



Newsletter - July 2010

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Library



Corporate Governance, Competition, and Political Parties.

Explaining Corporate Governance Change in Europe
Roger Barker, Oxford University Press

<http://www.oup.com/us/catalog/general/subject/Finance/Corporate/?view=usa&ci=9780199576814>

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Events Calendar

Optimizing EU financial reforms for achieving resilience, growth and competitiveness. What priorities? What roadmap

EUROFI

27 to 30 september 2010

Brussels

<http://www.eurofi.net/brussels.php>



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
<http://www.guberna.be/flash/june2010.html>

EUROPEAN CORPORATE GOVERNANCE CONFERENCES

The 9th European Corporate Governance Conference was organized under the Spanish Presidency of the European Union, by the Spanish Association of Board Directors (IC-A, Instituto de Consejeros- Administradores), and the Ministry of Economy and Finance/, with the collaboration of the Spanish Supervisor CNMV, the European Commission (CE) and ecoDa. Speakers and attendees debated on the balance between regulation and recommendation, board of directors' remuneration and the application of corporate governance to unlisted companies. The executive summary is now available on ecoDa's website:

http://www.ecoda.org/docs/100701%20Summary_9%20European%20Conference%20on%20Corporate%20Governance_Total_Eng.pdf

<http://www.eu2010.es/en/agenda/seminarioscongresosyconf/jun29gobcor.html>

As an official event under this Belgian Presidency, GUBERNA (ecoDa's member) organizes a European Corporate Governance Conference on 6 & 7 December 2010, in Brussels. On the first day, it will be discussed in several working groups to what extent academic research can help to cope with the numerous challenges corporate governance is faced with in Europe and throughout the world. The dinner event will reflect on the European policy towards better corporate governance. The second day is a business and policy oriented day, where business leaders, policy makers and academic circles exchange views on concrete steps forward to make governance more effective. It will explore new combinations of board, shareholder and external monitoring.

<http://www.guberna.be/flash/june2010.html>

CORPORATE GOVERNANCE FOR FINANCIAL INSTITUTIONS – ecoDa's response

The Commission has issued a Green Paper launching a public consultation on possible ways forward to improve corporate governance in financial institutions and remuneration policies. The Green Paper focuses on Risk Management issues and on processes and structures around this issue. ecoDa's policy committee has been thoroughly involved in drafting a policy paper for submission to the European Commission. This policy document takes into account all questions of the Commission (relevant to directors) and expresses ecoDa's view on the Green Paper. ecoDa's paper states that the Green Paper should be more balanced in its description of the role of directors in failing to prevent the financial crisis. Otherwise there is a danger of an inappropriate policy response, which excessively focuses on boards and insufficiently on other components of the global financial system. ecoDa stresses also the importance of differentiating between the governance frameworks that are required in the financial and non-financial sectors. ecoDa also addressed its views with regard to boards' evaluation, diversity, boards' duties or remuneration.

<http://www.ecoda.org/docs/EU%20Green%20Paper%20ecoDa%20response%202010-%202013%20July%202010%20FINAL.pdf>

European News

NEXT GREEN PAPER ON CG FOR LISTED COMPANIES

During the first quarter of 2011, the European Commission will issue a Green Paper on corporate governance for listed companies which should address the minority shareholders' protection, the boardroom's composition and diversity, the functioning of the comply or explain principle (following the previous Risk Metrics Report) as well as corporate social responsibility (which is becoming a topical issue for the European

Commission and Commissioner Barnier). On CSR, the Commission is looking for comparable data and therefore for a minimum of standardization.

SHAREHOLDERS' RIGHTS

In order to ensure that EU citizens and businesses fully benefit from the Internal Market, the European Commission has taken action against different Member States. It has referred Belgium, Cyprus, Greece, Spain, France, Luxembourg, The Netherlands and Sweden to the Court of Justice for late implementation of the Shareholders' Rights Directive. The Directive introduces minimum standards to ensure that shareholders of companies whose shares are traded on an EU regulated market have timely access to the relevant information ahead of the general meeting and simple means to vote at a distance. While nineteen Member States have already fully implemented the Directive, eight Member States (Belgium, Cyprus, Greece, Spain, France, Luxembourg, The Netherlands and Sweden) still have to implement some or all of its provisions. Incomplete implementation means that shareholders in those Member states do not enjoy the same rights as elsewhere in Europe and are denied the rights the Directive gives them when investing in publicly listed companies. The deadline for implementation was 3 August 2009.

