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GREEN PAPER

THE EU CORPORATE GOVERNANCE FRAMEWORK

The European Commission's consultation

EuroInvestors' reply

22nd July 2011

EuroInvestors (the European Federation of Investors or EFI) was created in the summer of 2009, following the financial crisis which demonstrated the limits of the almost exclusive dialogue between regulators and the financial industry, largely ignoring the user side. EFI aims at representing and defending at the European level the interests of financial services users in order to promote training, research and information on investments, savings, borrowings and Personal Finances of individuals in Europe, by grouping the organizations pursuing the same objectives at a national or international level. Already about 45 national organizations of investors and other financial services users have joined us, and EFI already represents about two million European citizens.

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Summary & general comments

Good principles of corporate governance and their proper implementation in all listed companies, is of vital importance for their long-term survival, growth and stability, for ensuring the long term interests of shareholders is not overlooked, and furthermore for the stability and sustainable development of the economy and the financial system. Therefore, EuroInvestors welcomes initiative of the European Commission to review and improve existing corporate governance legislation and soft law.

We believe that many problems of corporate governance arise from a failure of one or other of two conditions: broken links in the governance chain between directors and shareholders (the ‘agency” and depositaries processing chain problems); and the fact that shareholders – those who control the company – are not necessarily beneficial owners – those who carry the economic risks and rewards of ownership.

Unfortunately, this green paper fails to identify and address one of the main obstacles to shareholder engagement: the poor performance of the intermediaries chain which makes it very difficult and often very costly for small shareholders to exercise their voting rights (especially cross–border) and for issuers to know who their real (“beneficial”) owners are, and therefore for them to communicate with each other. The technologies used in the intermediaries’ chain are also antiquated: proxy certificates sent by fax, and still lack of cross –border Internet voting in the XXIst century EU (to our knowledge). Moreover, we believe that the General Meetings communications between listed issuers and their shareholders should not be monopolized by bank affiliates as this is not their core business and as their track record in this business is not satisfactory.

Euroshareholders, the organization of European shareholders associations and a founding member of EuroInvestors, has recently launched the EuroVote service facilitating the exercise of voting rights cross –border by offering individual investors an easy, trustworthy and free of charge proxy process. During the 2011 AGM season we have suffered from serious obstacles and deficiencies from the intermediaries’ chain while trying to exercise voting rights which we share in this response with the EC (see real case study attached). We believe that removing these deficiencies and making cross –border voting easy and efficient would importantly contribute to the better governance of listed companies.

EuroInvestors also asks for full (intra EU at least) shareholder identification being easily accessible both by issuers and by shareholder associations and free of charge.

EuroInvestors also observes that this green paper is mostly focused on institutional shareholders. Individual shareholders are not mentioned anywhere. This is unfortunate, as individual shareholders are mostly long term holders and often engaged ones. Sadly the role and influence of individual shareholders have been shrinking over time due to the

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'reintermediation' of capital markets to the benefit of financial institutions and to the detriment of the end –investors and non–financial issuers. Individual investors have been marginalized in the last decades coming from about 50 % of the equity markets to 10-15% today. Recent EU financial regulations have further marginalized individual shareholders and pushed them out of equity markets into packaged products, especially investment funds that have a much higher turnover rate, i.e. are invested in a much shorter term on average. EU policies have deliberately favored the expansion of financial capitalism to the detriment of people's capitalism. As a result individual shareholders have very little incentives to behave as engaged shareholders.

EuroInvestors also asks for having a minimum number of really independent board members, as many so –called "non executive" members are indeed not independent.

EuroInvestors could agree to the 'comply or explain' framework as a means of implementing of Corporate Governance Codes, but we believe that the quality and usefulness of the explanations provided by listed companies often have to be much improved, and that financial supervisors should control them.

We are also surprised at the lack of reference to the auditors' role. Ideally auditors should be appointed by, and report to, the beneficial owners. The key issue is the conflicts of interests of external auditors as they are paid by the issuers whom they are supposed to audit. Moreover, 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[1], which was also omitted in this paper. There will be no significant improvement of the listed companies' governance in Europe unless the issuers and the auditors become really liable to shareholders for serious governance failures.

Last but not least, we need to point out that even though the EC constantly reiterates its "commitment to a strong and successful single market which refocuses on citizens and regains their trust"[2], so far its public commitment to "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"3 has not been fulfilled. The lack of resources of small investors is one of major reasons for their inadequate influence as shareholders in the governance of listed companies. EuroInvestors asks again the EC to fulfill this important commitment made in March 2009.

