Consultation Document Proposal for an Initiative on Sustainable Corporate Governance

Fields marked with * are mandatory.

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This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.
The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.
Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

Introduction

Political context

The Commission's political guidelines set the ambition of Europe becoming the world's first climate-neutral continent by 2050 and foresee strong focus on delivering on the UN Sustainable Development Goals[1], which requires changing the way in which we produce and consume. Building on the political guidelines, in its Communication on the European Green Deal[2] (adopted in December 2019) and on A Strong Social Europe for Just Transition[3] (adopted in January 2020) the Commission committed to tackling climate and environmental-related challenges and set the ambition to upgrade Europe's social market economy.

The European Green Deal sets out that "sustainability should be further embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects."

Sustainability in corporate governance encompasses encouraging businesses to frame decisions in terms of their environmental (including climate, biodiversity), social, human and economic impact, as well as in terms of the company's development in the longer term (beyond 3-5 years), rather than focusing on short-term gains.

As a follow-up to the European Green Deal, the Commission has announced a sustainable corporate governance initiative for 2021, and the initiative was listed among the deliverables of the Action Plan on a Circular Economy[4], the Biodiversity strategy[5] and the Farm to Fork strategy[6]. This initiative would build on the results of the analytical and consultative work carried out under Action 10 of the Commission's 2018 Action Plan on Financing Sustainable Growth and would also be part of the Renewed Sustainable Finance

Strategy.

The recent Communication “Europe's moment: Repair and Prepare for the Next Generation” (Recovery Plan)[7] (adopted in May 2020) also confirms the Commission’s intention to put forward such an initiative with the objective to “ensure environmental and social interests are fully embedded into business strategies”. This stands in the context of competitive sustainability contributing to the COVID-19 recovery and to the long-term development of companies. Relevant objectives are strengthening corporate resilience, improving predictability and management of risks, dependencies and disruptions including in the supply chains, with the ultimate aim for the EU economy to build back stronger.

This initiative is listed in the Commission Work program for 2021 [8].

EU action in the area of sustainable corporate governance will complement the objectives of the upcoming Action Plan for the implementation of the European Pillar of Social Rights, to ensure that the transitions towards climate-neutrality and digitalisation are socially sustainable. It will also strengthen the EU’s voice at the global scene and would contribute to the respect of human rights, including labour rights– and corporate social responsibility criteria throughout the value chains of European companies – an objective identified in the joint Communication of the Commission and the High Representative on the Global EU response to COVID-19[9].

This initiative is complementary to the review of the Non-Financial Reporting Directive (NFRD, Directive 2014/95/EU[10]) which currently requires large public-interest companies to disclose to the public certain information on how they are affected by non-financial issues, as well as on the company’s own impacts on society and the environment. The NFRD also requires companies to report on their social and environmental policies and due diligence processes if they have them, or otherwise explain why they do not have any (comply or explain approach). Whilst the NFRD is based on incentives “to report”, the sustainable corporate governance initiative aims to introduce duties “to do”. Such concrete actions would therefore contribute to avoiding “greenwashing” and reaching the objectives of the on-going review of the NFRD too, in particular the aim of enhancing the reliability of information disclosed under the NFRD by ensuring that the reporting obligation is underpinned by adequate corporate and director duties, and the aim of mitigating systemic risks in the financial sector. Reporting to the public on the application of sustainability in corporate governance and on the fulfilment of directors’ and corporate duties would enable stakeholders to monitor compliance with these duties, thereby helping ensure that companies are accountable for how they mitigate their adverse environmental and social impacts.

The initiative would build upon relevant international standards on business and human rights and responsible business conduct, such as the United Nations’ Guiding Principles on Businesses and Human Rights and the OECD Guidelines for Multinational Enterprises and its Due Diligence Guidance for Responsible Business Conduct.

As regards environmental harm linked to deforestation, the Commission is also conducting a fitness check of the EU Timber Regulation and an impact assessment.

Finally, Covid-19 has put small and medium sized companies under financial pressure, partly due to increased delay in the payments from their larger clients. This raises the importance of the role of board members of companies to duly take into account the interests of employees, including those in the supply chains as well as the interests of persons and suppliers affected by their operations. Further support measures for SMEs also require careful consideration.

Results of two studies conducted for the Commission

To integrate properly sustainability within corporate strategies and decisions, the High-Level Expert Group on Sustainable Finance[11] recommended in 2018 that the EU clarifies corporate board members´ duties so that stakeholder interests are properly considered. Furthermore, they recommended for the EU to require that directors adopt a sustainability strategy with proper targets, have sufficient expertise in sustainability, and to improve regulation on remuneration.

In its 2018 Action Plan on Financing Sustainable Growth[12] the Commission announced that it would carry out analytical and consultative work on the possible need to legislate in this area.

The Commission has been looking at further obstacles that hinder the transition to an environmentally and socially sustainable economy, and at the possible root causes thereof in corporate governance regulation and practices. As part of this work, two studies have been conducted which show market failures and favour acting at the EU level.

The *study on directors' duties and sustainable corporate governance* [13] evidences that there is a trend in the last 30 years for listed companies within the EU to focus on short-term benefits of shareholders rather than on the long-term interests of the company. Data indicate an upward trend in shareholder pay-outs, which increased from 20% to 60% of net income while the ratio of investment (capital expenditure) and R&D spending to net income has declined by 45% and 38% respectively. The study argues that sustainability is too often overlooked by short-term financial motives and that to some extent, corporate short-termism finds its root causes in regulatory frameworks and market practices. Against these findings, the study argues that EU policy intervention is required to lengthen the time horizon in corporate decision-making and promote a corporate governance more conducive to sustainability. To achieve this, it spells out three specific objectives of any future EU intervention: strengthening the role of directors in pursuing their company's long-term interest by dispelling current misconceptions in relation to their duties, which lead them to prioritise short-term financial performance over the long-term interest of the company; improving directors' accountability towards integrating sustainability into corporate strategy and decision-making; and promoting corporate governance practices that contribute to company sustainability, by addressing relevant unfavourable practices (e.g. in the area of board remuneration, board composition, stakeholder involvement).

