

Consultation Document Proposal for an Initiative on Sustainable Corporate Governance

Fields marked with * are mandatory.

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudice 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
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* Surname

YASHAROVA

* I am giving my contribution as

- Academic/research institution
- 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

Belma

* Email (this won't be published)

belma.yasharova@amice-eu.org

* Organisation name

255 character(s) maximum

AMICE - Association of Mutual Insurers and Insurance Cooperatives in Europe

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- 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.

62503501759-81

* Country of origin

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

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

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

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

Democratic
Republic of the
Congo

Denmark

Liberia

Saint Kitts and
Nevis

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.

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

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:

- 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:

AMICE represents the mutual and cooperative insurance sector in Europe which has a 32.6% market share of all European insurance business and serves approximately 420 million members/policyholders. The mutual and cooperative insurance industry is unique in that its customers have an integral role as members, who have an ownership/governance relationship with the risk carrier. The decision-making process is therefore not subject to the financial interests of shareholders and makes it possible to take into account other interests such as those of stakeholders, customers, employees, suppliers and all issues related to CSR.

As member-policyholders, the members of a mutual insurance company directly or indirectly determine corporate policy through many different points of interaction. The congruence of ownership/control and being a customer makes it possible and necessary for the mutual undertaking to establish a balance between maximising profits (generally an interest of owners) and delivering optimal high-quality services (an interest of clients).

Furthermore, benefits derived by the business are shared with the member-policyholders in various ways, and there is an intrinsic commitment to values such as long-term commitments, democratic governance, social responsibility and sustainability.

We believe that from a strictly strategic / cultural point of view, the adoption of a holistic approach can help to improve the integration of the stakeholder perspective and to strengthen the commitment to search for an optimal balance between the different interests / needs in order to generate shared value (in which risks and opportunities are both taken into account).

The Commission itself, in the inception impact assessment, clarifies that the initiative concerning sustainable corporate governance "aims to ensure that sustainability is further embedded into the corporate governance framework with a view to align better the long-term interests of management, shareholders, stakeholders and society." The ultimate goal is therefore a better alignment of long-term interests to promote company "sustainability", which is achieved through a balance of social, environmental and economic-financial results. This implies that environmental and social issues are relevant, as their underestimation can compromise the profitability and economic / financial solidity of companies, which however remains the essential condition of operational stability in the interest of all stakeholders. In this sense, the social and environmental objectives constitute - together with other factors - the set of requirements that have to be met to ensure the achievement and stability of the company's financial results in the long term, which represent the priority to

guarantee company's "sustainability ". It follows that the first answer is improperly formulated compared to what is indicated in the second bullet.

We would finally like to underline the fact that most financial institutions are already subject to strict regulation and supervision according to the particularities relating to the nature of their activities. In the case of our members, the main piece of legislation is Solvency II; its extensive requirements in the area of governance should not be overruled or duplicated by yet another set of rules.

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:

We would like to recall that there are a number of EU initiatives, some of which have been already adopted – such as the Sustainable Finance Disclosure Regulation (SFDR – Regulation (EU) 2088/2019) and the Taxonomy Regulation (Regulation (EU) 2020/852) – or are in the process of being adopted – such as the ongoing revision of the Non-Financial Reporting Directive (Directive 2014/95/EU) all testifying a different approach towards financial regulation, more oriented at supporting the real economy and pursuing the objectives of the greater well-being of the society as a whole.

To achieve the EU goal of becoming the first block of countries in the world climate-neutral by 2050 – an economy with net-zero greenhouse gas emissions - the European Commission has in fact envisaged the creation of a framework aimed at facilitating and stimulating (both from a political-regulatory and financial-economic point of view) the necessary public and private investments for the transition to a climate-neutral, green, competitive and inclusive economy. Fostering sustainable investments has been identified as a priority in the Capital Markets Union's (CMU) mid-term review, and to support a re-orientation of capital flows towards this kind of investments, the Commission has proposed to establish a common language for sustainable finance, i.e. an EU sustainability taxonomy. This taxonomy will provide a classification system of climate, environmentally and socially-sustainable activities and will mean a uniform and harmonised classification system that is essential to determine which activities can be regarded as sustainable across the EU.

