



Association Européenne des Institutions Paritaires
European Association of Paritarian Institutions

Proposal on the Corporate Sustainability Due Diligence Directive (CSDDD)

AEIP Position Paper

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European Association of Paritarian Institutions (AEIP)

Opening statement

On 23 February 2022, the Commission submitted to the European Parliament and to the Council a proposal for a [Directive on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937](#).

AEIP and its members are strongly committed and support socially and environmentally responsible business practices to combat adverse impacts on human rights, society, the environment and the climate. More and more **social protection funds consider the negative impact of investments on the environment and societies** (inside-out perspective); voluntarily in line with the [OECD Guidelines](#) and [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#), and compliance under the recent [Sustainable Finance Disclosure Regulation](#) and the [Corporate Sustainability Reporting Directive](#) (CSRD). This means that they implement due diligence policies to identify and mitigate negative impacts and acknowledge that responsible investment leads to good long-term financial results.

With this in mind and in relation to the ongoing discussions on the Corporate Sustainability Due Diligence Directive (CSDDD), AEIP would like to make the following observations:

Proportionality is a key

The Commission's proposal brings into scope the entire financial sector irrespective of legal personality, including social protection funds. Overall, we stress that **the principle of proportionality must be ensured in practice for these institutions**. Social protection funds' setting among EU Member States is very heterogeneous in terms of scale, type of pension scheme, social and labour law, institutional design as well as contractual obligations. Several such funds are multi-employer funds, carried jointly by the social partners for thousands of employers and many thousands of employees. Given their diverse landscape across Europe but also that the vast majority of social protection funds are small and medium size, the proper implementation of the principle of proportionality throughout the Directive is of utmost importance. Notably, the adoption of a one-size-fits-all approach does not work for the IORP and group healthcare insurance sector, as it generates unnecessary costs especially for small and medium sized institutions. Such **increased costs are detrimental for the members' benefits**, as they destroy the affordability for many sponsors to organise an adequate pension scheme or healthcare scheme. Under any circumstances, the implementation of the Directive should impact the pensions or health benefits of millions of workers, affect the sustainability of these schemes, and undermine their functioning in the applicable sectors. Further to these considerations, AEIP believes that the threshold (500 employees on average and a net worldwide turnover of more than EUR 150 million) of the original proposal should be pursued. Any decrease in this threshold would be cumbersome particularly for smaller IORPs and social protection funds that lack the necessary resources to align themselves with this challenging framework.

Specific regime for institutional investors and asset managers

Pension funds and health and provident funds are inherently different from other financial market entities in the sense that they are 'not-for-profit', they play an important social role in adequate social protection, they do not have any shareholders and most importantly do not sell products, since **employees mainly benefit from a mandatory affiliation to the pension or health and provident scheme based on their employment relationship and are not customers**.

Importantly, in most cases social protection funds carry out investments by **buying shares and corporate bonds purchased on the secondary markets and have no direct contractual relationship with investee companies**. Moreover, typically social protection funds' underlying investment portfolios are broadly diversified, with numbers of securities of several thousand positions; social protection funds are usually minority shareholders.

AEIP holds crucial to share with decision-makers the following **two key considerations about the role pension funds should play in the CSDDD**. One approach is that the **lack of a contractual relationship means that investments should be out of scope of the definition of 'value chain' or 'activity chain'**. According to this interpretation, the EU legislator should therefore **not oblige Member States to extend the due diligence requirements to investments in which there is no direct contractual relationship with investee companies** – notably when the investment relates to an investment fund. Due diligence is not feasible for investors in such context.

An alternative approach is that the CSDDD **should introduce targeted requirements for investors, taking into consideration the international standards**. In this case, **due diligence for institutional investors and asset managers should allow a risk-based approach, in order to prioritize the most severe adverse impacts in the portfolio**. This would enable pension funds to **target the worst adverse impacts, while making sure that the administrative burden remains manageable** in order to maintain the costs borne by fund participants at reasonable levels. Moreover, under such a targeted framework, minority shareholders should explicitly be excluded from liability (see also below).

Uniform consistent due diligence is instrumental for the proper functioning of social protection funds

To make sure that adverse impacts on human rights, environment and good governance are properly identified, prevented, mitigated and brought to an end by financial institutions **we suggest basing the due diligence obligations on existing international standards, such as the UNGPs and the OECD Guidelines**. This can lead to a uniform consistent due diligence framework and foster an approach based on the UN and OECD standards. Additionally, AEIP suggests **promoting policy coherence of the proposed legislation with other related pieces of legislation** at European level such as the EU Taxonomy Regulation, CSRD and SFDR which establish a coherent regulatory framework for pension funds and healthcare and provident funds. For instance, this could apply for the reporting and monitoring requirements for investors and asset managers.

AEIP believes that a uniform consistent approach can make the due diligence framework predictable and proportionate for social protection funds. This can reflect the role they can play in value chains as well as create a fertile field for paritarian social protection funds to achieve their intended purpose; offer pension after retirement to the employees of a company or a group of companies or healthcare benefits and income protection in case of death, injuries or diseases.

Directors' duties, civil liability and the return on investment

Article 22 of the proposed legislation imposes serious consequences when companies fail to fulfil their due diligence obligations. Such a failure could give rise to breach of directors' duty of care or may lead to civil liability. AEIP wishes to emphasise – again – that **paritarian social protection funds are set up by collective agreements so by construction they do not present any conflicts of interest and comply with the prudent person rule regarding investment policies**.

Additionally, as a general principle under company law in most legal systems in Europe and around the world, shareholders have a separate legal personality from the company they invest in and only have 'limited liability' for its debts. Consequently, it is **only under exceptional circumstances that shareholders can be held directly liable towards an investee company's creditors or other third parties**. These general principles are also reflected within the framework of the **OECD guidelines under which institutional investors and asset managers are only considered responsible for remediation where they are found "to contribute" to or "cause" an adverse impact**.

Considering that stakeholders are not responsible for remediation, the proposed text of the Directive is not in line with the already established general principles enshrined in company law. Moreover, **any damages paid by investee companies would lead to reduced returns and lower future benefits, therefore pension funds and healthcare funds have a clear motive to avoid adverse impacts** on the portfolio even without direct liability.

Conclusion

We ask the decision-makers to take into consideration the above points, in order to ensure the proper functioning of the social protection funds and the protection of the interests of members and beneficiaries.

We call the decision-makers to exchange with AEIP and paritarian social protection funds to best assess how potential future measures can best work in practice.

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AEIP Disclaimer



AEIP represents the European Paritarian Institutions of Social Protection in Brussels since 1997. The Association gathers 29 leading large and medium-sized social protection providers, which are managed on the basis of joint governance and equal representation by both employees and employers' organizations (the social partners) in 12 EU Member States.

AEIP represents its members' values and interests at the level of both European and international institutions. In particular, AEIP - through its working groups - deals with EU coordinated pension schemes and pension funds, healthcare, unemployment, provident and paid-holiday schemes.

Owing to the quality of its members and to the delegation of powers conferred to its Board, AEIP aims at becoming the leading body for the promotion of balanced paritarian social protection systems in Europe. AEIP promotes and develops programs and orientations aiming at the sustainability of paritarian social protection systems at local level taking into account the national specificities aiming at ensuring social cohesion in Europe.

Based thereon, AEIP prepares recommendations, proposes local programs and influences European decisions to safeguard and promote the interests of its members. AEIP thinks ahead and anticipate modern paritarian social protection systems that take into account changing economic and societal pattern. It furthermore seeks to find a new balance between and across generations.

For more information: www.aeip.net