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I very much welcome the opportunity to participate, as a party interested in the FRC's effectiveness, in the proposed Review. I will not answer all questions included in this Consultation as I will focus on matters directly related to my area of academic expertise and my ongoing research in corporate governance, stewardship and enforcement that I hope will be useful for your purposes.

**Short Biography**

Dr Konstantinos Sergakis joined the University of Glasgow as Senior Lecturer in Law in 2015, where he has convened the LL.M in Corporate & Financial Law since 2016 and he has acted as School International Lead since 2017. In 2017, he was elected as a member of the Executive Board of the International Association of Economic Law (AIDE). He is the author of *The Transparency of Listed Companies in EU Law* (Sorbonne - IRJS Editions 2013) and of *The Law of Capital Markets in the EU: Disclosure and Enforcement* (Palgrave Macmillan 2018). His research interests are related to Corporate Law, EU Capital Markets Law and Corporate Governance.

**<u>Corporate Governance Code and Stewardship Codes</u>**

**Q22:** The UK Corporate Governance Code has recently been revised and its content continues to evolve towards positive outcomes notwithstanding various challenges in the modern corporate landscape (e.g. corporate failures). The consultation for the revision of the Code attracted substantial interest and triggered a considerable amount of debate, which allowed the FRC to update and further improve the Code's provisions. In light of these facts, along with the need to proceed to gradual – and not radical – changes in corporate governance, I am of the opinion that the current Review should not touch on any particular matter related to the content of the UK Corporate Governance Code. The Review can certainly reflect on surrounding matters, such as the powers given to the FRC in relation to the examination of corporate governance statements (please refer to my observations under Q31 and Q32).

**Q23: Effectiveness (Rationales and overall approach)**[1]

The Stewardship Code has set a target of increasing awareness of investment-related problematic issues and is attempting to change the current short-term mentality in the market in an flexible way since, contrary to the UK corporate governance code, institutional investors are not required to follow the Code but are simply encouraged to become its signatories and under that assumption are expected to disclose compliance with, or deviation from, its principles ('comply or explain'). The reason for increased flexibility in this emerging area is undoubtedly regulators' desire to avoid, at least for the time being, counter-productive intervention in the area of institutional shareholders given the ever-changing nature of engagement and its various facets that remain subject to considerable debate. By allowing a disclosure trend to emerge gradually via the encouragement of signing up the Code, it is expected that the increasing number of signatories will participate in this trend, thus allowing the rest of the market to understand the exercise of their activities.

Although such an invitation might seem quite superficial, especially by the critics of such regulatory initiatives, looking back to 2010 when the Code was first introduced, we have to consider it was the only possible regulatory approach that allowed, at that time, this disclosure trend to expand to other countries and which prepared the field for the European regulatory response that came recently with the revised Shareholder Rights Directive aimed at encouraging long-term shareholder engagement and that rendered such disclosure elements obligatory.[2] The FRC's position was therefore successful and perfectly adaptable to a long-term regulatory strategy that aimed, from the outset, to *gradually* develop and transform the embryonic stewardship spectrum and to expand its importance across the UK and the EU. We are now at a stage where institutional shareholders, asset managers and proxy advisors will need to comply with disclosure obligations across the EU, and taking stock of the importance of Stewardship Codes (that need to be in place in all Member States by 2019) is crucial to the adoption of measured and meticulously prepared regulatory steps.

Therefore, the main objective of this regulatory trend is to give visibility and awareness of the need for a viable, constant dialogue between company management and institutional investors, which would hopefully generate a realistic alignment of their respective incentives and targets. Acknowledging, as in the case of company profiles, that institutional investors have inevitably different strategies, conceptions and focuses with regard to the exercise of their business activities, the "comply or explain" principle is considered to be the only realistic tool to give the necessary flexibility to an ever-growing number of financial intermediaries to disclose information on their activities.

[1] For an overview of these and other related topics, see K. Sergakis, 'Deconstruction and Reconstruction of the "Comply or Explain" Principle in EU Capital Markets' (2015) 5(3) Accounting, Economics and Law: A Convivium 233, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2516741.

[2] Directive 2017/828/EU of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement [2017] OJ L132/1.

