NICG Network for Innovative Corporate Governance

Board Dynamics

Roots and Horizons

we are curious and
free spirits

NICG 2024/2

NICG – Network for Innovative Corporate Governance

History. Present. Future.

«The dilemma is that the very things that made you successful in the past also make it extraordinarily difficult to be successful in the future».
Quote from Clayton Christensen, US-American scholar

Christensen's paradox captures the profound challenge of balancing the achievements of the past with the demands of an ever-changing future. In a world that is evolving faster than ever before, characterized by geopolitical shifts, rapid technological advances and dynamic market forces, this tension is even more pronounced. What once served as a solid foundation for success risks becoming an anchor that holds back progress in the face of constant change.

Yet it is neither beneficial nor inherently possible to let go of the past. As the Nobel Prize winning William Faulkner wrote: **«The past is never dead. It's not even past.»**

Faulkner's powerful words remind us that history is not merely an archive of distant, irrelevant events. Instead, it remains alive, woven into the fabric of our present and the foundation of our future. For business, this reveals an essential truth: every innovation, strategy and decision is shaped by what has been - the successes, failures, values and lessons learned. This applies not only to the history of an organization, but also to the experiences of the individuals who drive its progress.

The challenge is to know what to keep, what to adapt and what to let go. The real art is knowing when to draw strength from the past and when to let it fade into the background. It takes great sensitivity to know when to drop the anchor for stability and when to raise it to chart a new course. Anchors are not meant to hold us back, but to steady us until we are ready to sail ahead.

The 2024/2 edition of Board Dynamics highlights the evolving nature of corporate governance. Through the diverse perspectives of our authors, the NICG—a curious network full of free thinkers—continues to push boundaries. By combining the wisdom of experienced professionals with the fresh perspectives of emerging scholars, we aim to shape governance practices that meet the demands of a rapidly changing world.

Together, let's have bold conversations, foster innovative ideas and drive the evolution of governance practices.

Kind regards

Prof. Dr. Michèle Sutter-Rüdisser
Director ILE-HSG

Dr. Cornel Germann
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SIX

University of St.Gallen
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Multi-Stakeholder Engagement

Unlocking spin-off potential

Gilbert Ghostine
Chairman Sandoz

Anna Mattsson
Partner at McKinsey & Company

Prof. Dr. Michèle Sutter-Rüdisser
Director at the Institute for Law & Economics, University of St. Gallen; independent board member of various companies.

On September 3, 2024, the NICG Conference featured a panel on Unlocking Spin-off Potential with Gilbert Ghostine and Anna Mattsson, moderated by Prof. Dr. Michèle Sutter-Rüdisser.

Prof. Dr. Michèle Sutter-Rüdisser
Anna Mattsson, before delving into the Sandoz spin-off case, could you please share with us some high-level figures about the success rates of spin-offs?

Anna Mattsson
Traditionally, data used to show that around 85% of spin-offs create value. Unfortunately, it is no longer accurate. In 2023, we published a study considering a large sample of spin-offs and evaluated the success of both CarveCo (i.e., separated entity) and the RemainCo (divesting company) in terms of total shareholder return. Our findings show that only 30% deliver great results for both CarveCo and RemainCo. My explanation for such surprising statistics is that most of the spin-offs occur for the right reasons, however, in their execution and operationalization often things go wrong.

Prof. Dr. Michèle Sutter-Rüdisser
Let's talk about the success story, which is often linked to the people and their own mission. Gilbert Ghostine let's go back to February 2023, when the Novartis Board of Directors announced your appointment as Chair-designated of the new Board of Directors of Sandoz. What were the factors that made you accept the challenge?

Gilbert Ghostine
Michèle, I am glad that you said challenge and not job, because this was exactly how the conversation started with Novartis. Before my appointment I had many interviews with executives and board members, and I remember very well one of the questions that I got «Why are you interested in this job?». I soon admitted that I was not looking for a job bur rather for a mission. I had more than 30 years of work experience and knew very well that being in the life science and healthcare industry requires working for a cause. Overall, I believe that my straight answer made the following conversations way easier.

Prof. Dr. Michèle Sutter-Rüdisser
As a follow up question, before joining Sandoz you have been Firmenich's CEO for many years, how was the transition from CEO – active on 24/7 basis – to a Chair role?

Gilbert Ghostine
I think it requires a different state of mind. When you are in a CEO, CFO or other leadership roles days can be very intense. I had the privilege of conducting such a life for about nine years and I felt ready to make the shift from executive to non-executive.

Prof. Dr. Michèle Sutter-Rüdisser
Anna, in your career you have followed more than 100 M&A transactions, what are the major reasons for their pitfalls?

Anna Mattsson
The trickiest decision is the choice to actually spin-off. When a Board of Directors is facing such a critical corporate decision, there are three key considerations to take into account: implications for valuation, timing and speed of execution, and general feasibility. Luckily today, even though you cannot predict the future, you can run multiple scenario analyses and get an understanding for most related aspects.

Once the main decision is taken, it is up to the business to run the separation and rationalizing it. Nevertheless, the Board of Directors is responsible to set the right mindset – which in my view should be «until we the spin-off is complete, it is still one company, not two». This can be particularly challenging when separations become no longer amicable. Usually, the sticking points tend to be the allocation of assets and liabilities, financial capital, and human talent. On top of these critical decisions, the firm must remain focus on running the business as usual.

Prof. Dr. Michèle Sutter-Rüdisser
How was this initial phase for you, Gilbert, especially considering cultural and talent aspects?

Gilbert Ghostine
It was really a busy period. Before the spin-off, Sandoz was a commercial division, in other words a sales organization. This implied that we had 11 months to prepare Sandoz to be an international blue-chip company. We had to prepare everything, from the legal aspects of drafting the article of associations and internal policies, to the set-up of different corporate functions. A lot of work was also done to meet external investor expectations, for instance preparing the prospectus and organizing the first capital market day.

The most interesting aspect is that we faced these busy times with the awareness that we had the opportunity to create our own new world from scratch. This meant that over the first two months, I team-up with our CEO to understand strengths and weaknesses; this activity allowed us to identify three pillars of our strategy: our dependence on science, the need for a highly competitive supply chain, and excellency in execution.

Once we understood which competencies we had in house, we also had to start recruitment activities. I am very proud today to have a very diverse top management team executing on the mission.

Prof. Dr. Michèle Sutter-Rüdisser
Anna, when it comes to people and morale, how do separations differ from other M&A activities?

Anna Mattsson
Well, everyone gets very excited about M&A because it is all about growth. For separations, the atmosphere can be rather tense given than you are giving something away. However, what I tell my clients is that with separations you have the chance to create something new: you develop the new operating model, the composition of Board of Directors and Executive team. In a way, it is like doing a mini-MBA on the job by getting to know the company from end to end – from strategy to facility management. And given that along the way you are making tons of decisions, it is very exciting.

Prof. Dr. Michèle Sutter-Rüdisser
Gilbert, focusing on Sandoz, what would you say or the major strengths nowadays and what opportunities has the spin-off given to the shareholders?

Gilbert Ghostine
Novartis did an amazing job at looking after the child company Sandoz for many years. But at a certain point, when it was realized that there were some divergences between the two businesses, Novartis had the courage to opt for the spin-off. Indeed, this was a huge cultural challenge. When Sandoz got separated from Novartis, the spin-off implied that we had to face the reality of being in control of our own destiny. That felt very exciting.

Question from the audience
Mr. Ghostine, could you please reflect on the current relationship with Novartis and how it that evolving over time?

Gilbert Ghostine
When the strategy update was initially shared internally, some of our people were frustrated and understood that their employer would become Sandoz, not Novartis anymore. To support such change, we had to focus on culture and realize that with the spin-off we were actually getting independent again as a in 1886, where Sandoz was founded. In other words, we realized that our venture was not starting from zero, but we were standing on the shoulders of giants, women and men, that contributed to Sandoz over the years through a culture of entrepreneurship and pioneering research.

Question from the audience
Ms. Mattsson, could you please share some learning from when spin-offs go wrong?

Anna Mattsson
First of all, one of the most recurring failures is not being able to engage with the employees effectively and fail to create a compelling story. It often happens that executives start working on the spin-off project many months in advance to the rest of employees. So, in a way they have time to process the change and envision the future of the firms. Months later, when the rest of the organization is informed about the strategic change, executives tend to assume that everyone else is on the same level of understanding and conviction. However, that usually takes more time than C-level realizes.

Second, the risk of loss of attention from business as usual. When preparing a separation, a lot of energy and focus goes at the inner workings of the organization, which may have negative impacts on the regular activities. In fact, when spin-offs are announced, competitors tend to raise the bar by investing more resources on expanding market share and attracting talent.

Third, ending on a positive note, in the past separations could fail because of technical delays or issues. Today, this has changed completely, technology enables much more flexibility in implementing envisioned separations.

Question from the audience

At times, when spin-offs do not go as intended, after the separation, employees of the CarveCo tend to find ways to join the RemainCo entity. How can you prevent these unfortunate dynamics?

Anna Mattsson

Usually, firms introduce retention mechanisms in place to retain talent. My personal belief is that you can put all the financial measures you want in place, however, if you fail to win the hearts and minds of people, financial incentives will not be sufficient on their own. Non-financials measures like career opportunities or engagement with the CEO or other C-levels can be very effective.

Gilbert Ghostine

I am very much aligned with you, Anna, it is all about emotional engagement on the journey and final destination. Additionally, you always need to have a bench. When I finalized the composition of Sandoz's board, I thought we were fine for the next few years. In fact, we had two changes already in the first year. One of the board members, became the company's Chief Financial Officer, while another director, had to step down given that accepted an executive role in another firm. Fortunately, we had a bench, and we were able to react very quickly.

Prof. Dr. Michèle Sutter-Rüdisser

Dear Anna and Gilbert, thank you so much for sharing fascinating insights and for being so open and passionate about your engagements.

2024 Survey on Board Succession Planning

A Board Search Consultant Perspective

Dr. Cornel Germann
Senior Research Fellow in Behavioral Aspects of Board of Directors and Vice-Director at the Institute of Law & Economics, University of St.Gallen.

1.0 Introduction

Corporate governance meltdowns, such as the Lehman Brothers bankruptcy, the BP Deepwater Horizon oilspill disaster, and the Wirecard fraud scandal, have highlighted the critical need for robust succession planning at the highest levels of an organization.[1] These high-profile failures underscore the increasing complexity of business environments and the growing demand for specialized competences within boards of directors.[2] As organizations face more intricate challenges, it has become essential to ensure that leadership transitions are seamless, strategically aligned, and capable of navigating such complexity.[3] Despite this, there is currently not a «universally standardized» best-practice framework for succession planning, leaving companies to navigate this crucial process with varying approaches and effectiveness – about which (unfortunately) little is known in public.[4]

In response to the increasing complexity of board succession planning and the lack of a standardized approach, many nomination committees turn to board search consultants to support this critical process.[5] An analysis of UK annual reports found that 73% of FTSE 100 companies and 60% of FTSE 250 companies said they had received support from board advisers in the past.[6]

Board search consultants are specialized professionals tasked with identifying, evaluating, and recommending suitable candidates for board-level positions.

1 Sonnenfeld, J. A. (2002). What Makes Great Boards Great. Harvard Business Review, 09, 1–10.
2 Fields, R., O'Kelley III, R., & Sanderson, L. (2021). Board Refreshment and Succession Planning in the New Normal. Harvard Law School Forum on Corporate Governance, Link: https://corpgov.law.harvard.edu/2021/10/16/board-refreshment-and-succession-planning-in-the-new-normal/; Huse, M., Hoskisson, R., Zattoni, A., & Vigano, R. (2011). New perspectives on board research: Changing the research agenda. Journal of Management & Governance, 15(1), 5–28.
3 Germann, C. (2023). Chairperson Succession: Competences, Moderators, and Disclosure. Springer Verlag: Wiesbaden.
4 Harrell, E. (2016). Succession Planning: What the Research Says. Most Organizations aren't prepared. Harvard Business Review. Link: https://hbr.org/2016/12/succession-planning-what-the-research-says; Elms, N., Nicholson, G., & Pugliese, A. (2015). The importance of group-fit in new director selection. Management Decision, 53(6), 1312–1328.
5 Deloitte (2023). The never-ending story: CEO succession planning. Link: https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/the-never-ending-story-ceo-succession-planning.html
6 Doldor, E., Vinnicombe, S., Gauglan, M., & Sealy, R. (2012). Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms. Link: http://thinkethnic.com/wp-content/uploads/2012/02/Gender%20Diversity.pdf.

Their expertise extends across industries and company sizes, providing a broad perspective that enhances the decision-making process. One of the key reasons why nomination committees engage board search consultants is to promote objectivity in the selection process.[7] With limited qualified candidates available, internal biases or constraints can make it difficult to ensure fair and effective leadership transitions.[8] Board search consultants bring a level of impartiality by leveraging their vast networks and deep understanding of diverse industries, ensuring that companies are presented with a range of highly qualified candidates capable of addressing the evolving demands of corporate governance.

Much of that expertise – especially critical information about the succession processes and the competences required at the board level – resides within board search organizations and the minds of their consultants. This valuable knowledge, until now, has never been captured and published. As a result, there are limited insights into how board search consultants operate and the methodologies they use to guide companies through these vital transitions.

Having greater access to this information would allow us to better understand both the work that board search consultants do and how board nomination committees approach succession planning – shedding light on both the positive practices and potential shortcomings.

The 2024 Survey on Board Succession Planning addresses this gap. This «brain teaser» survey aims to provide initial insights into current succession practices and represents the views of managing directors, partners and senior executives of board search organizations. Conducted in-between May and June 2024 among 37 representatives from Switzerland (41%), Germany (39%) and Austria (20%), the survey provides insights into the complexities and challenges of preparing for board leadership transitions. Given the demographics of the survey (table 1), the findings are dominated by unlisted, family-owned companies (approximately 4,200 employees) in the manufacturing sector (46%).

7 Schepker, D. J., Nyberg, A. J., Ulrich, M. D., & Wright, P. M. (2018). Planning for Future Leadership: Procedural Rationality, Formalized Succession Processes, and CEO Influence in CEO Succession Planning. Academy of Management Journal, 61(2), 523–552.

8 Giambatista, R. C., Rowe, W. G., & Riaz, S. (2005). Nothing succeeds like succession: A crit- ical review of leader succession literature since 1994. The Leadership Quarterly, 16(6), 963–991.

This article presents the key findings of the survey in relation to current consulting approaches by company boards (chapter 2) and board search consultants (chapter 3).

As with «brain teasers», the content of the survey is not exhaustive, but intends to provide initial insights into board search and succession planning. Both are practices often associated with sensitive information and little communication (company perspective) and a highly competitive market (consultant perspective). Understanding how succession planning works allows to benchmark one's own processes against others (quality) and to prepare candidates (transparency).

Are you curious and want to exchange thoughts? Get in touch: cornel.germann@unisg.ch

Table 1: Survey Demographics

Question	%
Which industry do you mainly advise?	
Manufacturing	46%
Others (*or not willing to provide)	19%
Financial institutions	11%
Information and communication	11%
Health services	5%
Construction	3%
Consumer goods and retail	3%
Transport and logistics	3%
What is the predominant owners hip structure of your clients?	
Institutional investor ownership	38%
Family ownership	32%
Dispersed ownership	22%
Government ownership	8%
Are your clients predominantly stock-listed or privately owned?	
Private ownership	73%
Stock-listing	27%
What is the average number of employees working for your clients?	4 228

Question	%
Experience in board search consulting (in years)?	
≤ 4 years	16%
5 – 8 years	14%
9 – 12 years	22%
13 – 16 years	16%
17 – 20 years	14%
21 – 24 years	5%
> 25 years	14%
Your Title/Role?	
Partner	54%
CEO/Managing Partner	27%
Other	11%
Executive Director	8%
Your Gender?	
Male	68%
Female	30%
Diverse	3%
Your Age (in years)?	51

2.0 Result in Succession Planning from a Company Perspective

2.1 Background

In practice, the nomination committee or designated board members are responsible for addressing succession planning. Who this is often depends on size (SME, multinational), corporate form (listed, private) and ownership background (family, free float). They usually act as «independent gatekeepers», linking the company's strategic competence requirements with external candidates. There are four main tasks associated with this responsibility: overseeing succession planning, identifying and recommending candidates to the full board, onboarding new members, and conducting annual board assessments.

According to the «father of corporate governance», Sir Adrian Cadbury, a well-structured and goal-oriented process is essential for effective succession planning, which should be «on merit and not by any form of patronage».[9] Essentially, there are three main reasons why a systematic approach should be taken:

(1) Succession planning is time-consuming and requires a candidate with functional role expertise and teamwork attitude;

(2) Succession planning needs a transparent, fair election in the board and its process sequences are company-specific; and

(3) Succession planning requires a careful and confidential search to identify suitable candidates.

