

Virtual meeting, 19 November 2020, 11:45-12:45

**Briefing for Ms Geneviève Tuts,
Head of Cabinet of Commissioner Didier Reynders
For the presentation and discussion at the virtual meeting
of BusinessEurope's Advice and Support Group**

Scene setter

- **BusinessEurope** is an EU level trade association representing enterprises of all sizes. Its membership comprises national business federations from 35 European countries.
- BusinessEurope's **Advisory and Support Group** (ASGroup) consists of 69 major European and multinational companies from all sectors. The group meets 4x/year with Commission Director Generals, Heads of Cabinets or MEPs as guest speakers.
- You will give a **15-20 minutes presentation/overview** of the Commission's plans in the areas listed in the agenda, followed by an **open exchange of views of 40-45 minutes** with the Directors / Heads of European Affairs of member companies **under Chatham House rules**.

- **Agenda:**

10h00 – 10h45 **Update on latest key developments**

10h45 – 11h45 **Mr Henrik Hololei**, Director General of DG MOVE

Subject: Upcoming sustainable and smart mobility strategy

11h45 – 12h45 **Ms Geneviève Tuts**, Head of Cabinet of Commissioner for Justice Didier Reynders

Subject: Sustainable corporate governance, due diligence, Consumer Agenda and the impact on international data flows due to the recent Schrems II judgement

Sustainable corporate governance

- On 7 October [REDACTED] had a call with Commissioner Reynders, including on sustainable corporate governance. On 13 October [REDACTED] sent a **letter** to the Commissioner, including the position of BusinessEurope [REDACTED] OUT OF SCOPE [REDACTED] OUT OF SCOPE [REDACTED]
- On the sustainable corporate governance initiative, BusinessEurope would like to be a **constructive partner**. Yet they have expressed **concerns about using the study conducted by Ernst and Young (EY) on "Directors' duties and sustainable corporate governance" as evidence** justifying legislation. They have methodological concerns. But, they do not contest that short-termism is a problem that should be addressed by the EU. They point to the need to pay attention to the role **capital markets** play in supplying and reallocating (risk) capital.
- On **due diligence**, BusinessEurope acknowledge the advantages of EU harmonization compared to fragmented national rules but warn about possible unwanted, negative impacts (e.g. jeopardising meaningful and successful company practices, and possibly dampening investment in third countries). They ask for a careful consideration of the many questions that arise (e.g. scope, adequate level of accountability, how to ensure that the responsibilities of states and

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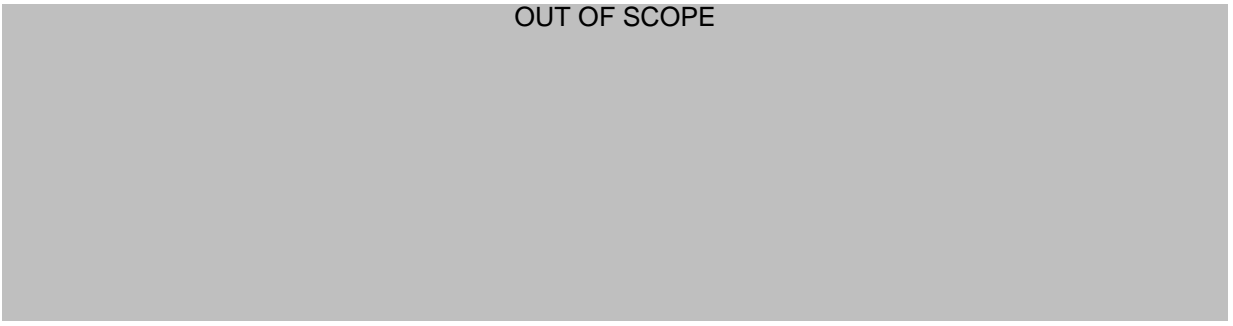
companies are not inverted).

- BusinessEurope also stresses the need to consider long-term structural changes to global value chains induced by **COVID-19** and that companies in the recovery will need to effectively secure, redesign and rebuild essential supply chains. Specific points regarding due diligence are discussed in the LTT or in the defensives.
- Just before this meeting, on 16-17 November, the 20th European Business Summit took place with the overarching theme: “**Rebooting the European economy - Towards a green, digital and more resilient Union**”, focusing on encouraging strong commitment from stakeholders to deliver on the economic, environmental and social objectives for a sustainable and inclusive Europe. Director General Saastamoinen participated in the session on Protection in the digital age.

Consumer Agenda:

- In [REDACTED] letter of 13 October 2020 sent to Commissioner Reynders, [REDACTED] asked to take this virtual ASGroup meeting as an opportunity to **raise awareness** and **get some preliminary feedback** on the idea of **green pledges**.

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Lines to take

Sustainable Corporate Governance (incl. due diligence):

[Why is the European Commission active in this area?]

- You know that delivering on the **United Nations' Sustainable Development Goals** and on the **Paris Agreement on Climate Change** remains the Commission's **top priority**.
- This requires a **holistic** approach to sustainability. We must change the way we **produce** and **consume**. We must have very ambitious **climate and environmental** objectives, but we should also pay appropriate attention to the **"S", the social factor**.
- In order to reach our sustainability objectives we need the contribution of **businesses**. On the one hand, they have a role in **promoting sustainable consumption patterns** – I will talk about our planned initiatives in a minute.
- On the other hand, **companies themselves need to become sustainable** – and for this, they need to **improve their governance** and **impacts** in their

global supply chains.

- **How to do this?:**
 - we need to **abandon short-term oriented business models** that prioritise short-term financial interests over building viability and resilience over the longer-term;
 - we also need a more **stakeholder-oriented corporate governance**.
 - Decisions **should take into account the interests** of, and **the impacts on**, workers, customers, the environment, local communities and other **stakeholders** impacted by the business, **including along the supply chains**;
 - in addition, corporate governance also needs to ensure **the proper identification and management** of the company's **sustainability risks and dependencies on human, social and natural capital**.
- Thus, the sustainability transition is both a **necessity** and a major **opportunity**.

- To make the **sustainability transition** and the **sustainable recovery** a reality, we need to *fully mobilise **all** economic sectors* in a more systematic manner.
- The Commission has decided to **submit** next year a **legislative proposal** on sustainable corporate governance.

[What would this legislative initiative cover?]

