

Congress of the United States
Washington, DC 20515

December 3rd, 2024

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, D.C. 20220

Dear Secretary Yellen:

We write to you following our June 13, 2023 letter to demand action from the Biden-Harris Administration to protect American companies from the European Union's ("EU") Corporate Sustainability Due Diligence Directive ("CSDDD" or "Directive").¹ Despite intense last-minute negotiations and concerns among European policymakers, the EU finalized the Directive on May 24, 2024, with consequential provisions that will have a major extraterritorial impact on U.S. companies and their supply chains.² Despite your testimony before the House Committee on Financial Services that the Directive would have "negative, unintended consequences", the Biden-Harris Administration has failed to act.³

The CSDDD will require U.S.-parented companies – both publicly held and privately owned – with a footprint in Europe to identify, assess, prevent, and mitigate adverse environmental, social, and governance ("ESG") impacts on their own operations, subsidiaries, and value chains.⁴ Moreover, the CSDDD will compel companies in scope of the Directive to adopt transition plans that align their business model, strategy, and, ultimately, supply chains, with the goals of the Paris Climate Accord.⁵ Put simply, the

¹ See: Letter from Congressman French Hill, et al, in re: Proposed Corporate Sustainability Due Diligence Directive. June 13, 2023. Available at: <https://files.constantcontact.com/27ea5431901/788314cf-3f39-4897-9608-f05a29a65588.pdf?rdr=true>

² See: Press Release of the Council of the EU. "Corporate sustainability due diligence: Council gives its final approval." May 24, 2024. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2024/05/24/corporate-sustainability-due-diligence-council-gives-its-final-approval/>

³ See: Bloomberg News. "Yellen Says U.S. Is Concerned About EU's ESG Supply Chain Rules." June 13, 2023. Available at: <https://www.bloomberg.com/news/2023-06-13/yellen-says-us-is-concerned-about-eu-s-esg-supply-chain-rules?sref=K5MJ5k21>

⁴ See: https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en

⁵ *Id.*

CSDDD will impose enormous ESG regulations well-beyond European borders and threaten the competitiveness of U.S. markets and the sovereignty of U.S. law.⁶

The threat posed by such a far-reaching and wide-ranging Directive is grave. The mandate to certify every point of a company's value chain would place a significant burden on smaller U.S. companies that work with larger U.S. companies, and those smaller companies risk losing those important partnerships if they cannot meet the EU's regulatory standards for ESG. U.S. companies that do not have a footprint in the EU should not be subject to EU policy priorities.

After it received vocal opposition about the harmful impact to small businesses, the Securities and Exchange Commission ("SEC") revised its own proposal on "The Enhancement and Standardization of Climate-Related Disclosures for Investors" to remove the requirement for U.S. public companies to disclose Scope 3 greenhouse gas emissions about the value chain.⁷ If the Biden-Harris Administration was forced to acknowledge that such a requirement was not appropriate for U.S. companies under U.S. regulation, then it should certainly oppose the direct application of similar requirements on U.S. businesses from the EU.

In fact, the Directive would impose extraterritorial regulations that go far beyond disclosure and use the European legal system to advance policy goals related to U.S.-based corporate activity, at the expense of American competitiveness. For example, on January 1, 2023, the German Act on Corporate Due Diligence Obligations in Supply Chains ("German Supply Chain Act")⁸ – a state-level law akin to the CSDDD – took effect. On April 3, 2024, the United Auto Workers of America ("UAW") filed a lawsuit against Mercedes-Benz,⁹ accusing the company of interfering in a union election at a Mercedes-Benz factories in Alabama, after the employees at two Alabama plants voted not to unionize.¹⁰ By leveraging the German Supply Chain Act, the UAW has sought to

⁶ See: Staff Report of the ESG Working Group, House Committee on Financial Services. "The Failure of ESG: An Examination of Environmental, Social, and Governance Factors in the American Boardroom and Needed Reforms." August 1, 2024, p. 26. "This directive would capture a higher number of U.S.-based companies, particularly those in 'high-impact sectors', including but not limited to, textiles, agriculture, fuels, and chemicals ... This places U.S. companies in a position where they must force their U.S.-based suppliers and customers to reduce greenhouse gas emissions, irrespective of the economic consequences." Available at:

https://financialservices.house.gov/uploadedfiles/hfsc_esg_working_group_staff_report.pdf

