DANISH COMMITTEE ON CORPORATE GOVERNANCE

6. oktober 2020

Secretary:
Danish Business Authority
Langelinie Alle 17
2100 Copenhagen Ø

cg-komite@erst.dk

Tlf. 35 29 10 00
CVR-nr. 10 15 08 17

Response to the public consultation on the European Commission's roadmap on sustainable corporate governance

The Danish Committee on Corporate Governance appreciates the Commission's intentions to address how companies can be encouraged to long-term development of the company, as well as of sustainability. It is important for companies to actively contribute to achieving the necessary reductions in Co2 emissions in the fight against climate change. However, there are significant challenges, which the committee describes below.

The Commission's objectives and policy options in the roadmap are described as 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. It aims at improving the framework to incentivise corporate boards to integrate properly stakeholder interests, sustainability risks, dependencies, opportunities and adverse impacts into strategies, decisions and oversight.

The Committee emphasizes that Corporate Governance Codes are best pursued as soft law, as the codes contain best practice. Furthermore, soft law is more flexible than legislation and thus easier to adapt as needed. This is important, as there are not one size fits all in corporate governance. The Committee finds the comply or explain principle extremely useful to apply in practice to achieve the necessary flexibility. The flexibility of Member States' Corporate Governance Codes allows the individual company to adapt in the most optimal way for the company. The marked differences that exist in the individual Member States' ownership and board structures can thus be accommodated in the respective Member States' Corporate Governance Codes – and the same is true for the Member States' regulative differences.

The Committee does not agree with the Commission's view that companies are short-sighted and only have the interests of shareholders in mind, as the study shows bias and non-representative study of literature and empirical data. E.g. the Committee finds the definition of "short-termism", as mentioned in the EY study on directors' duties and sustainable corporate governance, completely inadequate. In the EY study it is defined as the ratio between a company's payments in the form of dividends and share repurchases and the company's net income. The higher the ratio, the greater the short duration, as the distributed funds, according to the report, should instead have been reinvested in the company. In the Committee's view, the report lacks insight and analysis of the interaction between the supply of risk capital and the role of the capital market in the allocation and re-allocating of resources. The prospects of competitive returns for shareholders are particularly important for companies' ability to attract venture capital from the global capital market. The Committee emphasizes that the Commission should carry out thorough analyzes of options and examine all related legal, economic, competitive and practical implications.

It is further emphasized that it is important to have coherence between the EU initiatives that have been proposed or adopted already, but where we haven't seen the effect or impact yet. E.g. in relation to directors' remuneration, the amendments to the Shareholder Rights Directive, which aimed to avoid managements short-term risk taking and engagement by institutional investors and asset managers focusing too much on short-term returns. This directive has recently been implemented in the Member States, and the effect is expected to be seen in the coming years.

Furthermore, the Commission should ensure a broad stakeholder involvement, as a thorough stakeholder involvement is important to ensure that the proposals put forward by the Commission are proportionate and based on a solid understanding of companies' situation and knowledge of sustainable business development.

Finally, the linking of the initiatives on sustainable corporate governance and due diligence is not appropriate, as they have very different consequences including regulatory, economic, competitive and practical implications. EY's analyzes of the two areas were carried out independently of each other, so companies, business organizations and other stakeholders did not have the opportunity to link the two initiatives, which could have had an impact on the responses.

The Danish Committee on Corporate Governance