EFAMA

European Fund and Asset Management Association

EFAMA's REPLY TO THE EUROPEAN COMMISSION's CONSULTATION FOR AN INITIATIVE ON SUSTAINABLE CORPORATE GOVERNANCE

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EFAMA's REPLY TO EUROPEAN COMMISSION's CONSULTATION DOCUMENT PROPOSAL FOR AN INITIATIVE ON SUSTAINABLE CORPORATE GOVERNANCE

FOREWORD

EFAMA, the voice of the European investment management industry, strongly welcomes the European Commission's initiative to further integrate sustainability in corporate governance. We support the objective to ensure that environmental and social interests are fully embedded into business strategies, and believe this can contribute to improving the reliability of information disclosed by companies under the revised Non-Financial Reporting Directive (NFRD). In addition, the initiative has the potential to strengthen the stewardship role of asset managers by improving shareholders' understanding of the companies' sustainability practices and stakeholder considerations, ultimately enhancing the disclosures made by asset managers to their clients and enabling better-informed investment decisions.

For companies' prosperity, corporate decisions must take a long-term perspective and integrate the interests of both shareholders and stakeholders (such as employees, civil society organisations representing the interests of the environment, affected people, or communities). Environmental and social issues can amount to sustainability risks that may affect the long-term growth and resilience of a company. Investors, including EFAMA's corporate members, value positively companies that conduct their business having regard to stakeholders' interests and adopting a long-term perspective, as these companies are likely to be more sustainable and responsive to the changing needs of consumers.

Driven by these considerations, asset managers undertake a wide range of engagement activities, all with the goal of promoting long-term investment success. Exercising shareholder rights on behalf of their clients, which are asset owners and savers, asset managers regularly engage with investee companies on issues such as sustainability, governance, due diligence, executive remuneration and the overall business strategy. The consultation paper, on the other hand, portrays a fundamental opposition between the interests of shareholders and those of stakeholders, and depicts shareholders as exclusively interested in short-term financial returns. The critical condition for the success of this initiative is to counter these assumptions and develop any legislative measure with a solid, evidence-based approach.

In our response, we provide evidence and recommendations contributing to these objectives. We are grateful for the opportunity to participate in this consultation and look forward to engaging further with EU policymakers to support effective initiatives on sustainable corporate governance.

EXECUTIVE SUMMARY

Investors would benefit from an EU legal framework with due diligence guidelines and reporting requirements for companies in the real economy. This framework should be consistent with the reporting requirements in the revised NFRD and the disclosures in the Sustainability-Related Disclosures regulation (SFDR). At the same time, any framework for supply chain due diligence should not impose a competitive disadvantage for EU companies. It is important to promote and cooperate with similar initiatives at an international level (e.g., through the OECD and the International Platform on Sustainable Finance).

Directors' duty of care and stakeholders' interests

- **Being able to clearly define and identify stakeholders and their interests is essential to manage sustainability risks and opportunities**. Only shareholders, employees and customers are clearly defined and can be identified by companies. The other categories of stakeholders described in the consultation are still too vague for close-ended definitions to apply. Therefore, their identification needs to be left to a materiality assessment carried out by each company.

- Corporate directors can ensure that there are adequate procedures in place to identify, prevent and address possible risks and adverse impacts on stakeholders. Nevertheless, **requiring companies to set up measurable (science-based) targets is premature.** Existing methodologies and the current ESG data landscape do not support this objective.

- **We strongly oppose the assumption whereby shareholders are only interested in short-term financial performance**. European Supervisory Authorities, as well as EFAMA, have not found sufficient evidence of investor-driven short-termism in European capital markets that would justify such legislative measures.

- **To enhance directors' accountability**, the Commission could consider, in due course, initiatives beyond SRD II to further enhance long-term engagement between investors and their investee companies. Shareholders, to perform their role as stewards of the companies they invest in, need to be equipped with proper tools.

- **We advise against an enforcement role for stakeholders in relation to the directors' duty of care.** It would put the accountability of directors to shareholders and stakeholders on the same rank and raise several unintended practical and legal issues. It would create a mismatch between stakeholders, who would exercise control over the company's decisions, and the company's shareholders, who bear the economic risk linked to the business.

Due diligence duty

- **We support a balanced and proportionate definition of due diligence duty**, consistent with international principles and, in particular, the OECD guidelines for multinational enterprises and the related due diligence guidance.

- **In principle, we support the adoption of a principle-based approach consisting of guidelines and transparency requirements.** However, it remains challenging to define clear preferences around the content of such possible corporate due diligence duty without knowing its specifications or being able to assess its impact.

