

ecoda

Manifesto

February 2024

*The European
Voice of Directors*



01

*Executive
Summary*

ecoDa considers the following elements important for the mandate of the next EU policy cycle (2024–2029):

General policy recommendations

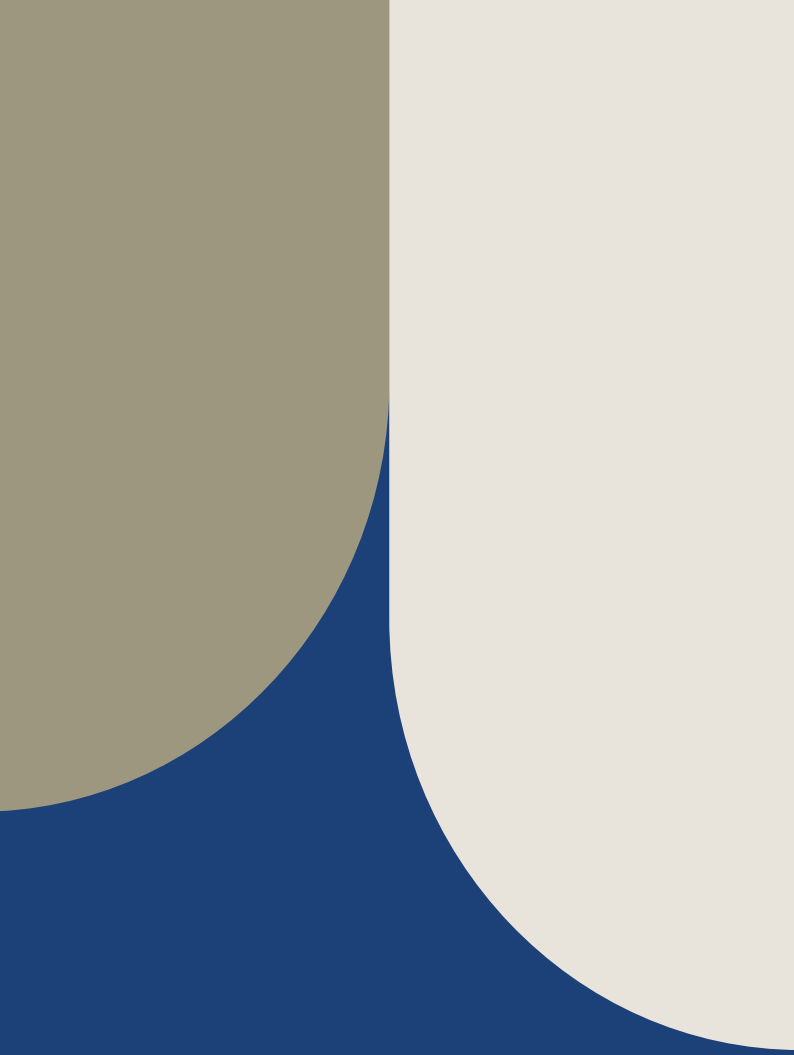
- To foster resilient and competitive businesses;
- To acknowledge the need to provide EU companies time to implement all the new EU legislation related to sustainability;
- To recognise the value of Corporate Governance Codes as soft-law and respect their diversity among EU Member states.

Specific Corporate Governance recommendations

- To recognize the need to keep clarity and respect the difference between management and oversight of businesses. (Articulate the roles and responsibilities of both executive and non-executive Directors);
- To have appropriate nomination and dismissal procedures to ensure effective independence. To possibly review or clarify the “2005 EU Independence Recommendation” on this point;
- To reinforce the role of the board in the evaluation of internal controls;
- To prevent the risks of conflicts of interests by several service providers, like proxy-advisors, assurance providers on sustainable reporting, rating agencies and board-evaluation providers.

Horizontal recommendations

- To implement a targeted EU budget line to support training-structures for board members;
- A revision of the Shareholders Rights Directive must be based on an in-depth evaluation of the effects of the current Directive, in particular on issues of ‘shareholders say’.



02

Background

Economic priority for the next EU Commission (2024–2029)

The competitiveness, innovative strengths, and resilience of its businesses will be one of the main challenges for the European Union in the years to come. Strong competitive and innovative businesses with top management, performing in an increasingly uncertain world will be key for maintaining a strong and healthy EU economy to the benefit of the whole society. The competitiveness of European businesses is a prerequisite for sustainable value creation in the long term.

Corporate sustainable long term value creation is dependent on Boards that provide direction and monitor the compliance of regulatory obligations to companies through their control functions.