- The new EU rules would, **first of all**, **clarify the directors' duty of care** to **act in the interest of the company**. This would **clearly require** board members and executive leaders of **any EU limited liability company** to take into account **wider stakeholder interests** and the **company's long-term interests**.
- The clarification of the directors' duty of care would **enable directors** to better integrate in their decisions **the long-term perspectives and sustainability factors**, and **withstand undue short-term pressure**.
- This pressure seems to be substantial: according to an independent study, the overwhelming majority (**87%**)

of corporate leaders complain about pressure from shareholders to generate short-term profit, even though they also claim that longer-time horizons would improve corporate performance and innovation.

- **Secondly, our initiative would require directors to embed sustainability into corporate strategies, building on the identification of all relevant stakeholders, sustainability risks, dependencies, opportunities and impacts.**
- **Thirdly, the new EU rules would require companies to undertake environmental, social and human rights due diligence in their own operations and in their value chains on an on-going basis. This would ensure that companies become clearly accountable for how they prevent or mitigate their actual or potential negative sustainability impacts.**
- **Such a mandatory due diligence would be based on a context-specific and risk-based approach, building on UN and OECD frameworks.**
- **It would bring legal certainty about what the**

companies' duties are vis-a-vis the supply chains, and could **level the playing field** in the EU – [when a number of Member States have adopted or are preparing their own **national laws** on due diligence.]

- The **ultimate aim** of the due diligence requirement would be to drive all companies towards **“doing no harm”**:
 - to ensure that internationally recognised **human rights and labour standards** are also respected throughout the company's **global** supply and **value chains**, and
 - **to align** the harm mitigation duty with our **2050 climate neutrality objective**, with **EU's biodiversity goals** and possibly other science-based environmental goals.
- **Complementing** this corporate duty, the new rules would, in our current thinking, also require setting **time-bound** and **measureable sustainability targets**.
- **Finally**, the implementation of these corporate and directors' duties could be supported by **adjusting other elements** of the corporate governance framework: for instance, regarding **engagement with stakeholders**, **involving sustainability expertise** in decision-making and **incentivising by remuneration**.

- The new or clarified duties should come with a **proper enforcement regime, including civil liability for due diligence and administrative supervision**. In this regard, we are **mapping** what enforcement regimes exist, what is possible, and what stakeholders think as needed and workable.
- Commissioner Reynders has expressed several times a clear preference for a **broad scope which covers all companies with limited liability in all sectors**.
- At the same time, I have to reassure you on the fact that we will **carefully** consider the possible costs and benefits for **small and medium-sized enterprises**.
- We are also examining how to cover **some third-country companies** that are **active** in the EU.

[Public consultations:]

- We are still in the preparatory and consultative phase.
- The first questions on this initiative were part of the **overall public consultation on the renewed**

sustainable finance action plan.

- The responses show that there is a **very strong support** for **directors to take stakeholders' interests into account in their decisions** and **mandatory EU due diligence**.
- We had also provided an opportunity for stakeholders to give us feedback on our Inception Impact Assessment.
- Most recently, we have **launched “our own” open public consultation**. This is dedicated entirely to the **sustainable corporate governance initiative** and **encompasses all aspects**: questions on directors' duties, corporate due diligence duty and other possible elements of our future initiative.
- The consultation will remain **open until 8 February 2021**. The replies will **feed into our impact assessment**, which will cover **all issues** and **various policy options**, and **will help us prepare the initiative**.
- We also **count on your participation** and your **constructive proposals**.

New Consumer Agenda:


- **The New Consumer Agenda** was adopted on 13 November 2020. It sets out both a political vision for the next 5 years as well as 22 concrete actions to address the immediate challenges of the COVID-19 pandemic and longer-term priorities. The indicative timing of each action is mentioned in the Agenda, but I'll pick some examples.
- Under the actions with immediate effects and directly related to the pandemic, further **cooperation with platforms to address the risk of scams**, including on masks, disinfectants and possible vaccines is clearly a priority.
- On the **green transition**, the new legislative initiative to give consumers better information about products' lifespan, environmental impact and reparability to better protect consumers from practices such as greenwashing, early obsolescence or unreliable sustainability labels - is planned for **the first half of 2021**.

- In parallel, **very soon** the first companies will adhere to the **“Green Consumption Pledges”** and will take voluntary commitments to actions promoting sustainable consumption patterns and going beyond legal obligations.
- We hope this will start a chain reaction and we will soon have many European businesses of all sizes and sectors coming forward with ambitious pledges in support of sustainable consumption.
- As for the **digital transformation**, we are working intensely as well, with the first objective to adopt in **the first half of 2021** the **two proposals to update rules both on product safety and on consumer credit**; these issues are most impacted by the new technologies and growing online selling and we need to respond to keep the regulatory framework up-to-date and fit for purpose.

