

1. Cost-Benefit Assessment

The rationale for EU level regulation

ecoDa raises concerns about the rationale for regulating certain matters at the EU level. In ecoDa's view, it is essential to determine which matters should be regulated at the EU level and which should be left for the member states' consideration. This includes assessing regulation and the costs associated with altering the status quo. A thorough cost-benefit analysis is crucial to justify any regulatory changes.

European regulatory discussion seems to be based on the notion that all investors, including private shareholders with small ownership, should be encouraged or even expected to participate in shareholders' meetings.

ecoDa finds this assumption erroneous. A vast majority of small private shareholders are not interested in participating in shareholders' meetings but show their view on the company by buying or selling shares.

EU level legislation should not assume that shareholders' meetings should be arranged so that all or most shareholders are expected to participate, but rather on the notion that the meetings are arranged so that shareholders are afforded a possibility to participate, should they so choose.

When discussing the competitiveness of the EU, the example of the United States is typically cited, on the one hand, and the need to harmonise EU company law regulation, on the other. However, it is important to note that in the US, the law on limited liability companies is state-specific and no real harmonisation has been done or exists on a federal level.

2. "Say-on-Pay"

Questioning EU-Level Regulation

ecoDa agrees that the "say on pay" mechanism introduced by the SRD has an important goal of promoting effective and transparent oversight of listed companies, providing shareholders with a formal say on executive pay policy. However, ecoDa questions whether the shareholders' right to have a "say on pay" should be regulated at the EU level.

There is a sentiment that "say on pay" is a largely formal exercise, consuming time at annual general meetings (AGMs) each year without providing a comparable benefit for the stakeholders. A more

efficient approach could involve publishing the Remuneration Report and determining if any related questions need discussion at the AGM.

It should be seriously considered whether the remuneration policy and report should only be discussed at the AGM if a significant minority of shareholders requests it, in order to avoid a burdensome standard procedure that does not often bring significant value. What matters most is ensuring transparency through clear and accessible reporting, which is the most important benefit from the last revision of the SRD.. The ex-post vote on remuneration reports can be considered unnecessary, as large institutional investors are not structured to assess individual proposals and utilise their votes effectively. Instead, such investors typically follow recommendations from proxy advisors such like the Institutional Shareholder Services (ISS), due to logistical constraints.

Additionally, a paper on the London Stock Exchange indicates that excessive corporate governance regulation may contribute to poor market performance as extensive governance requirements discourage companies from listing and lead companies that are already listed to consider exit from the stock exchange.¹ Even if the paper comes from a UK context, its findings are still a valuable signal that the European Commission should think twice before introducing overly detailed and excessive legislation, as also highlighted in the Draghi report.

3. Related-Party Transactions

Complexity and Competition

ecoDa's view is that the regulation of related-party transactions is quite complex. While some form of regulation is sensible, given the increasing competition among different markets, ecoDa questions the necessity of further EU-level legislation. The approaches to such transactions still vary significantly between countries, like Sweden and Finland, and, although EU legislation might boost market confidence, ecoDa believes that national legislation would be more appropriate to address these differences effectively.

The redefinition of the concept of 'related-party', as distinct from the IAS definition to which the Directive currently refers, could be assessed. The IAS definition concentrates on related-parties as entities and the definition on related-parties as persons is left more vague. The application of the IAS24 related-party definition in the context of board resolutions is challenging or, in some situations, impossible. ecoDa considers that it should be assessed if such redefinition would bring more clarity to the matter. It should be considered whether the definition could be aligned with the definition of related-parties under Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).

4. Cross-border participation in AGMs

¹ Cheffins, Brian R., and Reddy, Bobby V. "Murder on the City Express-Who is Killing the London Stock Exchange's Equity Market?." The Company Lawyer Forthcoming, University of Cambridge Faculty of Law Research Paper 16 (2023).

Challenges and Recommendations

Cross-border voting is hindered by various factors, including differing identification systems, language barriers, and legal discrepancies. These are valid reasons for the limited participation in cross-border voting, and the EU Commission seems to misunderstand this reluctance. While opinions on remote AGM participation vary, ecoDa believes that in-person meetings should not be mandatory, and there should always be an option for companies to organise fully remote GMs, supported by an appropriate function for fully participating in the meetings.

Institutional investors often lack the organisational capacity to assess individual proposals and determine how to exercise voting rights in particular companies in their portfolio, focusing instead on broader portfolio strategies and potential exit opportunities. Institutional investors often rely on proxy advisors' recommendations, increasing the proxy advisors' de facto influence considerably. Additionally, under national Finnish rules, shareholders are not restricted to agenda-related questions during AGMs; any questions related to the company's operations are widely permitted as the company's annual report is under discussion. However, the member states' provisions vary on this aspect and, for example, Lithuanian company law obliges the company to respond only to questions relating to the agenda of the general meeting submitted by shareholders before or during the general meeting, but the company has no similar obligation to respond to any questions relating to other operational matters of the company. In ecoDa's view, the need for mandatory EU-level regulation on this topic should be carefully assessed while also considering different types of participation such as remote and hybrid meetings.

5. Regulation of Proxy advisors

Open to Regulation

ecoDa is open to the idea of increased regulation of proxy advisors, especially as the European market is dominated by a global duopoly consisting of Glass, Lewis & Co and the ISS. While there is transparency as to the voting recommendations published by the proxy advisors, the implementation and recommendations in respect of individual companies should be justified to the company in question. It is important to ensure balance between transparency and accountability without undermining the advisory role these entities play.

6. Shareholder identification

Cross-Border situations

ecoDa recognises the challenges associated with shareholder identification in cross-border situations. It should be assessed whether shareholder identification can be regulated at an EU level, with reasonable cost-benefit ratio.

7. Conclusion

Key Considerations

To summarise, the main building blocks for further investigation include determining the appropriate level of regulation between the EU and Member States, conducting thorough cost-benefit analyses, and assessing the usefulness of the information delivery requirements.

Part of the ecoDa's ongoing work will involve commenting on the Commission's survey and the rationale for further action.

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