ecoDa
The European Voice of Directors

FSB Consultation on the OECD principles of CG

An ecoDa reaction

8 September 2016

About ecoDa:

The European Confederation of Directors' Associations (ecoDa) is a not-for-profit association founded in December 2004 under the laws of Belgium. Its objective is to represent the views of company directors from EU member states to corporate governance policy-makers at EU level. ecoDa, the European Confederation of Directors' Associations, is a not-for-profit association acting as the "European voice of board directors".

*Through its 20 national institutes of directors, ecoDa represents around sixty-five thousand board members from across the EU, ensuring that their views on Corporate Governance are clearly communicated to policymakers in the EU institutions. ecoDa's member organisations represent board dir*ectors from the largest public companies to the smallest private firms, both listed and unlisted.

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1. Need for a more comprehensive approach?

A first striking characteristic of the approach followed by the OECD in its governance principles is the large scope of audiences and themes covered. While in the EU, the governance codes for listed companies are primarily dedicated to companies, the approach followed in the G20/OECD Principles of Corporate Governance is much broader. It includes provisions at the attention of governments, shareholders and stakeholders as well.

It is clear that the self-regulation as developed from the perspective of the listed companies can only be effective if the other stakeholders and governance monitors have a comparably clear engagement to foster good governance practices. The discussion on shareholder monitoring and on monitoring the quality of comply or explain offers very relevant examples of such interlocking roles, as clearly shown by the ecoDa study on comply or explain (October 2014 http://ecoda.org/uploads/media/31719_EcoDa_CGC_report_v2.pdf).

ecoDa would therefore welcome that member states devote more attention to the missing links, such as the stewardship role to be played by shareholders (as developed in the Principle II of the OECD). Moreover, the shareholder roles and duties should be differentiated in terms of the type of shareholders and their status as outsider, versus insider; institutional shareholder versus private shareholder etc (see also Principle III of the OECD). But also governments should be encouraged to take good note of the recommendations of the OECD, such as the need for flexibility, consistency across different sets of rules, without overlaps or conflicts (hard law vs soft law; different categories of hard law; role of stock market regulation, etc.), transparent and enforceable requirements.

2. Need for a general governance framework for listed companies?

The governance codes mainly focus on the board of directors, whereas the board is only one out of the 6 main governance principles developed by the OECD. The OECD Principles cover a much wider approach of governance which is even more in contrast with the approach followed in the EU. In fact, the EU has opted for a piecemeal approach towards governance with a widespread set of topical regulations and recommendations on certain specific governance aspects. The ecoDa study on comply or explain (http://ecoda.org/uploads/media/31719_EcoDa_CGC_report_v2.pdf) has revealed how different the Member States have approached the wide domain of governance in their respective market regulation on listed companies, corporate law and governance codes. An important question is therefore, whether in each country one does not need to develop a kind of general governance framework, giving clear answers to all of the aspects and parties covered in the OECD Principles. The Principle I on 'ensuring the basis for an effective corporate governance framework' can be instrumental in this respect.

3. Need for more attention for corporate social responsibility, ethics and stakeholder relations?

Although significant differences exist across Europe, governance codes devote relatively less attention to aspects such as corporate social responsibility, ethics and stakeholder relations. In contrast with this the OECD clearly highlights the need for more attention to such elements (see e.g. Principle IV and also Principle VI of the OECD), in light of their impact on the sustainability of the company, its long-term profitability and success, its reputation and even its license to operate.

ecoDa would therefore welcome that member states who decide to update their code (as is regularly the case) include additional principles on promoting ethical, responsible and transparent corporate governance practices.

N.B: We invite you to pay also attention to the responses that our Belgian Institute of Directors- Guberna- will provide to you. Their responses will complete our common position with a more national focus.

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