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REPORT

on the communication from the Commission to the Council and the European Parliament: Modernising company law and enhancing corporate governance in the European Union - a plan to move forward
(COM(2003) 284 – C5-0378/2003 – 2003/2150(INI))

Committee on Legal Affairs and the Internal Market

Rapporteur: Fiorella Ghilardotti

Draftsman*:
Pervenche Berès, Committee on Economic and Monetary Affairs

* Enhanced cooperation between committees - Rule 162a

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PROCEDURAL PAGE

By letter of 22 May 2003 the Commission forwarded to Parliament the communication from the Commission to the Council and the European Parliament: Modernising company law and enhancing corporate governance in the European Union - a plan to move forward (COM(2003) 284), which had been referred for information to the Committee on Legal Affairs and the Internal Market, the Committee on Economic and Monetary Affairs, the Committee on Industry, External Trade, Research and Energy and the Committee on Employment and Social Affairs.

At the sitting of 4 September 2003 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market had been authorised to draw up an own-initiative report on the subject pursuant to Rules 47(2)and 163 of the Rules of Procedure, and that the Committee on Economic and Monetary Affairs, the Committee on Industry, External Trade, Research and Energy and the Committee on Employment and Social Affairs had been asked for their opinions (C5-0378/2003).

At the sitting of 4 September 2003 the President of Parliament announced that the Committee on Economic and Monetary Affairs, which had been asked for its opinion, would be associated with the drawing up of the report pursuant to Rule 162a.

The Committee on Legal Affairs and the Internal Market had appointed Fiorella Ghilardotti rapporteur at its meeting of 7 July 2003.

The committee considered the draft report at its meetings of 17 March and 6 April 2004.

At the last meeting it adopted the draft resolution unanimously.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman), Ioannis Koukiadis (vice-chairman), Bill Miller (vice-chairman), Fiorella Ghilardotti (rapporteur), Uma Aaltonen, Ward Beysen, Johanna L.A. Boogerd-Quaak (for Toine Manders, pursuant to Rule 153(2)), Bert Doorn, Giovanni Claudio Fava (for Maria Berger, pursuant to Rule 153(2)), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Malcolm Harbour, Renzo Imbeni (for Arlene McCarthy, pursuant to Rule 153(2)), Kurt Lechner, Klaus-Heiner Lehne, Sir Neil MacCormick, Lucio Manisco (for Michel J.M. Dary, pursuant to Rule 153(2)), Manuel Medina Ortega, Angelika Niebler (for Lord Inglewood), Marcelino Oreja Arburúa (for Marianne L.P. Thyssen), Elena Ornella Paciotti (for Carlos Candal), Anne-Marie Schaffner, Francesco Enrico Speroni (for Alexandre Varaut), Ian Twinn (for Rainer Wieland), Diana Wallis, Stefano Zappalà and François Zimeray.

The opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, External Trade, Research and Energy and the Committee on Employment and Social Affairs are attached.

The report was tabled on 7 April 2004.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the communication from the Commission to the Council and the European Parliament: Modernising company law and enhancing corporate governance in the European Union - a plan to move forward
(COM(2003) 284 – C5-0378/2003 – 2003/2150(INI))

The European Parliament,

– having regard to the communication from the Commission to the Council and the European Parliament (COM(2003) 284 – C5-0378/2003),

– having regard to the communication from the Commission to the Council and the European Parliament: Reinforcing the statutory audit in the EU (COM(2003) 286),

– having regard to its resolution of 12 February 2004 on corporate governance and supervision of financial services - the Parmalat case[1],

– having regard to Rules 47(2) and 163 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, External Trade, Research and Energy and the Committee on Employment and Social Affairs (A5-0253/2004),

A. whereas the Commission communication defines important objectives that should guide EU initiatives to modernise European company law and strengthen corporate governance,

B. whereas the events which occurred recently, first in Japan and subsequently in the United States and Europe, involving major industrial groups (in particular Parmalat), illustrate that the rules on transparency that should provide a frame of reference for action by European companies need to be more clearly defined; whereas in this connection the effects of such scandals are borne in particular by small shareholders, savers investing in funds or trusts and other creditors as well as workers, who lose their jobs and salaries ,

C. whereas, in connection with the globalisation of the economy, a set of internationally recognised principles and rules is needed to protect the interests of companies, investors and workers,

D. whereas it was decided at the Lisbon European Council and subsequent spring summits to make the EU the most competitive knowledge-based economy in the world, based on investment in human resources, full and quality employment and greater social cohesion in a framework of sustainable development,

E. whereas property rights are subject to restrictions and obligations for the benefit of society and companies have corporate social responsibility,

F. whereas, furthermore, the current restructuring process is leading to greater fragmentation,

[1] P5_TA(2004)0096.

outsourcing and delocalisation among companies, sometimes making it difficult to make out the actual composition of a company or where its real decision-making centres are, and often making it almost impossible to understand holdings and cross-ownership of shares or the rules and contractual provisions governing workers whose jobs have been dislocated to different parts of a pyramid or group structure,

G. whereas the Stockholm European Council approved the setting up of a European Monitoring Centre on Change (EMCC), which is an important European information source on the economic and social changes resulting from developments and shifts in technologies, work organisation, production and business models, legislation, and the labour market,

H. whereas good relations between management and workers and their representatives - including information and consultation, participation, bargaining and contractual agreements - are an important factor in the effectiveness of the production and social functions of a company as well as a driving force behind its success and competitiveness,

1. Whilst respecting the traditions in Member States company law provisions in line with the principle of subsidiarity, supports the need for urgent action to be taken in this context on European company law; the enlargement process and subsequent consolidation of the internal market will make it necessary to harmonise or coordinate the different national laws so as to establish a general framework that will allow for mobility between European countries;

2. Particularly emphasises the importance of paying attention to the fact that the aim of measures to harmonise EU company law is to help create a level playing field for companies and that a level playing field must be ensured in the case of all measures;

3. Supports the view of the Commission that competition between national company rules is healthy, and therefore considers that competition under level playing field conditions may take the place of efforts to bring about maximum harmonisation;

4. Considers, however, that governance cannot be seen as a problem confined solely to relations between shareholders and management; in this connection, points to the essential role to be played by stakeholders within or close to the company;

5. Draws attention to the importance of taking account of the work being carried out on corporate governance in the OECD;