- **To reduce competitive disadvantages for the EU industry, companies not established in the EU but listed in EU regulated markets should be subject to the same obligations**.

- **SMEs should have lighter reporting requirements** and, possibly, be subject to a "comply or explain" approach whereby they could refrain from applying due diligence processes if the risk of adverse impacts is less relevant in view of their specific business model.

Other elements of sustainable corporate governance

- **Remuneration of directors**: in principle, we support variable pay being linked to the achievement of long-term sustainability goals. However, prescriptive requirements would be disproportionate and fail to adapt performance criteria to different activities, risks, and investment strategies.

- **Enhancing sustainability expertise in the board**: we believe that any prescriptive measures should be considered with great caution. Instead, the Commission could consider initiatives enabling shareholders to influence the appointment of directors.

- **Share buybacks**: We do not see merits for further legislative action in this area and recommend competent EU bodies to carry out further research on shareholder pay-outs and the drivers of short-termism in the EU. Academic literature provides broad evidence to counter the assumptions that set the basis for the consultation paper.

CONSULTATION QUESTIONS

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:**

It is vital for companies' prosperity that corporate decisions integrate both stakeholder and shareholder interests. We expect companies and their directors to continue broadening the range of stakeholders' interests being considered. Environmental and social issues can amount to potential sustainability risks that may affect the long-term growth and resilience of a company. Several sustainability factors also constitute systemic risks that affect environment and society and, in turn, may become relevant to shareholders' financial interests. In practice, we see the consideration of sustainability issues as a dynamic process, where the delineation between "shareholder interest" and "stakeholder interest" is not straightforward.

The adverse impacts of certain activities may indeed affect the company's financial performance in the long-term, such as through physical and/or transition risks arising from climate change. At the same time, we believe in the need for companies to address a broader range of stakeholder interests' and meet a set of common international standards (e.g., the OECD MNE Guidelines) on issues such as human rights violations, environmental pollution and climate change.

We also increasingly observe empirical evidence that considering broader sustainability issues delivers financial benefits, both in corporate performance and in the performance of investment portfolios. This is a significant finding, given the growing level of interest in responsible investing, and is backed up by the resilience of sustainable companies in the face of COVID-19.[1]

[1] BlackRock, *Sustainable investing: Resilience amid uncertainty*

*** 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:**

Investors would benefit from an EU legal framework with due diligence guidelines and reporting requirements for companies in the real economy. Such a framework should be consistent with EU regulatory measures intended at facilitating sustainable growth, and provide investors with valuable information for decision-making and regulatory compliance. In the context of this consultation, however, we find it essential to clarify that due diligence practices for companies on their supply chains are very different from those applied by investment managers in their investment processes. To avoid duplication with the requirements on financial market participants under Regulation (EU) 2019/2088 on sustainable finance-related disclosures (SFDR), the actions stemming from this initiative would be more effective if developed in line with the specificities of EU corporates. Accordingly, its scope should maintain a clear focus on listed non-financial undertakings, to avoid capturing financial institutions under the scope of sectoral legislation such as SFDR, as well as Directive 2009/65/EC (UCITS), Directive 2011/61/EU (AIFMD), and the revised Directive 2014/65/EU (MiFID II).

Under the framework introduced by SFDR, institutional investors such as asset managers, insurance companies and pension funds are required by EU law to identify principal adverse impacts of their investment decisions in and to take measures in this regard. Corresponding reporting requirements on companies to identify and disclose sustainability risks and adverse impacts in accordance with consistent metrics would improve the quality and availability of such information, enabling investors to fulfil their disclosures requirements and provide their clients with decision-useful information.

At the same time, any EU legal framework for supply chain due diligence should not impose a competitive disadvantage for EU companies. Alongside the benefits of a consistent approach within the single market, there are concerns around the application of this framework for non-EU companies.

Companies that operate in a global ecosystem must apply due diligence standards and principles relevant across different jurisdictions. An EU framework must strike the right balance between consistency with ambitious EU measures and proportionality at the international level. Mandatory requirements risk imposing a disproportionate burden on EU companies and run counter the objectives to support job creation and sustainable recovery, placing administrative obstacles that limit the potential of private investment and capital markets to drive change. **We, therefore, believe it is important to**

promote and cooperate with similar initiatives at an international level (e.g., through the OECD and the International Platform on Sustainable Finance). We also believe that the ambition to address the entire supply chain can also negatively impact the effectiveness of the framework, and we would recommend focusing on key suppliers with whom companies have direct engagement and can bring concrete results. Over time, a gradual tightening of the rules can potentially trigger a race-to-the top for companies across global supply chains. Finally, we recommend clarifying the definition and scope of "supply chain" as, in this consultation, it is used interchangeably with the term "value chain".

