On behalf of the undersigned July 2, 2021

To:
Executive vice-president, Margrethe Vestager
Vice-President, Věra Jourová
Commissioner for Justice, Didier Reynders
Commissioner for Internal Market, Thierry Breton
Commissioner for Financial services, financial stability and Capital Markets Union, Mairead McGuinness

Joint letter on the European Commission's upcoming initiative on sustainable corporate governance

First and foremost, the co-signatories of this letter support the European Commission in its ambition to fight climate change and agree that companies play a vital role in the transition towards a green and sustainable economy. Most Nordic companies have already incorporated or are incorporating sustainability in their strategy.

However, the upcoming initiative on sustainable corporate governance touches upon two very different subjects; due diligence and corporate governance, which in our opinion should be handled separately. Linking them under the joint heading "sustainable corporate governance" is inappropriate as the two subjects have very different consequences including regulatory, economic, practical and competition implications. The upcoming initiative on corporate governance is based on the erroneous assumption that European companies focus on the shareholders' short-term economic interests only. This assumption is not thoroughly documented. The upcoming initiative is presented as a proposal pursuing a sustainable agenda. However, regulating fundamental elements of corporate governance and business management has little to do with sustainability. Therefore, we re- commend the European Commission to focus on moving forward with the initiative on due diligence only.

The due diligence initiative and other initiatives
The due diligence duty should be made in accordance to international recognised guidelines within the area, such as OECD guidelines for multinational enterprises etc. Focus in this regard should be on processes and transparency rather than on results. To ensure a level playing field, the scope of the regulation should include large companies, both listed and non-listed companies. In addition, both companies within the EU and companies operating in the EU but registered outside the EU should be included, otherwise the competitive situation for companies within the EU risks being deteriorated.

We are convinced, that such an initiative would be a sufficient supplement to the already proposed Corporate Sustainability Reporting Directive (CSRD), as well as the initiatives taken under the Sustainable Finance Action plan to ensure the transparency needed to enable a market-based transition to a sustainable economy. In this connection we wish to underline, that we also fail to see a need to introduce corporate governance specific reporting requirements in the CSRD or as part of the taxonomy. The transparency provided by these initiatives regarding environmental and social impact will in itself influence the governance.

The corporate governance initiative

Legal uncertainty concerning the management's duties and their enforcement is detrimental for the European business community

Managing long-term sustainability risks and including stakeholders' interests in management decisions is a license to operate for companies today. However, managements are dependent on a legal framework, that is clear, ensuring no ambiguity on reporting lines and no conflict of interests when decisions are made. Hence, it is not a solution to make management accountable towards a range of unspecified stakeholders. In such a situation, it would be unclear how a company's management should weigh the interests of stakeholders, especially if their interests are conflicting. Furthermore, extending enforcement of companies' managements' duties by for example giving NGOs legal standing, without meeting the requirements of tort law, will have an inhibitory impact on companies in the EU. It would result in an unclear legal position for companies' management which could lead to a 'paralysis' in fear of lawsuits that may be motivated by e.g. political interests, competing companies, etc. Rising costs for lawsuits, indemnity insurance and management remuneration are just some examples of possible negative impacts. This would be detrimental for the European business community and would slow down the ongoing market driven transition towards a more green and sustainable business conduct, rather than speeding it up. Moreover, regulating corporate governance does not prevent companies from evading the sustainable transition. Quite the contrary, investors with an ESG-driven investment focus assists in this transition by allocating capital to sustainable companies. The market-driven transformation will thus mean that less sustainable companies will be left behind with limited access to capital – emphasized by the banks increased unwillingness to support ESG-incompliant companies.

The upcoming initiative on corporate governance deteriorates the competitiveness of European companies

The legal uncertainty caused by the introduction of additional duties on the management of a company is unnecessary and harmful towards European companies. It would put at risk the competitive position of European companies and inhibit their ability to attract capital and competent management members. This is contrary to the purpose of the Capital Markets Union. It is important that European companies' global competitiveness is not hampered by an unlevel playing field, which would arise if the suggested duties and their enforcement are turned into law.

We therefore recommend the European Commission not to proceed with the initiative on corporate governance.

Sincerely yours,

Signatories

Danish Committee on Corporate Governance

Danish Committee on Foundation Governance

The Swedish Corporate Governance Board

The Finnish Securities Market Association

Jesper Lau Hansen, University of Copenhagen

Steen Thomsen, Center for Corporate Governance, Copenhagen Business School

Søren Friis Hansen, Copenhagen Business School

CFE-CGC Chimie – The Chemical Leadership Organization in France

Confederation of Danish Industry

Danish Shipping

FECCIA – The European Federation of Managerial Staff in the Chemical and Allied Industries

Ledarna – The Swedish Association of Managers and Executives

Ledernes Hovedorganisation – The Danish Association of Managers and Executives

Insurance & Pension Denmark

The Boardleadership Society of Denmark

The Danish Chamber of Commerce

VAA Führungskräfte Chemie – The Chemical Leadership Organization in Germany

A.P. Møller - Mærsk A/S

Aktieselskabet Schouw & Co

Arla Foods Amba

Brødrene Hartmann A/S

Carlsberg Breweries A/S

Coloplast A/S

Dansk Sintermetal A/S

DFDS A/S

DSV Panalpina A/S

Falck A/S

H. Lundbeck A/S

Industriens Pensionsforsikring A/S

ISS World Services A/S

JYSK A/S

Kamstrup A/S

Lars Larsen Group A/S

Novo Nordisk A/S

Pandora A/S

Rockwool International A/S

STARK Group ApS

Systematic A/S

SimCorp A/S

Man Energy Solutions, Danish Branch

Matas A/S

Murermester J. Ole Pedersen A/S

Ørsted A/S

Vestas Wind Systems A/S

WS Audiology A/S