

# Joint FIEC/EIC

## Proposals for Amendment of the JURI Report on Corporate Sustainability Due Diligence Directive

### Doc. A9-0184/2023

#### General remarks

From the beginning, FIEC and EIC have supported the introduction of an EU legal framework for Corporate Sustainability Due Diligence (CSDD) **under the condition and to the extent that such legal act is strictly confined to promoting an effective and uniform EU-wide application of the UNGP and the OECD MNE Guidelines** as the international established and recognised reference instruments for responsible business conduct.

FIEC and EIC have carefully analysed the REPORT on CSDD adopted by the JURI committee of the European Parliament [A9-0184/2023] and we are highly disappointed and concerned that the **JURI Report goes against basic principles of the rule of law and creates unrealistic expectations of affected businesses**. In addition, the proposed **JURI REPORT does not deliver on providing a level playing field** between EU and non-EU construction companies and their subsidiaries active in the EU Internal Market.

FIEC and EIC have identified **6 matters of the highest concern in the JURI REPORT** which should be corrected in the plenary vote of the European Parliament:

- **Principles of the rule of law**, see our comments below on the Articles 15 (3), 19 (5), 20 (2a), 24 and 25;
- **A level playing-field between EU and non-EU companies**, see our comment below on Article 2 (1); and
- **Unrealistic expectations of the private sector**, see our comment below on Article and 15 (1).

The President of the European Commission has announced in her speech at the European Parliament Plenary on the preparation of the European Council meeting in October 2022 to introduce a **standard competitiveness-check** in the EU regulatory system, a proposal which is **strongly supported by European businesses**.

Against this background, FIEC and EIC ask Members of the European Parliament to **correct the inadequate wording in the JURI REPORT** highlighted in the four-column document below. The original text proposed by the **European Commission** and the corresponding position adopted by the **Council** is in **black** colour. The **text of concern in the JURI REPORT** is marked in **red**, the **FIEC/EIC comments or amendments are marked in blue**. A justification for our position is given below each table.

## Proposals for Amendment based on the Principles of the Rule of Law

### JURI Report COMP 32 on Article 24

#### Article 24

No.	Commission Proposal	Council General Approach	Text proposed by the JURI Committee	FIEC/EIC Position
1	Member States shall ensure that companies applying for public support certify that no sanctions have been imposed on them for a failure to comply with the obligations of this Directive.	deleted	Member States shall ensure that <i>(non-)compliance with the obligations resulting from this Directive or their voluntary implementation qualifies as one of the environmental and social aspects to be taken into consideration in accordance with the rules applicable to the provision of public support or award of public contracts and concessions.</i>	Maintain the text of the Commission proposal, which is supported by the Council, and <u>reject the new wording introduced in the JURI Report.</u>

#### Justification

FIEC and EIC oppose the introduction of the new wording relating to public procurement and public concessions, as this addition establishes **de facto another type of sanction, in addition to those in Article 19**. This addition does not affect all businesses equally, but it **lays a specific burden selectively on those businesses and sectors whose business model(s) depends either entirely or to a large extent on public procurement or concessions**, such as the construction sector. Furthermore, this addition would lead to an **unequal playing field and a distortion of competition between those companies within the scope of the Directive and those which are not in-scope**, as only those in-scope would be subject to such sanction although the Directive should treat all sectors and businesses equally. Finally, sanctions related to public procurement go **beyond the scope of the UN Guiding Principles and the OECD rules and regulations** which are the yardstick for this Directive.

## Proposals for Amendment based on the Principles of the Rule of Law

### JURI Report COMP 27 on Article 19

#### Article 19 paragraph 5

No.	Commission Proposal	Council General Approach	Text proposed by the JURI Committee	FIEC/EIC Position
2	Member States shall ensure that the persons submitting the substantiated concern according to this Article and having, in accordance with national law, a legitimate interest in the matter have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.	Member States shall ensure that the persons submitting the substantiated concern according to this Article and having, in accordance with national law, a legitimate interest in the matter have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.	Member States shall ensure that the persons submitting the substantiated concern according to this Article <del>and having, in accordance with national law, a legitimate interest in the matter</del> have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.	<b>Maintain the text of the Commission proposal, which is supported by the Council, and <u>reject the new wording in the JURI Report on ‘and having, in accordance with national law, a legitimate interest in the matter’.</u></b>

