



Newsletter - January 2012

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ecoDa's News

On 1st January 2012, ecoDa welcomed the Swedish Academy of Board Directors as a new full member.

On 27th March 2012, the European Confederation of Directors' Associations (ecoDa) will organize in Brussels a full-day conference on the "Comply or Explain - Preserving Governance Flexibility with Quality Explanations". The aim of this conference is to trigger reactions on what are the criteria for shareholders to accept explanations. The objective is to get a reflection ground to improve the quality of the explain option. The conference will include national reviews. The conference will take place at the Residence Palace in the very heart of the European district, two steps away from the European Commission.

ecoDa holds its third development programme for European directors on 5 and 6 March 2012. The training programme is targeted at directors with a cross-border mandate in their board activities or looking for such a mandate. Anyone seeking to update their knowledge of recent EU policy developments in the field of corporate governance will also benefit from the module.
<http://www.ecoda.org/>

European News

2012 Work Programmes

The European Commission published its annual Work Programme for 2012 on 15 November 2011. The Programme puts financial services reforms, the strengthening of the economic governance and reforms of financial regulation on the top of the EU priorities.

Work on translating the reform of economic governance into practice and on the International Agreement on a Reinforced Economic Union and the Commission's two draft regulations on enhanced economic

governance of 23 November 2011 will be at the centre of the policy agenda during the Danish Presidency. The Danish Presidency will, in general, work towards improving the protection of European consumers in relation to the financial sector.

http://eu2012.dk/en/NewsList/Januar/~~/media/Files/P/residency%20programme/EU%20Presidency_Programme_UK_Final%20Web_22_12.ashx

Corporate Governance Framework

The European Economic and Social Committee (CESE) issued in November its response to the EU Green Paper on CG framework. The CESE encourages the European Commission to "perform and make available a detailed study on recent developments and trends in shareholders' types, structure and relative importance in terms of shares held". According to the CESE, the Commission should "emphasize and promote the development and application of voluntary codes at national level for unlisted companies especially those with significant importance to society in particular companies with state or municipal ownership and companies with significant market power".

At the European Parliament, the ECON and EMPL Committees have addressed opinion on Mr Bodu's report related to Corporate Governance Framework. The opinion addressed by Ashley Fox for the ECON Committee stressed that *"enforcement action should be taken where companies fail to explain the reason for deviating from the relevant code; this failure should also be publicised; enhanced 'comply or explain' procedures for systemic companies should ensure that the appropriate regulator is satisfied that the explanation is clear and contains the information needed by shareholders to decide whether it is satisfactory"*. In addition, the ECON Committee considered that *"a more effective enforcement of 'comply or explain' should involve peer pressure, by making monitoring reports on companies publicly available"*. The opinion text stresses *"that shareholders should contribute more to responsible corporate governance and should inform regulators when a company provides an unacceptable explanation for departing from a code of practice"*. The EMPL Opinion considers that *"it is the responsibility of management and supervisory*

board members to avail themselves of the training and further training necessary for fulfilment of their tasks, with assistance from the company as necessary".

In November, the European Commission posted the results of the consultation on CG Framework. As explained by Michel Barnier at the European CG Conference, the Commission will now reflect further and will assess costs and benefits before taking any decision. The Commission will issue a consultation on Company Law in January 2012. To ensure coherence and a comprehensive framework, the Commission will not issue any proposal before mid 2012. Proposals will then concern both Company Law and CG.

According to the Commissioner, Michel Barnier, two areas in CG require progress:

- The Commission will see how CG can help to get a long term approach,
- At boards' level, there is a need for effective rules, right diversity, appropriate skills and independence.

Flexibility is required and the comply or explain principle has to be maintained but it is not enough to leave certain issues to this principle such as rules on disclosure, minority shareholders and related party transactions.

