DANISH COMMITTEE ON CORPORATE GOVERNANCE

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Response to the public consultation on the European Commission's upcoming initiative on Sustainable Corporate Governance

The Danish Committee on Corporate Governance would like to thank the European Commission for the opportunity to contribute with the Committee's views on the upcoming proposal on Sustainable Corporate Governance.

The Committee fully supports the European Commission's sustainability agenda and the involvement of stakeholders' interests in a broader sense. However, in the Committee's view this is not achieved by a proposal on EU regulation of corporate governance but should be incorporated in soft law instead. This point of view is elaborated in the following.

Mandatory due diligence and corporate governance are two very different sets of regulations, and the Committee recommends the European Commission to treat the two sets of regulation separately, as they have very different consequences including regulatory, economic, competitive and practical implications. Moreover, any regulatory initiative regarding corporate governance should await a sufficient impact assessment which in the Committee's view has not yet been provided.

The European Commission's consultation regarding corporate governance is based on the wrongful conclusions from the EY report "Study on directors' duties and sustainable corporate governance". Thus, the European Commission bases its upcoming proposal on the highly criticized conclusions from this report, including especially the conclusions that the increase in the companies' dividends and share buybacks are a sign of short-termism. The Committee finds this criticisable as a reduction in the companies' opportunities to use such tools in reallocating capital will to a large extent also reduce the effectiveness of the Capital Markets Union and reduce the attractiveness of European listed companies to international investors. Therefore, the Committee has decided not to fill in the questionnaire as the questions presented are biased and the Committee finds it difficult to answer the questions in a complete manner.

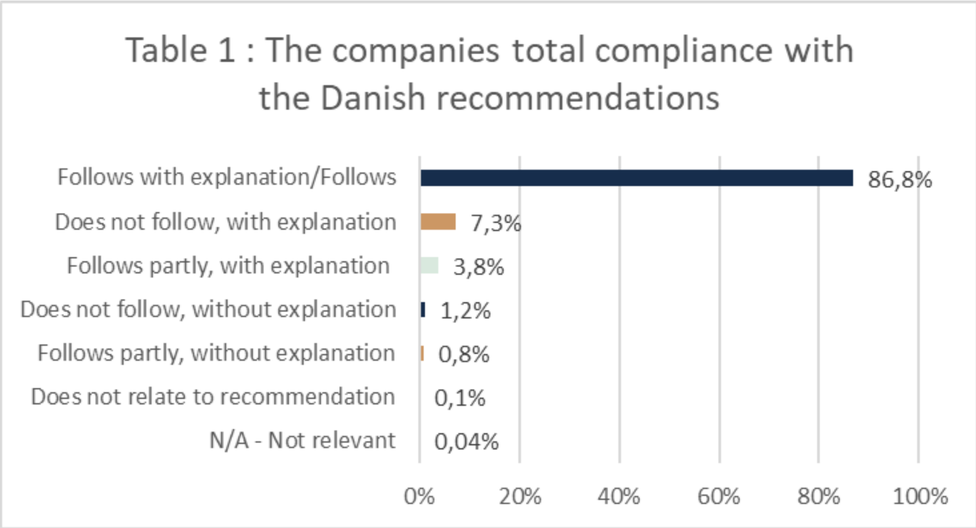
Need and objectives for EU intervention on sustainable corporate governance
The Committee finds no need for regulation at EU-level on this matter as it should build on already existing guidelines, such as e.g. OECD' guidelines for multinational enterprises, UN's guiding principles on business and human rights, the ILO Tripartite Declaration of Principles concerning MNEs and Social Policy, and other relevant guidelines. In this regard,

it is important that emphasis is put on processes rather than results. Moreover, industry-specific guidelines can be considered.

