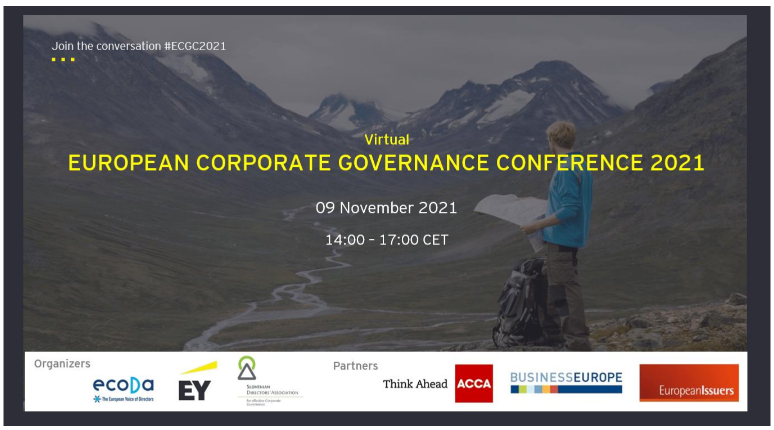
ECGC2021

The European Corporate Governance Conference 2021
Accompanying Event to the Slovenian Presidency

Beyond Traditional Corporate Governance – Sustainability & Innovation

During the event, panelists underlined that it was increasingly the case that a company's purpose needed to be built around long-term sustainable value creation which took all stakeholders' interests into account and that a move towards a stakeholder capitalism model from shareholder primacy was ongoing. Moreover, the challenges and potentials associated with sustainable corporate governance were set out, with speakers underlining the need to ensure adequate oversight of value chains. There were also calls heard for any legal changes, as proposed by the EU, to consider European businesses' competitiveness, with several interventions expressing the need for there to be a level playing field for both European and third country actors. In this regard, the question was also raised as to whether Europe could roll out a sustainable corporate governance framework alone, with an emphasis on the importance of trying to push for global standards in this area. Please see below for a full summary of the conference.



Welcome

Irena Prijović, Executive Director, Slovenian Directors' Association (SDA), welcomed all participants to the conference. The conference would bring together stakeholders from many areas, including business representatives and academia, and over 600 people had applied to attend. Issues such as ensuring that companies did not just 'green' their models and whether or not a real paradigm shift was underway or not would be discussed.

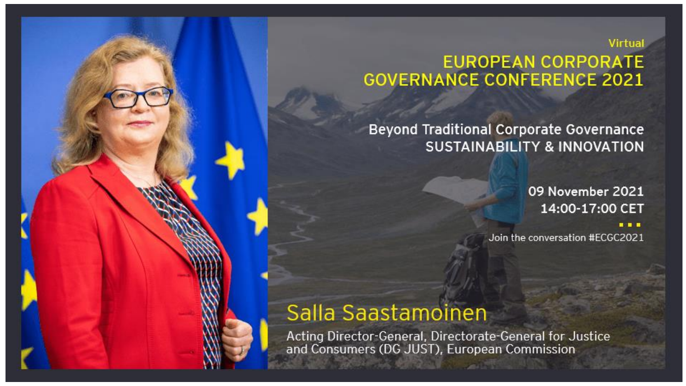
Opening speech

Julie Teigland, EY EMEIA Area Managing Partner and EY Global Leader – Women, stated that now was a pivotal point in human history and corporate governance had a critical role to play. The world was in the middle of a paradigm shift which had been accelerated by COVID-19. Amidst such challenges, including the threat of climate change, it was becoming clear that businesses had a greater role to play in tackling such challenges, especially as disrupters did not respect boundaries or borders. All must come to the table together to ensure a better future. EY was committed to building a better working world; building trust in capital market would be key to this. In this new environment, retaining trust required all to go further than before and this meant businesses including social and environmental factors in their performance. Growth must be sustainable going forward and benefit all stakeholders. Leaders must not evaluate the point beyond real profits: the real purpose of business. EY conducted a first long-term value and sustainable corporate governance survey last year. It showed that 66 percent of business leaders stated that stakeholders expected companies to drive sustainable impact and more than three-quarters said that a focus on sustainable growth was critical to building trust. Organizations were increasingly moving from shareholder primacy to stakeholder capitalism. Sustainable corporate governance (SCG) was key to balancing priorities.

