EUROPEAN SUSTAINABILITY AGENDA

THE ROLE OF COMPANIES

INTRODUCTION

The Commission has set an ambitious sustainability agenda for Europe with the Green Deal at the core. Danish businesses fully support the Green Deal. Europe's path to a carbon neutral future is not only a necessity, it is also an opportunity for companies to adopt their business strategies to the future of tomorrow and become industry leaders in quickly growing new markets at home, and abroad.

The Green Deal also includes several initiatives aimed at promoting sustainability in a broader sense. This includes measures on sustainable, responsible corporate conduct. Many Danish companies already have ambitious strategies for corporate sustainability. This includes following the UN Guiding Principles on Business and Human Rights, the OECD Guidelines on Responsible Business Conduct as well as actively integrating the Sustainable Development Goals into their business models. In fact, 3 out of 4 members of the Confederation of Danish Industry reported in a recent survey that they work strategically with environmental and/or social sustainability.

Europe's green transition, and path to sustainability in a broader sense, will require us all to contribute. We will all have to change our ways. We must find smarter and more sustainable ways to live our lives and build our societies. Europe will only succeed with the right regulatory framework in place.

Beyond setting the climate goals and sustainability ambitions, decision-makers, both nationally and at the European level, will decide on the regulatory framework underpinning Europe's transition. This is key, but by no means an easy task. The legislators not only have to find the right regulatory tools, but also strike the right balance between regulatory measures, on the one side, and allowing companies the freedom to run their business and create jobs and growth, on the other.

In the coming years, the Commission will revise most of the existing regulatory framework underpinning Europe's environmental and low carbon transition. The Commission will propose more ambitious policies and stricter rules on companies in relation to climate change, energy and environmental policies.

The Commission however envisages to go further. The Commission is working on proposals to promote corporate sustainability, not only in relation to the green agenda, but also the social dimension. Several EU proposals aimed at promoting sustainable corporate behavior more broadly are foreseen.

This calls for a holistic, coherent and proportionate approach by decision-makers to all the legislative initiatives in the pipeline. While we should avoid regulating the same area twice, it is also important to discuss whether some regulatory "tools" are more suitable to achieve the political objectives than others. It should also be recognized that regulatory measures in one area may remove the justification, or make less relevant, to introduce regulatory measures on companies in other areas.

With this publication, the Confederation of Danish Industry wants to provide input to the EU debate on how to further strengthen the role of companies in a sustainable Europe, focusing on the upcoming proposals on non-financial reporting, sustainable finance, due diligence and corporate governance.

The publication discusses the various regulatory options on the table. Each policy area is accompanied by a set of policy recommendations. The final section discusses the importance of understanding the way in which the policy options interact, and hence, the need for a holistic and coherent approach to these legislative initiatives, which broadly aim at the same overall sustainability objective.

Lars Sandahl Sørensen
CEO
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DECEMBER 2020

10 RECOMMENDATIONS

1 The EU should promote environmentally and socially responsible business conduct as a fundamental prerequisite for a future-proof European society.

2 The EU should take a holistic, coherent and proportionate approach to the many upcoming legislative initiatives aimed at furthering the role of companies in regards to both the green and social dimension of the sustainability agenda.

3 Some regulatory tools are more suitable to achieve the political objectives. Also, regulatory measures in one area may remove the justification or proportionality of introducing new regulatory measures on companies in other areas.

4 New sustainable requirements, both environmentally and socially, should be based on proportionality and reflect what companies realistically can and cannot do, and consequently be held liable for. The role of companies must not be confused with the responsibilities of states (i.e. law enforcement).

5 The taxonomy for sustainable finance should be promoted as a tool to make investments in environmentally sustainable activities more attractive for investors. The reporting requirements under the taxonomy should be aligned with existing and future reporting obligations and practices under the non-financial disclosure directive. The taxonomy will also serve as an effective incentive for companies to conduct their businesses sustainably. As is the case with non-financial reporting, the taxonomy relies on market mechanisms to achieve the political goals. Thus, they represent a proportionate and non-intrusive approach.

