August 14, 2026

Ms. Ana Gallego Torres
Director-General, DG Justice and Consumers
European Commission
Directorate A – Civil and Commercial Justice
B-1049 Brussels
Belgium

RE: Submission to the Public Consultation on the Corporate Sustainability Due Diligence Directive (CS3)

Dear Director-General Gallego Torres:

The National Foreign Trade Council (NFTC) is pleased to present recommendations for the European Commission's (EU) consultation on the Corporate Sustainability Due Diligence Directive (CS3D or "the Directive"). These recommendations are aimed at ensuring the Commission's guidance and Member State transposition provide a practical, risk-based approach that avoids unnecessary burdens on U.S. and multinational businesses, particularly to the extent their operations have negligible impacts on or connections to Europe.

The March 2026 Omnibus package narrowed and simplified the Directive but left key implementation details to Commission guidance and Member State transposition. This submission provides recommendations for practical, harmonized implementation that reflects U.S. business concerns.

The NFTC's recommendations closely align with the European Commission's broader competitiveness agenda outlined in the Draghi Report, which stresses the importance of proportionate regulation, reduced administrative fragmentation, and predictable implementation across the Single Market. The Report underscores that Europe's competitiveness depends on focusing regulatory effort where risks are most material, simplifying compliance obligations—especially for SMEs and global operators—and avoiding burdens that divert resources away from innovation, investment, and responsible business conduct. Our proposals for a risk-based approach, clear EU nexus, harmonized transposition, and non-duplicative reporting directly support these principles by ensuring that CS3D implementation reinforces rather than undermines Europe's stated goal of a more coherent, predictable, and globally competitive regulatory environment.

About NFTC

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities, accounting for over $6 trillion in revenue and employing nearly six million people in the United States.

Recommendations

1. **Guidance Should be Principles-Based, Non-Binding and Enhance Legal Certainty**

The CS3D establishes a broad framework that will need to be applied across a diverse set of companies, business models and circumstances. To support implementation while safeguarding Europe's competitiveness, CS3D guidance should be principles-based, non-binding and focused on improving legal certainty, without creating new obligations or extending the scope of the Directive. Guidance should provide flexibility for member states and businesses to design and implement approaches that are proportionate and risk-based. This encourages innovation and stability while ensuring resources are directed toward the most likely and severe risks.

2. **Preserve a Risk-Based Framework and Avoid Exhaustive Value-Chain Mapping**

The CS3D requires companies to conduct due diligence across operations, subsidiaries, and chains of activities. The recent Omnibus amendments provided an important improvement, allowing companies to focus on areas where adverse impacts are most likely to be severe based on reasonably available information. Commission guidance and Member State transposition should nevertheless confirm that companies may use an initial scoping process based on reasonably available information and should not be required to collect primary data where that information is available to regulators from other sources (such as public, sectoral, internal, group-level, audit, certification, or initiative-based sources). Where companies have existing governance, compliance, and risk-management systems that are substantially equivalent CS3D requirements, those should be recognized as satisfying the Directive without requiring a duplicative, stand-alone policy. This approach directs resources toward the most serious and likely risks, avoids expensive "check-the-box" mapping of every tier of the value chain, and aligns with the Omnibus goal of reducing unnecessary burdens.

3. **Clarify the EU Nexus and Limit Disproportionate Extraterritorial Reach**

CS3D applies to large EU companies and non-EU companies meeting the EU turnover threshold, and its due diligence duties reach complex global operations and business relationships, including operations and relationships with negligible (or even non-existent) connections to Europe. The Commission's CS3D guidance should confirm that a company's compliance program may focus on economic activities — within its own operations, subsidiaries, and chains of activities — that have a meaningful nexus to the EU market. Information gathering for activities lacking such a nexus should be voluntary. This approach is consistent with established principles of territoriality in international law, would reduce unnecessary extraterritorial friction, improve legal predictability for U.S. companies, avoid unnecessary expense, and focus the Directive on risks most relevant to the EU market.

4. Keep Model Contractual Clauses Voluntary, Flexible, and Non-Prescriptive

The amended Directive requires the Commission to adopt guidance on voluntary model contractual clauses by July 26, 2027. However, we are concerned that such clauses could become de facto mandatory benchmarks in practice. Model clauses should be voluntary tools that companies may adapt to reflect relevant factors in specific markets; they should not be mandatory templates or evidence of non-compliance, and companies should not be penalized where they are not used. U.S. and EU companies operate through diverse commercial arrangements, and it is not always possible to impose EU-style clauses on larger counterparties, non-EU suppliers, or contracts governed by third-country law.

5. Target Information Requests and Protect Confidentiality, Trade Secrets, and Legal Constraints

The Directive incorporates information gathering from business partners, but we are concerned that requiring overly broad requests will impose significant costs on smaller suppliers, non-EU partners, and companies subject to data protection, confidentiality, trade secret, competition law, sanctions, national security, blocking, and/or anti-boycott restrictions. The Commission's guidance should indicate that information requests must be necessary, proportionate, targeted, and limited to information needed for CS3D compliance. Partners should be able to decline to provide information beyond the Directive's scope, and this should not be treated as non-cooperation or evidence of non-compliance. Where legal barriers to information collection exist, they should be recognized as legitimate due-diligence limits and should not, by themselves, be treated as indicators of weak governance. This approach reduces compliance effects on small and mid-sized suppliers, lowers trade friction, and recognizes that companies may face real legal limits when collecting or sharing sensitive data in third countries.

