Corporate sustainability due diligence

In February 2022, the European Commission proposed a draft directive on corporate sustainability due diligence, to introduce mandatory due diligence on human rights and environmental criteria, and directors’ duty of care. Parliament has long advocated binding EU legislation on this issue, not least in a 2021 resolution. In March 2023, the Committee on Legal Affairs adopted its report on the proposal, calling for a number of changes. The report will be debated during the May II 2023 plenary session, with a view to setting Parliament’s position for trilogue.

Background

A growing number of EU companies have taken initiatives to deploy due diligence procedures, often using the existing international voluntary standards on responsible business conduct. Some Member States have started developing their own legal frameworks on corporate due diligence (see Annex 8 to the Commission impact assessment). In a legislative-initiative resolution of March 2021, Parliament called on the Commission to introduce mandatory due diligence legislation.

European Commission proposal

On 23 February 2022, the Commission put forward a proposal for a corporate sustainability due diligence (CSDD) directive, aiming to avoid fragmentation and provide legal certainty for business and citizens. The proposal lays down rules on corporate due diligence obligations (including on climate change), directors’ duties, civil liability and protection of persons reporting breaches. Supervisory authorities designated by the Member States would be in charge of enforcing the new directive. It would be aligned with international standards on human rights and environmental protection.

European Parliament position

The European Parliament’s Committee on Legal Affairs (JURI) is responsible for the file, while eight Parliament committees provided opinions. JURI adopted its report on the proposal on 25 March 2023, and demanded key amendments, including: 1) expanding the scope of companies subject to the directive; 2) broadening the definition of ‘value chain’, to include the sale, distribution, transport, and waste management of products; 3) introducing the single market clause, in order to prevent single market fragmentation; 4) proposing a risk-based approach to due diligence, by prioritisation; 5) introducing the principle of remediation for affected persons and/or the environment; 6) obliging companies to develop and implement climate change transition plans; 7) linking the variable remuneration for directors to these plans, for companies with over 1 000 employees; 8) proposing that the upper limit for sanctions should be no less than 5 % of net worldwide turnover; 9) ensuring the cost of legal proceedings are not prohibitive for claimants; and 10) enabling trade unions and civil society organisations to bring actions before a court. The vote in plenary is scheduled for the May II 2023 session.

If adopted, interinstitutional negotiations can start immediately afterwards, as the Council reached political agreement on a general approach in December 2022. Its demands include the addition of a phase-in period, the replacement of the term ‘value chain’, freedom for Member States to decide whether to apply the directive to regulated financial undertakings, removal of the two articles on directors’ duties, and of the link between directors’ variable remuneration and the transition plans.

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