[1] Our position on collective redress is available on the EC website and on ours: http://euroinvestors.org/upload/positions/EFI%20response%20on%20Collective%20Redress1304088422.pdf
[2] EC Green Paper 'The EU corporate governance framework' COM (2011) 164 final
[3] EC Communication "Driving recovery", annex I, page, 4 Mach 2009

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Questions

General

(1) Should EU corporate governance measures take into account the size of listed companies? How? Should a differentiated and proportionate regime for small and medium-sized listed companies be established? If so, are there any appropriate definitions or thresholds? If so, please suggest ways of adapting them for SMEs where appropriate when answering the questions below.

The priority is to ensure the safety and protection of shareholders, especially individual ones. Therefore, the same level of transparency and corporate governance should apply to all listed companies on the main markets. Companies perceiving the requirements being too heavy can go to the less regulated markets, as long as it is made clear to investors that less stringent provisions apply. In that regard, it could be interesting to look closer for example into the German approach, where two different listing regimes exist: listed prime standard with high corporate governance requirements and the general standard with lighter regulation. But this development of different market standards should be at the discretion of the local stock exchanges.

(2) Should any corporate governance measures be taken at EU level for unlisted companies? Should the EU focus on promoting development and application of voluntary codes for non-listed companies?

"Good corporate governance is particularly important to the shareholders of unlisted companies. In most cases, such shareholders have limited ability to sell their ownership stakes, and are therefore committed to staying with the company for medium to long term. This increases their dependence on good governance".[4] EuroInvestors believes that all companies with public ownership structure, e.g. state –owned companies, as well as all companies indirectly using capital markets for financing (e.g. through venture capital or other private equity funds which are then offered to private investors) should be subject to minimum corporate governance provisions . Therefore, we welcome actions focused on promoting

[4] 'Corporate Governance Guidance and Principles for Unlisted Companies in Europe' by ecoDa (*The European Confederation of Directors' Associations*), p. 7

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development and application of voluntary codes for non –listed companies at EU level like ecoDa's.

1. *Boards of directors*

(3) Should the EU seek to ensure that the functions and duties of the chairperson of the board of directors and the chief executive officer are clearly divided?

We believe it is of great importance to ensure split between executive and supervisory functions in order to avoid potential conflicts of interest and to prevent concentration of management powers in the hands of one person. It is especially important to divide the functions and duties of the chairman of the board from those of the CEO, at least in the listed companies.

1.1. Board Composition

(4) Should recruitment policies be more specific about the profile of directors, including the chairman, to ensure that they have the right skills and that the board is suitably diverse? If so, how could that be best achieved and at what level of governance, i.e. at national, EU or international level?

We strongly favour board diversity and we believe companies should be precise about their recruitment policies and about the profile of directors. Nevertheless, we do not think it should be a binding regulation, but rather a non–binding approach by local corporate governance codes. Nevertheless, in order to establish non–binding regulation efficiently it has to be implemented in a reasonably consistent way throughout the EU. Of course recruitment and diversity policies should be transparent and very well communicated to shareholders of the company both via the website and the annual report. It would be also advised to disclose in the annual report the name of the chairperson and non–executive members with appropriate details of their backgrounds, especially current and recent external (board and management) positions, age, and date of joining the company and board.
What is the most important is to ensure a minimum number of truly independent directors in order to avoid potential conflicts of interests. "Independent" directors should not be confused – as often it is the case– with "non-executive" board members, who are often not independent

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from the issuer, e.g. bankers, consultants or lawyers who are in business relations with the issuer.

(5) Should listed companies be required to disclose whether they have a diversity policy and, if so, describe its objectives and main content and regularly report on progress?

As mentioned in the reply to the question 4, we believe that companies should inform shareholders properly via the company website as well as through the annual report on their diversity policy (knowledge, international, gender diversity, etc.) and report on the progress. The objectives, time –frames and means to obtain those should be realistic, clearly established and well communicated.

(6) Should listed companies be required to ensure a better gender balance on boards? If so, how?

EuroInvestors is in favour of more diversity on boards. Nevertheless, we believe that the primary criteria to be taken into account during the non–executive board members recruitment process are: professional qualifications and competencies, relevant experience, independence, and personal qualities of the candidate. Of course, it is highly advised to take into consideration the professional, international and gender diversity. Some of our member organizations do favour the gender quotas. Some of the EU member states like France, Norway and Spain have already imposed them. Therefore, it would be an idea for EC to monitor the progress in the increase of gender diversity on the boards both in the member states that have implemented the gender quota and in those that have not done it. In case the EC observes too little progress in the countries where quotas have not been implemented, it would then be advisable to introduce quotas as a temporary measure in all EU countries.

Some of our member organizations as an alternative would gladly see companies implementing voluntary quotas. It is also important to take into consideration the industry particularities since certain, like e.g. mining, are largely dominated by men and it would be very difficult to find women having the required knowledge of the field.

