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European

Corporate

Insights

The EU Supply Chain Act

07
23

Malta

Own legislation

✗ No.

Typically, Malta transposes EU Directives into Maltese Law after their formal publication.

Local initiatives with the same objective

✗ No.

There are no local initiatives or national regulations that cover the same scope as the EU Supply Chain Act.

Scope

Although there are currently no such similar regulations in place, it is not expected that a significant number of Maltese companies would ultimately **meet the applicability thresholds set out in the current proposal,** i.e.:

- 500+ employees on average, with a net turnover of more than €150 million in the last financial year
- 250+ employees on average, with a net turnover of more than €40 million in the last financial year, provided at least 50 per cent of this turnover was generated in a high-risk sector, which include textiles, clothing, mineral extraction, agriculture, forestry, fishing, or metal manufacturing.

Duties applicable to companies

While there is currently no such similar legislation yet in place in Malta, companies that fall within the scope of the CS3D will have a corporate due diligence duty to identify, prevent, end, mitigate and report on adverse human rights and environmental impacts in their own operations, their subsidiaries and their supply chains.

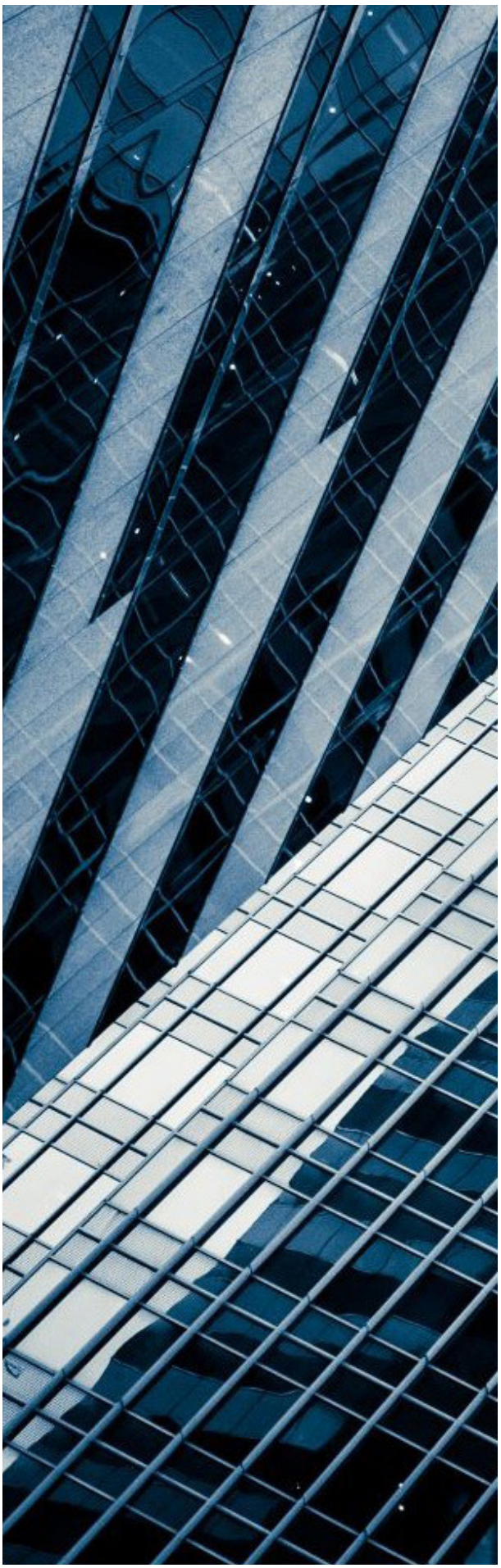
Implications for SMEs

Small and medium-sized enterprises (SMEs) are not directly within the scope of this proposal. Therefore, unless the Maltese Legislator gold-plates the transposition of the Directive, SME's shall not be directly impacted.

This is highly unlikely as the local business community has already voiced their concerns over the lack of certainty as to how the CS3D will be implemented in Malta. In fact, the Maltese Chamber of Commerce, which is the main local body representing local businesses, has released

a *statement* indicating that more clarity is needed for local businesses to understand the implications of the Directive once it is transposed and implemented.

Directors are expected to be fully aware of their responsibility to ensure that their organizations have robust due diligence processes in place to identify, stop, prevent, mitigate and report on any negative impacts on human rights and the environment in their own operations, subsidiaries and supply chains.



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Introduction

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The Context

The draft European Supply Chain Act (or CS3D) requires European Union ("EU") companies to carefully manage social and environmental impacts along their entire supply chain, including direct and indirect suppliers, their own operations, and their products and services. The objective is to ensure compliance with applicable human rights and environmental standards to promote a fairer and more sustainable global economy and responsible corporate governance. Introducing the draft, EU Justice Commissioner Didier Reynders said: "Only companies that do not harm the environment and fully respect human rights should operate in the EU".

The draft was adopted by the European Council in December 2022. The next step is to negotiate on final text of the Directive in a so-called trialogue between the EU Council, the EU Parliament and the EU Commission. Once adopted, the EU member states have two years to transpose the directive into their law. Jurisdictions with their own laws, such as Germany, where the new German Supply Chain Act came into force in January 2023, will have to revise and tighten their legislation.

Who is concerned?

- European companies and organizations from other jurisdictions operating in the EU with 500 or more employees and a global yearly turnover of at least €150 million fall within the scope of the draft CS3D. This affects around 9,400 companies.
- For high-risk sectors, where the risk potential for both humans and the environment is particularly high, the draft Directive is expected to apply to organizations with at least 250 employees and a global yearly turnover of €40 million. These include the textile and leather industries, agriculture and forestry, fisheries and mining. A two-year transition period applies to these sectors. Approximately 3,500 companies are affected.
- Even non-EU-based companies with a global yearly turnover of EUR 150 million out of which at least EUR 40 million must have been achieved within the EU are in scope.
- Small and medium-sized enterprises (SMEs) do not fall within the scope of the draft Directive, but are indirectly impacted by it as suppliers of larger companies subject to the Directive.
- The following legal entities are to be covered: public limited companies, private limited companies, limited lability companies, regulated financial companies and insurance companies.

Main differences between local laws and the Council's General Approach

The main differences lie in the scope of application with regard to the gradually decreasing number of employees and in the civil liability of companies, which is currently not part of German law.

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What's "**News**" in...

Belgium

- Seeds of Law published the e-book relating to the new contract law in Belgium, that came into force on 1 January 2023. The doctrine of hardship or unforseeability is one of the major innovations of the new contract law. The theory of hardship allows the revision of the contract in the event of the occurrence of new circumstances, subsequent to the conclusion of the contract, which are not attributable to the party relying on it, and if these circumstances have had a disrupting effect on the economy of the contract.

- In acquisition contracts, the hardship doctrine has long been applied through the so-called "material adverse change (mac) clauses". While mac clauses may remain useful, Belgian law has now a legal basis to rely on in case of substantial changes of conditions, even the contract does not include any hardship clause.

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- A basic banking service for businesses has been published together with its implementing decree. As a result, businesses will now have guaranteed access to a bank account and will in principle no longer be denied participation in payment transactions.

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- **Complying with accounting formalities is necessary to avoid directors' liability**

Directors can be held liable when their company goes bankrupt, except when the bankrupt company is a small business. But, the Belgian Supreme Court ruled recently that small companies are only immune from this directors' liability if they comply with the accounting formalities.

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- Seeds of Law notes that ESG legislation is moving more and more from soft law to hard law.

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Bosnia and Herzegovina

On February 3, 202, the Law on Amendments to the Law on Companies entered into force, and the same was published in the Official Gazette no. 17/23 on February 22, 2023. In fact, the primary text of the Law was adopted even in 2008, and ever since then there was a need to elaborate certain provisions additionally, as well as to regulate new institutes of commercial law.

Below is an overview of the most significant amendments to the Law on Companies.

- **Share capital of a limited-liability company**

In connection with the share capital, the minimum amount of the same remained unchanged (1.00 BAM) but the changes concern the situation when several persons establish a limited-liability company, then the minimum financial part for each founder cannot be less than 1.00 BAM per founder.

The other change regarding the share capital refers to the case when the monetary part of the share capital of a limited-liability company is equal to or exceeding the amount of 5,000.00 BAM, and then at least half of that amount is paid into a temporary account until the registration of the company, and the rest is paid according to the deadlines for the payment of monetary contributions that are determined by the Articles of Incorporation and no later than within two years from the date of registration.

- **Registration of shares in the Central Register of Securities**

One of the novelties, the implementation of which will likely attract the most attention, is the provision regulating the possibility to register shares of a limited-liability company in the Central Register of Securities. With this amendment, shares registered in the Central Register of Securities acquire the status of securities and are freely transferable. This novelty will introduce numerous other changes and alternative possibilities, such as the possibility to entrust the management of the Book of Shares to the Central Register of Securities, as well as to trade shares registered in the Central Register of Securities on the stock exchange or other regulated market in accordance with the applicable rules. Therefore, the regulations regulating the securities market are accordingly applied to the keeping of the Share Register at the Central Register and to the issuing of relevant reports. If the shares are registered in the Central Register, the principle of constitutive registration in the Central Register will be applied, which implies that all rights and obligations are acquired from the date of entry in the Central Register, regardless of the date of entry in the Register of Business Entities. Given that this type of registration was introduced as a possibility and not as an obligation, time will prove whether businessmen will use this possibility in practice and what advantages the same might provide.

