

December 9, 2024

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Lindsay Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairmen McHenry and Jordan, and Ranking Members Scott and Graham:

The undersigned organizations, which represent a broad diversity of businesses and significant portion of the American economy, write to express grave concerns with the European Union's (EU) Corporate Sustainability Due Diligence Directive ("CS3D" or "the Directive"),¹ as approved by the Council and Parliament of the European Union in July 2024. The Biden administration has failed to meaningfully appreciate the threat to American competitiveness posed by the Directive, and we urge you to ensure that the incoming administration does not repeat this mistake.

The business community generally supports the intent behind the Directive to help make global supply chains more efficient, resilient, and sustainable. However, as written, CS3D has broad extra-territorial reach that is not justified from a legal or market standpoint and is too complex and unrealistic for businesses to implement. The Directive intrudes on U.S. regulatory authority and threatens American competitiveness by capturing U.S. parent companies and affiliates in European regulatory preferences regardless of any nexus to Europe.

The U.S. and Europe enjoy the world's largest commercial and strategic relationship.² At a time of increasing geopolitical and economic challenges, it is imperative that this relationship remains stable and that regulatory policies on both sides of the Atlantic support – rather than undermine – competitiveness. In his September report to EU officials, former Italian Prime Minister Mario Draghi points to the proliferation of

¹ [Corporate sustainability due diligence - European Commission](#).

² [Europe's Competitiveness Challenge: Pathways to Renewed Growth | U.S. Chamber of Commerce](#).

“inconsistent and restrictive regulations” as a key factor in Europe’s sclerotic growth, and he singles out CS3D as particularly problematic.³

Among our chief concerns:

- Companies could face fines of up to five percent of their worldwide net turnover. The impact of such a penalty would be disastrous not only for an individual company but the American economy at large, as dollars that would have otherwise gone to employing American workers or investing in research and development would be diverted instead to European coffers. In addition to the significant financial penalty, companies found to have violated CS3D provisions would be subject to a “naming and shaming” schematic that will remain publicly available for at least five years, resulting in significant reputational harm that itself is not without cost.
- Beyond aggressive penalties, CS3D also threatens American competitiveness by empowering vaguely defined “stakeholders” in corporate decision-making. The Directive requires companies to consult stakeholders about their due diligence processes, their net-zero transition plans, and to create mechanisms for notification and complaints about the firm’s practices. In effect, business decisions that should be made pursuant to U.S. law will now be heavily influenced by European policy preferences and cede excessive power to non-governmental organizations that do not have a stake in the long-term economic success of American companies.
- CS3D also creates a civil liability structure that allows third-party stakeholders to speak for individuals if they have or *have potentially* been harmed by actions taken within a company’s supply chain. An injured party, for example, may authorize a trade union or non-governmental organization to represent them in the suit. Such a structure will empower plaintiffs’ attorneys with financial incentives and could subject companies to litigation under European rules for actions that are legal in the United States. The United Auto Workers (UAW), for example, recently sued Mercedes Benz under Germany’s existing due diligence law over union-related activity at an Alabama manufacturing plant that was permissible under US state law.⁴ While the German law presently applies solely to German companies, CS3D would extend to U.S. and global companies’ activities with no geographic nexus in the EU. Such infringement upon U.S. sovereignty should be impermissible.

³ [EU competitiveness: Looking ahead - European Commission.](#)

⁴ [UAW Files Charges in Germany Against Mercedes-Benz: Company's Anti-Union Campaign Against U.S. Autoworkers Violates New German Law on Global Supply Chain Practices - UAW | United Automobile, Aerospace and Agricultural Implement Workers of America.](#)

- Given the complexity of global supply chains, some companies faced with CS3D compliance may simply choose to cease their engagements in jurisdictions where they may have limited line of sight and potentially little influence. Businesses may not be in a position to fully appreciate whether vaguely defined violations of environmental or human rights standards have occurred, particularly in the absence of appropriate government oversight. Those in-country assets, however, will continue to operate and will be hungry for investment from other countries – including those with which America and Europe directly compete both economically and strategically.

Rather than pursuing policies that would improve their domestic economic climate, the EU is imposing undue regulatory measures that have a direct impact on the competitiveness of American firms. The U.S. has traditionally provided exemptions under its own reporting rules for European companies,⁵ and the U.S. government should at a minimum firmly advocate for reciprocal treatment.

Given the important ramifications of CS3D for the economic competitiveness of U.S. companies, we believe this deserves the attention of the next Congress. As the European Commission is considering potential amendments to CS3D via omnibus legislation, we urge U.S. policymakers to engage directly with counterparts in Brussels and EU Member States to protect U.S. companies from the steep costs of these measures.

We appreciate your consideration of our views and the necessity a strong commitment for the U.S. government to advocate for American businesses in the face of intrusive and impractical extraterritorial regulation.

Sincerely,

American Petroleum Institute
Business Roundtable
National Association of Manufacturers
U.S. Chamber of Commerce

⁵ e.g.: Foreign private issuers (“FPIs”) may present financial statements pursuant to International Financial Reporting Standards; Insiders of FPIs are exempt from filing beneficial ownership reports required by Section 16(a) of the Securities and Exchange Act; FPIs may file Forms 20-F and 6-K disclosure forms for annual and current reports, respectively, rather than use domestic forms on domestic timelines. See generally: [Information about Foreign Issuers - Division of Corporation Finance](#).

Cc:

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