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The European Federation of Financial Services Users
Fédération Européenne des Usagers des Services Financiers

Position on the European Commission Action Plan on Company Law and Corporate Governance

Reply of the European Federation of Financial Services Users (EuroFinuse)

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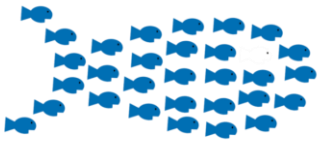
Executive Summary

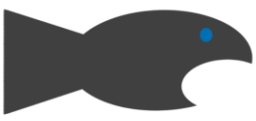
EuroFinUse, the European Federation of Financial Services Users, welcomes the Corporate Governance Action Plan from the European Commission. For over 20 years, and until its merger into EuroFinUse, Euroshareholders closely followed and participated in the design of EU corporate governance standards. We believe that the initiated consultation with a wide range of stakeholders by the Commission with regards to this Action Plan is a major step in this process, and would like to praise the Commission for opening up the dialogue.

In an effort to complement the proposal and improve the Action Plan we focus on those specific points which in our opinion have not been accounted for:

- The lack of response to the problems of cross-border shareholder voting;
- The establishment of an adequate treatment for non-profit proxy voting;
- Shareholder identification;
- Specific proposals supporting the long-term engagement of individual investors and promote longer holdings of shares (which simultaneously should not penalize necessary short-term tenure).

Finally, we would like to refer in particular to our Position on the Green Paper on the EU Corporate Governance Framework; our Position on the ESMA request for evidence on empty voting and our Response to the ESMA Discussion Paper on the Proxy Advisory industry; for further information about our views on corporate governance and shareholder rights.





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EuroFinUse would like to comment on the concrete proposals within the lines of action as identified by the European Commission in its Action Plan:

I. TRANSPARENCY ISSUES

- DIVERSITY IN THE BOARDS

We agree with the Commission on the importance of diversity in companies' boards, and understand the meaning of "diversity" in the same way as the European Commission: **the board should count on a wide range of different competencies from its members relevant to their duty (e.g. knowledge on capital markets; shareholder relations; legal, tax and audit issues, etc.)**. Along the same line EuroFinUse advocates more women in boards as highlighted in our response to the Consultation of the European Commission on Gender imbalance in corporate boards in the EU. We generally support sensitive measures that lead to an increase of women in boards, as we believe there are persistent barriers preventing companies to fully take advantage of women's talents available to them (of course, those female candidates should in any case count with skills and capabilities matching the required profile).. We would however, prefer corporate-based, soft-law approaches that allow flexibility to companies if they prove to lead to the expected outcome.

- STRUCTURE OF THE BOARD

EuroFinUse acknowledges the existence of different governance models throughout the EU[1]. Harmonization at EU level on this question does not seem adequate to us as they are adapted to the various economic and legal environments of EU Member States.

The participation of Nomination Committees to elect the board (and fewer restrictions for the election of its members) could contribute to the aforementioned objective of diversifying boards. This could be applied at least in the one-tier corporate governance system.

The Nomination Committee shall carry out a review of each candidate's qualifications and how the overall proposal will lead to a qualified and diversified board.

- DEFINITION OF "INDEPENDENT DIRECTOR"

[1] The one-tier system with one board (e.g. United Kingdom); the two-tier system including a management board and a supervisory board (e.g. Germany); and a mixed model combining features from both models, such as having one of the supervisory boards selecting the members of the management board (e.g. Denmark).

An important missing point is the lack of a legal definition[2] and objective criteria that define "independence" for directors. A general meaning of "independence" for directors should be agreed upon as the different corporate governance traditions throughout the individual EU Member States may differ at this point. Such definition has already been applied in the USA (NASDAQ Rule 4200 a (15)). On EU level however, we only have a non-binding Recommendation 2005/162/EC from the European Commission. So far, we have identified certain problems regarding the application of the meaning of independence of directors across the EU. For instance, in France the decision as to whether a candidate is independent or not is taken by the board, and therefore it is possible that the CEO of company A is considered by company B as independent and in the same time the CEO of company B will be considered as independent by the board of company A. In our view an EU-wide solution would be more than welcome, as we believe the required abilities and skills sets that an independent director should have are the same throughout the EU and not particular to the various governance systems of EU Member States.

Finally, we advocate the establishment of a maximum number of mandates for board directors.

