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A European Corporate Governance Model: Integrating Corporate Purpose Into Practice for a Better Society

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A EUROPEAN CORPORATE GOVERNANCE MODEL:

INTEGRATING CORPORATE PURPOSE INTO PRACTICE FOR A BETTER SOCIETY

Governance Center
for
Firms' Sustainability

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A EUROPEAN CORPORATE GOVERNANCE MODEL: INTEGRATING CORPORATE PURPOSE INTO PRACTICE FOR A BETTER SOCIETY

Abstract:

We reflect and propose governance principles and practices on a balanced approach of corporate purpose and corporations' expected contributions to a better society within a European context. This proposal also addresses issues of fair sharing, measurement, relations with governments, which contribute to improving corporations' efficiency and their impact on society and nature.

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Why this proposal?

Profound and unanticipated transformations are reshaping relationships between corporations and society. Over the past four decades, corporate success was primarily measured by financial performance. While some companies made occasional public declarations regarding their social contributions, their decisions were predominantly driven by profitability, often focusing on short-term gains—especially for publicly traded entities. However, a paradigm shift has occurred in society's expectations toward corporations, demanding their involvement in solving pressing environmental challenges (such as climate change and biodiversity loss) and addressing social inequalities. In this new landscape, the multiple voices advocating for transforming the way businesses operate can no longer be ignored. These voices together wield considerable influence, urging corporations to adopt sustainable practices and mitigate their environmental and social impact. Furthermore, consumers and employees, increasingly driven by a desire for purpose in their personal and professional lives, are paying close attention to how corporations address social demands for more sustainable and equitable value sharing. While conducting business in countries with a record of human rights violations increasingly presents ethical and operational dilemmas, corporations oftentimes face demands to adopt stances on societal matters that may not be related to their operations or impact.

On one hand, the shift in societal expectations has brought about a vital demand for corporate accountability. It is no longer acceptable for companies to prioritize financial gains at the expense of wider social and environmental concerns. Corporations now face an imperative to balance profitability with a broader commitment to both the well-being of society and the planet. As a result, they are compelled to redefine their strategies, integrate sustainability into their core operations, and actively contribute to solving the global challenges we collectively face. Embracing this new reality presents both opportunities and challenges for corporations. They must now navigate a complex landscape that demands innovative solutions and long-term thinking. The need for sustainable practices and responsible corporate behavior extends beyond mere regulatory compliance. Today's corporations must engage in purpose-driven initiatives, actively seeking ways to reduce their carbon footprint, preserve biodiversity, and contribute to social justice.

On the other hand, risks and constraints have significantly intensified. Whereas decision makers have begun to recognize the increasing financial and corporate risks of climate change and biodiversity loss, mounting pressures on other ecological limits of our planet pose new risks, as do human rights violations and other unsustainabilities. The pandemic serves as a poignant example of this phenomenon. While pandemics had been acknowledged as potential risks, the pre-symptomatic transmissibility of the SARS-CoV-2 virus caught many off-guard. Contemporaneously, the emergence of escalating geopolitical tensions poses unforeseen challenges that directly impact corporate operations, sometimes imposing on them necessary adjustments. Corporations now find themselves needing to consider various hypothetical scenarios that could arise overnight. What if China were to invade Taiwan? What if drastic water restrictions were imposed sooner than anticipated? What if advancements in artificial intelligence, initially projected to be available five years from now, suddenly became available on the market tomorrow? Furthermore, the constant threat of a cyber-attack breaching all extant protective measures looms large. These "what if's" demand careful consideration and strategic planning.

Simultaneously, as risks increase, corporations face a proliferation of obligations. Governments are struggling with mounting challenges that society faces, including climate change, increased biodiversity loss, depletion of natural resources, issues of corruption, rising

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inequality, and human rights violations. In response, they are placing greater obligations on corporations, which may be seen as seeking to delegate some of their own political objectives and commitments to them. It is important that governments when attempting to shape corporate practices based on their own value systems also give consideration to the various constraints and responsibilities that corporations must navigate. The nature of corporate obligations is changing: while sanctions are becoming more stringent and applying to a greater number of corporations, obligations are becoming more general and abstract, forcing corporations to make difficult decisions and swiftly arbitrate between complex solutions with uncertain intended and unintended consequences.

The confluence of increasing demands and escalating risks and obligations poses a significant challenge to current corporate governance and practices. Corporations, by their very nature, are not democratic entities established to address societal issues. They are born out of entrepreneurial ideas, organized to generate profits, and possess a legal personality limited to their defined purpose.

How can European corporations effectively address these unprecedented demands and mitigate these financial and corporate risks? In this evolving landscape, approaches that may have been efficient yesterday will not necessarily yield satisfactory results tomorrow. As such, it is crucial for governance structures to evolve and become more sophisticated. Merely incorporating some environmental, social, and governance (ESG) concerns into strategic discourses is no longer sufficient. The question at hand is not about whether ESG measures enhance profitability, but rather about how corporations can adapt and thrive in a more uncertain and volatile world, and to do so in a way that contributes to societal sustainability goals.

Investors and European corporations are in dire need of an updated and coherent governance model to reconcile the conflicting demands of profitability and social responsibilities. The prevailing corporate governance paradigm operates under the assumption of a stable world, with a broad consensus on the notion of progress. However, this consensus has eroded in the face of increasing instability and tensions and the emergence of alternative geopolitical models. European corporations must cope with these uncertainties as well as with increasing expectations to contribute to a better and sustainable world. Addressing these new realities necessitates adjustments to existing governance principles and structures. It calls for a comprehensive governance framework that empowers corporations to navigate these challenges, establish a long-term vision rooted in their corporate purpose, and adopt a coherent societal position.

Amidst these challenges, there are also new opportunities for value creation that extend beyond mere profitability and encompass benefits for the corporation itself, including its employees, workers, local communities and contractual parties while contributing – within the scope of the business of the corporation – to societal sustainability goals. The governance model we propose operates on the premise of an interconnection between corporations and society, acknowledging their mutual dependency and the distinct roles they play. By embracing this reciprocal relationship, we can foster a governance framework that enables corporations to fulfil their responsibilities while generating value that goes beyond financial metrics.

