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EUROPEAN COMMISSION

GREEN PAPER
Corporate governance in financial institutions and remuneration policies

EuroInvestors reply
1st September 2010

Summary & general comments

EuroInvestors agrees with the European Commission that the weaknesses of corporate governance in financial institutions did contribute to the financial and economic crisis, and welcomes initiative to improve it.

When it comes to the deficiencies of shareholders engagement, the EC should make a fundamental distinction between:

- Shareholders who really "own" the shares not only legally but also economically, and bear the risks and rewards of ownership on the one hand (mainly individual investors);
- and "agency" shareholders who are the legal owners but not the economic ones (a large part of the so-called "institutional investors").

Individual shareholders are economic and often long term owners of shares and, therefore have a "natural" incentive to act for a better governance of listed financial institutions. But their role and influence have been shrinking over time, due to the "reintermediation" of capital markets to the benefit of financial institutions and to the detriment of the "end" investors and non financial issuers. This reintermediation has been accelerated by the implementation of the MiFID Directive in 2007. Voting (especially cross –border) is also difficult, cumbersome, and sometimes costly for European individual shareholders. What's more, the EC public commitment to propose direct funding to investors stakeholders in 2009 has not been fulfilled.

- **Board of Directors**

We are in favor of ensuring the competency of directors. Nevertheless, we are concerned that the EC does not mention the necessary independence of at least some of them from the company and from its management. We are also concerned by conflicts of interests in large listed financial

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institutions which seem insufficiently addressed by the EC proposals. For example, many of the largest fund managers in Europe are held by parent banks or insurance companies.

- **External auditors**

We are not sure that the EC proposals, if enforced in the past, would have prevented the 2008 banking crisis. Indeed, the key issue is the conflicts of interests of external auditors as they are paid by the issuers they are supposed to audit. Also, the EC should ensure that external auditors are really liable on failing to perform their duties, and should make it possible for shareholders to seek damages from the external auditors through an EU-wide collective redress scheme.

- **Supervisory Authorities**

Supervisory authorities should ensure a minimum number of truly independent directors and representatives of individual and employee shareholders. Additionally, the governance and conflicts of interests of the supervisory authorities themselves are at stake, but not addressed in this green paper (see for example the recent analysis by FIN-USE on the EU national financial supervisors governance[1]).

- **Shareholders**

We do not agree with the EC statement about "*shareholders' lack of interest in corporate governance*". The EC must distinguish between "end" investors, shareholders as owners, and "agency" ones like fund managers who are more asset managers than "investors" or "shareholders". Moreover, there is unfortunately no mentioning of the badly needed EU-wide collective redress scheme for individual investors. There will be no significant improvement of the listed companies' governance in Europe unless the issuers become really liable to shareholders. Lastly, the very significant hurdles shareholders are facing to vote (especially cross-border proxy voting) are not addressed.

- **Effective implementation of corporate governance principles**

We have no knowledge of any European case of large failed financial institution directors being prosecuted for their wrongdoings in Europe, in contrary to the US. Again, an EU wide collective redress scheme for individual investors is urgently required.

- **Remuneration**

As noted by the EC, *"the substantial differences of national implementation on an element as fundamental as the structure of the remuneration policy are worrying. Further efforts are*

[1] Position Paper on consumer voice in financial services, May 2009 (http://ec.europa.eu/internal_market/fin-use_forum/docs/consumer_voice_en.pdf)

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thus needed to deal with this problem." A binding regulation is necessary to ensure a common approach within the EU on shareholders' "say on pay".

- **Conflicts of interests**

We would like the EC to consider a great step towards the reduction of conflicts of interests in financial institutions by: prohibiting European commercial banks which benefit from unique public privileges (access to the central banks' money, right to collect deposits, rescue funding by taxpayers) to engage into non commercial lending activities, especially capital markets and asset management ones. We refer to the current US and Italian Government approaches.

