



Brussels, 3 May 2021

Subject: Joint Letter regarding the EC initiative on Sustainable Corporate Governance – European leading associations share their views on upcoming initiatives

Dear Vice-President Maroš Šefčovič,
Dear Commissioner Didier Reynders,
Dear Commissioner Thierry Breton,

Copy: Salla Saastamoinen, Maija Laurila, Susanne Knöfel, Aleksandra Kulas

We would like to begin this letter by highlighting our support for the fundamental principles of the European Green Deal and the Sustainable Finance agenda, as well as the aim to support long-term engagement of end-investors. However, as the European Commission intends to propose legislation on sustainable corporate governance and due diligence this summer, we are writing you to express our concerns in relation to some of the ideas having been explored.

Our organisations are encouraging the European Commission to consider those two topics separately. Apart from the subject of due diligence, which is a specific issue for which a legislative response could be supported, there is common ground among all our organisations that a directive dealing with sustainable corporate governance would be counterproductive.

For a company to succeed and maintain its license to operate, directors need to effectively take into account its owners/shareholders as well as its stakeholders' expectations and work towards long-term sustainability. Integrating ESG matters helps reconcile economic growth, social progress and environmental protection when managing business risks. It implies that board members and directors consider the risks the activities of the company represent for the environment and society at large both short and long-term.

We are convinced that dialogue with stakeholders is essential, as it enables companies to better understand the expectations of the ecosystem in which they operate and to take into account stakeholders' interests in their decision-making. Taking into consideration various interests is indeed a natural part of directors' duties. However, the Commission should refrain from making board members accountable for every stakeholder interest. Not only is such a duty in itself impossible, but it also risks endangering EU competitiveness vis-à-vis companies based outside the European Union.

Introducing legal requirements would place obligations on companies to reconcile conflicting interests, and any liability attached to such a requirement would lead to legal uncertainty and the risk of paralysing the functioning of the board and management.

Most shareholders have a long-term vision, whether it concerns the shareholding of family businesses, private equity or end-investors (i.e. the EU citizens as individual investors and long term and pension savers who are bearing most of the risks and rewards of share ownership of EU listed companies, either as direct or as indirect investors). One focus of strengthening sustainable corporate governance should therefore be to facilitate and strengthen the long-term engagement of shareholders and investors, including individual shareholders.

Board members will not be able to perform their task if one-size-fits-all requirements are imposed on them without taking into account companies' diversity in terms of organisation and business context. Since different companies cannot be managed the same way, we support maintaining principles for corporate governance in the existing format of codes. This way, companies are provided with useful guidance on governance, while allowing shareholders to decide on the best ways forward. We believe further developments of principles related to the topic of sustainable corporate governance should be made within the framework of corporate governance codes. In relation to listed companies, further restrictions in this regard would risk conflicting with the policy objectives of the Capital Markets Union, namely to strengthen European capital markets.

In all, we are of the opinion that the European Commission should take the time to provide an objective and comprehensive analysis in order to define an initiative that is appropriate for all EU27 jurisdictions.

In the attached appendix you may find all elements on which the signatory associations agree upon. We hope that you can take these concerns into account when developing your initiative. We remain at your disposal should you wish to discuss this subject further.

Sincerely yours,

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APPENDIX: All elements on which each of the signing associations agreed:

Please find herewith the main elements that we wish to highlight:

- We fully support the concept of sustainable corporate governance, which companies across Europe have already integrated in their strategy and apply in different ways: enhanced dialogue with stakeholders, improved understanding of CSR risks at board level, CSR criteria included in executive remuneration.
- Overlapping legislation must be avoided. Several aspects related to the envisaged obligations for corporate directors are already sufficiently covered by existing legal requirements of other EU legislative instruments such as the NFRD and SRD II and corporate governance codes.
- Contradictory legislation must be avoided as well. The EC proposal directly contradicts one of the ideas behind the Shareholders' Rights Directive, that is to increase the shareholders' influence.
- Taking into consideration many interests is a natural part of directors' duties and principles related to this are already included in many corporate governance codes, which we believe is the best solution.
- The EU should not add legal requirements regarding stakeholder engagement but developing recommendations in corporate governance codes, would possibly be a useful way forward. We observe that many companies have established active dialogues with a wide range of stakeholders depending on their type of business. Engagement with stakeholders is more the role of management than the board. However, boards have a role to play in making sure that regular engagement between management and stakeholders occurs.
- A new layer of legislation on executive compensation should not be added, while the Shareholder Rights Directive has already incorporated long-term consideration. We would rather favour including recommendations on remuneration of directors in corporate governance codes. Principles-based recommendations and transparency provides the best incentives in achieving a balanced remuneration policy and allows companies to use different benefits and incentive models depending on what may be most appropriate for each company.
- We completely agree that the board of directors should be committed to sustainability issues relevant for their company. However, there are many competences that may be needed on a board depending on the company's activities. Various research shows that a company with a diverse management performs well. Diversity comes in many ways, including gender, ethnicity, expertise, etc. Applying rules in one field would be counterproductive to finding the balance between competence and diversity. Non-binding recommendations in combination with transparency, is the best way forward when it comes to considering a wide range of social and environmental interests.
- Corporate governance and company law is best dealt with in the form of recommendations towards the Member States, to avoid a one-size-fits-all approach which would not reflect the wide diversity of corporations and practices. Regarding

due diligence, we would support the development of a common understanding at EU level, building on the work of the OECD Due Diligence Guidance for Responsible Business Conduct in the form of guidelines.

- We fully support the establishment of a Commission Advisory Group on Sustainable Corporate Governance to identify good practices on sustainability and stakeholder engagement.