



Newsletter # 14

June 2008

- Corporate Governance in Europe – Directors' voice -

### THIS ISSUE AT A GLANCE

#### European News

EcoDa News	p. 1
European News	p. 1
News from European countries	p. 3
Events Calendar	p. 3
Related documents	p. 4

#### ecoDa's News

#### PRIVATE EQUITY – HEDGE FUNDS

On 1<sup>st</sup> of April last, ecoDa organised its annual conference on "Private Equity and Corporate Governance: perfect marriage or contradiction in terms?". For Pervenche Berès, keynote speaker, the industry is playing for time. *"The fact that there have been so many new and revised codes proposed by different industry associations indicates that there is a problem of compliance it shows that codes and guidelines do not work and that we need something more"*.

**For more information:**  
<http://www.ecoda.org/conference.html>

ecoDa has proposed taking shareholders' duties as part of Corporate Governance Recommendations.

**For more information:**  
[http://www.ecoda.org/docs/press\\_release\\_shareholders\\_duties\\_may\\_2008.pdf](http://www.ecoda.org/docs/press_release_shareholders_duties_may_2008.pdf)  
and <http://www.ecoda.org/policy.html>

#### EUROPEAN PRIVATE COMPANY

The EPC should be accessible to single and multiple shareholders, without any cross-border requirement. It should be capable of being set up from scratch, by merger or by transformation. Like the European (Public) Company, the EPC should be able to merge and transfer its registered office cross-border. The EPC should not be subject to any significant legal capital requirement. The EPC will form part of the Small Business Act which the Commission aims to present in early July.

**For more information:**  
<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/253&format=PDF&aged=0&language=EN&quiLanguage=fr>

#### COMPANY LAW SIMPLIFICATION

The report of Mr Lehne on CL simplification was adopted by the European Parliament on the 21st of May. The definition of micro-entities (for small companies) as suggested by the European Commission has been kept. The MEPs stress on the need to publish accounting information and recommend using the extensible Business Reporting Language.

## AUDIT

The European Commission has issued a Recommendation concerning the limitation of auditors' civil liability. Its main purpose is to encourage the growth of alternative audit firms in a competitive market. It aims to protect European capital markets by ensuring that audit firms remain available to carry out audits on companies listed in the EU. The Recommendation leaves it to Member States to decide on the appropriate method for limiting liability, and introduces a set of key principles to ensure that any limitation is fair for auditors, the audited companies, investors and other stakeholders.

**For more information:**

[http://ec.europa.eu/internal\\_market/auditing/liability/index\\_en.htm#recommendation](http://ec.europa.eu/internal_market/auditing/liability/index_en.htm#recommendation)

The European Commission has issued a Recommendation on "external quality assurance for statutory auditors and audit firms auditing public interest entities". It provides guidance to Member States for establishing an independent and effective system of inspections on the basis of the Directive on Statutory Audit. In essence, this Recommendation gives more responsibilities to the public oversight bodies, strengthens the independence of inspection teams and enhances transparency on the results of inspections of individual audit firms.

**For more information:**

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/734&format=PDF&aged=0&language=EN&guiLanguage=en>

## CROSS-BORDER MERGERS

The European Commission has decided to pursue infringement procedures against 11 Member States for failure to implement the Cross-Border Mergers Directive in national law. The Commission will send formal requests to Belgium, Greece, Spain, France, Italy, Lithuania, Latvia, the Netherlands, Portugal, Sweden and Slovenia. These formal requests take the form of "reasoned opinions", the second stage of the infringement procedure laid in Article 226 of the EC Treaty. If there is no satisfactory reply within two months, the Commission may refer the matter to the European Court of Justice. The Directive should have been implemented before the end of 2007.

**For more information:**

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/872&format=PDF&aged=0&language=EN&guiLanguage=fr>

## CJEC - FREEDOM OF ESTABLISHMENT

According to a Hungarian court, a firm that wishes to transfer its operational headquarters to another Member State must first be wound up in Hungary and then reconstituted under the law of that Member State. In the view of the advocate general, before Court of Justice of the European Communities, it is impossible to argue on the basis of the current state of Community law that Member States enjoy an absolute freedom to determine the 'life and death' of companies constituted under their domestic law, irrespective of the consequences for the freedom of establishment. Since the Hungarian Government has not put forward any grounds of justification, it is difficult to see how such 'an outright negation of the freedom of establishment' could be necessary for reasons of public interest.