In addition, the Commission has proposed a progressive and transparent integration of ESG factors in risk

management processes and investment decisions by financial operators, which reflects the re-orientation of investors' preferences towards sustainable investments.

This being said, we are of the opinion that the development of an EU legal framework for supply chain due diligence to address adverse impacts on human rights and environmental issues does not represent the most efficient tool to solve the problem of short-termism. Investors' preferences are already adopting long-term "sustainable" perspectives and implementing efforts in favour of a broader involvement of stakeholders' interests, by increasing transparency on their investment decisions' process in line with what is required by the Disclosure Regulation (due to become applicable as of March this year).

Secondly, there are doubts on the key aspects of a possible new legal framework, in particular on the extent of the due diligence obligation and on the adequate level of directors' accountability, as well as on possible negative and undesired impacts.

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)?

- 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
- 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
- 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
- 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)?

- Increased administrative costs and procedural burden
- Penalisation of smaller companies with fewer resources
-

Competitive disadvantage vis-à-vis third country companies not subject to a similar duty

- 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
- 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
- Disengagement from risky markets, which might be detrimental for local economies
- Other

Other, please specify:

Among the possible risks / disadvantages linked to the introduction of an EU due diligence duty, we would like to draw attention, especially with reference to the initial implementation phase, to a significant increase in terms of costs and resources due to the development or the updating and execution of internal processes, which will have to be implemented to comply with due diligence obligations.

These costs will have an impact on any type of businesses and regardless of their size, although we recognize that such an impact may be more relevant in case of SMEs (that may have fewer resources to allocate) and those operators that are still far away - from a cultural point of view - from formally integrating sustainability factors into their decision-making processes.

Lastly, we deem important to draw attention to the negative effects that could arise due to the competitive disadvantage compared to third-country companies not subject to a similar obligation of due diligence.

While on the one hand, the introduction of a legal framework on an EU due diligence duty could promote a level playing field at EU level and indirectly contribute to sustainable development also in third countries, European companies could find themselves in a position of disadvantage compared to their competitors from non-EU countries with consequent potential economic damages.

This is why, before taking any decision, it is essential to proceed with a robust and comprehensive impact assessment that contains a detailed cost / benefit analysis of each policy option to be examined.

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
the interests of employees	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the interests of employees in the company's supply chain	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
the interests of customers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the interests of persons and communities affected by the operations of the company	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the interests of persons and communities affected by the company's supply chain	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the interests of local and global natural environment, including climate	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the likely consequences of any decision in the long term (beyond 3-5 years)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the interests of society, please specify	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
other interests, please specify	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

the interests of society, please specify:

The interests of customers/members: mutual insurance companies have an institutionalised, natural close link to their policyholders and see themselves therefore able to respond quickly and appropriately to their customers' needs and expectations.

other interests, please specify:

We disagree with the assumption that the lack of clarity regarding the duty of care presumably favours a short-term perspective. Sustainability strategies and long-term vision are at the core of the mutual business model.

Other interests:

- The interests of local and regional territories: mutual insurance companies engage strongly with their local communities and promote the economy of the territory in which they are established.

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Management of the risks for the company in relation to stakeholders and their interests, including on the long run	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identification of the opportunities arising from promoting stakeholders' interests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain:

Whilst it is appropriate for corporate directors to manage the main directions of the company and to define the strategic choices, we are not in favour of the proposal to legally oblige directors to identify the opportunities arising from the promotion of stakeholders' interests.

The principle according to which directors must take into account the interests of the various stakeholders in their management activity is a principle of a general nature and should not be translated into an "obligation of result". In other terms, the stakeholders' interests should not become themselves the final objective to be pursued, with the risk of altering the content of the manager's duty of care to operate in the interest of the company, which is instead the true ultimate goal, or of introducing a set of standardized procedures that could plaster up the company's decision-making process.

