

Many Corporate Governance codes in the European Member States recommend that boards assess their own performance as well as their interaction with the executive management and in some cases with other stakeholders, and consider the functioning of their committees. Recommendations regarding the frequency of this evaluation vary from code to code. The most prescriptive guidelines require annual internal review and external review at least every three years.

However, Corporate Governance codes are often silent on any possible risk of conflicts of interests when the board evaluation is conducted by an external consultant.

For reasons of independence, it is important to be cautious when a commercial consulting firm provides other consultancy services at the same time as the board evaluation, or when the same consulting firm is consistently selected to provide the board's evaluation over a long period. Conflicts of interests might happen for instance when an executive search firm takes part in the recruitment of board members and the same research firm has then to evaluate them. In other words, it is difficult for a headhunter to evaluate a posteriori the contribution of the directors after having recommended their appointment. It should be borne in mind that many governance codes recommend including the appraisal of individual directors' contributions even when the collective evaluation of the board is the primary objective. However, if the board evaluation only focuses on the board as a collegial body, the risk of such conflicts of interests is reduced.

A Call to board evaluation facilitators

As a good practice, board evaluation facilitators should declare any significant risk of conflict of interests to ensure an independent and objective assessment. Similarly, facilitators should disclose whether they subscribe to a code of ethics. Board assessments would be viewed as non-permissible consulting services when conducted during the contractual period of the recruiting services by the same headhunting professional. The best practice would be to additionally impose a cooling-off period after termination of the headhunting contract. Such a cooling-off period should be determined taking into account the length and possible repetition of the mandate of the headhunting contract.

A Call for internal regulation and transparency

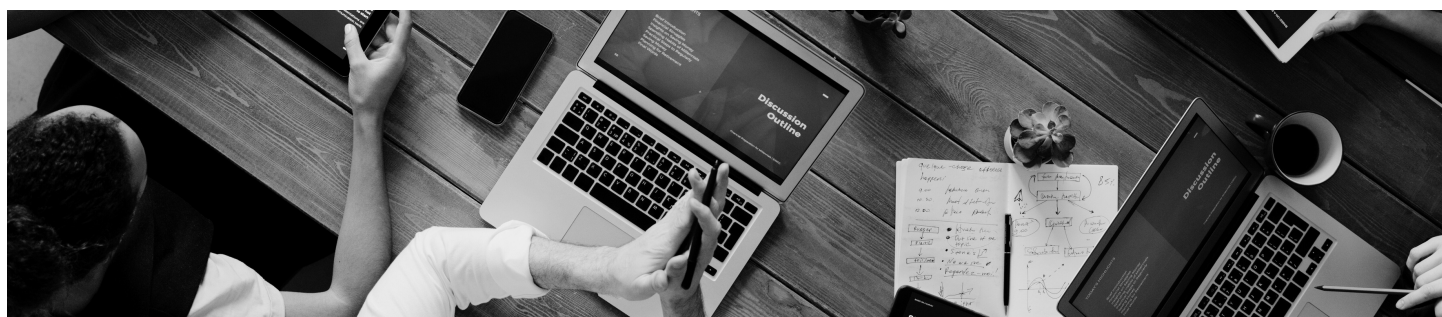
The Nomination & Remuneration Committee (or the Governance Committee if there is one) should be in charge of a) an assessment of the qualifications of the third party facilitating the

board evaluation, and b) developing a policy for pre-approval of any additional board services (nature and fee), with the exclusion of the non-permissible services specified above.

Regarding those services, as a minimum for listed companies, the practice should follow the following requirement to be found in the UK Corporate Governance Code: “The external evaluator should be identified in the annual report and a statement about any other connection it has with the company or individual directors”.

A Call for rotation

Furthermore, in general, the principle of rotation inspired by what applies to statutory auditors should be considered for all commercial board evaluation services. While using consistently the same firm over the years may shorten its “learning curve” and facilitate comparisons over time, the board could also benefit if a novel approach is brought by a new firm from time to time. In any case, any new consultant can use previous assessments as they are the property of the board. This is why ecoDa advocates, when the national markets are sufficiently mature on these subjects and offer a sufficient choice of experts, for incentivizing a rotation of these firms, in cases where a significant risk of conflict of interests is established.



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