ecoDa

CONFERENCE


## CONFERENCE ABSTRACT

***Conference moderated by Me Philippe Hoss, Partner, Elvinger, Hoss & Prussen***

**Prof. Ir. Pierre Klees, Former Chairman of ecoDa**

CSR and Corporate Governance are still dealt separately even if the two definitions have become increasingly overlapping. The most recent national codes of CG refer increasingly frequently to stakeholders' interests, the latter example being the British 2006 Companies Act requiring directors "to act in the interests of shareholders, but in doing so have to pay regard to the longer term, the interests of employees, suppliers, consumers and the environment". We are now moving away from the definition of the Corporate Governance given by the Cadbury Code which stated: "Corporate Governance is the system by which companies are directed and controlled. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship". Corporate Governance is becoming less and less internal to the company and directors must pay attention to a much broader set of interests and expectations. Good Corporate Governance is about more than just compliance to the rules; it is built into the processes, people, and culture of the organization. It's about the long-term success and sustainability of the company. There is a growing demand for CSR coming mainly from shareholders and investors. As a forum for constant questioning, the board is undoubtedly the right place to deal with CSR. Taking corporate social responsibility into account enables the company to reduce risks and helps directors to comply with their duty of care. Implementing appropriate long-term strategies requires a collective and permanent process at board level. Directors will also have to increase the communication on the intentions or activities of the company towards operating in an ethical and socially acceptable manner. The actions of the enterprise should be more oriented to the progress of our society and of the mankind, instead of reducing said action to the sole financial discussion. This should be accomplished by a large consultation between the actors of the politic and economic globalisation into a model of sustainable and durable development. It is a real challenge for all enterprises, private or public. Saying that directors' watch words should be Corporate Governance and Corporate Social Responsibility and Ethics at a larger scale, does not mean that there is a need for a legislative initiative to link these issues. Changes in the corporate culture are required first if we want to make CSR real.

## Richard Howitt, European Parliament, Committee on Employment and Social Affairs

A year ago, the European Commission produced its communication wondering where CSR would go in the next few years. At the European Parliament, this year, Richard Howitt was the author of a report on CSR. The Debate on CSR is a bit like an “elephant giving birth”; it takes time to take CSR seriously. In 1999, the European institutions were already convinced that there should be a European support for CSR. A green paper and a white paper were taken and a multi-stakeholders’ forum was organised. Afterwards a period of paralysis occurred. The idea of a multi-stakeholders’ forum was to get businesses, NGOs and trade unions to look at this issue and build relations and understandings. It was not so easy to organise since stakeholders in Brussels are more used to negotiate in a rather confrontational way. The communication of the European Commission of last year was at the first reading a bit disappointing: it seemed to be more or less of a step back difficult to understand for the business community. The European institutions do not really know where the discussions are now going after eight years of discussions. Discussions with stakeholders enable companies to bring forward good practices but the European institutions need to bring real added value to the debate. The European Parliament fully supports the approach of the European Commission but there is a need for an impetus in the details of an agenda. To create incentives to companies, European programmes and policies should be more CSR-friendly.

Article 24 of the Report on CSR of the European Parliament (adopted by an overwhelming majority of MEPs) states “*that the CSR debate must not be separated from questions of corporate accountability, and that issues of the social and environmental impact of business, relations with stakeholders, the protection of minority shareholders' rights and the duties of company directors in this regard should be fully integrated in the Commission's Corporate Governance Action Plan”.* ecoDa who supported this article has a role to play in the implementation of these ideas. As mentioned in the paper produced by ecoDa for the conference, it is obvious that CSR and corporate governance are overlapping concepts. As also mentioned, the most recent national codes of CG refer increasingly frequently to stakeholders’ interests. That is the case of the Belgian, Luxembourg, Slovenian, Czech and Spanish codes but the European Commission and the OECD have the same approach. Even if corporate governance is ruled by laws, details were given by national codes i.e. soft law. The promotion of CSR does not necessarily imply regulations. As mentioned in ecoDa’s paper, the key emphasises for directors are the whole organisation. Directors have duties of care and of risk management.

