FIVE CORPORATE GOVERNANCE GUIDELINES TO ACCELERATE CHANGE AND SUSTAINABLE GROWTH IN EUROPE

Action Plan

MARCH 2021

ecoDa

ABOUT ECODA

The European Confederation of Directors Associations (ecoDa) is a not-for-profit association founded in December 2004 under the laws of Belgium. Through its 22 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.

ecoDa's objective is to promote Board members' skills, professionalism, and impact on society. By contributing to a professional framework for both current and future board members, ecoDa hopes to help them develop and add value to their organisations, both in the commercial and non-commercial sectors. ecoDa proposes solutions to the key corporate governance questions facing Europe today, including the challenge of helping Board members operate effectively across all European Union Member States. ecoDa aims to be an active partner of the European Union and its institutions – especially the European Parliament and the European Commission.

FOREWORD

The world is changing and so does governance. Democracy is in a crisis, platforms take over business, digital transformation becomes the new normal. Or in governance terms: we move towards servant leadership, shared economy, and new stakeholders. ecoDa, the Voice of European Directors, wishes to make its own contribution. Not through rules, but through tools – by exchange of best practices.

In this way ecoDa intends to participate in the reflection the European Commission has initiated on the role that corporate governance could play to promote sustainability in European companies.

The objective of this document is to unite European board members around a common action plan to respond to the multiple challenges they face. and to define good practices to which they should strive. The expectations vis-à-vis companies are high and they must behave as exemplary "citizens" creating meaning for society while acting in a responsible manner regarding their external effects.

ecoDa believes in the value of leading by example and hopes that this document can be useful to executives and non-executives to benchmark their own practices to this compilation which aggregates the best practices observed in Europe. Some of the 50 good practices proposed in this document may not be applicable in all countries in view of national specificities, but referring to these proven standards seems to us a good start to open to new ways of fulfilling the EU sustainable growth objectives.

ecoDa hopes to initiate a dialogue around this document and is keen to receive any feedback (contact@ecoda.org).

I warmly thank the working group, led by François Bouvard, member of the Board of the French Institute of Directors (IFA), for their outstanding work.

Jan Wesseldijk, ecoDa's Chair

FOREWORD

This position paper has been written by a task force commissioned by the Board of ecoDa, the European Confederation of Directors' Associations.
The task force, composed of members of ecoDa representing 10 countries,[1] all experienced Non-Executive Directors, has worked between January and December 2020 to:

1. Identify the megatrends that transform the environment in which European companies operate,
2. Describe the specificities of the European Corporate Governance Model vs the USA and China,
3. Assess the convergence points between Corporate Governance Systems in Europe,
4. Identify common European Corporate Governance Guidelines as a driver of competitiveness for European companies and of sovereignty for Europe.

The task force has taken a practitioners' view, which does not attempt to offer the exhaustiveness and depth of thorough academic research.

Long before this initiative started, several forces were already at work: fast-paced digitalisation transforming the way companies operate while generating new opportunities and risks, increasing awareness regarding environmental issues, growing debate on the risk of social division, and geostrategic shifts changing the international trade landscape.

The emergence of the Covid pandemic in the first quarter of 2020, and the confinement that simultaneously stalled most developed economies resulted in a worldwide crisis of a magnitude unseen since 1929, that accelerated some of the forces already at work.

This position paper is a contribution of ecoDa to the European debate, based on our conviction that **corporate governance is a key driver for the competitiveness and sustainability of European companies and therefore of prosperity and sovereignty for Europe.**

We recognise that the Corporate Governance System of each European country, based on the national culture, history and legal system, is distinct. Our purpose is not to be prescriptive or normative, but rather to propose common guidelines to help address the megatrends that European companies are facing and to accelerate sustainable value creation across Europe.

We hope that the European Member States and the actors of corporate governance in each country will adopt them and transpose them in their own Corporate Governance System, according to the principle of subsidiarity.

We hope that the European Union institutions will support these guidelines and promote them actively.

François Bouvard,
ecoDa's European Corporate Governance Principles Task force Chair

1.Belgium, Denmark, Finland, France, Germany, Italy, Luxemburg, Romania, Sweden, United Kingdom

TABLE OF CONTENT

Foreword....................3

1- Megatrends impacting companies and influencing Corporate Governance.........6
1.1- Increasing complexity and accelerating pace of change....................6
1.2- New opportunities....................7
1.3- New strategic threats....................7
1.4- Increased expectations on companies to contribute positively to society..........8
1.5- External stakeholders inviting themselves to the corporate debate....................9

2- Specificities of the European CG model vs. USA and China....................11
2.1- USA....................12
2.2- China....................13
2.3- Europe....................13

3- Convergence points across European Corporate Governance Systems................16
3.1- CGS legal framework....................16
3.2- Corporate Governance Codes....................17
3.3- Governing body....................18
3.4- Executive committee....................19
3.5- Auditing....................20
3.6- Shareholders....................20
3.7- Stakeholders....................20

4- Proposal for five common European Corporate Governance Guidelines............23
4.1- Rely on national Corporate Governance Codes to promote long term value creation, transparency and foster faster change....................26
4.2- Promote the competence, independence and diversity of the Board, and of the Executive committee....................28
4.3- Foster a more effective collaboration between the Board and the Executive committee....................29
4.4- Commit to ESG as a differentiating strategic competitive advantage for long term sustainable value creation....................32
4.5- Involve all the relevant stakeholders to contribute to the corporate debate......33

Conclusion....................36
Appendix: Bibliography....................37

1. MEGATRENDS IMPACTING COMPANIES AND INFLUENCING CORPORATE GOVERNANCE

20 years ago, with the emergence of internet, the speed of change of the environment in which companies operated started to accelerate. Digitalisation deeply impacted all their processes, from product design to manufacturing and distribution, from accounting to human resources management. The Executive team and the Board of all companies had to rethink and adapt their strategy and operating model.

In addition, the capital required to finance their development, came increasingly from new sources and from globalizing financial markets, which contributed to significant changes in corporate ownership.

In the past 3 years, amid this era of deep transformation, new challenges have emerged. Our taskforce identified five megatrends impacting companies and analysed their implications regarding corporate governance.

1.1 - Increasing complexity and accelerating pace of change

The explosion of the use of the internet at the beginning of the 21st century triggered a deep transformation of the economy through digitalisation. All sectors and functions have been impacted. New business models appeared, such as digital platforms[2] that revolutionised entire sect of activity. New players emerged, quickly establishing a global leadership position. Data became the new strategic asset. Social media revolutionised the way companies communicate with customers, but also the way customers and citizens communicate about companies.

The combination of the globalisation of the economy and of digitalisation has generated an exponential level of complexity. Companies, large and small, must constantly adapt their offer of products and services in order to address a larger spectrum of markets and customer segments, each with their specific characteristics and regulations, and face new competitors with different value propositions and business models.

The pace of change has sharply increased. The time to market of technological breakthroughs (computing power, big data, miniaturisation...) is shortening, forcing companies to reinvent their product and service offering ever more rapidly. Agility has become a key feature of successful companies, which have to invent new operating and organisation models.

