MEETING WITH THE CEOs OF WATCH & JEWELLERY INITIATIVE 2030

Scene setter

- You are invited to give some introductory remarks and to take part in an exchange of views on the proposal for a Directive on Corporate Sustainability Due Diligence (CSDD) with the Watch & Jewellery leaders from Cartier, Kering, Richemont, Hermès, Chanel, in an event organised by the Watch & Jewellery Initiative 2030 (WJI 2030). The exchange will take place in English.

- Founded by Kering and Cartier, WJI 2030 is a coalition of well-known brands (Cartier, Chanel, Gucci, Swarovski, Pandora, Pomellato, inter alia), guided by the Ten Principles of the United Nations Global Compact and the 17 SDGs. The initiative acts as a platform to achieve 3 main goals, i.e. 1) building climate resilience; 2) preserving resources; and 3) fostering inclusiveness in the value chains.

- The agenda of the meeting consists of a welcome word by (Kering) and (Cartier’s your introductory remarks (11:15 to 11:40), an update about the WJI 2030 and the legislation by (WJI 2030) (11:40-11:45), and a round table discussion (11:45-12:30) followed by a lunch (12:30-14:00).

- The meeting will have as objective from the WJI side to hear an update on the CSDD proposal, explore collaboration opportunities with the European Commission for projects on the ground and share the challenges and opportunities of implementing due diligence with a focus on the SME suppliers.

- You already met the WJI 2030, on 10 January 2023, where presented the initiative and discussed with you their roadmap and the corporate sustainability due diligence (CSDD) proposal, inviting you to meet with the private sector.

- We are not aware of a formal position of the WJI 2030 on the CSDD proposal. However, the European Federation of Jewellery (which is the umbrella organisation of a number of national jewellery associations and some members are part of WJI 2030) has given input on the CSDD proposal; they opted against a disproportionate burden for SMEs and for an industry led certification scheme (see background).

- The Council general approach was adopted on 1 December 2022 in the COMPET Council (for the main points of the state of play on the Council GA see background below). The EP negotiation mandate could be adopted in May 2023.
LINE TO TAKE

[Challenges]

Ladies and gentlemen,

- I would like to thank you for your invitation to exchange about the European Commission’s proposal for a Directive on corporate sustainability – due diligence.
- As you know, Europe faces environmental, climate and sustainability challenges requiring systemic solutions.
- In addition, the Covid-19 pandemic highlighted the need for resilient supply chains embedded in social fairness and environmental protection.
- The European Commission responded to these challenges with the European Green Deal and the Recovery Plan to ensure a just and fair transition.
- The Commission proposal on a corporate sustainability due diligence is also key in this context.

[Actions]

- The contribution of companies across all sectors of the economy is needed to succeed in the transition to a climate-neutral and sustainable economy.
- I therefore welcome that a broad range of stakeholders, including businesses, have been calling for mandatory due diligence rules.
- Several EU companies have already recognized that sustainability makes sense for businesses and are already taking voluntary measures.
• Also, some **Member States** already put legislation in place, including France, and others have been considering to legislate.

• However, voluntary action combined with legal requirements only in some EU Member States is **not enough**.

• To fully achieve the shift towards a more sustainable economic model, we need to involve a **critical mass** of companies. This is why we proposed a **mandatory model** for the whole EU, covering large companies in all sectors, while sparing smaller companies.

• Our proposal sets out a **harmonised, ambitious and balanced approach** to corporate sustainability due diligence:
  
  o **Companies** would be required to address their adverse impacts on human rights and the environment, as identified in their own operations, their subsidiaries and their value chains.

  o **Directors** would have to implement and supervise the due diligence obligation of the company, including by integrating it into the corporate strategy. We propose to make clear that their duty of care requires that sustainability impacts are taken into account in all their decisions. This is a replication of the relevant provisions in the **French Loi PACTE**.
• It is important to note that the due diligence duty proposed is aligned with internationally recognised human rights and labour standards, as well as multilateral environmental commitments. It follows a risk-based approach.

• With these rules, we would like to ultimately introduce a global standard. Let me highlight that the rules proposed should apply to large third-country companies active in the EU market.

[Benefits and opportunities]

• This proposal could bring multiple benefits to EU companies, including:
  o a level playing field,
  o better risk management,
  o increased customers and consumers trust
  o stronger incentives to innovation,
  o better access to finance.

