

REGULATION

Regulation (EU) of the Council of the European Union

of 07 December 2019

establishing a European Approach to Corporate Social Responsibility (CSR)

(Text with EEA relevance)

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Section 1: General Provisions

Article 1 Purpose

This Regulation aims to ensure the protection of internationally recognized human rights and the environment in global value chains. Protection is provided both in the public interest and in the individual interest of people who are employed in or otherwise directly affected by the impacts of global value chains.

Article 2 Scope of application

1. This Regulation shall apply to all

(a) large companies; and

(b) other companies that operate, themselves or through a controlled company

i) in a high-risk sector; or

ii) in conflict and high-risk areas with registered office, head office or principle place of business in the EU.

- (c) small and other companies after having committed a severe violation
- 2. The obligations under this Regulation also extend to business activities conducted abroad.
- 3. This Regulation shall not apply to small companies.

Article 3 Definitions

For the purposes of this Regulation, the following definitions shall apply:

- 1. 'internationally recognized human rights' the human rights laid down in the international agreements the European Union is party to and those defined in Art. 6 TEU as well as those international agreements all member states are a party to.
- 2. 'Value chain' the creation of value throughout the life cycle of a product or service, i.e. all stages, including research and development, production, trade and related conditions, transport, use and maintenance, throughout the life of the product, construction or service, from the procurement of raw materials or production of resources to disposal.
- 3. 'Large company' a company that, alone or on a consolidated basis together with the companies controlled by it or controlling it, meets the two following criteria:
 - (a) An annual average of 250 (two hundred and fifty) employees;
 - (b) 40 Million Euros (forty million) in annual revenue.
- 4. 'Small company' a company that, on a consolidated basis, together with the enterprises controlled by it or controlling it, meets the two following criteria:
 - (a) An annual average of less than 50 (fifty) employees;
 - (b) Less than 12 Million Euros (twelve million) in annual revenue.
- 5. 'other company' is a company that is neither a large company nor a small company.
- 6. 'Controlled company' means any undertaking as understood by Art. 2 I lit. f of the Directive 2004/109/CE.
- 7. 'High-risk sectors' are the following sectors according to the statistical classification of economic activities as in NACE Rev. 2:
 - (a) Agriculture, forestry and fishing;
 - (b) Mining and quarrying of stone and earth;
 - (c) Manufacturing Industry/Production of Goods;
 - (d) Energy Supply.

8. ‘Conflict and high-risk areas’ mean areas of armed conflict or post-conflict fragility, and areas of weak or non-existent governance and security, such as failed states, where widespread and systematic violations of international rights, including human rights violations, occur.

9. ‘Fundamental requirements for environmental protection’ are requirements:

(a) that result from the regulations applicable at the place of success for the protection of the environmental media air, water, soil, climate, bio-diversity and the conservation of natural resources;

(b) resulting from international agreements that are binding on European Union;

(c) which result from the international state of the art.

10. ‘Environmental damage’ means a directly or indirectly occurring, detectable adverse modification of the air, water, soil, climate, bio-diversity and the natural resources or of their functions.

11. ‘Violation’ means a violation of human rights or a not insignificant violation of fundamental environmental protection requirements or environmental degradation.

12. ‘Strategic business decisions’ in particular the commencement of a new business activity or the fundamental extension, modification or withdrawal from an existing business activity.

Section 2: Human rights and environmental due diligence

Article 4 Due diligence obligation

1. Every company within the meaning of Article 2 (1) shall be obliged to exercise due diligence in accordance with Articles 5 to 7.

2. The subject of human rights due diligence is the protection of internationally recognized human rights.

3. The object of environmental due diligence is compliance with fundamental environmental protection requirements and prevention of environmental damage.

Article 5 Risk analysis

1. A risk analysis shall be carried out in accordance with paragraphs 2 to 5 in order to comply with the due diligence obligation.

2. In completing the risk analysis, the company shall identify, evaluate, and if necessary, prioritize in an adequate manner the risks of contributing to violations. What an adequate analysis requires shall be determined with regard to the country- and sector-specific risks, the

severity and likelihood typically to be expected of possible violations, and how directly the company is contributing to such violations, as well as the size of the company and the actual and economic leverage the company can exert on the actor directly causing them.

3. Within the risk analysis, the companies are expected to disclose their strategies to fight corruption and bribery, not only in the workplace, but within all business aspects, supplier relations and third-party agreements. This will be performed by implementing robust systems to audit suppliers, train employees and create a governance structure with clearly outlined policies applicable to all levels of the company.

4. If the company – through the risk analysis or otherwise – becomes aware of indications pointing to a risk that the company is contributing to a violation, the company shall undertake an adequate in-depth analysis of the risks specifically identified, based on the particular circumstances of the case; the affected persons are generally to be involved in this analysis.

4. A company may also be considered to be contributing to a violation if, either

(a) hired parties, in particular companies in the value chain; or

(b) products or services of the company;

contribute unlawfully to a violation as a result of the company's business activities, should the company have reasonably known about these violations.