6. Takes a favourable view of the Commission's proposals for modern corporate governance with the aim of increasing businesses' competitiveness as a crucial component of economic growth and job creation, improving protection for shareholders and creditors and enhancing the transparency of the way in which businesses operate;

7. Considers that it is necessary in all cases to distinguish between large and small shareholders, mainly as regards the use of modern technology in the exercise of shareholders' voting rights, given that small shareholders are usually more at risk;

8. Agrees with the Commission that there is no need to draw up a specific European code of

corporate governance, but considers that the EU should spell out a framework of international standards to be observed and determine procedures for these to be transposed, so as to supplement the existing regulatory provisions at national level;

9. Remains convinced that priorities at EU level should be in genuine cross-border areas, and therefore calls on the Commission to accelerate the drafting of the recommendations to Member States to review national rules that hamper the establishment of undertakings across borders;

10. Agrees with the Commission that 'the EU must define its own European corporate governance approach, tailored to its own cultural and business traditions' and warns of the emergence of a tendency to copy US solutions for US problems and to import US traditions and rules that would be counterproductive for decent corporate governance in Europe;

11. Endorses the general approach adopted by the Commission with a timescale matched to the one contained in the financial services action plan and which should be sufficiently flexible as regards the balanced use of legal instruments, directives and recommendations; welcomes the intention of the Commission to revise and prioritise the communication on company law and corporate governance in the wake of recent corporate scandals in Europe; agrees with the Commission that measures to encourage corporate governance must be dealt with at the same time, and with the same level of care and priority, as measures relating to company law; with regard to the rules on corporate governance, calls on the Commission to systematically take stock of the measures carried out in the Member States since the adoption of the Winter report and to take them fully into account when framing its proposals for directives and recommendations; in this connection, considers that the solutions adopted by the United States are not necessarily a suitable example for Europe and that it is vital that these rules should reflect the specific characteristics of the situation in Europe; accordingly, welcomes the Commission’s efforts to develop projects for the formation of a European company;

12. Expresses doubts about the point of the setting up by the Commission of a European Corporate Governance Forum, as harmonisation of corporate governance codes is not being proposed and coordination of work on national codes already takes place at association level (for example, Unice);

13. Considers it vital in this connection that the Member States' supervisory and monitoring bodies should meet three requirements: stability of the financial system, transparency of markets and of corporate balance sheets and corporate behaviour, and safeguarding competition. In particular, it is vital to:

    (a) ensure the autonomy, independence and integrity of members of the management and supervisory boards, auditors and rating companies;

    (b) ensure that the authorities responsible for monitoring the stock exchange are able to function effectively, giving them the necessary resources and staff;

    (c) create framework conditions for the work of anti-trust authorities;

(d) promote an effective system of cooperation between central banks;

14. Urges the Member States to effectively fulfil the undertakings given in recent years as regards meeting the Lisbon objectives, at national, regional and local level, so as to provide a regulatory, institutional, political and participatory framework for all actors concerned, including companies;

15. Stresses the need for companies to observe in their day-to-day conduct the principle whereby property rights are subject to restrictions and obligations for the benefit of society, and to be aware of their corporate social responsibility;

16. Regrets the fact that the High Level Group of Company Law Experts appointed by the Commission in September 2001 takes the same approach to all businesses and shareholders and considers that in order for these objectives to be achieved, instead of adopting a uniform approach to all businesses, a distinction should be drawn between those listed on the stock exchange, companies not listed on the stock exchange and particularly small and medium-sized businesses in this category;

17. Endorses the proposal that companies listed on the stock exchange should make an annual statement on corporate governance to provide investors with greater transparency and more information to guide their choices; however, this statement cannot and must not prevent the competent supervisory authorities from carrying out independent checks wherever they see fit;

18. Welcomes the business world’s initiative on greater openness and urges the Member States to encourage greater openness and transparency with regard to corporate reporting on governance since this will improve the flow of corporate capital and, in the long term, the confidence of market players;

19. Supports the Commission in its intention to strengthen shareholders' rights in particular through extension of the rules on transparency, proxy voting rights, the possibility of participating in general meetings via electronic means and ensuring that cross-border voting rights are able to be exercised;

20. Expresses its regret that no mention is made of the consequences for corporate governance of certain practices resulting from differences in the financing of companies, especially between the Anglo-Saxon tradition - where share ownership spread through financial markets predominates - and the continental tradition where banks and majority shareholders play a more important role; urges the Commission to carry out such an analysis and to avoid conclusions and initiatives based simply on a unilateral approach;

21. Calls for the Commission, as a matter of priority, and on the basis of suitable proposals, to help win acceptance for the principle of 'one share one vote' wherever it applies, in order to ensure equal treatment for all shareholders;

22. Calls on the Commission as a matter of urgency to strengthen the rules on corporate controls, particularly as regards auditing and introducing stringent penalties for fraud;

23. Urges the Commission and Member States to ensure strict application of European

legislation on market abuse, financial prospectuses and transparency;

24. Takes a positive view of the Commission's interest in cross-border mergers and the corresponding mobility of companies; stresses, however, that this interest must be matched by measures to facilitate the mobility of workers in the corresponding companies;

25. Insists on the need to guarantee that, in the case of listed companies, the possibility of being audited and advised by the same firm is ruled out;

26. Welcomes the proposal for a directive on the statutory audit of annual accounts and consolidated accounts (COM(2004) 177) submitted by the Commission and, in particular, supports the key principles on the full responsibility of the statutory auditor with regard to the consolidated accounts of the audited company and the need to set up an independent committee for the statutory audit of accounts in every public interest entity; shares the Commission's view that all listed companies – especially banks, insurance undertakings, hospitals and pension funds – should be classified and regulated as public interest entities, given their economic and social importance;

27. Stresses the need for listed companies and other public interest entities to have an Audit Committee, whose functions should include overseeing the external auditor's independence, objectivity and effectiveness;

28. Stresses the need for corporate governance to include auditing rules designed to enhance the responsibility of audit groups and their independence from management, and to improve and harmonise public supervision of auditors as regards problems relating to the scope and terms of reference of supervision, the composition of supervisory committees, the principles, quality and transparency of supervision and the mechanisms and methods for sanctions;