- **Assembly of a limited-liability company**

More significant changes have also been made to the provisions concerning the company's Assembly, i.e., in the case where the sole member of a limited-liability company is a legal entity, then the Articles of Incorporation can determine the body of that legal entity that performs the function of the Assembly, and if the Articles of Incorporation does not include such a provision, it is assumed that the role will be performed by the registered representative of that company. In addition, there is no longer a need to draw up minutes from the Assembly, but only to enter the decision in the Book of Decisions.

In addition, significant changes in connection with the company's Assembly concern the majority required for decision-making, so these changes abandon the previous regulations, which for: amendments related to the Articles of Incorporation and Contract of the Members of the Company, increase and decrease of the share capital (except for additional contributions of members in accordance with the Articles of Incorporation or Contract of the Members of the Company), status changes, change of legal form and termination of the company, distribution of profits to the members of the company, acquisition of the company's own shares, disposal of the company's assets of high value, etc.

acquired the consent of all members of the company, but now new legal solutions on the above-mentioned matters can be decided by a two-thirds majority of the members' votes (unless internal documents otherwise specified).

- **Resignation and expulsion of a member of the company**

The provisions regulating the resignation and expulsion of a member of the company have been elaborated in a more detailed manner with these amendments, and a member of the company who has no outstanding obligations towards the company and does not seek compensation for his/her share, may at any time, based on a statement of resignation submitted to the company, withdraw from the company without mentioning reasons. The share of a member of the company who withdrew from the company becomes the own share of the company even without making a decision on acquiring own share. In addition, it also regulates the resignation of a member for a justified reason, the resignation procedure itself, as well as the resignation for a justified reason by a court decision i.e. when a member of the company files a lawsuit against the company to the competent court and demands the termination of the status of a member of the company due to the existence of a justified reason and demands the payment of compensation for his/her share. In addition, the provisions on the expulsion of a member of the company by the decision of the company's Assembly, i.e., the decision of the court, as well as the compensation for the share of the excluded member are now regulated in more detailed manner and the dilemmas that arose in practice on this occasion have been eliminated.

- **Selling price of shares**

Until now, the selling price of shares could be set at a lower amount compared to its nominal value. The new amendments stipulate that the selling price cannot be lower than the nominal value of the share, except in cases where the book value of the share is lower than the nominal value, provided that the selling price of the shares cannot be lower than the book value of the share, then in the case of the sale of ordinary shares in the process of exercising the right of pre-emption of existing shareholders' shares or selling shares to a stock broker for their resale (in the process of takeover), whereby the sale value of the shares cannot be lower than the market value, unless the market value is lower than the book value, in which case, the book value of the share is applied. The exception equally applies to the issuance of shares in case of reorganization of a company.

When it comes to determining the market price, in addition to the previously established conditions for determining the market value of shares (weighted average price on the stock exchange or other regulated market, in the period of six months before the day of making the decision on determining the market value of shares, if during that period the volume of that class share trading on the securities market represented at least 3% of the total number of issued shares of that class and that in at least three months the realized trading volume amounted to at least 1% of the total number of issued shares of that class on a monthly basis) as amended by the Law on Companies introduced is the third condition, which is that it was traded on more than one-third of the days in which trading was possible on a monthly basis.

There are different views on this change, and the most common criticisms are that by prescribing the provision that the selling price cannot be lower than the nominal price, it may lead to a reduced interest in financing the development of joint stock companies through the issue of shares, and in general to a decrease in interest in buying shares at the higher price than the market price.

- **Dividend distribution**

By amending the Law on Companies, the Shareholders' Assembly can make a decision that up to 20% of undistributed profits can be distributed to employees of the company, in the manner and according to the criteria that will be beforehand determined by the Articles of Incorporation, i.e. Articles of Association. The decision on the distribution of profits in this way is made by the votes of those shareholders who do not exercise the right to shares from the profits. It is significant to emphasize that the right to a share of the profit can be exercised by an employee who, together with the new shares, does not own more than 5% of the share capital of the company. The amendments refer to the principle of equal treatment of all shareholders with regard to the payment of dividends and provide that monetary dividends can be registered in the Central Register of Securities. In the latter case, the dividend payment is made by depositing the funds to the dedicated account of the Central Securities Register, which makes direct payments to shareholders.

In addition, it is important to emphasize that the new amendments provide for special rules for contesting the decision on the distribution of dividends, and such a decision, in addition to the conditions previously regulated, can also be contested in the event that the decision on the distribution of profits does not include the payment of dividends to shareholders, and this payment should have been carried out considering the circumstances in which the company operates and under the condition that a positive assessment of a good businessman was obtained (assessment based on the opinion of an independent auditor), that it was mandatory to make a decision on the payment of dividends in accordance with the company's dividend policy, which is determined according to corporate governance standards in accordance with this law.

A lawsuit to challenge the decision from paragraph 1 of this article of the Law can be filed by shareholders whose total participation in the company's share capital is at least 10%.

This change, on the one hand, gives some kind of security to minority shareholders to request the payment of dividends when the new prescribed conditions are met, while on the other hand, it can be a limiting factor for shareholders and future investors, as it somewhat affects the right to make decisions at the Shareholders' Assembly, especially since the law prescribed how the decision on the distribution of profits is made.

- **Cross-border mergers and acquisitions**

Amendments to the Law on Companies also introduced cross-border M&A transactions, i.e. the merger/acquisition of at least two companies, of which at least one company is registered in the Republic of Srpska and at least one capital company is registered on the territory of a member state of the European Union or another country. Therefore, it was

necessary to work out the concept, conditions, announcement/publication of cross-border M&A transactions, the content of contracts between companies, the content of relevant reports required for the implementation of transactions, the position and role of notaries in this type of transaction, registration and consequences of this transaction. In addition, the law provides for a simplified procedure in case the acquiring company is the sole shareholder of a domestic company or if the acquiring company is a local company that has at least 90% of shares in another company. This new chapter remains open for numerous additions and discussions depending on how much interest there is in practice for this type of investment and thus the expediency of introducing these provisions.

- **Extension of certain deadlines**

The Law on Amendments to the Law on Companies has changed the deadlines in which the rights that a company has based on the violation of conflict of interest and competition rules can be exercised by a company and a partner, member or shareholder who owns or represents at least 5% of the company's share capital, and it is up to six months from the day of learning about the committed violation, i.e., ten years from the day of the committed violation. Previously, the subjective deadline was 60 days, and the objective deadline was three years.

Claims of partners, members and shareholders against the company, which arose on the basis of this status, expire within six months from the date of learning of the reason for filing the lawsuit, and no later than within ten years from the due date, unless otherwise provided by law for individual claims.
In addition, the right of minority shareholders to payment of monetary compensation and any price difference for bought shares was extended from three to ten years.

Bulgaria

The Bulgarian legislative scene in the last quarter has been affected by the preliminary elections of a new parliament in April. The legislative initiative has been focused on reforms which would decrease the gray sectors of the country's economy while increasing accountability in both the private and the public sectors.

Regardless of the challenging political climate, Bulgaria has kept up with the European Union trends in focusing on corporate governance and increasing transparency.

- **Whistleblower Protection Act**

As of 05 May 2023, the Bulgarian Whistleblower Protection Act which transposes the relevant provisions of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. It shall mainly affect employers in the private sector with 50 to 249 employees, which will have to comply with their obligations under its requirements by December 2023. The act, in line with the directive, is intended to have a preventative effect, in order to decrease violations and increase compliance.

- **Revision of the Measures Against Money Laundering Act**

Additional requirements concerning anti-money laundering compliance

were introduced with changes to the Measures Against Money Laundering Act ("MAMLA") promulgated on 14 July 2023, in line with recommendations provided by the EU. The changes include the introduction of a mechanism for the identification of persons who provide corporate governance services, as well as additional requirements for natural persons performing specific services under MAMLA.

Denmark

- **New guidance from the Dutch Supreme Court on Dutch anti-base erosion legislation**

In the Netherlands the deduction of related party interest in private equity structures is a complex matter. Such structures are often set up with a Dutch company as an acquisition vehicle. That company is then granted a loan from a related party to acquire the target, after which the acquisition vehicle and the target are joined in a consolidated group for Dutch tax purposes. As a result, in principle the interest on the loan can be offset against the profits of the target. However, based on the Dutch anti-base erosion legislation, unless the taxpayer can show that the loan is businesslike, the deduction of the interest is denied.

In recent years the Supreme Court has ruled that in certain cases, even if the deduction of the interest is not denied based on the Dutch anti-base erosion legislation, the deduction of the interest can still be denied based on the abuse of law doctrine. Unfortunately it still remains unclear under what circumstances exactly the deduction of interest can be denied based on the abuse of law doctrine. Currently there are pending procedures in which the Dutch Supreme Court will hopefully give more guidance on this matter.

In March this year the Dutch Supreme Court gave further guidance on the circumstances under which a related party loan should be considered businesslike for purposes of the Dutch anti-base erosion legislation. It ruled that if the creditor of a related party loan fulfils a "central treasury function", in principle the deduction of interest on the loan cannot be denied based on the Dutch anti-base erosion legislation. This is good news for Dutch tax payers that pay interest to related parties that fulfil a central treasury function. In such a case it is in principle no longer possible for the Dutch tax authorities to deny the deduction of the interest on the loan based on the Dutch anti-base erosion rules. The exception to this rule is the case in which, with respect to the related party loan, the creditor that has a central treasury function acts as a mere flow through entity. The Supreme Court has also given some guidance on how it should be determined whether a creditor has a "central treasury function". This should be determined based on all facts and circumstances of the situation. The creditor's activities should consist predominantly of active financing activities. Furthermore, the creditor should be independent in the management of the outstanding loans, should have qualified personnel, and should have its own administration.

