



# Connection

Newsletter #19

April 2010

*- Corporate Governance in Europe – Directors' voice -*

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## ecoDa's News

### CORPORATE GOVERNANCE FOR UNLISTED COMPANIES

On the 24th of March, at the European Parliament, ecoDa launched its Corporate Governance Principles and Guidelines for Unlisted Companies in Europe.

This pioneering initiative is designed to be implemented on a voluntary basis, in a manner that is tailored to the unique objectives and circumstances of individual unlisted companies across Europe.

Unlisted companies account for more than 75% of European GDP. They are key providers of current and future employment, as well as the source of a large proportion of European economic growth. EcoDa is convinced that good corporate governance can act as an efficient tool in promoting the growth and sustainability of such companies.

In this document, fourteen principles of good governance are presented on the basis of a dynamic phased approach, which takes into account the degree of openness, size,

complexity and level of maturity of individual enterprises. The application of such principles by unlisted companies – such as founder and family-owned businesses – will help promote corporate sustainability, bring external parties onto boards, attract funds, and help resolve issues between shareholders.

Furthermore, this ecoDa publication creates a platform that can be adapted by EU Member States to develop or update national corporate governance codes for unlisted companies. By generating better decision-making process, CG can stimulate innovation in companies. Innovation is not only about new products but also about new processes.

For more information:  
[http://www.ecoda.org/docs/ECODA\\_WEB.pdf](http://www.ecoda.org/docs/ECODA_WEB.pdf)

## European News

### THE EUROPEAN STUDIES ON MONITORING ENFORCEMENT OF CG CODES

Beside other items, the Belgian Corporate Governance Conference organized by GUBERNA, member of ecoDa, on 6 and 7 December 2010, will address the follow-up of the European study on monitoring and enforcement of CG codes in the EU Member States, carried out by RiskMetrics, ecoDa, BusinessEurope and Landwell & Associés. Special attention will also be paid to board effectiveness as a route to effective governance.

[http://ec.europa.eu/internal\\_market/company/ecg\\_forum/studies\\_en.htm](http://ec.europa.eu/internal_market/company/ecg_forum/studies_en.htm)

## 2010 COMMISSION WORKING PROGRAMME

On 31 March, the European Commission issued its 2010 Working Programme with a large number of proposals which form a structural and long-term response to the crisis. As expressed by Mr Barnier, the "proposals aimed at creating a new order in financial services and will create the right basis for a thriving financial sector". The Commission intends to take a Communication on Corporate Social Responsibility. It will address the question of how enterprises disclose environmental, social and governance information.

**For more information:**

[http://ec.europa.eu/atwork/programmes/docs/cwp2010\\_en.pdf](http://ec.europa.eu/atwork/programmes/docs/cwp2010_en.pdf)

## CG FOR FINANCIAL INSTITUTIONS

A green paper on CG for financial institutions should be issued by the Commission in May to ensure corporate governance and risk management inside financial institutions are improved. Boards' role regarding risk management will be considered. The idea is to get managers and non executive directors held to account. They must be competent, and they must have the time to do their job properly. Non-executive managers and administrators have to be responsible and competent and have to get the expertise, resources and time to fulfil their task. This will also necessitate greater involvement from shareholders. With respect to pay and bonuses, the pay structure must not encourage excessive risk taking. According to Commissioner Barnier, "We need better corporate governance. More transparency. Better risk management – within companies first. But also more effective external checks and controls".

**For more information:**

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/178&format=HTML&aged=0&language=EN&guiLanguage=en>

## REMUNERATION

Soon after the green paper on CG for financial institutions, a general reflection on CG for unlisted companies including company social responsibility will be issued by the European Commission. The idea is to look at remuneration to make sure that company directors' salary are long term rewarded

An initiative report on remuneration of directors of listed companies and remuneration policies is under consideration at the European Parliament. The report calls for a coordinated European action on remuneration of directors in the financial sector and in listed companies. The report states that the chair and the members of the remuneration committee must be members of the management body who do not perform any executive functions in the financial institution concerned, that shareholders should contribute towards the determination of sustainable remuneration policies and should be given the opportunity to express their views on the remuneration policies through a non-binding vote on the remuneration report at the general meeting, etc.

**For more information:**

[http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/econ/pr/807/807931/807931en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/econ/pr/807/807931/807931en.pdf)

## COMPANIES MANAGEMENT

An initiative report on "Deontological questions related to companies' management" taken by Klaus-Heiner LEHNE, refers to the duty of care, transparency, risk management, board practices or the exercise of shareholders' rights. It states that "*effective risk management should be regarded as one of the most important elements of good corporate governance in all companies*" and that "*recommendations issued by the Commission in respect of listed companies could also constitute a general guideline for developing best practices in non-listed companies*". The draft report is due to be voted in JURI Committee on 28 April 2010.

For more information:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-439.404+01+DOC+WORD+V0//EN&language=EN>

## SHAREHOLDERS' MANAGEMENT

In February 2010, the European Commission held a meeting to get views of stakeholders on how to strengthen shareholders' engagement. A green paper on this issue is due to be issued soon.

