consider accessibility standards in their operations and supply chains. This could lead to improved accessibility of products, services, and workplaces for persons with disabilities.

ii. Inclusive Employment Practices

Companies conducting due diligence may prioritize inclusive employment practices, including hiring, training, and accommodating employees with disabilities. This could create more opportunities for individuals with disabilities to participate in the workforce.

iii. Supply Chain Impacts

The directive's requirements for responsible sourcing and supply chain management could indirectly benefit persons with disabilities by promoting fair labor practices and avoiding exploitative working conditions, which may disproportionately affect vulnerable groups, including workers with disabilities.

2.2.2 DOES THE CSDDD REQUIRE COMPANIES TO PUBLICLY REPORT ON DISABILITY, IF SO HOW (BOARD, WORKFORCE, INCIDENTS, BENEFITS, ETC.)?

Article 16 para. 1 of the CSDDD requires companies to report on the matters covered by the CSDDD by publishing an annual statement on their website, no later than 12 months after the balance sheet date of the financial year for which the statement is drawn up. This duty shall not apply to companies that are subject to sustainability reporting requirements in accordance with the CSRD[57] to avoid duplicating the reporting obligations.[58] In this context, the CSRD is to be regarded as having priority over the CSDDD. Only if not subject to the reporting obligations under Articles 19a and 29a or 40a of Directive 2013/34/EU must the company report in accordance with the CSDDD.[59] With regard to the scope of application of the CSRD, please refer to Chapter 1:1.1.2 above. By March 31, 2027, the Commission must adopt further specifications regarding legal acts to specify the content and criteria of the CSDDD reporting.[60]

57 Article 16 para. 2, CSDDD.

58 Recital 62, CSDDD.

59 Example: A fictional company has 2,000 employees and generates a net turnover of EUR 500 million. As a result of meeting these criteria, the company is subject to both the CSRD and the CSDDD. However, the company is only obliged to report in accordance with the requirements of the CSRD and relieved from a potential double reporting under the CSDDD.

60 Article 16 para. 3, CSDDD.

From January 1, 2029, companies must simultaneously submit the annual statement to a collection body to be designated by the EU Member States to make the information accessible to the European Single Access Point, an instrument for companies' financial and sustainable investment-related information made public pursuant to EU legislation.[61]

2.2.3 WHAT ARE THE DISABILITY ACCOUNTABILITY MECHANISMS THESE LAWS IMPLEMENT AROUND DISABILITY (QUOTAS, FINES, ETC.)?

At the current stage, accountability mechanisms are only found in the CSDDD itself and have not been implemented in the national laws of EU Member States.

If national provisions adopted pursuant to the CSDDD that protect the human rights of persons with disabilities are infringed, companies will face penalties, including pecuniary penalties according to Article 27 para. 1 of the CSDDD. The imposition of penalties requires due account of various factors, such as – inter alia – the nature, gravity and duration of the infringement and the severity of the impacts resulting from the infringement.

When pecuniary penalties are imposed, they shall be based on the company's net worldwide turnover. According to Article 27 para. 4 of the CSDDD the *"maximum limit of pecuniary penalties shall be not less than 5% of the net worldwide turnover of the company in the financial year preceding that of the decision to impose the fine"*. Further, a system of "naming and shaming" must be implemented where the names of the sanctioned companies are to be published for at least five years and transmitted to the European Network of Supervisory Authorities.

2.2.4 CIVIL LIABILITY OF COMPANIES

EU Member States shall ensure that a company can be held liable for damages caused to a natural or legal person if the company intentionally or negligently failed to comply with the obligations laid down in Articles 10 (Preventing potential adverse impacts) and 11 (Bringing actual adverse impacts to an end) of the CSDDD, when the right, prohibition or obligation listed in the Annex is aimed to protect the natural or legal person. Further, a company cannot be held liable if the damage was only caused by its business partners.[62] Article 29 para. 2 of the CSDDD provides that where a company has been held liable, a natural or legal person shall have the right to full compensation for the damage occurred in accordance with national law (which still must be implemented). However, full compensation under the CSDDD shall not lead to overcompensation, whether by means of punitive, multiple, or other types of damages.[63]