2.The top-ranked companies by market capitalization are Apple, Microsoft, Alphabet, and Amazon. Facebook, Alibaba, and Tencent are not far behind. As of January 2020, these seven companies represented more than $6.3 trillion in market value, and all of them are platform businesses. Platforms are also remarkably popular among entrepreneurs and investors in private ventures. In 2017 two-third of the startups with valuations of more than $1 billion were platform businesses.
MITSloan, The Future of Platforms, February 2020

The increasing complexity and the accelerating pace of change create a huge challenge for the Executive committee and the Board of companies. They call for new approaches and competencies in domains that were unchartered territories: as data becomes a strategic[3] asset, how to ensure that your company is not dependent on others that will capture its value? What will be the impact of new technologies and of Artificial Intelligence on the skills and jobs that will be required 5 to 10 years from now? How to cope with[4] the changing international trade regulations?

1.2 - New opportunities

The speed of change, while being a challenge also offers tremendous opportunities: new products and services, new markets, enhanced understanding and a relationship with new customer segments, new operating and business models.

By embracing the principle of creative destruction, companies that are innovative and agile can reap the benefits of such opportunities and outpace competition.

1.3 - New strategic threats

Although some companies had identified a global pandemic risk in their risk management process, very few were actually prepared for it.

While viruses and diseases have been a threat to humanity for many centuries, we were led to believe that the tremendous progress of medical science in the past decades massively reduced such a risk. But the interdependency of our economies (intercontinental travel, specialisation of global supply chains, global trade...) and the simultaneous confinement in many countries has transformed a contained local issue into a global sanitary and economic crisis.

The culture of risk management has greatly improved and has indeed become an important dimension of corporate governance, we must acknowledge that while a company must of course prepare by mapping its risks and defining mitigation plans, one will never be able to pre-empt all of them.

Several new strategic threats have emerged over the past 10 years and the public awareness of their potential consequences has sharply increased: environmental disasters (Chernobyl 1986, Fukushima 2011), more frequent occurrence of natural disasters of a larger magnitude (Tsunami in Indonesia 2004, Katrina hurricane in New Orleans 2005), systemic financial crisis (sub-primes crisis 2008), risks resulting from the depletion of the natural resources and the reduction of the biodiversity, cybercrime that can freeze overnight all the processes of small and large companies, reputation risk relating to a company's brands, value chains and its key executives that can develop rapidly on social networks...

Is this a management issue or a governance issue? Since they might have a brutal impact on the company and its value, such topics must be discussed and dealt with at Board level, at least through their strategic angle.

3. If an industry is prone to technological change and rapid obsolescence, then the package of resilience, adaptability, coordination, and inimitability becomes more attractive than the package of efficiency, understandability, manageability, and predictability. Maintaining complexity within productive bounds, however, is a difficult task involving challenging trade-offs. Fortunately, it is important to learn how to harness complexity on a sustainable basis.
Harvard Business Review, Taming Complexity, January-February 2020

4. Simplicity is the Key to Accelerating Performance. Cumbersome legacy systems, multiple management layers, and unwieldy decision approval processes all contribute to record high levels of day-to-day clutter. High-growth companies — as well as their functions, business units, and teams — excel at simplicity. They continuously and repeatedly seek to kill complexity in four key areas: strategy, operating model, culture, and activity.

1.4 - Increased expectations on companies to contribute positively to society

Milton Friedman's mantra of the '70s that *"corporate managers should conduct the business in accordance with shareholders' desires, which generally will be to make as much money as possible, while conforming to the basic rules of the society"* and his famous article "The social responsibility of business is to increase its profit" [5] are now challenged, including in the United States.

While shareholders remain of course core internal stakeholders since they put their capital at risk to finance the development of a company, the objective stated by Friedman is now widely considered as having been too narrow.

In a context where a perception of increased social inequality, people now expect that companies adequately reward all internal stakeholders in a fair way, not only shareholders but also employees, management and, indirectly, suppliers.

In addition, the question of diversity of gender and ethnicity, in the workforce, in the Board and in the Executive committee also triggers very heated debates.

Finally, the increased public awareness and mobilisation around climate change has led to scrutiny, and indeed a need for greater accountability, around the impact that a company has on the environment.

These elements are occurring in a context of crisis of democracy in many countries, which is also a risk for business.

The expectation is now that, at a minimum, companies do not negatively impact the common good and that, better, they contribute positively to society, while fulfilling their own set of objectives.

The transformation that started with the concept of Corporate Social Responsibility (CSR) - which had been considered initially by some companies as a box-checking or green-washing exercise - is now gaining a far stronger momentum with ESG.

Environmental, Social and Governance objectives are increasingly taken seriously and considered as critical dimensions for a company to generate sustainable value and differentiate itself from its competitors.

Balancing these imperatives has an impact on each company's ability to achieve the return of capital expected by the financial markets and the shareholders, at least in the short term.

It starts with the company's purpose and is anchored in the measure of its performance and impact.

5. The New-York Time Magazine, 13 September 1970

1.5 - External stakeholders inviting themselves to the corporate debate

There is an increasing scrutiny from external stakeholders on companies. We have seen recently activists leverage social networks to organise the boycott of brands, or to compromise the reputation of companies or of members of their top management. It is for them a way to influence corporate decisions.

It is in the best interest of companies to strengthen the dialogue with the relevant external stakeholders (in particular, the authorities of the communities where the company operates, relevant NGOs and consumers' associations) as a useful input, while they define their strategy.

The point is not to create a level playing field between internal stakeholders (shareholders, management and employees who are all part of, and personally committed to the company) and external stakeholders, but to make sure the strategy of the company takes into account useful input in order to identify potential risks and to take the necessary mitigation steps.

These five megatrends have significant implications on corporate governance, that we have listed in the table below.

TABLE 1: MEGATRENDS AND IMPLICATIONS ON CORPORATE GOVERNANCE

Megatrend	Implications
1- Increasing complexity and pace of change	• How to best deal with the three time horizons (short, medium and long term)? • Should the respective roles of the Executive committee and of the Board evolve to define the strategy?
2- New opportunities	• How should Executive committee and Board work together to strike the right balance? • How to ensure the right level of risk taking?
3- New strategic threats	• How the better assess and prepare for these new threats? • During a crisis, how to best mobilise the complementary skills of the Executive team and of the Board?
4- Increased expectations on companies to contribute positively to society	• How to define and ensure sustainable performance • How to best allocate the profit? • Who should take these critical decisions? • Should the composition of the Executive team and of the Board reflect the composition of Society? • Should culture, values and ethics become a more explicit criteria in Board decisions? • How should Board members cope with these increased expectations? • How should the decision-making process be structured on these new issues?
5- External stakeholders inviting themselves to the corporate debate	• What type of mechanism should be implemented to strengthen the dialogue with the relevant external stakeholders? • How to take this input into account? • What type of feedback should be implemented with the external stakeholders?

2. SPECIFICITIES OF THE EUROPEAN CG MODEL VS. USA AND CHINA

The pandemic crisis and its economic implications have revealed some adverse consequences of globalisation. It outlined the interdependency of the European, American and Chinese economies, but also the dependency of European countries on foreign interests: the shortage of masks, respirators and sedation products came as a shock for many European citizens.

Over the past decades, China has successfully implemented a very ambitious strategy aimed at becoming the world's leading economy, and has reached a leadership - and in some cases dominant, if not monopolistic position - for many components and manufactured goods, that Europe and the United States have let go.

