AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Position Paper

Proposal for amendments on a Directive on corporate sustainability due diligence (CS3D)

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2020, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

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Executive summary

The European Commission's introduction of a common set of binding legal requirements on mandatory human rights and environmental due diligence for all sectors and companies irrespective of size furthers important societal and planetary objectives. Such requirements must, however, also serve to **combat growing internal market fragmentation**, which is proving unworkable for companies. The Directive on corporate sustainability due diligence (CS3D) must be improved to **ensure a level playing field** and identical **for companies domiciled in or outside the EU**.

To effectively support the EU's global political and strategic ambitions, the CS3D requirements must be proportionate, risk-based, workable and enforceable. Such measures should not create operational barriers to international trade for both EU firms with international businesses and non-EU firms with EU businesses.

Introduction

Human rights and due diligence legislation must be founded on the risk-based approach taken by voluntary international frameworks such as the UN Guiding Principles for Business and Human Rights (UNGPs), Organisation for Economic Co-operation and Development (OECD) Guidelines and International Labour Organization (ILO) core standards. This approach enables companies to identify, prioritise and address the most severe risks to people and the planet. In transposing these voluntary standards into mandatory requirements, companies must have complete certainty with regard to the scope and breadth of their legal obligations. To address the issues in the proposal, the Commission should limit civil liability to situations where a company is causing or contributing to harm and align the scope of the duty to conduct due diligence with the international standards. If the Directive is not based on a clear risk-based approach then the scope should only be applicable to the first tier of the supply chain. Suggested amendments to the directive are below.

Proposed Amendments

General remarks:

The below amendments address the subject matter with an eye towards maximum harmonisation to prevent internal market fragmentation. They address the scope of the legislation's application to non-EU companies, the definition of 'risk-based approach', the importance and role of industry schemes, prevention of potential adverse impacts, the complaints procedure and the need for sectoral guidelines. Also covered are the coherence of the CSRD with other EU due diligence laws, consolidation, civil liability and directors' duty of care.

Suggested Amendments:

Amendment 1 – Subject matter

Article 1– point aa (new)

Text proposed by the Commission	*Amendment*
1. (a) on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with whom the company has an established business relationship and	1. (a) on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the supply chain operations carried out by entities with whom the company has an established business relationship and
This Directive shall not constitute grounds for	This Directive shall not constitute grounds for reducing the level of protection of human rights or of protection of the environment or the protection of

reducing the level of protection of human rights or of protection of the environment or the protection of the climate provided for by the law of Member States at the time of the adoption of this Directive.	the climate provided for by the law of Member States at the time of the adoption of this Directive. ***Subsequent to the adoption of this Directive, Member States shall not introduce in their national law provisions that create obligations diverging from those laid down in this Directive.***

Justification
This suggestion reinforces the principle of maximum harmonisation.

Amendment 2 – Subject matter

Article 1 – paragraph 2a (new)

Text proposed by the Commission	*Amendment*
	2a. Member States shall not lay down, in their national law, provisions diverging from those laid down in this Directive, unless otherwise provided for in this Directive.

Justification
The American Chamber of Commerce to the EU (AmCham EU) fully supports the Committee on the Internal Market and Consumer Protection (IMCO) Amendment No.7, which seeks to introduce a maximum harmonisation provision to prevent growing internal market fragmentation. This trend is unworkable for industry and requires a harmonised approach at the EU level.

Amendment 3– Scope of application to non-EU companies

Article 2 – paragraph 2a new

Text proposed by the Commission	*Amendment*
	2a. For the purposes of paragraph 2, the due diligence measures referred to in this Directive shall apply only to the third country company's own operations; the operations of its subsidiaries established in the EU; and its value chain operations related to products sold in the EU and services provided in the EU.

Justification
Whilst the proposal might harmonise sustainability due diligence requirements in the EU, its extraterritorial application creates fragmentation of due diligence standards internationally. This creates issues for international companies that must comply with competing international legal frameworks and could also harm EU companies that do business globally. Once a company is in scope of the proposal's provisions, that company is required to implement the due diligence provisions for its entire global operations. For a non-EU company, this would mean that business relationships, as well as value chains, without any EU nexus

would be covered by the obligations. Thus, relationships which are not capable of affecting the EU internal market are currently included in the proposal. This places a disproportionate burden on non-EU companies which are active in the EU – undermining the EU legal principle of proportionality – and raises competition concerns where regional service providers would not be under the same obligations. to the Commission can take a proportionate approach to the extraterritoriality provisions in the CS3D by qualifying the scope so that it applies to: (i) the operations of non-EU companies which meet the threshold (€ 150million turnover in the EU); (ii) the operations of the subsidiaries of those non-EU companies which are established in the EU; and (iii) the value chain of those non-EU companies, in relation to direct business relationships, where these are originated when providing services/products in the EU (ie in scope non-EU companies should apply the provisions to their supply chains and their direct client relationships with EU businesses).

