February 2021

**Subject: EU's Public Consultation on Sustainable Corporate Governance and the B Corp movement**

B Lab Europe welcomes the opportunity to submit a response to the **European Commission's public consultation on "*Sustainable corporate governance*"** and applauds your efforts to embed sustainability into corporate governance at the EU level.

We represent the B Corp movement in Europe and are committed to transform the global economy to benefit all people, communities, and the planet through economic systems change. Our global network creates standards, policies, and tools for business, and we certify companies—known as B Corps—who are leading the way towards stakeholder capitalism in meeting performance standards and in their corporate governance structures. B Lab's vision is for an inclusive, equitable, and regenerative economic system, which we believe anticipated and today aligns with the objectives of the EU, particularly after the adoption of the European Green Deal.

Based on our decade of pioneering experience in self-imposed stakeholder-aligned corporate governance structures, we see mandatory sustainable corporate governance as the privileged instrument to change how companies operate and how they are governed.

**The B Corp movement – progress to date in Europe and beyond**

We would like to introduce the B Corp movement to you to provide additional context for our response to the public consultation. In particular, we intend to highlight and share the lessons learned over the last five years of the B Corp movement in Europe. Since its launch in the US in 2007, the B Corp Movement has now grown to over 3,800 certified B Corps in 72 countries (600 in Europe), and over 70,000 users of the B Impact Assessment (our impact measurement system). The extraordinary growth of this movement globally and particularly in Europe, since its establishment here and the UK in 2015, is a testament to the momentum for a change in corporate governance. Last year alone, over 600 companies in Europe submitted an assessment to be considered for B Corp status. Examples of companies that are B Corps include multinationals such as The Body Shop International (UK), Chiesi Pharmaceuticals (Italy), over 35% of Danone's subsidiaries (globally), and large publicly listed companies such as Natura (Brazil), Amalgamated Bank (US) and Benefit Systems (Poland). Also banks and financial institutions, such as Caisse D'Epargne, (France), Raiffeisen (Switzerland), Mirova Asset Management (France) and Triodos Bank (Netherlands) are certified B Corps with stakeholder governance embedded into their structures. Whilst many other multinationals use the B Lab products as management tools (e.g. the B Impact Assessment and SDG Action Manager), the large majority of B Corps globally are mid and small size businesses. Beyond the EU, stakeholder governance structures embedded in Benefit Corporation legislation have been passed into law in 39 jurisdictions in the US (where it has enjoyed an almost 90% approval rating on all votes from legislators in both parties), as well as Canada, Colombia, Peru and Ecuador. Efforts are moving forward also in Argentina, Chile, UK and many others. In the US, this legal form is referred to as Benefit Corporation; in Italy it is referred

to *Società Benefit*. There are now over 10,000 companies globally that have voluntarily adopted this Benefit Corporation legal form. This cohort of companies provides a powerful and positive active test case that should inform the considerations of your consultation.

**B Corp Legal framework for stakeholder governance and its implications**

One of privileged methods to attain B Lab's vision is by driving company change through a stakeholder governance legal structure. The B Corp Legal Framework requires companies to adopt a broad purpose to create material positive impact on society and the environment and to modify its directors obligations so that they are required to consider the impact of their actions on all their stakeholders. The intention of these legal changes is to ensure that ALL decisions at the company, whether it is a decision about taxes or wages or factory location, include an analysis of how it would impact the company's stakeholders and that there is accountability for this consideration. The B Corp Legal Framework is integrated into the governing documents of the company and becomes the fundamental legal DNA of the entity, to ensure it is also harder to change. Generally, amendments to governing documents require a shareholder vote, while amendments to other rules might only require board approval.

**B Lab's vision for European corporate governance**

We see three key building blocks that are essential to move to a corporate governance regulatory framework in the EU and beyond to serve the emergent and urgent needs of our people and planet.

1. **From voluntary to mandatory stakeholder governance**
   While corporate law in many EU countries does not inhibit directors of companies from considering stakeholders' interest when undertaking decisions, these "permissive statutes" are clearly not enough to change behaviour at scale, or urgently. They have so far failed to create widespread consideration of these stakeholders' interests. However, voluntary adoption of this approach falls short and does not satisfactorily address the existential risks to our planet and the inequitable distribution of returns from business. To address this, B Lab has created its own 'language' to go beyond permission and *require* directors to consider these interests. As a small but growing group of pioneers, B Corps provide a powerful demonstration effect to build on. For this reason, we argue strongly that we have to move to a mandatory requirement to consider these interests, one that is aligned across the EU and which may pave the way for global adoption of stakeholder corporate governance.

2. **Alignment the two sides of the coin - investment and corporate governance**
   Incentives are misaligned across the economic system. Today, more than ever, it is essential that companies and institutional investors are required to adopt sustainable corporate governance models to ensure that the capital markets look beyond individual company financial returns and take responsibility for the impact of businesses and investments practices on society and the environment.

