



Hello!

Welcome to Issue 10 of Parametric Insights, our corporate investigations and economic crime updates newsletter. We have an **exciting new format** this year, offering digestible and quick insights. Each month, we'll share **relevant updates and resources** to help you focus on key issues and navigate them successfully.

At Parametric Global, our primary focus is to help our clients **align conduct and culture**. We are passionate about helping organisations build healthy, productive compliance cultures and actively engage with senior leaders on how to strengthen and operationalise their ethics and compliance programmes.

On 14th March, Lloydette Bai-Marrow will also moderate a keynote panel discussion at 2024 ACFE Fraud Conference Europe: **"Impacts of the 2023 UK Economic Crime and Corporate Transparency Act"**. Leading subject matter experts will discuss the effect on the anti-fraud profession and how you should respond, so don't miss out! Check out the **Dates For Your Diary** section for registration details.

Get in touch with us if you need our assistance with any investigations, conduct or compliance issues in your organisation.

Your thoughts and feedback are **always welcome**. Please feel free to share this edition, and new readers can sign up to our mailing list [here](#). Enjoy!

Best,

Lloydette
Founding Partner

LEGISLATION UPDATES

The Corporate Sustainability Due Diligence Directive

Background And Aims

In December 2023, The European Council and the European Parliament reached a provisional deal on the Corporate Sustainability Due Diligence Directive (CSDDD).

The CSDDD **aims** to "foster sustainable and responsible corporate behaviour throughout global value chains" and strengthen the protection of the environment and human rights in the EU and globally. It is intended to **embed** these human rights and environmental considerations in companies' operations and corporate governance.

The rules will ensure that businesses address **detrimental impacts** of their actions, including in their value chains inside and outside Europe.

The **benefits** of the new rules for companies are intended to include, amongst others:

- A harmonised legal framework in the EU, creating legal certainty and a level playing field;
- more awareness of companies' negative environmental and human rights impacts; and
- better risk management and adaptability.

The CSDDD also incentivizes Directors to contribute to sustainability and climate change mitigation goals. It will introduce **duties for directors of EU companies in scope**. These include setting up and overseeing the **implementation** of due diligence processes, and **integrating due diligence** into the corporate strategy. Additionally, when fulfilling their duty to act in the company's best interest, directors must **consider** the human rights, climate change and environmental consequences of their decisions.

The CSDDD is not estimated to come into force **until 2025** at the earliest. Companies should take proactive steps in reviewing local and international supply chains and ensuring that they have good visibility on operations.

Scope and Requirements

The CSDDD will establish a corporate due diligence duty, and set out obligations for **large companies** regarding "actual and potential adverse impacts on human rights and the environment", with respect to their "own operations, their subsidiaries, and those carried out by their business partners."

This includes a company's **upstream** established direct and indirect business relationships, and partially also **downstream** activities – such as product transport and storage, or recycling.

It will mandate that companies adopt a plan ensuring that their business models and strategies are compatible with the Paris Agreement on climate change.

The CSDDD will apply to:

- EU companies with 500+ employees and worldwide turnover of more than EUR 150 million;
- EU companies operating in certain 'high impact' sectors (e.g. agriculture) with more than 250 employees and global turnover of more than EUR 40 million; and
- Non-EU companies whose operations within the EU fall within the above categories.

The proposal also provides supporting measures for **SMEs**, which although are not included in the scope of the CSDDD, could be **impacted** by its provisions as contractors/subcontractors to the companies that are within the scope. Large companies will be expected to ensure that their suppliers operate in line with the CSDDD's requirements. Therefore, this will **expose** SMEs in business relationships with companies in scope, to some of the related costs and burdens of compliance.

Financial services are **temporarily excluded** from the scope of the Directive. However, there will be a review clause for a possible future inclusion of the downstream financial sector.

To **motivate** companies, compliance with the CSDDD can also be used to determine eligibility for the award of public contracts and concessions.

In undertaking the due diligence process, companies will also need to carry out meaningful engagement with affected stakeholders, including dialogue and consultation.

Enforcement and Penalties

The Directive sets out rules on penalties and civil liability for breaching obligations.

Rules on directors' duties: These will be enforced through existing Member States' laws – the CSDDD does not include an additional enforcement regime for directors who do not comply with their directive obligations.

Administrative liability and supervision: Member States will designate a supervisory authority to monitor compliance with obligations, and impose "effective, dissuasive and proportionate" sanctions. They will be able to launch inspections and investigations. Penalties include compliance orders, "naming and shaming" and fines of up to no less than 5% of a company's net worldwide turnover. If companies fail to pay fines imposed, the provisional agreement includes injunction measures.

The Commission will set up a European Network of Supervisory Authorities to help with coordination, implementation and information-sharing, composed of the Member States authorities.

Civil liability regime for damages: Member States will ensure that victims can get compensation for damages arising from a company's breaches of the CSDDD obligations.

