

# ecoDa

a.s.b.l.

Confédération Européenne des Associations d'Administrateurs  
European Confederation of Directors Associations

The 17<sup>th</sup> of June 2005,

Dear Mr Doorn,

EcoDa as a recently formed organisation has not commented previously on the proposed Statutory Audit Directive. However, even at this late stage we feel obliged to express the concerns of directors about Article 39 of the proposed Directive. ecoDa is firmly committed to raising governance standards across EU companies, and to the development of directors.

Elements of the Directive are intended to enable European companies to satisfy the 'equivalence' requirements of the US Sarbanes-Oxley Act. The Directive proposals go far further than is necessary to enable companies to achieve equivalence. In particular our concerns are:

1. A statutory requirement for companies to establish an audit committee whose members will have specific duties set out in law separate from those imposed on other board members will undermine the basic concept of collective responsibility of boards which the EU recognises as one of the appropriate board structures for EU companies. While independent non-executive audit committees are best practice, statutory imposition is not appropriate.
2. The statutory requirement that one of the members of the audit committee must be independent will force the adoption of a legal definition of independence. Such a definition would either have to be consistent with the Recommendation on Non-Executive Directors, or that Recommendation would have to be scrapped and a new definition introduced. The definition in the Recommendation is inappropriate to a mandatory provision, although it works well in the context of the 'comply or explain' approach in the Recommendation. If adopted as a mandatory definition it would be far more demanding than the current compulsory definition set out in the US Sarbanes-Oxley Act. The approach taken should be that of compliance with the independence criteria or explanation why not

3. The statutory requirement that one of the members of the audit committee “with competence in accounting or auditing” also raises concerns. Again this is more onerous than the US provisions and should be placed on a ‘comply or explain’ basis.
4. The provisions on internal control also cause concern. The drafting of the provision could be interpreted as a legal requirement on the audit committee to certify the effectiveness of these controls. When something goes wrong, audit committees are bound to face accusations of dereliction of their legal monitoring duties. This brings us close to the prescriptive approach of the US where there is a requirement for a public statement on effectiveness. The prescriptive approach is not best suited to embedding the need for sound internal controls into standard business practice, but tends to lead to a compliance approach.

The member organisations of ecoDa believe that if adopted in its present form, the provisions on audit committees will deter the best people from serving on audit committees. It is not that we regard the function as an important one, but we believe that the EU should take a non-prescriptive, principles-based approach that encourages the best people to serve on boards, and particularly on audit committees, rather than one that deters them from doing so.

We apologise for these comments being made at such a late date, but the timing of the issue of the amendments on 2<sup>nd</sup> June 2005 did not allow much time to collate our views. We hope, however, that our views will be considered by you and the members of the committee in considering whether to support Article 39 of the Directive.

While we recognise the need for some European companies to be able to achieve ‘equivalence’ with US provisions, the efforts to achieve this appear to be driving the EU away from its stated aims towards and in some cases even beyond the US-style approach.

With kind regards,

Yours sincerely,

Daniel Lebègue  
ecoDa’s Chairman