61 Article 17, CSDDD.

62 Article 29 para. 1, CSDDD.

63 Article 29 para. 2, CSDDD.

2.3 EUROPEAN ACCESSIBILITY ACT (EAA)

In contrast to the currently unclear status of the CSDDD, the EAA has already been implemented in all EU Member States except Bulgaria (see also in Chapter 1:1.3.5 above) and must be implemented by all EU Member States by June 28, 2025. Also, the EAA relies on existing EU compliance mechanisms to implement its accessibility requirements for products and services in the Single Market.[64] The effect of this legislation on economic actors in the Single Market can therefore be predicted with greater certainty, even if the full suite of accessibility requirements is not yet in force in all EU Member States (see also Chapter 1:1.3.5 above).

2.3.1 HOW DOES THE EAA AFFECT THE WAYS COMPANIES INTERACT WITH DISABILITY?

As summarized above in Chapter 1:1.3.7, the accessibility requirements for products and services under the EAA are primarily concerned with the characteristics of products and services offered in the Single Market and their relation to disability.

The EAA and its national implementation laws do not create a new compliance or governance landscape for Single Market participants. Rather, they introduce an additional set of requirements that services and products must meet. These requirements are implemented through pre-existing compliance mechanisms for products and services in the Single Market.[65]

These pre-existing mechanisms are divided into three main areas of applicability, each summarized in more detail below:

(1) Bringing a product or service into the Single Market;

(2) Continually offering a product or service in the Single Market;

(3) Resolving any non-compliance and complaints.

Each of the above phases of a product or service lifecycle in the Single Market is covered by defined compliance mechanisms under the EAA, including, in sequence of the phases, initial licensing, ongoing monitoring and resolution of any non-compliance. None of the mechanisms for ensuring compliance with accessibility standards in any of the abovementioned phases are unique to the EAA and should therefore not be unfamiliar to market participants.

These mechanisms simply add the dimension of "accessibility" to the existing requirements that products and services must already meet when entering or being offered in the EU relating to e.g.,

64 Article 18 para. 3, EAA.

65 Articles 16 to 18, EAA.

health and safety, environmental impact, waste, and hazardous substances. Correspondingly, under the EAA (at least in the countries that have already transposed its requirements into national law) every manufacturer, importer or distributor must take into account the accessibility of their product or service to persons with disabilities when achieving and monitoring their regulatory compliance.

In practice, the main area of applicability is for products that must be declared to conform with EU regulations, including accessibility requirements, when they are first introduced to the Single Market.

2.3.2 BRINGING A PRODUCT INTO THE SINGLE MARKET

1. CE Mark and applicability within the scope of the EAA

A central mechanism with which the compliance of products offered in the Single Market is ensured is the European Certificate of Conformity (so-called "CE Mark").[66]

With the words of the relevant EU-Regulation, "the CE marking, indicating the conformity of a product, is the visible consequence of a whole process comprising conformity assessment in a broad sense".[67] The CE Mark shows that a given product meets all requirements applicable in the Single Market.[68]

Article 7 para. 2 of the EAA states:

> *Where compliance of a product with the applicable accessibility requirements has been demonstrated by that procedure, manufacturers shall draw up an EU declaration of conformity and affix the CE marking.*

The obligations concerning bringing products into the Single Market mainly apply to manufacturers and importers under the rules of the EAA (see also above Chapter 1:1.3.7).[69]

The accessibility requirements that must be met before a CE Mark may be attached to a product are extensive and published as an Annex to the EAA.[70]

2. Obtaining an EAA-conform CE-Certification

Generally, obtaining the right to attach a CE Mark to a product is subject to the completion of at least the following requirements:

(1) Conducting a conformity assessment of the product or service;

66 Annex II, CE Mark Regulation.

67 Recital 37, CE Mark Regulation.

68 Article 30 para. 3, CE Mark Regulation.

69 The process for obtaining a CE Mark is not contained in the EAA, rather the regulation states that the general principles of obtaining a CE Mark shall apply. See Article 17, EAA.