Amendment 4 – Definition: Risk-based due diligence

Article 3 – paragraph 1 – point aa (new)

Text proposed by the Commission	*Amendment*
	'Risk-based prioritisation' is when an enterprise takes action based on the severity and likelihood of adverse impact: **Risk-based prioritisation' is when an enterprise (1) performs due diligence in a manner and scope that is commensurate with a reasonable assessment of its potential risks and impacts, and (2) takes action based on its assessment of the severity and likelihood of adverse impact**

Justification
Where it is not possible for an enterprise to address all identified impacts at the same time, an enterprise should prioritise its actions based on the severity and likelihood of the adverse impact. This risk-based approach is a fundamental part of this legislative proposal which is based on the UNGPs, the OECD Guidelines for Multi-National Enterprises, Responsible Business Conduct and ILO Core Conventions. 'Risk-based prioritisation' as defined in international guidelines (OECD, UNGP) is not compatible with the concept of 'established business relationships'; therefore this concept should be removed altogether from the text.

Amendment 5 – Definition: Supply Chain

Article 3 – paragraph 1 – point (g)

Text proposed by the Commission	*Amendment*
'value chain' means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company. As regards companies within the meaning of point (a)(iv), 'value chain' with respect to the provision of these specific services shall only include the activities of the clients receiving such	'**supply** ~~**value**~~-chain' means activities ~~**related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company.**~~ **by entities, involved in the production of finished goods or inputs incorporated into those finished goods and services, provided to the end consumers.** As regards

loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;	companies within the meaning of point (a)(iv), '**supply ~~value~~** chain' with respect to the provision of these specific services shall only include the activities of the clients receiving such loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The **supply ~~value~~** chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;

Justification
The concept of 'value chains' is too broad and would lead to uncontrollable obligations and cover unforeseen risks. The Commission's current proposal could divert buyers' focus and resources from those activities and operations where risks have higher potential.

Amendment 6 Industry schemes

Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Member States shall ensure that, for the purposes of due diligence, companies are entitled to share resources and information within their respective groups of companies and with other legal entities in compliance with applicable competition law.	2. Member States shall ensure that, for the purposes of due diligence, companies are entitled to share resources and information within their respective groups of companies and with other legal entities in compliance with applicable competition law. **Companies should also be assisted by industry schemes, as well as multi-stakeholder initiatives, collaborative partnerships and other accompanying measures which should be encouraged and supported by Member States and the Commission.**

Justification
In order to comply with the legal requirements of the directive, companies need to have access to appropriate industry schemes such as the Responsible Business Alliance (RBA) which help to scale impact and exercise collective leverage. A 'smart mix' approach to regulation is important, and accompanying measures in addition to the directive will be important. A precedent, agreed by all three EU institutions, was set in this respect by Regulation (EU) No. 2017;821 on responsible minerals supply chains. The Regulation imposes legal obligations on importers of minerals to the EU. The legislation is bolstered by the European Partnership for Responsible Minerals (EPRM) which assembles national authorities, industry and civil society to help deliver on the goals of EU legislation. This highly successful public-private partnership has funded projects in conflict-affected and high-risk areas (CAHRAs) For example, it has helped women access credit and savings and introduced sustainable mining practices to local communities. The Netherlands, Germany, France and the UK and the Commission Directorate General for International Partnerships (DG INTPA) fund the EPRM as does industry (upstream, mid-stream and downstream supply chain actors). Civil society is the other key partner in the EPRM. Given the importance of the OECD Guidelines for responsible minerals supply chains, the OECD is an observer in the EPRM.

Amendment 7 – Prioritisation of identified actual and potential adverse impacts

Article 6a (new) - **Prioritisation of identified actual and potential adverse impacts**

Text proposed by the Commission	*Amendment*
	1. Member States shall ensure that companies are allowed to prioritise adverse human rights impacts arising from their own operations, those of their subsidiaries or those of their direct contractual suppliers identified pursuant to Article 6 for fulfilling the obligations laid down in Articles 7 or 8, where it is not feasible to address all identified adverse impacts at the same time to the full extent. 2. The prioritisation of adverse impacts shall be based on severity and likelihood of the adverse impact. Severity of an adverse impact shall be assessed based on its gravity or the number of persons affected, its irreversibility, and difficulty to provide remedy considering the measures necessary to restore the situation prevailing prior to the impact. 3. Once the most significant adverse impacts are addressed in accordance with Articles 7 or 8 in a reasonable time, the company shall address less significant adverse impacts.

