

Debriefing session on CS3D – by Greta Koch, Parliamentary assistant of the shadow rapporteur Axel Voss (EPP)

Updates on the CS3D trialogue discussions:

- No written text can be shared at this stage, since there were no official conclusions yet,
- Not much happened/ no article has been closed – still work in progress despite the 3 political trialogues and 20 technical trialogues
- **The initial goal to finalize the trialogue under the Spanish presidency is unlikely to be reached furthermore, that the Spanish presidency has deleted CS3D from their priority list. The negotiations should be closed under Belgian presidency (before February?), (otherwise with the new elections and newly composed Commission there might be no directive at all – Only the existing national legislations would apply).**
- The Council is revising its initial compromise text (Germany and France raising new concerns - France addressing concerns regarding the financial sector)). A new position should be released this week.
- The EPP party is closer to the Council position but this not the case for the rest of the parties.
- Not easy to reconcile all positions.
- EPP and the German government are not always aligned (especially with regards to financial services)

On specific articles; summarised points:

- **Article 3a - Single Market Clause** (element added at last minute):
 - Full harmonisation remains difficult. This article aims to harmonise in the transposition. This article is hardly doable, but the EPP pushes for harmonisation. The Council remains open for discussion.
 - Ongoing discussion on whether this article is compliant with the current treaties.
- **Article 4a- Group level due diligence:** Parent companies to do the due diligence exercise for their subsidiaries)
 - Question of scope: should the article covers only the parent companies that fall under the directive? Or any of them?
 - Should the stakeholder engagement be done at subsidiaries' level? Same question regarding the requirements on climate change.
 - Risk not to be aligned with CSRD.
- **Article 7 and 8: Transposition/ Bringing actual adverse impacts to an end/ termination of the business relationship:**
 - The EPP opinion often lies close to the Council, but still difficult to be integrated in the Parliament's text
 - Should we go for a close or an open list of measures? / risk to have a box ticking-exercise;
 - Question of engaging with partners on what they have to do – this point was deleted by the Council as it was judged too bureaucracy/ no legal certainty – Problem of financial investments to support SMEs in the value chain;

- With regard to **verification and audits**, the Council wants to enable industry initiatives, but the Parliament and the Commission want the audits to be done by independent. The question remains who bears the costs for SMEs audit and verification? The EPP is in favour at least of cost sharing (and not only in case of bankruptcy) – Important also under article 3 not to limit the number of entities (the more competition we get, the better it is);
- On **contract terminations**, there should be no obligation of termination if there exists no (provider) alternative (risk to lead to more harm than good). Here again: Council and Parliament views differ.
- **Article 8c remediation:** Extra article put by the Council
 - remediation should be based on how successful the measure is/ No obligation to restore the situation.
- **Article 8d stakeholder engagement and disclosure:**
 - the Council wants to bring in extra obligations and more legal certainty.
 - For the EPP: not clear if companies know all the stakeholders – important not to open the obligations too widely – No conclusion between the EP and the Council.
- **Article 15 climate change: The Parliament insists on the text.**
 - Minor changes were proposed
 - There is no agreement foreseen between the Parliament and Council. On para. 3 Remuneration, an agreement still needs to be found. The EPP voted against and the Council also wants it out.
 - Art 15 aligned with CSRD
- **Article 20 sanctions:** Yields several problems. E.g. that a 5% threshold is defined. Not approved by the Council
- **Art 22- Civil liability:** EPP not happy with the language of the EP text.
- **Article 25 Directors’ duty of care:** should have been deleted. The Council would never agree, and according to the EPP the article should have been deleted (problem of votes during the EP plenary session)

Q&A session with the audience:

- As the risk-based approach is taken in the directive, SMEs acting in the EU should be excluded from the due diligence process (EU supply chain should be considered as less risky).
- Reporting requirements and reporting burden (announcement of the Commission to reduce the reporting burdens on companies by 25%): Due diligence does not add to reporting, since the standard is defined in CSRD
- Definition of value chain: most tricky part of the negotiation – EPP is in favour of supply chain and EP refers to activity chain. – The definition of value chain for the financial sector is limited to tier one.