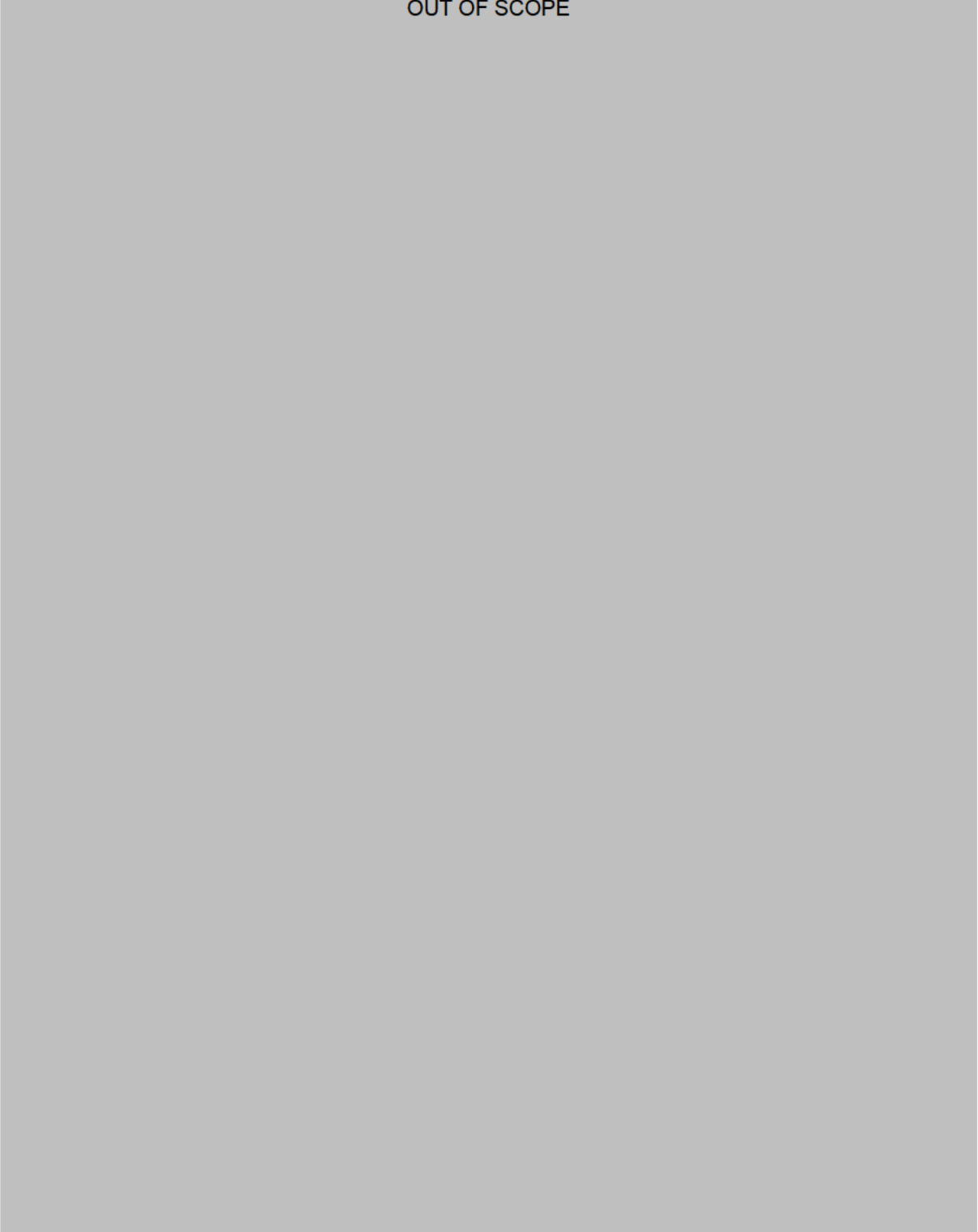
- From the enforcement side, we will stick to May 2022 as the date of entry into application of the **Directive on Better Enforcement and Modernisation of Consumer Law**; it is also our clear objective to ensure quick transposition and effect of the future **Directive on Representative Actions**, once formally adopted and in force.
- **Internationally**, our objective of developing in 2021 an action plan with China for strengthened product safety cooperation for products sold online holds its priority.
- Today, the New Consumer Agenda is being presented **at the Parliament's Internal Market and Consumers' Committee and also** to Member States in the **Competitiveness Council**. The Portuguese Presidency plans to adopt the Council Conclusions on the agenda in February 2021.
- The successful implementation of the actions outlined in the Agenda will depend on **close collaboration with stakeholders**, including Member States, consumer organisations, and **industry**.

- Such collaboration will be bolstered by the **creation of the new Consumer Policy Advisory Group**, which should be convened in early 2021 and which will involve also industry.
- I expect that the BusinessEurope Advice and Support Group will contribute to such an ambitious process and that it will be pro-active in promoting the new Green Consumption Pledges.


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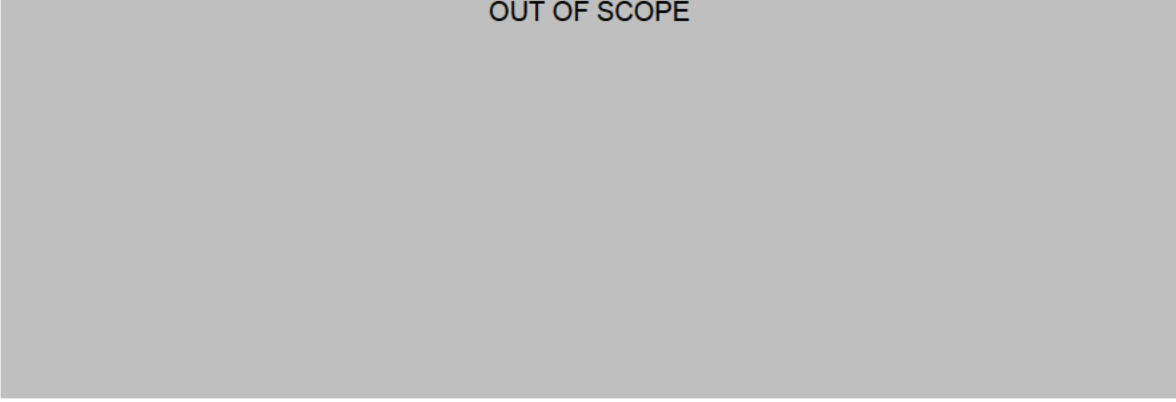
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DEFENSIVES

Due diligence:

We do not need a mandatory framework for supply chain due diligence.

- The due diligence study conducted for the Commission shows that the **voluntary “corporate social responsibility” approach, supported by reporting on a “comply or explain basis”, failed**: only one third of the 300 companies responding to the survey claim to have due diligence processes in place to identify and mitigate negative human and environmental impact in their supply chains. Other studies show even worse figures (for example a very recent German survey shows that 15-19% of companies have due diligence processes).
- A large majority of individual company respondents (over 300) to the due diligence study survey expressed **support** for mandatory due diligence rules.
- **EU harmonisation** may bring benefits over the development of **national initiatives which would lead to a fragmentation of approaches** and which could result in **extra costs**.

Any framework on due diligence should be based on an obligation of means rather than obligation of results. Companies should be exonerated from liability if they comply with a due diligence process standard.

- This is a **balancing** exercise: it is important to make sure that companies not only **establish processes** but also **implement them efficiently**.
- We hope our **public consultation** will inform us what can be added to a process requirement and also ensure the necessary legal certainty for companies.

A new legislative framework should not transfer the responsibilities of states/governments to the companies – their respective roles should not be mixed.

- To ensure that human rights are protected, States need to establish specific legal requirements. Companies (i.e. legal persons) shall respect human rights as much as physical persons, this has already been agreed in the UN 10 years ago when clarified in the UN Guiding Principles on Businesses and Human Rights. The **commentaries** of human rights covenants state that **States shall legislate** to require companies to respect

such rights across their value chain. This is the way to ensure that States provide an effective protection framework for such rights.

Consideration should be given to the impact on EU companies' overall competitiveness vis-à-vis companies from other parts of the world. Third-country companies should also be covered by the future EU framework.