Italy

- **11th package of the EU sanctions against Russia and Russian countermeasures**

On June 23, 2023, the European Union adopted new regulations imposing sanctions on the Russian Federation in response to the ongoing war in Ukraine. These measures focus on strengthening export controls and implementing an anti-circumvention mechanism to target companies suspected of evading the bans.

The insight, written by Tatiana Karbanova, manager at Andersen in Italy, provides an overview of the new restrictive measures, examining their objectives, scope, and potential impact.

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Poland

- **Family foundation**

Under the pressure from the family business community, on 22 May 2023, Poland introduced a new form of business: a family foundation. It is inspired by solutions adopted by other EU countries (e.g. Germany, Switzerland, Lichtenstein) intended to accumulate and manage assets in the interests of beneficiaries, provide them with benefits and facilitate succession in family businesses. Foundations can be established only by individuals having full legal capacity, not by commercial companies or other entities. It can be established during the founder's lifetime or after their death, based on a will. To establish a foundation, the founder should contribute assets of at least PLN 100,000. A family foundation is liable jointly and severally with the founder for pre-existing liabilities, but the founder is not responsible for liabilities of the foundation.

A family foundation can engage in certain business activities, as listed in the act, including property disposal, leasing, participation in commercial companies and investment funds, trading in securities, extending loans, foreign currency transactions, agricultural production, and forest management. In this scope, income of a family foundation is exempt from the income tax. Deriving profits from other business activities is not forbidden, but such income will be taxed at an increased rate of 25%.

- **Cross-border reorganisation**

An amendment to the Commercial Companies Code, implementing EU Directive 2019/2121, is currently awaiting the signature of the President of the Republic of Poland and will probably come into force on 15 September 2023. The amendment should increase the attractiveness of the Polish market for foreign investors and facilitate expansion of companies based in Poland. The amendment introduces new cross-border reorganization processes, such as:

Cross-border division of companies, i.e.:

- division by formation of new company/ companies,
- division by separation (shares in a new company are subscribed by the shareholders of the divided company),

- division by separation (shares in a new company are subscribed by the divided company),
- division by acquisition and formation of a new company.

Cross-border transformation – transformation of capital companies and limited join-stock partnerships into a foreign company (from other EU or EEA countries). When this process is followed, a registered office of a company can be transferred to another Member State while the company retains its legal personality. This solution was adopted to execute the judgment of the Court of Justice of the EU in case C-106/16 Polbud.

Furthermore, provisions have been introduced to protect creditors, minority shareholders and employees in the event of cross-border reorganisations. It will be possible for creditors to request a collateral within one month of disclosure of the plan (merger/division/transformation). Shareholders, who voted against the reorganisation of the company will have the possibility to exit the company and receive remuneration estimated by an independent expert, corresponding to the value of their shares. Employees will have the right to comment on the reorganisation plan and will have access to the report on the consequences of the transformation.

The amendment will also offer broader control of reorganisation processes, including the requirement of certification by public authorities. Its aim is to digitize operations of companies in the EU.

The law also introduces changes to domestic corporate reorganizations. The most important of these is the introduction of new procedures: a simplified merger (possible if one shareholder holds all shares of the merging companies or the shareholders hold the same proportion of shares in all merging companies) and division by separation (in which the shares will be obtained by the company being divided and not by its shareholders).

Another important change is to enable participation of limited joint-stock partnerships in the processes of merger – as the acquiring company or new company, and division of companies – as the divided company.

North Macedonia

- **Civil Bond**

The Law on Securities envisages the possibility for issuing bonds and the manner in which such bonds are offered on the market.

With this said, bond is a long-term debt security with which the issuer undertakes to pay the owner of the bond one time or in installments, on the specified day, the amount of the nominal value of the bond and the interest.

In June 2023, the Government of North Macedonia issued a public – civil bond available for all citizens, including legal persons, with the aspiration that the investment made by the citizens shall contribute to the growth of the domestic economy by financing development projects, reducing cash in circulation to deal with the gray economy and financing budgetary needs and servicing the public debt.

The civil bond is for two years with the coupon interest rate of 5% and paid once a year, which are terms that can be viewed as favorable for the citizens considering they compete and, in a way, overperform the deposit interest rates of the commercial banks in the country.

The citizens that shall invest in the civil bond, have the right to manage their right and sell their bond even before the maturity, through the Macedonian stock exchange and via OTC trading.

- **Proposal for preparation of a new law on banks resolving**

With Directive 2014/59/EU of the European Parliament and the Council of the EU, which was adopted on May 15, 2014, a framework for the resolution of credit institutions and investment firms was established in the European Union. Considering the status of the Republic of North Macedonia as a candidate for membership in the European Union, and in order to ensure consistency with the legislation of the European Union in the field of financial services, as well as the highest possible degree of financial stability in the country, it is necessary to adopt a new legal solution that will establish a set of tools for sufficiently early and quick intervention in a bank that is facing operational problems.

Purpose of the proposed law: The resolution of a bank will be implemented in order to achieve the following goals:

1. ensuring the continuity of the bank's critical functions
2. avoiding a significant negative impact on the stability of the financial system
3. protecting public assets by minimizing the possibility of use of extraordinary public financial assistance
4. protection of depositors who have secured deposits
5. protection of the funds of the bank's clients The Law establishes the National Bank as the authority responsible for the resolution of banks.

The timeframe for preparation of the draft version of the law, is from 11.06.2023 until 31.07.2023. After this, it is surely expected that the public, and especially the entities from the relevant industry, shall be part of the procedure and shall offer their positions regarding this law during the public hearings.

Spain

- **New Royal Decree on Foreign Investments in Spain**

The Government has approved the new Royal Decree on Foreign Investments in Spain, which will enter into force on September 1, 2023, although the Third Transitory Provision of Royal Decree 571/2023 establishes the transitional regime for the application of certain provisions until the approval of the implementing regulations.

The new Decree reinforces the control over foreign investments extending the scope of transactions considered as foreign investment and details which ones must be authorized by the Government. It has also shortened the resolution deadlines, from the current six to three months, and established a binding prior consultation system with a response period of 30 working days.

The main novelties of the adaptation to the European regulation refer to the energy and defense sectors, where the exemptions to the prior authorization regime are focused in order to avoid unwanted purchases from European companies that could put security, health or public order at risk. Those from outside the EU will always require prior authorization if they exceed 10% of the capital. Energy assets may be acquired without authorization if they do not reach 5% of the installed power.

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The **EU** Supply Chain Act

The EU Supply Chain Act

Current status and what we can expect

Last year, the European Commission introduced a draft Directive on Corporate Sustainability Due Diligence (CS3D), also known as the EU Supply Chain Act). Since then, significant progress has been made on the issue of conducting human rights and environmental due diligence processes, both within specific jurisdictions and at the European Union (EU) level. Several EU Member States have enacted or are in the process of enacting supply chain due diligence legislation as is the case with the German Supply Chain Due Diligence Act.

National initiatives within the EU that focus on developing due diligence frameworks alongside the EU-wide CS3D process.

The legal landscape around supply chain due diligence may be categorized into 4 different scenarios: (a) jurisdictions with regulations in place on the matter; (b) jurisdictions that are willing to regulate but have stalled on passing legislation due to the upcoming directive; (c) jurisdictions that lack an overarching regulation but choose instead legislate on a sector-by-sector basis, and (d) jurisdictions where none of the above applies .

Jurisdictions having supply chain due diligence regulations in force

In 2017, France adopted a law on the Duty of Vigilance (*Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*).

Germany has a Supply Chain Due Diligence Act ("*Lieferkettensorgfaltspflichtengesetz*" or "*LkSG*"). Because of the economic ties between Germany and other neighboring jurisdictions, this law also impacts companies in Austria, Hungary, Slovenia, Slovakia and Bosnia and Herzegovina.

While transposing Directive 2014/95/EU (which will be replaced by the European Supply Chain Act), Portugal adopted a law on corporate social responsibility that requires large corporations to report on their social, environmental and ethical performance (Decree-Law No. 89/2017).

Jurisdictions that were in the process of regulating supply chain due diligence processes, but stopped due to the upcoming EU directive.

In April 2021 Belgium approved a bill (*proposition de loi*) on the duty of vigilance. However, the process was halted following the announcement of the EU CS3D (*Proposition de loi instaurant un devoir de vigilance et un devoir de responsabilité à charge des entreprises tout au long de leur chaînes de Valeur*).

On March 11, 2021 the Netherlands passed a legislative proposal for Responsible and Sustainable International Business *(Wetsvoorstel Wet verantwoord*

en duurzaam international ondernemen). The Dutch legislative proposal is more far-reaching than the CS3D and has met with strong opposition in parliament over concerns that a stricter regime in the Netherlands would hamper the local economy.

Austria approved a Social Responsibility Bill that has run aground for the same reasons.

Spain's preliminary bill (*anteproyecto de ley*) on the protection of human rights, sustainability and due diligence in transnational business activities (*Anteproyecto de Ley de Protección de los Derechos Humanos, de la Sostenibilidad y de la Diligencia Debida en las Actividades Empresariales Transnacionale*s) has been in limbo since last May awaiting transposition of the CS3D once this is green-lighted.

Jurisdictions with sector- by- sector legislation.

Austria has corporate sustainability regulations applicable to the construction, renewable energy and financial sectors. These regulations apply to all companies, regardless of their size.

The Macedonian Stock Exchange has adopted an ESG reporting guideline, which is a practical tool for listed companies on ESG-related issues.

In Sweden, the Environmental Code touches on issues relevant to the EU CS3D, but with different due diligence obligations and formalities.