9 Cadbury, A. (1992, p. 23). Report of the Committee on the Financial Aspects of Corporate Governance. Burgess Science Press.

As mentioned above, the individuals tasked with this responsibility are usually the head of the nomination committee or the board chair, so they are often given a strong voice in the process. However, one significant drawback of concentrating power in the hands of one single individual, is the risk of «silo thinking».[10] On the one hand, this can cause board members to divide into groups based on their characteristics, which can lead to one-dimensional thinking. On the other hand, it may reduce the focus on promoting independence and diversity in the future composition of the Board. This can limit the variety of perspectives and ideas necessary for the board's balanced development.

The survey primarily aimed to evaluate, from a company's viewpoint, who holds responsibility for succession planning and the thoroughness with which this process is handled within boardroom settings. Thereby it sought to identify how aligned the company's succession practices are with best-practice standards, as well as the overall effectiveness of these practices in facilitating seamless leadership transitions. Key aspects explored included:

- Timing of the succession process (A.1 Timing)
- Identification of the responsible party for oversight (A.2 Process Lead)
- Duration of the process (A.3 Duration to Appoint)
- Degree of institutionalization of the succession planning (A.4 Institutionalization)
- Competences required (A.5 and A.6 Competence Dimensions)
- Key steps integral to the succession process (A.7 Key Process Attributess)
- Benefits of structured succession planning (A.8 Benefits of Planning)

Through these elements, the survey focused on whether the company's approach to succession planning is systematic, well-timed, and aligned with leading practices to support smooth leadership transitions.

2.2 Survey findings

- A.1 Timing: Succession planning at the board level is typically forward-looking and strategically launched before being formally discussed. However, it's still treated as a «time-limited project» rather than an ongoing activity.

- A.2 Process Lead: In nearly 90% of cases, either the board chair or the nomination committee chair leads the process. Less commonly, the vice-chair or company secretary takes charge. In cases with private equity involvement, the investment company often manages the process.

- A.3 Duration to Appoint: On average, appointing a CEO takes 184 days, a board chair 120 days, and a board member 111 days. This reflects a growing trend to carefully manage executive succession, especially in two-tier governance systems (e.g. Germany, Austria).

- A.4 Institutionalization: Larger companies tend to institutionalize succession planning, dedicating more resources and keeping the process a priority. However, about 30% of respondents believe there is room for improvement in formalizing processes, despite time-related challenges.

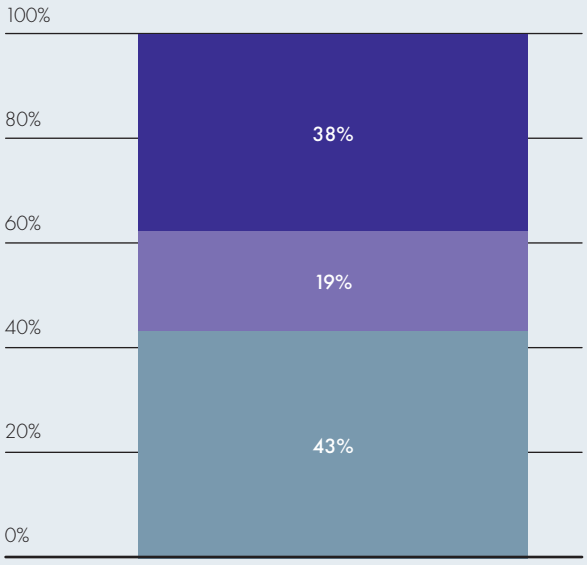
- A.5 and A.6 Competence Dimensions: Board search consultants identify business, leadership, and personal competences as the most critical qualities, with business/industry knowledge, visionary leadership, and HR management being currently the top three skills to prioritize.

- A.7 Key Process Attributes: The most important attributes for effective succession planning include identifying individuals' ambitions, utilizing multiple identification methods, and applying a step-by-step transition strategy. Addressing these three dimensions helps better understand the political dynamics within the organization (individual-related factors) and clarifies the scope of the process (organization-related factors), ensuring a smoother and more transparent succession approach.

- A.8 Benefits of Planning: Professional succession planning brings several benefits, including maintaining a continuous agenda, enabling quick decision-making, and reducing market uncertainty – all of which benefit shareholders and other stakeholders support in scope and candidate elected.

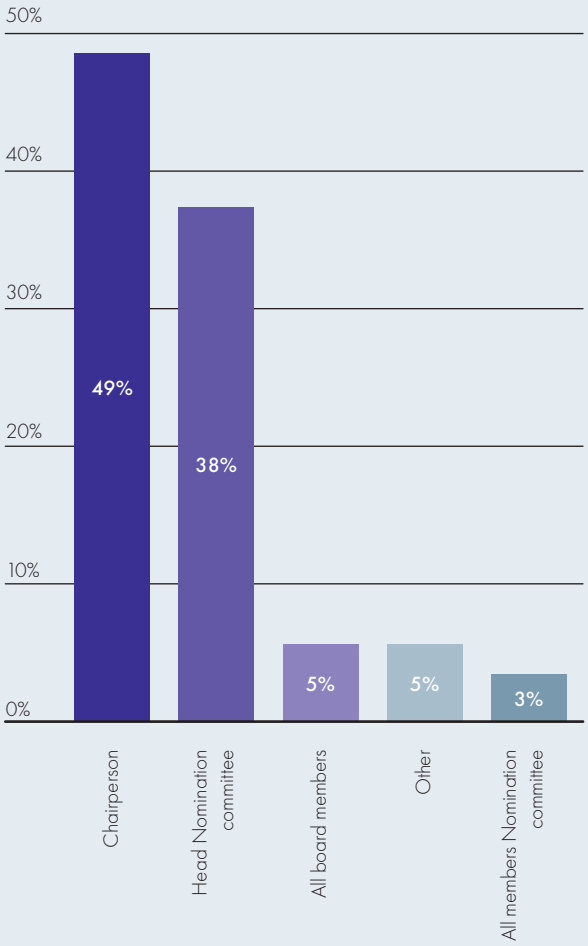
10 Olson, J. F., & Adams, M. (2004). Composing a Balanced and Effective Board to Meet New Governance Mandates. Business Lawyer, 59(2), 421–452.

A.1 At what point in time does board succession planning usually takes place in a company?

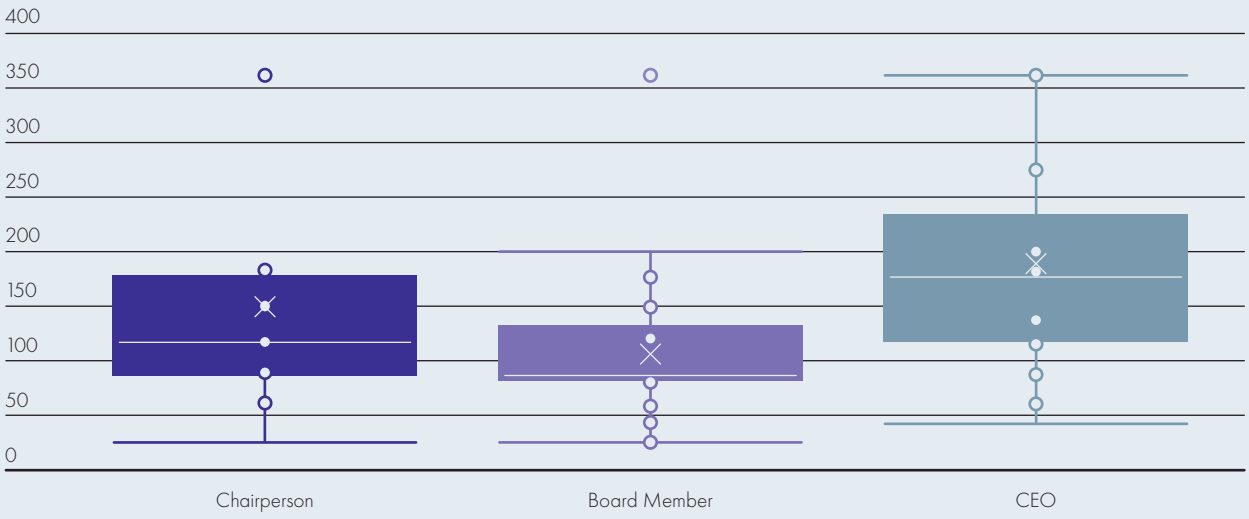


- Board succession takes place before the person has announced internally to step back/retire, also planning is part of an ongoing activity
- Board succession takes place before the person has announced internally to step back/retire, but planning is not part of an ongoing activity
- Board succession planning takes place after the person has announced internally to step back/retire

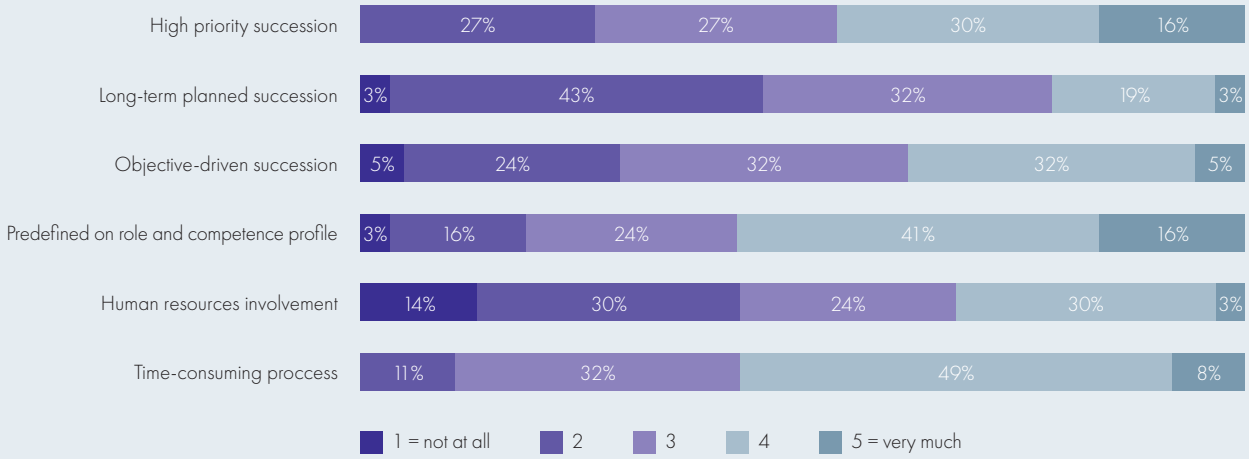
A.2 Who leads the succession process at board level?



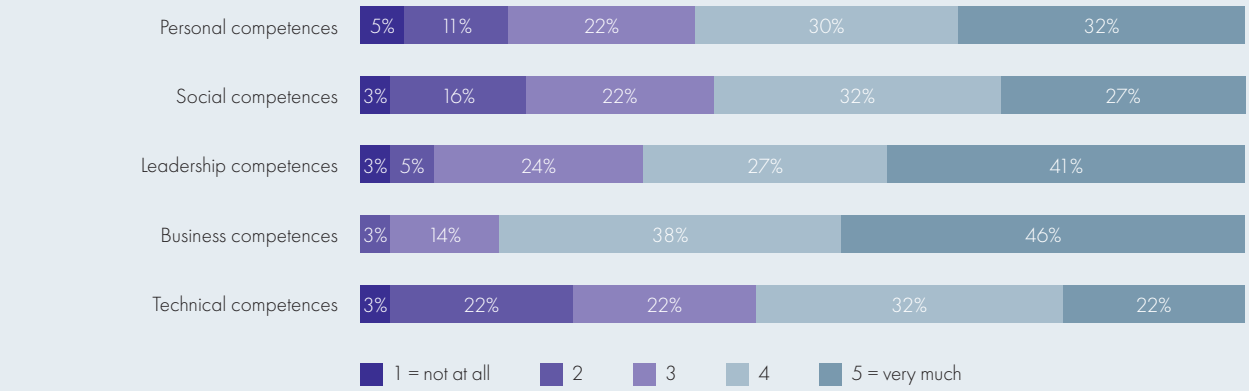
A.3 How long would it take for a company to appoint a successor if one of the following member leaves tomorrow (in days)?



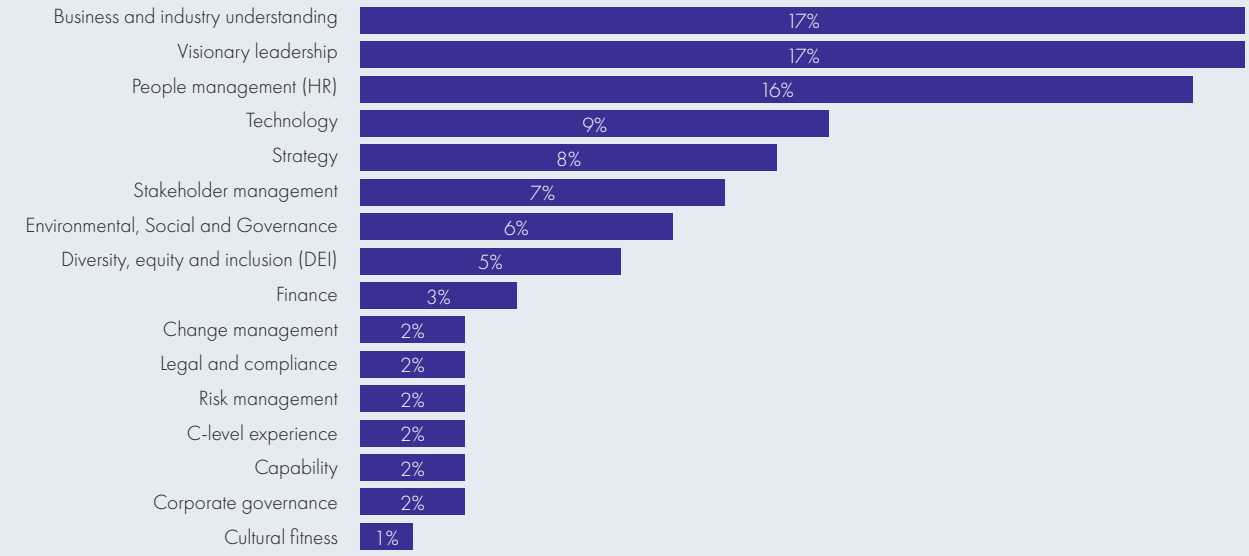
A.4 How institutionalized is board succession planning in companies?



A.5 To what extent focus companies on the following five areas of competences at board level?

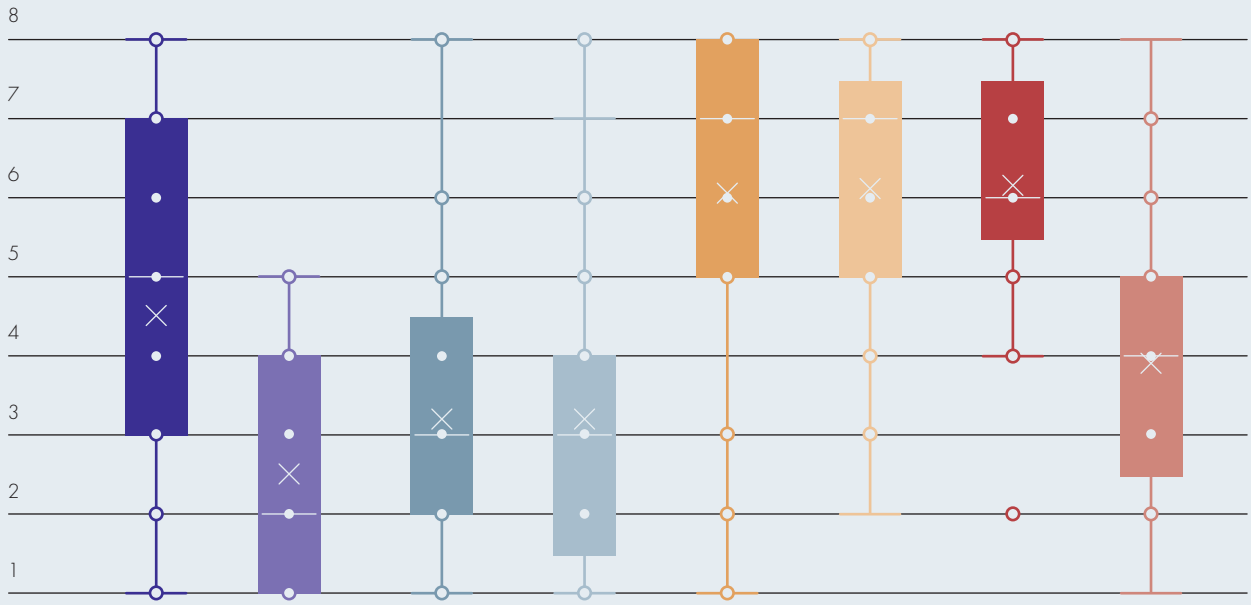


A.6 What are currently the top three specific competences at board level?