Therefore, it comes as a plausible assumption that regulation continues to rely on the "comply or explain" principle to make various activities much more visible and subject to interaction and informed dialogue amongst market participants, with the long-term objective of finding a common point of reference and alignment between different objectives. Encouraging market actors to interact, via the disclosure of their practices, is a viable step to refocusing the debate on the necessity for "genuine" shareholder engagement, namely an engagement that does not focus solely on short-term strategies and shows a less myopic conception of the company's long-term existence and continuity.

This view is not exempt from criticism and, more specifically, from the fact that interaction between market participants may arguably be only the *consequence* of long-term behaviour, not its *cause*. Indeed, it is difficult to assume that because various parties have a flexible framework whereby they can interact and evaluate one another, they will necessarily develop a constructive dialogue and adopt collectively long-term objectives.

Nevertheless, following this line of interpretation, we risk relying upon the eventual scenario that participants that are already long-term oriented will develop such a dialogue on their own. This will marginalise all the beneficial outcomes that might result from educational purposes and the ongoing incentives to build dialogue between participants, acknowledging the different priorities of all parties involved but still building together a conceptual framework towards long-term strategies and objectives. Of course, under this ideological construction, speculative participants will never be part of the dialogue or may participate purely for "window-dressing" purposes since they will still be seeking financial incentives to move towards long-term strategies.

But this should not prompt regulatory efforts towards maintaining a distance from various parties and leaving such an important issue exclusively to *ad hoc* initiatives. Dialogue should be generated in an already educated and sophisticated environment. For the level of education in capital markets to rise and for various parties to understand not only the benefits that they may derive from investment practices but also their own responsibilities in the entire investment chain, as well as the ramifications of their choices for other participants, the dialogue needs to occur upstream and present a convincing case for a long-term vision. If the educational and preventive prerogatives are lost, the communication gap will persist only to be bridged partially and periodically in cases where market participants with considerable power, resources and sophistication are in a position to influence their counterparties with regard to their long-term objectives.

**Assessment of statements' quality**

As an initial general assessment of the quality of engagement by the information providers since the Code's introduction in 2010, it seems that, during the first period of implementation, some signatory parties had conceived of soft law measures as an effective excuse for avoiding a genuinely transparent mentality on how they conduct their business and how they are willing to engage with other participants. The results in the beginning seemed frustrating. Indeed, according to the review conducted by the FRC in 2013 and in 2014, many signatories had not even updated their compliance statements since the latest reform of the Code in 2012 that had introduced more soft law principles. Therefore, even if they had complied formally with the Code, this kind of compliance remained superficial due to its pure formality and its lack of substance since it only referred to and reflected the partial spectrum of the Code as contained in its initial 2010 version. Moreover, those that had updated their compliance statements provided poor-quality information, especially with regard to the management of conflicts of interest and the collective engagement issues prescribed in the Code. Although adherence to the Code is purely voluntary, the signatories had not sufficiently engaged with the Code and the "comply or explain" principle itself.

Following the annual FRC Review in 2015, the Stewardship Code became subject to a tiering exercise by the FRC, allowing the latter to include various statements in different categories (Tier 1, Tier 2, Tier 3) depending on their overall quality and engagement with the Code's principles. The FRC carefully avoided the pitfalls of interpreting the content of such statements in a more interventionist way, aiming to create a 'dynamic of expectations' (not exclusively from the regulator but also from the market) regarding informational quality, by inciting signatory parties to make progress on their statements and to draw benefits from achieving this type of indirect recognition of such efforts by the regulator. Such an approach maintains an optimal balance between regulatory scrutiny and market empowerment for monitoring purposes, without becoming unreasonably constraining or counter-productive.

Since 2016 and up to date, the tiering exercise has achieved positive results in incentivising signatory parties to strive to provide better quality statements so as to be included in Tier 1 (the number now forming part of Tier 1 has considerably increased). Nevertheless, the quality of explanations provided in the case of non-compliance remains, in some cases, disappointing (FRC Review 2016). Overall, this approach has proven to be on the right path since it has achieved positive results in some respects. More educational efforts (ongoing dialogue with market actors, events across the country, open sessions etc.) are needed to improve the remaining and persisting cultural resistance to more openness and informational quality.

The recent introduction of an Investor Advisory Group (IAG) composed of market participants fits perfectly with such cross-fertilisation and educational purposes as it will provide a more stable forum for ongoing discussion to better inform and develop the FRC's future steps in this area.