However, ever-increasing reporting and regulatory requirements diminish the boards' possibility to concentrate on their main task i.e. to steer companies to a successful future. What is important to remember is that reporting obligations should though be imposed on companies, not on boards.

Indeed, the **role of the management and the boards of companies** in fostering competitive businesses should not be underestimated. Yet, Corporate Governance should not be used as a leverage to speed up societal and political changes but should be seen as a facilitator in enhancing the competitiveness, agility, and resilience of businesses. The implementation of the new and upcoming EU legislation related to sustainability does have a cost effect on companies. At a time when strong decisions will have to be taken by companies, the support of their investors will be required. This will be a test to assess investors' ESG commitment. The European Union has traditionally taken the lead on these issues, but to foster the competitiveness of businesses and capital markets in the EU, other countries will have to move in the same direction.

It is likely that companies will not be able to immediately provide all the data necessary to meet ESRS standards. The auditor statements (qualifications) that will be used in the context of limited assurance should therefore not lead to negative reactions from investors and NGOs. It is important to realise that meeting these new standards requires time. The **efforts by businesses** to move in the right direction need to be valued and **acknowledged**.

A. General policy recommendations

1) To reduce administrative burden. A cross-cutting problem for businesses, their Boards and executive management is the ever-increasing blanket of stifling regulatory requirements, with related reporting requirements. It is therefore essential to reduce existing burdens and to be very cautious about introducing new regulations that might inadvertently increase the overall burden. The commitment by the President of the Commission to reduce the reporting burden by 25% is welcome, but if new Regulations continue to introduce

new requirements, the objective will not be met. It is indispensable that the next Commission seriously addresses the administrative burden for companies and their boards.

Regulations should be assessed in a thorough manner, to identify possible counter-productive or undesired effects.

An exercise of streamlining and **simplifying existing regulations** should be carried out to make sure all (existing and new) regulations pass a double test. The Better Regulation leitmotiv of the European Commission should be reinforced through a double test consisting of:

1. The regulation should be effective and efficient: it should be sufficient to create an effective enforceable framework of which the impact is measurable and concrete;
2. Costs and benefits for enterprises should be better balanced (for instance, a practical test could be: can a company implement the new regulation without hiring external experts?).

In that respect, EU Competition law should not prevent companies in the same sector from cooperating to find common solutions to ESG issues.

In general, the European Commission should not only focus on “compliance” oriented regulation but also on a much more competitive “incentivizing” legal framework, enhancing innovation (to focus on “incentive measures” instead of compliance measures).

Even if a certain level-playing is required for sustainability issues, the Commission should consider raising the application thresholds for certain legislation.

In addition, ecoDa is concerned to see that the Commission is developing more and more Delegated and Implementing acts. With the introduction of Delegated acts, which give the Commission a considerable degree of latitude, European laws become equivalent to framework laws that go no further than set out general principles. As a result, companies must continually adapt to changing requirements without always benefiting from legal certainty.

2) ecoDa pleads for a regulatory pause. Over the past years, the EU has produced a significant number of rules, regulations, and standards — especially on ESG — to encourage responsible and sustainable business practices. The

implementation by the Member States, and regular gold-plating, has led to a patchwork of regulations making it difficult for companies, especially SMEs, to comply with applicable requirements. It would therefore be normal and common sense to let these rules sink in and give time for companies to implement the new requirements. Regulators should also use the period of pause to carry out a holistic evaluation. This should particularly concern the overall reporting requirements and their costs and benefits.

3) Board members do not need to be experts in everything: Effective governance requires well-informed and independent board members to allow them to challenge the management and exercise proper oversight. The growing complexity of the business world and the increasing set of regulations have led boards of directors to **set up more and more specialized committees** — though the final decision-making must take place within the board. Furthermore, the tendency to integrate the company's externalities into decision-making, the impact on its ecosystem and its business, and the interests of stakeholders obliges board members to further **expand their access to information**. However, there is no reason to demand that board members be experts in everything, as the EU Commission recently tends to do (e.g. EU Directive 2022/2555 on Cyber-security — The initial draft of the anti-money laundering directive also required expertise in that field at the board level). The European Commission should acknowledge that board members can always turn to *ad hoc* experts at any time, but cannot need to be experts in everything.

B. Specific Corporate Governance recommendations

1) The next European Commission should acknowledge better that there is a **clear distinction between the different governance models in place**, including the one-tier and two-tier models. In addition, some national laws provide great flexibility with respect to the board structure (e.g., *la Société Anonyme simplifiée SAS* in France).