The impact on competitiveness must be examined carefully before a set of mandatory due diligence requirements can be introduced at the EU level. At this stage, it is important to support and encourage the parallel development of industry standards from market participants; asking individual companies to follow piecemeal rules, from the outset, may delay the development of common industry standards across different jurisdictions. In this context, we believe it is too early to consider introducing regulatory requirements. **We recommend, instead, that EU intervention to build an EU legal framework focuses on minimum standards to foster a global level-playing field, and on principle-based rules for due diligence and reporting.**

In a (post-) COVID period, where capital markets and private investment will be a key driver for the economic recovery, the competitiveness of EU companies remains a goal that must be carefully combined and balanced with the rules considered under the current consultation. Long-term focus and due diligence can indeed enhance productivity and performance, as long as the due diligence process is considering firstly factors of materiality for the EU citizens and investors.

*** 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 long- term 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?

	Relevant	**Not relevant**	**I Do not know / I do not take position**
* the interests of shareholders	☒	☐	☐
* the interests of employees	☒	☐	☐
* the interests of employees in the company's supply chain	☒	☐	☐
* the interests of customers	☒	☐	☐
* the interests of persons and communities affected by the operations of the company	☒	☐	☐
* the interests of persons and communities affected by the company's supply chain	☒	☐	☐

* the interests of local and global natural environment, including climate	☒	☐	☐
* the likely consequences of any decision in the long term (beyond 3-5 years)	☒	☐	☐
* the interests of society, please specify	☒	☐	☐
* other interests, please specify	☐	☐	☒

The interests of society, please specify:

Among the many relevant interests of society, we consider potential benefits for the preservation of natural capital, sustainability of the economy, overall prosperity, quality of life and standard of living, as well as the preservation of democratic values and inclusiveness.

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?

	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
* Identification of the company´s stakeholders and their interests	☒	☐	☐	☐	☐	☐
* Management of the risks for the company in relation to stakeholders and their interests, including on the long run	☐	☒	☐	☐	☐	☐
* Identification of the opportunities arising from promoting stakeholders' interests	☐	☒	☐	☐	☐	☐

*** Please explain:**

Identifying the company´s stakeholders and their interests is a pre-requisite to managing the risks and opportunities arising from sustainability, and to developing a framework based on materiality, as it is important to ensure that the decision remains relevant from the perspective of shareholders, stakeholders and companies in the supply chain alike. It must be noted that out of all the possible relevant interests listed in question 5, only shareholders, employees and customers are clearly defined and can be identified by companies. The other categories of stakeholders are still too vague

for close-ended definitions to apply. Therefore, their identification needs to be left to a materiality assessment carried out by each company.

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, i.e.. 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:**

Corporate directors can ensure that there are in place adequate procedures to identify, prevent and address possible risks and adverse impacts on stakeholders. However, we note that the responsibility of setting up these procedures should remain a prerogative of the company's management, acting under the Board's oversight. Guidelines could further improve investors' understanding of how companies are managing sustainability matters. Having more clarity about standards of care companies are required to meet with respect to e.g., supply chain due diligence may also allow shareholders to better assess how companies perform across different markets and to hold them accountable.

Nevertheless, requiring companies to set up measurable (science-based) targets is premature. Existing methodologies and the current ESG data landscape do not support this objective, and any requirement would introduce unnecessary complexity and may mislead both stakeholders and shareholders. A survey of boards of directors by Willis Towers Watson identified challenges companies face with using ESG metrics in the context of incentive plans. Among the greatest challenges cited by respondents are target setting (52%), performance measure identification (48%) and performance measure definition (47%).[2] The assessment of science-based targets also presumes a degree of transparency, standards of disclosure and provision of accurate and consistent data on the part of third-party agents. It is challenging to see how all these conditions will be satisfied in the short term, and there may well be different arrangements depending on proportionality.

The proposals around due diligence should complement shareholders' expectations as well as support disclosures under the requirements in SFDR. Having regard to the interests of key stakeholders recognises the collective nature of long-term value creation and the extent to which each company's prospects for growth are tied to its ability to foster strong sustainable relationships with those stakeholders. Companies should articulate how they address adverse impacts that could arise from their business practices and affect critical business relationships with their stakeholders, and set

[2] Willis Towers Watson: 4 in 5 companies planning to change ESG measures in executive pay plans over next 3 years, Willis Towers Watson survey finds (December 9, 2020)

up monitoring processes that allow them to identify and mitigate potential adverse impacts.

An EU framework, alongside the development of industry standards from market participants, can help raise the bar across the EU single market, especially for the laggards, whilst recognising that the corporate governance ecosystem in several Member States (France, Netherlands, Germany, the Nordics) is already quite advanced. This will also facilitate shareholders' role in holding directors accountable, improving both corporate governance and shareholder engagement (stewardship).

