

## **CLEPA Assessment CSDD – contribution to consultation**

CLEPA welcomes the initiative for an EU wide sustainability due diligence framework. Unfortunately, without revisions, the proposal would undermine legal certainty and fragment the single market. Companies should be provided with more means and legal assurances to effectively fulfill due diligence requirements.

The directive should be amended on 4 principles:

- Due diligence obligations need to be embedded in a harmonized framework.
- Risk based approach should be embedded in the legal framework.
- Clearly defined obligations of means, recognizing limitations to control and ability to influence, appropriate due diligence should rule out liability.
- Sector cooperation and a clear role for public authorities to enable effective implementation of due diligence requirements by business.

The directive fails to deliver on these principles due to 5 flaws:

- Lack of ambition to deliver harmonization creates fragmentation risks.
- Article 7&8 do not recognise business' need to focus resources based on risk and create legal uncertainty.
- Article 7&8 do not recognise that a business relationship can be structural in nature and still provide a company with limited means to influence behaviour of supplier, proportionality regarding degree of control should apply to obligations.
- Civil liability could stretch beyond obligation of means and direct business relationships.
- 1.5-degree global warming target does not reflect the limited ability of individual businesses to influence emissions if regulations and policies globally are ineffective.

The following elements in the proposal should be strengthened:

- Industry initiatives and contractual clauses should be clearly defined and allow for (civil) liability exemptions.
- European network of supervisory agencies should be a driver of harmonisation.
- Public authorities should commit to a bigger role in providing expertise.

Amendment proposals:

### *Address fragmentation risks*

- The directive should clearly state that companies can fulfill their due diligence requirements at consolidated level.
- Due diligence requirements should only apply to upstream suppliers' supply chain.
- A Union agency with relevant expertise should be assigned to lead and coordinate the work of the European Network of Supervisory Authorities, as established in article 21.

### *Influence based obligations*

- Risks identified while fulfilling article 6 obligations and the ability to influence/control should determine obligations under article 7&8. The UN guiding principles link a company's responsibility to act to whether it is directly causing a risk/violation or contributes to it, due a link to a business relationship, and weighs the extent of leverage a company has.

- The obligations linked to direct and indirect relationships should be separated and based on ability to influence. Indirect business relationships need to be defined.

#### *Civil liability and obligation of means*

- If a company has complied with due diligence obligations, no civil liability should apply (obligation of means).
- Companies should explicitly be exempted from civil liability risks if obligations of article 7 and 8 are fulfilled and contractual assurances were obtained from direct suppliers and verified by an industry alliance.

#### *Global warming responsibilities*

- Article 15 should be better aligned with sector specific legislation so that companies can adopt a plan for emissions they directly control (scope 1,2) and plan to comply with sector legislation and regulatory targets in the different regions where they operate for emissions out of their direct control (in particular, scope 3).

#### *Effective implementation support*

- The directive should commit the Commission to issue binding guidance on what constitutes an industry initiative appropriate to fulfill obligations.
- Clearer definitions of *contractual assurance* and the related third-party verification.
- Public authorities should be committed to a clearly defined role in information and expertise provision.