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Subject: Report from the meeting of Cabinet Jourova with Frank Bold and Global Witness on the Sustainable Corporate Governance Initiative – 27/07/2021
Attachments: NGO policy briefing on Sustainable Corporate Governance.pdf

Report from the meeting of Cabinet Jourova with representatives of Frank Bold and Global Witness on the Sustainable Corporate Governance Initiative – 27/07/2021

Participants:

- Simona Constantin, Member of Cabinet of VP Jourova;
- [REDACTED] from Frank Bold and [REDACTED] from Global Witness.

The representatives of Frank Bold and Global Witness expressed interest in understanding the state of play with the preparation of the Commission's initiative on Sustainable Corporate Governance and presented their position paper along three packages with proposals/recommendations for aspects they consider relevant (see attached in full the position paper).

In particular, they stressed the importance of their suggested package I with proposals covering the due diligence duty and corresponding role/oversight for directors in delivering this duty. They explained that their suggested approach does not interfere with corporate models and does not require re-conceptualisation of the role of companies, since directors' (fiduciary) duties as laid down in national legal frameworks are sufficient. What is needed is rather practical guidance on which matters directors need to have a role for each step of the due diligence process. In their view as long as directors will do a proper work with clear obligations linked to due diligence, there is also no need to interfere with the enforcement of directors' duties.

On package II regarding the alignment of incentives with sustainability objectives, while being connected to due diligence, they saw them as more separate issues. However, they stressed the importance of sustainability targets which should not be prescriptive, but rather left to companies' flexibility to decide on the specific targets. As regards remuneration recommendations, also covered in their package II, they opinionated that these could also be left for later, linked to the Shareholder Rights Directive. In their view, if companies set sustainability targets, then it is expected that on their own they will also have an interest in setting voluntary incentives through remuneration, without a need for prescriptive regulatory intervention. If remuneration aspects are to be covered by the initiative now, they could rather to designed as high-level obligations to set companies on the sustainability path, but leave the details of how to exactly structure the remuneration to companies themselves. They informed that they are reaching out to concerned stakeholders, such as enterprises organisations, and Member States representatives to explain their pragmatic approach which would not interfere with well-established corporate models and directors' duties.

On package III regarding the composition and functioning of the boards, they saw this more detached from the core aspects on this Commission's initiative, thus rather for a work stream on their own and as something that merits a discussion in the future, but not as part of the initiative now.

Simona Constantin informed them about the ongoing preparatory work on the initiative, with all views being dully considered in order to design a proposal that meets the sustainability objectives in an effective manner. The envisaged timing for the adoption of the proposal is autumn this year. The Commission is reflecting on the calibration of the proposal, including as regards the eventual role and support for SMEs. She inquired for their views on whether to cover also SMEs and how should an eventual approach to high-risk/impact be defined. The representatives of the two organisations opinionated that first of all micro-companies should be fully excluded from the due diligence duties and eventual thresholds for employees be considered (eg. starting with 100-150 employees), as well as possible phasing in and differentiated obligations for smaller companies. On high-risk they opinionated that the most practical approach would be to go by criteria for high impact depending on the sector, with powers left to the Commission to develop the exact list in a delegated act. They gave the example of the garment sector, which is not relevant for deforestation impacts, but which, regardless of the size of the companies, is highly exposed to forced labour impacts. They also indicated that reflections on their side are still ongoing as regards the high-impact approach and they might share their views on this after the summer break.

Simona Constantin thanked the representatives of the two organisations for sharing their position paper and explaining their views, reassuring them that the Commission is dully reflecting on all relevant angles for the proposal, while aiming to design a tangible approach in line with the objective of moving on the path to sustainability.

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https://ec.europa.eu/commission/commissioners/2019-2024/jourova_en#team