

European board directors' responsibilities imprecisely extended



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ecoDa is concerned about the imprecise and unclear provisions on directors' duties included in the European Commission proposal for a directive on Corporate Sustainability Due Diligence.

« 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 their externalities in their strategy. They need less new legislation than examples of good practices. Streamlined and consistent environmental and social standards would be more useful than legislative texts which expand their responsibilities in an imprecise way », summarizes Leena Linnainmaa, ecoDa's Chair.

Initially announced in Action 10 of the 2018 Action Plan on Financing Sustainable Growth, the directive - which was initially to be a legislative package with two separate initiatives on due diligence and on directors' duties - pulls off the feat of including the question of directors' duties in a single text dedicated to the due diligence. This rather artificial imbrication results in a text which imposes notably the obligation to draft a plan to meet Paris Agreement goals and indicative emissions reduction, opening the door to litigation by stakeholders who disagree with the company's view on the adequacy of the plan.

If the scope of the directive duly respects the principle of proportionality by excluding SMEs and including non European companies, which ecoDa values, the proposal seems to overlook the efforts already taken by European companies to embed sustainability as part of their value creation proposal.

« However, care must be taken not to discourage companies. Member States cannot shift all their responsibility 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 broad power left to any stakeholders to challenge the decisions of the board risks bringing business to justice in Europe and could make our companies even more risk averse », added Michel de Fabiani, chair of ecoDa's Advocacy and Policy Committee.

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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.