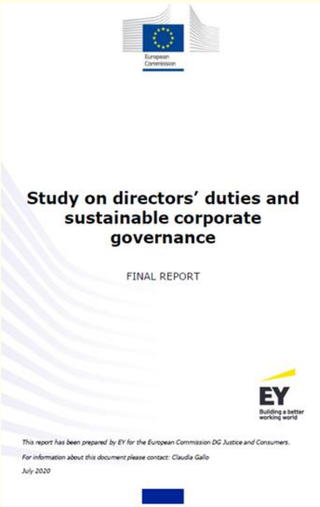
Reaktioner på forslaget fra forskningsverdenen


Study on directors' duties and sustainable corporate governance

FINAL REPORT

This report has been prepared by EY for the European Commission DG Justice and Consumers.

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Full Picture Series

Policy Workshops from the ECGI Research Network

Reminder

Please disregard this email if you have already registered for this event

11-13 November 2020 | Online Policy Workshop

European Commission study by Ernst & Young (EY) on 'Directors' duties and sustainable corporate governance'

3 days | 14:30 - 17:00 (CET) | 10:30 - 13:00 (EST)


ecoDa - BusinessEurope – EuropeanIssuers online event

Corporate Governance for sustainable and competitive European companies

28 October 2020 – 9.30 – 12.40 CET

9.30 – 9.35: Welcome: Michel de Fabiani, Chair of ecoDa's Policy Committee

9.35 – 9.45: *Keynote speech: How companies should articulate their long-term strategy?* Luc Vansteenkiste, Chairman EuropeanIssuers

9.45 *Table 1: Long-term value creation: Towards a stakeholders' oriented-capitalism?* – Moderated by Odile de Brosses, Chair of the Policy Committee EuropeanIssuers

Baggrund

- The European Commission recently published a study by Ernst & Young (EY) on directors' duties and sustainable corporate governance commissioned in 2019. Studies of this type are usually a stepping stone for policy proposals that will be put forward for consideration by EU Member States and the European Parliament.

- In the words of the Commission: "the Study found a clear trend of short-termism in the focus of EU companies. It identified key drivers of this issue, ranging from the narrow interpretation of directors duties and the company's interest with the tendency to favour the short-term maximisation of financial value, through growing pressure from investors and the lack of a strategic perspective on sustainability all the way to the limited enforcement of the directors' duty to act in the long-term interest of company. In order to lengthen the time horizon in corporate decision-making and to promote a corporate governance that is more conducive to sustainability, the Study also identified specific objectives that EU intervention could aim to reach".

Hvad er der udsigt til?

Problems Identified (EY Report)	Hard Law Solutions?
1. Directors' duties and company's interest are interpreted narrowly and tend to favour the short-term maximisation of shareholder value;	**1. EU directive:** Legal director responsibility for employees; customers, local and global, environment; society; sustainability risks.
2. Growing pressures from investors with a short-term horizon contribute to increasing the boards' focus on short-term financial returns to shareholders at the expense of long-term value creation;	**2. Shareholder Directive II**: Incentivize longer shareholding periods, prohibit both earnings guidance and quarterly reporting for listed companies.
3. Companies lack a strategic perspective over sustainability and current practices fail to effectively identify and manage relevant sustainability risks and impacts;	**3. EU directive**: integrate sustainability into the business strategy; sustainability targets; disclose appropriate information.
4. Board remuneration structures incentivise the focus on short-term shareholder value rather than long-term value creation for the company;	**4. Shareholder Directive II:** Regulating executives' ability to sell the shares. Compulsory inclusion of ESG metrics in executive pay.
5. The current board composition does not fully support a shift towards sustainability;	**5. EU directive**: Sustainability criteria in the board nomination process.
6. Current corporate governance frameworks and practices do not sufficiently voice the long-term interests of stakeholders;	**6. New EU rules**: corporate boards to engage with stakeholders on sustainability risks and impacts in business strategy.
7. Enforcement of the directors' duty to act in the long-term interest of company is limited.	7. **New EU rules:** Enforcement of directors' duty to act in the interest of the company.

Reaktioner fra forskningsverdenen

ecgi
european corporate governance institute

Online Policy Workshop

European Commission study by Ernst & Young (EY) on
Directors' Duties and Sustainable Corporate Governance

11, 12, 13 November 2020

11 November 2020

14:30 – 14:35 Day 1 | Introduction
Luca Enriques (University of Oxford and ECGI)
14:35 – 15:05 Presentation of the Report
15:05 – 15:20 Break
15:20 – 15:50 Keynote Briefing: "What Do Financial Economists Know About Short Termism?"
Zacharias Sautner (Frankfurt School of Finance & Management and ECGI)
15:50 – 16:05 Part 1 | Responses to the European Commission's Consultation by ECGI Research Members
Wolf-Georg Ringe (Hamburg University and ECGI) (Response)
16:05 – 16:35 Discussion
John C. Coffee, Jr. (Columbia Law School and ECGI)
Oren Sussman (University of Oxford and ECGI)
16:35 – 16:50 Q&A
16:50 – 17:00 Day 1 | Concluding remarks
Marco Becht (Solvay Brussels School and ECGI)

12 November 2020

14:30 – 14:45 Day 2 | Introduction
Luca Enriques (University of Oxford and ECGI)
14:45 – 15:15 Part 2 | Responses to the European Commission's Consultation by ECGI Research Members
Paul Davies (University of Oxford and ECGI) (Response)
Mark Roe (Harvard Law School and ECGI); **Holger Spamann** (Harvard Law School and ECGI) (Response)
15:15 – 15:30 Break
15:30 – 16:30 Discussion
Jesse Fried (Harvard Law School and ECGI)
Jennifer Hill (Monash University and ECGI)
Marc Goergen (IE and ECGI)
Theo Vermaelen (INSEAD and ECGI)
16:30 – 16:50 Q&A
16:50 – 17:00 Day 2 | Concluding remarks
Marco Becht (Solvay Brussels School and ECGI)

