



# CONFERENCE

## Does ethics pay?

### The view of directors

#### Brussels – 4 april 2006

### Introduction

***Daniel Lebègue, Former Chairman of ecoDa***

The European Confederation of Directors' Associations (ecoDa) is celebrating its first year of existence by organising this conference today. Considering the vast number of attendees, I am very pleased to see that we have managed to raise our profile towards European stakeholders since our launch event at the European Parliament, in April 2005. We will pursue on that direction to affirm us as a high-level forum for debate and for the exchange of experiences on corporate governance.

Beyond its three founder institutes, the *Institut Luxembourgeois des Administrateurs* (ILA), the Finnish *Association of Professional Board Members* (Hallitusammattilaiset ry) and the Spanish *Instituto de consejeros – Administradores* joined ecoDa. We have got good contacts with national institutes from eastern countries with which we expect to conclude new membership soon. In order to increase its legitimacy, ecoDa will act as a persuasive tool to encourage the creation of new national institutes for directors where no specific bodies exist.

In order to promote high standards for directors, I am pleased to announce that ecoDa has just offered to its members the possibility of bilateral cross membership system. A director affiliated to one national institute would be able to join another institute providing reduced fees. The director will then benefit from all services and facilities supplied by both of them. The system will generate practical benchmarking and promote best practices throughout the European Union.

EcoDa replied to different draft directives and consultations which were already in the European legislative pipeline. EcoDa intends henceforth to make the voice of directors heard at early stages and to raise discussion and new debates like the one today on ethics and corporate governance.

As guardians of a company, directors have to ensure that the company is ethically conducted with a sound strategy and transparency. Directors have an important role to play by pursuing corporate ethics despite business pressures. Ethics in business is not a theoretical issue, it requires high standards for directors, on which ecoDa has already been working for a year. We are convinced at ecoDa that ethical behaviour will prevent from unnecessary and burdensome legislation as it exists in the United States.

The aim of the conference is to bring together directors, executives, professionals and academics for reflective and useful presentations on these topics. The presentations will be very brief focusing on key messages. John Plender, who kindly accepted to be our moderator today, will pay particular attention to the timing. I would



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appreciate if time could be let for questions or comments. Rather than advocating a single position, we aim in the presentations and the discussions to mirror the variety of perspectives.

The first panel will feature presentations from different stakeholders while the second one will present the specific view of board members.

It is high time for me to give the floor to our key note speaker, Alain Etchegoyen to who I would also express my thanks for accepting to give us a philosophical view of today's subject.

## Key Note Address

### ***Alain Etchegoyen, Philosopher***

As former responsible for the first chair of business ethics of the ULB and former director of USINOR, I see clearly what you mean when you speak about ethics of business. From my experience, I would start from an empiric observation: when I see a company which I do not know, and when I hear immediately about ethics, that worries me. There is something worrying to show off thus its values.

The majority of the companies which have ethical practices do not make publicity of them. The first chair of business ethics at the ULB received support from companies which remained anonymous. Morals and ethics have different origins, Latin for the first, Greek for the last. Their difference is the same as between multilingual and polyglot, multiform and polymorphic. As soon as this difference is developed, confusion appears. Each philosopher has his own definitions. Ethics refers to a distinction between good and bad, and to the concept of duties. The difference between good and bad predominates.

The statement according to which "ethics pays" forms part of the important number of causes which led European companies to equip themselves with declaratory ethical texts ("code of good conduct", "ethical charter", "code of ethics" etc).

In my opinion, if one has to classify these reasons from the worse ones to the best ones, I would classify them as follows:

1. Vulnerability to American models
2. The statement according to which "ethics pays"
3. Image strategy
4. The developments of the penal code (especially for France with its new penal code of 1994 which establishes the *criminal liability for the legal entities*).
5. The relation between *Principles of action* and concepts like *identity, culture, or the soul* of the company
6. The response to a general request for morals vis-a-vis market economy and vis-a-vis triumphing capitalism.

I will not examine all these reasons but will concentrate on the second one which constitutes the main point of our debates, but which is very linked, in a contingent way to the first one and, in a necessary way, to the third one.