The current stakes are considerable for European businesses and the broader paradigm of European capitalism, which fully embraces private initiative to stimulate innovation and economic and social progress. When discussing ESG concerns, it is vital to acknowledge that good intentions alone will not adequately equip companies to smartly and effectively handle

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contemporary challenges. To address these issues effectively, we need to establish and implement clear standards.

However, setting these standards brings up questions about what they should include and the risk of spreading mediocre or "just average" practices that fall short of the initial ambitions. Moreover, putting the standards into action can be problematic if it ends up only concentrating powers in the hands of finance specialists within and outside the firm, keeping at bay other relevant stakeholders.

Therefore, it is crucial to ensure that the implementation of these standards does not merely reinforce existing power structures, but rather promotes a culture of transparency, accountability, and continuous improvement. This requires a holistic approach that integrates ESG concerns into all aspects of corporate decision-making and operations, and that recognizes the vital role of all stakeholders in driving sustainable and inclusive growth.

Hence, a balanced and comprehensive model of corporate purpose and governance, along with a fresh measurement approach for evaluating corporate contributions, is necessary. This requires collaboration among corporations, regulators, and states. More precisely, three key elements are required:

a) Clear Distribution of Roles: There should be a well-defined allocation of responsibilities among corporate bodies, including shareholders' meetings, the corporate board, senior executive management, employee representative bodies, and, when applicable, stakeholders' representative committees.

b) Composition of and Rules for the Corporate Board: The corporate board should have a composition and set of rules that enable a comprehensive consideration of diverse risks and interests, encompassing both internal and external factors. This includes addressing parties' interests beyond those of the companies' shareholders and closer stakeholders.

c) Trust and Ethical Behavior: Any organizational structure – including that of corporations – relies on the delegation of authority and trust among parties. In return, this implies and necessitates ethical behavior from all members involved as well as the adoption of ethical deliberation processes with each structure. Each party involved in the business project must understand their position and their expected contribution to the organization.

By reflecting on corporate purpose and governance, this proposal aims to tackle a range of these pressing issues and questions.

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What

We propose a coherent set of principles and processes grounded in the fundamental characteristics of corporate organizations, such as the delegation of authority, acceptance of risks, value creation, and value sharing. By adopting this approach, each corporation can establish its unique organizational compass, strategy, and structure. These principles are underpinned by the notion of corporate responsibility towards society and aligned with the prevailing company laws applied throughout Europe.

Superimposing new ESG-related constraints onto a shareholder primacy model is not a viable solution. While it may create an illusion of progress, it ultimately fails to yield results because it overlooks the fact that a company's primary goal is to fulfil its own specific purpose while ensuring a return on investment. Imposing overly stringent constraints on firms devitalizes corporate purpose and discourages risk-taking and innovation. Moreover, the misuse of ESG by certain corporations that have "greenwashed" has contributed to the resistance against new regulations (in the US, which may also be spreading to Europe). In addition, the accumulation of multiple constraints favors the promotion of a superficial culture of merely checking boxes, with no actual benefits. A superior approach lies in reinstating accountability and responsibility at the corporate governance level, not defensively, but with a drive for every firm to make sustainable contributions. This can be achieved by emphasizing the key assets of corporations, i.e. the efficiency of their decision-making process and their effectiveness at undertaking innovative, risky activities.

A modernized governance system ought to empower corporations to gain a thorough understanding of the interests of all parties involved. It should foster an open and mature dialogue between senior executive management, the corporate board, shareholders, and relevant parties including employees, workers, and representatives for affected local communities. Furthermore, it should enable a sound and informed decision-making process guided by the corporation's purpose. This process should also integrate the best interests of society into its decisions.

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For whom

This proposal is intended to be a contribution to the current debate on governance where the pursuit of profit and shareholder interests, on the one hand, and ESG, sustainability and stakeholder interests, on the other, are mistakenly seen as being in opposition to each other. It is aimed to any person dealing with governance issues (including legislators) and offers practical recommendations to those within corporations in charge of organizing governance.

Pertinent for anyone affected by business activities, it provides a perspective on a balanced approach of corporations' expected contributions to a better society, within a European context. It also addresses certain issues, adjacent to corporate governance, such as fair sharing, measurement, relations with governments, which contribute to improving corporations' efficiency and their impact on social and ecological environment.

These guidelines are applicable to both public and private corporations. However, for smaller firms, it is important to maintain a lightweight and flexible approach, ensuring that these guidelines' impact on their workings is proportionate to their means and capabilities.

I. THE FOUNDING PRINCIPLES

How corporate purpose can bring shared and sustainable prosperity to business and society

Corporate purpose is the determination of a corporation's view on its business and it position within society. More precisely, corporate purpose introduces a component—purpose— that belongs to a regime of action which carries intentionality and is infused with norms and values. As such, corporate purpose[1] may be understood as a particular "set of beliefs about the meaning of a firm's work beyond quantitative measures of financial performance."[2] For the British Academy, "a corporate purpose is the expression of the means by which a business can contribute solutions to societal and environmental problems. Corporate purpose should create value for both shareholders and stakeholders."[3]

[1] A difficulty arose from the use of the word purpose both for the corporate one as traditionally term ("*objet social*" in French) and the broader purpose determined by a corporation which relates to its mission ("*raison d'être*" in French). As such, we distinguish the purpose of the corporation (i.e. its role in society) from multiple and variegated corporate purposes (i.e. their aimed achievements).

[2] Quoted from Gartenberg, Prat, and Serafeim (2019, page 2). Durand and Huynh (2022) also caution that solely proclaiming a purpose is not enough for a company to become purpose-oriented because the social value orientation of firm members interact with internal and external stakeholders' preferences which may or may not be prosocial.