Moreover, we agree with the EC that introduction of quotas or targets to ensure gender balance in boards is not sufficient if companies do not adopt diversity policies on all company levels and provide mentoring, networking and adequate training in order to prepare women to hold board positions.

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Nevertheless, we need to stress that we do not favour quotas on a permanent basis and that the person should be chosen mainly on the basis of relevant qualifications and professional merits.

1.2. Availability and time commitment

(7) Do you believe there should be a measure at EU level limiting the number of mandates a non-executive director may hold? If so, how should it be formulated?

There is number of factors that need to be taken into consideration while discussing the potential limits of the mandates a non –executive director may hold.

First of all, it is important to distinguish between external and internal mandates. We think that membership on boards within the same group of companies shall not be counted (but preferably disclosed).

Furthermore, it is advised to differentiate between the mandates in listed, non –listed companies and other organizations, as well as between directors being at the same time active executives (in different companies since we favour the split of the executive and supervisory functions) and former executives, who have more time availability. Taking into account the prerequisites above, we would tentatively propose to limit the number of non–executive mandates up to 3 for active executives and up to 5 for pure non–executives. Due to the additional tasks and responsibilities burden, the position of the chairperson should be counted twice (see German model).

Additionally, it is important that listed companies are required to fully disclose the number of mandates, tasks and responsibilities involved with the mandate of each director, as well as other positions held by them in the annual report, together with the record of each board member's attendance at board and committee meetings.

Nevertheless, first of all it is important to simply ensure to elect board members who have time and capacity to be involved. And again we would like to stress the importance of the 'independence' factor.

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1.3. Board Evaluation

(8) Should listed companies be encouraged to conduct an external evaluation regularly (e.g. every three years)? If so, how could this be done?

EuroInvestors is of opinion that it is important that listed companies conduct board evaluation on the regular basis (at least every third year or – in case the term of office is longer at the beginning and at the end of the term of office). Nevertheless, we would rather leave the decision on the choice of the internal versus external procedure to the board itself in order to avoid creating a new and expensive field of activity for consultants. If the board chooses the internal evaluation it is yet very important that it is not run by a director or executive in order to avoid bias.

Last but not least, the results of such an evaluation should be properly communicated to shareholders preferably via the company website and in the annual report.

1.4. Directors Remuneration

(9) Should disclosure of remuneration policy, the annual remuneration report (a report on how the remuneration policy was implemented in the past year) and individual remuneration of executive and non-executive directors be mandatory?

EuroInvestors believes that the remuneration of the board as well as of the highest paid people in the company should be fully disclosed including all benefits, bonuses and actual value of the retirement benefits. On top of that, it should be done in an individualised manner and without opt –out possibility. This remuneration disclosure should be communicated to shareholders in the annual report.

It could be an idea to use as the benchmark the Summary Compensation Table required by the SEC for US listed companies[5]. It gives a one –page overview of all remuneration components of executive directors during the three year periods. This information is provided in a standardised and therefore easily comparable manner.

[5] Form DEF14A of the SEC, see e.g. the Proxy Statement 2010 of Intel Inc. (http://www.intc.com/intelProxy2011/executive_compensation/summary/) which has been filed in accordance with the disclosure requirements of the SEC

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(10) Should it be mandatory to put the remuneration policy and the remuneration report to a vote by shareholders?

We are in favour of a vote by shareholders on the remuneration policy, but not mandatory at this stage (therefore advisory, see the example of Germany). Nevertheless, the situation in member states should be monitored and in case the advisory vote does not prove to be sufficient, it may be advisable to introduce the binding one. A distinction needs to be made between a vote on the remuneration policy and a vote on the remuneration report. In case of the former it sufficient that a regular approval, preferably in line with the duration of directors' contracts takes place, if no substantial changes have been made to the remuneration policy in the meantime. While voting on the remuneration report should rather take place annually in order to control the absolute amounts of the remuneration paid in the precedent year. We are also in favour of claw-back possibility that in case of mismanagement gives extra powers to shareholders to claim back any compensation that was already paid to the directors.

1.5. Risk Management

(11) Do you agree that the board should approve and take responsibility for the company's 'risk appetite' and report it meaningfully to shareholders? Should these disclosure arrangements also include relevant key societal risks?

Yes, shareholders should have a clear overview of the risk assessment by the board. Risk management and the balance of risk and reward is a component of all business decisions. The need for the involvement of directors, management and stakeholders is self –evident. All listed companies should have a risk policy and communicate it to shareholders in the annual report, but existing requirements in member states' regulations must be first identified and analysed in order not to create additional and redundant reporting requirements.
Risk disclosure should include ESG risks (Environment, Social & Governance) and be consistent with the EU regulatory project on extra-financial disclosure.

(12) Do you agree that the board should ensure that the company's risk management arrangements are effective and commensurate with the company's risk profile?