**1. "ethics pays" is an arbitrary and dangerous statement which is based on a metaphysical conception of ideological type.**

The statement according to which "ethics pays" can be interpreted in two manners:

- either, this involves an argument of rhetoric to convince (or persuade) managers of companies that they must give an ethical dimension to their strategy or to their management. As the agenda of the Summer school of the Medef (2003) shows it, it is explained that *respect of the values* is an excellent asset for the *creation of values*. One refers then not to the sense of duty but to intelligence or to long-term interest. The ethical dimension can not be resumed to a simple calculation of interest, or what Kant named a *prudence imperative*. The argument is subtle. It refers to logic of usefulness: after all, *it is the result which counts* and little matters the reasons which urge the companies to act *morally*.
  - or, it is not a question of an argument but of a real conviction. It is supported on a metaphysical preconception of ideology: if *ethics pays*, if therefore *ethics is profitable*, if the company which acts well is a company which will succeed, that means that *the course of the world is moral*. It consists of canonizing retrospectively the company which succeeded: if *the course of the world is moral*, if *ethics pays*, then, the best one in an *economical* also is the best one *morally*. In other words, being a leader on a market also means to be a paragon of virtue!

The former President of Paribas, André Davidland, said that people start to speak about ethics in the United States from one billion dollars of turnover. In the film "Barton think", of the Cohen brothers, a producer told to a young director arriving at Beverly Hills that: "all I have I gained it because I have always acted morally, I joked, if I had acted morally, I would be cleaning the swimming pool".

These statements which canonize and consider sacred the economic system in which we live are completely arbitrary and it is in that they are ideological. They must therefore *be suspected*. As it also is advisable to criticize the ideology which would claim that only immoral behavior is paying. In fact of some gangsters gain and others lose, virtuous gain and others lose. In relation to the ethical attitudes, successes and failures are fortuitous or random.

One does not educate in the same way according to whether the intelligence is put ahead or calculations of interests or by calling for duty.

2. **The effectiveness even of the formula "pay ethics" is very often correlated to an image strategy which perverts the ethical dimension likely to be given to the development of *principles of action* by the company.**

This vision is however partial and too mechanist. Most of the time, those which consider that *pay ethics* based themselves on the mediation of a communication which would give to the company an excellent image. The initial formulation "*ethics pays*" must then be re-examined and added to mediation: obtaining an ethical image pays because this image inspires confidence.

This statement seems opened to criticism to me from a double point of view:

- a) Firstly, there is some naivety to think that the receivers of an ethical communication are enough simple to believe an issuer which says asset of himself. In the common, interpersonal experiment, we know although nothing is more worrying than a repeating person several times "*I am honest*". Only acts convince us of virtue. The remarks of employees, of suppliers or of customers of a company are much more effective than the self-satisfied statement which declares its own virtue.

Secondly, the development of an ethical image policy perverts radically the will to endow a company with ethical principles or with authentic principles of action. Most of the time, when a company conceives its own ethics to communicate it outside, the company is led to lie as from the first line. With the experience, we learn that the more often a company communicates about ethics outside, the more suspect the company is. The less the company communicates on it, the more the company is reassuring. Repeating that one is honest causes anxiety for people outside the company. The values of a person have to be recognized by a third party. When a virtue is exhibited, suspicion occurs.

- b) Each one remembers the Enron case, a company considered for several years as a model because of its ethical charter....

In France, there is no more confidence in companies. A documentary on Moulinex (which does not exist) referred to employees' interviews; the list of interviewed persons was mentioned at the end as well as what they had become, the managers' compensations were presented too. Deficiency towards companies is very important. The risk no longer appears on the managers' side.

3. **The conditions of happiness for an authentic development of the *principles of action* and the advent of a moral dimension in companies involve: intimacy, singularity, identity, freedom of word and operational character —in the management of human resources —of the advanced principles.**

- a) The aforesaid critical remarks could not prevent from ethical reflection *on* and *for* the company. However "earnings" or "profits" of ethics have to be conceived as happy consequences and not as calculated objectives. Pride, team spirit, consistency of the behaviors resulting

from ethics effectively implemented are sometimes undeniable and it is so much the better! But it must be known that the idea of ethics itself can lead a company to contradictions in comparison to its own interests. This is why; I think that ethical issues arise firstly in the relations with suppliers: the customer's satisfaction is completely coherent with the interest of the company and moral tensions are there less living!

- b) I believe that a company can very well think about its *principles of action* and formalize *them*. A first series of conditions resides in the internal character, almost intimate of such a step. Principles do not have to be interchangeable from one company to another, but well express the identity and the singularity of the company according to its professions and to its markets. This preliminary reflection does not have to be mortgaged by the immediate concern for an external communication or for a positive image to be developed.
- c) Consequently, these principles of action (or ethical principles) have to be operational. Their formalization has to enable a real transmission in the company through all the management of human resources: recruitment, reception, training, management of the careers etc. It is often very astonishing to note that the principles advanced by a company constitute hardly evaluation criteria at the time of annual statement.
- d) Lastly, there is no real ethics without real *freedom of speech in the company*. Too often the company is pleased to mention in its annual report that there is no transgression... in fact, it is probably a worrying symptom: a company who implements the ethical principles set up by itself, has to allow its employees to question, to challenge one or other behavior being contradictory with these principles. In other words, the first principle of an ethical operation consists in requesting consciences and even in ensuring freedom of speech within the company.