6 The EU should promote further harmonizing of non-financial reporting in Europe. Non-financial reporting by companies is a means to bring awareness of companies' environmental and social policies to investors and the broader society. With the right regulatory framework in place, non-financial reporting can be an effective tool to increase the transparency on companies' sustainable conduct as well as serve as an effective incentive for companies to prioritize sustainable action beyond what is legally required. The upcoming revision of the non-financial disclosure directive will contribute significantly to the overall sustainability objective.

7 It is important to distinguish clearly between corporate governance, on the one side, and mandatory due diligence, on the other. These two policy areas are being mixed up in the current debate. Legislatively, they should also be addressed separately.

8 Due diligence requirements represent a more intrusive regulatory approach than measures on sustainable finance and non-financial reporting. There may however be good reasons to introduce EU harmonized due diligence requirements, including to avoid fragmentation in national rules in an area which aims at regulating global supply chains.

9 Due diligence should be applied with flexibility and adjusted to the specific circumstances of a given company to reflect differences in size, risk profile and complexity of the company's supply chains. Mandatory due diligence should not extend beyond first level of suppliers and should focus on process requirements rather than performance requirements (results).

10 Interfering with the corporate governance systems of the Member States, the autonomy of companies and their right to manage their business as they see fit (of course in compliance with all legal requirements, e.g. product safety rules, environmental protection, labor law, social dialogue etc.) is the most intrusive and disproportionate proposal currently being prepared by the Commission. We strongly urge the Commission to reassess the need, the proportionality and not least the subsidiarity of proposing fundamental changes in the corporate governance frameworks of the Member States as a tool to reach the desired political objectives on top of all the other measures taken. The current analysis, on which the proposals on corporate governance are based, is simply flawed and the consequences of the proposals will be counter-productive. Sustainability – both the green and social dimension – is better pursued through other EU policies.

SUSTAINABLE FINANCE

WHAT IS THE PROBLEM THAT EU AIMS TO ADDRESS?

Reaching climate neutrality by 2050 will be a monumental challenge for Europe. The EU must be at the forefront of a concerted effort to deliver on our climate ambition. Considering the significant current gap in sustainable investments in Europe, the EU must solve the puzzle on how to increase access to sustainable finance.

To achieve an EU wide CO_2 target of 55 percent in 2030, the Commission estimates that annually in the period 2021-2030 the EU will need to invest EUR 350 billion more than it did in the period 2011 – 2020.

WHAT IS THE EU PROPOSING?

Aiming at redirecting capital flows towards sustainable investments, the EU is establishing a new classification system for sustainable investments, a so-called taxonomy. The EU taxonomy will help companies and investors understand whether an economic activity is environmentally sustainable based on harmonized criteria, covering economic activities in a wide range of sectors. The taxonomy will bring transparency to the financial market for sustainable finance and, hence, help companies and financial investors to navigate in the transition to a low-carbon economy.

Furthermore, as of 2021, large companies will be required to report on whether, and to what extent, their turnover as well as capital and operational expenditures are aligned with the taxonomy. This will be part of their non-financial reporting obligations.

The Taxonomy Regulation sets out the framework and objectives of the taxonomy. However, the technical details of the taxonomy are still to be defined in delegated acts. The Platform for Sustainable Finance will advise the Commission on those parts of the technical screening criteria of the taxonomy that are still to be developed.

PERSPECTIVES OF COMPANIES

Danish companies support the taxonomy for sustainable finance as an important tool to make investments in sustainable economic activities more attractive for investors and, consequently, ease companies' access to sustainable finance.

It is important that the taxonomy becomes a tool to promote investments that significantly contribute to sustainable economic activities. Conversely, investments in activities that neither have a positive nor negative impact on the environment should not be negatively affected by the taxonomy.

It is furthermore important that the technical screening criteria of the taxonomy are closely aligned with existing EU legislation in the areas of environment, energy and the climate. Hence, companies' access to finance should not be adversely impacted because the technical details of the taxonomy do not adequately mirror existing EU rules.