In the latest update of the Danish Recommendations on Corporate Governance in December 2020, "company's purpose" was introduced as a new term. A company's purpose is the company's overall aim for long-term value creation, which the company delivers to its shareholders, other stakeholders and society. In order to support the company's statutory objects pursuant to its articles of association, the company's board of directors should consider the company's purpose. The Committee considers the company's purpose to be a considerable driving force in the company's strategy and decision-making processes. In addition, "sustainability" is another new term in the recommendations, the term "corporate social responsibility" has been part of the recommendations for several years. The sustainability of a company includes e.g. the company's economic, financial and innovative sustainability and sustainability in relation to the concepts Corporate Social Responsibility ("CSR"), Environment, Social and Governance ("ESG") and the company's role as a positive contributor to society as a whole. It is essential for the companies' value creation that companies consider sustainability in a broad sense, i.e. not only in the sense of economic sustainability, but also, for instance, by looking at environmental, employee and social society sustainability.

Danish listed companies have a very high degree of compliance with the Danish Recommendations on Corporate Governance (version of November 2017). The percentage of recommendations that is complied with is 97,9 % which is published in the Committee's latest annual report 2019-2020. See table 1[1] below. This indicates that Danish listed companies will work seriously and effectively with the agenda of sustainability in case further recommendations from the European Commission would be introduced in this area. However, in addition to Danish listed companies, we note that other corporate entities e.g. state-owned companies, corporate entities with a special public interest, corporate entities owned privately or by commercial foundations also draw inspiration from the Committee's Recommendations when setting their own corporate governance standards.

[1] Source: The Danish Committee on Corporate Governance' annual report 2019-2020: https://corporategovernance.dk/analyser-og-aarsrapporter



The Committee notes that Danish listed companies are involving their stakeholders already, including dialog with relevant NGO's, such as e.g. WWF. The management should have flexibility to involve only the relevant stakeholders for the companies. This supports corporate governance codes based on soft law.

Directors' duty of care – stakeholders' interests

The Committee finds it necessary to distinguish between director's duty of care and stakeholders' interests. The Committee agrees that the stakeholders, such as for example shareholders, employees (including employees in the company's supply chain), customers, persons and communities affected by operations of the company and the company's supply chain, local and global natural environment, including climate etc. are relevant for the long-term success and resilience of the company. Danish listed companies do already take these stakeholders' interests into consideration today.

In total 109 Danish listed (large cap, mid cap, and small cap) companies (including companies de-listed or merged during 2020) report voluntarily on ESG metrics to Nasdaq Copenhagen A/S (Nasdaq). The reporting includes i.a. incentivized pay based on ESG KPI's, Supplier code of conduct, Data Privacy Policy, Sustainability Report, Child and forced labor policy, Human rights policy, Ethics and anticorruption code. The high percentage of ESG-reporting companies stated in table 2 shows that Danish listed companies are working actively with ESG matters including relevant stakeholders' interests.

Table 2: Danish listed companies reporting on ESG metrics[2]

	Number of Danish companies reporting ESG to Nasdaq	% of total number of Danish companies reporting ESG to Nasdaq out of all Danish listed companies
Large Cap (Market Value above 1 billion Euro)	39	100%
Mid Cap (Market Value between 150 million Euro and 1 billion Euro)	28	90%
Small Cap (Market Value below 150 million Euro)	38	68%

The Committee believes that introduction of further hard law in areas such as the composition of the management, management's ability to manage the company, liability of the management etc. will remove both shareholders' and the management's flexibility to develop the company in the best possible way, to make the necessary decisions and take into account the relevant stakeholders' interests. Regulating how companies should take stakeholders' interests into account will i.a. lead to a general increase in the circle of litigants entitled to sue the company e.g. NGO's, which may have a deterrent effect on potential, qualified management members to accept management positions in fear of lawsuits, forcing the companies to increase the remuneration for the management. Access for the companies to venture capital would weaken, as well as a reduction in the competitive position in general for the companies in EU. Moreover, regulation at EU-level will diminish the level playing field between companies in EU and companies in third countries, including UK.

