ALERT MEMORANDUM

Supply Chain Due Diligence Obligations in Germany, France and the EU: An Overview

March 5, 2024

Germany and France, the two largest economies in the EU, have adopted laws to hold companies accountable for violations concerning human rights and environmental protection along their supply chain. With the German Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz,* "**LkSG**") and the French Duty of Vigilance Law (*Loi de vigilance,* "**Vigilance Law**") both countries have already implemented a respective regulatory framework that would be refined by a future European Corporate Sustainability Due Diligence Directive ("**CS3D**"), which would mandate all other Member States to implement similar laws.

The following provides an overview of the key aspects of the LkSG and the Vigilance Law, draws comparisons between the LkSG and the Vigilance Law and gives an outlook on the envisaged CS3D for supply chain due diligence in the EU in the future, based on the latest proposal.

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A. The German Supply Chain Act

I. Overview

The LkSG came into effect on January 1, 2023 and imposes extensive due diligence compliance obligations on companies with regard to human rights and environmental protection along the supply chain.

In 2023, the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle,* ("**BAFA**"), the competent authority in Germany to enforce the LkSG, carried out a total of 486 audits of companies in relation to LkSG compliance. Further, the BAFA received 38 complaints, 20 of which had no reference to the LkSG or were not sufficiently substantiated. Only in 6 cases the BAFA reached out to the companies as a result of the complaints.[1]

II. Scope

The LkSG applies to (i) any company, irrespective of its legal form, which either has its headquarters, principal branch (*Hauptniederlassung*), administrative seat or registered seat in Germany or has a branch office (*Zweigniederlassung*) in Germany, and (ii) employs at least 1,000[2] employees in Germany on a regular basis (including employees of affiliated companies or employees seconded abroad). As a result, also foreign companies can fall into the scope of the LkSG. However, in practice the determination of whether a foreign company is within the scope of the LkSG can be difficult and depends on the specific case. Additional guidance in this regard from the BAFA is eagerly anticipated.

III. Obligations under the LkSG

Under the LkSG, in-scope companies are obliged to exercise diligence in their supply chain with respect to human rights and environmental matters in order to identify, prevent and mitigate human rights-related and environmental risks, and to eradicate infringements of human rights-related and environmental obligations by their suppliers. Generally, the due diligence obligations are limited to direct suppliers of the in-scope companies, but can be extended to indirect suppliers in certain circumstances. [3]

The LkSG establishes a duty of effort, but not an obligation to achieve a certain result. In other words, in-scope companies are not directly responsible for a violation of human rights or environmental laws in their supply chain, but must put in place certain mechanisms and policies to prevent or mitigate such violations. There is no absolute standard to be met. In-scope companies must take "adequate" measures. Such adequacy, and therefore the exact scope of obligations, is determined on a case-by-case basis taking into account (i) the nature and scope of the company's business, (ii) the company's ability to influence the direct cause of the risk or violation, (iii) the likelihood of a violation, the expected severity in the event of a violation, and the ability to reduce the violation and (iv) the nature of the company's contribution to the risk or violation.

However, the LkSG does not provide for a civil liability of in-scope companies. In case of a violation of human rights or environmental laws in the supply chain, the LkSG does not enable third parties (including victims) to raise direct claims against the company for breach of an obligation of the company under the LkSG. The in-scope companies can only be fined by the BAFA in case of breach of their due diligence obligations imposed by the LkSG (see A.IV. for details).

The obligations of in-scope companies under the LkSG are as follows:

Implement a human rights-related risk management system. The in-scope companies must identify, assess, and prioritise any risks within their supply chains and must implement their risk management system in all relevant business processes in an

[1] For this paragraph see: BAFA - Pressemitteilungen - Ein Jahr LkSG: BAFA zieht positive Bilanz, last accessed on March 4, 2024.

[2] The employee threshold has been lowered as of January 1, 2024. Prior to January 1, 2024 the threshold was 3,000 employees.

[3] In case of evasive transactions or structures to circumvent diligence obligations with regard to direct suppliers, an indirect supplier might be considered as direct supplier for purposes of the risk analysis. Further, some obligations of the in-scope companies are extended to indirect suppliers if an in-scope company obtains substantiated knowledge of a violation of human rights-related or environmental obligations by an indirect supplier. In this case, the in-scope company must carry out a risk analysis and take measures to prevent, remedy and minimize violations and adapt its risk management.

appropriate manner. What is to be deemed appropriate needs to be assessed on a case-by-case basis taking into account all circumstances of the individual case.