At the same time, however, the identification and mitigation of adverse impacts on sustainability factors is required by SFDR (which, as a disclosure framework, does not require setting specific targets), while, in the present initiative, the assessment concerns adverse impacts on *stakeholders*. The formulation is currently very broad, and there is a risk that it is not operationally possible to carry out this assessment unless stakeholders in scope are clearly specified. Out of all the possible relevant interests listed in question 5 of this consultation, only shareholders, employees and customers are clearly defined and can be identified by companies. The other categories of stakeholders are still too vague for close-ended definitions to apply. Therefore, their identification needs to be left to a materiality assessment carried out by each company.

*** 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:**

Investors, including EFAMA's corporate members, value positively companies that conduct their business having regard to stakeholders' interests and adopt a long-term perspective, as these companies are likely to be more sustainable and responsive to changing needs of consumers. Investors also have economic incentives to encourage this behaviour by engaging with companies and acting as stewards. Therefore, we do not see merits in legislative measures to enshrine in EU law corporate directors' duty to balance the interests of all stakeholders.

We reject the assumption whereby shareholders are only interested in short-term financial performance. European Supervisory Authorities, as well as EFAMA, have not found sufficient evidence of investor-driven short-termism in European capital markets that would justify such legislative measures, as also indicated by the respective ESAs' reports on short-termism dating December 2019. To avoid unintended consequences on the allocation of investments in EU capital markets, the initiatives stemming from this consultation should be developed with a solid evidence-based approach. The findings provided by the studies referenced in the consultation paper do not provide sufficient guarantees for this approach, as the analysis reported lacks depth and overlooks the

key dynamics of the role played by capital market participants.[3]

Asset managers, as shareholders in investee companies, are striving for long-term value creation in the interest of their clients. It is important to note that while retail investors in equity funds are generally able to redeem their fund investments at short notice, asset managers commonly communicate that the minimum recommended holding period for profitable investments is five years or more. The interest of shareholders, including institutional investors, relates to impacts on returns which are increasingly understood as being linked to all types of considerations - both financial and non-financial ones - as long as these remain material. Overall, the assessment of factors relevant to stakeholders should be guided by materiality. In this respect, we expect companies we invest in on behalf of clients to ensure that decisions are based on a balanced approach ensuring that all factors considered are relevant and material for the company's long-term prosperity. Basing decisions solely on non-material considerations includes important risks with the long-term performance of the companies we are invested in which can in turn also lead to market risks.

Asset managers contribute to the creation of long-term value by means of engagement with the investee companies that involves exercising voting rights attached to shares, but also continuous monitoring of a company's financial and non-financial performance and interaction with the company's directors. Since such interaction relies on a mutually trustful relationship built through dialogue, engagement cannot be successful in the short-term. The goal of engagement by asset managers is long-term value enhancement and achievement of long-term KPI targets. Commitment to long-term engagement by European asset managers has been demonstrated by the EFAMA Stewardship Code that serves as a guide for the exercise of shareholder rights. In addition, asset managers' clients often include pension funds, governments, sovereign wealth funds, life insurers and charities seeking sustainable value for investments with very long time-horizons.

In addition, the obligations which authorised corporate directors would need to abide by depend on the rule of law in each jurisdiction, as we already see in practice with national company law. We would expect that the majority of directors' duties – such as to act in good faith in the best interests of the company, to exercise skill and care, and to avoid conflicting interests - are already enshrined in European Regulations, i.e. the duty to balance the interests of all stakeholders is already in place and required by directors, with national variations.

For these reasons, the EU regulatory concept for the upcoming initiative on sustainable corporate governance needs to be adjusted by recognising that consideration of ESG issues does not conflict with the interests of shareholders. Institutional investors such as asset managers are interested in contributing to the long-term financial prosperity of their investee companies also by avoiding sustainability risks that may arise from inadequate responses to environmental or social issues. The primary focus of the director's duty of care should remain on the company's interest in the sense of economic prosperity. However, the understanding of economic prosperity should also involve consideration of long-term risks and opportunities arising from sustainability issues. This approach should ensure that the interests of shareholders are adequately taken into account as, ultimately, their capital and savings are at risk - and their fiduciary investment managers must prioritise these interests.

*** Question 9. Which risks do you see, if any, should the directors' duty of care be spelt out in law as described in question 8?**

In addition to the risk of misrepresenting the investors' interests, as explained in our reply to question 8, specific risks would likely arise from the differential state of existing Company Law. The

[3] Joint response to the European Commission's roadmap on sustainable corporate governance from the German, Danish and Swedish self-regulatory bodies, business associations and institutional investors.

various EU Company Law directives (e.g., 2017/1132) may also need to be considered.