Comments on the Introduction

EuroInvestors agree with the opening statement by the EC that the weaknesses of corporate governance in financial institutions have contributed to the financial and economic crisis. The EC refers to specific measures in this area announced in its Communication of 4 March 2009. While acknowledging that this green paper does constitute a follow-up of such announcements, EuroInvestors would like to stress that another key announced measure to reform the financial system has not been addressed so far: the same EC Communication of 4 March 2009 announced that the EC would propose "*to provide direct funding to facilitate the capacity-building of investor stakeholders to represent their interests in financial services policies at EU level… by the end of 2009"*.[2] The lack of resources of small investors is indeed a major reason for their inadequate influence as shareholders in financial institutions. EuroInvestors asks again the EC to fulfill this important commitment made in March 2009.

The EC also points out that the options of its green paper will likely accompany and supplement the legal measures implemented or planned to reform the financial system. We agree, but the MiFID revision process is not mentioned by the Green Paper and should be added. We wish to stress that this process is strongly linked to this Green Paper issues as well, as EuroInvestors believes MiFID has further marginalized retail investors from the capital markets, as we had explained in the position papers referred to in footnotes 3 and 4. The planned EC "PRIPs" (Packaged Retail Investment Products) regulatory reform should also be mentioned as it should ensure a level playing field and minimization of conflicts of interests between the sale of "packaged" and non "packaged" retail investments by financial intermediaries, especially shares and bonds.

[2] EC Communication "Driving recovery", annex I, page 4, 4 Mach 2009

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1. Boards of directors

General question 1: Interested parties are invited to express whether they are in favor of the proposed solutions concerning the composition, role and functioning of the board of directors, and to indicate any other measures they believe would be necessary.

We are in favor of only part of the solutions the EC is mentioning concerning the composition, role and functioning of the board of directors.

Indeed, we are concerned by the conflicts of interests in the large listed financial institutions which seem insufficiently addressed by the EC proposals. For example, many of the largest fund management companies in Europe are held by parent banks or insurance companies. Therefore, large "institutional shareholders" in the European financial institutions are de facto controlled by these institutions. How can one expect these fund managers to act in total independence and freedom from their parent company? Also, this critical issue is compounded by the fact that fund managers are not really "investors" as they are only managing investors' money without bearing the risks and reaping the rewards. In fact their economic incentives are poorly correlated to those of their clients -the real end investors (see for example "the future of the fund industry"[3]).
We do not believe the current EC initiatives are really addressing this conflicts of interest issue in the multi-business financial groups. We refer to our recent reply to the EC consultation on the Capital Requirement Directive for banks[4].

We agree with the EC regarding the asymmetric information between investors and shareholders on the one hand and the concerned financial institution on the other hand (section 3.1.). Nevertheless, we wouldn't qualify MiFID as "a step forward for transparency". On the contrary, we believe MiFID has been very detrimental to the transparency of capital markets from end investors' point of view. For more information please see EuroInvestors' reply to CESR's consultation on equity secondary markets[5].

We are also concerned that section 3.3 of the EC Green Paper on Boards of Directors does not mention the necessary independence of at least some of the directors from a listed company and from its management. Additionally, there is no mention of the role of "independent" directors.

[3] http://www.icbi-events.com/blogs/fundforum/?p=202#more-202
[4] http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/financial_services/requirements_directive_1/organisations_contributi/eurosharehoIders/_EN_1.0_&a=d
[5] http://www.cesr-eu.org/popup_responses.php?id=5550

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The labeling of directors as "non executive" by the company itself is certainly not a guarantee of the independence of such directors from the company. We have a lot of evidence for the contrary ("non executive" directors having consulting contracts with the company, or being one of the main bankers of the company).

1. Specific questions:

1.1. Should the number of boards on which a director may sit be limited (for example, no more than three at once)?

Yes. A professional working board is getting increasingly important. Additionally the position within the board (e.g. chair, committee member/chair) should be taken into account.

1.2. Should combining the functions of chairman of the board of directors and chief executive officer be prohibited in financial institutions?

Yes

1.3. Should recruitment policies specify the duties and profile of directors, including the chairman, ensure that directors have adequate skills, and ensure that the composition of the board of directors is suitably diverse? If so, how?

EuroInvestors favors the introduction of precise recruitment policies for directors. The development of such policies is the principal task of a nomination committee within the board. Especially regarding the board of directors of financial institutions, wide knowledge, experience, qualification and independence are indispensable. Therefore it is absolutely essential that precise policies are defined prior to the recruitment.

