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Consultation Document Proposal for an Initiative on Sustainable Corporate Governance

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The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.
Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

Introduction

Political context

The Commission's political guidelines set the ambition of Europe becoming the world's first climate-neutral continent by 2050 and foresee strong focus on delivering on the UN Sustainable Development Goals[1], which requires changing the way in which we produce and consume. Building on the political guidelines, in its Communication on the European Green Deal[2] (adopted in December 2019) and on A Strong Social Europe for Just Transition[3] (adopted in January 2020) the Commission committed to tackling climate and environmental-related challenges and set the ambition to upgrade Europe's social market economy.

The European Green Deal sets out that "sustainability should be further embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects."

Sustainability in corporate governance encompasses encouraging businesses to frame decisions in terms of their environmental (including climate, biodiversity), social, human and economic impact, as well as in terms of the company's development in the longer term (beyond 3-5 years), rather than focusing on short-term gains.

As a follow-up to the European Green Deal, the Commission has announced a sustainable corporate governance initiative for 2021, and the initiative was listed among the deliverables of the Action Plan on a Circular Economy[4], the Biodiversity strategy[5] and the Farm to Fork strategy[6]. This initiative would build on the results of the analytical and consultative work carried out under Action 10 of the Commission's 2018 Action Plan on Financing Sustainable Growth and would also be part of the Renewed Sustainable Finance

Strategy.

The recent Communication "Europe's moment: Repair and Prepare for the Next Generation" (Recovery Plan)[7] (adopted in May 2020) also confirms the Commission's intention to put forward such an initiative with the objective to "ensure environmental and social interests are fully embedded into business strategies". This stands in the context of competitive sustainability contributing to the COVID-19 recovery and to the long-term development of companies. Relevant objectives are strengthening corporate resilience, improving predictability and management of risks, dependencies and disruptions including in the supply chains, with the ultimate aim for the EU economy to build back stronger.

This initiative is listed in the Commission Work program for 2021 [8].

EU action in the area of sustainable corporate governance will complement the objectives of the upcoming Action Plan for the implementation of the European Pillar of Social Rights, to ensure that the transitions towards climate-neutrality and digitalisation are socially sustainable. It will also strengthen the EU's voice at the global scene and would contribute to the respect of human rights, including labour rights– and corporate social responsibility criteria throughout the value chains of European companies – an objective identified in the joint Communication of the Commission and the High Representative on the Global EU response to COVID-19[9].

This initiative is complementary to the review of the Non-Financial Reporting Directive (NFRD, Directive 2014/95/EU[10]) which currently requires large public-interest companies to disclose to the public certain information on how they are affected by non-financial issues, as well as on the company's own impacts on society and the environment. The NFRD also requires companies to report on their social and environmental policies and due diligence processes if they have them, or otherwise explain why they do not have any (comply or explain approach). Whilst the NFRD is based on incentives "to report", the sustainable corporate governance initiative aims to introduce duties "to do". Such concrete actions would therefore contribute to avoiding "greenwashing" and reaching the objectives of the on-going review of the NFRD too, in particular the aim of enhancing the reliability of information disclosed under the NFRD by ensuring that the reporting obligation is underpinned by adequate corporate and director duties, and the aim of mitigating systemic risks in the financial sector. Reporting to the public on the application of sustainability in corporate governance and on the fulfilment of directors' and corporate duties would enable stakeholders to monitor compliance with these duties, thereby helping ensure that companies are accountable for how they mitigate their adverse environmental and social impacts.

The initiative would build upon relevant international standards on business and human rights and responsible business conduct, such as the United Nations' Guiding Principles on Businesses and Human Rights and the OECD Guidelines for Multinational Enterprises and its Due Diligence Guidance for Responsible Business Conduct.

As regards environmental harm linked to deforestation, the Commission is also conducting a fitness check of the EU Timber Regulation and an impact assessment.

Finally, Covid-19 has put small and medium sized companies under financial pressure, partly due to increased delay in the payments from their larger clients. This raises the importance of the role of board members of companies to duly take into account the interests of employees, including those in the supply chains as well as the interests of persons and suppliers affected by their operations. Further support measures for SMEs also require careful consideration.

Results of two studies conducted for the Commission

To integrate properly sustainability within corporate strategies and decisions, the High-Level Expert Group on Sustainable Finance[11] recommended in 2018 that the EU clarifies corporate board members´ duties so that stakeholder interests are properly considered. Furthermore, they recommended for the EU to require that directors adopt a sustainability strategy with proper targets, have sufficient expertise in sustainability, and to improve regulation on remuneration.

In its 2018 Action Plan on Financing Sustainable Growth[12] the Commission announced that it would carry out analytical and consultative work on the possible need to legislate in this area.

The Commission has been looking at further obstacles that hinder the transition to an environmentally and socially sustainable economy, and at the possible root causes thereof in corporate governance regulation and practices. As part of this work, two studies have been conducted which show market failures and favour acting at the EU level.

The *study on directors' duties and sustainable corporate governance* [13] evidences that there is a trend in the last 30 years for listed companies within the EU to focus on short-term benefits of shareholders rather than on the long-term interests of the company. Data indicate an upward trend in shareholder pay-outs, which increased from 20% to 60% of net income while the ratio of investment (capital expenditure) and R&D spending to net income has declined by 45% and 38% respectively. The study argues that sustainability is too often overlooked by short-term financial motives and that to some extent, corporate short-termism finds its root causes in regulatory frameworks and market practices. Against these findings, the study argues that EU policy intervention is required to lengthen the time horizon in corporate decision-making and promote a corporate governance more conducive to sustainability. To achieve this, it spells out three specific objectives of any future EU intervention: strengthening the role of directors in pursuing their company's long-term interest by dispelling current misconceptions in relation to their duties, which lead them to prioritise short-term financial performance over the long-term interest of the company; improving directors' accountability towards integrating sustainability into corporate strategy and decision-making; and promoting corporate governance practices that contribute to company sustainability, by addressing relevant unfavourable practices (e.g. in the area of board remuneration, board composition, stakeholder involvement).