- SHAREHOLDER IDENTIFICATION

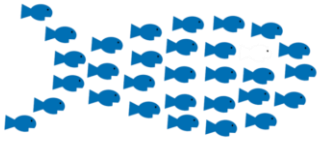
Another important point in the Action Plan related to shareholder identification. This is a crucial issue in the current post-MiFID scenario, entailing highly fragmented capital markets and an increasingly indirect holding of financial assets. Therefore, a shareholder register should be available not only for the management of listed companies but also for shareholders, shareholder associations and their representative organizations. It would be highly unfair for individual shareholders to be excluded from accessing this register if only the management of the company is granted access: this situation could be compared to flatowners in an apartment block who would not have information on who are the other co-owners in the building.

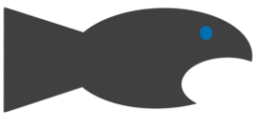
We agree on the fact that, unless the shareholder reaches a significant percentage of shares (e.g. between 0.5% and 1%) nominative identification should not be required[3]. The holding of shares under that threshold should however not be identified on a nominative basis but anonymously, stating the percentage of shares only, due to privacy and data protection regulations.

- COMPLY OR EXPLAIN

[2] Except in countries such as the UK (Higgs report on non-executive directors) and some Sweden (regulations of OXM Nordic Exchange Stockholm and of NGM).

[3] Unless identification for every single shareholder is required by the issuers' bylaws, which is the case for some big listed French companies.





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We agree with the European Commission's analyses on the 'comply or explain' principle for corporate governance codes. We also agree with the steady and significant improvement of the explanations of companies as to why they do not follow the recommendations of such codes. However we feel there is plenty of room for improving those explanations. We would be in favor of establishing a single website where information on the compliance of major EU listed companies with their national corporate governance codes could be found, thereby providing key information necessary for cross-border investment activities.

II. SHAREHOLDER ENGAGEMENT ISSUES

- CROSS BORDER VOTING

We would like to highlight that the specific evidence and recommendations as provided in EuroFinUse's Research Report on *'Barriers to Shareholders Engagement - Report on Cross-Border Voting'* were unfortunately not taken into account again by the European Commission in its Action Plan (we had already issued similar recommendations in our Position to the Green Paper on the EU Corporate Governance Framework). We understand that voting procedures on shares issued in a different EU Member States not only disincentivize the exercise of shareholder rights but in certain occasions completely block the use of such rights. This is not only a question of corporate governance or shareholder rights, but poses a serious threat to the EU Internal Market. We are therefore disappointed by the neglect of such important questions in the Action Plan, although we hope the upcoming proposal from the European Commission for a Securities Law Directive will make use of the evidence provided in our Report.

We believe that this problem could be at least partially addressed if the unique features of non-profit proxy voting were recognized: such mechanism is used by shareholder associations to provide voting recommendations to small shareholders on a free of charge basis. Therefore, proxy voting agents should be exempt from the most burdensome requirements as proposed in the EU Action Plan, such as for instance the mandatory disclosure of the voting recommendations for every single shareholder meeting. To this end, we would like to quote the Securities and Markets Stakeholder Group' opinion of ESMA's discussion paper on proxy advisers[4], which under point four and ten call for a distinction between for profit and non-for-

[4] http://www.esma.europa.eu/system/files/2012-smsg-25.pdf

profit proxy voting agencies, and advocates reducing compliance costs for non-for-profit proxy voting agencies.

- SAY ON PAY

EuroFinUse acknowledges the existence of disproportionate remuneration of some director boards and top managers of in some of the big listed EU companies. Plenty of examples of such excessive practices - as the "shareholder spring" has shown in most recent times - can be found. Above all, we believe in the general principle for remuneration "no reward for failure". Once this principle is respected, we believe remuneration of boards of directors and top managers should be somehow flexible as long as certain conditions are met:

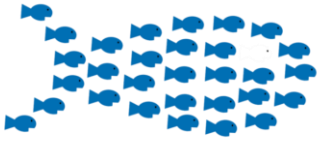
- ✓ Binding AGM vote on joint remuneration for boards of directors and top managers;
- ✓ Binding AGM vote on the remuneration structure for boards of directors and top managers;
- ✓ AGM vote (maybe binding) on individual remuneration for boards of directors and top managers;
- ✓ Establishment of remuneration caps for boards of directors and top managers;
- ✓ Limitation of "golden parachutes", "golden handshakes" and other equivalent allowances for boards of directors and top managers.

