EUROPEAN COMMISSION

Brussels, 09.08.2022
C(2022) 5805 final

Dear Speaker,

The Commission would like to thank the Riksdag for its Reasoned Opinion on the proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 {COM(2022) 71 final}.

This proposal plays a key role for delivering on the Commission's objective of a just transition to a sustainable economy and society and on the UN Sustainable Development Goals, including those related to human rights and the environment. Aimed at fostering long-term sustainable and responsible corporate behaviour, the proposal introduces a mandatory corporate due diligence duty obliging companies to identify and address actual or potential adverse impacts on human rights and the environment in their own operations, those of their subsidiaries and in their value chains.

The Commission has carefully analysed the Riksdag's Reasoned Opinion. It appreciates that the Riksdag has an overall positive view of the proposal. The Commission welcomes that the Riksdag shares its view that uniform rules at the EU level will be more effective than varying rules from individual countries and avoid fragmentation within the internal market and legal uncertainty for companies.

The Commission also takes note of the Riksdag's view that the proposal does not in all its sections comply with the subsidiarity principle, due to its provisions on variable remuneration (Article 15(3)), on directors' duties of care (Article 25) and on setting up and overseeing due diligence (Article 26). The Riksdag considers that those are best managed at the national level. The Commission would like to respond to the Riksdag's concerns with the following clarifications.

The Commission acknowledges that corporate governance systems are anchored in Member States' legal orders. At the same time, the EU has competences under the Treaties allowing it to act, under certain circumstances, by means of Directives in order to attain freedom of establishment. It has already legislated on this basis on corporate governance measures, for instance, when adopting the Shareholders' Rights Directive.

Mr. Andreas Norlén
Speaker of the Riksdag
SE - 100 12 STOCKHOLM

Against this background, the corporate governance elements in the proposal on Corporate Sustainability Due Diligence have been carefully selected, with the objective of achieving a balanced and proportionate approach and being mindful of existing structures in Member States.

As regards directors' duties, the Commission would like to stress that the proposal focuses overall on regulating sustainability due diligence obligations of companies, while obligations for directors have been included as they are regarded as needed to implement these due diligence obligations.

First, as laid down in Article 26 of the proposal, this encompasses directors' duties related to setting up and overseeing the implementation of corporate due diligence processes and measures and to adapting the corporate strategy to due diligence. This also corresponds to the existing international framework stemming from the United Nations Guiding Principles on Business and Human Rights and the guidelines on due diligence by the Organisation for Economic Co-operation and Development.

In addition, and in order to fully reflect the directors' role in the corporate due diligence obligations, the proposal also clarifies in its Article 25 that the directors' general duty of care is to act in the best interest of the company. This provision aims to ensure that this general duty – which is not newly created, but already present in all Member States' company laws – is understood and applies in a manner which is coherent and consistent with the due diligence obligations introduced. The proposal clarifies in its recital 63 that the proposed clarification would not require changing existing national corporate structures.

As regards variable remuneration, the provision in Article 15(3) provides remuneration incentives that complements the proposed specific regime aimed at ensuring that very large companies ensure compliance of their business strategy with the transition to a sustainable economy and limiting of global warming to 1.5°C in line with the Paris Agreement.

Finally, the Commission would like to emphasise that in its view the objectives of the proposed action – and this applies to all parts – cannot be achieved sufficiently by Member States acting alone, but can be better achieved at EU level. It should be flagged out that an increasing number of Member States have recently not only started to adopt divergent national due diligence laws, but also been regulating directors' duties relating to sustainability matters with differing requirements and diverging jurisprudence. First, this has added complexity to many companies that have cross-border ownership and operations which are influenced by regulations in some countries or lack of action in others. This also means that the efficiency of individual action of Member States are hampered, including in the area of directors' duties and remuneration.

The points made above are based on the initial proposal presented by the Commission, which is currently in the legislative process involving both the European Parliament and the Council. The Riksdag's Reasoned Opinion has been made available to the Commission's representatives in these ongoing negotiations and will inform them.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Riksdag and looks forward to continuing the political dialogue in the future.

Yours faithfully,

Věra JOUROVÁ
Vice-President