The *study on due diligence requirements* through the supply chain[14] focuses on due diligence processes to address adverse sustainability impacts, such as climate change, environmental, human rights (including labour rights) harm in companies' own operations and in their value chain, by identifying and preventing relevant risks and mitigating negative impacts. The study shows that in a large sample of mostly big companies participating in the study survey, only one in three businesses claim to undertake due diligence which takes into account all human rights and environmental impacts. Therefore voluntary initiatives, even when backed by transparency do not sufficiently incentivise good practice. The study shows wide stakeholder support, including from frontrunner businesses, for mandatory EU due diligence. 70% of businesses responding to the survey conducted for the study agreed that EU regulation might provide benefits for business, including legal certainty, level playing field and protection in case of litigation. The study shows that a number of EU Member States have adopted legislation or are considering action in this field. A potential patchwork of national legislation may jeopardise the single market and increase costs for businesses. A cross-sectoral regulatory measure, at EU level, was preferred to sector specific frameworks.

Objectives of this public consultation

This public consultation aims to collect the views of stakeholders with regard to a possible Sustainable Corporate Governance Initiative. It builds on data collected in particular in the two studies mentioned above and on their conclusions, as well as on the feedback received in the public consultation on the Renewed Sustainable Finance Strategy[15]. It includes questions to allow the widest possible range of stakeholders to provide their views on relevant aspects of sustainable corporate governance.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
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- Latvian
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- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

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ASBL

* I am giving my contribution as

- ( ) Academic/research institution
- ( ) Business association
- ( ) Company/business organisation
- ( ) Consumer organisation
- ( ) EU citizen
- ( ) Environmental organisation
- ( ) Non-EU citizen
- (•) Non-governmental organisation (NGO)
- ( ) Public authority
- ( ) Trade union
- ( ) Other

* First name

ecoDa

* Email (this won't be published)

policy@ecoda.org

* Organisation name

255 character(s) maximum

ecoDa, The European Confederation of Directors' Associations, ASBL

* Organisation size

- (•) Micro (1 to 9 employees)
- ( ) Small (10 to 49 employees)
- ( ) Medium (50 to 249 employees)
- ( ) Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](). It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
-
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South

	French Southern and Antarctic Lands		Sandwich Islands
Barbados	Gabon	Monaco	South Korea
Belarus	Georgia	Mongolia	South Sudan
Belgium	Germany	Montenegro	Spain
Belize	Ghana	Montserrat	Sri Lanka
Benin	Gibraltar	Morocco	Sudan
Bermuda	Greece	Mozambique	Suriname
Bhutan	Greenland	Myanmar /Burma	Svalbard and Jan Mayen
Bolivia	Grenada	Namibia	Sweden
Bonaire Saint Eustatius and Saba	Guadeloupe	Nauru	Switzerland
Bosnia and Herzegovina	Guam	Nepal	Syria
Botswana	Guatemala	Netherlands	Taiwan
Bouvet Island	Guernsey	New Caledonia	Tajikistan
Brazil	Guinea	New Zealand	Tanzania
British Indian Ocean Territory	Guinea-Bissau	Nicaragua	Thailand
British Virgin Islands	Guyana	Niger	The Gambia
Brunei	Haiti	Nigeria	Timor-Leste
Bulgaria	Heard Island and McDonald Islands	Niue	Togo
Burkina Faso	Honduras	Norfolk Island	Tokelau
Burundi	Hong Kong	Northern Mariana Islands	Tonga
Cambodia	Hungary	North Korea	Trinidad and Tobago
Cameroon	Iceland	North Macedonia	Tunisia

Canada	India	Norway	Turkey
Cape Verde	Indonesia	Oman	Turkmenistan
Cayman Islands	Iran	Pakistan	Turks and Caicos Islands
Central African Republic	Iraq	Palau	Tuvalu
Chad	Ireland	Palestine	Uganda
Chile	Isle of Man	Panama	Ukraine
China	Israel	Papua New Guinea	United Arab Emirates
Christmas Island	Italy	Paraguay	United Kingdom
Clipperton	Jamaica	Peru	United States
Cocos (Keeling) Islands	Japan	Philippines	United States Minor Outlying Islands
Colombia	Jersey	Pitcairn Islands	Uruguay
Comoros	Jordan	Poland	US Virgin Islands
Congo	Kazakhstan	Portugal	Uzbekistan
Cook Islands	Kenya	Puerto Rico	Vanuatu
Costa Rica	Kiribati	Qatar	Vatican City
Côte d’Ivoire	Kosovo	Réunion	Venezuela
Croatia	Kuwait	Romania	Vietnam
Cuba	Kyrgyzstan	Russia	Wallis and Futuna
Curaçao	Laos	Rwanda	Western Sahara
Cyprus	Latvia	Saint Barthélemy	Yemen
Czechia	Lebanon	Saint Helena Ascension and Tristan da Cunha	Zambia
	Lesotho		Zimbabwe

Democratic Republic of the Congo

Saint Kitts and Nevis

- Denmark
- Liberia
- Saint Lucia

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- **Anonymous**
  Only your contribution, country of origin and the respondent type profile that you selected will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- **Public**
  Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☑ I agree with the personal data protection provisions

If you replied that you answer on behalf of a business, please specify the type of business:

- institutional investor, asset manager
- other financial sector player (e.g. an analyst, rating agency, data and research provider)
- auditor
- other

Consultation questions

If you are responding on behalf of a large company, please indicate how large is the company:

- Large company with 1000 or more people employed
- Large company with less than 1000 but at least 250 people employed

If you are responding on behalf of a company, is your company listed on the stock-exchange?

- Yes, in the EU
- Yes, outside the EU

- Yes, both in and outside the EU
- No

If you are responding on behalf of a company, does your company have experience in implementing due diligence systems?

- Yes, as legal obligation
- Yes, as voluntary measure
- No

If resident or established/registered in an EU Member State, do you carry out (part of) your activity in several EU Member States?

- Yes
- No

If resident or established/ registered in a third country (i.e. in a country that is not a member of the European Union), please specify your country:

If resident or established registered in a third country, do you carry out (part of) your activity in the EU?

- Yes
- No

If resident or established registered in a third country, are you part of the supply chain of an EU company?

- Yes
- No

Section I: Need and objectives for EU intervention on sustainable corporate governance

Questions 1 and 2 below which seek views on the need and objectives for EU action have already largely been included in the public consultation on the Renewed Sustainable Finance Strategy earlier in 2020. The Commission is currently analysing those replies. In order to reach the broadest range of stakeholders possible, those questions are now again included in the present consultation also taking into account the two studies on due diligence requirements through the supply chain as well as directors' duties and sustainable corporate governance.

