

PROTECT, RESPECT, REMEDY: THE ROLE OF GOVERNMENT AS REGULATOR

Speaker points by Mr Herman Mulder on the occasion of the Conference on Corporate Social Responsibility organised by the Swedish Government as EU President

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Important learnings of the financial crisis include: markets are not always efficient and self-correcting, the desired effects of regulations and supervision should not be overestimated, accepted policies may have the desired short term outcomes but, yet, negative long term impacts. We all, public and private sectors, got it "sensationally" wrong and need to reflect and take action on the notions, particularly in the context of the serious and urgent global issues, whether our respective role-definitions, drivers, toolkits, institutions, procedures are still fit for purpose. On which the answer is in my view unquestionable: NO! We cannot walk alone, "living apart together", having silo-approaches leading to sub-optimal solutions, adopt (and be compensated for) short term performance targets, following incoherent national and international policy directions, not enforcing legal commitments, or being comfortable in our splendid isolation. The systemic risk is not limited to banks alone: it applies to our (elitist) imbalanced, un-sustainable approach to the wealth of the planet (and its depletion and degradation) and the human rights of all people.

In the current, chaotic period of transformative change there is more emphasis on the public domain and the public good (which has become more a "common good", to be equitably shared), and the urgent need geo-political and societal inclusion (with the G20 as the new international forum and local communities as important drivers), our economic drivers more based on "new economics" (recognising the value and associated costs and returns on natural and human/social capital), experimenting with new forms of public-private collaboration (with a differentiated, complementary purpose and responsibility). In such environment we may all have the right questions, some of us even the right answers, at least for today, but addressing and resolving the multiple macro- and micro-challenges requires much more: smart governments, sustainable and values'-based, responsible business, and enlightened citizens with a broader mindset than self-interest only. These are imperatives, though they may sound as oxymorons.

The above has far-reaching consequences for the role of governments, both individually and collectively. It puts a new impetus on its enabling and convening roles. In its regulatory role it has to recognise that the major themes are global in nature, that globalisation of business is accelerating, that "no one size fits all" should be an opportunity for smart regulation, that top-down rules'-based compliance may not be effective. In order words, it has to modernise its toolkit to make it fit for purpose in a dynamic, business-as-unusual world. This means that the concept of "soft law" becomes for it an important new driver. A good national example is the recently amended Danish Financial Statements Act, which now requires companies to self-define and publicly report on their sustainability efforts. Such public reporting would subject companies to public scrutiny by financiers, clients, partners, government, civil-society-at-large. More countries should adopt "mandatory self-regulation and assured, public disclosure" on all non-financial risk & opportunity factors (using eg. GRI indicators); they should also require an explicit Human Rights statement by each company as well as an independent company (or rather group-wide) grievance procedure. Another area for governments to act on is product certification and

labelling: consumers should become important drivers for "a better world". Stock Exchanges should go further by not only introducing ESG indices but also tighten listing requirements. Pension funds should consider ESG issues as part of their fiduciary duty. Banks should become drivers for the "green economy and just society". Eventually, this should lead to Integrated Reporting, as applied by some companies already and recommended in i.a. the King III Report.

But the concern from the business community, even with smart national regulation, is always the associated costs and the un-level playing field (and in the USA possibly litigation), particularly internationally. This requires broad-based international standards' setting. In this context the 2010 Review of the OECD Guidelines for Multinational Enterprises (now supported by 30 OECD countries and 12 adhering countries, including Brasil, Argentina) is offering an important opportunity to broaden its scale by including at least all G20 countries. Moreover, in the context of this Conference a number of issues to be sharpened, need to be considered which includes: Human Rights (in the context of the value chain and company governance structure); next to this, also financial sector, the investment nexus, public disclosure (GRI), convergence with ILO standards, Global Compact Principles, ISO26000. Also, the Review offers the opportunity for governments to take the OECD Guidelines really seriously by defining a high ambition level as to its application and, hence, by making available adequate resources to the country National Contact Points (for promotion and grievance-handling) and the secretariat in Paris to reach such ambition. The Dutch approach as adopted 2 years ago may in this respect serve as a benchmark.

The government as regulator has entered a new era: it must be smarter, leaner, more coherent, effective, and aligned with international standards as well as being much more private sector-sensitive, as it has more resources, capability to execute. It should look at the private sector as co-regulators to ensure subsequent implementation with the intended outcomes and impacts. We cannot walk alone anymore..... even not overstretched governments following the recent bail-outs.