Durand, R., & Huynh, C.-W. 2022. Legitimacy judgements and prosociality: organizational purpose explained. In Gerry George, M. R. Haas, H. Joshi, A. McGahan, & P. Tracey (Eds.), *Handbook on the Business of Sustainability: The Organization, Implementation, and Practice of Sustainable Growth*, Edward Elgar Publishing Ltd, p43-62

Gartenberg, C., Prat, A., & Serafeim, G. 2019. Corporate purpose and financial performance. *Organization Science*, 30:1–18.

[3] Principles for Purposeful Business, the British Academy; Future of the Corporation, November 2019

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Corporate purpose, as a statement reflecting a company's *raison d'être* and its long-term maintenance, may or may not align with the organization's leadership practices. This potential dissonance between words and actions can negatively impact stakeholder perceptions and their level of engagement with the firm.[4] Indeed, corporations should aim to cultivate a work environment that fosters individuals' ability to develop a fulfilling professional life. This entails providing opportunities for shared meaning, promoting creativity, nurturing reasoning and interpretation skills, facilitating collective collaboration, and embracing the potential of individuals to assume leadership roles within the firm and, more broadly, society.

A corporate purpose may exert a profound influence in shaping and directing every business decision. The extent to which a corporation contributes to society and impacts the environment differs across companies, both in their actual decisions and what they communicate. By not adopting an explicit purpose, a corporation often implicitly prioritizes the maximization of shareholder value, which can be understood as its preferred objective. Whatever their choice to adopt or not a purpose, transparency about environmental, social, and governance (ESG) issues and related decisions becomes crucial in this context, enabling stakeholders to make informed choices regarding their level of engagement with the corporation. It allows them to assess whether and to what extent they align with the values and objectives of the company in question.

To leverage a purpose as a competitive advantage, certain prerequisites must be fulfilled. It is essential not only for the leadership practices to set an exemplary standard but also for the individual work values of its employees to align with a corporation's purpose. Failure to meet these criteria can lead to cynicism and hypocrisy within the organization. Moreover, companies must navigate the diverse landscape of stakeholders, who may perceive and value a given purpose differently. While some stakeholders may find alignment between a purpose and their own preferences, others may contest the prioritization and hierarchy of issues associated with the purpose.

The recognition that a well-crafted and effectively implemented corporate purpose contributes to the enduring success of businesses and fosters shared prosperity is gaining momentum. Its adoption stems from an ethical view of economic activity that integrates societal concerns, such as mitigating climate change, reducing biodiversity loss, avoiding human rights violations, and treating employees and other workers fairly, into the core of corporate activities. Long-term cohesion between society and business occurs when businesses position their purpose within a larger societal framework and embed it at the heart of their strategic decisions. At the European level, advancing regional and national interests goes in hand with promoting corporate purposes that respect values beyond mere economic profit.

Against this backdrop, the successful adoption and implementation of corporate purpose requires an appropriate governance framework.[5]

[4].Durand, R. (2023). From the Boardroom: Making Purpose Research Relevant for Practice. Strategy Science. 8:149-158

[5] The recently concluded Scottish Government Business Purpose Commission final report illustrates how a purpose business commission can advance policy formulation and practical implementation of business purpose to forge common purpose and promote shared prosperity. See Durand (2023) cited above in footnote 2.

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An increased sense of responsibility rather than an accumulation of layers of constraints

The question regarding the position of firms within society and their relationship with the political community, which acknowledges their legal existence, is not new. Renowned lawyers and economists have long highlighted the rapid acquisition of power by the structured and functioning enterprise as a legal entity, often rivaling that of the State as a political institution. Figures such as Ripert in France, Hayek in Germany, and Berle and Galbraith in the U.S. have all recognized and commented on this longstanding phenomenon, which has given rise to what is commonly referred to as the "*industrial state*." This "*political*" dimension of corporations, further amplified by their production of influential products and services that shape our way of life, forms the foundation for concepts such as *Corporate Social Responsibility* (CSR) and *Purpose*.

The authority granted to corporations to acquire and allocate assets must be exercised within the scope of their primary function, which is to carry out their business project. Their legal personality is conferred precisely for this function. Historically, corporations operated within clearly defined boundaries set by charters or concessions enacted specifically for each entity. It is worth noting that corporations are one of the rare organizations where a collective vision, rather than a mere aggregation of individual rights, define their purpose. By embracing this approach, corporations can play a vital role in upholding social cohesion and are well positioned to make decisions that prioritize the preservation or enhancement of common goods. In essence, their purpose is not to pursue profit at the expense of stakeholders or society, but rather to pursue profit in a manner that is sustainable and contributive.

Fair sharing

The concept of value added, which measures the wealth generated from given assets within a specific timeframe, has held a central position in economic theory, spanning the works of Adam Smith and Keynes via those of Ricardo and Marx. It has been a catalyst for the emergence of numerous economic theories. The division of income between capital and labor, serving as a fundamental aspect of economics throughout history, continues to be a topic of active contemporary debates.

In neoclassical theory, the remuneration of capital and labor is believed to correspond to their respective marginal productivity in terms of value (assuming perfect competition and the absence of rigidities in goods and labor markets). According to this view, the production function leads to a stable distribution of value added between these factors. The conflict between capital and labor is thus mitigated, as any increase in wages for workers would lead to a corresponding decrease in employment (due to capital-labor substitution), thereby maintaining the share of value added unchanged. In this context, the conflict arises primarily between employed and unemployed workers. However, there is currently no comprehensive economic theory that provides an optimal distribution mechanism for value added among production factors. Nevertheless, several objective factors are known to influence the distribution of value added. These factors include technological progress (which can lead to

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labor-saving innovations), the cost of capital (reflected in interest rates), the bargaining power of employees, and the degree of openness of the economy (which impacts factor mobility).

The current period of societal and environmental transition presents an opportunity for reevaluating the concept of sharing, particularly in relation to the delicate task of establishing a distribution that ensures both the economic equilibrium of the firm and the just remuneration of all parties involved in its success. This concept, commonly referred to as "fair sharing," takes on heightened significance.