• Sustainability makes sense for business. In fact, a review of more than 2000 studies shows that integrating sustainability into business operations improves performance, competitiveness and resilience and can contribute to innovation.

• Sustainable companies are also more attractive for employees and customers.
[Next steps]

- The precise **timetable** is now **in the hands of the co-legislators**, the European Parliament and the Council.

- **As rapid progress** would be appreciated on this important file, it is **good that the Council adopted a General Approach** end of last year.

- We are now looking forward to the position of the **European Parliament** to keep the momentum in view of the **final adoption of the legislative text in this mandate**.

[Closing]

- I am looking forward to continuing our cooperation and to engaging further with you on the basis of your reflections from today.
DEFENSIVES

[Which companies will the new EU rules apply to?]

- **Large EU limited liability companies:**
  - **Group 1:** +/- 9,400 companies - 500+ employees and net EUR 150 million+ turnover worldwide.
  - **Group 2:** +/- 3,400 companies in high-impact sectors. - 250+ employees and net EUR 40+ million turnover worldwide, and operating in defined high impact sectors, e.g. textiles, agriculture, extraction of minerals.

- **Non-EU companies:** +/- 2,600 companies in Group 1 and +/- 1,400 in Group 2: Third country companies active in the EU with turnover threshold aligned with Group 1 and 2, generated in the EU.

[Why are some sectors included rather than others? What are the criteria for defining high impact sectors?]

- Due diligence obligations for the first group of large companies cover all sectors.

- For the group of companies in high-risks sectors, the Commission has used existing sectoral OECD guidance to identify sectors which have particularly high impact and are more prone to producing human rights or environmental adverse impacts. These include: agriculture, textile and footwear and minerals, including extraction.

[The employee threshold should be increased to a much higher number of employees - as in the French Supply Chain Act]

- Only 1% of companies in the EU are covered by the scope of application. They represent 50% of the EU GDP. Small and medium-sized enterprises (SMEs), which in total account for about 99% of all enterprises in the EU, are excluded. SMEs which are in the value chain of larger companies are protected and supported by the proposal in different ways. Examples include provisions to protect SMEs from excessive demands from
their large business partners, advice and financial support, hotlines, databases, training.

- The proposed scope aims at a **balanced and proportionate regime** that can achieve an impact on the ground on the one hand and limit the overall burden on EU businesses on the other.
- The proposal is aimed at companies that have the **operational and financial capacity** to comply with due diligence. Many of them already have procedures in place.

**[How can the balance between benefit and burdens be struck?]**

- The principle of **proportionality** was respected in ensuring that companies would be able to implement the rules and would have the operational and financial capacity to do so.
- The cost and benefits of different scope options were carefully assessed and the focus on large companies, which have the highest leverage on their value chains, was proposed. It ensures that **50% of the turnover in the market is covered**.
- The indirectly impacted SMEs will get technical and financial support to help them gradually integrate sustainability considerations in their business operations.
- The new rules are expected to bring **multiple benefits to all EU companies**, including a harmonised legal framework in the EU and a level playing field. Such rules would also contribute to international competitiveness and ensure legal certainty, allowing companies to manage sustainability impacts.

**[Value chain approach]**

- While the due diligence duty builds on the United Nation Guiding principles on business and human right as well as the OECD voluntary framework, the concepts used in the proposal are tailored to the mandatory nature of the duty capturing those **relationships where most harm occurs**.
- It takes into account that **most harm occurs in the value chain (upstream and downstream) further away from own operations**.
- The **coverage of the entire value chain is key** to achieving the objective of the proposal i.e. to address adverse impacts related to production chains.
[Established business relationships]

- The inclusion of this notion aims at providing for proportionality and feasibility of compliance by companies, by both 1) reducing the scope of the due diligence duty and 2) focusing on the company’s business partners on which the company may have leverage.
- This notion takes inspiration from the French law on the “devoir de vigilance”, and the French commercial law on the termination of contracts regime, but also from EU Anti-Money laundering legislation.
- This concept does not exist in the OECD and UNGP frameworks, but the reason for including it in the proposal is the binding nature of it, which comes with enforcement mechanisms and civil liability, while those frameworks are voluntary.
- Companies are in any case not expected to change suppliers regularly (which would be very costly for them) just to avoid compliance with due diligence obligations.

[Why are due diligence obligations not set up at group level?]