From the shareholders/investors point of view it is furthermore important that both profile and certificate of qualification are available to the owners of the financial institution. Against this background we advocate respective documentation obligations towards investors.

1.4. Do you agree that including more women and individuals with different backgrounds in the board of directors could improve the functioning and efficiency of boards of directors?

Yes, although from the investors' point of view, the most important criteria for selection are the following:

- qualification, expertise, knowledge
- independence: a minimum number of truly independent directors (this is much more important than the gender of directors)
- directors representing individual shareholders (mandatory if they represent more than 5% of the capital, encouraged otherwise) designated or approved by individual shareholders associations

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- directors representing employee shareholders when they represent a significant share of the capital: designated by them and not (directly or indirectly) by the company.

1.5. Should a compulsory evaluation of the functioning of the board of directors, carried out by an external evaluator, be put in place? Should the result of this evaluation be made available to supervisory authorities and shareholders?

See reply to 4: this is not the most crucial issue. It should only apply to large listed companies because of the cost. In general, an evaluation of the board is welcome as it can reveal deficits in the functioning of the board. However, it should be up to the board to decide if they chose an external or internal evaluation.

1.6. Should it be compulsory to set up a risk committee within the board of directors and establish rules regarding the composition and functioning of this committee?

If the audit committee is already in charge of risks, this is not necessary. However, it is important that the whole board is not discharged from liability when referring tasks to a committee. We therefore favor an obligation of the committee to report to the whole board about the risks, e.g. by circulating the minutes of the committee meetings.

1.7. Should it be compulsory for one or more members of the audit committee to be part of the risk committee and vice versa?

See 1.6.

1.8. Should the chairman of the risk committee report to the general meeting?

In Germany, reporting on risks at the AGM is already taking place as the risk report, which is part of the annual report, is presented to the AGM by the CEO or the CFO. In general, the CEO or the CFO should report on risks to the GA.

1.9. What should be the role of the board of directors in a financial institution's risk profile and strategy?

It should review and approve the strategy.

In the two-tier board system, the definition of the risk profile and strategy is to be qualified as an executive task and with that has to be performed by the management board. However it has to be approved by the supervisory board.

1.10. Should a risk control declaration be put in place and published?

Yes, if short and easily understandable by all shareholders.

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1.11. Should an approval procedure be established for the board of directors to approve new financial products?

No, much too heavy. This is micro-management. In addition, many structured funds are issued by the same institution several times per year.

The Board must approve the risk strategy that must include innovation and new products.

1.12. Should an obligation be established for the board of directors to inform the supervisory authorities of any material risks they are aware of?

Yes. Is not that already the case?

1.13. Should a specific duty be established for the board of directors to take into account? the interests of depositors and other stakeholders during the decision-making procedure ('duty of care')?

No. Financial institutions have equal responsibilities to the interests of all stakeholders, i.e. depositors, clients, owners and employees. A special regulation for depositors also seems not necessary as this stakeholder group is already protected by the existing deposit protection schemes.

2. Risk-related functions

General question 2: Interested parties are invited to express whether they are in favor of the proposed solutions regarding the risk management function, and to indicate any other measures they believe would be necessary.

Specific questions:

2.1. How can the status of the chief risk officer be enhanced? Should the status of the chief risk officer be at least equivalent to that of the chief financial officer?

We are not convinced about this. It is not always good to fragment too much top managers' responsibilities. Is the CFO not already usually responsible for managing risks?

2.2. How can the communication system between the risk management function and the board of directors be improved? Should a procedure for referring conflicts/problems to the hierarchy for resolution be set up?

The communication system can be improved by giving the risk manager a direct obligation to report to the board of directors or the respective committee. This could resolve hierarchy conflicts/problems.

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2.3. Should the chief risk officer be able to report directly to the board of directors, including the risk committee?

If the CFO is responsible for managing risks then he should report directly to the board on these matters. Otherwise this is the right way to enhance the status of the risk manager. However, reporting should not constitute a source of power only, but rather an obligation.

2.4. Should IT tools be upgraded in order to improve the quality and speed at which information concerning significant risks is transmitted to the board of directors?

This type of information must certainly be timely, if not it is useless. Whether this requires an upgrade of IT tools, it is to be assessed on a case by case basis.