Next Steps

- The Directive's obligations represent a **significant change**, and it will take time for companies to implement the necessary compliance mechanisms.
- Non-compliance will lead to **severe** penalties and reputational damage. Therefore, companies should start **proactively** crafting and implementing due diligence policies and procedures, assessing the CSDDD's requirements, and aligning internal policies accordingly.
- **Business directors** will have **specific obligations** to integrate due diligence into the corporate strategy. Additionally, they will also have to **consider** the human rights, climate change, and environmental consequences of their decisions.
- The CSDDD's scope will include operations, subsidiaries, and entire value chains (procurement, use, and disposal). Companies within scope may be required to **terminate** relationships with partners whose operations have adverse impacts on the environment or human rights, that they are unable to prevent or mitigate.
- Companies will have to **assess** the potential **impact** of their operations and supply chains on the environment, and potential human rights violations, when undertaking **due diligence**.
- They should establish enhanced communication and engagement with **business partners** to facilitate more effective **management** of issues.
- It will be important to ensure that internal reporting, reviewing and investigation mechanisms are ready to support the raising and addressing of **concerns** relevant to the CSDDD's obligations.

CASE UPDATES

German Multinational SAP Agrees To Pay DOJ And SEC \$222 Million To Settle Bribery Charges

SAP SE (SAP), a multinational Germany-based software company, will pay over \$220 million to resolve investigations by the DOJ and the SEC into violations of the Foreign Corrupt Practices Act (FCPA). This is part of a coordinated global settlement that includes the criminal and civil authorities in South Africa.

In January 2024, the SEC announced charges against SAP for FCPA violations, arising out of bribery schemes in seven jurisdictions - South Africa, Malawi, Kenya, Tanzania, Ghana, Indonesia, and Azerbaijan.

The SEC's order found that SAP violated the FCPA by employing third-party intermediaries and consultants from at least December 2014 through January 2022 to pay bribes to government officials to obtain business with public sector customers in the above countries. SAP was found to have failed to implement sufficient internal accounting controls over third parties and lacked sufficient entity-level controls over its wholly owned subsidiaries.

In parallel, the SAP agreed to pay the DOJ a \$118.8 million criminal fine and to a forfeiture of approximately \$103 million (of which \$85 million will be satisfied by the company's payment of disgorgement pursuant to the SEC's order). SAP received a 40% discount on the fine, which reflects their extensive cooperation and remediation.

The DOJ resolution stems from schemes to pay bribes to government officials in South Africa and Indonesia. The SAP entered into a three-year deferred prosecution agreement (DPA) with the DOJ and agreed to a financial penalty of nearly \$100 million in disgorgement of profits and prejudgment interest to settle the SEC's charges. SAP will continue cooperating with the DOJ in any ongoing or future criminal investigation arising during the DPA's term. The DOJ also reduced the fine by \$109,141. This reflects the bonuses that SAP withheld from employees "who engaged in suspected wrongdoing", or who had supervisory authority over employees / business area engaged in misconduct, and "knew of, or were willfully blind to, the misconduct."

SAP has previously faced fines for bribery-related misconduct, entering into a resolution in 2016 with the SEC concerning alleged FCPA violations in Panama.

Alleged Whistleblower Violations: JP Morgan To Pay Millions To SEC

In January, The Securities and Exchange Commission (SEC) announced settled charges against J.P. Morgan Securities LLC (JPMS) for hindering hundreds of advisory clients and brokerage customers from reporting potential securities law violations to the SEC.

According to the SEC's order, from March 2020 through July 2023, JPMS regularly asked retail clients to sign confidential release agreements if they had been issued a credit or settlement from the firm of more than \$1,000. The agreements required the clients to keep the settlement, all underlying facts relating to the settlement, and all information relating to the account at issue, confidential. In addition, even though the agreements permitted clients to respond to SEC inquiries, they did not permit clients to voluntarily contact the SEC.

Provisions that prevent individuals from contacting the SEC with evidence of wrongdoing cannot be included in employment contracts, settlement agreements or elsewhere. However, this is what JPMS is alleged to have done, forcing some clients to choose between receiving settlements/credits from the firm, and reporting potential securities law violations to the SEC.

The SEC's order found that JPMS violated a whistleblower protection rule under the Securities Exchange Act of 1934, which prohibits taking any action to impede an individual from communicating directly with SEC staff about possible securities law violations.

JPMS agreed to be censured, to cease and desist from violating the whistleblower protection rule, and to pay an \$18 million civil penalty to settle the charges.

Ex-Goldman Sachs Analyst Jailed 22 Months For Insider Dealing And Fraud

A former Goldman Sachs analyst was found guilty of six counts of insider dealing and three offences of fraud, this February.

This followed a 12-week trial at Southwark Crown Court, brought by the Financial Conduct Authority (FCA). Between 2014 and December 2017, Mohammed Zina worked as an analyst at Goldman Sachs International. Through his role in the Conflicts Resolution Group, he obtained inside information on potential mergers and acquisitions that his employer was advising on.