Implement an in-house body responsible for human rights protection. The in-scope companies must determine who exactly is responsible for monitoring risk management within the company; for example, by a so-called "human rights officer". Further, to identify all possible risks in its own business sphere as well as that of its direct suppliers, the in-scope companies must conduct a risk analysis as part of their risk management.

Declare basic principles for the protection of human rights in business. The in-scope companies must issue a policy statement on their human rights strategy, stating basic points about the process, potential risks, and future expectations related to their strategy.

Implementation of preventative measures, take remedial action in the event of a human rights violation. The in-scope companies must implement plans and measures to prevent violations in their own business sphere as well as in those of their direct suppliers. If the company identifies a violation, it must without undue delay take appropriate remedial action to prevent, end, or minimise the extent of the abuse or damage.

In particular, the LkSG stipulates that in-scope companies must obtain contractual assurances from their direct suppliers that the suppliers will comply with the human rights-related expectations of the in-scope companies and address them along their own supply chain. In practice, attempts are made by in-scope companies to pass on the obligations stipulated by the LkSG entirely to their suppliers and even include indemnity obligations of the supplier in favour of the in-scope company. However, the BAFA deems such comprehensive delegation of obligations and attempts to minimize in-scope companies' exposure insufficient for an in-scope company to fulfil its obligations under the LkSG. Therefore, it is best practice for in-scope companies to make a code of conduct part of their arrangement with the supplier with which the supplier must comply. Such code of conduct should specifically set forth the in-scope company's standards to be acknowledged by the suppler. In addition, in-scope companies should establish audit rights with the supplier in order to monitor the supplier's compliance. However, such audit rights are often times subject to lengthy discussions in relation to protection of know-how, IP rights and personal data protection requirements.

Implement a complaints procedure for notifying human rights violations, implement due diligence measures for risks connected to indirect suppliers. Further, in-scope companies must set up an internal complaints office and establish an appropriate complaints procedure to enable individuals to report potential risks or violations. The risk management and complaints procedure must enable reporting risks or violations that have arisen due to the economic activities of indirect suppliers.

Implement measures to document and report measures taken in performance of mandatory due diligence obligations. Lastly, in-scope companies must document the actions taken in performance of their due diligence obligations internally and provide information on their efforts with regard to transparency, sustainability, and fair working conditions in an annual report.

IV. Audit and Sanctions

The BAFA can initiate ex-officio audits. However, the BAFA has further implemented a complain procedure and also acts upon complaints received from third parties. The BAFA's audits include plausibility checks, in-depth audits, and on-site visits, including abroad. For example, in 2023 several NGOs submitted complaints with the BAFA against German supermarket chains, which the BAFA is currently examining individually.

In case of administrative enforcement proceedings by the BAFA, a potential penalty of up to EUR 50,000 may be imposed. If certain of the obligations described in Section A III are breached, the BAFA may impose a fine of up to EUR 800,000 on an individual and up to EUR 8 million or, if the annual turnover exceeds EUR 400 million, up to two per cent of the annual turnover on a company. However, the BAFA did not impose sanctions on companies in 2023.

V. Litigation Risks

In principle, sanctions can only be imposed by the BAFA. However, the documentation and reporting

obligations under the LkSG could increase the risk of LkSG related litigation. For example, as part of general ESG campaigns the information obtained could be used by NGOs and private individuals to amplify greenwashing allegations.

Currently, ESG lawsuits in Germany are focused on car manufacturers and energy companies. In addition, a large number of greenwashing lawsuits have been filed. Such law suits offer one of the few promising civil law approaches for interested parties such as NGOs. Claimants based their lawsuits on information they drew inter alia from company reporting, e.g., non-financial and sustainability reports, regarding projects they are invested in to offset the emissions caused.

The extensive documentation obligations required pursuant to the LkSG in relation to the entire supply chain could make it easier for activists to find such information. As a result, every statement made by a company and its representatives on ESG-relevant topics can be theoretically verified by third parties by double-checking the reports.

While the LkSG does not establish civil liability, liability unrelated to the LkSG remains unaffected. Greenwashing disputes are generally based on the German Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*), but could be greatly facilitated by the effects of the LkSG. While compliance with "climate-pledges" is comparatively easy to verify, this was not always the case for compliance with other standards such as the exact origin of raw materials or compliance with workers' rights. As such aspects are now part of the reporting obligations under the LkSG, potential claimants can use these reports as a guide for potential lawsuits. This could lead to a situation where companies are compliant with their documentation obligations under the LkSG, but greenwashing lawsuits are still successful.