- Although operating in the EU without proper establishment is relatively rare, we are looking into possibilities to cover **also some third country companies not formally established but operating in the EU**. Our public consultation specifically addresses this question.
- Our initiative would **build upon existing international standards and guidelines** (UN, OECD).
- The experience with the French law shows that a non-negotiable legal standard can **contribute to changing the regulatory and behavioural environment in the third country** of the supply chain. **Such positive impact of an EU standard would be even higher.**
- The Commission services having competence in **complementary areas** on this matter cooperate in this process. **Other policies**, such as development cooperation, neighbourhood policy, trade and external relations contribute with support, funding, dialogue, agreements. There is also an ongoing reflection about strengthening sustainability chapters in **trade agreements** to support the transition better and help levelling the playing field globally. These policies reinforce each other.
- The due diligence study shows that **no significant** negative distortions for EU companies are expected which would result from setting up and operating necessary due diligence processes. We will analyse other costs possibly linked to reorganisations of supply chains.

Possible reporting requirements should not overlap with the requirements under the Non-Financial Reporting Directive (NFRD).

- We would like to ensure that **the non-financial reports provide stakeholders all the information** they need to **monitor** companies and directors, and – eventually – to **hold them to account**, with regard to their duties in relation to sustainability.
- We will pay particular attention to the **consistency** and the **links** between this initiative and the review of the NFRD.

Any EU due diligence measure should be aligned with international standards and guidelines (e.g. UN and OECD), as many European

companies are part of global supply chains and must be able to maintain global competitiveness and reflect meaningful requirements on their international suppliers.

- Our initiative would **build upon existing UN and OECD standards and guidelines** (the **United Nations'** Guiding Principles on Businesses and Human Rights, as well as on the **OECD** Guidelines for Multinational Enterprises and the related Due Diligence Guidance for Responsible Business Conduct).
- It would also take into account the experiences with existing national and EU regulation.
- We are exploring how to align the due diligence duty to international human rights and environmental commitments (**fundamental and labour rights conventions, Paris climate agreement** etc.)

The level of detail of a due diligence legislation should be proportionate to provide clarity for business, but without encouraging a *tick-box* approach and ensuring the necessary *flexibility* to adapt to company specificities.

- Care will be taken to ensure that the possible EU law and its obligations are **sufficiently clear**, also in order to prevent that it generates unnecessary litigation. At the same time, it should be **flexible** enough so that companies can adapt to their specificities.
- We are also exploring the possibility to **combine level 1 and 2 measures and legislation with non-binding guidelines**.
- We are examining how to provide **clear definitions** and where necessary '**performance requirements**'. This is also related to the question of requiring means or also outcomes: the *public consultation* also entails questions on how to ensure that **process requirements for due diligence do not simply result in a tick-box exercise but in effective implementation**.

A possible mandatory approach on due diligence will impose bigger burdens on SMEs. Also, obligations will be imposed in any event on SMEs downstream, as part of the supply chain of companies that are within the scope. Any EU measure needs to take this into account.

- I agree that we need to **alleviate the burden** on SMEs. For instance, a **lighter** regime, more detailed **guidance** and a **gradual phasing in** of the new obligations are all possible options being explored.

- We also need to take into account that SMEs can be active in **high-risks sectors**, but they would also see **benefits** of the new rules: they may become better candidates to become a supplier of an EU company, they would themselves reap the benefits of addressing sustainability issues properly, they could get access to finance more easily etc.
- Our **public consultation** asks a detailed question about how SMEs burden could be reduced.

Will a possible EU law on due diligence have a limited scope with regard to value chains, e.g. beyond tier one and downstream? This is in particular relevant with regard to civil liability which needs to be carefully examined.

- The aim is to ensure the right balance here: the rules should be **effective** and should **not be easy to circumvent**. Human rights and environmental harm occurs more often beyond tier one, so covering only tier one suppliers would **jeopardise the effectiveness** of the measure. The French law also goes beyond tier one.
- There is an **embedded flexibility** in due diligence as it is inherently **risk-based** and **requires continuous improvement**. The company should identify which supply chain is the most risky and prioritise the most serious issues first.

Directors' duties:

Short-termism is a problem that the EU can and should address in different policy areas, but it is clearly portrayed in an inaccurate way by Ernst and Young (EY) study. If the EU is moving to change the existing corporate model it should do it based on a more comprehensive research and robust assessment.

- We are fully **aware of the criticism** that has been raised against the economic assessment conducted for us by **EY** on **short-termism**.
- At the same time, we find that **EY** carried out a **solid analysis for the purposes of the subject of that study** and **the conclusions are in line with other studies** that have underpinned corporate governance reform since the financial crisis: **short-termism in corporate governance exist and has been growing** over recent decades. (See more details in the Q&A below.)
- There are **other similar studies testifying about this trend** of “investmentless growth” across the Western world. It is widely

considered that such trend impacts on the long-term competitiveness of Western economies and is a **key barrier to the sustainability transition**.

- Other parts of the EY study also relied on an **extensive literature and regulatory review** and has identified **regulatory and market failures**, suggesting that in **most, but not in all, cases** EU legislation would be the most advantageous solution.
- **We will carefully assess these recommendations, together with the feedback we receive in our public consultations**, to see how to best proceed.
- To underpin our impact assessment, **we welcome any other studies** with data on companies' investments in the sustainability transition, their alignment with science-based climate and environmental sustainability targets, and an explanation of what has enabled this. **If those data provide a picture different from the EY study, it will be taken into account in the impact assessment.**

The EY study defines “short-termism” as simply the ratio between, on one hand, a company’s pay-outs in terms of dividends and share buy-backs and, on the other hand, the company’s net income. **That’s not a universal measure of short-term behaviour.**

- **Pay-outs as a percentage of net income** is the **most used indicator** in the literature as sound evidence of short-termism.
- But the **study goes further**. It **compares** the evolution of the ratio of shareholder payouts (i.e. the part of the profit that is redistributed to shareholders in diverse forms) **to investments** (i.e. the part of the profit that it reinvested with a view to ensure long-term development, including investment into new facilities, innovation, research and development).

- That's especially important as the sustainability transition requires important investments into resilience, sustainability, new technologies, research, workforce etc. such methodology was considered important to measure whether the market is sufficiently moving towards delivering on the transition itself.

The study is based on a review of 4,700 listed companies from only 16 out of 27 European countries. One third of those companies come from the UK (with their distinct ownership structure and outside the scope of future EU measures).

