

## FIEC-EIC Key Messages

on

### EU Directive on Corporate Sustainability Due Diligence

COM (2022) 71 final

FIEC and EIC support the introduction of an EU legal framework for the Corporate Sustainability Due Diligence Directive (CSRDD) under the condition and to the extent that such legal act is **confined to promoting a uniform EU-wide application of the UNGP and the OECD MNE Guidelines**. We also advocate a **level playing field between EU and non-EU construction companies operating in the EU Internal Market**. Having regard to the DRAFT REPORT on the proposal for a Directive on Corporate Sustainability Due Diligence (PE738.450) and the corresponding Amendments dated 08 December 2022 we would like to call the attention of EU legislators to the following ten priority issues:

### Our 'Top 10' priorities for upcoming EP and Trilogue negotiations

- 1. Need for a new Impact Assessment:** Bearing in mind that the Regulatory Scrutiny Board has twice rejected the Commission's impact assessment as insufficient, we **support Amendment 260** to conduct a **new impact assessment**, which should assess the coherence of this proposal with the direct and indirect consequences of such reporting and due diligence obligations for European companies. The consultations in the European Parliament should be postponed until the new impact assessment has been carried out. **Should the European Commission not conduct such a new impact assessment, the European Parliament should reject the Commission proposal.**
- 2. Adoption as a Regulation instead of Directive:** Bearing in mind that the Conflict Minerals Regulation (EU) 2017/821, the upcoming Regulation on Deforestation-free Products 16298/22 and the proposed Regulation on prohibiting products made with **forced labour** on the Union market, COM(2022) 453, have all been adopted as a Regulation, we **support Amendment 501** to **change the legal nature of the legislative act from a Directive into a Regulation**. Only the **full harmonisation of the dossier will lead to a level-playing field within the EU**. In the light of the fact that the EU Council has proposed in its General Approach to delete the provisions relating to EU company law, namely proposed Articles 15 para. 3, 24, 25 and 26, such modification should be possible even during the ongoing legislation process.
- 3. Focus on extra-EU activities:** As there is already a very high standard regarding human rights and the environment in the EU, with existing legally binding frameworks, **we support Amendments 266, 267, 537, 597 and 801 to exempt supply chains within the EU from the Directive** and to apply this Directive only for operations outside the EU in the sectors posing the highest risks. EU-based companies should be understood to act in accordance with existing national and EU law.

4. **Personal scope:** As there is no precedent for this legislation other than the French and German supply chain acts, we [support Amendments 536, 541 and 552](#) which propose to act cautiously and start with large companies, using the threshold of employees of existing legislation in line with the French and German supply chain acts. The low thresholds and cascading effects of the due diligence and liability scheme are likely to put a disproportionately heavy administrative burden on the numerous SMEs active in the construction industry and beyond.  
**Applicability to third country companies and their EU subsidiaries:** EU subsidiaries belonging to globally operating third country groups of companies would generally be allowed to escape from due diligence obligations if their field of operation is limited to the EU Internal Market, even though their third country parent company would be in-scope if they were based in the EU. We therefore [support Amendment 592](#) which stipulates that the **criteria for workforce and turnover in Article 2 paragraph 1 need to be calculated based on the figures for the group of companies** in case that the EU subsidiary is controlled by a third country parent company. With a view to third country (parent) companies, we [support Amendments 596, 605, 606 and 615](#) which **lower the required EU turnover in Article 2 paragraph 2** when this is linked to a significant threshold for total turnover worldwide.
5. **Construction, by nature, is not a 'high-impact' sector:** We [reject the Amendments 574, 579, 580 and 683](#) which label construction, civil engineering and other construction-related segments as 'high impact' sector. The selection of high-impact sectors for the purposes of this Directive should be based on **existing sectoral OECD due diligence guidance**. The inclusion of the construction sector would put a **disproportional burden and costs on a huge number of construction SMEs even if they are active exclusively within the EU**.
6. **Supply chain instead of value chain responsibility:** We [support Amendments 690, 691, 711-716, 718 and 722, 727, 730, 731, 733](#) which all are instrumental to **confine CSDDD obligations, in principle, to direct ('tier-1') subcontractors and suppliers in the supply chain**, as in the German 'Act on Corporate Due Diligence in Supply Chains'. In industries characterised by a multitude of intervening subcontractors and suppliers, whose composition and combination changes with each project, companies can only control their direct suppliers and subcontractors in a meaningful way. Nor do they have much leverage downstream on their clients, even less when it goes over public authorities, which make a sizeable part of the client base in many sectors.
7. **Introduction of a Risk-Based Approach:** We [support Amendments 737, 785, 794, 795, 801, 802, 806, 852, 920 and 1023](#) because this Directive should follow and respect the well-established concepts of the OECD Guidelines for Multinational Enterprises (MNE) and the UN Guiding Principles on Business and Human Rights, in particular the **'Risk-Based Approach'**. This concept is the essence of a long and inclusive process and acknowledges that companies may prioritise their most significant adverse impacts based on severity and likelihood of harm and, on that basis, focus their attention and resources on their higher-risk operations and business relationships.
8. **Legitimate interest required for submitting substantiated concerns:** We [reject Amendment 1413](#) which proposes dropping the need for a 'legitimate interest in the matter'. As the current wording of Article 19 paragraph 1 basically allows any person to bring a case before a supervisory authority about all possible breaches of the proposed provisions of the Directive, which creates a huge risk of forum shopping and proliferation of complaints,

we **welcome Amendment 1400** as it confines such right to the **stakeholders mentioned in Article 9 paragraph 2.**

- 9. Sanctions not to be expanded to public procurement and export credits:** We **reject Amendments 1418, 1440 and 1448** which propose to expand the list of sanctions to public procurement and export credits, trade missions, etc. Such broadening of the catalogue of sanctions would put an **excessive burden on the construction industry** for which the public sector and thus the public procurement market is an eminently important segment, when compared to other sectors which are less dependent on public procurement. This type of sanction would **unlawfully restrict competition** for public procurement and possibly **interfere with Article 15 of the EU Charter of Human Rights** [Freedom to choose an occupation and right to engage in work]. Limitation of access to export credits and trade missions **discriminate against companies that are internationally engaged**. In terms of public procurement, we would rather suggest introducing incentives into public procurement for companies which credibly demonstrate compliance with CSDDD.
- 10. Delete Director's duty of care:** We **support Amendments 776, 781, 1559-1561 and 1571** because it is **unnecessary to regulate Directors' duties at EU level**, as they are regulated sufficiently on Member State level. Interference in national corporate governance models and direct intervention in companies' business models and strategy is disproportionate.

Berlin/Brussels, 30 January 2023

Through its 32 national member federations in 27 European countries (24 EU & Norway, Switzerland, Ukraine), FIEC represents construction enterprises of all sizes (from one person craftsmen and SMEs through to large international firms), from all building and civil engineering specialties, engaged in all kinds of working methods.

EIC has as its members construction industry trade associations from fifteen European countries and represents the interests of the European construction industry in all questions related to its international construction activities. The international turnover of companies associated with EIC's Member Federations amounts to around 200 billion € per year.

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