#### Conclusion:

Ethics in the company first consists in developing the concept of responsibility and in avoiding some words of misleading of our time, such as for example the dangerous *Transparency* word which is often used in the political and economic spheres. Admittedly, a company has to give or deliver useful information. But the moral ideology of *Transparency* —positive moral value not to be found in all the history of the thought!!!—, represents a real danger for our freedoms.

*Transparency* is a false value, dangerous for our freedoms. It is the result of the bolshevist ideal in the market economy which supposes that one have to know everything about everyone. A Board of Directors does not have to be transparent, but responsible. The question is not to know what a leader gains, but if it deserves its remuneration. *Transparency* is the convergence of two



perversions: voyeurism and exhibitionism. Shareholders and employees have to receive useful and usable information. In all the history of morals, never transparency was presented as a virtue. It satisfies a desire of police force. Only responsibility is virtuous. Secrecy is the guarantee of freedom. All the professional secrets are challenged today. All the words dealing with confidence require secrecy. Transparency does not generate confidence.

Ethics often appears like a constraint, but it enables to invent. Towards Paul Valéry, one has more capacity to innovate in alexandrine lines than in lines with 10 feet. When a dancer wears too narrow ballerinas, this enables her to invent a new dancing step.

## **First round table: “What does ethics mean for boards? – view of different stakeholders”**

### **“Links between ethics and corporate governance”**

***Philippa Foster Back, Director of the Institute of Business Ethics***

There is a link between ethics and corporate governance. Companies and individuals are concerned. Ethics is to do more than what you are legally required to do in order to fulfil your legal obligations. Drivers, leadership have to lead companies to do better.

The definition of Business Ethics is the application of ethical values to business behaviour. It deals with openness, responsibility and integrity. The main question is how the company does its business. We do not look at the products. At the early stage, there is a consultation process to produce a code of ethics that will be often put on line on companies' website and talk about it on their corporate social responsibility report. The document will be used internally; it is the expression of how we do business.

The code and its message will be circulated within the company. Training must be organised to create a consistency of conduct within the business so that everyone will know how to face a critical dilemma and what they are expected. The company culture will set the tone of the attitudes. Is it going to be a tick boxes exercise or a meaningful process?

Having creating this code, you hope then to have reduced risks. If you have any risks, you might have a problem of reputation and it will lead to difficulties in terms of financial performance.

If we look at the drivers that have caused companies to look at business ethics, there are a number: Media & NGO interest, corporate governance, growth of socially responsible investment, conspicuous corporate misbehaviour, employees concerns, legislation, and public perceptions.

Concerning corporate governance, the first statement in 1992 from the Committee on the Financial Aspects of Corporate Governance (Cadbury Report), it is important that all employees should know what standards of conduct are expected of them. We regard it as good practice for boards of directors to draw up codes of ethics or statements of business practice and to publish them both internally and externally.



Prior to 1992, less than 50% of the major UK quoted companies have a code of ethics. Today almost the full one hundred have a code.

Does ethics pay? According to a previous study made by Business ethics, it occurred that companies with codes did better financially than the others. As the sample was small, it is no significant statistically, but it is obvious that the management has an important role to play.

Ethical leadership means good behaviour (openness, transparency), to take the initiative (by dialogue and engagement and make the connections) and to set the tone. Ethical managers should demonstrate five attributes: openness, fair minded, honesty, courage and ability to listen (the key one).

Concerning the key behaviours, it is important to be open minded and cultivate themselves and others through willingness to learn, be independent and willing to stand up and be counted, to challenge the status quo; be aware and know that doing the right thing is the right thing to do; be considerate and cautious in managing expectations; be determined and direct without fear of confrontation; actively stamping out poor behaviour.

The link between ethics and governance is demonstrating that you are doing more than you have to do and you are doing that through attitude, setting the tone, leadership and examples. If you do not get the right attitude, governance would become a tick boxes exercise and in a long term it is not sustainable.

## **“What can be expected from directors within a European Management model?”**

**Dirk Ameel, executive officer, Eurocadres**

Eurocadres' Membership is composed by organisations linked with ETUC (more than 5 million professionals and managers throughout Europe). Eurocadres work in all branches of industry, both manufacturing and service, and in the civil and public services. Eurocadres is recognised by the European Commission as a European social partner, it represents P&MS on European level, it participates in social dialogue at European level and it achieves specific P&MS (professional & managerial staff) framework agreements. Its key areas are mobility, education & training, recognition of competences, life-work balance, gender gap in decision making functions, European management model. Eurocadres did some work on responsible management.