Reporting requirements under the taxonomy should be aligned with existing and future reporting obligations, practices and reporting standards under non-financial disclosure directive and be cohesive with the financial reporting.

The data used by companies to report whether their business activities are aligned with the taxonomy must be easily accessible and the granularity should be based on the materiality principles already embedded in the NFRD. If not, taxonomy reporting risk becoming a burdensome and costly procedure for companies.

DI RECOMMENDATIONS

- The taxonomy for sustainable finance is an important tool to make investments in sustainability more attractive for investors.
- The taxonomy should be a tool to promote investments that significantly contribute to sustainable economic activities.
- The technical screening criteria of the taxonomy must be closely aligned with existing EU legislation on the areas of environment, energy and the climate.
- Investments in economic activities that neither have a positive nor negative impact on the environment should not be negatively affected by the taxonomy.
- Any decision to extend the taxonomy to also cover social aspects should be done with respect for the differences in member states' labor market models.
- Reporting requirements under the taxonomy should be aligned with existing and future reporting obligations, practices and reporting standards under non-financial disclosure directive and be cohesive with the financial reporting.
- The data used by companies to report whether their economic activities are aligned with the taxonomy should be easily accessible.

NON-FINANCIAL REPORTING

WHAT IS THE PROBLEM THAT EU AIMS TO ADDRESS?

The revision of the non-financial reporting directive (NFRD) aims to strengthen the foundation for sustainable investment. The Green Deal calls on companies and financial institutions to increase their disclosure on climate and environmental data so as to fully inform investors about the sustainability of their investments. The Commission believes a review of the NFRD is needed in order to support these policies.

Moreover, the Commission believes that non-financial reporting itself needs to be further harmonized. The current reporting requirements allow for the use of relevant international, regional or national frameworks and standards, and does not prescribe specific reporting formats/structures.

WHAT IS THE EU PROPOSING?

A detailed proposal to revise the NFRD is not yet announced by the Commission. The proposal is expected in early 2021. Several options on how to do non-financial reporting in a satisfactory way for the various users of the reporting are however already being discussed.

The challenge of finding and comparing company information, not only between Member States, but also locally, is a key issue. This can either be addressed directly in the NFRD or through level 2 legislation, for instance by issuing a European standard or adopting relevant international standard(s). The Commission has asked EFRAG Reporting Lab to conduct a technical analysis of existing regulations and practices and provide recommendations for a potential standard or set of standards.

The revision of the NFRD is also expected to initiate a debate on the scope of the NFRD, including whether the current scope should be broadened to cover more companies, including potentially SME's.

The review of the NFRD will also have to take international developments into consideration, including the developments on a global level to consolidate several different standards and frameworks. These developments, if successful, will have an impact on the global regulatory environment that the NFRD is currently embracing.

PERSPECTIVE OF COMPANIES

Danish companies support a revision of the NFRD. The focus should be on streamlining the structure of the reporting, making the alignment with financial reporting more well-defined, whilst retaining the flexibility to reflect different business models. Given the fact that non-financial information is also costly to produce, it is important that non-financial reporting remains relevant and supports the transition of the economy. Prescribing in an overly detailed way, or defining in the legislation, the matters which companies must report on would take away this important flexibility, turning the costs into a simple compliance cost instead of an investment in the future. The revision of the NFRD should ensure that non-financial information remains vibrant and does not turn into a compliance exercise.

Moreover, it is essential that the revision retains a focus on the users of the reporting and identify the material, justified and relevant information needs for the different stakeholder groups. Quality and relevance – not quantity – of information should be the guiding principle. This requires important policy decisions. Failure to do so will lead to more, but not better reporting.

Danish business are also European and global businesses. Therefore, Danish businesses believes that it is important to build or promote global standards and any European initiative should have a global perspective as a pre-requisite whilst at the same time catering for European ambitions.