The USA, during the Trump presidency, has almost abandoned multilateralism to pursue an "America First" strategy, turning its back on its historical European partners. It has imposed new trade tariffs on many goods. In the past decade, the USA have also leveraged the unique status of the Dollar to take extraterritorial financial sanctions against non-US companies, several of them European, or to discourage foreign companies to trade with countries that are "on[1] the US watch list".

The exacerbated rivalry and bipolarisation between the USA and China, while commercial interests are increasingly influenced by geopolitical strategies, leave Europe in the middle, running the risk of losing its economic sovereignty, hence endangering employment and wealth creation.

The European weaknesses revealed by **the Covid crisis have triggered reactions from citizens, Member States and institutions.**

Corporate governance is a powerful lever for competitiveness, but it can also become a trojan horse in an economic war.

For example, the International Financial Reporting Standards (IFRS) implemented in Europe since 2005 provide a very useful framework for better consistency and comparability of corporate financial statements. However, some observers argue that rather than representing the "European accounting culture", the elaboration of IFRS has been dominated by Anglo-Saxon experts that have built it on their own standards.

The focus has shifted today to the extra-financial criteria and reporting. This is a key debate given the critical importance that ESG (Environment, Social and Governance) has taken since sustainable performance is becoming the critical factor of performance.

Defining the non- financial ESG criteria according to the European values and long-term objectives is therefore critical.

Some observers warn about the influence that some of the largest Audit firms that are historically rooted in the USA might exercise on the European institutions to define these new standards. The world of extra-financial rating is consolidating quickly. The largest players are becoming aggregators of financial and extra-financial data, that are used by investors. Most of these large players are now American.[6] **There is a risk for Europe to become dependent on non-European players for both ESG data and its regulatory framework.**

So, it is worth taking a comparative look at the American, Chinese and European Corporate Governance Models to better understand what are the specificities of Europe in that domain, and how they can be harnessed to **better support the sustainable development of European companies, hence contributing to Europe's economic sovereignty.**

Definitions

Corporate Governance Model (CGM): underlying philosophy and history, nature of the financial market, predominant shareholding structure, key drivers for decision making and time horizon focus that drives corporate governance in a given country or group of countries.

Corporate Governance System (CGS): mix of hard law, stock market listing rules and soft law that drives corporate governance.

Corporate Governance Code (CGC): document describing the soft law elements of the CGS.

We have focused our analysis on the key elements underpinning the Corporate Governance Models in the USA, in China and in Europe.

2.1 - USA

In 1776, the Declaration of Independence established Equality, Liberty and Opportunity as fundamental rights of the American People. As a shortcut the American system could be characterised by the word **individualism**, or in other terms by the primacy of the individual over the collective.

In terms of corporate governance, the **primacy of the shareholder** prevailed since the '70s, often with a strong focus on the short-term illustrated by the critical importance of quarterly results for listed companies. **The corporate governance decision processes are most often based on shareholder's value and compliance.**

6. S&P, acquisition of Oekom by ISS, of Vigeo-Eiris by Moody's, of Sustainalytics by Morningstar

The financialisation of the economy, the globalisation and, at the turn of the 21st century, the emergence of the digital economy rooted in the USA has generated a new era of hypergrowth that primarily benefitted those at the very top of the pyramid, while the middle class felt increasingly left behind in the aftermath of the 2008 sub-prime crisis.

Since 2018, the position adopted by the US Business Roundtable has resulted in a greater interrogation of the shareholder primacy model, with the recognition of the importance of metrics related to the impact of business on society in the corporate objectives, in particular in terms of environmental and social impact.

However, the withdrawal in 2017 of the USA from the Paris Agreement on Climate Change Mitigation illustrates the dichotomy between the political objectives and the intention expressed by some business leaders. The deregulation implemented by the Trump administration also arguably conflicts with the Business Roundtable's position.

Therefore, at this stage the much publicised ***"shift from shareholders' primacy to stakeholder capitalism"*** **remains a concept** since there is still an important discrepancy between the words and the deeds, and it will most likely take several years to become a reality across the US business community.

The Biden presidency, after re-joining the Paris agreement, might create the conditions for a better alignment between the USA political objectives and these intentions.

2.2 - China

In China, Confucianism was the State ideology under the Han dynasty (206BC- 202AD), extending the self to others, from the individual to the family, and from a group to the State, to reach universal tranquillity and happiness. The modern China combined the Confucianism roots with the socialist ideal of national development, common prosperity, social harmony and improved quality of life by building a socialist market economy in order to pursue the collective interest of society. The Chinese system could hence be characterised by the **primacy of the group and of the State over the individual.**

In terms of corporate governance, which has been increasingly structured since the 90's, the **primacy of the controlling shareholder** over the minority shareholder and the management remains the main characteristics. In SOEs (State Owned Enterprise), this primacy is exercised by the government or by the Communist Party, and in non-SOEs often by the founding family. Some observers underline the central grip exercised on SOE, non-SOE and even foreign enterprises through the Communist Party Committees.

The Chinese system is therefore by large and **centralised economy** driven by the State in a **controlled market** with a **vertical decision-making process.**

2.3 - EU

Following on the trauma of the first and of the second world war, the European Union was founded on values of Human dignity, Freedom, Democracy, Rule of law and Human rights, largely inspired by the 18th century Age of Enlightenment.

Although it is difficult to characterise the philosophy of the European system given the diversity of cultural and political systems of the Nations composing the EU, **the search for a common ground** among parties might be considered as a key characteristic.

In terms of corporate governance, this philosophy translates into a **balanced view between shareholders and management**, and increasingly employees. Companies are operating into a **liberal, yet regulated market**. The decision process, based on performance taking **increasingly into account non-financial objectives** seeks to foster adhesion of the relevant parties.

This high-level empirical comparison of the corporate governance models of the USA, China and Europe, while being by nature a bit simplistic shows however significant differences in terms of underlying philosophy, financial markets, key drivers for decision making and time horizon focus.

TABLE 2: SPECIFICITIES OF THE EUROPEAN CG MODEL VS. USA AND CHINA

	USA	China	EU
Underlying philosophy	Individualism	Statism/Socialism	Seeking common ground among parties
Market	Liberal deregulated	Controlled	Liberal regulated
Predominant shareholding structure	Dispersed	Highly concentrated	Mix of dispersed and concentrated
Key driver	Primacy of shareholders	Primacy of the State or the controlling shareholder	Balance between shareholders and internal stakeholders
Decision making	Based on shareholder value and compliance	Top-down	Based on performance, seeking alignment of the relevant parties
Time horizon focus	Short term	Very long term	Medium to long term

In addition to the specifics of its Corporate Governance Model, the recent **strong emphasis placed in Europe on clarifying the corporate purpose,** to adapt the companies' strategy to the Environment Social and Governance imperatives and to better engage the relevant stakeholders in the corporate debate has gained a significant momentum and **can be seen as a distinctive feature** vs. the USA and China. It is a differentiating factor that Europe should leverage to **strengthen sustainable corporate performance, competitiveness as well as economic sovereignty.**

3. CONVERGENCE POINTS ACROSS EUROPEAN CORPORATE GOVERNANCE SYSTEMS

Studies comparing the national Corporate Governance Systems across Europe often tend to underline their differences. It is indeed true that each system is rooted in the country's own history, culture of entrepreneurship and political system. This translates into different type of ownership structures (concentrated vs. dispersed ownership), as well as different understanding of the role and prerogatives of the shareholders, boards, management and employees. Each country has also its own view about the right balance between hard law, stock market listing rules and soft law.