Jurisdictions where none of the above applies

Malta, Croatia, Slovakia are strongly influenced by the German Supply Chain Act.

Albania, Bosnia and Herzegovina, Serbia are not part of the EU, but their economies are highly dependent on trade with the EU and their legislation is therefore harmonized with EU legislation.

Note: In these jurisdictions local teams have reported that their economies largely consist of SMEs, which means that a low uptake by businesses is expected.

Conclusion

Overall, many of our contributors to this Newsletter mentioned that the scope of application of the CS3D ("large companies") is too limited to have a significant impact on local companies. However, many are concerned about increased administrative burdens. Jurisdictions that were in the process of adopting corporate sustainability legislation have chosen to wait to ensure that domestic laws are on a par with the obligations imposed by the CS3D, not stricter, which would render their economies less competitive.

Current status of the CS3D and expected timeline for approval and implementation.

The EU Supply Chain Act is expected to be adopted by early 2024 and implemented by early 2026. In Germany the Supply

Chain Due Diligence Act came into force on January 1, 2023 while in France the Law on the Duty of Vigilance came into force in 2017. Belgium, Spain and the Netherlands have also introduced draft bills on the subject. In any case, whether under the CS3D or independent national legislation, and whether as a direct consequence of these regulations or as part of the supply chain of a company subject to them, businesses will most likely have to comply with environmental and human rights due diligence obligations sooner rather than later.

What will companies have to do to be compliant?

The CS3D will establish guidelines for companies to address and minimize any adverse environmental impacts and human rights abuses resulting from their operations. Companies will be required to conduct due diligence processes not only on their own operations, but also on the operations of their subsidiaries and other business partners. Companies will need to develop and implement preventive action plans and ensure that their business partners comply with these plans. In addition, companies will be legally responsible for verifying compliance with the agreed measures.

Increased paperwork and bureaucracy aside, the CS3D also means financial investment in suppliers "downstream" to assist them in becoming compliant with international standards. The implications are truly far-reaching.

Which companies will the CS3D apply to?

The CS3D will apply directly to all EU and non-EU "large companies" selling goods and services on the EU market. These are companies with more than 500 employees or a turnover of more than €40 million. However, any SME that is part of the supply chain of a large company will have to apply the Regulation and comply with all human rights and environmental standards, as the large companies upstream will ask the SMEs to provide them with all evidence of their own supply chain due diligence.

What will companies risk?

In its current draft form, the CS3D seeks full compensation for victims of human right abuses and/or environmental damage where the following four conditions are satisfied (i) damage to a natural or legal person; (ii) breach of due diligence obligations; (iii) existence of a causal link between (i) and (ii); and (iv) there is fault (intentional or negligent).

Which international standards will be covered?

The final scope of the CS3D is not yet final. However, the following international standards will be covered:

- United Nations Guiding Principles on Business and Human Rights

- OECD Guidance on Responsible Business Conduct and sectoral guidance
- International Labor Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
- United Nations' Sustainable Development Goals
- Paris Agreement under the United Nations Framework Convention on Climate Change adopted on 12 December 2015
- Glasgow Climate Pact
- The EU Commission's 2030 Climate Target Plan

Importantly, the food and agriculture industries are is also undergoing similar structural changes. These sectors are already heavily impacted by recent EU legislation that prohibits certain unfair trading practices in the agricultural and food supply chain, including late payment, termination at short notice and unilateral contract changes by buyers.

Conclusion

The challenges resulting from the implementation of the CS3D will be daunting. However, this is also an exciting opportunity to reinvent the course of trade practices. Ensuring your company is compliant with CS3D standards means setting your business up for success and secure, long-term business relationships. Of particular note is the timing for implementation of the Supply Chain Directive. Although the deadline is set for 2026, the scale of the task of achieving compliance means that it is best to start thinking about these future rules today.

Albania

Own legislation

Various pieces of legislation, including employment, waste management, environmental, and licensing legislation, contain several provisions similar to the draft European Supply Chain Act.

Local initiatives with the same objective

✔ Yes.

Albania has addressed some of the **key issues** tackled in the draft European Supply Chain Act, such as

- The Guidelines for Sustainable Supply Chain Management for Medium-Sized Enterprises in the Chemical Industry.
- The Labor Code.
- Albania has established a National Environmental Agency.
- The Law on Waste Management.

Scope of Application

The Albanian Labor Code applies to all companies whatever the number of employees comprising their workforce.

Environmental initiatives usually apply to companies performing activities that have an adverse impact on the environment, also irrespective of the number of their employees.

Duties applicable to companies

Companies must comply with labor laws related to the rights of their employees.

In terms of environmental impact, companies must have the appropriate permit(s) and ensure ongoing compliance with any conditions for maintaining these permits by taking steps to mitigating potentially adverse environmental impacts.

Consequences of Non-Compliance

Failure to observe the employment legislation may result in fines imposed by the competent authorities.

Failure to comply with environmental legislation may also lead to fines and to the suspension or revocation of the relevant environmental permit, ultimately resulting in the suspension of the activity.

Liability

The Albanian law on environmental permits stipulates that non-compliant subjects are not relieved of civil liability. However, the law does not specify the nature and extent of such liability.

Albanian local laws lay out requirements for compliance with human rights criteria

and environmental protection initiatives in various unintegrated pieces of legislation. However, Albanian local laws do not require companies to integrate due diligence processes into all corporate policies, including the company's approach to due diligence, a code of conduct for employees and subsidiaries of the company, and the processes put in place to implement due diligence.

The Albanian legal framework thoroughly addresses ESGs concerns that should be considered by companies operating in Albania. However, implementation should be further developed. This can be achieved by ensuring better coordination between the authorities responsible for monitoring ESG objectives.

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Austria

Own legislation

✕ No.

Local initiatives with the same objective

✕ No.

Austria has in place ESG regulations that address sustainability and climate change, but without specifically targeting the supply chain.

A few sector-specific climate change regulations have recently been or will soon soon enacted, e.g. in the renewable energy, construction and real estate, and financial sectors. These regulations are scattered across various laws.

Scope

No specific exemptions in terms of personal scope.

Duties applicable to companies

The "sustainability component" of these provisions in local laws is largely derived not from the introduction of new obligations, but from other measures designed to enhance sustainability, such as easing the process for homeowners to obtain permits for certain construction activities.

Consequences of Non-Compliance

Austria may introduce administrative fines (up to €5 million) to punish violations of the EU Directive on sustainability-related disclosures in financial services.

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Belgium

Own legislation

✓ Yes.

In 2021 the Belgian government submitted a bill (proposition de loi) introducing a duty of vigilance and a duty of responsibility for companies across their supply chains. The draft is still under review. The Belgian Commission for Economy and Consumer Protection received the bill on January 18, 2023, which is still under review.

Local initiatives with the same objective

✓ Yes.

Similar industry-driven initiatives (e.g., the guide to sustainable supply chain management for SMEs in the chemical industry).

Scope

All companies within the scope of the Supply Chain Act on a national level, i.e. companies with >3000 employees and >1000 employees as of January 1, 2024.

Duties applicable to companies

Companies established in Belgium need to ensure compliance with respect to human rights and environmental risks along the supply chain. In particular, larger companies will be required to conduct an ongoing risk analysis and document the results. The proposal establishes a system of due diligence and remediation obligations.

The duty of vigilance requires companies to draw up a "**vigilance plan**" which **must include at least the following measures**:

1. a description of the supply chain;
2. a risk map;
3. procedures for regularly assessing the situation of subsidiaries, subcontractors or suppliers;
4. appropriate measures to mitigate risks or prevent serious harm;
5. a system for gathering risk-related reports that includes guarantees for the protection of whistle-blowers;
6. an effective complaint and redress mechanism, and
7. a system for monitoring the above measures.

Consequences of Non-Compliance

Companies failing to comply with the requirements to conduct a risk analysis or their documentation obligations may be subject to a fine.

Liability

Pursuant to the bill, non-compliant companies would face substantial fines and victims would be able to claim civil liability for human rights violations and environmental damage.

The bill establishes a collective redress mechanism for breaches of due diligence duties.

The bill allows victims to file a court claim for corporate liability arising from human rights abuses that occur in their supply chains. It also shifts the burden of proof in favor of victims. This is because the duty of vigilance regime obliges companies to retain all relevant information and thus to bear the burden of proof.

Where several companies are involved in the same infringement, the bill provides that they are to be jointly and severally liable.

Finally, the bill establishes that all companies operating in Belgium may face legal proceedings in Belgium for violations that occur in their supply chains abroad.

Implications for SMEs

SMEs will have to comply as they are often suppliers or service providers themselves and will have specific contractual obligations with the companies that fall within the scope of application of the draft, e.g. audit rights and ongoing reporting requirements.

However, the obligation to develop a vigilance plan will only be mandatory for large companies, as defined in the European Commission Recommendation of May 6, 2003 on the definition of micro, small and medium-sized enterprises.

SMEs that do not operate in high-risk regions and sectors will not be required to draw up a vigilance plan. However, as part of their duty of care, such companies should be encouraged to be transparent about the measures they take.

Main differences between local laws and the Council's General Approach

The EU CS3D requires companies to:

- integrate due diligence into their policies;
- identify actual or potential adverse impacts on human rights (human rights included in international conventions) and the environment;
- prevent or mitigate potential impacts;
- remove or minimize actual impacts;
- establish and maintain a complaints procedure;
- monitor the effectiveness of the due diligence policy and measures;
- publicly communicate on due diligence.

The CS3D imposes remedial obligations. In case of violation, companies will be fined. Victims have the right to claim damages.

The CS3D goes beyond the obligations of the draft Belgian law, as it establishes due diligence obligations for directors.