MINORITY SHAREHOLDERS PROTECTION

The last meeting of the Forum was held on 2 June 2010. It addressed mainly the issue of the relation between corporate governance and capital markets and the evaluation of the Transparency Directive and empty voting. The Forum is about to issue a statement on minority shareholders protection.

http://ec.europa.eu/internal_market/company/docs/ecqforum/agenda-meeting-20100602_en.pdf

EUROPEAN RECOMMENDATION ON REMUNERATION

The Commission reports one year after the adoption of Recommendation 2009/384/EC and of Recommendation 2009/385/EC on measures taken by Member States to promote the application of these Recommendations. The two reports are complemented by two staff working documents which provide detailed analysis of the measures taken by Member States.

http://ec.europa.eu/internal_market/company/docs/directors-remun/com-2010-286-2_en.pdf

http://ec.europa.eu/internal_market/company/docs/directors-remun/com-2010-285-2_en.pdf

MEPs on 17 approved some of the strictest rules in the world on bankers' bonuses. Caps will be imposed on upfront cash bonuses and at least half of any bonus will have to be paid in contingent capital and shares. MEPs also toughened rules on the capital reserves that banks must hold to guard against any risks from their trading activities and from their exposure to highly complex securities. Upfront cash bonuses will be capped at 30% of the total bonus and to 20% for particularly large bonuses. Between 40 and 60% of any bonus must be deferred for at least three years and can be recovered if investments do not perform as expected. Moreover at least 50% of the total bonus would be paid as "contingent capital" (funds to be called upon first in case of bank difficulties) and shares.

<http://www.europarl.europa.eu/sides/getDoc.do?ubRef=-//EP//TEXT+TA+P7-TA-2010-0274+0+DOC+XML+V0//EN>

Separately, in a non-legislative resolution drafted by Saïd El Khadraoui (S&D, BE), Parliament calls for remuneration policy principles to be extended to cover all companies listed on stock exchanges. It proposes that listed companies be required to explain their remuneration policies if their directors' pay is deemed not to follow certain principles aimed at removing incentives to take excessive risk or to take decisions based on short-term considerations. The resolution also proposes that shareholders be given greater control over the directors of a listed company. Finally, 'golden parachutes' handed

to directors in cases of early termination should be limited to the equivalent of two years of the fixed component of the director's pay and severance pay should be banned in cases of non-performance or early departure, says the resolution.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0265+0+DOC+XML+V0//EN>

TRANSPARENCY DIRECTIVE

The Commission Services have launched a public consultation on the modernisation of the Transparency Directive 2004/109/EC. The deadline for responses is 23 August 2010. Stakeholders are invited to respond on two main topics: a simplification regime for smaller listed companies and holdings of voting rights. http://ec.europa.eu/internal_market/consultations/2010/transparency_en.htm

A report on the operation of the Transparency Directive is also available at:

http://ec.europa.eu/internal_market/securities/docs/transparency/directive/com-2010-243_en.pdf

On 11 June 2010, the Commission organised a conference regarding the transparency directive.

The Commission is convinced that there is need for differencing and simplifying rules. Investors are facing too different rules and national gold-plating while acting cross-border. The objective of the reform is mainly to improve attractiveness for smaller listed companies and to increase liquidity. It is important to create space for different kind of assets, to have a long term vision of financing economy and to extend the benefits of the prospectus directive to the alternative markets, but at the same time to keep the flexibility at national level.

Regarding the Modernisation of the rules on disclosure of major holdings of voting rights, if maximum harmonisation is good, it is important to lower the costs of cross border investments and to curb temptation as a takeover tool. But harmonisation does not need to cover all, uniformity is a key for technical aspects; however, member states should choose their own thresholds.

<http://scic.ec.europa.eu/str/index.php?sessionno=1101>

INSOLVENCY LAW

The European Parliament recently published a report titled Harmonisation of Insolvency Law at EU Law Level. The report outlines differences between national insolvency laws which create difficulties for companies having cross-border activities or ownership within the EU and identifies areas where harmonisation would be desirable. The report also considers the extent to which the harmonisation of insolvency law could facilitate further harmonisation of company law.