Our purpose was not to draw a detailed and exhaustive mapping of Corporate Governance Systems across Europe - academics and international institutions are well equipped to do so - but rather to focus on the **convergence points across European Corporate Governance Systems** as well as the **good practices in each country that might help answer the challenges related to the megatrends** described in the first chapter.

To do so, we have adopted an empirical approach led by experienced Board members, based on a framework structured in seven chapters covering 60 relevant characteristics of Corporate Governance Systems : 1-CGS legal framework; 2-Corporate Governance Code (scope, elaboration process, enforcement); 3-Governing body (structure, composition, duties, organisation, compensation); 4-Executive committee (duties, diversity, compensation); 5-Auditing; 6-Shareholders (ownership structure, rights, duties, communication, proxy advisors, General Meeting); 7-Stakeholders (representation and trend).

This survey has covered France, Germany, Sweden and the United Kingdom, four countries that have sufficiently contrasted Corporate Governance Systems to lead us to believe that our findings are relevant at European level.

Our survey shows strong convergence points across the national Corporate Governance Systems that were analysed.[7]

3.1 - CGS legal framework

This is a domain that has been shaped in the past 200 years by each country's history, culture of entrepreneurship and political system, illustrated in particular by the level of concentration of ownership and by who detains the decision power.

7. We did not cover the requirements that are specific to the financial sector since, following on the 2008 financial crisis, corporate governance for financial institutions has been strengthened across Europe in regards to other sectors. So, we considered that the convergence points identified across sectors are already included in the rules that apply the financial sector

Therefore, the respective weight of hard law, stock exchange listing rules and soft law is very much specific, some countries relying more on hard law and mandatory rules, some on soft law and codes.This is why **we do not believe that it would be realistic to aim for a uniform European Governance Code.**

However, we believe that **European Corporate Governance Guidelines should be adopted** since they would provide common directions, without being overly prescriptive or normative, that each Member State could consider adopting and transposing according to its own culture and preferred mix of soft and hard law. This is consistent with the European principle of subsidiarity.

The public scrutiny on good governance driven by investors, proxy advisors, NGOs and the media is now such that it provides a powerful impetus to embrace such common guidelines.

3.2 - Corporate Governance Codes

Regardless of the respective weight of hard and soft law in each country, **the Corporate Governance Codes are unanimously considered a core element of the Corporate Governance Systems.**

Since the '90s, many countries have adopted one or more codes (specialised by type of legal structure or by size of corporation).

The format is very consistent across countries: **20 to 30 pages, written in simple language** - rather than legal terms - addressing very concrete governance questions in a pragmatic way. This simple user's guide format is important since **it provides a transparent framework that can be understood by everyone**, including individual shareholders and observers of the corporate life.

In the majority of countries, **the code is authored by an independent body**, possibly a commission composed of representants of companies, unions, administration, lawyers and academics.

Increasingly, **open consultations are organised** during the elaboration process and the **results are made public.**

The codes a regularly reviewed (usually every second year or every year), to keep pace with the strong momentum for good corporate governance and recommend the best practices already in place in the most advanced companies.

The enforcement mechanism is generally "Comply or Explain", which often contributes to raise the level of Corporate Governance Codes above the requirements of the law.

The **enforcement of the codes is ensured by a body that is most of the time independent,** possibly the same as the body authoring the code, but sometimes different. Some **publish an annual report** to take stock of the level of compliance with the code, some even naming specific companies (name and shame approach).

3.3 - Governing body

The nature of the corporate governing body is pretty much rooted in each country's entrepreneurial history and nature of shareholding.

While **one-tier Boards are the preferred structure in several countries,** others require Twotiers Boards and some allow the two options.

A majority of countries require or recommend the separation of the role of Chair of the Board and CEO, some have a tradition of non-dissociation between the two functions which is increasingly challenged.

In terms of Board size, many countries place a cap around 20 members, but there is a rising concern about large Boards, since it does not favour fruitful discussion and collective decision making. Some recommend a maximum size of 8 to 12 members.

The question of independence is considered as critical: **all countries recommend or impose to appoint independent non-executive directors.** The criteria for independence, although not the same across Europe, resemble each other and are most often clearly defined.

In some countries, boards of listed companies are mostly comprised of non-executive directors while in other countries the composition of the board is a mix of non-executive and executive directors.

The countries where the roles of CEO and Chair are not dissociated usually recommend the **appointment of an independent Lead director** or a non-executive Vice Chair specifically in charge of governance matters.

Some countries recommend or impose the **appointment to the Board of representants of the company's employees**, with or without voting rights. Some countries also make mandatory the appointment of **specific representants in companies where employees detain a significant share of the capital**.

In terms of diversity, **many countries now recommend or impose gender diversity on Boards**. Some countries have set quotas, most often initially for listed company but also increasingly for non-listed and smaller companies. This is definitely changing the composition of Boards across Europe and the gender balance is now scrutinised by observers and by the media. The appointment of more women on Board often contributed to lower the average age of Board members and also to open to foreign NEDs and to more diverse profiles. **This issue of diversity, not only of gender but also of age, origin and profile is definitely gaining momentum**.

The duties of the Board are quite consistent across the countries analysed, recommended or mandatory, with nuances depending on one-tier or two-tiers Board structure, and with items that must be voted by the General Meeting of shareholders.

The Board is responsible for:

- Selecting the type of organisation and governance;
- Appointing corporate top executives, setting their compensation and preparing the succession plan;
- Determining the company's strategic objectives and policies;
- Ensuring that risks and impact of the activities of the company are identified and action plans are in place to mitigate or compensate them;
- Validating annual corporate financial statements;
- Controlling the quality of information communicated to the shareholders and to the financial markets;
- Disclosing conflict of interest that directors might have.

So, this is obviously a large common base, however there two points without alignment:

- Some countries recommend or impose to calculate and communicate a Pay ratio to measure the spread of compensation across the company, some do not;
- Some countries recommend or impose to define and implement a code of ethics for the company, not the others.

In most countries **the role of the specialised committees is to provide facts, analysis and recommendation for the Board's decisions** (rather than decide themselves) on the issues within their scope. Since the role of the Board is becoming increasingly complex, specialised committees help the Board fulfil its role in a professional way without compromising the principle of collegiality.

The most frequent specialised committees are the **Audit committee**, sometimes combined with the **Risk committee**, the Remuneration committee, sometimes combined with the Nomination committee.

In some countries, there are two other type of specialised committee, resulting from the uncodified practice: the **Strategy committee** (while many consider that strategy is an inherent duty of the Boards and cannot be delegated to a committee), the **CSR committee** (Corporate Social Responsibility) now evolving towards ESG (Environment, Social and Governance). Some companies have also widened their Remuneration committees to Personnel Committees, covering, nomination and remuneration of top executives as well as the principles of the compensation policy across the company.

