

4 October 2006

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Better regulation and company law 4 October 2006

Address by Christoffer Taxell, President, Confederation of Finnish Industries – EK

Mr Chairman, dear colleagues, ladies and gentlemen

It is my great pleasure and honour to open this Conference on “Better regulation in EU Company Law, Process and Substance” here in Helsinki. First of all, let me thank the organisers, Finnish EU Presidency and especially Ministry of Justice for organising this important event. I also would like to extend my thanks to the European Commission for their valuable support which is also reflected by the presence of distinguished representatives of the Commission (Mr Pierre Delsaux, Acting Director, Internal Market and Services DG).

I also would like to congratulate the organisers for choosing a most interesting and topical theme for this conference. Better regulation is definitely a theme which one simply cannot avoid when discussing the role and future direction of any European regulatory activity. Linked with overarching and very practical theme of Company Law I think we got a fruitful mix of issues to be discussed today.

I don't have any intention to pre-empt the agenda of today's Conference by touching in depth our agenda but let me just by way of introduction share with you some of my very general thoughts on the main theme of the Conference.

Better regulation is a code word implying a set of positively sounding elements such as proper consultation, search for alternatives for legislation, impact assessments etc. Everybody is doing better regulation activities be it at national level or European level. We have witnessed a few convincing examples and proof upon the fact that you really can accomplish something by addressing the better regulation seriously. Just look at the developments in the Netherlands and UK, just to mention the two flagship cases in Europe.

But otherwise we have witnessed only too much good intentions without concrete results. Action plans can serve a useful purpose but here we need real action, less plans. Here in Finland we have just launched our own national programme on Better Regulation. It covers all the usual elements that you normally can find in any proper better regulation action plan but the key element and perhaps a difference here is the ownership of the exercise: it is not just another Government programme but also

involving all other relevant players such as Finnish business community. We – and I mean business community – are going to act like any serious owner in this exercise. We are going to do our own part properly and ask the others - especially government – do the same to achieve concrete results.

On the Company Law aspects I do have some reflections, too. Let me start by highlighting some basic starting points. Good and efficient company law and corporate governance are of utmost importance to companies and their stakeholders. Any action in these areas must pursue the objective of increasing competitiveness while respecting the legal environment in which they evolve. Excessive regulatory burdens may ultimately restrict the freedom of companies to do business, thereby holding them back from releasing their potential. This is detrimental to business, to company shareholders and more generally to the EU as a whole.

Here I would like to reiterate some of the leading principles to which business people would like the legislators to adhere at European level when they are drafting any new actions in this field:

1. **Subsidiarity** – The EU should only intervene when it is proven that the foreseen objective cannot be reached by national action. EU action should not disrupt the delicate balance found at national level, which takes into account national traditions and cultures.
2. **Principle-based approach** – In light of the subsidiarity principle, in any EU intervention, a general principles-based approach should prevail over a rules-based approach. This would allow a degree of flexibility necessary for companies to develop the governance model best suited to them.
3. **Market-driven approach** - Corporate governance is better served by flexible self-regulatory initiatives as opposed to regulatory interventions. Over-regulating is a disincentive for companies to go beyond legislation and adopt corporate governance best practice.
4. **Comply or Explain** – When a corporate governance code is applicable, companies should either conform to the provisions of that code, or provide an explanation as to why the principles have not been followed. As stated in the 1992 Cadbury Report, the Comply or Explain route should enable companies to “*strike the right balance between meeting the standards of corporate governance expected of them and retaining the essential spirit of enterprise... Raising standards of corporate governance cannot be achieved by structures and rules alone (...)* “. This ‘Comply or Explain’ approach has been in operation for over 10 years and the flexibility it offers has been widely welcomed both by company boards and by investors. The spirit of the principles is important, not a mere formalistic ‘box ticking’ approach.
5. **Transparency and disclosure** - Transparency is an essential ingredient for any form of outside monitoring. It is very important for the shareholders and investors to see the manner in which a company follows the recommendations on corporate governance. Transparency enhances confidence in a company.
6. **Global orientation** – EU policy should be oriented towards and take into account the global environment in which European companies inevitably evolve.



Adding an additional and possibly contradictory EU layer of regulation would be a hindrance to achieving the goals of corporate governance.

7. **Competition** – should be encouraged between national systems so that society can benefit from an emulation effect. Competition in the field of legal systems stimulates legal innovation. In this context, the EU should ensure that Member States mutually recognise each other’s legal systems.

8. **Better regulation** – Impact assessments and proper consultations¹ are the basis of good regulation. Consultation remains one of the basic principles of participatory democracy but consultation needs to be carried out in the right conditions: sufficient time for considered responses and a weighted analysis of responses received are fundamental ingredients for successful consultations.

On the second topic of today, namely “Different Classes of Shares and other Voting Right Arrangements, I do certainly have a word or two to say. Most of you here present know my firm opinion on the “one share – one vote” issue. I think it should be up to the company and its owners to decide how the structure of its capital is organised so as to respond the needs of the market. Any regulation to the effect of limiting the voting rights of owners can only be detrimental with a view to possibilities to raise capital. This would surely harm European companies with regard to e.g. US companies. However, as I said earlier, I do not intend to go into details here but leave this interesting topic for further lively debate today.

With these words I wish you a fruitful conference.

Thank you for your attention.

¹ As highlighted by the High Level Group of Company Law Experts that largely inspired the aforementioned Commission Action Plan “for both primary legislation and any alternatives, proper consultation is necessary”. See “A modern regulatory framework for Company Law in Europe” presented on 4 November 2002, available at the following page of the Commission website: http://europa.eu.int/comm/internal_market/en/company/company/modern/, p. 4.