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A corporate governance framework for European companies

European Parliament resolution of 29 March 2012 on a corporate governance framework for European companies (2011/2181(INI))

The European Parliament,

– having regard to the Commission Green Paper of 5 April 2011 on the EU corporate governance framework (COM(2011)0164),

– having regard to its resolution of 18 May 2010 on deontological questions related to companies' management,[1]

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on Industry, Research and Energy, and the Committee on the Internal Market and Consumer Protection (A7-0051/2012),

General approach

1. Welcomes the Commission's revision of the EU corporate governance framework initiated by the Green Paper;

2. Regrets, however, that important corporate governance issues such as board decision-making, directors' responsibility, directors' independence, conflicts of interest or stakeholders' involvement have been left out of the Green Paper;

3. Regrets the Green Paper's focus on the unitary system and disregard for the dual system, which is equally widely represented in Europe; stresses that the Commission's review of the EU corporate governance framework must take account of the rights and duties conferred on the various company bodies under national law, and in particular the differences between unitary and dual systems; hereinafter essentially uses the term 'board of directors' to refer to the supervisory role of directors, which, in a dual structure, generally falls to the supervisory board;

4. Underlines the importance of creating a more transparent, stable, reliable and accountable corporate sector in the EU, with improved corporate governance; considers that the corporate sector should be able to take social, ethical and environmental concerns into account in its practices and to demonstrate its responsibilities both towards employees and shareholders and towards society at large, in addition to ensuring better economic performance and the creation of decent jobs;

5. Takes the view, however, that good governance on its own cannot prevent excessive risk taking; calls therefore for independent auditing and rules respecting the different corporate cultures in the EU;

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1 OJ C 161 E, 31.5.2011, p. 16.

6. States that it is a prerequisite that a well-governed company should be accountable and transparent to its employees, shareholders and, where appropriate, to other stakeholders;

7. Considers that the 2004 OECD definition of corporate governance, according to which corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders, should be further promoted;

8. Considers that, in the wake of the financial crisis, lessons can be learned from the principal bankruptcies in the business world;

9. Stresses, in this connection, that attention must be drawn to the important role that the different committees (audit committees and, insofar as they exist in the Member States, remuneration and nomination committees) play in the good governance of a company, and calls on the Commission to strengthen their role;

10. Believes that a basic set of EU corporate governance measures should apply to all listed companies; notes that these measures should be proportional to the size, complexity and type of the company;

11. Considers that initiatives on corporate governance should go hand in hand with the initiatives on corporate social responsibility proposed by the Commission; takes the view that, particularly under present-day economic and social circumstances, corporate social responsibility could, in combination with corporate governance, help to forge closer links between companies and the social environment in which they grow and operate;

12. Stresses that the Financial Fair Play initiative is an example of good corporate governance practice in sport; calls on other sectors and public authorities to further explore these measures with a view to implementing some of their basic principles;

13. Calls on the Commission to submit every legislative proposal it considers on corporate governance to impact assessment, which should focus both on objectives to be attained and on the need to keep companies competitive;

Boards of directors

14. Stresses that in unitary systems there should be a clear demarcation between the duties of the Chair of the Board of Directors and the Chief Executive Officer; notes, however, that this rule should be proportional to the size and the peculiarities of the company;

15. Stresses that boards must include independent individuals with a mix of skills, experiences and backgrounds, that this aspect of their composition should be adapted to the complexity of the activities of the company and that it is the responsibility of the shareholders to ensure the right balance of skills in the board;

16. Is of the opinion that recruitment policies, where they are used, should be specific and that they should be subject to a comply-or-explain regime; underlines that the drafting and approval of policy documents of this kind is an exclusive shareholder competence;

17. Calls on companies to implement transparent and meritocratic methods in the field of human resources and to develop and promote efficiently men's and women's talents and skills; stresses that companies must ensure equal treatment of and equal opportunities for

men and women at work and contribute to an appropriate work-life balance for men and women;

18. Underlines the importance of having a broad and diverse set of skills and competences represented in the company board;

19. Calls on the Commission to present, as soon as possible, comprehensive current data on female representation within all types of company in the EU and on the compulsory and non-compulsory measures taken by the business sector as well as those recently adopted by the Member States with a view to increasing such representation, and, following this exercise, if the steps taken by companies and the Member States are found to be inadequate, to propose legislation – including quotas – in the course of 2012 to increase female representation in corporate management bodies to 30 % by 2015 and to 40% by 2020, while taking account of the Member States' responsibilities and of their economic, structural (i.e. relating to company size), legal and regional specificities;

20. Stresses that directors must devote sufficient time to the performance of their duties; considers, however, that no one-size-fits-all rules are advisable; believes that Member States should be encouraged to set limits to the number of boards on which a director can serve; points out that this would help to increase the frequency of board meetings and improve the quality of in-house supervisory bodies; highlights the importance of board members being fully transparent and open with their other engagements;

21. Agrees that external evaluations on a periodical basis are useful tools for assessing the effectiveness of corporate governance practices; however, is of the opinion that they should not be compulsory;

22. Takes the view that it is the responsibility of management and supervisory board members to avail themselves of the training and further training necessary for fulfilment of their tasks, with assistance from the company as necessary;

