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The Legal Validity of the Omnibus Package: A Charter Rights Analysis

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1 INTRODUCTION

The European Union is undertaking a significant recalibration of its sustainability legislation. Following the Draghi Report on EU Competitiveness[1] and the Commission's Competitiveness Compass[2], which highlighted concerns about cumulative compliance costs, the Commission tabled its first "Omnibus" package in February 2025.[3] This package, together with subsequent proposals on agriculture[4] and battery regulation,[5] seeks to simplify, defer or modify key elements of the EU's sustainability framework. Political leaders, including Presidents Macron and Merz, have called for more extensive changes, including the complete repeal of the Corporate Sustainability Due Diligence Directive (CSDDD).

These developments raise fundamental questions about the scope and limits of legislative discretion when modifying laws that implement Charter-protected rights. This memorandum examines whether and to what extent Article 52(1) of the Charter of Fundamental Rights constrains the Union legislator's ability to reduce protections once established through secondary legislation.

The analysis presented here matters for multiple constituencies. For the millions of workers, communities and citizens within and beyond the EU who stood to benefit from enhanced sustainability information and strengthened protections against environmental and human rights harms, the proposed changes represent a significant shift in expected safeguards. For financial market participants who have structured their risk assessments and investment strategies around anticipated transparency improvements, regulatory uncertainty creates material planning challenges. For companies seeking legal predictability, the prospect of protracted litigation before both the Court of Justice and potentially the European Court of Human Rights threatens to extend rather than resolve current uncertainties.

This memorandum provides a systematic analysis of how Article 52(1) applies to the proposed modifications. We examine the Charter framework, survey relevant international non-regression principles, and assess four specific measures against the necessity and proportionality requirements.

Our central finding is that regulatory simplification, while a legitimate objective, must proceed within constitutional boundaries. The current proposals, as formulated, may not satisfy the stringent requirements of Article 52(1), particularly given the absence of comprehensive impact assessments and consideration of less restrictive alternatives. This creates risks not only for the legal validity of the measures but also for the very legal certainty and competitiveness they seek to enhance.

We hope this analysis contributes to a more informed debate about how the Union can pursue necessary reforms while respecting its constitutional commitments to fundamental rights protection. While we believe our analysis is thorough and grounded in established legal principles, we acknowledge that applying constitutional constraints

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[1] European Commission, *Report of the High-Level Group on the Future of EU Capital Markets*, chaired by Mario Draghi (2024).

[2] European Commission, *Competitiveness of the European Economy: Annual Competitiveness Report 2025 – The Competitiveness Compass* (January 2025).

[3] See press release: https://commission.europa.eu/news/commission-proposes-cut-red-tape-and-simplify-business-environment-2025-02-26_en.

[4] See press release: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1205.

[5] Regulation (EU) 2023/1542 as regards obligations of economic operators concerning battery due diligence policies. Commission, COM(2025) 258.

to sustainability law rollbacks represents relatively uncharted territory in EU law. We therefore welcome critical engagement with our conclusions.

2 EXECUTIVE SUMMARY

The Omnibus negotiations pursue legitimate economic aims: reducing compliance burdens and strengthening Europe's competitive position. Yet these modifications venture into uncharted constitutional territory. While the Court has not ruled on regulatory rollbacks of this scale, recent case law suggests that deliberately reducing existing protections for fundamental rights may trigger strict judicial scrutiny—creating litigation risks that could delay reform for years.

The emerging jurisprudence points toward stricter limits on rights rollbacks. The Court's reasoning in *Digital Rights Ireland*, *Schrems II* and *Repubblika* increasingly focuses on practical effects rather than formal categories. Combined with international non-regression principles, this suggests a new reality: once the Union establishes rights protection, rolling it back requires compelling justification that current proposals lack.

Our Article 52(1) analysis reveals serious vulnerabilities:

Complete CSDDD repeal invites immediate litigation. Eliminating protection against forced labour and child exploitation, without evidence that less dramatic measures couldn't work, gives NGOs and progressive Member States strong grounds for challenge. The symbolic impact alone—Europe abandoning flagship human rights legislation—makes this the highest-risk option.

Tier 1 limitations contain a fatal admission: the Commission states this would "substantially reduce effectiveness" in preventing severe violations. Courts rarely uphold measures that agencies admit will fail. The restriction excludes precisely where worst abuses occur—distant mines and factories—while offering no evidence that clearer guidance couldn't address compliance concerns.

Deleting Article 22's implementation requirement appears especially vulnerable post-*KlimaSeniorinnen*, which emphasized duties to implement, not just announce, climate measures. Converting corporate obligations from action to aspiration invites obvious challenges.

Postponements face uncomfortable logic: if compliance is genuinely impossible, why would delay help? Courts may view extending deadlines to 2029 as political convenience rather than genuine necessity.

The deeper risk lies in cascading uncertainty. Well-funded NGOs stand ready to challenge; even partial success would leave businesses in worse limbo than today. Companies might relax compliance only to face retroactive obligations if measures are annulled. The litigation timeline — potentially 3-5 years — defeats the purpose of quick relief.

International ramifications compound the risk. Trading partners who've aligned with EU standards may retaliate against perceived backsliding. Investors increasingly price in regulatory stability; a hasty retreat that courts reverse would damage Europe's credibility as a reliable framework-setter.

The prudent path acknowledges that while simplification is needed, solutions lie in clarifying obligations rather than abandoning them. But if political pressures demand proceeding, decision-makers should understand they're gambling with considerable uncertainty — and that the Court's evolving fundamental rights jurisprudence is increasingly unlikely to permit the regulatory retreats that once seemed routine.

3 THE LEGAL BOUNDARIES SET BY ART. 52(1) IN THE CHARTER

3.1 General

Article 52(1) of the Charter of Fundamental Rights lays down four cumulative conditions that any *limitation* upon a Charter right must satisfy. The limitation must

a) be provided for by law,

b) respect the essence of the right concerned,

c) meet objectives of general interest recognized by the Union,

d) be necessary to achieve the objective of general interest (or to protect the rights and freedoms of others), and,

e) observe the principle of proportionality.

The Court of Justice has treated that catalogue as closed: failure on any limb renders the measure unlawful.

The Court's modern jurisprudence illustrates both the severity and the practical reach of the test. In *Digital Rights Ireland*[6] it annulled the data-retention directive on the ground that the legislature had not laid down clear and precise rules or minimum safeguards. Absent such guarantees, the directive could not qualify as "necessary" or "proportionate", notwithstanding the undeniably legitimate aim of combating serious crime. In both *Schrems I*[7] and *Schrems II*[8], the Court examined whether interferences with the rights to privacy, data protection and effective judicial remedy could be justified under Article 52(1) of the Charter. In both cases, the Court annulled the Commission's adequacy decision, finding that the safeguards relied upon lacked the legal certainty and enforceability needed to satisfy the necessity and proportionality requirements of Article 52(1).

3.2 Duties to act and duties to inform

The four Green-Deal measures— the CSRD, the CSDDD, the Taxonomy Regulation and CBAM —serve several policy purposes at once. Their legislative files dwell at length on competitiveness, capital-market efficiency and carbon-leakage control. Yet each instrument also claims, in its own recitals, to shore up interests that the Charter already protects. If the ECJ is later asked whether an Omnibus rollback "limits" Charter rights, those passages will be the natural starting-point; they are the clearest evidence of the legislature's self-declared intent.

For analytical purposes, it is relevant to make a distinction between two categories of obligations or duties that these legal acts give rise to: duties to act (by not doing harm etc) and duties to inform (by disclosing sustainability information).