There is a huge change in companies’ practices because the impact on their risks has been important. The scale in the world risks is also changing (climate change, etc.). Politicians need the help of companies to handle these problems. The challenges are exacerbating risks even if companies are doing the right things. Companies should not fear regulations on CSR at the European level; it is not going to happen. Attention should be paid on what companies are ready to do and to collaborate to the debate. There is no use to look at the different definitions of ethical trade, sustainable development, corporate governance, CSR, etc. They are all about the same thing. Corporate Governance and CSR are twins and their similarities are much more important than their differences, which is why there is a need to move forward. The United Kingdom has just passed the 2006 Companies Act which requires directors to act in the interests of stakeholders. There was a discussion on how far directors should have a duty to the environmental and social impacts of their company. Some companies feared that it could lead directors to be torn apart by trying to serve different interests. Directors can pay due regard to other concerns without necessarily having to go against the financial priorities. Solicitors themselves have to serve the interests of their clients but they can not go beyond their professional ethics. There is sometimes plurality of obligations. The debate on materiality is relevant.

Directors might only be sued for not respecting environmental or social aspects in case of excessive ignorance that will suppose claims from stakeholders and important lost for the company. As long as directors make reasonable judgements, there have nothing to fear.

Beside CSR and Corporate Governance, business accountability is important. It responds to a large demand. Globalisation has brought an interdependent world. Suppliers, subcontractors, employees, companies, etc. all have an impact on each others in much more complex ways than before. If you have impact on each other, it is only fair to be accountable to each other. We all have duties to operate in a transparent manner. Accountability keeps you sharp, and helps you provide a good job. Politicians must not to wait until the elections to be accountable and directors should not wait until serious trouble.

## First round table: Corporate Social Responsibility: between legal and voluntary standards: business and governance implications

### Matt Christensen, Executive Director, European Social Investment Forum

After Milton Friedman, a new economist able to tackle CSR has not been found yet. Five years ago, CSR and Corporate Governance were distinct. At that time, investors had different teams to analyse the way companies were managing risks. Across Europe, over the past 12-18 months, investors are increasingly putting these factors under one umbrella as Environmental Social Governance (ESG) issues. Investors are making decisions according to whether or not companies are putting a value statement for the board level into the way business is managed. Material risks are becoming a growing area in the investors' world. Most investors are coming to the belief that Board directors need to be involved in some form or other on ESG criteria; part of the role of companies is to think of these key issues at strategic levels. For some investors, board members should handle these issues from an internal, company-oriented perspective. For other investors (universal investors) considering that they represent the entire market as owners of the top companies, directors should internalise the problems of the whole industry across all financial products, consumer products, etc. More than legal or voluntary, CSR is at first strategic. Board members who are looking at the strategic matters and defining them will be the leaders of tomorrow with the best share prices. With regard to the recently passed transparency directive, Eurosif tried to lobby for requirements for companies to list what the material, environmental and social risks they face would be. But the amendment did not pass because companies feared that these requirements would be turned into laws and that NGOs would argue that all the relevant risks are not properly mentioned. Companies are sometimes caught between better transparency and disclosure versus the framework that might result in a class action campaign. Over time, these issues will become clearer, but the one 'takeaway' from the investor perspective is that Board Directors will need to be more involved in CSR issues.

### Marco Cilento, Adviser, European Trade Unions Confederation

In the multi-stakeholders forum, ETUC has agreed to consider CSR as a voluntary issue. CSR should follow the market rules. Companies evaluate CSR with a cost benefit approach. There is a wide consensus to admit that CSR refers notably to the attitude of the companies' management, but that the market is also looking for fair competition, accountability and transparency. Both the company and CSR as part of the company should respect these principles. Once a company decides to adapt CSR, it should respect a framework of rules to allow the stakeholders to participate in that process and to check its implementation. ETUC claims for social reporting and would like the European Commission to adopt some rules with this regard taking into account the expectations of employees and consumers as final users of CSR. There is a clear demand of rules on the CSR field. When companies declare themselves as CSR-oriented, they should prove it. Both CSR and Corporate Governance concern the relations between the companies, shareholders and stakeholders. Managers should not forget the responsibilities they have vis-à-vis environmental and social aspects. Stakeholders have a role to play in CSR. The employees' participation should be enhanced. The implication of employees in Parmalat Company might have prevented the scandal.