Justification
Where it is not possible for an enterprise to address all identified impacts at the same time, an enterprise should prioritise its actions based on the severity and likelihood of the adverse impact. This risk-based approach is a fundamental part of this legislative proposal which is based on the UNGPs for Business and Human Rights, the OECD Guidelines for Multi-National Enterprises, Responsible Business Conduct and ILO core conventions.

Amendment 8

Article 7 - Preventing potential adverse impacts

Draft proposal	**Amendment**
1. Member States shall ensure that companies take appropriate measures to prevent, or where prevention is not possible or not immediately possible, adequately mitigate potential adverse human rights impacts and adverse environmental impacts that have been, or should have been, identified pursuant to Article 6, in accordance with paragraphs 2, 3, 4 and 5 of this Article. 2. Companies shall be required to take the following actions, where relevant: (a) where necessary due to the nature or complexity of the measures required for prevention, develop and implement a prevention action plan, with reasonable and clearly defined timelines for action	1. Member States shall ensure that companies take appropriate **risk-based** measures to prevent, or where prevention is not possible or not immediately possible, adequately mitigate potential adverse human rights impacts **and adverse environmental impacts** that have been, or should have been, identified pursuant to Article 6**, and, where necessary, prioritised pursuant to Article 6a**, in accordance with paragraphs 2, 3, 4 and 5 of this Article**, taking into account the level of companies' involvement in the potential adverse impacts.** 2. Companies shall be required to take the following actions, where relevant:

and qualitative and quantitative indicators for measuring improvement. The prevention action plan shall be developed in consultation with affected stakeholders; (b) seek contractual assurances from a business partner with whom it has a direct business relationship that it will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by seeking corresponding contractual assurances from its partners, to the extent that their activities are part of the company's value chain (contractual cascading). When such contractual assurances are obtained, paragraph 4 shall apply; (c) make necessary investments, such as into management or production processes and infrastructures, to comply with paragraph 1; (d) provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME; (e) in compliance with Union law including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end, in particular where no other action is suitable or effective. 3. As regards potential adverse impacts that could not be prevented or adequately mitigated by the measures in paragraph 2, the company may seek to conclude a contract with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company's code of conduct or a prevention action plan. When such a contract is concluded, paragraph 4 shall apply. 4. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification. When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification. 5. As regards potential adverse impacts within the meaning of paragraph 1 that could not be prevented or adequately mitigated by the measures in paragraphs 2, 3 and 4, the company shall be required	(a) where necessary due to the nature or complexity of the measures required for prevention, develop and implement a prevention action plan, with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. The prevention action plan shall ~~be developed in consultation with affected~~ **take into consideration the concerns raised by** stakeholders; (b) seek contractual assurances from a business partner with whom it has a direct business relationship that it will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by seeking corresponding contractual assurances from its partners, to the extent that their activities are part of the company's **supply** ~~value~~ chain (contractual cascading). When such contractual assurances are obtained, paragraph 4 shall apply; (c) make necessary investments, such as into management or production processes and infrastructures, to comply with paragraph 1; (d) provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME; ~~(~~**de**~~)~~ in compliance with Union law including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to ~~bring the adverse impact to an end,~~ **prevent or mitigate the adverse impact** in particular where no other action is suitable or effective. ~~**3. As regards potential adverse impacts that could not be prevented or adequately mitigated by the measures in paragraph 2, the company may seek to conclude a contract with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company's code of conduct or a prevention action plan. When such a contract is concluded, paragraph 4 shall apply.**~~ **34**. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification. When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. ~~**Where measures to verify compliance are carried**~~

to refrain from entering into new or extending existing relations with the partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions: (a) temporarily suspend commercial relations with the partner in question, while pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts will succeed in the short-term; (b) terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe. Member States shall provide for the availability of an option to terminate the business relationship in contracts governed by their laws. 6. By way of derogation from paragraph 5, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.	~~out in relation to SMEs, the company shall bear the cost of the independent third-party verification.~~ ~~5. As regards potential adverse impacts within the meaning of paragraph 1 that could not be prevented or adequately mitigated by the measures in paragraphs 2, 3 and 4, the company shall be required to refrain from entering into new or extending existing relations with the partner in connection with or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions:~~ ~~(a) temporarily suspend commercial relations with the partner in question, while if pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts will succeed in the short-term;~~ ~~(b) terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.~~ ~~Member States shall provide for the availability of an option to terminate the business relationship in contracts governed by their laws.~~ ~~6. By way of derogation from paragraph 5, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.~~
Justification	
Economic operators should not be incentivised to 'cut-and-run' from adverse impact but should be encouraged to maintain the relationship to address the impact and prevent it from re-occurring. Setting up a legal obligation to terminate the relationship may provide an 'easier' route out for companies that do not want to take responsibility for the adverse impact.	