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Bosnia and Herzegovina

Own legislation

✕ No.

Local initiatives with the same objective

✕ No.

No local initiatives exist in addition to nationwide regulations on the protection of human rights and the environment.

Duties applicable to companies

The idea is to improve the contribution of businesses to sustainability, climate neutrality and to a green economy, identifying and preventing any adverse consequences. The main goals are also to raise awareness on the importance of human rights and environmental impact in the regular business operations of the company.

The main purpose and ideas of the Directive, the conclusion would be the compliance of the business, conduction of the due diligence, all in order to protect the human rights and the environment.

Main differences between local laws and the Council's General Approach

Since in Bosnia and Herzegovina the majority of the companies are small to medium-sized, the first impression is that Article 2(1)(a), the one that proscribes the impact on companies with more than 500 employees will not be used that often. Such a duty in BIH is still not introduced, but it is expected to be in time to come. Bearing in mind the size of the market and the size of the companies in the BIH, it is expected that this threshold shall be lower. One of the impacts on the company will most surely include the cost related to the conduction of the due diligence.

Some companies, particularly those established by foreign legal entities or individuals, are setting higher standards for the protection of human rights and of the environment. Therefore, this companies should find it easier to adopt the new Directive regulations.

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Croatia

Own legislation

✕ No.

Local initiatives with the same objective

✕ No.

Apart from national laws that generally regulate the protection of human rights and the environment, there are no other regional initiatives or partial regulations that cover the same scope as the EU Supply Chain Act.

However, since the EU Supply Chain Act will replace Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, which dealt with some aspects of corporate sustainability, i.e. disclosure of non-financial information of large undertakings (more than 500 employees), it is important to emphasize that in 2017 Croatia's legal system started to align with Directive 2014/95/EU, as the Croatian Law on Accounting in 2017.

Also, since the EU Supply Chain Act imposes additional due diligence obligations on companies covered by it in terms of protection of human rights and the environment and it also has a broader impact than Directive 2014/95/EU, Croatia will need to enact completely new laws to comply with the EU Supply Chain Act.

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France

Own legislation

✓ Yes.

In France, the Law on the Duty of Vigilance (Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, the "DoV Law") came into force in 2018.

Local initiatives with the same objective

The DoV Law is very sparse and the government is yet to release an implementing decree.

Leading NGOs such as Sherpa have therefore decided to publish their own guidelines for implementing the DoV Law. NGOs also publish an annual report analyzing the annual due diligence reports published by companies subject to the DoV Law.

Scope

The DoV Law applies to companies with over 5,000 employees in France or 10,000 employees elsewhere in the world.

Duties applicable to companies

Companies have to adopt a plan de vigilance designed to "identify any risks and anticipate serious violations against human rights and fundamental liberties, the health and security of people, and the environment.

For that purpose, **companies need to conduct and/or put in place**:

- A risk assessment intended to identify, analyze, and classify risks.
- Procedures for evaluating subsidiaries, subcontractors, or suppliers.
- Actions to mitigate risks and prevent serious risks.
- A risk alert mechanism, established in collaboration with the Works Council.
- A monitoring of the above measures to evaluate their effectiveness.

Consequences of Non-Compliance

Where a company is given formal notice to comply with the obligations of the DoV Law and fails to do so within three months from the date of the formal notice, the competent court may, at the request of any person having an interest in the matter, demand the company to comply with these obligations subject, as appropriate, to a penalty.

Liability

Violators of these obligations are liable to the relevant stakeholder(s) and may be required to pay compensation for any damages that could have been avoided by complying with these obligations.

Implications for SMEs

SME's are not required to comply with the DoV Law. However, in their capacity as suppliers or service providers, SMEs often need to comply under their contractual obligation to a company within the scope of the DoV Law.

Main differences between local laws and the Council's General Approach

The main differences are in terms of scope of application with regard to the gradual reduction of the number of employees. In addition, the financial sector, which was excluded from the scope of the Council's General Approach, may eventually be included at the request of the French Parliament.

Experiences with local laws

The corporate duty of vigilance has raised awareness on human rights and environmental risks. However, the government's failure to publish an implementing decree has made it difficult for companies to apply.

Reports published annually show that after 5 years of application, the duty of vigilance programs submitted by companies are more detailed and show a higher commitment.

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Germany

Own legislation

✓ Yes.

In Germany the Supply Chain Act entered into force on January 1, 2023.

Local initiatives with the same objective

✓ Yes.

There are similar initiatives driven by certain industries, including the guide on sustainable supply chain management for medium sized companies in the chemical industry.

Scope

Essentially all companies within the scope of the Supply Chain Act nationally, i.e. companies with over 3000 employees and over 1000 employees as of January 1, 2024.

Duties applicable to companies

Companies need to ensure compliance with respect to human rights and environmental risks along the supply chain. In particular, companies are required to perform an ongoing risk analysis and to document the results.

Consequences of Non-Compliance

If companies fail to comply with the above requirements they may be liable to a fine imposed by the relevant authority.

Liability

in the event of a breach of the German Supply Chain Act companies are not subject to civil liability.

Implications for SMEs

SME's are required to comply as they are often suppliers or service providers themselves. As a result, SMEs are subject to the specific obligations under their contracts with companies subject to the German Supply Chain Act, e.g. audit rights and on-going notification requirements.

Main differences between local laws and the Council's General Approach

The main differences lie in the scope of application with regard to the gradually decreasing number of employees and in the

civil liability of companies, which is currently not part of German law. In addition, the financial sector is excluded form the CS3D based on the Council's General Approach.

Experiences with local laws

The German Supply Chain Act has raised awareness of human rights and environmental risks. It is encouraging to see that even municipalities or other companies that do not fall within the scope of the German Supply Chain Act are in some cases complying voluntarily.

The first step for German companies is to determine whether the national Supply Chain Act applies to them. In the affirmative, the next step is to map out the functions and resources within the company to fulfill the relevant due diligence obligations. For example, responsibilities for human rights officers are established and certain other tasks are defined, such as responsibilities for providing supplier data, risk analysis and documentation. However, there is also a tendency among smaller medium-sized companies to voluntarily ensure compliance with the legal due diligence requirements, even if these smaller companies do not initially fall within the scope of the Supply Chain Act.

✓ Yes, German companies are concerned about the possibility of civil liability at the European level, particularly with regard to the scope of such liability. The national regulation of the Supply Chain Act in Germany does not recognize such liability for misconduct of suppliers and service providers.

✗ No, in our view it is not possible to avoid the obligations and liabilities at both national and EU level.

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Hungary

Own legislation

✕ No.

The Hungarian legislature is expected to transpose the EU CS3D Directive into Hungarian law upon its adoption.

Local initiatives with the same objective

✕ No.

There are no similar national initiatives or partial regulations in Hungary. However, because of the close economic ties between Germany and Hungary, a number of Hungarian companies that are either directly or indirectly part of the German supply chain may be impacted by the German Supply Chain Act, which entered into force on January 1, 2023.

Scope

Subsidiaries of German companies operating in Hungary, their suppliers and Hungarian companies exporting to Germany.

Duties applicable to companies

Hungarian companies exporting to Germany are likely to experience a significant increase in administrative duties as a result of the requirement to provide information on their products and services in the areas of environmental protection and human rights. Similarly, German companies are expected to provide their Hungarian suppliers with detailed information on the data and documents required to comply with the law. The processes are expected to be managed and controlled by the leading German companies in the supply chain, rather than by the Hungarian companies further down the chain.

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Malta

Own legislation

✗ No.

Typically, Malta transposes EU Directives into Maltese Law after their formal publication.

Local initiatives with the same objective

✗ No.

There are no local initiatives or national regulations that cover the same scope as the EU Supply Chain Act.

Scope

Although there are currently no such similar regulations in place, it is not expected that a significant number of Maltese companies would ultimately **meet the applicability thresholds set out in the current proposal,** i.e.:

- 500+ employees on average, with a net turnover of more than €150 million in the last financial year
- 250+ employees on average, with a net turnover of more than €40 million in the last financial year, provided at least 50 per cent of this turnover was generated in a high-risk sector, which include textiles, clothing, mineral extraction, agriculture, forestry, fishing, or metal manufacturing.

Duties applicable to companies

While there is currently no such similar legislation yet in place in Malta, companies that fall within the scope of the CS3D will have a corporate due diligence duty to identify, prevent, end, mitigate and report on adverse human rights and environmental impacts in their own operations, their subsidiaries and their supply chains.