Duties to act. CSDDD's opening recital recalls that the Union is founded on "respect for human dignity … and human rights" and that those values must guide its external-economic action. The operative chapters translate that ambition into enforceable private-law duties: undertakings must trace, prevent and, where necessary, remediate abuses that threaten dignity, physical integrity and fair working conditions — matters already covered by e.g. Articles 1, 2, 3, 31 and 32 of the Charter. The directive's liability

[6] Joined Cases C-293/12 and C-594/12, Digital Rights Ireland Ltd v Minister for Communications and Others, Judgment of 8 April 2014

[7] Case C-362/14, Maximillian Schrems v Data Protection Commissioner, Judgment of 6 October 2015.

[8] Case C-311/18, Data Protection Commissioner v Facebook Ireland Ltd and Maximillian Schrems, Judgment of 16 July 2020.

and supervisory provisions, for their part, supply the tangible pathway that Article 47 demands.

Climate-related risk is treated with the same logic, albeit through two distinct acts. Article 22 CSDDD obliges large companies not only to draft but to implement transition plans aligned with the 1.5 °C path. CBAM, founded on Article 192(1) TFEU, ensures that imported goods bear a comparable carbon price. The recitals of CBAM describe the mechanism as "integral" to meeting the Union's Paris targets and protecting environmental integrity; recital 10 of CSDDD anchors the transition-plan duty in the very same trajectory.

The ECHR reasoning in *Verein KlimaSeniorinnen Schweiz*[9] — that foreseeable climate harm can activate positive obligations to protect life and private life — does not compel to treat CBAM as a Charter measure, but it does illustrate why the legislature might plausibly describe carbon-adjustment and corporate mitigation duties as tools for preserving the practical value of Article 37 of the Charter. A stricter view is certainly possible: CBAM may be read as pure environmental economics. What matters for present purposes is that its own recitals acknowledge a protective purpose that resonates with the Charter.

Duties to inform. It can be argued that it is not as clear that the duties to inform – disclose sustainability information – also expresses charter rights. Still, CSRD does not hide its rights dimension. Recital 14 diagnoses an "accountability deficit" that impedes communities and civil-society actors from holding undertakings to account for impacts on people and the environment; recital 31 instructs standard-setters to align due-diligence disclosure with the UN Guiding Principles on Business and Human Rights; recital 49 requires that future standards capture information linked to the European Convention, the International Bill of Human Rights and the Charter itself.

The Taxonomy Regulation adopts the same vocabulary: recital 36 demands that screening criteria remain consistent with the European Pillar of Social Rights and with the UN and OECD human-rights instruments. These provisions do not erase the capital-market rationale, but they do confirm that the legislature also saw disclosure as a condition for exercising Charter interests in informed choice, health and environmental protection.

The Court's case-law does not yet resolve the issue. In *Ilva*[10] the ECJ fused Articles 35 and 37, holding that Italian authorities could not approve an industrial permit until *complete* emissions data were available. The ruling does not mention corporate sustainability reporting, yet it illustrates a holistic method: when effective protection of Charter interests depends on a shared evidentiary base, the Court will read the articles together and insist on disclosure. In *Bayer CropScience* the Court described emission figures as information that "by its very nature" tends toward publicity—another strand pointing the same way.[11] None of this forces the Court to declare a freestanding Charter right to sustainability information, but it does make the legislative choice of mandatory reporting a coherent, and perhaps persuasive, way of giving practical effect to e.g. Articles 11, 35, 37 and 38.

[9] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [2024] ECHR 304 (GC).

[10] Case C-626/22, C.Z. and Others v Ilva SpA in amministrazione straordinaria and Others.

[11] Case C-499/18 P, Bayer CropScience AG and Bayer AG v European Commission.

Recital language alone cannot establish that the four acts are "implementation measures" in the strict sense of Article 52(5); that label is significant because implementation measures, if later watered down, automatically trigger the limitation test in Article 52(1), which will be discussed below. Whether the Court, if asked, will embrace that characterisation is uncertain. It could emphasise the instruments' economic aims and conclude that Charter interests are only incidental. Yet the texts themselves speak the language of dignity, environmental integrity and accountability, and recent judgments show a Court willing to integrate multiple Charter articles when the effectiveness (*effet utile*) of each depends on the same regulatory machinery.

A cautious judicial mind would therefore note two points. First, nothing in the legislation precludes simultaneous economic and rights-based objectives; Union acts often rely on mixed competences. Secondly, by framing disclosure and mitigation duties as necessary to secure already-codified rights, the legislature has at least opened the door to a finding that those duties *operate* as Charter implementations. If the door remains open, any Omnibus proposal that narrows their scope will have to confront, rather than ignore, the proportionality calculus in Article 52(1).

3.3 The Non-Regression Principle in International Human-Rights Law

Assuming that the four legal acts discussed here express Charter rights: can the Omnibus proposals which partly withdraws obligations from them be viewed as *limitations* under Article 52(1) Charter? This raises the question whether there in EU law exist a so-called non-regression principle related to Charter rights, which, if such principle exist, would be a strong argument for the Omnibus proposals being viewed as limitations.

The non-regression principle is a recurrent theme across global human-rights instruments, saying that states may not dismantle or unduly postpone legal advances they have themselves enacted. The UN Committee on Economic, Social and Cultural Rights gave the doctrine its canonical formulation in 1990: *"any deliberately retrogressive measures … require the most careful consideration and must be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources"*.[12] Subsequent General Comments – on health[13], water[14], social security[15] and others – reiterate that once a higher level of protection is achieved the state bears the burden of demonstrating that any regression is temporary, strictly necessary, non-discriminatory and proportionate to a pressing public interest. In the Committee's practice, even fiscal crises cannot excuse back-sliding unless the State has exhausted less intrusive alternatives and safeguarded the rights' "minimum core".

Regional jurisprudence has converged on the same rule. The European Court of Human Rights treats the withdrawal or curtailment of an existing protection as an interference that calls for heightened scrutiny. In *Diaconeasa v. Romania*[16] the ECHR held that

[12] Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2(1) of the Covenant), UN Doc. E/1991/23, 14 December 1990, §9.

[13] Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4, 11 August 2000.

[14] Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12), UN Doc. E/C.12/2002/11, 20 January 2003.

[15] Committee on Economic, Social and Cultural Rights, General Comment No. 19: The Right to Social Security (Art. 9), UN Doc. E/C.12/GC/19, 4 February 2008.

[16] ECHR, Diaconeasa v. Romania, Application no. 53162/21, Judgment of 20 February 2024.

discontinuing a disability benefit previously granted by law violated Article 8 of the European Convention of Human Rights stressing that once a certain level of care is recognised the State cannot retreat without compelling justification. Earlier judgments – *McDonald v. UK*[17], *Guerra v. Italy*[18], *Öneryıldız v. Turkey*[19] – apply the same logic to reductions in social care, delays in environmental safeguards and failures to avert known life-threatening risks. The ECHR's message is consistent: inaction or regression that leaves individuals exposed to rights violations engages the Convention and demands strict proportionality review.

The Inter-American Court has gone further, reading Article 26 of the American Convention as a positive obligation of progressive realisation that flatly forbids unjustified regress. In *Cuscul Pivaral v. Guatemala*[20] the court condemned the state's suspension of antiretroviral treatment as a breach of the right to health; in *Advisory Opinion*[21] it affirmed that any deliberate setback in labour or social rights must survive most careful justification.