29. Agrees with the Commission proposal to set up a public electronic register of statutory audit firms – which have been approved by designated public authorities within the Member States – clearly and transparently listing the legal form, make-up and independence of the statutory audit groups; emphasises the importance of creating a system of recognition based on a high level of competence, training and professional ethics in statutory audit firms and the need to make information on the relations between the audit firm and the audited firm public, accessible and transparent, including information on fees charged and payments made;

30. Supports the establishment of a committee to regulate auditing in the EU that would include among its fundamental principles protection of the public interest and of all parties concerned; stresses the need to develop a common system of statutory auditing standards within the EU by means of a cooperation mechanism which is efficient and consistent with regard to the existing national systems; considers that the setting up of a single authority responsible for accounting and financial supervision in Europe would be a possible long-term solution;

31. Considers it vital to improve cooperation at Community level between the bodies supervising statutory auditing in the Member States with a view to developing a common

system of requirements to guarantee a high level of integrity and independence; considers the development of a cooperation model with the regulatory and statutory audit bodies of non-EU countries – based on the principle of reciprocity – to be vital for the sound and healthy operation of the financial markets;

32. Welcomes the Commission's effort in its 2004 work programme to revise the rules on the transfer of deficits and surpluses within a company operating in a number of EU Member States and urges the Commission to expedite this work since it is of vital importance for many companies operating across Europe;

33. Invites the Commission, moreover, to consider integrating in the proposal on the eighth directive on the approval of persons responsible for carrying out the statutory audits of accounting documents (84/253/EEC[1]) other provisions such as a prohibition on the performance by the same auditors of all non-audit services to audit clients;

34. Calls on the Commission to promote cooperation between the bodies and institutions responsible for supervision and control of relations between companies and banks, in order to protect the interests of small shareholders and savers investing in funds or trusts;

35. Points out that, if it is translated into reality and made transparent to the public, corporate governance enhances a company's image and rating alike and hence its position on the capital and financial markets, thus working, in the final analysis, in the company's interest;

36. Considers it vital, furthermore, that shareholders should be able to take part in discussions on the remuneration of directors and supports the idea that a recommendation should be adopted introducing a regime covering essential aspects of directors' remuneration policy;

37. Calls on the Commission to propose a legal framework laying down rules governing the activities and structure of 'institutional investors', taking into consideration a requirement concerning participation in shareholders' meetings;

38. Lastly, with regard to the Commission's other proposals, considers it vital to maintain the proposal for a directive requiring institutional shareholders to disclose information on their investment policy, given the direct influence they wield over the shape and substance of corporate governance for companies in which they invest; welcomes the more active role that some institutional investors and particularly pension funds have already taken in corporate governance and urges the Commission to start an active consultation with the sector on obligations to provide information on their investment policies and exercising of voting rights in companies in which they invest;

39. Calls on the Commission to examine the possibility of conflicts of interest in connection with holdings in companies and banks and to propose rules to eliminate and prevent conflicts of interest;

40. Stresses the need for extensive transparency as regards remunerations, including both fixed and variable components, and any incentive or stock option schemes for

[1] OJ L 126, 12.5.1984, p. 20.

management;

41. Calls on the Commission to substantially improve information and transparency procedures for groups and pyramids, since the formation of a company into groups and, in particular, pyramids, can make its actual structure less transparent;

42. Calls on the Commission to speed up work on information and disclosure with regard to a group's structure and intra-group relations by revision of the seventh directive on consolidated accounts (84/349/EEC[1]), in order to provide more transparency, and in this connection asks that the Commission reflects on ways to make features such as special purpose vehicles and tax-haven subsidiaries more transparent;

43. Asks the Commission to examine to what extent certain particularly opaque pyramid structures, whose primary purpose is to maintain control of a company, may be barred from being admitted to the stock exchange;

44. Supports the Commission's proposal to produce a directive on corporate restructuring and mobility;

45. Supports the work on a European Private Company;

46. Welcomes the Commission's initiative in launching a feasibility study concerning the European Private Company (EPC) which has broad support among the players concerned; calls on the Commission, furthermore, to review in that feasibility study the minimum capital requirements for the establishment of a European company (SE) (Council Regulation (EC) 2157/2001)[2] or to put forward proposals for a new form of European company adapted to small and medium-sized enterprises; the minimum capital requirement of EUR 120 000 makes it difficult for small and medium-sized enterprises to use the corporate structure of the European company (SE);

47. Considers that for small limited companies the second directive's system is particularly strict;

48. Supports the Commission in its intention, on the basis of a directive, to give companies throughout the EU the choice between a one-tier and a two-tier board structure;

49. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and regulatory and supervisory authorities of the Member States and the candidate countries.

[1] OJ L 193, 18.7.1983, p. 1.
[2] OJ L 294, 10.11.2001, p. 1.

EXPLANATORY STATEMENT

La posizione della Commissione europea.

La Commissione europea ha presentato una comunicazione al Consiglio ed al Parlamento europeo sulla modernizzazione del diritto delle società e sul rafforzamento del governo societario nell'unione europea. Tale comunicazione rappresenta la risposta al rapporto del 4 novembre 2002 del gruppo di esperti di alto livello in diritto societario, nominato dal commissario Bolkenstain allo scopo di indicare un quadro normativo moderno per il diritto delle società in Europa.
Nella comunicazione vengono definiti i grandi obiettivi politici che dovranno guidare ogni iniziativa futura. Inoltre essa ricomprende un piano d'azione che stabilisce il cronoprogramma di una serie di strumenti regolamentari e non, destinati ad essere predisposti a breve, medio e lungo termine, unitamente ad una griglia indicativa del livello di priorità delle misure stesse.
La Commissione ha tenuto conto della necessità di rispettare i principi di sussidiarietà e di proporzionalità, improntando alla gradualità il proprio approccio normativo, senza peraltro perdere di vista l'evoluzione della regolamentazione a livello internazionale.
Due sono gli obiettivi di fondo che la Commissione si pone nel porre mano alla riforma del diritto societario in Europa:
1) Il rafforzamento dei diritti degli azionisti e la protezione dei terzi:
- Devono essere intraprese alcune iniziative per agevolare i diritti degli azionisti e rendere più chiare le responsabilità degli amministratori; occorre inoltre accrescere la protezione dei creditori mantenendo una elevata qualità del quadro normativo.
- È necessario distinguere in maniera appropriata tra le diverse categorie di società, stabilendo in particolare un quadro giuridico più vincolante specialmente sotto il profilo delle garanzie, per le società quotate e quelle che fanno appello al pubblico risparmio. Per queste appare assolutamente prioritario migliorare le regole di trasparenza e di corretta informazione. Per quanto riguarda le altre società (c.d. società chiuse) si propone una maggiore flessibilità di approccio, nel rispetto della loro tipologia e della dimensione, elementi che risultano essenziali per il sistema delle PMI.
- Il diritto societario deve permettere, ed anzi, agevolare l'impiego delle tecnologie informatiche e dei sistemi di comunicazione da parte delle società allo scopo di favorire la partecipazione degli azionisti e salvaguadare i diritti dei terzi.
2) La promozione dell'efficienza e della competitività delle imprese:
- Gli interventi dell'Unione europeo nel campo del diritto societario devono affrontare prima di tutto alcuni temi specifici a carattere transfrontaliero quali le fusioni o i trasferimenti della sede sociale, gli ostacoli all'esercizio dei diritti degli azionisti e via dicendo.
- Vengono poi prese in considerazione alcune misure di armonizzazione di grado modesto volte a promuovere la competitività delle imprese a partire dalla determinazione di un quadro giuridico di riferimento che vada nel senso di una maggiore certezza giuridica.