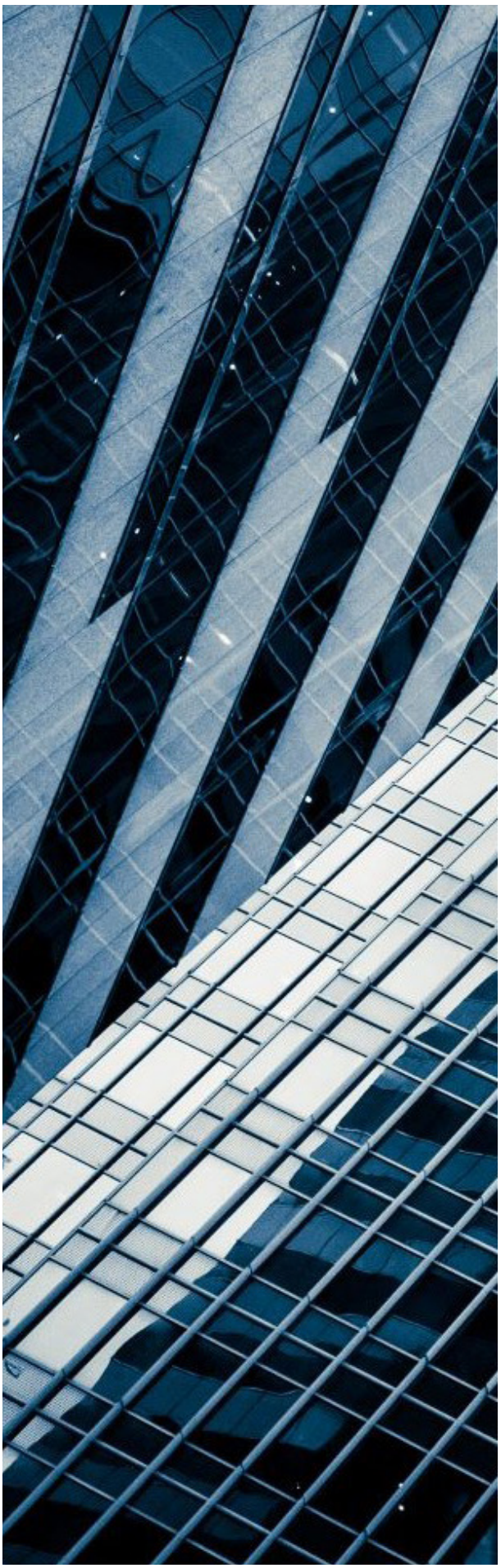
Implications for SMEs

Small and medium-sized enterprises (SMEs) are not directly within the scope of this proposal. Therefore, unless the Maltese Legislator gold-plates the transposition of the Directive, SME's shall not be directly impacted.

This is highly unlikely as the local business community has already voiced their concerns over the lack of certainty as to how the CS3D will be implemented in Malta. In fact, the Maltese Chamber of Commerce, which is the main local body representing local businesses, has released

a *statement* indicating that more clarity is needed for local businesses to understand the implications of the Directive once it is transposed and implemented.

Directors are expected to be fully aware of their responsibility to ensure that their organizations have robust due diligence processes in place to identify, stop, prevent, mitigate and report on any negative impacts on human rights and the environment in their own operations, subsidiaries and supply chains.



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The Netherlands

Own legislation

✓ Yes.

A legislative proposal for a Responsible and Sustainable International Business Act (*Wetsvoorstel Wet verantwoord en duurzaam international ondernemen*) (the "Proposal") was submitted on March 11, 2021. Alex

The Proposal is currently being discussed in the House of Representatives (Tweede Kamer).

Local initiatives with the same objective

✓ Yes.

The main purpose of the Proposal is to establish a legal lower limit (*ondergrens*) for corporate social responsibility that will ensure compliance with international standards as contained in the OECD Guidelines. Therefore, human rights, employment and the environment are the key components of the proposal.

Scope

The scope of the Proposal covers only companies that are active abroad, either directly or through subsidiaries. These can either be companies established in the Netherlands or on the BES islands (Bonaire, Sint Eustatius and Saba).

These can also be foreign companies provided that they meet at least two of the three criteria listed below for a 'large company' and are active in the Netherlands or sell a product on the Dutch market.

The criteria are:

- A balance sheet total of €20 million;
- A net turnover of €40 million;
- An average workforce during the financial year of 250 employees or more.

Duties applicable to companies

Based on the duties of care (*zorgplichten*) introduced in this Proposal, a company that falls within the scope and knows or can reasonably assume that its business activities may adversely affect human rights, labor rights or the environment in a country outside the Netherlands should:

- Take all reasonable steps to prevent such adverse impacts; or
- If the effects cannot be prevented, minimize them as far as possible, reverse them or ensure their restoration; or

- If the effects cannot be adequately mitigated, to cease those activities to the extent that this can reasonably be required.

Consequences of Non-Compliance

Activities of companies falling within the scope of the Proposal that have a negative impact on human rights, labor rights and the environment in a country outside the Netherlands.

Liability

Under the Proposal, breaches of the general duty of care (*algemene zorgplicht*) are not administratively enforceable.

However, in the event of a breach of certain obligations (if and when the Proposal enters into force), the regulator will have the authority to impose an order for incremental penalties (*last onder dwangsom*) or an administrative fine (*bestuurlijke boete*).

These are administrative measures.

Under certain circumstances, certain offenses can be punishable under the Economic Crimes Act (*Wet op de economische delicten*).

Implications for SMEs

The Proposal only covers international corporate social responsibility. The scope of the Proposal therefore only includes companies that are (partly) active abroad by themselves or via subsidiaries. These will mainly be large companies, but may also be SMEs depending on their business activities.

Main differences between local laws and the Council's General Approach

The Proposal envisages the implementation of the Corporate Sustainability Due Diligence Directive ("CSDD"). As such, there are many similarities between the two.

However, the Proposal takes a broader approach than the draft CSDD in a number of aspects.

Experiences with local laws

The Proposal was submitted jointly by six political parties.

However, the Proposal is facing considerable opposition and criticism from the business community and the Dutch government, which is not willing to support the proposal in its current form. This is due to the government's reluctance to put Dutch companies at a disadvantage compared to their EU competitors.

Businesses complain that this proposal is part of the larger Green Deal and that the larger package puts too much pressure on them to meet all the new requirements of the Green Deal. Furthermore, both the EU initiative and the Dutch Bill are criticized

for their inconsistency with the UN Guiding Principles for Business and the OECD Guidelines, for lack of clarity, and for their far-reaching provisions that fail to take into account practical and legal objections. Businesses anticipate a negative impact on the attractiveness of doing business in the Netherlands and an increased risk for business owners, which would result in a negative impact on the Dutch business climate.

Since 2011 there is a normative framework in the form of two soft law instruments in the form of the UN Guiding Principles on Business and Human Rights and the OESO Guidelines, therefore companies are making preparations in view of the proposed Directive.

By 2023, at least 90% of large Dutch companies should have the OESO Guidelines as an explicit basis for their international activities. In general, the government is currently taking measures to reduce greenhouse gases and mitigate the nitrogen crisis in the Netherlands.

Businesses are concerned about directors' liability, as it is the responsibility of directors to oversee the due diligence process and ensure that all potential risks are identified and anticipated. As in the case of Shell, a civil court can rule that the company is liable for civil damages if it has not fulfilled its duty of care. In contrary to the forementioned guidelines, does this initiative have teeth and can it be directly enforced in case of a breach of art. 7 and/or 8 of the Act, regardless the nature of the applicable law. Important to add is that the burden of proof rests with the plaintiff.

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North Macedonia

Own legislation

✗ No.

The Republic of North Macedonia has not yet introduced any laws specific to the EU Supply Chain Act.

Local initiatives with the same objective

✓ Yes.

The Republic of North Macedonia is not a member of the European Union, but as a candidate for EU membership, there is an ongoing focus on harmonizing the legislation and practices of the Republic of North Macedonia with EU legislation. At the EU level, under the European Green Deal and the accompanying Sustainable Finance Action Plan, several policy measures have been implemented to improve the disclosure of ESG information by companies and investors, increase market transparency and redirect capital flows towards sustainable investments.

The Macedonian Stock Exchange has adopted an ESG reporting guideline. This is a practical tool for listed companies on ESG-related disclosures in the context of the Corporate Governance Code developed in cooperation with the Securities and Exchange Commission of the Republic of North Macedonia and the latest international standards in this area.

No other regional initiatives and partial regulations in the Republic of North Macedonia related to the European Union Directive have been adopted yet.

According to the guideline adopted by the Macedonian Stock Exchange, companies are recommended to start preparing for a step-by-step approach to ESG issues.

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Poland

Own legislation

✗ No.

Local initiatives with the same objective

✓ Yes.

The Polish Parliament will soon vote on the Law on the Protection of Whistleblowers, which will implement Directive 2019/19/EU. The purpose of the Law is to protect individuals who report regulatory violations. The Law obliges companies to implement procedures to protect whistleblowers.

In addition, since the amendment of the Accounting Law in 2018, large companies are required to report non-financial information that is comparable to and based on ESG reports.

Scope

Under the soon to be enacted Law on the Protection of Whistleblowers, large companies will initially be required to implement certain procedures. From the end of 2023, companies with more than 50 employees will also fall under the scope of the Law.

In terms of non-financial reporting, only companies with over 500 employees and total assets exceeding €19,000,000 at the end of the financial year are covered by the Law.

Duties applicable to companies

Companies are required to implement adequate procedures to verify reports submitted by whistleblowers and take any appropriate action, which includes protecting the reporting person.

As regards non-financial reports, at the end of the financial year, companies are required to provide a sustainability description in a separate document, including: social, environmental, human rights, labor and anti-corruption measures taken. Companies are also required to report on the results of these actions.

Consequences of Non-Compliance

The Law allows reporting individuals to report any violation of national and EU law.

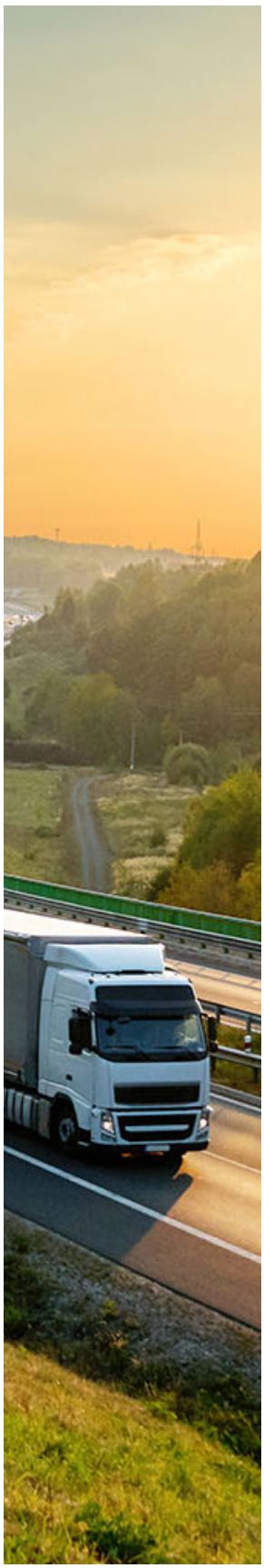
For non-financial reporting, companies are required to disclose strategies and actions that take ESG into account.