A.7 What are the most important attributes to include in a «board succession plan»?

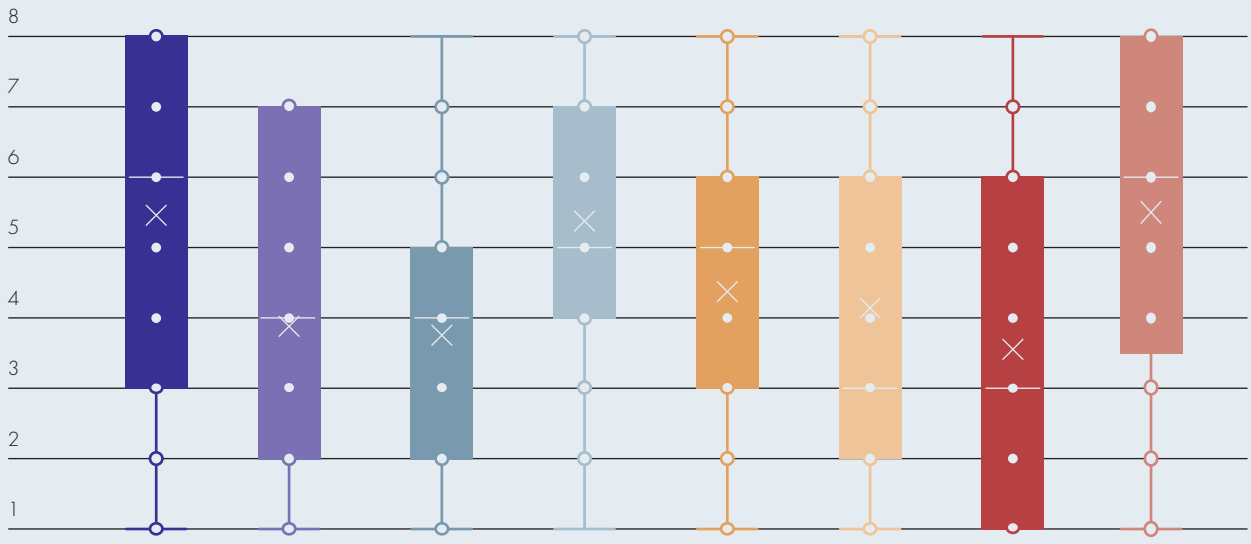
* 1 = most important attribute, 8 = least important attribute



- Outline critical functions
- Match skills needed
- Multiple methods to identify candidates
- Identify peoples ambitions
- Outline future role of position
- Understand stakeholder expectations
- Step-by-step transition strategy
- Understand organisations dynamics

A.8 What are the main benefits of a professional «board succession plan»?

* 1 = most important attribute, 8 = least important attribute



- Have an ongoing succession agenda in place
- Have an objective and goal-oriented succession process
- Alignment of the organisation's strategy and human resources with qualified leaders
- Ability to act at short notice
- Reduce the risk of losing experienced business leaders
- Fostering long-term company culture
- Improve long-term company performance
- Minimize market uncertainty to avoid shareholder and stakeholder pressure

3.0 Result in Succession Planning from a Consulting Perspective

3.1 Background

Once it is clear who will lead the board succession process, the designated individuals decide whether to involve a board search organization in the process. Typically, the choice of search partner is based either on traditional aspects (the search partner has been involved in similar processes in the past) or personal connections (a partner of the search firm is part of the board's professional network).

The involvement of a board search consultant may vary depending on the complexity of the assignment (the situation the company is in), the board's knowledge of succession planning (experience in leading such a process) and the nature of the leadership change (resignation, deselection or forced transition). Against this backdrop, and more specifically following the academic argument, there are four key reasons why organizations most often turn to board search partners:[11]

(1) To bring objectivity and transparency to the process;

(2) To enhance the external perception of professionalism;

(3) To provide guidance in defining the selection process and required competences; and

(4) To widen access to a larger pool of candidates.

Another important advantage of board search consultants is that they gain valuable insight from working with companies in a variety of industries.[12]

They are «in tune with the times» and have an eye for trends. This helps them to assess a company's approach to succession and identify areas for improvement, ultimately enhancing the quality of their advisory services.

Board search firms therefore play a crucial role in facilitating the recruitment process by managing the communication and activities between the company and the candidate.[13] However, these services come at a cost, which the board should consider when deciding whether or not to engage them.

The survey aimed to evaluate, from a consulting perspective, how board search consultants assess the quality and effort involved in succession planning. It sought to understand how consultants perceive both the efforts made by company boards and their own contributions, identifying areas of strength and potential improvement. Key aspects of the survey included:

- Quality of succession practices and reasons for either improvement or stagnation of quality aspects (B.1 and B.2 Quality)
- Company adherence to consultant recommendations (B.3 Best-Practice Realization)
- Pros and cons of involving board search consultants in succession planning (B.4 Value of Board Search Consultants)
- Unique selling points of board search consulting services (B.5 Unique Selling Points)
- Time commitment required for board search consulting projects (B.6 Time Effort)
- Fees associated with board and executive search mandates and related compensation models (B.7 and B.8 Search Fee)

By focusing on these areas, the survey aimed to shed light on the perspectives of board search consultants regarding the effectiveness of succession planning, the value they bring to the process, and the alignment between companies' efforts and consulting recommendations.

11 Doldor, E., Vinnicombe, S., Gauglan, M., & Sealy, R. (2012). Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms. Link: http://thinkethnic.com/wp-content/uploads/2012/02/Gender%20Diversity.pdf; Schepker, D. J., Nyberg, A. J., Ulrich, M. D., & Wright, P. M. (2018). Planning for Future Leadership: Procedural Rationality, Formalized Succession Processes, and CEO Influence in CEO Succession Planning. Academy of Management Journal, 61 (2), 523–552.

12 Coverdill, J. E. & Finlay, W. (2018). Contingency Headhunters: What They Do – and What Their Activities Tell Us About Jobs, Careers, and the Labor Market. In: Klehe, U. & van Hooft, E. The Handbook of Job Loss and Job Search. Oxford University Press: Oxford.

13 Simmons, O. S. (2019). Forgotten Gatekeepers: Executive Search Firms and Corporate Gov- ernance. Wake Forest Law Review, 54(3), 807–858.

3.2 Survey findings

- B.1. and B.2 Quality: Quality Improvement: Board search consultants generally rate board succession practices as 'average' (49%) or 'above average' (24%). Survey participants highlighted improvements in succession processes, particularly through increased professionalism, a stronger focus on company and board culture, and the use of assessment centers to thoroughly address both personal and business-related dimensions. However, there are still areas that require further improvement. The three most significant areas there include expanding the time horizon from short-term to long-term planning, overcoming reluctance to change that often stems from reliance on outdated thinking and traditional routines, and reducing the dependence on personal networks during key process steps and candidate selection.

- B.3 Best-practice Realization: Board search consultants are engaged as strategic sparring partners, with a key responsibility of critically evaluating existing processes and providing improvement recommendations. When consultants suggest enhancements to the board member search process, companies are most likely to adopt changes in areas such as expanding the candidate pool and addressing gaps between candidate profiles and required competences. To a lesser extent, recommendations are also implemented in refining internal processes and considering independent input from third parties.

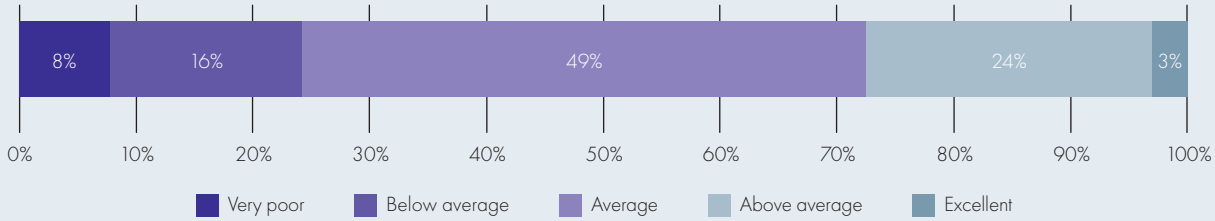
- B.4 Value of Board Search Consultants: Survey participants highlighted several key advantages of involving board search consultants in the succession process. The top three include increased professionalism, an independent external perspective to counter biases, and broader market expertise with access to a wider pool of candidates. However, the disadvantages mentioned include higher costs due to fees and remuneration systems, longer timeframes – leading to higher transaction costs for proper planning – and, in some cases, a perceived lack of quality in the advice provided.

- B.5 Unique Selling Point (USP): Board search consultants distinguish themselves by asserting USPs in several key areas, especially in comparison to their competitors. These include the deep expertise of their consultants (presumably in specific industries and processes), the quality and breadth of their services, extensive market networks and access to a wide candidate pool, and the proprietary tools they have developed to provide a comprehensive 360-degree evaluation of candidates.

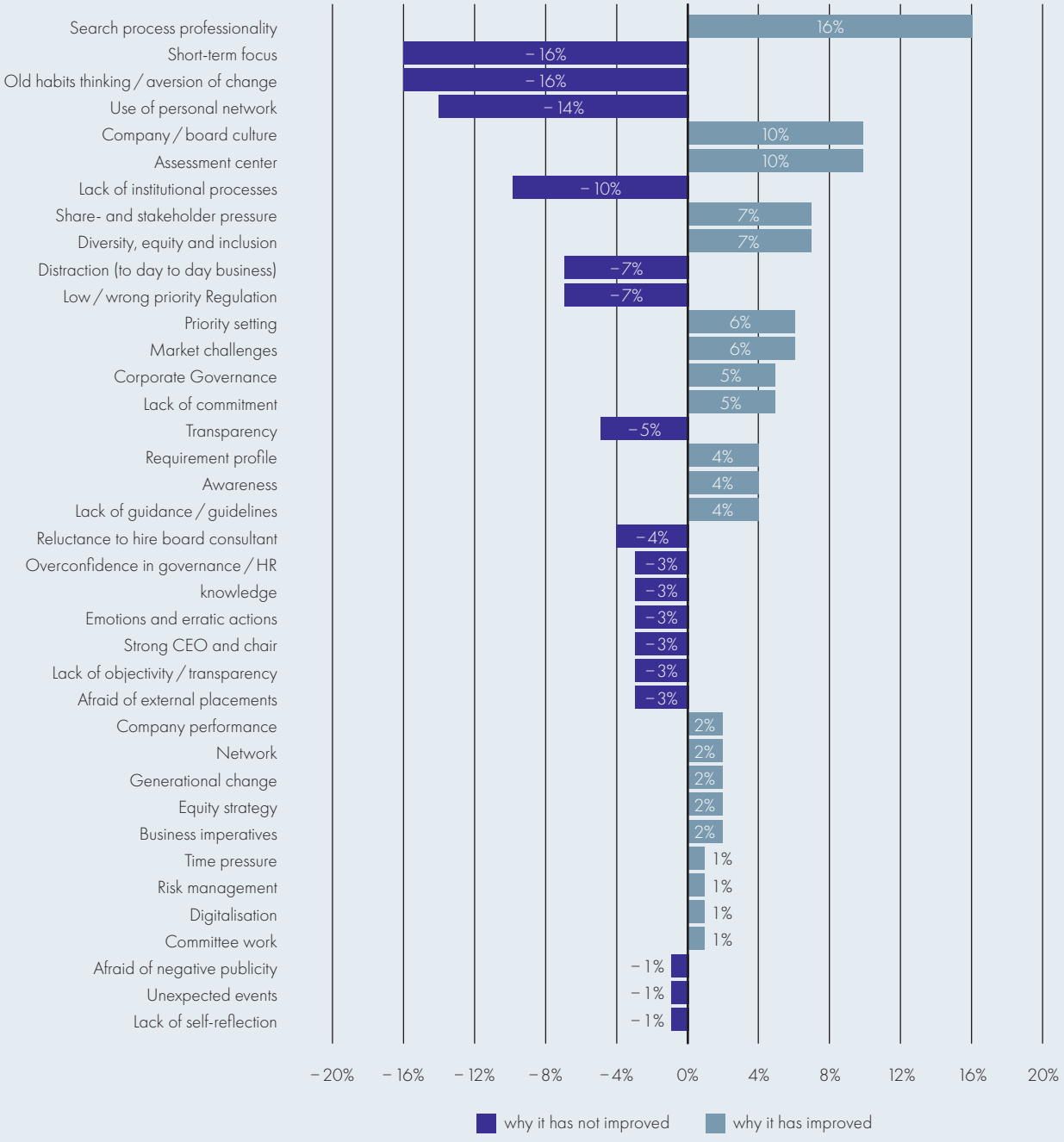
- B.6 Time Effort: The average board search involves 115 hours of consulting work, allocated across several key activities: time for evaluating, which includes briefing candidates for the vacant position and supporting interview rounds (44 hours); time for identifying, which entails screening CVs and evaluating candidates' backgrounds to ensure they match the profile (39 hours); time for profiling, which involves defining the necessary competences for the position and proactively challenging those definitions with the designated board member or board committee (17 hours); and time for selecting, which means supporting the strategy to ensure all board members meet the final candidates and familiarize themselves with their backgrounds before the final decision-making in the board (16 hours). However, a comparison of the data reveals higher distribution patterns in the time spent for identifying and evaluating candidates. This variation may be influenced by the priorities set by the board search firm or the complexity of the client's needs. So, for example, reported one participant to spend as much as 250 hours only on candidate evaluation.

- B.7 and B.8 Search Fee: Board search firms charge an average fee of CHF 92 000 for a chairperson, CHF 78 000 for a board member, CHF 165 000 for a CEO, and CHF 110 000 for an executive committee member. There are significant discrepancies in responses, particularly for CEO mandates, with fees ranging from CHF 500 000 to less than CHF 50 000. These variations are likely linked to differences in the market (Switzerland, Germany, Austria) and the size of the company (private vs. listed). Beyond that, among respondents, 59% report using only a fixed compensation system, while 38% use a combination of fixed and variable compensation. A small minority focus solely on fully variable compensation components.

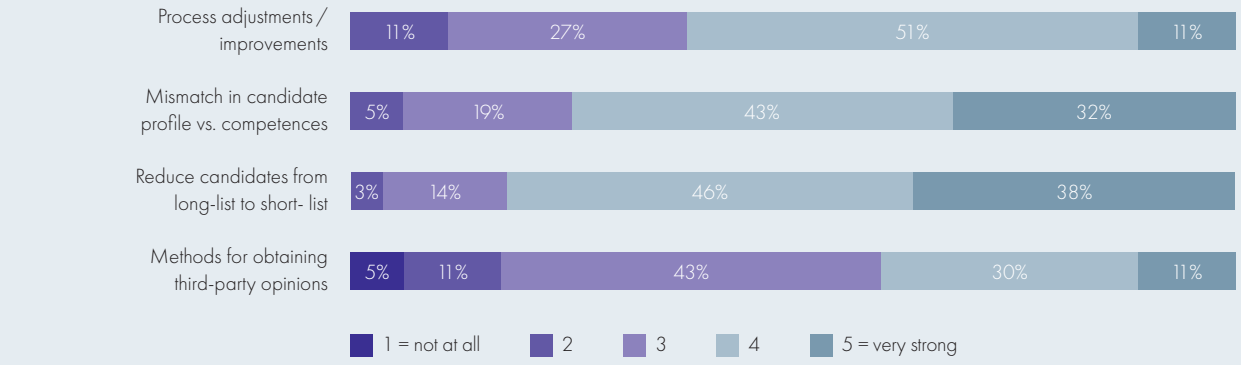
B.1 From the consultant point of view who has gained insight into a large number of succession cases, how would you assess the quality of board succession practices in companies?