The *study on due diligence requirements* through the supply chain[14] focuses on due diligence processes to address adverse sustainability impacts, such as climate change, environmental, human rights (including labour rights) harm in companies' own operations and in their value chain, by identifying and preventing relevant risks and mitigating negative impacts. The study shows that in a large sample of mostly big companies participating in the study survey, only one in three businesses claim to undertake due diligence which takes into account all human rights and environmental impacts. Therefore voluntary initiatives, even when backed by transparency do not sufficiently incentivise good practice. The study shows wide stakeholder support, including from frontrunner businesses, for mandatory EU due diligence. 70% of businesses responding to the survey conducted for the study agreed that EU regulation might provide benefits for business, including legal certainty, level playing field and protection in case of litigation. The study shows that a number of EU Member States have adopted legislation or are considering action in this field. A potential patchwork of national legislation may jeopardise the single market and increase costs for businesses. A cross-sectoral regulatory measure, at EU level, was preferred to sector specific frameworks.

Objectives of this public consultation

This public consultation aims to collect the views of stakeholders with regard to a possible Sustainable Corporate Governance Initiative. It builds on data collected in particular in the two studies mentioned above and on their conclusions, as well as on the feedback received in the public consultation on the Renewed Sustainable Finance Strategy[15]. It includes questions to allow the widest possible range of stakeholders to provide their views on relevant aspects of sustainable corporate governance.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- (x) English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* Surname

KUPER

* I am giving my contribution as

- Academic/research institution
- (selected) Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Magdalena

* Email (this won't be published)

magdalena.kuper@bvi.de

* Organisation name

255 character(s) maximum

BVI

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- (selected) Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South

	French Southern and Antarctic Lands		Sandwich Islands
Barbados	Gabon	Monaco	South Korea
Belarus	Georgia	Mongolia	South Sudan
Belgium	Germany	Montenegro	Spain
Belize	Ghana	Montserrat	Sri Lanka
Benin	Gibraltar	Morocco	Sudan
Bermuda	Greece	Mozambique	Suriname
Bhutan	Greenland	Myanmar /Burma	Svalbard and Jan Mayen
Bolivia	Grenada	Namibia	Sweden
Bonaire Saint Eustatius and Saba	Guadeloupe	Nauru	Switzerland
Bosnia and Herzegovina	Guam	Nepal	Syria
Botswana	Guatemala	Netherlands	Taiwan
Bouvet Island	Guernsey	New Caledonia	Tajikistan
Brazil	Guinea	New Zealand	Tanzania
British Indian Ocean Territory	Guinea-Bissau	Nicaragua	Thailand
British Virgin Islands	Guyana	Niger	The Gambia
Brunei	Haiti	Nigeria	Timor-Leste
Bulgaria	Heard Island and McDonald Islands	Niue	Togo
Burkina Faso	Honduras	Norfolk Island	Tokelau
Burundi	Hong Kong	Northern Mariana Islands	Tonga
Cambodia	Hungary	North Korea	Trinidad and Tobago
Cameroon	Iceland	North Macedonia	Tunisia

Canada	India	Norway	Turkey
Cape Verde	Indonesia	Oman	Turkmenistan
Cayman Islands	Iran	Pakistan	Turks and Caicos Islands
Central African Republic	Iraq	Palau	Tuvalu
Chad	Ireland	Palestine	Uganda
Chile	Isle of Man	Panama	Ukraine
China	Israel	Papua New Guinea	United Arab Emirates
Christmas Island	Italy	Paraguay	United Kingdom
Clipperton	Jamaica	Peru	United States
Cocos (Keeling) Islands	Japan	Philippines	United States Minor Outlying Islands
Colombia	Jersey	Pitcairn Islands	Uruguay
Comoros	Jordan	Poland	US Virgin Islands
Congo	Kazakhstan	Portugal	Uzbekistan
Cook Islands	Kenya	Puerto Rico	Vanuatu
Costa Rica	Kiribati	Qatar	Vatican City
Côte d’Ivoire	Kosovo	Réunion	Venezuela
Croatia	Kuwait	Romania	Vietnam
Cuba	Kyrgyzstan	Russia	Wallis and Futuna
Curaçao	Laos	Rwanda	Western Sahara
Cyprus	Latvia	Saint Barthélemy	Yemen
Czechia	Lebanon	Saint Helena Ascension and Tristan da Cunha	Zambia
	Lesotho		Zimbabwe

Democratic Republic of the Congo | Saint Kitts and Nevis

- Denmark
- Liberia
- Saint Lucia

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- **Anonymous**
  Only your contribution, country of origin and the respondent type profile that you selected will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- (selected) **Public**
  Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

- [x] I agree with the personal data protection provisions

If you replied that you answer on behalf of a business, please specify the type of business:

- (selected) institutional investor, asset manager
- other financial sector player (e.g. an analyst, rating agency, data and research provider)
- auditor
- other

Consultation questions

If you are responding on behalf of a large company, please indicate how large is the company:

- Large company with 1000 or more people employed
- Large company with less than 1000 but at least 250 people employed

If you are responding on behalf of a company, is your company listed on the stock-exchange?

- Yes, in the EU
- Yes, outside the EU

- Yes, both in and outside the EU
- No

If you are responding on behalf of a company, does your company have experience in implementing due diligence systems?

- Yes, as legal obligation
- Yes, as voluntary measure
- No

If resident or established/registered in an EU Member State, do you carry out (part of) your activity in several EU Member States?

- Yes
- No

If resident or established/ registered in a third country (i.e. in a country that is not a member of the European Union), please specify your country:

If resident or established registered in a third country, do you carry out (part of) your activity in the EU?

- Yes
- No

If resident or established registered in a third country, are you part of the supply chain of an EU company?

- Yes
- No

Section I: Need and objectives for EU intervention on sustainable corporate governance

Questions 1 and 2 below which seek views on the need and objectives for EU action have already largely been included in the public consultation on the Renewed Sustainable Finance Strategy earlier in 2020. The Commission is currently analysing those replies. In order to reach the broadest range of stakeholders possible, those questions are now again included in the present consultation also taking into account the two studies on due diligence requirements through the supply chain as well as directors’ duties and sustainable corporate governance.

Question 1: Due regard for stakeholder interests', such as the interests of employees, customers, etc., is expected of companies. In recent years, interests have expanded to include issues such as human rights violations, environmental pollution and climate change. Do you think companies and their directors should take account of these interests in corporate decisions alongside financial interests of shareholders, beyond what is currently required by EU law?

- ○ Yes, a more holistic approach should favour the maximisation of social, environmental, as well as economic/financial performance.
- ● Yes, as these issues are relevant to the financial performance of the company in the long term.
- ○ No, companies and their directors should not take account of these sorts of interests.
- ○ Do not know.

