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REPORT

on deontological questions related to companies' management
(2009/2177(INI))

Committee on Legal Affairs

Rapporteur: Klaus-Heiner Lehne

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on deontological questions related to companies' management (2009/2177(INI))

The European Parliament,

- having regard to the Commission recommendation of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies¹,
 - having regard to the Commission recommendation of 30 April 2009 on remuneration policies in the financial services sector²,
 - having regard to the communication from the Commission accompanying the two above mentioned recommendations, which was also published on 30 April 2009 (COM/2009/0211),
 - having regard to the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (COM(2009)0362),
 - having regard to Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies³,
 - having regard to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC⁴,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Employment and Social Affairs (A7-00135/2010),
- A. whereas the European Union and the rest of the world are experiencing the severest economic crisis of the last 60 years, the real economy is experiencing its worst recession of that period, and difficult employment conditions are anticipated despite a relative upturn in the economy,
- B. whereas, irrespective of the type of company or the sector in which it operates, a number of questions related to companies' management are important in the general context of the deontology of business conduct, such as the duty of care, transparency, corporate social

¹ OJ L 120, 15.5.2009, p. 28.

² OJ L 120, 15.5.2009, p. 22.

³ OJ L 184, 14.7.2007, p. 17.

⁴ OJ L 157, 9.6.2006, p. 87.

responsibility, risk management, the economic sustainability of financial investment decisions, board of directors or supervisory board practices or the exercise of shareholders' rights; whereas the recent financial crisis showed that those questions need to be considered in the light of preserving financial stability and continuously analysed in order to help find solutions allowing companies to face current challenges and to help promote economic growth and higher employment within the EU,

- C. whereas the crisis also showed close links between risk management and remuneration policy and the importance of the latter in the mechanisms governing the proper functioning of companies; for this reason risk management should be duly taken into account when devising remuneration policy so as to enable effective risk management systems to be built into a broader, balanced approach to governance, and to ensure that if incentive systems are set up, care is taken to provide appropriate risk management systems as a counterbalance,
- D. whereas companies in all sectors share a number of classes of risk, although some types of risk are sector-specific (such as risks facing companies active in the financial sector); whereas failure of effective risk management resulting from inadequate monitoring of compliance with supervision rules and misaligned incentives in remuneration policies played a central role in the recent financial crisis,
- E. whereas risk management should be understood and applied at the level of the whole organisation and not only of its individual operational units; it should also be disclosed, transparent and subject to reporting requirements,
- F. whereas any solution should ensure that, when the risk is taken, it accords with the purpose of the business and the strategy of the company with due regard to effective risk management; effective risk management should be regarded as one of the most important elements of good corporate governance in all companies,
- G. whereas one of the first steps taken by the Commission after the crisis addressed the issue of remuneration policy by complementing Commission Recommendations 2004/913/EC and 2005/162/EC, which aimed to ensure appropriate remuneration policy by setting out best practices for its design with a new recommendation as regards the regime for remuneration of directors of listed companies and by publishing a recommendation on remuneration policies in the financial services sector,
- H. whereas the degree of recommendation varies, depending on the type of company, with due regard to size, internal organisation and complexity of activities; whereas such distinctions can be made between financial (listed or not) and listed but non-financial companies, and between different sectors of the financial industry such as banking, insurance and fund management,
- I. whereas in the context of remuneration several points need to be considered, such as (i) remuneration schemes, including their structure, transparency and symmetry and the link

between remuneration and incentive, (ii) the process of determining the remuneration schemes, including the definition of actors, roles and responsibilities, (iii) control over remuneration schemes, with particular attention given to shareholders, and (iv) total remuneration including salaries and pensions,

- J. whereas some aspects of principles of paramount importance contained in the recommendations remain unclear and must be put properly into practice, such as the concept of performance criteria, which should help in creating the link between pay and performance, the notion of ‘inadequate performance’ in the case of termination payments, the termination payment and variable components of remuneration in the financial services sector,
- K. whereas, given the recurring difficulties in defining the link between pay and performance, the focus should be on the effectiveness of the process in which remuneration policy is determined and on transparency, both of which should be based on sound governance defined and assessed by reference to an appropriate time-frame, oriented towards the medium to long term so as to avert dangerous, unsustainable risk management policies geared to the short term (if not the very short term), with defined, separated roles and the responsibilities of those involved,
- L. whereas any adopted solutions should not follow the one-size-fits-all principle and companies should retain flexibility in adjusting systems to their own needs,
- M. whereas ex-post assessment of the performance and remuneration policy is needed,
- N. whereas transparency proved to be an important element of good governance; whereas it should not be reduced to mere disclosure, but it should mean that companies are able to explain the choice of a particular remuneration policy,
- O. whereas disclosure of the policy on directors’ remuneration in a clear and easily understandable way should in principle benefit the process of taking decisions on remuneration policy, in particular by shareholders; such disclosure could include detailed disclosure in the annual accounts or in the remuneration report of the total remuneration and other benefits granted to individual directors,
- P. whereas the company’s objective should be constructive engagement of shareholders and employees; whereas this requires exploration of other measures for effective involvement of shareholders in shaping the company’s policy on remuneration (such as the possibility introduced in Germany for companies to seek shareholders’ approval of a tier remuneration policy through an advisory vote), in particular since shareholders are not always willing or prepared to take on a more active role; whereas this should also mean that ways should be explored of ensuring more proactive rather than reactive behaviour by shareholders vis-à-vis boards,
- Q. whereas, especially in the listed companies, non-participation by shareholders is substantial, and electronic voting should therefore be encouraged in shareholders’ meetings,

