**ecoDa 10th ANNIVERSARY CONFERENCE**

**22 APRIL 2015 – BRUSSELS**

**WRAP-UP REPORT**

10th anniversary ecoDa The European Voice of Directors

*Celebrating a decade of ecoDa*

The Professionalism of Directors - Key to European competitiveness

22nd April 2015, Brussels

*The event was sponsored by:* Standard Life Investments

**CONTEXT:**

European competitiveness is being challenged both by emerging markets and by traditional competitors, such as the US. The deep and wide European recession resulting from the financial crisis has exposed the economic vulnerability of Europe. The need for concerted actions from the European business community, European governments and not the least the EU institutions has never before been more pronounced.

Regulations and laws cannot solve the fundamental problem behind European competitiveness: the ability of European companies to stay competitive in a globalized world. On the contrary, lawmakers must design a legal framework that supports the sustainability and the competitiveness of European companies.

A key question is the level of professionalism governing European companies. Do the Boards of Directors of European listed and non-listed companies have the professionalism needed to advance European competitiveness in a sustainable way? ecoDa chose the subject of "The professionalism of directors- Key to European Competitiveness?" to celebrate its $10^{th}$ anniversary.

This conference was the last one in a series of ecoDa 10th Anniversary conferences. It started in Stockholm last June, moved to Ljubljana during the fall and is now finishing off in Brussels.

**CONTENT:**

The project conference was divided into four parts:

- "The Professionalism of directors: Directors that deliver",
- "Challenging discussion: The importance of economic intelligence for boardrooms",
- "The Professionalism of Directors: Directors that are well selected",
- "The Professionalism of Directors: Challenges for the 10 coming years".

**Suzanne Liljegren,** *Chair of ecoDa's Communication Committee*, moderated the whole conference.

As a keynote speaker, **Jeroen Hooijer** (*Head of Unit, Company Law, DG Justice, European Commission)* mentioned that Corporate Governance remains a topical issue in the media. He then highlighted the main contributions made by the European Commission to improve professionalism of boards:

1. The Directive with the aim of attaining a 40% objective of the under-represented gender in non-executive board-member positions in publicly listed companies which is still subject of negotiations at the Council,
2. The Directive on non-financial and diversity information by certain large companies and groups which is based on a Comply or Explain approach,
3. The 2005 Recommendation on independent directors which tried to stimulate an appropriate balance between executives and non-executives. The items of getting a sufficient number of non-executives and of assessing the independence are still crucial for companies.
4. The draft Directive on shareholders' rights to encourage dialogue between boards and shareholders on key issues (including remuneration).
5. The creation of specialized committees where there are potential areas of conflicts of interests which aim also to increase boards' efficiency.

Jeroen Hooijer mentioned for the benefit of the discussion some possible questions:

- The limitation of board mandates: the CRDIV Directive has fixed some limits for the financial sector; Is a reflection necessary whether a regulatory measure could be applicable in the non-financial sector?
- Boards' efficiency and boards' workload: we expecting a lot from board members? How to find an effective balance between the work-load and the general expectations?
- Board meetings' frequency: Do Boards meet frequently enough to exercise proper oversight?


**Lars- Erik Forsgårdh**, *ecoDa's Chair,* reminded briefly the history of ecoDa's creation and its main achievements. He acknowledged that Corporate Governance is no longer a topic for a small community. The whole society wants to have an eye on how companies are governed. The specific topic of "professionalism of directors" illustrates perfectly well the need for a qualitative jump. Board members needs to be on top of things to really provide added value to the management and to contribute to sustainable enterprises. He paid a specific tribute to ecoDa past chairs that have contributed to the development of the confederation, namely Daniel Lebègue, Pierre Klees, Miles Templeman, Juan Alvarez-Vijande and Patrick Zurstrassen.

*To help the participants all better understand who ecoDa is and what ecoDa is striving for, a short video sponsored by Sodali was shown.* [www.ecoDa.org](www.ecoDa.org)

## ➢ FIRST PART: "THE PROFESSIONALISM OF DIRECTORS: DIRECTORS THAT DELIVER"


*The first roundtable discussion was moderated by* ***Simon Walker,*** *IoD.*

**Pierre Rodocanachi** *(Vice-Chair of Vivendi Supervisory Board)* illustrated the role of directors by using the Vivendi case where the company moved from a conglomerate holding several telecommunications companies to a pure media company. He highlighted how boards can play an active role by identifying areas of development, identifying the risks, changing the management and making sure that the strategy is implemented. He explained in detail how the Vivendi board reacted in early 2012 to the entrance of a new competitor in the telecommunications sector, how the board launched an IPO, and soon after arbitrated between two competitors willing to buy that asset, how the board looked for stable and long-term oriented shareholders, and how Vincent Bolloré was involved, as a major shareholder committed to the strategy, and who later became the Chair of Vivendi. He then explained how the board was involved in replacing the CEO during that process and was heavily involved in selecting the best candidate.  He highlighted the current difficulties that Vivendi is facing nowadays: given its important cash flow, shareholders are pushing to get money back and other major companies might be willing to take over the company, a problem of riches!