B. The French Duty of Vigilance Law

I. Overview

The Vigilance Law, which is implemented under Articles L. 225-102-4 and L. 225-102-5 of the French Commercial Code,[4] imposes a duty of vigilance on companies to prevent social, environmental and governance risks associated with their activities and those of their subsidiaries and business partners. The Vigilance Law came into force in March 2017 and the first vigilance plans were required to be published in 2018, together with the management reports for the 2017 financial year.[5]

II. Scope

The Vigilance Law applies to joint stock companies incorporated in France (namely the *sociétés anonymes*, *sociétés en commandite par actions* and *sociétés par actions simplifiées*) which, at the end of two consecutive financial years, have either (i) at least 5,000 employees working for the company and its direct and indirect French subsidiaries; or (ii) at least 10,000 employees working for the company and its direct and indirect French or foreign subsidiaries.

Subsidiaries or controlled entities are deemed to comply with the Vigilance Law when the controlling company establishes and implements a vigilance plan that covers the activities of all subsidiaries or controlled entities.

III. Obligations under the Vigilance Law

Companies are required to establish, implement and disclose each year in their management report a vigilance plan and include a report on its effective implementation.

The vigilance plan, developed in association with the stakeholders of the company,[6] must include reasonable and appropriate measures to identify and prevent serious impacts[7] (i) on human rights and fundamental

[4] These provisions will become respectively Articles L. 225-102-1 and L. 225-102-2 of the French Commercial Code as of 1 January 2025 (Articles 4, 5° and 6°, and 33, I, of the Ordinance no. 2023-1142 implementing the CSRD (the "**Ordinance**")).

[5] In the first year, the report on the effective implementation of the vigilance plan was not required.

[6] The provisions according to which the vigilance plan should be drawn up with the company's stakeholders have an incentive effect, so that the legislator has not disregarded the constitutional objective of accessibility and comprehensibility of the law (*Conseil constitutionnel*, decision no. 2017-750 of 23 March 2017).

[7] Since January 1 2024, the vigilance plan of companies producing or marketing agricultural or forestry products must include, in particular, reasonable vigilance measures to identify risks and prevent deforestation associated with

freedoms, health and safety, and the environment; and (ii) resulting from the activities of the company and its direct and indirect subsidiaries, as well as the activities of subcontractors or suppliers with whom the company has an established relationship.

It must include at least the following five measures: (i) a **mapping that identifies, analyses and prioritises risks**; (ii) a **risk assessment procedure** for subsidiaries, subcontractors or suppliers with whom the company maintains an established business relationship; (iii) **appropriate measures to mitigate or prevent serious harm**; (iv) a **mechanism to alert and collect reports on potential and actual risks**, drawn up in consultation with representative trade unions (*organisations syndicales représentatives*); and (v) a **system for monitoring the measures implemented and evaluating their effectiveness**.

Although the Vigilance Law enables the *Conseil d'Etat* to issue a decree to supplement the above vigilance measures and to specify the procedures for the elaboration and implementation of the vigilance plan, no such decree has been published to date.

From January 1, 2025, companies will be allowed to refer to the sustainability information published in their management report in accordance with the CSRD in their vigilance plan.[8]

IV. Sanctions

Formal notice to comply with the Vigilance Law. Any person may serve a formal notice (*mise en demeure*) on a company to comply with its obligations under the Vigilance Law. There is no legal threshold or legal interest to be demonstrated in order to send a formal notice, nor is there any restriction on the publicity that may be given to it.

The formal notice is likely to be increasingly used by NGOs and other human rights or ESG-focused organizations or individuals as a pressure tool to compel companies to disclose additional information on human rights and climate commitments, thereby creating additional exposure and reputational risk and damage.

Court order to comply with the Vigilance Law. If a company fails to comply with the formal notice within three months, the Paris Judicial Court (*Tribunal Judiciaire de Paris*)[9] or its president, acting in summary proceedings (*référé*), may order the company to comply with the obligation to publish and implement a vigilance plan in accordance with the Vigilance Law, and may impose a penalty payment for this purpose.