- In line with international frameworks (e.g. UNGPs), under the proposal companies need to carry out due diligence and be accountable for it on an individual basis.
- Due diligence is also more efficient at individual level, while allowing to share resources within the group.
[Administrative enforcement]
- Companies not complying with their due diligence obligations will be subject to administrative sanctions by the competent national authorities.
- These sanctions will be proportionate and dissuasive and could take the form of fines and/or other forms.
- The supervision of the compliance will be performed by supervisory authorities, designated by each Member State.
- At European level, the Commission will set up a European network of Supervisory Authorities that will bring together representatives of the national bodies, in order to ensure a coordinated approach and allow for knowledge and experience sharing.

[Civil liability and applicable law]
- The proposed rules require Member States to harmonise certain aspects of their civil liability rules (based on the existing concepts in their laws).
- People who suffered harm – which could have been prevented through due diligence – will have better chances to bring a civil liability claim in front of the courts.
- Companies will have more clarity under which conditions such claims can be brought. Civil liability arises where harm is foreseeable to the company, in own operations, subsidiaries and in the value chain. This is necessary as it is known that human rights, social and environmental harm occurs more often beyond tier one. However, liability in indirect relationships is subject to certain conditions. This approach as regards value chain liability is in line with emerging jurisprudence and makes the liability regime fair, as the company often has a possibility to exert or increase its leverage over the business partner and thereby prevent or mitigate harm.
- It has been shown that civil liability makes a difference in driving good corporate behavior.
- Moreover, when the relevant damage caused by the failure to respect the due diligence obligations occurs outside of the EU triggering dispute and litigation, the proposal facilitates the work of EU courts, as they apply the law of the country in which an action is brought rather than foreign law.
- Indeed, our proposal provides that Member States shall ensure that the liability provided for in national rules – transposing the civil liability provision of the Directive – is of overriding mandatory application, in cases where the applicable law is not the law of a Member State.
[Risk-based approach]

- The proposal is aligned with the international frameworks as much as a mandatory regime can be aligned with the voluntary frameworks. Some approaches cannot be “transposed” from the voluntary to the mandatory regime in an identical way.
- For example, the “risk-based approach” has been taken into account as much as possible: the company has the right to prioritize, but does not have the right to select only 3 risks and ignore the rest. The OECD regime is also clear on this: once the company has addressed prioritized risks, it has to address the other risks too. The company is not exonerated from liability if it has deprioritized an important adverse impact and caused harm.

[Industry schemes/multi-stakeholder initiatives]

- The proposal stipulates explicitly that companies may rely on such schemes or initiatives to support the implementation of their due diligence obligations to the extent that they are appropriate to support the fulfilment of those obligations. The proposal also states that the Commission and the Member States may facilitate the dissemination of information on such topics. The Commission may also issue guidance in collaboration with Member States.
- It was not considered appropriate to recognise industry schemes, as this has proven to be very difficult in existing legislation such as the Conflict Minerals Regulation, which foresees such Commission recognition, but no scheme has yet been recognized. Furthermore, evidence does not encourage overreliance on industry initiatives in the due diligence process. There is a poor record of monitoring the members’ compliance with their own standards. There is also indication of frequent social auditors’ failure to identify evidence of labour and human rights abuses. Hence the efficiency and reliability of industry schemes for prevention and mitigation purposes is debatable.

[What is the link between the CSDD and the Corporate Sustainability Reporting Directive (CSRD) proposals?]

- The CSRD and the due diligence initiative complement each other.
- The CSRD contains a reporting requirement covering all sustainability issues.
- Our initiative provides for behavioural requirements covering human rights and environmental due diligence. It also requires companies to have
plans to ensure that their business model and strategy are compatible with the transition to a sustainable economy and limiting global warming to 1.5°C in line with the Paris Agreement.

- Companies subject to the CSRD will report all material sustainability information under the CSRD rules, including on what they are required to do by the CSDD.

**[Why is the proposed scope of the CSDD different from CSRD?]**

- The scopes are different for reasons of proportionality and to avoid unnecessary burden on reporting companies.
- When deciding the proposed scope of this initiative, the Commission considered that many companies would already be subject to the CSRD reporting requirements and took account of the cumulative costs for individual companies of both proposals.
- We decided to limit the scope of this initiative compared to the proposed scope of the CSRD, in order to limit the cumulative costs for smaller companies.

**[How will the companies be accompanied in this transition?]**

- In order to support companies and Member States with the implementation of the directive, the Commission may issue further guidance, where necessary.
- Planned accompanying measures include supporting tools such as hotlines, databases or training, funding, support as part of partnership cooperation, e.g. to create a stronger regulatory environment in a third country and capacity-building.