Please provide reasons for your answer:

> Adverse impacts of a company's activities may also become financially material and thus are likely to affect the financial performance in the long term. For instance, business activity of a company from an GHG-intense manufacturing sector has an adverse impact in terms of GHG emissions in the first place. This adverse impact could also materialize as a risk for the financial performance in case of introduction of carbon-pricing mechanisms that would penalize highly emitting activities.
>
> Considered from this angle, sustainability issues should be taken into account if they amount to potential sustainability risks that may affect the long-term financial performance of a company and thus, may become relevant in terms of financial interests of shareholders.

Question 2: Human rights, social and environmental due diligence requires companies to put in place continuous processes to identify risks and adverse impacts on human rights, health and safety and environment and prevent, mitigate and account for such risks and impacts in their operations and through their value chain.
In the survey conducted in the context of the study on due diligence requirements through the supply chain, a broad range of respondents expressed their preference for a policy change, with an overall preference for establishing a mandatory duty at EU level.
Do you think that an EU legal framework for supply chain due diligence to address adverse impacts on human rights and environmental issues should be developed?

- ● Yes, an EU legal framework is needed.
- ○ No, it should be enough to focus on asking companies to follow existing guidelines and standards.

- No action is necessary.
- Do not know.

Please explain:

The requirement upon the real economy companies to identify risks and adverse impacts of their business activities and to report on such risks and impacts should be considered a natural continuation of the EU regulatory measures aiming at facilitating sustainable growth.

Institutional investors such as asset managers, insurance companies and pension funds are already required by EU law to identify principal adverse impacts of their investment decisions in investee companies and to take measures in this regard. They will also be bound to report on such principal adverse impacts by means of standardized indicators that will be probably introduced in 2022 under the SFDR framework. However, it should be clear that investors can only react to risks and adverse impacts if they have access to reliable information that allows for meaningful evaluation and comparisons of their investee companies. Therefore, from the investors' perspective, a corresponding duty of companies to identify and disclose sustainability risks and adverse impacts in accordance with consistent metrics is considered a precondition for their ability to comply with their own regulatory requirements.

But also with regard to mitigation or prevention of adverse impacts on the environment or on social and employee matters, the primary responsibility should lie with the originators of such impacts, i.e. companies operating in the real economy. The current SFDR rules place a disproportionate burden upon asset managers and other institutional investors in this regard. A direct obligation of companies would help to restore a proper balance in terms of underlying responsibilities and should make an immediate contribution towards a more sustainable economy.

Question 3: If you think that an EU legal framework should be developed, please indicate which among the following possible benefits of an EU due diligence duty is important for you (tick the box/multiple choice)?

- [x] Ensuring that the company is aware of its adverse human rights, social and environmental impacts and risks related to human rights violations other social issues and the environment and that it is in a better position to mitigate these risks and impacts
- [x] Contribute effectively to a more sustainable development, including in non-EU countries
- [ ] Levelling the playing field, avoiding that some companies freeride on the efforts of others
- [x] Increasing legal certainty about how companies should tackle their impacts, including in their value chain
- [ ] A non-negotiable standard would help companies increase their leverage in the value chain
- [x]

Harmonisation to avoid fragmentation in the EU, as emerging national laws are different
- [ ] SMEs would have better chances to be part of EU supply chains
- [ ] Other

Question 3a. Drawbacks

Please indicate which among the following possible risks/drawbacks linked to the introduction of an EU due diligence duty are more important for you (tick the box /multiple choice)?

- [x] Increased administrative costs and procedural burden
- [x] Penalisation of smaller companies with fewer resources
- [x] Competitive disadvantage vis-à-vis third country companies not subject to a similar duty
- [x] Responsibility for damages that the EU company cannot control
- [ ] Decreased attention to core corporate activities which might lead to increased turnover of employees and negative stock performance
- [x] Difficulty for buyers to find suitable suppliers which may cause lock-in effects (e.g. exclusivity period/no shop clause) and have also negative impact on business performance of suppliers
- [x] Disengagement from risky markets, which might be detrimental for local economies
- [ ] Other

Section II: Directors' duty of care – stakeholders' interests

In all Member States the current legal framework provides that a company director is required to act in the interest of the company (duty of care). However, in most Member States the law does not clearly define what this means. Lack of clarity arguably contributes to short-termism and to a narrow interpretation of the duty of care as requiring a focus predominantly on shareholders' financial interests. It may also lead to a disregard of stakeholders' interests, despite the fact that those stakeholders may also contribute to the long-term success, resilience and viability of the company.

Question 5. Which of the following interests do you see as relevant for the long-term success and resilience of the company?

	Relevant	Not relevant	I do not know/I do not take position
the interests of shareholders	(x)	( )	( )
the interests of employees	(x)	( )	( )

the interests of employees in the company’s supply chain	●	○	○
the interests of customers	●	○	○
the interests of persons and communities affected by the operations of the company	●	○	○
the interests of persons and communities affected by the company’s supply chain	●	○	○
the interests of local and global natural environment, including climate	●	○	○
the likely consequences of any decision in the long term (beyond 3-5 years)	●	○	○
the interests of society, please specify	○	○	●
other interests, please specify	○	○	●

the interests of society, please specify:

other interests, please specify:

Question 6. Do you consider that corporate directors should be required by law to (1) identify the company´s stakeholders and their interests, (2) to manage the risks for the company in relation to stakeholders and their interests, including on the long run (3) and to identify the opportunities arising from promoting stakeholders’ interests?

	I strongly agree	I agree to some extent	I disagree to some extent	I strongly disagree	I do not know	I do not take position
Identification of the company´s stakeholders and their interests	●	○	○	○	○	○
Management of the risks for the company in relation to stakeholders and their interests, including on the long run	○	●	○	○	○	○
Identification of the opportunities arising from promoting stakeholders’ interests	○	●	○	○	○	○

Please explain:

As explained in our reply to question 2 above, the requirement upon real economy companies to identify and mitigate risks and adverse impacts of their business activities and to report on such risks and impacts should be considered a natural continuation of the EU regulatory measures aiming at facilitating sustainable growth. Sustainability risks and adverse impacts cannot be properly dealt with without identifying the stakeholder groups and their respective interests that are relevant in view of a company’s business activities. Such requirement should also involve direct duties addressed at corporate directors in their capacity to decide upon the strategic orientation of a company.