*** How could these possible risks be mitigated? Please explain:**

As indicated in our reply to question 8, the primary focus of the director's duty of care should remain on the company's interest in the sense of economic prosperity, encompassing the consideration of long-term risks and opportunities arising from sustainability issues. This approach should ensure that the interests of shareholders are adequately taken into account and that all useful factors are considered against the materiality they bring for the long-term performance of companies and their investors.

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

Yes, as the directors' integration of stakeholder interest in their decisions is likely driven by materiality considerations linked to the long-term performance of the company. Integrating relevant stakeholders' interests in corporate decision making is strategically important and is conducive to long-term value creation, which it is positively evaluated by shareholders and stakeholders.

*** 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:**

While we agree that such considerations should increasingly be integrated into the company's strategy, decisions and oversight, we believe that mandatory requirements would be disproportionate at this stage. We do not find that companies lack a strategic orientation on sustainability risks, impacts and opportunities, as for many companies these considerations are well integrated into strategy, decisions and oversight. Each company addresses these issues differently, according to strategic and materiality considerations, and specific requirements prescribed by law may reduce this process to a box-ticking exercise.

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:

EFAMA's corporate members regularly engage with investee companies on issues relevant to the long-term performance of the companies they invest in, typically including firm governance, executive remuneration, and sustainability issues. Asset managers undertake a wide range of such activities. While they are not involved in the day-to-day management of the companies they invest in, asset managers have a number of options to pursue to enforce the directors' duty of care on behalf of the company. They can seek regular communication or meetings with the Board, as part of ongoing relationship management and to voice any concerns privately, or express their views by filing and voting on resolutions at general meetings.

For investors, the revised Shareholder Rights Directive (SRD II) puts in place measures to address poor executive pay practices and tackle short-termism through effective engagement. However, **beyond SRD II, EU regulatory action can further enhance long-term engagement between investors and their investee companies. Shareholders, to perform their role as stewards of the companies they invest in, need to be equipped with proper tools.** To further promote shareholder engagement, including on sustainability topics, the Commission could consider initiatives that facilitate shareholders' access to the Board, including relevant directors, such as members of a specific committee or the most senior non-executive directors. We also note that companies with majority or controlling shareholders have fewer incentives for a dialogue with their minority shareholders, as management proposals can go through approval with the sole voting power of their majority shareholder. With regards to voting, we also find that directors' (re-)appointment provides an effective mechanism for shareholders' engagement and it makes directors more responsive to the concerns raised. In addition, it is important shareholders can effectively propose resolutions on the agenda of general meetings and that there are sufficient minority shareholder protection safeguards.

*** 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 exercise of the engagement tools listed above can lead to changes in companies' enforcement of duty of care, as well as their strategy, governance structure or board composition. If a company fails to address asset managers' concerns, at the risk of material impact to its long term financial performance, managers of active investment strategies can decide to sell their holdings.

*** 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:**

It is in the interest of companies to engage effectively with their stakeholders in order to consider their interests when refining the business strategy. In this regard, we support measures to improve stakeholder engagement of companies, in line with our reply to question 20. We also believe that enhanced reporting on how directors manage sustainability risks and address adverse impacts can strengthen directors' accountability. Directors could be requested to disclose, on a best-effort basis, the likely consequences of any decision in the long term, the interests of the company's employees, or the impact of the company's operations on the community and the environment.

An enforcement role for stakeholders in relation to the directors' duty of care would potentially put the accountability of directors to shareholders and stakeholders on the same rank and raise a number of unintended practical and legal issues. This would create a mismatch between stakeholders, who would exercise control over the company's decisions, and the company's shareholders, who bear the economic risk linked to the business, and further dilute the influence they can exert through engagement. This would also remove the responsibility of company management, which should remain in charge of the day-to-day management of sustainability issues, with the Board responsible to oversee all risks to the company. A greater formal role for stakeholders as envisaged might disincentivise boards to undertake their responsibilities and to engage with the economic owners of the company, thus harming shareholder engagement. Another effect may be to produce cases of abuse of enforcement rights by stakeholder organizations motivated by interests other than the long-term sustainability and performance of a company, for instance as part of a communication campaign targeting the company or the industry in which it operates. In addition, we would expect increased liability risks on directors, which may harm the ability of European companies to attract directors with the best skills and highest experience. Instead, to support equity funding in Europe and the broader Capital Markets Union agenda, the European Commission could look into ways to encourage stakeholder groups, such as employees, to become shareholders themselves.