#### Justification

FIEC and EIC oppose that the JURI Report in Article 19 (5) has **deleted the critical qualification for bringing matters wording, namely ‘and having, in accordance with national law, a legitimate interest in the matter’**, as proposed by the Commission and supported by the Council, and thus the need for a legitimate interest in the matter. As the current wording of Article 19 paragraph 1 basically allows any person to bring a case before a supervisory authority about all possible breaches of the proposed provisions of the Directive the deletion of such requirement will lead to an inflation and proliferation of complaints. The **requirement of a ‘legitimate interest in the matter’ is a general principle of law** and provides the reason why affected parties can get access to courts of law.

## Proposals for Amendment based on the Principles of the Rule of Law

### JURI Report COMP 28 on Article 20

#### Article 20 paragraph 2a (new)

No.	Commission Proposal	Council General Approach	Text proposed by the JURI Committee	FIEC/EIC Position
<b>3</b>	No respective proposal.	No respective proposal.	<p><i>At least the following measures and sanctions shall be provided for:</i></p> <p><i>(i) pecuniary sanctions;</i></p> <p><i>ii) a public statement indicating that a company is responsible and the nature of the infringement;</i></p> <p><i>iii) the obligation to perform an action, including to cease the conduct constituting the infringement and to desist from any repetition of that conduct;</i></p> <p><i>(iv) the suspension of products from free circulation or export.</i></p>	<p><b>Maintain the text of the Commission proposal, which is supported by the Council, and <u>reject Article 20 paragraph 2a proposed in the JURI Report.</u></b></p>

#### Justification

FIEC and EIC oppose the introduction of para. 2a in Article 20 for two reasons. Firstly, it **expands the list of sanctions under lit. (ii), (iii) and (iv)** which are confined in the Commission's proposal to pecuniary sanctions. Even worse, it stipulates that these are minimum sanctions ('At least, the following sanctions...') and this opens the door to a **fragmentation between Member States sanctioning practices by allowing 'gold-plating' by individual Member States** which again would lead to a grave distortion within the EU. Thus, this provision will lead to the opposite effect of what was intended, namely an unlevel playing field within the EU due to a different range of corresponding sanctions in each Member State.

## Proposals for Amendment based on the Principles of the Rule of Law

### JURI Report COMP 23a on Article 15 paragraph 3

#### Article 15 paragraph 3

No.	Commission Proposal	Council General Approach	Text proposed by the JURI Committee	FIEC/EIC Position
<b>4a</b>	Member States shall ensure that companies duly take into account the fulfilment of the obligations referred to in paragraphs 1 and 2 when setting variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.	deleted	<i>Member States shall ensure that directors are responsible for overseeing the obligations set out in this article and that companies with more than 1000 employees on average have a relevant and effective policy in place to ensure that part of any variable remuneration for directors is linked to the company's transition plan referred to in this Article. Such a policy shall be approved by the Annual General Meeting.</i>	<b>Reject the wording proposed in the JURI Report in favour of supporting the Council's position of deleting Article 15 (3).</b>

### JURI Report COMP 33 on Article 25

#### Article 25

No.	Commission Proposal	Council General Approach	Text proposed by the JURI Committee	FIEC/EIC Position
<b>4b</b>	1. Member States shall ensure that, when fulfilling their duty to act in the best interest of the company, directors of companies referred	deleted	1. Member States shall ensure that, when fulfilling their duty to act in the best interest of the company, directors of companies referred to in Article 2(1) take into account the consequences of their decisions for sustainability	<b>Reject the wording proposed in the JURI Report in favour of supporting the</b>

	<p>to in Article 2(1) take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.</p> <p>2. Member States shall ensure that their laws, regulations and administrative provisions providing for a breach of directors' duties apply also to the provisions of this Article.</p>		<p>matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.</p> <p>2. Member States shall ensure that their laws, regulations and administrative provisions providing for a breach of directors' duties apply also to the provisions of this Article.</p>	<p><b>Council's position of deleting Article 25.</b></p>
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### Justification

FIEC and EIC oppose Articles 15 paragraph 3 and 25 because **it is unnecessary to regulate Directors' duties at EU level, as they are regulated sufficiently on Member State level**. Interference in national corporate governance models and direct intervention in companies' business models and strategy is disproportionate.