Question 7. Do you believe that corporate directors should be required by law to set up adequate procedures and where relevant, measurable (science –based) targets to ensure that possible risks and adverse impacts on stakeholders, ie. human rights, social, health and environmental impacts are identified, prevented and addressed?

- ○ I strongly agree
- ◉ I agree to some extent
- ○ I disagree to some extent
- ○ I strongly disagree
- ○ I do not know
- ○ I do not take position

Please explain:

As indicated in our response to question 2 above, institutional investors such as asset managers, insurance companies and pension funds are already required by EU law to identify principal adverse impacts of their investment decisions in investee companies and to take measures in this regard. They will also be bound to report on such principal adverse impacts by means of standardized indicators that will be probably introduced in 2022 under the SFDR framework. Fund managers shall consider the identified principal adverse impacts as part of their investment process.

Against this background, it seems appropriate to align the understanding of principal adverse impacts that shall be deemed relevant for a company’s activities with the envisaged concepts and metrics currently being developed for consideration of such impacts by investors under the SFDR framework. This should involve setting of measurable, science-based targets where practicable in order to help investors to understand whether and when the identified adverse impacts might actually result in significant harm to certain stakeholder groups. This should also assist corporate directors in prioritising actions for mitigating or preventing the identified impacts and risks.

In broader terms, accounting for the interests of key stakeholders recognises the collective nature of long-term value creation and the extent to which each company’s prospects for growth are tied to its ability to foster strong sustainable relationships with those stakeholders. Companies should articulate how they address adverse impacts that could arise from their business practices and affect critical business relationships with their stakeholders, and have monitoring processes in place that allow them to identify and mitigate potential adverse impacts. This would also help investors to better assess the companies' capability to respond to the environmental and social challenges in the long run.

Question 8. Do you believe that corporate directors should balance the interests of all stakeholders, instead of focusing on the short-term financial interests of shareholders, and that this should be clarified in legislation as part of directors' duty of care?

- ○ I strongly agree
- ○ I agree to some extent
- ○ I disagree to some extent
- ● I strongly disagree
- ○ I do not know
- ○ I do not take position

Please provide an explanation or comment:

The question for consultation insinuates that shareholders are driven by short-term financial interests that impact the strategic orientation of investee companies and potentially conflict with the long-term interests of stakeholders. We disagree with this assumption. Fund managers as shareholders in investee companies are striving for long-term value creation in the interest of their investors. It is important to note that while retail investors in equity funds are generally able to redeem their fund investments at short notice, fund managers commonly communicate that the minimum recommended holding period for profitable investments is five years or more. On the institutional side, the biggest share of fund investments is attributable to institutions such as insurance companies and pension funds with long-term payment commitments.

Moreover, the ESA reports on short termisms dating from December 2019 have not identified any material deficiencies in terms of the EU regulations that would promote short-term profit orientation in the fund sector and consequently, have not recommended any specific action in this regard.

Fund managers contribute to the creation of long-term value by means of engagement with the investee companies that involves exercising of voting rights attached to shares, but also continuous monitoring of a company's financial and non-financial performance and interaction with the company's directors. Since such interaction relies on a mutually trustful relationship built through dialogue, engagement cannot be successful in the short-term. The goal of engagement is always long-term value enhancement and achievement of long-term KPI targets. Commitment to long-term engagement by European asset managers has been demonstrated by the EFAMA Stewardship Code that serves as a guidance for the exercise of shareholder rights.

For these reasons, the EU regulatory concept for the upcoming initiative on sustainable corporate governance needs to be adjusted by recognising that consideration of ESG issues is not fundamentally conflicting with the interests of shareholders. Institutional investors such as fund managers are interested in contributing to long-term financial prosperity of their investee companies also by avoiding sustainability risks that may arise from inadequate responses to environmental or social issues.

Question 9. Which risks do you see, if any, should the directors' duty of care be spelled out in law as described in question 8?

There is a clear risk of misrepresenting the investors' interests as explained in our reply to question 8 above. Against the background of these explanations, we believe that the primary focus of the director's duty of care should remain on the company's interest in the sense of economic prosperity. However, the understanding of the economic prosperity should also involve consideration of long-term risks and opportunities arising from sustainability issues. This approach should ensure that the interests of shareholders are adequately taken into account

How could these possible risks be mitigated? Please explain.

The understanding of the company's interest linked to economic prosperity should also involve consideration of long-term risks and opportunities arising from sustainability issues. This approach should ensure that the interests of shareholders are adequately taken into account.

Where directors widely integrate stakeholder interest into their decisions already today, did this gather support from shareholders as well? Please explain.

Question 10. As companies often do not have a strategic orientation on sustainability risks, impacts and opportunities, as referred to in question 6 and 7, do you believe that such considerations should be integrated into the company's strategy, decisions and oversight within the company?

- ○ I strongly agree
- ● I agree to some extent
- ○ I disagree to some extent
- ○ I strongly disagree
- ○ I do not know
- ○ I do not take position

Please explain:

It would appear reasonable to put in place some principle-based organisational requirements in order to ensure proper consideration of sustainability risks and opportunities as well as adverse impacts within a company. Such requirements in terms of internal governance are already foreseen for fund managers and other financial market participants that will be bound to consider sustainability risks in their investment decisions.

Enforcement of directors' duty of care

Today, enforcement of directors' duty of care is largely limited to possible intervention by the board of directors, the supervisory board (where such a separate board exists) and the general meeting of shareholders. This has arguably contributed to a narrow understanding of the duty of care according to which directors are required to act predominantly in the short-term financial interests of shareholders. In addition, currently, action to enforce directors' duties is rare in all Member States.

Question 11. Are you aware of cases where certain stakeholders or groups (such as shareholders representing a certain percentage of voting rights, employees, civil society organisations or others) acted to enforce the directors' duty of care on behalf of the company? How many cases? In which Member States? Which stakeholders? What was the outcome?

Please describe examples:

Question 12. What was the effect of such enforcement rights/actions? Did it give rise to case law/ was it followed by other cases? If not, why?

Please describe:

Question 13. Do you consider that stakeholders, such as for example employees, the environment or people affected by the operations of the company as represented by civil society organisations should be given a role in the enforcement of directors' duty of care?