Between July 2016 and December 2017, Zina dealt in six shareholdings using this inside information. The total profit from trading in these stocks was approximately £140,486. The trading was partly funded by three loans, fraudulently obtained from Tesco Bank, totaling £95,000.

Zina's brother Suhail Zina, a former Clifford Chance lawyer, was a co-defendant. He was acquitted of all counts against him at the same trial after the fraud charges were discontinued, and there was found to be insufficient evidence in relation to the insider dealing counts.

Following a sentencing hearing at Southwark Crown Court, Zina was sentenced to 22 months in prison.

THE INVESTIGATOR'S MINDSET

Ignoring The Basics? Prepare To Fail!

"We conducted an internal review/investigation and found nothing of concern" is a commonly heard assurance.

It is true that internal reviews or investigations will not always identify issues and may well establish there is nothing of concern.

This is a great outcome - but only IF the reviews or investigations have been undertaken properly in the first place!

If the goal is to reach the most accurate and credible findings, then it is important for organizations to get the fundamentals right, by consider the following:

- First and foremost: **Who** is going to conduct the internal review? Get the right people on board. This sets the foundation for any successful investigation.
- **Competency** is key: Ensure that investigators have the necessary skills, experience and expertise to get to the root of the issues under investigation.
- No two investigations are the same, and a **tailored approach** will lead to faster, more efficient processes and outcomes.
- **Independence is essential:** Who is the investigator being directed by, and what **influence** do they hold in relation to the scope and outcomes?
- Ensure investigators can **act with independence:** This enables them to do their job competently, and accurately identify issues.
- Organizations can then make decisions on resolution and remediation based on **fair and objective** assessments of issues identified.

Internal reviews and investigations can be complex and difficult. Organizations should strive to get the basics right. Failure to do so will result in a less rigorous process, possibly leading to more severe issues and consequences later.

The considerations above are a good place to start.

USEFUL RESOURCES

Book: Higher Ground: How Business Can Do the Right Thing in a Turbulent World
Access: [Amazon](#)

Author: Alison Taylor

Ethics professor Alison Taylor argues that amid stakeholder demands and transparency pressures, ethics can no longer be treated as merely a legal and reputational defense mechanism. Leaders at Davos and the Business Roundtable have called for a new corporate responsibility paradigm, but organizations struggle to implement these ideas in an atmosphere of heightened expectations and intense suspicion.

Offering stories and examples from years working in anti-corruption and advising companies on ethics, Taylor brings this complex, risky innovation alive to provide a blueprint for how leaders can rethink and reshape their practices. How can CEOs cut through the noise to set robust environmental and social priorities? When should they speak out on contentious social and political issues — and how? What does it really take to build a healthy organizational culture? How can corporate values be approached when society itself is so divided? *Higher Ground* shows leaders how business can navigate this paradigm shift, build trust, and achieve long-term strategic advantage in a turbulent world.

DATES FOR YOUR DIARY

2024 ACFE Fraud Conference Europe

ACFE | 13-to-15-03-24 | [Register](#)

This is the region's premier anti-fraud event, attracting industry leaders, decision-makers and influencers from the public and private sectors. This conference is a valuable opportunity for providers of anti-fraud solutions and services to connect with prospective customers and clients.

Preventing Whistleblower Victimization
Protect | 21-03-24 | [Register](#)

This masterclass includes: an overview of whistleblowing and why it is important; how to best identify a whistleblowing concern vs a grievance complaint; why trusted and transparent cultures are so important and how to develop them; best practices for handling whistleblowers and addressing the concerns they raise, empowering you to navigate these crucial situations with confidence; the opportunity to consider your organisation's current practices when someone raises a concern, and gain insights on how to enhance their effectiveness; practical exercises and case studies to help you gain the hands-on experience necessary to implement best practices from day one.

Useful Tools for Building a Culture of Compliance
Corporate Compliance | 28-02-24 | [Register](#)

In this webinar, learn about the approach that worked for the organization 'dentsu' to build a culture of compliance; analyze the feedback loop between transparent leadership, speak up culture and accountability; and explore specific tools to bolster each part of the feedback loop.

Lessons Learned and Tips on How to Simultaneously Address Remediation While Undergoing a Government Investigation
SCCE | 29-02-24 | [Register](#)

Learn how to take a strategic approach to remediation while under investigation to meet and exceed government expectations; apply remediation lessons learned from recent government investigations; and understand recent government enforcement trends to anticipate future expectations.

Is There Forced Labor In Your Supply Chain?
PwC | 19-03-24 | [Register](#)

Reporting standards, increased regulation (with a focus on increased transparency), enforcement and stakeholder activists are increasing the pressure for organizations to proactively identify and mitigate forced labor risks from their supply chains. The impact and exposure from supply chain disruption and regulatory complexity has made human rights due diligence a key priority for Executives; to act ethically, to mitigate the impact to their operations as well as their operations on rights holders. Learn more about the steps organizations are taking to identify forced labor in their supply chain, and key topics organizations should consider incorporating into their supplier responsibility program.

Would you like to access [previous issues](#) of Parametric Insights?