ENNHRI raises important concerns over the European Commission's Omnibus I proposal

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The European Network of National Human Rights Institutions (ENNHRI), which represents over 40 National Human Rights Institutions (NHRIs) across Europe, expresses concern with the "Omnibus I" proposal to amend the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD) adopted by the European Commission on 26 February 2025 (the Omnibus).

ENNHRI, through its Business and Human Rights Working Group, has been active throughout the CSDDD negotiation process (through public statements in March 2022, in April 2023, in October 2023 and in June 2024), advocating for strong human rights protection and alignment with authoritative international business and human rights standards including the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines).

At the national level, ENNHRI's members actively engage with their national governments and their Members of the European Parliament, and also participate in formal consultation and transposition processes.

To ensure that the CSDDD remains aligned with the UNGPs and OECD Guidelines to the greatest extent, ENNHRI recommends that the EU:

- Ensure that the next phase of the legislative process is undertaken transparently and on the basis of adequate stakeholder consultation and a solid evidence base.
- Uphold the risk-based approach to due diligence throughout companies' chains of activities which is the cornerstone of international business and human rights standards.
- Maintain the CSDDD's approach to responsible disengagement.

- Maintain a broad definition of stakeholders, which includes NHRIs, and ensure that stakeholder engagement is central throughout the due diligence process.
- Maintain the original civil liability provision to ensure coherence on the conditions of civil liability across the EU and effective access to remedy for rightsholders.
- Maintain the requirement to review inclusion of the financial sector.
- Maintain the ambition of the CSRD to respond to the need for reliable and quality environmental and human rights-related disclosures, by resisting proposals to reduce the personal scope of the CSRD and allowing reporting entities to request meaningful information from other actors where necessary.
- Align the European Sustainability Reporting Standards (ESRS) with the CSDDD and international responsible business conduct standards.
- Avoid changes to the ESRS which disproportionately reduces the social subject matter disclosures.
- Develop sector specific reporting requirements, through standards or possibly in the form of guidance.

1. The EU should ensure that the process around the Omnibus is transparent and undertaken on the basis of adequate stakeholder consultation and good evidence

In its submission to the EU 2024 Rule of Law Report, ENNHRI has called for the EU to ensure transparent, timely and meaningful public consultations within EU law and policymaking processes and conduct human rights impact assessments of EU legislation and policies, in consultation with relevant human rights actors, including NHRIs.

In the spirit of that recommendation, ENNHRI highlights concerns about the process to develop and adopt the Omnibus proposal, in particular with regard to the lack of transparency and consultation throughout. As the Explanatory Memorandum to the Omnibus itself notes, the CSDDD has not yet been transposed and the CSRD has only been applied by the first set of companies it applies to; *"it has therefore not been possible to undertake an ex-post evaluation or fitness check of either piece of legislation"*. Significant changes have been proposed without a solid evidence base gathered through a full impact assessment. In the case of the CSDDD legislation

duly adopted, following a full legislative process, has been subjected to significant amendments less than a year after entry into force and at a point when it is several years from implementation. In the case of the CSRD, wide-ranging amendments are being proposed after a majority of the EU Member States have transposed the instrument, and after in-scope companies have already published CSRD-aligned reports and made significant investments towards implementation.

ENNHRI particularly highlights the lack of adequate consultations in this process, particularly in the absence of a full impact assessment.

ENNHRI urges the European Parliament and the Council of the EU to ensure that the next phase of the legislative process is undertaken transparently and on the basis of adequate stakeholder consultation and a solid evidence base.

2. The approach to the Omnibus should ensure that any amendments to the CSDDD remain aligned with international business and human rights frameworks and best practice

a) Risk-based approach to due diligence

As ENNHRI noted in its October 2023 statement, the substantive due diligence obligations in the CSDDD should be based on a risk-based approach to due diligence. This is core to ensuring alignment with the key international standards, the UNGPs and OECD Guidelines, which ENNHRI has consistently called for.

However, under the Omnibus proposal, the obligation to conduct due diligence has been changed to an approach which creates artificial and arbitrary limits on the extent of due diligence a company should take by restricting due diligence to direct suppliers (Tier 1) unless a company has "plausible information" that it should consider its indirect suppliers.

As the Staff Working Document (SWD) published by the Commission alongside the proposed amendments to the legislation recognises, limiting the due diligence exercise to Tier 1 would challenge the effectiveness of due diligence, acknowledging that *"the main risks to human rights and the environment most often occur farther upstream (and downstream) in the value chain"*.

Rather than a responsibility to identify the impacts that a company has through the entire value chain and prioritise for action the most severe, the Omnibus proposes that companies should, *prima facie*, only consider the impacts that they have in their own operations, their subsidiaries and their direct business partners. The Omnibus suggests that companies should consider

impacts at the level of an indirect business partner only where they have "plausible information" suggesting actual or potential adverse impacts at their level. This shifts the burden from companies, who would be expected to know what impacts they have on human rights and the environment under the UNGPs and the CSDDD, to third parties, including NGOs, media and NHRIs to monitor human rights in the in-scope companies' chains of activities.