- I strongly agree
- I agree to some extent
- I disagree to some extent
- (x) I strongly disagree
- I do not know
- I do not take position

Please explain your answer:

An enforcement role for stakeholders in relation to the directors' duty of care would potentially put accountability to shareholders and stakeholders on a par and raise a number of unintended consequences in practice, such as
- Mismatch between control and economic risk which is not in the interest of investors,
- Conflation in the types of rights that owners of a company – who bear the economic risk – should reasonably have vs those that do not bear this risk,
- Potential abuse of enforcement rights by stakeholder organisations seeking to organise effective public campaigns e.g. on sustainability issues,

- Increased liability risks on directors, which may have a negative effect on the ability of European companies to attract directors with highest skills and experience.

We are therefore not supportive of stakeholders being assigned a formal enforcement role in directors' duty of care. On the other hand, it is in the interest of companies to have a formalised engagement with their stakeholders in order to take account of their interests when refining a company's business strategy. In this regard, we support measures to improve stakeholder engagement of companies in line with our reply to question 20 below.

Question 13a: In case you consider that stakeholders should be involved in the enforcement of the duty of care, please explain which stakeholders should play a role in your view and how.

Section III: Due diligence duty

For the purposes of this consultation, "due diligence duty" refers to a legal requirement for companies to establish and implement adequate processes with a view to prevent, mitigate and account for human rights (including labour rights and working conditions), health and environmental impacts, including relating to climate change, both in the company's own operations and in the company's the supply chain. "Supply chain" is understood within the broad definition of a company's "business relationships" and includes subsidiaries as well as suppliers and subcontractors. The company is expected to make reasonable efforts for example with respect to identifying suppliers and subcontractors. Furthermore, due diligence is inherently risk-based, proportionate and context specific. This implies that the extent of implementing actions should depend on the risks of adverse impacts the company is possibly causing, contributing to or should foresee.

Question 14: Please explain whether you agree with this definition and provide reasons for your answer.

We agree with the proposed definition of the due diligence duty, since it seems consistent with the established understanding in accordance with international principles, in particular the OECD guidelines for multinational enterprises and the due diligence guidance related thereto. The decisive difference is, however, that the OECD Guidelines are non-binding, whereas the proposed definition shall form the basis for future EU legal requirements upon companies. A proper balance should thus be sought from the outset between the promotion of responsible business conduct across the supply chain and the actual legal responsibility of companies (cf. also our reply to question 19 below).

Question 15: Please indicate your preference as regards the content of such possible corporate due diligence duty (tick the box, only one answer possible). Please note that all approaches are meant to rely on existing due diligence standards, such as the OECD guidance on due diligence or the UNGPs. Please note that Option 1, 2 and 3 are horizontal i. e. cross-sectorial and cross thematic, covering human rights, social and environmental matters. They are mutually

exclusive. Option 4 and 5 are not horizontal, but theme or sector-specific approaches. Such theme specific or sectorial approaches can be combined with a horizontal approach (see question 15a). If you are in favour of a combination of a horizontal approach with a theme or sector specific approach, you are requested to choose one horizontal approach (Option 1, 2 or 3) in this question.

- ○ Option 1. “Principles-based approach”: A general due diligence duty based on key process requirements (such as for example identification and assessment of risks, evaluation of the operations and of the supply chain, risk and impact mitigation actions, alert mechanism, evaluation of the effectiveness of measures, grievance mechanism, etc.) should be defined at EU level regarding identification, prevention and mitigation of relevant human rights, social and environmental risks and negative impact. These should be applicable across all sectors. This could be complemented by EU-level general or sector specific guidance or rules, where necessary
- ● Option 2. “Minimum process and definitions approach”: The EU should define a minimum set of requirements with regard to the necessary processes (see in option 1) which should be applicable across all sectors. Furthermore, this approach would provide harmonised definitions for example as regards the coverage of adverse impacts that should be the subject of the due diligence obligation and could rely on EU and international human rights conventions, including ILO labour conventions, or other conventions, where relevant. Minimum requirements could be complemented by sector specific guidance or further rules, where necessary.
- ○ Option 3. “Minimum process and definitions approach as presented in Option 2 complemented with further requirements in particular for environmental issues”. This approach would largely encompass what is included in option 2 but would complement it as regards, in particular, environmental issues. It could require alignment with the goals of international treaties and conventions based on the agreement of scientific communities, where relevant and where they exist, on certain key environmental sustainability matters, such as for example the 2050 climate neutrality objective, or the net zero biodiversity loss objective and could reflect also EU goals. Further guidance and sector specific rules could complement the due diligence duty, where necessary.
- ○ Option 4 “Sector-specific approach”: The EU should continue focusing on adopting due diligence requirements for key sectors only.
- ○

Option 5 "Thematic approach": The EU should focus on certain key themes only, such as for example slavery or child labour.

- None of the above, please specify

Question 15a: If you have chosen option 1, 2 or 3 in Question 15 and you are in favour of combining a horizontal approach with a theme or sector specific approach, please explain which horizontal approach should be combined with regulation of which theme or sector?

It is not easy to commit to preferences for specific approaches without being able to assess further details or specific implications. However, our views on the proposed options are as follows:
- We are in favour of principle-based regulation that would define the general due diligence duty based on key process requirements. From the investors' perspective, however, it is also important to introduce a set of harmonised definitions in order to promote a common understanding of adverse impacts that should be the subject of the due diligence obligation.
- In this regard, we recommend reference to the established international principles, especially the OECD guidelines for multinational enterprises that are the most comprehensive international standard on responsible business conduct. They provide for an advanced understanding of the areas where adverse impacts can occur. Due account should also be taken of the ongoing work on identification and disclosure of principal adverse impacts by institutional investors. Asset managers, insurance companies and pension funds will be bound by the SFDR framework to report on a standardized set of indicators for principal adverse impact probably from 2022 onwards. The relevant indicators are currently being developed by the ESAs. In order to facilitate consideration of adverse impacts both for the company's due diligence and as part of the investment process, the understanding of principal adverse impacts deemed relevant for business activities should be aligned with the envisaged concepts and metrics currently being developed under the SFDR framework.
- While the general due diligence duty should apply to all companies regardless of the sectors in which they operate, it could be appropriate to supplement such general, principle-based obligation by more specific provisions for sectors in which the risk of adverse impacts to the environment, the rights of employees or the society at large is particularly virulent. This approach is also followed under the OECD guidelines that provide for additional guidance in order to identify and address adverse impacts associated with business operations, products or services in particular sectors (such as garment and footwear, mining or minerals). In our view, such additional sector-specific guidance could be developed as non-binding EU measures, e.g. recommendations, while the overarching due diligence duty should have a binding legal status.