Yes. See Q.11

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2. Shareholders

2.1. Lack of appropriate shareholder engagement

We do not agree with the EC statement regarding "lack of shareholders' interest in corporate governance".

First of all – as already mentioned in our reply to the EC consultation on the corporate governance and remuneration policies in financial institutions - 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".

Secondly, the significant hurdles shareholders are facing to vote (especially regarding cross – border proxy voting) are not addressed.

2.2. Short-termism of capital markets

(13) Please point to any existing EU legal rules which, in your view, may contribute to inappropriate short-termism among investors and suggest how these rules could be changed to prevent such behaviour.

It is very important to differentiate between inappropriate and appropriate short–termism. Short–termism per se is not necessarily a negative phenomenon. Capital markets need both short–term and long term investors to ensure proper functioning and sufficient liquidity levels. Of course we want shareholder engagement and responsibility. The majority of individual shareholders is long term oriented.

Nevertheless, we have spotted examples of the EU legislation that encourages inappropriate or at least unwarranted short–termism:

- MiFID has further marginalized individual shareholders who are mostly long term holders, by severely reducing the pre- and post–trade transparency for them, by fragmenting and making equity markets much more complex for the benefit of financial investors, especially professional traders and HFT and to the detriment of individual shareholders. For a more detailed analysis, we refer to EuroInvestors' reply to the MiFID review consultation[6].

[6]http://euroinvestors.org/upload/positions/MiFID%20EFI%20reply%20%202%20Feb%202011%201296749279.pdf

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- CRD for banks and Solvency II for insurers are penalizing heavily equity holding by banks and insurers for their own account. These regulations - even before their full enforcement - are already pushing banks and even more importantly insurers (who – acting on their own account - have been a major long term shareholder in Europe) out of the equity market. At the same time, and for the same reason, banks and insurers are also pushing retail investors further to "packaged" products (savings accounts, investment funds in "Units", etc.) to improve their capital ratios (and sometimes increase commissions). These investment funds have on average a much higher turnover rate (close to 100% for active equity funds) than portfolios of individuals investing directly on the equity markets and then insurers' portfolios investing for their own account. Therefore, these regulations increase the share of short term equity investments versus long term ones. Moreover, these regulations do not prevent banks from dealing with other businesses than lending and makes it easy for them to push retail investors out of capital markets and into much more short term "packaged" products.

MiFID, CRD and Solvency II are penalizing long–term shareholders in several ways and are encouraging short–term investment behaviour.

- The lack of EU–wide collective redress provisions (despite EC reports which have identified the issue) contributes to the lack of confidence of small shareholders: as soon as a problem occurs with an issuer, they know in most EU countries that they are very unlikely to get indemnified in case of an issuer's misbehaviour. So, they usually prefer to sell immediately rather then hold on to these shareholdings.
- The KIID for UCITS (the principle of which could be extended to other investment products through the "PRIPs" project) requires a maximum of 10 yeas track record for equity funds. But the time horizon of pension investors is much longer than that. Indeed, the EU regulations do not generally address the short–termism of packaged investment products, especially equity funds.
- Quite a few national tax regulations favour short term investments versus long term ones.

It is also important to mention that individual shareholders tend to be 'loyal' towards the companies they invest in. Inappropriate legislation or not well –implemented one that excludes

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shareholders from the decision process or puts them in unprivileged position, is an incentive for small shareholders to disconnect from the traditional longsighted behaviour and change to a more short –sighted and self –protecting behaviour.

2.3. The agency relationship between institutional investors and asset managers

2.3.1. Short –termism and asset management contracts

(14) Are there measures to be taken, and if so, which ones, as regards the incentive structures for and performance evaluation of asset managers managing long-term institutional investors' portfolios?

Asset managers should have a duty to exercise their best diligence in the interests of their clients (and not only their institutional clients as the EC question warrants). The economic interests of asset managers are still not aligned to the ones of long –term holders (individuals and pension funds). Currently asset managers are usually getting paid on assets measured on a yearly basis and frequently they get performance fees also on a yearly basis. This contributes to high turnover rates as well as to high transaction fees. "*Institutions are getting more and more concerned that the fees the active management community is charging are not properly aligned with their interests as investors*."[7]

Last but not least, long term end investors ("beneficial owners") are weakly organized, and they have little leverage on their asset management providers:

- individual ones due to lack of resources and the failure of the EC to meet its 2009 commitment to propose a direct funding of their representatives[8];
- to our knowledge long term institutional end investors (pension funds in particular) do not seem to have a representative organization at the European level.[9]

The possible solutions to the problem are: encouragement of low-turnover funds; revision of EU tax schemes and most importantly the review of the relationship between institutional and fund investors and asset managers. We also want to draw the EC's attention to the innovative solution developed by our Swedish member Aktiesparna, which has recently launched an equity fund where the fund holders can vote the shares of the fund's portfolio.