Corporate governance plays a pivotal role in determining how the value generated through a firm's activities is shared among its various stakeholders, including shareholders and others who contribute to the firm's achievements. The objective of fair sharing is to enable the organization to thrive while simultaneously maximizing the satisfaction of all stakeholders in recognition of their contributions. Fair sharing should be viewed as a tool for promoting both economic and social efficiency. It is not an end in itself, but rather a principle and means through which sustainable outcomes can be achieved.

In the context of the evolving societal and environmental landscape, the notion of fair sharing invites us to explore innovative approaches that go beyond traditional paradigms. By embracing fair sharing as a guiding principle, corporations can foster greater harmony among stakeholders, ensuring that their participation is duly acknowledged and rewarded. This principle serves as a cornerstone for achieving a more equitable and prosperous future.

A project primarily for European corporations

In Europe, there has been a tendency to replicate solutions and practices developed in the United States. This can be attributed to factors such as the overall strength of the US economy, including its corporations, the perceived efficiency of US extraterritoriality, and influential rankings (like the World Bank's) that position US practices as the best. However, simply duplicating US approaches does not guarantee efficiency or success in the European context. Between the US model and the Chinese authoritarianism, there is an opportunity to cultivate a distinct European model, one that embodies its own unique values and priorities.

Economic activity should prioritize serving people. Large corporations possess the power to influence both human behavior and the natural world, and so do smaller firms at a lower scale individually, and in aggregate to a high extent. Consequently, the definition and implementation of corporate strategy must encompass a sense of responsibility that extends beyond profit-making. This view promotes an emphasis on business ethics that goes beyond mere compliance with rules and codes. Business ethics should be viewed as a practice, a tool to foster respectful and open debates with stakeholders to help reaching a shared vision with stakeholders and avoid falling into systematic blind spots that could hinder progress.

The only alternative to trusting companies to act responsibly is to impose constraints, which, if taken to an extreme, contradicts the spirit of entrepreneurship. While it is widely acknowledged that corporations, like any other entity or individual, are not immune to selfishness and disregard for the interests, values, and practices of others, we firmly believe that committing to a purpose that incorporates sustainable and shared value, including consideration for those involved in and affected by the business of a corporation will improve a corporation’s impact on both society and the environment.

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The choice to orient economic activity in this manner is a national or supranational one (although some major corporations can also influence it in a determining manner). It would be naive not to acknowledge that such a choice may potentially create a competitive disadvantage for European firms compared to foreign companies that do not share the same objectives. Therefore, this is a matter that governments and public authorities when enacting legislation, must carefully consider.

For instance, the EU's Corporate Sustainability Due Diligence directive draft introduces a new requirement for corporations to consider their impact on human rights and the environment. It may be said to establish an obligation for corporations to align their business practices with international human rights and environmental law. A close cooperation between governments and corporations is key to ensure that these objectives are achievable and aligned with what firms really face and can control in the multiple markets where they operate. Likewise, climate actions present a significant opportunity to foster private-public partnerships, an effective tool particularly for infrastructure projects. This approach can be applied more widely across various sectors. Hence, as corporations are increasingly being tasked with implementing objectives set by governments, such as carbon reduction targets, it is essential for governments to view corporations, as well as those affected by business activities including people and communities across global value chains, as partners and involve them in the determination of these objectives and priorities.

A model recognizing the importance of entrepreneurs

It is crucial for any regulator to recognize that corporations, regardless of their scale, typically emerge from the vision and courage of one or several individuals who take the leap of launching a business. At the corporate level, maintaining an entrepreneurial spirit and mindset becomes challenging as the organization becomes more institutionalized. Yet, nurturing and preserving this entrepreneurial behavior within corporations is vital for fostering innovation, adaptability, and continued growth. Striking a balance between institutionalization and fostering entrepreneurial spirit is a delicate but crucial endeavor for any company in order to succeed. Therefore, when imposing new regulatory or governance constraints, attention should be paid to avoid discouraging potential entrepreneurs.

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II. MAIN COMPONENTS OF THE PROPOSAL

1. A properly formulated purpose: "*A corporate purpose is the expression of the means by which a business can contribute solutions to societal and environmental problems. Corporate purpose should create value for both shareholders and stakeholders*."[6] A well-crafted purpose statement goes beyond being merely descriptive of a company's activities or having lofty aspirations of saving the planet or society. Instead, it serves to articulate how companies contribute to addressing the challenges faced by individuals, organizations, and societies. Simultaneously, it emphasizes the importance of companies to take responsibility to avoid or mitigate any adverse effects they may cause. This purpose statement is rooted in the understanding that a corporation's long-term success hinges on the growth and alignment of every element within its ecosystem, each driven by its own purpose. It acknowledges the interconnectedness of various stakeholders and aims to foster a sustainable and harmonious coexistence, where the prosperity of all parties is mutually beneficial.

   While corporations strive to generate profits, corporations must be clear about their purpose. This purpose not only reflects their commitment to sustainability and consideration of diverse stakeholders, including passive ones, but also safeguards their long-term profitability and the positively spill-overs on their constituencies. A well-defined purpose should align with the corporation's activities and be endorsed by its primary stakeholders; all parties must then take action based on this shared purpose.

2. Shareholders' ownership rights: The dominance of the Shareholder model, along with the growing attention towards other stakeholders, has overshadowed a critical question regarding the extent of ownership rights held by shareholders. This question's main ideas can be synthesized as follows: (i) ownership pertains to shares and not to the corporation itself (a legal fact often overlooked in practice) and (ii) share ownership confers specific governance and financial rights. Shareholders possess ultimate decision-making authority concerning the fate of corporations, empowering them to make crucial decisions and appoint (or dismiss) the board. The board, in turn, is responsible for shaping the corporation's strategy, considering stakeholders' interests, and appointing and overseeing the management. It is crucial to understand that ownership is not an absolute right; it carries a social function similar to other forms of private ownership. It must be considered in conjunction with the overarching purpose of the corporation and its broader impact on society's long-term sustainability. It is essential to take this broader perspective into account to ensure that ownership rights are exercised responsibly, aligning with the corporation's ultimate purpose and contributing to the well-being of society as a whole.