**[What is the expected impact in the EU’s main trading partners?]**

- We expect the proposal to achieve the most significant positive impacts in the EU’s main trading partners.
- We will work with EU trading partners to ensure mutually reinforcing initiatives, including development of voluntary sustainability standards, support of multi-stakeholder alliances and industry coalitions, as well as accompanying support provided through EU development policy and other international cooperation instruments.
[Is there a risk of disengagement of companies?]

- Business partners in the value chain should not fear disengagement. The proposal contains rules, such as investment and accompanying measures, such as capacity-building support, with a view to mitigating the risk of companies withdrawing from territories with a high risk of adverse human rights and environmental impacts.
- The aim is to for companies to prioritize engagement in business relationships in the value chain, instead of disengaging, which should remain a last resort.

[What is the Commission’s take on the Council General approach on the Directive on corporate sustainability due diligence?]

- The Commission welcomes the fast progress achieved in the Council negotiations and that an agreement could be found. The agreed mandate is an important step in the ongoing legislative negotiations.
- We are now looking forward to the mandate from the European Parliament so that trilogue negotiations can start.
- At this stage, as usual, the Commission reserves its position on the amendments to the Commission proposal put forward until the position of both co-legislators is available.

[The Directive should be converted into a Regulation.]

- The legal basis for legislative action in the field of company law is Article 50 TFEU, which only provides for legislation in the form of directives.

[If it cannot be a Regulation, the proposal requires amendments regarding the level of harmonisation (i.e. maximum harmonisation approach).]

- EU company law is usually regulated with a minimum harmonisation approach. This minimum approach respects the evolution of company law and corporate governance at national level, which may depend on different legal traditions, socioeconomic conditions or other national specificities. Where a higher degree of harmonisation is used, this is often due to the specific content of the provision, e.g. referring to content of certain documents, steps in certain procedures.
There were good reasons to put forward the CSDD proposal with a minimum harmonisation approach:

- **the objective and political content of the proposal**, i.e. delivering on the sustainability transition, does not fit with a maximum harmonisation approach. In particular, Member States should be allowed to introduce further provisions if they wish to protect stakeholders’ interests better. For example, EU and national law already today protect certain interests more than the proposal, e.g. certain health and safety impacts within the EU trigger absolute liability.

- **As regards due diligence in particular, global voluntary standards have been adopted** and operate as benchmarks for responsible corporate behaviour. Therefore, Member States should be allowed to go beyond the personal scope of the future Directive according to global standards.

- **Minimum rules allow for taking national specificities into account.** For instance, this is crucial for areas already regulated in Member States company laws, for rules on supervision which must fit to the competences and characteristics of national regimes, and for liability rules which must respect the national civil laws.

**[Forced labour ban]**

- The horizontal and mandatory due diligence duty in this proposed Directive requires companies to account for sustainability impacts in their own operations, their subsidiaries and value chains, including combating forced labour.

- The proposal does not include an import ban or withdrawal of products linked to forced labour or child labour from the market as a possible sanction.

- This proposal aims to ensure continuous engagement and improve the situation on the ground.

- **However**, it requires disengagement from suppliers if products or parts of them are produced in for example State-imposed labour camps, where mitigating the adverse impact is not possible.

- The Commission adopted a specific proposal for a regulation on prohibiting products made with forced labour on the Union market on 14 September 2022. It is currently in the legislative process.
BACKGROUND

State of play on the Council GA (main points)

Council General Approach (GA): Adopted on 1 December; NL, DK, IE, FI and EE had voted against.

- The personal scope, both as regards thresholds and as regards covering EU and non-EU companies, has been maintained.
  - A phase-in approach was introduced (one year after end of transposition period: companies with more than 1000 employees and €300 million net worldwide turnover or, for non-EU companies, €300 million net turnover generated in the EU; 2 years after end of the transposition period: COM proposed scope).
  - As opposed to the Commission’s proposed inclusion of the financial sector, the GA gives discretion to the Member States to apply the Directive to banks and insurance companies with respect to their business partners to which they provide services. Investment funds have been excluded from the scope.

- As regards material scope:
  - the notion of “value chain” was replaced with a company’s “chain of activities”, which covers a company’s upstream business partners (supply chain) and in a limited manner also downstream business partners, leaving out the use of the company’s products or provision of services;
  - the concept of “established business relationships”, limiting the scope to business relations expected to be lasting in view of intensity or duration, was deleted;
  - the risk-based approach has been strengthened: the companies must prioritise between the adverse impacts they have identified if they cannot address all fully at the same time;
  - the list of human rights/violations and corresponding conventions has been reduced; a limited number of environmental conventions has been added.

