



**Economic and Social
Council**

Distr.
GENERAL

TRADE/WP.8/2005/14
6 December 2004

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

Working Party on Industry and Enterprise Development
Sixth session, 10 and 11 February 2005

CORPORATE GOVERNANCE TRENDS AND ISSUES IN THE UNECE REGION

ROUND TABLE*

Geneva, 9 February 2005

Information Notice No.1 by the UNECE secretariat**

Introduction

1. Corporate governance issues rank high in agendas of UNECE governments, investors and major corporations. Despite the lack of a widely accepted definition of corporate governance, it is an issue that has undoubtedly contributed to the hefty financial market correction in the beginning of this decade, worries on the solvency of major public and private public schemes,

* New accreditation procedures have been introduced for all delegates attending meetings held at the Palais des Nations. Delegates are therefore requested to complete the attached registration form also available from the Internet Web site of the UNECE Industrial Restructuring, Energy and Enterprise Development Division (<http://www.unece.org/ie>) and to transmit it to the UNECE secretariat, at the latest two weeks prior to the Forum, either by fax (+41-22-917-0178) or by e-mail (marina.dolgova@unece.org). Prior to the session, delegates are requested to present themselves at the Pass and Identification Unit of the UNOG Security and Safety Section, located at the Villa Les Feuillantines, 13, Avenue de la Paix (a map is attached) for the issuance of an identification badge. In case of difficulty, please contact by telephone the UNECE secretariat (internal extension 71964).

** This document was submitted late due to the technical problems in securing the appropriate support to the organization of the Round Table, which have been successfully resolved.

still present hesitation to invest in publicly listed corporations, skyrocketing of directors' and officers' insurance rates and the shortening of the average CEO tenure, in particular in the United States. In this framework, it is no surprise that the major stock market indices in developed market economies are on the levels seen 5-10 years ago. This also applies to S&P500 and Nasdaq stock indices, which in terms of nominal dollars seem to be holding much better than their European counterparts. However, if adjusted for changes in the US dollar / Euro exchange rate, those key US financial market indices also could be seen in a slightly different light. It is also no surprise that the average cash held by the world major corporations is much above usual or perhaps "normal" levels. Thus, mistrust in corporate governance institutions and processes has certainly contributed to depressed levels of fixed investments in developed market economies.

2. Corporate governance issues preoccupy not only the decision-makers from developed market economies. In emerging market economies, solid corporate governance can foster foreign direct and portfolio investment inflow and could be the backbone of a promising economic restructuring and enterprise development with all benefits for economic growth and employment. The link between economic growth and corporate governance is therefore important for many countries. Corporate governance has become a global issue with potential impact on trends in financial markets, economic growth and employment.

3. The key mission of the UNECE – fostering economic cooperation and development in its region – consequently confronts the whole range of corporate governance issues. The UNECE region consists of 55 countries and covers the whole of Europe, the Commonwealth of Independent States, North America and Israel. The variety of corporate practices is substantial, and yet in each country there are important debates over what constitutes better practices and better regulations. The UNECE seeks to create the opportunity to exchange views on these new policy initiatives and to this end has proposed a series of workshops and policy papers on the subject.

4. Good corporate governance is seen as an essential part of the economics mechanism conducive to continuous economic growth, technological progress and, to a certain extent, the creation of employment. One definition of corporate governance is the agency relationship that exists between shareholders and corporate management, given the legal and regulatory framework as well as institutions and structures in the financial markets. In many contexts, this definition is deficient, since many other stakeholders play useful roles in governing the actions of corporations consistent with creating economic value for shareholders. Tackling the perceived or real deficiencies of corporate governance both at the international and national levels, therefore, involves a relatively large number of factors, institutions and market players. It is also related to many branches of economic and business science including corporate finance, financial strategy, investment, labour economics and corporate law.

5. Since the recent waves of corporate scandals in many market economies, including the high-profile Enron, World Com and Parmalat bankruptcies, governments in the UNECE region enacted new legislation essentially tightening the noose around corporate wrongdoers and threatening those with exemplary punishments. The flagship legislation in this respect is the Sarbanes-Oxley Act passed by the US Congress in 2002. It is flagship not only because it introduced new substantive legal standards and provisions on corporate governance in the United States, the world's largest economy, but also because of its *worldwide impact* on all companies

either listed on the US financial markets or having an important business presence in the US factor and product markets.