<http://www.insol-europe.org/download/file/2492>

EUROPEAN COMPANY STATUTE

On 23 March 2010 the Directorate General for Internal Market and Services launched a public consultation on how the European Company Statute (SE) works in practice. The aim of the consultation was to test the findings of the external study provided by Ernst & Young ('E&Y') following a call for tender by the Commission and to provide the Commission with input on issues relevant for the assessment of the SE. The European Commission has now published a synthesis of the comments received in response to its consultation. On 26 May, the Commission organised a conference aimed at supporting the on-going work with a view to elaborate the report required by Regulation 2157/2001 on the Statute for a European Company. It seems that if it is not possible to conclude a European Private Company, the European Company Statute will be extended and more open. Professor Monti's report on the single market recommended greater progress to be made on adoption of the Statute European Private Company.

http://ec.europa.eu/internal_market/consultations/docs/2010/se/summary_report_en.pdf

DEONTOLOGICAL QUESTIONS RELATED TO COMPANIES' MANAGEMENT

A resolution was adopted by the Parliament on 18 May on deontological questions related to companies' management. It is stated that the European Union needs an industrial, social, and environmental model geared to the long term, consistent with the general interest of companies, shareholders, and workers. It mentioned also that the Commission should promote the utilisation of best practice guidance for unlisted companies, which is designed to take account of the specificities and differences of such companies.

Moreover Member States should effectively implement measures such as the EU Shareholders' Rights Directive to remove the obstacles to and enhance shareholders participation in voting, in particular with respect to cross-border voting.

The resolution also calls for binding measures on remuneration for directors of bank and credit institutions and emphasises the general social responsibility of company boards for the sustainable, longer-term development of firms based in an EU Member State. These measures should be implemented as a duty of such boards in order to structure company directors' remuneration in a way which reflects that aim and which is transparent to the European public.

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0165>

ecoDa provided Mr Lehne with its publication on '*Corporate Governance principles and guidance for unlisted companies*' and with a statement regarding People Governance and Corporate Governance drafted by ecoDa's working group on People Governance and Corporate Governance.

The inclusion of unlisted companies in the draft report represents an important turn, since they have never been considered before in the draft report.

AUDIT

Commissioner Barnier will publish a Green Paper on the role of auditors in autumn. The objective of this green paper is to initiate a debate on the role and the governance of auditors, as well as the possible changes which could be foreseen in this domain.

MARKET ABUSE

The European Commission (DG Internal Market and Services) held a public hearing on the review of the Market Abuse Directive 2003/6/EC (MAD) on 2 July 2010 in Brussels. Four panels discussed the main issues in the ongoing review of the MAD:

- Ensuring comprehensive and appropriate coverage of derivative markets in the MAD
- Closing the remaining regulatory gaps
- Strengthening the investigative and sanctioning powers of competent authorities
- Moving towards a single rulebook/Reducing administrative burdens, especially on SMEs

The Commission services have launched a public consultation on the review of the Market Abuse Directive. Its objective is to consult financial market participants, governments, competent authorities and other stakeholders on the modifications to the Market Abuse Directive that the Commission is considering for its forthcoming legislative proposal. A review of the Directive is expected by December 2010.

http://ec.europa.eu/internal_market/securities/abuse/index_en.htm

http://ec.europa.eu/internal_market/consultations/2010/mad_en.htm

DERIVATIVE MARKET AND SHORT SELLING

Proposed EU rules on derivatives trading must be made clearer and tougher, so as to reduce speculative trading and ensure that as many derivatives as possible are traded through open channels that are subject to rules, the European Parliament said in a resolution adopted on 15 June. The resolution also suggests ways to regulate the trade in credit default swaps and reduce the regulatory burden on corporate end-users of derivatives. Caught in the eye of the storm of the Greek debt crisis and widely criticised for the opaque way in which they are traded, derivative products are currently being scrutinised at national level, EU level and also by the G20. The Commission has also issued a consultation on Derivatives and Market Infrastructures and will publish the new EU draft legislation on derivatives in September

http://ec.europa.eu/internal_market/consultations/docs/2010/derivatives/100614_derivatives.pdf

The Commission services launched also a public consultation on short selling. Its purpose is to consult market participants, governments, regulators and other stakeholders on possible provisions to be considered in a forthcoming Commission proposal for stand alone legislation dealing with potential risks arising from short selling.

http://ec.europa.eu/internal_market/consultations/2010/short_selling_en.htm

International News

US PROXY SYSTEM

The Securities and Exchange Commission today voted unanimously to issue a concept release seeking public comment on the U.S. proxy system and asking whether rule revisions

should be considered to promote greater efficiency and transparency.

<http://www.sec.gov/news/press/2010/2010-122.htm>

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