A completamento della precedente comunicazione si è ritenuto opportuno includere, nell'ambito della presente relazione di iniziativa, anche la comunicazione della Commissione sul rafforzamento della revisione legale dei conti nell'Unione europea.
In tale documento, viene delineata la visione relativa ad un quadro normativo moderno in una materia strettamente collegata a quella del governo societario.
Le principali iniziative legislative proposte dalla Commissione riguardano l'aggiornamento dell'ottava direttiva sul diritto societario con particolare riferimento all'esigenza di di

rinforzare, a livello comunitario, il controllo pubblico in materia di revisione legale dei conti, di imporre l'applicazione delle norme internazionali in materia di audit (ISA) in Europa a partire dal 2005, di migliorare il sistema sanzionatorio disciplinare e di rendere più trasparenti le società di revisione e le loro ramificazioni internazionali.
In correlazione con il sistema di governo societario poi, vengono proposti interventi volti a rafforzare i comitati dei revisori ed il controllo interno di gestione, nonché ad accrescere l'indipendenza e definire in modo più appropriato la responsabilità dei revisori anche mediante la valorizzazione di codici deontologici.

Per affrontare in maniera adeguata la complessità dei temi sollevati dalle comunicazioni, la commissione ha organizzato un'audizione con la presenza di esperti accademici che si è tenuta il 1° dicembre 2003.

La posizione della relatrice.

Le ragioni essenziali, e condivisibili, di questa iniziativa possono dunque essere individuate come segue:
1) determinare un quadro più omogeneo di riferimento in materia di diritto societario per facilitare l'esercizio dell'insediamento e delle ristrutturazioni transfrontaliere, anche tenendo conto che l'ingresso dei dieci nuovi Stati membri nell'Unione europea, a partire dal 1° maggio 2004, aumenterà le diversità presenti tra le diverse legislazioni nazionali;
2) costruire le condizioni per evitare il ripetersi di recenti scandali societari, tra cui spicca, per la portata, quello che recentemente ha investito la Parmalat, le conseguenze dei quali hanno colpito pesantemente il reddito, le pensioni, i posti di lavoro, gli investimenti di milioni di persone;
3) sfruttare al massimo i vantaggi del mercato interno.

La comunicazione della Commissione contiene un piano d'azione con due obiettivi di fondo, che sono stati richiamati in precedenza, e che mirano a rafforzare i diritti degli azionisti e la protezione dei terzi da un lato, e a promuovere la competitività delle imprese europee nel mercato mondiale dall'altro.
Per realizzare il primo obiettivo è indispensabile assicurare un sistema efficace ed aggiornato di protezione degli azionisti e dei loro diritti, il che potrà comportare indirettamente anche la protezione del risparmio e delle pensioni di milioni di cittadini, rafforzando al tempo stesso le fondamenta del mercato di capitali e favorendo la diversificazione dell'azionariato. Ciò permetterebbe inoltre alle imprese di accrescere la loro capitalizzazione a costi meno elevati.
Occorre poi tenere in debita considerazione la posizione di alcuni soggetti terzi particolarmente qualificati sotto il profilo degli interessi di cui sono portatori: i creditori ed i lavoratori.
Da questo punto di vista l'approccio con cui la Commissione affronta il problema della *governance* appare riduttivo e parziale.
Il tema relativo al governo societario è presentato come un problema limitato solo alla relazione fra azionisti e *management* come se un'impresa fosse un'entità riferibile unicamente agli interessi degli azionisti.
In questo modo si descrive un'impresa virtuale, senza dare adeguato rilievo ai lavoratori e senza responsabilità più generali nei confronti di altre categorie di soggetti interessati alla vita dell'impresa stessa, quali ad esempio i creditori e gli altri *stakeholders* (tra i quali meritano una particolare attenzione i risparmiatori ed i consumatori).
Con riferimento al secondo obiettivo, la competitività delle imprese può essere favorita da