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 agree with the proposed definition of the due diligence duty, since it seems proportionate and consistent with the established understanding in accordance with international principles, in particular the OECD guidelines for multinational enterprises and the due diligence guidance related thereto. However, while countries adhering to the OECD Guidelines make a binding commitment to promote and implement them across enterprises operating in or from their territories, applying the framework is not mandatory, whereas the proposed definition is intended to form the basis for future EU legal requirements upon companies. A proper balance should thus be sought from the outset between the promotion of responsible business conduct across the supply chain and the actual legal responsibility of companies.

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

☐ 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

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 recommend the adoption of a principle-based approach that distinguishes specific sectors and themes, especially at the current stage in the development of an EU framework, since it is challenging to define clear preferences around the content of such possible corporate due diligence duty without knowing its specifications or being able to assess its implications. In general, we are in favour of principle-based regulation that would define the general due diligence duty based on key process requirements. From the investors’ perspective, however, it is also important to introduce a set of harmonised definitions in order to promote a common understanding of adverse impacts that should be the subject of the due diligence obligation.

In this regard, we recommend reference to established international principles. The OECD guidelines for multinational enterprises are the most comprehensive international standard for responsible business conduct. They provide an advanced understanding of the areas where adverse impacts can occur. Due account should also be taken of the ongoing work on identification and disclosure of principal adverse impacts by institutional investors. Asset managers, insurance companies and pension funds will be bound by the SFDR framework to report on a standardised set of indicators for principal adverse impact. In order to facilitate consideration of adverse impacts both for the company’s due diligence and as part of the investment process, the understanding of principal adverse impacts deemed relevant for business activities should be aligned with the envisaged concepts and metrics under the SFDR framework.

While the general due diligence duty should apply to all companies regardless of the sectors in which they operate, it could be appropriate to supplement such general, principle-based obligation by more specific provisions for sectors in which the risk of adverse impacts to the environment, the rights of employees or the society at large is particularly relevant. This approach is also followed under the OECD guidelines that provide for additional guidance in order to identify and address adverse impacts associated with business operations, products or services in particular sectors (such as garment and footwear, mining or minerals). In our view, such additional sector-specific guidance could be developed as non-binding EU measures, e.g. recommendations, while the overarching due diligence duty should have a binding legal status.

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

Consumer goods, mining and extraction activities, agribusiness, transport, energy, utilities and construction.

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

Climate change, human rights, modern slavery, child labour, diversity, health and safety, labour standards, natural capital/biodiversity.

*** 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[16] 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:

The introduction of a legal due diligence duty with regard to supply chains will be a game-changer for the established business models and might have implications for the competitiveness of the European industry. In the interest of proportionality, we suggest starting with a commitment of large undertakings that could be defined in line with the future scope of application of the NFRD regime.

SMEs could be subject to a "comply or explain" approach whereby they could refrain from applying due diligence processes if the risk of adverse impacts is less relevant in view of their specific business model. SMEs operating in sectors in which the risk of adverse impacts to the environment, the rights of employees or the society at large is particularly relevant should be bound to comply with at least a set of principle-based requirements.

*** 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.**

In order to reduce potential competitive disadvantages for the EU industry, certain companies established outside the EU should be subject to the same obligations in case they have significant operations in the EU markets. In this regard, companies not established in the EU but listed in EU regulated markets should also be subject to any obligation in the envisioned legal framework. We encourage the Commission to develop a robust mechanism to identify these companies, and to leverage the legal and diplomatic tools available to ensure international consistency and a global level-playing field. In any case, application of substantive due diligence requirements should be accompanied by related disclosures on identified adverse impacts in line with the standards and metrics to be developed under EU law.

*** 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:

The International Platform on Sustainable Finance should serve as a multilateral forum for promoting a common understanding of due diligence standards for responsible business conduct

in line with the established international principles. With an effective dialogue, members of the International Platform could be encouraged to adopt the key components of an EU framework and introduce a minimum set of principle-based requirements for effective due diligence across supply chains. As indicated in the reply to question 2, we also believe it is important to promote and cooperate with similar initiatives at an international level (e.g. through the OECD and the International Platform on Sustainable Finance).

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:

We disagree with attaching legal liability and potential claims for compensation in case of harm caused by not fulfilling the due diligence obligations. As explained in our reply to question 15, due diligence under the EU law should be principle-based and confined to key processual requirements that should apply in a commensurate, risk-based manner. This would mean that a company should be able to prioritise preventive or palliative actions based on the severity and likelihood of the identified adverse impacts. Such principle-based responsibilities should not give rise to liability claims, but be dealt with by the competent national authorities that should be equipped with effective sanctioning powers in this regard. Affected stakeholders could be given a role in this process by being entrusted with a right of complaint that should result in investigative action by the NCA.