Text proposed by the Commission	*Amendment*
(a) where necessary due to the nature or complexity of the measures required for prevention, develop and implement a prevention action plan, with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. The prevention action plan shall be developed in consultation with affected stakeholders;	*(a) where necessary due to the nature or complexity of the measures required for prevention, develop and implement a prevention action plan, with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. The prevention action plan shall be developed in consultation with affected stakeholders* ***and taking into account a risk-based prioritisation.***
(b) seek contractual assurances from a business	*(b) seek contractual assurances from a business partner with whom it has a direct business*

partner with whom it has a direct business relationship that it will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by seeking corresponding contractual assurances from its partners, to the extent that their activities are part of the company's value chain (contractual cascading). When such contractual assurances are obtained, paragraph 4 shall apply;	*relationship that it will ensure compliance with the company's* ***due diligence policies*** ~~*code of conduct*~~ *and, as necessary, a prevention action plan, including by seeking corresponding contractual assurances from its partners, to the extent that their activities are part of the company's value chain (contractual cascading). When such contractual assurances are obtained, paragraph 4 shall apply;*
Justification	
Company risk-based prioritisation is an essential part of international standards' risk-based approach. Codes of conduct are only one element of a company's due diligence management practices.	

Amendment 9
Article 8 – Bringing actual adverse impacts to an end

Draft proposal	Amendment
1. Member States shall ensure that companies take appropriate measures to bring actual adverse impacts that have been, or should have been, identified pursuant to Article 6 to an end, in accordance with paragraphs 2 to 6 of this Article. 2. Where the adverse impact cannot be brought to an end, Member States shall ensure that companies minimise the extent of such an impact. 3. Companies shall be required to take the following actions, where relevant: (a) neutralise the adverse impact or minimise its extent, including by the payment of damages to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the contribution of the company's conduct to the adverse impact; (b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, develop and implement a corrective action plan with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. Where relevant, the corrective action plan shall be developed in consultation with stakeholders; (c) seek contractual assurances from a direct partner with whom it has an established business relationship that it will ensure compliance with the code of conduct and, as necessary, a corrective action plan, including by seeking corresponding contractual assurances from its partners, to the extent that they are part of the value chain (contractual cascading).	1. Member States shall ensure that companies take appropriate measures to bring actual adverse impacts that have been, or should have been, identified pursuant to Article 6**, and, where necessary, prioritized pursuant to Article 6a** to an end, in accordance with paragraphs 2 to 6 of this Article **taking into account the level of companies involvement in the actual adverse impacts.** 2. Where the adverse impact cannot be brought to an end, Member States shall ensure that companies minimise the extent of such an impact. 3. Companies shall be required to take the following actions, where relevant: (a) neutralise the adverse impact or minimise its extent, including by the payment of damages to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the contribution of the company's conduct to the adverse impact; (b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, develop and implement a corrective action plan with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. Where relevant, the corrective action plan shall **take into consideration the concerns raised by** ~~**be developed in consultation with**~~ stakeholders; (c) seek contractual assurances from a direct partner with whom it has an~~ established business relationship~~ **direct contractual supplier** that it will ensure compliance with the code of conduct and, as

When such contractual assurances are obtained, paragraph 5 shall apply. (d) make necessary investments, such as into management or production processes and infrastructures to comply with paragraphs 1, 2 and 3; (e) provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME; (f) in compliance with Union law including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end, in particular where no other action is suitable or effective. 4. As regards actual adverse impacts that could not be brought to an end or adequately mitigated by the measures in paragraph 3, the company may seek to conclude a contract with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company's code of conduct or a corrective action plan. When such a contract is concluded, paragraph 5 shall apply. 5. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification. When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification. 6. As regards actual adverse impacts within the meaning of paragraph 1 that could not be brought to an end or the extent of which could not be minimised by the measures provided for in paragraphs 3, 4 and 5, the company shall refrain from entering into new or extending existing relations with the partner in connection to or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take one of the following actions: (a) temporarily suspend commercial relationships with the partner in question, while pursuing efforts to bring to an end or minimise the extent of the adverse impact, or	necessary, a corrective action plan, including by seeking corresponding contractual assurances from its partners, to the extent that they are part of the **supply ~~value~~** chain (contractual cascading). When such contractual assurances are obtained, paragraph 5 shall apply. (d) make necessary investments, such as into management or production processes and infrastructures to comply with paragraphs 1, 2 and 3; **~~(e) provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME;~~** (**e~~f~~**) in compliance with Union law including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end, **or minimize the extent of such impact,** in particular where no other action is suitable or effective. **~~4. As regards actual adverse impacts that could not be brought to an end or adequately mitigated by the measures in paragraph 3, the company may seek to conclude a contract with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company's code of conduct or a corrective action plan. When such a contract is concluded, paragraph 5 shall apply.~~** **~~4~~5**. The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification. When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. **~~Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.~~** **~~6. As regards actual adverse impacts within the meaning of paragraph 1 that could not be brought to an end or the extent of which could not be minimised by the measures provided for in paragraphs 3, 4 and 5, the company shall refrain from entering into new or extending existing relations with the partner in connection to or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take one of the following actions:~~** **~~(a) temporarily suspend commercial relationships with the partner in question, while pursuing efforts~~**

