Proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

ESBG Position– Executive summary

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The European Savings and Retail Banking Group (ESBG) supports the goal to tackle environmental issues and human rights abuses. ESBG members commit to sustainable, responsible and future-oriented banking and support the creation of a coherent legal framework, yet believe that the proposal foresees a role for financial entities that is too ambitious and could create legal uncertainty.

Rules must be proportionate, feasible and should not restrict competition and innovation. The current environment might not be adequate for requirements that could hamper economic and financial recovery. To avoid unfeasible implementation and monitoring costs, accompanied by uncertain legal consequences, we request further clarification on the role of financial entities in the context of the proposed Directive.

ESBG'S MAIN CALLS

- The **scope** of the Directive must not apply to companies with less than 1000 employees.
- Mandatory **due diligence provisions** for regulated financial services undertakings should be limited to clients that are not regulated financial services undertakings themselves. An EU voluntary common framework of best practices in corporate sustainability due diligence for regulated financial undertakings should be established, as the financial sector is already highly regulated. Due diligence requirements for credit institutions' own business operations and those of suppliers should be limited to activities that have a specific connection to the provision of services by banks, for example bank IT, outsourcing partners, or sales partners.
- A grandfathering provision should be introduced for the **identification of actual and potential adverse impacts**, so that only new exposures of credit institutions are subject to the review obligations.
- There is no need to establish new **corporate directors' duties** as they already take long-term sustainability goals into account in their decisions and they cannot be held accountable for concepts of an undetermined nature that are not completely under their control.
- Existing **liability regimes** of Member States already provide appropriate rules for the civil liability of companies. In consideration of the right to the presumption of innocence, businesses should not be held liable for damage in their supply chain if they did not directly cause it. Claims procedures must be consistent with the international legal framework.
- The **sanctions and civil liability regime** would lead to an extreme increase of costs for new sustainability KYC procedure. Moreover, the enforcement through national rules would lead to legal arbitrage.
- There is no need to establish a specific **complaints mechanism**.
- A uniform standard for the preparation of a **Code of Conduct** (CoC) should be created, for example through a Regulatory Technical Standard. It should be sufficient that the company contractually requires that the direct partner has its own CoC which is held to the same standard as the company's own CoC.
- It is essential that the **model contractual clauses** are provided as part of the proposal/voluntary code instead of being developed at a subsequent stage.
- **Further clarification** should be provided on calculation of the fines, on the periodic assessment to be carried out in the monitoring obligation, on several definitions (incl. "director") and on consistency with other legal acts, such as the Capital Requirements Directive and the Sustainable Finance Disclosure Regulation (SFDR).
- Several **disproportionate provisions** (concerning Articles 15, 19, 20, 22) should be **eliminated**.

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