3.4 - Executive committee

The **role of the CEO is most often defined by law** since he or she is accountable for the legal responsibility of the company.

The questions of the **dissociation of the CEO role with the Board Chair role** has already been covered, and constitutes a very strong trend since it provides better check and balances in corporate decisions.

Finally, the debate on the **diversity of the Executive committee** is picking up a very strong momentum in some countries, although it is more difficult to implement in the law that for Boards, since very few countries have a legal definition of Executive committee.

3.5 - Auditing

All countries impose the **appointment of statutory auditors**, generally validated by the General Meeting of shareholders. The auditors work with the Audit Committee and with the management of the company to certify the annual financial statements.

In most countries, it is recommended or mandatory for large companies to implement a Risk management and control function.

3.6 - Shareholders

As already mentioned, the nature and structure of the shareholding in companies of the various countries depends very much on the national entrepreneurial culture and history. It has led naturally to various types of legal structures and of Articles of Association.

The shareholders duties, controlling mechanisms and the rights of minority shareholders also vary accordingly and consistently with the shareholding structure, concentrated or dispersed. They should be taken as a given.

Finally, Proxy Advisor regulation is applied into several countries.

Our survey outlines **convergence points and common trends in terms of shareholders rights exercised at the annual General Meeting**:

- Communication and dialogue with shareholders: the Chair of the Board or the Lead director are entrusted to organise the dialogue with the shareholders in the application of the financial disclosure policy for listed companies;
- Appointment, dismissal of non-executive directors and in some cases of executive directors;
- Say on pay: after many years of debate, the shareholders now vote (ex-ante and/or ex-post) on the remuneration policy and report of the CEO, the Chair of the Board, the Lead director and the Non-Executive Directors;
- Financial accounts and statements must be approved by shareholders;
- Related party agreements must be reported by the statutory auditors and voted by the shareholders in the General Meeting;
- The payment of dividends is submitted to a vote at the General Meeting;
- Major strategic moves (M&A) and the change of the Articles of Association must also be voted by the shareholders (sometimes with supermajority requirements).

3.7 - Stakeholders

The question of the involvement of external stakeholders in the corporate debate has been gaining strong momentum lately, exacerbated by the increased public awareness of the implications of climate change and the negative impact that some companies might have on their environment.

It has not yet translated into formal orientations in the CGS of the countries we have analysed. However, some companies are experimenting by creating a specific forum – roundtable or committee – to engage and structure a dialogue with relevant external stakeholders. The jury is still out regarding the format, composition, frequency, and role, if any, in formal corporate governance.

The dialogue with external stakeholders will most likely become a major topic in the coming months as more and more companies are revisiting their purpose – some on them including it in their Articles of Association - their strategy, financial and non-financial objectives and reporting as well as the criteria of performance of the top management.

Since companies are increasingly held accountable for not endangering the common good, **it makes sense for Boards and Executive committees to take a proactive stance to better structure a sustained dialogue with the relevant external parties.**

Our empirical analysis of European Corporate Governance Systems therefore outlines **many convergence points that provide a robust basis on which common guidelines can be developed.**

TABLE 3: CONVERGENCE POINTS OF EUROPEAN CORPORATE GOVERNANCE SYSTEMS

Convergence points	Comments
1- CGS legal and regulatory framework	• Resulting from each country's history and culture of entrepreneurship • Not an obstacle for common European Corporate Governance Guidelines • Differences can be handled by each country by application of the principle of subsidiarity
2- Corporate Governance Codes	• Fairly consistent formant, elaboration process and enforcement process • Based on Comply or Explain • Generally focusing on large listed companies but increasingly extended to others
3- Governing Body	• Consistent roles and duties despite various structures (1 or 2 tier Board) • Dissociation of the role of the CEO and Chair of the Board in many countries • Appointment of independent directors and when relevant, Lead director in most countries • Rising trend to consider employees standpoint, in some cases by appointing representatives to the Board or setting up a Personnel Committee • Consistent role and composition of the specialized committees (Audit, Risk, Nomination, Remuneration and Personnel, Governance, ESG, Stakeholders) • Increasing attention paid to diversity (in particular gender)
4- Executive Committee	• Role of CEO often defined by law, but not Executive Committee • Emerging attention to diversity
5- Auditing	• Consistent role of statutory auditors
6- Shareholders	• Shareholding composition largely a result of the national culture and history of entrepreneurship • Fairly consistent shareholders' rights • Strengthened shareholders dialogue led by the Chair or Lead director • Shareholders rights exercised by voting at the General Meeting
7- Stakeholders	• Rising attention to structuring the dialogue with relevant external stakeholders

4. PROPOSAL FOR FIVE COMMON EUROPEAN CORPORATE GOVERNANCE GUIDELINES

Corporate governance is a powerful lever for sustainable performance since **the Board is indeed the place where corporate dilemmas must be reconciled**: productivity vs. social responsibility; capital gains vs. employees and customers satisfaction; shareholders benefits vs. stakeholders' welfare; strategy vs. agility, cost efficiency vs. workforce development.

ecoDa has established high level principles for good governance that apply to all type of companies, large and small, listed and non-listed and also, to a large extent, to not-for-profit structures. These 11 principles constitute the foundations for the design of a credible framework of governance that involves the respective roles and linkage between the key corporate governance actors. The way in which such principles are implemented may vary according to countries and specific and business context; the key point is that they should be incorporated by individual governance frameworks in an appropriate manner.

ecoDa's Principles for Good Governance

- **Corporate purpose**: helps companies of all sizes articulate their business model, strategy, operating policies and approach to risk above and beyond simply generating profits. It also helps to motivate the staff and business partners around a shared definition of long-term sustainable success. To define the corporate purpose, the Board and the Executive committee must engage closely with key shareholders, the workforce and wider stakeholders.

- **Corporate culture and values**: the combination of the values, attitudes and behaviours manifested by a company in its operations and relationships with its stakeholders. A healthy culture is critical to a company's competitive advantage, and vital to the creation and protection of long-term value. The Board, shareholders and management should maintain a commitment to embedding the desired culture and values throughout the organisation – including in their own personal conduct.

- **Sustainability**: an approach to business decision-making and behaviour that aims to generate long-term value for the company's stakeholders and for the environment in which the company operates, particularly with respect to environmental impact and climate change, but also relationship with the local community. Increasingly, sustainability is viewed as a powerful means by which companies can win the trust of stakeholders and wider society in their approach to business.

- **Diversity**: a governance principle which aims to improve decision-making by involving diverse perspectives in leadership, strategy and oversight. Diverse perspectives serve to counter self-centred thinking, complacency or lack of connection with wider society. Appropriate levels of diversity across dimensions such as gender, professional background, nationality, age and ethnic background also help build organisational alignment with wider social trends relating to inclusion and a responsible business environment.

- **Delegation of authority**: while in any company, a key source of authority is equity ownership, shareholders need to delegate to the Board and the management. The law and the company's articles of association formalise the rights of the shareholders and the duties of the Board and of the management through a delegation of authority. The execution of some Board responsibilities can be delegated but the Board remains fully responsible.