We are in favour of combining option 2 that would ensure a set of common definitions with more sector specific guidance in most problematic areas. This approach is also followed under the OECD guidelines that provide for additional guidance in order to identify and address adverse impacts associated with business operations, products or services in particular sectors (such as garment and footwear, mining or minerals). In our view, such additional sector-specific guidance could be developed as non-binding EU measures, e.g. recommendations, while the overarching due diligence duty should have a binding legal status.

Question 15b: Please provide explanations as regards your preferred option, including whether it would bring the necessary legal certainty and whether complementary guidance would also be necessary.

Question 15c: If you ticked options 2) or 3) in Question 15 please indicate which areas should be covered in a possible due diligence requirement (tick the box, multiple choice)

- [x] Human rights, including fundamental labour rights and working conditions (such as occupational health and safety, decent wages and working hours)
- [x] Interests of local communities, indigenous peoples' rights, and rights of vulnerable groups
- [x] Climate change mitigation
- [x] Natural capital, including biodiversity loss; land degradation; ecosystems degradation, air, soil and water pollution (including through disposal of chemicals); efficient use of resources and raw materials; hazardous substances and waste
- [ ] Other, please specify

Question 15d: If you ticked option 2) in Question 15 and with a view to creating legal certainty, clarity and ensuring a level playing field, what definitions regarding adverse impacts should be set at EU level?

We recommend reference to the established international principles, especially the OECD guidelines for multinational enterprises that are the most comprehensive international standard on responsible business conduct. They provide for an advanced understanding of the areas where adverse impacts can occur. Due account should also be taken of the ongoing work on identification and disclosure of principal adverse impact by institutional investors. Asset managers, insurance companies and pension funds will be bound by the SFDR framework to report on a standardized set of indicators for principal adverse impact probably from 2022 onwards. The relevant indicators are being currently developed by the ESAs. In order to facilitate consideration of adverse impacts both for the company's due diligence and as part of the investment process, the understanding of principal adverse impacts deemed relevant for business activities should be aligned with the envisaged concepts and metrics currently being developed under the SFDR framework

Question 15e: If you ticked option 3) in Question 15, and with a view to creating legal certainty, clarity and ensuring a level playing field, what substantial requirements regarding human rights, social and environmental performance (e.g. prohibited conducts, requirement of achieving a certain performance/target by a certain date for specific environmental issues, where relevant, etc.) should be set at EU level with respect to the issues mentioned in 15c?

Question 15f: If you ticked option 4) in question 15, which sectors do you think the EU should focus on?

In our opinion, the need for common standards of supply chain due diligence is particularly urgent in the following sectors: industry, mining, energy, utilities, transport, construction and consumer staples.

Should the Commission rather opt for the thematic approach outlined as option 5, we would see merit in first focusing on strategies for avoiding adverse impacts in terms of human rights, GHG emissions and carbon footprint, water, ecosystems and biodiversity.

Question 15g: If you ticked option 5) in question 15, which themes do you think the EU should focus on?

Question 16: How could companies'- in particular smaller ones'- burden be reduced with respect to due diligence? Please indicate the most effective options (tick the box, multiple choice possible)
This question is being asked in addition to question 48 of the Consultation on the Renewed Sustainable Finance Strategy, the answers to which the Commission is currently analysing.

- [ ] All SMEs[16] should be excluded
- [x] SMEs should be excluded with some exceptions (e.g. most risky sectors or other)
- [ ] Micro and small sized enterprises (less than 50 people employed) should be excluded
- [ ] Micro-enterprises (less than 10 people employed) should be excluded
- [ ] SMEs should be subject to lighter requirements ("principles-based" or "minimum process and definitions" approaches as indicated in Question 15)
- [ ] SMEs should have lighter reporting requirements
- [ ] Capacity building support, including funding
- [ ] Detailed non-binding guidelines catering for the needs of SMEs in particular
- [ ] Toolbox/dedicated national helpdesk for companies to translate due diligence criteria into business practices
- [ ] Other option, please specify
- [ ] None of these options should be pursued

Please explain your choice, if necessary

Introduction of a legal due diligence duty with regard to supply chains will be a game changer for the established business models and might have implications for the competitiveness of the European industry. In the interest of proportionality, we suggest starting with a commitment of large undertakings that could be defined in line with the future scope of application of the NFRD regime. SMEs should not be required to apply the due diligence standards in any case, but could be subject to a “comply or explain” approach whereby they could refrain from applying due diligence processes if the risk of adverse impacts is less relevant in view of their specific business model. SMEs operating in sectors in which the risk of adverse impacts to the environment, the rights of employees or the society at large is particularly virulent should be bound to comply with at least a set of principle-based requirements.

Question 17: In your view, should the due diligence rules apply also to certain third-country companies which are not established in the EU but carry out (certain) activities in the EU?

- (x) Yes
- ( ) No
- ( ) I do not know

Question 17a: What link should be required to make these companies subject to those obligations and how (e.g. what activities should be in the EU, could it be linked to certain turnover generated in the EU, other)? Please specify.

It is clear that an obligation for EU companies to obey by due diligence standards on sustainability in their business relationships will impact their competitive position towards third-country players. In order to reduce potential competitive disadvantages for the EU industry, companies established outside the EU should be subject to the same obligations in case they have significant operations in the EU markets. In this regard, linking the application of the due diligence duties e.g. to a certain percentage of turnover generated in the EU appears a viable option. In any case, application of substantive due diligence requirements should be accompanied by related disclosures on identified adverse impacts in line with the standards and metrics to be developed under EU law.

Question 17b: Please also explain what kind of obligations could be imposed on these companies and how they would be enforced.

Question 18: Should the EU due diligence duty be accompanied by other measures to foster more level playing field between EU and third country companies?

- (x) Yes
- ( ) No
- ( ) I do not know

Please explain:

The International Platform on Sustainable Finance should serve as a multilateral forum for promoting a common understanding of due diligence standards for responsible business conduct in line with the established international principles. Members of the International Platform could be encouraged to follow the

EU example in introducing a minimum set of principle-based requirements for effective due diligence across the supply chains.