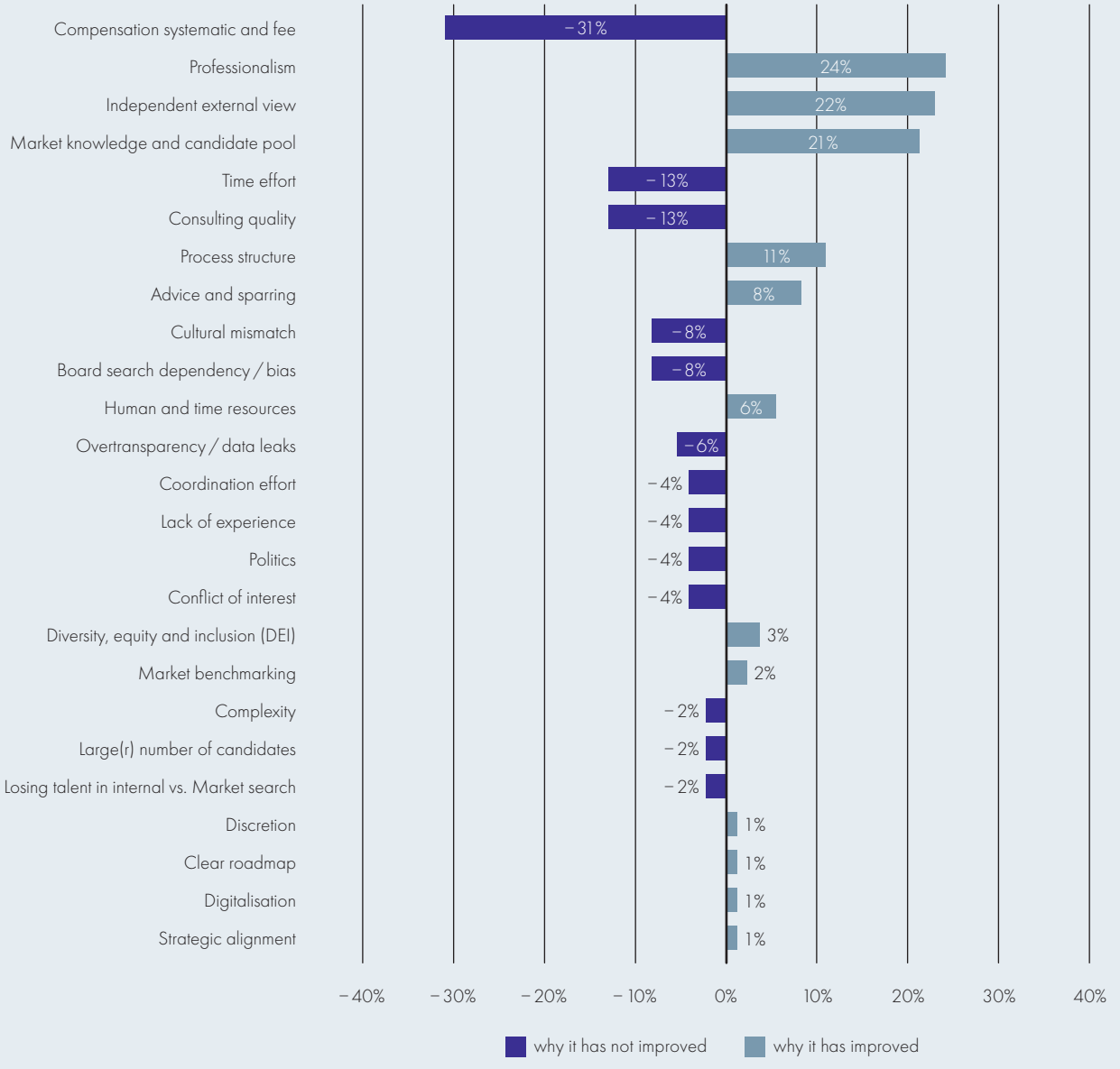
B.2 What are the reasons why board succession planning has / has not improved over the last few years?



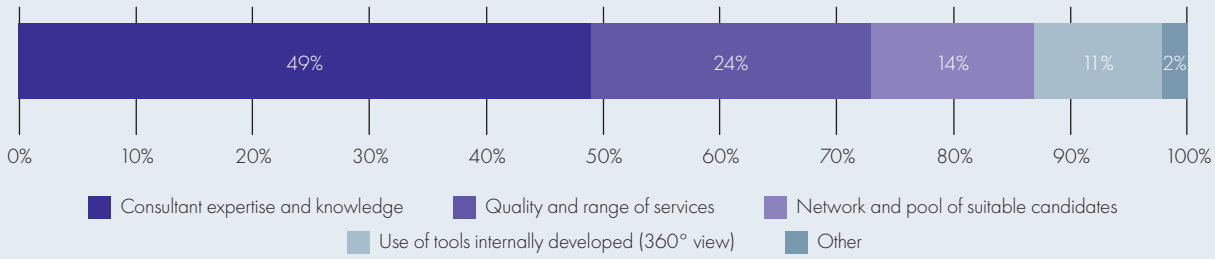
B.3 As a board search consultant, you recommend that companies should meet certain «best practices». How do companies comply with your recommendations in the following categories?



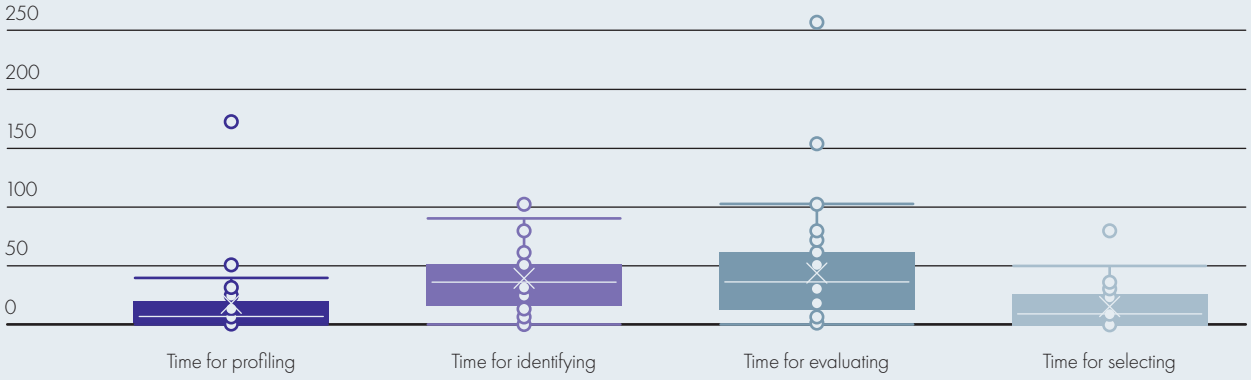
B.4 What are the advantage / disadvantages of involving board search consultants in succession planning?



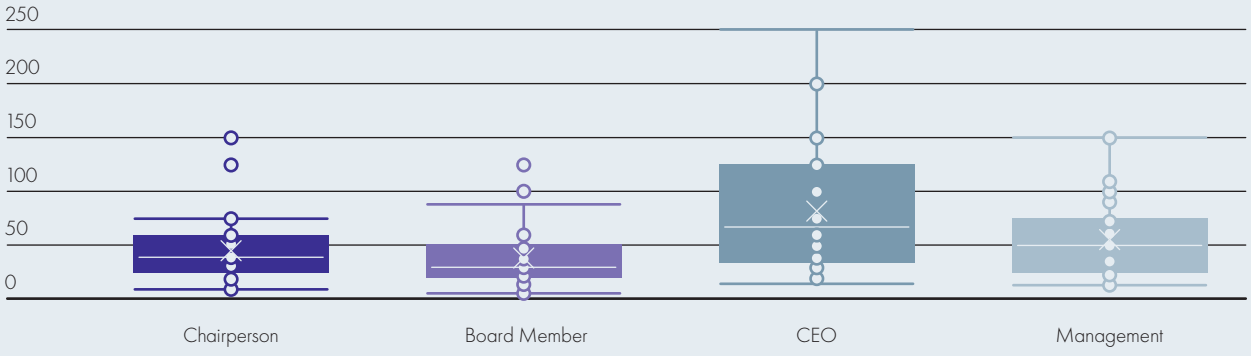
B.5 Compared to your competitors, what is your unique selling proposition (USP) in board search services?



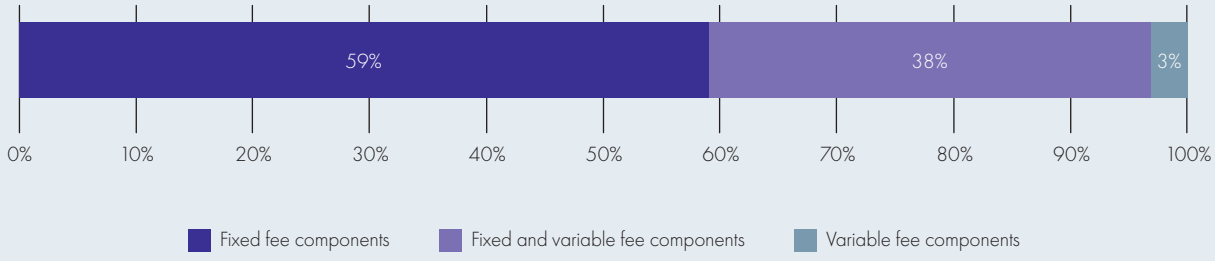
B.6 What is the average time effort for a board search mandate (in hours)?



B.7 When offering consulting services in succession planning for one of the following positions, what is the average fee (assuming 1 CHF = 1 EUR)?



B.8 What is your revenue model in board search consulting mainly based on?



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Bridging Regulations
The EU AI Act and Switzerland's Path Forward

Prof. Dr. Miriam C. Buiten
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1.0 Introduction

As artificial intelligence (AI) technologies evolve rapidly, they become ever more important to key sectors of the Swiss economy, including financial services and life sciences. These advancements present both great opportunities and new risks. The autonomous features of AI raise complex accountability questions, while its «black-box» nature complicates the transparency of decision-making processes.[1] AI is transforming practices across businesses and public authorities, highlighting issues of responsibility and risk management. As AI technologies become more widespread, ethical concerns such as bias, discrimination, and privacy risks emerge as well.

In response to these challenges, countries are developing regulatory frameworks for AI. For instance, in October 2023, the U.S. issued an executive order on AI regulation,[2] China launched a global initiative on AI governance,[3] and 29 nations signed a declaration for the responsible development of AI.[4] These efforts reflect a growing global demand for regulations addressing AI-related risks.

In this context, the EU's recently adopted AI Act[5] has direct implications for Swiss companies.

1 European Commission, White Paper on Artificial Intelligence – A European approach to excellence and trust, Brussels, 19.2.2020, COM(2020) 65 final, p. 12.
2 The White House, FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence, 30 October 2023, https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/.
3 DigWatch, China launches global AI governance initiative, 18 October 2023, https://dig.watch/updates/china-launches-global-ai-governance-initiative.
4 The Bletchley Declaration by Countries Attending the AI Safety Summit, 1 – 2 November 2023, 1 November 2023, https://www.gov.uk/government/publications/ai-safety-summit-2023-the-bletchley-declaration/the-bletchley-declaration-by-countries-attending-the-ai-safety-summit-1-2-november-2023.
5 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ L, 2024/1689.

Switzerland is concurrently preparing a strategy for its AI regulatory framework, expected by the end of 2024, which aims to align with international standards – especially those of the EU and the Council of Europe – while promoting innovation and safeguarding human rights, democracy, and the rule of law.[6]

This article examines the implications of the EU AI Act for Swiss businesses and explores potential pathways for Switzerland's AI regulation. It discusses the benefits of aligning with the EU AI Act, as well as arguments for pursuing alternative approaches where (still) possible. The article is structured as follows: Section 2 outlines the EU AI Act, focusing on its approach, scope, risk-based framework, obligations, and enforcement mechanisms. Section 3 explores the implications for Swiss companies, while Section 4 examines Switzerland's regulatory strategy. Section 5 offers concluding remarks.

2.0 The EU AI Act

The EU AI Act represents the world's first comprehensive legislation on artificial intelligence, aiming to make Europe a leader in trustworthy AI.[7] The EU AI Act establishes harmonized rules for AI development, marketing, and use across EU Member States. The AI Act went into effect on 1 August 2024, with key implementation deadlines over the coming years. By February 2025, companies must comply with regulations on prohibited AI systems, and by August 2026, high-risk AI systems must adhere to the Act's requirements.

2.1 Approach

The EU AI Act takes a product safety approach rather than one based on individual rights, meaning it does not grant individuals specific rights directly. Instead, it adopts a certification model, similar to those used for many non-AI products, with the primary aim of protecting fundamental rights, health, and safety through rigorous safety standards rather than enforceable individual rights.[8]

Compliance with the AI Act involves considerable regulatory demands. A study by Intellera Consulting estimates that companies may incur annual costs between € 230 000 and € 4 million (CHF 218 000 – CHF 3.7 million) to ensure their high-risk AI systems are fair and reliable, which will likely require hiring specialized personnel.[9] Many Swiss companies operating in the EU could face similar costs.

Despite this regulatory burden, the Act seeks to encourage innovation by offering legal clarity and promoting best practices in AI. The EU's goal is to ensure that AI systems within its borders are safe and uphold European rights and values, addressing concerns over AI products from outside the EU that might not align with these standards.[10]

2.2 AI Act: Scope

AI Act is a technology regulation that applies to «AI systems», defined broadly, with a focus on autonomy. The AI Act defines an AI system as any machine-based system designed to operate with varying degrees of autonomy to produce outputs such as predictions, recommendations, or decisions that impact physical or virtual environments.[11] Additionally, the Act defines a general-purpose AI model as an AI model that displays significant generality and is capable of competently performing a wide range of distinct tasks and that can be integrated into a variety of downstream systems or applications.[12] The definition of AI has long been a subject of debate, illustrating the inherent challenge to regulating technology itself rather than applying existing legal frameworks to it.[13] Initially, the definition was so broad it could include general business software. It has since been refined to focus on autonomy.

6 Schweizerischer Ansatz zur Regulierung von KI-Systemen, https://digital.swiss/de/strategie/fokusthema/schweizerischer-ansatz-zur-regulierung-von-ki-systemen.
7 European Commission, Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Act, Brussels, 21.4.2021 , COM(2021) 206 final, 2021/0106 (COD), pp. 1 – 3.
8 Recitals 7 – 8 AI Act.
9 European Commission, Study to Support an Impact Assessment of Regulatory Requirements for Artificial Intelligence in Europe, https://op.europa.eu/en/publication-detail/-/publication/55538b70-a638-11eb-9585-01aa75ed71a1.
10 Recitals 20, 138 AI Act.
11 Art. 3(1) AI Act.
12 Art. 3(63) AI Act.
13 Buiten, M.C., 2019. Towards intelligent regulation of artificial intelligence. European Journal of Risk Regulation, 10(1), pp. 41 – 59.

Another key discussion revolved around who should be the addressee of the main obligations: should they rest more with developers or users?

The EU has chosen to impose extensive requirements on providers, such as risk management and monitoring, while deployers have more limited responsibilities, such as following usage instructions and maintaining records.[14] However, the distinction between provider and operator can blur in practice. Providers, defined functionally, include any entity developing or commissioning an AI system for general purposes and bringing it to market, even under their brand, whether for a fee or free of charge.[15] Deployers, on the other hand, oversee an AI system's deployment, unless it's for personal, non-professional use.[16]

The EU AI Act has sparked discussions in Switzerland and other countries on whether to adopt a similar regulatory framework or take a different path. Nonetheless, the Act's extraterritorial reach means that any company offering AI services in the EU market, regardless of location, must comply with its provisions. For Swiss companies, this applies not only if an AI system itself is marketed in the EU but also if its outputs are used there.[17] As a result, many Swiss AI providers and deployers are likely to be subject to the Act. For instance, when companies serve EU-based clients, or if a chatbot could be accessed by Swiss citizens residing in the EU.

Given the broad applicability, the EU AI Act's standards are expected to become part of Swiss industry practices as companies increasingly develop products for markets beyond Switzerland. This is especially significant for Swiss providers of high-risk AI systems, who must appoint an authorized representative in the EU.[18] Swiss deployers whose AI outputs are used in the EU also face transparency and code of conduct obligations. Non-compliance may lead to investigations by European regulators and potential fines under the Act.

14 See Section 2.3.
15 Art. 2(1)(a) AI Act.
16 Art. 2(1)(b) AI Act.
17 Art. 2(1)(c) AI Act.
18 Arts. 3(5) and 22 AI Act.

2.3 AI Act: Risk-based approach

The EU AI Act applies a risk-based approach, classifying AI systems based on the potential harm they pose, considering both likelihood and severity.

AI systems presenting unacceptable risk – primarily those with significant ethical concerns, such as social scoring[19] and biometric classification – are banned except in strictly regulated, exceptional cases.