**Conni Jonsson** (*Chairman of EQT*) testified how owners can ensure that the board and the management effectively play their roles. EQT is a private equity firm that works with portfolio companies to achieve sustainable growth, operational excellence and market leadership. Conni opened is presentation by reviewing the different ownership models in Europe incl. comparing the public and private governance structure. The quantity and the size of private companies are exploding. To him, the public ownership structure is a legacy of the past rather than a driving force for the future. He believes that the private ownership model is more sustainable then the public ownership model. Private companies can attract the best talent (the governance structure allows to create alignment between board, owner and management), and private companies can make the management focused on the right things faster. It is important to mention the regulators requirements on the governance, the regulators need to make sure that they do not kill entrepreneurship. If they don't have a commercial drive the industry will not be able to attract the best talent. To make the board of directors efficient is all about creating alignment, accountability and transparency. Defective governance can occur in two circumstances: 1. when there is misalignment between the board and the shareholders or 2. when there is misalignment between the board and the management. The core essence of building good companies is to create alignment among all shareholders of the company. It is dangerous to categorize owners as people that are not allowed to put people they trust on the board. What is the agenda of independent directors? One should understand that poor business judgement cannot be avoided by regulations. If you take a snapshot of how the world looks today, you will find companies with revenues of 5 to 20 billion euros, companies that were not even around 10 years ago, companies that had a disruptive effect on regular companies.

**Alexandra Schaapveld** (*Board Member of Vallourec, Société Générale, Bumi Armada Berhad; and INSEAD IDP-C)* presented practical points of views on what she learnt from being a non-executive:

1- Information received by non-executives: board book tools have not reduced the amount of information on the contrary. It is important to get the essential out of shorter documents, it is also important to get executive summary which highlight the dilemmas and the questions that the management want to raise. Furthermore a flow of information should be ongoing between board meetings.

2- Getting to know the company: it is relevant to organize one-to-one meeting with key executives at different levels of the company (by informing the CEO) in order to enhance the knowledge about the company, to understand what are the talents of the company, and to understand the corporate culture.

3- Boards: Getting the right board is not only about getting the best quality it is also about making it a team. In camera sessions with only non-executives can enable Directors to express their feelings about the company. Non-executives should not wait for a crisis to organize those meetings.

4- Tone at the top: board members are there to get the right people who are going to fix the values of the company. If they are not confident with the way the CEO sets the tone, and no change occurs the Board might end up having to change the CEO.

*Participants pointed out the importance of boards' evaluation and team dynamics.*

- **SECOND PART: "CHALLENGING DISCUSSION: THE IMPORTANCE OF ECONOMIC INTELLIGENCE FOR BOARDROOMS"**


**Dana Purcarescu** (*Diplomatic counsellor, Interministerial Delegate for Economic Intelligence in France*) presented the reasons why boards have to be familiar with the concept of economic intelligence for long-term decision making. She explained how economic intelligence can help boards monitor the information, prevent risks (including intangible risks and reputation risks) and be influential. Board members can play an efficient part in the decision making by helping companies to understand their environment and engage in shaping their environment not just reacting to it. Boards need to be one step ahead of change. Thanks to their experience and the right information they will be able to take the right decisions. The right information means relevant pieces of data available in a timely manner to the decision makers. Monitoring in a passive way is not enough, companies need to know the regulators and contribute to the regulatory process. When it is too late, it will be more expensive and more resource consuming to exercise influence. Boards need to be proactive in requesting the information they expect and not wait for information that someone is pushing to them. Ms Purcarescu insisted on the need to find the appropriate balance between transparency requirements and strategic information that needs to be protected. Boards have a role in managing transparency; there is a middle way between full transparency and total secrecy. Boards have to define processes to identify what is strategic and what needs to be protected.

**Cora Van Nieuwenhuizen** *(MEP, European Parliament-ADLE, Member of the Committee on Economic and Monetary Affairs)* concluded the discussion by saying that people are keener to follow examples rather than to obey the rules. Boards have definitely to set the tone and lead by example. Although she believes in the need to get more diverse boards, she does not believe in quotas.