- The fact that the UK market was also analysed does not change the conclusion of the study that **high payouts/net income appear to be stable across most EU MS**. (4 MSs stand out with larger payout ratios and Poland and Hungary stand out with relatively smaller ratios but in the rest the ratio is largely the same.)
- Furthermore, the country of **listing** was the basis of including in the sample, and there are also a number of EU-based companies that are listed in the UK.
- As EY explains in the study, they also **validated the robustness** of their findings with **different samples of companies**.
- Thus, even if the scope of the economic assessment conducted by EY does not cover all EU listed companies, and even if it covers companies listed in the UK, the analysis clearly revealed a **growing predominant focus in EU listed companies on short-term financial performance**.

There are major differences in the company law regimes of the 16 countries covered in the Study, which renders it difficult if not impossible to identify a common explanatory variable.

- The study depicted a long-term trend of growing short-termism across **most of the countries and sectors** under review.
- The study clearly shows that predominant focus on short-term financial performance **has become a “social norm”**, despite the **letter of the law** and **different corporate law regimes** in Member States. So there is a need for regulatory intervention.
- The EY study also relied on an **extensive literature and regulatory review** and has **identified regulatory and market failures**, suggesting that – for most issues – EU legislation would be the most advantageous solution.

Changing the regulation of directors' duties risks that European companies would get less access to risk capital, hampering investment in sustainable innovations.

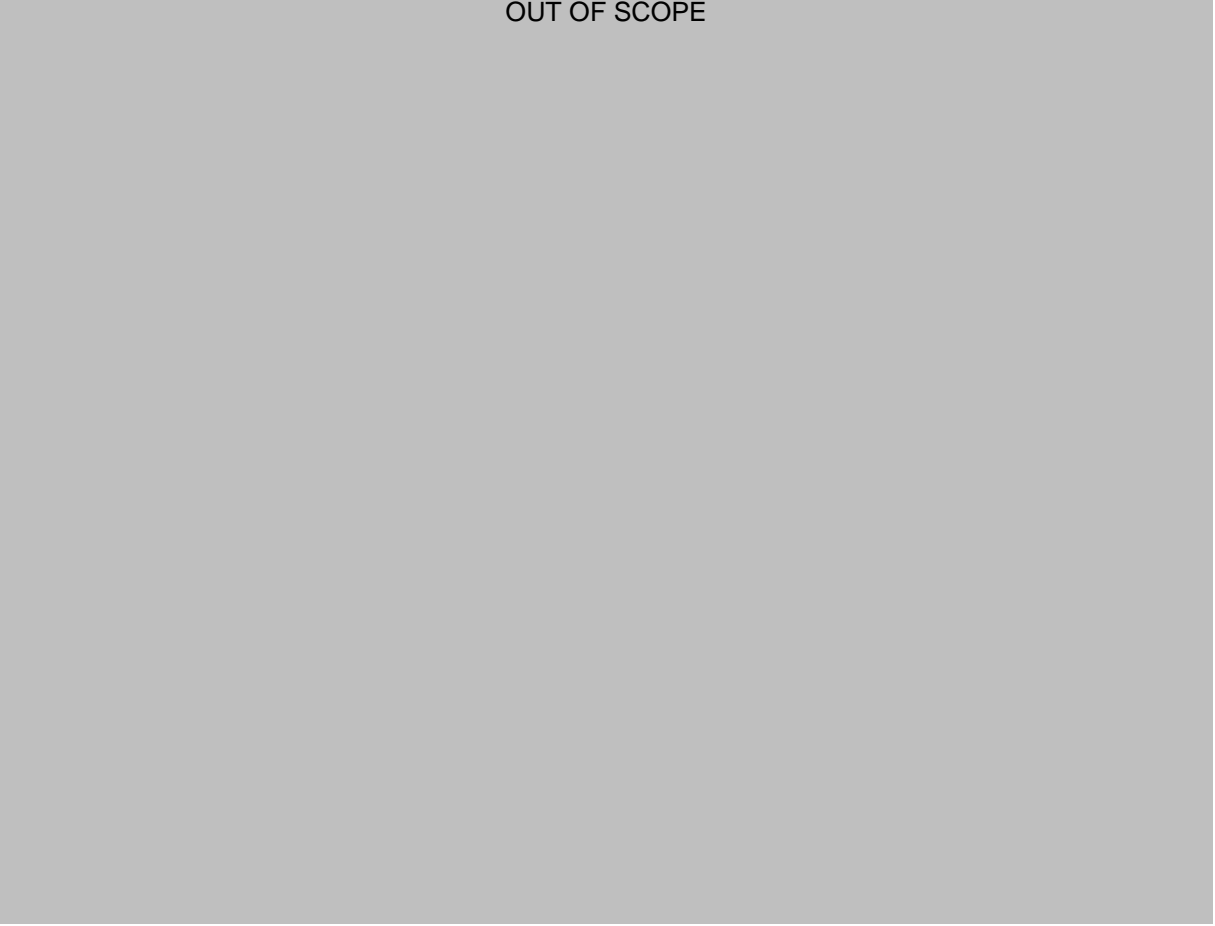
- As the sustainable corporate governance initiative's aim is to **enable directors to make investments** which serve the resilience and the competitiveness of the company and which is ultimately in the interest of all stakeholders including investors, we believe that **it will help companies to attract investment, including risk capital.**
- We have recently seen how **99% of Danone's shareholders supported its commitment** to make profit in a way that also takes into account the health of its customers and the interests of the planet.
- **Investors are also pushed to decarbonise their portfolio and integrate environmental and social issues into their investments** through the **Sustainable Finance Action Plan**. An EU framework for sustainability that puts it at the core of business strategies should **help attract investment.**

In certain cases the interests of some stakeholders may be conflicting with each other (e.g. in restructuring, recovery, insolvency, merger or division). The company needs flexibility to balance those stakeholders' interests.

- All stakeholders' interests as well as the **long-term interest of the company** should always be considered in board decisions. We do not aim at making a hierarchy between the different interests, but focusing predominantly on one interest (i.e. short-term financial) should not be the norm.

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The New Consumer Agenda

How could you ensure that an agenda of such a high level of ambitions could concretely work, in terms of resources and practical implementation?

- The agenda is the tool to formulate and implement specific actions. The priorities of the new Single Market Programme under the new MFF will support the objectives of the agenda.
- We also call upon the Member States to align their funding streams to their consumer policy priorities. Each country is invited to involve closely key stakeholders, including businesses and consumer organisations in the implementation of its consumer policy.

