alfi association of the luxembourg fund industry

Luxembourg, 23 May 2022

# ALFI position regarding the European Commission proposal on a Corporate Sustainability Due Diligence Directive

## Introduction

The Association of the Luxembourg Fund Industry (ALFI) represents the face and voice of the Luxembourg asset management and investment fund community. The Association is committed to the development of the Luxembourg fund industry by striving to create new business opportunities, and through the exchange of information and knowledge.

Created in 1988, the Association today represents over 1,500 Luxembourg domiciled investment funds, asset management companies and a wide range of business that serve the sector. These include depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax advisory firms, auditors and accountants, specialised IT and communication companies. Luxembourg is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg domiciled investment funds are distributed in more than 70 countries around the world.

We thank the European Commission for the opportunity to provide feedback regarding the proposal on a Corporate Sustainability Due Diligence Directive.

## Feedback on the proposal

<u>Scope</u>

- The scope of the proposal captures different sectors and entities. While it is clear that a common set of rules should apply to the commercial sector, it should be kept in mind that for financial institutions and in particular asset managers (AMs) the supply - and investor chain are not on equal terms. Reg. the latter it should be clear that when it comes to portfolio companies AMs are invested in, there is a well-established stewardship role with well-defined duties and a long-term approach. This is a separate role that should not be addressed in this context and the need for rules reg. the supply chain. It should also be kept in mind that a due diligence on the whole investor chain could be challenging/not feasible to implement for funds with a very high number of investors and/or a large investor chain, taking into account the capacities that would be required for this exercise. Also, the investor chain of a fund typically consists of institutional investors, i.e. insurance companies and pension funds as well as distributors, such as banks and MiFID firms, which are themselves subject to prudential and disclosure rules based on SFDR, Taxonomy and CSRD.
- The differences between funds and corporate entities as well as investment products and commercial products should not be disregarded. Therefore, a clear exemption of funds should be foreseen from the scope of this Directive.

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- On the extraterritoriality aspect, art. 2 (2), it would be important to clarify under which role non-EU incorporated entities would be captured. I.e. when providing services directly in the EU single market or on the basis of having an EU-based subsidiary based? Furthermore, we believe it would be beneficial to receive additional background to the requirement of an employee-threshold for EU companies while this is not the case for non-EU companies.
  It is important to keep in mind that AMs are already subject to extensive due diligence rules that capture ESG factors. In addition, it should be noted that provisions related to stewardship also already exist on product level. With regard to both entity and product level requirements, as appropriate, reference can be made to the AIFMD and UCITS Commission DAs reg. sustainability risks and - factors as well as SFDR and SRD II. The proportionality of capturing AMs and funds again under the scope of this new proposal should be further assessed. Moreover, funds, AMs as well as investors may in addition to complying with existing requirements voluntarily adhere to certain guidelines, standards and principles, e.g. the OECD "Responsible business conduct for institutional investors".

<u>Asset managers stewardship role</u>

- AMs as shareholders (SHs) have a dynamic role that includes long-term goals reg. the companies they invest in. This allows value and long-term sustainable value creation and is therefore linked to their own fiduciary duty to their clients. Long-term sustainable value creation requires taking into account external factors, incl. the objectives of the Paris Agreement and net zero legal commitments
- In this context, SH engage with investee companies on critical ESG considerations.
- At the same time, it is important to stress that the stewardship role of AMs cannot substitute the investee companies' primary due diligence duty vis-à-vis their supply chains. This cannot be addressed solely or principally via AMs in their SH role.
  It is equally important that the legal accountability of companies towards their investors cannot be sidestepped due to responsibility towards other stakeholders. While it remains important to allow and support stakeholders' concerns and right to raise awareness on key issues related to the operations/services and products of a company, the directors' duty of care remains towards SHs that are focused on the value and long-term sustainable value creation of the specific company.