[7] Mark Brunner, Towers Watson, quoted by the FT, February 2011
[8] EC Communication on "Driving European recovery", Annex I , 4 March 2009
[9] The EFRP (European Federation for Retirement Provision) membership does not match the institutional end investors universe: pay-as-you go pension schemes, and fund managers are members, and insurers for their own account are not.

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2.3.2. Lack of transparency about the performance of fiduciary duties

(15) Should EU law promote more effective monitoring of asset managers by institutional investors with regard to strategies, costs, trading and the extent to which asset managers engage with the investee companies? If so, how?

See Q. 14
Long term institutional investors should also take ESG (Environment, Social & Governance) criteria into account, as integrating ESG is a way to develop a long term approach towards investment.

2.4. Other possible obstacles to engagement by institutional investors

2.4.1. Conflict of interest

(16) Should EU rules require a certain independence of the asset managers' governing body, for example from its parent company, or are other (legislative) measures needed to enhance disclosure and management of conflicts of interest?

See Q 15. One big difference between European and American asset managers is that many of the big European ones are affiliates of banking institutions, creating an obvious conflict of interests' situation, even more so as the banking institutions are not only the owners but also distributors of their affiliates' products.
Yes, there should be rules ensuring independence of the board of an asset management company from its parent company. We would favour implementation of non-binding codes for asset managers ensuring indispensable minimum standards. We believe the EC should also consider unbundling asset management from banking and insurance businesses, as this was the case in the US until 1999.

2.4.2. Obstacles to shareholder cooperation

(17) What would be the best way for the EU to facilitate shareholder cooperation?

The 2008 financial crisis has revealed deficiencies in corporate governance and a lack of shareholder engagement. One of the key obstacles to shareholders engagement are hurdles

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that, despite the adoption of the European Shareholders Rights Directive of 2007, individual investors face in exercising their voting rights, especially cross-border. Poor performance of the intermediaries' chain makes it difficult and often costly for small shareholders to exercise their voting rights and for issuers to know who their real ("beneficial") owners are. This hampers or even prevents the proper communication between issuers and shareholders. What's more, the technologies used by the intermediaries' chain seem often antiquated: proxy certificates sent by fax, and more importantly lack of cross–border Internet voting in all EU member states (to our knowledge). EuroInvestors believes that the General Meetings communications between listed issuers and their shareholders should not be monopolized by bank affiliates as this is not their core business and their track record in this business is not satisfactory. Shareholder identification and record services (notary public type) should be unbundled from share voting services, which is already the case for other types of assets (co-op apartment buildings for example).

EuroInvestors together with its founding member Euroshareholders, as well as all their member organizations, are doing a lot to try to increase shareholder engagement and cooperation. Euroshareholders' member organizations are federations of individual shareholders in respective member states and provide their members with various possibilities to exchange views and to gain financial education and expertise. Most of both EuroInvestors' and Euroshareholders' member organizations[10] organize educational seminars and conferences that not only increase the financial knowledge but also constitute an excellent opportunity for networking and exchange of experiences. Furthermore, they issue magazines increasing financial literacy and providing information about new trends, opportunities and threats. A lot of information is disseminated via websites that nowadays constitute an excellent communication tool. But we need to stress that our members are non–profit organizations and have very limited resources. People working for these organizations very often sacrifice their personal time and act pro bono publico. Moreover, the outreach of these organizations is on the local (national) level. That is why EuroInvestors was created to protect the interests of individual investors and other financial services users at the EU level, to enable the exchange of experiences and ideas between our member organizations, to address the obstacles that individual investors face while investing cross border and last but not least to encourage investor and shareholder cooperation on the EU–wide level.

In order to encourage shareholder engagement and promote shareholders using their voice in the European companies Euroshareholders established a web based platform

[10] http://www.euroshareholders.eu/member/all; http://euroinvestors.org/member/externalmembers/1

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EUROVOTE aimed at facilitating cross –border voting.[11] We started during 2011 AGM season with nearly 60 European companies with big international free float. Shareholders can easily pass their proxies to the shareholder association based in the country where the General Meeting takes place. The Euroshareholders member organisation receiving the proxies attends the AGM via their representatives and votes shares on behalf of all shareholders who transferred their proxies to them. As an additional service we have established and published European–wide Voting Guidelines which is unique for individual investors. EUROVOTE is the only proxy voting service available for free to individual shareholders.

Thanks to the EUROVOTE service cross–border investors can benefit from cost and time reduction, free expertise of highly qualified representatives of shareholders associations and best alignment of interests between the investors and the proxy holders (they are all from investor associations). Additional advantages are stronger influence on company management and that due to physical participation to the General Meeting no vote gets lost (that is sometimes the case with online voting). EUROVOTE is also beneficial to issuers thanks to better and direct contact (without intermediaries) with hundreds of thousands private shareholders via our national member associations and additional voting potential, i.e. increased turnout at the General Meetings. EuropeanIssuers officially expressed their support to EUROVOTE.