Even if company law to a large extent has been harmonized, the development of EU rules and regulations must allow for national practices including through soft law (i.e., self-regulation), and respect national specific features (like on voting rights) that have demonstrated their value. ecoDa would consider that a detailed review process would be warranted to screen and clarify the relevant legislation on inconsistencies but also allow local market conditions and requirements (soft law) to prevail.

2) Collegiality of boards is a key feature of EU corporate governance and should be preserved. A board committee is a consultative body and final decisions are taken by the board. The specific mission of Audit Committees concerning non-audit services has undermined to a certain extent this collegiality.

3) Remuneration

Linked to this, it may be useful for the Commission to understand the impact of increasing responsibilities for non-executive board members in relation to their remuneration. The responsibilities of non-executive board members have grown over time, with potential (liability) risks and a consequential huge increase of insurance premia, and reputational threats, but their remuneration has not kept pace. This discrepancy can lead to decreased interest in board positions. Especially, for (smaller) listed companies, where additional requirements to implement personal liability are likely to hinder the recruitment of top talents to boards.

The fact that the current board pay structure and levels are not appropriate for the complexity of today's world and the level of responsibility raises the question of the attractiveness of the right non-executive profiles in Europe and of the ability of European companies to stay globally competitive. ecoDa here draws the attention of the European regulator to this subject. However, ecoDa believes that the market is self-regulating and there is no interference of regulation needed.

[See: 2023 Non-Executive Director Remuneration in Europe Time for a change?](#)

[See: Directors' duties and liabilities survey November 2023](#)

4) Board independence

A periodic assessment of the independence of non-executives should be further explored. The EC Recommendation (the "2005 EU Independence Recommendation") could be revised to state that national Corporate Governance Codes should also stress the specific attitudes and behaviours required from both non-executive and independent non-executive directors (including necessary training), and make sure that boards have appropriate nomination and dismissal procedures to ensure effective independence. Indeed, independence should not be limited to a set of formal factors. Further recommendations could be:

- To provide a minimum of two independent directors, as the effect one independent director is often negligible;
- A periodic assessment of the independence of non-executives;
- Attention to D&O policies.

It goes without saying that the independence of mind of every director, whether deemed independent or not, is crucial for good governance.

[See: 2023 ecoDa Report and Recommendations on Independence Directors](#)

[See: Sample Independence Verification Form for Supervisory Board Members developed by The Association of Independent Non-Executive Directors in Poland](#)

5) Service providers – conflicts of interests

ecoDa is sensitive to the issue of conflicts of interests, whether they concern proxy advisors, assurance providers on sustainable reporting, rating agencies or board-evaluation facilitators. ecoDa welcomes the recent efforts made by the Commission concerning the independence of ESG rating agencies. However, regarding board evaluation providers, most Corporate Governance codes are silent on the possible risk of conflicts of interests when carried out by an external service provider.

[See: 2024 ecoDa paper on board evaluation and possible conflicts of interest.](#)

6) Role of the board regarding internal control

ecoDa feels the need to strengthen understanding of the board's mission in terms of internal control and to specify the level of detail required.

C. Horizontal recommendations

1) Invest in continuous education and training.

The role of Board members has increased over time, as a reflection of the changes in our society. This requires however an increased skillset, a high level of training or coaching, on a permanent basis. Whilst the regulators have piled on tasks, responsibilities, and reporting requirements on board members, they have left the 'how' to the companies and commercial service providers.

The Commission should prioritize education through **dedicated resources** to help companies and their board members **adapt to new regulatory requirements**.

Budget lines for board education should be allocated especially in the field of sustainability, to set up high-level training facilities and co-finance non-commercial training institutes. This has for example been done for the gender quota di-

rective where EU funding was allocated for specific mentoring and education programmes.

2) The upcoming revision of the Shareholders Rights Directive must be based on an in-depth evaluation of the effects of the current Directive, in particular on issues of ‘shareholders say’. It is important to re-establish the board’s role as a body responsible for the long-term interests of the company, its shareholders, stakeholders, and society.

In the revision of the SHRD, **Electronic access to general meetings** (AGMs and EGMs) should be allowed, — but not be mandatory — for publicly listed companies. Practical solutions for instance on voting mechanisms, possibilities to pose questions online, etc. should be developed.

Final remark

For an overview of good Corporate Governance practices in Europe in 2024, ecoDa with the help of Ethics & Boards will publish shortly a European barometer.



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