- **Checks and balances**: no one individual should have unfettered power over decision-making and the actions of individuals should be subject to third party scrutiny (other members of the management team, or the Board), while the most important decisions should be taken on a collective basis, in particular by the Board. Building the right checks and balances is therefore necessary to minimise these risks while fostering accountability. Specific examples of checks and balances within the corporate structure include splitting the role of CEO from that of Chair of the Board.

- **Professional decision-making**: the Board is place for collective decision-making for the most critical dimensions of a company strategy. The Chair has a specific responsibility in building a group of capable individuals into an effective team in order to make collectively the best decisions regarding the company and its future. An atmosphere of open discussion should be encouraged. Perspectives and viewpoints should be properly documented in the minutes, allowing dissenting voices to be recorded. Board members must be properly trained.

- **Accountability:** within a company, each level in the hierarchy is granted specific responsibilities and powers that should be linked to meaningful accountability regarding performance and the exercise of powers. Employees are accountable to managers, who themselves report to the Board, which is accountable to shareholders and also to external stakeholders, including government agencies and regulators. For accountability to exert an effect over behaviour, it is important that each employee, manager, and Board member understands expectations about the nature and scope of his or her responsibilities through an appropriate framework of reporting and control.

- **Transparency**: the assumption of many citizens is that opaque organisations have something to hide. Greater transparency is therefore beneficial in establishing the legitimacy of the company as a responsible enterprise in society. It is highly effective in encouraging high standards of behaviour. Board members, managers, and employees are likely to give greater thoughts to their conduct if they perceive that they are being observed by others. A first statutory level of transparency is required by law and regulation (e.g. publication of financial statements) but is is not sufficient. A key step in strengthening transparency in a company is to appoint independent non-executive directors.

- **Conflicts of interest**: Board members and company officers have the duty to promote the success of the company as a whole. They are specifically prohibited from directing the activities of the company in favour of themselves or particular shareholders and/or stakeholders. Conflicts of interest have the potential to undermine the governance and reputation of the company. Consequently, a robust governance framework needs to define credible mechanisms by which potential conflict of interest issues can be managed or resolved.

- **Aligning incentives**: Remuneration is an issue that frequently attracts the attention of the media. Aligning the incentives of the shareholders, Board members and senior management is necessary for the development of a company. A credible and transparent remuneration policy helps win the commitment and loyalty of all company stakeholders (e.g. employees, suppliers, providers of finance, the media, and the local community) to the company's objectives.

Over the past years, the EU has taken many initiatives related to corporate governance, in particular through Directives that apply to all Member States, often through a long and tedious negotiation process.

Beyond these directives, the members of ecoDa believe that the **drive and momentum should come first and foremost from the governance actors in each country**, consistently with the principle of subsidiarity, applying the principle of good governance listed above. This momentum should be encouraged and supported by the EU initiatives and, only when necessary, by EU directives.

The megatrends described in the first chapter increase this vital need for good corporate governance suited to the current situation and challenges. This why this paper proposes **five common Corporate Governance Guidelines**, that go beyond the 11 ecoDa generic principles, as powerful levers **to set clear directions across Europe in order to achieve faster change.**

We hope that the EU will promote these guidelines, so that the actors of corporate governance in each member State will consider and implement them **to build a stronger sustainable economy that respects the environment and that is conducive to more solidarity and cohesion in our society.**

Five Corporate Governance Guidelines to accelerate change and sustainable growth in Europe

1-Rely on Corporate Governance Codes to promote long-term value creation, transparency and efficient governance practice

2-Promote the competence, independence and diversity of the Board, and the diversity of the Executive committee

3-Foster a more effective collaboration between the Board and the Executive committee

4-Commit to ESG as a differentiating strategic competitive advantage for long-term sustainable value creation

5-Invite all relevant stakeholders to contribute to the corporate debate

4.1 - Rely on national Corporate Governance Codes to promote long term value creation, transparency and foster faster change

For the past 10 years, the European institutions have taken many initiatives to promote good corporate governance across its Member States through directives. Given the megatrends at work and the acceleration generated by the economic consequences of the Covid pandemic, **we believe Europe has to shift gears.**

In our opinion, **this should be done by adopting a more agile approach, aiming at a higher ambition**, by relying more on national Corporate Governance Codes and less on EU directives.

In fact, EU directives, since they have an impact on the national legal systems, often generate strong resistance and require a long and tedious negotiation process. This leads to focus more on the differences between CGSs across Europe than on the convergence points that, as we have seen, constitute a robust common ground on which we can build.

National Corporate Governance codes play a key role in developing good market practices since they often include more stringent recommendations, above national legislation, and are easily adaptable to industry specific and professional standards through the Comply or Explain principle.

While they are in many countries initially designed for large listed companies, similar codes are increasingly developed for non-listed companies and SMEs, with the relevant adjustments. This trend should be encouraged.

Therefore, **relying more on the improvement of national Corporate Governance Codes might help to achieve faster change**. This is consistent with the spirit of subsidiarity which is a core principle of the European Union.

Setting and adopting shared guidelines that are common to the countries of the EU and conducive of sustainable value creation might be a better way to strengthen the momentum which is already at work in Europe.

Our analysis has identified the following good practices already implemented in some European countries.

Guidelines	Comments
1– Rely on Corporate Governance Codes to promote longterm value creation, transparency and foster faster change	• Promote the development of CG codes in each country, aiming at long term value creation and suited for each type of companies (listed, notlisted, large and small); • Adopt "Comply or Explain" as founding principle for listed companies to foster transparency and emulation; • Stipulate transparency in CG codes (company structures, governance practices, risks policy…) as a way to reinforce the trust of all stakeholders towards the companies; • Promote long term ownership as a basis for long term value creation; • Make the codes binding for the listed companies, subject to Comply or Explain; • Ensure the codes are not too rigid and detailed to leave the necessary space for progress and innovation; • Ensure the independence of the Authoring Bodies; • Consult all the relevant parties in the elaboration process and publish the results of the consultation before issuing the code; • Ensure the independence of the Enforcement Bodies; • Monitor actively the compliance with the codes and the governance practices; • Publish an annual report on the level of compliance, highlighting the best practices; • Update each code regularly with open consultations, taking into account the best practices at national and European level.

4.2 - Promote the competence, independence and diversity of the Board, and of the Executive committee

Effective governance starts with an effective Board and with the Board's composition in order to ensure a set of complementary expertise, experience and profiles that are consistent with the nature of the company's activity, geographical footprint, opportunities and challenges.

The size is also important. The Board should be large enough to provide the relevant set of competencies, and not too large to favour an effective collaborative dialogue.

One of the most critical duties of the Board is to appoint the company's officers. Given the magnitude of the challenges that companies are facing, the Board must take a hard look at the profile required to tackle these challenges. The choice of the Chair and of the CEO are of course among the most critical decisions that a Board is taking (or prepares when it is the duty of the General Meeting of the Shareholders). This requires courage and timeliness. The times of the "super CEO" who decides on everything are over. Boards have to choose CEOs that are aligned with the purpose of the company, its culture, values and ethics and is able to work closely together with the Board to set and achieve the company's objectives.