DI RECOMMENDATIONS

- European businesses are global businesses. A revision of the NFRD should, to the extent possible, be aligned with major global frameworks and standards. The long-term aim of the revision should be the development of global standards.

- Any European standard on non-financial reporting would need an independent standard-setter. An organization like EFRAG would be a possible anchor point, provided the EU chooses a European and not a global route.

- Strong focus on the different users and their justified information needs is important. Quality and relevance – not quantity – of information should be the guiding principle.

- The reporting structure of the NFRD should enhance comparability, but still maintain enough flexibility to allow companies to address specific key user groups in their reporting, in instances where this provides for better overall reporting for all the users.

- There is no such thing as two identical companies. They all differ in one way or another other. Therefore, the specific matters on which a company reports under NFRD should remain based on companies' own assessments as to what constitutes material business information for their stakeholders.

- Coherence of reporting obligations across EU legislation is key. The review of the NFRD should ensure – and if necessary – align various reporting requirements across current and anticipated EU legislation.

- Many companies have taken the UN Sustainable Development Goals to to heart and are incorporating them in their reporting. Reporting on relevant SDG's should be considered as part of the NFDR revision.

- Key elements of the companies' non-financial reporting remain stable over several years. The reporting framework should address whether stable elements of the reporting should only be updated when changed, for instance the policies of a company, in order to drive long-term behavior and focus the annual reporting.

- Small and Medium-Sized Enterprises (SMEs) often do not have the technical expertise nor resources necessary to prepare full scope reports. The NFRD should not extend the scope to SME's, but rather provide a simple voluntary reporting format to guide the SME's on how to voluntarily report on key elements relevant for their business.

DUE DILIGENCE

WHAT IS THE PROBLEM THAT EU AIMS TO ADDRESS?

The European Commission does not consider current voluntary frameworks and guidelines sufficient to ensure compliance with human rights and environmental standards. The Commission is therefore laying the grounds for a proposal on mandatory human rights and environmental due diligence at EU level to strengthen and further promote responsible business conduct throughout global supply chains of European companies.

National mandatory due diligence regulation has evolved at a rapid pace over the past years. A few European countries (France, UK, Netherlands) have adopted due diligence legislation in various shapes, and debates are taking place in other European countries (Germany, Finland, Denmark, Switzerland, Belgium). This potential patchwork of national legislation may jeopardize the level playing field in the EU's single market.

WHAT IS THE EU PROPOSING?

The EU Commissioner for Justice has announced that a proposal for a mandatory corporate environmental and human rights due diligence legislation for EU companies will be introduced early 2021.

In October 2020, the Commission announced a public consultation on mandatory due diligence in supply chains as part of a broader consultation called "sustainable corporate governance".

With this, the Commission is proposing to adopt EU legislation on mandatory requirements or due diligence along the supply chain of European companies to address adverse sustainability impacts on human rights and the environment in companies' own operations and in their global value chain by identifying and preventing risks and mitigating negative impacts.

The Commission argues that a horizontal EU regulation on due diligence requirements for human rights and the environment could provide a level playing field within the single market and reduce the divergence in the requirements that companies meet across EU member states.

It is still to be determined how broad the scope of regulation will be, which companies will be included, for how many levels of the supply chain companies are held accountable, and how enforcement of the EU regulation would look like.

PERSPECTIVE OF COMPANIES

A vast majority of Danish companies have a long tradition for responsible business conduct with due respect for human rights and the environment, and support the current voluntary standards presented in the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

In general, Danish companies support the Commission's aim of creating a European level playing field free of various national legislations that can be a heavy administrative burden and difficult to navigate

in, especially for smaller companies. As many companies – SME as well as larger companies – are deeply integrated in the global economy, there is a concern that strict EU regulation may lead to a compromised competitiveness of European companies on global markets.

Finally, companies are concerned about the uncertainty as to whether they will be held liable for damage in their global supply chain when they have not directly caused the damage, could not reasonably be aware of the damage, or when they have taken the necessary measures to prevent the damage.