3. The increasing importance of boards: An effective governance model should not rely solely on the assumption that shareholders will naturally prioritize the interests of other stakeholders and the long-term sustainability of the corporation. In the upcoming years, the role of boards will become increasingly vital as they are responsible for setting the company's strategy. This strategy must consider its impact on the environment and society as a whole to a greater extent than before. Stakeholder interests, risk assessment, governance evaluation, alignment with purpose, strategy implementation, profitability

[6] Principles for Purposeful Business, the British Academy; Future of the Corporation, November 2019.

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(obviously), and overall coherence of actions will all converge towards this objective. As a result, boards will need to allocate more time to strategic matters and value creation, proactively anticipate risks, regularly evaluate governance practices, and more. Corporate law should explicitly mandate boards to fulfill these responsibilities, going beyond their traditional role of representing shareholders' interests in pursuit of the company's overall welfare. In other words, company law should clarify that the duty of the board is to promote the interests of the company - leaving then that concept and the development of it to the company law of each Member State – in such a way that creates sustainable value and contributes to mitigating pressures on planetary boundaries. In certain jurisdictions, the concept of "social interest" may encompass these various considerations and serve as a guiding principle.

4. Delegation and centralization: Corporations' efficiency hinges on the degree of delegation vs. centralization of authority. Given the complexity of issues, no single corporate board or committee can possess expertise in all areas. Similarly, not everyone should be involved in every topic; each corporate body has distinct functions that it should adhere to. The board, with its oversight role, possesses the duty and right to monitor the actions of the corporation and should be equipped accordingly. The governance structure of any corporation must clearly define the roles of each corporate body and promote reciprocal information exchange, while emphasizing accountability. This approach fosters efficiency and engenders trust. Delegation and centralization rely on trust, where each stakeholder willingly takes the risk of granting governing bodies the freedom to act, trusting that other participants will fulfill their respective roles. Trust is also a prerequisite for fair sharing, and fair sharing nurtures trust and collective ambition to maximize the total value generated by the firm. Trust, in turn, necessitates strict accountability not only for profitability but also for the fulfillment of the corporation's purpose. Trust requires coherence in decision-making and practices; for instance, decisions on political contributions should align with the corporation's communication regarding its social impact. Furthermore, there should be a clear willingness to openly discuss any unfavorable news within the appropriate corporate bodies, rather than attempting to conceal such information. Overall, coherence between words and deeds and adherence to corporate purpose generates trust.

5. Interests of the parties impacted by the corporation’s activities: Any corporate’s activity may involve an active or passive stakeholder’s interests. Management and the board need to have visibility of these possible and actual implications. The board is responsible for determining the extent to which these implications should influence specific business decisions. Merely demonstrating that demand for a product or service exists, or its potential profitability, is not the sole criterion; consideration for natural resources, biodiversity, social impact, and other aspects of sustainability are part of the equation. Yet, it is unreasonable to expect corporations to single-handedly solve by their own complex challenges such as climate change, human rights violations, or biodiversity issues. Their primary purpose is not inherently oriented towards these broad societal roles. Instead, it falls within the board's purview to decide how the corporation's activities should aim to avoid harm (to humanity and to nature) and actively contribute to their improvement. For instance, agricultural operators should not only refrain from pesticide use but also employ practices that regenerate the land. The level or degree of "social implication" is not fixed or universally defined; within the specific framework of the purpose of the company, considering the corporation’s unique circumstances and objectives, and based on a sustainability assessment of the

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business, it is a decision for the board to make in coordination with the general assembly of shareholders, and not for third parties who may have various agendas.

6. Employees' participation: Employees represent a critical constituency within a company. They are the individuals responsible for implementing the company's purpose on a daily basis and, therefore, deserve the board's specific attention. When making decisions, the board should not only assess the purpose's impact on employees but also evaluate their level of commitment to the company purpose's implementation.

   Ensuring that employees have a voice in corporate governance matters and requires suitable organization and customization based on each company's unique governance structure. The methods to involve employees vary and become strategic with the trends in long-term full-time employment decline, the rapid obsolescence of skills, and the diminishing importance of traditional hierarchical relationships, which may be accompanied by phenomena like "quiet quitting" or the "big quit."

   In addition to legally mandated means of employee participation and those determined at the company level, exploring additional opportunities for participation on a project-by-project basis or at a local level can offer further avenues for engagement. Analyzing how the employee community receives a decision and acknowledging their own sensitivity to the common good or ESG notions can help implement purpose and prevent any misconduct resulting from the employees' impossibility or unwillingness to reach purpose-related objectives.

   For corporations with work force who are not in employee positions recognised by labour law, including parent companies and lead companies of global value chains, a broader inclusion of worker participation across the business, the corporate group and global value chains should be considered.

7. Measurements: In order for decision-makers to be held accountable for adhering to corporate purpose imperatives, a shift is needed in the metrics used to evaluate a firm's performance. This shift is also imperative for firms to be compared effectively and for investors to accurately assess risks. To achieve this shift, it is necessary to broaden the current scope of assessment, which is primarily focused on accounting performance, to include the externalities that firms generate for the environment and society. Some firms may generate a net positive impact (with positive externalities outweighing negative ones), while others may have a negative overall impact. These indicators need to reflect integration of sustainability into the governance and the progresses made by firms as an estimation of their efforts toward reaching objectives compatible with international agreements por science-based targets. These non-profit related measures of effort and performance must be transparent and accessible to customers, investors, and the labor market so that economic actors can adjust their preferences accordingly.

   The convergence of reporting standards can be achieved through either de jure regulations imposed by law or de facto competition among providers to offer the best-in-class extrafinancial performance information. Notably, there is an ongoing geopolitical battle, with the United States pushing for soft law recommendations through the IFRS/ISSB, while the European Union seeks to regulate the provision of this information through directives that require investors to disclose their ESG orientation. In our opinion, de jure standardization holds the most promise for safeguarding the interests of the most vulnerable stakeholders, contributing to giving

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a level playing field for sustainability-oriented businesses, and providing legal certainty for business decision-makers as well as for those affected by business. Europe should enforce an expanded version of performance metrics that encompass multiple criteria, moving beyond solely accounting performance and incorporating voluntarily disclosed indicators. This approach would serve as a requirement for firms seeking access to European markets.

