

Green Paper on corporate governance in financial institutions and remuneration policies

As a member of ecoDa, the European Confederation of Director Associations, **GUBERNA, the Belgian Governance and Directors' Institute**, wants to contribute to the public consultation on the 'Green Paper on corporate governance in financial institutions and remuneration policies'. At the one hand, our contribution **confirms and supports the ecoDa opinion** sent to the EC on July 13th 2010. At the other hand, GUBERNA's consultation of its member base (directors of all types of organisations) **necessitates that some elements are specifically stressed or further complemented**. GUBERNA especially wants to focus on those elements that its members consider of special importance given the role they play in corporate boards, listed as well as unlisted, financial as well as non financial institutions. Other Belgian organisations (e.g. Febelfin) are planning to respond to the Green Paper from a specific financial sector perspective (with analysis of the feasibility of the EU proposals with the Belgian legislation as well as the supervision of the financial sector).

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General Remarks

GUBERNA welcomes the debate the EC is organising on corporate governance in general and appreciates the opportunity offered to all interested parties to give feedback on this Green Paper. We sincerely hope that this consultation process may help the EC in developing relevant and effective recommendations for better corporate governance.

Scope of the Green paper

The scope of the Green Paper is rather diverse. As to the financial sector, quite a large number of banks or financial institutions are not listed. Moreover, many questions raised throughout the Green Paper do not focus as such on financial institutions but more in general on listed companies.

In our opinion the **mix of recommendations for the financial sector -with listed as well as unlisted companies-, with more general recommendations for executive remuneration of all listed companies** necessitates careful rethinking. Although the scope is clear in (some) of the titles, the text of the analysis and the recommendations is often not sufficiently nuanced. GUBERNA wants to stress the importance of aligning governance mechanisms, processes and structures to the specific governance challenges. Our long research history of governance practices has revealed that such governance challenges are quite different in different shareholding environments, which vary significantly throughout Europe, but even throughout each of the Member States. Moreover, certain sectors, such as the financial sector, pose specific and additional governance challenges since these companies have an important societal impact. GUBERNA therefore asks special attention for the necessary distinction and nuances between listed and unlisted companies as well as between financial sector and non-financial sector.

Recently, the **landscape of governance** in general and that of executive remuneration and financial sector governance more specifically, **drastically changed in numerous member states**. Consequently, quite some proposals in this Green Paper have already been embedded

(sometimes quite differently) in national legislation and financial regulations. **Taking stock of this moving target** will be essential before fine tuning the recommendations at EU level.

Methodology of the Green Paper

As already highlighted in the introduction, GUBERNA appreciates the open consultation for important discussions on governance issues. As a director organisation, **GUBERNA wants to stress the need for a more in-depth integration of the point of view of non-executive and independent directors, when debating future governance recommendations.** As key partners in the governance of corporations as well as social profit organisations, directors can offer their wide experience and know-how to develop effective governance recommendations and focus on substance more than on the formal governance elements.

Implementation of the Green Paper

Once the EC will have reached a decision on the direction of the final recommendations, more specifications on the implementation of its proposals will be necessary. To this end, GUBERNA wants to stress the **importance of combining a general regulatory framework with self-regulation.** There is growing evidence that effective governance is more dependent on corporate behaviour and governance attitude than on numerous factual elements and input factors. Whereas such factual elements and input factors can be integrated relatively easily in legal principles or regulations, such route offers no solution for the more informal governance elements. For such qualitative guidance self-regulation is the only way ahead. But GUBERNA acknowledges that self-regulation will only be effective as far as monitoring is well organised. Here the non-executive and independent directors, supported by regular board evaluations, could form an important monitoring factor.

Role of shareholders

The observation made on the methodology also has important consequences on the perception of the term “shareholders” by the EC. The role of the shareholders set down by the EC does not fit with the role of shareholders in practice. The **concept of “shareholders”** needs to be much more nuanced. Family shareholders, institutional shareholders, long-term and short-term shareholders need to be differentiated. This differentiation has consequences with regard to risk, monitoring ability and willingness, etc. Such differences need to be taken into account by policy makers when they want to develop effective recommendations.