Having a large proportion of independent directors on the Board is a critical factor since all Board members must put the interest of the company above all other matter. Nonindependent directors might have vested interests that could bias their judgement. Most Corporate Governance codes recommend that at least 50% of the Board members are independent. The criteria might slightly differ from one country to another, but they have to be disclosed so that all shareholders can assess the independence of a Board member against these criteria. In addition to fulfilling these formal criteria, independence is also a question of attitude and posture in the Board discussion. This last point should be covered by the Board assessment.

Increasingly countries favor independent Chairs to provide the appropriate check and balance with the CEO and executive team.

The diversity of the Board is also a key driver of performance, not only regarding gender, but also of origin, nationality and age. Some argue that the Board composition should reflect the diversity of the society. Given the increasing complexity of the environment in which companies operate, diversity, together with collective competence, are critical elements for an effective and well performing Board.

While gender diversity has significantly progressed in Boards of listed companies in Europe in the past years, it is not yet the case for smaller, non-listed companies, nor regarding other types of diversity.

In addition, when it comes to Executive committee, the available data on diversity show that it is worse. Some countries argue that it is more difficult to take actions and edict rules since, unlike Boards, Executive teams do not have a legal status. This cannot be an excuse and the **disconnect between the composition of society and the composition a company's workforce, management and governance is likely to become increasingly an issue that could hamper its performance and reputation**.

Each country has its own culture and view on the way to foster diversity. Some are indeed more advanced than others. Some have chosen to apply gender quotas which has proven very effective, in particular when softer approaches did not yield the expected benefits. In some countries, asking information on origins is not allowed. C**ountries that do not apply quota should at least edict a "Commit and Report" rule** where companies disclose their diversity objectives and report on their achievement on a yearly basis. A tailor-made approach is required to take stock of the situation and culture of each country.

The following good practices have been successfully applied in some of the countries rewied by the task force.

Guidelines	Comments
2- Promote the competence, independence and diversity of the Board, and diversity of the Executive committee	• Recommend adequate Board size, large enough to gather the required competencies, but not too large to avoid hindering agility and quality of debates and decision making; • Ensure that the complementarity of the competencies and profile of the NEDs is suited for the company's future challenges; • Strengthen the independence of the Board by disclosing the criteria of independence and the proportion of independent NEDs; • Ensure strict and legally enforceable accountability of directors towards the company; • Promote actively the diversity of the Board members, not only gender but also experience, education, culture and age, possibly through a "Commit and Report" approach in the countries that do not support quotas; • Profile Board members competence, gender distribution, age and nationality and communicate it in the annual report; • Promote training and induction sessions of new Board members; • Conduct each year an evaluation of the Board collective practices and of the individual contribution of each Board member; • Prepare succession plans to strengthen the Board profile, competence and diversity; • Commit to diversity and in particular to gender fair balanced representation throughout the company, starting with the executive committee to better reflect cognitive and demographic diversity; • Develop equality plans, covering all levels of the company, including; • Board and Executive Committee through a "Commit and Report" approach, with targets and monitoring.

4.3 - Foster a more effective collaboration between the Board and the Executive committee

Since the beginning of the pandemic crisis, most Boards and Executive committees have changed the way they work together.

Non-Executive Directors across Europe underline the following changes: more frequent interaction in both formal and informal meetings, faster communication of the relevant information, more open discussion and debates, more fruitful sharing of experience and ideas, more collaborative and faster decision process. The digital or hybrid format for Board meetings has not been an obstacle as people got used to it, providing the Chair makes sure that all participants contribute to the discussion in a timely manner. But, as there tends to be less discussion in digital meetings, innovativeness may suffer and difficult issues may be set aside. Therefore, the Chair must be vigilant and pay attention to conduct digital meetings efficiently and effectively.

This time of crisis is indeed an acid test for the CEOs confronted to a "perfect storm", but also for each Board member. It has made the difference between the NEDs merely fulfilling their basic duties and the ones able to contribute "live" and bring value in a constructive way to the decision process in this context of high uncertainty.

The feed-back from both NEDs and management outlines that **this evolution in the interactions between the Board and the Executive team significantly improved the effectiveness of the corporate governance and decision making**.

In the initial "Resolve" phase of the crisis, the discussions focused on protecting the employees, setting the continuation plan, adapting the organisation and processes to the confinement and sanitary rules, and of course to preserving the cash and taking the necessary steps to ensure proper financing of the company.

Towards the end of the first confinement, companies have focused on the "Restart phase". This was not trivial since the situation remains very unstable with the rise of a second wave of pandemic in several countries, causing "stop and go" depending on the situation in every place where the company operates, with strong differences between countries or even communities, that require to adapt on a continuous basis and implement new solutions. For example, the proportion of time that employees work from home has significantly increased and will likely not go back to the pre-crisis situation.

The Executive teams are therefore fully mobilised on the day to day, iterating between the Resolve and the Restart. This leaves them little time to work on the "Reset" phase - the longer time horizon - to rethink the company's strategy and business model, to take stock of what we have learned during the pandemic, for example the vulnerability of the supply chains, and to capture the opportunities in terms of new product, services, market segments, business models, organisations and processes.

The common wisdom says that in a given week a CEO should spend 60% of time on the short term (delivering the budget), 30% on the mid-term (improving the business model to deliver the 3 years plan) and 10% on the long term (rethinking the positioning and business model of the company).

On one hand, for CEOs, sticking to the 60/30/10 rule has proven a real challenge since the beginning of the year, most of their attention and energy having indeed been focused on the very short term, between Resolve and Restart.

On the other hand, **Board members, long before the crisis, complained that they had to devote an increasing amount of time to compliance matters**, in particular given the rise of non-financial metrics. This led them to spend more time looking in the back mirror, than looking and thinking ahead.

This is indeed a risk that some companies "get stuck" focusing on the short term (adapting to stay afloat) and mid-term (improving the existing business model) **while not spending enough attention to the longer term** (reinventing the company for the future).

If the right time allocation for the CEO and executive along the short term, mid-term and long term is 60/30/10, then should the Board aim for a 10/30/60 time allocation?

This would position the Board as the constructive sparring partner of the Executive committee in the long-term strategic planning process. This is not a change of role between the executives and the governing body, by rather a more effective way of working together, in full respect of the operating role of the management, with which the Board should not interfere.

Specialised committees can help by ensuring the Board has all the necessary facts and analysis structured in the appropriate way to have fruitful discussions that lead to the right decisions. Therefore, the structure, scope and composition of these committees is critical. Ad hoc invitation to committee meetings of the relevant management representative often adds a lot of value.

So, the lessons from the recent modus operandi during the crisis might provide **good practices for a more effective collaboration between the Board and the Executive committee** going forward. Our analysis identified the following good practices.

Guidelines	Comments
3- Foster a more effective collaboration between the Board and the Executive committee	• Refocus the time of the Board on the longer time horizon (vs compliance); • Ensure the Board spends a substantial amount of time each year to define the strategy and future success of the company with the CEO and the Executive Committee; • Schedule a specific session of the Board at the beginning of the strategic process to discuss orientations and involve NEDs on an ad hoc basis during the strategic process; • Hold a formal meeting with the full Board and the end of the process to question and validate the strategic plan; • Schedule informal working sessions between Board meetings; • Invite n-1 managers to the informal sessions; • Hold "field sessions" with the Board once or twice a year; • Leverage the Board specialized committees to ensure a rigorous and professional preparation of Board's sessions; • Schedule frequent non-executive session of the Board.