(b) terminate the business relationship with respect to the activities concerned, if the adverse impact is considered severe. Member States shall provide for the availability of an option to terminate the business relationship in contracts governed by their laws. 7. By way of derogation from paragraph 6, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract, when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.	~~to bring to an end or minimise the extent of the adverse impact, or~~ ~~(b) terminate the business relationship with respect to the activities concerned, if the adverse impact is considered severe.~~ ~~Member States shall provide for the availability of an option to terminate the business relationship in contracts governed by their laws.~~ ~~7. By way of derogation from paragraph 6, point (b), when companies referred to in Article 3, point (a)(iv), provide credit, loan or other financial services, they shall not be required to terminate the credit, loan or other financial service contract, when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.~~
Justification	
Economic operators should not be incentivised to 'cut-and-run' from adverse impacts but should be encouraged to maintain the relationship to address the impact and prevent it from re-occurring. Setting up a legal obligation to terminate the relationship may provide an 'easier' route out for companies that do not want to take responsibility for the adverse impact. Moreover, obliging companies to bear the due diligence cost for small and medium-sized enterprises (SMEs) may also disincentivise companies from integrating SMEs into their supply chains.	

Amendment 10

Article 9 – paragraph 2 - Complaints procedure

Text proposed by the Commission	*Amendment*
Complaints procedure 2. Member States shall ensure that the complaints may be submitted by: (a) persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact, (b) trade unions and other workers' representatives representing individuals working in the value chain concerned, (c) civil society organisations active in the areas related to the value chain concerned.	Complaints procedure 2. Member States shall ensure that the complaints may be submitted by: (a) persons who are affected or have reasonable grounds to believe that they will be affected by an adverse impact, (b) trade unions and other workers' representatives representing individuals working in the value chain concerned, (c) civil society organisations whose **interest, mission and activities** relate to the value chain concerned **and the impacted individual.**
Justification	
This suggestion clarifies the type of civil society organisations.	

Amendment 11

Article 9 – paragraph 3- Complaints procedure

Text proposed by the Commission	*Amendment*

3.Member States shall ensure that the companies establish a procedure for dealing with complaints referred to in paragraph 1, including a procedure when the company considers the complaint to be unfounded, and inform the relevant workers and trade unions of those procedures. Member States shall ensure that where the complaint is well-founded, the adverse impact that is the subject matter of the complaint is deemed to be identified within the meaning of Article 6.	3.Member States shall ensure that the companies establish ***and disclose*** a procedure for dealing with complaints referred to in paragraph 1, including a procedure when the company considers the complaint to be unfounded~~***, and inform the relevant workers and trade unions of those procedures.***~~ Member States shall ensure that where the complaint is well-founded, the adverse impact that is the subject matter of the complaint is deemed to be identified within the meaning of Article 6.
Justification	
This suggestion seeks to improve the complaints procedure by making it more efficient.	

Amendment 12
Article 9 – paragraph 4 - Complaints procedure

Text proposed by the Commission	*Amendment*
4. Member States shall ensure that complainants are entitled (a) to request appropriate follow-up on the complaint from the company with which they have filed a complaint pursuant to paragraph 1, and (b) to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint.	4. Member States shall ensure that complainants are entitled (a) to request ***reasonably*** appropriate follow-up on the complaint from the company with which they have filed a complaint pursuant to paragraph 1 ~~***and***~~ ~~***(b) to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint.***~~

Justification
A company should be given discretion to evaluate complaints and meet with complainants as reasonably appropriate. Forcing companies to meet with all complainants regardless of a complaint's merit, risk or severity of issue may motivate complainants to weaponise this requirement. This could lead to complainants filing complaints to interfere with a company's operations merely to create added burden. Again, companies should be allowed to use reasonable business judgment in following upon complaints based on the merit of the complaint or severity of the risk raised.