This represents a fundamental departure from the expectations of the UNGPs and risks a regression in the international consensus on the responsibilities of businesses regarding their human rights impacts.

Companies seeking to map their human rights and environmental impacts need access to relevant data. This includes making information requests of business partners. However, the Omnibus proposes that companies should not make any such requests of business partners of under 500 employees unless information cannot be obtained by other means. This means that companies will be expected to rely primarily on voluntary disclosures made in accordance with the Voluntary Sustainability Reporting Standard for non-listed SMEs (VSME). As we note in section 3 below, this standard is not fit for purpose.

Lastly, the proposed change to monitor the effectiveness of the due diligence measures from every year in the adopted text of the CSDDD to every 5 years in the proposal neither reflects the ongoing nature of due diligence under the UNGPs, nor is in line with the operational realities of companies. It would also, as the Commission itself underlines, expose companies to an increased risk of sanctions for non-compliance.

ENNHRI urges the European Parliament and the Council of the EU not to adopt the proposal to restrict due diligence to Tier 1 in the first instance and to uphold the risk-based approach to due diligence.

The CSDDD also contains a regime on responsible disengagement, requiring companies to disengage with business partners as a matter of last resort under certain circumstances. Under the Omnibus, companies would no longer be required to disengage from a business partner, only to refrain from entering into new or extending relations with them. The regime in the Omnibus essentially creates a permission structure for impacts to continue where there are "reasonable expectations" that action plans to address particular impacts will succeed. The move from requiring a company to suspend rather than terminate a relationship would mean that the disengagement regime is now out of step with international standards, in particular with OECD guidance.

ENNHRI urges the European Parliament and the Council of the EU to uphold the CSDDD's approach to responsible disengagement.

b) Stakeholder engagement

As ENNHRI noted in its October 2023 statement, it is essential that companies meaningfully engage stakeholders, especially rightsholders who might be affected, throughout the due diligence process in order to more effectively identify their impacts on human rights and design appropriate measures to address them.

The CSDDD recognises the importance of meaningful stakeholder engagement. However, the Omnibus proposal places limits on the stages of due diligence during which companies should engage with stakeholders, removing the requirement when taking the decision to disengage from a business relationship and when developing monitoring indicators to measure the effectiveness of due diligence. The Omnibus proposal also includes a more restrictive definition of stakeholder, essentially limiting engagement to those who are or may be directly affected by the actions of the company, its subsidiaries or business partners. Restricting the definition of stakeholders in this way limits the ability of a company to properly map its risks and understand broader contextual factors which are critical to designing effective appropriate measures. Crucially, NHRIs have been removed as a stakeholder from the definition. This is a particular concern for ENNHRI. As independent human rights experts with a mandate to monitor respect for human rights in their jurisdictions, NHRIs have an important role to play in the implementation of the law.

ENNHRI calls on the EU's negotiating institutions to maintain the role of stakeholder engagement as central to the due diligence process, and to keep a broad definition of stakeholders, which includes NHRIs.

c) Civil liability

As ENNHRI noted in its October 2023 statement, the prospects of the CSDDD to effectively address impacts on human rights and the environment hinge, to a large extent, on a solid enforcement regime. This includes the possibility for civil liability for harms resulting from failures to meet the due diligence requirements in the Directive.

However, the Omnibus proposal removes the obligation for the Member States to ensure that companies can be made liable for harms which occur from intentional or negligent due diligence failures. By removing this requirement, the CSDDD will not be able to bring clarity about the conditions of civil liability across the 27 Member States and address a fragmented liability

landscape. This undermines the ability of the instrument to create legal certainty for companies, and for rightsholders who would seek legal redress through litigation, in line with Pillar 3 of the UNGPs.

As ENNHRI has previously recommended, the civil liability measures must address persisting obstacles to access to justice identified by the European Union Agency for Fundamental Rights and in OHCHR's Accountability and Remedy Project, including legal standing, access to information, evidence barriers, legal costs, the length of proceedings, and limitation periods. The Omnibus proposal also removes the requirement on the Member States to provide for representative actions which, as the SWD acknowledges, are important to address power imbalances between victims and companies. The Commission itself points out that this will lead to court cases becoming more fragmented as claimants would not be able to bundle their legal actions.

ENNHRI calls on the EU's negotiating institutions to uphold the original civil liability provision to ensure coherence on the conditions of civil liability across the EU and effective access to remedy for rightsholders.

d) Financial sector inclusion

Under the CSDDD, financial institutions are required to conduct due diligence on their own operations and their supply chain, rather than being required to consider the impacts of investments, loans, insurance or other financial services (i.e., their "downstream" activities).

