Diversity of corporate models and governance ignored

The EY study differentiates between companies in different sectors, of different size and listed/ non-listed companies. Like the study the consultation document only refers to “companies” in the broadest sense and considers rolling out measures on all corporates.

This completely ignores forms of company such as cooperatives or mutuals with very different governance structures. Corporate diversity is reflected in the Treaty (Article 54) and EU law, especially. Council Regulation (EC) No 1435/2003, which underlines that *“Cooperatives are … entities with particular operating principles that are different from those of other economic agents”:*

- The principal object of is the satisfaction of members’ needs and development of their economic activities.
- Profit is relevant, but not primary purpose.
- Membership is normally open to all citizens.
- Members vote in the general meeting, generally on the basis of the democratic principle (one member, one vote).
- In most cases, membership requires participation in the cooperative capital with limited remuneration: members receive dividends, but usually the major part of the profit goes to the reserves.
- Members acquire shares at face value and never get back more than the face value when leaving

These interacting elements create a unique governance structure with a member/customer-orientation. The approach to business is long-term oriented and a usually broad member basis ensures a sustainability and community focus

Neither the study nor the consultation document make any caveat or indicate that cooperatives and mutuals were not examined and that accordingly its results would not apply.

We reject the validity of the study and its conclusions for cooperatives and mutuals. Any measures considered by the Commission should not be applied to cooperatives or be applied in a way that is appropriate to the governance structures of cooperatives.

Performance and Profitability

We question the universality of statements such as *“New research about the COVID-19 crisis also shows that companies with better social and environmental performance are more resilient in the crisis.”* Banks do not master a crisis due to their social and environmental performance, but due to a sustainable and profitable business model. Thus, any approach to the measurement of the performance of companies must not ignore or overrule economic (“E”) aspects (EESG approach).

Due diligence

Supply chain due diligence rules should apply exclusively to business activities outside the EU and only with regard to business relations with partners established in third countries. There should be a general presumption that companies’ activities and transactions in the EU are in line with the national law and EU frameworks and comply with the relevant standards regarding environment, social and governance aspects (rule of law).

Directors’ duties

While companies and their directors should take into account ESG aspects in corporate decisions alongside (financial) interests of shareholders, the situation of cooperatives differs from other companies. Their specific governance needs to be reflected.

ESG risk

The ECB Guide on climate-related and environmental risks and other banking regulation is already demanding an adequate knowledge and understanding of ESG risk by executives. The rules envisaged by DG Justice should be aligned to those rules.

Directors’ remuneration

Bank-specific regulation on remuneration already takes a holistic approach and stimulates sustainability-oriented behaviors. The integration of ESG-risk into banks’ risk management will even more reflect ESG factors in the risk-focused remuneration rules. Hence, an overrepresentation of ESG targets in banks should be avoided. As the legal framework on remuneration for banks is already very complex and a significant disadvantage on the labor market more complexity has to be avoided.