



INSTYTUT ALLERHANDA

EU sources of Corporate Governance

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Two sentences

- Harmonisation of the rules relating to company law and corporate governance, as well as to accounting and auditing, is essential for creating a Single Market for Financial Services and products

originally at the EC website

- The foundation of any structure of corporate governance is disclosure. Openness is the basis of public confidence in the corporate system and funds will flow to centres of economic activity that inspire trust.

Sir Adrian Cadbury

First steps

- 1992
 - Cadbury Report (comply-or-explain)
- 1995-2001
 - some other EU countries (guidelines)
- 2000
 - Enron, WorldCom and others
- Second phase: 2001 –
 - Sarbanes-Oxley Act (US) (2002)
 - German Corporate Governance Code (DE) (2002)
 - Code of Best Practice (PL) (2002)

Development in the European Union

- Recommendations of the European Commission
 - 2004/913/EC (29.12.2004) – remuneration regime
 - 2005/162/EC (15.02.2005) – non-executive directors
 - 2009/384/EC (30.04.2009) – rem. in financial services
 - 2009/385/EC (30.04.2009) – rem. in listed companies
- Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (...) – audit committee
- Green Paper – Corporate Governance in financial institutions and remuneration policies
- Directive 2010/76/EU (CRD III) – supervisory review of remuneration policies
- Green Paper – Corporate Governance in listed companies (5.04.2011)

Beginnings of ESG reporting

- Directive 2013/34/EU on the annual financial statements
 - Art. 19(1)(3) – contents of the management report
 - where appropriate, non-financial key performance indicators relevant to the particular business
- Directive 2014/102/EU – *amending the above*
 - Art. 19a – Non-financial statement
 - large undertakings (> 500 employees), as minimum:
 - environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters
 - Art. 20 – Corporate governance statement
 - Description of the diversity policy (*except SME's*)
 - or explanation as to why no such policy is applied

Shareholders Rights Directive

- SRD-1 (2007/36/EC)
 - General meetings of shareholders
- SRD-2 (2017/828) – *amending the above*
 - Identification of shareholders
 - Transmission of information
 - Facilitation of the exercise of shareholders rights
 - Non-discrimination, proportionality and transparency of costs
 - Third-country intermediaries
 - Remuneration policy and report
 - Related party transactions

Quality of CG reporting

- Commission Recommendation of 9.04.2014 (2014/208/EU)
- on the quality of CG reporting ('comply or explain')
 - Quality of corporate governance statements
 - sufficiently clear, accurate and comprehensive
 - Quality of explanations in case of departure from a code
 - in what manner company departed from the code
 - reasons for the departure
 - how the decision was taken within the company
 - where limited in time – when it will be complied with
 - the measure taken instead

Problem with ESG ratings

- Warsaw Stock Exchange – WIG-ESG
 - roughly speaking – 60 (20+40) biggest companies
 - ESG rating (possible reduction to 60% of share in the index)
 - CG reporting (possible reduction to 85% of share in the index)
 - *no ESG, no CG – but still 51% share in the index...*
- ESMA letter to EC (28 January 2021)
 - unregulated and unsupervised nature of the market for “ESG” ratings and ESG assessment tools
 - risk of:
 - greenwashing
 - capital misallocation
 - conflicts of interest
 - product mis-selling



Poland: The Best Annual Report

- Institute of Accountancy and Taxes
 - The contest since 2006 (annual report of 2005)
- 2019 – CG statement – *pilot edition (WIG-20)*
- 2020
 - Financial report (40 points)
 - Management statement (30 points)
 - Corporate Governance statement (30 points)



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Thank you
for your attention

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