

## **Feedback on the European Commission's proposal for a new Directive on Corporate Sustainability Due Diligence**

With reference to the possibility to submit feedback in relation to the European Commission's proposal for a new Directive on Corporate Sustainability Due Diligence (the "**Proposal**"), the Swedish Corporate Governance Board (the "**Board**") would like to submit the following comments.

The Board advises against the inclusion of Articles 15, 25 and 26 in the Proposal, i.e. against all proposed corporate governance rules.

Article 15 requires companies to ensure that their business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement. Irrespective of the importance of the targets of the Paris Agreement on a global level, it is impossible to operationalise these collective targets on an individual company level and therefore also impossible to use them in relation to variable remuneration. Targeted measures in areas such as the pricing of emission rights, sanctions for environmentally harmful behaviour, procurement requirements and so on would be more appropriate and more effective from the perspective of fighting climate change.

Articles 25 and 26 constitute an intervention in the internal decision making of the companies concerned and the responsibility at the individual level under the national company law of the member states. Corporate governance issues have thus far, for good reasons, not been subject to legal harmonisation within the Union. The well-functioning, well-established and co-existing governance models of the different member states should be safeguarded by continuing to leave regulation in this area to the member states.

Article 25 of the Proposal addresses the duties and responsibilities of the members of a company's board of directors and its chief executive officer, stating that the directors shall take sustainability matters into account in their decision-making. Already today, the board and management of a limited liability company must in all areas that are relevant to the company take into account in its decision-making the consequences for the company and its surroundings, including but not limited to the matters set out in the Directive. It is not appropriate to specify that certain aspects should be taken into account in the decision-making and thereby indirectly leave other relevant aspects deprioritised. There is a danger that this will result in a loosening of today's relatively stringent principles regarding corporate governance and the responsibilities of corporate bodies.

Article 26 of the Proposal stipulates that the members of a company's board of directors and its chief executive officer shall be individually responsible for putting in place and overseeing the due diligence actions and the due diligence policy. Imposing direct liability on the board and chief executive officer

towards anyone who considers themselves to have suffered harm as a result of the company's actions would seriously impact a company's ability to attract experienced and knowledgeable executives. The requirements of Article 26 ought more properly be aimed at the company, whereby the national organisational model, as in all other matters, may then deal with how these responsibilities are to be handled with respect to internal corporate governance.

THE SWEDISH CORPORATE GOVERNANCE BOARD

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