We are doing our utmost to expand and improve EUROVOTE – even with limited resources and no help from any public agencies - but unfortunately, this service to improve and facilitate shareholder engagement is severely hampered by the deficiencies of the intermediaries chain, as the case study of what happened or the 2011 General Meeting of French blue chip company demonstrates (see annex).

In the future we would also like to complement EUROVOTE by a European wide forum for shareholder cross board cooperation. This forum would allow for exchange of views and information before and after the General Meetings of companies. Such a platform would enhance shareholder cooperation significantly, but is quite costly endeavour.

We would like to stress that in order to ensure the balanced representation of individual shareholders vis–a–vis financial industry at the EU level and to encourage shareholder engagement and cooperation, shareholder associations need to be supported both financially and morally. In 2009, the EC committed publicly to propose a direct funding of retail investors' representatives but unfortunately failed to meet this commitment.

[11] www.euroshareholders.org/eurovote

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2.5. Proxy advisors

(18) Should EU law require proxy advisors to be more transparent, e.g. about their analytical methods, conflicts of interest and their policy for managing them and/or whether they apply a code of conduct? If so, how can this best be achieved?

Yes, commercial proxy advisors are proven to have a significant impact on the voting behaviour of institutional investors. Therefore, we need more transparency and better insight into what kind of guidelines they follow in order to avoid conflicts of interests. UK Stewardship Code gives a good example and has proven to be effective as all major proxy advisors have committed themselves to this non –binding transparency standard.

As we already mentioned it in our reply to the EC Green Paper on Corporate governance in financial institutions and remuneration policies, it is important to differentiate between:

- commercial proxy advisors who provide paid services only to institutional investors
- shareholder associations who are the only ones providing service to individual investors and moreover free of charge[12]. We should not impose too many constraints on shareholder associations since they have limited resources and are the only ones providing this service to individual shareholders. Nevertheless, shareholder associations should also be transparent at least towards their members.

It is critical not to put more regulatory constraints and burdens on the latter, given their absence of conflicts of interests and their limited resources. Otherwise, the EC may kill the only proxy service to individual shareholders.

Also, it is also important not to forget the issue of the board/management collecting proxies to vote on behalf of the absent shareholders. There should be restrictions to that as well and it would be highly advisable that the proxies are passed to other shareholders or representatives of shareholder associations in order to avoid conflict of interest.

(19) Do you believe that other (legislative) measures are necessary, e.g. restrictions on the ability of proxy advisors to provide consulting services to investee companies?

Yes. Providing consulting as well as commercial proxy advisory services to the same companies creates a severe conflict of interest for proxy advisors. Therefore we believe this issue should be addressed by an EU Code of Conduct including recommendation to proxy

[12] See as an example the EUROVOTE Service http://www.euroshareholders.eu/eurovote_about

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advisors to abstain from providing consulting services to companies. Moreover, proxy advisors should be recommended to disclose any potential conflicts of interests.

2.6. Shareholder identification

(20) Do you see a need for a technical and/or legal European mechanism to help issuers identify their shareholders in order to facilitate dialogue on corporate governance issues? If so, do you believe this would also benefit cooperation between investors? Please provide details (e.g. objective(s) pursued, preferred instrument, frequency, level of detail and cost allocation).

Yes, we are in favour of issuers having a better knowledge of who their beneficial owners are, but as long as this information is also easily and freely accessible to shareholders (or at least to shareholder associations) since shareholders, and especially the individual ones, have the need to get in contact with each other. However, it is important that this personal information will be well protected from any kinds of abuse and will not be used for commercial purposes. Moreover, some of our member organizations believe that shareholders should have the possibility not to be identified in case of small shareholdings (e.g. in Sweden it is up to 500 shares, while our Dutch member suggests establishing the limit at 0.02 or 0.05 of equity capital.

2.7. Minority shareholder protection

2.7.1. Scope for engagement and the functioning of 'comply or explain' where there is a controlling or dominant shareholder

(21) Do you think that minority shareholders need additional rights to represent their interests effectively in companies with controlling or dominant shareholders?

Yes, of course minority shareholders need support to be able to exercise their interests in companies with controlling or dominant shareholders. EuroInvestors therefore asks for the proper recognition of individual shareholder associations by issuers and by the EU regulations. Shareholder associations should have the right to collect proxies, and to present resolutions to the general meetings once they reach a minimum percentage of shares through the proxies they collect. We further insist that once a minimum percentage of shares is "free float" (e.g. 30%) or when there is a single majority shareholder, minority shareholders should get at least one board seat to protect their rights.