To reflect on the current criticism of flexibility in this area in relation to the fact that soft law measures have traditionally been applied to accommodate business needs (and are therefore not essentially purported to serve as a convincing regulatory tool for the introduction of an informational transparent framework), we firmly believe that the essential *problem* lies with the *use* of soft law measures and *not with their identity* as such. Flexibility might have been one of the drivers for change and the adoption of soft law measures, but it can certainly not be transformed into an "illusion making" mechanism if the provider of the information is willing to engage effectively in this framework. It is therefore not the "softness" of the legal framework as such that is problematic, but the fact that market participants continue to rely upon flexibility to avoid better informing the rest of the market.

**Reflection upon proposals for reform**

I therefore firmly believe that the current regulatory stance is the most suitable to ensure a gradual transformation of mentality in relation to engagement and continuous dialogue. The FRC has committed to revising the Stewardship Code in 2018, and it would be preferable for that further step to be taken before undertaking any other regulatory initiatives at this stage. There is no doubt that such strategy takes longer and that progress is incremental and therefore less visible within a fixed period of time. Nevertheless, our goal makes to be the final outcome within a long-term perspective and the progress needs to be primarily a cultural one.

Acknowledging the perfectible character of disclosure trends as well as the risk of instrumentalisation of the regulatory flexibility by signatory parties, it seems more plausible to invest in this regulatory path, whereby market participants are constantly encouraged to disclose information about their strategies and to make opportunities for dialogue with other participants more feasible. This flexible approach will inevitably give rise to some poor quality statements, but this would be offset by increasing awareness amongst parties and allowing them to be in a position to participate in a wider debate about balanced corporate governance and long-term goals. It is the educational element of disclosure that needs to be preserved even if some signatory parties will continue not to make full use of the opportunities presented in the Stewardship Code.

Changing drastically this framework to render it more constraining and rigid would likely result in transforming stewardship in a formalistic compliance exercise with liability concerns in the case of failure to meet pre-determined regulatory standards. The only realistic proposal for reform, if considered appropriate, should therefore be the enhancement of social enforcement by awarding some additional powers to the FRC (see Q31 and Q32 below) that will allow it to trigger more reaction from the market in case of poor quality statements. As will be explained later, legal enforcement (administrative sanctions and measures) is not necessarily suitable in this area.

**FRC and corporate failure**

**Q27:** Initiating a dialogue with companies following the examination of their corporate governance statements of poor quality could be one way forward. 'Naming and shaming' could be another option (but it depends on how far the FRC will be allowed to go in its enforcement powers and also on the market's reaction, which may not always be expressed, especially if non-compliant companies are profitable). I would argue, *inter alia*, for either of these two options under certain criteria and processes (see my analysis and proposals under Q31 and Q32 below).

**Q28:** Answering the question from a corporate governance angle, as will be mentioned below, it is ultimately a question of how far the FRC can go following a poor corporate governance statement. Awarding the FRC some additional powers to enable it to engage more in a discussion and educational exchange with companies may be a first step towards better outcomes in corporate failures. This of course cannot represent a perfect solution for all types of corporate failure, but it can provide space for more engagement between the FRC and companies, which is still missing and may facilitate the furtherance of dubious or potentially damaging governance practices. For more details, see my analysis and proposals under Q31 and Q32 below.

Corporate failures can, most importantly, be prevented with a wider transformation of corporate culture and investment culture. Market participants need to be incentivised to challenge governance strategies more. The FRC needs to maintain its educational approach with ongoing events with various stakeholders to increase the awareness of critical issues and to enable various actors to continue to be more responsive in the presence of borderline cases or deficient disclosure strategies. The FRC should also be given more resources to multiply such preventive initiatives with the introduction of more stakeholder panels including a wider pool of participants (employees, other stakeholders and any other interested parties, such as academics, etc.).

## Enforcement Powers

**Q31:** The FRC has traditionally operated on the premise that increased transparency will enable market participants to engage more with the providers of the statements (companies, institutional investors, etc.). It has not assumed any interventionist approach in relation to the interpretation of the content of such statements or any follow-up (further enquiry, administrative sanctions/measures) thereafter. Social enforcement (namely the expected market reaction following the publication of a governance or stewardship statement) has therefore prevailed – and quite wisely so. If we were to reform the FRC's powers in this framework, and award it strict enforcement powers, we should be aware of the following issues[3]:

a) putting aside the delisting that can be imposed in the presence of non-compliance with the corporate governance code, legal enforcement (administrative sanctions and measures) risks creating an operational environment that is overly regulated and dissuading companies and shareholders from conducting their activities in capital markets with flexibility and innovative methods (both in terms of governance and in terms of engagement with other market actors).