A responsible board of directors is a question of vital importance. They have to be aware that a larger group in society is investing not only employees (work), but also customers (confidence, trust), suppliers, community (infrastructure, education), environment and social organisations. These stakeholders, these different groups have a diversity of interests, also 'conflicting' interests and frames of reference - , but they are influencing or being affected by the activities of the company.

A responsible board has the duty to advocate the long term' interest and the broad interest of the company which comes down to all the challenges in the community. The broad interest is a dynamic concept: Objectives evolve with social demands, requirements and product developments. The role of a responsible board is just to



complement the economic and financial aims with 'social-ethical' aims. The responsible board tries to picture concretely the 'sustainable' benefits & profits (not only in financial terms but also in social terms too). It means critical loyalty to the shareholders. The board must take different shareholders and stakeholders into account and advocate 'responsibility' in management, motivating all parties.

Responsible management means societal accountability instead of unilateral 'financial accountability and shift from short-term thinking to long-term planning and anticipation. The value-based management instead of unilaterally business-driven defines the set of values and principles that will drive the company's behaviour and attitude. Social audit is complementary to financial audits. Companies must act as "*learning organizations*" including personal development, knowledge sharing & lifelong learning for people, providing the appropriate environment for diversity, equal opportunities, openness, transparency, awareness on sustainability & societal responsibility, skills, a clear-cut and systematic 'responsible' policy with impact on the whole organization, and promoting responsible behaviour.

Not a lot of companies are developing social audit. There are a lot of social ethical reports, in the UK specifically. But social audit is more important, it gives the opportunity to start the dialogue with shareholders. It is not only a report. Many of these reports are not understandable for everyone. Social audit must define objectives, priorities, values; select and identify stakeholders and their expectations; criteria to assess (relevant, measurable, comprehensible, comparable; external verification). It is an opportunity for 'real' participation of all partners (social partners included): it can promote higher motivation and better 'performance', enhance 'quality' of human resources policy and it is a chance for upgrading social dialogue & participation. Social auditing might also enhance Corporate Governance (not limited to the relations between directors, managers and shareholders) in value, by adding 'social' and 'sustainable' issues to the agenda. Social auditing creates also a 'climate of ethical option' which supports managers & employees who want to assume their social/ethical responsibility.

The key challenges for directors are to implement these views and proposals, how to create the criteria to assess and to organise responsible European management and to create a feasible framework for discussion. They have to cope with constantly changing roles, expectations, labour market demands, societal contexts, to join discussion on responsible management & values and to discuss instruments which can measure the company's performance on 'responsibility' and report on it.

The commitments of the directors need to be discussed. Within the companies having social and ethical reports, the intentions are applied differently in economically developed societies and countries with poor legislation and politics. Another question concerns self-regulation versus regulation. 'Incentives' for responsible management should be given as well as 'legal & feasible' framework' for responsible behaviour.



## “Ethics, hard law or soft law?”

**Jean-Louis Duplat, Senior advisor Ernst and Young, Former President of Commercial Court, and of the Banking, Finance and Insurance Commission (CBFA)**

Should the principle “*comply or explain*” be applied in codes in Western Europe,? That is a central question, in particular in the political world. Excess of legislation must undoubtedly be avoided; it is already very difficult for persons responsible for listed companies to explain in which and why they depart from a code. The regulator is not the first judge of the application of codes and of its exemptions, for the listed companies the shareholders are the ones who should be able to consult the documents. Given information has to be reliable. But the addressees of societal information are not trained enough. In terms of governance of company, Medias are concerned only with the problem of remunerations of the controller.

The second shelf that must be avoided is to check that the company meets the various criteria of the codes by using the method of “*boxes ticking*”. Very often there are various reasons for which a company gives information which does not follow completely the recommendations of the codes. A major challenge in the future will be to organize dialogue between shareholders' institutional representatives and issues in fields not considered by codes. Codes mention insufficiently shareholders' rights. It is not easy in certain countries for even an institutional shareholder to take part in a general meeting of a major listed company. The problem of “*one share, one vote*” is essential. Does the leader act deontological by using the capital permitted out of right of preferences while the interest of shareholders does not go in this direction? Codes have to be subject of fundamental reflection on the role of shareholders.

The principles of ethical behavior are essential for companies. It is important to draft reference documents like the definition of the strategy to be followed in terms of means, of human resources and of markets as well as an ethical charter. The latter is still developed insufficiently, it has to revolve around five concerns – which can not be found often in annual reports -: those of customers (who have to be informed of the banking transaction costs, of product quality and who sometimes undergo anti-competitive behaviors), those of employees (the cost assigned to the permanent continuing training of employees and promotion chances must be specified to them, as well as profit-sharing, proper functioning of the board of the company which has to include relevant persons), those of the suppliers (important to know how products are manufactured). The societal responsibility also must be pointed out: the company has vocation to grow, to safeguard jobs, to create new jobs in a world in rapid development. The responsibility with respect to the shareholders who have to be informed must not be forgotten, they should be able to take part in the debates to allow them taking decisions.