The report highlighted four key success factors. First, was board dynamics and composition. To be successful over the long-term, a board must be composed of a diverse range of people and they must engage in healthy discussion. Remuneration was the second critical factor; there must be an alignment between long-term performance and reward. Third, boards must be transparent with stakeholders and engage with these stakeholders to build trust. Fourth, a long-term focus required boards to understand the organization's performance in areas providing value and clear value metrics should be set out to evaluate performance. Stakeholder capitalism metrics, as partially developed by EY, could be used in this regard, and indeed they were being further adapted to this end. SCG was a key enabler regarding long-term focus. To build up the capital markets union (CMU), there must be high-quality and easily accessible corporate reporting. Corporate governance, auditors and supervisors must all be looked into in this regard and each of the three pillars must be strong and ensure greater consistency of requirements across the EU. Issues currently at stake were global which meant that sustainability reporting must have global baselines. Globally recognized frameworks made perfect sense in this regard and international convergence was also important. She suggested that the EU adopt a pragmatic approach and build an international insurance standard. High quality financial and sustainability reporting would be dependent on strong risk management and internal controllers. Reporting must be robust and reliable to guard against misstatements and greenwashing and EU policymakers could drive higher standards in this area.

Consistency and transparency in the supervision of corporate reporting and audits was key and more supervisory activities, including sanctioning, were required to build up the CMU. EY was committed to providing the technical skills and resources to help build up EU reporting frameworks. Internal control systems and risk management could strengthen reporting and EY would work towards providing integrated solutions, for example. EY would also increase investment in talent and technology over the coming years in this area. However, auditors could not succeed on their own and all had to work positively and constructively with auditors on matter like fraud and going concern. For change to take place, there must be dialogue and collaboration. EU institutions, national governments and businesses now had the opportunity to set out transformative, innovative and sustainable growth scenarios, with long-term value at the centre of their strategy.

Keynote Speech

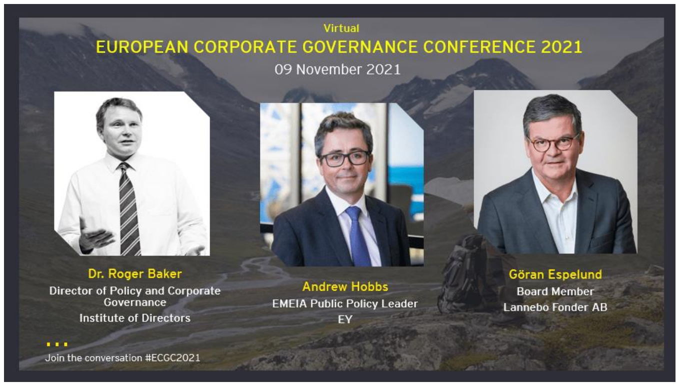


Salla Saastamoinen, Acting Director-General, DG JUST, European Commission, stated that the need for actions came very much from stakeholders' needs. Today, stakeholders expected sustainable value creation and reliable disclosures from companies. Sustainable value creation should improve. Shortcomings in this area were expected to increase, over time, however, and the rate of change was not consistent across all sectors or businesses. COVID had shown the need of embedding social fairness and environmental protection in corporate governance. Corporate governance was important to provide proper accountability and incentives and contemplating horizontal EU action in this area was a novel idea. Support had been shown across the board for immediate EU action to strengthen the dimension of sustainability in directors' duties. Action must be taken to rebuild trust for all, and all stakeholders' ideas should be taken into account.

A decade ago, the UN's guiding principles on businesses and human rights were set out and now, reflections would culminate in upcoming proposals from the EU. The initiative of SCG would be an important contribution to mainstreaming human rights, for example, and this initiative was still under preparation. The idea was to foster sustainable value creation over the long-term. An impact assessment was looking at the impact on EU-wide rules on corporate due diligence, for instance, and how legislation could be best aligned with international standards. Another question was clarifying that directors had the duty to act in the long-term interests of their businesses. Effective enforcement was also being looked into. The huge number of stakeholder contributions were being analyzed, which included half a million responses to the public consultation. Critical attention would be paid to proportionate solutions and to avoiding unnecessary burden for companies.

The Commission was also paying critical attention to ensuring consistency across the board. SCG could help improve the financial performance of companies, leading to better resilience and more innovation, for example. Labour rates would also be improved, and this instrument would be paramount to helping society rebuild an economy that worked for all. The EU saw that companies would invest in development and become more resilient, for example, under this initiative. Long-term sustainability focus was positively correlated with innovation and this would lead to additional growth, productivity and resilience. Businesses were already profiting by switching to sustainable models and a fast switch to such models would enable Europe to positively impact the world on a global level.

Fireside chat



Moderator Andrew Hobbs, EY EMEIA Public Policy Leader, welcomed the two panelists. He asked both for their perspectives on what they had heard. What were their main takeaways?

Göran Espelund, Chairman, Slovenian Directors' Association (SDA), moderator Andrew Hobbs, EY EMEIA Public Policy Leader, noted that he had been struck by the fact that sustainable companies could be more sustainable. The question was how to define what a sustainable company was. High quality sustainability reporting was required to judge this. Investors had the problem that there were so many investing standards extant.