## Proposals for Amendment to establish a level playing field between EU and non-EU companies

### JURI Report COMP 2 on [Article 2](#)

#### Article 2 paragraph 1 (new paragraph 1a)

No.	Commission Proposal	Council General Approach	Text proposed by the JURI Committee	FIEC/EIC Position
5	(a) the company had more than 500 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been or should have been adopted; (b) the company did not reach the thresholds under point (a), but had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been or should have been adopted, provided that at least EUR 20 million was generated in one or more of the following sectors associated with the applicable statistical classification of economic activities established by Regulation (EC) No 1893/2006 and listed in Annex II: [...]	(a) the company had more than 500 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been or should have been adopted; (b) the company did not reach the thresholds under point (a), but had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been or should have been adopted, provided that at least EUR 20 million was generated in one or more of the following sectors associated with the applicable statistical classification of economic activities established by Regulation (EC) No 1893/2006 and listed in Annex II: [...]	a) The company had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been prepared; b) the company did not reach the thresholds under (a) but is the ultimate parent company of a group that had 500 employees and a net worldwide turnover of more than 150 million in the last financial year for which annual financial statements have been prepared.	<b>Insert Amendment #592 as new Article 2 paragraph c).</b>

### Justification

As written, Article 2 (1) does not apply to EU subsidiaries of third-country multi-national companies, e.g. from China, which have been established just for the purpose of operating within the Internal Market. This leads to an unlevel playing-field between EU companies and these third-country EU subsidiaries. Hence, we advocate integrating proposed Amendment #592, see PE739.675v01-00, into the text: *“This Directive shall also apply to a company that does not meet the criteria set out in paragraph 1, points (a) and (b) if that company is part of a group of companies whose parent company is registered in a third country and which has more than 5000 employees on average or had a net worldwide turnover of more than EUR 900 million in the last financial year for which annual financial statements have been prepared.”*



## Proposals for Amendment based on unrealistic expectations of the private sector

### JURI Report COMP 23 on Article 15, paragraph 1 and paragraph 2

#### Article 15 paragraph 1 lit. (f)

No.	Commission Proposal	Council General Approach	Text proposed by the JURI Committee	FIEC/EIC Position
6	Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations.	Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan, including implementing actions and related financial and investments plans, to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119, and where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities, as referred to in Articles 19a(2), point (a)(iii), and 29a(2), point (a)(iii), of Directive 2013/34/EU. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk	Member States shall ensure that companies referred to in Article 2 <b>develop and implement a transition plan in line with the reporting requirements in Article 19a of Regulation (EU) 2021/0104 (CSRD)</b> , to ensure that the business model and strategy of the company are <b>aligned</b> with the <b>objectives of the</b> transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement <b>and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119 (European Climate Law) as regards its operations in the Union, including its 2050 climate neutrality target and the 2030 climate target. This plan shall include a description of:</b> <del>in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations</del> (a) to (e) <i>(f) the time-bound, science-based targets related to climate change set by the company for scope 1, 2 and, where relevant, 3 emissions, including where appropriate, absolute emission reduction targets for greenhouse gas for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence, and a description of the progress the company has made towards achieving those targets;</i>	<b>Maintain the text of the Commission proposal, which is supported by the Council, and <u>reject the new wording introduced in the JURI Report.</u></b>

		for, or an impact of, the company's operations.		
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### Justification

FIEC and EIC **reject to mix up supply chain responsibilities with climate reporting obligations** and we, therefore, are in favour of maintaining the text proposed by the Commission. The add-ons introduced by the JURI Committee in paragraph 1 and in particular **the obligation under lit.( f) to describe ‘the time-bound targets related to climate change set by the company for scope 1, 2 and, where relevant, 3 emissions’ thus including the entire supply chain is totally unrealistic.** Companies should not be burdened in the framework of the CSDDD with such far-reaching climate reporting obligations.

**FIEC represents through its 32 national member federations in 27 European countries (24 EU & Norway, Switzerland, Ukraine) construction enterprises of all sizes (from one person craftsmen and SMEs through to large international firms), from all building and civil engineering specialties, engaged in all kinds of working methods.**

EIC has as its members construction industry trade associations from fifteen European countries and represents the interests of the European construction industry in all questions related to its international construction activities. The international turnover of companies associated with EIC's Member Federations amounts to around 200 billion € per year.

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