The ethical charter does not require legislative intervention. Each company has to determine itself what are the best means to achieve the objectives set up by the company either listed or not, belonging to the commercial sector or not.

**« Measuring ethics within corporate governance »****Justin Reynolds, Director of corporate programmes,  
Institutional Shareholders Services (ISS) Europe**

ISS has written a paper on the link between Corporate Governance and long term performance. Over the last five years, ISS has been collecting data on Corporate Governance from 8000 companies using them for different researches and delivering them to 1600 institutes and clients that ISS has.

Two external studies (Rob Bauer: Empirical Evidence on Corporate Governance, 2003 and McKinsey: Global Investor Opinion Survey on Corporate Governance, 2002) and ISS own internal study (ISS: Corporate Governance Quotient Regression testing against Performance, 2005) have concluded that there is a link between well governed companies and long term performance and a reduced cost of capital and equity risk. Well-governed companies represent higher return and lower risk. Investors trust well-governed companies and active investors earn superior performance.

The survey of McKinsey Global Investor (Opinion Survey on Corporate Governance, 2002) using ISS data is about what investors are willing to pay for well governed companies. About 78% of them are ready to pay a premium for well governed companies. The same survey considers also the relationship between rating factors and performance metrics. Responding to the question "how important is corporate governance relative to financial issues, e.g. profit performance and growth potential, in evaluating which companies you will invest in?", 56% of the investors considers Corporate Governance as important.

In another survey from ISS (2005), it appears that there is strong relation between well governed companies and long term performance. Companies in the best practice group, i.e., those having fully independent nominating committees, have lower volatility relative to companies without a nominating committee or companies having insiders on the nominating committee. Another chart illustrates the relationship between one of the profitability measures, ROE, and the nominating committee composition. Companies with fully independent nominating committees have greater ROE than companies with insiders on the nominating committee or no nominating committee. Another chart shows the relationship between return on assets and companies having compensation plans with reasonable costs and companies having compensation plans with excessive costs. It seems that companies in the best practice group (i.e., those having compensation plans with reasonable costs) outperform companies in the worst practice group.

As James Wolfensohn, President, World Bank, said "The governance of the corporation is now as important in the world's economy as that of the world's governments". -

**Discussion:**

*On the role of the board concerning codes of ethics:* Board members are jointly responsible for the code of ethics and impose it to the management. It is a commitment of the board but in practice the management team (top managers and employees) need skills and tools to implement it. The board is responsible for ethics and it has to be convinced that lack of ethics has a cost.

*Notion of ethics:* various open questions were raised such as: "Is it ethical to make market constraints prevail over employment?", "it is ethically responsible for a company to open its markets to countries with very different ethical criteria?" It is important to put pressure on the governments of the countries without ethical criteria to change things.

*On culture of compliance:* it is unrealistic to think that codes of ethics could cover all situations that could occur. In the United States, ethics has come out to the law; in the European Union, the law has come out to ethics.

## **Second round table on Codes and deontology: "What should an ethical board look at?"**

### **"What place for ethics in the European Action Plan on Corporate governance?"**

**Florence François Poncet, Administrator, European Commission**

Ethics, as defined in the dictionary, refers to conduct. It is a broad concept which covers matters dealt with in corporate governance, corporate social responsibility, and codes of conduct. It is a discipline dealing with what is good and bad and with moral duty and obligation, defined as (a) a set of moral principles or values, (b) a theory or system of moral values, (c) the principles of conduct governing an individual or a group (d) a guiding philosophy.

The Commission just carried a consultation on the follow-up to its 2003 action plan on the enhancement of corporate governance and the modernisation of company law. Following the completion of the short term measures envisaged in the 2003 action plan, the Commission is now considering which action, if any, should be taken in the future. The approach of the European Commission is an internal market approach; the competence of the European Commission is based on the Treaty of Rome. It is more of a regulatory approach than an ethical one. While regulators have a role in promoting rules and structures to induce ethical conduct, their role is not to regulate ethics. Corporate governance is only one part of the action plan which concerns corporate governance and company law with the double objective (in line with what has been done by the Commission since the beginning), of the strengthening of shareholders' rights and third parties' protection, and fostering the competitiveness of companies. For its part, the company law directives also share this double objective by ensuring that both shareholders and third parties have a minimum level of protection throughout the single market and affording companies new flexibilities (e.g., directive on the cross-border merger of companies).