70 Annex 1, EAA.

(2) Preparing technical documentation describing and evidencing conformity of the product or service;

(3) Issuing a declaration of conformity.

In practice, steps (i) and (ii) are conducted together, as the technical documentation is usually prepared in connection with the conformity assessment and later serves as the required demonstration of the assessed conformity.

The EAA gives guidelines on conducting the conformity assessment in its Annexes II (for products) and III (for services).[71] Pursuant to Annex IV, Article 2, the technical documentation for products shall at a minimum contain:

> *"(a) a general description of the product and*
>
> *(b) a list of the harmonised standards […] and descriptions of the solutions adopted to meet the relevant accessibility requirements referred to in Article 4 where those harmonised standards have not been applied […]"*

Should the conformity assessment determine that a product is not compliant with accessibility requirements, the product may not enter the Single Market and a new conformity assessment must be conducted following remedial changes to the product.

Once the conformity assessment has yielded a positive result and the technical documentation demonstrates compliance with the accessibility requirements of the EAA, the manufacturer may issue a declaration of conformity of the product. The basic form of the declaration of conformity is not governed by the EAA, but by the general regulation on declarations of conformity for products in the Single Market.[72] By publishing the EU declaration of conformity, the manufacturer assumes responsibility for the compliance of the product with the EAA.[73] In practice, as explained above, the conformity assessment and the declaration of conformity for a product will relate to various requirements, accessibility being one of them.

Once the above steps have been completed, manufacturers may affix a CE Mark to each product that satisfies the accessibility requirements and for which a declaration of conformity has been issued.

3. Practical implications

Since the general principles for obtaining CE Marks apply within the scope of the EAA, the process for demonstrating conformity with accessibility requirements of a product is no different than for requirements related to, e.g., health and safety or environmental impact. Consequently, the processes should be familiar to market participants in the Single Market.

While primarily, the manufacturer of a product is responsible for obtaining a CE Mark, any importer to the Single Market is required to ensure that the manufacturer of the imported product has complied with the

71 See also Annex IV, Articles 1 and 2, EAA.

72 Article 16 para. 2, EAA. The EU declaration of conformity shall have the model structure set out in Annex III to Decision No 768/2008/EC.

73 Article 16 para. 4, EAA.

CE Mark process and obtained a CE Mark for the product.[74] In practice therefore, importers to the Single Market cooperate with manufacturers in obtaining the required CE Mark. Annex II Article 5 sets out that a manufacturer may have their reporting obligations fulfilled by an authorized representative on their behalf.

As described above in Chapter 1:1.3.7 above, distributors must ensure that a product has a CE Mark before placing it on the market and otherwise use due diligence to ensure that both manufacturer and importer have complied with their obligations. Consequently, making the CE Mark subject to conformity with accessibility requirements provides consumers with an easy measure of whether a product complies with accessibility standards.

2.3.3 OFFERING AND MAINTAINING A PRODUCT IN THE SINGLE MARKET

Once a manufacturer or its representative has demonstrated conformity with the EAA's accessibility requirements and attached a CE Mark, the product is subject to ongoing monitoring and reporting obligations. These obligations also apply to services.

The prepared technical documentation and conformity declarations are subject to document retention periods of at least five years.[75] While the product is on the market, the manufacturer is obligated to ensure that procedures are installed so that series production remains in conformity with the EAA.[76]

The national laws of the EU Member States that transpose the EAA into national regulation each are required to appoint and authorize a market supervisory body to ensure adequate and effective means to ensure compliance.[77]

Manufacturers are required to report to the relevant supervisory body of each EU Member State in which a product has been brought to the market if they become aware that one of their products is or has become non-compliant with the accessibility requirements.[78] When making such a notification, manufacturers are also required to state which measures they have or will enact to ensure conformity in future. Manufacturers are required to maintain records of all such notices.[79] The supervisory body may also request technical documents and information from the manufacturer to ensure that a given product conforms to the accessibility requirements.

