



Newsletter # 17

May 2009

- Corporate Governance in Europe – Directors' voice -

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ecoDa's News

Mr Juan Álvarez-Vijande, from the Spanish *Instituto de Consejeros – Administradores* was elected ecoDa's new chairman during the General Meeting 2009, held on last April 27th. He benefits from more than 18 years boardroom experience developed as Non-Executive Director (amongst others as independent director), as Executive Director, advisor to Boards on Good Corporate Governance Practices as well as Advisory Board member.

For more information:

<http://www.ecoda.org/docs/Press%20Release.%20Appointment%20Juan%20Álvarez.%20April%202009.pdf>

The European Commission has commissioned a research report to assess the effectiveness of monitoring and enforcement mechanisms concerning Member States' corporate governance codes or other related forms of soft law. ecoDa has been appointed to deliver this research in collaboration with RiskMetrics Group, the leader partner (a leading provider of risk management and corporate governance services to the global financial community), BUSINESSEUROPE (the Confederation of European Business), and law firm Landwell & Associés and its European legal

correspondents. The study aims to provide a full, systematic picture of the efficacy of the 'comply or explain' corporate governance framework in Europe. ecoDa and BUSINESSEUROPE are responsible for analysing the European companies' perceptions of corporate governance codes based on one survey.

For more information:

<http://www.ecoda.org/docs/Press%20release%202005.02.09.pdf>

ecoDa and its affiliated member, the Institute of Chartered Secretaries and Administrators (ICSA) are co-developing a study which aims to review how boards are being supported and managed across the EU. The study looks to identify the types of board support roles currently in place, the scope and influence of these roles and what professionals are doing on a day to day basis to promote good governance practice and influence board behaviour. The study will take the form of an online survey of current roles and governance responsibilities. For those interested, the questionnaire will be available as from 15th June.

For more information:

Soon on line at: www.ecoda.org and <http://www.icsa.org.uk/home?c=1>

ecoDa's Annual Conference 2009 took place at the Residence Palace in Brussels last April 27th. The title of the conference was *The Boardroom's Response to the Crisis*. One roundtable was dedicated to *Can the Board Manage Risks?* while the second was about *The Boardroom after the Crisis: getting the balance right*. The overview will be available soon in ecoDa's website.

For more information:

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

The overview of the Round Table Discussion on Audit Committees and CG,

organized by ecoDa, on March 18th 2009 with KPMG (its associate member) and the European Confederation of Institutes of Internal Auditing (ECIIA) is now available in ecoDa's website.

For more information:

<http://www.ecoda.org/docs/RTD%20on%20Audit%20Committees.%200Overview.pdf>

European News

EXECUTIVE REMUNERATION

The Commission has issued two new Recommendations on remuneration: one to update the 2004 Recommendation on directors' remuneration in listed companies and the other to address remuneration in the financial services industry. The second one will be followed up by legislative proposals to bring remuneration schemes within the scope of prudential oversight. In June, the Commission will present proposals to revise the Capital Requirements Directive to ensure that regulatory capital adequately covers the risks inherent in banks' trading book, securitisation positions and remuneration policies.

On directors' pay, the new Recommendation is in line with the ECOFIN Council's conclusions of December 2nd 2008 and sets out principles on the structure and governance of remuneration policy:

- On structure, the Recommendation introduces proportionality of remuneration within the company by benchmarking directors' remuneration to the other executive directors in the board and the senior employees in the company. It sets a limit on severance pay and provides for no severance pay in case of failure. It requires a balance between fixed and variable pay and subjects the award of variable pay to predetermined and measurable performance criteria.
- To promote the long term sustainability of the company, it provides for a deferment of variable directors' remuneration, for a minimum vesting period for stock options and shares and for the minimum holding of part of shares until the end of employment.

- On governance, it sets out principles aimed at improving shareholders' oversight of remuneration policies.
- Regarding remuneration committees, at least one member of the committee should have sufficient expertise in the field of remuneration. The members of the committee must be present at the general meeting where the remuneration statement is discussed.