6. Treat Third-Party Verification and Industry Initiatives as Optional Tools, Not Compliance Mandates

Companies may use audits, certification schemes, third-party verification, and industry initiatives as due diligence tools, but the Directive does not require third-party verification as a general compliance condition. The Commission's guidance should confirm that participation in verification schemes or multi-stakeholder initiatives is voluntary and supplementary, that non-participation does not imply non-compliance, and that companies should not be expected to require business partners to obtain certifications. The Commission should assess initiatives on substance (vs form) and avoid fitness criteria so prescriptive that credible existing industry initiatives are disqualified, which would force costly duplication rather than improve outcomes. A voluntary approach (a) avoids creating a costly verifier market that incentivizes unnecessary work, (b) prevents burdens from being pushed down to suppliers, and (c) preserves company judgment about which tools are useful for a specific risk, sector, or geography.

7. Preserve Practical Stakeholder Engagement and Non-Adjudicative Complaints Mechanisms

CS3D requires stakeholder engagement and notification/complaints mechanisms. Adding on rigid procedures would create litigation-style processes that do not reflect practical risk management and introduce tremendously costly U.S.-style tort litigation norms into European regulatory and judicial systems. These costs would ultimately result in higher prices of goods and services for consumers, as observed in the United States. The Commission's guidance should distinguish stakeholder engagement from formal complaints mechanisms, confirm that complaints processes are preventive and non-adjudicative, and clarify that mere receipt of a complaint does not itself prove an adverse impact, fault, or liability or necessitate a change in behavior. This approach preserves access to meaningful channels for complainants while preventing complaints systems from becoming automatic enforcement triggers.

8. Encourage Continued Engagement as a Compliant Alternative to Disengagement

Companies may face pressure to suspend or terminate business relationships when adverse impacts are identified. Such disengagements can, however, have harmful effects on workers, communities, suppliers, and local economies, which run counter to the underlying purpose of CS3D. The Commission's guidance should confirm that disengagement is a last resort and that continued engagement, along with corrective action plans, capacity building, collaborative leverage, and staged escalation can be compliant where they are more likely to improve outcomes. Where supplier selection is constrained by legal, regulatory, or contractual requirements, due diligence expectations should remain proportionate to a company's actual leverage and ability to influence outcomes. This approach would prevent the Directive from encouraging abrupt exits from difficult markets, which can transfer risk to less responsible actors and undermine the objectives of the law.

9. Enforcement Should Reflect Good-Faith Processes

As CS3D is transposed at the national level, Member States will designate national supervisory authorities. Supervisory authorities should coordinate through the European Network of Supervisory Authorities, to promote consistent enforcement and avoid the legal uncertainty that would result from fragmented Member State court decisions.

The Commission's guidance and national rules should make enforcement actions process-based, with a guidance-first approach that reserves pecuniary sanctions for serious, repeated, or intentional non-compliance, or the failure to take appropriate due diligence measures. The maximum fine of three percent of net worldwide turnover should be used only for the most serious violations, rather than becoming a default target. Any penalties should be calibrated to account for broader socioeconomic effects, including impacts on energy security, employment, and economic conditions. The Commission should ensure the implementation deadline does not come before the Commission has provided full compliance guidance and implemented functional systems. Further, the Commission should provide a safe harbor period to allow companies time to adjust before penalties and civil liability are enforced.

The Commission should recognize mitigating factors such as good-faith prioritization, cooperation, corrective measures, legal impossibility, and limited leverage. Companies should not face penalties when an adverse impact occurs despite the existence of reasonable systems.

CS3D is intended to support risk-based due diligence rather than guarantee outcomes across global supply chains. Draconian penalties will significantly discourage foreign investment in the European Union, cause foreign interests to situate operations in other regions that pose less risk to on-going operations, and even prompt disengagement or removal of business operations currently in Europe to other regions. Finally, where a company demonstrates compliance with a comprehensive and effectively enforced local regulatory framework — including applicable permits, health, safety, environmental, and labor rules — that should create a presumption that the company has satisfied its risk-assessment obligations.

10. Prevent Fragmentation and Duplication in Member State Implementation

As the Directive now moves to national transposition, fragmented Member State implementation could create divergent standards, inconsistent evidentiary expectations, and overlapping obligations with CSRD, forced labor, batteries, deforestation, and other sectoral regimes. The Commission and Member States should commit to harmonizing transposition, a single E.U. helpdesk connected to national support mechanisms, consolidated group-level processes where appropriate, and no duplicative CSRD reporting solely because a company is also subject to CS3D. Additionally, Member States should respect established conflict-of-law principles: the post-Omnibus deletion of former Article 29(7) confirms that national CS3D transposition laws do not automatically constitute overriding mandatory provisions and the ordinary rule that the applicable law is the law of the country in which the damage occurs should be preserved. Avoiding fragmented and duplicative member-state regulation would improve the EU single market, reduce administrative costs for non-European companies operating in multiple Member States, and make compliance more predictable.

Conclusion

The CS3D consultation presents an important opportunity to shape implementation in a way that achieves the Directive's objectives without imposing unworkable burdens on companies with complex global operations. The recommendations above advocate for guidance and transposition that prioritize principle- and risk-based due diligence, legal clarity, proportionality, and harmonization across Member States. Compliance should be assessed on the basis of reasonable processes and good-faith efforts, not on whether every adverse impact in a global chain of activities has been eliminated. Adopting these principles would reduce compliance costs, improve legal predictability for non-European businesses operating in the E.U., and focus regulatory resources on the most meaningful risks rather than exhaustive documentation exercises.

Thank you for the opportunity to provide our views in this consultation. I would be happy to respond to any questions on issues raised in our recommendations. I can be reached at tsmith@nftc.org.

Sincerely,

Tiffany Smith
Vice President Global Trade Policy