Liability

The liability of any persons repoted by a whistleblower depends on the type of violation and the law infringed upon.

Companies that fail to publish their non-financial reports may be liable to a fine of up to €12,000.

The German Supply Chain Act is certainly an issue that some Polish companies that have partnerships with German companies are concerned about, as the German Act may have an indirect impact on Polish companies. In addition, it should be noted that larger medium-sized companies in Poland, in particular, are increasingly concerned about human rights and environmental risks, having started to develop or implement their own compliance systems.



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Portugal

Own legislation

✗ No.

Local initiatives with the same objective

✓ Yes.

Some initiatives and regulations in Portugal aim to promote responsible and sustainable business practices on a broader scale.

In particular, while transposing Directive 2014/95/EU (which will be replaced by the European Supply Chain Act), Portugal passed a law on corporate social responsibility that requires large companies to report on their social, environmental and ethical performance (Decree-Law No. 89/2017).

Scope

Large companies and parent companies of a large group, which have the legal status of a public interest entity and have an average of more than 500 employees, are covered by Portuguese environmental legislation.

Duties applicable to companies

Such companies are required to publish an annual non-financial statement, included in the annual report or in a separate report, drawn up by their governing bodies and containing adequate non-financial information for understanding the development, performance, position and impact of their activities, at least with respect to environmental, social and employee matters, gender equality, non-discrimination, respect for human rights and combating corruption and bribery.

Consequences of Non-Compliance

Corporate social responsibility legislation in Portugal does not specifically define violations nor does it establish penalties for non-compliance. Rather, it establishes a reporting requirement for certain large companies to disclose information on their social, environmental and ethical performance in their annual reports.

However, companies that violate labor laws related to minimum wage, working hours, or health and safety may be subject to fines or other penalties. Companies that violate environmental laws may face suspension of operations or other sanctions in addition to

fines. Similarly, companies that engage in unfair trade practices or fail to comply with consumer protection laws may be subject to fines or other penalties.

Liability

✕ No.

Small and medium-sized enterprises that fall below the average threshold of more than 500 employees are not subject to the reporting requirements of this legislation.

According to a survey published in March 2023 by the Business Council for Sustainable Development (BCSD, a local non-profit organization representing more than 140 benchmark companies), most companies in Portugal recognize the need and opportunity for sustainability policies: about 93% of companies questioned already include sustainability commitments in their mission, 68% have already diagnosed and established strategic priorities, objectives, targets and action plans, and 11% have plans to achieve the 2030 goals and already outlined goals for 2050.

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Serbia

Own legislation

✕ No.

Serbia is still not a member of the EU and therefore, up to this date, has not introduced any laws related to the EU Supply Chain Act.

Local initiatives with the same objective

✕ No.

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Slovakia

Own legislation

✗ No.

Local initiatives with the same objective

✓ Yes.

Scope

Public interest entities with an average number of employees exceeding 500 and fulfilling the conditions of Act No. 431/2002 Coll. on Accounting, as amended, are obliged to include in their annual reports non-financial information on the development, performance, position and impact of the company's activities on such issues as environmental impact, social and employment, respect for human rights, anti-corruption and anti-bribery. Various pieces of legislation give examples of information that companies are required to provide, including a brief description of their business model, and a description and results of any policies applied by in the areas of social responsibility.

The implementation of supply chain due diligence in a legally compliant manner is becoming a strategic concern for business entities. However, companies face the challenge of fully capturing, assessing and documenting all changes in their supply chain. It is expected that companies will start preparing to comply with this new legislation, taking into account the significant impact of the German Supply Chain Act on Slovak companies. For example, BILLA Slovakia, as a member of the REWE Group, voluntarily joined the Digital Complaint System for Supply Chains in accordance with the adopted German Supply Chain Act as of January 1, 2023. Other companies are expected to follow suit.

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Slovenia

Own legislation

✗ No.

Local initiatives with the same objective

✓ Yes.

As a general rule, business entities established under Slovenian law or operating in Slovenia are **required to respect and protect human rights**. To this end, various provisions have been enacted, including teh following:

- The National Action Plan on Business and Human Rights ("NAP"), which is a non-binding document, and
- the Companies Act ("CA").

Scope

As mentioned above, companies may agree to be bound by the NAP voluntary.

The Companies Act applies to companies of public interest with >500 employees.

Duties applicable to companies

NAP: Businesses must ensure and promote respect for human rights among their business partners. To this end, they must establish mechanisms to raise awareness, promote communication, and provide mechanisms for reporting on any violations. In addition, companies are required to conduct a due diligence on their business activities and to report on their human rights performance in an annual or sustainability report.

CA: The non-financial performance report of public interest companies must include information on environmental, social, human resources, human rights, anti-corruption and anti-bribery issues. In most cases, this requirement is met with generic statements.

Consequences of Non-Compliance

NAP: there are no (legal) consequences

CA: The CA does not provide for fines for failure to submit the non-financial performance report.

Liability

✗ No.

The current legislation has no impact on SMEs.

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Spain

Own legislation

✕ No.

Spain's preliminary draft law (*anteproyecto de ley*) on the protection of human rights, sustainability and due diligence in transnational business activities (*Anteproyecto de Ley de Protección de los Derechos Humanos, de la Sostenibilidad y de la Diligencia Debida en las Actividades Empresariales Transnacionales*) has been suspended since last May and is still awaiting approval.

This is an excellent opportunity for the Spanish government to pass this law and set an example in the protection of human rights and the environment, as Spain will soon hold the rotating presidency of the European Union in the second semester of 2023.

Local initiatives with the same objective

✕ No.

However, several organizations, including the Platform for Responsible Business (*Plataforma por Empresas Responsables*) - an NGO group of 18 Spanish civil society organizations representing more than 530 companies - are currently lobbying for the adoption of a legislation imposing human rights and environment due diligence obligations in Spain

At this stage, Spanish companies are not yet aware of the need to make the necessary preparations in the face of the proposed EU Directive and Spanish legislation. That said, some of Spain's major companies, such as Inditex, have already implemented their Global Framework Agreement, making this industrial group a global reference in social sustainability.

Spanish companies need to comply with other specific measures already applicable to them, such as the EU Whistleblowing Directive, which has been implemented in Spain by the Law on the Protection of Whistleblowers ("*Ley 2/2023, de 20 de febrero, reguladora de la protección de las personas que informen sobre infracciones normativas y de lucha contra la corrupción*"). The Spanish Law on the Protection of Whistleblowers came into force on March 13, 2023.

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Sweden

Own legislation

✗ No.

Since the CS3D Directive will become part of the Swedish legal system two years after its adoption, it is expected that legislation specifically referencing European regulations will be eventually adopted within the appropriate time frame.

Local initiatives with the same objective

✓ Yes.

Sweden is a party to many international human rights treaties and has human rights provisions in its constitution and other legislation. In addition, as a member state of the European Union, Sweden has implemented measures adopted at the EU level.

Sweden has extensive environmental legislation, some of which is based on EU legislation. The basis of environmental legislation in Sweden is the Environmental Code (1998:808). Additionally, there is supplementary legislation covering specific issues, including handling of chemicals, waste management, and others.

In general, Swedish environmental provisions are addressed to business operators, i.e. the person or company that carries out an activity that falls within the scope of environmental laws. In many cases, an activity may be carried out by more than one operator, in which case each operator is responsible for ensuring compliance.

Scope

The Environmental Code and the supplemental regulations implement and enhance EU directives in different ways. Generally speaking, the Environmental Code cover all activities and therefore all operators must comply. Supplemental legislation covers operators that conduct activities in specific industries.

Duties applicable to companies

Swedish environmental legislation cover a wide range of responsibilities, all of which have the common goal of protecting the environment for present and future generations. The rules with which companies must comply range from minimum standards for noise emissions to ensuring the protection of certain species.

Consequences of Non-Compliance

Violations are generally covered by the Environmental Code (SFS 1998:808), which lists a wide range of offences, from operating a business without the necessary environmental permits to causing damage to surrounding properties as a result of the activity.

Liability

Based on the type of legal provision infringed upon, liability may include a penalty provision, environmental sanction charges, or damages.

SMEs must comply with the rules in the same way as larger companies.

The main difference between Swedish laws and the Council's General Approach is the scope of application in terms of gradually decreasing number of employees, as well as the Directive's more straightforward approach in terms of due diligence procedures and targeting of supply chain related issues.

Many companies in Sweden are developing environmental and human rights policies and codes of conduct that are incorporated into their contracts as clauses requiring their counterparties to comply. Also, major banks in Sweden now involve dedicated environmental and sustainability teams when negotiating the terms of credit facilities with their client companies. In addition, protection of human rights and the environment are carefully highlighted in annual audits. As a result, businesses are already being pushed towards environmental friendliness (and the CS3D Directive).

Companies in Sweden are taking several steps to comply with the regulations and are particularly interested in implementing ESG practices in their operations. Similarly, more companies are developing environmental and human rights policies and codes of conduct. It should be noted, however, that this is not necessarily a result of the CS3D Directive.