2.5. Should executives be required to approve a report on the adequacy of internal control systems?

This is already an obligation in Germany, introduced by the so called BilMoG. EuroInvestors believe it should be required in the whole EU.

3. External auditors

General question 3: Interested parties are invited to express whether they are in favor of the proposed solutions concerning the role of external auditors, and to indicate any other measures they believe would be necessary.

We are not sure these proposals, if enforced, would have prevented the 2008 banking crisis.

As mentioned by the EC in section n 3.7, the first key issue is the conflicts of interests of external auditors as they are paid by the issuers.

Also, the EC should ensure that external auditors are really liable on failing to perform their duties, and to make it possible for shareholders to sue the external auditors through an EU-wide collective redress scheme (we refer to our "Key Priorities").

Specific questions:

3.1. Should cooperation between external auditors and supervisory authorities be deepened? If so, how?

Yes

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3.2. Should their duty of information towards the board of directors and/or supervisory authorities on possible serious matters discovered in the performance of their duties be increased?
Yes: as stated by the EC in section 3.7. This duty must be effectively enforced.

3.3. Should external auditors' control be extended to risk-related financial information?
Yes.

4. Supervisory authorities

General question 4: Interested parties are invited to express whether they are in favour of the proposed solutions concerning the role of supervisory authorities, and to indicate any other measures they believe would be necessary.

No, we believe it is much more important for supervisory authorities to ensure a minimum number of truly independent directors and of representatives of individual and employee shareholders. See our replies to 1.4.

Moreover, the governance of the supervisory authorities themselves is at stake and not addressed at all in this green paper. We refer to the recent study published by FIN-USE on the EU national financial supervisors. For example in France, the Board ("college") of the securities regulator includes quite a few directors from the financial industry and only one from the end investors' side (representing employee shareholders). And the larger banking and insurance supervisor's board does not include any user representative.

For example, according to the Financial Times, the exceptional ECB purchase of EU sovereign bonds in 2010 would have mostly benefited some French banks. Why would that be? The relationship between regulators and the financial institutions should be much more transparent. More generally, conflicts of interests between national regulators and financial institutions are likely to be more acute nowadays as national Eurozone governments rely more and more on financial institutions to buy their largely increased debt issues. This is another drawback of the reintermediation of capital markets (see Euroshareholders'[6] and EuroInvestors' responses to the

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European Commission consultation on the Capital Requirements Directive[7], and to the CESR consultation on secondary equity markets[8]).

Specific questions:

4.1 Should the role of supervisory authorities in the internal governance of financial institutions be redefined and strengthened?
Yes, see above and 1.4.

4.2. Should supervisory authorities be given the power and duty to check the correct functioning of the board of directors and the risk management function? How can this be put into practice?
Yes, idem

4.3. Should the eligibility criteria ('fit and proper test') be extended to cover the technical and professional skills, as well as the individual qualities, of future directors? How can this be achieved in practice?
A more important criterion is the real independence from the company and its management of a minimum number of directors. This is a better way to "ensure better independence of judgment".

5. Shareholders

General question 5: Interested parties are invited to express their view on whether they consider that shareholder control of financial institutions is still realistic. If so, how in their opinion would it be possible to improve shareholder engagement in practice?

We agree with the EC that, *"in many cases, the shareholders did not properly perform their role as owners of the companies"*.

But we take exception to the unsubstantiated statement by the EC of *"shareholders' lack of interest in corporate governance"*. The EC must at last distinguish between "end investors", shareholders as owners, and "agency" ones like fund managers who are more intermediaries than

[7] http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/financial_services/requirements_directive_1/organisations_contributi/euroshareholders/_EN_1.0_&a=d
[8] http://www.cesr-eu.org/popup_responses.php?id=5547

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"investors" or "shareholders". Individual shareholders are real owners of their companies and all studies show that they are more long term holders and therefore are more interested in the governance of listed companies. Furthermore, they do not measure their performance on a daily basis as investment funds have to do because at any time a fund holder may want to redeem his fund shares.