Dr Roger Barker, Director of Policy and Corporate Governance at the Institute of Directors (IoD), remarked that there had been a shift towards stakeholder capitalism. This tied in with the idea of businesses had a broader purpose which was linked to social impact and went beyond the bottom line. Systems must be brought up to date and aligned with the shift to stakeholder capitalism.

Göran Espelund said that Swedish corporations would traditionally not have looked to other stakeholders beyond their customers. The governance principles in different companies were different in different countries. Long-term sustainable value creation had been discussed for years in Sweden and this was now being seen as an opportunity and no longer as just a risk, particularly as equity markets were valuing sustainable companies very highly. A good example of this was Tesla. He underlined his optimism and said corporate governance was moving in the right direction. Owners appointed directors and thus they must be responsible.

Dr Roger Barker agreed that corporate governance systems were different in different countries. In global capital markets there was inherent short-termism unfortunately. Companies had the ever-present risk of being under pressure to perform over the short term given the stock market.

However, society and governments as a whole often thought short-term. The Nordic countries provided a good example of how things could work well regarding benevolent owners that thought long-term.

Göran Espelund said a distinction needed to be made between equity markets and how companies were run. Capital was starting to flow to just a few names, such as Vanguard, who ran index funds and they would say they think long-term. As such, he stated that it was hard to see where the short-term thinking was coming from, especially as many wanted companies to be run with a long-term perspective, which encompassed taking care of employees, for example. Nominating committees can also be useful for being engaged and thinking long-term.

Moderator Andrew Hobbs, addressing Mr. Barker, asked him what he recommended companies do to accelerate the governance shift.

Dr Roger Barker said that, in terms of boards of directors, the first ask was to implement sustainability, particularly with regard to climate change. Larger companies could have sustainable sub-committees, for example, and outlining a clear roadmap for getting to net zero by a particular date was key to building a vision and communicating to stakeholders. He was more concerned about the boards of SMEs. Many SMEs had a real desire to play their parts, but many did not have the in-house expertise regarding achieving a sustainable future. Larger companies thus had an important role to transmit their vision on decarbonization to smaller companies. On the policy front, company law should be changed to reflect more of a genuine stakeholder orientation. Fiduciary law was still stuck in the era of shareholder primacy and more of a pluralistic approach was required.

Moderator Andrew Hobbs, on the Commission's proposals, sked Mr. Espelund whether company law needed to be changed.

Göran Espelund replied that Swedish company law did not need to be changed. Every successful company was trying to be a part of the solution now. One of the top chairmen in Sweden was recently in the paper where he spoke about the need for companies to satisfy all stakeholders. Employees were often represented on the board of companies, for example.

Dr Roger Barker stated that a good board would often try to satisfy stakeholders. However, doing so was especially important at critical moments, such as a takeover situation. Some boards had said they had no choice but to accept the largest bid offer as they were bound to do so; this showed they believed their job was to auction off the company to the highest bid. Rather, they should be considering how would be the best steward for the company. Executive remuneration was often focused on share price and a more balanced approach could take account achieving net-zero and other non-financial objectives for example. As such, company law should be aligned to what was trying to be achieved under sustainability.

Göran Espelund agreed on the point about remuneration. Implementing the right incentive system was extremely difficult. However, in Sweden, some incentives were tied to attaining ESG goals. One example of a real estate company reducing energy use meant increased up-front costs but savings over the long-term and shareholders could play a key role in voting for such approaches.

Dr Roger Barker said that shareholders could be a tremendous cause for good. The shareholder community was a very heterogenous one, for example, with some only interested in short-term value creation.

Göran Espelund stated that everyone was talking about ESG and sustainability and there was a lot of money flowing into their area. It would be very hard to find traditional institutional investors who were not pro-ESG now.

Moderator Andrew Hobbs, noting that questions had been posted on the chat, said one concerned asking how regulators could support SMEs moving to full ESG disclosure. How could small firms meet ESG procurement criteria for larger companies?

Dr Roger Barker said there needed to be a partnership between the various actors in the system. However, a lot of big company requirements should not be imposed on SMEs. Government procurement processes could embed ESG sustainability, for example, and some form of standards that were easy to comply with for SMEs could help. An appropriate certification system could really help

Göran Espelund echoed the need for the larger companies to help smaller ones. Companies needed to be able to ensure they had a Code of Conduct which they audited and larger companies could transfer this knowledge to smaller ones.