Question 19: Enforcement of the due diligence duty

Question 19a: If a mandatory due diligence duty is to be introduced, it should be accompanied by an enforcement mechanism to make it effective. In your view, which of the following mechanisms would be the most appropriate one(s) to enforce the possible obligation (tick the box, multiple choice)?

- [ ] Judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations
- [x] Supervision by competent national authorities based on complaints (and/or reporting, where relevant) about non-compliance with setting up and implementing due diligence measures, etc. with effective sanctions (such as for example fines)
- [ ] Supervision by competent national authorities (option 2) with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU
- [ ] Other, please specify

Please provide explanation:

We disagree with attaching legal liability and potential claims for compensation in case of harm caused by not fulfilling the due diligence obligations. As explained in our answer to question 15 above, due diligence under the EU law should be principle-based and confined to key processual requirements that should apply in a commensurate, risk-based manner. This would mean that a company should be able to prioritise preventive or remediative actions based on the severity and likelihood of the identified adverse impacts. Such principle-based responsibilities should not give rise to liability claims, but be dealt with by the competent national authorities that should be equipped with effective sanctioning powers in this regard. Affected stakeholders could be given a role in this process by being entrusted with a right of complaint that should result in investigative action by the NCA.

Question 19b: In case you have experience with cases or Court proceedings in which the liability of a European company was at stake with respect to human rights or environmental harm caused by its subsidiary or supply chain partner located in a third country, did you encounter or do you have information about difficulties to get access to remedy that have arisen?

- ( ) Yes
- ( ) No

In case you answered yes, please indicate what type of difficulties you have encountered or have information about:

If you encountered difficulties, how and in which context do you consider they could (should) be addressed?

Section IV: Other elements of sustainable corporate governance

Question 20: Stakeholder engagement

Better involvement of stakeholders (such as for example employees, civil society organisations representing the interests of the environment, affected people or communities) in defining how stakeholder interests and sustainability are included into the corporate strategy and in the implementation of the company's due diligence processes could contribute to boards and companies fulfilling these duties more effectively.

Question 20a: Do you believe that the EU should require directors to establish and apply mechanisms or, where they already exist for employees for example, use existing information and consultation channels for engaging with stakeholders in this area?

- [ ] I strongly agree
- [x] I agree to some extent
- [ ] I disagree to some extent
- [ ] I strongly disagree
- [ ] I do not know
- [ ] I do not take position

Please explain.

Most companies do already have in place mechanisms to facilitate dialogue with their stakeholders that are e.g. represented in an advisory body. In Germany, consideration of employees' interests in the strategic business orientation is ensured by participation of employee representatives in the supervisory boards of companies. Another feature of this co-determination system is the right of employees to found a works council (Betriebsrat) to represent their interests in the day-to-day business and to improve and systematise communication channels. Works councils operate also in other Member States such as Austria, the Netherlands, Belgium, Luxembourg, Italy and France, albeit under different rules.
As things stand, we do no see the need for further institutionalisation of the stakeholder dialogue at the EU level. "Advisory bodies" and "stakeholder general meetings" can be already observed as elements of best practice as indicated below. In addition, a compliant mechanism could be promoted at the EU level as part of the due diligence process. Stakeholders could be obliged to first issue complaints to the relevant company and to await remediative measures before directing them to the responsible national authority as a request for investigative action (cf. our response to question 19a above).

Question 20b: If you agree, which stakeholders should be represented? Please explain.

Question 20c: What are best practices for such mechanisms today? Which mechanisms should in your view be promoted at EU level? (tick the box, multiple choice)

	Is best practice	Should be promoted at EU level
Advisory body	◉	○
Stakeholder general meeting	◉	○
Complaint mechanism as part of due diligence	○	◉
Other, please specify	○	○

Question 21: Remuneration of directors

Current executive remuneration schemes, in particular share-based remuneration and variable performance criteria, promote focus on short-term financial value maximisation [17] (Study on directors' duties and sustainable corporate governance).

Please rank the following options in terms of their effectiveness to contribute to countering remuneration incentivising short-term focus in your view.

This question is being asked in addition to questions 40 and 41 of the Consultation on the Renewed Sustainable Finance Strategy the answers to which the Commission is currently analysing.
Ranking 1-7 (1: least efficient, 7: most efficient)

Restricting executive directors' ability to sell the shares they receive as pay for a certain period (e.g. requiring shares to be held for a certain period after they were granted, after a share buy-back by the company)	★★★★★★☆
Regulating the maximum percentage of share-based remuneration in the total remuneration of directors	★★☆☆☆☆☆
	★★

Regulating or limiting possible types of variable remuneration of directors (e. g. only shares but not share options)	☆☆☆☆☆
Making compulsory the inclusion of sustainability metrics linked, for example, to the company’s sustainability targets or performance in the variable remuneration	★★★★★★☆
Mandatory proportion of variable remuneration linked to non-financial performance criteria	★★★★☆☆☆
Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors’ variable remuneration	★★★★☆☆☆
Taking into account workforce remuneration and related policies when setting director remuneration	★★★★☆☆☆
Other option, please specify	☆☆☆☆☆☆☆
None of these options should be pursued, please explain	☆☆☆☆☆☆☆

Please explain:

Introduction of a retention period for shares paid to directors as part of the variable remuneration (option 1) is a very common and effective instrument for incentivising executive decisions that promote long-term value creation in a company.

While we support the idea of linking a certain share of variable remuneration to non-financial performance (option 4), we are reluctant to further specifying the relevant proportion by means of regulation (option 5). It is important that both the share of variable remuneration and the choice of relevant non-financial KPIs are consistent with the business activities of companies. This should include reduction of carbon emissions if these pose a material risk to a company's business activities, e.g. in case it belongs to a highly emitting sector. We recommend that companies be required to integrate company or sector-specific ESG indicators in the short-term and long-term variable remuneration and reflect the approach in the remuneration policy to be submitted for a vote by the general meeting.

With regard to the latter, shareholders' right to vote on the remuneration policy should be binding in order to warrant effective control and correction of excessive pays by shareholders. Such additional control mechanism is particularly indicated in case of weak governance structures, e.g. involving close links between executive and non-executive directors. With regard to sustainability considerations, a binding vote by shareholder could help to promote proper alignment of the remuneration metrics with the ESG targets defined in the business strategy of a company.