In fact most fund managers and many third party asset managers do not care as much about the governance of listed companies, as they have no real direct interest in improving the corporate governance of issuers:

- "active" funds have on average a portfolio turnover rate above 100 %, i.e. on average they don't hold a position in any listed company for more than a year, so why bother with going to the annual meeting and engage actively for measures that will likely not impact them directly? We ask for the public disclosure of all European "active" equity managers average portfolio turnover rate, to be compiled by the EC or CESR (ESMA in the future). It is about time governments and the media face the reality of "institutional" share ownership. And this is not including "trading" shareholders among financial institutions which now account for most of the orders and trades on the equities markets (High Frequency Trading and the like, see Euroshareholders'[9] above-mentioned reply to CESR), and who do not have any interest whatsoever in the governance of the issuers of the shares they hold sometimes only a few nanoseconds.
- "passive" or index funds do not care about the governance of any specific company as their only goal is to replicate an entire market (or market segment) performance.

Unfortunately, "real" end investors have been more and more marginalized and penalized (for example information asymmetry has increased substantially) in the last decades, and particularly by the MiFID enforcement (see EuroInvestors' replies on the EC CRD consultation and on the CESR consultation on equity secondary markets regarding the MiFID revision process, footnotes 7 and 8). EU regulations have encouraged promotion and sale of packaged products to retail customers including funds, to the detriment of direct ownership of shares and bonds, which is much less profitable for financial intermediaries.

Also, the badly needed EU-wide collective redress scheme for individual investors has not been mentioned. How individual investors are supposed to fight for better corporate governance if they do not have the legal means to do that successfully? An EU-wide collective redress scheme used to be on the EC's agenda before. We are very concerned that despite the 2008 financial crisis being the worst financial crisis since 1929 and despite the obvious responsibility of financial institutions and regulators for it, this goal seems to have been dropped by the European

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Commission. There will be no significant improvement of the listed companies' governance unless the issuers become fully liable to the shareholders.

Another important issue is that voting rights restrictions against minority shareholders of financial institutions should be prohibited whenever possible. In particular, quite a few large listed financial institutions have issued nonvoting certificates to individual shareholders instead of voting shares. For example, ING, the Dutch based bank insurance Group, has issued such nonvoting certificates to the shareholders of BBL when it acquired the Belgian banking group. At the general meetings the voting rights are exercised by the "administratiekantoor" for "the Company's good". Experience shows it always voted with the management. Still today, a large share of the ING's ownership rights is held by this "administratiekantoor".

Another example of the failed governance of the European financial institutions boards is the case of UBS. Even when the General Assembly of shareholders rejected the discharge of the previous Board for its management of the financial company in 2007, the next one refused to take any follow-up action, especially regarding the severance packages of the members of the previous management team.

Lastly, the significant hurdles shareholders are facing to engage in proxy voting (especially in cross-border proxy voting) are omitted. The GMMS (General Meetings Markets Standards) working group set up by the EC is now more than 5 years old and is still blocked by the financial intermediaries. Euroshareholders[10] "EuroVote" project has so far received limited attention from the EC, and can possibly face legal hurdles due to the gold plating practices of some member states with regard to the Shareholders' Rights Directive . In General, individual shareholders face heavy constraints while exercising their voting rights in Europe. For example, in the US any individual shareholder automatically receives all voting and proxy materials by email, and can vote or give his proxy by email as well (this "Broadridge" service covers 95 % of US equity brokers). We are very far from such a user friendly practice in Europe. On the contrary, shareholders have to pay up to EUR 70 (fees charged by deposit banks and Clearstream/Euroclear) per ballot (which means even for one share) if they want to cast their vote for shares from another country.

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Specific questions:

5.1. Should disclosure of institutional investors' voting practices and policies be compulsory? How often?

Disclosure of the general voting policies should be minimum standard for all institutional investors. Therefore we consider an EU-wide binding regulation as absolutely essential. Furthermore, we also attach great importance to the publication of the institutional investor's vote recommendations prior to the general meeting. The intended voting behavior should be disclosed in due time before the meeting (e.g. 2 weeks before the general meeting) and should be easily accessible by other investors/shareholders on the institutional investor's website. Last but not least the actual voting behavior in the general meeting shall be disclosed in due time after the general meeting in the same way as the intended voting behavior.

5.2. Should institutional investors be obliged to adhere to a code of best practice (national or international) such as, for example, the code of the International Corporate Governance Network (ICGN)? This code requires signatories to develop and publish their investment and voting policies, to take measures to avoid conflicts of interest and to use their voting rights in a responsible way.