High-risk AI systems are those that can significantly affect health, safety, or fundamental rights. High-risk AI systems are identified based on either the regulated industry or high-risk application area.[20] Examples include AI used in critical infrastructure, biometric data processing, and recruitment.[21] Providers of high-risk AI must perform a self-certification conformity assessment before marketing their products, adhering to specific sector regulations.[22] While self-certification is the norm, third-party certification may be required if stipulated by sectoral regulations.[23] The obligations for providers of high-risk AI are extensive, including risk management,[24] data quality,[25] technical documentation,[26] human oversight,[27] and security measures,[28] in addition to establishing a post-market monitoring system. In contrast, user responsibilities are relatively limited, focusing primarily on ensuring responsible use and conducting regular risk assessments and mitigation strategies.[29]

19 Social scoring refers to the evaluation of people based on their behavior in society.
20 Art. 6 AI Act.
21 The list of high-risk AI systems may be updated by the Commission over time, see Art. 7 AI Act.
22 Arts. 43 ff. AI Act.
23 See critically on the self-certification approach Wachter, S., 2024. Limitations and loopholes in the EU AI Act and AI Liability Directives: what this means for the European Union, the United States, and beyond. Yale Journal of Law and Technology, 26(3), pp. 671 – 718, p. 713.
24 Art. 9 AI Act.
25 Art. 10 AI Act.
26 Arts. 11-12 AI Act.
27 Art. 14 AI Act.
28 Art. 15 AI Act.
29 Arts. 16 ff. AI Act.

Limited-risk AI systems – such as chatbots and text generators – face moderate regulations focused on transparency.[30] Providers and deployers must ensure that users are informed they are interacting with AI, with added warnings about potential misinformation to reduce user misunderstandings.

Minimal-risk AI systems, like spam filters and AI-driven video games, have few regulatory requirements, though voluntary codes of conduct are recommended to encourage responsible practices.

In addition, general-purpose AI (GPAI) models – such as large language models – are regulated separately. The risks associated with GPAI depend on their application context, and those with systemic impacts may face «light» high-risk obligations, including safety testing, technical documentation, and compliance with copyright standards.[31]

The responsibility for categorizing AI systems lies with the providers themselves. The AI Act outlines an evaluation procedure by the market surveillance authority if there is reason to believe that a provider has misclassified a non-high-risk AI system as high-risk.[32] To assist providers with classifying their AI systems, the EU Commission is expected to issue guidance on the classification rules for high-risk AI systems, including a detailed list of practical use cases.[33] The timeline may however be tight, meaning that in practice, providers and deployers will have to begin categorizing their AI systems now to ensure timely compliance with the AI Act.

2.4 Implementation and enforcement

The EU AI Act establishes a network of regulatory bodies to oversee its implementation and enforcement. Key authorities include the European Commission, the AI Office, the European Artificial Intelligence Board, an AI advisory forum, an independent scientific panel of experts, and national supervisory bodies.

Violations of the AI Act can incur significant penalties, including fines of up to € 35 million or 7% of annual turnover for the use of prohibited AI systems; up to € 15 million or 3% of annual turnover for breaches related to data and transparency requirements; and up to € 7.5 million or 1% of annual turnover for other types of violations.[34]

Looking ahead, we can expect further guidance by the Commission on the AI Act obligations as well as standard-setting within specific industries. While the AI Act is extensive and detailed, it lacks specific guidance for implementation, leaving much open to interpretation. As a result, businesses may require substantial legal support to ensure effective compliance.

3.0 Implications for Swiss companies

Swiss companies should take a proactive approach to reviewing their AI systems and related processes to ensure compliance with the AI Act. This begins with a careful evaluation to determine whether the Act applies to them. Companies need to assess if they offer AI systems in the EU, if their systems are deployed, imported, or used within the EU, or if the outputs generated by their AI systems are utilized in the EU. If the AI Act is applicable, they must then classify their systems into the appropriate risk category and make any necessary adjustments to align with the AI Act's requirements. To ensure compliance, companies should implement robust risk management systems and transparency measures:

- Risk Management: Establish a comprehensive risk management framework that identifies, assesses, and minimizes risks.[35]

- Transparency and Traceability: Design AI systems to guarantee that decision-making processes are transparent and traceable.[36] Companies must document how decisions are made and which data are utilized in the process. For systems categorized as low-risk, companies must ensure users are informed that they are interacting with an AI system.

30 Art. 50 AI Act.
31 Arts. 51 ff. AI Act.
32 Article 80 AI Act.
33 European Commission, Artificial Intelligence – Questions and Answers, 1 August 2024, https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_1683.
34 Art. 99 AI Act.
35 See further Schuett, J., 2024. Risk management in the artificial intelligence act. European Journal of Risk Regulation, 15(2), pp.367 – 385.
36 See further Panigutti, C., Hamon, R., Hupont, I., Fernandez Llorca, D., Fano Yela, D., Junklewitz, H., Scalzo, S., Mazzini, G., Sanchez, I., Soler Garrido, J. and Gomez, E., 2023, June. The role of explainable AI in the context of the AI Act. In Proceedings of the 2023 ACM conference on fairness, accountability, and transparency, pp. 1139 – 1150.

For high-risk AI systems, companies should take the following specific actions:

- AI System Registration: Register AI systems as required by regulatory standards.
- Conformity Assessments: Adapt existing sector-specific compliance processes to meet the conformity assessment requirements as needed.
- Data Quality Maintenance: Establish processes to ensure data quality is maintained during the AI training process.
- Information Disclosure: Implement clear and transparent information disclosures to meet compliance obligations.
- Human Oversight: Set up mechanisms for human oversight to continuously monitor AI system operations.
- Risk Management Systems: Develop risk management frameworks aligned with the AI Act, including measures to address cybersecurity risks.
- Human Rights Impact Assessment: Conduct assessments to evaluate and mitigate potential impacts on human rights.
- Technical Documentation: Maintain comprehensive technical documentation demonstrating compliance with the AI Act.

4.0 Swiss regulatory strategy

Switzerland's initiative to draft AI regulations is coming somewhat «late in the game,» raising questions about how much flexibility remains to create a distinct approach. A 2019 report from the federal government concluded that the existing legislative framework was sufficient to address new AI applications and business models, largely because of the technology-neutral nature of Swiss law.[37] In terms of data protection and privacy, the revised Data Protection Act (DPA), which came into effect in September 2023, specifically addresses automated decision-making and requires data controllers to inform individuals about decisions with legal implications. Additionally, Switzerland has established ethical guidelines for AI use by public authorities, published in November 2020, which emphasize human-centered development, transparency, and collaboration with stakeholders.[38]

A broader regulatory framework for AI is being considered only now, as the Federal Council tasked the Federal Department of the Environment, Transport, Energy and Communications (DETEC) in November 2023 with analyzing potential regulatory strategies for AI, with results expected by the end of 2024.[39]

37 Interdepartementale Arbeitsgruppe Künstliche Intelligenz, Herausforderungen der künstlichen Intelligenz, Bericht an den Bundesrat, 13. Dezember 2019, https://www.sbfi.admin.ch/sbfi/de/home/bfi-politik/bfi-2021-2024/transversale-themen/digitalisierung-bfi/kuenstliche-intelligenz.html.

38 Leitlinien «Künstliche Intelligenz» für den Bund, Orientierungsrahmen für den Umgang mit künstlicher Intelligenz in der Bundesverwaltung, 25. November 2020.

39 Schweizerischer Ansatz zur Regulierung von KI-Systemen, https://digital.swiss/de/strategie/fokusthema/schweizerischer-ansatz-zur-regulierung-von-ki-systemen.

In drafting its AI regulatory framework, Switzerland faces critical decisions regarding its approach and requirements and the need to balance regulatory burdens and AI safety with innovation. Key considerations include determining the regulatory scope, aligning with or diverging from EU law, and effective implementation.

Approach and Timing: Swiss authorities must evaluate how much independence they still have for developing a unique regulatory approach, as well as the importance of coordinating with the EU's AI Act. With the extraterritorial impact of the AI Act, it will be vital for Swiss companies to avoid dual burdens and conflicting obligations. This means Switzerland will likely need to enact rules aligning with the EU AI Act to avoid overwhelming businesses with compliance challenges. To continue operating within the European market, Swiss companies must comply with the new regulations, and many are already preparing based on their experiences with data protection laws.

Scope: Authorities must choose between a broad, risk-based framework or a more sector-specific model. Should AI regulations apply uniformly across industries, or be customized for specific sectors? Additionally, they must decide if self-certification is sufficient or if government oversight will be necessary. Academics have advocated for a sector-specific approach, suggesting that it would be impractical to address all legal issues in a single regulation given the diverse challenges presented by AI applications.[40] With the AI Act being in place now, there may be more benefit to aligning with the EU approach to keep regulatory burdens manageable for companies.

Implementation Oversight: The question of who will oversee AI regulation in Switzerland also must be answered. Like the EU model, where standardization and interpretation are ongoing challenges, Switzerland's regulatory framework will need to address practical concerns regarding authority, specificity, procedures, and detail.

5.0 Conclusion

Switzerland can benefit from a balanced approach to AI regulation: adopting an independent framework where possible—addressing sector-specific needs and prioritizing human rights—while aligning with the EU AI Act when necessary, particularly on matters of product safety and market access. This approach would involve establishing core principles that allow for sector-specific flexibility, fostering innovation, and creating foundational AI rules that respect human rights and uphold central values. Clear assignment of responsibilities to national authorities is also needed, including defining which public bodies will lead implementation, how public input will be incorporated, and mechanisms for stakeholder involvement. Regardless of Switzerland's next steps, the regulatory age of AI has already begun for Swiss companies, with the EU AI Act setting the groundwork for implementation.

40 Braun Binder, N., Burri, T., Lohmann, M.F., Simmler, M., Thouvenin, F. and Vokinger, K.N., 2021. Künstliche Intelligenz: Handlungsbedarf im Schweizer Recht. Jusletter, 28, pp.1 – 25.

Upcoming Changes to Disclosure and Reporting

What Board and Executive Members Need to Know

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Andrea's legal practice focuses on capital markets, critical regulatory and supervisory matters. With her sound judgement and long standing experience, she provides strategic legal advice to board members and executives in view of responsible decisions and pragmatic outcomes.

Listed companies and their executives face numerous disclosure and reporting duties. They aim to ensure transparency and fairness in the financial market by requiring timely and accurate reporting of material information. In Switzerland, such obligations are primarily governed and enforced through self-regulatory frameworks of the stock exchanges and complemented by federal law, like the Financial Market Infrastructure Act (FinMIA).[1]

The recently published draft amendment to the FinMIA introduces substantial changes to these obligations with some surprising developments. While the changes are not expected to take effect until 2027/2028, the following article shall give members of the board of directors and the executive committee of Swiss listed companies a first impression what to prepare for within their companies, for themselves – and you will see – also for their relatives.[2]

1.0 Key Changes in the Draft Amendment

Management Transactions - Expanded Scope on Managers and their Related Parties

Management transactions – such as the purchase or sale of shares by executives – are interpreted as a signal for a company's performance. Members of management committees and members of the board of directors of listed companies are therefore required to inform their companies if they engage in trading in their own company; the respective reports are then published. Having said that, such transactions are not always straightforward signals. A CEO may cash out a portion of his stock-based compensation or sell shares to cover tax liabilities, rather than as a reflection on the company's performance. However, evidence, particularly for the U.S. capital market, suggests that over time management transactions may offer some predictive value for a company's performance.[3]

1 Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading, (Financial Market Infrastructure Act, FinMIA) of 19 June 2015

2 For simplicity, the article will compare the new rules with the rules of SIX Swiss Exchange. With BX Swiss the Swiss stock market also has a second well established player.

3 See for example Disclosing and cooling-off: An analysis of insider trading rules, by Liyan Yang of 17 September 2024, Harvard Law School Forum on Corporate Governance

To date, the stock exchange supervisory authorities can take action only against issuers; there is no sanction possibility on the persons subject to reporting obligation, let alone their related parties. The draft FinMIA proposes to transfer the reporting of management transactions obligation from self-regulation to federal law[4] and introduces an expanded reporting scope: the obligation is in future aimed directly at the persons who are subject to reporting obligations, i.e.:

(i) the managers;
(ii) their related parties[5]; as well as
(iii) the companies, who are responsible for publication of the reports, instructing the managers and setting up a proper reporting organization.

Typical example of related parties are the domestic partner, individuals in the same household or legal entities under control of the manager or where he or she holds a management position.[6]
This aligns the obligation of management transactions with the concept for insider trading and market manipulation where criminal liability is imposed on all parties involved (erga omnes applicability).

Disclosure of Name and Function

When listed companies report management transactions, they report the name[7] and function to the stock exchange supervisory authority. The name is not publicly disclosed, the function only in a generic way («executive» or «non-executive»). Under the revised rules, management transactions will be published with the name and function of the person reporting. It can be assumed that the name and function of the manager will be published in the case of a related party transaction, and not the name of the related party.

Even though known from jurisdictions like the EU, this raises questions about the relevance of such disclosures to investors. An executive position comes with a certain transparency; this is also a requirement under good corporate governance.

Consequently, managers must disclose other mandates to disclose potential conflict of interest situations or show their qualifications with a biography and skills set in the corporate governance report. Given the fact that an individual transaction not necessarily provides meaningful signals (as described above), the new requirement may attract inappropriate attention or lead to undue focus on high-profile names by the media.

Law enforcement authorities will retain full access to identity details for investigative proceedings.

Mandatory Blackout Periods

A vast majority of listed companies enforce blackout or blocked periods in their internal policies. Typically, companies have a fixed blocked period around the preparation of financial results (full year, half year) until one or two cooling off days after publication of the results as well as extraordinary blocked periods which are installed for major corporate events (like M&A projects).

The draft FinMIA now suggests codifying such blackout periods into federal law.[8] However, a uniform approach may not suit all businesses. Factors such as industry, size, level of international operations, accounting and IT systems play a significant role in determining an appropriate period.

Furthermore, not all blackout periods necessarily involve actual, material insider information. Black-out periods might also be introduced as a more precautionary compliance measure. Nonetheless, under the new rules transactions during black-out periods will be treated as criminal offence, i.e., regardless of whether they are actual, material insider trading.

Insider Lists

Insider lists are lists that record the time at which insider information was created and further provide evidence on who became aware of it and when. They are thus a tool for the prevention of insider trading support law enforcement if violations are suspected.

4 Art. 37c D-FinMIA.
5 From the material available yet, it is not clear whether the related parties must report their transactions to the manager who then forwards the information to the company or whether related parties report to the company themselves.
6 See for the currently valid definition of related parties, art. 3 para. 2 of the SIX Directive on Management Transactions.
7 As well as date of birth, art. 56 para. 4 cif. 1 of the SIX Listing Rules.
8 Art. 37c para. 5 D-FinMIA

To date, many listed companies have best practices in place to maintain insider lists in line with their internal compliance guidelines.[9] However, regulators have noted deficiencies in these lists, particularly among non-supervised issuers.[10]

Under the revised rules maintaining insider lists becomes a legal obligation for issuers of shares and bonds and their agents.[11] Two significant changes are proposed:

- insider lists must be stored for as long as 15 years, a significantly longer period than in other areas or other jurisdictions;
- non-compliance (including on storage duration) will be penalized with fines of CHF 100k in negligent and CHF 500k in intentional cases (see below).

The high compliance requirement raises questions about proportionality since non-compliance alone does not necessarily result in harmful behavior that would justify a sanction.

Ad Hoc Publicity

The obligation requires listed companies to immediately and clearly disclose events that could significantly affect their share price, ensuring all market participants have equal access to information. Under the revised FinMIA, the obligation for ad hoc publicity will be transferred to federal law and renamed as «publication of insider information».[12]

The draft suggests largely maintaining existing practices under stock exchange regulations to increase legal certainty. Requirements for postponement of disclosure will also be codified. However, as the implementing ordinance has yet to be published, one should remain cautious about potential changes.

2.0 Strengthened State Oversight

Direct FINMA Oversight

The reporting obligations of ad hoc publicity and publication of management transactions will be transferred from self-regulation of the stock exchanges to the FinMIA and thus placed under the supervision of the Swiss Financial Market Supervisory Authority FINMA (FINMA).[13]

While the detailed organizational structure is not yet clear from the legislative material, the consequences in case of potential breach are clearly set out in the draft amendments: Issuers and their managers – as well as related parties in the case of management transactions – are under direct FINMA oversight. This represents a paradigm shift, as FINMA's role for listed companies previously focused only on areas like insider trading and market manipulation, unless the issuer is subject to FINMA supervision due to its area of activity.

Consequently, some of FINMA's tools under the Financial Market Supervision Act (FINMASA) will now apply broadly to all issuers of equities and debt securities and thus, issuers and their managers may be subject to enforcement proceedings.[14] While the draft amendment explicitly excludes professional bans for employees of non-supervised institutions, other FINMA measures such as reputational damage from enforcement proceedings, naming and shaming as well as confiscation of profits remain as risks for companies and their executives.

Introduction of new Criminal Offenses

A further key amendment is the introduction of a direct criminal liability for listed companies, managers, including related parties in relation to management transactions reporting. This marks a significant expansion of personal accountability in the Swiss regulatory system, while so far listed companies could only be sanctioned by the stock exchange authorities with civil damages.