Soft-law instruments reinforce the hard-law trend. The UN Special Rapporteur on human rights and the environment has identified non-regression as a foundational principle of environmental governance.[22] The 2018 Escazú Agreement makes the principle explicit, establishing a principle of non-regression in Article 3.[23] Within the EU institutional family the European Economic and Social Committee has urged incorporation of a social non-regression clause into Union law, citing the European Committee of Social Rights' case-law that condemns stagnation – let alone reduction – of acquired social standards.[24]

Two corollaries follow. First, *non-regression is indifferent to legislative technique*: repeal and dilution leave rights-holders worse off and therefore trigger the presumption against backward steps. Secondly, the *burden of proof shifts to the legislator*. The next question is then whether this non-regression principle will apply if future changes to e.g. the CSRD or CSDDD are challenged before court.

3.4 Does a non-regression principle apply under the Charter*?*

The Charter contains no clause that forbids the Union legislator to lower a previously chosen level of fundamental-rights protection, and the ECJ has never ruled that every such step is an unlawful "regression". Does such principle apply here? There are arguments for and against, but in our view, the arguments for are clearly the strongest.

[17] ECHR, McDonald v. the United Kingdom, Application no. 4241/12, Judgment of 20 May 2014.

[18] ECHR, Guerra and Others v. Italy, Application no. 14967/89, Judgment of 19 February 1998.

[19] ECHR, Öneryıldız v. Turkey [GC], Application no. 48939/99, Judgment of 30 November 2004.

[20] Inter-American Court of Human Rights, Case of Cuscul Pivaral et al. v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment of 23 August 2018, Series C No. 359.

[21] Inter-American Court of Human Rights, Advisory Opinion OC-27/21, "Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to Other Rights, with a Gender Perspective," Series A No. 27, 5 May 2021.

[22] John H. Knox, "Framework Principles on Human Rights and the Environment," Report of the Special Rapporteur on Human Rights and the Environment, UN Doc. A/HRC/37/59, 24 January 2018.

[23] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica, on 4 March 2018, entered into force on 22 April 2021.

[24] European Economic and Social Committee, "Opinion on the Social Progress Protocol (exploratory opinion at the request of the Spanish Presidency)" (SOC/756), OJ C 293, 18 August 2023, para. 4.4.

3.4.1 Arguments for non-regression

The line of authority that opens with *Repubblika*[25] and continues through the Polish disciplinary-chamber cases[26] shows judicial unease whenever secondary law tangibly weakens a value anchored in Article 2 TEU. In *Repubblika* the Court held that Malta could not dilute the guarantees of judicial independence in force at accession, grounding the bar in Articles 2 and 19 TEU read with Article 47 CFR. That unease, however, rests so far on a single doctrinal strand; no judgment has yet extended the label beyond the rule-of-law context. Even so, the Court's own vocabulary of "non-regression" invites the question whether a comparable restraint might apply when the Union scales back legislation that gives practical effect to other Article 2 values, such as human dignity or equal treatment.

Text and structure lend that possibility more than incidental support. Article 2 lists the Union's foundational values without hierarchy, and the Charter accords equal normative rank to the rights to life, child protection and a high level of environmental protection. Once the Union deliberately enacts detailed rules — corporate due-diligence duties, sustainability-reporting obligations, carbon-leakage controls — to render those rights effective, repealing or diluting the rules will, on its face, reduce their practical enjoyment. Such a measure would therefore fall within Article 52(1), obliging the legislature to satisfy legality, respect for essence, strict necessity and strict proportionality and to shoulder the burden of proof, as it did in *Digital Rights Ireland* and *Schrems II*.

A further strand that strengthens this reading is the Court's settled reliance on the doctrine of *legitimate expectations*. Whenever secondary law that operationalises a Charter value is later revised, the Court asks—not only whether the new rule is substantively compatible with the Charter, but—whether economic operators *and the persons for whose benefit the Charter right operates* enjoy a protectable reliance interest. Classic authorities such as *Salumi*[27] , *Barber*[28], *Rey*[29] and *DAAA*[30] show a consistent pattern: where the Union has given "precise, unconditional and concordant assurances", or where the regulatory design itself invites long-term reliance, a sudden step-back is viewed with particular suspicion and may be upheld only if compelling public reasons and proportionate transition measures are demonstrated.

In effect, the expectations doctrine provides the procedural complement to a substantive non-regression analysis: the first asks *how* a rollback is carried out, the second *whether* it may lawfully occur at all. Taken together, they yield a reinforced threshold. Once the legislature has deliberately put flesh on the bones of e.g. Articles 11, 35, 37 or 38 CFR — by mandating, for example, CSRD-style disclosure standards — and communities, workers along global value chains, civil-society monitors and sustainability-oriented investors have organised their advocacy, risk-mitigation or capital-allocation practices around those standards, any later attempt to dilute the

[25] Case C-896/19, *Repubblika v Il-Prim Ministru*, Judgment of 20 April 2021.

[26] Case C-791/19, European Commission v Republic of Poland, Judgment of 15 July 2021 and Case C-204/21, European Commission v Republic of Poland, Judgment of 5 June 2023.

[27] Joined Cases 212 to 217/80, Amministrazione delle Finanze dello Stato v Srl Meridionale Industria Salumi and Others, judgment of 12 November 1981.

[28] Case C-262/88, Syndesmos ton Ellinon Touristikon kai Taxidiotikon Grafeion v Greek State, judgment of 10 July 1991.

[29] Case C-332/14, New Valmar BVBA v Global Pharmacies Partner Health S.L., judgment of 25 November 2015.

[30] Case C-234/21, Défense Active des Amateurs d'Armes ASBL and Others v Conseil des ministers, judgment of 5 March 2024.

regime is doubly encumbered: it arguably prima facie operates as a "limitation" within the meaning of Article 52(1) and it triggers the Court's strict reliance-based scrutiny.

3.4.2 Arguments against non-regression

One could imagine a number of counterarguments against the non-regression argument above.

First, a distinction might be drawn between "systemic" and "material" guarantees. *Repubblika* concerned judicial independence, a meta-value said to underwrite "the very existence of the EU legal order": if courts are not independent, every other right risks becoming judicially unenforceable. By contrast, values such as environmental protection or consumer information—though undeniably important—could, it could be argued, be adjusted without provoking institutional collapse, and the Treaties appear to leave such calibrations to the political process. On that view the Court has, on occasion, declined to second-guess politically sensitive trade-offs even where Charter rights were indirectly affected, instead acknowledging a "broad margin of discretion" as set out in e.g. *Vodafone*[31], and *Kotnik.*[32]

Secondly, one might invoke the Charter's internal architecture**.** Article 52(5) explicitly distinguishes "rights" from "principles". Several sustainability-related provisions — most evidently Article 37 on environmental protection — are formulated as principles that must be "respected" and "promoted", yet leave the concrete level of protection to legislative judgment. A rigid non-regression bar, the objection could run, would blur that textual distinction and risk constitutionalising policy choices that the Charter itself was content to leave open.

Thirdly, the unresolved baseline problem could be raised**.** Even if a non-regression constraint were accepted in principle, the Court has never indicated when the protected "level" crystallises — at accession, at the first implementing act, at the most recent amendment, or at the point when individuals rely on the regime. Without a clear temporal anchor, the doctrine might generate uncertainty, thereby undermining the very legal-certainty values that legitimate-expectations review is meant to secure.

Finally, a Union–Member-State symmetry concern might be put forward**.** Should the Union be barred from lowering Charter-implementing standards, consistency could seem to require the same restraint of national legislatures acting within the scope of EU law. Such an extension, critics would warn, might erode subsidiarity and unsettle the vertical balance that currently allows Member States some latitude in fine-tuning social and environmental policies so long as the Charter's minimum floor is respected.