Amendment 13 – Sectoral guidance
Article 13 – paragraph 1

Text proposed by the Commission	*Amendment*
Guidelines In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international	Guidelines In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, ***shall*** issue

bodies having expertise in due diligence, may issue guidelines, including for specific sectors or specific adverse impacts.	guidelines, including for specific sectors or specific adverse impacts. ***The Commission shall issue guidance to address the coherence between this directive, the Corporate Sustainability Reporting Directive (CSRD) as well as existing EU due diligence legislation such as the minerals, batteries and regulations limiting duplicative or overlapping obligation to the maximum extent possible,.. The Commission shall also issue sectoral guidance to review and support industry due diligence efforts and address high risk commodities.***

Justification
Sectoral approaches are necessary including guidance. This needs to be done both on an industry and on a high-risk commodity basis. Companies have undertaken extensive global due diligence efforts over several decades on, for example, the minerals, palm oil and cocoa supply chains. The effectiveness of such efforts needs to be reviewed, and sectors need to be supported to scale impact and exercise collective leverage.

Amendment 14 – Coherence with CSRD and other EU due diligence laws

Article 13

Text proposed by the Commission	*Amendment*
Guidelines In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, may issue guidelines, including for specific sectors or specific adverse impacts.	Guidelines In order to provide support to companies or to Member State authorities on how companies should fulfil their due diligence obligations, the Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, and where appropriate with international bodies having expertise in due diligence, ***shall*** issue guidelines***, including on the relationship between this directive and the corporate sustainability reporting directive (CSRD), other existing EU due diligence laws such as Regulation (EU) 2017/821 on responsible minerals supply chains and the regulations on batteries, as well as for specific sectors or specific adverse impacts.***

Justification
The relationship between the proposed directive and the corporate sustainability reporting directive (CSRD) remains vague, including in scope. There should be consistency between this directive and existing EU legislation with due diligence obligations, for example, Regulation (EU) 2017/821 on responsible minerals supply chains and the new battery regulation. It is important that companies have as much legal certainty as possible. Industry needs sectoral guidance that assesses the effectiveness of due diligence efforts to date, helps companies of all sizes comply with the legal requirements and assists with continual improvement.

Amendment 15 – Accompanying measures

Article 14

Text proposed by the Commission	*Amendment*
Companies may rely on industry schemes and multi-stakeholder initiatives to support the implementation of their obligations referred to in Articles 5 to 11 of this Directive to the extent that such schemes and initiatives are appropriate to support the fulfilment of those obligations. The Commission and the Member States may facilitate the dissemination of information on such schemes or initiatives and their outcome. The Commission, in collaboration with Member States, may issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.	4. Companies may rely on industry schemes and multi-stakeholder initiatives to support the implementation of their obligations referred to in Articles 5 to 11 of this Directive to the extent that such schemes and initiatives are appropriate to support the fulfilment of those obligations. The Commission and the Member States may facilitate the dissemination of information on such schemes or initiatives and their outcome. The Commission, in collaboration with Member States, ~~may~~ ***shall*** issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.

Amendment 14 – Combatting climate change

Article 15

Text proposed by the Commission	*Amendment*
1. 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. 2. Member States shall ensure that, in case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company includes emission reduction objectives in its plan. 3. 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.	Suggest to delete ~~**1. 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.**~~ ~~**2. Member States shall ensure that, in case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company includes emission reduction objectives in its plan.**~~ ~~**3. 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.**~~

Justification
This directive should not focus on sustainability efforts, which are better addressed through other policy

initiatives outside the scope of due diligence.

Amendment 17 – Consolidation

Article 17 new paragraph

Text proposed by the Commission	*Amendment*
	(new paragraph) Member States shall ensure that companies which are subsidiaries of a parent company, may fulfil their duties under paragraph 1 of this Article if their parent company report in accordance with the Corporate Sustainability Reporting Directive
Justification	
This suggestion would ensure consistency with the CSRD.	

Amendment 18 –Civil Liability

Article 22

Text proposed by the Commission	*Amendment*
1. Member States shall ensure that companies are liable for damages if: (a) they failed to comply with the obligations laid down in Articles 7 and 8 and; (b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage. 2. Notwithstanding paragraph 1, Member States shall ensure that where a company has taken the actions referred to in Article 7(2), point (b) and Article 7(4), or Article 8(3), point (c), and Article 8(5), it shall not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact. In the assessment of the existence and extent of liability under this paragraph, due account shall be taken of the company's efforts, insofar as they relate directly to the damage in question, to comply with	1. Member States shall ensure that companies are held liable for damages if: (a) they failed to comply with the obligations laid down in Articles 7 and 8 and; (b) as a result of this failure a ***significant severe*** adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and that failure led to damage. 2. Notwithstanding paragraph 1, Member States shall ensure that ~~*where a company has taken the actions referred to in Article 7(2), point (b) and Article 7(4), or Article 8(3), point (c), and Article 8(5), it shall not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact.*~~ ***companies shall not be held liable for any damage:*** ***(a) resulting from a severe adverse impact referred to in paragraph 1 that is attributable to the intervening acts or omissions of any third party, party with whom the company has a direct contractual business relationship with.*** (+ text to make clear it's only direct contractual business relationships**)**