## ➢ THIRD PART: "THE PROFESSIONALISM OF DIRECTORS: DIRECTORS THAT ARE WELL SELECTED"

**Dominic Schofield (***Senior Client Partner, Korn Ferry)* and **Turid Solvang** (*Managing Director, Styreinstitutt)* presented the ecoDa/Korn Ferry Guidance on "Beyond the old boys' network". Companies from across the continent have adopted many aspects of global best practice to win the confidence of global investors and to enhance corporate performance. European corporate governance landscape retains its distinctive historical diversity. Although the role and activities of directors and supervisory board members across Europe have much in common, there are key differences - arising from national regulatory frameworks and local business norms - which are relevant to any director serving on a European board. The global financial crisis, combined with the shift in economic power to the East and digital revolution has dramatically increased the scope of work and pressures on European company boards. ecoDa and Korn Ferry have identified four forces lashing the Boardrooms from Dublin to Warsaw (1- Economic turbulence and Eurozone instability has become the 'new normal', 2- More governance, more guidelines, more regulation, 3- Diversity, 4-More active investors and greater scrutiny from institutional investors). The report discussed also the transferability of the Nordic CG model to other European countries and jurisdictions. The result is a set of fourteen best practices that together make a good guide/manual to help boards and their Nominations Committees develop robust and effective nomination procedures.


**Irena Prijovic** *(Secretary General, the Slovenian Directors' Institutes)* commented the ecoDa/Korn Ferry guidance. For her, this topic has been tackled in many CG codes and literature on board of directors but since then we have lacked something more tangible on recruitment and selection processes that also include the actual feedback from practitioners and explain challenges in different jurisdictions across Europe. ecoDa and Korn Ferry guidelines fill that gap. Pressure towards better and value-adding boards in practice primarily means a pressure towards highly professional board selection and nomination processes. Keeping main stakeholders informed about the appointment of board directors is certainly one important recommendation. In fact Irena Prijovic has witnessed fake candidates in general assembly agendas, as at the moment of their public exposure they would be discredited, so decision is to keep them secret until the day of general meeting. Taken into account the board dynamics is also important given that one person on the board can change dynamics and influence the behaviour of the whole board for "the best or the worst". To reference a potential candidate with their Board peers, current and former colleagues, mentors, and directors who know them is also important. "Fit and proper" double-check should be done even for candidates who belongs to the good network.

- **FOURTH PART: THE PROFESSIONALISM OF DIRECTORS: CHALLENGES FOR THE 10 COMING YEARS**

*The fourth roundtable discussion was moderated by **Lutgart Van den Berge**, Executive Director, Guberna.*

**Daniela Weber-Rey** *(Chief Governance Officer, Deutsche Bank AG)* stated that it is time to make a step back and to define better Corporate Governance for the benefit of companies and for society at large but not through more regulation. It is important to look at the old OECD definition of CG which refers to the improvement of economic efficiency and growth and to the enhancement of investors' confidence. Regulators have forgotten the competitiveness' aim of Corporate Governance. The OECD Principles refer also to the need to provide the appropriate structures which is largely underestimated. The need to provide proper incentives and to facilitate effective monitoring has been covered in enormous details. We should, however, renew our regulatory thinking with a principles-based approach. Too much regulation runs the risk of a check-the-box exercise, which can be dangerous. The three core goals: 1- align risks and liabilities, 2- provide empowerment for accountability (this requires clarity of mandates), 3- ascertain clear checks and balances. It is important to draw conclusions from past regulation, to challenge whether they were useful in practice, whether regulations are compatible with our international environment and if they reinforce our competitiveness. Regulators think that Corporate Governance failures were not the trigger of the financial market crisis but have contributed to the crisis. We don't need so much regulation, in particular not too detailed or contradictory regulation, at least outside the financial sector. Firms are struggling to find board members willing and able to cope with such regulation. This can reinforce a trend away from the capital markets. Daniela also raised a provocative question: in discussing whether directors have enough time for their role, should they be spending time reading 30 pages on how to calculate the time spent? Obviously board members have to dedicate enough time but Daniela pleads to give them the freedom to act and leave them their entrepreneurial responsibility. She mentioned that there is a tendency for the regulator to check the competences of the individuals below the managing board who are key for the strategy; in the financial sector these are the so-called Key Function Holders. She considers this approach appropriate in light of the responsibilities in the financial sectors.