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We also refer again to the lack of an EU wide collective redress scheme for individual investors.

2.7.2. Protection against potential abuse

(22) Do you think that minority shareholders need more protection against related party transactions? If so, what measures could be taken?

Yes. EuroInvestors believes it is very important to protect minority shareholders against related party transactions. This can be achieved by obliging issuers to provide a report[13] together with the Annual Report on all transactions undertaken with the major shareholder(s) during the last fiscal year. This report should be audited in the same manner as the Annual Report. We also consider it important that the outcome of the auditor's findings and the significant parts of the Dependency Report are properly communicated to minority shareholders.

Another important measure would be introduction of the EU –wide legal proceedings in case shareholders are "squeezed-out" of a company. As an example we would like to point to the German example of the so–called "Spruchverfahren: a shareholder holding at least 95 % of the share capital of a company can demand a squeeze–out of minority shareholders by paying them a cash compensation based on the value of the company at the date of the general meeting, the minimum compensation being the share's average stock exchange price during the past three months. In France a similar rule exists.

And again it is important to ensure that once a minimum percentage of shares is "free float" (e.g. 30%) or when there is a single majority shareholder, minority shareholders should get at least one board seat to protect their rights.

[13] Like the Dependency Report required by the German HGB (the German commercial law) or the report on conventions between related parties in France, but with more explanations and comments from management.

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2.8. **Employee share ownership**

(23) Are there measures to be taken, and is so, which ones, to promote at EU level employee share ownership?

We refer to the measures already in place in France for decades, which have resulted in a large development of the employee share ownership. EuroInvestors considers development of employee share ownership as positive provided that:
- Employee shareholder rights are not confiscated or limited by issuers (there are many cases where the supervisory board of the employee shareholder fund includes the issuer's representatives, who decide on how the fund will vote at the issuer's AGM);
- Employees' shareholdings of the company they work for remain a limited percentage of their total savings in order to diversify the risks, as their salary is already subject to the same company's failure risk. We refer here to the Enron case in the US or Vivendi one in France where the DC schemes where much too heavily invested in company shares.

3. Monitoring and implementation of Corporate Governance Codes

(24) Do you agree that companies departing from the recommendations of corporate governance codes should be required to provide detailed explanations for such departures and describe the alternative solutions adopted?

In principle we are in favour of the "comply or explain" framework, but the evidence shows that often not enough detail or useful information is emerging from the explanations provided by the companies. Companies tend to use standard formulas of the type: "This part of the code doesn't suit our company." Therefore, the quality of the explanations should be increased and the use of meaningless standard formulas shall be forbidden. Companies departing from recommendations of corporate governance codes should be obliged to provide detailed explanations for such departures and describe the alternative solutions adopted.

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(25) Do you agree that monitoring bodies should be authorised to check the informative quality of the explanations in the corporate governance statements and require companies to complete the explanations where necessary? If yes, what exactly should be their role?

Financial supervisory authorities should be responsible for making sure that the ‘comply or explain’ framework is properly enforced. In order to do so they should dispose both of injunctive and sanction powers. The informative quality of explanations in the corporate governance statements should be first verified by the auditor.

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ANNEX

Barriers to the exercise of shareholders' voting rights cross-border in the EU: *Failures of the intermediary chain (real case study)*

Background

Euroshareholders[14], the federation of European shareholder associations, is trying to help small shareholders to exercise their voting rights, in particular when the company they own shares of is headquartered in a different European country than the one they are residents of. For this purpose, Euroshareholders has developed a web-based "EUROVOTE" service where shareholders can give a proxy to Euroshareholders member organizations which will physically participate on their behalf in the general meetings abroad. Euroshareholders has also published its pan-European voting guidelines on its web site.

The European Shareholders Rights Directive of 2007 also aims at facilitating the exercise of cross border shareholders voting rights across the EU.

In early 2011, DSW (the German member association of Euroshareholders and EuroInvestors) made an agreement with a major German bank[15]. This bank proposed to its clients who owned shares of companies headquartered in other EU countries to give their proxy to DSW (or to a person designated by DSW) to represent them in person at the 2011 General Meetings. It was agreed that the first application of this agreement would be for shareholders of a French-based Stoxx 50 listed company[16]. DSW designated Guillaume Prache, Secretary General of Euroshareholders and Managing Director of EuroInvestors, to represent all these shareholders at the 4 May 2011 Annual General Meeting of Company X.

The meeting's notice of this issuer (accessible on the company's website in French and in English) clearly sets the rules and deadlines to vote:

In accordance with Article R.225-85 of the French Commercial Code, a shareholder who has already cast his/her vote by mail, sent a proxy or requested his/her admission card to the Meeting, or, where applicable, the certificate of attendance, may no longer opt for another means of participation.

