



## The Corporate Governance Dialogue – Third edition

### Short summary – 16 September 2019

- To some extent this is the third governance revolution (we have to rethink CG away from its traditional notion dealing with agency conflicts);
- We need to re-balance the focus - Governance should foster that rights of stakeholders are not neglected. It is no longer the supremacy of financial markets;
- Empirical evidence can be taken from specific types of companies: Foundations whose purpose is by definition specified), Family Businesses, etc. Companies that focus on their corporate purpose are more successful.
- Corporate purpose should be defined and taking forward CG is about managing corporate interest with delivering of corporate purpose (“The purpose of governance is the governance of purpose”). The corporate purpose is the basis for the redefinition of board members’ fiduciary duties;
- Corporate purpose should not be just descriptive or aspirational.
- Corporate purpose is not only about generating profits. It is about profitable solution to the problems of people and planet. We have to move to “mindful corporations”;
- The concept of corporate purpose is not new. The Nordic Company Law recommends that companies should clarify their purpose in case that the purpose is not to generate profits; What is new is the stakeholders’ inclusivity;
- Who should define the corporate purpose? The risk to give control to the managers (like advocated by the US Business roundtable) is to come back to the managerial capitalism and its pitfalls. Most of the participants considered that it should be a prerogative of the owners (purpose must be ruled in the long term ownership). Shareholders should be legally required to set the corporate purpose. The ownership is not anymore only of assets but of corporate purpose. In other words, shareholders don’t only have rights, they have duties. Long term owners should be educated and they should know what products they want to deliver to the society;
- Most of the participants agreed that the shareholders should define the purpose and then discharge the board. However boards should play this role by default where ownership is too disperse. As a consequence, any change in the definition of the corporate purpose should be agreed at the GM. That would require adaptation of the AoA (with qualified majority). Board should also take the leadership when the company is in existence for a long time;
- Directors’ duties are still defined towards shareholders. They are nominated by the shareholders and they remain accountable to the shareholders who discharge them.

- Board members have to make sure that they have the resources required to deliver and to measure the performance according to the corporate purpose;
- Board members will have to prove to shareholders that they contribute to the corporate purpose. Depreciation of all types of assets (negative externalities) will have to be taken into account. It is quite challenging to identify the right performance measures and to develop the right metrics. This is even more important with technology developments (AI is not only about processing data to help decision making but it is also about replacing decision making. An important question is who is programming the algorithms and with which purpose?).
- Boards must establish the strategic values and ensure that culture is aligned with delivering. They have to set the tone at the top and promote the desired culture;
- Boards cannot take into consideration the broad scale of stakeholders. It is impossible to put all the trade-offs on the shoulders of the board members. Board members are not allowed to take into account interests if they are not aligned with the company purpose. They cannot be held accountable to different masters. It is up to the politicians/regulators to impose that certain stakeholders' interests should be considered when they are not compatible with the corporate purpose. The society has indeed the right to require incentives and to define the level playing field. Boards should not be faced by conflicts of goals. Otherwise, the risk is to turn them into entrepreneurial zombies.
- Different recipe can be envisaged to ensure accountability (Nomination Committee composed not only of shareholders but of stakeholders, Advisory Council, Boards of trustees or legal liability). However, it is important not to dilute companies' dynamism and to micro-manage them. Boards of trustees will generate tensions and will express opinions without being accountable;
- During the debate with the participants other ideas were put forward:
  - European companies have to be proactive if not offensive in order to get a competitive advantage. Therefore, it is clear that someone has to take the lead. Hard law will put pressure but a call for action is needed to work on soft law and to make things happen;
  - Different approaches might be found – a one-size-fits-all approach will not work;
  - Market democracy will also force the changes.

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