Dansk Industri
Confederation of Danish Industry

The European Commission
Directorate-General for Financial Stability,
Financial Services and Capital Markets Union
Horisontal Policies
Sustainable Finance

Consultation on the Renewed Sustainable Finance Strategy

DI welcome the consultation on the Renewed Sustainable Finance strategy and the efforts to finance the Green Deal ambitions. The strategy will need to respond to the dual objective of mobilising more investments towards EU's sustainability goals and enabling the short-/medium-term recovery of the whole European economy.

DI is committed to make the Green Deal a success. In 2019 we introduced our own 2030-plan "2030 – Together we create Green Growth" (www.di.dk/english/2030) setting an ambitious path for Denmark by stating that we must reduce Denmark's greenhouse gas emissions by 70 per cent by 2030. Building on this we naturally support and encourage the EU Commission to continue their work. Financing the journey is an important element.

We believe the EU could be a world class location for sustainable finance, whilst also raising the standard globally. If well-designed and accompanied by the right tools and frameworks, a renewed Sustainable Finance strategy can create an enabling agenda that supports European businesses in their transformation towards climate neutrality, sustainable growth, job creation and prosperity. It is important to underline that we should retain the global outreach and keep this as the guiding principle – even or especially when being front runners.

DI believe that the main objective of a renewed Sustainable Finance strategy should be to finance the "sustainable transformation" of our economy. The focus should be on channelling investment that creates impact and supports a sustainable growth strategy in line with the Green Deal objectives, which we consider as an opportunity to successfully modernise and recover the European economy.

From our members perspective it is essential that the different tools and frameworks:

- Lead to mobilisation of more investments within and outside the EU in support of economic, environmental, societal and governance goals, without undermining initiatives that contribute to this end. This means in particular "financing the transformation" as a whole will be key, financing the green alone will not be enough.

- Take a positive approach that provides incentives which allow all sectors and industries to transform and to contribute to the transition, instead of “punitive” instruments that would hamper companies’ access to finance.

- Ensure a level playing field for European companies operating globally and avoid investment leakage. By bringing together third countries and establishing best practices on a global level, the EU could show leaderhship providing opportunities to scale up sustainable investment and to promote the integration of markets for sustainable financial products.

- Take into account the different starting points and challenges regarding the transformation that companies, sectors and regions face.

- Accommodate the requirements and needs of both the financial markets as well as the real economy. The two are deeply intertwined and approaching them separately risks undermining the objective.

- Are fit-for-purpose and avoid additional and cumulative bureaucratic burdens for corporates, in particular SMEs.

We have answered the questions raised in the Consultation Document. There were a number of questions were we – unfortunately – could not provide the reasoning for our answer. We are concerned that this may create an unintended bias in the responses and the understanding of some of the responses. Therefore, the general thrust of our answers may sometimes appear more negative due to the inability to provide context or details to answers. This is especially true for questions where one of the mentioned conditions are unacceptable, while other measures are supported. We have therefore provided our comments to these questions in the attached Annex.

We look forward to take part in and contribute to the further development and implementation of the Renewed Sustainable Finance Strategy.

Kind regards

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Annex: Additional comments from DI to the following questions