4.4 - Commit to ESG as a differentiating strategic competitive advantage for long term sustainable value creation

The **increased awareness on the implications of climate change and of social matters** – diversity, equality of chances, wealth inequality, impact on the communities where they operate - forces companies to address these issues proactively in order not only to mitigate the risks, but also to capture opportunities and make a difference with competitors.

Several European Member States have indeed encouraged **companies to review their purpose in the light of the ESG challenges**. Many corporations in Europe are ahead of their US and Chinese competitors in this matter and have already launched the reassessment of their company's purpose, and started to adapt their strategy. Well managed, **this can become a strategic competitive advantage for each company, and for Europe as a whole**, if the momentum is broad and strong enough.

Some also mention that the oversight of the c**orporate culture and ethics should be an explicit duty of the Board**, since it is also closely linked to the company's purpose.

Finally, the way the profit generated by the company is allocated is a key issue both in terms of internal policy in order to foster performance, but also in social terms, which has an increasing influence on the company's image. **The Board should therefore be driving the discussion and decision on the optimal allocation of the value generated** between reinvesting in the company itself, rewarding the shareholders (dividends), the top management (salary, performance bonus, long term incentive plan), and the employees (salary, bonuses, company shares plan).

Several countries have implemented a Pay Ratio to give a sense of the spectrum of remunerations in a company. The intent is good, but the calculation method is not yet clear and consistent across countries, which makes comparisons difficult. This approach should be developed on a European basis with clear and simple metrics.

The analysis of the most advanced CGSs suggests the following good practices.

Guidelines	Comments
4- Commit to ESG as a differentiating strategic competitive advantage for long-term sustainable value creation	• Revisit the corporate purpose in light of the ESG imperative; possibly include the corporate purpose in the Articles of Association of the company; • Include explicitly ESG as a differentiating competitive advantage in the company's strategy validated by the Board; • Include ESG indicators in the criteria of directors' and executives' compensation; • Make the allocation of the value generated an explicit duty of the Board between dividends, compensation, investment…); • Set ESG European guidelines and framework to ensure high level consistency and keep indicators simple; • Apply rules to both European and non-European companies for fair competition; • Leave implementation details to the national level;

Guidelines	Comments
	• Adapt the ESG rules to SMEs to avoid excessive administrative burden and cost; • Encourage companies to benchmark with peers also on non-financial indicators; • Recommend the publication of a Pay Ratio providing a consistent calculation method is defined, taking into account the national context; • Include the oversight and monitoring of the corporate culture and ethics as a duty of the Board.

4.5- Involve all the relevant stakeholders to contribute to the corporate debate

The notion of stakeholders has gained momentum over the past years. The USA shareholdercentric view has been challenged by a notion of three stakeholders' concentric circles:

1. **The "inner circle"** composed of the shareholders (including the minority shareholders), the management and the employees;
2. **The "extended corporation"** that includes suppliers, sub-contractors and other business partners;
3. **The society** at large with NGOs, consumers' associations and communities where the company operates.

Good governance must deal with each of the three circles, in a differentiated way, taking into account the level of commitment, risk and implication (shareholders, management and employees), but also the impact of the company on the extended corporation and on the broader society, consistently with the ESG imperative.

In the past few years, the **dialogue with shareholders has been pointed out as a key feature of good governance**. Proxy advisors now play an important role and their implication has been codified in most countries. Some activist shareholders, sometimes considered as predators, even start to get a better image as some of them actually might constructively stimulate the company's performance and some are striving for companies' sustainability.

The General Meeting is the time and place for all shareholders to exercise their rights. However, with the Covid crisis, the very concept of a General Meeting is changing. Interesting lessons can be drawn from the much-disturbed 2020 GM season: many companies had to hold their General Meeting late and behind closed doors, using the fully digital or the hybrid - presence and digital - format. Many reported a larger attendance, since shareholders who do not usually attend physical meetings did log onto the digital platform. However very few companies organised a live Q&A sessions and voting. The explanation has often been that it is technically difficult to ensure the identity of on-line participants. Some started to argue that this has endangered the dialogue with shareholders.

Companies must therefore to pay attention to continuing to improve the dialogue with all shareholders, not only the majority or large shareholders, but also other shareholders, large and small, in the appropriate way, in order to prevent a rise of activism that would be detrimental. In order to do so, they need by to overcome the technical obstacles for effective hybrid format General Meetings for the 2021 GM Season.

Some European countries have imposed on listed companies **the appointment of Board members representing employees, with voting rights**. All companies should strive for workforce engagement and select a suitable way for it, be it employee's representants at the Board, with or without voting rights, workers' council, responsibility for the Chair or other director to have regular discussions, or some other way. Companies should be transparent about their choice of promoting workforce engagement.

The business partners of the "extended enterprise" should be managed in a fair way, applying the relevant ESG guidelines, as well as ethical standards. This should be part of the contractual arrangements, and **the Board must ensure that the contractual arrangements with business partners are consistent with the purpose, values and ethics of the company**.

The relevant members of the society on which the company might have a direct or indirect impact, should also be taken in consideration. There are indeed important stakeholders and their perspective matters in particular, but not only, in terms of image. Neglecting them can generate reputation risks that can spread very quickly through social networks.

Some companies are experimenting with **stakeholders' round tables or committees**. These informal instances are useful to understand the concerns and expectations of the external stakeholders and also possibly to get their feed-back on specifics actions or projects. **They are not part of the corporate decision process but can provide very useful input to the management and to the Board.**

The contribution of the stakeholders, from the inner circle to the broader society is increasingly important dimension of good governance. However, all stakeholders should not have an equal say and decision power. It is important that the regulator takes this into account.

The following good practices have been applied in several countries.

Guidelines	Comments
5– Invite all relevant stakeholders to contribute to the corporate debate	• Strive for clear and understandable communication with internal and external stakeholders; • Promote dialogue with all shareholders both before and during the General Meeting; • Foster active participation of all shareholders to General Meeting, possibly through digital platforms that allow for online Q&A and voting;

Guidelines	Comments
	• Enforce strict minority shareholders protection; • Promote workforce engagement for long-term success of the company, possibly through the appointment of employees' representants at the Board, with or without voting rights, or at least through workers council, or the responsibility for the Chair or other director to hold discussions, or some other way; and report on how this is done; • Promote the dialogue with all relevant external stakeholders, possibly through the creation of roadshows, round table or committees; • Ensure the Board provides oversight on the relationship with business partners and sectorial professional associations.

CONCLUSION

The five European Corporate Governance Guidelines and the fifty good practices advocated in this paper are based on the views of the members of ecoDa, which represent thousands of Non-Executive Directors active in the Board of hundreds of listed and non-listed European companies, large and small.

We believe that, in the context of accelerating change and of high uncertainty, these guidelines and the application of the good practices already successfully implemented in some European countries will help accelerate the development of improved national corporate governance systems, that are conducive to sustainable and profitable growth, and will help address the environment and social challenges that we are facing, making it a competitive advantage for Europe.

We hope that all the actors of corporate governance in each European country will consider, adapt and implement these guidelines in order to accelerate the development of a sustainable and competitive economy on which the sovereignty of Europe depends.

We hope that the EU will actively support them and promote them.

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