



## CONSULTATION

### ON THE PROPOSED BILL ON INTERNATIONAL RESPONSIBLE BUSINESS CONDUCT TRANSPOSING THE CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CS3D)

December 19, 2024

#### 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 Dutch governing program. At AmCham NL, we welcome this recognition from policymakers that Europe's but also the Netherlands' competitiveness challenge should be addressed, as well as the focus to put administrative burden relief and simplification on its agenda.

#### Comments on the Proposed Bill on International Responsible Business Conduct Transposing the Corporate Sustainability Due Diligence Directive (CS3D)

##### *General*

We understand that an omnibus regulation (which will include changes to the CS3D) will be proposed by the European Commission in late February 2025. Since in-scope companies will need to properly prepare for the proposed Bill on International Responsible Business Conduct, we request the Dutch legislator to delay its transposition process until after the omnibus has been adopted such that all changes to the CS3D can be properly reflected in the proposed Bill on International Responsible Business Conduct without causing additional complexity for business. We suggest that the Dutch government considers asking the European Commission to adjust the deadline for transposition into national legislation in such a way that the omnibus changes can be taken into account.

As a general principle, AmCham supports a European approach over national legislation because this ensures a level playing field across Europe. While taking into account above considerations, we commend the Dutch government for staying close to the EU directive in its transposition of the CS3D and for avoiding goldplating. During revision of the proposed text, we identified a number of specific issues which are listed below.

##### *Specific Articles*

- Article 3.1.1: the use and definition of "best efforts" should be interpreted in the same way as CS3D Art. 22 (Combating climate change) which indicates that "best efforts" obligation applies to both "adopt" and "put into effect" (or "implement") a transition plan for climate change. Thus, best efforts should also apply to the adoption of and setting of targets under Article 3.1.1 regarding description of the climate transition plan, in addition to the implementation and execution of the climate transition plan (which is already covered in 3.3).

- Article 3.1.1: on the basis of CS3D Preamble paragraph 73, a Company may, in its climate transition plan, deviate from the absolute climate targets when justified. (For example, paragraph 73 of the Preamble states that: “Being an obligation of means, due account should be given to the progress companies make, and the complexity and evolving nature of climate transitioning. While companies should strive to achieve the greenhouse gas emission reduction targets contained in their plans, specific circumstances may lead to companies not being able to reach these targets, where this is no longer reasonable.”) Such position would also be aligned with language in the Court of Appeal’s ruling in the Shell v Milieudefensie case.
- Article 3.1.2(a): the use of the term “if applicable” appears to be a stricter interpretation of the language in Article 22.1(a) of the CS3D which states “where appropriate”, thus, recommend aligning more closely with the CS3D term instead.
- Article 3.3: To align with the European Commission’s FAQ 3.2, the legislator should explicitly take the position that where a Company complies with public law rules (such as sectoral specific climate legislation pursuing the same objectives but providing for more extensive or more specific obligations (e.g., ETS, RED, etc.)) the Company complies with its best-efforts obligation in relation to the implementation of the climate transition plan.”

### General Concerns Relating to CS3D

In the context of the EU’s competitiveness, it is worth noting that the Draghi report 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. The CS3D also received two negative impact assessments from the EU’s own scrutiny board.

As the voice of the American business community in the Netherlands, 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 the Netherlands. This could lead companies to shift resources from strategic environmental initiatives towards administrative compliance exercises, which undermines the benefit that international business brings to the Netherlands.
2. **Ambiguity and uncertainty around CS3D implementation:** The political (dis)agreement within the EU on the CS3D currently 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 resulting from the trifecta of CSRD, CS3D and Taxonomy 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, which creates overlapping regulations in non-EU jurisdictions.



While we remain supportive when it comes to the sustainability objectives of the Corporate Sustainability Due Diligence Directive, it is important to recognize its potential implications for business confidence. The directive may significantly impact the EU's competitiveness, particularly in The Netherlands, thereby limiting our capacity to attract and maintain investment. AmCham has identified a real risk of investment leaving the Netherlands.

### [AmCham Recommends](#)

AmCham NL recommends to halt the transposition process until there is more clarity around the announced omnibus regulation and potential competitiveness assessment.

In general, to ensure legislation achieves sustainability goals without compromising the business environment, we recommend to keep involving business through a dedicated platform to develop practical and workable solutions, both during the development of legislation and during implementation.

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### [About AmCham The Netherlands](#)

The American Chamber of Commerce in the Netherlands (AmCham NL) has been the spokesperson for U.S. business in the Netherlands and for companies involved in transatlantic trade since 1961. AmCham is a non-profit, non-governmental, non-political, voluntary organization of companies who invest in and trade between the United States of America and the Netherlands. The Netherlands is one of the most important destinations for US direct investment in Europe and a major hub of American professionals living and working abroad. The common denominator shared by all our members is a belief in the importance of two-way trade and investment between the Netherlands and the United States as an essential basis for creating mutual economic welfare. American business has had good reason to come to the Netherlands in the past and AmCham works to ensure they have good reason to stay in the future.