

## **Eumedion response to EC Consultation Document Proposal for an Initiative on Sustainable Corporate Governance**

### **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 board's duty is to promote the company's long-term sustainable success, thereby exercising due care with regard to the interests of the relevant company's stakeholders. The promotion of the company's long-term sustainable success cannot be realised without sound, sustainable financial performance. "Maximisation of social and environmental performance" is a rather vague concept.*

**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:

*Due diligence requirements are already imposed on institutional investors following the SFDR and the Taxonomy Regulation. These requirements will become more meaningful if the due diligence requirements are also imposed on companies. Moreover European legislation would guarantee a level playing field for all European companies and would lead to a greater policy impact.*

*Additionally, we would like to stress that any future EU framework for supply chain due diligence needs to be consistent with relevant EU sustainable finance rules and legislation, and with existing, internationally recognised standards for due diligence as these are already widely used by multinational enterprises (such as the OECD Due diligence guidance for responsible business conduct and the UN Guiding Principles on Business and Human Rights).*

**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 longterm 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?

the interests of shareholders: **RELEVANT**

the interests of employees: **RELEVANT**

the interests of employees in the company's supply chain: **RELEVANT**

the interests of customers: **RELEVANT**

the interests of persons and communities affected by the operations of the company: **RELEVANT**

the interests of persons and communities affected by the company's supply chain: **RELEVANT**

the interests of local and global natural environment, including climate: **RELEVANT**

the likely consequences of any decision in the long term (beyond 3-5 years): **RELEVANT**

the interests of society, please specify: **RELEVANT**

other interests, please specify: **RELEVANT**

the interests of society, please specify: *in particular relevant for companies active in so-called vital sectors and for companies producing sensitive technology*

other interests, please specify: *creditors*

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?

Identification of the company's stakeholders and their interests: **I strongly agree**

Management of the risks for the company in relation to stakeholders and their interests, including on the long run: **I strongly agree**

Identification of the opportunities arising from promoting stakeholders' interests: **I strongly agree**

Please explain:

*It is important that the company board's vision, strategy and expectations are shared and tested with the relevant stakeholders of the company in order to further sharpen these themes in the business operations. Such an exercise can be executed via a stakeholder dialogue and/or a so-called materiality assessment (that identifies a list of material topics).*

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: *The due diligence obligations towards companies should be designed in a way that these accommodate the due diligence requirements imposed on institutional investors following the Taxonomy Regulation and the SFDR. We also underline the importance of alignment with existing, internationally recognised standards for due diligence. However measurable, science-based targets are still emerging. At this stage, such targets only exist to support companies' net zero transition plans. It appears premature to prescribe the need for measurable targets on a variety of areas when such targets do not exist yet. Reference is made to our answer to question 2.*

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: *As mentioned earlier, the board's duty is to promote the company's long-term sustainable success, thereby exercising due care with regard to the interests of the company's relevant stakeholders (not per se all stakeholders). Companies should be allowed to identify their relevant stakeholders. For the sake of a more harmonised approach regarding the directors'*

*duty of care within the European Union we are in favour of incorporating this 'stakeholder principle' into European law. We also believe that the board should describe in the annual report how the various interests of the relevant stakeholders have been considered in board discussions and decision-making. This stakeholder principle can be elaborated in more detail at national level, given the specificities of the corporate governance model in individual EU Member States. However, we do not concur with the notion that corporate directors currently focus on the short-term financial interests of shareholders. Also shareholders particularly institutional investors whom Eumedion represents and have long-term investment horizons have an interest in long-term value creation and in promoting the long-term sustainable success of the company.*

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?

- Less accountability of directors towards the shareholders meeting*
- Shareholders have possibility to dismiss board directors who do not put the interests of shareholders first*

How could these possible risks be mitigated? Please explain.

- Stronger board autonomy in setting the company's strategy and policy.*
- Underlining the responsible share-ownership principle for institutional investors (as they hold the majority of companies' shares), taking into account ESG factors in setting their voting and engagement policies and ensuring the board fulfills its role of setting the company's strategy and policy in the interest of the company and its relevant stakeholders.*

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

*Yes: institutional investors have already changed their behaviour towards more responsible share-ownership, also stimulated by their own clients and beneficiaries, national stewardship codes and the revised EU Shareholder Rights Directive. They also developed their own ESG targets and recognise that integrating stakeholder interests in the board decision-making process will reduce business risks and enhance value creation.*

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: *Sustainability risks and opportunities will impact the company's ability to create long-term value and to promote the company's long-term sustainable success.*

### **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:

*No, not "on behalf of the company". But we are aware that in the European Union Member States other mechanisms to enforce the directors' duty of care exist. For instance in the Netherlands there is a possibility for shareholders (if they represent a specific amount of capital), trade unions representing persons employed by the company, the attorney-general for reasons of public interest and the company itself to start an inquiry procedure against the company before the Enterprise Chamber of the Amsterdam Court of Appeals. The Enterprise Chamber will only grant the request for an inquiry procedure if there are sound reasons to doubt the policies of the company and/or the conduct of its business. Between 1994 and 2021 38 inquiry proceedings were started against Dutch listed companies. These inquiry proceedings were formative of corporate governance in the Netherlands as it*

*clarified what constitutes 'mismanagement', that board decisions should be taken without the participation of directors who have a conflict of interest, that the board has to provide sufficient and correct information to the shareholders meeting for making informed decisions and that a controlling shareholder may not neglect the interests of minority shareholders in executing its powers.*

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:

