Comments of Independent Retail Europe on the amendments proposed by the European Commission under the Omnibus I package and further proposals for simplification and burden reduction

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EXECUTIVE SUMMARY

- Independent Retail Europe welcomes the European Commission's proposal for a 1st Omnibus package as an important step to deliver on its promise to better balance competitiveness with sustainability requirements and to reduce significantly administrative and reporting requirements for European businesses.
- *Unfortunately important elements that would make a major contribution to the competitiveness of independent retail , whilst not effecting the effectiveness of the regulations captured by the Omnibus 1 proposal, are still missing.*

Key ask with regards to the CSRD:

1) **extend the exemptions for subsidiaries of parent companies in Article 19a paragraph 9 of the CSRD, when these are included in the consolidated report of the parent company, to other group models consisting of independent companies and a separate undertaking acting as a head office**
Since there is no added benefit, only extra burden and a duplication of reports, in having member retailers of groups of independent retailers (or franchisees of franchises) report individually, the central organisations of groups of independent retailers as well as franchisors should be given the option to report on behalf of the member retailers resp. the franchisees that fall into the scope of the CSRD. The current article cannot apply to groups of independent retailers or franchises, even though in both cases, the parties are independent companies, as central organisations of groups of independent retailers and franchisors are not parent companies of their member retailers or of their franchisees, and the latter are not subsidiaries of the first. A specific analogical exemption for independent retailers and their groups would create a level playing field and reduce reporting burdens, whilst providing more transparency on groups for interested parties. **(AM1 on CSRD).**

Key asks with regards to the CSDDD:

1) Delete article Article 2 1. (c) on franchise groups from the scope (AM 2)
2) Develop annexes and a safeguard clause on recognised certifications (AM 8)
3) Exclude any due diligence requirements regarding indirect partners (AMs 4 and 6)

You will find suggestions for further simplification and reduction of unnecessary/disproportionate burdens in this paper.

COMMENTS OF INDEPENDENT RETAIL EUROPE

Comments on the amendments proposed to the CSDDD

Independent Retail Europe welcomes

1. the limitation of the obligation to conduct the risk assessment to direct business partners (see paragraph (4) amending Article 8 of the CSDDD);
2. the limitation of stakeholder involvement to the identification and the conceptual stage and the inclusion of the notion that stakeholders must be directly affected. This will ensure that companies only have to engage with relevant stakeholders thus reducing unnecessary burdens

(see proposed paragraph (2) replacing Article 3(1), point (n) of the CSDDD, and paragraph (7) amending Article 13 on meaningful engagement with stakeholders by amending paragraph (3), point (a), and deleting points (c) and (e) of the CSDDD);

3. the limitation of the possibility of Member States to enact stricter rules in the area of risk assessment, penalties and value chain due diligence. This is an important step to ensure more harmonized rules thus allowing for a level playing field for operators across the EU (see paragraph (3) replacing Article 4 of the CSDDD);
4. the abolition of the calculation of penalties as a percentage of turnover and of national caps on penalties, as well as the empowerment of the Commission to issue guidance on the level of penalties (see paragraph (11) replacing Article 27(4) of the CSDDD as regards the imposition of pecuniary penalties as part of public enforcement);
5. equally, the removal of the EU-wide civil liability regime and transfer to the national level will limit financial and administrative costs as Member States, companies and courts will be able to work with existing national legal regimes that they are accustomed to. The considerations of Article 27(2) together with the Commission's guidance should ensure a relatively harmonised, fair, penalty (see paragraph (12) amending Article 29 of the CSDDD as regards civil liability by deleting paragraph (1), paragraph (3), point (d) and paragraph (7), and changing paragraphs (2), (4) and (5)).

