

To Minister Jozef Síkela
Minister of Industry and Trade
Government of the Czech Republic
nábřeží Edvarda Beneše 4
118 01, Prague 1
Czech Republic

15 November 2022

Subject: **Competitiveness Council discussions on Proposal for a Corporate Sustainability Due Diligence Directive**

Dear Minister,

Ahead of the 1 December Competitiveness Council meeting, Eurochambres – the association of European chambers of commerce and industry - would like to provide comments on the proposal for a Corporate Sustainability Due Diligence Directive.

Eurochambres appreciates the efforts of the Council to support more responsible business conduct in the supply chain. We also understand that a general approach may be adopted during the 1 December Competitiveness Council meeting. However, the chamber network is concerned that the current proposal's provisions and some of the amendments indicated by Council delegations will be very difficult for businesses to comply with. **Eurochambres advises you to continue discussing the draft text and not to rush to a final position which fails to offer solutions to businesses on key issues.**

It is important to carefully assess the economic impact of certain amendments that may jeopardise the regular flow of goods and materials critical to European industries. **To improve the efficacy of their scope, the Council should avoid supporting ideas that have not been subject to a thorough analysis in terms of likely costs and/or benefits. More time is needed to undertake ex-ante evaluations.**

The Council must continue working on achieving a balanced approach that guarantees **harmonisation, a level playing field and legal certainty in the EU**. It is important as well to abide by the **Think Small First principle**, with full consideration of SMEs' needs, and to avoid undue administrative burdens.

With respect to “Definition and scope”, the proposed definition of “value chain” covers an unrealistic and *de facto* unlimited scope of activities. It is also questionable how the terms “intended and reasonably foreseeable use and disposal of the product” are to be interpreted. Businesses have varying degrees of influence along their supply chain, thus cannot accept the imposition of legal obligations over an extremely broad coverage of operations which they are unable to comply with or thoroughly verify. With this in mind, Eurochambres recommends that:

- To ensure a realistic implementation of the Directive, we recommend limiting the definition to supply chain.
- The proposal should only cover large companies' own operations and partners with which they have a direct contractual supplier relationship (1st tier). Later extension to additional tiers should be subject to a comprehensive legal assessment a posteriori and based on the experience acquired by companies.

Regarding the “**Prevention of adverse impacts**”, the concept of “viability” as a criterion for the support required by SMEs from large companies regrettably remains in the compromise text (article 7(2d)). There is a risk that SMEs become less attractive as business partners because they have to be supported financially and technically. Furthermore, it is unrealistic to extend the application of the company’s code of conduct to business partners (article 5 (1a(b))). **Support to SMEs should not be at the expense of their business partners and business partners should also not be obliged to abide by the code of conduct of in-scope companies.**

Considering “**Directors’ duties**”, Eurochambres welcomes the Council’s decision to delete imprecise considerations on directors’ duty of care from the text. It is important to recognise that directors must retain the ability to adapt their corporate strategies to the needs, considering pre-established liability safeguards and their fiduciary duties. **The Council must avoid imposing companies to appoint a human rights officer reporting directly to the management, as suggested by some delegations in e.g. Article 5.** Flexibility in the decision-making process of the management body is more appropriate in light of the externalities over which management has no control.

For future discussions, we recommend the following points:

- The creation of an **advisory committee** with an “observer” role, yet no decision-making powers. Its members would be selected by the Board of Directors and made up of key stakeholder representatives. The advisory committee would be consulted on the measures put in place for identifying and preventing adverse impacts and remedying damage (articles 6, 7 and 8). **Companies would then be able credibly convey to the control authority that they acted to the best of their knowledge and belief at all times.**
- The creation of a **one-stop shop platform** managed by the European Commission containing detailed information on e.g.:
 - International guidelines and Q&A related to corporate sustainability legislation (CSDD, NFRD, deforestation, conflict minerals, forced labour, etc);
 - EU and member state financial aid put in place to support SMEs with compliance;
 - A database with all the anonymised national authority judicial decisions taken;
 - Existence of industrial schemes and multi-stakeholder initiatives;
 - Calls for consultation from EFRAG or other standard setters with an EU impact;
 - Calls for research projects and partners;
 - Sharing of business best practices;
 - An instrument/app that, based on the location and the sector/sub-sector of a supplier, could help companies to identify and prioritise risks; receive advice; consult lists of criteria, requirements, certifications needed to assess suppliers.

Thank you in advance for considering this input from the European chamber network. You can find related positions in annex to this letter.

Yours sincerely,

A handwritten signature in black ink that reads 'Ben Butten'.