Question 1: Due regard for stakeholder interests', such as the interests of employees, customers, etc., is expected of companies. In recent years, interests have expanded to include issues such as human rights violations, environmental pollution and climate change. Do you think companies and their directors should take account of these interests in corporate decisions alongside financial interests of shareholders, beyond what is currently required by EU law?

- ○ Yes, a more holistic approach should favour the maximisation of social, environmental, as well as economic/financial performance.
- ◉ Yes, as these issues are relevant to the financial performance of the company in the long term.
- ○ No, companies and their directors should not take account of these sorts of interests.
- ○ Do not know.

Please provide reasons for your answer:

The demand for sustainable companies is growing on stakeholders' side (employees, customers, but also investors and shareholders). Companies cannot ignore this demand, all the more that they are part of the whole society, they impact the social community and their activities may impact the environment as well. Furthermore, economic results are not solely determined by pure financial returns. On the contrary, sustainability and purpose are becoming part of the equation. Sustainable companies have far better financial performances (by 4% in average and reduce by 7% their risks), and as the Covid-19 crisis had proven, they are also more resilient and agile, minimising losses during crisis.

As a result, companies have significantly increase their contact with both their shareholders and their relevant stakeholders and in particular Employees Representatives and this development is moving on very visibly. Stakehodlers' interests are thus intergrated in companies' strategies and decision-making processes.

However, what is referred to as "the interests of stakeholders" is not a clear homogeneous concept but a complex combination of potentially conflicting interests that have to be dealt with in making decisions. The directors must remain in control of their decisions and report them to the market. The European Commission may stimulate board members to engage better with their relevant stakeholders. However, it should be up to board members to define which stakeholders make sense for their business model and how to integrate their interests during their decision-making, as long as they report on their decisions and disclose the chosen engagement methodology. Giving multiple and contradictory objectives is the best way to create agency conflicts, it allows the agent to act in his/her own interest by arguing for the protection of specific category of stakeholders.

Question 2: Human rights, social and environmental due diligence requires companies to put in place continuous processes to identify risks and adverse

impacts on human rights, health and safety and environment and prevent, mitigate and account for such risks and impacts in their operations and through their value chain.
In the survey conducted in the context of the study on due diligence requirements through the supply chain, a broad range of respondents expressed their preference for a policy change, with an overall preference for establishing a mandatory duty at EU level.
Do you think that an EU legal framework for supply chain due diligence to address adverse impacts on human rights and environmental issues should be developed?

- ○ Yes, an EU legal framework is needed.
- ◉ No, it should be enough to focus on asking companies to follow existing guidelines and standards.
- ○ No action is necessary.
- ○ Do not know.

Please explain:

Having an EU legal framework would create a level-playing field for European companies and improve the legal certainty which is necessary for European companies to operate.
However, many drawbacks could arising from such a legislation, that is why it should not not be too prescriptive nor too binding.

At ecoDa, we believe that imposing on companies an obligation to account for the results of the implementation of a due diligence strategy through the entire supply chains may create legal uncertainty on companies. In addition, a diligence duty imposed on the entire value chains may result in a relocation or in any case a reduction of value chains since many companies will not have the means to acquire the digital tools or recruit the relevant teams in order to ensure effective screening. To a certain extent, such an initiative would look like a disguised Buy European Act, without it being certain that the consumer will be ready to pay the higher prices such a development would generally imply, and especially in times of crisis.

Finally, in terms of due diligence, ecoDa supports the pragmatic approach of the OECD, which does not envisage monitoring obligations for companies of each supplier. The OECD recommends that companies have an overview of their value chains and focus more specifically on the riskiest segments. According to the OECD, engagement with stakeholders should not necessarily be made by the company but by its suppliers on its behalf.
ecoDa also favors the approach of the OECD guidelines for multinationals which are negotiated between governments, business representatives, trade unions and NGOs. Finally, these principles are based on an original implementation mechanism that goes through national contact points. They are in charge of promoting the guiding principles nationally and play a mediating role when there is a conflict or when complaints are filed.

Question 3: If you think that an EU legal framework should be developed, please indicate which among the following possible benefits of an EU due diligence duty is important for you (tick the box/multiple choice)?

- Ensuring that the company is aware of its adverse human rights, social and environmental impacts and risks related to human rights violations other social issues and the environment and that it is in a better position to mitigate these risks and impacts
- Contribute effectively to a more sustainable development, including in non-EU countries
- Levelling the playing field, avoiding that some companies freeride on the efforts of others
- Increasing legal certainty about how companies should tackle their impacts, including in their value chain
- A non-negotiable standard would help companies increase their leverage in the value chain
- Harmonisation to avoid fragmentation in the EU, as emerging national laws are different
- SMEs would have better chances to be part of EU supply chains
- Other

Question 3a. Drawbacks
Please indicate which among the following possible risks/drawbacks linked to the introduction of an EU due diligence duty are more important for you (tick the box /multiple choice)?

- Increased administrative costs and procedural burden
- Penalisation of smaller companies with fewer resources
- Competitive disadvantage vis-à-vis third country companies not subject to a similar duty
- Responsibility for damages that the EU company cannot control
- Decreased attention to core corporate activities which might lead to increased turnover of employees and negative stock performance
- Difficulty for buyers to find suitable suppliers which may cause lock-in effects (e.g. exclusivity period/no shop clause) and have also negative impact on business performance of suppliers
- Disengagement from risky markets, which might be detrimental for local economies
- Other

Section II: Directors’ duty of care – stakeholders’ interests

In all Member States the current legal framework provides that a company director is required to act in the interest of the company (duty of care). However, in most Member States the law does not clearly define what this means. Lack of clarity arguably contributes to short-termism and to a narrow interpretation of the duty of care as requiring a focus predominantly on shareholders' financial interests. It may also lead to a disregard of stakeholders' interests, despite the fact that those stakeholders may also contribute to the long-term success, resilience and viability of the company.

Question 5. Which of the following interests do you see as relevant for the long-term success and resilience of the company?

