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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements - Presidency fourth compromise text, additional changes

Delegations will find attached a new Presidency compromise proposal (recitals and operative part) with regard to Article 22 of Directive (EU) 2024/1760, for examination at the meeting of the Antici Group (Simplification) on 13 June 2025.

Changes to the third Presidency compromise text are indicated in **bold and underlined**, deletions are marked as ~~strike-through~~.

ANNEX

RECITALS

(26) To ensure better alignment of Directive (EU) 2024/1760 with the **wording of the** sustainability reporting regime laid down in Directive (EU) 2022/2464 the requirement to **"**put into effect**"** the transition plan for climate change mitigation should be replaced by a clarification that the obligation of companies to adopt a transition plan includes outlining implementing actions, planned and taken. **This way, the behavioural duty under Directive (EU) 2024/1760 is consistent with the requirement for the reported plan to set out "implementing actions" in Directive (EU) 2022/2464.** The obligation to adopt the plan and its initial and updated design remains subject to administrative supervision.

(26a) With a view to reducing burden for companies and achieving the objectives of Directive (EU) 2024/1760 in a more proportionate way, the required behavioural standard should no longer be "best efforts" but "reasonable efforts". The **transition** plan should aim to ensure, through ~~best~~ **reasonable** efforts, that the business model and strategy of the company are compatible with the limiting of global warming to 1.~~,~~5°C in line with the Paris Agreement and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119. Recital 73 of the Directive **already** clarifies that ~~this~~ **even the concept of "best efforts"** should be understood as an "obligation of means" and that due account shall be given to the complexity and evolving nature of climate transitioning and the progress made by companies. While companies should strive to achieve the 1.5°C aligned greenhouse gas emission reduction targets contained in their plans, specific circumstances may lead to companies not being able to reach these targets where this is no longer reasonable. ~~The~~ **With a view to providing further legal certainty, it should be clarified that the** notion of "~~best~~ **reasonable** efforts" ~~thus~~ refers to what can be expected from a diligent party to reach the targets in its transition plan, taking into account best industry practices, the effectiveness of actions taken and the principle of proportionality. It does not require making every possible effort, **nor adopting the best standard in the given sector for all actions in case that would not be reasonable under the circumstances, n**or going beyond the underlying science and factors outside the control of the company that **may affect the achievement of the company's 1.5°C compatible targets or of other parts of the climate plan and that** the company cannot reasonably foresee cannot be held against it. **Furthermore, given the particular complexity of formulating climate change transition plans, there should be a**

transitional period during which adoption of such a plan is optional rather than obligatory for companies. That transitional period should be limited to two years following application of the measures referred to in Article 37(1), second subparagraph of that Directive (hence two years from 26 July 2028 for companies referred to in points (a) and (b), and from 26 July 2029 for companies referred to in point (c)).

(26b) As announced in the Clean Industrial Deal, the Commission is working on defining sectorial pathways which should help companies develop 1.5°C compatible plans and targets **and provide a common EU methodology to guide companies and supervisors when it comes to using the pathways for targets that are compatible with the 1.5°C temperature goal ("sectoral emission pathways") as well as the adequacy of implementing actions ("sectoral decarbonisation lever pathways"). The pathways will be developed in dialogue with industry and other stakeholders, including SMEs. The pathways are based on an indicative 2030-2050 GHG budget that is fully compatible with the Paris Agreement's long-term temperature goals. Because guidance could assist companies in designing their transition plans, thereby reducing the burden on those companies, the** Commission guidelines on transition plans under the Directive should **be required to** reflect the results of this work **by including practical guidance on sectoral pathways**. **These pathways reflect the need for certain sectors to transition earlier than others while acknowledging that in some sectors the pace of greenhouse gas reductions can be slower, and even within sectors, the pathways are based on different scenarios. The sectoral pathways are being developed based on the intermediate and long-term targets of the European Climate Law. Consequently, as regards emissions in foreign countries not covered by such pathways, and in particular with respect to the EU intermediate target, the framework provides for more flexibility.**

(26c) Under Article 22(2) of Directive (EU) 2024/1760, companies that report a transition plan for climate change mitigation in accordance with the CSRD Directive (EU) 2022/2464) are deemed to have complied with the obligation to adopt a transition plan for climate change mitigation as referred to in Article 22(1) of Directive (EU) 2024/1760. This transition plan for climate change mitigation is one and the same as in ~~the~~ Directive (EU) 2022/2464 and ~~in the~~ Commission Delegated Regulation (EU) 2023/2772. It is, however, important to maintain the obligation to adopt such a plan in Directive (EU) 2024/1760, because ~~nothing in~~ Directive (EU) 2022/2464 **does not** require~~s~~ such adoption. While there are requirements for the adoption of climate-related transition plans also in other areas of EU law, those rules

either have a different scope (e.g., transformation plans under the Industrial Emissions Directive (Directive 2010/75/EU) or climate-neutrality plans under the ETS Directive (Directive 2003/87/EC), both of which are at installation level) or pursue different objectives (e.g., plans under the Capital Requirements Directive VI (Directive 2013/36/EU) and the Solvency II Directive (Directive 2009/138/EC) which seek to address financial risks to the institution, including from climate change and the transition to climate neutrality). A common transition plan template could support the integration of activity or installation-level data into company level transition plans. Th**ise** template would be based on existing requirements and would not add additional reporting for companies.