Taken together, these objections would not deny that rollbacks need justification, but they would urge the Court to handle them through a flexible proportionality analysis—asking *how far* protection may be reduced—rather than through an outright prohibition on *any* downward adjustment.

Each of the objections just outlined carries weight, yet none seems to be decisive on closer inspection. *Repubblika* did not announce a rule confined to Article 19 TEU; it articulated the broader proposition that, once the Union has deliberately fixed the protection of an Article 2 value by legislation, a subsequent dilution must be constitutionally justified. Because Article 2 establishes no internal hierarchy, the same

[31] Case C-58/08, Vodafone Ltd and Others v Secretary of State for Business, Enterprise and Regulatory Reform, judgment of 8 June 2010.

[32] Case C-526/14, Kotnik and Others v Državni zbor Republike Slovenije judgment of 19 July 2016.

logic can extend to dignity, equality, environmental protection or consumer information. Put differently, a value that was sufficiently fundamental to warrant heightened protection in 2022 cannot be treated as mere policy ballast in 2025.

Policy discretion probably survives: Article 52(1) still leaves ample room for socio-economic recalibration, but it requires the legislature to *demonstrate* — not merely assert — that the objective pursued is weighty, that no equally effective but less-restrictive alternative exists, and that the essence of the right remains intact. Baseline questions are routinely managed case-by-case within that proportionality test: the Court has long assessed *when* reliance crystallises and *how far* a rollback may reach. Legitimate-expectations analysis performs a complementary function here, protecting those who have ordered their affairs — or, in the CSRD/CSDDD context, those whose rights-monitoring activities depend on the existing regime — from abrupt and unexplained reversal.

The Charter's architecture does arguably not point the other way. Article 52(5) certainly distinguishes "rights" from "principles", but it also obliges the Union to *respect* and *promote* those principles in its legislation. Once the legislature has done so by translating, say, Article 37's environmental mandate into concrete disclosure or due-diligence duties, the resulting floor engages the *rights* dimension of the Charter and cannot be lowered without satisfying Article 52(1). In short, non-regression does not collapse the rights/principles distinction; it prevents a principle that has already been operationalised from being emptied of content without persuasive justification.

A further rebuttal concerns a possible appeal to *Kotnik*, invoking the judgment for its reference to the institutions' broad policy margin. Yet *Kotnik* simultaneously affirms that, once the Commission—through soft-law guidelines—has given "precise, unconditional and concordant assurances", it is self-bound and may depart from those assurances only on compelling grounds. Far from undermining non-regression, *Kotnik* therefore arguably underlines a core premise: institutions that have consciously induced reliance — whether among workers in global value chains or among civil-society actors who use CSRD data to hold companies accountable — cannot later dismantle the framework without an evidence-rich explanation.[33] The same dynamic is reinforced by the Interinstitutional Agreement on Better Law-Making of 2016[34], in which Parliament, Council and Commission jointly commit to fundamental-rights impact assessments and to proportionality checks whenever they propose to adopt, amend **or** repeal major legislation. That agreement thus converts Better-Regulation methodology into a cross-institutional yardstick against which any rollback of Charter-implementing acts will be measured.

Nor does a Union-level discipline necessarily bind the Member States in identical terms. Article 51(1) already requires national measures "implementing Union law" to respect the Charter; that obligation coexists with subsidiarity and allows domestic tailoring so long as the Union floor is not undermined. A non-regression filter at EU level therefore preserves, rather than erodes, the vertical balance: the Union may not move the baseline downward, while the States remain free to exceed it.

Article 52(3) adds one final layer. It obliges the Charter to provide at least the protection accorded under the ECHR. The ECtHR has, as said above, begun — still cautiously — to scrutinise environmental and social rollbacks (*Öneryıldız*, *Kudrevičius*, *Klimaseniorinnen*

[33] See eg. para 40, 62 and 66 of the judgement.

[34] OJ L 123, 12.5.2016

Schweiz). Even an incomplete trend nonetheless raises the Convention floor and makes it correspondingly harder for Union law to sink beneath it.

3.4.3 Our assessment

A functional middle course therefore emerges. Where a legislative revision markedly diminishes the effective enjoyment of a Charter value — judicial independence, dignity, life or environmental protection — the Court is in our view likely to class the measure as a limitation and to demand the full Article 52(1) justification, without presuming the outcome. That approach preserves political recalibration yet insists on evidence that the objective is weighty, that less intrusive means were considered and rejected, and that the essence of the right stays intact. The Court is also acutely aware of the political sensitivity surrounding large-scale deregulatory packages and may proceed incrementally, but the burden of proof will lie with the legislator.

In practice, this means the Omnibus proposals should most likely not be treated as ordinary deregulatory housekeeping. Any substantial reduction in due-diligence scope, disclosure coverage or climate-transition obligations will almost certainly trigger a non-regression-inflected proportionality test. Unless the preparatory record shows why milder, right-preserving options are inadequate, the risk remains high that the Court—drawing on *Repubblika* and its Article 52(1) case-law—will scrutinise the rollback rigorously and may well find it wanting.

4 ARTICLE 52.1 TESTS ON OMNIBUS

If we now assume that

(a) The four legal instruments in play really do implement and express Charter rights,

(b) Withdrawing such rights would constitute *limitations* under article 52.1, which thus means that we assume that the Court would find that a non-regression principle applies, if not in general, but in those cases,

then this of course raises the question if and to what extent various parts of the proposals would satisfy the art 52.1 requirements regarding legality, respect of essence, objectives of general interest, necessity and proportionality. Before making such assessment, two things should be pointed out.

First, it is well-known that the Commission did not carry out, as it should have according to the Better Regulation framework, a complete cost/benefit analysis when putting the Omnibus proposals on the table. To simplify, the Commission only analysed cost savings. The empirical evidence for the Commission's claim of overregulation and threat to EU competitiveness was scarce, apart from self-reporting from undertakings struggling with the rules.

Second, we have in a separate memorandum argued that the Commission's analysis of the root causes of the perceived problems may be deficient, suggesting that what is perceived as overregulation could instead reflect normative ambiguity in the legal framework, leading to legal uncertainty and excessive compliance costs that might require structural rather than symptomatic solutions. While this alternative analysis could be relevant for any Article 52(1) assessment — particularly regarding whether less restrictive alternatives such as normative clarification could achieve the same objectives — the evaluations that follow do not presuppose the correctness of our analysis, as there are legitimate counterarguments and alternative perspectives on these issues.

4.1 Repealing act: The Macron–Merz Proposal to Repeal the CSDDD

President Macron and Chancellor Merz have publicly floated the idea of withdrawing the Corporate Sustainability Due Diligence Directive (CSDDD) in its entirety and, at most, replacing it later with lighter, sector-specific instruments. Whether such a proposal represents genuine policy intention or negotiating tactics, it merits careful legal analysis. In light of the analysis in section 3.4, there are grounds to believe — though the matter remains untested—that the Court would *likely class such a blanket repeal as a "limitation"*: the measure would remove a Union-level mechanism that currently secures a concrete, measurable level of protection for several Charter rights. The Court has, as far as we know, never ruled on a Union-level rollback of this scale, and considerable uncertainty exists about how it would approach such unprecedented deregulation. Nevertheless, the effect-oriented reasoning in *Digital Rights Ireland*, *Schrems II* and *Repubblika*, together with the structural symmetry of Article 2 TEU, suggests that the non-regression logic canvassed above could well be invoked.