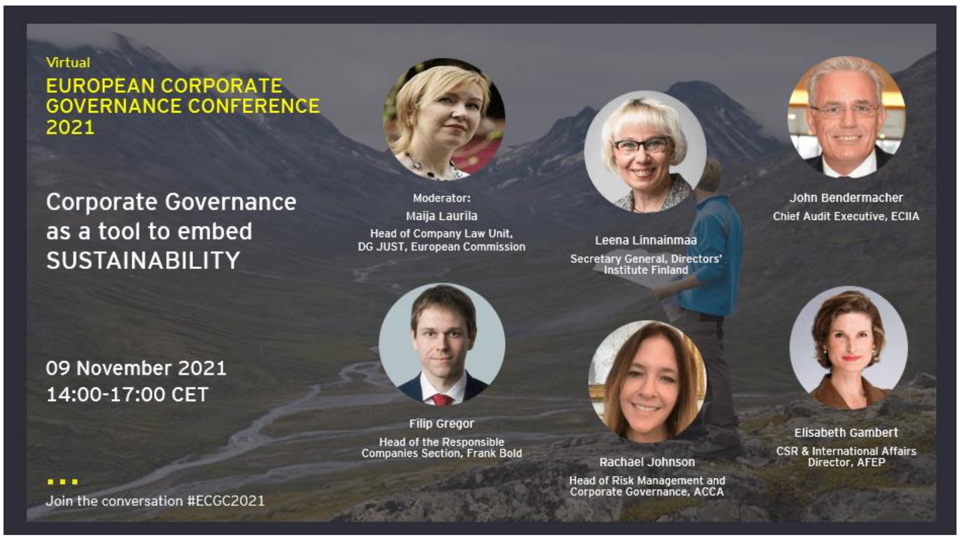
Moderator Andrew Hobbs said a lot of questions had been received on what companies needed to do to prepare for the changing regulatory landscape. He asked for practical suggestions.

Dr Roger Barker replied that the best companies were fulfilling these requirements anyway; most reasonable companies were trying to secure their supply chain and ensure ample oversight. As for changing reporting requirements, any good company would have already undertaken a stakeholder mapping exercise from which they would have drawn up a communication strategy, for example. His advice would be for companies to thin about their main stakeholders and to work out a relevant communication strategy.

Göran Espelund stated that the regulators should keep it simple for SMEs and the SMEs should start easily as change was coming.

Moderator Andrew Hobbs stated key takeaways included that business leaders were already going down this and that they were not aligned on whether legislation was needed.

Panel 1 - Corporate Governance as a tool to embed sustainability



Moderator Heidi Hautala (Greens/EFA, FI) said she was excited about the coming initiative on SCG and the fact that mandatory human rights and environmental due diligence would be a part of it. She understood that the Commission's proposal would be put forward on December 8. After having introduced the panelists, she asked Ms. Linnainmaa what was currently happening the boardrooms regarding sustainability.

Leena Linnainmaa, Secretary General, Directors' Institute Finland, said that sustainability committees were not being introduced in all companies. However, some remuneration committees were changing into personnel committees and the same change was not being seen in every company. Sustainability was on board agendas and the directors' institute in Finland were aware how important this issue was. A key issue was SMEs, especially as large companies were currently setting targets. Some SMEs did not seem to be aware of the changes that were underfoot. There were many ways of raising awareness with SMEs; however, additional training exercises were needed in this regard.

Moderator Heidi Hautala, addressing Ms. Gambert, what the challenges were for large companies in terms of implementing due diligence in supply chains.

Elisabeth Gambert, CSR and International Affairs Director, AFEP, on supply chain due diligence, said this was a difficult issue given the complexity of global supply chains. Large companies could have several thousand suppliers and these companies could also have serval thousand suppliers in turn. The second challenge was that some suppliers were larger than their customers and refused to comply. Moreover, some suppliers from third countries may not also be willing to comply with EU legislation.

As such, supply chain due diligence should be limited to companies' sphere of control. Due diligence should focus on clearly defined risks and a level playing field regarding the scope was needed, including with regard to third country players operating in the EU. There must be clear commitment from the highest level of government to send a strong signal to all stakeholders that all should respect the companies' sustainable conduct. In addition, stakeholder consultation was good practice; however, corporate governance and strategy was a prerogative of the board. Flexibility was needed with regard to involving external stakeholders and it was dangerous to comply boards to take into account all stakeholders' wishes as all interests could not always be put on a level footing. The board of directors should be committed to sustainability issues. However, to perform their duties they must have a wide range of skills and expertise which went beyond sustainability. Concluding, she supported legislation on due diligence; however, the EU should limit itself to several guiding principles, as similar to French law, so companies can adapt to fast changing challenges.

Moderator Heidi Hautala asked Ms. Arus how the Commission could help SMEs when it came to due diligence.