Our further suggestions for simplification and burden reduction under the CSDDD

- The scope of the CSRD should be ***fully aligned*** with the proposed new scope of the CSDDD, to enable companies in scope to develop one integrated due diligence and reporting methodology. **The paragraph on franchise networks (Article 2 1. (c)) should be deleted** from the scope of the CSDDD since the financial thresholds in this article are so low that fairly small networks fall within the scope, which is disproportionate when compared to the large companies that are meant to be captured by the Directive and the CSRD.
- For legal certainty and a level playing field, companies need **one single due diligence regime across the EU**. ***Any* openings to circumvention or differentiations by the Member States should be eliminated from the Directive**. Article 1(2) of the Directive and Article 4(2) of the Omnibus proposal should therefore be deleted.
- **Companies should not have to look beyond their direct business relationships as proposed in Article 4 paragraph 4 amending Article 8 paragraph (2a).** Even though we welcome that the obligation to go beyond direct business partners is already limited in the Commission's proposal, this remains a disproportionate, illogical requirement. Disproportionate, because groups of independent retailers have thousands of direct business partners and exponentially more indirect business partners, whose activities they can never control or even monitor. Illogical, since every indirect business partner of a given company is a direct business partner of another company and therefore falls under the due diligence responsibility of the latter. As a consequence, Article 4 paragraph 4 of the Omnibus proposal amending Article 8 (2a), should be deleted.
- The Directive clarifies that due diligence should be risk-based, meaning that a company should focus on the biggest risks first, and when this is covered, then move to smaller risks. However, due diligence is not required to be conducted with regard to *every* risk, however small. The Directive or accompanying guidelines, should better clarify this and Article 9 (3) of the CSDDD should be clarified

as this article wrongly gives the impression that due diligence should be applied to every risk. The Commission should provide clear guidance on the application of risk-based due diligence.

- Since retail organisations have thousands of direct business partners, it is in addition necessary to clarify that the risk-based approach of the Directive also applies to the mapping of risk and to establishing the need for in-depth assessments of direct business partners.
- We welcome the removal from Article 10 6. of the obligation to *terminate the business relationship* as a last resort measure, as it is often very complicated to replace a business partner, also because contracts are often agreed for the long term to ensure continuity in the supply chain and cannot be abruptly terminated. However, *suspension of a contract* (which is implied by “suspension of the business relationship with respect to the activities concerned”) as now proposed by the Commission is often not feasible either. In addition, it is difficult to evaluate whether the negative impact of the continuation of the contract outweighs the negative impact of the suspension, as these very different impacts are often difficult to compare. Whether or not to suspend these activities should be left to the discretion of the company. The company should only be able to provide the justification when requested by an authority. (Article 4 paragraphs (5) and (6) of the Omnibus proposal replacing Article 10 (6) and Article 11 (7) of the CSDDD).
- Appropriate certification schemes (e.g. “Fairtrade”, “Grüner Knopf” and “GOTS”) can play an important role in making the due diligence process as streamlined as possible. Audits/certifications, training programs and effective grievance mechanisms are crucial to sustainably minimise risks in supply chains. **Such industry initiatives with results-oriented activities should be promoted**. New suitable certification systems may be needed to effectively close existing gaps. These certification systems can be based on successful examples such as the monitoring of ship safety and environmental protection through the accreditation of and monitoring by classification organizations, flag states and port state controls. Since locally active certifications and audits strengthen small local manufacturers in particular and scale much better than remote verification mechanisms, this is an essential lever for increasing regulatory effectiveness while reducing bureaucratic burdens.
- In order to be scalable, these systems must have a “safe harbour” feature. Without such a feature, there are no economic incentives to set them up, as internal systems would also always have to be maintained. A **safe harbour clause** should therefore be introduced.
- It should be clarified that, where audits/certifications exist, **the first point of contact is the organisation that has issued the audit/certificate**, so that these issuing organisations check the facts and either initiate effective measures or withdraw the certification from the company in breach.

