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DRAFT REPORT

on sustainable corporate governance
(2020/2137(INI))

Committee on Legal Affairs

Rapporteur: Pascal Durand

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on Sustainable corporate governance (2020/2137(INI))

The European Parliament,

- having regard to the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs)¹,
- having regard to the Sustainable Development Goals²,
- having regard to the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises³,
- having regard to the OECD Due Diligence Guidance for Responsible Business Conduct⁴,
- having regard to the International Labour Organization (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy⁵,
- having regard to the Paris Agreement adopted on 12 December 2015⁶ (‘The Paris Agreement’),
- having regard to the EU Action Plan: Financing Sustainable Growth (COM(2018)0097),
- having regard to The European Green Deal (COM(2019)0640),
- having regard to the Adjusted Commission Work Programme 2020 (COM(2020)0440),
- having regard to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC⁷ (‘the Accounting Directive’),
- having regard to Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups⁸ (‘the Non-

¹ https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf

² <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

³ <http://mneguidelines.oecd.org/guidelines/>

⁴ <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

⁵ https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf

⁶ https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

⁷ OJ L 182, 29.6.2013, p. 19.

⁸ OJ L 330, 15.11.2014, p. 1.

Financial Reporting Directive’),

- having regard to Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure⁹ (‘the Trade Secrets Directive’),
 - having regard to Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement¹⁰ (‘the Shareholders’ Rights Directive’),
 - having regard to Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law¹¹ (‘the Whistleblower Directive’),
 - having regard to Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector¹² (‘the Disclosure Regulation’),
 - having regard to Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088¹³ (‘The Taxonomy Regulation’),
 - having regard to the Commission Guidelines on non-financial reporting (methodology for reporting non-financial information)¹⁴ and to the Commission Guidelines on non-financial reporting: Supplement on reporting climate-related information¹⁵,
 - having regard to the Final Report of the High Level Forum on the Capital Markets Union: ‘A new vision for Europe’s capital markets’¹⁶,
 - having regard to the Recommendations from the Task Force on Climate-related financial disclosure¹⁷,
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A9-0000/2020),
- A. whereas in a corporate context, a sustainability approach implies that the interest of different stakeholders in the company, including general societal and environmental concerns, are duly taken into consideration;
- B. whereas the multiple international initiatives promoting sustainable corporate

⁹ OJ L 157, 15.6.2016, p. 1.

¹⁰ OJ L 132, 20.5.2017, p. 1.

¹¹ OJ L 305, 26.11.2019, p. 17.

¹² OJ L 317, 9.12. 2019, p. 1.

¹³ OJ L 198, 22.6.2020, p. 13.

¹⁴ OJ C 215, 5.7.2017, p. 1.

¹⁵ OJ C 209, 20.6.2019, p. 1.

¹⁶ https://ec.europa.eu/info/news/cmu-high-level-forum-final-report_en

¹⁷ <https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-2017-TCFD-Report-11052018.pdf>

governance remain soft law only;

- C. whereas during the last legislative term, the European Union undertook a number of initiatives in an effort to foster transparency and long-termism in financial and economic activities, such as the Shareholders' Rights Directive, the Action Plan for Financing Sustainable Growth, the Disclosure Regulation and the Taxonomy Regulation;
- D. whereas the Non-Financial Reporting Directive ('NFRD') presents shortcomings that need to be addressed;
- E. whereas according to its adjusted Work Programme for 2020, the Commission intends to put forward a proposal reviewing the NFRD in the first trimester of 2021;
- F. whereas stakeholders have often expressed that the non-financial information provided by companies pursuant to the NFRD is insufficient, unreliable and not comparable; whereas disclosure of more complete and reliable information is necessary so that companies can be held accountable for their potential adverse impacts on the environment and society;
- G. whereas companies' directors have the legal and statutory duty to act in the interest of the company; whereas an excessive focus on short-term profit maximisation has an adverse impact on companies' long-term performances and on sustainability, and therefore may be to the detriment of shareholders' interest;
- H. whereas the consistency of EU legislation on sustainable corporate governance should be achieved through the establishment of concrete obligations to do and not only to report information; whereas an additional framework defining company boards' duties in terms of sustainability is therefore necessary;

