Confederation of Danish Industry | Confederation of Finnish Industries | NHO Confederation of Norwegian Enterprise | SVENSKT NÄRINGSLIV SWEDISH ENTERPRISE

To: Ms. Wolters, Mr. Voss, Mr. Vázquez Lázara, Ms. Hautala,
Mr. Buxadé Villalba, Ms. Aubry

CC: Members and substitute members of the JURI Committee

March 2, 2023

Sent by e-mail

Dear Rapporteur and Shadow Rapporteurs on the Corporate Sustainability Due Diligence file,
Distinguished Members of the European Parliament,

The Corporate Sustainability Due Diligence Directive – corporate governance

As representatives of Nordic enterprises, our organizations deem it crucial to re-emphasize the importance of not including corporate governance rules in the Corporate Sustainability Due Diligence Directive. Regulations reducing the competitiveness of European companies is particularly concerning in light of the current and strong economic headwind and the interest in boosting long-term competitiveness of European business. Good corporate governance is key for successful business operations and with already well functioning, well-established governance models in place, this is not the time to introduce an experiment of this magnitude.

Business plays a key role to handle environmental, social and economic challenges and constitutes a cornerstone in building a sustainable economy and society. Creating the right preconditions for businesses to successfully contribute is therefore essential.

Companies must at the highest board and management level consider a broad range of aspects and consequences to remain competitive, take appropriate decisions and secure long-term business and profitability. Market-driven competitive factors are essential for companies' long-term ability to attract customers, investors and employees and applies across the EU.

Harmonization in the area of corporate governance is not needed to make companies a central part of driving a sustainable development. That is already a matter of survival and success for businesses. Also, there is a substantial risk that the introduction of rules in this area, broadening the purpose of the company, would harm companies' ability to do business effectively, weaken current corporate governance models and blur directors' duties.

Shifting to a system where the role and responsibility of the board and management goes beyond the very purpose of the business risks having several severe negative effects. Unclear roles and responsibilities as well as conflicting stakeholder interests would hinder adequate decision-making and appropriate risk assessments. Also, it increases the risk for lawsuits where stakeholders raise claims towards the board and management. Further, this would weaken the rights and incentives of the investors and harm companies' ability to attract capital needed to support innovation and the contribution to a sustainable business going forward.

The risk is significant that the proposed Corporate Sustainability Due Diligence Directive would not only harm business as such, but that it would also reduce businesses' continued successful contribution to the development of a sustainable economy and society. Being the engine of innovation, the role of business must not be neglected.

We would like to re-emphasize the importance not to include corporate governance rules in the proposed Corporate Sustainability Due Diligence Directive. For your convenience, a set of brief arguments have been summarized on the reverse side of this letter.

Kind regards,

Thomas Bustrup
Deputy CEO
Confederation of Danish Industry

Jyri Häkämies
Director General
Confederation of Finnish Industries

Ole Erik Almlid
CEO
Confederation of Norwegian Enterprise

Jan-Olof Jacke
Director General
Confederation of Swedish Enterprise

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<u>Rationale why corporate governance rules must not be included in the Corporate Sustainability Due Diligence Directive – in brief</u>

- **Harmonization of corporate governance would be in breach of the subsidiarity and proportionality principles**. Corporate governance does not benefit from harmonization within the EU, rather the contrary. The corporate governance elements received two clear negative opinions from the EU Commission's Regulatory Scrutiny Board. The inclusion of these provision in the Corporate Sustainability Due Diligence Directive would thus also violate the EU Better Regulation Principles.

- **Already today, the board and management must in all areas that are relevant to the company, consider a broad range of aspects** and consequences for the company and its surroundings (including those addressed by the proposed Directive) to remain competitive, take appropriate decisions and secure long-term business and profitability**.** This applies across the member states.

- **Adding directors' duties on top of hard law requirements on sustainability due diligence is not necessary to make the due diligence requirements effective**. Directors are already responsible for ensuring their respective company's compliance with applicable national law. Therefore, as sustainability due diligence goes from soft law to hard law, there is no need to specifically regulate directors' duties in this area.

- It would create **unnecessary legal uncertainty** about management decisions, causing negative side-effects, ultimately **hampering the global competitiveness of European companies**.

- **Well-functioning, well-established governance models and frameworks already in place** in the member states, including corporate law regulating responsibilities of the corporate bodies and applicable corporate governance codes must be safeguarded. They have been developed and fine-tuned for decades, tailored to the specificities of each member state. There is no evidence that the current models stand in the way of the sustainable transition. On the contrary, **experimenting with well-functioning, well-established governance models involves significant risks, also for the sustainable transition**.

- Shifting to a system where the role and responsibility of the board and management goes beyond the very purpose of the business, is not appropriate and risks having **a number of negative effects**, including:

  (i) **unclear roles and responsibilities** and **conflicting interests,** where the interests of different stakeholders are not aligned and where accountability of board and management becomes unclear and weak, making **boards and management incapable of taking necessary risks to increase the long-term value of the company**;

  (ii) reduced ability to evaluate the performance of the board and the willingness to invest, which **risks reducing investments and contributions of businesses to a more sustainable society**;

  (iii) the **board work risks being severely hampered** if the board agenda and strategies are set by rules and regulations and/or other stakeholders, and if other stakeholders than shareholders are given a legal right to hold the board responsible for its decisions; and

  (iv) **hamper the ability to attract and retain qualified board members**.