	Relevant	Not relevant	I do not know/I do not take position
the interests of shareholders	●	○	○
the interests of employees	●	○	○
the interests of employees in the company's supply chain	●	○	○
the interests of customers	●	○	○
the interests of persons and communities affected by the operations of the company	●	○	○
the interests of persons and communities affected by the company's supply chain	○	○	●
the interests of local and global natural environment, including climate	○	○	●
the likely consequences of any decision in the long term (beyond 3-5 years)	●	○	○
the interests of society, please specify	○	○	●
other interests, please specify	○	○	○

the interests of society, please specify:

Some Member States are encouraging companies to state their corporate purpose beyond the specification of the technical or sectoral areas in which the companies exercise their activity, as can generally be mandatorily written in their bylaws, and aside the possibility to form companies specifically pursuing other goals than the sharing of profit. The European Commission could consider following the same path and invite companies to review their purpose in the context of sustainability. The concept of corporate purpose could indeed be a way to clarify the scope of directors' fiduciary duties. The Corporate Purpose can serve as a place of safety for directors in the sense that board members would be protected from any compromise between profitability and stakeholders' interests. It can act like an anchor for decision-making. Companies that choose to go in this direction must however understand that defining a corporate purpose is not an end in itself. It should be embedded in the whole strategy and in the KPIs to assess performance.

This being said, stating the corporate purpose does not eliminate some of the practical challenges that boards face in engaging with their stakeholders. Experience in countries where this is in place shows that it is often a pure communication exercise. Additionally, one cannot forget that companies can be extremely successful without having explicitly stated their purpose.

However, Corporate Purpose should not be legislated. Indeed, if the purpose is mandated by legislation, it will be the purpose of the legislators and not the purpose of the company. Companies should simply be encouraged to express their commitment to sustainability and to respect stakeholders in terms that are as explicit as possible and that can also be applied in practice. These commitments affect their Purpose, their Mission, their Strategy and the way they operate. Legislation should focus on aspects related to the measurable impact on labour, environment, corruption and others.

Question 6. Do you consider that corporate directors should be required by law to (1) identify the company´s stakeholders and their interests, (2) to manage the risks for the company in relation to stakeholders and their interests, including on the long run (3) and to identify the opportunities arising from promoting stakeholders' interests?

	I strongly agree	I agree to some extent	I disagree to some extent	I strongly disagree	I do not know	I do not take position
Identification of the company´s stakeholders and their interests	○	○	○	●	○	○
Management of the risks for the company in relation to stakeholders and their interests, including on the long run	○	○	○	●	○	○
Identification of the opportunities arising from promoting stakeholders' interests	○	○	○	●	○	○

Please explain:

As a general principle, ecoDa would like to repeat that taking into account all stakeholders' interests on an equal footing should not be the ultimate goal of companies. Stakeholders' interests are often contradictory between themselves: to take the simplest example, the interest of customers is that prices are as low as possible, the interest of the company's suppliers and workforce is that they are as high as possible so as to soften cost-cutting. Boards should not be turned into bargaining bodies where different, often probably mutually conflicting interests are turned against each other, thus hampering efficient decision-making. There is a great risk of diluting the energy of the directors in endless lawsuits where each stakeholder who feels aggrieved by a decision could take legal action. The European Commission should think twice before changing the accountability rules. Such provisions would clearly lead to the creation of risk-averse companies in Europe.

However, responsible boards must definitely arbitrate between the interests they take into regard and those they ignore. Boards should take into account the interests of both shareholders and the relevant stakeholders of the company which need to be clearly identified and can be specific to certain sectors and companies.

To conclude, at ecoDa, we strongly believe that companies should indeed take the relevant stakeholders interests into consideration, but this should not be required by law.

Question 7. Do you believe that corporate directors should be required by law to set up adequate procedures and where relevant, measurable (science –based) targets to ensure that possible risks and adverse impacts on stakeholders, ie. human rights, social, health and environmental impacts are identified, prevented and addressed?

- ( ) I strongly agree
- ( ) I agree to some extent
- (•) I disagree to some extent
- ( ) I strongly disagree
- ( ) I do not know
- ( ) I do not take position

Please explain:

Setting relevant science-based targets is relevant to ensure meaningful targets, comparability and measurability. And this is all the more true for companies that have defined their purpose. But a corporate purpose is not valid until it is enshrined in the DNA of the company and should not be mandated by legislation as it will be the purpose of the legislators and not the purpose of the company anymore.

However, the European Commission should prevent itself from requiring the same procedure to all companies. This is why including this disposition in a law does not appear as the best option for ecoDa.

Question 8. Do you believe that corporate directors should balance the interests of all stakeholders, instead of focusing on the short-term financial interests of shareholders, and that this should be clarified in legislation as part of directors' duty of care?

- ( ) I strongly agree
- ( ) I agree to some extent
- (•) I disagree to some extent
- ( ) I strongly disagree
- ( ) I do not know
- ( ) I do not take position

Please provide an explanation or comment:

First of all, ecoDa does not see the introduction of a new legislation as a necessary nor relevant step as companies are already taken into stakeholders interests.
ecoDa may see an interest in further clarifying directors' duty to take the interests of all relevant stakeholders duly into account as part of their duty of care to the company so as to finally put an end to the widespread myth that they would otherwise only favour the interests of the shareholders.
However, ecoDa would like to stress once again the impossibility for directors to take into account the interests of all stakeholders, which often are competiting and contradictory between each others. Board members should define who are the relevant stakeholders and take their interests into account. But at the end, we should not forget that board members are accountable to shareholders.

Question 9. Which risks do you see, if any, should the directors' duty of care be spelled out in law as described in question 8?

ecoDa questions the advisability of modifying the notion of duty of care through imprecise considerations which risk creating confusion. The more details the duty of care would entail, the greater the risk to create loopholes in terms of all aspects of it which are not mentioned will be. ecoDa strongly encourages the Commission to refer to the conclusions of a report it commissioned from the London School of Economics in 2013 on Directors' Duties and Liability. The report clearly stated that:
- « In almost all countries, directors' duties are codified.
- Directors' duties are owed primarily to the company, i.e. to the legal entity and not to its shareholders. This basic principle is universally accepted and undisputed. However, in exceptional circumstances duties may be owed directly to shareholders, creditors, or other stakeholders.
- All jurisdictions rely to varying degrees on case law to define and amplify directors' duties. Notwithstanding a country's regular approach, the analysis suggests that the law in most legal systems is elastic enough to allow the courts to derive solutions for novel conflicts that are not addressed by the statute. Most jurisdictions recognise that directors may become risk averse if the liability risk faced by them is too high, thus forgoing investment opportunities with a positive net present value in favour of less risky alternatives ».

Hard law intervention in corporate governance contributing to diffuse and unlimited director liability is likely to have detrimental consequences on the growth ambitions and competitiveness of European companies.