For more information:

http://ec.europa.eu/internal_market/company/directors-remun/index_en.htm

Last March 23rd 2009 and before the two new recommendations, the European Corporate Governance Forum published a statement regarding directors' remuneration. The statement focuses in three main points:

- The disclosure of director remuneration: the disclosure of the remuneration policy of listed companies and of the individual remuneration of directors (executive and non-executive) and any material change to it should be mandatory for all listed companies in the EU.
- The process of setting director remuneration: an appropriate process for setting executive director remuneration requires that executive directors have no involvement whatsoever in setting executive director remuneration. Instead, this should be left to non-executive directors and shareholders.
- The substance of director remuneration: it should not be regulated in a mandatory way at EU level.

For more information:

http://ec.europa.eu/internal_market/company/docs/ecgforum/ecgf-remuneration_en.pdf

CROSS-BORDER ISSUES & CORPORATE GOVERNANCE

on March 23rd, the European Corporate Governance Forum published a statement on Cross-border issues of Corporate Governance Codes. The Forum believes that companies incorporated in the EU the shares of which are admitted to trading on a regulated market should at least apply one code and should not materially have to apply more than one code.

In order to fulfill this, the Forum recommends the introduction of two new rules:

- A requirement for companies incorporated in the EU of which shares are traded on a regulated market to apply a corporate governance code applied in either the Member State of its registered seat, or the Member State of its primary share listing.
- A member State should require no more than that a company that is either registered in that Member State or the shares of which are admitted to trading on a regulated market in that Member State but which applies another Member State's corporate governance code explains in what significant ways the actual corporate practices of that company deviate from those set out in the Member State's corporate governance code.

For more information:

http://ec.europa.eu/internal_market/company/docs/ecgforum/ecgf-crossborder_en.pdf

PRIVATE EQUITY & HEDGE FUNDS

On April 29th, the European Commission has proposed a Directive on Alternative Investment Fund Managers (AIFM) which include the managers of hedge funds and private equity funds, managed around €2 trillion in assets at the end of 2008. The proposed Directive will require all AIFM within scope to be authorised and to be subject to harmonized regulatory standards on an ongoing basis. It will also enhance the transparency of the activities of AIFM and the funds they manage towards investors and public authorities and ensure that all regulated entities are subject to appropriate governance standards and have robust systems in place for the management of risks, liquidity and conflicts of interest. It will also regulate all major sources of risks in the alternative investment value chain by ensuring that AIFM are authorised and subject to ongoing regulation and that key service providers, including depositaries and administrators, are subject to robust regulatory standards

For more information:

http://ec.europa.eu/internal_market/investment/docs/alternative_investments/fund_managers_proposal_en.pdf

EUROPEAN PRIVATE COMPANY

On March 10th 2009 the European Parliament amended and adopted a text on the

proposal for a Council regulation on the Statute for a European Private Company (EPC). The proposition is now at the Council. The proposition must be adopted by unanimity by the 27 Ministers responsible for competition issues.

The Commission project suggested the entry into force of the EPC by July 2010, but the current discussions might delay it. The 27 have not reached an agreement on two major aspects of the text. The most problematic point is the participation of workers in the company's organization, the co-management. The Commission's project foresees that in the Member States where this co-management is a characteristic of the company's organization, the prevailing law is the national law. But there are several countries, such as Germany and Austria, which consider this mention insufficient and want a stricter regulation mentioned in the proposition. On the other hand, for other countries such as France, Italy or Poland, this point is not that significant.

In France, on May 14th 2009, the Committee for Economic Affairs of the French National Assembly examined the report of Member of Parliament Marc Dolez (left wing) about the EPC. The report highlights two problematic aspects, the first of which is the application framework of the EPC.

For more information:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0094&language=EN>

RISK MANAGEMENT

The Spanish *Instituto de Consejeros – Administradores* organized a Conference that took place on February 26th in Madrid, where they had the opportunity to learn how risk is managed in different countries, which is the role of the Board and Audit Committee in the management of risks of listed companies in Spain, the view of the Regulator on risk transparency, and they also studied the management of business risks in Unlisted companies. They had the chance to analyse the information that Directors have for decision making, either through internal audit, or rating agencies.