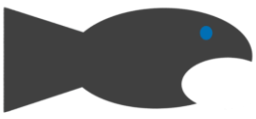
We understand that in any case, disclosure is the first necessary step which should be followed by the above mentioned points.

We believe as well that, even if the AGM vote was not binding, it is quite appropriate for shareholders to vote especially on the remuneration policies and the overall remuneration of the management, and maybe also on the individual remuneration and bonuses of each director.

- LONG TERM ENGAGEMENT OF INSTITUTIONAL INVESTORS

EuroFinUse agrees with the analyses of the European Commission for the need of increased engagement of institutional investors. In our view, individual investors as a group are in most cases long-term investors due to the big costs of trading shares (e.g. search costs, broker commissions, etc.) and the fact that frequently they invest to cover long-term needs, such as retirement, children's education and housing. Therefore, incentives are high to take informed decisions which will result in longer share tenures. However, institutional investors may not have





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any incentives to engage in companies as they may focus on short-term benefits and therefore use investment strategies with short tenure periods. Many major shareholders who do invest long-term such as pension funds, insurance companies and investment funds do not act like engaged shareholders and are rarely active. We identify this issue as critical, especially because their weight in the ownership structure is generally high but they do not take advantage of their capacity to influence the development of the company.

On the other side, we feel that at least some institutional investors may not properly exercise their fiduciary duties as regards to their beneficiaries or clients. Therefore, all measures leading to transparency (and therefore allowing to objectively assess their performance as managers) are adequate. The full disclosure of their voting policy could play a key role to improve the fiduciary duties. Moreover, the exercise of the votes at AGMs is a basic requirement to comply with those fiduciary duties. Its public disclosure would further strengthen such compliance. We would be in favor of establishing an obligation for institutional investors to vote on all the stocks held in their portfolios and to inform at least their clients or beneficiaries of the exercise of such voting rights.

- CONCRETE POLICY PROPOSALS TO ACHIEVE SHAREHOLDER ENGAGEMENT

We were surprised to find no references to concrete proposals in the Action Plan to extend the average share tenure. When speaking about "shareholder engagement", it is clear that only shareholders that remain in the company for a certain period of time will have some incentives to monitor the management and in general have a true interest in the long-term performance of the company. This is why EuroFinUse believes that specific measures to increase the average holding time of shares would be overall beneficial for the system.

Certain proposals have been discussed amongst our members to award a double vote or an increased dividend[5] to long-term shareholders[6]. Such initiatives should be aligned with the European Commission's current discussions on long-term investment[7].

Some of our members are concerned however, about the adequacy of these measures for a number of reasons: First, awarding a double vote would infringe the important principle in

[5] Several big French issuers do reward shareholders who have held shares for two years or more with an increased dividend.

[6] We referred to this possibility in our Response to the Consultation of the Commission on UCITS and Long-Term Investment.

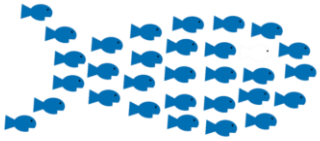
[7] Such initiatives, unfortunately, seem to be much more focused on institutional investors and neglect the potential roles that individual shareholders and other retail investors can play in long-term term investment.

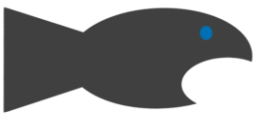
corporate governance of "one share, one vote"[8]. Second, the award of a higher dividend for engaged shareholders could indirectly penalize short term investment, which we understand is necessary to ensure liquidity to issuer companies. Also both measures could put the principle of equal treatment of shareholders at risk, which we believe should always be respected.

Therefore, other measures should be explored such as awarding an important role to engaged shareholder when electing Nomination Committees, which will make a proposal for the members to compose the board.

Shareholders should be allowed to actively participate in the preparation of AGMs if they wish to in order to tailor AGMs to shareholders' needs and interests. This is a practice already implemented in some countries through shareholder committees. This is a necessary measure to implement as the ownership structure may vary considerably from one company to another and therefore have a potential impact on engagement possibilities for shareholders.
Finally, shareholders should also be able to put forward resolutions to vote in the AGMs as long as they are filed by a minimum of 100 shareholders.

[8] In France, however, shareholders are awarded a double vote in certain occasions.





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