Across Europe, national legislation and/or case law deal with directors' duties and make it clear that they are owed to the company and not to the shareholders. This has a direct impact on directors' liability. Additionally, several Member States have provided for possible forms of companies aiming at other purposes than the sharing of profit. Enhancing such existing legislations could have been achieved through the more flexible tool of a recommendation.

How could these possible risks be mitigated? Please explain.

At ecoDa level, we are advocating for a "comply or explain" approach with general high principles.

Where directors widely integrate stakeholder interest into their decisions already today, did this gather support from shareholders as well? Please explain.

Many companies are indeed already integrating stakeholder interest into their decisions, it is not something new. Some companies are even placing stakeholders and consumers at the heart of their business model (a model seen as a competitive advantage).
This integration of stakeholder interests is widely supported by shareholders (institutional investors are looking for sustainable investment based on strict ESG criteria).

Question 10. As companies often do not have a strategic orientation on sustainability risks, impacts and opportunities, as referred to in question 6 and 7, do you believe that such considerations should be integrated into the company's strategy, decisions and oversight within the company?

- ○ I strongly agree
- ● I agree to some extent
- ○ I disagree to some extent
- ○ I strongly disagree
- ○ I do not know
- ○ I do not take position

Please explain:

ecoDa strongly believes in the importance for companies and directors to strengthen their long-term strategies by further integrating the interests of legitimate stakeholders that make sense to their business. Boards have a duty to be clear in their strategic choices and must be able to justify them in the light of external constraints which can turn out to be sources of formidable opportunities.

ecoDa encourages the Commission to develop guidance to help board members integrate sustainability aspects (impacts, risks, opportunities) into the business strategy and set adequate sustainability targets aligned with overarching goals. The members of ecoDa are at the disposal of the Commission for this exercise.

Enforcement of directors' duty of care

Today, enforcement of directors' duty of care is largely limited to possible intervention by the board of directors, the supervisory board (where such a separate board exists) and the general meeting of shareholders. This has arguably contributed to a narrow understanding of the duty of care according to which directors are required to act predominantly in the short-term financial interests of shareholders. In addition, currently, action to enforce directors' duties is rare in all Member States.

Question 11. Are you aware of cases where certain stakeholders or groups (such as shareholders representing a certain percentage of voting rights, employees, civil society organisations or others) acted to enforce the directors' duty of care on behalf of the company? How many cases? In which Member States? Which stakeholders? What was the outcome?

Please describe examples:

The second sentence in the introduction to this question is totally unfounded, especially the reference to short-term financial interests of shareholders.
ecoDa encourages the Commission to present their evidence behind this allegation.

Question 12. What was the effect of such enforcement rights/actions? Did it give rise to case law/ was it followed by other cases? If not, why?
Please describe:

Question 13. Do you consider that stakeholders, such as for example employees, the environment or people affected by the operations of the company as represented by civil society organisations should be given a role in the enforcement of directors' duty of care?

- ○ I strongly agree
- ○ I agree to some extent
- ○ I disagree to some extent
- ● I strongly disagree
- ○ I do not know
- ○ I do not take position

Please explain your answer:

The duty of care requires directors to make decisions that are financially, ethically, and legally sound. As diverse as they are, stakeholders have not the same definition of what is ethical for instance as it is highly subjective and derived from a national culture.
Such a provision would represent a high legal risk for companies.

Companies have to consider the interests of all relevant stakeholders but it would be totally inappropriate to give the equivalent of supervisory rights to groups that may or may not be truly representative and that normally would not share any risk with shareholders.

Question 13a: In case you consider that stakeholders should be involved in the enforcement of the duty of care, please explain which stakeholders should play a role in your view and how.

Section III: Due diligence duty

For the purposes of this consultation, "due diligence duty" refers to a legal requirement for companies to establish and implement adequate processes with a view to prevent, mitigate and account for human rights (including labour rights and working conditions), health and environmental impacts, including relating to climate change, both in the company's own operations and in the company's the supply chain. "Supply chain" is understood within the broad definition of a company's "business relationships" and includes subsidiaries as well as suppliers and subcontractors. The company is expected to make reasonable efforts for example with respect to identifying suppliers and subcontractors. Furthermore, due diligence is inherently risk-based, proportionate and context specific. This implies that the extent of implementing actions should depend on the risks of adverse impacts the company is possibly causing, contributing to or should foresee.

Question 14: Please explain whether you agree with this definition and provide reasons for your answer.

> ecoDa questions what the European Commission means by "reasonable efforts". The notion should be clarified.
> In addition, ecoDa would like to stress that mandatory due diligence duties could pose serious difficulties for companies with a number of different supply chains, some of them very complex and extended all over the world.

Question 15: Please indicate your preference as regards the content of such possible corporate due diligence duty (tick the box, only one answer possible). Please note that all approaches are meant to rely on existing due diligence standards, such as the OECD guidance on due diligence or the UNGPs. Please note that Option 1, 2 and 3 are horizontal i. e. cross-sectorial and cross thematic, covering human rights, social and environmental matters. They are mutually exclusive. Option 4 and 5 are not horizontal, but theme or sector-specific approaches. Such theme specific or sectorial approaches can be combined with a horizontal approach (see question 15a). If you are in favour of a combination of a horizontal approach with a theme or sector specific approach, you are requested to choose one horizontal approach (Option 1, 2 or 3) in this question.

- (●) Option 1. “Principles-based approach”: A general due diligence duty based on key process requirements (such as for example identification and assessment of risks, evaluation of the operations and of the supply chain, risk and impact mitigation actions, alert mechanism, evaluation of the effectiveness of measures, grievance mechanism, etc.) should be defined at EU level regarding identification, prevention and mitigation of relevant human rights, social and environmental risks and negative impact. These should be applicable across all sectors. This could be complemented by EU-level general or sector specific guidance or rules, where necessary
- ( ) Option 2. “Minimum process and definitions approach”: The EU should define a minimum set of requirements with regard to the necessary processes (see in option 1) which should be applicable across all sectors. Furthermore, this approach would provide harmonised definitions for example as regards the coverage of adverse impacts that should be the subject of the due diligence obligation and could rely on EU and international

human rights conventions, including ILO labour conventions, or other conventions, where relevant. Minimum requirements could be complemented by sector specific guidance or further rules, where necessary.

