



21 January 2021

Dear Member of the Legal Affairs Committee,

**RE: Upcoming Vote on Draft report on Corporate due diligence and corporate accountability**

We understand that the European Parliament Legal Affairs (JURI) Committee is expected to vote on its Draft report on Corporate due diligence and corporate accountability by rapporteur MEP Lara Wolters on 27 January 2021. Ahead of this important vote, BusinessEurope would like to outline key concerns.

A future European initiative on (mandatory) due diligence will have a critical impact on companies, on their operations and relationships in supply chains they are engaged in, as well as on their competitiveness on the global stage.

Such a move should not lead to putting state responsibilities on to companies nor make them responsible for impacts in the supply chain – typically involving many components and actors - that are completely out of their control.

We acknowledge the efforts made in both the draft report and the amendments under discussion towards an alignment with well recognised standards in this area such as the OECD guidelines and UN Guiding Principles. The amendments currently being considered include some improvements from the point of view of clarity, but there remain important flaws:

- **Not delivering on a level playing field:** the approach seems to be to allow member states to add layers of rules on due diligence on top of European obligations. For European business, if EU legislation on due diligence exists in the future, it must be proportionate and workable, and ensure that there is not a patchwork of possibly incompatible or duplicating national legislative initiatives.
- **Too wide scope:** it seems the direction is set to cover value chains, which is a broader scope than supply chains covering both upstream and downstream business relationships. In practice, it is impossible to manage all the risks related to a company's business relationship along the whole value chain. A targeted EU



scheme, focusing on a company's first tier (or contractual relations) will be more efficient and effective.

- **Requiring companies to verify that subcontractors and suppliers comply with their obligations:** this is not only legally and administratively challenging but, more importantly, it is implying that companies will be asked to step in and fulfil State obligations. Companies cannot be expected to replace states. But companies can support by promoting European values and standards through their global presence.
- **Lack of legal certainty on key concepts:** catch-all definitions (e.g., notion of supplier and stakeholder) and clauses for liability (e.g., notion of adverse impact) would leave too much room for interpretation, affecting legal certainty and the ability of companies to pursue meaningful due diligence.

Combined with rules which reverse the burden of proof and suggestions to change EU international private law (Brussels I and Rome II regulations), the EU would be opening the door to frivolous claims and abusive litigation. This combination would not deliver a workable, proportional and efficient EU framework.

Given the complexity of the proposal and the many open questions and risks, it is essential that the JURI Committee does not draw premature conclusions until an acceptable and workable conclusion can be found on this important report.

BusinessEurope is finalising its reply to the ongoing Commission public consultation on sustainable corporate governance and due diligence which we would be soon ready to share with you for your consideration.

We remain at your disposal should you wish to discuss further.

Yours sincerely,



Markus J. Beyrer