JBCE – KITA Joint Statement

Omnibus I extraterritoriality

The Japan Business Council in Europe (JBCE) with > 100 Japanese multinational companies active in Europe, and the Korea International Trade Association (KITA), Korea's largest business association with > 77,000 members, support simplifying corporate sustainability due diligence & reporting. Our members remain committed to safeguarding the objectives of the EU Corporate Sustainability Reporting Directive (CSRD) and the EU Corporate Sustainability Due Diligence Directive (CSDDD), whilst underpinning EU & global competitiveness. For EU rules' proportionality and effective implementation amidst the global geopolitical reality, JBCE & KITA propose the following:

1. CSRD standards & CSDDD guidelines for non-EU companies two years prior to legal application dates
2. Jurisdictional clarity & prevention of litigation risk under CSDDD
3. Convergence of financial & non-financial reporting scopes

The two associations fully subscribe to the objectives of CSRD & CSDDD. Notwithstanding, a mix of smart simplifications will rationalize reporting obligations and provide the necessary legal certainty to non-EU companies with complex international value chains and a significant EU footprint. In this way, the two laws will make the framework a coherent, internationally operable tool to advance sustainability in an integrated manner.

1. CSRD standards & CSDDD guidelines for non-EU companies

Tailored standards & guidance, at least two years before the entry into application of CSRD/CSDDD, are essential for effective compliance by non-EU companies newly subject to CSRD & CSDDD. For CSRD, timely adoption of NESRS, in line with the Global Reporting Initiative (GRI) and the International Sustainability Standards Board (ISSB) standards, will provide the necessary time for consolidation of global information as well as of EU subsidiaries' data whose disclosure dates have already been delayed by two years. Otherwise, postponement of CSRD requirements for non-EU companies will be inevitable. And, if further postponement is not feasible, a phased-in application with a grace period of two years, during which penalties are suspended, would be needed. For CSDDD, Article 19 guidance for non-EU companies will help elucidate the different requirements upon entities' jurisdiction of establishment (Article 2.1 vs. Article 2.2) and nexus to the EU. Embedding sustainability takes time. Companies in Asian countries (incl. Japan & Korea) operate across diverse sectors such as manufacturing, trading & services, and their global value chains are complex and interlinked. Providing supportive measures for effective implementation by non-EU actors connected to the EU market is crucial to understand the extra steps they shall take in complement to their OECD Guidelines- & UNGP-aligned activities. In this way, EU requirements can become implementable for companies with global operations/value chains.

2. Jurisdictional clarity & litigation risk under CSDDD Article 29(3)

The civil liability provisions of CSDDD should be aligned at EU-level to avoid fragmentation/gold-plating by Member States. This should be translated into an amendment in Article 29(3) stating: "(n) Member States shall ensure that courts of a Member State shall not have jurisdiction over claims under this Article unless there is a clear and demonstratable connection between the alleged adverse impact and the territory of that Member State". In addition, a legal provision is needed within CSDDD to clearly limit Member State discretion in their liability regimes, and define that where a company has reasonably conducted due diligence on its direct business partners and exercised leverage, where possible/necessary, it shall not be liable for adverse impacts caused by indirect partners outside of companies' control. In this way, CSDDD's broad jurisdictional scope will be narrowed, and overexposure of non-EU companies to uncontrolled litigation risks for activities

unrelated to the EU market for claims linked to CSDDD non-compliance will be prevented. Let alone when these activities are regulated by regional & international laws. This will help avoid multiple lawsuits across Member States regardless of damages' material connection to the jurisdiction.

3. Convergence of financial & non-financial reporting scopes

The financial & non-financial statements in annual management reports should have the same scope and rely on the same exemption regimes (e.g., national exemptions (Dutch 408 for financial reporting), IFRS 10.4 allowing sub-consolidation exemption). Any dichotomy in applying CSRD Articles 19a, 29a, and 48i should be avoided. For example, when an EU financial holding parent company with no involvement in the management & operational activities of its EU/non-EU subs prepares a standalone financial statement, the same scope should be replicated in its sustainability report too. This will prevent excessive reporting about subsidiaries in different parts of the world, and which are not included in the parent's financial statement. This is the first aspect of extraterritoriality that needs to be controlled in this regard. The second form it can take pertains to the cases where the EU financial holding parent undertaking is itself subsidiary of a third-country headquartered undertaking. Since the ultimate non-EU parent company will prepare a globally consolidated CSRD report in 2029 (FY2028), its subsidiary, when serving as intermediate financial holding parent company of other non-EU entities, should not be overburdened by the obligation to prepare a consolidated CSRD report for these non-EU subsidiaries a year earlier (2028 for FY2027).

Conclusion

JBCE & KITA support the objectives of the CSRD and CSDDD. However, to ensure effective implementation of the CSRD and CSDDD for non-EU companies, we need early, tailored guidance and harmonized liability rules to provide legal certainty and prevent fragmented enforcement. Also, aligning the scope of financial and sustainability reporting will help reduce duplication and extraterritorial burdens. We respectfully urge EU policymakers to carefully consider these proposals to achieve a coherent, effective, and practical sustainability framework.

■ Korea International Trade Association (KITA)

Established in 1946, the Korea International Trade Association (KITA) is the largest business organization in Korea, representing over 77,000 member companies. KITA's mission is to advance Korea's economic development through the promotion and expansion of global trade. KITA also serves as the secretariat of the Korea Business Association Europe (KBA Europe), representing over 400 Korean companies operating across Europe and supporting their interests in international trade and investment.

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■ Japan Business Council in Europe (JBCE)

Founded in 1999, the Japan Business Council in Europe (JBCE) is a leading European organization representing the interests of over 110 multinational companies of Japanese parentage active in Europe. Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceuticals, textiles, and glass products.

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