

Ahead of the Roundtable on European sustainability legislation on 4 March, please see our response to the public consultation by the Dutch Government in December 2024, relating to the proposed bill on International Corporate Social Responsibility Act (“Wet IMVO”). These comments set out our main concerns on the Corporate Sustainability Due Diligence Directive (CS3D). Note that ExxonMobil’s consultation response predated the 2025 Omnibus and subsequent amendments.

Consultation Dutch Law on Corporate Social Responsibility (“Wet IMVO”) Response ExxonMobil¹

As a concerned EU corporate citizen, we provide comments on the draft bill on Corporate International Responsibility Act (Bill), while at the same time reiterating our broader views on the Corporate Sustainability Due Diligence Directive (CS3D), from its laudable aims to its likely repercussions on EU competitiveness and investment attractiveness.

Comments on the CS3D

Europe’s Competitiveness Challenge: Mario Draghi’s recent report on the future of European competitiveness states that the EU needs an additional annual investment of €800 billion to meet its competitiveness and climate targets.

However, the current regulatory and policy framework discourages businesses from investing in the EU. Doing business in Europe is more difficult when compared to other regions such as the U.S. and China. According to Draghi’s report, the EU has passed nearly four times as many pieces of regulation than the U.S. over the past five years.

If the EU wants to meet its climate goals, it must make doing business here easier. Otherwise, it risks losing the very industries that can provide the technologies to help achieve net zero. If these industries leave, jobs and economic security go with them, and the EU becomes even more dependent on imports.

The Draghi report labels the CS3D as a major source of regulatory burden. CS3D is a prime example of an uncompetitive policy and was proposed despite two negative impact assessments from the Commission’s own scrutiny board.

The spirit of the CS3D is laudable. It is important for companies to respect human rights, end forced and child labour and protect the environment. But the CS3D poses a number of concerns including:

- Extraterritorial effect and overreach: the CS3D impacts companies both inside and outside the EU and creates overlapping and potentially conflicting regulations with those in non-EU jurisdictions.
- Regulatory burden: it will impose heavy, costly and in some cases unfeasible, burdens on companies.
- Civil liability regime: it opens the door to a further threat of frivolous, excessive, and expensive litigation by various parties and, with its extraterritorial scope, creates liability hazards in non-EU jurisdictions and could result in litigation and potential liabilities for the same damages under different legal systems.
- Transition plans: the EU is trying to turn commitments by countries under the Paris Agreement into direct legal obligations for companies. The EU already has a comprehensive framework for

¹ Exxon Mobil Corporation has many affiliated companies, many of which include the names ExxonMobil, Exxon, Esso, and Mobil. For convenience and simplicity, those terms such as company, company, our, we and his/her are sometimes used on this website as abbreviated references to specific affiliated companies or related groups. Abbreviated references that describe global or regional operational organisations and global or regional industries are also sometimes used for convenience and simplicity. ExxonMobil also has business relationships with thousands of customers, suppliers, governments, etc. For convenience and simplicity, words such as enterprise, joint venture, partnership, co-venturer, and partner are used to indicate business relationships involving joint activities and interests, and those words do not necessarily indicate exact legal relationships.

achieving its net zero ambitions, including the Fit for 55 package (with, e.g., a well-established emission trading system and policies addressing the transport sector). Companies should have the flexibility to decide how to best comply with those EU policies in their business, taking into account consumers' needs.

We understand that the European Commission will propose an omnibus package (which will include amendments to some parts of the CS3D) in late February 2025. Progressing the process of transposing a directive into national law while at the same time discussing amending the directive itself will create uncertainty and inefficiencies for both businesses and the institutions involved. We believe that the Dutch government – as well as the other Member States – **should work with the European Commission to adjust the deadline** for transposition into national legislation to ensure that the omnibus changes can be properly taken into account for national implementation. We also point out the risk of distortion of the level playing field if the Netherlands implements the CS3D quickly in national legislation, while other member states may wait for the discussion on omnibus legislation before proceeding with implementation.

Detailed comments on the proposed Bill, notwithstanding the above mentioned points

We applaud the efforts of the Dutch government to introduce legislation that aligns to the CS3D without additional burdens to business being included in the Bill. That said, we believe that Article 3 would benefit from a more closely aligned interpretation of the Article 22 (Combating climate change) provisions and related preamble paragraphs, including the following:

- **Article 3.1.1:** the use and definition of “best efforts” should be interpreted in the same way as CS3D Art. 22 (Combating climate change) which indicates that the “best efforts” obligation applies to both “adopt” and “put into effect” (or “implement”) a transition plan for climate change. Thus, best efforts should also apply to the adoption of and setting of targets under Article 3.1.1 regarding description of the climate transition plan, in addition to the implementation and execution of the climate transition plan (which is already covered in Article 3.3).
- **Article 3.1.1:** on the basis of CS3D Preamble paragraph 73, a company may, in its climate transition plan, deviate from the absolute climate targets when justified. (For example, paragraph 73 of the Preamble states that: “Being an obligation of means, due account should be given to the progress companies make, and the complexity and evolving nature of climate transitioning. While companies should strive to achieve the greenhouse gas emission reduction targets contained in their plans, specific circumstances may lead to companies not being able to reach these targets, where this is no longer reasonable.”) Such a position would also be aligned with language in the recent Court of Appeal’s ruling in the *Shell v Milieudefensie* case.
- **Article 3.1.2(a):** the use of the term “if applicable” appears to be a stricter interpretation of the language in Article 22.1(a) of the CS3D which states “where appropriate”; thus, we recommend aligning more closely with and utilizing the CS3D term instead.
- **Article 3.3:** To align with the European Commission’s FAQ 3.2, we recommend that the legislator explicitly take the position that where a company complies with public law rules (such as sectoral specific climate legislation pursuing the same objectives but providing for more extensive or more specific obligations (e.g., ETS, IED, etc.)) the Company complies with its best-efforts obligations in relation to the implementation of the climate transition plan.