Fostering sustainable and responsible businesses through due diligence

The co-signatures support the European Commission's ambition in the European Green Deal to promote the sustainability of European companies and align their operations with the UN Guiding Principles on Business and Human Rights and OECD's Guidelines for Multinational Enterprises.

Due diligence as the core element to a more sustainable and responsible business

We support the Commission's aim to regulate due diligence processes to ensure that companies contribute to sustainable and responsible business conduct by identifying actual and possible risks of their adverse impacts on human rights, including fundamental labour rights, and on the environment and climate and managing those risks. **Regulating due diligence processes will have a significant positive impact on companies' sustainable decision-making**. This includes the engagement of directors in the process, which is needed to further integrate sustainability in companies and to make questions of sustainability and responsible supply chain management a matter for directors, and not just for sustainability departments.

Hence, introducing **mandatory due diligence will be the most effective and proportionate instrument to make sure that companies work effectively towards long-term sustainability**. In combination with the initiatives already taken at the EU-level to foster sustainability in finance and trade, this would encourage managers to work with sustainability by increasing transparency to investors, consumers and other stakeholders.

Encouraging companies to deliver on the sustainability agenda

The most successful companies of tomorrow are the companies whose management acknowledges that long-term sustainability is fundamental to their business and who integrate this into their management. In order to do so, directors need a clear and effective legal framework at their disposal. The focus should thus be on providing strong incentives for companies to work with sustainability and to avoid any legal uncertainty that could potentially prevent them from doing so.

To enable a green and sustainable transformation it is essential that companies allocate resources to fulfil this transition through long-term investments including in new technologies, sustainable business models and supply chains. However, it is important that the measures taken are well thought through and appropriately designed to help create good conditions and lead in the right direction without undesirable consequences in other areas. Reducing companies' opportunity e.g. to pay out dividends and increasing the circle of stakeholders whose interests should be taken into account in decision-making can have unintended consequences, such as introducing legal uncertainty and harming the ability to attract venture capital.

We support the view that companies' stakeholders' interests are very relevant and that the best way of addressing these stakeholders is described in the recommendations of the OECD on due diligence processes and achieved through due diligence regulation instead of possible further company law or corporate governance rules. However, it may have undue negative consequences if companies could be held accountable for not involving certain stakeholders enough. This could introduce a high degree of legal uncertainty.

The European Commission’s upcoming proposal on directors’ duties would be primarily based on the report by Ernst and Young (EY) “*Study on directors’ duties and sustainable corporate governance*”. The conclusions from the report have been heavily criticized by e.g. company law professors around the world and numerous business organizations. We are therefore of the opinion that **the need and evidence for an upcoming proposal that harmonizes rules on corporate governance has not been documented** and we recommend the European Commission to provide a better basis for decision-making. If an initiative is to be proposed, it is essential to build it on a strong evidence-based foundation, since corporate governance models in different EU-member states are based on various different legal and economic traditions and possible new rules could have far-reaching consequences. It is at the moment unclear how harmonized corporate governance rules within this field of legislation would in a positive way interplay with different legal and economic traditions.

With that in mind, we wish to convey our concerns related to the upcoming initiative on Sustainable Corporate Governance and ask the European Commission to prioritise **moving forward with a regulatory proposal on due diligence processes.** At the same time, we **urge the European Commission to reconsider the need and appropriateness of further regulating corporate governance as outlined in the Commission’s consultation**.

In conclusion, the co-signatures propose in relations to the Sustainable Corporate Governance initiative to prioritise moving forward with a regulatory proposal on due diligence on human rights and the environment. In line with this, we ask the European Commission to reconsider the appropriateness and need of further regulating corporate governance including director’s duties, the involvement of more stakeholders in company decisions and the enforcement of the duty of care. The co-signatures believe this would be the right approach and that it would be in line with the principles for Better Regulation.

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