13 November 2020

14:30 – 14:45 Day 3 | Introduction
Lucrezia Reichlin (London Business School), Chair, ECGI
14:45 – 15:15 Part 3 | Responses to the European Commission's Consultation by ECGI Research Members
Alex Edmans (London Business School and ECGI) (Response)
Steen Thomsen (Copenhagen Business School and ECGI) (Response)
15:15 – 15:30 Break
15:30 – 16:30 Discussion
Mariassunta Giannetti (Stockholm School of Economics and ECGI)
Amir Licht (IDC Herzliya and ECGI)
Rolf Skog (University of Gothenburg and ECGI)
Per Strömberg (Stockholm School of Economics and ECGI)
16:30 – 16:50 Q&A
16:50 – 17:00 Day 3 | Concluding remarks
Marco Becht (Solvay Brussels School and ECGI)

Reaktioner fra forskningsverdenen:
(Oxford, Harvard, Insead, Columbia…)


In conclusion, **Professor Marco Becht** (Université libre de Bruxelles and ECGI) highlighted the unanimous verdict regarding the EY Report by presenters and discussants, as well as the clear recommendation to the EU Commission to disregard the study. Professor Becht noted that there was still room for academics to comment, for example, on the reports of the three European Supervisory Authorities and in the ongoing consultation on "sustainable corporate governance". Many ideas and insights had been put forth already during the three half-day workshop and it was hoped that some of these would be taken up in the European Commissions revised 2021 agenda. There was also unanimous agreement that corporate governance is central to sustainability, but that most of the actions proposed in the EY Report are not those that are needed to deliver on the sustainable growth objectives. Worse, if implemented, they could do harm.

Konklusion

- In conclusion, Professor Marco Becht (Université libre de Bruxelles and ECGI) highlighted the unanimous verdict regarding the EY Report by presenters and discussants, as well as the clear recommendation to the EU Commission to disregard the study. …
- There was also unanimous agreement that corporate governance is central to sustainability, but that most of the actions proposed in the EY Report are not those that are needed to deliver on the sustainable growth objectives. Worse, if implemented, they could do harm.

Ownership and Time Horizons

Short < 2 years | Medium ≈ 5 years | Long > 10 years

Financial Investors
- Hedge funds
- Asset managers
- Private Investors
- High-Frequency traders

Strategic Shareholders
- Private equity
- Institutional investors
- …

Long-Term Owners
- Founders
- Families
- Foundations
- Coops/mutuals
- …….

Agency

Stewardship

Note: Not clear that long-term ownership are currently more sustainable, but they have the incentive

Hovedpunkter i vurderingen

- Belæg for “short-termism” er uklart
- Europæiske selskaber er ikke underkapitaliserede
- Aktietilbagekøb svækker ikke selskaberne
- Stakeholder model => direktørvælde
- Større og mere diffust bestyrelsesansvar => risikoaversion og svækket konkurrrenceevne

Grundlaget er falsk

- Men Kommissionen kører videre i fuld fart
- Lovgivning i år
  "The Commission has stopped listening"
- Hvad gør vi?

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/F594592

Risici

- Ubegrænset og diffust bestyrelsesansvar
- Stakeholder konflikter og handlingslammelse
- Politisering af erhvervslivets beslutninger
- Kortslutning af kommandoveje

- => lavere risikovilje
- => Lavere vækst og reduceret konkurrenceevne (Tilbage til ”*Eurosclerose”)*
- => Langsommere grøn omstilling
- Retssikkerhed er helt afgørende

"AT THE HEART OF IT IS OUR COMMITMENT TO BECOMING THE WORLD'S FIRST CLIMATE-NEUTRAL CONTINENT. IT IS ALSO A LONG-TERM ECONOMIC IMPERATIVE: THOSE WHO ACT FIRST AND FASTEST WILL BE THE ONES WHO GRASP THE OPPORTUNITIES FROM THE ECOLOGICAL TRANSITION."

Alternative veje

Problems Identified	Solutions
1. Directors' duties and company's interest are interpreted narrowly and tend to favour the short-term maximisation of shareholder value;	1. Specify in company law that directors may give priority to company purpose and stakeholder interests, particularly in takeover situations.
2. Growing pressures from investors with a short-term horizon contribute to increasing the boards' focus on short-term financial returns to shareholders at the expense of long-term value creation;	2. Strengthen long-term ownership – by families, foundations, and coops/mutuals (e.g tax neutrality, dual class shares).
3. Companies lack a strategic perspective over sustainability and current practices fail to effectively identify and manage relevant sustainability risks and impacts;	3. Sustainability Committees on Boards (comply or explain).
4. Board remuneration structures incentivise the focus on short-term shareholder value rather than long-term value creation for the company;	4. Long-term board compensation by restricted stock > 10 years (or fixed pay)
5. The current board composition does not fully support a shift towards sustainability;	5. Sustainability committees => Sustainability competencies (biology, engineering, science)
6. Current corporate governance frameworks and practices do not sufficiently voice the long-term interests of stakeholders;	6. Advisory Stakeholder Councils that prioritize outsiders: costumers and suppliers (employees are already covered by works councils etc)
7. Enforcement of the directors' duty to act in the long-term interest of company is limited.	7. Strengthen company purpose and board representation by long-term shareholders.

Tak!