Governance

The new governance framework involved not only the Commission, but also the Member States in the implementation of the New Agenda: is the Commission going beyond its competence?

- No, the Agenda's vision implies a **new framework for enhanced cooperation** between EU and national policy priorities capable of delivering concrete actions. Member States are called upon to act, but their competencies under the Treaties as well as the relevant *acquis* remain untouched. Moreover, they will decide their own priorities.

How should the new Consumer Policy Advisory Group work? How can the EP or MEPs be involved?

- The Agenda confirms the need for a consultative group bringing together a wide range of stakeholders, in addition to the existing bodies for national enforcement authorities (CPC Group) and policy-makers (CPN Group).
- We are discussing how the new group replacing and widening the mandate of the former *European Consumer Consultative Group (ECCG)* should be set up and what should be its mandate and working methods.
- The new formation will have to fit for purpose, in terms of fair representativeness of consumer organisations and adequate expertise for each policy priority area. It will bring together representatives from the consumer movement and the industry. The EU Parliament and the Committee of Regions and ECOSOC will also be involved.

- Parliament experts, such as colleagues from the IMCO secretariat, could attend the meetings of this expert group if you consider it useful.

Green empowerment/Sustainable consumption

Why is the right to repair initiative not announced in this Agenda?

- Considering the complexity of products and the diverging legal frameworks for different products categories, such a “right to repair” does not seem feasible through a single legal act.
- Instead, it appears necessary to develop such a new right through a combination of various measures, both legislative and non-legislative, that cover requirements for products, e.g. on the design of a product to facilitate repair, responsibilities for producers and traders, and consumer rights, e.g. on access to repair information.
- In addition to the new eco-design, sustainable product policy, and a Circular Electronics initiatives, consumer policy will contribute to a strong right to repair with:
 - 1) improving consumer information through the legal proposal on empowering consumers in the green transition (May 2021);
 - 2) encouraging voluntary business behaviour by extending the concept of green pledges under the new Consumer Agenda (as of November 2020);
 - 3) creating incentives through the initiative on sustainable corporate governance covering also due diligence (2021);
 - 4) and finally the review of the Sales of Goods Directive (evaluation starting from 2022).

What is the Commission's view on the Cormand Report?

- The Commission has followed closely the discussions in IMCO and is pleased to see that the revised draft resulting from IMCO amendments is taking the text on a number of points closer to Commission's lines
- We share IMCO's view that sustainability has to be pursued hand in hand with the competitiveness of European companies and that public policy should create opportunities for European innovation and business growth as much as for the adoption of more sustainable patterns of behaviour by EU consumers.
- We also share IMCO's interest in providing consumers with reliable information about products, including their lifespan and reparability. The

best way and form for providing such information must result from a rigorous impact assessment analysis which the Commission is currently conducting. The options advocated in the draft report (e.g. mandatory information on expected lifespan) are part of our current analyses.

- We appreciate IMCO's recognition that effective rules on reparability will have to be in large part specific to each product category. On right to repair, see specific defensive. We also appreciate that some elements from the initial draft report (e.g. advertisement tax) have been removed by IMCO's amendments.
- Some of IMCO's suggestions (e.g. on revising the rules on commercial guarantees) may be considered only in later stages, e.g. in the review of the Sales and Good Directive which cannot start before 2022 (end of transposition).

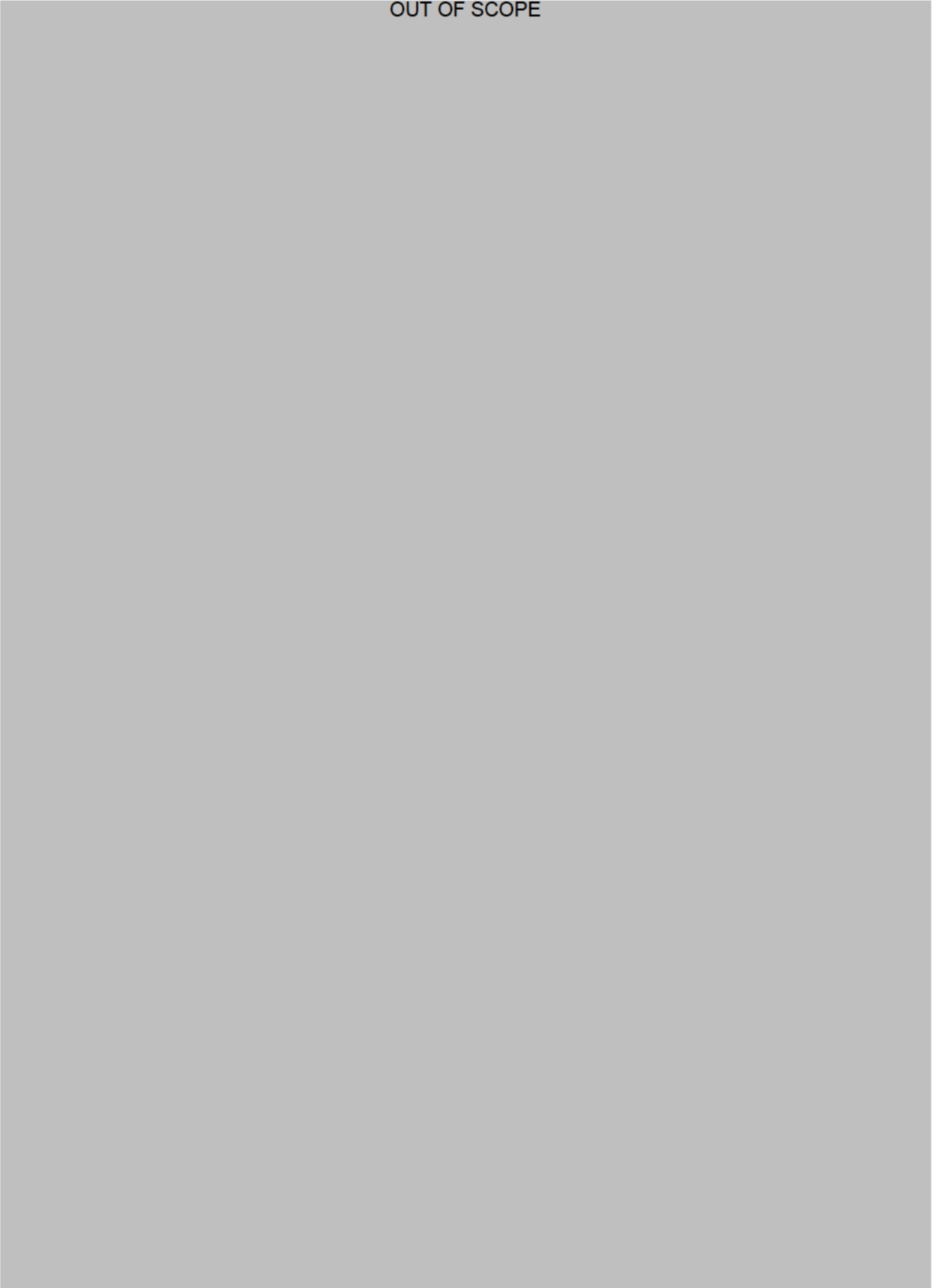
Does the Commission plan to introduce harmonised and mandatory labelling on expected lifespan, as well as an EU-wide repair score? Will this information requirement only apply to certain product categories, or will horizontal requirements be introduced?