For more information:

http://www.iconsejeros.com/noticias/ampli_noticia.php?id=145

ACCOUNTING DIRECTIVES

The Fourth and Seventh Council Directives are currently under review in line with the broad policy objective of simplifying the regulatory environment in the EU and reducing the administrative burden, in particular, on SMEs. A public consultation was organised until the 30th of April and a stakeholder event has been fixed on June 12th 2009 a preliminary analysis of the responses to the public consultation will be given and where discussion about the overall directions that the Commission intends to take for a legislative proposal will be launched.

For more information:

Contact: markt-stakeholder-event@ec.europa.eu

International News

OECD - CORPORATE GOVERNANCE LESSONS

The OECD has published an article about the corporate governance lessons that can be learnt from the financial crisis. The report analyses the impact of failures and weaknesses in corporate governance on the financial crisis and concludes that the financial crisis can be to an important extent attributed to failures and weaknesses in corporate governance arrangements that did not serve their purpose to safeguard against excessive risk taking in a number of financial services companies.

For more information:

<http://www.oecd.org/dataoecd/32/1/42229620.pdf>

SEC - RIGHTS OF SHAREHOLDERS TO NOMINATE DIRECTORS

The US securities watchdog has tabled a proposal to allow shareholders to directly nominate directors. Under the proposals, shareholders who own a significant stake in a company (one, three or five per cent, depending on its size) will be able nominate up to a quarter of the board's directors. Shareholders could, under certain circumstances, include a nominee or nominees for director in company proxy materials. The Securities and Exchange Commission (SEC) has asked for comments on the proposals by the beginning of July.

For more information:

<http://sec.gov/news/press/2009/2009-116.htm>

ICGN- ROLE OF CORPORATE GOVERNANCE IN RESTORING STABILITY

In its second statement on the Global Financial Crisis, ICGN clearly pointed out that *"shareholders should take governance factors into account and consider the riskiness of a company's business model as part of their investment decision-making"*. Furthermore, regarding remuneration, and *"provided they are given a right to vote on remuneration policy, shareholders should take responsibility for seeing that directors are incentivised in such a way that delivers on the agreed medium and long-term strategy and aligns their interests with those of shareholders"*. Competence and board dynamics must be tested through independent evaluation, and the process for this should be evident to the market.

For more information:

http://www.icgn.org/files/icgn_main/pdfs/news/icgn_statement_on_the_financial_crisis_23_march_09.pdf

Events Calendar

*Stakeholder event on the Review of the 4th and 7th Council Directives.
DG Internal Market and Services*

June 12th 2009 from 09.30 to 12.30 in Brussels

More information: markt-stakeholder-event@ec.europa.eu



Corporate Governance in Crisis?

June 18th 2009 from 14.30 to 17.00 in Luxembourg

Organised by the ECGI and the University of Luxembourg with support from the Chambre de Commerce, Luxembourg and the Institut Luxembourgeois des Administrateurs

More information: <http://www.ecgi.org/luxembourg/conference/programme.php>



The 4th ICSA Companies Act Conference

June 2nd 2009 in London

Organised by the Institute of Chartered Secretaries and Administrators

More information: <http://www.icsatraining.co.uk/disp.php?ID=87>



Graduation Ceremony of the First Promotion of Certified Board Directors IC-A.

July 1st 2009 in Madrid, Spain

More information:

mcervantes.iconsejeros.com

Related documents

 - **Boards in turbulent times, Corporate Governance Report 2009- Heidrick and Struggles**
« Good governance does not grant performance in European companies »
<http://www.heidrick.com/NR/rdonlyres/A03A8F3A-A676-43FC-BBBA-06105F43B034/0/CorporateGovernance2009Europe.pdf>

 - **Managing risk in perilous times - Practical steps to accelerate recovery**
A report from the Economist Intelligence Unit - Sponsored by ACE, KPMG, SAP and Towers Perrin
<http://www.kpmg.be/index.thtml/en/about/news/index.html?cid=52616e646f6d4956e74bc8aa7f9a9c7c5d17a93064c14fa6>

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