**To the attention of Mr Didier Reynders, Commissioner for Justice and Consumers**

Brussels, 8 April 2021

**Subject: Commission Strategy on Sustainable Corporate Governance**

Dear Commissioner Reynders,

The Financial Services User Group (FSUG) was set up by DG JUST and DG FISMA in order to involve users of financial services in policy-making. Its 20 members represent the interests of consumers, individual investors or micro-enterprises, and include individual experts with expertise in financial services from the consumer perspective.

FSUG members expressed serious concerns about the consultation paper on sustainable corporate governance and the expected strategy of the EU Commission in this area. They had the opportunity to present those concerns in brief to your colleague Susanne Knoefel (DG JUST A.3) at the last FSUG meeting in February.

On 26 October 2020, the EC launched a consultation to respond to alleged short-termism of shareholders[1] and proposed potential initiatives in the area of sustainable corporate governance.

A number of initiatives proposed in the consultation paper, especially in sections 2 and 4, are based on arguments derived from a study from EY[2] which in the view of different stakeholders and academics has serious flaws. CEPS, an independent think tank and forum for debate on EU affairs, states for example that the findings of the study should be treated cautiously as they are "highly questionable, in terms of the methodology and the measurement criteria used, the bias and reference to cherry-picking empirical studies, and the conclusions."[3]

[1] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation
[2] https://op.europa.eu/de/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en
[3] https://www.ceps.eu/download/publication/?id=31762&pdf=are_european_listed_corporations_short_termist.pdf

The FSUG very much shares the concerns of academics regarding this study.

First, the study shows a **lack of representativeness in consulted stakeholders**. Major key players in the European capital markets from the user side, such as Better Finance, the only European organization representing altogether more than 4.5 million investors and DSW, the most representative association for private investors in Germany with more than 30 000 members, both represented in the FSUG, were not even invited to take part in this study.

In addition, we regret that the study is **non-transparent** on which companies had been chosen as this would have been an important factor to consider also for the public.

Furthermore, this study is based on a **wrong view on shareholders** and therefore offers the wrong conclusions. It first and foremost completely ignores the fact that it is the shareholders who are carrying the risk of a total loss. Wirecard is only one but a very prominent example here. As a risk premium, shareholders can receive dividends, the importance of which increased in times of negative interest rates, especially for those non-professional investors that invest in order to get repayments to finance their pensions. In most cases, private investors reinvest their dividends again in listed companies or in the economic cycle, so this money is not lost for society.

In addition, the study has not properly taken into account the fact that there exist **different kinds of companies**: those from traditional industries with rather low growth rates. Those companies usually pay a good dividend in order to maintain their shareholders in the company. Growth companies have a different approach. They want to invest as much as possible in their future growth and their shareholders can possibly profit from a good share price development. These growth companies usually do not pay a high dividend since they show a much higher need for future investments. Since shareholders take risks by their investment, they receive as a compensation the right to have a say as one of the owners of the company. This is an important part of their property rights. All company laws in Europe acknowledge this fact just as in the case of owners of apartments. Of course, we strongly encourage all other stakeholders, especially employees, to become shareholders and also profit from their investment in shares in order to also have the opportunity and use their rights as shareholders. This could also be used to strengthen sustainability aspects in the general assembly.

In addition, the study does not properly take into account that there are **different kinds of shareholders**, among them institutional (passive, active, activist) investors, family shareholders and private shareholders with different horizons of their investments. A recent study from Professor Matti Keloharju, Aalto University (2020) that was based on data from Euroclear Finland between 1995 and 2017 shows that the average holding period of Finnish individuals was 135 trading days while that of Finnish financial and insurance corporations was only six trading days. The Finnish study further demonstrates that short-termism has not increased over time.

Furthermore, the EY study **is a clear renunciation of the EU Commission's hitherto existing assessment** that the main source of funding and long-term value creation stems from the EU households' ability to finance the EU economy via more involvement in capital markets.

Most importantly however, the FSUG has serious doubts with respect to the **methodology of this study**. The selected Key Performance Indicators (KPIs) are not representative: The selection of the development of the net corporate funds being used for payouts to shareholders as the only KPI seems one-dimensional (bias) and leaves out other important KPIs such as the development of the cash flow. Also the comparison of the only chosen KPI to the development of investments in Research & Development seems arbitrary. Decision to invest into R & D depends primarily on existing investment opportunities. In times of high prices companies may tend to abstain from such investments if the pricing seems excessive. Also, R & D expenses are closely dependent on state tax incentives. Both aspects should have been taken into consideration.

As a result, the consultation paper in many instances (e.g. questions 1, 8 or 10) was not framed in a way that allowed respondents to fully express their views.

With this letter, we take the opportunity to declare our support for the Commission's aim to support long-term shareholder engagement of end-investors, i.e. the EU citizens as individual investors and long term and pension savers. Referring to "short-term financial interests of shareholders" is however questionable, ignores individual shareholders, and fails to consider differences among shareholders. Individual investors are bearing most of the risks (and only parts of the rewards) of share ownership, either as direct or as indirect investors. Their long-term interests and environmental and social preferences are aligned with the society at large. Not considering these aspects would miss the link with the Capital Market Union (CMU) initiative and with its objectives to foster retail investments into capital markets. Moreover, sustainable value for money and pension adequacy would be harder to reach.

We therefore ask you to carefully take the above concerns into account when evaluating the consultation responses, especially to those questions influenced by the EY study for any future policy proposals in the area of sustainable corporate governance.

We look forward to your response and we are of course available for any further exchanges with you.

Yours sincerely,

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