- Our evidence shows that consumers want more information about the lifespan and the reparability of products but that they currently cannot find it. This prevents them from making more sustainable consumption choices but also represents consumer detriment, for instance because they have to replace some goods earlier than they expected.
- Through our initiative on empowering consumers in the green transition, we precisely want to fill this gap and equip consumers with better information about products' lifespan, their reparability (including access to repair manual, information on the availability of spare parts and updates etc.) as well as their environmental characteristics.
- The nature of the measures and their scope are currently being assessed and it would thus be premature to announce a specific way forward before we have the results from our Impact Assessment and the College decision. But we are looking at developing an instrument with a scope that is as horizontal as possible and with measures that can easily be enforced.

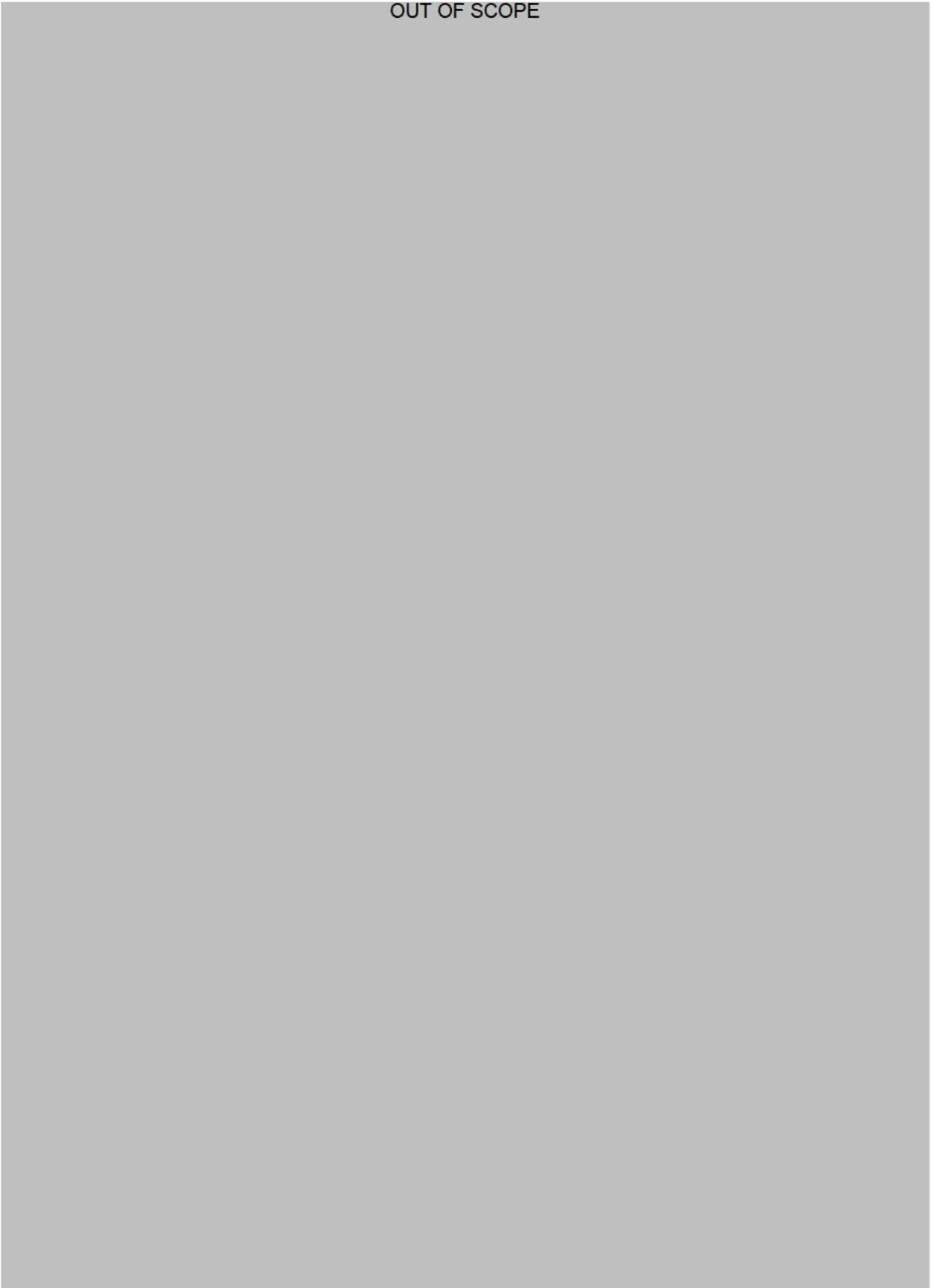
How does the Commission intend to tackle the problem of consumers being confronted with false environmental claims, and ensure that such claims can only be made if they are clear, accurate and based on scientific evidence, so as not to mislead consumers?