b) legal enforcement does not fit harmoniously with the conceptual premise of governance and engagement disclosure duties whose main benefit is to trigger further engagement in the markets, increase the educational benefits of disclosure in this area and gradually fight against shareholder apathy and deficient governance. This is because concerned parties (companies, institutional investors etc.) will inevitably focus on the liability factor of compliance and might be deterred from disclosing further information. Legal enforcement may therefore transform educational and dialogue tools into liability risks and severely undermine the FRC objectives

c) in the presence of legal enforcement, the recipients of disclosure will rely mechanistically upon the FRC instead of engaging with companies and shareholders. This is due to the fact that they will most probably perceive potential FRC administrative measures and sanctions as an adequate safeguard from non-compliance risks and they will not be as motivated to interact with other market actors to challenge in a fruitful way their statements and strategies and seek to obtain more information that is relevant to their priorities

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[3] Analyzed in detail in my recent research: K. Sergakis, 'Legal versus Social Enforcement of Shareholder Duties' (May 28, 2018), in Hanne Birkmose and Konstantinos Sergakis, *Enforcing Shareholder Duties* (Edward Elgar 2018), available at SSRN: https://ssrn.com/abstract=3186084

d) legal enforcement will risk legitimising certain borderline shareholder practices in the absence of actions taken by the FRC. Indeed, if the FRC is awarded strict enforcement powers and decides that it is difficult/very complex to decipher (or fails to investigate) non-compliance elements and, subsequently, to sanction them, the governance and engagement issues at stake will be perceived by the market as complied with and not raising any further concerns. An inactive regulatory stance (from an enforcement point of view) can therefore be seen as an ex post regulatory certification of dubious or borderline practices. The concerned companies or shareholders will thus be enabled, and given a legitimate reason, to stop engaging with other parties that may want to challenge their activities and further engage in dialogue with them. The overall risk will therefore be a mutually neutralising effect of engagement and further apathy, from the perspectives of both the concerned companies/shareholders and the recipients of information.

**Proposals for reform of enforcement powers in corporate governance and stewardship statements**

a) **Right to contact the statement providers and ask for clarifications**: in light of other national examples (see Q32 below), the FRC could be given the power to contact companies and ask for more information in the absence of meaningful explanations or satisfactory overall compliance. If the company responds positively to such a request, it will be expected to show in tangible terms the amendments made in due time or in the next corporate governance statement. If the company does not co-operate with such a request, the FRC would make this information public by also mentioning the company's arguments.

b) **'Name and shame'**:[4] this type of social enforcement should be preferred in deficient governance statements cases, and it could be one way to encourage the efficient implementation of governance provisions. The tiering exercise currently adopted with the Stewardship Code statements could also be used for corporate governance statements. Furthermore, more targeted 'naming and shaming' (individual mention of companies) could be used for companies that keep on disregarding regulatory requests to comply better with the expected disclosure standards.

The discreet reinforcement of social sanctions through the use of disclosure of regulatory concerns over deficient statements as an exposure tool vis-à-vis other market participants would be a welcome change, but its ultimate efficiency will depend on the behavioural patterns of these actors. For social sanctions to take on a meaningful dimension and to act as a counterbalance to various 'borderline practices', market actors must already have the necessary education and evaluation skills to act responsibly when they receive any information related to stewardship. Education is key here, as it will prove critical for market actors that must reprioritise their strategies and not focus solely on the financial implications of governance activities.

c) **Alternative monitoring mechanisms** that can maintain the FRC's neutrality could

[4] This method can be seen as part of legal enforcement since it may replace a pecuniary sanction (for example, the FRC could issue a public warning to a company). I therefore use the term 'social enforcement' in this case to denote their 'meta-regulatory' function, namely the expected reputational effects of such actions upon the concerned companies and their ramifications upon other market actors.

also be proposed. For example, in 2015, I argued for the introduction of an 'institutionalised dialogue spectrum'.[5] This would be a soft monitoring process exercised by a Review Panel that, possibly under the aegis of the FRC (receiving secretarial or other support, but not necessarily functioning as a department of the FRC so as to avoid being seen as a purely regulatory body with strict sanctioning powers) would provide a 'dialogue framework' amongst market participants. Its role would also include the receipt and management of complaints in relation to poor quality statements.