DI RECOMMENDATIONS

- The EU should promote socially and environmentally responsible business conduct as a fundamental prerequisite for a future-proof society in Europe and globally.
- There is a need for a balanced EU approach that considers the proportionality of what is realistic for companies to do and to be held liable for. The role of companies must not be confused with the responsibilities of states (i.e. law enforcement).
- A flexible approach to developing the due diligence requirements is needed. Due diligence must be applied with flexibility and adjusted to the specific circumstances of a given company (depending on size, risk profile and complexity of the company and supply chains).
- Mandatory due diligence should not extend beyond first level of suppliers and should focus on process requirements rather than performance requirements (results). A risk-based approach is essential for companies to make a difference for the rights holders.
- EU regulation should not cover small and medium-sized enterprises (SMEs). Without legal requirements, SMEs will still be affected through demands from major customers, which are subject to mandatory due diligence, and their standard will thus be raised by market forces. Alternatively, mandatory due diligence must be adapted to the needs and capacities of SMEs.
- Finally, mandatory due diligence requirements should build on existing international standards and guidelines (UN, OECD) and, as far as possible, be harmonized with the international framework outside the EU so that the competitiveness of European companies in global markets is not compromised.

CORPORATE GOVERNANCE

WHAT IS THE PROBLEM THAT EU AIMS TO ADDRESS?

The Commission believes many companies focus too much on short-term financial performance compared to their long-term development and sustainability aspects. The Commission has ordered a study from EY on the subject which concludes that short-termism exists. According to the study, it exists because current rules on directors duties in the Member States tend to favor the short term maximisation of shareholder value and because directors are under pressure from investors (shareholders) who are increasingly short-term. It is argued that the consequences of keeping the status quo unaltered have serious implications for the EU, including negative impact on climate change, biodiversity loss, raising inequalities, weakening of the innovative capacity of the economy etc.

WHAT IS THE EU PROPOSING?

While the proposal is not finalized, the Commission seems to be contemplating a multitude of measures that seems to have two overall characteristics: Regulation of corporate governance should be moved from Member States level to the EU level, and, the regulatory corporate governance regime should be changed from a shareholder-oriented approach to a stakeholder-oriented approach.

More specifically the following measures seems to be considered:

Directors' duties towards the company will be changed to require directors to balance, the interests of all the company's stakeholders, including the interests of employees (potentially also in the supply chain), customers, local and global environment and society at large. A supplementary idea is to also require directors to identify and mitigate the economic, social, and environmental impacts of companies' activities, and identify the opportunities arising from promoting stakeholders' interests.

Stakeholders could also be given legal rights relating to the creation and implementation of companies sustainability strategy and the enforcement of directors' duties. One idea is to give employees, the environment or people affected by the operations of the company (represented by NGO's) a right to sue directors for breach of their new duties towards the company.

Further, it is contemplated to regulate the overall business strategy of companies by requiring companies to integrate sustainability risks, impacts and opportunities therein.

Ways of regulating executive pay is also considered. The ideas include making it compulsory to have non-financial ESG-metrics in the pay scheme (e.g. requiring KPIs on CO_2-reduction); limit variable pay; forbid certain types of pay (e.g. share options); require workforce remuneration to be taken into account when setting director remuneration.

Means to enhance sustainability expertise in the board are also assessed. The ideas include requiring a certain number/percentage of directors to have relevant environmental, social and/or human rights expertise, or requiring such expertise to be part of the selection criteria.

PERSPECTIVES OF COMPANIES

Companies disagree with the assumption on which the entire EU initiative on corporate governance is based. It is incorrect that current Member States' rules on directors' liability focus on short term profit maximization of shareholders' interests. Neither is this the way companies are generally managed. World leading academics support this critique calling the Commission's EY study heavily biased and its recommendations unfounded. Consequently, the EU has no reason or right to move the regulation of corporate governance from the Member State level to the EU level.