- The current legal framework, namely the Unfair Commercial Practices Directive (UCPD), only allows to some extent to address some of these practices. Indeed, its principles-based approach requires a case-by-case assessment that renders its enforcement difficult, particularly for greenwashing where in-depth analysis and expertise is often needed to assess whether the principles of the UCPD have been infringed.
- Enforcers have confirmed the difficulty to enforce the UCPD for these specific practices for these reasons.
- Our aim is therefore to better protect consumers by making it clear in our instrument which criteria qualify greenwashing as unfair. This will facilitate the work of enforcers and ultimately strengthen consumer protection. Various options to achieve these objectives are being assessed and it would be premature to announce a specific way forward before we have the results from our Impact Assessment and the College decision

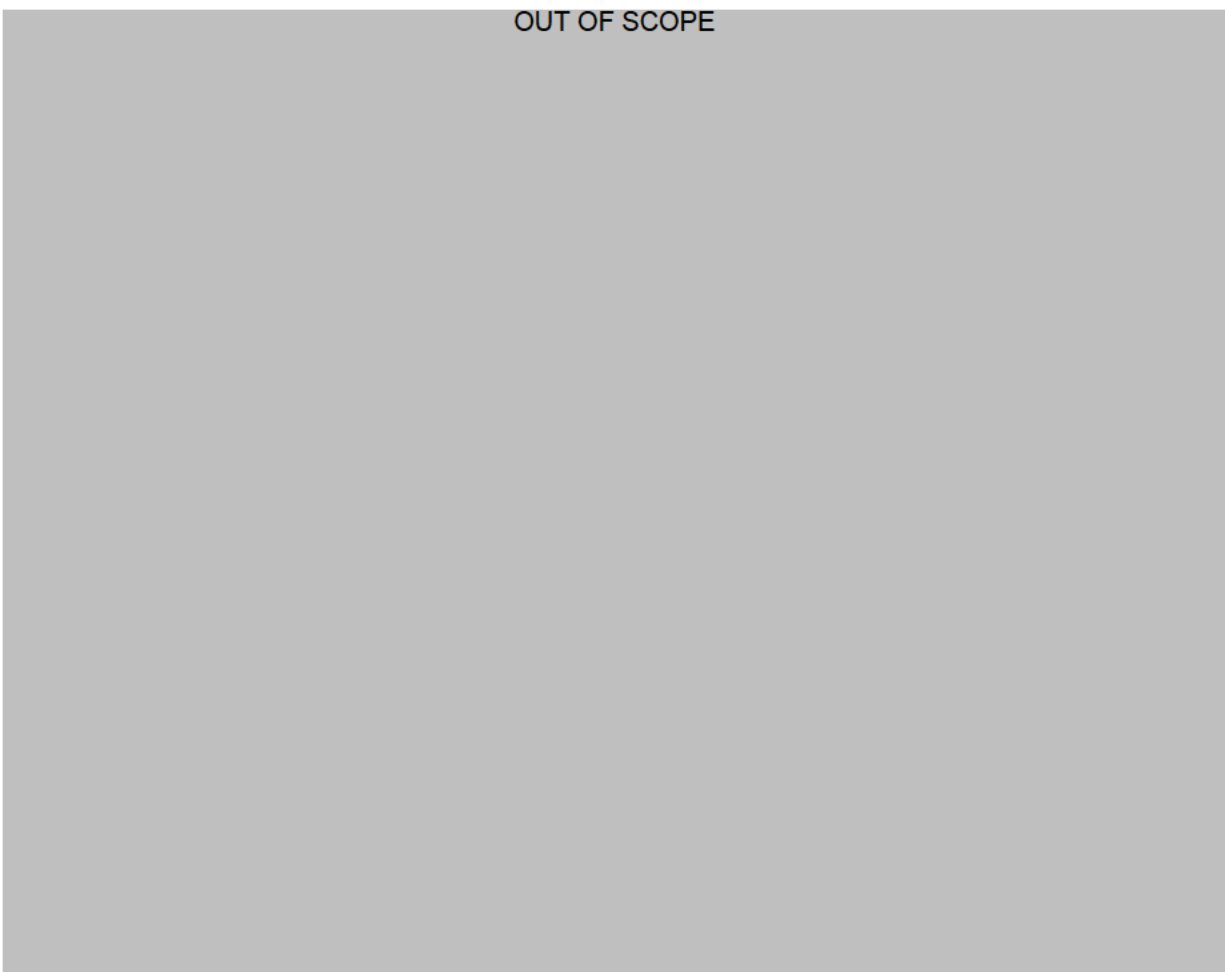
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BACKGROUND

Sustainable Corporate Governance:

The Commission's 2021 work programme envisages, for **Q2 2021**, the adoption of a **legislative proposal** on sustainable corporate governance to foster long-term sustainable and responsible corporate behaviour, under the headline ambition "**an economy that works for people**". The Inception Impact Assessment ("**roadmap**") on the initiative was open for consultation until 8 October. An **open public consultation** on the initiative launched on **26 October 2020**.

In parallel, the **EP's JURI committee** is preparing 2 reports on the topics covered but the sustainable corporate governance initiative; namely, an own initiative legislative report (**INL**) on "**Corporate Due Diligence and Corporate accountability**" (rapporteur Lara Wolters, S&D, NL) and an own initiative report (**INI**) on "**Sustainable Corporate Governance**" (rapporteur Pascal Durand, Renew, FR). Two studies prepared for the EP would also underpin these reports. The EP discussions show an emerging majority on all key elements of the forthcoming sustainable corporate governance initiative, including redefinition of the interest of the company and directors duty of care and due diligence.

In the meantime, more and more **Member State** are having **laws, initiatives and plans** to reform corporate governance measures (DE, AT, FI, FR, NL, DK, IT, BE, LU, SE); the **FR Duty of Vigilance Law** being the first and most prominent, and **DE Supply Chain Act** considerations being the most recent.

As regards the position of stakeholder, during the consultative and analytical work that preceded the announcement of the initiative, **civil society** has exhibited **very strong support** in numerous instances, while **business associations** naturally expressed **initial hesitations** about possible mandatory rules, however are recently also starting to support the voice of **large individual businesses** who have repeatedly spoken out in EU fora and issued multiple calls **in support of EU level action**, to stop free-riding.


New legislative initiative to empower consumers in the green transition

The initiative was announced in the Green Deal and Circular Economy Action Plan and is scheduled for adoption in May 2021.

Its aim is to empower consumers to actively participate in the green transition 1) through the provision of clear and more reliable information in order to choose durable, repairable and environmentally sustainable products, 2) through a better protection against practices such as green washing and early obsolescence and 3) through the establishment of criteria to guarantee more reliable sustainability labels and logos.

Of horizontal nature, the scope and content of this consumer law proposal will focus on consumers, and therefore at activating and empowering the “demand” side of the market. It will build on synergies with various work-streams that are under way in different Commission services (DGs ENV, GROW, CNECT) in response to the Green Deal and the new Circular Economy Action Plan, and which focus more on the “offer” side of the market, notably on product standards on material efficiency (durability/reparability) and technical methodologies (e.g. Product/Organisational Environmental Footprint)

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BusinessEurope's Advice and Support Group
Virtual meeting, 19 November 2020, 11:45-12:45

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