*The Enterprise Chamber developed a rich case law as to the question of what may amount to 'mismanagement'. It is also an effective tool to acquire information on the company's state of affairs and its management. That information can be used by plaintiffs or other claimants as evidence to support their claim for damages in other proceedings. In practice, inquiry proceedings appear to be a useful stepping stone for plaintiffs seeking damages from (former) managing and supervisory directors.*

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 European Commission's proposal appears absolute, which we disagree with. Only the key stakeholders of the company (the shareholders and the (representatives of) employees) should be given a role in the enforcement of directors' duty of care. These stakeholders should have at least a substantial interest in the company as legal proceedings against a company and its directors can have a major impact on the company and its stakeholders. There should be a careful balance between stakeholders' access to legal enforcement and the interests of the company. If there is no balance, it will provide groups with no economic rights even greater power to those who do. It could weaken the quality of*

*shareholder engagement. Therefore we are not in favour of giving civil society organisations a direct role in the enforcement of directors' duty of care.*

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.

*At least the shareholders, the (representatives of) employees and the attorney-general for reasons of public interest.*

### 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.

*We believe that the definition should refer to existing, internationally recognised standards for due diligence as these are already widely used by multinational enterprises (such as the OECD guidance on due diligence and the UN Guiding Principles on Business and Human Rights). Furthermore, we would like to underline the importance of a crystal-clear definition of ‘supply chain’, including its scope (including ‘suppliers’ and ‘subcontractors’).*

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

X 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

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?

*We refer to the areas ticked under question 15c.*

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.

*We believe option 2 would bring the highest level of legal certainty and level playing field for EU companies. We are in favour of maximum harmonisation within the EU with respect to due diligence requirements.*

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?

*These should be aligned with the concept of the '(principal) adverse impacts' in the SFDR.*

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?

*N/A*

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

*N/A*

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

*N/A*

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 should be excluded

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

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

*Our starting point are the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs state among other things that business enterprises should carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. It also states that “The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure”. It follows from the commentary to the UNGPs that “small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size”.*

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?

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.

*Third-country companies whose shares are admitted to trading on a regulated market situated or operating within a Member State and EU subsidiaries of third-country parent companies.*

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

*Similar obligations as for EU-based companies, enforced by national authorities and securities regulators.*

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: *It should be part of any trade agreement between the EU and third countries.*

### **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: *This is aligned with current, successful system of advancing the effectiveness of the OECD Guidelines for Multinational Enterprises. Please note, however, that certain offences are already addressed by criminal law.*

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

I disagree to some extent

I strongly disagree

I do not know

I do not take position

Please explain.

*We believe that directors are obliged to take the company's relevant stakeholders' interest into account when taking decisions (see our answers to questions 1 and 5). This will already incentivise the board to enter into dialogue with the company's*

*relevant stakeholders. Also our answer to question 6 and our preference for holding a periodical materiality assessment will incentivise the board for organising stakeholder dialogues.*

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

*N/A*

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)

Advisory body

Stakeholder general meeting

Complaint mechanism as part of due diligence: *Should be promoted at EU level*

Other, please specify: *Is best practice*

Other, please specify: *works council/employee nominations and stakeholder dialogues*

### **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): *7*

Regulating the maximum percentage of share-based remuneration in the total remuneration of directors: *2*

Regulating or limiting possible types of variable remuneration of directors (e.g. only shares but not share options): *5*

Making compulsory the inclusion of sustainability metrics linked, for example, to the company's sustainability targets or performance in the variable remuneration: **6**

Mandatory proportion of variable remuneration linked to non-financial performance criteria: **4**

Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration: **1**

Taking into account workforce remuneration and related policies when setting director remuneration: **3**

Other option, please specify

None of these options should be pursued, please explain

Please explain: *We are not in favour of EU legislation regarding the application of detailed remuneration provisions. We believe that the company's design and content of an executive remuneration policy should be the result of dialogue between the remuneration committee, shareholders, the works council/employee representatives and probably other stakeholders and ultimate decision-making by the shareholders' meeting.*

## **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 (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

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: *Sustainability risks and opportunities are so relevant for a company's strategy and policy that all directors should have a minimum level of sustainability knowledge. This should not be 'outsourced' to one or two experts in the board.*

### **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. (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

I strongly disagree

I do not know

I do not take position

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

- *Introducing a maximum delegation period for share buybacks of 18 months instead of the current 5 years.*
- *A maximum authorisation of 20% of the issued capital in this 18 month-period.*

- *Introducing a supermajority shareholder vote requirement of at least 2/3 for approving a proposal to authorise the company's board to repurchase shares.*

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

Yes

If so, please specify: We call for the introduction of a mandatory non-binding shareholder vote on the company's policy to reduce greenhouse gas emissions (a so-called a 'say on climate').

We expect companies to disclose a plan to align their business with a global aspiration of achieving net zero greenhouse gas emissions by 2050. An annual vote on a company's transition plan may focus the board on enhancing their planning and reporting and implemented through a legislative amendment, would ensure a broad-based, consistent approach by all companies in a market. A 'say on climate' would also provide shareholders with a mechanism to signal which companies are making good progress in reducing greenhouse gas emissions and those that are lagging and which companies have a credible transition plan to becoming a so-called net zero company in due course and which companies have a rather unrealistic action plan given their current business model. This would also fit into the European Commission's Green Deal. Moreover, this suggestion is also aligned with 'progressive' companies such as Unilever that already announced to seek a non-binding advisory shareholders' vote in 2021 on the company's emissions reduction targets and the plans to achieve them (see Unilever press release of 14 December 2020).

## 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.

*N/A*