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*Committee on Economic and Monetary Affairs*

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**2010/0000(INI)**

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# DRAFT REPORT

on the Green Paper on corporate governance in financial institutions  
(2010/0000(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Ashley Fox

## CONTENTS

### Page

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION .....	3
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## **MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION**

### **on the Green Paper on corporate governance in financial institutions (2010/0000(INI))**

*The European Parliament,*

- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on the Internal Market and Consumer Protection (A7-0000/2010),

#### ***Approach***

1. Welcomes the Commission's Green Paper and the opportunity to improve corporate governance structures throughout the EU;
2. Notes that during the recent financial crisis many financial institutions around the world failed at great cost to the taxpayer; believes that the Commission is right to examine every possible cause of failure in financial institutions in order to prevent another crisis occurring;
3. Notes the shortcomings of the prescriptive US Sarbanes-Oxley Act, which failed to protect US institutions during the financial crisis, whilst at the same time increasing compliance costs for all listed companies, in particular SMEs, reducing competitiveness and hampering the creation of new listed companies;
4. Notes the diversity of corporate governance structures throughout the European Union and the diversity of approaches that Member States take in regulating these structures; recognises that a 'one size fits all' approach would be inappropriate and damaging to the competitiveness of financial institutions;
5. Recognises that the area of corporate governance is constantly evolving and is therefore ill-suited to a prescriptive approach and that a flexible 'comply or explain' approach in the form of codes of best practice is more appropriate; believes that 'comply or explain' is proportionate and can be applied across a wide range of financial institutions operating in various sectors and markets, but that it must be complemented by regular external evaluation and appropriate regulatory oversight;
6. Calls on the Commission to submit every proposal it considers to improve corporate governance to a cost-benefit impact assessment which focuses on the need to keep financial institutions competitive so that they can help deliver economic growth;

#### ***Risk***

7. Notes the failure of some financial institutions and supervisors to appreciate that the nature and scale of the risk they had incurred contributed to the financial crisis; believes that effective risk governance is essential to preventing future crises;

8. Stresses that risk is intrinsic and necessary in the financial sector in order to foster competitiveness, increase liquidity, provide loans, and deliver economic growth;
9. Calls for the establishment of mandatory risk committees at board level for all economically significant financial institutions;
10. Believes that the risk committee should have responsibility for oversight and for advising the board on the current risk exposures of the financial institution concerned and should advise on future risk strategy, including strategy for capital and liquidity management, taking into account financial stability assessments developed by supervisors and national banks;
11. Stresses that ultimate responsibility for risk governance lies with the board;
12. Believes that firms should establish an internal procedure, reviewed by the supervisor, to address conflicts which may arise between their risk management and operational units;
13. Notes the Transparency Directive, which requires institutions to disclose principal risks in their business review, and the Fourth Company Law Directive, which requires institutions to describe their internal control systems relating to financial reporting risks;
14. Calls for a rationalisation of current EU legislation with the aim of requiring every institution to publish in its annual report a risk report and a business model setting out the board's approach to overall risk strategy, including its risk tolerance and appetite, risk policy, risk management and internal control systems, including compliance policy, thereby enabling investors and supervisors to assess whether the institution has identified key risks and whether the risk management and internal control systems relating to those risks are adequate;

#### ***Boards of directors***

15. Calls on national supervisors to develop objective criteria for a 'fit and proper person' test to assess the suitability of individuals to be added to an 'approved persons' list for supervised functions; supervisors must perform their assessments and approvals procedure in a timely and efficient manner;
16. Calls for regular, formal external assessments to be carried out of the board and its performance, on the basis of objective criteria to be approved by the relevant national supervisor, and for summaries of these assessments to be included in annual reports for the benefit of investors, shareholders and national supervisors;
17. Believes that there should be a basic assumption that the roles of CEO and chairman should be separate; notes that there are circumstances in which a combined role could be beneficial;
18. Believes that all non-executive members of unitary or supervisory boards should be of high calibre, that every board should have non-executive members who possess recent and relevant financial industry expertise, whose role should be complemented by other non-executives with other areas of expertise and experience relevant to the work of the board,

that every financial institution should have a board with a diversity of experience, expertise and character and that appointments should be made on merit;

19. Stresses that directors must devote sufficient time to the performance of their duties, which should be monitored by national supervisory bodies;
20. Believes that there should be a basic assumption that no person should serve on more than three boards of directors of financial institutions;

### ***Remuneration***

21. Believes that remuneration policies should encourage long-term thinking and the sustainable performance of the institution and should avoid a short-term focus, as this may contribute to excessive risk-taking;
22. Stresses that properly disclosed share options with vesting periods of at least three years for directors are a useful tool to bring the interests of directors into line with those of the shareholders;
23. Notes that the issue of remuneration in financial institutions has been dealt with in CRD III;

### ***Supervisors, auditors and institutions***

24. Believes that an enhanced three-way dialogue between supervisors, auditors (both internal and external) and institutions would make it possible to detect substantial or systemic risk at an early stage; encourages supervisors, auditors and institutions to engage in open discussions and to increase the frequency of meetings in order to facilitate prudential supervision;
25. Stresses that an auditor's primary role should not be compromised by the burden of extra duties, such as an examination and assessment of non-audit information, which falls outside his or her area of expertise;

### ***Shareholders and the AGM***

26. Encourages institutional and individual shareholders to take a more active role in holding the board and its strategy to account;
27. Believes that significant transactions above a set size, with the benchmark to be decided by ESMA, should require specific shareholder approval or be subject to a requirement to inform shareholders before the transaction can take effect;
28. Recognises that transparency is necessary with regard to related party transactions and that, on the basis of a benchmark to be set by ESMA, transactions which involve a related party should be notified to the listing authority and be accompanied by a letter from an independent adviser confirming that the transaction is fair and reasonable, or should be subject to a vote by shareholders from which the related party is excluded;
29. Calls for mandatory annual elections of each member of the board at the AGM, with a

view to making the board more accountable and encouraging a culture of greater responsibility;

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