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

The European CG Forum  
By email to Jaap Winter and José Maria Garrido Garcia

The 6<sup>th</sup> of April 2009,

*Copy to: Claire Bury, Head of Unit, DG Markt*

Dear members,

The European Confederation of Directors' Associations (ecoDa) welcomes the balanced and pragmatic approach, just taken by the European CG Forum on Director Remuneration. ecoDa fully supports codes to enhance good Corporate Governance practices, suitable to a diverse spectrum of companies. However, it is time to respond firmly to the perverse effects of some (executive) remuneration systems. Otherwise it could well be that the Corporate Governance system itself becomes jeopardized.

#### ***Disclosure of the remuneration policy***

As pointed out by the Forum, disclosure and transparency, at large, remain key requirements which could therefore be included in a EU Directive. However, the complexity of comparing data -due to different social status and different fiscal regimes in Europe- calls for standardization in the transparency format. A standard format to disclose corporate costs for each type of remuneration will facilitate comparative analyses. More explicit information both in terms of the remuneration methodology and its application in practice seem necessary for an enlightened assessment by the shareholders. Performance criteria should be in line with the long-term value creation, the strategy and include corrective elements in relation to the risk exposure.

#### ***Process of the remuneration policy***

ecoDa fully supports the requirement that only non-executive directors and shareholders should have a say on pay. The nuances suggested by the European Corporate Governance Forum are fully supported by ecoDa<sup>1</sup>. Furthermore, remuneration committees, in majority composed of independent directors, should be a key aspect of best practice in all listed companies.

#### ***Substance of director's remuneration***

Regarding the substance of director's remuneration, boards should be reminded that their decisions have to be taken in coherence with the company's interests and values. Directors have social responsibility towards all stakeholders. Remuneration Committees should ensure that the measurement of performance for long term incentive plans - including those based on the performance of shares - is risk-adjusted. This will necessitate that the

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<sup>1</sup> *i.e. the shareholders have to approve the remuneration policy, the yearly application remains one of the principle tasks of the board of directors but the shareholders. either have a binding or an advisory voting right; this leaves ample room for the corporations to justify their remuneration to their shareholders; for all stock-related remuneration the shareholders have the last word.*

Remuneration Committee exposes sufficient competence on performance management and measurement as well as on risk management.

The statement of the Forum goes too far in its strict and detailed prescriptions on variable pay. To adjust executive remuneration to performance, variable pay is needed. However performance should not only be linked to stock-exchange criteria but also to financial and non-financial criteria. As recommended by the Forum, variable pay should be in line with real value creation for the company, its shareholders and stakeholders.

Regarding stock options, it is the duty of the board to fix the percentage of the attributed shares, to fix the awarding criteria and the number of shares and to encourage stocks options or shares' allocation.

If ecoDa supports the Forum in its intention to link closely stock options to performance and to facilitate 'clawback' (even if 'malpractice' will have to be clearly defined), its statement related to the vesting after a period during which performance conditions are met should be kept simple, otherwise small listed companies will not be in a position to fulfil the recommendations.

ecoDa agrees that it is unacceptable that severance pay could be paid in case of poor performance. It is the duty of the board to take individual performance into account as well as the existence of pension entitlements. However setting limits should be left to boards and eventually to national codes so to enable sufficient flexibility (e.g. in case of a merger, a change in control or where an executive's personal reputation may be at stake).

ecoDa supports the requirement for disclosure of the pension entitlements.

In addition, ecoDa would agree more on the requirement for a consultation on the monitoring of how the best practices have been put in place - since the "comply or explain" approach required a proper monitoring – than on the requirement for a consultation to check how the best practices are included in the national CG Codes. The first approach would be more efficient and would keep the spirit of soft law.

We hope that you will give your support to our remarks.

Yours sincerely,

Béatrice RICHEZ-BAUM  
Secretary General

Miles TEMPLEMAN  
Chairman

## About ecoDa

The European Confederation of Directors' Associations (ecoDa) is representing the views of ten national institutes of directors the *Institute of Directors* (IoD), the Belgium *Guberna* (AB), the *Institut Français des Administrateurs* (IFA), the *Institut Luxembourgeois des Administrateurs* (ILA), the *Finnish Association of Professional Board Members* (Hallitusammattilaiset ry), the *Instituto de Consejeros – Administradores* (IC-A), the *Czech Institute of Directors* (CloD), the *Slovenian Association of Supervisory Board Members* (ASBM), the Polish Institute of directors and the *Croatian Association of certified supervisory board members*.

Through its member-base, ecoDa represents individual board members from all kind of companies, small and bigger, public and private.

### Board members:

- **Miles Templeman**, Director General of the British Institute of Directors (IoD), non-executive Chairman of Shepherd Neame, and a non-executive director of Melrose plc., *Chairman of ecoDa*
- **Daniel Lebègue**, Chairman of the French Institute of Directors (IFA), non executive director of Alcatel Lucent, Crédit Agricole SA, Technip, Scor and he is director of the European Corporate Governance Institute,
- **Pierre Klees**, Director of Guberna, Chairman of Vinçotte Group and directors of Trasys, MCM, Proviron, SPE sa and SEGEBEL sa,
- **Patrick Zurstrassen**, Chairman of the Luxembourg Institute of Directors, director of the European Corporate Governance Institute, and member of the European Advisory group on Corporate Governance and Company Law,
- **Juan Alvarez-Vijande**, Executive Director of Spanish Board Director Association (IC-A) boardroom experience at Amper Group, Cable and Wireless SA, Baytree International, Telefonica and Alcatel Space affiliates,
- **Olli V. Virtanen**, Chairman of the Finnish Professional Board Members Association (Hallitusammattilaiset ry), Editor-in-Chief and Publisher of Board News, a magazine promoting corporate governance,
- **Irena Prijovic**, Secretary General of Slovenian Association of Supervisory Board Members.

*In addition, ecoDa's management group is composed of:*

- **Lutgart van den Berghe**, Executive Director of Guberna, director of Electrabel and Belgacom, Member of the Supervisory Board of C.S.M and of SHV-Holding, *Chairwoman of ecoDa's Policy Committee*,
- **Richard Zisswiller**, Chairman of the IFA's international committee and Delegate director of the Conference board, *Chairman of ecoDa's Benchmarking and Information Committee*
- **Philippe Declaire**, director of Jadre Management engineering network, GVA asset management, Dexia immorent, Member of the Supervisory Board of Actes Sud, *Chairman of ecoDa's Membership Committee*

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