

QJ(22)1960:3 – JE/na

## **Copa and Cogeca feedback to Commission consultation on the proposed Corporate Sustainability Due Diligence directive (2022/0051(COD))**

In response to the current legislative proposal on Corporate Sustainability Due Diligence we would like to reiterate our general position that due diligence needs to be **reasonable, inherent-risk based and proportionate**.

Our position is set out in more detail regarding specific aspects of the legislation:

### **1. Scope of the directive**

**The scope of the directive raises specific concerns for the agri-food, fishery, and forestry sectors due to their classification as high-risk**, and the reduced turnover and employee-on-average threshold means more companies in these sectors will be affected. Since only **“more than 50% of net turnover”** needs to be generated in a high-risk sector, this will also bring more high-risk companies within the scope of the proposed directive. Additionally, the inclusion of temporary agency and part-time workers in the employee threshold is significant for the agricultural sector, which depends largely on seasonal workers. Copa and Cogeca regret that the proposal in its current form, and actions required of such companies to comply, will entail significant administrative burden and cost to companies falling within its scope.

**With regards to the inclusion of agriculture, forestry, and food sectors among the “high-risk sectors” category, Copa and Cogeca underline that this is to be objected to and avoided as it does not respond to any scientific evidence.** Over the years, the EU agriculture, forestry, and food sectors have made great efforts and put in place investments to meet the needs of the present without compromising the ability of future generations to meet their own needs. The reality is that EU agriculture has increased its overall productivity by 25% since 1990 and in this same period greenhouse gas emissions from EU agriculture have been reduced by 20.5%. Agriculture has therefore decoupled environmental impact from production growth through gains in efficiency. Under these considerations, **Copa and Cogeca consider any attempt to include agri-food and forestry companies in the “high-risk” category is inappropriate and incongruent with the level of trust and accountability that the EU agri-food and forestry sectors have achieved in the last decades.**

### **2. The cooperative difference**

**With specific regard to enterprises with cooperative statutes, Copa and Cogeca note that the cooperative business model differs from that of limited companies and listed companies.** This applies to the roles of the governance bodies and management, their role in the social economy, as well as to the different relationship the farmer-members have toward their cooperatives compared to that of the shareholder to a limited company.

In the agri-cooperative sector, many of the performance indicators are measured more on serving stakeholders, including local producers, customers, rural communities, and employees, and less on corporate profit and revenues. Long-termism therefore tends to prevail over sole short-term economic objectives. **Therefore, Copa and Cogeca call for due consideration of the impact (even indirect) of this legislation on cooperative enterprises.**

### **3. Definition of key terms**

**We are concerned that key terms are not sufficiently well-defined and call for clear definitions.** For example, the current definition for “value chain”, set out in recital 18, is very far-reaching and raises questions regarding practical implementation. Here, it is not clear how companies can ensure that human rights, environmental and climate-related due diligence requirements are met downstream if they have little to no legal or factual ability to influence the downstream sector.

Furthermore, Copa and Cogeca also call for a further clarification of the meaning of “established business relationship”, for example, specifying a minimum purchasing volume percentage, evidence of consistent business activities over the past three years and existence of framework contracts.

#### **4. Sanctions and civil liability**

Since due diligence obligations in the field of sustainability are a recent development at this stage and based on the information made available, the introduction of these obligations should be geared towards gaining experience and guidelines should be issued instead of sanctions. Therefore, **Copa and Cogeca regret the inclusion of sanctions (Article 20) and civil liability (Article 22), and call for these aspects of the proposal to be revised with guidelines.**

A duty of effort measured against an adequate due diligence management system, with sanctions based on clear criteria that are fair, measurable and comprehensible could be an option.

#### **5. SMEs**

**As regards SMEs, actions related to due diligence are difficult to implement and so Copa and Cogeca welcome their exclusion from the scope of the proposal. We highlight in particular that:**

- Since the proposal applies to subsidiaries and value chains of companies, SMEs will be indirectly affected. While we **welcome the inclusion of support measures, which should in any case come from the EU or from Member States, instead of from large enterprises.**
- Furthermore, **it must be noted that the proposal in its current form will nonetheless significantly affect SMEs** due to the requirement for large companies to identify “actual or potential adverse impacts” not only in their operations, but also their subsidiaries, and in “direct or indirect business relationships in their value chain”. The risk for SME farmers and cooperatives is that they will have to prove, through certification for example, that no actual or potential adverse impacts occur during their economic activities. Therefore, the proposal in its current form will entail a massive burden on SMEs due to administrative and practical requirements for compliance.
- There are also risks to SMEs due to the cost and information advantages of very large companies, which could lead to a strengthening of their market power compared to that of SMEs.
- Finally, on SMEs, Copa and Cogeca are concerned that under the current text, they will have to comply with different rules for large companies operating in different sectors, and so **call for the inclusion of uniform sector standards.**

**Overall, taking these factors into account, Copa and Cogeca regret that this proposal will, in reality, have a large negative impact on SMEs and so call for additional support measures that respond to our concerns.**

## 6. Treatment of third country companies

**Copa-Cogeca supports trade within the EU and with third countries. Trade must be based on balanced, fair and transparent rules to avoid distortion of competition.** In principle, imports to the EU must be in line with the Union requirements for its own farmers. **Therefore, Copa and Cogeca welcome the equal treatment of third country companies (Article 2, paragraph 2, point (a)).**

The importance of legal certainty and the rule of law must also be highlighted. **However, Copa and Cogeca have concerns that the text in its current form will, in fact, lead to legal fragmentation in the legislative process** due to its increased references to future delegated acts, guidelines and standards. Furthermore, Copa and Cogeca fear that this text will lead to the outsourcing of legal interpretation and control to private certification bodies, without corresponding legal remedies.

**Finally, Copa and Cogeca note that environmental and human rights issues are global issues.** With this in mind, compared to environmental and human rights standards at a global level, circumstances are vastly different within Europe, where all companies and entities producing within the Union must already adhere to strict rules regarding labour law and environmental standards. **Therefore, Copa and Cogeca consider there to be no factual basis for such strict measures and administrative burdens within the EU,** and especially not for small producers such as farmers to carry the burden which large companies will contractually transfer to them (as is also foreseen within the proposal itself). In light of this, **we call for the setting up of white lists,** exempting supply relations within the EU, and ensuring that due diligence requirements be limited to third country relationships where there are known to be insufficient human rights and environmental standards.