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Andersen Europe **Highlights**

Belgium

Partner Hiring

Seeds of Law announces that Stefan Lossy joined our firm as from 1 April 2023.

Stefan Lossy is an important addition to our corporate and M&A team. With his arrival, we are perpetuating our quality service; indeed, our law firm is increasingly called upon to assist in corporate transactions. Stefan specialises in corporate law, family property law, inheritance law, insolvency law, contract law and liability law. He advises, support and represent business managers, shareholders and companies, with a particular focus on family businesses.

Read more

Rankings

Seeds of Law is ranked by the Legal 500 Edition 2023 for Insolvency and restructuring.

"Seeds of Law has a strong reputation when it comes to insolvency and restructuring matters. The team treats all matters as if they were their own business. They work together with their clients to think of solutions, and obtain good results. Every business that they save creates a new partnership for them. Partnership is the key to their success.'"

Seeds of Law's Corporate and M&A team is mentioned as Legal 500 Firm to watch for Commercial, Corporate and M&A.

"Seeds of Law has bespoke expertise in company and corporate law, as well as public law and administrative issues, and provides guidance to a diverse range of clients on corporate governance and environmental considerations. Leo Peeters and Toon Rummens head up the team."

Germany

Remarkable Transactions

Andersen Germany advises SV Krug on the sale to Verisk

An Andersen team led by partner Dr. Moritz Brocker advised insurtech SV Krug on its sale to Verisk. U.S.-based and Nasdaq-listed Verisk acquires all shares in SV Krug to expand its European solutions portfolio and further accelerate Verisk's growth in support of the global insurance industry.

Read more

Italy

Partner Hiring

Andersen in Italy promotes Alessandra Nodari and Alberto Trainotti as new partners.

Andersen in Italy has announced the promotion of Alessandra Nodari and Alberto Trainotti as salary partners, demonstrating the firm's dedication to nurturing talent and maximizing internal resources.

Alessandra Nodari brings extensive experience in bankruptcy law, restructuring procedures, and corporate transactions, while Alberto Trainotti specializes in advising multinational corporations and investment funds on M&A deals and complex Real Estate operations. This internal promotion reflects Andersen's strategy of attracting and investing in exceptional professionals.

Alessandra Nodari
Alberto Trainotti

Remarkable Transactions

Andersen in Italy assisted Movinter in the selling to RedFish LTC

Edoardo Fea, partner at Andersen in Italy, managed the financial and tax aspects of the sale of Movinter S.r.l. to RedFish LongTerm Capital. Movinter, a renowned player in the Italian and European railway market, specializes in the construction of complex lightweight structures and piping for high-speed projects.

With a successful performance in 2022, generating a turnover of over 20 million euros and an adjusted EBITDA of 3.4 million euros, Movinter has secured the satisfaction of its key clients, who have expressed their support for the transaction and their commitment to maintaining existing business relationships while exploring new growth opportunities.

Read more

Multinational company O-I Italy has entered the share capital of Sarco

Andersen has assisted Sarco Srl, a company with thirty years of experience in optimizing products derived from recycling, in a capital increase aimed at the multinational O-I Italy SpA. The leading global glass container producer has made an investment in waste treatment and end-of-waste production through a Sicilian company. The collaboration involved a cooperation between Andersen's team, led by partner Francesco Inturri, and O-I Italy's in-house legal team.

Sarco produces high-quality secondary raw materials that can be utilized in the glass, foundry, and steel industries. By entering the share capital of Sarco, O-I Italy strengthens its presence in the region and enhances the partnership in waste valorization. This transaction aligns with their commitment to innovation and the circular economy, contributing to the added value of permanent materials' lifecycle.

Read more

Andersen in Italy coordinated a merger cross-border operation in Spain and Germany for FCA Bank

Andersen in Italy, with a team led by the partners Maricla Pennesi and Marco Giorgi, provided assistance to FCA Bank in the transformation of their Spanish and German subsidiaries into branches. This restructuring operation, following the previous reorganization of their French

and Portuguese branches, involved a cross-border merger where all assets of FCA Capital España and FCA Bank Deutschland were transferred to the newly established branches of FCA Bank.

The cross-border project was coordinated by Andersen's teams in Spain, led by partners Javier Cubillo and Miguel Prado Gangoiti, and in Germany, led by partners Thomas Koch and Timo Kläner.

Read More

Andersen in Italy with Transition Capital Partner for the acquisition of Dental Feel Group

Transition Capital Partners received financial and tax assistance from Andersen for the acquisition of around the 70% of the company Dental Feel Group. Led by partner Marcello Rabbia, along with Gianni Poggi and Alberto Trainotti, the multidisciplinary team conducted a comprehensive financial due diligence process on the target companies. This process involved activities such as EBITDA normalization, analysis of net working capital dynamics, determination of the actual net financial position, and revenue recognition assessment. The team also addressed tax matters to ensure compliance with regulations.

Transition Capital Partners, along with Yana Investment Partners and a family office, invested in the acquisition through TCP Dental Holdco, acquiring about 70% of Dental Feel Group's shares.

Read more

Spain

Hirings

Andersen incorporates Íñigo Zumalabe as a Partner to reinforce the Private Equity practice area

Andersen has appointed Íñigo Zumalabe as a Partner in the M&A department in the Madrid office to strengthen the private equity practice area.

Zumalabe has more than 20 years of professional experience, during which time he has specialised in M&A and Private Equity. He has advised national and international funds, as well as large corporations in all types of M&A transactions.

Read More
Íñigo Zumalabe

Remarkable Transactions

Andersen advises Reig Capital Group on the sale of Mandarin Oriental hotel in Barcelona to The Olayan Group

Andersen has advised Reig Capital Group on the sale of the Mandarin Oriental hotel in Barcelona to the Saudi investment group The Olayan Group, which has become one of the largest transactions of the year in the hotel market.

The transaction includes the hotel asset, the hotel management and the adjacent commercial premises. The exclusive five-star establishment, with 120 rooms, was inaugurated in 2010 and is located on

Passeig de Gràcia, the commercial hub of luxury in the heart of Barcelona.

Read more

Andersen advises MySphera on fundraising led by the European Commission's EIC Fund

Andersen has advised MySphera, a leading company in improving healthcare efficiency through new technologies, in attracting investment led by the European Commission's European Innovation Council Fund (EIC Fund).

This EIC Fund investment in a Spanish company has been joined by venture capital funds such as SWANLAAB, Sabadell Venture Capital or ALIAD, and other private investors already involved in the company, reaching 2.7 million euros in the first tranche.

Read more

Andersen advises T3N on agreement with Harrison Street for the development of sports and educational complexes starting with ESC LaLiga & NBA Madrid Village

Andersen has advised T3N Sport & Investment (T3N) on the agreement with the US fund Harrison Street for the development of sports and educational complexes in Spain and abroad, which will start with the launch of the ESC LaLiga & NBA Madrid Village project.

The agreement foresees an investment of 300 million euros in projects to be developed in Spain, in cities such as Valencia, where the project is already well advanced, and other countries such as the United States, Japan and Mexico. The companies have already executed the first transaction with the entry into the ESC LaLiga & NBA Madrid Village complex, which they will manage exclusively.

Read more

Andersen advises Emperador Inc. on secondary listing on the Singapore Exchange (SGX)

Andersen has advised Emperador Inc. on the admission of the secondary listing on the Singapore Exchange (SGX) in relation to legal matters affecting the Spanish jurisdiction.

Emperador Inc., an international spirits company with a broad portfolio of brands distributed in more than 100 countries, has an estimated market capitalisation of S$7.3 billion and was previously listed on the Philippine Stock Exchange.

Read more

Andersen advises Squirrel Media and Mondo TV Studios on acquisition of animation production company

Andersen has advised BME Growth listed companies Squirrel Media and Mondo TV Studios in the transaction whereby the former has acquired the animation production company.

With this transaction, Squirrel Media has agreed with the Italian parent company of Mondo TV Studios, Mondo TV S.p.A., the

acquisition of 74.24% of this company, which is one of the largest European producers and distributors of animation content.

With this transaction, and following approval by the general meeting of shareholders, Mondo TV Studios will be delisted and integrated into Squirrel Media, which will become one of Europe's largest producers and distributors of animation content.

Read more

Andersen advises Inversis on the acquisition of OpenFinance

Andersen has advised Inversis, a subsidiary of Banca March, on the closing of an agreement with BME, a SIX Group company, for the purchase of 100% of its fintech Openfinance, an entity that offers technological tools for the provision of comprehensive reporting, advisory and discretionary portfolio management services.

The transaction involves the acquisition of both the software and more than 20 years of experience of Openfinance, which has a highly specialised team with a presence in Spain, Andorra, Mexico, Costa Rica, Panama, Colombia and Chile.

Read more

Andersen advises Aksìa Group on Samcla acquisition

Andersen has advised the Italian private equity fund Aksìa Group on the acquisition, through Scarabelli Irrigazione, an Italian company specialising in irrigation systems and solutions, of Samcla, a Spanish company that develops irrigation monitoring, remote control and automation systems.

The acquisition is part of Scarabelli's strategic plan, which aims to give new impetus to the internalisation of key products and accelerate the development of international markets.

Read more

Andersen advises Trucksters on closing 33 million Series B round

Andersen has advised Trucksters on the closing of a 33 million Series B investment round, one of the largest raised by a startup this year in Spain and, at the same time, one of the largest in the Spanish road transport sector.

The Spanish startup that optimises long-distance freight transport has secured backing from Volvo Group Venture Capital, Continental's venture capital unit, the European Investment Bank (EIB) and FondICO.

Read more