



ecoDa NEWSLETTER

October 2006

NEWS FROM ECODA...

➤ ecoDa took **three position papers** during the summer:

- following the Report of the alternative investment expert group to the European Commission - Managing, servicing and marketing **hedge funds** in Europe, ecoDa sent a letter to Commissioner McCreevy considering that the report hardly considers transparency disclosure and other aspects of Corporate Governance. Good Corporate Governance requires a global approach achieved through the attitudes and actions of all actors and not only of company directors - even if they are the main guarantors of it,
- Following the European Parliament resolution on recent developments and prospects in relation to **company law** adopted on 4 July, ecoDa repeated to DG Markt that convergence on higher standards is likely to be achieved more easily by implementing high-level principles rather than by systematic recourse to EU legislation,
- ecoDa gave its views on the amendments by the JURI and ECON Committees of the European Parliament on the **shareholders' rights** directive.

See: <http://www.ecoda.org/policy.html>

NEWS FROM EU...

➤ The European Commissioner Charles McCreevy has welcomed the publication of a **Work Plan between the Committee of European Securities Regulators (CESR)**

and the Securities Exchange Commission (SEC) aiming at ensuring the consistent enforcement of the International Financial Reporting Standards (IFRS). The Work Plan is part of a strategy for operational and supervisory cooperation between the European and US regulators. See:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1085&format=PDF&aged=0&language=EN&guiLanguage=en>

➤ Commissioner McCreevy has agreed that French State owns **golden share** in Suez-GDF. The European Court of Justice (ECJ) on 28 September 2006 ruled against the Netherlands holding a "golden share" in postal-services provider TNT. The ECJ decided that the practice of holding a share, which gives the state a veto over mergers, was incompatible with the free movement of capital in the internal market. The ruling is in line with the Commission's decision against the Dutch government in 2003, which stated that the influence that was given to the Dutch state as holder of the special share ("golden share") could deter investors from other member states from investing capital.

See: [http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher\\$docrequire=alldocs&numaff=C-282/04&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100](http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher$docrequire=alldocs&numaff=C-282/04&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100)

➤ The European Commission has put forward a proposal that will tighten the **procedures that Member States' supervisory authorities have to follow when assessing proposed mergers and acquisitions (M&A) in the banking, insurance and securities sectors.**

Current EU rules allow supervisory authorities to block proposed M&A if they consider that the 'sound and prudent management' of the target company could be put at risk. The proposed new Directive, which amends various existing Directives in these sectors, will in particular clarify the criteria against which supervisors should assess possible M&A operations. This will improve clarity and transparency in supervisory assessment and help to ensure a consistent handling of M&A requests across the EU.

See:

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/487&format=PDF&aged=0&language=EN&guiLanguage=fr>

➤ The **second company law directive** on the formation of public limited liability companies and the maintenance and alteration of their capital was published in September in the Official Journal of the European Union. See: http://ec.europa.eu/internal_market/company/capital/index_en.htm

➤ Shareholder Services (ISS), Shearman & Sterling LLP and the European Corporate Governance Institute (ECGI) have won the European Commission contract to study the proportionality between ownership and control in EU listed companies (**one share one vote principle**). See: <http://www.ecgi.org/>

➤ The European Commission has published an independent study on the economic impact of current EU rules on **auditors' liability regimes** and on insurance conditions in Member States. The study analyses the structure of the auditing market and its possible development in the future, describes the existing limitations in the insurance market for international audits, examines the economic needs for limiting auditors' liability and compares several possible methods for limiting liability. It represents the first EU-wide scale economic study on this subject. The preparation of the study has been

accompanied by the creation of an Auditors Liability Forum composed of market experts. The Commission is to issue a report on auditor liability based on this study before the end of 2006 and will invite stakeholders to give their views.

See:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1307&format=PDF&aged=0&language=EN&guiLanguage=fr>

➤ The European Parliament issued a draft report with recommendations to the Commission on the **European private company statute**.

