ECGI - Corporate Sustainability Workshop - 28 March 2022

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Bullets (no slides)

* Since the beginning of this century, also as a consequence of the financial markets crisis, corporate governance focused on topics of internal corporate governance such as composition of boards, qualification of board members, independence, diversity and remuneration.
* But there was a massive loss of trust in companies, their representatives and directors (including NEDs), not only due to the financial marktes crisis, which caused also political concern.

* This started a discussion about the necessity and success of detailed regulation and called for new approaches.
* In the UK, France and - to a lesser degree - Germany hard and soft law approaches to a more innovative way of dealing with the challenge of loss of trust were sought.
* The intent was to redefine corporations in the 21st Century, which benefit not only investors but society more widely through a purpose which is broader than just making profits.
* The role of values, cultures and law came into focus.
* The goal was to empower corporation to transform their purpose AND their governance.
* The UK amended its Corporate Governance Code (2018) with the goal to build trust in society as a whole, reenforcing ia stakeholder value
* A project of the British Academy ‚The Future of the Corporation' (2018-2021) had similar concerns and focused on purpose, policy and practice.
* The goal of the British Academy was for corporations to produce profitable solutions for the problems of people and planet while not profiting from creating problems.
* France introduced its Loi Pacte (2019) which came with the introduction of a purpose and call for a raison d'être (right to exist; license to operate) for companies.
* Germany was slower and less courageous; only the German Corporate Governance Code introduced in 2020 the concept of purpose and societal responsibility. But the latest draft amendments seek to include rather strong wording on sustainability.

* This approach via the purpose/raison d'être/societal responsibility opened the way to a wider definition of corporate governance, the best interest of companies and board role, but these approaches are too vague to provide for quick change.
* Corporate Governance was at risk to be guided by vague concepts with little guidance for the boards, which were not loved, nor appreciated anymore but came under much more scrutiny along with increased risks of personal liability.
* At the same time the ESG principles were detailed and enforced by a number of actions. These measures rather increased compliance than truly strengthened governance in practice.
* Did those measures reestablish trust in companies and their representatives and directors? I wonder.
* Companies and boards had to deal with these challenges, the public debate about loss of trust, the uncertainties as to what is (now) the best interest of the company, non-financial risk assessments did not seem sufficient anymore, operational risks were the big concern, in particular reputational risk.

* Then came the big bang of the EU Green Deal assisted by younger generations standing up, eg Greta Thunberg and Fridays for Future. And things became even more complicated for boards. I do not even want to start talking about the EU taxonomy and the question whether it can achieve the Paris climate goal of 1,5 degrees and not only net-zero which seemingly does not get us to saving our planet.
* How to deal with the climate challenges at a time when due to the sanitary crisis and broken value chains the focus was on health, logistics, liquidity, liquidity, liquidity and sheer survival of the business?

* Now comes the EU Proposal for a Directive on Corporate Sustainability Due Diligence.
* While being in line with the developments of previous years, this is now the final move away from the general distinction between internal and external corporate governance.
* Now the outside-in perspective needs to be combined with the inside-out perspective, a totally new concept, taking into account of and creating liability risks for external effects. This is necessary to cover the entire value chain but it still is now a sea change for governance, board responsibilities and liability risk.
* People and society, climate and planet have to be taken into account. The adverse impact of the company has to be assessed and not only profitability prevails. New learning and focus of the boards is key.
* The shift towards sustainable management has left the strategic level and is influencing concrete business policy. Sustainability is becoming increasingly relevant to the performance indicators for corporate management (and relevant for remuneration). What is needed now are pragmatic and goal-oriented solutions instead of entanglement in formalities and box-ticking in order to jointly realise the ambitious sustainability goals.
* The effort to establish sustainability expertise by means of an ESG/sustainability expert on the boards is not to be advocated. On the one hand, the boards have already built up knowledge; on the other hand, the high goal of sustainability is one that concerns the board as a whole. Everyone has to contribute something to the topic from their own expertise.
* In any event, the goal of a sustainable economy is widely considered to be absolutely right and necessary. However, many companies and their representatives worry that the leap is too ambitious, that the Proposal aims too high if only because fear of personal liability on the part of the board of directors and supervisory boards leads to too much internal procedure and compliance, instead of ambitiously and wholeheartedly seeing and embracing improved sustainability as a business opportunity.
* How to balance the interests of the wider stakeholder groups, the people and the planet, with the interests of shareholders in profits and returns without concerns about misappropriation of company funds and acting against the best interest of the company which seems to be a moving target, undergoing a step by step change in definition?
* In any event, new compliance management systems are necessary for the new topics and the value chain checks. This is the only certain way to minimize liability concerns of boards and directors.
* The country-by-country approach rather than a group approach leads however to the risk of fragmentation of these compliance management systems

* Let‘s hope that the discussions on this Proposal manage to alleviate the concerns of those who must act upon the new challenges while taking them along to assist as best as they can to achieve the general goal and the Commission‘s political priority: „An economy that works for people.“ And we have not even started to look closely at social challenges and their impact on companies and their governance.
* Challenges ahead for board members!