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:**

Most companies do already have in place mechanisms to facilitate dialogue with their stakeholders (e.g., by having stakeholders represented in an advisory body, as required by national legislation). In certain EU Member States, such as Germany, Austria, the Netherlands, Belgium, Luxembourg, Italy and France, it is already customary for Worker Councils to be set up to inform management decisions, monitor health and safety concerns and improve and systematise communication channels. As such, we do not see the need for further institutionalisation of the stakeholder dialogue at the EU level. "Advisory bodies" and "stakeholder general meetings" can be already observed as elements of best practice. In addition, the notion of establishing a 'Complaint mechanism as part of due diligence' should not be promoted or standardised at an EU-level, given that many complaints arise from retail-classified entities who need to be assessed by their National Competent Authorities. Stakeholders could be obliged to first issue complaints to the relevant company and to await palliative measures before directing them to the responsible national authority as a request for investigative action.

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

As indicated in the previous replies, employees, customers and direct suppliers should be included in a mechanism for stakeholder engagement, and companies should be able to identify any other stakeholder groups material to its business.

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)

	Is best practice	Should be promoted at EU Level
Advisory body	☒	☐
Stakeholder general meeting	☒	☐
Complaint mechanism as part of due diligence	☐	☐

Other, please specify	☐	☐

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)	☐
Regulating the maximum percentage of share-based remuneration in the total remuneration of directors	☐
Regulating or limiting possible types of variable remuneration of directors (e.g. only shares but not share options)	☐
Making compulsory the inclusion of sustainability metrics linked, for example, to the company's sustainability targets or performance in the variable remuneration	☐
Mandatory proportion of variable remuneration linked to non-financial performance criteria	☐
Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration	☐
Taking into account workforce remuneration and related policies when setting director remuneration	☐
Other option, please specify	☐
None of these options should be pursued, please explain	☒

Please explain:

The main goal of the remuneration policy, including its variable component, is to balance incentives for high performance with a commitment to superior results, which are tied to long-term value creation. For this reason, we support variable pay being linked to the achievement of long-term goals. This can include long-term non-financial goals that are part of a company's strategy. In this context, it remains important that all relevant performance criteria apply to ensure alignment to long-term value; however, a mandatory preselection of such criteria is not appropriate and fails to adapt performance criteria to different activities, risks and investment strategies.

We also observe a stronger emphasis on ESG factors in Boards' remuneration decisions. A survey from Willis Towers Watson confirms this and finds that 78% of 168 respondents are planning to change how they use ESG with their executive incentive plans, 41% plan to introduce ESG measures into their long-term incentive plans over the next three years while 37% plan to introduce ESG measures to their annual incentive plans. Additionally, about a third plan to raise the prominence of Environmental and Social/Employee measures in their incentive plans.[4] In the case of investment managers, as noted by ESMA[5], due to the substantial remuneration rules for investment funds that have already been put in place in recent years, there is no need for any legislative action in terms of remuneration.

Both the share of variable remuneration and the choice of relevant non-financial KPIs must be consistent with the companies' business and strategy. Shareholders' have a right to vote on the remuneration to warrant effective control and correction of excessive pays by shareholders. Such additional control mechanism is particularly fit in case of weak governance structures, e.g. involving close links between executive and non-executive directors. With regard to sustainability considerations, voting helps promoting proper alignment of the remuneration metrics with the ESG targets defined in the business strategy of a company.

As indicated in our response to the Commission's consultation on the Renewed Sustainable Finance Strategy,[6] EFAMA champions a real shift in corporate thinking and designing a well-thought-through and consistent sustainability approach by the board. The options proposed, on the other hand, could result in a mere box-ticking exercise and limit directors' ability to adapt remuneration schemes to their strategic objectives and ESG materiality considerations. We suggest that any regulatory measure should rather aim at increasing transparency as to whether and how a share of variable remuneration has been linked to sustainability performance, instead of imposing any prescriptive measures.

*** 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

[4] Willis Towers Watson: 4 in 5 companies planning to change ESG measures in executive pay plans over next 3 years, Willis Towers Watson survey finds (December 9, 2020)
[5] ESMA Report on Undue short-term pressure on corporations (December 2019)
[6] EFAMA responds to EC Consultation on Renewed Sustainable Finance Strategy (July 2020)

☐ Other option, please specify

☐ None of these are effective options

Please explain:

Regulatory intervention in the composition of boards in order to enhance directors' competence in ESG matters should be considered with caution. From an investors' perspective, measures ensuring adequate consideration of ESG issues in the nomination process or seeking to enhance the ESG expertise of the board members in office are preferable to direct interventions such as the requirement for a certain minimum percentage of directors with demonstrable knowledge e.g., on climate risk. Such a requirement would be disproportionate to other qualifications that are relevant to the business operations or the financial position of a company and yet not subject to comparable specifications in regulatory terms. Also in this case, shareholder engagement can support these objectives. The Commission could consider initiatives enabling shareholders to influence the appointment of directors, for example by ensuring that the number of candidates exceeds the seats available.