The above also applies to distributors with the modification that they are not responsible for enacting measures to ensure conformity of products but must nevertheless notify the supervisory body of any non-compliance they become aware of.[80]

Aside from the requirement that market participants report non-compliance, the supervisory authorities may also proactively monitor compliance of products themselves and conduct spot checks. In addition, consumers and consumer bodies may make complaints to supervisory authorities relating to alleged non-compliance of certain products.[81]

74 Article 9 para. 2, EAA.

75 Article 7 para. 3, Article 9 para. 7, EAA.

76 Article 7 para. 4, EAA.

77 Article 29 para. 1 and 2, EAA.

78 Article 7 para. 8, EAA.

79 Article 7 para. 8, EAA.

80 Article 10 para. 5, EAA.

81 Article 29 para. 2, EAA.

2.3.4 RESOLVING NON-CONFORMITY AND PENALTIES

Should a supervisory body find that a product is non-compliant, manufacturers are obligated to work with the supervisory body to adjust the product or service to make it compliant.[82] In the interim, importers and distributors may not bring the non-compliant product into or distribute it in the Single Market.[83]

EU Member States shall also specify fines for infringements. The fines are not defined in the EAA itself and are left up to the discretion of each EU Member State. The EAA only stipulates that these should be effective, proportionate, and dissuasive.[84] This is due to the economic differences between EU Member States and is a common practice for EU-legislation. The result is a varied landscape of potential penalties across the countries that have already implemented the EAA, as outlined below for some exemplary jurisdictions:

JURISDICTION	PENALTY
DENMARK	Fine in an unspecified amount[85]
FRANCE	Fine of up to EUR 100,000 that can be increased to up to EUR 1,000,000.00 in case of recidivism *plus* restriction of placing or keeping product on market[86]
GERMANY	Fine of up to EUR 100,000 *plus* restriction of placing or keeping product on market[87]
IRELAND	Fine of EUR 5,000 *or* EUR 60,000 depending on type of breach and up to 18 months imprisonment[88]
ITALY	Fine of between EUR 2,500 and EUR 40,000 in several brackets depending on the type of accessibility requirement that has been breached[89]
SPAIN	Fine of up to EUR 1,000,000 *plus* restriction of placing or keeping product on market[90]

82 Article 7 para. 8 and 9, EAA.

83 Article 9 para. 1 and Article 10 para. 3, EAA.

84 Article 30 para. 2, EAA.

85 § 57 Lov om tilgængelighedskrav for produkter og tjenester and Chapter 5 of the Danish Criminal Code.

86 Article 451-4-II of Decree No. 2023-931 and Article 132-13 and Article 131-39 French Criminal Code.

87 § 37 para. 1 and 2 and § 23 para. 2 and 3, Barrierefreiheitsstärkungsgesetz.

88 Article 32 para. 6(a) and (b), S.I No. 636/2023.

89 Article 24 para. 1 Decreto Legislativo 27 maggio 2022.

90 Article 30, Ley 11/2023 of May 8, 2023. Article 83, Ley General de derechos de las personas con discapacidad y de su inclusión social, aprobado por el Real Decreto Legislativo 1/2013, of November 29.

In addition to the enforcement of conformity through the supervisory body, the national laws transposing the EAA into the laws of EU Member States generally contain checks and balances on the decisions of such supervisory body. For example, in Germany, if the supervisory authority determines that a product is compliant, but a consumer body (e.g., a consumer protection association or interest group) assesses that this determination is incorrect, the consumer body may bring legal action against the decision of the supervisory authority.[91]

2.3.5 OFFICE ENVIRONMENT PRODUCTS UNDER THE EAA

Please see below an overview of the key types of products that are likely covered under the EAA, especially those relevant to office environments:

1. **Office Equipment and Devices:**

- Computers and peripheral devices (printers, scanners, etc.) that include accessibility features such as screen readers to assist those with visual impairments or ensuring that buttons to be pressed do not require much force so that persons who have motor impairments can use them.
- Telecommunication devices designed to be used with hearing aids, and those providing real-time text functionality and high-fidelity audio for clearer communication.

