6th of September 2023

To: Raúl Fuentes Milani, Spanish Presidency Ambassador

Lara Wolters, Rapporteur for the JURI Committee

Didier Reynders, Commissioner for Justice

Cc: Shadow Rapporteurs

Company Law attachés

DG JUST

The EU's Corporate Sustainability Due Diligence Directive (CSDDD)

IOGP Europe and FuelsEurope recommendations in view of the trialogue negotiations

IOGP Europe (International Oil and Gas Producers Association) and FuelsEurope, representing respectively the oil & gas upstream and fuel manufacturing industry in the policy debate with the EU institutions and other stakeholders, are convinced that corporate social responsibility contributes to a sustainable, long-term economic and social development. We are committed to respecting human rights and our business practices reflect elements of instruments such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Businesses.

However, the risk to hamper security of supply by leaving room for legal uncertainty is tangible. If member companies are not given usable tools and a workable framework to properly facilitate the sustainable transition, the risk to disrupt supply chains is high. Therefore, we call for applicable provisions and a usable structure.

We would therefore like to present some proposals to be considered ahead of the trilogue negotiations aimed at making the CSDDD framework proportionate and usable:

1. We call for full alignment of the provisions on transition plans with the Corporate Sustainability Reporting Directive (CSRD). It is essential that coherence with other legislative frameworks is maintained and that disclosure requirements are clear and consistent. Therefore, any reference to transition plans within the CSDDD, or any other legislation, should mirror exactly the CSRD reporting language to avoid duplication and inconsistency.

Proposal:

- **Support** a version of Art. 15 that is in line with the CSRD reporting requirements, without further requirements to adopt a plan.

2. We call for balanced legal liability provisions, including sanctions which follow legal traditions around breach-damage-causality, and truly incorporate the widely accepted principle that due diligence is first and foremost an obligation of means. The complexity of value chains cannot be underestimated when analysing impacts which can have multiple competing causes, players, and dynamics. Therefore, companies cannot be held liable for damages they have not – intentionally or negligently – caused.

Proposal:

- While we continue to believe that the civil liability provisions should defer to existing tort law instead of creating new duties, **the Council's position on Art. 22 (that civil liability is limited to failures to comply with the obligations laid down in Articles 7 and 8) represents the most rational approach currently under consideration**. However, some concerns remain. In particular, we would like to emphasize that the mandatory application of EU law in Art. 22(5) ignores foreign laws that may be applicable if the damage occurred in another (i.e., non-EU) country.

3. We call for a narrow definition and application of 'value chain'.

Proposal:

- We call for a definition of 'value chain' including only direct contractual suppliers (upstream), and not downstream. In our view, given the complex business model of the Oil&Gas industry, the logical and workable solution is to include first-tier suppliers only. Otherwise, the inclusion of the thousands of second-tier suppliers would make the value-chain coverage unworkable, consequently undermining the whole framework.

Moreover, we insist that the concept of **"established business relationships**" as designed by the Commission proposal - particularly when applied to indirect business partners - is unclear. As a matter of fact, a legally mandated course of downstream due diligence requiring companies to conduct due diligence on the entirety of their downstream value chain - beyond where otherwise required by law or individual company commitments - would be overly complex and expensive, if not impossible. Such requirements would create problems across industries, but they would be especially acute in the oil-and-gas and fuel manufacturing sectors in light of the numerous uses of petroleum products, as well as renewable fuels and products, due to the difficulty in tracking their use by customers, and the fungible nature of these products which could mean they have been traded/sold dozens of times prior to reaching the end consumer.

Proposal:

- We ask for a better definition of the concept of 'established business relationship' in a way that it could limit the material scope of the obligations imposed by the Directive to a level commensurate with the level of control that a company may have on its supply chain.

4. Regulating directors' duties as suggested by the Commission does not belong in a due diligence framework. It will have negative side-effects, including the disruption of existing, well-established governance models of member states and non-EU countries, without added value to the ability of companies to apply effective due diligence.

Proposal:

- We ask for the 'director of duties' element not be considered within the scope of the CSDDD, and to be left as a national regulatory issue.

5. A Union-wide reporting regime should not be hampered by national gold-plating. While it is the declared political objective of the CSDDD to establish a level playing field for EU and third country companies, the Directive (as proposed by the Commission and the Council) fails to limit the ability of Member States to gold-plate EU requirements, thereby creating the possibility of regulatory differences and increasing complexity and administrative burden without any discernible policy benefit.

Proposal:

- While Art. 3a of the EP version constitutes an important step in the right direction, an **express prohibition of gold-plating is sensible.**

6. Introducing the concept of a corporate group in Art. 2 of the CSDDD (as suggested by the EP) is inconsistent with the legislative approach chosen for the CSDDD. Including the "ultimate parent company of a group" as proposed by Art. 2 para. 1 and 2 (b) by the EP only because the "group" meets certain employee and sales thresholds introduces a new and untested concept for defining the scope of a Directive, which is likely to lead to legal uncertainty (e.g., in case a group is controlled by an individual).
Furthermore, **the presence of a subsidiary engaging in business in the EU should not systematically be a reason for the parent company to be held responsible for its actions.** Finally, while the number of workers employed and sales achieved appear to be a sufficient basis for including a company into the scope of a Directive, the mere fact that a company is the ultimate parent company of a group meeting these criteria, should not constitute such basis.

Proposal

- Identification and definition of responsibilities that parent companies may have on their subsidiaries' actions should be assessed on a case-by-case basis. Furthermore, the concept of corporate group as suggested by the European Parliament should not be taken forward as it would ingenerate **considerable legal uncertainty.** The concept of 'ultimate parent company of a group' cannot be used as the legal basis for defining the scope of the CSDDD. Conceived this way, it would ingenerate significant confusion and legal uncertainty. We therefore ask for this concept to be nuanced and assessed on a case-to-case basis.

We trust that our considerations will be taken into account, and remain available for further discussions.

Yours sincerely,

François-Régis Mouton de Lostalot-Lassalle, Regional Director of IOGP Europe

Alessandro Bartelloni, FuelsEurope Director