   Our B Corps which are active in the financial and investment sector have highlighted the need for the Sustainable Finance Directive to be thoroughly aligned with the expectations of future sustainable corporate governance. For this, it's imperative to ensure that the sustainable finance taxonomy metrics that investors will soon be required to report on, align with those that the directors of companies are mandated to take into account in their decision-making process (some of which may be their investment targets).

3. **Create EU-wide aligned requirements**
   In some EU member states, B Corps have experienced significant hurdles while trying to embed stakeholder governance models in the articles or statutes of companies. For example, in Italy,

several Chambers of Commerce initially rejected attempts of B Corps to restructure their Articles of Association. Likewise, Italian public notaries opposed an attempt to incorporate stakeholder considerations into the legal DNA of a company. Ultimately, a new legal form of company was created - the "Società Benefit"- for which the corporate governance rules were modeled after the Public Benefit Statute from Delaware, US. B Lab and its national partners successfully advocated for this legislative effort in Italy and the Association for Società Benefit companies and the B Corp community are actively engaged in promoting this legal option.

In other countries, like Finland, B Corps report that they face seemingly fewer legal obstacles. Yet, as of now, they have not made any attempt at altering their articles of association or statutes to reflect sustainable corporate governance models. Thus, in those jurisdictions, it remains unclear and disputed whether this will be possible. Companies assume that the law does not prevent the inclusion of stakeholder interests in their operations, but until it is tested, this remains to be seen. Uncertainty also exists in other jurisdictions, such as Poland. Unlike Italy and other member states, company law in Poland has not been tested yet to see whether it might accommodate stakeholder governance requirements. This has a chilling effect, holding back progress as companies do not pursue adoption of these articles in case they create additional risks for investors and shareholders. Additionally, for larger publicly listed companies, dissenters' rights and forced share buyback may be triggered if shareholders decide to vote against these legal changes proposed by B Lab (because, for instance, they perceive that the legal uncertainty is too great). All of this creates roadblocks for sustainably-minded companies and their directors, and at scale may hinder long term value creation for both shareholders and stakeholders of companies.

Moreover, as illustrated in France, inconsistent or competing legal frameworks for metrics and reporting may create unnecessary hurdles for companies and confuse investors to the point of defying the aim pursued by such sustainability measures. By aligning reformed investment and corporate director fiduciary duties, investors will act as responsible owners of companies to ensure they live into their new duties.

The resulting situation of regulatory divergence calls for the adoption of EU-level sustainable corporate governance legislation, beyond existing environmental sustainability requirements. Directors should be legally empowered to consider and weigh up the interests of stakeholders alongside those of shareholders to determine the right course of action, and to be legally able to prioritise the interests of one stakeholder group over another including over shareholders, where appropriate. Furthermore, based on our B Corps' experience, proposed EU legislation should go even further and provide for mandatory inclusion of these stakeholders' interests in the decision-making process of the directors of the company.

Based on this real-life experience gained across and beyond the European Union, we share with the Commission the collective experiences and main benefits perceived by B Corps operating under stakeholder governance models in different jurisdictions. The main benefits are shared in the consultation response but are summarised below.

**Benefits of stakeholder governance according to European B Corps**

In a recent survey, B Corps identified several benefits from enshrining **duty of care** into their business model, including:

- Mandatory sustainable corporate governance can reduce the real cost of capital; some B Corps (on a qualitative basis) report that the cost of capital for companies governed in a sustainable manner may generally be lower insofar as the risk premium that lenders or investors demand

is lower. This approach was adopted in the case of Danone's EUR 2bn 5 year syndicated credit in which the interest rate on the loan was inversely and directly tied to two variables: a) B-Corps certified sales and b) agreed ESG Ratings;

- Attracting and retaining employees: new employees seek to work for purpose-aligned organisations (71% of B Corps said people joined them because of their standing as B Corps, that prioritised people and planet (2019);

- Attracting new types of clients, including clients who are 'aligned' with this sense of responsibility and increasingly selecting clients on that basis;

- Increased trust and satisfaction from consumers ; trust leads to long-term relationships. To quote one B Corp, " *(the B Corp model) has highlighted strengths during the Covid period. This business structure brings solidarity, trust and balance"* ;

- Reputation enhancement :"*it lays the basis for collective action that makes our company credible and noticeable despite our small size",* says one tech company referring to selecting clients based on aligned values. B Corps refer to better interactions with communities, as companies treat their local communities as valued stakeholders and contributors to their success.

With regard to **due diligence**, surveyed B Corps have found that their approach "creates trust from both customers and suppliers", and describe it as a proportionate investment rather than a cost. Overwhelmingly, B Corps cited **long-term loyalty** as a key benefit. An EU wide, mandatory sustainable due diligence legislation would need to entail a set of proportionate requirements, so as not to over-burden SMEs, while still aligning management and supervisory boards' fiduciary obligations with interests of all stakeholders, not just shareholders. This would ultimately guarantee the respect of human rights and sustainability.