2. **Software and Digital Interfaces:**

- Office software that supports alternative input and output methods, including compatibility with assistive technologies[92] like screen readers and Braille displays.
- Websites and mobile applications used for office work, which must be perceivable,[93] operable,[94] understandable,[95] and robust.[96]

91 § 33, Barrierefreiheitsstärkungsgesetz.

92 'Assistive technology' means any item, piece of equipment, service or product system including software that is used to increase, maintain, substitute, or improve functional capabilities of persons with disabilities or for, alleviation and compensation of impairments, activity limitations or participation restrictions.

93 This means that information and user interface components must be presentable to users in ways they can discern (perceive).

94 This means that user interface components and navigation must be functional (operable).

95 This means that the information and the operation of the user interface must be clear (understandable).

96 This means the content must be stable (robust) enough to be interpreted reliably by a wide variety of user agents, including assistive technologies.

3. Documentation and Signage:

- Printed and digital documents (such as reports, presentations, and manuals) that are accessible, incorporating clear fonts, adequate contrast, and compatibility with screen readers.
- Signage around the office that includes Braille and high contrast to assist those with visual impairments.

4. Office Furniture:

- Ergonomically designed furniture that accommodates a range of physical disabilities, including adjustable desks and chairs, accessible filing systems, and office supplies.
- Lighting and environmental controls that are easily accessible, including alternative controls for individuals with limited reach or strength.

5. Emergency and Safety Equipment:

- Safety and emergency information that is accessible, including alarms with visual and audible signals and emergency instructions that are available through more than one sensory channel.

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CHAPTER 3. WHEN DO COMPANIES NEED TO START CHANGING THEIR BEHAVIOR AND PROVIDING RESULTS?

3.1 CSRD

As mentioned in Chapter 1:1.1.1, the CSRD came into force on January 5, 2023. EU Member States must transpose the CSRD into their national laws until July 6, 2024. The following timeline illustrates when in-scope companies subject to the CSRD as outlined in Chapter 1 need to start collecting data and producing sustainability reports:

YEAR	ACTION / COMPANIES AFFECTED
2023	The CSRD was published in the Official Journal of the European Union and entered into force on January 5, 2023.

YEAR	ACTION / COMPANIES AFFECTED
2024	In-scope companies with over 500 employees that are already subject to the non-financial reporting directive ("**NFRD**") are subject to the reporting requirements of the CSRD with the first report on financial year 2024 due in 2025. The deadline for transposition into national law expires July 6, 2024. By this time, EU Member States must have transposed the CSRD into their national laws.
2025	In-scope entities that are not subject to the NFRD, and are Large EU undertakings and EU parent undertakings of large groups that meet two of the following criteria (either as a single entity or on a consolidated group basis): • Balance sheet total: EUR 25 million; • Net turnover: EUR 50 million; and/or • Number of employees: 250. Are subject to the reporting requirements of the CSRD with the first report on financial year 2025 due in 2026.
2026	Sector specific standards under the ESRS (as defined in Chapter 1:1.1.1) to be finalized by June 30, 2026. In-scope entities that are not subject to the NFRD, and are EU SMEs that are listed on EU regulated markets that meet two of these criteria: • Balance sheet total: EUR 5 million; • Net turnover: EUR 10 million; and/or • Number of employees: 50. Are subject to the reporting requirements of the CSRD with the first report on financial year 2026 due in 2027.

2028	In-scope entities that are not subject to the NFRD, and are a Non-EU parent company with: (i) an EU-established large subsidiary or a listed SME subsidiary; or (ii) a large EU branch that meet the following criteria:
	
	• Net turnover of EUR 150 million in the EU for each of the last two consecutive financial years; and
	• At least one subsidiary or branch in the EU which:
	    • For a subsidiary: meets the criteria for categories (2) or (3) above[97]; or
	    • For a branch: has a turnover of more than EUR 40 million.
	
	Are subject to the reporting requirements of the CSRD with the first report on financial year 2028 due in 2029.