Companies also believe that a regulatory change from a shareholder approach to a stakeholder approach as contemplated by the Commission would constitute an unnecessary, counter productive regulatory excess. Sustainability is already embedded in the corporate governance systems of the Member States but through broad principles that take into account the fact that companies face uncertainty, but still need to be able to take decisions. As residual owners, the shareholders as a group has the long-term interests of the company as their self-interest. The postulate that shareholders are not fit to be the ultimate decision-makers in companies and should be replaced by a regulatory stakeholder perspective is highly controversial.

The proposals therefore lack fundamental understanding of how private companies work and how Member States' corporate governance systems work. They also ignore that European legislative initiatives in other policy areas, pursuing the same objectives, are under way as well as adopted legislation that have not yet had time to work (e.g. shareholders rights directive). Lastly, the proposals fail to consider market driven trends towards the same goals.

As a result, the proposals interfere unnecessarily with core elements of the corporate governance systems of Member States. In the private sector, the owners are the ultimate decision makers, and the internal governance structure of companies must remain internal. If the EU sets these fundamental mechanisms aside the very foundation of the private sector will be undermined.

The consequences of the proposed regulatory changes are likely to be dramatic. Business decisions are taken in uncertain and quickly changing environments. There will therefore always be an element of uncertainty in any decision a company takes as well as doubt as to the consequences that will follow from the decision. Therefore, unlimited and diffuse director liability, as proposed by the Commission, in which directors are required to balance the interests of its stakeholders, will inevitably lead to stakeholder conflicts and deadlocks.

Moreover, it will lead to risk aversion and less entrepreneurship ultimately reducing EU growth, employment, innovation and competitiveness. Paradoxically, it will also reduce investors incentives to provide risk capital to companies, including first movers and others who need risk capital to invest in the sustainable transition. The proposals will therefore work against its very purpose of supporting a sustainable transition.

The goals targeted with the corporate governance initiative are better pursued through other policy areas.

DI RECOMMENDATIONS

- Reassess the need, the proportionality and not least the subsidiarity of proposing fundamental changes in the corporate governance frameworks of the Member States as a tool to reach the desired political objectives on top of all the other measures taken. The assumption that current national corporate governance frameworks do not work is incorrect. The assumption that companies are systematically short-term also does not survive an empirical reality check. The impacts of the proposed change to a stakeholder dominated regulatory system would not only have adverse effects on the political objectives pursued but will have profound negative consequences for decision-making efficiency, the incentive to be entrepreneurial and innovative, the access to finance and therefore the competitiveness of the entire private sector of the EU.

- Sustainability in areas of environment and climate is better pursued through other policy tools, e.g. the sector-specific green initiatives in the Green Deal, the taxonomy for sustainable finance, an updated non-financial reporting directive and due diligence requirements.

- As the EY study has proven heavily flawed, the Commission should go back to the drawing table. Rather than going forward with far-reaching proposals interfering with core elements of Member States' corporate governance systems and with the autonomy of companies, the Commission should review whether there is empirical evidence supporting regulatory measures in specific situations where current EU rules favor behavior contrary to the long-term interest of the company, e.g. a review of the EU rules on take-overs.

CORPORATE SUSTAINABILITY

The debate on EU rules to promote sustainable corporate behavior is taking place amidst Europe's ambitious Green Deal. The legal framework for Europe's climate and environmental transition will undergo revision in the coming years. This relates to EU's climate, energy, environmental policies. All sectors will be affected and required to contribute to meet EU's higher climate and sustainability ambitions.

Companies are legally obliged to comply with these EU rules (e.g. legal requirements supporting environmental sustainability, such as circular economy, sustainable products and energy efficiency in buildings etc). Companies are liable for non-compliance, and subject to fines or even criminal charges depending on the severity of the breaches.

Legal compliance with EU rules is only one part of the equation. The level of ambition should indeed be higher. The EU should promote environmentally and socially responsible business conduct with a view to future-proof European society.

We should however have a thorough debate on what regulatory tools most effectively achieve the desired political objectives. We should also recognize that regulatory measures in one area may remove the justification or proportionality of introducing new regulatory measures on companies in other areas. The complexity of the regulatory landscape, and the need to find the right regulatory balance, increases as differences between Member States, sectors and companies are considered. Moreover, the role of states and companies must not be confused.