<u>Composition of the Panel</u>: For the Review Panel's activity to be efficient and legitimate, its composition and the spectrum of its authority must be clearly identified and delineated. The composition of the Panel should be as diverse as possible in order to gain acceptance by all market participants as well as to spark interest in participating in its activities. Company directors (executive and non-executive), institutional investors and proxy advisors should be eligible to be elected members of the Panel. Membership should also be open to other stakeholder groups under the condition that they have developed considerable experience in interacting with market participants.[6] The FRC's Stakeholder Advisory Panel and Investor Advisory Group could be involved in such a Review Panel.

<u>Role of the Panel</u>: with regard to potential cases being launched under this scheme, an interested party could ask for the Panel's intervention due to a statement that does not – in its view – comply with the application and implementation of a Code (Corporate Governance Code or Stewardship Code). Any market participant would therefore be subject to such complaints (namely a proxy advisor or institutional shareholder expressing concerns about a company's corporate governance statement and vice versa). This would allow for holistic treatment of compliance issues and would enable participants to adopt a similar mindset around these areas. If a cultural transformation in business is seen as a priority, the involvement of a wide pool of interested parties in such a process is necessary.

It would also be necessary to define clear criteria for a Review Panel to be able to allow a request to be put forward and trigger a more active dialogue with the concerned party whose disclosure practices are questioned. Generally speaking, these criteria could be:

a) a detailed explanation of the disclosure-related issue, as well as the implications of the supposed informational deficiency for the claimant party's affairs

b) moreover, the claimant party should provide proof that communication had already been sought, as well as a reasonable explanation as to why the party considers that the outcome of this initiative did not prove fruitful, namely in the case that the party concerned did not cooperate or its cooperation did not met the expectations of the claimant party.

c) provided that the request for further examination is well argued and sound, the

[5] K. Sergakis (2015) footnote 1, above.

[6] The "considerable experience" criterion would further strengthen the useful character of the discussions taking place in this framework as well as the quality of the dialogue developed in these discussions

Review Panel would be in a position to invite the party concerned to attend a meeting for further discussion of the subject, which could entail failure to update the "compliance" statement or the disclosure of perfunctory "non-compliance" explanations. Confidential information should also be protected in this framework, and the relevant rules applicable to the Panel's functioning should clearly allow parties not to disclose any information for which they have a legitimate interest to maintain confidentiality. Secrecy needs to be included for some delicate matters that, although they may be able to trigger a more fruitful dialogue, may compromise the position of one of the parties involved and have negative repercussions on a larger scale.

However, if the party does not wish to attend the meeting or attends but without showing a real willingness to cooperate and improve its practices, the Review Panel would have the right to publish a statement summarising the position adopted by this party or outcomes of the meeting. The Review Panel would therefore remain completely neutral on the persuasiveness of the arguments presented by the party and would only make public its guidance, the dialogue that took place, and the overall outcome of the procedure.

The invited party would be given the chance to express its views on the disputed matter, present its own version of the alleged facts as presented by the claimant party, and possibly show that steps have been taken to remediate this situation or even improve the informational context in the future. Under this assumption, the Review Panel would be expected to provide guidance on further actions to ensure that improvement will occur. Guidance should remain always neutral and should focus on general recommendations that could correspond to already existing guidance notes of various soft law texts currently applicable at the national level.

Maintaining the Panel's neutrality is the key to the success of such a proposed monitoring mechanism, since the Panel will only offer the chance to the concerned parties to express their views and explain their respective arguments further.

Summarising all the above-mentioned proposals, the various regulatory tools that can be potentially used inevitably run in different directions, since they refer to a future role for the FRC (or associated Panels) with variable levels of interventionism and neutrality. Whichever direction future reforms may take, it is important to acknowledge that some of the above-mentioned steps can be taken as an experimental attempt to improve compliance standards so as to pave the way for more complex or audacious initiatives, if and where appropriate.

**Q32:** In relation to corporate governance codes, national regulators have adopted different strategies for enforcement purposes. Although the majority of them follow the FRC's 'neutral' approach, leaving the recipients of the information to judge its quality and act accordingly, I will mention two interesting models[7] that may provide some interesting elements for further reforms in the UK:

a) in <u>the Netherlands</u>, a formal monitoring Committee (*Monitoring Commissie*

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[7] See K. Sergakis, 'Deconstruction and Reconstruction of the "Comply or Explain" Principle in EU Capital Markets' (2015) 5(3) Accounting, Economics and Law: A Convivium 233, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2516741.