If the repeal were indeed treated as a limitation, the four limbs of Article 52(1) would govern the review. *On legality* there is little difficulty: a repealing act adopted by the ordinary legislative procedure would be "provided for by law". *With regard to the essence of the rights*, the CSDDD operationalises, among others, the right to life and physical integrity (Articles 2–3 CFR) by requiring companies to avert deadly workplace hazards, the right to private life (Article 7) through environmental-due-diligence duties, and the right to an effective remedy (Article 47) by creating corporate liability. Eliminating the directive would not erase those rights, yet it would deprive individuals of the specific Union-wide vehicle through which they obtain practical protection and judicial redress. If no functionally equivalent safeguards were put in place, the practical content of the rights would be significantly thinned — though whether that thinning reaches the threshold of impairing the "essence" remains an open question.

Necessity is likely to be the critical hurdle. The political rationale advanced so far is economic: compliance costs allegedly deter investment and curb competitiveness. *Given our separate analysis — that structural solutions could potentially achieve significant burden reduction without eliminating protections — outright repeal would need particularly strong justification.* The Union could raise turnover thresholds, lengthen phase-in periods, *clarify what constitutes "appropriate measures" under Articles 11-12* and so on.

While Better Regulation Tool #28 calls for selecting the least rights-intrusive option when fundamental rights are at stake, the weight given to such soft-law instruments remains uncertain. Nevertheless, the complete absence of alternatives analysis would be difficult to defend. Unless the legislator can produce robust, empirical evidence showing that these calibrated tools would not achieve the economic aim — and explain why our suggested burden reduction through structural clarification was deemed insufficient — the strict-necessity limb would probably be challenging to satisfy.

Proportionality in the narrow sense requires a fair balance between the public benefit and the rights cost. Repeal would undoubtedly relieve companies of administrative and organisational burdens. The price, however, would be a prolonged exposure of workers and communities to forced labour, child exploitation and environmentally induced health risks that the Union has already deemed intolerable, together with the loss of a civil-remedy framework for victims. The political calculation here is complex: while business pressure is significant, the reputational and potential legal risks of dismantling human rights protections may give pause to decision-makers.

In sum, the legal vulnerability of a complete CSDDD repeal depends on several uncertainties: whether the Court would apply non-regression beyond rule-of-law contexts, how much weight it would give to soft-law requirements, and how it would balance economic against rights considerations in unprecedented circumstances. From a risk-management perspective, pursuing complete repeal could paradoxically delay the regulatory relief businesses seek, as legal challenges would be highly likely and could take years to resolve. A targeted reform addressing the identified structural problems would face far fewer legal obstacles while potentially achieving comparable burden reduction. Political leaders must weigh whether the symbolic value of repeal justifies these legal uncertainties and practical delays, particularly when more legally secure paths to meaningful reform remain available**.**

4.2 Postponing Acts: Stop-the-Clock and other Postponement Across Multiple Instruments

Postponement of a series of measures that or implement sustainability-related obligations is part of the Omnibus proposals. Specifically: Directive (EU) 2025/794 delays the application of both CSRD and CSDDD by approximately two years and up to four years respectively**;** COM(2025) 258 proposes to postpone battery supply chain due diligence requirements until August 2027; and COM(2025) 258 on ESRS would make sustainability reporting standards voluntary for the vast majority of companies while reducing mandatory content to undefined "key information." While each must be assessed individually under Article 52(1), their cumulative effect raises additional systemic concerns.

4.2.1 The Threshold Question: Do Postponements Constitute "Limitations"?

Before examining individual measures, we must address whether regulatory postponement can constitute a "limitation" on fundamental rights requiring justification under Article 52(1). As discussed in section 3.4, this question lacks clear precedent.

Several factors suggest postponements could qualify as limitations. First, the effect-oriented approach in *Digital Rights Ireland* and *Schrems* focuses on practical impact rather than formal categorization. A two-to-four-year delay in rights protection may substantially affect the practical enjoyment of those rights. Second, legitimate expectations may arise once protective legislation is adopted — stakeholders may reasonably rely on announced timelines for enhanced protection. Third, if rights include their effective implementation mechanisms, postponing those mechanisms arguably limits the rights themselves.

However, countervailing arguments exist. Postponement differs from repeal; the obligations remain in law, merely deferred. The Court might view this as a matter of implementation timing rather than rights limitation. Moreover, transition periods are common in EU law and rarely analysed as rights restrictions.

For present purposes, we proceed on the assumption that substantial postponements of rights-protective measures can constitute limitations, while acknowledging this remains an open question that may ultimately determine the viability of any Article 52(1) challenge.

4.2.2 Directive (EU) 2025/794 ("Stop the Clock")

Necessity Assessment. If we consider our analysis suggesting that normative ambiguity constitutes the root cause of compliance burden, the necessity test becomes particularly problematic for this directive. Our research indicates that normative clarification of obligations could potentially achieve 45-48% burden reduction without requiring any postponement. Under this view, the postponement appears unnecessary as structural alternatives — clarifying undefined concepts, establishing clear thresholds, specifying "appropriate measures" — could address the perceived overregulation more effectively than mere delay.

However, even setting aside our specific analysis of root causes, the necessity assessment reveals significant concerns. The directive provides no analysis of why these specific postponement periods are necessary, nor any evaluation of less restrictive alternatives. The Commission's limited cost-benefit analysis and the absence of any assessment of potential structural solutions weaken the necessity case under any analytical framework. The measure appears to assume that time alone will resolve compliance difficulties without addressing their underlying drivers.

Proportionality Assessment. Under our analysis, the proportionality balance becomes severely skewed. If normative clarification could achieve substantial burden reduction while maintaining protection levels, the choice to postpone rights protections for two to four years appears disproportionate. The temporary administrative relief does not justify the extended absence of disclosure and due diligence protections, particularly for the CSDDD's timeline extending to mid-2029.

Independent of our root cause analysis, proportionality concerns remain. The measure trades certain postponement of rights protections against uncertain future compliance benefits. Without clear evidence that the postponement period will be used to address compliance challenges systematically, the balance tips heavily toward rights restriction with minimal countervailing benefit.

4.2.3 COM(2025) 258 (Battery Regulation Amendment)

Necessity Assessment. Our analysis suggests this postponement is particularly unnecessary. The battery sector presents documented risks of child labour and environmental harm that originally justified urgent sector-specific rules. If normative ambiguity drives compliance burden, clarifying what constitutes "appropriate measures" in the battery context could address concerns without postponing protections for vulnerable workers and communities. The postponement appears to mistake symptom for cause.

Even without relying on our specific analytical framework, the necessity case remains weak. The proposal provides insufficient justification for why these particular risks warrant deferral rather than targeted guidance. The urgent humanitarian concerns in battery supply chains originally justified accelerated protection; postponing these protections requires compelling necessity that the proposal fails to establish.

Proportionality Assessment. Under our analysis, postponement appears clearly disproportionate. Structural clarification could address industry concerns while maintaining protection for vulnerable populations. The measure sacrifices certain harm prevention for uncertain administrative convenience.

Independently assessed, the proportionality balance remains questionable. The documented risks to children and workers in battery supply chains weigh heavily against administrative burden concerns. Without clear evidence that postponement will resolve

underlying compliance challenges, the measure appears to prioritize industrial convenience over human rights protection.

