

ecoDa's PRESS RELEASE

Today's publication of the European Commission Action Plan on company law and corporate governance addresses the question of the comply-or-explain (CoE) in general and the quality of explanations more specifically as one of its top priorities. At a past conference on this topic, the European Confederation of Directors' Associations (ecoDa) triggered insights and reactions on the functioning of the comply or explain principle at national level in Europe. ecoDa is now publishing a full report pointing out clearly the main issues at stake behind this principle.

ecoDa believes that the quality of the explanations for deviations to the corporate governance codes is the core factor for upgrading the legitimacy of the CoE-approach. By opting for the comply or explain principle, the Commission has explicitly made the choice for flexibility. Flexibility was seen as the condition to guarantee that companies have their governance tailored to their specific needs. If it offers a great opportunity to take the specific business context into consideration, directors should demonstrate their compliance with the overarching principles of the Code. In other words, they are accountable for the use they make of the flexibility offered by the Code.

As expressed by Lutgart van den Berghe, Chair of ecoDa Policy Committee, *"From the start, corporate governance codes have offered a dilemma to boards of all sorts of companies: the responsibility of choice. It is great to have choice but companies must effectively choose. They can't just refer to a code simply because it is a code. Companies have the choice to act differently: therefore they should reflect on taking another route"*.

Every code assumed that shareholders would finally be the monitors of the CoE and eventually alert market regulators if the information was not available or if the quality was not sufficient. However, as highlighted in ecoDa report, companies with dispersed shareholding are faced with the lack of shareholders' engagement whilst in companies with more concentrated ownership, there is no real check-and-balance.

As shown in Spain, market or securities regulators can be helpful and can engage with the company and start one-on-one discussions. In other countries, alternative monitoring through the corporate governance commissions takes place and provides more guidance in reaching the goal of good explanations.

On the top of that, as stated by Lutgart van den Berghe, *"the board has an important role to play in fostering corporate governance and good explanations. The board should approve the reasons, endorse them and then submit the explanations to the General Meeting to provide transparency and engage into a debate with shareholders. Directors can try stimulating a good explanation culture by using peer pressure. To this end, the requirement in the CG codes to foresee a regular board evaluation is the most important provision"*.

ecoDa report invites not to pay too much attention to formalistic questions in relation to governance compliance but to provide the right culture of critical reflection for successful and sustainable enterprise. As expressed by Patrick Zurstrassen, ecoDa chairman, *"it is not because you have a board composition that is fully in line with the code's recommendations, that you will make good decisions"*.

CONTACT DETAILS

About ecoDa - The European Confederation of Directors' Associations

www.ecoDa.org

The European Confederation of Directors' Associations. ecoDa is a not-for-profit association based in Brussels, acting since March 2005 as the "European voice of directors". Through its national institutes of directors (the main national institutes existing in Europe), ecoDa represents around fifty-five thousand board directors from across the EU member states.

ecoDa's mission is to promote good corporate governance and improve the effectiveness of boards of directors and/or supervisory boards, particularly by means of appropriate director training, professional development and boardroom best practice.

ecoDa's members: IoD, GUBERNA, IFA, ILA, IC-A, the Slovenian Directors' Association, the Croatian Association of certified supervisory board members, the Polski Instytut Dyrektorow, the Directors' Institute of Finland, the Norwegian institute of directors (Styreinstitutt), the Swedish StyrelseAkademien, the Danish Board Network and the Macedonian Institute of Directors.

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