There are no legal provisions specifying the powers of the court in the event of a violation of the duty of vigilance. The court may verify the existence of the vigilance plan and whether it contains the measures foreseen in the Vigilance Law, the existence of a published report on its effective implementation and the inclusion of the vigilance plan and the report in the management report. Alternatively, the court could conduct a qualitative analysis of the vigilance plan and report, in particular assessing the adequacy of the plan with respect to the identified risks.

In order to ask the court to order the company to comply with its obligations, a party must demonstrate an interest. The interest to act is assessed under the ordinary conditions of Article 31 of the French Code of Civil Procedure, according to which the action is open to any person who has a legitimate interest in the success or rejection of a claim, subject to cases in which the law grants the right to act only to persons whom it qualifies to bring or contest a claim or to defend a specific interest.

Civil liability. Failure to comply with the obligations under the Vigilance Law also exposes the company to civil liability under the ordinary conditions of Articles 1240 and 1241 of the French Civil Code, for compensation for any damage resulting from non-compliance with the Vigilance Law obligations.

Any person having an interest to act may bring an action for civil liability before the Paris Judicial Court,

the production and transport to France of imported goods and services.

[8] See Articles 4, 5°, b) and 33, I, of the Ordinance.

[9] In 2017, the Vigilance Law simply stated that the matter should be referred to the "*competent court*", without specifying which court actually had jurisdiction. This ambiguity gave rise to a dispute that ultimately led the legislator to give the *Tribunal Judiciaire de Paris* exclusive jurisdiction to hear actions relating to the duty of vigilance based on Articles L. 225-102-4 and L. 225-102-5 of the French Commercial Code (Article L.211-21 of the French Code of Judicial Organization).

which may also order the publication of its decision and its enforcement under a penalty payment.

Administrative sanctions. The Vigilance Law had initially provided for administrative sanctions of up to EUR 10 million. However, these provisions were annulled by the *Conseil constitutionnel* (French Constitutional Council) in its decision no. 2017-750 of March 23, 2017 for violation of the principle of legality, as the terms used to define the relevant offenses were considered insufficiently clear and precise to constitute a valid legal basis for sanctions.

Exclusion from public contracts and concessions. Non-compliant companies may be excluded from the procedure for the award of a public contract or a public concession in accordance with Articles L. 2141-7-1 and L. 3123-7-1 of the Public Procurement Code.

V. Ongoing litigation

Since the entry into force of the Vigilance Law, more than 30 formal notices have been served on French companies, resulting in dozens of summonses and several court decisions.

In most cases to date, a judge hearing a vigilance case has ultimately dismissed the case, mainly on procedural grounds:

In the EDF case, the Court declared the action inadmissible for lack of prior formal notice regarding the vigilance plan at issue.[10]

In the TotalEnergies – Uganda case, the Court ruled that (i) the action was inadmissible for lack of prior notice, as the NGOs' claims before the Court differed substantially from those set out in the formal notice, and (ii) the NGOs' request for summary judgment was inappropriate given the complexity of the issues at stake.[11]

In the Suez case, the Court ruled that (i) Vigie Groupe SAS could not be considered a defendant in the action because the vigilance plan did not specify which Suez Group company was the author of the plan, and (ii) the action was inadmissible because the plaintiffs summoned the company on the basis of a vigilance plan different than the one on which the formal notice was based.[12]

In the TotalEnergies – Climate case, the Court (i) declared the action inadmissible for lack of standing of the NGOs and local authorities, (ii) ruled that the disappearance of the subject matter of the dispute due to the publication of more recent vigilance plans did not result in the termination of the proceedings, (iii) declared the action based on the Vigilance Law inadmissible because the prior notice was too vague to serve as a basis for useful negotiations before the summons, and (iv) declared the action based on Article 1252 of the Civil Code inadmissible,[13] such an action being subject to the provisions of Article L. 225-102-4 of the Commercial Code, which are special and derogate from the general provisions of the Civil Code.[14]

On December 5, 2023, the Court issued its first decision[15] on the merits in a case involving La Poste Group, largely siding with the Sud PTT union, which had summoned La Poste Group in December 2021 after several formal notices. The Court ordered La Poste Group to: (i) complete its vigilance plan with a risk map identifying and prioritizing risks; (ii) establish procedures to assess subcontractors based on specific risks identified in the risk map; (iii) supplement its vigilance plan with a mechanism for alerting and collecting reports after consulting representative trade union organizations (*organisations syndicales représentatives*) (the Group had chosen to adapt the existing whistleblowing alert system put in place when the Sapin II Law came into force without specifically consulting the said organizations); and (iv) adopt and publish measures to monitor vigilance actions. The Court decided not to impose a penalty in connection with the injunction.