molteplici elementi, tra i quali appare imprescindibile l'esistenza di un quadro normativo adeguato in materia di diritto societario posto saldamente in equilibrio tra misure nazionali e comunitarie.
La sfida che oggi deve essere accolta è quella che punta a far emergere i tratti distintivi e peculiari del capitalismo europeo nell'epoca della globalizzazione. Bisogna verificare, in altri termini, se possa parlarsi di un vero e proprio modello europeo, che si differenzia sensibilmente da quello nordamericano, non perché corrisponda e si delinei a partire da un quadro di sfide e problemi diversi da quelli che si pongono per tutti in un contesto di globalizzazione economica, ma perché impersona un'attenzione ai risvolti ed alle implicazioni sociali in modo tale da renderlo in qualche modo più temperato ed umano.
Un modello che ha la pretesa di concepire il nucleo essenziale del modello societario rappresentato dall'interesse sociale, non solo come interesse comune dei soci, e quindi degli azionisti, ma piuttosto come interesse dell'impresa in sé. Un'impresa che non è una monade isolata, ma che, nei panni di un attore economico autonomo, si fa carico anche dell'interesse particolare di tutti quei soggetti esterni/interni all'impresa come i dipendenti, i clienti, i fornitori, i creditori, i risparmiatori, la pubblica amministrazione (in qualità di erogatrice di welfare, oppure di fisco) ed, in ultima analisi, la società civile intera che è strutturalmente collegata con l'interesse generale e comune alla prosperità ed alla continuità dell'impresa. È questa in buona sostanza la missione dell'impresa per la quale devono determinarsi regole chiare e produttive di effetti positivi.
Un'ultima considerazione di carattere generale merita di essere introdotta. Si tratta del richiamo alla ricerca di un giusto equilibrio tra autoregolamentazione ed eteroregolamentazione mentre si va a delinerae il quadro della *governance* europea.
In effetti si è ampiamente diffusa oggigiorno la tendenza a colmare i vuoti normativi (lasciati dai legislatori nazionali o sovrannazionali) con codici di autoregolamentazione, raccolte di *best practices*, codici etici ecc.. Tutto ciò è apprezzabile e probabilmente necessario, ma non di per sé sufficiente. Occorre mantenere, se non rafforzare, un sistema di regole giuridicamente vincolanti, munite di sanzioni efficaci, applicate da organismi pubblici ai quali affidare i compiti di indirizzo, di vigilanza e di integrazione della normativa essenziale. Gli scandali finanziari e societari degli USA, del Giappone o dell'Europa dimostrano poi che, in assenza di norme cogenti, chiare e possibilmente uniformi a livello internazionale, nessun codice di autoregolamentazione, per quanto all'avanguardia, può mettere al riparo dalle malversazioni e dalle scorrettezze. E non è un caso che la reazione al caso *Enron* abbia prodotto a tamburo battente un deciso intervento da parte del legislatore federale statunitense (con il *Sarbanes-Oxley Act*). Per riassumerla quindi in uno slogan, la prospettiva deve essere quella di "globalizzare" le regole di *governance* e mettere in rete le autorità pubbliche di controllo.
A tale proposito va detto che l'approccio con cui la Commissione affronta il problema sembra piuttosto riduttivo e parziale (ed in contraddizione con quanto è stato fatto con la direttiva sui CAE, in materia di informazione e consultazione dei lavoratori, sullo Statuto della Società Europea).

Partendo da queste premesse è comunque utile focalizzare la riflessione su alcuni temi chiave.

1) Trasparenza – diritti degli azionisti
Il rafforzamento dei diritti dei soci, con particolare riferimento a quelli di minoranza, deve avvenire con modalità differenti a seconda che si tratti di società quotate, (o che fanno ricorso

al pubblico risparmio), o di società chiuse. In queste ultime occorre accrescere i poteri individuali di informazione e di controllo sull'amministrazione, garantendo l'accesso pieno alla documentazione sociale nonché il diritto d'azione individuale contro le irregolarità di gestione. Per le altre società, l'informazione deve essere più ampia e dettagliata, anche con riferimento ai diritti ed agli interessi degli *stakeholders* esterni.
In tal senso, la Dichiarazione annuale sul governo societario (soprattutto per le società quotate) è sicuramente utile, ma insufficiente. Essa può certamente giovare a colmare le asimmetrie informative che caratterizzano i mercati finanziari, ma di per sé non basta. Per questo non si può e non si deve escludere la possibilità che la Commissione e/o l'autorità vigilante proceda ad una autonoma verifica sui contenuti del rapporto, qualora lo valuti necessario. Sono dunque opportune azioni stringenti allo scopo di realizzare la democrazia azionaria e la contendibilità delle società europee.

2) Investitori istituzionali
Uno degli elementi che merita maggior chiarezza è il ruolo degli investitori istituzionali (ed anche delle banche), sia sotto il profilo di una migliore definizione della figura stessa, in coerenza con le regole esistenti sui mercati finanziari, sia sotto il profilo di una maggior responsabilizzazione per i comportamenti adottati. In effetti porebbe essere utile prevedere, tra i doveri di diligenza degli investitori istituzionali, l'obbligo di partecipare alle assemblee dei soci e di votare, in modo da assicurare, tra l'altro, la presenza di un management efficiente nell'impresa.
In secondo luogo sarà necessario mettere a punto la nozione di conflitto di interessi dell'investitore professionale, con la previsione, ad esempio, del divieto dell'assunzione di partecipazioni o di voto in società controllate dagli stessi soci di controllo dell'investitore professionale.
Parimenti occorrerà pensare ad una definizione accurata del conflitto di interessi applicabile agli amministratori ed al management.

3) Gli amministratori indipendenti.
La presenza di azionisti di minoranza, già di per sé, si traduce in un maggiore controlo sulla gestione. Tuttavia risulta oltremodo utile promuovere - come si sostiene nel rapporto Winter - il ruolo degli amministratori indipendenti. Per questi ultimi va predisposto uno statuto giuridico che garantisca un'effettiva indipendenza, stabilendo che non vi siano legami con la società, né con gli amministratori, gli azionisti di maggioranza ecc. La funzione degli amministratori indipendenti sarà particolarmente utile in quei settori dove più frequente è il rischio di conflitto di interesse: la nomina dei dirigenti, la loro remunerazione, le forme di controllo di gestione necessarie a valutare i risultati della società.

4) Le piramidi societarie
Per quanto i gruppi societari siano legittimi, essi tuttavia possono determinare rischi specifici per gli azionisti, i creditori ed i lavoratori. In particolare le piramidi societarie, per la loro mancanza di trasparenza sono fonte di una qualche preoccupazione. E' necessario intervenire con modalità efficaci quali gli obblighi di informazione e la determinazione di una chiara politica di gruppo. Tutto ciò perché è indispensabile eliminare ogni possibile pericolo di dissociazione tra potere e rischio di impresa. Gli assetti proprietari dei grandi gruppi europei non devono presentare asimmetrie tra capitale conferito e controllo, perché questo impedirebbe in buona sostanza al mercato di controllare e sottoporre ad esame l'efficienza manageriale.

5) I lavoratori
Non si può prescindere, nel modello europeo, dalla considerazione dei diritti dei lavoratori che sono, tra l'altro, creditori particolarmente qualificati dell'impresa. Vi è la preoccupazione che la mobilità dell imprese possa prestarsi ad abbassare la soglia di tutela di questi ultimi, anche nel caso in cui sia prevista la loro partecipazione, in qualche forma, al governo societario. Occorre di conseguenza mantenere almeno gli standards minimi previsti nella normativa comunitaria in materia di partecipazione dei lavoratori.

