



Brussels, 23<sup>rd</sup> May 2022

MK/MM/VH

**EACB response to the European Commission's HAVE YOUR SAY consultation on Corporate Sustainability Due Diligence proposal**

The EACB supports the EC objectives: respect for human rights and the environment, in line with the UN Agenda 2030 for Sustainable Development and the Paris Agreement on Climate Change. It is important to harmonize corporate sustainability due diligence at the EU level to ensure a level playing field and the spread of EU values. Including non-EU companies in the scope is vital. It should be ensured that the same rules apply to all market participants, while upholding a principle-based approach.

The proposal does not apply to 'cooperatives' in general, but it applies to cooperative banks. We do not understand this treatment and request an exemption for cooperative banks as done under the French law. Cooperative banks feature a democratic governance and thus their members influence the companies' policies. Cooperative banks are fully engaged to support the regional economy. They have a long-term vision, strong social focus, solidarity and inclusion as key values. The local governance is attentive to the impacts of the environment in which the members live.

The due diligence obligations should apply at the consolidated banking group level, subsidiaries should be expressly exempted. It should be avoided to have several due diligence plans in a group.

The obligations for financial service providers should be limited to first-rank clients/suppliers and to clients that are not themselves financial services providers. The list of financial services covered should be restrictively enumerated to enable the financial institutions to manage compliance with the requirements in practice. If not, owing to the diversity of services the application of the rules may become practically impossible.

The duty to act in the best interest of the company shall prevail over other criteria. There should be a recognition of the need for a balanced consideration of the different interests involved: the economic and social interest of the region, and not only the impacts in terms of human rights and environmental protection.

There should be differentiated rules for 'potential' impacts and proven 'severe' impacts.

The proposal should be aligned with the CSRD transition plan requirements. CSRD reports must be an adequate source of information for obligations under the CSDD.

The due diligence duty should primarily apply to value chain operations with third country entities. Intra-European supply chains should be granted a proportionate treatment in view of the presumption that EU companies act in line with national law, Union law, human rights and environmental standards.



A full harmonization is requested as otherwise there is a risk of disparate rules in the Member States and gold-plating because of already existing national laws. Notably, sanctions should be fully harmonised.

We are in favour of extraterritoriality to promote a "do not harm" culture and for competition reasons. The text should be more precise on how third countries companies are sanctioned, and which Member State's law applies to these companies if there is no full harmonization.

The provisions of Articles 6, 7, 8 are ambiguous risking legal uncertainty and diverging transposition. Obligations to consider stakeholder views and civil organisations should be reduced in view of the practical limits.

Sanctions must require faultive behaviour, with a clear causal link with a damage and the intervention of a judge.

Governance aspects need to be clarified: the notion of directors, sharing the roles between the executive and non-executive bodies and the practical feasibility of Article 26. It is fundamental that the "*duty to act in the best interest of the company*" prevails over other criteria to avoid a deadlock. Article 25 shall not lead to the nullity of any act of the company.

The EC delegated acts should be limited and should not deal with essential issues. Guidelines should not add obligations without a legal basis.

Unbalanced burden and unjustified costs should be avoided.