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FEDIL'S POSITION ON CS3D GUIDELINES

FEDIL welcomes the Commission's initiative to develop practical guidance on the Corporate Sustainability Due Diligence Directive (CS3D). Clear and proportionate guidance will be essential to ensure effective implementation while preserving companies' ability to apply due diligence approaches adapted to their sectors, business models and value chains.

1. Overall approach

- Welcome the Commission's initiative to develop practical guidance to support the effective, proportionate and harmonized implementation of the CS3D. Well-designed guidance can provide valuable support by clarifying practical challenges, promoting consistency across Member States and helping companies implement due diligence processes in line with the objectives of the Directive.

- The guidance should provide practical, operational support while preserving sufficient flexibility to reflect different sectors, business models, value chains and risk profiles. It should strike an appropriate balance between usefulness and legal certainty, avoiding overly prescriptive approaches that could narrow companies' discretion or create expectations beyond the Directive.

- The guidance should provide clarity and support implementation while respecting its non-binding nature and avoiding becoming a de facto extension of the Directive by introducing new obligations, additional reporting requirements or interpretations that broaden its scope.

- The guidance should respect the balance achieved by the co-legislators, including through the Omnibus negotiations.

- The guidance should clearly reflect that the CS3D establishes an obligation of means rather than an obligation to guarantee specific outcomes. Companies should be assessed on whether they have taken appropriate and proportionate due diligence measures, rather than on whether adverse impacts occur.

- The Commission should consider providing practical implementation tools alongside the guidance, such as FAQs, checklists, illustrative case studies and web-based resources that can be updated over time. Examples and good practices included in the guidance must be presented as illustrative only. They must not evolve into or be interpreted as de facto standards or requirements against which companies are assessed by supervisors, courts or stakeholders. The guidelines do not serve to create benchmarks of compliance but to strengthen legal certainty and predictability.

2. Alignment with international standards

- In principle, support alignment with existing international frameworks, including the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.

- At the same time, alignment should take account of the specific legal nature and architecture of the CS3D. While these international frameworks provide valuable reference points, the guidance should ensure that their application is consistent with the binding obligations established by the Directive.

- The guidelines should therefore:

    - ensure consistency with internationally recognized standards where appropriate;

    - avoid importing concepts or expectations that go beyond the wording or intent of the Directive;

    - refrain from creating new obligations not foreseen in the legislative text; and

    - promote a harmonized interpretation across Member States, thereby reducing legal uncertainty and avoiding regulatory fragmentation.

3. Scope and content of the guidance

- The guidance should prioritize areas where companies would benefit most from practical support and greater legal certainty, including:

    - prioritization methodologies;

    - identification and assessment of risk factors;

    - stakeholder engagement;

    - use of data and information sources;
    - due diligence measures;
    - contractual cooperation mechanisms.

- The guidance should acknowledge that companies frequently have to take decisions on the basis of incomplete information, particularly beyond direct business relationships. Practical constraints, including legal restrictions, commercial confidentiality, trade secrets and limited leverage over business partners, should be taken into account when assessing due diligence efforts. Monitoring does not mean continuous or real-time oversight of every business partner; its frequency and intensity should depend on the level of risk and the company's position in the chain.

- The guidance should explicitly recognize that there is no single model for implementing due diligence. Companies should remain able to adopt different approaches depending on their sector, value chains, size and risk profile, provided these are consistent with the objectives of the Directive.

- The guidance should explicitly recognize the value of industry initiatives and multi-stakeholder collaboration as legitimate tools for conducting due diligence, sharing information, building capacity and increasing leverage throughout the value chain.

- The guidance should clarify practical implementation challenges in complex, multi-tier value chains, including the role of internal stakeholder engagement, companies' discretion in good-faith prioritization decisions and the fact that "reasonably available" information under Article 8(3) does not require exhaustive searches.

4. <u>General vs sector-specific guidance</u>

- The Commission should carefully assess whether sector-specific guidance provides genuine added value in addition to horizontal guidance.

- Priority should be given to horizontal, sector-agnostic guidance (with the main guidelines expected by July 2027 and any additional guidance by July 2028).

- Any future sector-specific guidance should build on existing sectoral guidance where appropriate and avoid duplication with guidance already developed under other EU legislation, including the Deforestation Regulation (EUDR), the Conflict Minerals Regulation, the Batteries Regulation and the Forced Labour Regulation.

- The guidance should promote consistency with other EU due diligence and sustainability legislation and encourage companies to rely, where appropriate, on information and assessments already carried out under other EU legal frameworks, thereby avoiding unnecessary duplication.

- In particular, the guidance should clarify that a single information request to a business partner can serve both CSDDD due diligence and CSRD reporting purposes, and that the CSRD value chain cap does not entitle a partner to refuse the due diligence component of a combined request. Furthermore, the guidance should clarify that not all identified or prioritized adverse impacts under CSDDD are necessarily material for the purposes of the CSRD double materiality assessment. Companies should be able to leverage existing risk identification and prioritization processes and report voluntarily on these without this being interpreted as an acknowledgement of materiality for CSRD purposes.

- Sector-specific guidance risks fragmented compliance expectations and prescriptive requirements beyond the Directive's intent. If developed, it should remain strictly within the Directive's existing obligations and avoid creating additional sector-specific standards that reduce companies' flexibility in determining appropriate measures.

5. <u>Model Contractual Clauses</u>

- The Commission should provide greater clarity regarding its envisaged approach to voluntary model contractual clauses.

- The purpose of such clauses should be to provide practical examples and facilitate implementation, rather than establish standard contractual templates or create an expectation that companies should systematically use particular clauses.

- It would therefore be helpful for the Commission to clarify that any model contractual clauses are voluntary and illustrative in nature.

- The guidance should recognize the indirect impact of CS3D on SMEs throughout supply chains and encourage proportionate information requests and contractual arrangements, avoiding the unnecessary transfer of disproportionate compliance burdens to smaller business partners.

6. Best practices

- Practical examples and best practices can be valuable tools to support implementation and improve understanding of the Directive.

- However, they should remain illustrative and entirely voluntary.

- Following a particular best practice should not become a de facto condition for demonstrating compliance with the CS3D.

Overall, FEDIL supports guidance that provides practical clarity, promotes harmonized implementation across Member States and enables companies to meet their due diligence responsibilities in a proportionate and effective manner.