Question 40
Clear, understandable and comprehensive information on remuneration of board directors and its alignment with the company's long-term strategy helps boosting confidence in companies and ultimately in the markets. But a balance is needed in terms of the level of prescription of the rules regarding remuneration policies to avoid triggering negative side effects.
This balance was negotiated for more than three years in the recently transposed Shareholder Rights Directive 2. The fully intended outcome of those negotiations was that disclosure requirements and shareholder say-on-pay were substantially increased, thus focusing on increased transparency but leaving the substance of the executive pay to the companies and their shareholders. It seems very ill-advised to reopen this discussion again so soon after, especially when this part of the directive has not yet come into effect in practice. It would be very premature and in clear breach of EU better regulation principles.
Although, the directive has no legal requirement to include non-financial KPI's in its remuneration criteria, a recital encourages listed companies to assess directors' performance using both financial and non-financial KPI's. Whatever KPI's a company chooses to use, there must be transparency in both the remuneration policy and report. Moreover, the remuneration policy must contribute to the company's business strategy and long-term interests and sustainability and shall explain how it does so. This is a good balance.
Regulation on the substance of executive remuneration (e.g. defining percentages of variable remuneration, determining in detail which ESG components should go into variable remuneration) is too far-reaching and intrusive on the fundamental rights of private companies. This was left out of the SRD II for very good reasons. It should remain for each individual company to decide how best to align executive remuneration with its business model, the strategy and goals (also long term) of the given company.
Question 43
The recently implemented shareholders rights directive II put into hard law a number of measures aimed at encouraging shareholder engagement complemented by measures strengthening shareholders' say also in an attempt to gear companies and their investors towards long term objectives (including ESG). Not only is it too early to measure the results of these rules (implementing regulation is still to come into force) but going beyond could risk negatively impacting the way companies function and interact with their shareholders. Furthermore, companies need flexibility to define which ESG factors are relevant/material to them and their stakeholders, rather than prescribing this. Regulating even further voting frameworks in companies would trigger a further transferring of the responsibilities of the board to shareholders which would negatively disrupt well-functioning corporate governance structures. The primary purpose of boards is to develop the strategy, control management (including risk management processes) and take corrective action on strategies and in relation to the management. These competences should not be watered down and placed in the hands of shareholders/investors who would

likely not have the expertise nor the means to have an informed vote. This could also give way to an added dependence of the latter on the services of proxy advisors. Ultimately shareholders continue to have a say and if disappointed with the company's direction in relation to ESG and performance they can take corrective action by removing/changing the board.

Questions 46

Since many years, companies have taken account of diverse stakeholders' interests alongside the financial interests of shareholders, not only because this is an expectation placed on them, but because they see the value also for the financial position of the company, in doing so. It is therefore a totally wrong assumption that companies exclusively prioritise shareholder value creation, or that shareholder value creation is necessarily contrary to a stakeholder-oriented approach. This is often part of companies' CSR/sustainability practices, which by their voluntary nature go beyond what is required by law. Corporate governance codes in many member states (e.g. France, Netherlands, Belgium, Italy) also have recommendations nudging companies around stakeholder value. In addition, due to the Non-Financial Reporting Directive companies are also obliged to be transparent in the way they take stakeholders interests into account.

Pushing hard law beyond this would be inappropriate as it would lead to a one-size-fits all approach incompatible with the way companies function. For example, it should be noted that in certain cases not all the interests of stakeholders of companies are fully compatible with each other, sometimes they are even contradictory (e.g. workers, shareholders, investors, creditors, consumers) depending on the situation (e.g restructuring, recovery, insolvency, merger or division). The company needs flexibility to balance those interests as, depending on the situation, they can often not be put on the same level, otherwise it would lead to contradictory approaches. Any attempt to set a mandatory legal norm where companies would need to balance the interests of shareholders with other stakeholders would also contradict the well-functioning corporate governance structure in place in the Member States (general meeting => board => management) which have been fine-tuned over decades, even centuries in some cases. It would simply conflict with one of the fundamental principles of our market economy model which is the freedom of enterprise.

Question 47

DI acknowledges the risks of a fragmented and diverging legislative approach by individual members states on supply chain due diligence for multinational companies operating in different countries. While the development of national initiatives on mandatory due diligence calls for levelling the playing field to safeguard competitiveness of Danish and European companies, it is crucial to take such action in an international perspective.

While offering expanded sourcing and other business opportunities, by operating in the framework of global value chains, companies face a number of challenges: they have to manage complex production processes, scattered around different locations, in many cases using inputs that come from many different suppliers, and often the environments in which they operate are challenging, both from a human rights and an environmental point of view, because of conflict, rule of law gaps or other risks. Whilst many companies have devised approaches to verify and control their suppliers, it is extremely complex for large multinationals to ensure full control at all levels of their supply chain, in particular those beyond tier one. Companies also face challenges downstream in the value chains as their goods and services could be used both for military and civilian purposes. Sometimes it is difficult for a company to control the final application of the product or service and therefore even more challenging to ensure that it is not used by a given public or private entity in a way that could constitute a human rights violation for instance.