## Jean-Pierre Paelinck, General Secretary, Euroshareholders

Euroshareholders pointed out the need for more cooperation between directors, politicians and shareholders. Boards and shareholders both wish to operate in efficient markets. Boards must work in an ethical way to get the respect and support of shareholders who must be aware that they are not the only ones to be important and that other stakeholders' rights must also be protected. Social health can not be created without economic values and economic values require good management and good boards. Being a manager implies to pay attention to other interests. However this aspect is forgotten by those who opt for extravagant golden parachutes and excessive remuneration. For Euroshareholders, the change in mentality has not and will not be obtained by decree but will come because all decent market participants are interested in market integrity. Boards need support but shareholders have to play a critical role. More than transparency, it is reliability which is needed. When a merger is planned, CSR has a role to play; the interests of stakeholders have to be taken into account.

Euroshareholders do not favour unnecessary bureaucracy but want to operate in an effective legal framework with sufficient provision to combat wrongdoing. Shareholders and boards have indeed common interests and goals.

## Michael Athayde Marques, Member of the Managing Board

CSR is closely linked to competitiveness. However, CSR is much a concept whereby companies integrate social and environmental concerns in their business operations in interaction with stakeholders on a voluntary basis. Creating value and delivering value to stakeholders is part of the companies' activities; there is no need to mention and add this bottom line or "raison d'être" in the definition of CSR. The social and environmental dimensions must be integrated in the business operations in close cooperation with stakeholders. CSR goes beyond regulation; there is no law obliging companies to integrate

CSR, it is based on a voluntary approach. Companies have been trying to be good citizens for decades. CSR is not something new; it is only integrating social and environmental aspects in a new philosophy. There are different notions such as Corporate Sustainability, Corporate (Global) Accountability, Environmental and Social Governance with the same meaning. Are CSR and Corporate Governance a twin concept? CSR is part of Corporate Governance and it is not easy to define which comes first. There is a need for one single label to avoid confusion. All of these concepts must be integrated into a whole to be forced through education into creating a mindset in decision makers and in the public opinion at large.

CSR has direct economic value for any company facing the challenges of globalisation. Although the prime responsibility of a company is to generate profits, companies can contribute to social and environmental objectives by integrating CSR into their core business strategy. CSR is a strategic issue. By taking care of CSR, companies are investing in their future. The voluntary commitments will increase the profitability of companies. CSR is not philanthropy; it is useful for the company to ensure stability and profitability. There is no one single model to integrate CSR. On the internal dimension, Euronext has defined human resources management as one of the areas of intervention towards CSR. Companies should prefer employability rather than employment. On the external dimension, Euronext has focused on the management of environmental aspects to interact with local partners. To make these ideas operational, companies need objectives such as controlling risks, building corporate identity and safeguarding reputation, attracting highly competent staff and better talents, being accountable, building sustainable relation and improving effectiveness and coherence with local communities. CSR does not imply philanthropy but a win-win solution for companies, it means business opportunities (not boundaries) and compliance with the best practices to move beyond.

## Michael Castello Vogt, Senior Associate & Manager, ISS Corporate Services

CSR is difficult to quantify because of the different sizes and sectors of companies. Asset managers pay more and more attention to CSR issues from a shareholder's (value) perspective. Investors are taking a closer look at extra-financial factors as part of the investment process, including corporate governance, environmental, and social and ethical issues. These factors can highlight potential risk for companies and investors. Many of these extra-financial factors can also have a significant impact on a company's reputation and valuation (example: BP stock decline after the explosion of a plant in Texas and pipeline failures in Alaska). There are increasing evidence/research of positive correlation of enhanced CSR practices and company valuation/reputation. A variety of organizations and principles are focused on ES&G factors including the Equator Principles, UNEP Finance Initiative, Institutional Investors Group on Climate Change, UN Principles of Responsible Investment and Enhance Analytics Initiative. Not only long-term investors (pension funds) but more and more "mainstream" asset managers are stepping up to CSR investment activities. All of these are bringing increased focus to CSR. Directors need to be aware of these factors, and how they may impact the investors' views of their company. CSR does not need to be a cost factor. Acting responsibly can result in new products, greater competitiveness and improved reputation. As such, it adds value. Ignoring CSR can lead to reputation damage and can result in a loss of values and risks. CSR is not a means by itself; it should be integrated in companies' strategy. CSR must be treated successfully by managers keeping in mind the interests of the stakeholders. CSR is only viable if its characteristics are well suited to increase the value for owners and has an impact on these values for owners and stakeholders. According to some findings of an ISS global investors' survey among 332 investors world-wide on CG and CSR in 18 countries, investors are far from a consensus on