Susana Arus, Communications and EU Public Affairs Manager Frank Bold, stated that research her organization had carried out had shown there was a lack of data on due diligence processes. She supported minimum mandatory due diligence standards to ensure the right incentives were in place for companies to comply with EU. The reform of the directive and the associated standards would ensure increased consistency in areas such as environmental and labor rights. It would also foster sustainability and increased long-term thinking. Companies could still struggle as to what to do regarding due diligence and how to adequately disclose it. Research had shown that the actual due diligence process was currently only disclosed by 20 percent of companies. On SMEs' reporting, they had been left out from sustainability reporting obligations up to now. However, this would soon change and small businesses must understand the implications of the changes. Many SMEs were in sectors that faced technological changes, for example, and, to be competitive and secure funding, SMEs must invest into their own transformation and this would include providing the right data on sustainability.

Moderator Heidi Hautala asked Ms. Johnson what the auditors' role was in this transition. Did auditors also advise companies on how to avoid greenwashing?

Rachael Johnson, Head of Risk Management and Corporate Governance, ACCA, stated that audit committees had taken on more of a facilitation role. They had become a lot more dynamic in both challenging and supporting management. This required a high degree of judgement and, as noted earlier, the evolving rules and expectations on sustainability, had required organizations to rethink internal controls. It was the responsibility of the audit committee to drive such change and this was the backbone of the sustainability journey. As companies in the EU faced regulatory change, it was crucial for the board to understand the risk and opportunities to transition to net-zero represented. Risk was about building a mindset and this was where the audit committee's relationship with the board would be crucial, including with regard to how risks were assessed in disclosure. Audit committees must be brave and initiative some of the most uncomfortable conversations to collect correct and truthful information. Audit committees must always be present and ensure that all pertinent questions were asked. Getting to know the stakeholders was as important as getting to know the risks, she concluded.

Moderator Heidi Hautala, on board members, noted that they did not operate in a vacuum. How could internal auditors better enable boards to identify risks?

John Bendermacher, Chief Audit Executive, Euroclear, noted that not every country currently mentioned internal audits in its corporate governance legislation. If management aimed to have sustainable corporate governance, then risk management, compliance and audit would be central. In this respect, internal audits could audit the development and implementation programme, in addition to KPIs and the monitoring procedures, for example. The execution could also be audited, as could the culture change that would be needed, for instance. Internal and external reporting could also be looked into. Reporting reliability would also be key in this whole area going forward. Internal audits could provide first insight into areas such as culture and behavior. Clear definitions and interpretations of KPIs and non-financial metrics, for example, were needed to ensure there reliable reporting was the outcome. Proper standards and measurable KPIs were required, he underlined.

Moderator Heidi Hautala (Greens/EFA, FI) asked panelists how to best address directors' duties under the legislation. Should remuneration of directors be more linked to sustainability outcomes? Or what was the best way to achieve results?

Leena Linnainmaa stated that, in Finland, company law was very precise on liabilities and thus there was no need for new legislation in this area. Listed companies had to adhere to corporate governance codes, such as promoting women's participation on boards, for example. There were differences between countries and the Commission should bear this in mind. On remuneration, her organisation partnered with remuneration consultations, many of whom were receiving assignments from companies to add sustainability criteria to remuneration factors. Next year, there will likely be more directors who will have their remuneration linked to sustainability criteria.

Elisabeth Gambert, on remuneration, stated that the shareholders' rights directive had already covered this issue. Corporate governance codes could also go further, however, such as under French legislation which stated that environmental criteria should also be taken into account, for example. Criteria should be clearly defined and relevant. In France, a high percentage of large companies had included remuneration factors that were linked to ESG.

Susana Arus noted that both corporate due diligence and sustainability impacts required clear oversight from company boards. She expected the upcoming EU initiative would outline how boards could align incentives that supported responsible and sustainable management. The UN guiding principles including responsibilities for directors, for example. However, sustainability information was still not incorporated properly in business decision making regarding core strategies, for instance. As such, procedural duties for directors should be clarified. Directors should full integrate sustainably and specify concrete objectives to reach clearly defined targets. Voluntary frameworks did not go far enough in this area. Too often, remuneration was linked to the share price and could lead to short-term focus; as such, remuneration could be a powerful tool to set impactful sustainable objectives.

Rachael Johnson said that accountancy professionals had a key role to play in checking that rules were followed. In terms of governance, the framework did not need to be reinvented; rather, the purpose of such frameworks needed to be clearly set out across value chains. Concerning standards, more consistent and comparable reporting standards were needed. The reporting landscape was changing and it was difficult for companies to know what to do; as such, there needed to be more consistency across the board. Audit firms also needed to assume a stewardship approach and invest in their capabilities to deliver independent audits. Investors had been increasingly championing a move towards sustainability and they could also play a stewardship role regarding the green transition. Conscious investors could go onto websites and see how index funds were being chosen and what the parameters were.

Moderator Heidi Hautala (Greens/EFA, FI) asked Mr. Bendermacher whether remuneration was already working towards sustainability.

John Bendermacher said that what he had seen in the financial industry was that the focus of senior management was longer when remuneration parameters took a long-term persecutive.