⁷ See, for example: Letter from U.S. Small Business Administration Office of Advocacy. Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors – File Number S7-10-22. June 17, 2022. Available at: <https://www.sec.gov/comments/s7-10-22/s71022-20131758-302192.pdf>

⁸ See: <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/supply-chain-act.html>

⁹ See: "UAW Files Charges in Germany Against Mercedes-Benz: Company's Anti-Union Campaign Against U.S. Autoworkers Violates New German Law on Global Supply Chain Practices." April 3, 2024. Available at: <https://uaw.org/uaw-files-charges-in-germany-against-mercedes-benz-companys-anti-union-campaign-against-u-s-autoworkers-violates-new-german-law-on-global-supply-chain-practices/>

¹⁰ See: CBS News. "Mercedes-Benz Workers in Alabama Vote Against Joining the UAW." May 17, 2024. Available at: <https://www.cbsnews.com/news/mercedes-benz-workers-union-vote-uaw/>

extend European law outside of the EU and flout Alabama's well-established and constitutionally-enshrined "right to work" laws, which provide workers a choice about unionization and are designed to protect the competitiveness of local economies.¹¹

Under U.S. law, the right to freedom of association in a union is protected and observed by companies where the unionization effort took place; Alabama's right to work law recognizes workers' rights *not* to join a union. However, as the UAW's organization effort was unsuccessful, the organization is now seeking a narrow interpretation of what constitutes a violation of the freedom of association through the German Supply Chain Act.¹² Under CSDDD, lawsuits such as the UAW's will only be the beginning. Other 'stakeholders' defined by the Directive, such as non-governmental organizations and political activists, are also expected to seek the European legal system to advance policy goals related to U.S.-based corporate activity, at the expense of American competitiveness.

Beyond empowering 'stakeholders' to bring lawsuits that directly challenge U.S.-parented companies in the European arena, the Directive will also open the door for EU Member States to bring enforcement actions in Europe for activities throughout a company's supply chain, including in the U.S. The expansive nature of due diligence requirements under CSDDD will have the real impact of allowing other countries to police the activities of U.S. companies, including to assess penalties against those companies.

The Biden-Harris Administration has failed to mitigate the devastating impact that CSDDD will have on the ability of U.S. companies to source from or sell to other U.S. companies, particularly small businesses. We reiterate our view that the extraterritorial application of EU requirements is a violation of international norms and an infringement on U.S. sovereignty. The Biden-Harris Administration and, by extension, the Treasury, has a duty to protect and advocate for U.S. interests, both domestically and abroad. It is imperative for the global competitiveness of this country that U.S. regulators continue to regulate U.S. companies.

Please provide a written response detailing the following:

1. Any actions taken by the Administration to engage in dialogue with EU policymakers before and since the finalization of CSDDD.

¹¹ See: Statement from Governor Kay Ivey, et. al. "Governor Ivey & Other Southern Governors Issue Joint Statement in Opposition to United Auto Workers (UAW)'s Unionization Campaign." April 16, 2024. *Available at:* <https://governor.alabama.gov/newsroom/2024/04/governor-ivey-other-southern-governors-issue-joint-statement-in-opposition-to-united-auto-workers-uaws-unionization-campaign/>

¹² *N.b.* The German Supply Chain Act will be replaced by the EU's CSDDD once the Germans have transposed the Directive into local law. The German coalition government reached a political agreement to amend the German Supply Chain Act to bring the requirements of the Act into compliance with CSDDD, as published under the

2. Any steps taken or future plans by the Treasury or the Financial Stability Oversight Council ("FSOC") to prevent the CSDDD from applying to U.S.-based firms and their U.S. operations.
3. Whether the Administration has and will engage with other EU 'Third Countries' to communicate to EU policymakers that the far-reaching consequences of the CSDDD will negatively affect European and global competitiveness. If not, why not.
4. Whether the Administration has or plans to engage with incoming members of Parliament and the European Commission to understand opportunities to rein in the extraterritorial scope of the Directive.
5. Whether Treasury has performed an analysis of the U.S.-parented companies that will be subject to the CSDDD.

Sincerely,

A handwritten signature in blue ink that reads "J. French Hill".

J. French Hill
Member of Congress

A handwritten signature in blue ink that reads "Gary Palmer".

Gary Palmer
Member of Congress