- As regards civil liability, the GA excludes companies’ liability if the damage is caused only by the business partners in the chain of activities. It is unclear what this means; it is possible that damage occurring at the level of indirect relationships, but also, depending on the situation, even of direct relationships (tier 1) is not covered by liability. From the COM proposal, the rebuttable presumption aimed at limiting companies’ liability in indirect business relationships has been deleted.

- Due diligence obligations as such remained broadly the same, but certain derogations have been introduced for the last resort obligation of disengagement of a business relationship. Regulated financial undertakings have been carved out from the obligation to disengage.

- Directors’ duties have been deleted.

- Elements related to the remuneration of directors linked to the adoption of a sustainability transition plan have been deleted.

- The proposed specific regime on combating climate change has been largely maintained.
Situation in the EP

- In the European Parliament, JURI committee is the leading committee with several others associated (9 involved in total) to give an opinion (AFET-DROI, ENVI, EMPL, IMCO, ECON, INTA, ITRE, DEVE). Ms. Lara Wolters (S&D/NL) is the rapporteur and Mr. Axel Voss (EPP/DE), Mr. Adrián Vázquez Lázara (Renew/ES), Ms. Manon Aubry (GUE/NGL/FR), Ms. HAUTALA (Greens/FI), and Mr. BUXADE (ECR/ES) are the shadow rapporteurs.

- It is planned that the JURI committee could vote on its report on 25 April 2023. The EP plenary vote is scheduled for May 2023. Trialogues could then start still under the SE Presidency if such progress is achieved.

- Overall, the 1713 amendments tabled in JURI (259 of those in MEP Wolters’ draft report), cover a wide range of positions across the political spectrum. Some of the criticism raised in particular by EPP relate to request for a Regulation instead of a Directive, or full harmonisation; too much burden for companies as regards personal scope, coverage of the whole value chain, possible reporting obligations.

- In the JURI committee (25 members) numbers are extremely tight and therefore the rapporteur needs RENEW support. There seems to be support from RENEW for civil become a bargaining chip) while more scepticism is present as regards stakeholder engagement and on defining affected/general stakeholders.

Position of the European Federation of Jewellery on the CSDD proposal

The European Federation of Jewellery/EFJ, founded in 2013, represents the interests of the European jewellery sector.

- EFJ emphasises that they have been very proactive in ensuring responsible and sustainable mineral sourcing through the implementation of the EU legislation and industry-driven certification schemes.

- The sector is mainly composed of SMEs, with limited human and financial resources, therefore the proportionate approach regarding SMEs is key. Effective supporting measures are needed, e.g. dedicated websites or trainings. It is essential to avoid the passing of the burden from those large companies to the smaller suppliers in the value chain. It is also important that all EU Member States financially support SMEs, and not only a few, to avoid unfair competition in the EU.

- Companies should be able to rely on industry-driven certification schemes (Responsible Jewellery Council’s Code of Practices and the World Diamond Council’s renewed System of Warranties) to support the implementation of their due diligence obligations.

- EFJ concurs with the Commission’s proposal on the complementarity of the initiative, as it aims to be aligned and consistent with already existing EU initiatives, in particular with the EU Conflict Minerals Regulation.
• EFJ is satisfied with the fact that the proposed framework on due diligence is based on an obligation of means rather than an obligation of results.
• Having an exhaustive list of all the different legislations that companies have to consider in order to identify, bring to an end, prevent, mitigate and account for adverse human rights and environmental impacts in an Annex of the Directive provides for further legal certainty.
• EFJ would urge the Commission to come forward as soon as possible with contractual clause examples that will help companies comply with the Directive.
• EFJ regrets that the current proposal is focused on sanctioning companies at first stage in case of non-compliance with the EU Directive, instead of positively triggering and motivating companies to implement due diligence practices into their business structure.
• EFJ agrees with covering third-country companies.
• EFJ criticises that the proposal of the Directive also leaves a great deal of leeway to the Member States to draft diverging national legislation, e.g. with regard to sanctions policy.
Watch & Jewellery Initiative 2030 – meeting with the CEOs
Kering headquarters, 40 rue de Sèvres 75007 Paris - 19/04/2023 11:00

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