Moderator Heidi Hautala (Greens/EFA, FI), on the challenges of mapping the supply chain, she noted that the European parliament believed that legislation on due diligence must contain the whole value chain in its entirety. She asked Ms. Gambert how the supply chain could be mapped if EU legislation went beyond tier 1 and tier 2.

Elisabeth Gambert said that one single company could not solve all problems that existed across global supply chains. It was impossible to control all supply chains and all stakeholders would have to work together. Without a multi-stakeholder approach, issues could not be tackled. Some suppliers from third countries did not care what was asked of them and even some large EU multinationals did not have adequate leverage in this area. The difficulty was translating this vision into hard law as companies would fear what might happen if some suppliers did not do what they were requested to do. The question then boiled down to responsibility, especially when European companies could not influence suppliers.

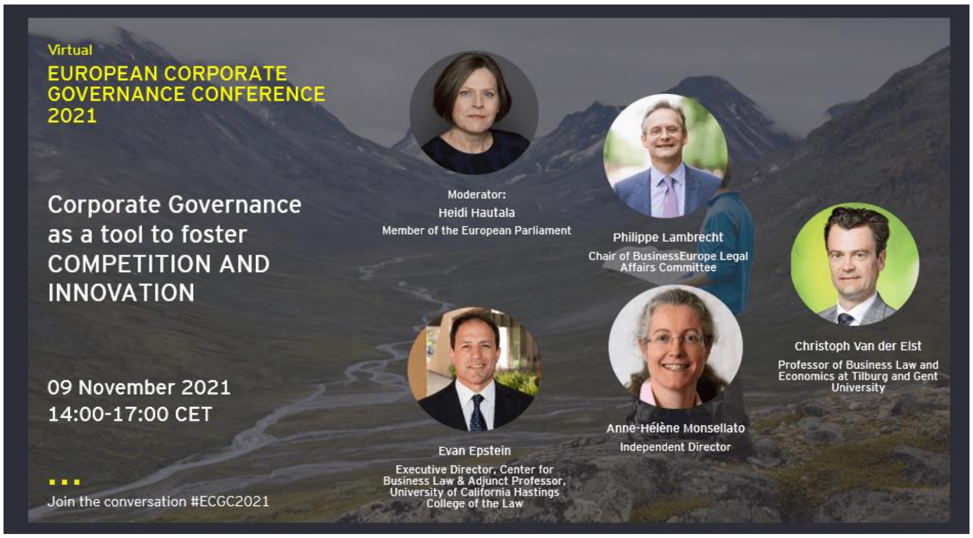
Leena Linnainmaa agreed with Ms. Gambert's comments. China was the largest producer of components and it was up to politicians in Europe and the international security to secure China's commitments to global standards.

Rachael Johnson underlined the importance of companies knowing their stakeholders. The due diligence undertaken prior to the pandemic was no longer fit for purpose in many instances. Many companies that thought they were doing the right mapping exercises actually had poor visibility over their supply chains. Aligning targets and values with objectives was key and she stressed the importance of coherence across all areas of companies' actions. Tesco in the UK was a good example, and their new supply chain management perspective was having a positive impact.

John Bendermacher said that third part assurance statements could be an idea to provide more security regarding supply chains.

Susana Arus highlighted that the majority of breaches of child labour laws, for example, occurred in developing countries. Good suitability management started with an assessment of the potential risks to people and the environment.

Panel 2 - Corporate Governance as a tool to foster Competition and Innovation



Moderator Andrew Hobbs asked Mr. Lambrecht about the delineation between the role of management and boards. Had he seen new practices undertaken by boards regarding strategy and the need to innovate and be competitive? Where did he see the different roles of management and boards in this regard?

Philippe Lambrecht, Chair of Business Europe Legal Committee, replied that the main question was 'what was the role of the board'? A key question was what was necessary for a good board to think in a sustainable and long-term way. Europe, there was no one answer to such questions as there were difference systems and frameworks in place. The existing obligations on boards, such as directives, must also be analysed in light of non-EU companies. The question was also how to ensure that EU companies were not the only ones implementing sustainability criteria to ensure a level playing field. For boards to be able to think in a strategic way regarding long-term strategy, they must have sufficient room to innovate and be creative. More reflection on creativity and new solutions needed to be considered, such as looking at value chains in a different way. He asked if it would be better to implement a system that encouraged companies to think more long-term or one that forced them to.

Moderator Andrew Hobbs, addressing Mr. Van der Elst, asked what his experience was regarding private equity boards and their focus on strategy? What could be learnt from them?