23. Encourages disclosure of company remuneration policies and annual remuneration reports, which should be subject to approval by the shareholders' meeting; stresses, however, that Member States should be allowed to go further and set requirements regarding disclosure of the individual remuneration of executive and non-executive directors, which can help to enhance transparency;

24. Believes that strong surveillance and new rules must be introduced to forbid any malpractices concerning the salaries, bonuses and compensation paid to executives of companies belonging to the financial or non-financial corporate sector that have been bailed-out by a Member State government; considers that legal action should, where necessary, be taken in order to prevent the misuse of public bail-out funds;

25. Calls for sustainable long-term remuneration policies, which should be based on the long-term functioning of the individual and his company;

26. Considers that directors' pay rises should be consistent with the long-term viability of their companies;

27. Supports the inclusion in managers' variable remuneration of long-term sustainability components, such as making a percentage of their variable remuneration dependent on the

achievement of corporate social responsibility targets, e.g. health and safety in the workplace and employee job satisfaction;

28. Notes that the board is the body responsible for reviewing and approving company strategy, which includes the company's approach to risk, and should report it meaningfully to shareholders as far as possible without disclosing information that may damage the company, for example in relation to competitors; considers that environmental and social risks should be included insofar as they have a material impact on the company, as already required under EU legislation;

Shareholders

29. Believes that shareholders' engagement with the company should be encouraged by enhancing their role, but that this involvement should be a discretionary choice and never an obligation;

30. Nevertheless, believes that measures to incentivise long term investment should be considered and also a requirement for full transparency of voting for any borrowed shares, apart from bearer shares; considers that institutional investor behaviour aimed at creating liquidity and keeping good ratings should be reconsidered, as this solely encourages short-term shareholding by such investors;

31. Notes that the Shareholders' Rights Directive[1] endorses the principle of equal treatment of shareholders and that therefore all shareholders (institutional or not) are entitled to receive the same information from the company, irrespective of their stake;

32. Calls on the Commission to bring forward proportionate proposals for Europe-wide guidelines on the type of information released to shareholders in annual company reports; considers that this information should be of a high quality and informative;

33. Notes that there is a lack of long-term focus within the market and urges the Commission to review all relevant legislation to assess whether any requirements have inadvertently added to short-termism; welcomes, in particular, the Commission's proposal to abandon the quarterly reporting requirement in the Transparency Directive, a requirement which adds little to shareholder knowledge and simply creates short-term trading opportunities;

34. Welcomes the development of Stewardship Codes for institutional investors across the European Union; believes that a European Stewardship Code could be developed drawing on existing models and in collaboration with national authorities;

35. Stresses that institutional investors have the fundamental duty to protect their investments and that it is their responsibility to monitor the asset manager they have appointed with regard to strategies, costs, trading and the extent to which this asset manager engages with the investee companies, and therefore to require adequate transparency in the performance of the fiduciary duties;

36. Is of the opinion, in this connection, that institutional investors should be free to design the

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[1] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17).

relevant incentive structures in their professional relationship with asset managers;

37. Notes that conflicts of interest, including those of a potential nature, should always be disclosed and that appropriate action is needed at EU level;

38. Calls on the Commission to amend the Shareholders' Rights Directive in such a way as to evaluate by what means shareholders' participation can be further enhanced; considers, in this connection, that the role of electronic voting at general meetings of listed companies in order to encourage shareholders' participation, especially with regard to cross-border shareholders, should be analysed by the Commission through an impact assessment;

39. Reminds the Commission of the need for a clear-cut definition of 'acting in concert', as the lack of uniform rules constitutes one of the main obstacles to shareholders' cooperation;

40. Believes that proxy advisors play a very important role, but that their activities are often subject to conflicts of interest; calls on the Commission to ensure further regulation of proxy advisors, giving special attention to transparency and conflict-of-interest issues; is of the opinion that proxy advisors should be prohibited from providing consulting services for the investee company;

41. Considers that companies should be entitled to choose between a name shares regime and a bearer shares regime; considers that, if they choose name shares, companies should be entitled to know the identity of their owners and that minimum harmonisation requirements should be set at EU level for the disclosure of material shareholdings; considers that this should be without prejudice to the right of the owners of bearer shares not to disclose their identity;

42. Notes that, although the protection of minority shareholders is an issue which is addressed by national company law provisions, Union action might be useful to promote proxy voting;

43. Endorses the guidelines contained in the statement issued by the European Corporate Governance Forum on related party transactions for listed entities on 10 March 2011; encourages the Commission to take action at EU level by means of a soft law measure such as a recommendation;

44. Believes that the question of employee share ownership schemes is one which should be regulated at Member State level and left to negotiations between employers and employees: the possibility of participating in such a scheme should always be of a voluntary nature;

The 'comply or explain' framework

45. Believes that the 'comply-or-explain' system is a useful tool in corporate governance; is in favour of compulsory adherence to a national corporate governance code or a Code of Conduct chosen by the company; considers that any deviation from the Code of Conduct should be explained in a meaningful way and that, in addition to this explanation, the alternative corporate governance measure taken should be described and explained;

46. Stresses the need to achieve better functioning of, and compliance with, existing governance rules and recommendations rather than imposing binding European corporate governance rules;

47. Believes that codes of practice can deliver behavioural change and that the flexibility provided by codes allows innovation which can draw on best practice throughout the EU; believes that a sharing of best practice would improve corporate governance in the EU;

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48. Instructs its President to forward this resolution to the Council and the Commission.