In addition, it occurs that the respondents to the consultation:

- Are divided as to the need of further regulation on the EU level,
- Are against one size fits all approach
- Favour a principle based and flexible approach
- Call for EU measures in some specific fields (disclosure of remuneration, identification of shareholders)

Regarding boards, there is a consensus to call for more diversity, more time commitment, board evaluation, board's approval of risk strategy and profile, disclosure of remuneration. But the views are divided regarding the prohibition of cumulated mandates, limiting number of mandates, binding quotas, mandatory external evaluation.

http://ec.europa.eu/internal_market/company/docs/modern/20111115-feedback-statement_en.pdf

CRDIV

Paragraphs 4 and 5 of article 87 of the recent draft Capital Rights Directive (CRD IV) propose that the European Banking Authority (EBA) will benchmark boardroom diversity and develop regulatory technical standards for the directors of European banking institutions. Amongst other things, these standards will address the time commitment, skillset, training, diversity and independence of board members. According to its annual work programme, the EBA shall submit draft regulatory technical standards (Art 87 point 5) to the Commission by 31 December 2015.

[http://eba.europa.eu/cebs/media/aboutus/Work%20Programme/EBA-BS-2011-137-FINAL-Annex-\(EBA-work-programme-for-2012\).pdf](http://eba.europa.eu/cebs/media/aboutus/Work%20Programme/EBA-BS-2011-137-FINAL-Annex-(EBA-work-programme-for-2012).pdf)

The Danish Presidency will work for consensus in the Council on the Commission proposal for a revision of capital and liquidity requirements for credit institutions.

Audit

On 30 November 2011, the Commission published its proposal to reform the European audit market. The proposal establishes mandatory rotations for audit firms, mandatory tendering and new supervisory powers for the European Markets and Securities Authority (ESMA).

ACCA (the Association of Chartered Certified Accountants) and ecoDa (the European Confederation of Directors' Associations) organised a joint roundtable on 6 December 2011 in Brussels to discuss for the first time the newly published Commission's proposals on audit.

Bringing together about 85 high profile participants from diverse background and nationality, including EU and national decision-makers, academics, representatives from the financial services sector and from large and small businesses, regulators and supervisors as well as the audit profession, the event provided an informed platform to explore ways in which

we might most effectively enhance the value and quality of audit and restore society's confidence in the ability of audit to add value to corporate activity. This event also allowed participants to exchange good practices and recommendations, namely on the role of audit committees and proportionate audit for SMEs at EU level. The main conclusions indicate that there is a broad consensus that the value and quality of audit should be enhanced. There are however diverging views on the appropriate tools to reach that aim and a constructive dialogue with the EU decision-makers and all stakeholders is needed to ensure that the final audit measures can deliver the maximum benefits for businesses in Europe. The debate also highlighted different views on some of the proposed measures linked to market structure. These measures include mandatory rotation after 6 years (participants expressed instead their support for the existing internal rotation of partners), large "audit only" firms and a blanket ban of non-audit services to audited clients. Some participants indicated that providing non-audited services create a level of expertise needed for audit firms and that a blanket ban of non-audit services to audited services might generate a loss of professional expertise. Some participants also expressed doubts relating to compulsory mandatory tendering, arguing that it should be up to the audit committee to decide if and when the tendering process should occur. It was indicated that instead of addressing independence, these measures would rather end-up being counterproductive and even risky in case of complex or systemic businesses.

It was stressed that we should be careful not to link the independence of auditors and the financial crisis. It was argued that the job of auditors is to assess financial reports, but not to assess risky financial products.

In addition, some concerns were expressed regarding the proposal on oversight that could end-up excluding professional accountancy bodies from any other activity regulating their members other than the registration and approval of auditors. It was underscored that auditors are professionals, and like other regulated professions such as lawyers or doctors, they should have the ability to be monitored by their own professional bodies according to their codes of conduct and ethics.

http://ec.europa.eu/internal_market/consultations/docs/2010/audit/green_paper_audit_en.pdf

The US Public Company Accounting Oversight Board proposed for comment an auditing standard on communication with audit committees.

http://pcaobus.org/Rules/Rulemaking/Docket030/Release_No_2010-001.pdf

Gender Quotas

DG Justice is conducting an Impact assessment on feasibility, economic and social impact and the costs and benefits of possible EU measures on gender quotas in company boardrooms (results not before summer 2012).