Christoph Van der Elst, Professor of Business Law and Economics at Tilburg and Gent University, stated that many directors on these boards had quite a hands-on approach. These directors continuously reviewed detailed information flows, such as earnings reports. These private equity boards often operated over a longer time horizon that many listed companies had to comply with. Often, the elements seen on private equity boards were seen on the boards of family companies. The framework of listed companies was significantly different compared to private equity firms. For instance, stakeholder capitalism was less of an issue for private equity boards. Listed companies had a larger list of requirements. He gave the recent case of Shell wherein different stakeholders called for different outcomes and also these differences had to be taken on board by listed companies. At the European level, development must take into account the specific interests of different types of boards and remuneration parameters should take into account, as such as possible, the strategic principles that can be more easily taken on board. While private equity boards could not ignore strategic capitalism, limited company boards need to take this into account in a more central way.

Moderator Andrew Hobbs asked Mr. Epstein for a comment on the difference in composition between the boards of private and public firms in the US.

Evan Epstein, Executive Director & Adjunct Professor at UC Hastings College of the Law, said there was a lot of difference between entrepreneurs and public companies, for example. Everything in Silicon Valley was booming and a lot of Silicon Valley companies were going public now. Traditionally, many companies wished to remain private because there was so much finance flowing in. The public markets came back with COVID-19 and a lot of companies were now going public. Boards in private companies were very lean as typical start-ups were quite small. Problems concerning diversity were very real, especially in the private sphere. California was the first State to propose gender and minority quotas. NASDAQ had also implemented gender and minority quotas. A lot of media attention had been focused on recent fraud cases and the question was whether many investors were really doing their due diligence. Crypto was now a 3 trillion-dollar market and there was also a lot of metaverse talk which was becoming a big trend. As such, there was a lot of dynamism in the sphere. A lot of people in Silicon Valley were against taxes and some companies had relocated to States such as Texas. There were questions as to whether the Bay Area had lost its edge.

Moderator Andrew Hobbs asked Ms. Monsellato about audit committees. What was the role of this committee in supporting a board's strategic and innovative outlook?

Anne-Hélène Monsellato, Independent Director, stated that audit committees had recently been growing in importance. Ensuring the reliability of information first meant overseeing how this information was repaired and whether it had been audited by a good quality firm. Sufficient effort must be dedicated to reliable and trustworthy information. The audit committee was sometimes seen as backward looking and a compliance committee. However, it could be forward looking in terms of ensuring that dynamic information was rendered to stakeholders and building the architecture on non-financial matters in a clear manner. Measuring impacts was also key, especially in terms of how ESG commitments were followed up on over time. Another example was also questioning hoe trust was built with the financial community to ensure adequate financing under the green transition. To attract financing, a good story was needed which would be based on internal and reliable reporting. The audit committee should be careful to not perform in a silo and to connect with other committees.

Moderator Andrew Hobbs agreed on the importance of information being robust and trustworthy. A question came in from the audience on SPACs and questionable governance practices. How could companies that wanted to go public adjust their business models to build the trust they needed to stay afloat.

Evan Epstein stated that SPACs had been a huge change. SPACs had basically created a third avenue for going public. What was interesting about this approach was that it had existed since the early 1990s; however, capital had really been pushed into this vehicle over the last two years. The issue was that these were being used to acquire a private company and the SEC was looking into what fees were being charged. Essentially, the sponsors would go onto the board and there were questions as to whether these were the right people to join the boards. 530 SPACs had been formed this year alone and that meant that 530 companies valued at over 1 billion dollars had to be found. The issue was how many mergers were going to be real and there was the question as to many of these would survive. There were also risks in the area of litigation. Mergers would be a big area over the next couple of years. Some savvy hedge funds were also investing in SPACs because they only had upside. Insurers had realised that the risk of SPACs was incredibly high, he noted, and some European companies had even gone public in the US through SPACs.

Philippe Lambrecht said SPACs was a typical way that the American market was seeking to be dynamic and bring more companies to the market. In Europe, a new, long-term framework to create sustainable companies was being drawn up. In the US, there was a shorter-term approach regarding SPACs, whereas a much more cautionary approach was being shown in Europe. Additional capacity was needed for fast growing companies in Europe. However, should the solution be to put the money in a 'black box' and he asked whether SPACs were only possible because money was so cheap.

Evan Epstein agreed that SPACs had been on the rise because people did not know where to park their money and they were looking for yield. Concerning unicorns, it was all about the US and China and the question was how Europe could catch up. All the big tech companies were now American and Chinese. In the US, the tech companies had a lot of power and in some ways were detached from other power structures. There was a lot of risk taking and there would likely be a lot of shenanigans seen regarding many SPACs. The problem was fraud and the SEC needed to be very active. People were peddling companies that would not necessarily produce value. However, investors were willing to invest as their money was losing value by just sitting in the bank. The solution for Europe should be not to overregulate and ensure that new development was not killed off.