9 The maintenance of insider lists is also a requirement under financial market regulation to justify that insider information is shared at all (safe harbor rules, see art. 128 FinMIO).
10 Explanatory Report of the Federal Department of Finance to the drafts amendment of the FinMIA, p. 19.
11 Art. 37b D-FinMIA.
12 Art. 37b D-FinMIA.
13 For other areas such as the supervision on financial reporting and corporate governance aspects, regulation and supervision remain with the stock exchanges.
14 See art. 145 D-FinMIA

The new fines can reach up to CHF 500k for intentional violations and CHF 100k for negligent ones. Fines may be waived in minor cases of negligence.[15]

It is important to note that such fines imposed on individuals are generally not covered by D&O insurance (with some exceptions for light negligence under certain conditions), thus leaving managers personally liable in such cases.

3.0 Governance Challenges and Broader Implications

Duality of Proceedings («Nemo Tenetur» Principle)

The shift from self-regulation to federal law introduces the potential for overlapping or consecutive administrative and criminal proceedings. In cases of suspected breaches, FINMA may request comprehensive documentation from issuers and their executives, which could later be used as evidence in criminal investigations by the Federal Finance Department. The principle of «nemo tenetur» (protection against self-incrimination) becomes particularly relevant in this context.

On top of that, investigations targeting both companies and individual managers could create tensions, as companies might blame onto managers, while executives may argue that failures stem from organizational shortcomings of the company or other executives. Conflicts of interest situations may arise and thus, dual proceedings may create sensitive procedural questions, requiring careful navigation by companies and their executives.

Criminal Accountability for Companies

Criminal law traditionally focuses on individual accountability and behaviors, making its application to corporations in financial market regulation difficult. There are (limited) possibilities to prosecute companies and they sometimes require creative constructs (like art. 49 FINMASA where the organization can be held liable in case the ascertainment of the persons who are criminally liable requires investigative measures that are disproportionate in comparison with the penalty incurred).

As financial market regulations primarily target companies, the question arises whether the current framework adequately provides the legal grounds for effective and fair enforcement.

Impacts on Compliance and Costs

Companies may also face increased compliance costs under the new FinMIA. Compliance costs are expected to rise, not only due to new obligations and enhanced oversight but also because of the significant internal resources required to address potential criminal investigations or proceedings. The costs associated with defense in such investigations usually outweigh the actual fine amounts.

Switzerland does not provide shareholders with direct legal recourse against companies or managers for regulatory breaches. The primary mechanism for liability remains the directors' liability under Article 754 of the Swiss Code of Obligations. While the draft amendments do not indicate any intention to introduce personal shareholder claims, the risk cannot be ruled out entirely until a court has confirmed so.

4.0 Concluding Remarks: Navigating the Shift to State Oversight

The introduction of criminal liability for certain issuers obligations constitutes a novelty in the sense that managers of listed companies and their related parties are now subject to direct supervision of FINMA and criminal law proceedings and sanctions. The proposed changes thus fortify state oversight and introduce expanded competences by FINMA and administrative criminal authorities like the Federal Department of Finance.

The implementation of the draft amendments will still have to pass the political process. In the consultation (Vernehmlassung; the deadline expired on 11 October 2024) many stakeholders, like issuers and some political parties, raised concerns about the potential compliance burden and the expansion of regulatory state oversight. These discussions also align with the broader political debate on strengthening FINMA's powers and measures, which also polarize opinions among stakeholders. The final shape of the amendments discussed herein will therefore also depend on the outcome of this ongoing process.

15 Art. 149a FinMIA; however, the maximum amount of fines is significantly reduced compared to the current regulation under the SIX Listing Rules where fines are possible up to CHF 10 Mio.

Smart Governance: Leveraging Nomination Committees to meet Board Challenges[1]

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1.0 Introduction

Geopolitics, climate change, rapid technological change, the role of artificial intelligence (AI) in modern governance, risk management, cyber security, armed conflict; a plethora of complex issues compete for mind space everywhere. At board level it is no different: complexity and multiple demands are ever present, and the stakes are high. Too much complexity and uncertainty can have a paralyzing effect. How then should boards adapt to deal effectively with these challenges?

This article champions the view that there is much to be said for a systematic and collaborative approach. The focus is on a subset of the board, the Nominations Committee, to illustrate how a systematic and pro-active approach could help shape a future-fit board. The insights could be helpful for new committees or existing ones preparing for a more complex future.

2.0 An agile, competent, forward-looking board

To deal with complexity and multiple challenges, it is often asserted that the board should be agile, competent, and forward-looking [Naspers, 2024].[2] But what makes for an agile, competent, forward-looking board? When asked this question, Perplexity ai boldly responds:

«An agile, competent, forward-looking board is characterized by its commitment to purpose, adaptability, inclusivity, continuous learning, and visionary leadership. By adopting effective governance practices such as a forward-looking approach, robust decision-making frameworks, regular evaluations, proactive succession planning, and stakeholder engagement, boards can navigate complexities and drive their organizations toward sustainable success in a dynamic environment.»

1 Perplexity ai generated a shorter version of my long title. I thank Lynelle Bagwandeen, Naspers and Prosus Company Secretary for research support. The rest of the essay is my own in structure and composition.

2 Naspers Governance Newsletter, February 2024.

This is a tall order, which without an intentional, systematic approach with meaningful reliance on the work of its sub-committees can risk being easier said than done. The next section describes how the Nominations Committee in cooperation with the chair and the company secretary can craft a path to build an agile, competent and future-fit board.

3.0 The Nominations Committee: Cinderella no more[3]

Traditionally, the Nominations Committee was the board committee primarily tasked with filling vacancies that arise in the board and executive management, the latter in conjunction with the Human Resources and Remunerations Committee. Hence, the potential contribution of the Nominations Committee to strategic leadership selection and preparation for the board was underestimated.

In 2016, an influential survey of global business leaders by EY in collaboration with the Governance Institute emphasized the valuable role that the Nominations Committee can play.[4] In that same year, the King IV Code™[5] included a broader and more pro-active role for the Nominations Committee, i.e., to assist the board with overseeing:

- the proper composition of the board for it to execute its duties effectively.
- succession planning (for contingencies and long term) in respect of board members and management.
- the rationale for re-election of board members.
- a process for nominating, electing and appointing members to the board.
- the evaluation of the performance of the board and its independence (including committees and individual members); and
- the induction and continuing training and development of board members.

Of course, one size does not fit all hence the roles and responsibilities may differ from organization to organization depending on factors such as size and purpose.

These developments predate the explosive interest in AI and other trends that permeate the competitive environment of firms in 2024 and beyond. It is therefore an appropriate juncture to consider how a pro-active Nominations Committee could align the elements in their remit to best help the board navigate the challenges facing the organization. To this end, the next section illustrates how efficient use of time and resources in a symbiotic and systemic process yields the desired results.

3.1. Smart pathways in the hands of the Nominations Committee

Working together with the chair and the company secretary, the Nominations Committee can weave the components of its remit into an effective annual programme with clearly defined key objectives against which its performance can be assessed. In doing so, it would be helpful to focus on five promising areas for efficacy gains and long-term success:

Alignment

By gaining a deep understanding of the firm's long-term strategic objectives, its evolution and trends in the competitive environment, the committee can ensure that it aligns with demands on board composition, competence, and succession. For example, this alignment will be crucial in several areas, such as the evaluation of the performance of the board and its individual members, gap analysis for new appointments and considerations for re-appointments. It can do so from an informed standpoint ensuring skill sets on the board that require supplementing are addressed through appropriate appointments.

3 Independent Audit, April 2016. Available: https://www.independentaudit.com/article/committees/nominations-committee-not-so-easy-after-all/

4 https://assets.ey.com/content/dam/ey-sites/ey-com/en_uk/topics/assurance/the-nomination-committee-coming-out-of-the-shadows/ey-the-nomination-committee-coming-out-of-the-shadows.pdf

5 https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/49D62EF3-F749-403C-BE47-73C50F27F30F/General_Guidance_for_Boards_-_Nominations_Comm.pdf.

Closing the feedback loop

The committee has oversight over the induction, evaluation and development of new directors, carried out in conjunction with the company secretary. It would be beneficial to gain regular feedback on what worked well and where there may be areas for improvement. Training and other formation activities such as site visits are normally planned together with the chair, CEO and company secretary. Also in this instance, receiving feedback is essential for future endeavours. Part of this feedback can be gained from a formalised board performance evaluation, which could inform future improvement initiatives. The evaluation process also provides the basis for key performance objectives the board must assess and ensure a cycle of continuous improvement.

Best use of technology

The sheer number of topics that boards must deal with has increased significantly over the years. To ensure that the quality and depth of deliberations do not suffer, and processes are running smoothly, technology is a valuable ally. For example, the use of a secure board portal can streamline many processes, including access to board documents, evaluation questionnaires and voting. Digital technologies allow for a skills matrix to be created and updated regularly to generate insights for the committee and the board when current and future board compositions are considered. More modern tools available also ensure smart learning portals accompanied by accreditations and better formulation of performance against agreed targets.

Cooperation

We have already alluded to cooperation with the chair and the company secretary, but cooperation and collaboration with other committees, for example with HR & Remunerations (on executive management) and the Audit and Risk Committees, are recommended, too. This can be achieved through common membership and shared reports and leveraging off the delegation of authority principle. At the very least, being aware of the work of these committees informs many of the committee's deliberations. For example, it is essential to be aware of the risk map and tolerance together with the long-term strategy, when figuring out the skills and experience new directors should embody.

Improved reporting and communication

Unlike the Audit Committee and Human Resources and Remunerations Committees, the Nominations Committee does not have a prescribed communications or reporting onus. This may sometimes be counterproductive. For example, when shareholders are required to approve re-appointments of non-executive directors, they have an asymmetric information problem since they cannot observe the directors' contributions directly and they do not have line of sight of internal development and training initiatives. Here, the Nominations Committee could improve reporting by keeping track of internal and external training and education and report the topics on which new or improved skills were acquired during the financial year.

4.0 Conclusion

In an increasingly complex world with rapidly accelerating technological change, strategic leadership is key for long-term success. This paper argues that a pro-active Nominations Committee has much to offer to enhance the strategic leadership capabilities in the company and particularly in the board.

By focusing on alignment, feedback loops, smart use of technology, improved reporting, and communications, in cooperation with the chair, company secretary and other committee leaders, while carrying out its duties, the Nominations Committee has an exciting role to play that stretches it beyond the traditional Cinderella epithet, elevating its role to being a key cog in the future of better boardroom dynamics.

In the final instance, all in efforts to create and maintain an agile, competent, and future-fit board.

Complexities and Challenges of Regulation

At the 13th Frankfurter Aufsichtsratstag, hosted by AdAR, Dr. Haase gave a keynote speech on the challenges of regulation. This article provides a selected extract from her compelling presentation.

Dr. Margarete Haase
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Since 2016, she has also been part of the German Corporate Governance Code Commission.

- What do consumers do with a tethered cap? They take scissors and cut off the cap to avoid spilling.
- What do internet users confronted with the General Data Protection Regulation (GDPR) do? They click «Yes» on all fields to proceed with their work.
- What do people do with the printed receipt at the bakery? They toss it in the trash.
- What do companies confronted with the CSRD (Corporate Sustainability Reporting Directive) do? They scale back their ambitious sustainability efforts to avoid the trap of greenwashing through reporting.
- What does the CSDDD (Corporate Sustainability Due Diligence Directive) make us do? Companies play it safe and reduce purchases from developing countries.
- What do companies affected by the Energy Efficiency Law do? They stop building data centers in Germany.
- How do companies handle the AI Act? They hesitate to launch new products, as seen with Apple delaying the European release of the iPhone 16, which is expected to exclude Apple Intelligence.

1.0 Is regulation a growth inhibitor?

Of course, regulation is needed to ensure transparency and balance diverse interests, which are often difficult to reconcile. Think about dilemmas like innovation versus safety, national sovereignty versus international standards, economic growth versus social security, or long-term goals versus short-term interests, and so on. But the key question is: How much regulation do we need? What is regulation good for, and how can it be done effectively? I'll address this shortly.

The European Union has apparently gone too far with regulation, overwhelming us with a tsunami of rules and directives, creating bureaucratic monsters that harm our long-term competitiveness.

As the saying goes: «The United States invents, China produces, and Europe regulates». This might be a stereotype, but unfortunately, it contains a grain of truth. My impression is that regulation in the U.S. tends to promote economic growth, while in the EU, regulation stifles and hampers the economy, putting us at a competitive disadvantage. Typical examples include the IRA (Inflation Reduction Act) and AI regulation. Even Mario Draghi, in his recently presented industrial strategy for Europe, criticized the barriers to innovation caused by excessive regulation, including so-called «gold-plating» and fragmented rules in Europe, as well as the overly ambitious implementation by member states. Examples like data protection and the AI Act highlight these issues. Across Europe, over 270 regulators are active in the digital networks domain, making it nearly impossible for young, innovative tech companies to establish themselves. Draghi's assessment is strikingly realistic, even if one might not agree with all the proposals or the suggested funding mechanisms.

Excessive and fragmented regulation also leads to overlapping and conflicting rules, causing headaches for those affected. Take the example of DORA (Digital Operational Resilience Act) and NIS 2 (Network and Information Systems Directive) in the tech and finance sectors. Companies face a jungle of security regulations, with overlapping efforts on the same topic creating an enormous workload and uncertainty, particularly for banks. Delving into banking regulations further would exceed today's scope but suffice it to say: banking regulations are a necessary reaction to the complexity and lack of transparency created by previous deregulation. However, these regulations often address past problems while creating new ones, as crises tend to arise from unforeseen sources.

2.0 Why does regulation often achieve the opposite of what was intended?

Ambitious sustainability experts in companies face challenges with double materiality assessments when dealing with accountants and auditors who approach matters entirely differently. The lack of mutual understanding means that reporting requirements and transformation efforts often clash. On the one hand, companies are taking on the challenges of transformation and have made significant progress. On the other hand, they are critical of the burdensome reporting requirements, which provide little real benefit. In simpler terms, anyone who needed such extensive reporting to understand their sustainability efforts likely has a governance problem.

Take another example: the Supply Chain Due Diligence Act or the CSDDD at the European level. These rules create reverse globalization and diversification. Regulators often fail to grasp the effects they create and lose sight of their original goals. The trade-off between prosperity and growth on the one hand and consumer protection on the other is often overlooked. Regulations are frequently developed without involving key experts and decision-makers. One prominent example is the idea that climate protection can only be achieved through austerity and degrowth. I believe economic growth is necessary to fund transformation and social initiatives. Unfortunately, Europe is alone in its ambition to create a better world through regulation. ESG goals in Asia are pursued only if they align with business models, while the topic has largely faded into the background in the U.S. Moreover, regulation is becoming increasingly sloppy. A recent example is the European AI Act, which many argue lacks sufficient input from businesses and other critical stakeholders during its development.

3.0 Why has the disconnect between politics and business grown? When did this trust break down?

I see two key events: the Diesel scandal and the financial market crisis. Understandably, the state has taken on more responsibilities and consults stakeholders less frequently.

A major example of failed cooperation is the Green Deal. Initially presented as an economic miracle just before the pandemic, its promise of profitable growth has since been withdrawn, with negative effects now expected. Discussions with EU parliamentarians revealed that limited dialogue with businesses occurred due to the pandemic, and it is admitted in private that the taxonomy data might not be usable. This growing lack of dialogue with affected experts, coupled with the democratic deficit in European institutions, leads to poorly conceived regulations with unintended economic consequences. The recent example of tariffs on Chinese electric vehicles illustrates this trend.

Enough complaining. Here are eight theses for sustainable European regulation:

1. Regulation should not follow ideology.

2. It should involve extensive consultation with affected parties, including experts, and be based on thorough cost-benefit analysis.

3. Regulations must be reversible if they fail to achieve their goals.

4. Ideally, each new regulation should eliminate two existing ones.

5. Regulation should measure its impact on Europe's global competitiveness and adhere to the «level playing field» principle.

6. It must pass the SME and startup test: Is it simple enough for smaller or younger companies to manage?

7. Regulation should create transparency consistent with our market economy model. It should establish frameworks without micromanaging.

8. Reconnect rather than disconnect. We must actively engage in shaping regulation, even if not invited to do so.

In conclusion, fostering «policy observation competence» and building trustful relationships with policymakers are crucial to ensuring regulations support European economic growth.

How SIX Swiss Exchange Supports the Transition to a Sustainable Economy

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Tobias Lehmann
Head Products Primary Markets of SIX Swiss Exchange

1.0 The Essential Role of Capital Markets in Sustainability

To achieve net-zero targets, substantial investment from the private sector is essential. According to McKinsey, an estimated $9.2 trillion per year needs to be allocated to climate-change mitigation projects until 2050 to keep global warming within 1.5°C above pre-industrial levels, representing a 60% increase in annual investments compared to current levels.[1] Notably, this figure does not account for the funds required to meet other non-climate sustainability goals.

