



ESIA Position Paper on the CS3D

Input to the Commission public consultation on the Proposal for a Directive on Corporate Sustainability Due Diligence

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Introduction

ESIA represents the European semiconductor sector which is operating and competing in Europe and globally. The European semiconductor industry has an excellent environmental and human rights record and has been active in addressing topics related to Corporate Sustainability and Due Diligence, such as the responsible sourcing of minerals and sustainable business conduct, for years. In light of this, ESIA welcomes the European Commission's proposal for a Directive on Corporate Sustainability Due Diligence (CS3D). ESIA appreciates that the Proposal envisages the establishment of a European Network of Supervisory Authorities to facilitate the cooperation among national Supervisory Authorities and to coordinate and align their regulatory, investigative, sanctioning, and supervisory practices. Nonetheless, ESIA believes that there are areas of the Proposal which can be improved.

Specific comments

ESIA appreciates that the Commission Proposal acknowledges that companies and Member States will require guidance on how to fulfil their due diligence obligations and acknowledges the relevance of industry schemes such as the Responsible Business Alliance which have shown to be effective in reaching the goals of identifying and preventing human rights violations in supply chains. ESIA believes that a mechanism should be built into the legal framework of the CS3D that recognises existing and future industry schemes, as is the case with the Conflict Minerals Regulation. Collaborative partnerships such as the highly successful European Partnership for Responsible Minerals (EPRM) should also be encouraged to help deliver on the goals of the proposed Directive. ESIA would recommend developing such collaborative partnerships with non-EU stakeholders, particularly in manufacturing countries which will be the most impacted by the CS3D. Ensuring that countries in which suppliers

operate are not only informed about the Directive and its impact, but also involved in the relevant discussion forums at early stage, will be instrumental to ensure a successful implementation of the CS3D.

ESIA is supportive of the introduction of a common set of binding legal requirements on mandatory human rights and environmental due diligence. However, binding legal requirements must also serve to combat growing internal market fragmentation in the area of corporate sustainability and due diligence. With the recent adoption of due diligence legislation by Member States, this fragmentation becomes increasingly unworkable. Therefore, the CS3D must ensure that there is a level playing field. Unfortunately, the current Proposal does not achieve this aim.

With further regard to alignment, ESIA points to the need for coherence between the various existing and forthcoming legislative frameworks broadly related to sustainability or due diligence that are limited to certain sectors. Clarity and guidance should be provided regarding the relationship between the proposed CS3D and the Corporate Sustainability Reporting Directive (CSRD) for which sustainability reporting standards are being elaborated by the European Financial Advisory Group (EFRAG), as well as existing sectoral laws which already contain due diligence requirements (e.g., the Batteries Regulation, Deforestation or Conflict Minerals Regulations) to ensure full policy coherence.

ESIA welcomes that the proposed CS3D is based on existing international standards such as the UN Guiding Principles on Business and Human Rights (UNGPs) the OECD Guidelines for MNEs and the ILO Declaration on Fundamental Principles and Rights at Work. Since the adoption of these international standards, numerous businesses including the global semiconductor industry have voluntarily aligned with these frameworks and established due diligence policies specific to their sector providing assurance to customers and stakeholders. Thus, coherence of the European proposal with globally established frameworks will allow companies to implement efficient and harmonised due diligence mechanisms in their value chains. ESIA would like to highlight the need for a 'risk-based', proportionate and context-specific approach that is aligned with the aforementioned international standards and to draw attention to some of the definitions within the proposed directive:

Value chains

The value chain is an extremely vague concept which results in decreased legal certainty for companies. The OECD Guidelines for Multinational Enterprises refer to 'supply chain' as do the German Supply Chain Act and the proposed French AGECLaw. Referring to value chains instead of supply chains leads to even further internal market fragmentation of companies' due diligence obligations. Moreover, 'value chain' could be interpreted as including the end use of products which is extremely difficult

to control and detracts from the identification and mitigation of salient risks in supply chains.

Established business relationships

This concept needs to be better defined but the definition must be consistent with the cause-contribute framework outlined in the UNGPs and not extend the scope beyond that framework. ESIA deems that only direct contractual business relationships within the supply chain at a level at which companies are directly connected should be covered by the CS3D. In other words, the Directive should focus on those contractual relationships that cause or contribute to an impact and an associated level of responsibility and leverage for correction and remedy.

Environmental due diligence

While there is a certain level of understanding with regard to human rights due diligence, the scope of environmental due diligence remains vague. Additionally, there needs to be due consideration for potential risks of duplication or contradiction with existing and forthcoming environmental and climate-related EU legislation and international standards, including clarification to which environmental standards companies should adhere. A clear definition of environmental due diligence is required to determine its scope before obligations are introduced.

Human rights and environmental adverse impacts

The Proposal defines adverse impacts on human rights and the environment by reference to an Annex that lists a number of international treaties, including CITES, the Minamata Convention, the POPs Convention, and also the Basel Convention. With respect to adverse environmental impacts, in particular the proposed Directive provides little clarity on how a company would identify or address an adverse impact associated with an international treaty given that these treaties were drafted to apply to States and not to private corporations.

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ABOUT ESIA

The European Semiconductor Industry Association (ESIA) is the voice of the semiconductor industry in Europe. Its mission is to represent and promote the common interests of the Europe-based semiconductor industry towards the European institutions and stakeholders in order to ensure a sustainable business environment and foster its global competitiveness. As a provider of key enabling technologies, the industry creates innovative solutions for industrial development, contributing to economic growth and responding to major societal challenges. Being ranked as the most R&D-intensive sector by the European Commission, the European semiconductor ecosystem supports approx. 200.000 jobs directly and up to 1.000.000 induced jobs in systems, applications and services in Europe. Overall, micro- and nano-electronics enable the generation of at least 10% of GDP in Europe and the world.