6. The Sarbanes-Oxley Act covers many areas, ranging from responsibilities of the board, fiduciary obligation of the CEO and Chief Financial Officer, fees for funding external oversight, regulations regarding the oversight of the Security Exchange Commission, accounting standards, rotating auditors, and white collar penalties for fraud and related crimes connected to financial reporting.

7. The Sarbanes-Oxley Act was accompanied by a number of similar legal or voluntary initiatives in several market economies including the United Kingdom, Germany and France, with a mushrooming of corporate governance surveys, guidelines and codes of conduct. In addition, a number of international financial and development institutions lead by the OECD stepped into the area with ambitions to provide guidance not only to governments and private corporations in developed market economies but also to educate decision-makers in emerging market economies across the globe. In addition, there have been related initiatives by various financial standard bodies such as IASB and FASB. It is worth noting that controversies around corporate governance are not new at all. For example, in Report of the Committee on The Financial Aspects of Corporate Governance, published in December 1992 after 18 months of work, the Chairman Mr. A. Cadbury stated: "It is however the continuing concern about standards of financial reporting and accountability heightened by BCCI, Maxwell and the controversy over directors' pay which has kept corporate governance in the public eye." He continued: "Unexpected though this attention might have been, it reflects a climate of opinion that changes are needed and it presents an opportunity to raise standards of which we should take full advantage". It has been 12 years since then, and yet the problems continue.

8. Based on the number of recent corporate scandals as well as the disappointing stock markets performance, the public focus in developed market economies on corporate governance in the last fifteen years or so has not yet produced desirable results. It appears therefore that despite certain progress there are deep-entrenched difficulties in dealing with corporate governance deficiencies, which have not yet been properly identified and addressed. The widespread disagreement on what is the root cause of corporate governance failures among different communities present in the financial market, including governments, regulators, financial intermediaries, lawyers and corporate executives, does not contribute very much to the advancement of this urgent dossier. (See also TRADE/WP.8/2005/13, paras. 2-8, p.2-4 for a more detailed overview of differences in perceptions of roots of corporate governance deficiencies.)

9. Emerging market economies in the UNECE region need also to address corporate governance issues in a broader framework. Firstly, to sustain the ongoing market transition, substantial investments in domestic enterprises are required. Given insufficient domestic stock market volume and liquidity, a sizeable portion of those investments would need to come from abroad mostly as foreign direct investments. For a foreign investor, in particular if his investments will not bring decisive majority control in a targeted domestic company, quality of corporate governance might be of utmost importance. Secondly, even in more advanced emerging market economies and beyond the foreign investment context, considerable efforts are required in adopting and implementing a modern corporate governance approach along the

Sarbanes-Oxley Act of 2002 or a similar west European initiative. The level of sophistication and resources required to accomplish this task runs much beyond the ability of many emerging market economies in the UNECE region both at the governmental and corporate levels. For example, given the current transparency levels in financial markets in most emerging market economies in the UNECE region, raising corporate governance standards to desirable levels will be a task for many years to come.

10. Despite considerable efforts of the international financial community, as well as at the national level in particular in many developed market economies, to address the corporate governance deficiencies in the last decade or so, it is not clear how much of the required progress has been achieved. The hesitation of the world investment community to embrace fully investments in particular in stock markets is an indication that the desirable level of corporate governance has not yet been reached. It also might indicate that certain changes could be necessary in the current approach towards improving the quality of corporate governance, whatever it means for different participants in financial markets. One of desirable changes could be related to the institutional framework in which the corporate governance issues have been considered. Most likely a neutral and fully transparent platform where both governments and the corporate sector could engage in a dialogue on substance of the corporate governance issue and possible approaches to address them could play an important role in the process. Given the considerable international ramifications of the national legislations on corporate governance in large economies in particular, a multilateral coordination might be preferred in many aspects to a purely national approach. In addition, the global nature of financial markets and the relatively increasing importance of the corporate sector outside the UNECE region in sectors like energy and communication and information technologies demands a platform where many governments and corporations can simultaneously take part in related deliberations.

11. It is within the above framework that the Working Party on Industry and Enterprise Development decided at its fifth session in February 2004, that a new programme element “corporate governance” should be included in its programme of work. The corporate governance element focuses on industrial restructuring, knowledge-based economy and enterprise development, which is obviously not only cross-sectoral but also could generate substantial synergy in the programme implementation. With this in mind, the UNECE secretariat organized in February 2004 an introductory discussion on corporate governance that has provided a valuable framework for further progress in this crucial area.