The financing need not only underscores the crucial role of investors and capital in the transition to a more sustainable economy, but also the role of transparency on sustainability-related facts. Without information on issues like negative externalities that impact the wider society, investors cannot align their decisions with the transition.

On the one hand, sustainability information helps align the capital and efforts of investors who are committed to sustainability goals.[2] Transparency in relevant sustainability facts allows investors to identify companies that are effectively working to enhance their sustainability performance at the scale and pace required to meet global targets while monitoring and mitigating sustainability-related risks. This clarity enables sustainability-minded investors to direct their capital towards leading companies, enabling companies to execute on their own transition plans and to develop and scale essential projects, such as carbon-removal technologies and infrastructure, that facilitate the transition for others.

1 McKinsey, 2022, The Net Zero Transition (January 2022), page viii.

2 We can distinguish between two types of sustainability-minded investors: those seeking to positively impact society (create environmental and/or social value through stock selection and stewardship) and those seeking to align their investments with their values (through stock selection). See e.g., WEF Global Future Council on Responsible Investing, 2024, Responsible Investment: Definitions and Taxonomies (April 2024).

On the other hand, sustainability information can help align the capital and efforts of investors more broadly. Lawmakers may increasingly mandate companies to align with sustainability goals and penalizing (e.g., fines, carbon taxes) those that do not.[3] Transparency in sustainability facts allows investors to price in the risk of penalties and lawsuits related to sustainability issues. If the anticipated costs of negative externalities are substantial, financially-focused investors would back transition plans, increasing the likelihood that companies align with the shift towards a sustainable economy.

2.0 How Stock Exchanges (Should) Promote Transparency

All else being equal, higher transparency in sustainability facts can accelerate the sustainability transition by enabling investors to make better-informed decisions. However, creating transparency is not without its costs since disclosures can be quite resource intensive for companies.[4]

Mandatory disclosure obligations, therefore, involve an intricate cost-benefit analysis, with potentially far-reaching (unintended) effects on society. Democratically-elected, representative governments are generally better positioned to weigh and balance these diverse interests than private, for-profit corporations.

In regions where local governments are proactive about mandatory sustainability disclosures, like Switzerland, stock exchanges should defer to local governments' judgments on the appropriate level of mandatory requirements and instead focus on voluntary instruments, guided by their core raison d'être – to help companies access capital so they can grow, create new jobs and develop innovative products. However, despite sharing this mission, the best approach to promoting sustainability transparency may well vary among stock exchanges due to differing local conditions.

3.0 How SIX Swiss Exchange Promotes and Supports Sustainability Transparency

The Federal Council has proposed amendments to Articles 964 ff of the Code of Obligations, which were open for public consultation until October 17, 2024. These amendments aim to align Swiss non-financial disclosure requirements with the EU CSRD. If implemented, the changes would expand the scope from around 300 to 3'500 companies, including all Swiss listed companies.

The sustainability space remains largely inefficient in terms of transparency. According to a SIX-sponsored 2023 Corporate Governance Survey, a majority of investors say that their understanding of companies' material sustainability topics is average at best.[5] The majority of companies recognizes that their sustainability endeavors are not being fully appreciated by investors, but over 40% say that missing workforce, lack of knowledge and expertise, and costs considerations are holding them back in improving the quality of their sustainability information.

This is why SIX supports sustainability transparency by focusing on assisting listed companies in complying with relevant legal disclosure requirements and in helping them being correctly understood by market participants.

Our offerings include the SIX Sustainability Handbook, written by subject matter experts, which provides guidelines and best practices. We also host a variety of conferences, culminating in our annual year-end IR conference, offering a platform for knowledge exchange and networking among industry leaders. And through the UN Sustainable Stock Exchanges Academy, we provide online training to help companies develop the skills needed to address specific topics.

3 A survey of 509 equity portfolio managers finds that more than half believe that «pollution and waste management (57%/2.49) and greenhouse gas emissions (54%/2.50) to be [financially] material, perhaps due to current and likely increasing future regulations.» (Edmans, Gosling, Jenter, 2024, Sustainable Investing: Evidence From the Field, FEB-RN Research Paper No. 18/2024, 20 September 2024, page 21).

4 EJDP, 2024, Änderung des Obligationenrechts (Transparenz über Nachhaltigkeitsaspekt): Erläuternder Bericht zur Eröffnung des Vernehmlassungsverfahrens (26 June 2024), page 44.

5 SWIPRA, 2023, 11. SWIPRA Corporate Governance Survey.

We further collaborate with academic institutions to create new educational programs. For example, our partnership with the University of St. Gallen resulted in the SIX-HSG Board Essentials program, which prepares board members for their role in a fast-changing environment, including the challenges of sustainability governance.

Finally, SIX Swiss Exchanges offers a wide range of sustainability-focus flags designed to help companies be acknowledged for their sustainability efforts and plans.

4.0 SIX Sustainability Flags

SIX provides voluntary flags that serve as tools to amplify the recognition and reach of companies' sustainability efforts. Similar to labels on food items, SIX flags increase sustainability transparency for investors, helping them to make better informed decisions and thus ultimately contributing to a more efficient market. SIX flags are based on established sustainability principles, recognized targets, and (emerging) consensus, facilitating understanding and comparability for investors.

Since 2014, SIX Swiss Exchange has been a trading venue for green bonds when the European Investment Bank listed the first green bond on the platform. In 2018, SIX introduced its inaugural voluntary *Green Bond Flag*[6], designed to help companies demonstrate that the proceeds from their bonds are exclusively used to finance or refinance environmentally friendly projects and therefore help strengthening sustainable investing. Since then, SIX has expanded its range of sustainability-focused bond flags to include the Social Bond Flag, Sustainability Bond Flag, and Sustainability-Linked Bond Flag. By 2023, the number of flagged bonds had exceeded 100. SIX sustainable bond flags apply relevant ICMA principles and/or require recognition by the Climate Bond Initiative.

The voluntary SIX 1.5°C Climate Equity Flag, launched in August 2024, is designed to help companies provide additional evidence that their climate targets and transition plan are credible.[7] Credibility essentially indicates that it is reasonable to view the company's entire value chain as currently a contributor towards limiting global warming to 1.5°C above pre-industrial level. Additional evidence for the credibility of the transition plan can, for example, be helpful for mitigating greenwashing risks, as public net-zero commitments or emissions reduction targets by companies without a credible transition plan behind these statements have already been dismissed as "greenwashing."[8]

The SIX 1.5°C Climate Equity Flag combines recognized requirements on climate targets and on the climate transition plan with additional requirements that arise from the application of the WFE Green Equity Principles (2023) to climate change mitigation.

6 SIX Website: Green bonds must be included in the Green Bond Database by the Climate Bonds Initiative («CBI») and be aligned with the Green Bond Principles by ICMA.

7 Credibility is increasingly recognized to require that the climate transition plan is grounded in the latest climate science, aligns with limiting global warming to 1.5°C, involves a fair distribution of the remaining global carbon budget across corporations, details necessary actions, addresses funding requirements, and offers sufficient implementation feasibility.

8 Most notably, Binger et al, 2023, Net Zero Transition Plans: Red Flag Indicators to Assess Inconsistencies and Greenwashing (September 2023), commissioned by WWF and co-produced with the University of Zürich and University of Oxford. A credible transition plan is, of course, only necessary for companies whose alignment necessitates a transition. In other words, it is only necessary for companies whose current emissions and removals fall short of the levels needed for an ideal low-carbon, climate-resilient future. See also Global Risk Institute, 2022, How to Distinguish the Good from Greenwashing (April 2022), page 4, "Firms with vague net-zero commitments with no plan, targets or pathways. This is a marketing strategy to convince the public that these companies are more environmentally sustainable or have better ESG performance than they actually do." ASIC, 2023, ASIC's Recent Greenwashing interventions (Report 763, May 2023), page 5, "We [Australian Securities & Investment Commision] identified net zero statements and targets, and claims of decarbonisation, that did not appear to have a reasonable basis, or were factually incorrect ... Our interventions resulted in corrective disclosures ... We also issued three infringement notices to a listed company ... [For example] 'An oil and gas company removed net zero emissions statements, including a target to achieve net zero emissions by 2050, from its prospectus. The company was unable to provide additional information about how the targets would be achieved and the potential feasibility of achieving them.'"

«What is success?»

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The central challenge of the question presented in the title lies in the agency theory.[1] The agency dilemma arises when the capital provider (principal) is separated from the management (agent). This leads to an unequal distribution of information, as the capital provider often has only incomplete information about the company's performance. Such situations occur, for example, when the founder of a family business steps back to the Board of Directors (Board) and hands over the management to an external, non-family manager. This creates information asymmetries between the owner and the new manager. There are various ways of reducing these asymmetries, such as control, monitoring and financial incentive systems.

The company performance is of central importance in incentive systems. This raises the question of how the owner or the Board can conduct a comprehensive and systematic assessment of the company's performance. Is the observed performance good or bad? How should non-financial factors be included in the performance assessment?

The starting point to determine «What is success?» is the purpose of the business. If Executive team members are asked individually, the chances of getting a range of very different answers are high: ensuring customer satisfaction, providing secure jobs, creating added value for shareholders and customers, making a positive contribution to society, etc.

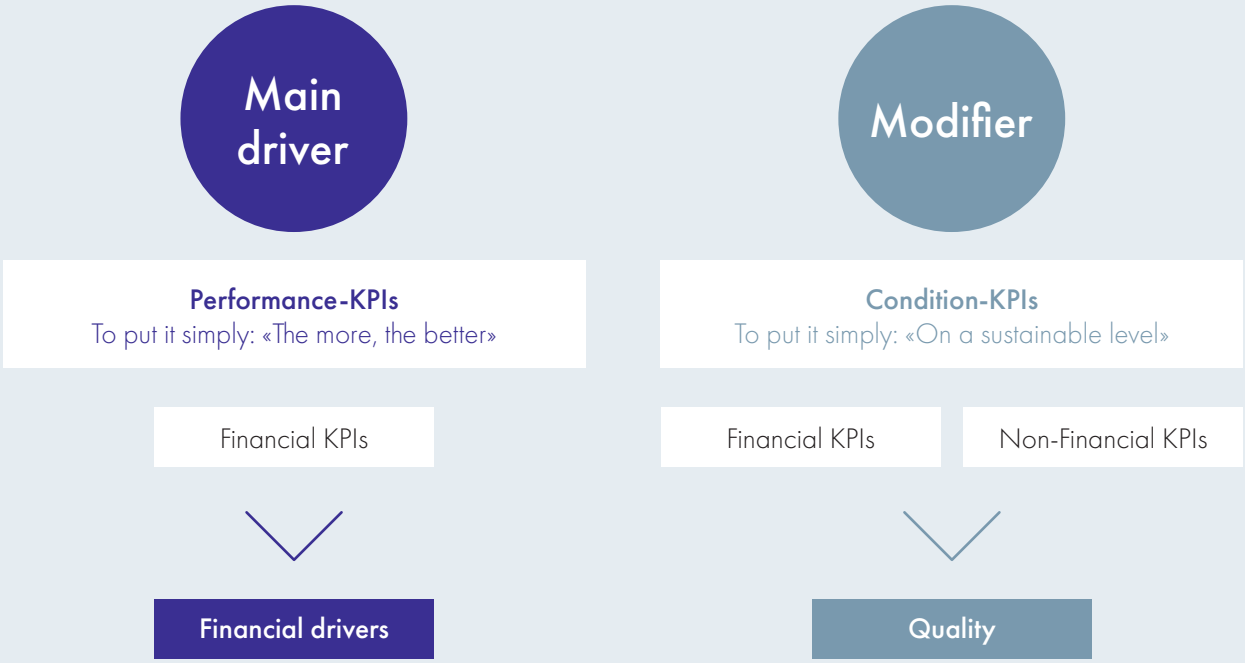
All these factors are relevant, but with so many financial and non-financial interests, goals and intentions, the question arises: What priorities should be set? In the last decades, prioritisation was set according to the shareholder value maximisation approach. Put simply: «If the shareholder is doing well, everyone benefits». However, the implementation of this construct often resulted in losing the focus on important long-term aspects of the company's development. Since the financial crisis of 2008, it has become clear that a one-sided focus on the share price and key financial figures is not sufficient to reflect sustainable corporate development.

1 Jensen, M. C., & Meckling, W. H. (2019). Theory of the firm: Managerial behavior, agency costs and ownership structure. In Corporate governance (pp. 77-132).Fama, E. F. (1980). Agency problems and the theory of the firm. Journal of political economy, 88(2), 288-307.

There is a growing realisation that, besides the financial indicators, other aspects such as quality, long-term supplier relationships, employee and customer satisfaction, etc. are important for the top-level steering of the company. However, these aspects are often neither sufficiently nor systematically included in the performance assessment.

Another challenge is the conflicting objectives between the KPIs: «Should prices be reduced in order to increase customer satisfaction? Should employee satisfaction be improved, or should costs be reduced?» Such trade-offs are common in everyday business life. But how can one KPI be weighed against another? Often, numeric weightings are introduced to address this issue. However, this does not solve the dilemma, as many KPIs are not truly performance drivers per se, but rather represent conditions and prerequisites for sustainable performance. Therefore, we differentiate between Performance-KPIs and Condition-KPIs; for example, in profit-sharing schemes.

Performance-KPIs vs. Condition-KPIs



Performance-KPIs reflect the philosophy: «the more, the better». They are usually highly industry- and company-specific in terms of the company's life cycle and degree of maturity. Examples: Sales, EBITDA, EBIT, operating profits, margins, return ratios or economic profits, etc.

Conditions-KPIs reflect the philosophy: «at a sustainable level». They define the framework within which the company should operate and show the quality of performance. Examples: Employee turnover between 5% and 15%, investment of at least 1% of turnover in cultural activities, production waste of maximum 0.2, etc.

The Condition-KPIs act as a «modifier» to the overall performance assessment derived from the Performance-KPIs. In other words, the underlying firm performance is assessed based on Performance-KPIs, while the financial and non-financial Condition-KPIs serve as a correction factor. Typically, the modifier can lead to an adjustment of the Performance-KPIs by around plus / minus 20% to 30%.
Condition-KPIs are often mistakenly treated like Performance-KPIs, meaning that targets are set, and deviations are measured. However, this is an inappropriate approach for Condition-KPIs. This is because they represent framework conditions and, therefore, need to be treated differently. Measuring deviations is not suitable for Condition-KPIs, as deviations suggest that «more» or «less» is automatically better or worse, which is not necessarily the case. For Condition-KPIs, it is much more important to be for example within a range. This range helps to ensure that small changes do not have immediate consequences. The principle is as follows: As long as the Condition-KPI is within the range, it is good enough. Thinking about quality in terms of ranges, minimum and maximum requirements enables entrepreneurial performance discussions without conflicting objectives.

1.0 «Quality Scorecard»

How do owners, Boards and management determine the «conditions» for long-term profit? It is often mistakenly assumed that a large and almost unmanageable number of topics and factors are relevant. In practice, however, the Condition-KPIs can be summarised in five to six main topics, such as growth and strategy, innovation, customers, balance sheet and sustainability. These main topics differ only slightly between small and large companies.

Owners who are actively involved in the company's operations have a good grasp of the relevant information and can quickly assess whether the financial performance is robust and sustainable. But how can Condition-KPIs be made more understandable and tangible for the Board who is less involved in the company and not operationally active? Summarizing Condition-KPIs in a «Quality Scorecard» is one way of addressing quality factors systematically and effectively. It also makes Condition-KPIs easier to understand for the Board and the management. Additionally, it establishes a common language between operational management and the Board about what constitutes «success» in the organisation.

Quality condensed into a «Quality Scorecard»

Main Topics	Focus Topics	Ambition Level	Current situation	Evaluation	
				Assessment	Comment
Growth & Strategy	Strategic Projects				
Innovation	Portfolio ...				
Customers	Customer satisfaction ...				
Employees	Employee satisfaction ...				
Balance sheet	Debt-equity ratio ...				
Sustainability	Sustainability goals ...				
Proposal Overall Assessment					
Proposal Overall Assessment				**xx%**	

The "Quality Scorecard" is designed as follows: firstly, the focus topics are collected and consolidated. The focus topics are then assigned to the main topics and supplemented with corresponding ambitions. It should be noted that the strategic relevance of the focus topics and their ambitions should be reviewed periodically, while the main topics remain rather constant. This is followed by a compilation of certain information on the current status, and lastly, the company's performance is commented and assessed by using a slider on a colour-coded bar.