6) Revisione dei conti
Tra gli obiettivi da conseguire meritano di essere sottolineati quelli indicati in materia di revisione legale dei conti.
Anche alla luce dei recenti fatti che hanno dimostrato tutta l'inadeguatezza della situazione si deve richiamare la centralità di un sistema di vigilanza pubblica sugli operatori del settore. Ciò risulta essenziale per il mantenimento della fiducia del mercato nella funzione stessa di revisione dei conti. Del resto, per rimediare alle carenze sinora manifestate, non ci si può affidare interamente all'autoregolamentazione che rischia di innescare un nuovo filone di conflitto di interessi. Si tratta dunque di procedere all'armonizzazione della vigilanza pubblica in modo da renderla omogenea in tutta l'UE.
Si richiama inoltre la necessità che il revisore conservi un grado di indipendenza sufficiente rispetto agli amministratori esecutivi. Egli non deve venirsi a trovare né in situazioni di eccessiva familiarità né in situazione di eccessiva dipendenza nei confronti degli amministratori esecutivi che preparano i bilanci che il revisore è incaricato di valutare in modo obiettivo e critico, nell'interesse degli azionisti e delle altre parti interessate. Per questo vi è la necessità di migliorare la normativa mediante l'inclusione di alcuni principi in materia di nomina, di revoca e di retribuzione dei revisori dei conti allo scopo di accentuarne l'indipendenza.

24 February 2004

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs and the Internal Market

on the communication from the Commission to the Council and the European Parliament 'Modernising company law and enhancing corporate governance in the European Union - A plan to move forward'
(COM(2003) 284 – 2003/2150(INI))

Draftswoman: Pervenche Berès

PROCEDURE

The Committee on Economic and Monetary Affairs appointed Pervenche Berès draftswoman at its meeting of 2 September 2003.

It considered the draft opinion at its meetings of 7 October, 4 November 2003, 26 January, 17 February and 24 February 2004.

At the last meeting it adopted the following suggestions by 23 votes to 0, with 2 abstentions.

The following were present for the vote: John Purvis (acting chairman), José Manuel García-Margallo y Marfil (vice-chairman), Philippe A.R. Herzog (vice-chairman), Pervenche Berès (draftswoman), Generoso Andria, Hans Blokland, Hans Udo Bullmann, Jonathan Evans, Robert Goebbels, Lisbeth Grönfeldt Bergman, Mary Honeyball, Christopher Huhne, Giorgos Katiforis, Christoph Werner Konrad, Alain Lipietz, Astrid Lulling, Hans-Peter Mayer, Fernando Pérez Royo, Olle Schmidt, Peter William Skinner, Bruno Trentin, Theresa Villiers, Ieke van den Burg (for Bernhard Rapkay), Harald Ettl (for David W. Martin), Manuel António dos Santos (for Helena Torres Marques).

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Supports the main guidelines set out in the Commission communication, which was drawn up in response to the report by Mr Jaap Winter. Deplores, however, the narrow focus on almost exclusively the shareholders-management relationship, is not convinced of the assumption that shareholders are the best and only watchdog against the failures and scandals in recent history, and regrets the underestimation of and lack of attention to the role of company management (executive and non-executive) to safeguard the balance between the interests of different stakeholders and the wider public interest in a broader context of corporate social responsibility. A European initiative is vital to strengthen or restore public confidence in European financial markets. The aim is to make existing rules on company law more flexible and, in particular, facilitate cross-border restructuring in Europe. Integration of the financial markets brings with it a need to reform corporate governance. A measure of this kind must promote convergence of these rules and prevent excessive legal competition between Member States of the Union.

2. Notes the influence of recent financial scandals on the debate on corporate governance and calls for an objective and proportionate response to these scandals, based on a thorough assessment of the facts.

3. Disputes the position taken by the Commission that 'shareholders own companies' and thus should have absolute veto rights on major decisions. Tends to prefer the continental European view that shareholders own shares, notes that they often have a restricted focus on their own financial interests at the stock market, whereas the one-tier or two-tier managements of companies have a broader mission than only making profits for their shareholders; and urges a more fundamental debate about the ownership-control relationship and the European traditions of company law, and a more in-depth analysis of the impact of the major differences in company financing in Europe, particularly between the Anglo-Saxon tradition, where a dispersed share ownership via the financial markets is dominant, and the continental tradition characterised by a major role for banks and majority shareholders.

4. Endorses the general approach adopted by the Commission with a timescale matched to the one contained in the financial services action plan and which should be sufficiently flexible as regards the balanced use of legal instruments, directives and recommendations. Welcomes the intention of the Commission to revise and prioritise the communication on company law and corporate governance in the wake of recent corporate scandals in Europe. Agrees with the Commission that measures to encourage corporate governance must be dealt with at the same time, and with the same level of care and priority, as measures relating to company law. With regard to the rules on corporate governance, calls on the Commission to systematically take stock of the measures carried out in the Member States since the adoption of the Winter report and to take them fully into account when framing its proposals for directives and recommendations. In this connection, considers that the

solutions adopted by the United States are not necessarily a suitable example for Europe and that it is vital that these rules should reflect the specific characteristics of the situation in Europe. Accordingly, welcomes the Commission's efforts to develop projects for the formation of a European company.

5. Points out that the rules governing corporate governance are generally designed to maintain a duality of power within the collegiate decision-making body by distinguishing between management and supervisory functions so as to limit conflicts of interest but stresses that non-executive structures may, besides their monitoring task, also have vital advisory, mediating and networking functions, and a particular role in linking up with societal demands and general interest. These rules are also designed to strengthen the role and rights of shareholders, in particular through better information and financial transparency. However, the recent financial scandals and the way they have affected the system as a whole offer grounds for a broader approach to matters of corporate governance; requests therefore that, in addition to the interests of institutional or individual shareholders, which are dealt with in depth in the communication, the Commission should take explicit account of the interests of all other stakeholders (employees, creditors, clients, suppliers, etc.) in the various proposals it will be submitting as part of its action plan, giving particular weight to the principle of corporate social and environmental responsibility; emphasises that decent structures and practices of information and consultation of workers form an indispensable part of European corporate governance and is of the opinion that all European company law directives should contain obligations for information and consultation of employee representatives where major decisions are at stake for the continuity of firms and jobs.