8. Fair sharing: A successful fair sharing society can be defined by two key factors: (i) the fulfillment of individual and collective needs in a satisfactory manner, and (ii) the provision of solutions to these needs that do not compromise economic, social, and ecological well-being. Within a market economy, it is crucial to prioritize the achievement of both economic and social efficiency.[7]

   The corporate governance debate has long revolved around the perceived tension between the interests of shareholders and other stakeholders. However, this conflict is not a zero-sum game. Quite the contrary, establishing strong connections with various segments of society generates value, not only by fortifying the business model but also by addressing the issue of equitable value distribution. Fair sharing strategies provide companies with a framework to reconcile profitability with societal needs. These strategies are not merely ethically important ends; they are economically intelligent approaches to success. They serve as fundamental guidance for companies to achieve sustainable economic development and reduce social inequality by adopting strategies that prioritize the needs of as many stakeholders as possible and improve the relationship between companies and society.

   Fair sharing is less about philanthropy, social responsibility, or ethics, than about enhancing business practices while simultaneously promoting societal prosperity. Fair sharing becomes an integral part of a company's strategy, entwined with social and financial costs and benefits. It is not a one-time activity but an ongoing process that entails a series of actions aimed at achieving these goals. The allocation of created value should be annually reviewed and monitored by the board, subject to assessment during the shareholders' meeting in light of the adopted purpose. Fair sharing also serves as a means to establish consensus on specific objectives such as ESG goals. Employee compensation, including long-term incentive plans, should incorporate variable components tied to environmental or social performance. To make it applicable to employees beyond upper management, the attainment of these objectives can be assessed at local levels such as specific sites, plants, or activities.

9. Regulating Competition: Historically, economic law, particularly competition policy, has been developed as a distinct project, separate from social and environmental considerations. This approach has led to a series of reforms since the 19th century that have promoted industrialization and economic globalization. These reforms affirmed that commercial companies are legal entities akin to individuals, thereby safeguarding their freedom and autonomy.[8] They facilitated the liberalization of capital, goods, and services markets, along with the generalization of freedom of establishment, promoting corporate mobility. Furthermore, regulatory responsibilities were transferred to

[7] Manifesto "Shareholder Duacy and Efficient Governance for the XXIst Century Responsible Firm", Bruno Deffains, Rodolphe Durand and Daniel Hurstel, July 2021. Available at SSRN 3894234

[8] Mahoney, J. T. (2023). Corporate personhood and fiduciary duties as critical constructs in developing stakeholder management theory and corporate purpose. Strategy Science, 8:212-220.

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independent administrative authorities to ensure neutral market regulation, free from political influence. Throughout this process, there was a strong belief that the laws governing business corporations and markets would primarily aim to ensure free competition, with the ultimate objective of promoting economic growth and preventing abuse in transaction and market relationships.

Economic efficiency, based on and contributing to sustainability, must remain a crucial objective, and freedom of enterprise and consumer sovereignty the conditions for meeting it. By instilling trust in the values inherent to a market economy, we can minimize unnecessary interventions in business governance. In today's landscape, companies are confronted with compelling incentives to embrace sustainability as a fundamental aspect of their operations. Some consumers are actively demanding greener products, and the implementation of environmental taxes and regulations has made at least some environmentally harmful practices economically burdensome. The force of competition often drives these transformative pressures into the boardroom. The need to compete motivates companies to surpass expectations in meeting consumer demands while simultaneously optimizing resource utilization. This impetus prompts businesses to reimagine their models, invest in green innovation, and proactively address the evolving needs of a dynamic and more sustainable market.

However, in recent years, the landscape has undergone a notable shift, particularly in the context of ESG orientation and foreign direct investment. There is now an increasing debate surrounding the integration of social and environmental objectives into the norms that form the legal framework of the contemporary economy. These objectives are not merely seen as exceptions to proclaimed economic rights and freedoms but are increasingly viewed as fundamental goals *per se*. Consequently, the mandate of economic regulators may need to adapt accordingly. This dynamic suggests that economic law is entering a new age. In this evolving context, it is crucial to foster a deeper understanding of the growing integration of social and environmental issues within competition policy. What issues does it address? How is this integration being implemented? What are the anticipated consequences? What further extensions can be explored? Advancing the reflection on these questions becomes paramount as economic law undergoes significant transformations to address both sustainability and competition imperatives at once.

10. Co-construction with States: Ethics and compliance now lie at the core of challenges faced by companies, regardless of their size or sector, both domestically and internationally. Companies are subjected to a multitude of constantly evolving regulatory constraints concerning ethics and transparency, such as anti-money laundering, anti-corruption, personal data processing, insider trading, competition policy, and CSR. However, it is important to recognize that these compliance obligations that business leaders often perceive as restrictive and bureaucratic also can contribute to progress, trust, and garner support from managers and employees. They have the potential to enable companies to navigate their markets more thoughtfully, enhance their reputation, and influence customer choices in favor of their products and services.

    Adopting such an approach, finance, strategy, and corporate sustainability intertwine to establish stronger connections between business outcomes and social impact. New metrics bridge the gap between meeting social needs and achieving business objectives. They evaluate the creation of economic and social value in relation to costs,

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differentiating non-financial performance from traditional measurements such as profit. Globally, this approach can define new competitive advantage strategies, wherein companies address societal issues alongside business objectives within their overall strategy. The process begins with the organization's purpose, which shapes its commitments related to products, services, value chain activities, and investments in productivity enhancement. However, effective implementation necessitates cooperation with the state. Co-constructing a relevant legal framework serves as an engine for purpose-driven companies to achieve their objectives at scale. It also drives innovation by identifying opportunities that benefit both the business and society, ultimately creating a sustainable future for all stakeholders.