- Option 3. “Minimum process and definitions approach as presented in Option 2 complemented with further requirements in particular for environmental issues”. This approach would largely encompass what is included in option 2 but would complement it as regards, in particular, environmental issues. It could require alignment with the goals of international treaties and conventions based on the agreement of scientific communities, where relevant and where they exist, on certain key environmental sustainability matters, such as for example the 2050 climate neutrality objective, or the net zero biodiversity loss objective and could reflect also EU goals. Further guidance and sector specific rules could complement the due diligence duty, where necessary.
- Option 4 “Sector-specific approach”: The EU should continue focusing on adopting due diligence requirements for key sectors only.
- Option 5 "Thematic approach": The EU should focus on certain key themes only, such as for example slavery or child labour.
- None of the above, please specify

Question 15a: If you have chosen option 1, 2 or 3 in Question 15 and you are in favour of combining a horizontal approach with a theme or sector specific approach, please explain which horizontal approach should be combined with regulation of which theme or sector?

Companies should remain free to decide which of their activity segments should be monitored based on the risk exposure of the segments.

ecoDa would advise the European Commission to follow the pragmatic approach of the OECD stating that companies should have an overview of their value chains and focus more specifically on the riskiest segments.

Question 15b: Please provide explanations as regards your preferred option, including whether it would bring the necessary legal certainty and whether complementary guidance would also be necessary.

Question 15c: If you ticked options 2) or 3) in Question 15 please indicate which areas should be covered in a possible due diligence requirement (tick the box, multiple choice)

- ☐ Human rights, including fundamental labour rights and working conditions (such as occupational health and safety, decent wages and working hours)
- ☐ Interests of local communities, indigenous peoples' rights, and rights of vulnerable groups
- ☐ Climate change mitigation
- ☐ Natural capital, including biodiversity loss; land degradation; ecosystems degradation, air, soil and water pollution (including through disposal of chemicals); efficient use of resources and raw materials; hazardous substances and waste
- ☐ Other, please specify

Question 15d: If you ticked option 2) in Question 15 and with a view to creating legal certainty, clarity and ensuring a level playing field, what definitions regarding adverse impacts should be set at EU level?

Question 15e: If you ticked option 3) in Question 15, and with a view to creating legal certainty, clarity and ensuring a level playing field, what substantial requirements regarding human rights, social and environmental performance (e.g. prohibited conducts, requirement of achieving a certain performance/target by a certain date for specific environmental issues, where relevant, etc.) should be set at EU level with respect to the issues mentioned in 15c?

Question 15f: If you ticked option 4) in question 15, which sectors do you think the EU should focus on?

The EU should focus on the most risky sectors.

Question 15g: If you ticked option 5) in question 15, which themes do you think the EU should focus on?

Question 16: How could companies'- in particular smaller ones'- burden be reduced with respect to due diligence? Please indicate the most effective options (tick the box, multiple choice possible)
This question is being asked in addition to question 48 of the Consultation on the Renewed Sustainable Finance Strategy, the answers to which the Commission is currently analysing.

- [ ] All SMEs[16] should be excluded
- [x] SMEs should be excluded with some exceptions (e.g. most risky sectors or other)
- [ ] Micro and small sized enterprises (less than 50 people employed) should be excluded
- [ ] Micro-enterprises (less than 10 people employed) should be excluded
- [ ] SMEs should be subject to lighter requirements ("principles-based" or "minimum process and definitions" approaches as indicated in Question 15)
- [ ] SMEs should have lighter reporting requirements
- [ ] Capacity building support, including funding
- [x] Detailed non-binding guidelines catering for the needs of SMEs in particular
- [ ] Toolbox/dedicated national helpdesk for companies to translate due diligence criteria into business practices
- [ ] Other option, please specify
- [ ] None of these options should be pursued

Please explain your choice, if necessary

Knowing that in 2018 SMEs accounted for 99% of all enterprises in the EU and generated more than 50% of value added, the European Commission should prevent itself from adding any additional burden on them. The European institutions cannot ignore the major burden that will be borne by SMEs. While they will be the first to bear the brunt of the Covid crisis, the Commission must ensure a principle of proportionality and a fair balance.

Question 17: In your view, should the due diligence rules apply also to certain third-country companies which are not established in the EU but carry out (certain) activities in the EU?

- (x) Yes
- ( ) No
- ( ) I do not know

Question 17a: What link should be required to make these companies subject to those obligations and how (e.g. what activities should be in the EU, could it be linked to certain turnover generated in the EU, other)? Please specify.

Any requirement that may be introduced at EU level should apply to any commercial organisation, public or private, operating in the European market.

Question 17b: Please also explain what kind of obligations could be imposed on these companies and how they would be enforced.

The same as the ones imposed on European companies.
But how can those obligations (i.e. those imposed on European companies) be imposed and enforced on third-country companies?

Question 18: Should the EU due diligence duty be accompanied by other measures to foster more level playing field between EU and third country companies?

- ○ Yes
- ○ No
- ○ I do not know

Please explain:

Question 19: Enforcement of the due diligence duty

Question 19a: If a mandatory due diligence duty is to be introduced, it should be accompanied by an enforcement mechanism to make it effective. In your view, which of the following mechanisms would be the most appropriate one(s) to enforce the possible obligation (tick the box, multiple choice)?

- ☐ Judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations
- ☐ Supervision by competent national authorities based on complaints (and/or reporting, where relevant) about non-compliance with setting up and implementing due diligence measures, etc. with effective sanctions (such as for example fines)
- ☑ Supervision by competent national authorities (option 2) with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU
- ☐ Other, please specify

Please provide explanation:

Disputes must be settled by a court under the Union's judicial system. Only such a court is able to guarantee the full effectiveness of Union law.

In addition, ecoDa suggests to reinforce the role of internal and external audits on this topic.

Question 19b: In case you have experience with cases or Court proceedings in which the liability of a European company was at stake with respect to human rights or environmental harm caused by its subsidiary or supply chain partner located in a third country, did you encounter or do you have information about difficulties to get access to remedy that have arisen?

- Yes
- No

In case you answered yes, please indicate what type of difficulties you have encountered or have information about:

If you encountered difficulties, how and in which context do you consider they could (should) be addressed?

Section IV: Other elements of sustainable corporate governance

Question 20: Stakeholder engagement

Better involvement of stakeholders (such as for example employees, civil society organisations representing the interests of the environment, affected people or communities) in defining how stakeholder interests and sustainability are included into the corporate strategy and in the implementation of the company’s due diligence processes could contribute to boards and companies fulfilling these duties more effectively.

Question 20a: Do you believe that the EU should require directors to establish and apply mechanisms or, where they already exist for employees for example, use existing information and consultation channels for engaging with stakeholders in this area?