CSR, but they advocate that CSR represents the next frontier to Corporate Governance. The question is whether morality or economic interests drive CSR. 41% of pension funds screen for CSR issues. Their long-term view lets them understand the value of CSR. Corporate Governance needs to be more broadly defined to embrace CSR. The integration of CSR factors into financial risks is an involving issue. Including CSR into investment decisions is becoming mainstream. Compliance with regulations is necessary, as non-compliance holds a significant reputational and financial risk. However, companies may want to look at going above and beyond local regulations - particularly in developing countries. CSR is undoubtedly an issue for boards, even if CSR is market driven (TIAA-CREF's new CG policy: "Oversight of CSR is part of a corporate director's job"). CSR should be treated by boards in the same manner as other issues of Corporate Governance.

## Second round table: CSR in the board room

**Pierre Delsaux, Director of Free movement of capital,<br>company law and corporate governance, DG Markt, European Commission**

Although CSR is an important subject for the European Commission, CSR as such is not considered as part of Corporate Governance. With regard to Corporate Governance, the European approach is to leave freedom to companies to integrate it and not to set up burdensome rules. The same approach prevails for CSR. It is up to shareholders and stakeholders to decide how companies should be managed by directors. Companies must decide to which extend they want to apply CSR. Even if the European Commission does not intend to impose one set of rules regarding CG, it has tried to encourage exchange of information on best practices by building up for example the European Forum on Corporate Governance. The European Commission has the duty to monitor what is going on in the field of CG and more generally in the field of CSR. The fundamental principle of complain and explain should be adopted as well when CSR is concerned, to enable stakeholders to react. This principle can only be useful provided that shareholders and stakeholders are able to make their voices heard. By trying to remove obstacles to the vote of shareholders in General Meetings, the European Commission in its directive on cross-borders shareholders' rights enables shareholders to express their voices and therefore gives the opportunity to shareholders to change the behaviour of board directors. It is part of the duties of shareholders. It does not mean that the European Commission will never take any initiative on CSR. The European Commission is in the process of publishing a communication on simplification of company law. All stakeholders will be invited to make their views known.

**Tom Palmberg, Director, Ålandsbanken Oyj and Myllykoski Oyj**

The running of a company with a long-term viability and profitability is as such a remarkable social responsibility. CSR is not something new. Companies have been taking care of social responsibility for hundred of years by running their business with profitability for the sake of stakeholders and shareholders. Making useful products and services and keeping people employed is part of CSR. Politicians and NGOs are demanding that corporations act where their own achievements are very meagre. Some NGOs even think that companies should be responsible for the welfare objectives that governments have been unsuccessful to achieve. Politicians could use their power to apply a wide variety of legal constraints on companies and most companies willingly adhere to these legal requirements (these vary from country to country). It is important to keep in mind that companies, in addition to obeying laws, pay suppliers, employees, financiers, and tax authorities long before they can even return anything to the investor who has injected risk capital into the company. Directors should become much more vociferous in describing and protecting the already large social responsibilities affecting their business and not accept pressures that might even violate the future of a healthy company, very useful for the society where it operates.

## Yves Medina, Partner PricewaterhouseCoopers, Chairman of the IFA's working group on CSR

CSR is undoubtedly a major issue for management. Beyond the necessary management by directors, CSR should become the responsibility of the board. A study was carried out by PricewaterhouseCoopers on how directors of the main French listed companies deal with CSR. The survey was addressed to 180 companies from CAC 40. The first question raised was about the interest of board members towards this issue. 40% claimed their interest. The second question was about the main points on CSR that the board has to tackle with. On the top of the list, whatever the category of directors was, we find the long-term vision of the companies, then the question of ethics and compliance, and ranking third, the social policy (employment and human capital). In the last answers, we find relations with stakeholders. For the third question relating to the motivations for considering CSR, long-term strategy and improvement of reputation were mentioned. By tackling CSR, board members want to avoid risks mainly in terms of image and reputation. 70% of the respondents consider that they have enough tools to deal with CSR. On average, one out of two of board members considers that having one person dedicated to CSR in board rooms would be necessary, the least favourable to this solution being the chairmen. The same average is in favour of a proper CSR committee. For the others, the audit committee (not the risk management committee) was mentioned by 45% as the committee to set up to deal with CSR. 70% consider that current reporting on CSR is sufficient but according to them the internal audit report is not the main tool for CSR. The findings of this survey will be formally published in September. It appears clearly that board members want to link CSR to their activities. It is the duty of the management to carry out relations with stakeholders, but up to the board to verify that this is properly done.