The European Commission looks for initiatives to foster efficiency and the competitiveness of business (like the directive on cross-border mergers). As far as CG itself is concerned, the Commission focused on the potential



conflict of interests in the company, the minimum level of disclosure and transparency, and the accountability of the management to shareholders. The measures concern the listed companies which have the broader shareholders base and where the link between management and shareholders is the weakest. The tools used are recommendations (not mandatory tools). Since all Member States have corporate governance codes, which show a significant degree of convergence, there is no need for corporate governance codes, which show a significant degree of convergence, there is no need for a corporate governance code at EU level. Instead, the European Commission is in favour of pushing towards the convergence of national corporate governance codes.

The two recommendations already adopted focus on the role (and profile) of independent directors, and the remuneration of directors. Independent directors have a key role to play notably when the board is faced with potential conflicts of interests (key role in audit and nomination committees). The remuneration of directors also can raise important potential conflicts of interests. Any remuneration based on shares should be submitted to the prior approval of the general meeting. There should be a disclosure line by line of the compensations of every executive director. The remuneration policy should be subject to an advisory vote of the general meeting. All these recommendations are based on the “Comply or explain” principle which is the only mandatory aspect of the corporate governance measures taken at EU level. Each listed company will have to produce an annual corporate governance statement mentioning whether it complies with the applicable corporate governance provisions and, if it does not, explaining the reasons for non compliance. These measures intend to restore the specific function of each company body and the necessary checks and balances and to provide for organisational safeguards to address potential conflicts of interest.

A key question is how to enforce these measures. If the code is not respected, if the comply or explain principle is not monitored in the right way; it will be only expression of good intentions. The European Corporate Governance Forum made a statement in last February on this issue. The balance between enforcement and accountability should clearly be in favour of accountability. The role of regulators should be limited to sanctioning the major faults (e.g., not providing a “comply or explain” statement at all or providing a corporate governance statement which would be completely deficient). Whether the justifications for not implementing a part of the code are valid or not, should be a matter for shareholders. The European Corporate Governance Forum calls for a real obligation to comply or explain, a high level of transparency and ultimate accountability to shareholders.

As regards shareholders, the European Commission proposed last January a directive on the cross-border exercise of voting rights which is now before the European Parliament. The consultation on the follow-up to the Action Plan also contains proposals to promote shareholder activism by facilitating shareholder communication and by setting up a special investigation right of shareholders. There is still much to do for the promotion of shareholders’ activism.



## **“The Northern Approach on Ethics”**

### ***Tom Palmberg –Chairman of the Finnish Association of Professional Board Members***

If, we should not forget that “The Business of Business is Business” (Milton Friedman), transparency, accountability and honesty remain key words. Concerning the dimensions of Board Work Compliance, it is obvious that compliance with law, soft law, codes and best practices are not enough in a competitive situation. It is important to add values, strategy, creativity, value creation.

It is important to look at the cultural environment in which the company is operating. On a Nordic point of view, we have important values such as lowest corruption, distinct and modernised Corporate Law, strict laws and regulations regarding environmental issues, comprehensive Corporate Code, clear role distinction between owners, board, executive management and auditors, openness within organisations (we listen to clients), co-operation procedures within undertakings (explain why you fire people), very social equality (50% of females members in the Finnish Association of Professional Board Members), management by Objectives (enhances responsibility).

The business should be directed and managed in order to meet the justified requirements of shareholders (long-term profitable performance, competitive return), customers (confidence, reliability), employees (dimensioned and managed in accordance with business requirements), suppliers (continuity of relationship), community at large (laws and regulations, employment, tax and long-term profitable performance).

No profitability, no responsibility so let's be profitable.

## **Importance of a Business Ethic Code for a director – Example of the new Spanish Business Ethic Code**

### ***Antonio Abril Abadin, INDITEX/ZARA Board Secretary and IC-A Professional Standards Committee member***

Corporate social responsibility is viewed as an area integrated in the business strategy, is the latest innovation within Spanish companies – especially in listed ones – in the first years of this decade.

C.S.R is comprised of three parts:

- social action or commitment of the company with its most vulnerable Stakeholders,
- respect for Environment,
- good Corporate Governance which means in essence the Ethics and Transparency of Directors and Management.

The Spanish Securities and Exchange Commission (CNMV) is currently working on a “Unified Code on Good Governance in Listed Companies” which consolidates and updates the previous “Olivencia” and “Aldama”



Codes. The I.C.A. (Institute for Directors - Management) has drafted a “Code of Ethics for Companies” with the aim of stressing and enhancing the process of CSR and specifically of Good Corporate Governance, stressing the relevance of Ethics in all Companies, as a key concept to ensure and balance the rights and interests of all Stakeholders involved: employees, clients, shareholders, suppliers and Business partners and the society at large.

