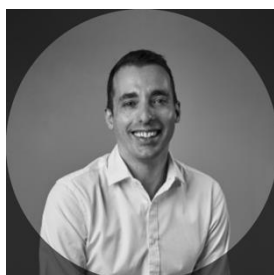




7 April 2022



[g.zohios@aklawfirm.gr](mailto:g.zohios@aklawfirm.gr)

## **LEGAL BRIEFING – Corporate**

*by George Zohios– Partner & Symeon Konstantinou-Associate*

### **EU Publishes Draft Corporate Sustainability Due Diligence Directive**

On 23 February 2022, the European Commission released its highly anticipated Draft Directive on Corporate Sustainability Due Diligence. This initiative confirms the Commission's strategic policy agenda to become the leading character of stakeholder capitalism, using its regulatory means to tame the market forces. It is not exaggeration to say, that the Draft Directive will contribute to the field of sustainable and responsible business conduct, with emphasis to human rights and environmental standards throughout the entire global value chain.

#### **A. The Scope of the Draft Directive and the proposed measures**

The Directive will apply to companies **a)** based in the EU; **i.** with more than 500 employees and a net worldwide turnover of more than EUR 150 million in the last financial year, **ii.** with more than 250 employees and a net worldwide turnover of more than EUR 40 million in the last financial year, as long as at least 50% of this turnover was generated in one or more sectors named in article 2 (b) of the Directive; **b)** based outside the EU; **i.** with a net turnover generated in the EU of more than EUR 150 million in the last financial year, **ii.** with a net turnover generated in the EU of more than EUR 40 million in the last financial year, provided that at least 50% of this turnover was generated in one or more sectors named in article 2 (b) of the Directive. It must be pointed out that the scope is not limited only to the company's activities per se, but also engulfs the activities of subsidiary companies and those of its value chain.

As far as the measures are concerned, the process covers a number of human rights and environmental due diligence activities to be considered by the companies. Companies are obliged to establish an annually updated due diligence policy with reference to the company's code of conduct and a process of implementation. Covered companies must also, after identifying any potential adverse impacts on human rights and environment, take appropriate measures to prevent if possible, or else, to mitigate these impacts. Otherwise, if already spotted, the impacts must be put to an end. Moreover, companies are compelled to establish a complains procedure. The Member States must secure the public communication regarding the due diligence, as well as the implementation of all the aforementioned measures by ensuring that the companies carry out periodic assessments of their own operations and measures, those of their subsidiaries, and where related to the value chains of the company, those of their established business relationships.

## **B. Enforcement and the Director's Duty of Care**

Although the envisaged measures enhance the European corporate governance framework, the enforcement field is equally interesting. The Commission believe that national supervisory bodies will bear the responsibility and power of carrying out investigations, supervise and exchange information with the companies. In the case of non – compliance the supervisory authorities may impose a combination of penalties like fines and compliance orders, following the principle of proportionality. Apart from the administrative liability, the States must also adopt their legal orders and allow for civil liability of the breaching companies. Interestingly, the Director's Duty of Care is also enriched, as company directors must take into account the consequences of their decisions regarding the human rights and the environment. However, the provisions for liability do not replace any stricter civil liability rule already set under EU or National Law.

While the Draft Directive is, indeed, an addition to the Corporate Governance legislation, it must be noted that it lacks legal certainty in some cases; for example, the actions that companies need to undertake in order to prevent adverse impacts is an ambiguous regulation, in a core section of the Directive.

As for the next step, we have to wait for the outcome of the upcoming negotiations with the European Parliament and the European Council, likely before the end of 2022, according to the Commission's timetable. After the entry into force of the Directive, the Member States will have two years to transpose the rules into national law. Despite any obstacles that may occur, the Corporate Governance field will undoubtedly change, leaving space only for enhancement between the businesses and society.