4.2.4 COM(2025) 258 (ESRS Simplification)

Necessity Assessment. Our analysis reveals this proposal as potentially counterproductive. Making disclosure voluntary while introducing undefined "key information" concepts may perpetuate the very normative ambiguity that drives current compliance difficulties. The measure acknowledges complexity as the burden driver but responds by removing obligations rather than clarifying them, potentially exacerbating long-term problems.

Even without our specific framework, necessity concerns persist. Converting mandatory to voluntary disclosure undermines the information rights rationale that justified original ESRS requirements. The proposal fails to demonstrate why voluntary schemes would provide equivalent protection or why clearer mandatory requirements could not achieve burden reduction.

Proportionality Assessment. Under our analysis, the measure appears to invert proper proportionality. Rather than addressing root causes that could maintain rights while reducing burden, it eliminates rights to reduce burden—the least proportionate available option.

Independent assessment similarly reveals proportionality problems. The measure sacrifices information transparency that serves important public interests for uncertain administrative benefits. The introduction of new undefined concepts may perpetuate compliance uncertainties while reducing protection levels.

4.2.5 Conclusion

Each of these measures faces substantial legal vulnerability under Article 52(1). The "Stop the Clock" Directive, battery regulation postponement, and ESRS simplification all suffer from the same fundamental flaw: they restrict or delay rights protections without demonstrating necessity or considering less restrictive alternatives.

Most critically, none of the measures includes the alternatives analysis required by Better Regulation principles when fundamental rights are affected. This systematic failure to assess whether structural solutions—such as normative clarification—could achieve similar burden reduction without limiting rights creates a strong basis for legal challenge.

The "Stop the Clock" Directive is particularly vulnerable. Its broad postponement of both CSRD and CSDDD protections, extending in some cases to 2029, lacks adequate justification and appears disproportionate to the stated administrative concerns. A well-founded Article 52(1) challenge could succeed, especially given the complete absence of alternatives analysis.

Rather than continuing this pattern of postponement without structural improvement, policymakers should consider whether clearer legal frameworks might achieve their burden-reduction objectives while maintaining stronger legal foundations and avoiding potential judicial scrutiny.

4.3 Limiting applicability: Raising the CSRD threshold to 1 000 employees

The Omnibus package proposes to restrict CSRD coverage to companies with over 1,000 employees, reducing the directive's scope by approximately 80% from 50,000 to 10,000

entities. While presented as administrative simplification, this threshold creates a particularly revealing test of constitutional limits when regulatory criteria systematically undermine their own stated objectives.

As explored in section 3.2, it can be argued — though the matter is not settled — that disclosure obligations under the CSRD give expression to Charter-protected rights. The recitals speak of addressing an "accountability deficit" and enabling stakeholders to exercise oversight, while the Court's reasoning in *Ilva* and *Bayer CropScience* suggests that access to information may be integral to the effectiveness of multiple Charter rights. If this interpretation holds, then substantially reducing the scope of mandatory disclosure could constitute a "limitation" requiring Article 52(1) justification.

The CSRD serves multiple functions in the Union's sustainability architecture. It creates transparency obligations that enable stakeholders to assess corporate impacts on health (Article 35), environmental protection (Article 37), and consumer interests (Article 38), while also supporting informed investment decisions and democratic accountability. By mandating comprehensive rather than selective disclosure, it arguably gives practical expression to these interconnected Charter interests.

Restricting coverage to the 1,000+ employee threshold would exclude 80% of currently covered entities. Whether this constitutes a limitation depends partly on how the Court views the relationship between the directive's scope and the effectiveness of Charter rights—a question complicated by the fact that some information would still be available through other channels and that the largest companies would remain covered. Nevertheless, given the legislature's own characterization of comprehensive coverage as necessary for accountability, and the potential impact on stakeholders' ability to obtain information about significant portions of economic activity, the measure would likely face Article 52(1) scrutiny.

Necessity Assessment. The Commission's rationale—easing compliance complexity and providing competitive relief—represents legitimate aims. However, restricting coverage through an employee-based threshold may not be demonstrably necessary to achieve these objectives, particularly given the criterion's poor alignment with actual sustainability risks.

The necessity case faces several challenges. First, empirical evidence suggests that employee count bears little relationship to sustainability impact. Carbon intensity varies dramatically across sectors: low emitting professional services firms often employee more people than industries that exhibit substantially higher intensities. A petrochemical facility with 800 employees may generate exponentially greater environmental and health risks than a consultancy with 2,000 employees, yet only the latter would face reporting requirements. This mismatch between the regulatory criterion and the underlying risks the directive addresses raise questions about whether the measure genuinely serves its stated purpose.

Second, less restrictive alternatives appear available. The Commission could have considered simplified reporting for smaller entities, sector-specific thresholds based on actual risk profiles, emissions-based criteria, or graduated disclosure obligations. Technical assistance and clearer guidance could address complexity concerns without wholesale exemptions. The proposal provides no evidence that such calibrated measures were assessed or found inadequate.

Third, if the core issue is compliance complexity rather than company size per se, the solution might lie in clarifying requirements rather than exempting entities. The absence

of alternatives analysis, particularly given Better Regulation principles when fundamental rights are affected, weakens the necessity case considerably.

Proportionality Assessment. The proportionality calculus requires balancing the administrative savings against the reduction in rights protection. The Commission estimates cost savings of several billions for affected enterprises—a tangible benefit. However, when Charter-protected interests are at stake, economic considerations alone cannot be determinative.

The measure's design raises particular concerns. By using employee count as the sole criterion, it systematically excludes enterprises that may pose significant sustainability risks while capturing others with minimal impact. This inversion of regulatory priorities means that multi-billion savings come at the cost of reduced transparency precisely where it may be most needed. The environmental, health and consumer protection objectives that the CSRD serves — acknowledged as carrying exceptional normative weight given the climate crisis — would be undermined in ways that appear disproportionate to the administrative relief achieved.

Moreover, if alternative approaches could achieve substantial burden reduction while maintaining coverage of high-risk enterprises, the choice of a blunt employee-based threshold becomes harder to justify. The measure eliminates transparency to avoid the more complex task of designing risk-appropriate obligations.

Conclusion. The proposal to restrict CSRD coverage through the 1,000-employee threshold faces constitutional uncertainties. While administrative simplification is a legitimate aim, the measure's poor calibration to actual sustainability risks and the absence of alternatives analysis creates vulnerabilities under Article 52(1).

Whether the Court would find this measure incompatible with the Charter depends on several open questions: the extent to which disclosure obligations implement Charter rights, the significance of excluding 80% of covered entities, and the weight given to administrative burdens versus transparency objectives. However, given the systematic mismatch between the chosen criterion and the directive's purposes, combined with the failure to explore less restrictive options, there are credible arguments that the restriction cannot satisfy the necessity and proportionality requirements.

A more carefully designed approach—using risk-based criteria, providing graduated requirements, or offering enhanced support rather than blanket exemptions—would face fewer constitutional obstacles while potentially achieving comparable administrative relief.

4.4 Article 22 CSDDD: The Constitutional Challenge to Removing Implementation Requirements

The Omnibus package does not propose wholesale repeal of the CSDDD, but its suggestion to amend Article 22 provides a particularly revealing test of constitutional limits. In its adopted form, Article 22 obliges in-scope companies not only to adopt climate-transition plans consistent with the 1.5°C trajectory but also to "put that plan into effect"—embedding it in strategy, capital allocation and executive incentives. This creates a duty of performance rather than mere publicity.

