

U.S. Chamber of Commerce Position on the EU Corporate Sustainability Due Diligence Directive

The U.S. Chamber of Commerce agrees with the spirit of the European Union’s (“EU”) Corporate Sustainability Due Diligence (“CS3D”) Directive (“Directive”), which seeks to improve the efficiency, resilience, and long-term sustainability of global supply chains. The Chamber is concerned, however, about the misalignment between the CS3D’s goals and potential requirements, and what business can practically accomplish. Legal certainty and proportionality should be key tenets of any regulatory approach regarding due diligence.

The EU is currently engaged in trilogue discussions between the Commission, the Council, and the Parliament on the final text of the proposed Directive. The proposal introduces specific due diligence requirements for around 17,000 EU and non-EU businesses, intended to mitigate adverse impacts on the environment and human rights within supply chains.

CS3D principally consists of two pillars: introducing mandatory supply chain due diligence requirements for companies; and introducing new duties for the directors of EU companies. Under the due diligence component, companies will need to identify, mitigate, and prevent adverse human rights and environmental impacts to the extent that those activities are present in a company’s value chain.

Under the governance component, directors assume direct responsibility for due diligence, and must consider sustainability in their decisions. Additionally, the Parliament’s proposal makes directors accountable to ‘stakeholders’ (a vaguely defined term) via legal action if they fail to adequately identify or address risks. In case of non-compliance, the Directive contemplates both administrative sanctions from supervising authorities and liability to third parties for damages.

If enacted without significant moderation, CS3D will impose heavy and potentially unfeasible burdens on companies, and risks the constant threat of frivolous, excessive, and expensive litigation. The Chamber therefore invites policymakers to carefully consider the following key elements in order to create final legislation that is meaningful, achievable, and fit for purpose:

- The extraterritorial scope of the Directive creates overly burdensome obligations for companies that may not have a geographical nexus with the EU. It further removes decision-making authority for U.S. firms away from U.S. regulators.



- The proposed civil liability regime and its extraterritorial scope creates liability risks in non-EU jurisdictions and risks infringing international law principles relating to the applicability of international agreements. For U.S. companies, CS3D could result in liabilities for the same damages under different legal systems.
- The inclusion of directors' duties and obligations risks interfering with national company law and governance regimes, and ultimately lacks coherence with the liability regime. The Chamber strongly supports the Council's position on the deletion of the directors' duties' provisions in the CS3D.
- The definition and scope of "value chain" under the Commission and Parliaments' proposals expands the scope of the Directive and widens the obligations and risk for companies, including in relation to their business partners. The legal obligations may introduce civil liability for non-compliance in relation to activities of the value chain over which companies have no visibility or control.
- The Chamber welcomes the Council's pragmatic approach in replacing the "value chain" with "chain of activities" that is limited to the production and supply of goods, or provision of services.
- The Directive must adopt a risk-based prioritization in identifying and addressing potential adverse impacts to ensure the due diligence process is workable in practice. The Chamber supports both the Council and the Parliament's approaches to this issue.
- The inclusion of transition plans on climate change in the due diligence assessment creates potential discrepancies with other international obligations and regimes, creating overlapping and possibly contradictory requirements and legal uncertainty.
- The inclusion of financial services companies in the scope of obligations is deeply problematic given the specific industry value chains, business models, and current regulatory framework governing financial services in the EU. The inclusion of financial institutions in the scope of the value chain creates undue burdens and obstacles in financial markets, without any contribution to the objectives of the Directive.
- The reliance on national law and litigation practices is quite likely to lead to material divergences between implementation regimes.
- The CS3D undermines the EU principle of proportionality by imposing burdens that are excessive in comparison to the objective to be achieved.

The impact of CS3D on global political dynamics also must be carefully appraised, especially given recent statements regarding unintended consequences by officials from the U.S. and other countries. The Chamber strongly believes the extraterritorial impact of the Directive and subsequent consequences must be appropriately considered and meaningfully addressed in trilogue discussions. The Chamber believes the EU should likewise use the trilogue process to reduce the overall burden and litigation risk for companies to ensure continued competitiveness of the European market.

