

Unclear duties of board directors in EC proposal make for legal disputes



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The EC proposal on Corporate Sustainability Due Diligence is unclear and unprecise when it comes to the duties of board directors. As a result, there is an obvious risk of legal disputes involving stakeholders who disagree with decision made by the board.

« The proposal provides relatively little useful clarification on the notion of directors' duty of care. Directors are aware of their responsibilities and of the need to include stakeholders in their strategy. They don't need more legislation but more examples of good practices. Streamlined and consistent environmental and social standards would be more useful than legislation that expand directors' responsibilities in an unprecise way », summarizes Leena Linnainmaa, ecoDa's Chair.

« The broad power given to every stakeholder to challenge decisions of the board risks getting European businesses into legal jeopardy and could make our companies even more risk averse », added Michel de Fabiani, chair of ecoDa's Advocacy and Policy Committee.

ecoDa welcomes that the directive respects the principle of proportionality by excluding SMEs and by including non-European companies. However, the proposal doesn't acknowledge the efforts already taken by European companies in making sustainability part of their value creation.

« Care must be taken not to discourage companies. Member States cannot shift all their responsibilities onto companies, especially when they prove unable to meet their own climate commitments. Furthermore, this obligation does not make sense for all companies in all sectors », underlined Leena Linnainmaa, ecoDa's Chair.

The directive was initially announced in Action 10 of the 2018 Action Plan on Financing Sustainable Growth. It was planned to be a legislative package with two separate initiatives - one on due diligence and one on directors' duties. Instead, the proposal on due diligence now also includes an obligation by board directors to draft a plan to meet the goals of the Paris agreement.

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Notes to editors

About the European Confederation of Directors Associations

The European Confederation of Directors Associations (ecoDa) is a not-for-profit association founded in December 2004 under the laws of Belgium. Through its 20 national institutes of directors (the main national institutes existing in Europe), ecoDa represents approximately 55,000 board directors from across the EU. ecoDa's member organizations represent board directors from the largest public companies to the smallest private firms, both listed and unlisted.