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Input of the SER on the Commission's Proposal for a Directive on corporate sustainability due diligence

The Social and Economic Council of the Netherlands (SER) has followed the development of the Commission's proposal with great interest. In October 2021 the SER published its advisory report '*Effective European Due Diligence legislation for Sustainable Supply Chains*'. This advisory report underlies our input for the proposed legislation by the European Commission.

The SER believes the European legislation must follow the leading international frameworks for international responsible business conduct, the *UN Guiding Principles on Business and Human Rights (UNGPs)* and the *OECD Guidelines for Multinational Enterprises* as closely as possible, including the proportionality concept therein and the provisions regarding engagement with affected stakeholders.

With negative impact in supply chains continuing to occur and too few companies undertaking meaningful due diligence, it is clear that ambitious European due diligence legislation is paramount. However, due to the complexity of international supply chains and the many actors involved, solely mandating the due diligence process steps will not be sufficient to improve circumstances in supply chains. Legislation also needs to incentivize European sector agreements to foster collective action on prioritized risks and collective grievance mechanisms. This also allows for the inclusion of SMEs in high-risk sectors in a proportional manner. They too can play an important role in avoiding negative impact and creating positive impact in their supply chains.

European sector agreements will enable companies to work on improving circumstances in supply chains together with local stakeholders, and help clarify expectations of companies through practical application of the UNGPs and OECD Guidelines. This approach builds on the lessons and evaluations of the international responsible business conduct sector agreements that have been established in the Netherlands since 2016. It takes the strong features of these agreements and further improves upon them by developing a new generation of sector agreements at European level. These sectoral agreements should cover the entire supply chain, and support for producing countries is needed to make them effective. The SER proposes that business, unions and NGOs enter into sectoral agreements at EU level so as to implement the due diligence steps, organize independent monitoring of progress and collective grievance mechanisms and develop best available techniques.

In order to achieve this, the references to multistakeholder collaboration in the EC proposal need to be strengthened. The European Commission should be given power to recognize European sectoral agreements and other international responsible conduct agreements (such as the International Accord), and to support their conclusion and implementation. Once recognized, companies that have joined these agreements should be subject to lighter supervision, as long as the sector agreements perform well. Companies will thus not fall outside the scope of supervision — no safe harbors. Stronger supervision at the EU level ensures the same rights and obligations for businesses in all member countries. Companies that do not participate in a sector agreement should be subject to a more stringent supervision regime, that includes the adoption of best available techniques agreed upon within sector agreements and recognised by the EU. These provisions should be reflected in articles 7, 14, 17, 20 and 22 and in the relevant considerations.

In order to enable access to remedy, European due diligence legislation should include an obligation to join a recognized independent complaints mechanism in line with UNGP 31 that can issue binding rulings. Such an obligation ensures that companies are open to the concerns of their stakeholders, and it also provides information for the due diligence process. These complaints mechanisms should preferably be set up as part of the European sector agreements. In sectors with OECD-aligned existing initiatives, it should also be possible to establish the complaints mechanisms at the European or international level independently of a sector agreement. These provisions should be reflected in article 9 and the relevant considerations.

Lastly, legal incorporation of enterprises *responsibility to respect* human rights requires at least commensurate efforts by government to fulfil their *duty to protect* human rights and lead by example. This implies raising human rights issues at all levels, ensuring policy coherence (including in public procurement) and partnerships with production countries.