any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as any collaboration with other entities to address adverse impacts in its value chains	***(b) caused by a severe adverse impact that occurred despite the companies having complied, in good faith, with the obligations laid down in Articles 7 and 8.***
	(new) Member States shall ensure that legal persons bringing administrative or legal complaints have a direct interest in taking legal action, having regard to the minimum criteria laid down in Directive (EU) 2020/1828 for qualified legal entities to bring collective legal complaints, in particular their independence, non-profit character and representation of the affected parties as part of their main mission.
Justification	
This suggestion seeks to clarify the provisions of this Article	

Amendment 19– Directors' duty of care
Article 25

Text proposed by the Commission	*Amendment*
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 matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.	Delete ~~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 matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term~~

Justification
This suggestion deletes Articles 25 and 26 because of their vagueness, ambiguity and nature that is contrary to the principles of subsidiarity and proportionality. This amendment proposal does not aim to remove or reduce the responsibility of directors but rather to highlight the duties they already have to fulfil under national company law. The proposed Articles 25 and 26 on directors' duties conflict with existing national conventions on company law which already set broad obligations to the company boards to act by taking into account all the relevant matters for the corporate benefit. Although it is important that corporate governance keeps pace with stakeholders and investors' sustainability-related demands, the current wording of the directors' duty of care in the proposed Article 25 is extremely vague. It is unclear to which extent and how the potential human rights issues, climate change and environmental impacts should be taken into account, especially in situations where the relevant issues might conflict with each other or with

the longer term corporate benefit, be it within the short or long term. Further, it is not clear from the proposed regulation what the relationship is between the obligation to take into account the interests of other stakeholders – such as shareholders, creditors, customers and business partners – and other general decision-making principles of the company's management. Finally, the Directive does not define sustainability issues to be taken into account under Article 25.

Amendment 20 – Setting up and overseeing due diligence

Article 26

Text proposed by the Commission	*Amendment*
1. Member States shall ensure that directors of companies referred to in Article 2(1) are responsible for putting in place and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organisations. The directors shall report to the board of directors in that respect. 2. Member States shall ensure that directors take steps to adapt the corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9.	Delete ~~1. Member States shall ensure that directors of companies referred to in Article 2(1) are responsible for putting in place and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organisations. The directors shall report to the board of directors in that respect.~~ ~~2. Member States shall ensure that directors take steps to adapt the corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9.~~

Justification
This suggestion deletes Articles 25 and 26 on the basis of their vagueness, unclarity, and their contrary nature to the principles of subsidiarity and proportionality. It is necessary to stress that this amendment proposal does not aim to remove or reduce the responsibility of directors, but rather to highlight the duties they already have to fulfil under national company law. The proposed articles 25 and 26 on directors' duties are in conflict with existing national conventions on company law which already set broad obligations to the company boards to act by taking into account all the relevant matters for the corporate benefit.

Amendment 21 – Industry schemes

Recital 37

Text proposed by the Commission	*Amendment*
(37) As regards direct and indirect business relationships, industry cooperation, industry schemes and multi-stakeholder initiatives can help create additional leverage to identify, mitigate, and prevent adverse impacts. Therefore it should be possible for companies to rely on such initiatives to support the implementation of their due diligence obligations laid down in this Directive to the extent that such schemes and	(37) As regards direct and indirect business relationships, industry cooperation, industry schemes and multi-stakeholder initiatives can help create additional leverage to identify, mitigate, and prevent adverse impacts. Therefore it should be possible for companies to rely on such initiatives to support the implementation of their due diligence obligations laid down in this Directive to the extent that such schemes and

initiatives are appropriate to support the fulfilment of those obligations. Companies could assess, at their own initiative, the alignment of these schemes and initiatives with the obligations under this Directive. In order to ensure full information on such initiatives, the Directive should also refer to the possibility for the Commission and the Member States to facilitate the dissemination of information on such schemes or initiatives and their outcomes. The Commission, in collaboration with Member States, may issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.	initiatives are appropriate to support the fulfilment of those obligations. Companies could assess, at their own initiative, the alignment of these schemes and initiatives with the obligations under this Directive. In order to ensure full information on such initiatives, the Directive should also refer to the possibility for the Commission and the Member States to facilitate the dissemination of information on such schemes or initiatives and their outcomes. The Commission, in collaboration with Member States, **shall** issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.
Justification	
The Commission must issue guidance for the assessment of industry schemes. AmCham EU prefers a European approach instead of 27 different systems, which would not be efficient. However, the co-deciders could consider introducing a system of mutual recognition whereby an industry scheme applies for recognition in one Member State and if successful, this recognition would apply across other Member States. However, such guidance should not encourage forum shopping.	