## INTERPRETATION OF MARKET ABUSE DIRECTIVE

The European Court of Justice was required to interpret, for the first time, the Market Abuse Directive (2003/6/EC): a Belgian company bought a certain number of its own shares on the stock exchange (Euronext Brussels) and subsequently published certain results and information concerning its commercial policy. The company's share price then increased. For the EJC, *"in order to avoid extending the scope of the prohibition on insider dealing beyond what is appropriate and necessary, reference needs to be made to the purpose of the directive, which is to protect the integrity of the financial markets and to enhance investor confidence. That confidence is based, in particular, on the assurance that investors will be placed on an equal footing and protected from the unfair use of inside information. The prohibition on insider dealing applies where a primary insider who is in possession of inside information takes unfair advantage of the benefit gained from that information by entering into a market transaction in accordance with that information"*.

For more information:

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-12/cp090113en.pdf>

In April, the CESR publishes a review of how securities regulators across Europe use options and discretions applied by CESR Members under the European Market Abuse Directive (MAD) regime. CESR's stock take found divergence in how national supervisors disclose information on supervisory measures or sanctions, inside information directors' dealings and suspicious transaction reports.

For more information:

<http://www.cesr.eu/popup2.php?id=6537>

## EMPTY VOTING

The European Corporate Governance Forum has issued a statement on the issue of empty voting. "Empty voting" refers to voting by a shareholder without corresponding financial interest in the company in which he votes. The Forum recommends the introduction of an assumption in company law that shareholders who take part in a general meeting own the corresponding economic interest in the voted shares. According to the Forum, "companies lending their own shares should stipulate in the contract with the borrower that they will not vote the shares".

For more information:

[http://ec.europa.eu/internal\\_market/company/ecgforum/index\\_en.htm#statements](http://ec.europa.eu/internal_market/company/ecgforum/index_en.htm#statements)

## EUROPEAN COMPANY STATUTE

The European Commission has launched consultation on how European Company Statute (SE) works. The aim of the consultation is to test the results of the study amongst the relevant stakeholders and to provide input to the Commission ahead of the Commission report on the application of the SE Statute, required by its Article 69. The Commission report may suggest amendments to the Statute, if appropriate. The deadline for responses is 23 May 2010. A related conference organised on 26 May 2010 aims at supporting on-going work with a view to elaborating the report required by Regulation 2157/2001 on the Statute for a European Company

For more information:

[http://ec.europa.eu/internal\\_market/consultations/2010/se\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/se_en.htm)  
[http://ec.europa.eu/internal\\_market/company/doc/se/20100526\\_conference\\_programme\\_en.pdf](http://ec.europa.eu/internal_market/company/doc/se/20100526_conference_programme_en.pdf)

## INTERCONNECTION OF BUSINESS REGISTERS

The European Commission launched a public consultation on possible ways to enhance co-operation between business registers. The objective of the consultation was to improve access to business information and to increase legal certainty surrounding cross-border operations in the EU, which the Commission considers to be missing links in the Internal Market. A summary of the replies is now available.

**For more information:**

[http://ec.europa.eu/internal\\_market/company/docs/business\\_registers/2010\\_consultation\\_final\\_report\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/business_registers/2010_consultation_final_report_en.pdf)

## TRANSPARENCY DIRECTIVE

The European Commission is currently preparing a report on the operation of the Transparency Directive (cf. Article 33) which will be published later this year and intends to organise a public conference on 11 June 2010. The conference is part of the review exercise aimed at assessing the impact of the Transparency Directive and adapting it to the current market situation. The Transparency Directive sets disclosure obligations for issuers of securities (admitted to trading in regulated markets) and for holders of voting rights in listed companies.

**For more information:**

[http://ec.europa.eu/internal\\_market/securities/transparency/index\\_en.htm](http://ec.europa.eu/internal_market/securities/transparency/index_en.htm)

## International News

## NEW OECD ACTION PLAN

OECD has launched an ambitious action plan to address weakness in corporate governance. It aims to develop a set of recommendations for improvements in priority areas, such as board practices, implementation of risk-management,

governance of the remuneration process and the exercise of shareholder rights.

## Events Calendar

***A conference on the operation and impact of the European Company Statute (SE Statute)***

**26 May 2010**

[http://ec.europa.eu/internal\\_market/company/se/index\\_en.htm](http://ec.europa.eu/internal_market/company/se/index_en.htm)



***2010 ICGN Annual Conference***  
**7 - 9 of June 2010 - Toronto, Canada**

<http://www.icgn.org/>



***A public conference on the Transparency Directive***

**11 June 2010 in Brussels**

[http://ec.europa.eu/internal\\_market/securities/transparency/index\\_en.htm](http://ec.europa.eu/internal_market/securities/transparency/index_en.htm)



***A public hearing on the amending proposal of the Market Abuse Directive organised by the European Commission***

**July 2010, in Brussels**



***The seventh conference in the Transatlantic Corporate Governance Dialogue (TCGD)***

**scheduled to take place in Brussels in October 2010**



***The Belgian Corporate Governance Conference***

**6 and 7 December 2010 in Brussels**

## Contact information

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