**For more information:**

[http://curia.europa.eu/juris/cgi-bin/form.pl?lang=EN&Submit=Rechercher\\$docrequire=alldocs&numaff=C-210/06&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100](http://curia.europa.eu/juris/cgi-bin/form.pl?lang=EN&Submit=Rechercher$docrequire=alldocs&numaff=C-210/06&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100)

## FINANCIAL MARKETS

The European Commission has launched a consultation on possible amendments to Commission Decisions establishing the Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). The overall objective is to align, clarify and strengthen the responsibilities of the Committees of Supervisors and to ensure their contribution to supervisory cooperation and convergence at EU level, and to the safeguarding of financial stability. The consultative document invites to comment on a non-exhaustive list of tasks that the Committees are expected to perform in these areas. Stakeholders are invited to comment on these issues by 18 July 2008.

**For more information:**

[http://ec.europa.eu/internal\\_market/finances/committees/index\\_en.htm#review](http://ec.europa.eu/internal_market/finances/committees/index_en.htm#review)

The ECON Committee of the European Parliament is intensifying its work by focussing on the situation in the EU financial markets. "After 10 long months, we still do not see the end of the crisis. On the contrary the crisis is spreading beyond the financial sector. This crisis is a major market failure and calls for strong responses from all the EU policy makers! The European Parliament has already and is still willing to take its part in the necessary debate that needs to come out with concrete proposals for change in the short, medium and long term. It is our duty to safeguard our citizens' interests and soundness and stability of our financial markets" the ECON Chairwoman said.

**For more information:**

<http://www.europarl.europa.eu/document/activities/cont/200805/20080505ATT28196/20080505ATT28196EN.pdf>

## ACCOUNTING

The Services of the European Commission have prepared a Working Paper on third countries in the process of converging their national Generally Accepted Accounting Principles (GAAPs) towards International Financial Reporting Standards (IFRS) and on the progress towards the elimination of reconciliation requirements that apply to Community issuers listed in these countries.

**For more information:**

[http://ec.europa.eu/internal\\_market/accounting/news/index\\_en.htm](http://ec.europa.eu/internal_market/accounting/news/index_en.htm)

## News from European countries

Spanish companies have begun committing to greater board independence and the unbundling of director elections because of a new corporate governance code that comes into effect this year.

The Financial Reporting Council has announced that it will be updating the UK Combined Code.

## Events Calendar

**7<sup>th</sup> European Company Law and Corporate Governance Conference (under the French presidency)**

**October 17 Paris**



**The Institute of Chartered Secretaries and Administrators**

**Corporate Governance Developments Across the EU**

**October 7 – 8 Brussels**

**Contact: [rhamilton@ICSA.co.uk](mailto:rhamilton@ICSA.co.uk)**



**Transatlantic Corporate Governance Dialogue**

**"Corporate Governance Standards and Financial Stability"**

**September 10 Brussels**

**<http://www.ecgi.org/tcgd/index.php>**



**EVCA Symposium**

**June 18 – 20 Madrid**

**<http://www.evca-specials.com/symposium08/>**



**2008 ICGN Annual Conference**

**"Globalisation of Capital Markets: Impact on Corporate Governance"**


**June 18 - 20 Seoul**


**<http://www.icgn.org/conferences/2008/programme.php>**

At the 1st of April the new Company Law has been introduced in Croatian company Law. It gives possibility to the companies to choose between monistic and dualistic system of corporate governance, it also provides to the companies whose shares are traded on the stock exchange to apply comply or explain principle.

## Related documents

 **The latest Progress Report of the Global CG Forum :**  
[http://www.gcgf.org/ifcext/cgf.nsf/AttachmentsByTitle/Progress\\_Report\\_Summer2008/\\$FILE/GCGF\\_SummerReport\\_Final.pdf](http://www.gcgf.org/ifcext/cgf.nsf/AttachmentsByTitle/Progress_Report_Summer2008/$FILE/GCGF_SummerReport_Final.pdf)

 **"Governance Scorecards as Tools for Breakthrough Results", GCGF**  
[http://www.gcgf.org/ifcext/cgf.nsf/AttachmentsByTitle/Private\\_Sector\\_opinion8/\\$FILE/GCGF+PSO+issue+8+5-13-08.pdf](http://www.gcgf.org/ifcext/cgf.nsf/AttachmentsByTitle/Private_Sector_opinion8/$FILE/GCGF+PSO+issue+8+5-13-08.pdf)

 **"Examining the U.S. Regulatory Framework for Assessing Sovereign Investments"**  
<http://banking.senate.gov/public/index.cfm?Fuseaction=Hearings.Detail&HearingID=218c829a-b4a1-4ad6-bc0a-0153c7228e35>

 **"A Blueprint for Sovereign Wealth Fund Best Practices",** Peterson Institute for International Economics  
<http://www.petersoninstitute.org/publications/pb/pb08-3.pdf>

 **"The Rise of Sovereign Wealth Funds: Impacts on US Foreign Policy and Economic Interests", The Brookings Institution**  
<http://www.petersoninstitute.org/publications/papers/truman0508.pdf>

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