

European Commission  
Directorate-General for Justice & consumers  
Rue de La Loi  
1040 BRUSSELS

Paris, 03/02/2021

**Subject:** IFA's position on the European Commission's public consultation for an Initiative on Sustainable Corporate Governance.

Dear Madam, Dear Sir,

IFA, the *Institut Français des Administrateurs*<sup>1</sup> is pleased to respond to the European Commission consultation for an Initiative on "Sustainable Corporate Governance", and is here seizing the opportunity to put its contribution into context.

In May 2019, France enacted a new legislation, entitled *Plan d'Action pour la Croissance et la Transformation des Entreprises*, also known as the *Loi PACTE*, introducing a new principle to the French civil code that a company shall be managed in its corporate interest taking into consideration the social and environmental issues relating to its business (article 1833 of French civil code). Under this law, the French Commercial Code also has been amended so that boards and managements take into account *social and environmental issues* as part of their respective managerial assignments. Also, companies are encouraged to incorporate social objectives to their corporate purpose (*Raison d'être*) as part of their bylaws.

As per its 2020 Annual General Assembly, IFA has adopted a *raison d'être* that builds upon responsibility, sustainability and long-term value creation, enshrining those "sustainable governance" principles in IFA's statement of purpose.

Doing so, IFA is voicing and underlining the engagement of its members who have been embedding ESG and Sustainability matters in their corporate governance practice, while equipping the Board of Directors with clear oversight, expertise and accountability on ESG strategy and integration into business - and its capacity for future returns to shareholders and stakeholders.

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<sup>1</sup> Lien vers la page IFA en anglais

Earlier on, in 2017, a French “Due Diligence law” had been passed, imposing due diligence requirements on large companies. Companies falling within the scope of this law are required to draw up a due diligence plan, which must include “reasonable measures” to identify risks and prevent infringements on human rights, health and safety, and the environment, that might result from the activities of the company, its subsidiaries and companies that it controls. The scope of the due diligence plan also encompasses operations of subcontractors and suppliers with which the parent and its subsidiaries have an “established commercial relationship”.

Such corporate governance principles have also been expressed in the corporate governance code of listed corporations, known as the “AFEP-MEDEF code”, stating that “[the Board] endeavours to promote long-term value creation by the company by considering the social and environmental aspects of its activities [...]”<sup>2</sup>. Set up in 2013, the High Committee on Corporate Governance (HCGE) monitors the application of the Code’s recommendations and assists companies in doing so through its regularly updated application guide.

We trust the above corpus of French laws guidelines and monitoring body, is well-known to the Commission, as are other Member states’ initiatives. Mentioning this context, we wish to relate to the two focus subjects addressed in the present Consultation on “Sustainable Corporate Governance”, i.e. the Directors’ duties of care and the Due diligence duty.

We strongly believe that corporate directors have a major role to play as part of their duty of care to foster due consideration of social and environmental matters. With the conviction that the integration of sustainability into business is a matter of competitiveness and will increasingly be so, Corporate directors (of French companies) are already largely committed to this path and are implementing such good behavior within their normal practice

This is why IFA is naturally supportive of the Commission's initiative to strengthen the EU framework in both fields of corporate due diligence duty and Directors’ duty of care, and would be eager to share its experience of how the French legal framework has been leveraging effective value in this regard.

With the view of making it a successful process in the best interest of European companies and their stakeholders, we would like to highlight some specific points addressed in the questionnaire of the consultation:

- **“Level-playing field & Competitiveness”**: we strongly believe that the European Commission, while setting high ambitions for Member states, should ensure a level playing field in the Single Market and therefore set equivalent rules for non-European companies operating in Europe. It should also tackle the articulation of upcoming EU initiative with existing mechanisms and frameworks (e.g. the

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<sup>2</sup> [https://hcge.fr/wp-content/uploads/2020/02/Afep\\_Medef\\_Code\\_revision\\_2020\\_EN.pdf](https://hcge.fr/wp-content/uploads/2020/02/Afep_Medef_Code_revision_2020_EN.pdf)



the global regulatory landscape. Again, we are determined to foster sustainability as a driver of competitiveness and we expect the EU initiative to support such approach.

o **"Relevant Stakeholders"**: while the consultation refers to "stakeholders", we would suggest referring to "relevant stakeholders" in order to best capture the nature of the Directors' duty of care. The Board of directors should be provided with all necessary information regarding the identification and prioritization of the relevant stakeholders, the risks and opportunities related thereto, in order to make proper assessments. On that basis, we believe it is up to the company (with guidance from the code and not pursuant to law) to identify its relevant stakeholders and to define the ways and means to engage with them.

In practice, the Board is continuously arbitrating stakeholders' conflicting expectations and Corporate Directors are permanently exercising their judgment in balancing short term interest and long term value creation to address complex and moving situations. In straightforward terms, it is in the genuine interest of the company to conduct a thorough mapping of its relevant stakeholders and to be as inclusive as possible.

Should EU proceed with legislation, we would draw on our experience of the existing French regulations and soft law to suggest the following recommendations:

o Corporate due diligence duty for all large European companies and non-EU companies operating in the European market, with a principles-based approach, should be consistent with existing global frameworks. Such principles-based approach should also be conducted in accordance with the principle of proportionality: for SMEs, we recommend that the EU develops non-binding guidelines and - most importantly - capacity building mechanisms to accompany continuous improvement, so to make the EU initiative a lever of competitiveness for smaller players as well.

o Besides the integration of social and environmental issues resulting from company's activities in the Corporate directors' duty of care (as made through amendment of article 1833 of French civil code - see above) the integration of non-financial metrics in the variable short and long term remuneration of executive directors (including climate metrics) should be made, but on a comply or explain basis, to ensure strategic alignment of interests and sound governance.

o Irrespectively of these initiatives, we would strive for the systematization and sharing of Member States' Corporate Governance codes, enforced under national regulators supervision. We would welcome the generalization of national codes promoting principles-based corporate governance standard and including guidance to enhance due consideration of social, environmental and human rights matters.

The European Union has launched a remarkable set of initiatives towards an holistic framework linking the European Green Deal, the EU Action Plan for Financing Sustainable Growth, and ambitious agendas in the fields of sustainable finance, non-financial reporting, corporate disclosure and mandatory due diligence.

We do believe that this approach, while ensuring a global playing field, shall be a formidable driver of competitiveness for European companies.

In line with its *raison d'être*, IFA is forcefully supporting this path and is committed to support Corporate governance practice that builds upon responsibility and sustainability.

Corporate Directors are already playing a key role, as catalysts and promoters of this Sustainability momentum, and we are looking forward to pursuing further discussion regarding sustainable corporate governance and directors' duties.

Yours faithfully,



Denis Terrien  
Président de l'IFA