More emphasis should be put on the Member States' corporate governance codes. Moreover, it should be included in corporate governance codes that companies should consider to set up sustainability committees under the board of directors to ensure that sustainability competencies are at place in the boards and the sustainability agenda is anchored at board level.

Corporate Knights' 2020 Global 100 ranking on the world's most sustainable corporations shows that European companies, including especially Danish companies, already are front runners on the sustainability agenda.

[2] Source: Nasdaq ESG Data Portal:
https://www.nasdaq.com/sustainability/offerings/ESG-Data-Portal. Please note that the companies ESG-reporting follows the "comply or explain"-approach.

Table 3: Extracts of Corporate Knights' 2020 Global 100 ranking on the world's most sustainable corporations[3]

Rank 2020	Company	Peer Group	Country	Overall Score
1	**Orsted A/S**	**Wholesale Power**	**Denmark**	**85%**
2	**Chr. Hansen Holding A/S**	**Food and other chemical agents**	**Denmark**	**84%**
3	Neste Oyj	Petroleum Refineries	Finland	84%
4	Cisco Systems Inc	Communications Equipment	United States	84%
5	Autodesk Inc	Software	United States	83%
6	**Novozymes A/S**	**Specialty and Performance Chemicals**	**Denmark**	**83%**
7	ING Groep NV	Banks	Netherlands	83%
8	Enel SpA	Wholesale Power	Italy	82%
9	Banco do Brasil SA	Banks	Brazil	82%
10	Algonquin Power & Utilities Corp	Electric Utilities	Canada	81%

Due diligence duty
The due diligence duty should be kept as a matter of soft law, and reference should be made to international recognised guidelines within the area such as OECD guidelines for multinational enterprises etc. Focus in this regard should as mentioned above be on processes and transparency rather than on results. To ensure a level playing field, regulation should include large companies (e.g. over 500 employees), both listed and non-listed companies, but it is important that especially SME's and micro-enterprises are not met with new burdensome requirements. However, exposing more companies domiciled in third countries but operating in EU to disclose information on environmental, social, human rights and anti-corruption matters according to the EU Non-Financial Reporting Directive (NFRD) could also be a solution.

The Committee reminds the European Commission that already ongoing and newly implemented initiatives are set out to solve the sustainability issue. That is e.g. NFRD, Disclosure Regulation, Taxonomy Regulation, Shareholder Rights Directive II (SRD II) and the principles for better regulation. Any further initiatives should await the effect of these initiatives.

The Committee recommends that employee representation at the Board of Directors level in large companies is given a more prominent role as it is a good way for this group of stakeholders to gain influence in a company.

[3] Source: Corporate Knights' 2020 Global 100 ranking on the world's most sustainable corporations: https://www.corporateknights.com/reports/2020-global-100/2020-global-100-ranking-15795648/

Other elements of sustainable corporate governance
The proposed initiatives regarding remuneration are in the view of the Committee best regulated in soft law. This is supported by experience's in Denmark with i.e. the Danish Recommendations on Corporate Governance. The regulation today applies only to Danish listed companies and further regulation of listed companies will create a large gap between regulation of listed and non-listed companies, including corporate entities owned privately or by commercial foundations. Consequently, it will be less attractive for companies to raise capital on the stock exchange, and go against the purpose of the Capital Market Union. Regulation on remuneration should await the effect of the newly implemented SRD II. An alternative to a legislative approach could be to a Commission Recommendation on sustainability, which can be implemented into the Member States' corporate governance codes.

Final remarks
In summary, the Committee supports the European Commission's sustainable agenda, but disagrees on which instruments should be used to achieve the goals set out. The Committee strongly encourages the European Commission to be reluctant with a proposal on legislation but instead await the effects of ongoing and newly implemented initiatives and introduce possible new measures trough soft law.

The Danish Committee on Corporate Governance remains at your disposal for further contribution in the process, especially contributing with ideas on how to implement initiatives on sustainable corporate governance in soft law, including in corporate governance codes.

The Danish Committee on Corporate Governance