As it stands, most boards seek to address sustainability topics by recruiting executive directors with relevant operational experience e.g., in terms of overseeing health and safety rather than detailed ESG experience e.g., on climate risk. However, as companies develop their TCFD reporting and improve the quality of their sustainability disclosures while assuring the underlying data, they are successively gathering greater experience of these issues also at the board level. The pending EU reform of NFRD, but also the international thrust for common standards in sustainability reporting expected to be introduced at the global level, should further accelerate this development without the need for direct regulation.

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?

Before acting in this area, we recommend competent EU bodies to carry out further research on shareholder pay-outs and the drivers of short-termism in the EU. Academic literature finds broad evidence that corporate pay-outs to shareholders (in the form of both dividends and share buybacks) have been moderate (after accounting for equity issuance by EU public firms), leaving companies ample resources for investment. In fact, there is evidence that both investment levels and investment intensity have been rising, with R&D levels and intensity at record highs.[7]

At the same time, cash balances have also increased,[8] suggesting that companies find themselves with surplus capital after allocating resources to productive investments and value-creating opportunities, including new technologies, resilience, sustainable business models and supply chains. When these investment opportunities are exhausted, companies may use surplus capital for buybacks - rather than the other way around. On this basis, we do not find evidence of investor pressure that would justify EU action in this area.

Arguably, share buybacks may further contribute to value creation by concentrating the firm's ownership, re-orientating directors' interests towards the long-term resilience and sustainability of the company. This would address the negative effect of dispersed ownership on the long-term interest of listed companies, whereby shareholders' stakes are too small to motivate them to look beyond short-term earnings. Larger shareholders, instead, have the incentive to look beyond earnings and instead look to a company's long-term growth opportunities and intangible assets.

Ultimately, dividends are a core component of a company's overall approach to capital management. Capital management decisions form an important basis for investor engagement; how well a company uses its capital has a significant impact on its long-term profitability and success. Investors want to support capital allocation decisions that will drive productivity improvements and will only support distributions that will not impact the long-term sustainability of the company. For these reasons, we do not see merits for further legislative action in this area.

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

If so, please specify:

Despite the progress made with the introduction of the requirements under the revised Shareholder Rights Directive, asset managers continue to observe barriers to voting and engagement with companies in certain markets. Notwithstanding the temporary measures taken during the ongoing pandemic, some jurisdictions still require shareholders' physical presence at AGMs to exercise their voting rights. and/or require 'Power of Attorney' for shareholders to empower another person, the proxy, to vote in their place and on their behalf. To add complexity, shareholders appoint proxies by filling out a form in the local language. **Given the role shareholder engagement plays in encouraging long-term, sustainable value creation, we recommend adopting measures that facilitate the exercise of shareholders' rights by allowing full electronic vote, as well as facilitating proxy voting and the filing of shareholder resolutions across Member States.**

We also believe that, given the importance of transitioning to a carbon-neutral economy by 2050, companies should develop a transition strategy to carbon neutrality by 2050, at the latest, and report annually on the progress made. The responsibility for the strategies should be placed at the board

[7] Fried, J. M., & Wang, C. C. (2020). Short-Termism, Shareholder Payouts, and Investment in the EU. European Corporate Governance Institute-Law Working Paper, 544.
[8] Ibid

level, and companies' transitioning pathways could be subject to shareholders' approval. An annual non-binding vote by shareholders on a company's transition plan may focus management on enhancing their planning and reporting and, would reinforce sustainable corporate governance. However, even with a wide 'say on climate', we believe shareholders should continue to vote against the re-election of board directors if companies fall short in planning or disclosures, as a vote on climate proposals is only one mechanism for signalling concern about a company's climate plan.

About EFAMA

EFAMA, the voice of the European investment management industry, represents 28 Member Associations, 57 Corporate Members and 23 Associate Members. At end Q3 2020, total net assets of European investment funds reached EUR 17.6 trillion. These assets were managed by more than 34,200 UCITS (Undertakings for Collective Investments in Transferable Securities) and almost 29,400 AIFs (Alternative Investment Funds). At the end of Q2 2020, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 24.9 trillion.

More information is available at www.efama.org.

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