6. Supports, therefore, the Commission's main specific proposals, such as the plan to introduce a directive requiring listed companies to publish an annual corporate governance statement, referring to a code on corporate governance designed for use at national level, with which the company complies or in relation to which it explains deviations.

7. Points out that, if it is translated into reality and made transparent to the public, corporate governance enhances a company's image and rating alike and hence its position on the capital and financial markets, thus working, in the final analysis, in the company's interest.

8. Also approves the principle of introducing a recommendation on minimum standards applicable to the creation, composition and role of the nomination, remuneration and audit committees. Considers, nevertheless, that clearer provision should be made in the case of one-tier board structures for the functions of chairman and director-general to be explicitly separated and, in particular, for employees or their representatives to be entitled to a seat on the various decision-making bodies.

9. Insists that the Commission speed up work on the Eighth Company Law Directive on approval of persons responsible for carrying out the statutory audits.

10. Invites the Commission, moreover, to consider integrating in the proposal other provisions such as a prohibition on the performance by the same auditors of all non-audit services to audit clients.

11. Considers it vital, furthermore, that shareholders should be able to take part in discussions

on the remuneration of directors and supports the idea that a recommendation should be adopted introducing a regime covering essential aspects of directors' remuneration policy.

12. Supports the Commission's proposal to adopt a directive by 2005 to enhance the collective responsibility of board members for financial and key non-financial statements, as well as the introduction in the medium term of a further directive to enhance the individual responsibility of board members.

13. Calls on the Commission to speed up work on information and disclosure with regard to a group's structure and intra-group relations by revision of the Seventh Company Law Directive, in order to provide more transparency, and in this connection asks that the Commission reflects on ways to make features such as special purpose vehicles and tax-haven subsidiaries more transparent.

14. Lastly, with regard to the Commission's other proposals, considers it vital to maintain the proposal for a directive requiring institutional shareholders to disclose information on their investment policy, given the direct influence they wield over the shape and substance of corporate governance for companies in which they invest. Welcomes the more active role that some institutional investors and particularly pension funds have already taken in corporate governance and urges the Commission to start an active consultation with the sector on obligations to provide information on their investment policies and exercising of voting rights in companies in which they invest. The same applies to the proposal to set up a European corporate governance forum to encourage coordination and convergence of national codes and the proposal concerning access to information for shareholders and the arrangements enabling shareholders to exercise their various rights.

18 February 2004

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on Legal Affairs and the Internal Market

on the communication from the Commission to the Council and the European Parliament on modernising company law and enhancing corporate governance in the European Union - a plan to move forward
(COM(2003) 284 – C5–0378/2003 – 2003/2150(INI))

Draftsman: Per-Arne Arvidsson

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Per-Arne Arvidsson draftsman at its meeting of 26 August 2003.

It considered the draft opinion at its meetings of 2 December 2003, 19 January 2004 and 18 February 2004.

At the last meeting it adopted the following suggestions by 34 votes to 1.

The following were present for the vote: Luis Berenguer Fuster, chairman, Peter Michael Mombaur, vice-chairman, Jaime Valdivielso de Cué, vice-chairman, Per-Arne Arvidsson, draftsman, Gordon J. Adam (for Massimo Carraro), Sir Robert Atkins, Guido Bodrato, Felipe Camisón Asensio (for Concepció Ferrer), Giles Bryan Chichester, Nicholas Clegg, Marie-Françoise Duthu (for Colette Flesch pursuant to Rule 153(2)), Francesco Fiori (for John Purvis), Neena Gill (for Norbert Glante), Michel Hansenne, Hans Karlsson, Bernd Lange (for Imelda Mary Read), Peter Liese (for Paul Rübig), Rolf Linkohr, Eryl Margaret McNally, Marjo Matikainen-Kallström, Ana Miranda de Lage, Elizabeth Montfort, Bill Newton Dunn (for Willy C.E.H. De Clercq), Angelika Niebler, Giuseppe Nisticò (for Umberto Scapagnini), Seán Ó Neachtain, Reino Paasilinna, Fernando Pérez Royo (for Harlem Désir pursuant to Rule 153(2)), Elly Plooij-van Gorsel, Godelieve Quisthoudt-Rowohl, Alexander Radwan (for Dominique Vlasto), Konrad K. Schwaiger, Esko Olavi Seppänen, W.G. van Velzen, Alejo Vidal-Quadras Roca, Myrsini Zorba, Olga Zrihen Zaari.

SUGGESTIONS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Supports the principle of an Action Plan and its overall objectives to ensure that there is a flexible and dynamic company law and corporate governance framework within the EU;

2. Welcomes the Commission's conclusion that it will not propose any harmonisation of different codes of corporate governance;

3. Emphasises that the subsidiarity principle which ensures that distinctive national features and traditions are accommodated must guide the Commission's continuing work on company law and corporate governance: it is of major importance to safeguard the possibility for Member States to select different solutions and thus offer companies a choice between different regulatory systems;

4. Stresses that the Plan must ensure that the corporate governance principles identified in the Action Plan are taken forward in the most efficient ways by measures aligned with national requirements and preserve the diversity of approaches across Member States. This flexibility will ensure a more efficient and durable outcome than a "one-size-fits-all", legislation-driven approach;

5. Welcomes the business world's initiative on greater openness and urges the Member States to encourage greater openness and transparency with regard to corporate reporting on governance since this will improve the flow of corporate capital and, in the long term, the confidence of market players;

6. Remains convinced that priorities at EU level should be in genuine cross-border areas, and therefore calls on the Commission to accelerate the drafting of the recommendations to Member States to review national rules that hamper the establishment of undertakings across borders;

7. Welcomes the Commission's initiative in launching a feasibility study concerning the European Private Company (EPC) which has broad support among the players concerned; calls on the Commission, furthermore, to review in that feasibility study the minimum capital requirements for the establishment of a European company (SE) (Council Regulation 2157/2001) or to put forward proposals for a new form of European company adapted to small and medium-sized enterprises; the minimum capital requirement of EUR 120 000 makes it difficult for small and medium-sized enterprises to use the corporate structure of the European company (SE);

8. Welcomes the Commission's effort in its 2004 work programme to revise the rules on the transfer of deficits and surpluses within a company operating in a number of EU Member States and urges the Commission to expedite this work since it is of vital importance for many companies operating across Europe;

9. Is critical of the idea of a European corporate governance forum since setting up

bureaucratic bodies is seldom the most effective solution to problems: instead, it risks becoming an obstacle to innovation and the framing of different codes of corporate governance;

10. Is concerned that the Action Plan, particularly in field of corporate governance, is unnecessarily prescriptive and may lead to increasing burdensome and unnecessary regulation over time. Therefore the Action Plan should not be overly rigid in its form and execution and it is essential that new developments be reflected in the priorities of the Plan as it evolves;

11. Warns the Commission that its proposals must not entail additional costs for companies and urges it to ascertain whether such adverse consequences may arise;

12. Draws attention to the importance of taking account of the work being carried out on corporate governance in the OECD.