12. Based on the inputs provided by selected senior corporate governance experts from the private sector and comments delivered during the initial consideration of corporate governance issues, it is clear that the UNECE has a role to play in fostering improvements in corporate governance practice which could lead to more predictable investment climate, higher corporate transparency, more efficient financial markets and hopefully higher rates of economic growth in the UNECE region.

Mandate

13. The recurrent debate on corporate governance in the UNECE region has unfortunately not yielded either the expected or sufficiently tangible results. Beginning with the corporate governance definition mentioned above, there is agreement on few of its elements among key

players in financial markets. The disagreement exists even in attempts to formulate fairly general and perhaps vague guidelines not to mention those of financial reporting and senior executives' compensation. Despite the persistent efforts of several international development and financial organizations which deal with corporate governance issues in dissimilar ways, the gap between the corporate sector and governments appears not to be smaller today than it was five or ten years ago. The resolution of this important controversy has not been helped by hesitant stock markets after a series of corporate governance related legislation and other measures in particular in the key economies. Contrary to the expectations of public decision-makers, the new measures have not yet reinforced trust in stock markets. In addition, they seem to impose considerable compliance and reporting costs whose benefits still need to materialize. Those reasons, among several others, were responsible for the decision to incorporate corporate governance in the programme of work of the Working Party.

Expected Achievements

14. With the introduction of the corporate governance element into the Working Party's programme of work, member countries aim to achieve the following key goals:

- Create an objective and comprehensive platform on key corporate governance issues in the UNECE region which would allow all relevant parties to project their views, submit proposals for policy recommendations and develop better understanding of the variety of existing and future corporate governance legislative and other initiatives;
- Use this comprehensive platform to facilitate exchange of experience and policy solutions and instruments applicable to corporate governance leading possibly to a convergence of views on at least key issues and facilitating the compatibility of different corporate governance regimes among various UNECE member countries; and
- Initiate reviews of corporate governance policies and practices in the UNECE region which could lead to an enhanced dialogue among member countries as well as between governments and the corporate sector and ultimately to a region-wide improvement in the quality of corporate governance.

15. The Working Party intends to rely on a variety of procedures and frameworks to successfully address corporate governance in the UNECE region. Apart from research and assessment of the state of corporate governance in individual UNECE countries, including economies in transition, dissemination of relevant information and data and policy-facilitating meetings, the UNECE secretariat would ask member countries to assist in identifying and presenting successful policy and other corporate governance measures with considerable benefits to all member States.

Purpose and scope of the Round Table

16. The main purpose of the Round Table is to assess the current state of corporate governance in the UNECE region and provide initial policy guidance both to governments of member States and the corporate sector on key corporate governance issues. In addition, the Round Table should contribute to the creation of a core group of experts both from governments and the private sector, which would be able to take a lead in defining the corporate governance agenda

for the UNECE region and fostering appropriate policy changes, including in individual countries, in the near future. The Round Table will be structured as a constructive interface among experts, related government policy makers and senior officials from the corporate sector.

17. The Round Table is expected to strengthen the UNECE objective platform on corporate governance, which has fostered the exchange of experience in policy areas as well as in implementation of relevant legislation, regulation, principles and guidelines in the corporate sector.

18. The Round Table proceedings will focus on potential policy and corporate responses with regard to the improvement of corporate governance policy in emerging market economies. This approach might in particular be of interest for sectors such as energy and ICT, and for emerging market countries which are becoming of increasing importance for developed market economies in the region. Given the current not necessarily favourable economic developments in some of those countries, it would be desirable if the Round Table could provide appropriate policy insights and alternative corporate responses including legal and regulatory framework, interaction with financial markets, relationships with foreign direct investments and domestic capital formation.

Participation

19. Targeted participants for this Round Table are senior government officials from UNECE member countries, officials from regulatory agencies, senior corporate executives and independent experts from the UNECE region. Invitations will be also extended to selected international organisations such as the European Union and OECD and appropriate individual corporate governance specialists and, if need be, selected corporate executives headquartered outside the UNECE region. A participation of approximately 40-50 experts and officials is envisaged.

Provisional programme

20. Based on the conclusions and recommendations of the first UNECE Round Table on Corporate Governance held in 2004, and under the guidance of the Working Party Bureau, the secretariat has developed a provisional programme for the Round Table. The intention is to divide the Round Table programme into two or more sessions, of which two are provisionally indicated: Session I Corporate Governance Trends, and Session II Strategies and Policies for Advancing Corporate Governance in the UNECE Region: Key Challenges and Roles. The programme of the Round Table will be refined in due course and individual slots of time will be assigned to qualified speakers, both from the private sector and UNECE governments.