[10] *Tribunal judiciaire Paris*, November 30 2021, n°20/10246, EDF.

[11] *Tribunal judiciaire Paris*, February 28 2023, n°22/53942 and n°22/53943, TotalEnergies SE available here and here (in French only).

[12] *Tribunal judiciaire Paris*, June 1 2023, n°22/07100, SUEZ SA.

[13] According to which independently of compensation for ecological damage, the judge may, at the request of certain persons, order appropriate measures to prevent or stop the damage.

[14] *Tribunal judiciaire Paris*, July 6 2023, n°22/03403, TotalEnergies SE available here (in French) and here (in English).

[15] *Tribunal Judiciaire Paris*, December 5, 2023, n°21/15827, La Poste available here (in French).

Given the number of pending cases, further decisions are expected in 2024 that will likely clarify the scope of the duty of vigilance pending the adoption and subsequent implementation of the CS3D into national law.

C. Comparison of the LkSG and the Vigilance Law

The LkSG and the Vigilance Law align partly, especially regarding the due diligence obligations imposed on companies by both laws. However, they differ in a number of key areas.

I. Similarities

Both the LkSG and the Vigilance Law impose extensive due diligence and reporting requirements. Further, both the LkSG and the Vigilance Law can increasingly be used by NGOs to put pressure on companies and to bring lawsuits against them; in the case of the LkSG, due to the missing direct civil liability component, only indirectly by using the LkSG's reporting obligations to bring claims under German civil law. So far, however, most of the cases filed have been dismissed by the German BAFA and the German courts, as well as by the French courts (so far, dismissals have only been on procedural grounds).

II. Differences

The three main differences between the LkSG and the Vigilance Law are their respective scope, the civil liability of the non-compliant company and the use of administrative sanctions.

In Germany, companies are subject to the LkSG if they employ at least 1,000 employees, whereas in France, companies or groups with at least 5,000 employees in France or 10,000 employees in France and abroad are bound by the Vigilance Law.

Further, under the Vigilance Law, companies may be held liable under civil law for any violations of the law, whereas there is no direct civil liability with regards to the LkSG.

The BAFA can impose administrative sanctions for violations of the LkSG whereas the French administrative sanction procedure was struck down by the *Conseil constitutionnel* (French Constitutional Council).

D. Corporate Sustainability Due Diligence Directive

I. Overview

On February 23, 2022, the European Commission published its original proposal for a Directive on Corporate Sustainability Due Diligence.[16] Following a lengthy legislative process, the European Parliament and Council reached provisional agreement on December 15, 2023 and, on January 29, 2024, a compromise text (the "**CS3D Compromise**") was presented.

Following announcements by some Member States that they will abstain from voting on the CS3D Compromise, the European Council postponed the vote, which was originally scheduled for February 9, 2024. The European Council then envisaged another vote on February 28, 2024. However, the CS3D Compromise has not yet received the required majority and has therefore not yet been approved.

It is currently unclear whether and when a new vote will be held or if and to which extend the CS3D Compromise will be amended. In the meantime, the below provides an overview of the CS3D Compromise in its current version.

II. Scope

The CS3D Compromise would apply to EU companies and non-EU companies, provided they qualify as any of the following:

Large companies, i.e., in the case of EU companies, 500 employees and over EUR 150 million worldwide turnover; for non-EU companies, over EUR 150 million generated in the EU;

Parents of large groups, i.e., the entity does not itself reach the above thresholds, but it is the ultimate parent of a group that does;

Large franchises, i.e., the company entered into certain franchising or licensing agreements with third parties, and generated, in the case of EU companies, a worldwide turnover of more than EUR 40 million,

[16] For an analysis of the Commission's original proposal, please see our dedicated alert memorandum here.

and, in the case of non-EU companies, more than EUR 40 million in the EU ("**Large Franchises**");

Large critical sector companies, i.e., the company reaches certain thresholds (250 employees / over EUR 40 million worldwide for EU companies, and EUR 40-150 million EU turnover for non-EU companies) and generates at least EUR 20 million of turnover in certain high-impact sectors (e.g., textiles, agriculture, food and beverages, wood, extraction of mineral sources, metal manufacturing, chemicals, construction) ("**Critical Sector Companies**").