The CSDDD contains a review clause, which would require the Commission to prepare a report on further inclusion of the financial sector. ENNHRI has welcomed the inclusion of this review clause as the majority of impacts the financial sector has on human rights and the environment is located in the downstream value chain. As ENNHRI has previously stated, the financial industry plays a significant role in the economy and holds significant leverage to drive change in corporate human rights management and should therefore be fully included in the scope of the CSDDD.

The Omnibus proposal would delete this review clause. This is a missed opportunity to address the impacts the financial sector has on human rights and the environment, especially given that any review proposed by the Commission would be grounded in an evidence base determining the need for financial sector actors to be included.

ENNHRI recommends that the European Parliament and the Council of the EU not change the review clause for the inclusion of the financial sector.

3. The Omnibus should ensure that the reporting requirements in the CSRD are fit for purpose, providing reliable and high quality human rights disclosures at scale

ENNHRI has advocated for policy coherence in regulation aiming to address business impacts and transparency on human rights. It has called for sustainability reporting requirements to be aligned with due diligence requirements, using key international frameworks, such as the UNGPs, as a critical touchstone to bring clarity to the EU's legal framework. For companies to conduct human rights and environment due diligence properly, they must be able to rely on robust and comparable information, including that disclosed in sustainability reporting and on information provided by their business partners. As ENNHRI has noted in a previous submission, the CSRD sought to address deficiencies in the approach of its predecessor, the Non-Financial Reporting Directive (NFRD), by clarifying the obligations of reporting entities and providing a set of reporting standards, and by significantly increasing the personal scope to deliver robust sustainability information at scale.

In this context, ENNHRI wishes to raise concerns over the changes to the CSRD proposed by the Commission. The Commission's proposal would reduce by 80% the scope of companies mandated to report. This drastic reduction would both jeopardise access to standardised and structured data for the purpose of due diligence, but also for financial institutions that rely on sustainability reporting for their decision-making on investments and lending.

The proposal suggests repurposing the VSME in two ways. First, the Commission would adopt a delegated act on the basis of the VSME standard for voluntary use by all companies below the new threshold. Second, it would introduce a prohibition on the remaining in-scope companies from requesting relevant information from small and medium-sized business partners beyond what is requested by the VSME standard. However, the VSME standard was developed to act as voluntary guidance for small companies with limited sustainability efforts and facing information requests from financial institutions and business partners. It is not fit for the purposes envisaged for sustainability reporting, because it effectively reduces social sustainability and human rights to a few metrics related to own workforce and would hinder critical information exchanges between companies and their suppliers related to negative human rights impacts on workers in value chains, on communities and on consumers/end-users; it does not include a double materiality requirement; and it is not aligned with the UNGPs and OECD Guidelines. If it is to be used as proposed in the Omnibus, the VSME should undergo technical revision.

The proposal further suggests fast-tracked review of the European Sustainability Reporting Standards (ESRS) to substantially reduce the reporting requirements and give priority to

quantitative data points over qualitative ones, as a means of simplifying the EU's reporting framework. This is problematic as most human rights-related disclosure requests are not quantitative. This approach may thus disproportionately damage the social disclosures. ENNHRI is concerned that the prioritisation of quantitative data points will further undermine the quality of the reporting on human rights impacts and, in its interactions with the due diligence process of the CSDDD, negatively impact companies' capacity to identify and assess their impacts on human rights.

Lastly, the Omnibus proposal removes the possibility for the development of sector-specific standards, which would have tailored reporting to specific issues commonly faced in sectors and would have simplified the double materiality assessment and reporting exercise required under the CSRD.

ENNHRI is concerned that the suggested changes restrict the availability of sustainability information in a manner which undermines the ability of companies to meaningfully undertake due diligence required under the CSDDD and of financial market participants to meet sustainable finance regulatory requirements. It also diminishes the possibility for affected stakeholders, including rightsholders, civil society and trade unions, to utilise sustainability reporting to engage with companies on their sustainability performance. In its statement on the revision of the NFRD, ENNHRI had already highlighted the limitations of NFRD as being able to meet the information needs of users of sustainability reporting data. In the same way, it is therefore critical that revisions to the CSRD also take into consideration the scale and usability of data provided by reporting companies.

ENNHRI urges the European Parliament and the Council of the EU to:

- Maintain the ambition of the CSRD to align with the need for reliable and quality environmental and human rights-related disclosures, by resisting proposals to reduce the personal scope of the CSRD and allowing reporting entities to request meaningful information from other actors where necessary.

- Avoid changes to the ESRS which disproportionately reduces the social subject matter disclosures.

- Align the ESRS with the CSDDD and international responsible business conduct standards.

- Develop sector specific reporting requirements, through standards or possibly in the form of guidance.

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