



Frans Timmermans
First Vice-President of the European Commission

Copy to: Veronica Gaffey (Chair of the Regulatory Scrutiny Board), and Pascal Leardini (Director for Strategy, Better Regulation & Corporate Governance, Secretariat-General, European Commission)

Subject: Reaction to the recent EC Communication on Better Regulation

The 2nd of May, 2019

Dear Mr Vice-President,

We are writing you about the recently adopted Communication on Better Regulation. We understand that the European Commission is still keen to exchange views on possible ways forward as it was done at the time of the related conference organized on April 29.

The European Confederation of Directors' Associations (ecoDa) represents 22 national institutes of directors in Europe with more than 55.000 individual board directors. ecoDa is very supportive of all the recent developments to move towards a transparent legislative process based on actual evidence from facts on the ground. All the achievements in that sense have secured a more robust system that better meets the expectations of European businesses.

This being said, we would like to share with you some of our concerns. In the area of Corporate Governance, we have seen an inflation of different European guidelines that are supposed to complement not only European legislations but also national Corporate Governance Codes. This is particularly true with the draft guidelines on the standardized presentation of the remuneration report under Directive 2007/36/EC as amended by Directive (EU) 2017/828 ('Shareholders' Rights Directive') and the Update of the Guidelines on Non-financial Reporting.

Contribution ecoDa and its members

Firstly, we believe that the European Commission should rely more on professional bodies like institutes of directors to develop practical guidelines that frame the way boards are operating. Those representative bodies have the capacity to quickly adapt best practices that are fit for purpose. For instance, at the time of the EC Action plan on Company Law and Corporate Governance (2012), the Commission decided to rely on ecoDa's Guidelines for unlisted companies instead of developing a new set of non-binding rules.

Subsidiarity to national self-regulation

Secondly, while developing guidelines, the Commission should sufficiently take into consideration the existing self-regulations developed at national levels. As rightly specified in the EC Communication on

Better Regulation, "actions at the EU level should always add value compared with what can be done at national, regional or local level". In addition, trying to achieve complete harmonization in terms of best practices might be too far-reaching.

Principle-based approach

Thirdly, in our opinion, the best is the enemy of the good. Guidelines should be more principle-based, leaving reasonable freedom to companies to design their information in ways they consider most suitable to its specific circumstances. It is important not to circumvent the benefits of having less binding legislative acts with too detailed and prescriptive guidelines. Furthermore, when they are too detailed, guidelines are formulated in a way that in practice make them more or less mandatory for companies to comply with.

Assessment after 3-5 years

Finally, ex-post impact assessment of the efficiency of newly implemented regulations should indeed be regularly undertaken but within an appropriate time frame after their enforcement. If you take the example of the recent fitness check on Corporate Reporting, parts of the regulation referred to have only recently been implemented in the member states (as this was the case with the Non-financial Reporting Directive, for which 2017 was the first year of application for most companies when their financial year coincided with calendar year - and even later for companies with split financial year). Hence, we questioned at that time if the timing was right for an overall evaluation of the existing regulations in this field. In general, ecoDa is of the opinion that it takes at least about 3-5 years before the full effects of regulations of these kinds can be assessed with any reasonable degree of certainty. We hope that our considerations will be useful when setting the priorities of the next European Commission.

We remain at your disposal for further details.

Sincerely yours,



Michel de Fabiani
Chair of ecoDa Policy Committee



Jan Wesseldijk
Chair ecoDa

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The European Confederation of Directors Associations (ecoDa) is a not-for-profit association founded in December 2004 under the laws of Belgium. Through its national institutes of directors (the main national institutes existing in Europe), ecoDa represents approximately 55,000 board directors from across the EU. ecoDa's member organizations represent board directors from the largest public companies to the smallest private firms, both listed and unlisted.