III. Obligations under the CS3D

The CS3D would impose on in-scope companies a duty to conduct 'risk-based' human rights and environmental due diligence, to address the issue of adverse environmental and human rights impacts (broadly, adverse impacts resulting from breaches of certain obligations set out in Annex I of the CS3D Compromise).

The due diligence measures would include the following:

Integrating due diligence into the company's policies and risk management systems. There would be specific requirements what the relevant policies should cover, including a description of the company's approach (including long-term) to due diligence, and a code of conduct to be followed throughout the company, its subsidiaries, and the company's direct or indirect business partners.

Identifying and assessing actual and potential adverse impacts, of companies' own operations, the operations of their subsidiaries, and, where related to their chains of activities, those of their business partners. This should include identifying relevant risk factors, mapping operations, and assessing those areas where impacts are most likely to occur.

Preventing or mitigating potential adverse impacts, and bringing actual adverse impacts to an end. Where this is not feasible in respect of all identified adverse impacts at the same time, companies should prioritise the most critical impacts.

Remedying actual adverse impacts that were caused by the company (either alone or jointly with others).

Carrying out meaningful stakeholder engagement throughout the due diligence process, including when gathering information on actual or potential adverse impacts, developing prevention and corrective action plans, deciding whether to terminate or suspend a business relationship, adopting measures to remediate adverse impacts.

Putting in place complaint mechanisms for key stakeholders, such as persons who might be affected by companies' adverse impacts, trade unions, and civil society organisations.

Monitoring and assessing the effectiveness of these due diligence measures, without undue delay after any significant change, but at least every 12 months.

Publishing an annual statement covering companies' due diligence efforts on companies' websites, except for companies already reporting under the CSRD (Articles 19a, 29a and 40a of the Accounting Directive).

Moreover, some of the in-scope entities (including large companies and parents of large groups) will be required to adopt and implement climate transition plans to ensure, through best efforts, that their business model and strategy are Paris-Agreement aligned.

Importantly, the company's due diligence efforts will need to extend beyond the operations of itself and any subsidiaries, and will need to include consideration of its 'chain of activities', i.e., its business partners both upstream (including raw material producers and suppliers) and downstream (including distribution, transport, recycling, disposal, etc. of products). For these purposes, 'business partner' means both 'direct business partners' (i.e., with whom a company has a commercial agreement) and 'indirect business partners' (which perform business operations related to the operations, products or services of the company.

Subject to the conditions set forth in Article 4a of the CS3D Compromise, due diligence obligations may be performed by the parent company at the group level.

IV. Enforcement

Investigatory powers. Member States will designate authorities to supervise compliance with the new obligations. These authorities are to have 'adequate powers', including powers to require companies to provide information; to carry out investigations; to supervise the adoption and design of transition plans. Moreover, any person will be able to submit to the

authority 'substantiated concerns' where they have reasons to believe that a company is failing to comply with its due diligence obligations.

Sanctions. Authorities will also have powers to impose various types of sanctions, including powers to order cessation of infringements, abstention from any repetition of relevant conduct, or provision of remediation; to impose penalties; and to adopt interim measures. The penalties will be set by Member States (provided that they are "effective, proportionate and dissuasive"), although the CS3D Compromise provides that the maximum limit of pecuniary penalties must be at least 5 % of the relevant company's worldwide turnover.

Civil Liability. Companies can be held liable for damages caused to a natural or legal person, provided that (i) the company intentionally or negligently failed to comply with certain of its obligations under the CS3D and (ii) as a result of the failure a damage to the natural or legal person's legal interest protected under national law was caused. However, the company cannot be held liable if the damage was caused only by its business partners in its cain of activities. Overcompensation, whether by means of punitive, multiple or other types of damages is excluded.

V. Next Steps

The CS3D Compromise will still need to be formally approved by EU legislators before it can be enacted. Following entry into force of the CS3D, the obligations will be phased-in as follows:

3 years from entry into force. (i) large EU companies and EU parents of large groups, which have more than 1000 employees and a worldwide turnover of more than EUR 300 million and (ii) large non-EU companies and non-EU parents of large which generate a turnover of more than EUR 150 million in the EU.

4 years from entry into force. (i) all other large EU/non-EU companies and EU/non-EU parents of large groups and (ii) all Large EU/non-EU Franchises.

5 years from entry into force. EU/non-EU Critical-Sector Companies.

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