97 See above Chapter 1:1.1.2.

3.2 CSDDD

Once the CSDDD enters into force, the directive must be transposed into the national laws of the EU Member States within the applicable transposition period of two years.[98] As stated above in Chapter 1:1.3.6, EU Member States shall gradually apply those provisions in accordance with the CSDDD.[99] However, as noted in Chapter 1:2.2.2, there is no obligation under the CSDDD to publish an annual statement, if a company is subject to sustainability reporting requirements in accordance with the CSRD. In this context, the CSRD is to be regarded as having priority over the CSDDD.

The following timeline illustrates when companies – assuming they meet the below stated thresholds – must begin to conduct risk-based human rights and environmental due diligence,[100] publish the reports on the matters covered by the CSDDD[101] and align their behavior with the CSDDD. Nevertheless, companies are free to comply with the obligations arising from the CSDDD at an earlier date.[102]

YEAR	ACTION / COMPANIES AFFECTED
2024	The CSDDD was published in the Official Journal of the European Union and will enter into force on July 25, 2024 (20 days after its publication on July 5, 2024). EU Member States are required to transpose the CSDDD into their national laws until July 26, 2026.[103]
2026	The deadline for transposition into national law expires on July 26, 2026. By this time, EU Member States must have transposed the CSDDD into their national laws.

98 Article 37 para. 1, CSDDD.

99 Article 37 para. 1, CSDDD.

100 Regarding the individual due diligence obligations of companies, see above in Chapter 1:1.2.7.

101 Regarding the CSDDD's timeline for the annual report on the matters covered by the CSDDD pursuant to Article 16 and 17 of the CSDDD, see above in Chapter 2:2.2.2.

102 When the German Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz, **LkSG**) had been adopted in June 2021, companies already started preparing to comply with the new legal requirements even though the obligations under the LkSG did not apply until January 2023.

103 Article 37 para. 1, CSDDD.

YEAR	ACTION / COMPANIES AFFECTED
2027	National laws (transposing the CSDDD) apply to EU companies with • more than 5,000 employees, and • more than EUR 1,500 million in net turnover. National laws (transposing the CSDDD) apply to third country companies with • more than EUR 1,500 million in net turnover. The obligation to publish an annual statement on company websites regarding the matters covered by the CSDDD shall apply to in-scope companies for the financial years starting on or after January 1, 2028.
2028	National laws (transposing the CSDDD) apply to EU companies with • more than 3,000 employees, and • more than EUR 900 million in net turnover National laws (transposing the CSDDD) apply to third country companies with • more than EUR 900 million in net turnover. The obligation to publish an annual statement on company websites regarding the matters covered by the CSDDD shall apply to in-scope companies for the financial years starting on or after January 1, 2029.
2029	National laws (transposing the CSDDD) apply to all companies within the scope of the CSDDD as described above in Chapter 1:1.2.2, meaning that EU companies with • more than 1,000 employees, and • more than EUR 450 million in net turnover are affected by the national laws which have been passed because of the CSDDD. From this point on national laws (transposing the CSDDD) also apply to third country companies with more than EUR 450 million in net turnover.

3.3 EAA

The EAA came into force on April 17, 2019, but it only applies to products placed on the EU market after June 28, 2025.[104]

Even though Bulgaria has not transposed the EAA into their national laws yet,[105] it is nevertheless obliged to enact corresponding laws for the enforcement of the directive and to apply them onwards from June 28, 2025.[106]

YEAR	ACTION / COMPANIES AFFECTED
2019	The EAA was published in the Official Journal of the European Union and entered into force on April 17, 2019.
2022	The deadline for transposition into national law elapsed on June 28, 2022. By this time, EU Member States must have had transposed the CSDDD into their national laws.
2025	All EU Member States are obliged to enact corresponding laws for the enforcement of the directive and to apply them from June 28, 2025.

104 Article 2 para. 1, and Article 31, EAA.

105 The deadline to transpose the EAA into national law elapsed on June 28, 2022.

106 Except for the obligation to establish the "112" as the emergency number for emergency communications, which should be applied no later than June 28, 2027. See Article 31 para. 3, EAA.

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