Regarding the Basic Guidelines of the Code of Ethics for Companies, it takes a step further and therefore presupposes the fulfilment of Law and of the internal regulations of companies. The Board of Directors is responsible for drawing up the Code of Ethics but the General Meeting of Shareholders should be involved with its approval or ratification.

Shareholders and Owners faced with the Code of Ethics are responsible for approving the Code of Ethics and for procuring the effective implementation thereof. They are responsible for making the achievement of profits – the basic goal of any company - compatible with a sustainable, environmentally sound social development, the sustainability of the company in the medium and long term opposite to all interests in short-term enrichment, the consideration of ethics and responsibility as criteria to be used when recruiting directors and officials, at the same level as their professional qualifications.

Concerning directors and management faced with the code of ethics, with regard to their management duties, they are responsible for complying with and enforcing the Code of Ethics and, in particular, setting up an Ethics Committee with sufficient power to enforce the Code, establishing internal and external risk management and control systems and providing external and internal auditors with all such information to carry out their work, making the interest of the company prevail in the event of conflicts of interest and of personal use of corporate assets, ensuring the transparency and control of their remuneration as well as their suitability, ensuring the continuity of the company through a succession plan for key positions choosing their dependent personnel in accordance with the principles of merit and capacity.

With regard to the suppliers and clients of the company, directors and management faced with the Code of Ethics are responsible for choosing only those suppliers who respect human dignity and do not jeopardize the company’s good name, not altering the rules of free competition in the selection of suppliers introducing criteria such as kickbacks or any other corruption.- other than those of suitability, price and quality of their products and services.

With regard to competitors of the Company, they are responsible for not taking advantages of dominant or privileged market positions, abstaining from engaging in unfair practices and unethical methods to win clients.

With regard to employees of the Company, they are responsible for not only not discriminating against for reasons other than their merit and skills, but also for respecting their different cultural sensibilities, reconciling work with the personal and family life of the employees, promoting the employment of disabled or handicapped people, promoting that employees take part in the social action plans of the company

With regard to Civil Society, they are responsible for respecting and promoting human rights and democratic institutions, maintaining the principle of political neutrality and ensuring transparency in connection with contributions to political parties and public institutions, collaborating with Public Entities and non-governmental organizations whose aim is to improve the levels of social attention for disadvantaged persons.



## **"Common points of the various European charters of deontology"** ***Simon Golstein, Professor emeritus at Université libre de Bruxelles***

I tried to define the lowest common denominator between Charters of deontology of various national institutes of directors national. They can be compiled in 10 high level principles widely developed by the particular provisions of the national codes.

This involves:

- 1. Watch over the interests of the company:  
*Director represents all shareholders and not only those which named him/her,*
- 2. Take into account the legitimate interests of all shareholders:  
*It is not a question of taking into account all the interests of all the shareholders. There are sometimes conflicts of interests or divergent interests. This involves avoiding the abuses of majority or of minority.*
- 3. Ensure an efficient functioning of the Board of Directors:  
*Does the board have a clearly established mission? Are the internal and external controls carried out clearly? Are the means available to the board adapted (existence of ad hoc committees)? Are the board and directors evaluating themselves?*
- 4. Ensure that the company respects its contractual and legal commitments:  
*The board must not only check that the company comply with its legal obligations, but also urge the company to set up a code of best practices.*
- 5. Exercise his judgment independently:  
*Internal pressures (from the management) and external pressures (from shareholding) must be avoided and judgment in soul and conscience must be correctly exerted.*
- 6. Act with integrity by resolving conflicts of interests and avoiding insider trading:  
*Are there procedures to solve these conflicts and are they respected? It is necessary to inform the board on any potential conflict. Directors do not have to accept mandates when conflict of interests might occur.*
- 7. Act professionally by continuing education to develop the necessary competences:  
*Directors have to understand the company, its environment and they are required to have the skills necessary to carry out their roles.*
- 8. Take into account the legitimate expectations of all the stakeholders of the company (clients, authorities, managers, employees, suppliers, creditors):  
*Directors have to defend the interests of the company but stakeholders might have different interests. Directors have to consider the issues for the company in a short and medium term approach.*
- 9. Adhere to the code of good practices recommended by his national body:  
*Culture, legislations, regulations, must be taken into account by national codes.*
- 10. Adhere to the spirit of these principles:  
*As a code cannot cover everything, director is required to solve problems with honesty, competence, independence, integrity and responsibility.*

Few differences exist finally between the various codes. It is important to stress on their convergences rather than on their divergences.