However, we need to acknowledge the international context in which these virtuous mechanisms are intended to operate. For instance, in the U.S., regulatory bodies such as the Securities & Exchange Commission, the Federal Reserve banks, the Treasury Department, and other independent agencies have refrained from mandating disclosure rules for publicly-traded corporations on many social and environmental matters. Not to mention many other areas of the globe where no legislation even exists on these issues. By contrast, the European Union has been at the forefront of developing laws and regulations to tackle climate change and expand corporate programs and reporting on ESG issues. It follows that we need to keep in mind this approach’s impact on European firms’ competitiveness within a globalized economic system.

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III. SPECIFIC DEVELOPMENTS AND ADDITIONAL PRACTICAL RECOMMENDATIONS

1. Sharing and implementing a purpose: " *(…) Once adopted, delivering on corporate purpose requires appropriate structures, systems, processes, financing, measurement and incentives both outside and within the boundaries of the corporation itself.*"[9] A purpose can serve as a valuable asset when embraced by all stakeholders, including managers, board members, shareholders, and employees. If not genuinely shared, it runs the risk of devolving into mere "social washing" or "green washing" - empty gestures devoid of true commitment. Therefore, the formulation of a purpose must involve all relevant parties, with a particular emphasis on employees. Additionally, it should be ratified by the shareholders, ensuring their alignment with the company's direction. Moreover, every decision made within and on behalf of the firm should be evaluated against the backdrop of the purpose statement. A purpose is not a mere flag to be waved during strategic moments or for communication purposes; it is an integral element that shapes the functioning and operations of the corporation.

2. The role of the Shareholders: Shareholders evaluate the board's performance and take action when deemed insufficient. They should explicitly align their decisions with the pursuit of the company's purpose and the establishment of trust with other stakeholders. The evaluation should encompass the achievements of the board with respect to performance (see above paragraph on measurement), strategy, and alignment with the purpose. This crucial step fosters organizational coherence and bolsters societal acceptance. Also, decisions presented to shareholders, especially strategic moves, should undergo an assessment of their alignment with the company's purpose and their impact on employee, clients, suppliers, and communities. Shareholders should actively endorse and validate the implementation of the company's purpose.

3. The role of boards and their relation to management: Boards will significantly increase in importance, as mentioned earlier. They will dedicate more time to strategy, shaping a coherent societal vision, analyzing risks, and ensuring the effective implementation of the purpose throughout the firm. However, this expanded role should not encroach on management's responsibilities nor result in redundant work. Conversely, management should not restrict boards to routine matters and seek their mere endorsement, as is often the case. Management can only benefit from providing the board with necessary information for independent judgment. Conversely, individual board members should not satisfy themselves with limited information provided or ignoring so-called non-financial performance information, incorrectly perceiving their duty as primarily protecting shareholder interests by maximizing profitability.

In a board, independent and mature cooperative relationships are vital. This necessitates a board that has sufficient time and resources to form its own opinions and engage in open discussions with management, while maintaining critical scrutiny. Board members should have the ability and financial means to seek insights from external advisors, chosen experts, management, as well as lower levels of the organization when necessary. Additionally, boards should dedicate more time to risk assessment and proactively

[9] Principles for Purposeful Business, the British Academy Future of the Corporation, November 2019.

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anticipate factors that could potentially undermine the company's value creation and reputation. These practices foster the cultivation of collective intelligence, a key asset in corporate culture.

4. Composition and working methods of boards: Given the expanded scope of their responsibilities, which includes implementing the corporate purpose while actively addressing social and environmental concerns, responding to public pressure and expectations, and navigating uncertainties and risks, boards must strive to incorporate diverse perspectives. To effectively tackle current challenges, it is crucial that board members bring a range of perspectives stemming from diverse educational backgrounds, genders, geographical origins, past experiences, and mindsets. Regularly reviewing the board's composition is necessary to ensure alignment with evolving challenges.

The question of whether boards should include experts in fields such as climate, energy transition, and digital revolution is frequently raised. While boards committed to sustainable practices require an understanding of these issues, they do not necessarily need to have specialized expertise in every area. Including experts directly on the board is not always the optimal solution. Board size is limited, and it is essential to ensure representation of individuals who are familiar with the corporation's activities. Access to external experts to provide insights on specific matters, such as the climate impact of a particular activity or project, is appropriate, and the board should determine the most effective means to obtain such expertise.

Certifying board members on climate or human rights challenges, designating a board member responsible for ensuring stakeholders' interests are duly considered, establishing an impact committee in charge of representing outside parties' interests with a board member's involvement, and providing adequate financial resources for accessing expert advice are all suitable approaches. Furthermore, regularly training and raising awareness among board members about sustainability and governance issues will enhance their effectiveness.

The presence of independent board members is often considered a hallmark of good governance. However, it is important to recognize that the concept was primarily developed to safeguard the interests of minority shareholders in companies with controlling majority shareholders. Therefore, the focus should not solely be on the number of independent directors, but rather on the valuable contribution they can bring to board discussions. While independent directors can be beneficial, their effectiveness relies on having relevant expertise and experience, sufficient availability of time, a genuine interest in the corporation's growth, and maintaining independence even when their own term is up for renewal.

Boards should regularly assess whether their composition, including the skills and availability of each member, as well as their processes, are conducive to achieving their goals and equipping the board with the necessary expertise, commitment, and agility.

In terms of processes, evaluations of significant board dysfunctions often reveal a lack of attentiveness and dedication among board members, along with a passive reliance on management information. It is not uncommon for major failures to occur in companies that have received excellent governance ratings, highlighting the danger of a compliance approach. To avoid this, boards must modify their agendas to move beyond formalities and openly discuss strategy, culture, and risks without fear of breaching apparent and

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formal consensus. Seeking impartial information and staying informed about the company's activities and its environment are essential for board members to provide value without duplicating management's work.

Boards should regularly evaluate the effectiveness of governance practices, their own performance, and the company's reporting practices. When it comes to decision-making and the prioritization of interests, challenges and discussions should occur within the board and involve those who have a stake in the decisions. These considerations can also be taken into account when renewing board mandates. However, they should not be used as a means to question board members' liability, as long as they fulfill their duty to duly consider the interests at stake.