On this point, it is important to specify that corporate directors' duty of care should mainly focus on identifying the stakeholders (and the associated risks) who are the most significant for that company. Thus doing, corporate directors will have to reasonably carry out an assessment of "materiality" which depends to a significant extent on the managerial responsibility of the directors themselves and is therefore characterized by a certain degree of discretion (obviously, on a rational basis). This means that it is not feasible to introduce a legal obligation on the identification and evaluation of opportunities arising from the promotion of stakeholders' interests.

Should the European Commission decide to proceed with a legally binding approach, we would like to invite the Commission to take into account that a significant complementary source for a complete view on the concrete evolution of the company's interest is represented by the Corporate Governance Codes, which already recommend the board to pursue long-term value creation and to consider also the interest of other stakeholders that are relevant for the company's business. Such an approach is already observable in a number of national jurisdictions (i.e. Germany, Italy, Netherlands).

To this end, we recommend to assess the overall governance framework, composed by legal provisions, case law and corporate governance codes (which are both able to evolve and adapt over time), and to consider the possibility to proceed by developing best practices and recommendations instead of introducing a new legislative initiative.

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:

In line with the arguments expressed in the answer to question no. 6, we disagree with the suggestion to introduce legal requirements to establish adequate procedures and, where appropriate, measurable objectives to ensure that possible risks and adverse impacts on stakeholders, i.e. human rights, social, health and environmental impacts, are identified, prevented and addressed.

In fact, such an initiative would entail the introduction of an additional regulatory layer that would aggravate all the phases of the decision-making process, making them necessarily standardized and verifiable with potential excessive burdens and costs on operational effectiveness. Furthermore, it is necessary to add the definition and implementation of the necessary enforcement mechanisms, which will also imply further burdensome and onerous effects.

In this context, we consider appropriate to recall the provisions of the NFRD, with respect to which - as indicated by the European Commission itself in the introduction to this consultation - an initiative on sustainable corporate governance will be complementary. Instead of introducing a legal obligation of due diligence which would entail the consequent introduction of codified procedures and measurable objectives, the NFRD already offers a suitable framework for the implementation of due diligence policies.

Article 1 of NFRD – that inserts ‘Article 19a’ on Non-financial statement – provides that non-financial reporting includes a description of the policies pursued by the undertaking in relation to those matters (i.e. environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters), including due diligence processes implemented. Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so.

In its Guidelines on non-financial reporting, the European Commission clarifies that due diligence processes relate to policies, to risk management and to outcomes. Due diligence processes are undertaken by a company to ensure that it delivers against a concrete objective (e.g. to ensure that carbon emissions are below a certain level or that supply chains are free from trafficking in human beings). They help identify, prevent and mitigate existing and potential adverse impacts.

Companies should provide material disclosures on due diligence processes implemented, including, where relevant and proportionate, on its suppliers and subcontracting chains. They may also consider disclosing appropriate information on the decisions taken to set them up and how the processes are intended to work, in particular as regards preventing and mitigating adverse impacts. Companies may also consider providing relevant information on setting targets and measuring progress.

This being said, we consider that the framework regarding integration of corporate sustainability risks, impacts and opportunities into the corporate strategy is already in place and efficient. This framework will certainly be strengthened following the review of the NFRD and additional measures in this regard do not seem justified.

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:

Mutual insurance companies do not have any shareholders and they do not have to reward equity investors by paying dividends. Instead of focusing on short-term financial interests, mutuals have a long-term vision which allows them to act in the best interest of their members/policyholders.

This being said, we are not in favour of a legal obligation for directors to balance the interests of all stakeholders which would conflict with the founding principles of freedom of enterprise and to conduct business (see Article 16 of the EU Charter of Fundamental Rights).

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?