- R. whereas existing legislation on information and consultation of workers as regards management of their firms must be correctly implemented so as to make possible a genuine dialogue with management and a clear definition of the firms' remuneration practices and objectives,
- S. whereas it falls within the legal remit of company boards to establish criteria for management remuneration and fix the levels of such remuneration,
- T. whereas voluntary standards are essential in improving boards' performance and a review of good practices may be necessary,
- U. whereas the aim should be to create competent boards of directors and supervisory boards capable of objective and independent judgment; whereas boards' effectiveness and efficiency should be evaluated,
- V. whereas, owing to the acknowledged weaknesses of the current system of corporate governance, a percentage (for ex. 1/3) of the directors (members of the board) should be professionals, remunerated, responsible and subordinated only to the shareholders; whereas their responsibility and subordination should be filtered through professional expertise,
- W. whereas, while legislating in this area might be a more difficult and time-consuming option than adoption of recommendations, the soft law approach is not satisfactory,
- X. whereas the Commission plans to follow up the recommendations with legislative proposals to bring remuneration schemes within the scope of prudential oversight, and has proposed notably to revise the Capital Requirements Directive; whereas the Commission intends to examine additional measures in relation to non-banking financial services,
- Y. whereas recommendations issued by the Commission in respect of listed companies do not necessarily represent appropriate general guidelines for developing best practices in non-listed companies,
- Z. whereas uniform and coherent implementation of any instrument adopted in this area throughout the EU and by all relevant parties is essential,
1. Welcomes steps aiming at addressing the deontological aspects of companies' management, which the recent financial crisis reveals are far from resolved; welcomes in this context the two recommendations issued by the Commission;
 2. Points out that the soft law approach is however not satisfactory;
 3. Welcomes therefore the Commission's first legislative proposal allowing the EU legislator to properly address the relevant issues, i.e. the amendment of the Capital Requirements Directive;
 4. Endorses the principles which the Commission put forward in its recommendations of 30 April 2009 concerning, firstly, remuneration regimes and governance arrangements with

regard to the remuneration of the directors and managers of listed companies, and, secondly, on remuneration regimes and the process of drafting and implementing remuneration policy (governance), the transparency of remuneration policy and prudential supervision (surveillance) in the financial sector, but emphasises that these recommendations have not been put into practice satisfactorily by the Member States;

5. Maintains that the EU needs an industrial, social, and environmental model geared to the long term, consistent with the general interest – of companies, shareholders, and workers – and with a new financial architecture based on a system of prudential and deontological rules and on national and European supervisory authorities with binding powers; also believes that the financial sector should meet the needs of the real economy, help to promote sustainable growth and display the greatest possible degree of social responsibility;
6. Recalls that, during the process of economic renewal, in addition to supporting the real economy, measures for the protection of jobs, training and working conditions are of major importance and should be taken into account by all stakeholders;
7. Maintains that remuneration policies making for sound, sustainable governance are necessary not just for deontological reasons, but also for eminently economic reasons, given that policies of this kind have a direct impact in terms of assets and the development outlook for companies themselves as well as the economy in general, and of preserving and creating higher levels of employment;
8. Considers that provisions on remuneration policies for directors of banks and credit institutions have to be more than mere recommendations and must hence take the form of binding measures linked to a system of oversight, the object being to ensure that the variable component of remuneration – bonuses, stock options, and incentives – does not drive companies to adopt over-risky investment and management policies which pay no heed to the fallout for the real economy;
9. Emphasises that corporate management and remuneration policies must comply with and foster the principles of wage parity and equal treatment of women and men established by the Treaties and by EU directives;
10. Sees the need for further European legislative action in order to solve the problem of different national remuneration rules for companies in cases where managers move from one Member State to another within a (holding) company or from one company to another company in a different Member State, or when companies make use of freedom of movement within the internal market, for example, by way of cross-border mergers;
11. Considers it important to emphasise the general social responsibility of company boards for the sustainable, longer-term development of firms based in an EU Member State, and to expect it as a duty of such boards that they structure company directors' remuneration in a way which reflects that aim and which is transparent to the European public;
12. Urges the Commission to propose sector-specific amendments to financial services legislation to ensure consistency between banking and non-banking institutions in remuneration policy. Furthermore, calls on the Commission to bring forward legislative

proposals in the field of company law to help address corporate governance issues and ensure consistency in remuneration policy for all types of companies;