[14] Euroshareholders is the organisation of European shareholders associations and a founding member of EuroInvestors
[15] For the purpose of this case study we will refer to it as bank Y
[16] For the purpose of this case study we will refer to it as company X

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In accordance with Article R.225-85 of the French Commercial Code, shareholders may attend the Meeting if they can justify:

— for registered shares: the registration of the shares in the registered share accounts kept by the Company at 00:00, Paris time, on Friday, April 29, 2011,

— for bearer shares: the registration of the shares (where applicable in the name of the intermediary registered on behalf of the shareholder under the regulatory and legal terms and conditions) in the bearer share accounts kept by the duly empowered intermediary at 00:00, Paris time, on Friday, April 29, 2011. The duly empowered intermediaries shall append a certificate of attendance to the proxy voting form or the admission card request drawn up in the name of the shareholder or on behalf of the shareholder represented by the registered intermediary.

Only those shareholders who are able to justify this capacity at 00:00, Paris time, on April 29, 2011, under the aforementioned terms and conditions, may attend the Shareholders' Meeting.

Facts

- On Friday, April 29th, 2011 Mr Prache learned that Company X had not received any registration for shares in his name.
- On Monday, May 2nd, 2011 in late afternoon, and after DSW and Euroshareholders asked the bank intermediaries (Bank Y in Germany, and its correspondent in France, a major French bank[17]), Mr Prache received several documents by email:
  - A certificate issued and signed by Bank Z's Securities Services dated May 2nd stating that Mr Prache can validly participate to the May 4 General Meeting, and that he "owned" ("appartenant à") 8941 shares.
  - A copy of a swift message from Bank Y to Bank Z's Securities Services dated 26 April 2011 requesting admission cards for Mr. Prache for 8941 shares, proving that Bank Y had sent the necessary document on time to Bank Z.
  - A copy of the bilingual (French / English) voting forms (French format) filled in and signed by Bank Y for the same 8941 shares, but for which it chose to vote by post instead of giving a proxy to Mr. Prache.

- The same day, Mr. Prache contacted company X which still had not received any news from Banks Y and Z. After reviewing the banks documents forwarded by Mr. Prache, Company X rightfully noted that:
  - the deadline of April 29th, 2011 had passed anyway,
  - the forms filled by Bank Y (but not received by X) were instructions for Bank Y to vote by post, not by proxy given to Mr Prache.
  - Finally, the certificate of Bank Z was late and not received by X.

  Due to all these facts, X concluded that Mr Prache could not be admitted to the shareholder meeting and could not vote any of the 8941 shares. Mr. Prache pointed out that this position was contradictory to that of Bank Z (see above), and asked company X for confirmation in writing.

[17] For the purpose of this case study we will refer to it as bank Z

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- On Tuesday May 3rd, 2011 Company X confirmed by email that Mr Prache could not vote any of the shares. He communicated the copy of the April 26th, 2011 message from Bank Y to Bank Z to prove that it had been communicated on time to Bank Z. Later that day, Bank Z sent a new certificate dated May 3rd, 2011 but for 30000 shares instead of 8941, and this time "owned" by Bank Y and represented by Mr. Prache, and again certifying that Mr Prache can validly participate to the General Meeting representing 30000 shares.

- On Wednesday May 4th, 2011 Mr Prache cancelled his trip to Paris to participate in the General Meeting based on the position taken by X (who was rightfully following the rules), and kindly asked X to investigate with Banks Y and Z why he was eventually not able to exercise his voting rights. As of 17 July 2011, he has not gotten any explanation from anyone.

Findings

The above constitutes a perfect case showing how burdensome and ineffective cross-border proxy voting in Europe is. Despite the active involvement of two major shareholder associations and—more importantly—of major German and French depositaries, and despite the direct contacts of the proxy holder with the issuer, the process completely failed and as a result small shareholders were prevented from exercising their voting rights from 8941 up to 30000 shares despite their willingness and efforts to do so, and their correct follow-up of rules and procedures.

This real case shows that the bank intermediaries made several mistakes:

- Bank Y requested admission cards for the proxy holder on time, but at the same time issued and signed 'vote by post' forms in its own name instead of 'vote by proxy' ones
- Bank Z acting as a French correspondent of the bank Y, did not take the instructions of the bank Y into account on time, and did not communicate anything to the issuer on time, or even later
- When queried, bank Z issued (after the deadlines) two separate admission certificates within two days which were contradictory (different number of shares, different owner and proxy holder), and containing incorrect information (the proxy holder does not own the shares, and it is very doubtful that bank Y would own all of them either).
- No information (except wrong one) was provided on the real shareowners.
- The IT and communication tools used by the bank intermediaries appear antiquated, inconsistent and quite ineffective.