## Viviane de Beaufort, Professor ESSEC, Jean Monnet Chair

In a European and global context devoted to CSR, it is interested to look at the French process. According to a survey carried out by Philippe Zarlowski, the French approach on CSR issues is based on principles that make this approach specific when compared to other Western countries. France is keen on creating laws and regulations but not on the field of CSR. CSR refers to philosophy; in France, CSR is less considered as a risk factor than in Anglo-Saxon countries. In France, CSR is a duty for companies (Article 1.1.6 of 2001 Act) to complete statements on the actions referring to social and environmental aspects. Measuring the impact of this legislation is not easy and CFIE reports, IGO documents and works from Ernst & Young are a valuable source of data. The comparison of developments of CSR within companies between 2001 and 2007 is based on the compliance of the legislation. It seems that during the first stage of 2001-2004, there has been clear improvement; companies whatever their sector made efforts to comply with the regulation by internal reporting processes and the annual statement. The effort was diluted between 2005 and 2006 but the findings must be nuanced depending on the sector concerned. In the energy sector, it would be too risky for them to ignore CSR in terms of image. There is no homogeneity amongst sectors. In the automotive industry, the second best company in terms of CSR is the 42nd best performing company in general. Beyond a potential sector-based dynamic, it is an individual choice for companies to make considering the cost linked to this exercise. With regards to the statements made by companies, it appears that financial aspects are more often mentioned than social aspects because the latter are less objective. Information on CSR is more disseminated to shareholders rather than to employees. Could improvements be made by international standards or sector-based approach? Could sanctions be envisaged? How should it be translated at the European level? In 2004, the Report of the European Economic and Social Committee favoured the partnership approach and the standardisation approach. But according to the latest report of Richard Howitt, it seems that the European Parliament is much more in favour of a voluntary approach to CSR. The opposition of models is not useful. CSR implications are efficient and companies cannot risk not integrating it. Directors must send to their own management the message that CSR is a priority. The reporting exercise must not become academic or artificial to be repeated at the European level.

## Philippe de Woot, emeritus Professor (UCL) and former director of companies

CSR and Corporate Governance should be considered as a whole. CSR is not mentioned on CG codes with small exceptions in the French code and more recently in the Spanish code. Many CEOs take the CG codes as an alibi to ease their conscience and to devote less attention to the CSR matters which are more complex than CG. These can be resumed to the regulation of the relations between management, shareholders and board
.

There is no proof that companies are successful because they follow CG and CSR recommendations. Good practices are not enough, the global system has many faults and there is a need for a change of mentality. Not many boards realize that changes in the corporate culture are urgent and necessary. The culture change for a new sustainable model of development would be useful if it could enable the enlargement of companies' purposes to go beyond the short term approach of Milton Friedman. The purpose of companies is not to make more money; it is to create one kind of human progress: economic progress. Profit is a result, it is not a "raison d'être"; it should not be a purpose.

When CEOs refer to ethics, they mean integrity and compliance. Ethics is broader; it refers to the world we want to build at a global level with the resources we depose of. The political approach should be enlarged; the dialogue with new forces of the civil society is still very weak. Business leaders should become political people participating in the public debate, this will influence our model.

## Miles Templeman
## new Chairman of ecoDa

Although there is diversity, there is also consensus among the speakers. Directors have always played an important part in terms of CSR by providing jobs.

In emerging economies such as Slovenia's, although they have not developed Corporate Governance on a level we would consider appropriate as of yet, they demonstrate a strong sense of CSR. Back in the UK, the earliest big company involved in CSR was Cadbury, and its name is now strongly linked with the Corporate Governance issue.

Even if CSR is not a new thing for companies to worry about, it takes on many new meanings in modern economies. Companies must fully integrate it into their business to make it operational, but in a way that is appropriate. For small companies, this will differ from what the big companies could do. That is why ecoDa implores the European Commission not to legislate on CSR.

Corporate Governance is a set of rules and procedures; CSR is the way companies have to operate and a long-term strategy. In some ways, it is easier for boards to pursue at CSR at a strategic level. Requiring them to hit CSR targets might bring in some grey areas. The main question is how should boards apply CSR to achieve the right mindset within the company.

**This event was sponsored by Euronext, ISS and Loyens.**

**Translation was provided by BLS - Brussels Language Services.**