CSR

In October 2011, the European Commission approved a new European strategy on corporate social responsibility. The Commission puts forward a new definition of CSR as "the responsibility of enterprises for their impacts on society". The Commission intends to 1- create in 2013 multistakeholder CSR platforms in a number of relevant industrial sectors, for enterprises, their workers and other stakeholders to make public commitments on the CSR issues relevant to each sector and jointly monitor progress, 2-launch from 2012 onwards a European award scheme for CSR partnerships between enterprises and other stakeholders. The Commission also intends to launch a process in 2012 with enterprises and other stakeholders to develop a code of good practice for self- and co-regulation exercises, which should improve the effectiveness of the CSR process. All large European enterprises should make a commitment by 2014 to take account of at least one of the following sets of principles and guidelines when developing their approach to CSR: the UN Global Compact, the OECD Guidelines for Multinational Enterprises, or the ISO 26000 Guidance Standard on Social Responsibility.

http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf

Social Business Initiative

The European Commission has adopted a Social Business Initiative action plan which provides a short-term action plan to stimulate the creation, development and growth of social businesses.

The Commission uses the term 'social business' to cover an enterprise:

- whose primary objective is to achieve social impact rather than generating profit for owners and shareholders;
- which operates in the market through the production of goods and services in an entrepreneurial and innovative way;
- which uses surpluses mainly to achieve these social goals and
- which is managed by social entrepreneurs in an accountable and transparent way, in particular by involving workers, customers and stakeholders affected by its business activity.

The Commission proposes 11 priority measures including a European regulatory framework for social investment funds, a comprehensive map of social enterprises in Europe in order to identify good practices and models which can be reproduced. Proposing to simplify the regulation on the Statute for a European Co-operative Society; as well as a European Foundation Statute. A study on the situation of mutual societies is also envisaged.

Market Abuse

The Commission has adopted proposals to replace the Market Abuse Directive with a Regulation on Market Abuse (MAR) and a Directive on criminal sanctions for market abuse. The proposal extends the scope of the market abuse framework to apply to any financial instrument admitted to trading on an MTF or organised trading facility, as well as to any related financial instruments traded OTC which can have an effect on the covered underlying market.

Regulation on insider dealing and market manipulation (market abuse):

http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_651_en.pdf

Directive on criminal sanctions for insider dealing and market manipulation
http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_654_en.pdf

Other News

OECD

The OECD should issue soon a Best Practice Report on CG for SOEs.

The OECD should revise its CG Principles in 2013.

National reports of companies' compliance with CG Codes

The British Guidelines Monitoring Group published its fourth annual report and provides a summary of the private equity industry's conformity with the Guidelines for Disclosure and Transparency in Private Equity (the "Guidelines") following their introduction in November 2007.
<http://walker-gmg.co.uk/sites/10051/files/gmg-dec11.pdf>

The Dutch Corporate Governance Code Monitoring Committee published its annual survey of companies' compliance with the Dutch Corporate Governance Code
http://commissiecorporategovernance.nl/page/downloads/Rapport_MCGC_2011.pdf

The French AMF has also published its 2011 Report on CG and executive compensation:
http://www.amf-france.org/documents/general/10249_1.pdf
An English version should be available soon:
http://www.amf-france.org/affiche_plan.asp?IdSec=6&IdRub=174&IdPlan=236&Id_Tab=0&lang=en

Assonime analyses every year the CG reports of almost all Italian listed companies and elaborate statistics on the application of CG rules. Moreover, in the second part of the analysis Assonime focuses on a specific topic: last year was remuneration, this year "slate voting"

<http://www.assonime.it/AssonimeWeb2/servletDocAllegati?idSelectedDocument=229937&idSelectedDocumentType=377&idSelectedAttach=229938&reserved=false>

Events Calendar

Comply or explain: Preserving Governance Flexibility with Quality Explanations

ecoDa

27 March 2012

Brussels

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



ICGN 2012 Spring Conference

ICGN

19-20 March 2012

London

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



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