Christoph Van der Elst noted that there seemed to be a huge amount of available cash in the US. He agreed that the EU was much more cautious and the market in Europe was more heavily regulated. The only straightforward role for regulators seemed to pertain to gender diversity. Was such a regulation a hindrance or an advantage?

Evan Epstein stated that California passed this law and would not go back. It was a good thing. The law focussed on public companies and they question was why it did not apply to private companies. The ESG framework was becoming very strong in public companies. Even though such a law was questionable from a constitutional perspective, many companies thought it was the right thing to do. The market had already taken this into consideration and it did not appear to be a hindrance.

Moderator Andrew Hobbs asked Ms. Monsellato what could be sone on a policy level to promote competitiveness.

Anne-Hélène Monsellato stated that levelling the playing field was especially important. The issue surrounding the EU taxonomy was that it was focused on solutions and the merging issue was how to attract the level of financing required to allow the traditional economy to transition. There was a need to reconsider the balance when it came to reporting by public companies and private companies. Recently, there had been the issue of bad assets being used from public to private companies. With respect to ESG reporting, all actors should be included. On regulation in relation to the mission of the audit committees related to non-financial issues, audit committees will have to address different types of firms with different types of culture. The field of ESG was very wide and highly technical and thus new competencies will be needed to ensure good audit work in this area. Moreover, in non-financial information, AI would likely be of help and algorithm bias and careful selection of words could influence output and this would have to be monitored by audit committees.

Philippe Lambrecht stated that the issue was whether regulation was actually needed. Europe had one of the most sophisticated regulatory systems in the world; however, there were much less IPOs in Europe today than five years ago. The dominance of US and Chinese public companies was growing compared to Europe. Further, Europe was attempting to implement a sustainable economy within 30 years and he questioned whether the right tools were being employed to achieved this. Was it better to regulate or to give more leeway to companies to innovate? This question must be debated in a philosophical way. The ultimate goal of a company must be to create sustainable value and he underlined the importance of implementing a more efficient financial market in Europe. He was against the overload of useful regulation which had been come into force over the last 10 or 15 years.

Evan Epstein said the Europe should try to use the Silicon Valley playbook. One advantage the US had was that a lot more importance was given to entrepreneurs and capital than to labor. There were less unions in Silicon Valley which made it more dynamic. The number of employees that had become millionaires in Silicon Valley due to IPOs was enormous. This model created more investment into the system. In addition, an open migration system allowed for top talent from India, China and Europe to come to Silicon Valley. From the outside, it appeared that there were too many rules in Europe and it was very hard to start a company there.

Christoph Van der Elst stressed the need to find the appropriate balance. He supported considering some deregulation if it only amounted to red tape. However, more standardization around ESG was needed. Europe had taken the lead on the 'do no harm' principle, for example, and he called for a combination between more sustainability regulation and allowing for regulation. This was a challenge that he hoped the Commission would consider.

Moderator Andrew Hobbs noted that there was an underlying question about the competitiveness of Europe and how to solve this. There was a call for any action taken by the Commission to be thoughtful. He was also struck by the comments about talent going to the US. A good case was made for understanding how reporting on performance was key to securing financing.

Wrap-Up

Gorazd Podbevšek, Chairman, Slovenian Directors' Association (SDA), said he would touch on the issues that had impressed him the most. He had heard that a lot was expected from corporate governance right now and a lot of that had to do with the very purpose of the company which seemed to be changing. What was clear was that this purpose needed to be built around sustainable value creation that took all stakeholders' interests into account. The challenges and potentials that the EU had detected in this area had also been pointed out, such as in the area of value chains and the need for focus to be put on long-term sustainable value creation. Changes to the legal framework may be needed in this regard. Such a legal change may be needed; however, care must be shown in approaching this topic. Any changes in this area needed to be well thought out and coherent. Any new EU legislation must be compliant with existing EU law and national law.

Moving towards a stakeholder capitalism model from shareholder primacy was ongoing. However, it was clear that definitions were still not clear, such as what exactly a sustainable company was. There was a dilemma between deregulation and needing to regulate at the same time and this was central to the question of Europe's competitiveness. A lot could be done if companies were willing and the importance of strong risk management and the role of sustainability reporting was set out. He was happy to hear that remuneration schemes were starting to align with sustainability criteria.

A burning need for robust supply chain due diligence was also discussed. Stakeholders' expectations were increasing in this regard and there was the question of taking long-term approaches better into account. The role of the boards was also discussed and the questions was how to define an optimal role for the board, especially when combined with the European role of supervisory boards. Moreover, it was made clear that the EU framework should ensure a level playing field and not put the CMU at risk. The question was also raised as to whether Europe could turn responsibility into greater EU competitiveness. In addition, could Europe be a pioneer alone in the area without risking its competitive edge. The debate on what the next steps would be was going to be very complex. While a panacea regarding corporate governance had not been found, important trends had been discussed today.

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Thank you!