Euroinvestors welcomes an obligation of institutional investors to adhere to a code of best practice, preferably been laid down in an EU-Directive. We explicitly welcome the introduction of a requirement to develop and publish institutional investors' investment and voting policies to take measures to avoid conflicts of interest and to use their voting rights in a responsible way. Furthermore we recommend to fully adopt the new regulations of the British Stewardship Code which contains clear definitions and obligations for institutional investors. Additionally, imposing the same obligations on proxy agencies acting on behalf of institutional investors seems worth considering. Here too, increased transparency is considered reasonable.

Also, we agree with the EC's stated intention to review the issue of "*the identification and disclosure of potential conflicts of interest by institutional investors*"(see EuroInvestors' reply to general question 1 on the conflicts of interests within diversified financial groups).

5.3. Should the identification of shareholders be facilitated in order to encourage dialogue between companies and their s-hareholders and reduce the risk of abuse connected to 'empty voting'27?

Yes, we refer again to the more than 5 year old "GMMS" (General Meetings Market Standards) working group set up by the EC and in which Euroshareholders[11] is participating: signing of the standards is still blocked by the refusal of financial intermediaries.

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5.4. Which other measures could encourage shareholders to engage in financial institutions' corporate governance?

As stated earlier and in particular in EuroInvestors' reply to the "General question", it is important to strengthen the importance of the general meeting by:

- Thoroughly facilitate proxy voting – cross-border proxy voting in particular – in line with the spirit of the shareholders Rights Directive (but unfortunately not with the way it is being implemented); we refer again to Euroshareholders' EuroVote initiative to facilitate cross-border proxy voting for individual shareholders[12].
- Thoroughly facilitate voting by email (like in the USA);
- Establish an EU-wide collective redress scheme for individual investors;
- Ensure the independence of asset managers from banking institutions (like the Italian Government is now currently implementing, and as it was enforced in the US up to 1999)
- Create a level-playing field between the sale and marketing of packaged investment products and the sale and marketing of shares and bonds to retail investors; in particular address the conflict of interest issue of the financial distribution.

6. Effective implementation of corporate governance principles

General question 6: Interested parties are invited to express their opinion on which methods would be effective in strengthening implementation of corporate governance principles?

In contrary to the US, we have no knowledge of any European case of any large failed financial institution directors being prosecuted for their wrongdoings in Europe.

In particular, since the outburst of the financial crisis, quite a large number of deceptive information and insider trading profits cases within financial institutions have been reported by the media. For example, we note that both US individual shareholders and US professional pension fund shareholders of the French Bank SocGen have sued the bank for such alleged cases, but – to our knowledge – no European institutional shareholders have made such a move, and no individual ones because of the lack of effective collective redress schemes (except for the Netherlands).

This kind of evidence should be very worrisome for the European Authorities, and illustrates the lack of legal means for individual investors to defend their rights and to claim damages when

[12] References: Euroshareholders web site www.euroshareholders.org and EuroVote press release, Financial Times stories, for example: "*Act on private shareholder solution*" (FTfm, 28 March 2010), "*Boost for cross-border voting"* (FTfm, 10 May 2010)

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they are prejudiced in form of a direct claim against the respective board members. Again, an EU wide collective redress scheme for individual investors is urgently required.

Specific questions:

6.1. Is it necessary to increase the accountability of members of the board of directors?
Yes, as it currently does not exist in reality, see above.

6.2. Should the civil and criminal liability of directors be reinforced, bearing in mind that the rules governing criminal proceedings are not harmonised at European level?
Idem.

7. Remuneration

General question 7: Interested parties are invited to express their views on how to enhance the consistency and effectiveness of EU action on remuneration for directors of listed companies.

The Report on the application by Member States of the EU of the Commission 2009/384/EC 2009 Recommendation on remuneration policies in the financial services sector has shown that "the substantial differences of national implementation on an element as fundamental as the structure of the remuneration policy are worrying. Further efforts are thus needed to deal with this problem." We consider a binding regulation as necessary to ensure a common approach within the EU.

Specific questions:

7.1. What could be the content and form, binding or non-binding, of possible additional measures at EU level on remuneration for directors of listed companies?
See our response to General question 7 above.