13. Invites the Commission to encourage and support effective implementation of measures adopted at EU level, focusing primarily on cross-border companies, and to fulfil its undertaking to submit an evaluation report on the application of both recommendations by Member States; in this context calls on the Commission to include in the evaluation report's conclusions a schedule of appropriate legislative and non-legislative activities which might be a necessary follow-up;
14. Calls for efficient implementation of the rules on consultation and employee participation systems opted for in the context of Directive 2001/86/EC¹ supplementing the Statute for a European Company;
15. Sees the European company as a suitable platform for best practices with a view to embedding ethical principles in the way that transnational companies are directed and putting such principles into practical application;
16. Calls on Member States to effectively implement measures such as the EU Shareholders' Rights Directive to remove the obstacles to and enhance shareholders' participation in voting, in particular with respect to cross-border voting;
17. Calls on all stakeholders to actively engage in a review of business practices and changes in business culture;
18. Calls for encouragement for more women to be assigned to management posts by means of a Commission recommendation to introduce a system for the filling of posts on company decision-making bodies, posts in other bodies and posts in general;
19. Proposes that the national supervisory authorities, in assessing the independence of members of the managing bodies of undertakings more strictly, should devise more effective anti-corruption schemes, the establishment of which may not only be conducive to more ethical business management practices but may also increase the economic success of undertakings;
20. Supports the establishment of uniform and comprehensive guidance concerning risk management, which at present seems to be addressed by various codes and standards applicable in Member States only in a fragmentary way;
21. Stresses that, in the case of economic crimes, it is possible to bring criminal proceedings against the individual members of the board of directors responsible for these crimes;
22. Invites the Commission to promote the utilisation of best practice guidance for unlisted companies, which is designed to take account of the specificities and differences of such companies;

¹ OJ L 294, 10.11.2001, p. 22.

23. Instructs its President to forward this resolution to the Council and the Commission.

19.3.2010

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Legal Affairs

on deontological questions related to companies' management
(2009/2177(INI))

Rapporteur: Patrick Le Hyaric

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas the European Union and the rest of the world are experiencing the severest economic crisis of the last 60 years, the real economy is experiencing its worst recession of that period, and difficult employment conditions are anticipated despite a relative upturn in the economy,
- B. whereas profits generated in the financial sector have been disconnected from the real economy, with disproportionately high remunerations based on securing short-term profits and share price rises, creating increasingly risky business models to the detriment of manual workers, white-collar workers, savers and investors, which were diverted from their purpose of long-term investment,
- C. whereas citizens are paying a double price for this risk-taking, for which they are in no way responsible, through the loss of their jobs and by their governments financing the rescue of financial institutions that have profited greatly from salaries declining as a share of national income from 68% in 1972 to 58% in 2009,
- D. whereas the bonus system, which also had an impact on the current crisis, has been maintained,
- E. whereas existing legislation on information and consultation of workers as regards management of their firms must be correctly implemented so as to make possible a genuine dialogue with management and a clear definition of the firms' remuneration

