



a.s.b.l.
Confédération Européenne des Associations d'Administrateurs
European Confederation of Directors' Associations

March 2006,

EcoDa's response to the consultation on future priorities for action plan on Company Law and Corporate Governance

EcoDa is representing the views of its six members, *Institut Français des Administrateurs* (IFA), the *Association Belge des Administrateurs* (AB), the UK's *Institute of Directors* (IoD), the *Institut Luxembourgeois des Administrateurs* (ILA), the Finnish *Association of Professional Board Members* (Hallitusammattilaiset ry) and the Spanish *Instituto de consejeros – Administradores* (IC-A) on corporate governance and company law issues.

Question 1 : Overall aim and context for future priorities

EcoDa is in favour of soft law, rather than hard law to the maximum extent possible. Our member organisations all believe that convergence and the development of good practice is easier to achieve with soft law.

The Commission should concentrate its action on the clarification of legal issues in the case of cross-border activities and seek to solve the problems which companies and directors with cross-border activities have to face (as regards taxation, Social Security etc.).

Question 2: Overall aim and context for future priorities

Rules already exist at EU level and rather than introduce new legislation the Commission should apply these rules and pursue cases more often before the Court of Justice when failures of States to implement these existing rules affect cross-border mobility.

The Commission should facilitate access to the legislation of the various countries of the Union for companies and particularly for the SMEs. The fact that increasingly directors will be foreigners to the company where they sit will make this access all the more crucial and the problems which will be encountered should be anticipated.

Question 3: One share, one vote

The EU should enhance a wide consultation on this issue. Recommendations might then be considered but a directive is not appropriate for the time being.

Question 4: Rights of shareholders

EcoDa has already answered to the former consultation on this issue and will address its position on the draft directive soon. EcoDa is in favour of enforcing shareholders' rights.

Question 5: Disclosure by investors of their voting policies

Fund managers have different policies and different voting requirements. The issue should be left to the market since there are already strong pressures in that direction.

Question 6: Directors' responsibilities/ Enhanced transparency of legal entities

As regards liability, each national system results from an internal equilibrium between liability of shareholders and liability of managers. Wanting to strengthen only directors' liability is likely to break these balances.

Modifications do not have to be pushed by the European Union but by Member States. Some Member States suffer from a bad national system. More dialogue is needed between national authorities. One of the main tasks of ecoDa is to increase directors' standards by notably benchmarking of the best practices between its members.

Question 7: The 14th Company Law Directive on the transfer of the registered office

The European Court of Justice has admitted the theory of real headquarters. There is no real need for an EU action. This issue is tax driven and linked to the variety of national systems of Company law.

Question 8: The choice between the monistic and dualistic types of board structures

No. Member States have to remain free concerning the structures of the companies incorporated in their territory. In view of the possibility of mobility choice exists for those companies which would prefer one structure to another. European intervention is not necessary.

Question 9: Squeeze out and sell out

While ecoDa took its position concerning the Draft directive amending Council Directive 77/91/EEC, as regards the formation of public limited liability companies and the maintenance and alteration of their capital, no consensus occurred on the specific matter of squeeze out and sell out.

Question 10: Groups and pyramids

The context has changed since 2002; it is no longer an issue for EU legislation.

Question 11/12: The European Company/ European Private Company

EcoDa's members do not have the same elements for estimating this question which refers

to company law.

Question 13: The European Foundation

No position.

Question 14: Simplification and Modernising of European Company Law

The drawing up of EU legislation and its implementation are complex and difficult to manage. That is why ecoDa privileges soft law and benchmarking of good practices. A European code would be burdensome for the time being.

EcoDa is willing to assist you in your continued work on that particular issue.

For further explanations, don't hesitate to contact:

**Béatrice RICHEZ
Secretary General**

Rue de la Loi, 42

B- 1040 Brussels

Phone : 0032.2.231.58.11

Fax : 0032.2.231.58.31

Email : beatrice.richez@ecoda.org

Website : www.ecoda.org