

ecoDa

a.s.b.l.

Confédération Européenne des Associations d'Administrateurs
European Confederation of Directors' Associations

Pierre Delsaux
Director
DIRECTORATE F
Free movement of capital,
company law and corporate
governance
European Commission
200 rue de la Loi
1040 Brussels

24 July 2006,

Object: the European Parliament resolution on recent developments and prospects in relation to company law

Dear Sir,

Following the European Parliament resolution on recent developments and prospects in relation to company law adopted on 4 July, I am now taking the liberty of raising some concerns on behalf of the European Confederation of Directors' Associations (ecoDa).

Our Confederation welcomes the initiative taken by the European Parliament presenting various interesting points that we will consider in our future policy. However, ecoDa does not agree with all of them. First of all, ecoDa would like to repeat that we have always supported the European Commission's pragmatic vision based on the preference of soft law instruments such as recommendations, rather than prescriptive detailed legislation. EcoDa is convinced that convergence on higher standards - on which we are actively working amongst our own members - is likely to be achieved more easily by implementing high-level principles rather than by systematic recourse to EU legislation. We hope that the European Commission will stick to its "light touch" approach.

Concerning paragraph 6 and the "*call on the Commission to explain in detail the plans to present a complete consolidation of the company law directives in one single act*"; ecoDa considers that while the aim should be to ensure there are no inconsistencies, a single measure would be hugely time-consuming and costly without necessarily providing significant benefits.

Concerning paragraph 14 on the *contribution of other stakeholders than shareholders on the strategy of companies*, ecoDa considers that the accountabilities of directors - whether to shareholders or to other stakeholders - are founded in national legal and social systems. It should not therefore be addressed at EU level.

Concerning paragraphs 19 and 20 on *disqualification of directors* and *wrongful trading*, these matters can be linked. One of the problems with cross-border information on disqualification of directors is the widely varying range of matters for which directors may be disqualified in different Member States. However, ecoDa does not consider that wrongful trading should be addressed in EU legislation.

Concerning paragraph 22 and the call for *“transitional periods after which active members of the management board who wish, on leaving the board, to transfer to the supervisory board or the non-executive board may do so”*, ecoDa sees no reason to institute such a system. What is at issue here is whether a person will be regarded as an independent director. Recent management involvement is already one of the most clear-cut bars to independence (as listed in the recommendation) so there is no need for further regulation.

Concerning paragraph 23 on *the independence of directors*, the European Commission is about to monitor the response to the recommendation in the Member States. It seems that the results are different between the Member States. However, no new European action should be taken before due analysis.

Concerning paragraph 24, the fact that *the Commission has to be alert to conflicts of interests and the disproportional accumulation of information and influence by some large players in the chain of intermediaries and advisors involved in the exercise of shareholders' voting rights in companies* and paragraph 44 on transparency regarding institutional investors, ecoDa agrees that these topics are of general concern, but we do not regard them as suitable subjects for legislative intervention.

Concerning paragraph 36 on *delisting*, ecoDa does not believe that this is a subject for EU intervention.

Concerning paragraph 43 and *the principle "one share one vote"*, ecoDa shares the same approach as that of the European Parliament. Any EU intervention must be evidence-based. It is not yet apparent that a case has been made out.

In conclusion, in thanking you for your attention to these topics, we trust you will give the issues raised in this letter due attention. I take the opportunity of this letter to inform you that our confederation has just been enlarged to include the Czech Institute of Directors, a new step in the eastern countries that will improve undoubtedly our exchange of best practices.

Yours sincerely,

Prof. Ir. Pierre Klees
Chairman

Copy to: Nathalie Bergé