5. Employees and work force: Differentiating between the corporation and specific projects or activities can bring clarity to the issue of employees and the workforce. Decentralized decision-making at the project level can facilitate the implementation of innovative solutions. Employees imprint the culture of the corporation and best understand the environment; they are best positioned to design and carry out a given project and discuss fair sharing both in terms of governance and remuneration as related to the project. This approach also allows for the inclusion of the interests of workforce members who are not directly employed by the corporation but are involved in its implementation.

Upskilling, training, and prosocial engagement programs are suitable for employees who may have limited tenure with a specific firm. Considering training expenses as an asset and treating them accordingly in the corporation's accounts recognizes their value as an investment rather than a mere cost contributing to the product or service.

Regarding increasing employee involvement in decision-making processes at the corporate level, options include broader consultation, additional membership in consultative roles, or greater representation on boards. Different models, such as the German co-determination model or bicameralism, can be considered based on the firm's purpose and organizational structure. Regular reviews by boards should assess whether participation features remain aligned with the evolving nature of corporate activities. It is essential to maintain flexibility in legal structure options, ensuring that shareholders evaluate what is most appropriate not only for their own interests but also for the fulfillment of the firm's purpose.

6. Diversity of interests and societal issues: Conducting a sustainable activity goes beyond simply considering the interests of specific stakeholders. While identifying stakeholders' interests is a valuable tool for promoting responsible business practices, it is important to avoid creating lengthy lists that result in overwhelming checks. Merely following a "tick the box" process can lead to superficial satisfaction for the board without effectively addressing the broader set of stakeholders' interests.

Stakeholders encompass various constituents of the corporation, including active parties with contractual relationships as well as passive contributors who may be impacted by the firm's activities (for instance, sporadic suppliers, short-term shareholders, clients and bondholders; note also a legal trend in various countries tends to consider natural entities (rivers, forests, biodiversity, air ...) as legal entities whose rights corporations must respect.[10]) However, if third parties' interests should be viewed and analyzed in

[10] The Scottish company, Faith In Nature, has appointed a director to represent nature on its board.

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themselves, the interests of the corporation (which may include relevant third parties' interests in line with applicable company law) should remain the guide for board decisions. In other words, the new responsibility for a corporation's governance is to acknowledge the importance of these diverse contributors in the value generation process and determine how to effectively address their interests.

Third parties' interests often pertain more to specific projects rather than the overall corporation, and it is crucial to analyze and address them within that context. Implementing measures at a decentralized level offers numerous advantages, as it allows for the implementation of targeted actions towards appropriate parties that can be embraced and measured. On a per project basis, management can then prepare and present to the board specific stakeholder-oriented policies. Ad hoc committees representing those interests may assist the board, providing valuable insights and perspectives. Although such committees if any may have a consultative role without decision-making powers, they should be empowered to publicly express any disagreements with shareholders or board decisions. Boards must establish mechanisms to ensure visibility of these interests and incorporate them into their decision-making processes. This can involve appointing a board member responsible for overseeing stakeholder engagement and ensuring no interests are overlooked, or establishing a dedicated board committee focused on sustainability.

The involvement of corporations in political or general social issues raises important questions. Should a corporation take a stance on social issues that are not directly related to its purpose? How should corporations deal with growing pressure from the media and social activists to do so? While the legitimacy of such involvement may be questioned, corporations may find themselves compelled to speak out due to their power and impact and the pressure exerted by different kinds of activists. It is also crucial to ensure that these positions do not become an opportunity for shareholders, board members or senior executive management to promote their personal views and negatively affect the firm's operations.

7. Measurement: The measurement of performance has become the crux of the matter, particularly regarding how to assess multiple dimensions simultaneously. Should companies adopt a unified system for comparing their performance in the plurality of its dimensions? Or should professional experts and agencies play a role in intermediating the market? The evaluation of externalities, such as greenhouse gas emissions and carbon footprints, is progressing, but there is still more work to be done in valuing societal impacts. The European Sustainability Reporting Standards (ESRS) promote the reporting of double materiality, i.e., financial and impact materiality, and promises the compatibility of its standards with those proposed by the IFRS/ISSB, which however rely on the less constraining investor-oriented single materiality basis.

In our opinion, regulations should be put in place to provide a multidimensional definition of performance, and market access (particularly in Europe) should be granted only to suppliers that adhere to these principles by disclosing audited accounts of their sustainability performance. Note that if the responsibility for double materiality shifts solely to chief financial officers, as observed in certain countries, there is a risk of undermining the essence of this approach. Furthermore, accounting standards need to be revised not only in relation to externalities but also in determining what constitutes

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expenses versus investments. For example, expenses related to employee training and well-being are currently considered costs rather than investments.

A logical next question arises regarding the contributions of top executives beyond financial performance and how their compensation should be structured. Emphasizing a plural performance measurement approach requires remuneration committees to modify their practices and expand the scope of evaluation to incorporate non-financial indicators. Executives should be rewarded not only for financial results but also for their contributions to broader aspects of performance, such as achieving the firm's purpose and promoting a positive environmental and social impact. This shift in compensation practices aligns with the need for a more holistic assessment of executive performance that considers the long-term sustainability and societal implications of their actions.

8. Hybrid structures: Some corporations or their founders may wish to go further and integrate sustainability into the governance. They may for part of their activities give precedence to a social mission, and they may, in such cases, choose to adopt other corporation forms such as "société à mission" in France, cooperatives, CICs (Community Interest Companies) in England, or enterprise foundations in Denmark. An additional possible model is to connect traditional for-profit corporations with social-oriented structures, including associations and foundations. These structures allow different entities within a group to play distinct roles and fulfill specific purposes. Among many, one approach is to allocate a portion (or all) of the company's capital to a foundation with a dedicated purpose. Conversely, the company itself can establish a foundation to carry out a specific mission using allocated funds. Hybrid structures, for combining profit and social-oriented entities such as these listed above, are likely to gain prominence in the future. They are particularly beneficial for family-controlled companies that prioritize long-term visions and individuals seeking to ensure the continuity of their action through the promotion of organizations with well-defined purposes.

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