Imposing legislation raises many questions – scope, adequate level of accountability and sanctions, how to ensure that the responsibilities of states and companies are not inverted - and could have negative and unwanted impacts (e.g. on competitiveness of European companies, jeopardising meaningful and successful company-best practices, and possibly dampening investment in third countries). In addition, at a time where value chains are heavily disrupted due to the COVID19 crisis, introducing a new layer of legislation in the near future could make it harder for companies to effectively secure, redesign or be able to rebuild essential supply chains in the upcoming exit and recovery phases.

If the EU does decide to go ahead with a legislative measure, the following fundamental considerations need to be taken into account:

- Any new initiatives by the European Commission should be backed up by a **strong impact assessment** that clearly identifies the potential failures (if they exist) and how to limit them without taking disproportionate measures.
- When devising any EU measure, the **flexibility needed** by companies and the potential of soft law should not be forgotten – a **mixed approach** is key. Whether in complying with mandatory requirements or in their own actions, companies should be able to devise solutions which fit their size, sector, operating markets and business model and allow them to identify where the material risk of adverse impacts, e.g. on human rights or environment is highest and to focus their efforts and resources there.
- Any framework should be based on an **obligation of means rather than obligation of results**.
- **The precise content of a mandatory due diligence would vary considerably**, depending on the different actors, context, sector or nature of the supply chain. This would mean legal uncertainty. For example if companies enter in business with suppliers from countries that do not share the same standards as the EU (e.g. on freedom of association, equality between men and women, or freedom of speech are not recognised) what would be the consequences in terms of duty of diligence and accountability.
- Consideration should be made on the impact on **EU companies' overall competitiveness** vis-à-vis companies from other parts of the world. **Third country private or publicly held companies** could, under certain conditions (e.g. turnover-based threshold in the EU) also be covered by the measures.
- **Role of governments and companies should not be mixed**. Companies do not have the mandate nor the capability to solve all the problems arising from failing states or weakly governed states causing e.g. human rights breaches in domestic supply chains.

- **Any EU framework should not exclusively focus on the company and its direct stakeholders alone**. In order to effectively reduce or mitigate risks, due diligence has to be taken in an holistic way by involving many actors of the ecosystem of supply chains, from companies (multinational and local) to states, NGOs to consumers.

- If reporting requirements are **devised overlap must be avoided with regard to the Non Financial Reporting Directive**, and any future revision or new standards developed in this area.

- Consideration needs to be given to **practical challenges companies could face to comply with legislation,** including in case of large and co :

    - If there are large and diverse value chains.
    - If suppliers reject to comply (e.g. in a dependence relationship);
    - How to handle subcontractors with which the company does not have a direct relationship.

Cooperation with business associations and companies is essential in the development of any European measures - voluntary or mandatory – because they better understand these practical challenges of supply chains upstream and downstream.

- When it comes to a**ccountability** it would be inappropriate to hold only Danish and European companies accountable for damages occurring through global supply chains when it is impossible to control all the components of the chain and the many other actors involved.

- **Imposing too many obligations on the board** leads to increasing potential liability of board members and companies which will hamper EU companies' ability to attract board members and hamper EU companies' competitiveness.

- Any new framework should be **fully in line with internationally recognised standards** such as the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD due diligence guidance for responsible business conduct. European companies operating worldwide already refer to these standards to conduct business in a responsible way.

- **Regulatory requirements need to be sufficiently clear so that business** can implement with confidence of compliance. The level of detail should be proportionate to provide clarity for business, but without being prescriptive to a point that encourage a **tick-box approach** rather than the more holistic approach and which takes away necessary flexibility for companies to adapt to their specificities.

- Regulatory requirements must not lead inadvertently to situations where companies are held liable precisely because they took due diligence measures.