Non-financial reporting obligations

1. Welcomes the Commission's commitment to reviewing the NFRD; highlights that such revision should be fully consistent with the requirements imposed by the Disclosure Regulation and the Taxonomy Regulation; calls on the Commission to take into account the recommendations included in this resolution;
2. Reiterates its call for an enlargement of the scope of the NFRD to cover all listed and non-listed large undertakings established in the Union territory, as defined in Article 3(4) of the Accounting Directive; invites the Commission to identify high-risk sectors of economic activity with a significant impact on sustainability matters that could justify the inclusion of small and medium enterprises (SMEs) in those sectors, within the scope of the NFRD;
3. Considers that the concept of environmental matters in the NFRD should be interpreted in line with the Taxonomy Regulation; considers it equally important to define with precision the other sustainability matters to which the Directive refers, such as the concepts of social and employee matters, respect for human rights and anti-corruption and bribery;

4. Considers that the definition of materiality should include the issues that affect long-term value creation and matters beyond the purely financial performance of companies;
5. Observes that the NFRD gives companies within its scope significant flexibility to disclose relevant information in the way they consider most useful; notes that companies may currently rely, at their discretion, on a number of different frameworks; considers it necessary to set up a comprehensive EU framework covering the full set of sustainability issues relevant for a comprehensive non-financial reporting; highlights, in this regard, that the EU framework should ensure that the disclosures are clear, balanced, understandable, comparable among companies within a sector, verifiable and objective; stresses that this framework should include, where relevant, mandatory sector-specific standards; welcomes, in this regard, the Commission's commitment to supporting a process to develop EU non-financial reporting standards¹⁸;
6. Considers that the location of the non-financial statement should be harmonised; calls on the Commission to establish a publicly accessible EU-wide digital platform that is free of charge, on which companies should publish their non-financial information;
7. Notes that the NFRD excludes non-financial statements from the requirement of content assurance to which financial statements of companies are otherwise subject; considers that non-financial statements should be subject to a mandatory audit, depending on the size and field of activity of the company concerned; considers that the assurance service provider, subject to requirements of objectivity and independence, should conduct their audit in accordance with the future EU framework;
8. Highlights the importance of introducing an obligation requiring certain EU companies to produce, on an annual basis, a country-by-country report for each tax jurisdiction in which they operate; urges the Council to urgently resume negotiations with Parliament on the Commission's proposal for a directive amending Directive 2013/34/EC as regards disclosure of income tax information by certain undertakings and branches (COM(2016)0198)¹⁹;

Directors' duty of care and additional measures to make corporate governance more sustainability-oriented

9. Urges the Council to initiate without delay negotiations with Parliament on the proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (COM(2012)0614) ('the Women on Boards Proposal'), which sets out to put an end to the pervasive imbalance between women and men at the highest-levels of decision-making in companies;
10. Notes the major role of directors in defining a company's strategy and overseeing its operations; considers that directors should have a duty to integrate long-term interests and sustainability risks, impacts, opportunities and dependencies in the overall strategy

¹⁸ Remarks by Executive Vice-President Dombrovskis at the Conference on implementing the European Green Deal: Financing the Transition, 28 January 2020 (https://ec.europa.eu/commission/presscorner/detail/en/speech_20_139)

of the company;

11. Calls on the Commission to present a legislative proposal ensuring that members of the administrative, management and supervisory bodies of limited liability companies, acting within the competences assigned to them by national law, have collective responsibility for defining, disclosing and monitoring a corporate sustainability strategy;
12. Considers that the sustainability strategy should identify and address, in line with companies' due diligence obligations, the significant impacts that the company might have on environmental, climate, social and employee matters, respect for human rights and anti-corruption and bribery matters connected to the company's business model, operations and supply chains, including outside the European Union; considers that the duty of care that directors owe to the company requires also taking into consideration the interest of stakeholders who may be adversely impacted by the company's activities;
13. Further considers that the sustainability strategy should include measurable, specific, time-bound and science-based targets aligned with the Union's commitments at international level on the environment, climate change, particularly the Paris Agreement, biodiversity, and deforestation; stresses that it should also include policies on gender equality, the better integration of employee's rights in the business activities and a definition of a fair salary policy, and sector-specific and/or geographical matters; believes that the variable part of the remuneration of directors should be linked to the achievement of the measurable targets set in the company's sustainability strategy;
14. Considers that, in the process of defining and monitoring their sustainability strategy, companies should engage with all relevant stakeholders, including shareholders, employees' representatives or spokespersons, and stakeholders external to them but who are affected by their activities and supply chains;
15. Considers that this engagement should take place, depending on the size and field of activity of the company concerned, by means of advisory committees, in which stakeholders' representatives or spokespersons would participate, and that will be tasked with advising on the content and the implementation of the sustainability strategy; believes that such committees should have the right to request and carry out, if approved by a large majority, an internal inquiry if reasonable concerns on the correct implementation of the sustainability strategy are raised.