21. Apart from presentations to be delivered by the Round Table speakers, participants will be encouraged to comment on relevant topics regarding the state of corporate governance in their countries as well as on the practices of their national companies in the same area. Participants who are not on panels are encouraged to prepare very brief reviews on these topics regarding "their home situation", preferably with one or two Power Point slides. These briefs will be included in the Round Table proceedings and final report to be issued later in 2005.

22. Interested executives, experts and officials are invited to submit their proposals by 15 January 2005 to the secretariat and to Mr. Bruce Kogut, Chairman of the Round Table (e-mail: Bruce.Kogut@insead.edu, Professor, INSEAD, Fontainebleau, France) for presentations on the topics indicated in the programme as well as on the closing morning and afternoon panel discussions. A brief outline of the proposed presentation should be sent to the secretariat and Mr. Kogut, by 25 January 2005 at the latest.

Provisional programme

Wednesday 9 February 2005

- 10.00 – 10.15 Welcome and brief introduction, by Mr. George Kowalski, Director, Industrial Restructuring, Energy and Enterprise Development Division, United Nations Economic Commission for Europe
- 10.15 – 10.45 Key Note Speech: Corporate Governance in the UNECE Region: Past and Prospects, by Mr. Bruce Kogut, Professor, INSEAD, Fontainebleau, France, and Chairman of the Round Table; plus guest speaker.

Session 1. Corporate Governance Trends

- 10.45 – 11.45 Chair: Mr. Erik Berglof, Professor, Stockholm School of Economics, Vice-Chair: Ms. Kim Olson, Managing Director & Regulatory Liaison, Fitch Ratings, New York, USA
- Corporate Governance and Financial Markets: What did we learn in the last five years? by Mr. Erik Berglof, Professor Stockholm School of Economics
- Measurement of Corporate Governance: Techniques and Limitations for Bond Investors, by Mr. Kim Olson, Managing Director, Fitch Ratings, New York, USA
- Use of Information Technology in Supporting Good Corporate Governance, by Ms. Martha Bennett, Vice President & Research Director, Financial Services Europe, Forrester Research, London, United Kingdom.
- 11.45 – 12.00 Break
- 12.00 – 13.00 Panel: Identifying and Implementing the Best Approaches for Improving Corporate Governance: What Role for Governments versus Private Sector, Chair: Mr. Peter Cornelius, Chief Economist, Shell, London, United Kingdom; Mr. Andrey Korotkov, Senior Vice President and Chief Investment Officer, Vneshtorgbank, Moscow, Russian Federation
- 13.00 – 15.00 Lunch Break

Session 2. Strategies and Policies for Advancing Corporate Governance in the UNECE Region: Key Challenges and Roles

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| 15.00 – 16.45 | <p>Chairman: Mr. Ron Freeman, formerly COO, EBRD; Vice-Chairmen: Mr. Andrey Korotkov, Senior Vice President, Chief Information Officer, Vneshtorgbank, Moscow, Russian Federation</p> <p>Advancing Corporate Governance on the Board Level: Issues and Solutions</p> <p>Insurance Markets and Corporate Governance: USA versus Europe</p> <p>Regulations of Financial Markets on Corporate Governance: Compliance Cost and Benefits</p> <p>Corporate Governance along the Financial Market Chain, by Mr. Sead Vilgorac, UNECE secretariat</p> |
| 16.45 – 17.00 | <p>Break</p> <p>Shareholders returns, stock market and corporate governance: is there are relationships?</p> <p>CEO's turnover, officers' compensation and corporate governance</p> |
| 17.00 – 17.45 | <p>Panel: Co-Chairs: Mr. Erik Berglof and Mr. Bruce Kogut, What is to be Done?</p> |
| 17.45 – 18.00 | <p>Concluding Remarks and Closure, by Mr. George Kowalski</p> |

Note: Programme and titles of individual presentations are subject to change and will be refined in due course.

Organizational Matters

23. The official languages of the meeting will be English, French and Russian. There will be simultaneous interpretation.
24. To benefit from the preferential UN hotel rates in most Geneva hotels, Round Table participants are requested to reserve their rooms directly and as early as possible and to identify themselves as the participants in the UN organized event. All participants are expected to cover their travel and lodging costs.
25. For all visa enquiries for Switzerland, please contact Ms. Marina Dolgova, UNECE secretariat (tel.: +41 22 9171964, fax +41 22 9170178, e-mail marina.dolgova@unece.org).



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Mr. ☐

Family Name

First Name

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