5. The risk analysis shall be updated adequately on a continuous basis, to the extent there are grounds for doing so. In addition, the risk analysis shall be repeated annually and comprehensively, regardless of any specific grounds for doing so. Moreover, the risk analysis shall be conducted before every strategic business decision. In this case, the risk analysis shall cover those risks associated with the planned decision.

Article 6 Preventive measures and reactionary measures

1. If the company identifies a violation and a risk of contributing to violations, it shall incorporate adequate preventive measures in its business policy, integrate them into its business processes and evaluate and monitor their effectiveness.

2. In particular, the company shall as a rule take adequate measures to avoid violations in connection with contract initiations, contract negotiations, and the conclusion of contracts relating to strategic business decisions.

Article 7 Protection of whistleblowers

1. The enterprise shall establish an appropriate system for receiving and documenting evidence of failure to exercise due diligence and of actual or threatened violations in accordance with paragraphs 2 to 6.

2. The reporting channel must be open to its own employees as well as employees and stakeholders in the value chain and other third parties.
3. Hints are to be followed up immediately. If the information proves to be correct, appropriate and adequate follow-up measures must be taken without delay. If the report is not made anonymously, feedback must be given to the whistleblower within three months on any follow-up action taken.
4. The reporting channel must be set up and operated in such a way that the confidentiality of the whistleblower's identity is preserved. A whistleblower employed by the enterprise must not be discriminated against because of the complaint. Follow-up measures for complaints coming from third parties must, as far as possible, ensure that the whistleblower is not discriminated against.
5. A whistleblower employed by the company must also not be discriminated against if he informed the competent authorities instead of the internal reporting channel and could reasonably assume from his point of view that the information was correct.
6. Hints are systematically evaluated and included in the risk analysis. The effectiveness of the reporting system is evaluated regularly. The reporting system shall be adapted if the results of the evaluation give cause to do so.

Article 8 Complaints Mechanism

1. The company shall establish an effective internal complaints mechanism or participate in an effective non-governmental complaints' mechanism of a multi-stakeholder initiative. The complaint mechanism is open to any person who claims that he or she, another person or the environment is negatively affected, directly or indirectly, by the company's business activities, in particular in the company's value chain.
2. A Compliance Officer is responsible for setting up and operating the internal complaints mechanism or for participating in the external complaints' mechanism. The complaints mechanism shall be set up and operated in such a way as to preserve the confidentiality of the identity of the complainant. It must be ensured that complainants are neither punished nor otherwise disadvantaged because of the complaint.
3. The complaints mechanism shall have written rules of procedure that, in particular, contain reasonable time limits for the procedural steps and decisions. The Rules of Procedure shall be published in the official languages of the country in which the company has its seat and in English.

Article 9 Documentation and reporting obligations

1. Compliance with the obligations under Articles 4 to 8 shall be truthfully documented. The documentation must be kept for at least 10 years.
2. The compliance with the obligations pursuant to Articles 4 to 8 shall be publicly reported. The Report shall be published in a for this purpose established online register and in addition to this if the company has an internet presence, the report shall be published there too.

Section 3: Enforcement and Sanctions

Article 10 Compensation for Damages

1. Any company that deliberately or grossly negligent, unlawfully violates the internationally recognized human rights or the environment in global value chains is liable to provide just satisfaction to the other party for the damage arising from this.
2. The same duty is held by a company that contrary to Article 6 Paragraph 1 does not take the adequate reactionary measures.

Article 11 Administrative fines

1. Any company, that
 - (a) does not carry out a risk analysis contrary to Article 5 (2);
 - (b) does not publicly report on compliance with Articles 4 to 8 contrary to Article 10 (2);is committing an administrative offence.
2. Any company, that deliberately or grossly negligently does not take preventive measures contrary to Article 6, although the risk was determined, is committing a severe administrative offence.
3. Offences pursuant to paragraph 1 will be fined up to 5 % of the companies annual revenue.
4. Severe offenses pursuant to paragraph 2 will be fined up to 10 % of the companies annual revenue.

Article 12 Penal provisions

It is suggested and strongly encouraged that the member states implement the ratio of the following article into their national legal system:

1. Anyone who, contrary to Article 11 (1), deliberately or grossly negligently makes false statements in the documentation of due diligence compliance:

(a) causes serious damage to the health of another person or damage to the health of a large number of people; or

(b) puts another person in danger of death;

may be punishable by imprisonment for not less than one year. Anyone who, as a Compliance Officer or Executive Director in the case of Article 11 (2), causes an injury specified in sentence 1 may be equally punished.

2. Any person who, in the case referred to in paragraph (1), causes the death of another person may be punished with a custodial sentence of not less than two years. A Compliance Officer or Managing Director, who, in the case of Article 11 (2), causes a consequence specified in sentence 1 will be equally punished.

Article 13 New European Agency

1. A European agency shall be implemented so that it serves the broad education of consumers about ethical and environmental related practices thus integrating Corporate Social Responsibility into education, training and research.

2. Member States are strongly encouraged to set up national initiatives, aiming to create awareness, promote best practice and share knowledge about the efforts of national companies, by means such as CSR Awards in cooperation with the global Foundation.