More efforts are needed to redirect private capital towards sustainable investments. The taxonomy for sustainable finance is therefore welcomed by businesses as a tool to ensure transparency in the market for sustainable finance and incentivize sustainable investments for businesses and financial investors alike. The taxonomy will serve as an important tool to reach the political sustainability objectives.

The EU should also promote harmonizing of non-financial reporting in Europe. Non-financial reporting by companies is a means to bring awareness of companies' policies to investors and the broader society, environmentally and socially. With the right regulatory framework in place, non-financial reporting can be an effective tool to increase the transparency on companies' sustainable conduct as well as serve as an effective incentive for companies to prioritize sustainable actions beyond what is legally required.

Non-financial reporting should provide the short and long-term perspective of companies' conduct, and by doing so, glue the various sustainability initiatives together. Quality and relevance – not quantity and unfounded requests – should be the guiding factor. It is further important that non-financial reporting requirements in other EU-legislation do not conflict or overlap with the requirements in the non-financial reporting directive. Such reporting requirements should be amended to align them with the requirements of the non-financial reporting directive.

The difference between due diligence and corporate governance is often misunderstood. Confusing the terms blurs the understanding of the political objective to be achieved, the regulatory options to get there and the consequences of adopting those options.

Due Diligence is about processes to ensure and promote responsible business conduct in the supply chain of companies and builds on international guidelines of United Nations Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises.

Corporate Governance is more broadly about the general framework for internal executive decision-making processes in companies, focusing on the internal checks and balances between shareholders (owners), board (appointed by the shareholders) and executive management (appointed by the board). In the private sector of the European economy, the owners are the ultimate decision makers and the internal governance structure of companies are internal. If the EU sets these fundamental mechanisms aside the very foundation of the private sector will be undermined. It must be recognized that companies should have flexibility to govern their own business.

Although representing a more intrusive regulatory approach than the taxonomy and non-financial reporting measures, there may be good reasons to introduce EU due diligence requirements, particularly to avoid the risk of national fragmentation in an area concerning global supply chains.

It is however a prerequisite that EU rules on due diligence are flexible and can be applied and adjusted to the specific circumstances to reflect different sizes, risk profiles and complexity of supply chains of different companies. Mandatory due diligence should not extend beyond first level of suppliers and should focus on process requirements rather than performance requirements (results). Rules on due diligence should also reflect what companies realistically can and cannot do, and consequently what companies can be held liable for. Lastly, the role of companies must not be confused with the responsibilities of states (i.e. law enforcement).

Businesses are much more critical on the EU targeting corporate governance rules to promote sustainability. Interfering with the corporate governance systems of the Member States, the autonomy of companies and their right to manage their business as they see fit (of course in compliance with all legal requirements, e.g. product safety rules, environmental protection, labor law, social dialogue etc.) is undoubtedly the most intrusive part of the initiatives currently being prepared by the Commission. The EY study, on which the initiative is based, is heavily biased and flawed, as pointed out by world leading academics. We strongly question not only the need to interfere with Member States' corporate governance rules to promote sustainability, but also the proportionality, the subsidiarity and the consequences of EU actions in the area of corporate governance. As a result, the Commission should withdraw its initiative in this area.

As a closing remark, Danish businesses want to reiterate their support for EU's sustainability agenda. This support also includes efforts to further promote sustainable and responsible corporate conduct. Companies do, however, ask the political decision-makers to carefully consider the regulatory tools with which they aim to achieve the desired policy objectives. Several regulatory initiatives are under way aimed at broadly the same sustainability objective in relation to corporate behavior. The proposals do, however, vary in the way they interfere with companies' legitimate right to manage their own business. We therefore appeal to the decision-makers to carefully consider the proportionality of the measures they are proposing, as well as assess whether the same sustainability objective can be achieved with less far-reaching regulatory tools.