*Corporate Governance Code*) was established in 2009. Its role is, amongst other things, to monitor compliance with the corporate governance code and to examine the explanations provided by companies when they do not comply with its provisions. The Committee also writes directly to companies in the case of unsatisfactory explanations and asks them whether they would like to provide an explanation about deviation from the provisions of the Code. The adopted approach has convinced some companies to start complying in a more meaningful way but others still struggle to engage effectively with the Committee.

Although this effort is highly appreciated and clearly shows the advantages of a soft monitoring framework, we must bear in mind that the Committee is not used in naming, positively or negatively, a company that has been subject to this direct contact, to preserve the confidentiality of the process. Moreover, the Committee ensures the monitoring process on its own without being open to potential complaints by market actors regarding the unsatisfactory quality of the information provided by companies. Therefore, this model could be further enriched in the future with "naming" practices and a more active approach from market participants who would be able to trigger the Committee's actions (following our proposals above).

Another positive aspect of this Committee's work is the collaboration with a research agency or university to examine compliance rates and content of explanations.[8] In this way, a number of resources are optimally used by third parties working closely with the Committee. Such initiatives could be used more extensively in the UK.

b) in France, a private body (The High Committee in charge of monitoring the implementation of the code) (*Haut Comité de suivi de l'application du code:AFEP-MEDEF*) composed of five personalities with recognised experience from international groups and three personalities from other sectors (investors, personalities selected for their competence in legal/ deontological issues) has assumed the role of monitoring the application of the principles contained in the Afep–Medef corporate governance code as well as proposing updates to the code. The members of the Committee are nominated and appointed by Afep (the French Association of Private Enterprises) and Medef (the French Business Confederation) for a period of 3 years, renewable once, and they also have to declare their directorships in listed companies. The committee has to produce an activity report on an annual basis.

The Committee may receive companies' questions on corporate governance code interpretation issues but also retains the right to contact companies and ask for more information in the absence of meaningful explanation. It should also be noted that companies that choose not to follow the recommendations of the Committee must mention this fact in their annual report/reference document and explain why they have adopted this position. Therefore, companies will be invited to proceed to a second level of informational exposure following again the "comply or explain" principle with regard to the outcome of the contact with the Committee.

In 2018, the AFEP/Medef revised the French Corporate Governance Code, as well as some of the Committee's features. In the event of an investigation initiated by the Committee, if the company has failed to reply to the Committee's letter within a

[8] Monitoring Committee Corporate Governance Code – Final document (unofficial translation), December 2017, p. 16, available at https://www.mccg.nl/?page=5787.

maximum period of two months, the Committee will render the investigation public.[9] 'Name and shame' have therefore been adopted this year to further increase the efficiency of this monitoring function.

Although I am not personally in favour of a private body exercising monitoring functions in this framework,[10] the reinforcement of social enforcement in this framework is much welcomed since it will exert additional pressure on companies to engage more and to strive to comply with the Committee's recommendations.

As an overall assessment of other regulators' or monitoring bodies' stances on these issues, in relation to the lessons to be drawn for the purposes of this Review, we could argue that the FRC has adopted an acceptable position while allowing, where appropriate, for some fine-tuning in its monitoring and overall enforcement powers, in accordance with some features found in the Netherlands (initiating contact with companies and asking for clarification) and in France ('naming and shaming').

I strongly believe that the FRC Review can contribute to the further improvement of the current regulatory framework. Nevertheless, as mentioned above, this review also needs to take into account:

a) the FRC's considerable and long-standing success in creating an ongoing dialogue with market participants, and
b) the pitfalls of strict legal enforcement of corporate governance rules that may shift the attention of companies to mere liability issues instead of aiming to enhance their governance structures.

I hope the comments provided in this letter are of interest for the Consultation's purposes.

Should you require any further information on the points raised above, please do not hesitate to contact me at Konstantinos.Sergakis@glasgow.ac.uk.

Yours sincerely,

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[9] Afep/Medef Code 2018, available at http://www.afep.com/wp-content/uploads/2018/06/Afep-Medef-Code-revision-June-2018-ENG.pdf.

[10] For a detailed explanation, see K. Sergakis, 'Deconstruction and Reconstruction of the "Comply or Explain" Principle in EU Capital Markets' (2015) 5(3) Accounting, Economics and Law: A Convivium 233, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2516741, p. 274-276.