Key asks regarding the CSDDD:

➔ **Maintain the Commission’s proposed amendments mentioned in points 1-5 above;**

➔ **Fully align the scopes of the CSRD and the CSDDD on large companies with at least >450m turnover and >1000 employees; as a consequence, and also <u>for reason of disproportionality and lack of clarity of its text, Article 2 1. (c) on franchising should be deleted from the CSDDD</u>; (AM 2)**

- **For reason of business efficiency and legal certainty, ensure a fully harmonized implementation of the Directive by closing all doors to circumvention or differentiation by the Member States; (AMs 1 on CSDDD and AM 3)**
- **Clarify in Article 8 paragraph 2 point (a) that the limitation to direct business partners does not affect the risk-based approach of the Directive, and that the risk-based approach also applies to the mapping of risk; (AM 4)**
- **Delete Article 4 paragraph 4 of the Omnibus proposal amending Article 8 (2a) with regard to indirect business partners as for reason of proportionality and logic, companies should only be required to exercise due diligence towards their direct business partners; (AM 6)**
- **Leave it to the–discretion of the company to decide whether or not to suspend a business relationship with regard to activities relative to the negative impact. It should only be able to provide justification for this when requested by authorities; (AM 7)**
- **Clarify in Article Article 9 (3) that due diligence is not required to be applied on every risk, however small, and develop accompanying guidelines on how due diligence should be applied;(AM 5)**
- **Accept the use of industry initiatives such as certificates as well as audit reports and adopt an implementing act to create an annex to the Directive, through which the Commission would set quality thresholds for different certification schemes, as well as a separate annex that would officially recognise certain certification schemes. This list of recognised certification schemes should be regularly updated by the Commission; (AM 8)**
- **Introduce a "safe harbour clause" for third-party certification schemes by introducing an Annex that officially recognizes certification schemes; (AM 8)**
- **Clarify that, where certifications and audit reports exist, the first point of contact is the organisation that has issued the certificate/audit report, so that these issuing organisations check the facts and either initiate effective measures or withdraw the certification from the company in breach or correct their audit; (AM 8)**

Comments on the amendments proposed to the CSRD

With the implementation of the CSRD, large companies that have already set up reporting regimes, report a 40% budget increase for reporting activities between 2023 and 2024. This is mainly due to the excessive number of data points on which companies have to report.

Independent Retail Europe therefore particularly welcomes

1. the announcement on page 5 of the Omnibus Directive of a delegated act within six months of approval of the CSRD that will significantly revise and reduce the set of the essential data points in the ESRS, simplify and presentation of the standards and clarify provisions and the materiality principle;
2. the decision not to develop sector-specific standards;
3. both, the extension and strengthening of the value-chain cap, particularly the limit to what a reporting company can request from SME partners further down in the supply chain based on the VSME standard.

Our further suggestions for simplification and burden reduction under the CSRD

- Further limitation of the scope and full alignment of the scope of the CSRD and the CSDDD. Although we welcome the reduction of the scope of the CSRD by raising the scope of application from 250 employees to 1.000 employees (see paragraph (2) amending Article 19a of the Accounting Directive), we believe that this threshold should be raised even further to substantially reduce bureaucratic burden for medium-sized companies. The turnover threshold should be aligned with the CSDDD (for reasons mentioned above under comments on the CSDDD) and raised from 50 million EUR to (at least) 450 million EUR.
- Extend the exemptions for subsidiaries of parent companies in Article 19a paragraph 9 of the CSRD, when these are included in the consolidated report of the parent company, to other group models consisting of independent companies and a separate undertaking acting as a head office. Since there is no added benefit, only extra burden and a duplication of reports, in having member retailers of groups of independent retailers (or franchisees of franchises) report individually, the central organisations of groups of independent retailers as well as franchisors should be given the option to report on behalf of the member retailers resp. the franchisees that fall into the scope of the CSRD. The current article cannot apply to groups of independent retailers or franchises, even though in both cases, the parties are independent companies, as central organisations of groups of independent retailers and franchisors are not parent companies of their member retailers or of their franchisees, and the latter are not subsidiaries of the first. A specific analogical exemption for independent retailers and their groups would create a level playing field and reduce reporting burdens, whilst providing more transparency on groups for interested parties.
- The introduction of an additional deadline of three years for the implementation of all mandatory data points. This would be an important relief for companies, as they currently have to provide all of them already in the first report.
- Reporting obligations in one single electronic format does not reflect the everyday reality of SMEs as they each have individual accounting and reporting routines. Moreover, the smaller the company, the higher the proportionate costs for the company to implement any reporting standards, creating a competitive disadvantage. The VSME should therefore be designed in a manner that is *extremely* SME-friendly and that would enable them to prepare only one standard response for all their direct partners.
- For many companies, the materiality analysis does not offer enough opportunity to exclude data points. Therefore, a set of material data points should be defined that applies to all companies. For other standards, there should be sector-specific options for de-prioritisation.
- the Commission should consult existing standard setters such as GS1 in the retail sector, especially with regard to new data points.

