



NOTE

1. februar 2021

Annex regarding the initiative on corporate governance

The Danish Government acknowledges that in order to achieve e.g. the goals of the Paris agreement on climate change and the Sustainable Development Goals it is vital that businesses contribute to a sustainable development. The Danish Government believes that sustainability, growth and competitiveness must be aligned and not be contradictions.

The Danish Government agrees with the Commission that it is necessary to empower directors to further integrate a wider range of interests into corporate decision-making than just the interests of the shareholders in order to avoid a narrow focus on the short term. This includes but is not limited to the interests of employees and the environment.

The Danish Government believes that introducing mandatory due diligence as described in the response, would be the most effective and proportionate instrument to achieve this empowerment. The Danish Government finds that hard regulation of directors' duties and liability could hamper the ability of companies to deliver on the sustainability agenda in the most effective way.

Directors' duties and directors' liability

The possibility for a company to buy back shares is an important instrument to adjust the capital structure of the company. It may make sense for companies not to have large cash holdings, for example because of low interest rates, but instead pay out dividends to the shareholders. If restrictions are imposed on the management of companies in relation to the payout of dividends and share buybacks, it will limit the ability of the management to act in order to make the necessary and effective decisions for the benefit of the company.

Furthermore, the right for stakeholders to influence the directors' decision-making is not accompanied with a corresponding risk and liability of the stakeholders for such decisions. This imbalance is a heavy and disproportionate burden on the companies.

Stakeholders' involvement in company decisions and enforcement of the duty of care

It is a matter of companies' *license to operate* today to consider the different interests from stakeholders that are relevant. Such stakeholders include but are not limited to the interests of employees, the environment,

NGO's, customers etc. The companies' focus on relevant stakeholders' interests is also necessary in order to attract qualified employees, and is expected to become increasingly relevant in the coming years.

However, requiring companies by law to identify the company's stakeholders and their interests in order to manage risks for the company and to identify the opportunities that arise to promote the interests of the stakeholders, could have a number of negative and unintended effects. E.g. the companies' access to venture capital could be weakened, as well as the possibility to have a well-functioning capital market within the EU in general. It is important to note that it is the task of the shareholders at the annual general meeting to decide whether they can support the management's strategy for the company's development, sustainability and goals.

Furthermore, the proposal is based on the assumption that there by nature is a fundamental conflict between the shareholders' interests and the company's long-term strategy, and furthermore, that shareholders' interests by definition are short term economic interests solely focusing on maximizing profit. This is not always the case. In general, shareholders including large institutional investors are pushing the companies forward on the sustainability agenda and forcing companies to take into account the risk of e.g. climate changes and the costs of the transition to sustainable development. Many shareholders, including pension funds and other institutional investors are at the forefront of the movement to transition the society in a sustainable way.

Principle of subsidiarity

The area of corporate governance is based on various different legal and economic traditions in different countries, and in Denmark, there is a unique tradition and model of corporate governance. Many Danish companies are already operating with a high focus on sustainability. The Danish Government therefore is concerned that it could be difficult for all member states in the EU to agree on such a high level of sustainable corporate governance and that questions can be raised as to how harmonized legislation would interplay with legal and economic traditions across the EU countries. Consequently, we are of the opinion that regulation of corporate governance at member state level is more appropriate, efficient and in compliance with the principle of subsidiarity.