Diversity in the boardroom

Research has shown that **gender diversity offers quite interesting perspectives for more effective diversification within the board room.** Diversity of opinion is indeed an important value added for effective corporate decision-making. However, as mentioned by ecoDa in its response to the Green Paper, it is **important that corporate governance policies and especially the concept of board diversity is not politicised.** The board’s composition should be defined in relation to the specific needs and challenges a corporation is facing. In developing a board’s profile, all dimensions of diversity should be considered.

Director appointments and diversity increasingly demand justification and accountability towards the shareholders and (eventually) other stakeholders. The board should develop a **general board profile** as well as a **specific profile for each new director nomination** and illustrate to the shareholders its reasons for proposing a certain candidate for nomination.

Management

The Green Paper sets out different links between the board of directors, internal and external auditors, risk managers etc. However, the interaction and **role division between the board of directors and executive management, which is so crucial for good governance, is totally missing** in the Green Paper. GUBERNA is well aware of the difficult task ahead, because such role division is not only quite distinct in different legal board structures, but even within the same board structure the respective roles and the interaction between the board and management may be quite different from one company to another. However, such difficulties are no excuse for not thoroughly reflecting on a number of essential questions that such task division and interaction may pose.

Behaviour

Recommendations and upcoming regulations will never suffice to cover all issues to improve board effectiveness. Training, sensitizing directors and professionalization of directors is of **vital importance** for good corporate governance. GUBERNA believes that directors need to be stimulated and offered the chance to develop in their role as a director through **training, education and professional development**.

Remuneration

As already highlighted before, **executive remuneration is a moving target in most national Member States**. Belgium recently adopted new legislation regarding executive remuneration. This legislation is now being implemented by all listed companies as from the accounting year 2010 onwards. It is therefore important that the EC takes into account **the ongoing implementation** of recent national legislation.

GUBERNA **deplores the fact that the Green Paper does not distinguish between financial institutions and listed companies regarding remuneration**. Moreover, GUBERNA -as directors' institute and ecoDa member- wants to explicitly support the ecoDa remark as to the **importance of distinguishing between executive and board remuneration**.

Such distinction is necessary from two perspectives. First, the remuneration structures are quite different with executive pay being far more complex. The issues of linking executive remuneration to performance (however defined) and the potential side-effects on risk attitude and risk-taking are important and complex challenges. On the contrary, board remuneration is far more straightforward and mostly of a fixed nature. Second, the non-executive director remuneration needs a completely different examination. The assignment of increasingly more responsibilities to directors, the new criteria for professionalism, qualifications and director development as well as an important increase in time commitment will certainly demand a matching remuneration. Such 'matching' demands far more reflection than is prevailing in today's governance discussions.

About GUBERNA

GUBERNA (Het Instituut voor Bestuurders – L' Institut des Administrateurs), headed by its Executive Director, Prof. dr. Lutgart Van den Berghe, is the outcome of the merger between the Belgian Governance Institute (founded in 1996) and the Association of Board Members in Belgium.

GUBERNA is the knowledge centre in Belgium, which encourages corporate governance in all its dimensions and for every type of organization. As an academically based network, GUBERNA wants to offer a platform for the exchange of experience, knowledge and 'best practices'. GUBERNA wants to bring about the professionalization of the directors' profession in order to improve the effectiveness of boards of directors.

As a knowledge centre, GUBERNA is actively involved in the development of the Corporate Governance Codes in Belgium (among others, member of the Corporate Governance Committee for listed companies and the Committee Buysse for non-listed enterprises) as well as in numerous other initiatives from home and abroad.

GUBERNA's network currently includes about 1500 members, individual as well as corporate and institutional members.

GUBERNA is also a member of ecoDa (The European Confederation of Directors' Associations).