How could these possible risks be mitigated? Please explain.

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

As institutional investors, insurance companies are required, among others, not only to comply with the provisions of the robust framework outlined by SHRD2, but also to meet the requirements of Solvency II according to which sustainability and solvency of the company in the long term represent the main element of macro-prudential supervision. EU insurance prudential standards require regulated institutions to have a rigorous governance framework, founded on the premise that a well-governed institution is essential to the protection of the interests of policyholders.

Thus, in the insurance sector, the regulation and supervision of internal governance mechanisms are central to the risk management framework because some risks may only be properly addressed through governance requirements. An effective system of governance requires a proactive approach on the part of insurance firms, with a significant impact on the duties and obligations of the members of the board, on the one hand, and on the supervisor's ability to assess the compliance of the internal governance with these specific requirements, on the other.

With this in mind, when assessing the need and advisability of a possible legal framework on the due diligence obligation, the European Commission should take into account the provisions of the sectoral regulations (such as Solvency II).

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:

As a preliminary remark, we believe that the formulation of the question is biased ("companies often do not have a strategic orientation on sustainability...").

While we are in favour of the entrepreneurial openness to sustainability, we believe that greater awareness in this sense can be fostered not through the introduction of additional regulatory layers but rather, possibly (if current guidelines and corporate governance codes are not considered sufficient) with soft law tools, based on best practices and recommendations.

However, should the Commission decide to proceed with a legislative initiative, despite the concerns raised by the industry, we are of the opinion that such an initiative should be principles-based (see our answer to question 15).

In addition, we want to underline that the insurance sector has already in place sectoral oversight and rules on this issue (Solvency II legislation) and that any action taken by the EU pursuant to this consultation should not create overlaps or result in excessive burden.

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
- I strongly disagree
- I do not know
- I do not take position

Please explain your answer:

The governance of mutuals by nature gives an integral place to the stakeholders without having to entrust this role to external organisations. Members/policyholders have (directly in members' assemblies or indirectly through members' representatives in assemblies or through board participation) an influence over the management provides direct accountability of the management to policyholders.

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 believe that the definition should be consistent and aligned with the concepts and definitions used in the OECD Guidelines on Due diligence.

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?

For mutual insurance companies, the approach to be followed is above all that defined by the members and their elected representatives around shared values, and whose operating principles derive from the democratic expression of the members and elected representatives.

The principles-based approach should not contradict or overlap with existing sector specific initiatives, such as the new requirements towards the financial sector to manage and report in the area of sustainability (e.g. the Taxonomy Regulation and SFDR).

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.

If a mandatory due diligence duty is to be introduced, such standards should be principles-based so that there is flexibility for different sectors and different legal forms or sizes of companies to apply these.

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)

Human rights, including fundamental labour rights and working conditions (such as occupational health and safety, decent wages and working hours)

- Interests of local communities, indigenous peoples' rights, and rights of vulnerable groups
- Climate change mitigation
- 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?

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?

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
- 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

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?

- 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.

Any activity carried out in the EU must lead the companies concerned to apply due diligence rules in order to ensure a level playing field.

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

The same obligations as those imposed on EU companies should apply to third country companies carrying out activities in the EU.

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?

- Yes
- No
- I do not know

Please explain:

The EU and Member States should ensure a level playing field and it should not be the responsibility of companies to address certain risks in third countries.

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
- 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:

In the event that a mandatory due diligence duty is introduced, a cooperation/coordination mechanism at EU level is necessary in order to ensure uniformity in supervisory practices and avoid cases of gold-plating by national authorities. Such a mechanism would also facilitate the resolution of cross-border conflicts. However, the proposal of judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations should be excluded. In fact, the principle according to which the punishment of a subject can be established only as a consequence of the violation of clearly defined rules constitutes a pillar of civil societies. Should the above-mentioned proposal be chosen instead, the judicial

assessment of the directors' liability would risk to be subject to the excessive judicial discretion and it cannot be excluded that this could represent a significant disincentive to the directors' recruitment, thus triggering over time a phenomenon of adverse selection.