7.2. Do you consider that problems related to directors' stock options should be addressed? If so, how? Is it necessary to regulate at Community level, or even prohibit the granting of stock options?
Yes. We consider a binding regulation in a form of Directive preferable, as the respective Recommendations obviously have not been as effective as expected. However, prohibiting granting of stock options is considered as less feasible.

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7.3. Whilst respecting Member States' competence where relevant, do you think that the favorable tax treatment of stock options and other similar remuneration existing in certain Member States helps encourage excessive risk-taking? If so, should this issue be discussed at EU level?

Yes, it could but with the aim of establishing mandatory rules for all EU Member States.

7.4. Do you think that the role of shareholders, and also that of employees and their representatives, should be strengthened in establishing remuneration policy?

Shareholders should have "Say on Pay" at the general meeting. However, the establishment of the remuneration policy should remain a competence of the board of directors.

7.5. What is your opinion of severance packages (so-called 'golden parachutes')? Is it necessary to regulate at Community level, or even prohibit the granting of such packages? If so, how? Should they be awarded only to remunerate effective performance of directors?

First of all, a precise definition of the term "severance packages" is necessary. It is important to distinguish between special payments being made after the director's term of office and payment obligations resulting from the terms of contract.

An EU-wide harmonized regulation would be welcome, although it does not seem clear how remuneration for the effective performance of directors should be measured. It should be linked to medium and long term performance with a heavy weighting on relative (to peers for example) equity market performance.

General question 7a: Interested parties are also invited to express their views on whether additional measures are needed with regard to the structure and governance of remuneration policies in the financial services. If so, what could be the content of these measures?

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Specific questions:

7.6. Do you think that the variable component of remuneration in financial institutions which have received public funding should be reduced or suspended?

No. In fact, the variable component of remuneration in financial institutions which have received public funding should be designed to incentivize positive mid-term performance so that public funding is no longer required. However, this is only possible if aspects of sustainability (e.g. via a perennial basis for assessing the variable remuneration) are taken into account.

8. Conflicts of interest

General question 8: Interested parties are invited to express whether they agree with the Commission's observation that, in spite of current requirements for transparency with regard to conflicts of interest, surveillance of conflicts of interest by the markets alone is not always possible or effective.

No, we do not agree.

A great step towards the reduction of conflicts of interests in financial institutions could be achieved by prohibiting European commercial banks, which benefit from unique public privileges (access to central banks money and right to collect deposits), from engaging into non commercial lending activities, especially to capital markets and asset management ones. We refer again to EuroInvestors' reply to the EC consultation on the CRD Directive (footnote 7) and to the current US and Italian Government financial policy approaches. An EU-wide and clear definition of the term "conflict of interest" would be a precondition.

Specific questions:

8.1. What could be the content of possible additional measures at EU level to reinforce the combating and prevention of conflicts of interest in the financial services sector?

See above.

Asset managers and capital market brokers should be independent from commercial banks. It is neither up to the central banks nor to depositors to finance these activities. For example, the CDOs market in France is controlled by only two "dependent" players: JP Morgan and PIMCO (affiliate of the Allianz insurance Group).

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8.2. *Do you agree with the view that, while taking into account the different existing legal and economic models, it is necessary to harmonise the content and detail of Community rules on conflicts of interest to ensure that the various financial institutions are subject to similar rules, in accordance with which they must apply the provisions of MiFID, the CRD, the UCITS Directive or Solvency 2?*
Yes, of course (see previous replies). But the current regulatory projects of the EC unfortunately go in the opposite direction, as the following examples prove:

- the EC currently excludes shares and bonds from the "PRIPs" project's scope (initially called "substitute retail investments products" project instead of "packaged" which is much too narrow and does not mean anything for the average retail investor: see EuroInvestors' reply on PRIPs to the EC on their website);
- Solvency II Directive purposefully excluded all non insurance regulated long term savings and pension products, creating an unleveled playing field in this critical area.

The proposed regulations for the new European Financial Authorities still fragment the supervision of retail investment products sales between three different Authorities, regardless of the reality at the point of sale where all these products are substitutable, whether they are banking, insurance, pension, securities or fund-based products. Often they are even mixed together (unit-linked insurance contracts for example which mix life insurance and investment funds).