EXPLANATORY STATEMENT

In the corporate context, a sustainability approach implies that the interest of different stakeholders in the company, including general societal and environmental concerns are duly taken into consideration. Currently, several international initiatives promote sustainable corporate governance, notably the UN Guiding Principles on Business and Human Rights of 2011, the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. While these tools are valuable in terms of encouraging responsible business conduct in a globalised environment, they remain soft law only.

The European Union undertook multiple steps with the aim of fostering transparency and long-termism in financial and economic activities, such as the revision of the Shareholder's Rights Directive, the Action Plan for Financing Sustainable Growth, the Disclosure Regulation and the Taxonomy Regulation. The adoption of the Non-Financial Reporting Directive in 2014 was also a major step forward in promoting transparency in order to measure, monitor and manage undertakings' performance and their long-term impact on society and the environment. However, the shortcomings identified during its implementation show that there is a need to enhance non-financial reporting information in the Union. The rapporteur is convinced that transparency is of key importance to ensure accountability. He welcomes, therefore, the engagement of the Commission to review the current Directive.

In addition, a consistent European approach on sustainable corporate governance should be achieved through the establishment of concrete obligations to do and not only to report information. The Rapporteur considers that it is necessary to establish a new framework defining company boards' duties in terms of sustainability.

Non-financial reporting obligations

In its resolution of 29 May 2018 on Sustainable finance, the European Parliament called for the consideration of an enlargement of the scope of application of the NFRD. The Rapporteur would like to reiterate this call, while specifying which companies need to comply with the obligation of reporting non-financial information. He is of the opinion that the current scope appears to be too narrow and not in line with the definitions laid down in the Accounting Directive.

The definition of materiality should be also reviewed and aligned with issues that affect long-term value creation and include matters beyond the purely financial performance of companies.

The significant flexibility offered by the NFRD results in companies reporting information is often deemed insufficient, unreliable and not comparable. The non-binding guidelines issued by the European Commission did not remedy this problem. The rapporteur believes that it is, therefore, necessary to put in place a standardised framework, which will allow for clear, balanced, understandable, comparable among companies within a sector, verifiable and objective disclosures.

Another recurrent difficulty that the stakeholders are faced with is related to the location of the report, for which the current framework provides also considerable flexibility. Harmonising

this aspect seems, therefore, necessary. In any circumstances, the information should be easily accessible, for example on the company's website or by means of a publicly accessible and free of charge EU-wide digital platform.

A crucial part of the review should be the content assurance requirement, which is not part of the currently applicable rules on non-financial information. The rapporteur considers that the statements should be subject to a mandatory audit performed by an impartial and independent assurance service provider.

It is extremely important to ask the Council to urgently resume negotiations with Parliament on the Commission's proposal for a directive amending Directive 2013/34/EC as regards disclosure of income tax information by certain undertakings and branches.

Directors' duty of care and additional measures to make corporate governance more sustainability-oriented

Companies are not abstract entities disconnected of today's environment and social challenges. They should more actively contribute to sustainability as their long-term performance, resilience, and even survival may depend on their adequate response to environment and social matters. In this regard, directors' duty of care towards the company should be defined not only in relation to short-term profit maximisation of shares, but also in relation to sustainability concerns. Given the major role of directors in defining companies' strategy and overseeing its operations, they should have a duty to integrate long-term interests and sustainability risks, impacts, opportunities, and dependencies in the overall strategy of the company.

The rapporteur sees the need for a new framework ensuring that the members of the administrative, management and supervisory bodies of undertakings have the collective responsibility of defining, disclosing and monitoring a corporate sustainability strategy. This duty should require taking into consideration also the interest of stakeholders who may be adversely impacted by the company's activities. The Rapporteur is of the opinion that the sustainability strategy should include measurable, specific, time-bound and science-based targets aligned with the Union's commitments at international level. It should also include policies on better integration of employee's rights in the business activities and a definition of a fair salary policy, as well as sector-specific and/or geographical matters.

The process of defining and monitoring the sustainability strategy should include all relevant stakeholders, such as shareholders, employee's representatives and external stakeholder affected by the company's activities. Depending on the size of the company, an obligation to establish advisory committees for this purpose should be considered.