The provision serves two critical functions. First, it translates the Union's macro-level climate targets into enforceable corporate conduct, narrowing the gap between

headline goals and real-economy action. Second, by mandating implementation rather than just disclosure, it gives practical expression to the Union's positive duty to protect life and private life against foreseeable climate risks—a duty the ECHR emphasized in *Verein KlimaSeniorinnen Schweiz* when insisting that states must both adopt and effectively implement measures capable of keeping warming within safe limits.

Impact on Articles 2 and 7 CFR. Deleting the implementation requirement would convert a duty of performance into a duty of disclosure. Companies could publish transition ambitions while deferring or foregoing the operational changes required to deliver them. This would weaken the practical protection of rights to life (Article 2) and private and family life (Article 7)—rights that accelerating climate impacts increasingly threaten. While the essence of these rights would not vanish, the Union's chosen mechanism for making them effective in the corporate sphere would be significantly pared back.

Whether this reduction constitutes a "limitation" under Article 52(1) depends on how far the Court extends non-regression logic beyond the rule-of-law context. Several factors suggest it should. First, the Court's effect-oriented approach in cases like *Digital Rights Ireland* focuses on practical impact rather than formal categorization—converting performance duties into disclosure requirements substantially affects the practical enjoyment of climate-related rights protection. Second, once protective legislation is adopted creating implementation obligations, legitimate expectations arise that stakeholders can rely on that level of protection. Third, if fundamental rights include their effective implementation mechanisms, removing those mechanisms arguably limits the rights themselves. Given these considerations and the provision's direct link to life- and health-related Charter interests, the Court would likely treat deletion as a limitation requiring full Article 52(1) justification.

Necessity Assessment. The Commission's rationale—easing compliance complexity and providing regulatory breathing space—represents legitimate aims, but removing the implementation duty is not demonstrably necessary to achieve them. The necessity case fails on multiple levels.

First, the underlying compliance burden appears to stem largely from definitional uncertainty rather than inherent regulatory impossibility. The phrase "put into effect" lacks precise definition, creating uncertainty about required implementation depth, timeline, and acceptable evidence of compliance. This normative ambiguity forces companies into defensive over-compliance or leaves them uncertain whether their efforts suffice. However, clarifying what "putting into effect" means—through guidance on acceptable implementation phases, sectoral specifications, safe harbours for good-faith efforts, or tiered requirements based on company size—could address these concerns while maintaining protection levels.

Second, numerous less intrusive alternatives exist: phased sectoral roll-out, extended deadlines for capital-intensive industries, interpretative guidance and technical assistance, or EU-level transition-finance facilities. The Omnibus proposal provides no evidence that such calibrated measures would fail to achieve the stated objectives.

Third, deletion appears to mistake symptom for cause. If companies struggle with implementation requirements because they don't understand what constitutes adequate compliance, removing the requirement altogether doesn't solve the underlying definitional problem—it simply eliminates protection. Under the standard established in *Digital Rights Ireland* and *Schrems II*, this absence of alternatives analysis and failure to address root causes renders the necessity case fundamentally deficient.

Proportionality Assessment. The proportionality calculus appears strongly unfavourable to deletion. Integrating 1.5°C-aligned plans into strategy and capital budgets undoubtedly imposes costs, particularly on high-emitting sectors. However, high cost alone does not displace the Charter test when fundamental rights are at stake.

Article 22 pursues objectives—protection of life, health and private life from severe climate harm—that carry exceptional normative weight in light of scientific consensus on climate risks and the ECHR's recognition in *KlimaSeniorinnen* of positive state duties regarding climate protection. The balance therefore involves measurable economic benefits for a subset of firms against systemic diminution of rights protection for society at large.

Moreover, if normative clarification could achieve substantial burden reduction while maintaining climate protections, choosing deletion over clarification appears disproportionate. The measure would eliminate rights protection to avoid definitional work that could preserve both business certainty and climate safeguards. Because less intrusive options appear available, and because deletion would externalize transition costs that Article 22 is designed to internalize, the proposed amendment risks overshooting the fair-balance requirement. The empirical record currently available provides insufficient justification for such a dramatic reduction in protection levels.

Conclusion. The proposal to remove Article 22's implementation requirement faces serious constitutional challenges. The measure demonstrably lowers the Charter-protective reach of the provision while failing to demonstrate necessity or consider less restrictive alternatives.

Most fundamentally, the deletion risks converting meaningful climate protection into disclosure theatre—allowing companies to publish ambitious plans while avoiding the operational changes needed to deliver them. This transformation weakens protection for life and health rights in ways that appear neither necessary nor proportionate to the stated administrative concerns.

Given the absence of robust evidence that clarification or other milder adjustments would not suffice, there are compelling arguments that removing the implementation requirement cannot satisfy Article 52(1). The same analytical framework would apply to any other Omnibus deletion that appreciably reduces practical Charter protection. A well-founded constitutional challenge could succeed, particularly given the measure's direct impact on fundamental rights to life and health in the climate context.

4.5 Tier 1 limitations in CSDDD

Another Omnibus proposal relating to the CSDDD means limiting due diligence obligations to direct (tier 1) business partners in the normal course. Exceptions apply only where companies possess "plausible information" suggesting actual or potential adverse impacts beyond tier 1. This represents a significant departure from the CSDDD's comprehensive framework, which requires companies to conduct due diligence across their entire chains of activities to identify, prevent, and mitigate adverse human rights and environmental impacts.

The proposal emerges from legitimate concerns about compliance complexity and costs. Industry stakeholders have argued that mapping and monitoring global supply networks imposes substantial burdens, particularly given the practical difficulties of exercising influence over distant suppliers. However, any legislative adoption of this

narrower approach must be assessed not merely as administrative simplification, but as a potential limitation on the protective scope of fundamental rights.

Identifying the Rights Limitation. The proposed tier 1 limitation affects the protective scope of multiple Charter rights, including Articles 2 (right to life), 3 (prohibition of torture and inhuman treatment), 7 (respect for private and family life), 31 (fair and just working conditions), 35 (healthcare and environmental protection), and 37 (environmental protection and sustainable development).

By restricting systematic due diligence to direct business partners, the proposal creates what amounts to a presumptive safe harbour for adverse impacts beyond tier 1. This represents more than a procedural adjustment — it arguably constitutes a material reduction in the preventive mechanisms through which these Charter rights receive practical protection in global value chains. The significance of this reduction becomes clear when considered against empirical evidence showing that the most severe human rights and environmental violations typically occur not at tier 1, but in upstream production phases — in mines, plantations, and factories multiple tiers removed from EU companies.

The analysis, of course, relies on the section 3.4 assessment that a non-regression principle applies, which is still uncertain however plausible. Assuming that it does, we can continue with the rest of the Article 52.1 criteria.

Necessity Assessment. The necessity assessment can proceed on two tracks: first, examining whether the limitation addresses the actual root cause of regulatory burden, and second, evaluating the measure against conventional necessity criteria.

As we have tried to demonstrate in a separate memorandum, the true challenge with the CSDDD is not overregulation but normative ambiguity — specifically, the absence of clear legal thresholds for what constitutes "appropriate measures" across the supply chain. The Omnibus proposal fails to address this root cause. It narrows the directive's scope while leaving the underlying obligation undefined. Companies will still face uncertainty about what constitutes an "appropriate measure" for their tier 1 relationships, and the "plausible information" exception introduces new ambiguities about when deeper supply chain investigation becomes mandatory. The proposal thus relocates rather than resolves the fundamental uncertainty.

