STATEMENT REGARDING THE PROPOSAL FOR A DIRECTIVE ON

CORPORATE SUSTAINABILITY DUE DILIGENCE

(COM(2022) 71 final / 2022/0051 (COD))

Eumedion welcomes the European Commission's proposal for a directive on Corporate Sustainability Due Diligence (hereinafter: 'directive'). The proposal aims to establish substantive duties for European companies in the area of human rights and environmental due diligence, as well as to clarify the directors' duty of care. Eumedion - representing the interests of institutional investors with a long-term investment horizon and with a more than € 7 trillion global investment portfolio – considers the proposal an important contribution to fostering responsible business conduct throughout the whole value chain and to integrating various international due diligence standards into European law. The proposal also aims to supplement the requirements laid down in other pieces of European legislation, such as the SFDR, the Taxonomy Regulation, and the CSRD proposal. This way, the proposal not only contributes to more sustainable business practices and long-term value creation, but it should also foster more detailed sustainability information available to investors. Eumedion supports the clarification of the directors' duty of care as it will encourage directors to carefully take into account sustainability matters in their strategy and policy decisions. As the proposal will be brought forward to the European Council and European Parliament, Eumedion would like to highlight a few key issues for the upcoming discussions between the European institutions.

Adverse climate impacts should be covered by due diligence obligations from the outset

The due diligence obligations for companies, as proposed by the European Commission, are centered around adverse impacts in the areas of human rights and the environment. Adverse impacts related to climate change – and by consequence also the explicit obligations for a company to prevent, mitigate and/or terminate adverse impacts, as well as company liability in this area – have been excluded from the scope of the due diligence obligations. Instead, such adverse impacts are only covered indirectly by the obligation for a large company to adopt a climate action plan, in which companies in particular need to identify the extent to which climate change can be considered a (principal) impact of the company's operations. As follows from recital 70 and article 29(d), the European Commission would only be required to evaluate after seven years whether adverse climate impacts need to be covered as well. Eumedion is of the opinion that this aspect of the proposal does not reflect the immediate urgency posed by the

adverse impacts of climate change, nor the societal expectations and judicial developments in EU Member States around responsibilities of companies (as well as of investors, for that matter) in this area. Notwithstanding the fact that, following recital 15, the inclusion of adverse impacts of climate change would not require companies to guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped, the European institutions should establish a compulsory duty for companies covered by the directive to address the adverse impacts of climate change alongside the more-narrowly focused climate action plan. Such a duty would also be aligned with the indicators of principal adverse impacts of investment decisions on sustainability factors for – in brief – institutional investors in the Commission Delegated Regulation of 6 April 2022 supplementing the Sustainable Finance Disclosure Regulation (SFDR) 2019/2088 and with the "do no significant harm" definition of Art. 2(17)/18(2) of the Taxonomy Regulation.

Verification of climate action plans needs to be clarified or introduced

The proposal does not make sufficiently clear if climate action plans should contain *science-based* emissions reduction objectives and will be subjected to (third-party) verification procedures and by whom, which are paramount not only to the reliability and comparability of this information, but also to the success of the transition to a sustainable and climate-neutral economy. Eumedion calls on the European institutions to explicitly clarify (and, if needed, introduce) these requirements in the proposal, alongside a clarification of the powers of supervisory authorities in this area.

Further issues to be clarified

a) Scope of the directive (Article 2)

As the directive is intended to supplement the upcoming Corporate Sustainability Reporting Directive (CSRD) and the already existing SFDR and Taxonomy Regulation by imposing substantive duties to feed the disclosures required by this European package of sustainable finance legislation, the scope of the directive should be fully aligned with the scope of CSRD, SFDR and the Taxonomy Regulation in order to make the entire European sustainable finance package effective. However, we note some material gaps between the scopes of the various pieces of legislation and we recommend therefore to bridge these scoping gaps during the negotiations of the European institutions.

b) Climate and variable remuneration (Article 15)

The proposed article 15(3) seems to suggest that performance measures related to the climate action plan should be included in variable remuneration schemes. While Eumedion understands the intention of such a requirement, we do not believe that climate change is a material topic for alle listed companies. We opine that only companies for which climate change is a material topic should include emission reduction objectives in their variable remuneration schemes. For other companies it would be more

suitable to include other ESG-related objectives. Therefore we suggest to refer in article 15(3) only to paragraph 2 of that article.

c) Duties of regulated financial undertakings (Article 3 (g), Article 7 (6) and Article 8 (7))

We believe that the phrase “the activities of clients” of regulated financial undertakings providing investment services (as part of “financial services”) in the definition of ‘value chain’ (article 3 (g)) is unclear. Our interpretation of recital 19 is that the activities of the companies or other legal entities that are included in the value chain of a client of such a regulated financial undertaking are not covered by the directive. We recommend to clarify that in recital 19 and to reflect that in Article 3 (g).

Article 7 (6) and Article 8 (7) imply that regulated financial undertakings should not be required to terminate a contract when this can be reasonably expected to cause substantial prejudice to the entity to whom the financial service is being provided. We advise to clarify in Article 22 (or in the recitals) that in such case the regulated financial undertaking is not liable for any damages.

d) Complaints procedure (Article 9)

Article 9 establishes the obligation that companies provide for the possibility to submit complaints to the company in case of legitimate concerns regarding potential or actual adverse impacts, including the company’s value chain. The OECD Guidelines for Multinational Enterprises contains the possibility to establish a so-called operational-level grievance mechanism if it meets the core criteria of legitimacy, accessibility, predictability, equitability, compatibility with these OECD Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions (commentary section 46). As the directive is intended to be aligned with the OECD Guidelines, we recommend to clarify at least in the recitals that companies can also opt for establishing a grievance mechanism if that mechanism meets the afore-mentioned core criteria.

e) Definition of stakeholders (Article 3 (n))

We recommend to explicitly recognise the company’s shareholders as ‘stakeholders’ (amendment of Article 3 (n)).

For more information:

Rients Abma, executive director, tel. +31 70 2040 303; e-mail: rients.abma@eumedion.nl.

Eumedion’s registration number with the European Commission and Parliament is: 65641341034-11.