- I strongly agree
- I agree to some extent

- [x] I disagree to some extent
- [ ] I strongly disagree
- [ ] I do not know
- [ ] I do not take position

Please explain.

It should be left to board members to decide who are the relevant stakeholders but also how the company should engage stakeholders as the best mechanism will depend on the sector and the size of the company. In addition, ecoDa would like to stress that participation of employee representatives in the governance process tends is already a widespread mechanism in European countries through a various mechanisms (shareholders reprsentatives at board level, supervisory boards...).

Question 20b: If you agree, which stakeholders should be represented? Please explain.

Stakeholders that should be represented are both internal (employees, trade unions) and external (the relevant ones), but once again, at ecoDa, we think that it should be decided by the board depending on the specific situation of the company.

Question 20c: What are best practices for such mechanisms today? Which mechanisms should in your view be promoted at EU level? (tick the box, multiple choice)

	Is best practice	Should be promoted at EU level
Advisory body	○	○
Stakeholder general meeting	○	○
Complaint mechanism as part of due diligence	○	○
Other, please specify	○	●

Other, please specify:

ecoDa supports governance processes ensuring :
-the relevant internal and external stakeholders views are examined by the board and its committees ;
- for some companies, the AGM could also be a way to consult the relevant stakeholders (without voting rights).

Boards are expected to take responsibility for an increasing range of issues. This increased workload of boards has a direct impact on the way boards structure themselves and on the interaction they have with the management. In order for boards to focus on their core functions, they will not be able to ignore a deeper reflection on their internal organization. However, with regard to sustainability, it should be up to the board to determine whether the subject of sustainability motivates the creation of a specific committee for preparatory work, whether the risk or audit committee is better placed or whether the board prefers to handle these issues as a whole. It should be acknowledged that the setting up of board committees to deal with certain matters also comes with a price, e.g. in terms of diluting the accountability of the other directors, which may in fact counteract the intended purpose of the committee.

According to Ethics & Boards, approaches in this respect vary greatly in Europe. The preference for a dedicated committee is more predominant in e.g. France, Italy and Spain than in some other European jurisdictions, and the rationale for committees also differs substantially due to the sheer size of the board. In general, it will be noted that companies are constantly innovating and even ahead of the recommendations of corporate governance codes.

Question 21: Remuneration of directors

Current executive remuneration schemes, in particular share-based remuneration and variable performance criteria, promote focus on short-term financial value maximisation [17] (Study on directors' duties and sustainable corporate governance).

Please rank the following options in terms of their effectiveness to contribute to countering remuneration incentivising short-term focus in your view.

This question is being asked in addition to questions 40 and 41 of the Consultation on the Renewed Sustainable Finance Strategy the answers to which the Commission is currently analysing.
Ranking 1-7 (1: least efficient, 7: most efficient)

Restricting executive directors' ability to sell the shares they receive as pay for a certain period (e.g. requiring shares to be held for a certain period after they were granted, after a share buy-back by the company)	☆☆☆☆☆☆☆
Regulating the maximum percentage of share-based remuneration in the total remuneration of directors	☆☆☆☆☆☆☆
Regulating or limiting possible types of variable remuneration of directors (e.g. only shares but not share options)	☆☆☆☆☆☆☆
Making compulsory the inclusion of sustainability metrics linked, for example, to the company's sustainability targets or performance in the	☆☆☆☆☆☆

variable remuneration	☆
Mandatory proportion of variable remuneration linked to non-financial performance criteria	☆☆☆☆☆☆☆
Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration	☆☆☆☆☆☆☆
Taking into account workforce remuneration and related policies when setting director remuneration	☆☆☆☆☆☆☆
Other option, please specify	☆☆☆☆☆☆☆
None of these options should be pursued, please explain	☆☆☆☆☆☆☆

Please explain:

The European Commission should not base its initiative on the EY report insofar as it does not describe the reality on the ground and conveys false assumptions (as largely expressed by the academic and business communities). The European Commission should collect data on European companies as a more reliable base for action and consider other surveys like the European Investment Bank on investments in sustainability issues.

ecoDa would like to emphasize the following points:
- The concepts of Short-termism and Long-termism are treated in the questionnaire and in the study of reference in a way that appears oversimplified and, as a minimum, incomplete. These concepts are fundamental in the line of reasoning that is presented in the questionnaire and they must be considered rigorously. Otherwise, the conclusions derived can be wrong and potentially damaging to the very objective

of promoting sustainability and broader corporate responsibilities.
- The questionnaire implicitly and sometimes, explicitly seems to associate short-termism with the interest of shareholders. The study used as reference, tries to assess the increase of short-termism by measuring the evolution of the relative shares of retained earnings and distribution to shareholders. The underlying reasoning appears to be that "Distributing profits to shareholders is Short-term and therefore, bad. Retaining earnings in the company is Long-term and therefore, good". Conversely, long-termism appears as aligned with the general "interests of stakeholders" without any specific definition of these interests, let alone any metrics associated with whether or not companies are responding to them.
- This line of reasoning is incomplete with significant flaws. It ignores some basic questions:
- What determines if a corporate decision is Short or Long-term oriented is not necessarily the nature of the decision but the nature of the criteria used to make the decision. A decision to distribute profits to shareholders can respond to genuine Long-term considerations depending on the specific situation and perspectives of a company. At the risk of stating the obvious, distributed profits mainly serve to recycle funds in the economy and finance companies with better prospects long term, thereby contributing to overall sustainability.
- The interests of some stakeholders can be absolutely Short-term depending on the circumstances (Some examples are well known like the demand for salary increases that sometimes could be seen in labour negotiations or the attitude of some communities regarding investments in their areas), especially in pre-election periods.
- This incomplete view of what is Short vs Long-term creates a bias that permeates the questionnaire and might damage its objectivity. It is a fundamental question and it would be important to make efforts to clarify it in Europe and everywhere.

International academic literature has identified excesses of both short and long-termism depending on cycles, the situation of the company, etc.

ecoDa would also like to highlight the conclusions drawn in ESMA Report on Undue short-term pressure on corporations: « It observes that the Commission's non-binding guidelines on reporting climate-related information state that the definition of short-, medium- and long-term is likely to depend on the company's business model and the life cycle of its assets and liabilities. As regards the suggestion to develop criteria on what constitutes undue short-termism, ESMA has not found sufficiently robust evidence to recommend that such an exercise be undertaken ».