Moreover, as highlighted in that analysis, the CSDDD lacks alignment with the causal understanding embedded in the CSRD framework, which recognizes that sustainability risks originate in governance structures, business strategies, and organizational incentives. Without requiring companies to analyse these internal sources of risk, the directive asks them to act on impacts whose structural causes it does not require them to understand. The tier 1 limitation exacerbates this disconnect by further narrowing the field of vision without clarifying the nature of responsibility.

Even setting aside the normative ambiguity argument, the tier 1 limitation faces significant challenges under conventional necessity analysis. The Commission must demonstrate that less restrictive alternatives cannot achieve the legitimate objectives of reducing compliance costs and focusing resources effectively.

Several less restrictive alternatives appear viable: First, the directive could maintain comprehensive scope while introducing structured proportionality criteria based on company size, sector risk profiles, and degrees of influence. This would reduce burden through targeted application rather than categorical exclusion.

Second, enhanced implementation guidance could clarify what constitutes sufficient due diligence at different supply chain tiers, potentially incorporating safe harbours for good-faith efforts or industry collaboration. The absence of such guidance to date does not demonstrate its inadequacy.

Third, phased implementation schedules could allow companies to develop capabilities progressively, beginning with tier 1 but extending systematically based on risk indicators and capacity building.

Fourth, the development of sectoral or regional risk profiles could enable companies to focus efforts where impacts are most likely, rather than conducting exhaustive mapping of all relationships.

The Commission's impact assessment acknowledges that limiting due diligence to tier 1 would have "a detrimental effect on the effectiveness of due diligence since the main risks to human rights and the environment most often occur farther upstream." This admission undermines the necessity claim — if the measure substantially reduces effectiveness in achieving the directive's core objectives, it cannot be considered necessary in the Charter sense.

Proportionality Assessment. The proportionality balance presents a stark asymmetry between gains and losses. On one side, companies would achieve cost savings and simplified compliance procedures—benefits that are real but primarily economic in nature. On the other side stands a systematic exclusion from corporate due diligence of precisely those value chain segments where the most severe human rights abuses and environmental destruction concentrate.

The non-regression principle adds crucial weight to this analysis. As established in Repubblika and subsequent cases, once the Union has deliberately fixed the level of protection for an Article 2 value through legislation, any subsequent dilution must meet heightened justification standards. The Court has shown particular concern where rollbacks affect systemic values or where stakeholders have developed legitimate expectations based on existing protections.

Here, civil society organizations, affected communities, and responsible investors have built monitoring systems, advocacy strategies, and capital allocation frameworks around the expectation of comprehensive value chain due diligence. Trade unions have negotiated agreements premised on companies' obligations to address labour rights violations throughout their supply chains. The sudden withdrawal of these protections would undermine not just individual compliance strategies but entire accountability ecosystems.

Furthermore, the "plausible information" exception creates perverse incentives. Companies may rationally avoid developing the relationships and monitoring systems that would generate such information, creating wilful blindness rather than responsible business conduct. This dynamic could ultimately increase rather than decrease systemic risk, as problems fester undetected until they manifest as operational disruptions or reputational crises.

Conclusion. The proposal to limit CSDDD due diligence to tier 1 business partners arguably violates Article 52(1) requirements when assessed through the non-regression principle. The measure fails the necessity test because it addresses symptoms rather than root causes — normative ambiguity could (assuming we are correct) be resolved through clearer standards rather than coverage restrictions. It fails proportionality because minor administrative savings cannot justify excluding supply chain segments

where the most severe human rights and environmental violations occur, especially given the Commission's admission that this would substantially reduce the directive's effectiveness.

4.6 Raising the CSDDD threshold to 5 000 employees

France has suggested that the directive's personal scope be limited to groups with at least 5 000 employees. How vulnerable that idea is under Article 52(1) depends on the line the Court ultimately draws in the non-regression debate outlined in section 3.3. If the Court adopts the broader, effect-based reading of *Repubblika*—treating any material reduction in protection as a "limitation" that must survive strict necessity review—the higher threshold will still have to clear the proportionality test; however, the rights impact here is more incremental than in the proposals examined above, and that may shift the balance.

The directive currently spares small and medium undertakings; a 5 000-employee floor would further exempt a large cohort of medium-sized groups while still capturing almost all very large multinationals – the actors best placed to influence high-risk supply chains. Protection would therefore shrink but not disappear: many Member States intend to keep lower national thresholds, and residual obligations such as public reporting would continue to reach firms below the EU cut-off. The practical question is whether the legislature can demonstrate, with credible data, that compliance costs rise steeply for firms under the 5 000 mark and that those costs cannot be alleviated by gentler tools such as phased entry, risk-weighted duties, or targeted technical assistance.

If such a showing is forthcoming, the adjustment could be cast as a proportionate calibration rather than a roll-back. The rights cost – reduced due-diligence coverage in segments like textiles or artisanal mining – would have to be weighed against a documented economic benefit to several thousand undertakings and the internal-market gains of keeping EU rules broadly aligned with realistic compliance capacity. Because the rights at stake remain protected by national legislation and because lighter Union instruments (disclosure rules, contractual cascade clauses) would still apply, the Court would perhaps conclude that the proposal, though a *limitation*, survives strict-necessity review. Absent such an evidentiary backbone – the current Omnibus file does not yet contain it – the measure would struggle.

In short, the 5 000-employee proposal is not in the same constitutional posture as a blanket repeal or the deletion of Article 22's implementation duty. It could well still have to clear Article 52(1), but, given a robust legislative dossier showing cost asymmetry, residual protections and flanking measures, it stands a non-negligible chance of being upheld. Without that dossier the non-regression logic, now folded into the proportionality test, would likely tilt the scales the other way.

5 CONCLUSION

The Omnibus proposals and later suggestions represent a high-stakes constitutional gamble. While the Union may modify its sustainability framework, recent jurisprudence suggests the Court views regulatory rollbacks affecting fundamental rights with increasing scepticism. Each proposed measure — whether repeal, dilution, or postponement — reduces protections the Union has already deemed essential for human dignity, workers' rights, and environmental survival.

The legal vulnerabilities are striking. No current proposal includes evidence that less restrictive alternatives — graduated phase-ins, sectoral guidance, targeted relief—have been seriously examined. This absence is not merely procedural; it goes to the heart of whether these measures can satisfy Article 52(1)'s strict requirements. The Commission's own assessments occasionally undermine its case, as when acknowledging that tier 1 limitations would "substantially reduce effectiveness" in preventing severe human rights violations.

The practical risks compound the legal ones. Well-resourced NGOs and progressive Member States stand ready to challenge. Even if some measures ultimately survived review — itself uncertain — the litigation timeline would span years, creating worse uncertainty than exists today. Companies would face an impossible choice: maintain current compliance levels despite promised relief or reduce protections and risk retroactive liability if courts intervene. International partners who've aligned with EU standards may view rollbacks as bad faith, potentially triggering commercial retaliation.

Most troubling, in our view, is what this reveals about the Union's approach to fundamental rights. The pattern across proposals — addressing symptoms rather than causes, choosing abandonment over clarification — suggests a concerning readiness to trade established protections for short-term political gains. Yet the emerging non-regression principle, reinforced by international law and the Court's own trajectory, increasingly forecloses such trades without compelling justification.

A sustainable path forward exists: provide the clarity and structure that enables meaningful compliance without sacrificing protection levels. But if political pressures demand proceeding with current proposals, legislators should understand the stakes. They risk not just legal defeat, but a governance crisis where signature Green Deal achievements unravel in court, leaving Europe's regulatory credibility damaged and businesses in prolonged limbo. The Charter's constraints are real, and the Court's patience with unjustified rights rollbacks appears to be running thin.

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