26 January 2004

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Legal Affairs and the Internal Market

on modernising company law and enhancing corporate governance in the European Union - a plan to move forward
(COM(2003) 284 – C5-0378/2003 – 2003/2150(INI))

Draftsperson: Ioannis Koukiadis

PROCEDURE

The Committee on Employment and Social Affairs appointed Ioannis Koukiadis draftsperson at its meeting of 4 June 2003.

It considered the draft opinion at its meetings of 27 November 2003 and 22 January 2004.

At the latter meeting it adopted the following suggestions unanimously.

The following were present for the vote: Theodorus J.J. Bouwman, chairman; Marie-Hélène Gillig and Winfried Menrad, vice-chairpersons; Ioannis Koukiadis, draftsperson; Anne André-Léonard, Elspeth Attwooll, Regina Bastos, Hans Udo Bullmann (for Jan Andersson), Ieke van den Burg, Philip Bushill-Matthews, Luigi Cocilovo, Proinsias De Rossa, Harald Ettl, Carlo Fatuzzo, Ilda Figueiredo, Stephen Hughes, Anne Elisabet Jensen (for Marco Formentini), Karin Jöns, Jean Lambert, Elizabeth Lynne, Mario Mantovani, Claude Moraes, Neil Parish (for Raffaele Lombardo, pursuant to Rule 153(2)), Manuel Pérez Álvarez, Bartho Pronk, Lennart Sacrédeus, Herman Schmid, Elisabeth Schroedter (for Hélène Flautre), Miet Smet, Helle Thorning-Schmidt and Barbara Weiler.

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Takes a favourable view of the Commission's proposals for modern corporate governance with the aim of increasing businesses' competitiveness as a crucial component of economic growth and job creation, improving protection for shareholders and creditors and enhancing the transparency of the way in which businesses operate;

2. Considers that the Commission's key policy objectives are inadequate, and should also include reference to promoting sustainable development, environmental justice and fair trade;

3. Regrets, however, that the Commission's proposals do not place greater importance on the involvement of other stakeholders, such as workers, consumers and community representatives;

4. Deplores, however, the narrow, almost exclusive focus on the shareholder – management relationship; is not convinced of the assumption that shareholders are the best and only watchdog against the kinds of failures and scandals that have occurred recently; regrets the underestimation of and lack of attention given to the role of company management (executive and non-executive) in maintaining a balance between the interests of different stakeholders and the wider public interest in a broader context of corporate social responsibility;

5. Consider imbalanced the position of the Commission that “shareholders own companies” and thus should have absolute veto rights on major decisions; tends to prefer the European continental approach that shareholders own shares to provide investments for companies, but that companies and their one-tier or two-tier management structures have a broader mission than only making profits for their shareholders; requests a broader fundamental debate about the ownership – control relationship and the European traditions of company law;

6. Agrees with the Commission that “the EU must define its own European corporate governance approach, tailored to its own cultural and business traditions” and warns of the emergence of a tendency to copy US solutions for US problems and to import US traditions and rules that would be counterproductive for decent corporate governance in Europe;

7. Regrets the fact that the High Level Group takes the same approach to all businesses and shareholders and considers that in order for these objectives to be achieved, instead of adopting a uniform approach to all businesses, a distinction should be drawn between those listed on the stock exchange, companies not listed on the stock exchange and particularly small and medium-sized businesses in this category;

8. Regrets that there is no analysis of the implications for corporate governance practices arising from differences in company financing, particularly between the Anglo-Saxon

tradition - where a dispersed share ownership via the financial markets is dominant, and the continental tradition - characterised by a major role for banks and majority shareholders; urges the Commission to make such an analysis and avoid conclusions and initiatives based only on a one-sided approach;

9. Considers, furthermore, that since the category of creditors also includes salaried workers, in respect of their demands, account should be taken of the particular nature of their demands to ensure that they too are effectively protected;

10. Considers it necessary for a distinction to be drawn between large and small shareholders, chiefly with regard to the use of modern technologies in the exercise of shareholders' voting rights, since small shareholders are usually more exposed to risk;

11. Considers that special attention should be paid to the methods used to capture shareholders' votes, as can be seen in arrangements which permit the informal organisation of systems and representation of shareholders by large anonymous groups;

12. Considers that for small limited companies the second directive's system is particularly strict;

13. Takes a positive view of the Commission's interest in cross-border mergers and corresponding company mobility; considers, however, that this interest should be complemented by measures to facilitate the mobility of workers in those companies;

14. Welcomes the more active role that some institutional investors and particularly pension funds take in corporate governance and urges the Commission to start an active consultation with the sector on obligations to provide information on their investment policies and on the exercise of voting rights in the companies in which they invest;

15. Considers that European corporate governance and Company law must include decent structures and practices for informing and consulting workers, and that all European company law directives should contain obligations to inform and consult employee representatives where major decisions are at stake as regards the continuity of firms and jobs;

16. Considers that the Commission's views on the supervisory role of the non-executive bodies and the auditing role of the executive bodies are rather vague, and fail to reinforce the importance of these bodies playing the roles laid down for them; emphasises that non-executive structures should not be restricted to monitoring roles: their advisory, mediating and networking functions should also be recognised, particularly their role in linking up with societal demands and general interest;

17. Supports the initiative of the Commission to propose a recommendation in the short term on detailed disclosure of directors' remuneration in annual accounts, but would prefer that this be included in the draft Transparency Directive currently under discussion;

18. Believes that the European Corporate Governance Forum which the Commission proposes to convene ought to be representative of all interests and therefore that trade unions and civil society ought also to participate in it;

19. Believes that, because of their rapid spread, groups of undertakings need regulation, because certainty regarding their legal framework facilitates the transparency of transactions and makes it possible to protect creditors of subsidiaries, including as against the parent companies.