practices and objectives,

1. Stresses that the European Union and the world need a new social and environmental production model based on the long term which takes into account the general interest and the interest of workers and of a new financial architecture based on a system of prudential and ethical rules and subject to national and European supervisory authorities with binding powers; believes that the financial sector must respond to the needs of the real economy, contribute to sustainable growth and demonstrate greater social responsibility, in particular by using employment- and training-friendly resources;
2. Endorses the principles set out by the Commission in its recommendations of 30 April 2009 on, first, the structure and governance of the remuneration of directors of listed companies and, second, the structure of remuneration, the process of design and operation of remuneration policy (governance), transparency of remuneration policy and supervisory review (supervision) in the financial sector, but observes that those recommendations are only being implemented in an unsatisfactory manner by the Member States; calls, therefore, for these recommendations to be appropriately taken into account in the revision of Directive 2006/49/EC;
3. Wishes to reinforce the requirement for proportionality of remuneration within companies by linking changes in the overall remuneration and pensions of directors to those of staff and by discouraging excessive risk-taking; considers that, for reasons of social justice and economic sustainability, the composition, structure and level of remuneration, bonuses, golden parachutes, stock options and pensions of the directors of listed companies, companies with public participation and/or companies receiving aid from the Member States or from the European Union must be capped, taking account of the various income situations in the Member States, and taxed, in accordance with the tax rules in force in the Member States, in order to contribute to the financing of social protection and public services; calls, therefore, for a European plan to combat tax havens to be devised in order to flesh out the intentions announced by the G20 in London and Pittsburgh;
4. Is convinced that, for the purpose of defining policies on the remuneration of management and by subsequently assessing these policies in relation to the management and development of the undertaking, it is necessary also to consider non-financial criteria, such as the attainment of objectives based on social and environmental responsibility; suggests a minimum period of three years in order to ensure that this assessment is meaningful; strongly emphasises that the management of undertakings and policies on remuneration must respect and promote the principles enshrined in the European Treaties and directives concerning equal pay and treatment for women and men;
5. Calls, in the light of cases such as that of Dell Ireland, for the European Court of Auditors to draw up a diagnostic review of the use of EU aid, its impact on the strategies of undertakings and its social repercussions; calls for that diagnostic review to take into account job creation, training and improvements in working conditions;
6. Endorses the Commission's proposal to amend Directive 2006/49/EC¹ on capital requirements to make the abovementioned principles binding on banks and investment

¹ OJ L 177, 30.6.2006, p. 201.

companies by making them subject to prudential supervision and by ensuring that the total amount of variable remuneration does not limit their capacity to increase their capital; insists that the entire financial sector, including insurance firms and alternative investment vehicles such as hedge funds and private equity funds, should be subject to stronger EU regulation;

7. Reaffirms the need to penalise all forms of discrimination in undertakings, particularly in the definition of wage policies, career development and the process of recruiting senior management;
8. Calls for new national supervisory authorities to be given binding powers to ensure compliance with principles of sound financial management;
9. Recalls that, during the process of economic renewal, in addition to supporting the real economy, measures for the protection of jobs, training and working conditions are of major importance and should be taken into account by all stakeholders;
10. Draws attention to the importance of ensuring that the regulation of financial incentives and remuneration structures in the financial sector does not adversely affect trade union organisations' right to collective bargaining;
11. Calls for complete transparency with regard to remuneration policies for directors in accordance with national and EU legislation. Recalls the right to information and consultation for employees and their trade union organisations through works councils and group works councils;
12. Calls for efficient implementation of the rules on consultation and employee participation systems opted for in the context of Directive 2001/86/EC¹ supplementing the Statute for a European Company;
13. Proposes that the national supervisory authorities, in assessing the independence of members of the managing bodies of undertakings more strictly, should devise more effective anti-corruption schemes, the establishment of which may not only be conducive to more ethical business management practices but may also increase the economic success of undertakings;
14. Supports, in connection with the Commission recommendation of 30 April 2009, the idea of imposing a ceiling on redundancy payments for directors of undertakings or prohibiting their award in cases where the reason for terminating a contract lies in the inadequate performance of the undertaking.

¹ OJ L 294, 10.11.2001, p. 22.

RESULT OF FINAL VOTE IN COMMITTEE

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|---|---|
| Date adopted | 17.3.2010 |
| Result of final vote | +: 31 -: 4 0: 5 |
| Members present for the final vote | Regina Bastos, Edit Bauer, Pervenche Berès, Milan Cabrnock, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Sergio Gaetano Cofferati, Marije Cornelissen, Karima Delli, Proinsias De Rossa, Frank Engel, Sari Essayah, Ilda Figueiredo, Pascale Gruny, Thomas Händel, Marian Harkin, Roger Helmer, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Martin Kastler, Patrick Le Hyaric, Veronica Lope Fontagné, Olle Ludvigsson, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Siiri Oviir, Rovana Plumb, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Traian Ungureanu |
| Substitute(s) present for the final vote | Jürgen Creutzmann, Julie Girling, Dieter-Lebrecht Koch, Evelyn Regner, Csaba Sógor, Emilie Turunen |

RESULT OF FINAL VOTE IN COMMITTEE

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|---|--|
| Date adopted | 28.4.2010 |
| Result of final vote | + : 21 - : 0 0 : 2 |
| Members present for the final vote | Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Lidia Joanna Geringer de Oedenberg, Daniel Hannan, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Kay Swinburne, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka |
| Substitute(s) present for the final vote | Piotr Borys, Sergio Gaetano Cofferati, Kurt Lechner, Eva Lichtenberger, József Szájer |