Question 22: Enhancing sustainability expertise in the board

Current level of expertise of boards of directors does not fully support a shift towards sustainability, so action to enhance directors' competence in this area could be envisaged [18] (Study on directors' duties and sustainable corporate governance).
Please indicate which of these options are in your view effective to achieve this objective (tick the box, multiple choice).

- [ ] Requirement for companies to consider environmental, social and/or human rights expertise in the directors' nomination and selection process
- [ ] Requirement for companies to have a certain number/percentage of directors with relevant environmental, social and/or human rights expertise
- [ ]

Requirement for companies to have at least one director with relevant environmental, social and/or human rights expertise

- [x] Requirement for the board to regularly assess its level of expertise on environmental, social and/or human rights matters and take appropriate follow-up, including regular trainings
- [ ] Other option, please specify
- [ ] None of these are effective options

Please explain:

The European Commission should refrain from laying down prescriptive rules on board composition regarding sustainability. Sustainability means different things to different companies. Imposing a straight jacket would deprive shareholders of their ability to select the board members based on their specificities. In general, the legislator should not intervene to define the necessary expertise, neither at the level of the boards of directors nor of the management teams. Additionally, “expertise in sustainability” is a somewhat fuzzy concept.

However, ecoDa strongly supports the fact that board members need trainings to update their skills and to upskill on arising topics, such as ESG matters.

Question 23: Share buybacks

Corporate pay-outs to shareholders (in the form of both dividends and share buybacks) compared to the company’s net income have increased from 20 to 60 % in the last 30 years in listed companies as an indicator of corporate short-termism. This arguably reduces the company’s resources to make longer-term investments including into new technologies, resilience, sustainable business models and supply chains[19]. (A share buyback means that the company buys back its own shares, either directly from the open market or by offering shareholders the option to sell their shares to the company at a fixed price, as a result of which the number of outstanding shares is reduced, making each share worth a greater percentage of the company, thereby increasing both the price of the shares and the earnings per share.) EU law regulates the use of share-buybacks [Regulation 596/2014 on market abuse and Directive 77/91, second company law Directive].
In your view, should the EU take further action in this area?

- ( ) I strongly agree
- ( ) I agree to some extent
- ( ) I disagree to some extent
- (x) I strongly disagree
- ( )

I do not know

I do not take position

Question 23a: If you agree, what measure could be taken?

The first two sentences of the share buybacks paragraph are simply wrong, and therefore, should not be used as a basis for a question.

Question 24: Do you consider that any other measure should be taken at EU level to foster more sustainable corporate governance?
If so, please specify:

At ecoDa, we strongly believe that a change in mindset on ESG matters will happen through education of board members rather than through a legislative act. It is preferable to rely on the training of directors to embrace sustainability issues. This approach would prevent creating loopholes in terms of all aspects that would not be specified in a legislation.
The future EC initiative should therefore make a clear reference to the importance of certification and in the interest of the internal market to arrive at some common criteria in terms of ESG education for board members.
ecoDa invites the European Commission to release a budget line for the training of directors on ESG matters as it was done, sometimes ago, for the training / mentoring of women directors.

In addition, ecoDa wants to recall the importance of national codes which are already going much further than European legislations.

ecoDa is afraid that the future legislation will become a catch-all-text. Such a very broad piece of legislation would undoubtedly dilute its primary objective to foster sustainable value creation. The European Commission should ensure coherence among all initiatives in the pipeline, especially the upcoming review of the Non-Financial Reporting Information. ecoDa considers that the Non-Financial Reporting Information is the right tool to ensure that board members provide a proper oversight of companies processes and define the right KPIs for sustainability materiality.

There are other ways to force companies to pay for the externalities caused. ecoDa would not exclude the interest of EU-level legislation in some areas. This is in itself a very broad question that touches on many aspects of company law, like for instance, questions of labour and fiscal regulations. It should not be approached only under the scope of sustainability and related concepts.

Section V: Impacts of possible measures

Question 25: Impact of the spelling out of the content of directors’ duty of care and of the due diligence duty on the company
Please estimate the impacts of a possible spelling out of the content of directors’ duty of care as well as a due diligence duty compared to the current situation. In your understanding and own assessment, to what extent will the impacts/effects increase on a scale from 0-10? In addition, please quantify/estimate in quantitative terms (ideally as percentage of annual revenues) the increase of costs and benefits, if possible, in particular if your company already complies with such possible requirements.

Table

	Non-binding guidance. Rating 0-10	Introduction of these duties in binding law, cost and benefits linked to setting up /improving external impacts' identification and mitigation processes Rating 0 (lowest impact)-10 (highest impact) and quantitative data	Introduction of these duties in binding law, annual cost linked to the fulfilment of possible requirements aligned with science based targets (such as for example climate neutrality by 2050, net zero biodiversity loss, etc.) and possible reorganisation of supply chains Rating 0 (lowest impact)-10 (highest impact) and quantitative data
Administrative costs including costs related to new staff required to deal with new obligations	0	5	10
Litigation costs	0	5	5
Other costs including potential indirect costs linked to higher prices in the supply chain, costs liked to drawbacks as explained in question 3, other than administrative and litigation costs, etc. Please specify.	0		10
Better performance stemming from increased employee loyalty, better employee performance, resource efficiency			

Competitiveness advantages stemming from new customers, customer loyalty, sustainable technologies or other opportunities		5	
Better risk management and resilience	5	10	10
Innovation and improved productivity			
Better environmental and social performance and more reliable reporting attracting investors	5	10	10
Other impact, please specify			

Please explain:

Question 26: Estimation of impacts on stakeholders and the environment
A clarified duty of care and the due diligence duty would be expected to have positive impacts on stakeholders and the environment, including in the supply chain. According to your own understanding and assessment, if your company complies with such requirements or conducts due diligence already, please quantify / estimate in quantitative terms the positive or negative impact annually since the introduction of the policy, by using examples such as:
- Improvements on health and safety of workers in the supply chain, such as reduction of the number of accidents at work, other improvement on working conditions, better wages, eradicating child labour, etc.
- Benefits for the environment through more efficient use of resources, recycling of waste, reduction in greenhouse gas emissions, reduced pollution, reduction in the use of hazardous material, etc.
- Improvements in the respect of human rights, including those of local communities along the supply chain
- Positive/negative impact on consumers
- Positive/negative impact on trade
- Positive/negative impact on the economy (EU/third country).

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