

## **CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE**

December 19, 2024

### **Executive summary**

This position paper reaffirms the support of the American Chamber of Commerce in Belgium (AmCham Belgium) for the objectives of the Corporate Sustainability Due Diligence Directive (CS3D) while constructively addressing the challenges it may pose to business confidence and investment in Belgium and its regions.

The international business community in Belgium is particularly concerned about: (i) the administrative burden and cumulative impact of the CS3D and related legislations on businesses, (ii) the unclarity and uncertainty around CS3D interpretation and implementation, (iii) the risks posed by unpredictable litigation and (v) the legislation's extraterritorial effects.

To foster a positive investment climate and ensure company resources remain oriented towards strategic sustainability initiatives, AmCham Belgium strongly encourages Belgian policymakers to consider the following five recommendations: (i) advocate for a comprehensive competitiveness assessment by the European Commission of the CS3D on business and industry, including the extraterritorial reach and increased risk of unpredictable and complex litigation, in order to identify the issues and implement the necessary remedies, (ii) promote collaboration with the business community in Belgium to develop practical solutions, (iii) advocate for the quick publication of clear guidance and implementation guidelines, (iv) ensure clarity and consistency in the directive's application in Belgium (e.g., no fragmented regulatory requirements and no gold-plating), and (v) ensure the risk-based approach of CS3D is clearly safeguarded in the Belgian transposition to ensure the exercise remains productive.

### **Introduction**

Mario Draghi's recent report on the future of European competitiveness states that the EU requires an additional annual investment of €800 billion to achieve its competitiveness and climate targets. According to Mr. Draghi's report, over the past five years, the EU has enacted nearly four times more regulation than the U.S. The competitiveness challenge is reflected in the Council's Strategic Agenda, in Commission President Ursula von der Leyen's political guidelines, in both the Draghi and Letta reports, as well as in the Flemish and Walloon Government Agreements. At AmCham Belgium, we welcome this recognition from policymakers that Europe's competitiveness challenge should be addressed, as well as the focus to put administrative burden relief and simplification on its agenda. In this context, we welcome the Commission President von der Leyen's recent commitment to an omnibus regulation proposal seeking to reduce the reporting burden resulting from the trifecta of CSRD, CS3D and Taxonomy. To avoid unnecessary legislative changes and uncertainty, further implementation should await at least the outcome of this omnibus regulation.

## Concerns

- In the context of the EU's competitiveness, it is worth noting that the Draghi report<sup>[1]</sup> highlights the need for a 25% reduction in reporting requirements and emphasizes the importance of "competitiveness checks" on EU legislation; notably, the CS3D is identified in the report as a significant source of regulatory burden.
- As the voice of international business in Belgium, AmCham emphasizes four specific concerns regarding the CS3D:
  1. **Cumulative administrative burden:** the CS3D will impose substantive due diligence burdens on companies adding to the existing burdens from recent EU environmental legislation, having a cumulative impact on companies in Belgium. This could lead companies to shift resources from strategic environmental initiatives towards administrative compliance exercises, undermining the benefit that international business brings to Belgium.
  2. **Uncertainty and uncertainty around CS3D implementation:** The political agreement of CS3D requires companies to make business decisions based on "interpretations" of what their legal obligations are. The current deadlines for the European Commission to provide more clarity through guidelines are too close to the entry into force of CS3D. The announced omnibus regulation and potential competitiveness assessment might also have an impact on the guidelines.
  3. **Risk of litigation:** the CS3D may expose companies to an increased risk of unpredictable, complex and costly litigation, including on climate transition plans, that can be brought by various parties.
  4. **Extraterritorial effects:** the CS3D impacts companies both inside and outside the EU creating overlapping regulations in non-EU jurisdictions.

## Recommendations to Belgian policymakers

1. Advocate for a comprehensive competitiveness assessment (including from the increased risk of unpredictable and complex litigation and the extraterritorial reach) of the CS3D on business and industry by the European Commission, prior to implementation, to identify the issues and implement the necessary remedies. While we welcome guidelines to be issued as quickly as possible, we also request the European Commission prioritize consistency between the guidelines and the upcoming omnibus regulation. Hence, AmCham Belgium recommends that Belgian representatives seek greater clarity from the Commission regarding the resolution of identified concerns, and the initiation of a competitiveness assessment of the CS3D – also in view of the omnibus regulation.
2. Involve the international business community in Belgium through a dedicated platform to develop practical and workable solutions during the implementation and transposition process.
3. Encourage to advocate for the publication of clear guidance and implementation guidelines before its transposition into Belgian law. This is critical to ensure a harmonized and streamlined application of the CS3D. By taking these steps, we can ensure that the implementation of the CS3D supports sustainability objectives, while maintaining a favorable environment for business growth and investment in Belgium.
4. Ensure uniformity, clarity and simplicity in both implementation and transposition. We ask to avoid further fragmentation of the EU internal market by preventing unnecessary additions to the directive ('no gold plating').

5. Safeguard and embed the risk-based approach: The CS3D stipulates requirements for due diligence, with a risk-based approach, that are aligned with recognized international frameworks such as the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the UN Guiding Principles on Business and Human Rights (UNGPs). We agree that due diligence reviews must be meaningful and effective, rather than a tick-in-the-box exercise. This risk-based approach should allow companies to balance the need for thorough due diligence against reasonable time and budget constraints. We ask Belgian representatives to encourage the European Commission to expedite further guidance on the identification and prioritization of impacts. We ask to maximize synergies between the requirements in CS3D and CSRD value chain mapping and materiality assessment.

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### **About AmCham Belgium**

Founded in 1948, the American Chamber of Commerce in Belgium (AmCham Belgium) is a dynamic non-profit organization dedicated to improving business and investment opportunities for the US-Belgian business community. Supported by more than 400 member companies, AmCham Belgium plays a pivotal role in an evolving business environment by focusing on three key areas: advocacy, networking, and knowledge-sharing. To learn more about AmCham Belgium, visit [www.amcham.be](http://www.amcham.be).

<sup>11</sup> THE FUTURE OF EUROPEAN COMPETITIVENESS — PART B | SECTION 2 | CHAPTER 5, page 318: “The EU’s sustainability reporting and due diligence framework is a major source of regulatory burden, magnified by a lack of guidance to facilitate the application of complex rules and to clarify the interaction between various pieces of legislation.”