Deontological questions related to companies' management

2009/2177(INI) - 28/04/2010

The Committee on Legal Affairs adopted the own initiative report drawn up by Klaus-Heiner LEHNE (EPP, DE) on deontological questions related to companies' management.

It welcomes steps aiming at addressing the deontological aspects of companies' management, which the recent financial crisis reveals are far from resolved, and in this context it welcomes the Commission's recommendation of 30 April 2009 supplementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies, and the Commission recommendation of 30 April 2009 on remuneration policies in the financial services sector.

It points out, however, that the **soft law approach is however not satisfactory**, and also welcomes therefore the Commission's first legislative proposal allowing the EU legislator to properly address the relevant issues, i.e. the amendment of the Capital Requirements Directive.

The committee maintains that the EU needs an industrial, social, and environmental model geared to the long term, consistent with the general interest – of companies, shareholders, and workers – and with a new financial architecture based on a system of prudential and deontological rules and on national and European supervisory authorities with binding powers. Remuneration policies making for sound, sustainable governance are necessary not just for deontological reasons, but also for eminently economic reasons, given that policies of this kind have a direct impact in terms of assets and the development outlook for companies themselves as well as the economy in general, and of preserving and creating higher levels of employment.

Members note that some aspects of the principles contained in the recommendations remain unclear and must be put properly into practice, such as the concept of performance criteria, which should help in creating the link between pay and performance, the notion of 'inadequate performance' in the case of termination payments, the termination payment and variable components of remuneration in the financial services sector. They consider further that provisions on remuneration policies for directors of banks and credit institutions have to be more than mere recommendations and must hence take the form of binding measures linked to a system of oversight, the object being to ensure that the variable component of remuneration – bonuses, stock options, and incentives – does not drive companies to adopt over-risky investment and management policies which pay no heed to the fallout for the real economy.

The report urges the Commission to propose **sector-specific amendments to financial services legislation** to ensure consistency between banking and non-banking institutions in remuneration policy. Furthermore, it calls on the Commission to bring forward legislative proposals in the field of company law to help address corporate governance issues and ensure consistency in remuneration policy for all types of companies. Members also call for the following:

- the Commission to support effective implementation of measures adopted at EU level, focusing primarily on cross-border companies, and to fulfil its undertaking to submit an evaluation report on the application of both recommendations by Member States;
- the Commission to include in the evaluation report's conclusions a schedule of appropriate legislative and non-legislative activities which might be a necessary follow-up;
- efficient implementation of the rules on consultation and employee participation systems opted for in the context of Directive 2001/86/EC supplementing the Statute for a European Company;
-

Member States to effectively implement measures such as the EU Shareholders' Rights Directive to remove the obstacles to and enhance shareholders' participation in voting, in particular with respect to cross-border voting;

- encouragement for more women to be assigned to management posts by means of a Commission recommendation to introduce a system for the filling of posts on company decision-making bodies, posts in other bodies and posts in general;
- national supervisory authorities, in assessing the independence of members of the managing bodies of undertakings more strictly, should devise more effective anti-corruption schemes, the establishment of which may not only be conducive to more ethical business management practices but may also increase the economic success of undertakings;
- uniform and comprehensive guidance concerning risk management, which at present seems to be addressed by various codes and standards applicable in Member States only in a fragmentary way;
- the Commission to promote the utilisation of best practice guidance for unlisted companies, which is designed to take account of the specificities and differences of such companies.

Lastly, the committee recalls that, during the process of economic renewal, in addition to supporting the real economy, measures for the protection of jobs, training and working conditions are of major importance and should be taken into account by all stakeholders.