Focus topics that cannot be measured quantitatively should also be included in the «Quality Scorecard», as they are often not «measurable» but can be «assessed». This creates the necessary scope for owners and the Board to systematically address such topics.

The «Quality Scorecard» should be summarised so that it fits within a single page. It also makes sense to take up the topics, for example, at quarterly Board meetings and provide a brief update. This will prevent the Board from an information overflow during the annual performance review at the end of the year. «The Quality Scorecard reduces complexity. Formulating a few but concise objectives is very important,» says Josef Felder, Chairman of Zurich Airport, Vice Chairman of AMAG and member of other Boards.

It is also important to emphasise that a «Quality Scorecard» with a slider on a coloured bar intentionally avoids mathematical calculations. For example, there is no assessment with a numerical scale between 0 and 1. Instead, the slider is moved to the red area for poor performance or to the green area for good performance. It is done for each main topic and for the overall performance, resulting in a non-mathematical overall assessment without weighting.

Furthermore, this leads to a comprehensive presentation of the company's qualitative performance. According to Michael Bruggmann, Head of Rewards & Engagement at Swisscom: «The Quality Scorecard provides a holistic view of success and ensures a robust process for a fair assessment of the company's performance.»

2.0 Courage for intentional blurriness in performance discussions

The «Quality Scorecard» deliberately avoids the mechanistic interdependence of measured values, targets, deviations from targets and the associated consequences via, for example, Excel calculations. Such mechanisms often lead to undesirable results, as they tend to distort the overall performance of the company and are also complex, requiring more effort. The «Quality Scorecard» thus introduces an intentional blurring, in particular through the following three omissions:

- No exact indication of target achievement degree: A bar with signal colours and a slider are used for «measurement». The slider can be set in a colour gradient between red and green. At first glance, this may seem «nebulous» due to its blurriness. However, it has the advantage of avoiding a discussion about deviations (e.g. «the target is 93.5 % vs. 94.7% achieved»). The reason for this is that as soon as you start discussing percentages, you end up in a complicated debate about deviations in points and percentages, while the original content of the discussion is usually lost.

- No weighting: There is a deliberate decision not to weigh the main or focus topics. Such weightings can give the impression of a false prioritisation and send the wrong signals, for example, that customers are more important than employees. It can also happen that a single reputational case in the current year causes considerable damage. Although this incident may appear proportionally insignificant in the «Quality Scorecard», it can be highly relevant in assessing the overall performance from an owner's point of view.

- No automatic consequences: The «Quality Scorecard» is not about determining what automated and «hard-wired» effects a green or a red assessment has on the overall performance. It is much more about initiating important discussions and assessing the overall situation instead of «calculating» the consequences.

The intentional blurriness of the performance discussion has its advantages but also presents certain challenges. Michael Bruggmann comments: «I do not believe that you can simply delegate the assessment to an Excel spreadsheet. Even with an arithmetic system, an assessment has to take place, namely when you determine the evaluation mechanism for the individual non-financial variables. At the same time, the blurriness offers room for criticism because it is not quantifiable in the aggregate and, therefore, requires more effort in terms of communication.»

This room for criticism also increases the responsibility of the Board. Roger Schoch, General Secretary of the Board of the Swiss Post, comments: «The approach of the Quality Scorecard has proven itself. The Board assumes a great deal of responsibility with the comprehensive overall assessment.»

Despite the challenges, a certain degree of blurriness provides the basis for a comprehensive performance discussion, instead of evaluating it solely on numbers.

This is also shown by Josef Felder's experience: «Detailed calculations are risky because they could lead in a wrong direction with a false precision. The Quality Scorecard leaves room for «gut feeling», which plays an important role in entrepreneurial decision-making. Especially in times of uncertainty, resilience is key, and it is particularly important to avoid an «accounting machine». This also helps to build resilience – morally, financially and organisationally.»

3.0 Conclusion

In many companies, owners, Board and management lack a standardised and reliable understanding of success. In this respect, a separation between Performance-KPIs and Condition-KPIs is crucial. Summarising and systematically processing Condition-KPIs, e.g. in a «Quality Scorecard» can improve the orientation and help maintain an overview. Additionally, allowing for a certain degree of blurriness facilitates an entrepreneurial dialogue about the company's performance.

To get back to the initial question «What is success?», a possible answer could be: «Long-term profitable growth, but only under certain conditions.»

The Board of Directors' role in corporate communication

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AI increases risks in communication and reputation management – Many Boards of Directors are underprepared

The role of the Board of Directors (BoD) in the development and implementation of corporate strategy has changed fundamentally. Strategic communication with relevant stakeholders is now a key element in the work of Boards of Directors. Artificial intelligence (AI) and other digital technologies are increasingly shaping communication and, therefore, companies' reputation management. This harbors new risks: Monitoring these risks is one of the core tasks of every Board of Directors. However, deficits are apparent: many Boards of Directors do not understand reputation management and the associated corporate communication as central corporate tasks. Most BoDs do not have a specialized committee for reputation / communication – a strategic deficiency with high-risk potential.

«If you lose money by bad decisions, I will be understanding... If you lose reputation for the firm, I will be ruthless». This crisp statement is associated with the successful investor and entrepreneur Warren Buffet.

1.0 Good reputation is a key success factor for companies

Reputation is the «good name» and «good standing» of a company and its management. It arises from the continuous alignment between the expectations of the various interest groups and their actual experiences with the company. Aspects such as sustainability and good corporate governance are becoming increasingly important. The insights gained shape future expectations and significantly influence the appreciation and loyalty of stakeholders towards the company – from customers and employees to investors, political decision-makers and media representatives.

A company's reputation is the basis of its relationships with all stakeholder groups. A positive reputation gives companies a decisive competitive advantage:

- Customers and business partners develop a stronger buying preference for the products and services of the positively viewed company.
- Qualified, skilled employees are easier to attract and retain in the long term.
- Investors consider the good reputation positively in their valuations.
- Media coverage of the company and its management is more favorable.
- Policy-makers and supervisory authorities tend to provide more favorable framework conditions.

2.0 BoD also responsible for reputation / communication

The Board of Directors is the supreme supervisory body of a public limited company. According to the Swiss Code of Obligations (CO), the BoD has non-transferable and irrevocable duties. Among other things, it is responsible for the overall supervision of the company and the appointed management. It is also responsible for the organization of accounting, financial control and financial planning.

The Code of Obligations does not explicitly mention «communication» and «reputation» as duties of the Board of Directors. However, the obligations of the BoD can be indirectly identified for these areas. Article 716 of the Swiss Code of Obligations states that the Board of Directors is responsible for preparing the annual report. And, according to Article 754 of the Swiss Code of Obligations, the BoD must also assume responsibility for «culpable breaches of duty that have led to damage to the company, shareholders or creditors». In a modern interpretation of this CO provision, the BoD can be held liable if a company's most important intangible asset, its reputation, is massively damaged.

3.0 Additional BoD committee to minimize risk

Boards of Directors have become increasingly specialized in recent years. They are responding to the more extensive duties and expectations with more specialization, as reflected in the growing number of board committees. With the help of its committees, a Board of Directors can more actively drive forward the implementation of the corporate strategy and provide more intensive support for the operational business.

Most BoDs in Switzerland today have committees for «Audit» (91%), «Compensation» (90%), and «Nomination» (81%). Committees for other strategic topics are the exception, according to the schillingreport 2024: «Sustainability» (29%), «Risk» (27%), strategy (18%) and «IT / Digitalization» (9%).

Today, hardly any BoD has a dedicated committee for «Reputation / Communication».

4.0 Communication can affect share price

Successful reputation management at board level requires a proactive approach, clear communication strategies, and ongoing monitoring of stakeholders' perception of the company. Above all, good and targeted communication requires strategy and planning. Messages must be developed in an impact-oriented manner and communicated to the relevant stakeholder groups via the right channels.

Reputation management is not only important for companies, but also for managers who are in the spotlight. Executives are expected to act confidently towards stakeholders. The Chairman of the Board of Directors can also play this role. The chairman's appearance and communication can raise or lower the company's reputation and perhaps also its share price.

In times of crisis, the strategic and operational leaders of a company are particularly challenged. From «now on» they are usually catapulted into the public eye without any lead time. With their communication, they then have a significant influence on the further course of the crisis situation seen by internal and external stakeholders and therefore also on the future of the company.

5.0 Board of Directors needs its own communications consultancy

In order to master the risks associated with crises with confidence, clearly defined communication strategies and comprehensive communication plans are also required at Board of Directors level. The BoD shouldn't simply rely on the existing structures within the operational part of the company. If the causes of the crisis lie within the company itself and perhaps even affect operational leaders, the company's communications department (which often reports to the executive board) will very quickly find its loyalties in serious conflict.

For this reason, more and more Boards of Directors are engaging their external communications consultancy. These external advisors must have a good understanding of how a board of directors works. During normal operations, the BoD's communications advisor cooperates closely and trustfully with the Corporate Communications department. Crisis plans define clear breaking points at which the BoDcan work autonomously with its trusted communications advisor – independently of the operational company.

6.0 Building future-proof communication capacities

The sheer volume of new digital communication technologies and communication channels confront every board of directors with additional complex risks. For example, artificial intelligence has already become an integral part of reputation management, communication, and interactions with stakeholders, opening up new opportunities. However, it also harbors additional risks, which the Board of Directors must monitor as part of its supervisory function in accordance with the guidelines of the Swiss Code of Obligations.

AI tools can improve the effectiveness of corporate communication. However, they make it easier for external «attackers» to manipulate a company's image and undermine the trust of stakeholders with fake news. The BoD has to ensure that the company maintains the integrity of its communications while developing the capabilities to respond quickly to misinformation.

Therefore, implementing early warning systems to identify and address potential problems before they escalate into a crisis is just as important as the strategic use of such new technologies.

7.0 Considering risk in the digital environment of tomorrow

Besides traditional cybersecurity concerns, new threats such as deepfakes and AI-generated content manipulation pose major challenges for corporate leadership. Manipulated statements that appear to come from a board member can trigger market reactions or (unjustified) criticism from stakeholders and thus jeopardize both the company's reputation and market stability.

Additional challenges are posed by the regulatory environment. New frameworks conditions for data protection, content authenticity checks and platform responsibity are constantly being created. These must be taken into account and reported in the risk assessment.

The Board of Directors must ensure that the executive management recognizes these additional regulatory requirements and addresses them operationally. Part of this is ensuring that appropriate guidelines are in place for AI-supported content and cross-border data protection. It isimportant that the BoDretains its actual governance role in these new topics and is not concerned with operational details.

To meet this responsibility, boards of directors should consider creating committees to oversee technology or expanding existing committees to include monitoring digital transformation.

Such governance structures should focus on monitoring emerging technologies and assessing their potential impact on risk and overall governance effectiveness.

In addition, boards of directors must ensure that appropriate training programs are in place to develop members' knowledge of new technologies affecting governance and supervisory activities.

8.0 Strategic supervision in a world that is becoming increasingly digital

For Boards of Directors, the transformation of digital communication is both an opportunity and a strategic necessity. In this shifting landscape, they have to find the balance between technological adaptation and sound governance. Beyond traditional oversight functions, this requires strategic oversight that combines robust governance frameworks with flexible communication capabilities. The implementation of appropriate risk management protocols and compliance measures is central in this context.

By carefully considering the opportunities and risks, boards of directors can help their organizations transform digital challenges into governance benefits. They lead their companies through the ongoing digital transformation while fostering trust and stakeholder engagement.

Companies whose boards integrate the oversight of digital communications into their broader governance responsibilities will be successful. These boards recognize how strong governance and stakeholder trust are enhanced by effective supervision of digital communications.

Caption

How an AI image generator visualizes a possible future board meeting. Source: Farner Consulting, created with the help of AI.

Data strategy in the age of AI

A boardroom imperative

Bruno Schenk
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In a world increasingly driven by artificial intelligence (AI), data strategy is crucial for competitive advantage. AI projects can transform businesses but also pose risks that need careful management. As the guardians of corporate strategy, board members must ensure data governance supports AI initiatives and ask: Are we leveraging data securely, ethically, and effectively to serve our organizational goals? The answer lies in robust data governance and a clear vision for how AI and data intersect.

1.0 Reflecting on the digital shift

Over the past decade, we have witnessed a profound transformation in how businesses capture, manage, and utilize data. Technologies that were once experimental are now central to operations, and AI tools have emerged as key enablers of decision-making. However, many organizations still underestimate the complexity of the changes happening beneath the surface—from data generation and curation to governance and usage.

This digital shift is not only about new tools but also about new responsibilities. Boards must recognize that data, if not managed strategically, can either be an unparalleled asset or a significant liability.

2.0 Why data governance must be a priority

Imagine navigating through a storm without a reliable map. That's what handling data is like with-out proper governance. Data governance isn't just a buzzword; it's the backbone of any successful AI initiative. By setting up policies, practices, and controls, it ensures that your data remains accurate, secure, and compliant. Without these guardrails, data projects can easily become liabilities.

Think about everything that data governance covers: data accuracy, ownership, storage, and usage. As AI systems increasingly rely on real-time data processing, the stakes are higher than ever. Poor governance can lead to devastating breaches, compliance nightmares, or even intellectual property theft, all of which can tarnish a company's reputation and drain its finances.

So, how can companies avoid these pitfalls? Boards need to establish robust, adaptable frameworks that align with current regulations. But it's not just top-down; every employee must understand their role in maintaining data integrity. When everyone works together, data remains a powerful asset rather than a looming threat.

3.0 The strategic imperative: Aligning data and AI governance

As organizations embrace advanced tools, the focus must go beyond functionality. The question is not just «What can this tool do?» but «How do we manage the data that powers it?» For example, generative AI applications require large datasets, and boards must ask:

- Where does this data come from?
- How is it stored and secured?
- Are we adhering to applicable privacy and intellectual property laws?

Without a clear strategy, organizations risk deploying AI tools without understanding the underlying data's provenance, quality, or compliance. Moreover, employees may inadvertently expose sensitive data by using external tools for work-related tasks. Boards must champion enterprise-grade AI and data solutions and ensure these align with governance standards, mitigating risks associated with data leakage and misuse.

4.0 Challenges in a global regulatory landscape

Navigating the global regulatory landscape for data governance and AI is becoming increasingly complex. The European Union's AI Act, for example, is setting a high bar with its rigorous transparency and accountability requirements. Here in Switzerland, while we may enjoy a more flexible regulatory environment, we must still be vigilant about regional differences. What works seamlessly in Switzerland might hit roadblocks in Germany, France, or the United States.

Recent legal challenges in the U.S., such as allegations against OpenAI for intellectual property misuse, underscore the importance of clear data ownership and traceability. Boards must proactively address these issues, ensuring that data strategies comply with all applicable laws while safeguarding the company's intellectual property. On-premises solutions, which keep data entirely within a company's control, may offer a viable path for organizations seeking to balance innovation with security and compliance.

5.0 Building a culture of data awareness

Effective data governance is not just a technical challenge but a cultural one. Boards play a pivotal role in fostering a culture of data awareness across the organization. This involves:

- Training and education: Ensuring employees understand the risks and responsibilities associated with data usage and AI tools.
- Clear policies: Establishing guidelines on what tools can be used, how data should be handled, and what constitutes acceptable use. For instance, tools like ChatGPT are increasingly becoming part of employees' daily workflows, both for private and business purposes. While they open up new opportunities, they also pose risks of unintentionally transporting internal intellectual property outside the company—a clear governance framework must address what is allowed and what is not.
- Accountability: Creating mechanisms to monitor compliance and address breaches swiftly and effectively.

When employees are well-informed about data governance, they become allies in protecting the organization's data assets. This reduces the likelihood of unintentional data leaks and enhances the overall effectiveness of AI initiatives. Moreover, companies must proactively educate employees about the risks of using external AI tools, such as sharing sensitive information through non-enterprise applications, which could lead to data leaks.

6.0 Questions for the boardroom

1. Does our organization have a clear and enforceable data governance framework that aligns with both local and global regulations?

2. Are employees and leaders properly trained to use data and AI tools responsibly, reducing risks and increasing value?

7.0 The road ahead: Data as a strategic asset

Data is not just a resource; it is a strategic asset that drives decision-making and innovation. For boards, the implications are clear: Data governance must be at the forefront of every strategic discussion. By establishing strong governance frameworks, aligning data and AI initiatives with organizational objectives, and promoting a culture of awareness, boards can fully harness the potential of AI while mitigating its associated risks.

As we look to the future, the boardroom's role in shaping data strategy will be critical. The choices we make today will determine not only the success of our AI and data initiatives but also the long-term resilience and reputation of our organizations. Let us lead with clarity, responsibility, and a shared commitment to harnessing data and AI for good.

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