Amendment 22 – Harmonisation

Recital 71

Text proposed by the Commission	*Amendment*
(71) The objective of this Directive, namely better exploiting the potential of the single market to contribute to the transition to a sustainable economy and contributing to sustainable development through the prevention and mitigation of potential or actual human rights and environmental adverse impacts in companies' value chains, cannot be sufficiently achieved by the Member States acting individually or in an uncoordinated manner, but can rather, by reason of the scale and effects of the actions, be better achieved at Union level. In particular, addressed problems and their causes are of a transnational dimension, as many companies are operating Union wide or globally and value chains expand to other Member States and to third countries. Moreover, individual Member States' measures risk being ineffective and lead to fragmentation of the internal market. Therefore, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality,	(71) The objective of this Directive, namely better exploiting the potential of the single market to contribute to the transition to a sustainable economy and contributing to sustainable development through the prevention and mitigation of potential or actual human rights and environmental adverse impacts in companies' value chains, cannot be sufficiently achieved by the Member States acting individually or in an uncoordinated manner, but can rather, by reason of the scale and effects of the actions, be better achieved at Union level. In particular, addressed problems and their causes are of a transnational dimension, as many companies are operating Union wide or globally and value chains expand to other Member States and to third countries. Moreover, **a growing number of** individual and **different** Member States' measures risk being ineffective**, unworkable for companies to comply with**, and lead to fragmentation of the internal market. Therefore, the Union may adopt measures, in accordance with the principle of

as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.	subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Justification
A number of countries have introduced due diligence laws, for example, France's Droit de Vigilance, Germany's Supply Chain Act, Norway's Transparency Act and the Child Labour Law in The Netherlands. These laws differ in scope and legal obligations. Other Member States with similar proposed laws include Italy, Austria, Finland, Spain and Belgium. This trend is unworkable for companies and contributes to growing internal market fragmentation.

Amendment 20 – Sectoral guidance

Recital XX (new)

Text proposed by the Commission	*Amendment*
	Sectoral approaches are necessary including guidance. This needs to be done both on an industry and high risk commodity basis. Extensive global due diligence efforts have been undertaken over several decades. They need to be assessed for effectiveness and supported to scale impact and exercise collective leverage. Such sectoral approaches incorporate the use of relevant industry schemes such as the Responsible Business Alliance (RBA) which should be recognized under the directive. In this respect a precedent has been set under Regulation (EU) 2017/821 on responsible minerals supply chains with the agreement of Commission, Parliament and Council.

Justification
Sectoral approaches will be important and there is a need for guidance. For example, the digital technology sector's global due diligence efforts have been built up over several decades, triggered by the focus on armed conflict and other challenges in minerals supply chains such as forced and bonded labour. The effectiveness of such efforts needs to be assessed and supported to scale impact, provide collective leverage and contribute to continual improvement based on the goals of the directive. There should not only be an industry sectoral approach but also an approach based on high-risk commodities such as certain minerals. Since 2009, there has been an extensive global approach to address the above-mentioned supply chain challenges. The OECD framework (Due Diligence Guidelines for minerals supply chains), the US Dodd Frank Act and Regulation (EU) No. 2017/821 have introduced legal requirements. These laws have been accompanied by multi-stakeholder collaborative partnerships such as the EPRM. Industry schemes such as the Responsible Minerals Initiative (RMI) play a central role in helping companies comply with the legal requirements, scale impact and exercise collective leverage. These collective efforts – which have entailed considerable cost and time, including extensive EU negotiations resulting in agreement by the Parliament, Commission and Council – have focused

on the supply chains of four minerals: tin, tungsten, tantalum and gold, the so-called '3TG'. If the directive comes into effect as proposed, the value chains of all other minerals will be regulated by a different set of legal requirements. Moreover, existing EU laws such as the new battery regulation, which legislates other minerals such as cobalt and lithium, also need to be taken into account.

Amendment 21 – Coherence with CSRD and other due diligence laws

Recital XX (new)

Text proposed by the Commission	*Amendment*
	It is essential to ensure consistency with not only the Corporate Sustainability Reporting Directive (CSRD) but other existing sectoral EU due diligence laws such as Regulation (EU) 2017/821 on responsible minerals supply chains and the regulations on batteries, limiting duplicative or overlapping obligation to the maximum extent possible.

Conclusion

All stakeholders must continue constructive dialogue to improve human rights and environmental issues around the world, without overburdening companies. This will allow them to conduct business in a fair way while also empowering national authorities to enforce the rules appropriately.