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
- I agree to some extent
- I disagree to some extent
- I strongly disagree
- I do not know

I do not take position

Please explain.

Companies have already established procedures to engage with stakeholders. There should not be a legally binding obligation for directors to establish such mechanisms. It should be up to each company to define the scope of its stakeholders and decide the best way to organize the dialogue.

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	<input type="radio"/>	<input type="radio"/>
Stakeholder general meeting	<input type="radio"/>	<input type="radio"/>
Complaint mechanism as part of due diligence	<input type="radio"/>	<input type="radio"/>
Other, please specify	<input type="radio"/>	<input type="radio"/>

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)	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
---	---

<p>Regulating the maximum percentage of share-based remuneration in the total remuneration of directors</p>	
<p>Regulating or limiting possible types of variable remuneration of directors (e.g. only shares but not share options)</p>	
<p>Making compulsory the inclusion of sustainability metrics linked, for example, to the company's sustainability targets or performance in the variable remuneration</p>	
<p>Mandatory proportion of variable remuneration linked to non-financial performance criteria</p>	
<p>Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration</p>	
<p>Taking into account workforce remuneration and related policies when setting director remuneration</p>	
<p>Other option, please specify</p>	
	

None of these options should be pursued, please explain



Please explain:

We do not see the need to take action in this matter as the Solvency II regulation already sets out detailed requirements which insurance undertakings in the EU must meet with respect to remuneration. There should not be overlaps or contradictions with existing EU and national requirements.

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).

- 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
- 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:

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 a general remark, before considering any legislative action, besides carrying out a thorough impact assessment of likely economic impacts, including implications for the companies (especially SMEs), the European Commission should:

- better assess the overall governance framework, case law and corporate governance codes (which are both able to evolve and adapt over time), taking into consideration also stakeholders' expectations;
- better consider the competitive issues related to the company's capacity to operate on the market;
- avoid further intervention on risks, as any attempt to standardise best practices that are currently evolving across companies and investors would not be desirable;
- take into account the specific situation and needs of SMEs;
- consider appropriately the interconnection with the revision of the NFRD on this issue.

For the mutual and cooperative sector, further action would be the recognition of the existence of a diversity of business models in the financial sector which ensures stability and helps avoid systemic risk. This has been already acknowledged in the revised EIOPA Regulation (Regulation (EU) No 1094/2010) which defines mutuals and cooperatives as "sustainable business models" (Article 8(1a)(c) of EIOPA Regulation).

For the (mutual and cooperative) insurance sector, it is also vital that legislation takes into account the long-term focus of insurance, reflecting sustainable finance goals. The mutual/cooperative model embeds long-term relationships as a core element of their structure and operations since there are no external shareholders to remunerate.

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
o n t h e c o m p a n y

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	5	8	10
Litigation costs			
Other costs including potential indirect costs linked to higher prices in the supply chain, costs linked to drawbacks as explained in question 3, other than administrative and litigation costs, etc. Please specify.	4	6	8
Better performance stemming from increased employee loyalty, better employee performance, resource efficiency	1	4	5

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	6	7	8
Other impact, please specify			

Please explain:

Regarding the costs, the impacts would be different depending on the size and resources of our members. Concerning performance aspects, mutual insurance companies have already put in place a sustainable governance. The spelling out of the due diligence duty on the company would therefore not have any impact on their performance.

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).

We believe that the positive effects of greater entrepreneurial openness aimed at favouring, through the adoption of strategic guidelines, the systematic consideration of the interests of stakeholders can be found not only with regard to all the aspects indicated by the Commission in the question at issue. These effects can in fact also be perceived due to, on the one hand, the growing attention of the financial community towards a higher attractiveness of sustainable investments and, on the other, the greater preferences of investors towards such investments.

Contact

just-cleg@ec.europa.eu

