



Brussels,
RSB

Opinion

Title: Impact assessment / Sustainable Corporate Governance

Overall opinion: NEGATIVE

(A) Policy context

The EU corporate governance framework combines EU and national rules and soft law. International bodies, EU, Member States and private actors have made efforts to support the mainstreaming of sustainable governance practices in companies. This initiative aims to integrate such practices more firmly in the EU corporate governance framework. It is closely linked to a series of ongoing sustainability initiatives, including on sustainable finance (i.e. the taxonomy and the Sustainability Reporting Directive).

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

- (1) The problem description is vague and does not demonstrate the magnitude and likely evolution of the problem. It does not provide clear evidence that EU business (including SMEs) do not sufficiently address sustainability opportunities, risks and impacts.**
- (2) The policy options are too limited and do not adequately reflect the available policy choices in terms of company and sector scope, content of measures and range of delivery instruments. The added value and likely effectiveness of several of the measures are unclear.**
- (3) The assessment of proportionality is insufficient. Costs and benefits are not sufficiently presented.**
- (4) The report does not sufficiently integrate differentiated stakeholder views.**

(C) What to improve

(1) The problem definition sets out a very broad and intangible problem. The claimed insufficient sustainability practices in companies concerns a wide range of climate, environmental, human rights, social and health related issues and their internal and external

impacts. The report should clarify what problem this initiative aims to tackle and why it is not sufficiently covered by existing or planned sectoral and horizontal legislation or private sector initiatives. The report should clarify if the problem concerns insufficient sustainable governance in the interest of the company, or companies breaching sustainability and human rights standards. It should describe the magnitude of the problem and how it will evolve, taking into account expected market and societal dynamics. It should clearly establish why the problem cannot be tackled appropriately at the level of Member States.

(2) The report is not clear about why existing sustainability strategies and corporate management practices are considered as insufficient or what in practice companies would have to do to have adequate sustainability governance practices in place. It should substantiate with clear evidence that EU business (including SMEs) do not sufficiently address sustainability opportunities, risks and impacts via their corporate management systems.

(3) The report argues that the problems pertain to more or less all companies independent of their size (all above 20 employees) or sector. What is the risk that SMEs are engaged in unsustainable practices? What is the evidence that companies (particularly SMEs) in all sectors will have the market power to generate real change on the ground through processes of due diligence and directors' duties?

(4) The policy options are too limited and do not sufficiently reflect the available policy choices. Given the sensitive nature of corporate governance, the radical change of approach from existing practise, the uncertainty in terms of effectiveness and efficiency, and potential subsidiarity issues, the policy options should offer a broader and more nuanced range of options allowing for more diverse policy packages, with measures including different levels of ambition, scope and legal obligations. Soft law instruments should be assessed in a more nuanced and balanced way, and be considered in possible combination with selected hard law elements. The need for transitional measures, including experimental or adaptive approaches should be considered.

(5) Overall, the options should provide more clarity on the content, added value and effectiveness of elements included such as due diligence, target setting at company level, directors' nominations or the role of competent authorities. The report should also clearly set out the added value of a very broad horizontal due diligence regime compared to sectoral approaches focusing on clearly identified shortcomings.

(6) The report should clarify how third country businesses would be covered by the initiative and how effective enforcement would be ensured in view of global level-playing-field concerns. It should clarify what standards would apply to third country companies in the value chain and how these would be aligned with international agreements, such as the Paris Agreement.

(7) A more consistent intervention logic should be established, based on a clearer problem definition, specific objectives expressed in SMARTer terms and a clearer link to a wider range of policy options. Costs, benefits, trade-offs, and proportionality of options should be brought out more clearly.

(8) The report should include a more nuanced assessment of impacts on companies, notably SMEs, innovation and competitiveness. It should assess how this initiative impacts on the fundamental rights to conduct a business and on property and ownership rights. Moreover, the report needs to clearly distinguish between having certain practices (e.g. due diligence obligations, sustainability targets) in place and the extent to which they are effective in reaching sustainability or human rights objectives, and having a real world impact on climate, environment and social issues. It should also convincingly show that

these effects could not be reached by other legislation or voluntary corporate initiatives under the baseline.

(9) Given the uncertainty that the expected benefits will actually materialise and the substantial costs resulting from a broad set of measures that would be imposed on up to 2 million companies, the proportionality of the options needs to be significantly better argued. In particular, the inclusion of SMEs in the scope requires a more critical proportionality reflection. Subsidiarity issues also require more attention, given that many SMEs operate largely within national borders and given the national focus of company law. The comparison of options should provide a more convincing assessment of effectiveness, efficiency, coherence and proportionality.

(10) The report should present the diverse stakeholder views better. This should be done in the main text (notably in the problem section and when discussing options and impacts) but also in annex 2, while more seriously addressing the criticism raised by stakeholders and academics. More generally, the report should be revised to present the evidence in a more balanced and neutral way.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

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