

On behalf of the undersigned

To:

Věra Jourová, European Commission Vice-President for Values and Transparency
Didier Reynders, European Commissioner for Justice
Thierry Breton, European Commissioner for Internal Market
Lucie Slavíková, Chair of Council Working Party on Company Law
Karl-Petter Thorwaldsson, Minister for Business, Industry and Innovation in Sweden
Morgan Johansson, Minister for Justice and Home Affairs in Sweden
Adrián Vázquez Lázara, Member of the European Parliament
Axel Voss, Member of the European Parliament
Heidi Hautala, Member of the European Parliament
Jorge Buxadé Villalba, Member of the European Parliament
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Linea Sogaard-Lidell, Member of the European Parliament
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Joint letter on the European Commission's proposal for a Directive on Corporate Sustainability Due Diligence

The co-signatories of this letter welcome a proposal for a Directive on Corporate Sustainable Due Diligence (the proposal, CSDDD) and support the objective to mitigate adverse human rights and environmental impacts. Companies play a vital role in the transition towards a green and sustainable economy. Consequently, it is important that the CSDDD delivers a practical and realistic framework for companies as well as other stakeholders concerned. It is key to ensure balanced rules that can both meet the objective and be operational for the companies subjected to it. Focus in this letter is however kept on corporate governance and the due diligence obligations in the proposal that has an impact on the management of the companies.

The need for legal certainty

Clear rules are essential when it comes to duties, liability and uniform enforcement, therefore vague and broad definitions should be avoided. For instance, introducing complaint rights for a wide and vaguely defined group of stakeholders in combination with equally vaguely defined directors' duties, creates legal uncertainty about the liability of the management. This will likely lead to abusive litigation and to slow, risk-averse decision making inside companies incompatible with the competitive demands of global companies. It could also potentially have a deterring effect on companies' opportunities to attract qualified professionals for their management, forcing the companies to increase the remuneration packages beyond what is commercially motivated. Access to venture and private equity capital would weaken, and further reduce the general competitive position for businesses within the scope of the CSDDD.

Legal uncertainty is created in particular as regards requirements to prevent potential adverse impacts, to bring actual adverse impacts to an end, as regards complaints procedures (art. 9), stakeholder involvement (art. 26), combating climate change (art. 15), sanctions (art. 20), and civil liability (art. 22). Moreover, the proposal contains several references to international conventions the majority of which are government-to-government, which all makes it difficult to comply with as a company.

Requirements should relate to due diligence and be within the companies' range of influence

The CSDDD proposal includes obligations related to due diligence which are too wide ranging and difficult to understand and apply. This needs to be clarified.

Firstly, the requirements should be limited to the companies' suppliers in the first link. It is only in this stage that companies can practically assert influence. Further, the terms "established business relationship" and "value chain" need to be clarified. These definitions are very broad and unclear. As regards "value chain", we believe the term should be replaced by "supply chain", and it should be further clarified how far the responsibility extends.

No need for further regulation of corporate governance

Some duties in the proposal go beyond the objective of regulating companies' due diligence obligations. This is especially the case for the parts related to corporate governance (art. 15 (3), 25 & 26), including regulating management remuneration in line with the Paris Agreement, that is already regulated in the new Corporate Sustainability Reporting Directive.

The European Commission has chosen to present the proposal for a directive, despite the fact that this part of the impact assessment was rejected twice by the European Commission's Regulatory Scrutiny Board (RSB). RSB called for better explanation and evidence of the added value of regulating directors' duties on top of due diligence requirements, considering that the due diligence obligation already requires risk management and engagement with stakeholders' interests. The same critique was raised early in the process by a large number of stakeholders who strongly recommended the European Commission to abstain from including corporate governance in the proposal on this questionable basis, and to focus instead on the due diligence obligations. Thus, we find it unfortunate that the European Commission now has put forward a proposal which contains sensitive general rules on corporate governance without a proper evidence base.

The existing frameworks for corporate governance are based on unique legal and economic traditions throughout the Member States and are not suited for regulation at EU-level. According to the subsidiarity and proportionality principles, EU legislation is not motivated. This regulatory area has historically developed in very close ties to local culture and local company law and previous attempts at harmonising the area have hence proven challenging. This is not to say that national solutions are static and ancient – on the contrary, corporate governance best practices are shared internationally and the systems are by nature dynamic.

It needs to be borne in mind that when a legal responsibility applies to the company as an entity it *automatically* becomes a responsibility of the directors according to existing company law in the Member States. In other words, when a legal obligation is put on the company, Member States already have rules in place ensuring that it affects directors' duties. These rules are specific to the governance models of the particular Member State, but they all have in common that directors will risk personal liability if they violate their duty to a certain extent of negligence. This assessment will depend on the concrete circumstances pertaining to the individual director and will be assessed in accordance with the tort and criminal

law regime in the particular Member State. It is therefore unnecessary and inappropriate to regulate this at the EU-level.

Furthermore, it needs to be underlined that in these existing national combinations of legislation and corporate governance frameworks, directors - and management – are already obliged to consider consequences for the company as well as for other stakeholders in decision making. These decisions are complex and include by nature prioritising among both risks and opportunities, at all times. According to fundamental principles, shareholders are in their capacity of owners the ultimate decisionmakers of the company and it is the responsibility of the directors to safeguard the company's and the shareholders' interests with care and with due consideration for the investors and other stakeholders. There is therefore no need to regulate that directors take into account the consequences of their decisions for sustainability matters. Managing long-term sustainability risks and including stakeholders' interests in management decisions is a license to operate for companies today.

Overall risks with a sub-optimal framework

An EU framework should secure that companies operating at a global level will face a level playing field. This is important in order to avoid reduced competitiveness vis-à-vis businesses not subject to the CSDDD. Further, the willingness of persons to be directors in companies subject to CSDDD should not be reduced, as companies already face difficulties recruiting professionals for appropriate compensations. Entrepreneurship and innovation in Europe risks being negatively affected.

We truly believe that a transition towards a green and sustainable economy can be accomplished through a well-balanced framework that keeps the abovementioned considerations in mind.

Sincerely yours,

Signatories

Danish Committee on Corporate Governance	Danish Association of Architectural Firms
Danish Committee on Foundation Governance	The Confederation of Finnish Industries
The Swedish Association for Good Practice in the Securities Market	The Confederation of Swedish Enterprise
The Swedish Corporate Governance Board	The Danish Chamber of Commerce
Jesper Lau Hansen, University of Copenhagen	The Estonian Employers' Confederation
Steen Thomsen, Center for Corporate Governance, Copenhagen Business School	The Swedish Academy of Board Directors
Søren Friis Hansen, Copenhagen Business School	Insurance & Pension Denmark
Confederation of Danish Industry	Ledernes Hovedorganisation – The Danish Association of Managers and Executives
Danish Shipping	