

To EP Rapporteurs & Shadows on the CSDD
(from JURI & other opinion committees)

Brussels, 23 January 2023

Subject: Power Sector's views on the Corporate Sustainability Due Diligence Directive (CSDDD)

Dear Rapporteurs and Shadow-Rapporteurs,

As the JURI Committee and other opinion Committees are currently establishing their views on the proposed Corporate Sustainability Due Diligence Directive, the European Power Sector would like to emphasize its key messages and remains available with knowledge and expertise.

Overall, Eurelectric welcomes the Commission's initiative and perceives it as a much-needed step towards a sustainable corporate governance framework as it will require companies, as well as their subsidiaries, to identify and manage the negative impacts of its own operations and their supply chain on human rights and on the environment.

It is of particular importance that a coherent EU framework is not further delayed, as this is a regulatory area that needs a common structure not only in the EU but beyond. Companies that integrate sustainability into their operations should not be exposed to unfair competition from companies (EU or third country) which do not take on this responsibility as supply chains of EU companies actually take place on a global scale. **Such Directive should provide for full harmonization and not minimum rules** as the later could lead to MSs making burdensome differences leading to fragmentation of the internal energy market.

Having said that, it is key to ensure legal certainty and a reasonable administrative burden for companies. To keep a reasonable administrative burden, it is key to:

- **Limit the scope of the Directive to the supply chain of companies:** In principle, the responsibility for taking action in the event of serious human rights and environmental impacts, and for remedying them, should lie with the party that caused them. Companies are not able to effectively monitor the future transactions/contracts of their clients (downstream business relations). The difficulty of tracing the availability and use of products and services in the downstream value chain appears particularly delicate for reasons relating to the protection of trade secrets and the profound imbalance in customer relations. The provisions regarding the upstream suppliers therefore need to be realistic, and it must be recognised

that the leverage of a company towards its suppliers might be limited. (*Amendment 2 to Art. 3*);

- **Ensure coordination with international standards**, such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Due Diligence Guidance for Responsible Business Conduct and OECD Guidelines for Multinational Enterprises;
- **Allow parent companies to fulfil the due diligence requirements on behalf of their subsidiaries** to allow for a group-based due diligence management. This is particularly important for energy companies as, due to regulatory requirements, the power sector has to ensure that e.g. each wind park has its own legal entity. A corporate procedure from parent company aligned with the best standards and mandatory across the different subsidiaries of the Group prevents subsidiary companies from applying their own procedures based on compliance with the local regulation that could be below those international standards. In addition, a company-level approach will avoid an excessive administrative burden and ensure simplification within the group and harmonisation, most needed both for the fulfilment of the obligations and their monitoring (*see Amendment 1 to Art. 2*);
- **Allow for a risk-based due diligence approach**: prioritisation of adverse impacts, that is based on severity and likelihood of the adverse impact, and a risk-based approach are key elements of the existing international UN and OECD voluntary standards. These are important factors in making due diligence manageable for business (*see amendment 4 to Article 6, amendment 5 to Article 7; amendment 7 to Article 9*);
- **Take into account the ability of companies to influence the external business partners causing the potential adverse impact**, as recognised in the OECD Guidelines recognise that there are practical limitations on the ability of enterprises to effect change in the behaviour of their suppliers and business partners (*see Amendment 5 on Article 7, amendment 6 to Article 8*);
- **Avoid the inclusion of civil liability**: An introduction of extensive civil liability rules would create enormous legal uncertainty for companies with complex supply chains. The civil liability should therefore be limited to where the company caused the adverse impacts. According to general legal principles, liability is always linked to a culpable breach of duty that is causal for the damage. There is no objective reason to deviate from this in the planned legislation. It is also important that the burden of proof lies with the one seeking justice (*see amendment 10 on Art 22*);
- **Address the unclear functionality regarding directors' duties**: It is important that directors are encouraged to consider the consequences of their decisions for sustainability matters as it should be the case for all their decisions. The Directors' duties provisions in the proposal are however unclear and inappropriate and contradiction with European legislation. The functionality of the proposed provisions remains very unclear and their relationship to existing national company law and the duty of care included therein raises questions. When a legal responsibility applies to the company as a legal entity it automatically becomes a

responsibility of the directors according to existing company law in the Member States. It is therefore not necessary to explicitly legislate about directors' duties every time the EU legislates on something that put obligations on companies (*see amendment 12 on Article 25 and amendment 13 on Article 26*);

- **Ensure coherence with other related pieces of legislation, particularly SFDR and CSRD** by including, among others, cross-references to the other legislative acts, where appropriate (*see amendment 8 on Article 15*).
- **Allow companies more time to adjust to the new obligations** by extending the period until which Member States shall adopt and publish regulations and administrative provisions necessary to comply with the Directive by one year (*see amendment 14 on Article 30*).

Our [detailed amendment proposals](#) are available here as well as our [detailed position paper](#) on the EC proposal.

Should you have any questions and/or would be interested in a follow-up bilateral exchanges, we remain at your disposal. Please do not hesitate to reach out to Charlotte Renaud, Head of Markets & Customers (crenaud@eurelectric.org).

Thanks for your consideration,

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Yours sincerely,