Key asks:

➔ **Maintain the Commission's proposed amendments mentioned in points 1-3 above;**

➔ **Adopt the delegated act reducing the data points as soon as possible;**

➔ **Reduce further the scope of the CSRD and fully align the scopes of the CSRD and the CSDDD on only large companies; (see justification AM 2)**

➔ **<u>Give groups of independent retailers the option to report one consolidated report at central level on behalf of the members who fall into the scope of the CSRD in order to avoid</u>**

<u>unnecessary administrative burden and costs as well as duplication of reports with no added value;(AM 1 on CSRD)</u>

- ➔ **Set an additional deadline of three years for the implementation of the mandatory data points;**
- ➔ **Develop one very SME-friendly electronic standard response form for SMEs' voluntary reporting standard which would enable them to prepare one response for all their supply chain partners;**
- ➔ **Develop one set of material data points that applies to all companies; provide sector-specific guidance on other standards to assist with de-prioritisation;**
- ➔ **Advise that existing standard setters such as GS1 are consulted when setting new data points.**

Comments on the EU Taxonomy Regulation

As the scope and timing of the corporate taxonomy alignment reporting requirements under Article 8 of the Taxonomy Regulation are determined by the scope and timing of corporate sustainability reporting in the Accounting Directive, the EU Taxonomy Regulation will be affected by the Omnibus I proposals.

We particularly welcome

1. that companies with up to 1.000 employees and 450 million euro net turnover are no longer obliged, but can now voluntarily opt for taxonomy reporting;
2. that companies can disclose information in Article 8 of the Taxonomy Regulation in a more flexible way (see paragraph (5) inserting Article 29a of the Accounting Directive);
3. the proposed introduction of an "opt-in" for taxonomy reporting for all undertakings (except for the largest ones). The rules for opting in should be harmonised to allow for a level playing field.

We propose

- clearer guidance on how taxonomy can complement CSRD requirements;
- the proposed amendments do not solve the problem of the workload for the assessment of taxonomy-eligible activities. We therefore propose to exclude all non-material activities, since not particularly relevant for investors, whilst the application of the 10% non-materiality threshold is too burdensome;
- companies should not have to report on the defined operating expenses (OpEx) if they constitute less than 25% of total revenue.

Our suggestions for simplification of and burden reduction in the Taxonomy Regulation

Key asks:

- ➔ **Align the scope with that of the CSRD and the CSDDD;**
- ➔ **Ensure that opt-in rules are harmonized to allow for a level playing field;**
- ➔ **Provide clearer guidance on how taxonomy can complement CSRD requirements;**
- ➔ **Exclude all non-material activities from Taxonomy reporting as not relevant to investors;**
- ➔ **Delete reporting on OpEx if they account for less than 25% of the total revenue.**

Comments on the proposals for amendment of the CBAM

We welcome all the proposed changes to the CBAM, in particular

1. the change from a financial threshold to a de-minimis mass-based threshold;
2. the simplification of reporting obligations;
3. the postponement of the sale of CBAM certificate;
4. the extended crediting of CO2 prices paid in third countries;
5. the development of a fool-proof anti-circumvention system.

Key ask:

➔ **Maintain the Commission's proposal**

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*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

Independent Retail Europe represents cooperative/associative retail groups with are characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer.
Our members are groups of independent retailers, associations representing them as well as wider service organisations built to support independent retailers.

Independent Retail Europe represents 24 groups and over 501.000 independent retailers, who manage more than 764.000 sales outlets, with a combined retail turnover of more than 1.411 billion euros and generating a combined wholesale turnover of 621 billion euros. This represents a total employment of more than 6.440.000 persons.

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