

ecoDa

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Confédération Européenne des Associations d'Administrateurs
European Confederation of Directors' Associations

Poul Nyrup Rasmussen
European Parliament
Bât. Altiero Spinelli
11G130
60, rue Wiertz
B-1047 Brussels

14 May 2008,

Dear Sir,

Through its member-base of ten national institutes of directors*, ecoDa represents individual board members from all kind of companies, small and larger ones, public and private.

ecoDa welcomes your working paper on Hedge funds and Private Equity as a expert opinion to the highly topical debate at the European Parliament. We also paid careful attention to your draft report on the same issue. ecoDa tries to take an active part in the current discussions by focusing its annual conference at the beginning of April on "*Private equity and corporate governance: Perfect marriage or contradiction in terms?*". As a follow up to this conference and after careful analysis and reflection, please find herewith our members' comments.

1- *General remarks:* Although, we want to underline our appreciation for a well documented work and the relevant questions put forward, we are rather surprised that your proposal (for more regulation) links the subprime crises with Private Equity and Hedge Funds. Whereas you rightly highlight the differences between Private Equity and Hedge Funds, their "*symbiotic relation*" – to repeat your own words – should be extended to other types of investors, such as pension funds, insurance companies, banks etc. Moreover, to our mind, linking the subprime crisis with Private Equity and Hedge Funds goes way too far. Using the subprime crisis as an alibi to legislate Private Equity and Hedge Funds is more than questionable. We are convinced that the core problem of the subprime crisis is much more complex and is more related to financial market techniques like securitisation, the role of rating agencies, the volatility embedded in IFRS fair market valuations, etc.. However, we fully support your concerns related to long-term investment needs and the importance to place these capital funds in the broader context of the Lisbon strategy.

2- *On Private Equity:* ecoDa is convinced that far from being "in contradiction in terms", Private Equity can promote good Corporate Governance. As poorly governed companies are more prone to failure, Private Equity companies have an interest in enhancing the reputation and credibility of the companies they invest in. A private equity firm's reputation and return will suffer if an investee company in its portfolio becomes embroiled in a CG scandal or goes bankrupt. Furthermore Private Equity managers have a greater degree of involvement in the direction and control of their invested companies; they have ownership with an insider status and as such they are changing the 'usual' relations between board and management. In fact their active ownership status diminishes the agency and monitoring cost embedded in dispersed shareholdership.

Beside the advantages Private Equity funds provide to companies, ecoDa is well-aware of their downside risks they might bring along (such as private benefits, conflicts of interest,

1

insider trading). However we disagree on the remedy you suggest. Private Equity funds are not different from any other active owner (e.g. such as families or holding companies) and one should avoid jumping into special rules beside the existing company law, security market laws, etc., already completed by self-regulation. ecoDa does favour a principles-based-approach also in this respect.

3- *On Hedge Funds:* ecoDa would like to highlight the ‘empty voting’ as a real issue as well as the lack of transparency on the structure of the ownership and of the voting rights this brings along. More generally, subprimecrisis and the question of an unequal playing field when it comes to the regulation of the financial markets (hedge funds and private equity versus traditional banking business, pension funds, etc.) are global problems, which cannot be solved by EU-regulation, but necessitate first a global approach; ecoDa as a European organisation is therefore neither the organisation to take the lead in this respect.

4- *Beyond Private Equity and Hedge funds:* A common ground between Mr Lehne’s report and yours is the need for more attention to the duties of shareholders. Today governance rules and recommendations devote much attention to shareholders’ rights, but shareholders’ duties are almost ignored. **ecoDa invites the European institutions to raise this question as we believe that duties of shareholders should be included in the regular/official governance codes.**

We trust that you will give the issues raised in this letter the attention they deserve. We remain at your disposal to meet you and to present you in further details our views.

Yours sincerely,

Béatrice Richez-Baum
Secretary General

Miles Templeman
Chairman

* the British *Institute of Directors* (IoD), the *Institut Français des Administrateurs* (IFA), the Belgian *Guberna*, the *Institut Luxembourgeois des Administrateurs* (ILA), the *Finnish Association of Professional Board Members* (Hallitusammattilaiset ry), the Spanish *Instituto de Consejeros – Administradores* (IC-A), the *Czech Institute of Directors* (CioD), the *Slovenian Association of Supervisory Board Members*, the *Polish Institute of Directors* and the *Croatian Association of certified supervisory board members*)