**Conclusion**

Amid the major transformations facing our society, the moment to introduce these changes at a pan European level has come and must not be missed. Businesses at large have to change, and must be used as a force for good, not just for profit. Our global community of B Corps prove that more and more entrepreneurs, directors and companies understand this and want to see and participate in meaningful change. The EU now has a unique opportunity to be at the forefront of a stakeholder economy, and turn it into the new norm. By undertaking this legislative effort and leveraging on its large market, the EU will set the path for others to follow. We urge the EU to be brave in the legislative choices it faces. Our experience shows that the corporate practice of stakeholder economy has a positive impact on all stakeholders (including shareholders) and has a strong business rationale. Our B Corps are a testament to this. We would be delighted to share further learnings with you in your next steps of consideration.

Yours sincerely

DocuSigned by:
Katharine Hill
4ED72E70911C4EE...

Katie Hill
B Lab Europe, Chair of Management Board

Professor Alberto Alemanno
Founder of The Good Lobby,
Professor of Law, HEC Paris

**Below are signatures of European B Corps and European B Lab partners:**

Tom Bosschaert
Except Integrated Sustainability

Dr. Marcel Pietsch
PNZ-Produkte GmbH

Ethan Krohn
enie.nl

Mette Seiding
JJW Arkitekter

Mickael Keromnes
Cedreo

Léopold Coppieters
Skysun

Jaap van den Hoek
The Change Collective

Miquel Perdiguer Andrés
PENSIUM SL

Marcel Compte Orriols
OMPLIM Gestió i Edificació Responsable

Paul Passenier
Bruggink & Van der Velden Advocaten (BvdV)

Joan Alexander Olivella Martinez
Pablo Sanchez
B Lab Spain

Laura Gori
Way2Global Srl SB

Claudina Caramuti
CANVAS Estrategias Sostenibles

Janneke Wagner
B Lab Germany

Roberto Ballester Fuillerat
Felidarity, SL

Luis Amado
B Lab Europe at Portugal

Jeanne Deslandes
Agence Pixelis

Sara Gnoni
The Positive Project

Alexander Swagers
Synergie

Niels Bonefeld
Baisikeli ApS

Marek Talarczyk
Netguru

Marta Mendes
Symington

Tiago Pessoa
Agri Marketplace

Juan José Manzano Sánchez
AlmaNatura

Catarine Soares
The Manipedi

Raphaël Vullierme
Luko

Sabrina Toscani
Organizzare Italia Srl SB

Silvia Mazzanti
Save The Duck S.p.A.

Juan Ignacio Bautista Sánchez
Fundeen

Oscar Di Montigny
Be Your Essence S.r.l.

Myriam Ines Giangiacomo
Bottega Filosofica srl Società Benefit

John C Scade
Managing A Sustainable Business, S.L.

Rafal Mikolajczyk
Benefit Systems

Lina Ruiz
WeTransfer

Francesco Botto Poala
Successori Reda Spa

María Molina
Gabeiras & Asociados

Giorgio Stancati
Farmacia degli Arsenali s.r.l.

Benoit Doithier
Antica Erboristeria SpA –
Società Benefit

Claudio del Tufo & Andrea Grillenzoni
GARC S.p.a.

Paolo Di Cesare & Eric Ezechieli
Nativa

Marco E Tirelli
Tirelli & partners s.r.l.
Società Benefit

Pavithra Ram
Tony's Chocolonely

Pablo Sanchez
B Lab Spain

Elisabeth Laville
Utopies

Paolo Braguzzi
Davines

Tiziano Capelli
Primate s.r.l.
Società Benefit

Alessandro Cremona
GOLDMANN & PARTNERS s.r.l.
Società Benefit

Martina Dell'Antonio
Habitech - Distretto Tecnologico Trentino S.c. a r.l.

Bodo Schulze
neu.land GmbH

Andy Schmidt
Pearl Consulting

Yael Guillon
Imfusio

Olaf Elderenbosch
Elho Group

Alonso de la Fuente
Impact Hub

Pierluigi Scordari
N&B Natural is Better

Sónia Coutinho
Phytoderm

Virginia Yanquilevich
Dopper B.V.

Alice Siracusano
Luz s.r.l.
Societa` Benefit

Elizabeth and Nicolas Soubelet
Ma Bonne Etoile ("Squiz")

Veronica Brunelli
Euro Company s.r.l.
Societa` Benefit

Paweł Niziński
Better

Daniela Gonzalez
B Lab Benelux

Nille Skalts
Märk

Alberto Alemanno
The Good Lobby + HEC Paris

Wojciech Baginski
Attorney at Law

Laurene Chenevat
Mirova

Jonathan Normand
B Lab Switzerland