**David Styles** (*Director Corporate Governance Codes & Standards Division, FRC)* highlighted 5 elements: 1- Focus more on business strategy for the future in order to get the right balance of skills needed on boards, 2- Link business strategy and succession planning, and develop pipelines of internal talents for executive boards' roles and a pipeline of external talents for non-executives., 3- Look at the role of the Nomination Committees in identifying talents and the relationships of the committee with the CEO, the company secretary and the HR department, 4- Consider a wider definition of diversity, 5- Look at the role of investors in helping board with succession planning.

**Andrea Di Segni** (*Head of Corporate Advisory, Sodali)* considered like Roger Ferguson that Corporate Governance is a combination of 'software' and 'hardware' (policies, structures). If a lot has been achieved in terms of 'hardware', a lot still have to be done in terms of 'software'. He pointed out the role of independent directors who are not supposed to take into account the interests of the minority shareholders only but who should instead take the whole perspective of all stakeholders. The role of independent board members should be perceived differently. It is time to move to the notion of 'independent board members 2.0'. Independent directors should not only counterbalance the roles of the chair and of the management but support them with an independent and constructive approach to strategic and/or management matters. They should bring a different perspective into the boardroom which does not fall into a confrontational approach. They should be a value-added drivers for the Board and this requires professionalism, expertise, and open-mind approach. A professional and expert-like role should be played not that different from the activist role – even within governance issues there are value creation opportunities for shareholders. It is the attitude that matters more rather than the definition of independence. Last remarks is on the new alignment on independent members pay. It is becoming a real job with value added and it should be rewarded accordingly through cash or even shares to ensure long-term alignment to shareholders' interest.

**Jo Iwasaki** (*Head of Corporate Governance, ICAEW*) mentioned that there is a need for a new movement in Corporate Governance. It will help companies and their boards to demonstrate accountability on major issues of public concern. The global financial crisis has highlighted how companies behave in today world and how their governance works. Confidence in businesses has been damaged. In this context, the scope and the nature of CG debate is changing: this presents challenges to existing governance codes. Some of these issues are outside the scope of CG codes. ICAEW decided to explore where these challenges are coming from and has attempted to answer some fundamental questions in a series of papers looking at 'What should companies be responsible for?', 'What are the overarching principles of corporate governance?', 'When is comply or explain the right approach?' 'How diverse should boards be?' and 'Who should be covered by codes?'. ICAEW would like to move build on these papers, focusing on fundamental top-line principles for companies. Companies need to behave in a way socially acceptable, they have to observe laws and regulations, they have to be accountable. Boards have to be sufficiently diverse, they have to show leadership, they have to be accountable individually and as a collective body, they have to consider sustainable operations and they have to demonstrate integrity. Developing a set of high level principles should help us approach challenging CG issues such as executive remuneration, tax avoidance, diversity and the treatment of suppliers, customers and employees; in other words, encourage businesses to be more proactive in addressing emerging issues of public concern.

**For Mike Everett** (*Governance & Stewardship Director, Standard Life Investments),* generally asset managers will look to invest in companies that are likely to have the best chance of 'long term' success. The effectiveness of a company's board is often a key aspect of delivering long term success. The board should be involved in the definition of strategy, assessment of risk to the company and oversight of implementation and delivery of strategy. This activity is complex and requires a good deal of skill and experience. Investors rely on the boards of company to deliver long term success and therefore the professionalism, abilities and experience of board members are very important to investors. In Europe we do have people of the right skills and experience and indeed many of Europe's companies are global in nature and can attract the highest level board members from around the world. However, the boards of companies are not always managed with the level of professionalism required to deliver the long term success desired by investors and required by European societies. It is important that those on boards, investors and policy makers all recognize the role they play in creating long term success and are held to account for delivering the roles for which they are responsible. Investors can't judge the quality of board members from a statement, they have to meet them.

*Participants questioned:*

- If the board can do what they are assumed to do in a complex world? If some listed companies are not just too big to govern? If this solution is to make organizations smaller? If boards' role should not change or if the perception of their role should not change?

  In response, it was said that: boards alone cannot fully control the organization. They need a set of senior people to rely upon. The EBA and the European Insurance authority have introduced the concept of key function holders and boards have to designate them. It is a new concept which was introduced thanks to the fact that the financial organizations have developed internal governance.

**Lars-Erik Forsgårdh** *(ecoDa Chair)* concluded the conference mentioning that there is a limit with what we can achieve with regulation. It is time to reflect where regulation has taken us. He thanked all the participants and the speakers for this successful conference.

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