**« Human resources, corporate governance and ethics »****Mary Pitsy, President, Boyden Brussels**

Most companies in the world are stating that the most important asset for a company is its employees. Why human resources are so important for the corporate governance rules? Limited information related to human resources is available on all documents concerning corporate governance. You hardly find a paragraph on human resources in the national code of corporate governance even if the word employees can be found. Is an ethical board in charge of the human resources' vision of the company? Is it the role of the company, or other persons? Otherwise if employee talent is the most critical issue for a company, the question is: how to translate this need in the vision, mission and core values of a company?

The Spanish code of conduct is the only one using the term family. Is it important that the employees feel comfortable with their companies and the issues they have to carry out for the company?

**Discussion:**

On independent directors: The concept of independent directors is a difficult concept. There is a trend to restrict the category of independents so that the concept would not be a pure form but also substance. It does not seem to be the best approach since a director can not be considered as independent as long as he is paid by the company. This is the main point to consider. The European recommendation on independent directors implies some thinking on national level on what might constitute the principles of independence. A box sticking approach must be avoided. The principles should refer to the spirit of things. Directors must show integrity by disclosing their mandates when conflicts of interests might occur and courage by telling when they do not agree with the other members of the board.

On Human Resources: Human resources are essentially considered at the managerial level. However, compensations for managers are not based on how well the long-term strategy is implemented. Codes of conduct referring to human resources are essential to let the employees being creative in respect of a common deontology. Human resources constitute an important value of companies. This value should be one of the concerns of the board. The board should be responsible towards shareholders on the way this value is run. Management should report towards the board on this specific issue. The board evaluates the remuneration of managers, but the human resources' issues are not deeper taken into account. The directors representing employees are the only ones raising some concerns about human resources. If the board does not have to interfere in the employees' management, it should be consulted and it should give some guidelines on the recruitment or training policies. It is part of its duties even if it is not done for the time being.



## Conclusion

### ***Pierre Klees, Chairman of ecoDa***

Thanks to all the speakers, it is obvious that ethics is no longer a luxury; those who were sceptical can now be convinced that ethics pay and that the ends never justify means.

Indeed, ethics does not prevent a company from being competitive. Ethics is not against creativity and competency. The large demand from various stakeholders for ethics will bring it out in the long run as an important competitive advantage. Avoiding short-sightedness and considering the whole strategy of companies on a long term shall replace ethics at the centre of companies' considerations. As Justin Reynolds said, there is a link between well governed companies, long term performance, and reduced cost of capital and equity risk. It is clear that the interests of the different stakeholders of a company converge when ethics is applied. Ethics should be then seen as an opportunity rather than a problem.

Is there one best approach to ethics? According to what has been said today, it seems that shareholders and managers have their own views. There are different visions of ethics but common basis can be found. Individuals have to determine if an act or an idea is ethics with regards to the multiplicity of situations and with the multiplicity of objectives. In a company, if diversity in values and interests is an enduring reality, it is important to establish an optimal governance process that allows different values and interests to be taken into account and to be balanced. This is the only way to find a common ethics amongst the ethics of shareholders, the ethics of Managers, and so on... The starting point of this process might be found within the board as a body where all these considerations should be examined. A shared vision of which routes the companies have to follow in respect of ethics must be clearly defined. Directors have a key role to play with regards to that purpose.

Before being a collective interest, ethics is strictly part of individuals. Everyone has his own values. Ethics is closely linked with integrity. High-level human output should therefore be considered with strong interest, as pointed out earlier by Mary Pitsy. Directors should be chosen with regards to their integrity, responsibility and transparency. You should also keep in mind the high level principles identified by Simon Golstein as the lowest common denominator between different national Charters of deontology. This work should be pursued and extended to the different European countries.

Corporate Governance is practical ethics adapted to directors. Corporate Governance like ethics is evolutionary and must be updated. Good Corporate Governance will enable directors to balance rightly the different views of ethics from the different stakeholders. One of the main tasks of ecoDa is to adjust Corporate Governance by a benchmarking of the best practices between its members. EcoDa will strengthen this analysis work and pursue all its activities in the spirit already breathed by Daniel Lebègue.

I would like to take the opportunity to thank Daniel Lebègue for his Presidency which offered strong framework and visibility for ecoDa. This will enable us to consider quick enlargement of our membership. As the new Chairman of ecoDa for the following year and on behalf of all members, I would like to thank him for his competence and his experience which have served ecoDa. I would like to ensure him that everything will be done to promote his values.

I would also like to thank our sponsors, Euronext and Boyden, for making this successful event possible.



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## Does ethics pay? the view of directors

Thanks also to John Plender for moderating the conference with shrewdness and clarity. This allows me to conclude the conference in due time.

And of course, thanks to all of you for coming and special thanks to all the speakers for their excellent presentations.



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