Question 22: Enhancing sustainability expertise in the board

Current level of expertise of boards of directors does not fully support a shift towards sustainability, so action to enhance directors' competence in this area could be envisaged [18] (Study on directors' duties and sustainable corporate governance).
Please indicate which of these options are in your view effective to achieve this objective (tick the box, multiple choice).

- [x] Requirement for companies to consider environmental, social and/or human rights expertise in the directors' nomination and selection process
- [ ] Requirement for companies to have a certain number/percentage of directors with relevant environmental, social and/or human rights expertise
- [ ] Requirement for companies to have at least one director with relevant environmental, social and/or human rights expertise
- [x] Requirement for the board to regularly assess its level of expertise on environmental, social and/or human rights matters and take appropriate follow-up, including regular trainings
- [ ] Other option, please specify
- [ ] None of these are effective options

Please explain:

Regulatory intervention in the composition of boards in order to enhance directors' competence in ESG matters should be carefully considered. From the investors' perspective, measures ensuring adequate consideration of ESG issues in the nomination process or seeking to enhance the ESG expertise of the board members in office are preferable to direct interventions such as the requirement for a certain minimum percentage of directors with demonstrable knowledge e.g. on climate risk. Higher transparency standards with regard to the nomination and selection process would be helpful in order to enable investors to properly exercise their respective rights of control.

Stricter regulatory requirements in terms of board composition would be disproportionate to other qualifications that are relevant to the business operations or the financial position of a company. As it stands, most boards seek to address sustainability topics by recruiting executive directors with relevant operational experience e.g. in terms of overseeing health and safety rather than detailed ESG experience e.g. on climate risk. However as companies develop their TCFD reporting and improve the quality of their non-financial disclosures while assuring the underlying data, they are successively gathering greater experience of these issues also at the board level. The pending EU reform of NFRD, but also the international thrust for common standards in the area of non-financial reporting to be introduced at the global level should further accelerate this development without the need for direct regulation.

Question 23: Share buybacks

Corporate pay-outs to shareholders (in the form of both dividends and share buybacks) compared to the company's net income have increased from 20 to 60 % in the last 30 years in listed companies as an indicator of corporate short-termism. This arguably reduces the company's resources to make longer-term investments including into new technologies, resilience, sustainable business models and supply chains[19]. (A share buyback means that the company buys back its own shares, either directly from the open market or by offering shareholders the option to sell their shares to the company at a fixed price, as a result of which the number of outstanding shares is reduced, making each share worth a greater percentage of the company, thereby increasing both the price of the shares and the earnings per share.) EU law regulates the use of share-buybacks [Regulation 596/2014 on market abuse and Directive 77/91, second company law Directive].
In your view, should the EU take further action in this area?

- ○ I strongly agree
- ○ I agree to some extent
- ○ I disagree to some extent
- ○ I strongly disagree
- ○ I do not know
- ● I do not take position

Question 23a: If you agree, what measure could be taken?

Question 24: Do you consider that any other measure should be taken at EU level to foster more sustainable corporate governance?
If so, please specify:

As suggested in our response to question 21 above, shareholders' right to vote on the remuneration policy should be declared binding in order to warrant effective control and correction of excessive pays by shareholders. Such additional control mechanism is particularly indicated in case of weak governance structures, e.g. involving close links between executive and non-executive directors. With regard to sustainability considerations, a binding vote by shareholder could help to promote proper alignment of the remuneration metrics with the ESG targets defined in the business strategy of a company.

In addition, the following measures could be envisaged to foster more sustainable corporate governance:
- providing for mandatory shareholders' vote on relevant M&A transactions, especially in case of transactions that materially alter the risk profile of a company,
- introducing a standard voting item on the discharge of directors relating to the sustainability strategy of the company in order to reflect the relevance of introducing and implementing such strategies,
- enhancing transparency and simplicity along the voting chain (elimination of hurdles to cross-border voting) in order to overcome the "black-boxed" chains of custodians that currently force shareholders to rely on their capacity without effective control measures, and
- enabling shareholders to file shareholder proposals cross-border in order to encourage more active ownership.

Section V: Impacts of possible measures

Question 25: Impact of the spelling out of the content of directors' duty of care and of the due diligence duty on the company

Please estimate the impacts of a possible spelling out of the content of directors' duty of care as well as a due diligence duty compared to the current situation. In your understanding and own assessment, to what extent will the impacts/effects increase on a scale from 0-10? In addition, please quantify/estimate in quantitative terms (ideally as percentage of annual revenues) the increase of costs and benefits, if possible, in particular if your company already complies with such possible requirements.

Table

	Non-binding guidance. Rating 0-10	Introduction of these duties in binding law, cost and benefits linked to setting up /improving external impacts' identification and mitigation processes Rating 0 (lowest impact)-10 (highest impact) and quantitative data	Introduction of these duties in binding law, annual cost linked to the fulfilment of possible requirements aligned with science based targets (such as for example climate neutrality by 2050, net zero biodiversity loss, etc.) and possible reorganisation of supply chains Rating 0 (lowest impact)-10 (highest impact) and quantitative data
Administrative costs including costs related to new staff required to deal with new obligations			
Litigation costs			
Other costs including potential indirect costs linked to higher prices in the supply chain, costs liked to drawbacks as explained in question 3, other than administrative and litigation costs, etc. Please specify.			
Better performance stemming from increased employee loyalty, better employee performance, resource efficiency			

Competitiveness advantages stemming from new customers, customer loyalty, sustainable technologies or other opportunities			
Better risk management and resilience			
Innovation and improved productivity			
Better environmental and social performance and more reliable reporting attracting investors			
Other impact, please specify			

Please explain:

Question 26: Estimation of impacts on stakeholders and the environment
A clarified duty of care and the due diligence duty would be expected to have positive impacts on stakeholders and the environment, including in the supply chain. According to your own understanding and assessment, if your company complies with such requirements or conducts due diligence already, please quantify / estimate in quantitative terms the positive or negative impact annually since the introduction of the policy, by using examples such as:
- Improvements on health and safety of workers in the supply chain, such as reduction of the number of accidents at work, other improvement on working conditions, better wages, eradicating child labour, etc.
- Benefits for the environment through more efficient use of resources, recycling of waste, reduction in greenhouse gas emissions, reduced pollution, reduction in the use of hazardous material, etc.
- Improvements in the respect of human rights, including those of local communities along the supply chain
- Positive/negative impact on consumers
- Positive/negative impact on trade
- Positive/negative impact on the economy (EU/third country).

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