(26d) As regards supervision of the adoption and design of the climate transition plan, it is important that authorities take due account of, inter alia, the difficulties inherent in estimating future greenhouse gas emissions, the availability and effectiveness of climate change mitigation technologies, and the overall complexity and evolving nature of climate transitioning. While it is important that authorities supervise whether transition plans are science-based and whether the plan, including the actions and underlying assumptions, is generally robust, companies should be granted the necessary flexibility in determining the appropriate transition path within the limits set by the Directive. In carrying out their functions, it is important that supervisory authorities, where appropriate, prioritise cooperation over enforcement action, in particular through penalties. While the authorities retain discretion over the performance of their supervisory role, they may find it useful to seek to engage in a dialogue with companies and guide their efforts in designing transition plans through advice and, where needed, assistance, in a manner that does not compromise their independence or responsibilities to ensure legality. Where appropriate, they should be able to afford companies an opportunity to rectify non-compliance and avoid sanctions by coming into compliance within a specified time. This might include, for instance, seeking or accepting time-bound commitments to address shortcomings. However, that does not prevent them from taking immediate enforcement action for example where the company has not been cooperative in the past, has repeatedly failed to comply with its obligations, including with previous commitments, or if proposed commitments are insufficient.

(27) Article 27(1) of Directive EU 2024/1760 requires Member States to lay down penalties that are to be "effective, proportionate and dissuasive". Article 27(2) of that Directive requires Member States, when deciding whether to impose penalties and, if so, when determining their nature and appropriate level, to take due account of a series of factors that determine the gravity of the infringement and attenuating or aggravating circumstances. Article 27(4) of that Directive requires Member States**, when imposing pecuniary penalties,** to base **them**~~any imposed pecuniary penalties~~ on the net worldwide turnover of the company concerned. However, **this requirement appears unnecessary and could be misinterpreted as requiring pecuniary penalties to be based solely or primarily on that turnover. Instead, in accordance with the requirement that penalties be effective, proportionate and dissuasive, supervisory authorities are required to take appropriate account of the net worldwide turnover (or, in the case of companies belong to a group, the consolidated worldwide turnover of the ultimate parent company), alongside the series of factors laid down in Article 27(2) of that Directive. Accordingly, this separate requirement should be removed. Conversely, to ensure a level playing field across the Union and in line with the objective of harmonization, Member States should be required to set a uniform maximum limit of pecuniary penalties of 5% of the net worldwide turnover. The application of this maximum limit to companies belonging to groups should be clarified**~~given the fact that supervisory authorities already have to take into account a series of factors as laid down in Article 27(2) of that directive, pecuniary penalties cannot be based solely on the net worldwide turnover of the company concerned. Rather, they should take appropriate account of the net worldwide turnover, namely to ensure the effectiveness, dissuasiveness and proportionality of the penalty~~. Moreover, to increase the consistency of enforcement practices across the Union, the Commission, in collaboration with the Member States, should develop guidelines to assist supervisory authorities in determining the level of penalties.

OPERATIVE PART

(10) in Article 22(1), the first subparagraph is replaced by the following:

'Member States shall ensure that companies referred to in Article 2(1), points (a), (b) and (c), and Article 2(2), points (a), (b) and (c), adopt a transition plan for climate change mitigation, including implementing actions, which aim to ensure, through ~~best~~ **reasonable** efforts, that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119, including its intermediate and 2050 climate neutrality targets, and where relevant, **address** the exposure of the company to coal-, oil- and gas-related activities.

By way of derogation from the first subparagraph and the third paragraph, Member States shall ensure that adoption of the transition plan referred to in that subparagraph is optional during the first two years of the application of the measures to be adopted in accordance with Article 37.

The guidelines issued under Article 19(1) on transition plans shall include practical guidance on sectoral pathways to assist companies in adopting plans and actions. These guidelines may be used by a company in designing their transition plan for climate change mitigation, as well as by supervisory authorities in supervising the design and update of this plan.

For the purposes of this article, 'reasonable efforts' means taking the reasonable steps that would be taken by a diligent person to achieve the targets set in the transition plan, taking into account best industry practices, the effectiveness of actions taken, and the principle of proportionality. A failure to implement the transition plan due to factors that are outside the company's control, and that could not reasonably be foreseen at the time of the adoption of the plan, does not constitute non-compliance with the requirement to make reasonable efforts.';

(10a) in Article 25(1) a new second subparagraph is added:

'In carrying out their supervisory function in respect of the adoption and design of the transition plan for climate change mitigation, the authorities shall take due account of, inter alia, the difficulties inherent in estimating future greenhouse gas emissions, the effectiveness and availability of certain climate change mitigation technologies, levers and actions over time and the overall complexity and evolving nature of climate transitioning.'