

Brussels, 31/05/2021

Subject: Directive on corporate sustainability due diligence

Dear Madam/Sir,

Our industry relies on efficient global supply chains and a stable market environment. With the current geopolitical context exacerbating the ongoing effects of the pandemic, our companies face unforeseen economic challenges. These range from increasing energy costs, high inflation to supply chain disruptions, such as scarcity of steel and other intermediate products. As part of addressing these economic challenges, we need to strengthen and diversify our supply chains.

However, we fear that the recently proposed Directive on corporate sustainability due diligence introduces requirements for companies' supply chains that will have the opposite effect. As drafted, the latest Directive will have a far reaching negative effect on the operations and supply chains of European based companies and thereby will undermine their global competitiveness.

International supply chains have contributed to a massive eradication of poverty through job creation in many developing countries. European companies, emphasising quality products and long-term relationships often have contributed to the development of an important middle class in these countries. These and other positive aspects of global supply chains need more room in the argumentation of the Commission.

The Directive includes vague concepts and insufficiently concrete definitions such as the definition on 'established business relationship' and 'value chain', which leave too much room for interpretation and will inevitably cause legal uncertainty on companies. The need for legal certainty is fundamentally compromised by the article on civil liability as foreseen in article 22 of the Commission's proposal.

Moreover, this proposal will cause an overwhelming amount of administrative burden on companies as companies will be obliged to carry out due diligence for their entire value chain. This is not workable in practice, not even for larger companies, as these companies often have over 100.000 direct suppliers and further upstream suppliers could comprise millions of micro-companies.

We also note that the proposal includes controversial elements going beyond due diligence, e.g. directors' general duty of care and executive remuneration. These intruding corporate governance elements are unnecessary to attain the objective of the proposal and they were rejected twice by the Regulatory Scrutiny Board. They will add to the legal uncertainty and interfere with longstanding, well-functioning corporate governance models of the Member States.

Furthermore, it should be noted that, while the Directive in itself will be extremely burdensome, it should also be seen in conjunction with the proposal for a Directive on corporate sustainability reporting, the Taxonomy Regulation and its possible extension to a "social

taxonomy". These legislative initiatives threaten to add a long list of new and most likely overlapping obligations for companies in terms of stricter reporting obligations and significantly widen the scope to smaller companies. Moreover, the proposals in the area of sustainability must be considered in the larger picture of EU level legislation that will impose a high level of additional legislative requirements on companies, such as the Directive on pay transparency, the Directive on transparent and predictable working conditions, the Directive on platform work etc.

The undersigned European associations underline that all the above-mentioned legislative proposals will put European based companies, in an enormous competitive disadvantage in comparison to third country companies which are not subject to these heavy administrative burdens. We do not see this proposal in line with the target of the recent Versailles Declaration of the Heads of States and Governments to build a more robust economic base in the EU.

European companies are world leaders in monitoring supply chains' adherence to human rights and environmental protection. We agree that companies have a responsibility to take social, environmental and human right issues into account in addition to their economic and financial performance. This letter is therefore not a plea to withdraw the proposal but a call on the European institutions to find an approach which does maintain the aim of the Directive, while making it workable for EU based companies.

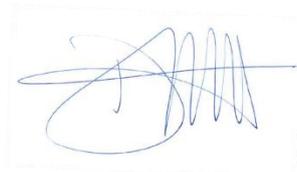
Concretely, the undersigned European associations suggest to include, amongst others, the following elements in the text of the Directive:

- The Directive should only apply to those parts of the value chain with which companies have a direct contractual relationship, i.e. the tier 1 suppliers of the upstream supply chain.
- As there are very high social standards and effective systems of control and enforcement in the EU, companies should focus on their tier 1 suppliers outside the EU, in accordance with the Conflict Minerals Regulation, in order not to indirectly affect SMEs.
- The scope as laid down in the annex must be limited to internationally recognized core standards of human rights. The broader the scope (e.g. climate change and environment), the more difficulties for a successful fulfilment of the due diligence obligations.
- In order to mitigate the harsh consequences in terms of legal uncertainty, article 22 on civil liability should be deleted.
- Elements going beyond due diligence, i.e. on directors' general duty of care (article 25) and executive remuneration (article 15), should be deleted as they are unjustified, intruding and do not fit a due diligence proposal.

We would be happy to further discuss this proposal with you in more detail, in order to ensure that the final text of the Directive on corporate sustainability due diligence, is workable in practice for companies.

Yours sincerely,

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Malte Lohan
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