See:

[http://www.europarl.eu.int/registre/commissions/juri/projet_rapport/2006/378635/JUR_I_PR\(2006\)378635_EN.doc](http://www.europarl.eu.int/registre/commissions/juri/projet_rapport/2006/378635/JUR_I_PR(2006)378635_EN.doc)

NEWS FROM ABROAD EU...

➤ Despite this summer's series of moves by the US Securities and Exchange Commission (SEC), aimed at reducing the impact of the Sarbanes Oxley Act on smaller companies, **it looks increasingly likely that Americans lawmakers will legislate to undo some of the damage being inflicted by the earlier law**. Officials representing the country's small and medium-size banks are increasingly optimistic that Congress will approve new legislation in 2007 that will leave only 200 of the 8000 plus US banks still subject to the more onerous requirements of the much-criticised 2002 Sarbanes Oxley Act. The latest proposed deferment of SOX compliance deadlines announced in August, means that the section 404 provision will now initially apply to so-called "non-accelerated filers" (chiefly **smaller companies** – equity capitalisation under 75 million – who are allowed rather longer than larger companies to file their statutory annual financial statements) with financial years ending on, or after December 15, 2007. **The Commission is granting relief from Section 404(b) compliance for foreign private issuers** that are

accelerated filers (but not large accelerated filers), and that file their annual reports on Form 20-F or 40-F. Under the new compliance schedule, foreign private issuers that are accelerated filers will have their compliance deadline extended for an additional year, so that they will not begin complying with the Section 404(b) requirement to provide an auditor's attestation report on internal control over financial reporting in their annual reports until fiscal years ending on or after July 15,

2007. This group of issuers will be required to comply only with the Section 404(a) requirement to include management's assessment report.

See:

<http://www.sec.gov/news/digest/2006/dig081006.txt>

ARTICLES:

- ▶ *Spring market volatility: More than just white noise?* , European Capital markets institute, July 2006
<http://www.eurocapitalmarkets.org/files/comment7%20formatted.pdf>
- ▶ *Separating the roles of chairman and chief executive: Looking at both sides of the debate*, Spencer Stuart, July 2006,
<http://www.spencerstuart.com/research/boards/1015/>
- ▶ *Corporate Governance in the GCC – An Investor Perspective*, Downward corrections in Gulf Co-operation Council (GCC) stock markets and increased corporate activity by GCC corporations in Western markets are driving improvements in corporate governance standards, according to a report released today by Hawkamah, the Institute for Corporate Governance, and the Institute of International Finance (IIF)
<http://www.iif.com/download.php?id=P4Czie02wRM=#search=%22INSTITUTE%20OF%20INTERNATIONAL%20finance%20and%20dubai%20institute%20for%20corporate%20governance%22>
- ▶ *Corporate Governance of Non-Listed Companies in Emerging Markets*, OECD, July 2006
http://www.oecd.org/document/55/0,2340,en_2649_34795_37259703_1_1_1_1_00.html

CALENDAR

- ▶ *A Company Law Conference – Better Regulation in EU Company Law, Process and Substance*, Finnish Presidency, 5 October 2006, Helsinki.
- ▶ *Risk management*, 11 October, Ernst and Young and the Federation of European Risk Management
<http://www.ferma-asso.org/Calendar%20of%20events/Pr%E9-invitation%20180706.pdf>
- ▶ *Conference on Audit Regulation*, 12 October 2006, FEE, Brussels
- ▶ *Compliance in the Financial Sector: A 1 day seminar on MiFID Implementation*, Epsilon and Houston Consulting, 7 November, Brussels
<http://www.epsilonevents.com/>
- ▶ *The European Employee Ownership TOP 100*, EFES, 14-16 December 2006, Brussels,
<http://www.efesonline.org/TOP%20100/CONFERENCE%202006/DRAFT%20PROGRAMME%206TH%20EN%20060822.pdf>