ACCOUNTANCY EUROPE RESPONSE TO THE EC PUBLIC CONSULTATION ON THE CSDDD GUIDELINES

IDENTIFICATION OF ADVERSE IMPACTS (INCLUDING DATA AND INFORMATION SOURCES)

[The parts in *italics* are copied from the European Commission consultation document.]

Under the CSDDD (Article 8), companies in scope are required to take appropriate measures to identify adverse impacts, including at the level of indirect business partners (beyond direct contractors) in their value chains.

As part of this, and taking into account relevant risk factors, companies are required to carry out a scoping of risk areas across their own activities, those of their subsidiaries and those of their business partners where impacts are most severe and most likely. Based on the results of this scoping, companies should carry out an "in-depth assessment" in those areas where the adverse impacts were identified as most severe and most likely to occur. Companies will be expected to carry out the scoping exercise based on reasonably available information which will as a general rule preclude requesting information from business partners. Nevertheless, companies have flexibility in judging what information is reasonably available to them (Omnibus I, recital 39). Furthermore, companies will be expected to request information from business partners for the in-depth assessment only where that information is necessary and, in the case of business partners with fewer than 5 000 employees, only when the information cannot reasonably be obtained by other means. For the purposes of this in-depth assessment, where adverse impacts are identified as equally likely to occur or equally severe in several areas, companies may prioritise assessing such areas which involve direct business partners.

Question 7:

Have you faced any legal obstacles or conflicts when collecting information for the purpose of either carrying out a scoping of risk areas, or an "in-depth assessment" as a result of third countries' laws? Companies and stakeholders are invited to signal barriers to due diligence they may face in third countries when conducting due diligence.

The guidelines should recognise that, in some jurisdictions, companies may face legal restrictions that prevent them from obtaining information or carrying out certain due diligence activities. They should clarify how the concepts of 'appropriate measures' and 'reasonably available information' should be applied in these circumstances, and what documentation companies should retain to demonstrate compliance where conflicting legal obligations prevent access to relevant information.

DIGITAL TOOLS

Digital tools and technologies can facilitate the performance of due diligence. Such tools are for instance used for the tracking and surveillance of raw materials, goods and products throughout value chains (e.g. satellites, drones, radars or platform-based data sharing). They can help companies reduce the cost of data and facilitate the identification, monitoring and assessment of adverse impacts, as well as enhancing collaboration and stakeholder engagement.

Question 12:

What digital tools do you consider most useful to facilitate the identification, monitoring and assessment of possible adverse impacts? Please explains pros and cons.

Technology evolves rapidly, guidelines should guide effective tool use, not specify which tools to use. The guidelines should explain how companies should select, govern and use digital tools effectively.

There is no one-size-fits-all solution, as appropriate tools depend on the value chain, sector, geography and sustainability issues. Technology sovereignty risks and reliance on non-EU technology providers should also be considered. Responsibility cannot be delegated to technology.

Question 13:

Have you encountered any difficulties or problems with digital tools, including issues that cause unnecessary burdens?

One key challenge is ensuring the auditability and transparency of digital tools. Where tools operate as "black boxes", it may be difficult to understand how conclusions were reached or assess whether the underlying data are reliable. Companies therefore need appropriate governance, including documentation, traceability of outputs and human oversight. Interoperability between systems also remains a challenge.

Question 14:

Do you think there should be additional digital tools? What functionalities and tasks should these focus on?

Rather than developing additional standalone tools, the priority should be improving interoperability between existing systems and reducing duplication of reporting requirements. Tools supporting risk prioritisation, horizon scanning, scenario analysis and assessing the effectiveness of due diligence processes over time would be beneficial. This would support a stronger focus on outcomes, governance and continuous improvement. The market should continue to drive technological innovation, while the guidelines should focus on enabling effective use of digital tools.

SMES

In setting out the due diligence duties, the CSDDD includes specific safeguards for SME business partners. An important safeguard is the requirement for in-scope companies to use contractual terms that are fair, reasonable, and non-discriminatory, and that do not shift compliance burdens to SME business partners. Furthermore, where relevant, companies should provide SME business partners with targeted and proportionate support where necessary in view of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems, and, where compliance with the code of conduct or a prevention/correction action plan would jeopardise the viability of the SME, by providing targeted and proportionate financial support (such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing).

Question 21:

In your experience, have you used specific contractual terms that are fair, reasonable, and non-discriminatory when entering into contractual relationships with SME business partners to facilitate or support the due diligence process? Please explain pros and cons.

Contractual clauses can support due diligence, but they are not a substitute for effective risk management and engagement with business partners. Existing model contractual clauses, such as those developed by the Responsible Contracting Project, may provide useful examples of balanced contractual approaches that support due diligence without transferring disproportionate compliance burdens to business partners.

Question 22:

In your experience, what are the most cost-effective measures to support SMEs? What are the pros and cons?

The most cost-effective support measures are practical, proportionate and scalable. This means clear guidance, sector-specific examples, standardised templates, and digital tools aligned with existing reporting processes. Capacity-building through accountants and SME advisers can further reduce costs. Where SMEs are critical to the in-scope business, targeted financial and technical support can enable effective prevention and corrective action.

GUIDANCE ON THIRD-PARTY VERIFICATION (ARTICLE 20)

The CSDDD allows companies to use independent third-party verification to support the implementation of due diligence obligations to the extent that such verification is appropriate to support the fulfilment of relevant obligations, in particular the obligation to verify compliance by business partners with the contractual assurances regarding the company's code of conduct and possible prevention and corrective action plans. Independent third-party verification may be carried out by specialised companies or by an industry or multi-stakeholder initiative. According to the Directive, the third-party verifier must be objective, completely independent from the company, free from any conflicts of interest and from external influence, have experience and competence in human rights (including labour rights) or environmental matters, according to the nature of the adverse impact, and be accountable for the quality and reliability of the verification.

Question 40:

What best practices could ensure the independence of third-party verifiers from the companies that they assess, from the companies on whose behalf they act and from external influence?

Independence should exist in fact and appearance**.** Verifiers should be free from conflicts of interest, should not verify systems they designed or implemented, should have robust ethics, independence and quality management arrangements. Internationally recognised quality management principles, such as those applied in assurance engagements, provide useful benchmarks and should apply on a level playing field to all verification providers.

Question 41:

In your view, what level of experience and competence in human rights (including labour rights) or environmental matters, according to the nature of the adverse impact, would be necessary for third-party verifiers to support companies in implementing the Directive's requirements?

Verifiers should combine expertise in human rights or environmental matters with competencies in governance, risk assessment, internal controls, evidence gathering, assurance methodologies. Assessing whether due diligence processes operate effectively is as important as technical knowledge. Assurance, sector expertise, local knowledge and stakeholder engagement experience should match the adverse impacts assessed. The guidance should ensure a level playing field across verification providers.

Question 42:

In your experience, what are the most effective standards ensuring that the third-party verifiers are accountable for the quality, effectiveness, reliability and integrity of the verification?

The guidelines should reflect internationally recognised principles for ethics, independence, quality management and competence. Accountability requires technical expertise, documented methodologies, review procedures, robust governance, quality controls, and effective challenge mechanisms. Established professions, such as statutory auditors, already operate under standards, methodologies and independence requirements. The guidelines should build on these rather than reinvent the wheel.