

EuropeanIssuers' Comments on the Green Paper Corporate Governance in Financial Institutions

1 September 2010

The Green Paper focuses on corporate governance requirements only for financial institutions and on directors' remuneration for all listed companies.

The Commission announced that a broader review on corporate governance within listed companies in general and, in particular, on the place and role of shareholders, the distribution of duties between shareholders and boards directors with regard to supervising senior management teams, the composition of boards of directors, and corporate social responsibility, will soon be launched. Most of these issues are addressed in the present Green Paper with reference to financial institutions.

We therefore wish to set out our general views on corporate governance requirements and the possibility of further intervention for all companies at European level.

General comments

We are pleased to see that the consultation paper raises the question of whether the existing corporate governance regime is deficient or whether the issue is one of poor implementation. We disagree with the theories put forward in paragraph 3.2, however.

It would appear that in many cases the boards of financial institutions did not appreciate the risks that the company was running and did not have the necessary information in order to take the necessary decisions to do something about this. Without the requisite information, it is unlikely that any board will be in a position to be more effective.

Risk-taking in financial institutions has systemic consequences for the economy as a whole and thus there needs to be specific capital and liquidity requirements governing such institutions, with sufficient disclosure to shareholders of the risks involved in the different business segments and insolvency provisions to ensure that their failure will not create too many shocks to the rest of the system. One of the questions for consideration, however, may be whether some financial institutions have become too complex to manage.

Before legislating it is necessary to reflect upon the impact more detailed regulation will likely have on the behaviour of financial institutions. There has already been a marked herd effect among financial institutions worldwide in the last years. This effect has also been driven by stricter regulation in the fields of supervision and corporate governance. The more rules there

are, the more stakeholders will claim for level playing fields and the higher the risk that the rules will press all the players in one direction (which may then prove to be the false one). To avoid this, policymakers should not seek to set forth stringent rules for any and all thinkable situations, but rather leave room for market - and practice - driven solutions (i.e. soft law, comply or explain-codes and the like) in addition to current regulation. This is particularly important for behavioural issues such as governance (board composition, the role of shareholders and directors and board performance) which are best dealt with by the “comply or explain” framework.

1. Boards of directors

General question 1: Interested parties are invited to express whether they are in favour of the proposed solutions concerning the composition, role and functioning of the board of directors, and to indicate any other measures they believe would be necessary.

As a general point, any EU regulation must take into account the specifics of the two-tier system of executive board and supervisory board established in several member states.

Requiring the EU legislator to consider the specifics of the two-tier system in a comprehensive manner might not prove workable and undermines the general subsidiarity principle. For this reason alone, the EU should refrain from establishing new rules regarding the composition of boards at EU level.

In addition, many of the concerns are around behavioural issues, which are very difficult to address via rules but are best dealt with via corporate governance codes, which in turn work best at Member State level.

1. Specific questions:

1.1. Should the number of boards on which a director may sit be limited (for example, no more than three at once)?

We agree with what we assume is the principle behind this question, which is that directors should devote sufficient time to their responsibilities. The question then is what the best way to achieve this is.

We believe that a rule limiting the number of directorships would undermine the principles-based regime on which corporate governance and the comply or explain regime is based. The proposal would only cover directorships and not other time-consuming commitments which might be relevant, thus potentially undermining the principle that the individual should be able to devote sufficient time to the job. The experience of the UK, which tried at one stage to limit the number of FTSE100 chairmanships by a rule but then found that this omitted other relevant factors such as time spent in US companies or charities etc, may be instructive in this respect.

The problem with drafting rules as opposed to facilitating the use of judgement is that it requires considering several factors such as whether the director has (or not) an executive role, sits in one or more board committees, sits in boards of directors from companies in the same group, or whether it is a listed or non-listed company. Even more detailed rules for exemption would follow.

Instead, we should ensure the effective working of the comply or explain regime: shareholders should be empowered to decide whether they consider that an individual is able to devote sufficient time to his or her responsibilities and to vote against individuals where they consider

this not to be the case. To this end, it might be helpful if shareholders could access information on other directorships held by individuals within the EU, to assist them to judge whether they are happy with that individual's time commitment.

We note that information on company appointments, person search and personal appointments is available from some but not other countries via the European Business Register¹ (EBR). Perhaps it should be made compulsory for such information on all directors of EU listed companies to be made publicly available via the EBR.

We believe that this would be a better solution than a rule setting out an arbitrary limit.

1.2. Should combining the functions of chairman of the board of directors and chief executive officer be prohibited in financial institutions?

We are not aware of evidence that financial institutions that did combine these functions fared worse in the recent crisis than those that did not, or that their actions could be attributed to a formulaic separation of roles. We do not therefore support such a prohibition.

Mandating division of responsibilities between the Chairman and Chief executive is not always the best means to achieve an even distribution of power within the Board. There are different means: where both functions are combined, experience suggests that appointing a lead independent director may serve to facilitate the Board's smooth operation. Typically, the lead independent director functions as liaison on Board-wide issues between independent directors and the Chairman. In some jurisdictions, there is also the possibility for the Board of Directors to limit the powers granted to the CEO for strategic operations or to elect independent directors in order to introduce a desirable balance between members.

We believe that shareholders do tend to look more closely at proposals to combine these functions and are willing to oppose the combined role in many cases.

EuropeanIssuers takes the view that, as a result, the matter should be referred to national law, especially corporate governance codes and there is no need to adopt further EU wide corporate governance principles.

1.3. Should recruitment policies specify the duties and profile of directors, including the chairman, ensure that directors have adequate skills, and ensure that the composition of the board of directors is suitably diverse? If so, how?

Appointments to the board should be made on merit and against objective criteria. Evaluation should be based on balance of skills, knowledge and experience on the board and, in the light of this evaluation, a description of the role and capabilities required for a particular appointment

¹ <http://www.ebr.org/>

should be prepared. The duties and profile of individuals within the board and of different boards may vary radically, depending on the type of business, the geographical markets in which the company operates, the range of skills already in existence among the executive and non-executive directors, and the character of those individuals etc. In order to ensure that boards are suitably diverse, consideration thus needs to be given to the existing mix.

The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board. However, this is already dealt with by many national corporate governance codes and so there is no need to adopt further EU wide corporate governance principles.

1.4. Do you agree that including more women and individuals with different backgrounds in the board of directors could improve the functioning and efficiency of boards of directors?

Heterogeneous background, knowledge and experience are important for the efficiency of the Board. While advancement of women in business and their participation in the firm's board of directors and senior management should be fully supported and promoted, the issue should be left to self-regulatory strategies and rely on incentives and policy encouragements to influence organisational behaviour, rather than direct legal enforcement.

What is important is that there is a range of individuals on the board such as there is sufficient challenge. This is a matter of character rather than gender. Diversity of experience is important.

In any event, if the EU were to require boards to approve new financial products, as opposed to setting the risk appetite and the parameters by which such products should be evaluated, more technical expertise would be required which might undermine board diversity.

1.5. Should a compulsory evaluation of the functioning of the board of directors, carried out by an external evaluator, be put in place? Should the result of this evaluation be made available to supervisory authorities and shareholders?

We support the principle of evaluations but not their compulsory use at EU level. We are not convinced that the results of the evaluation should be made available. Given what we know about human behaviour, it seems likely that directors may be less frank if the evaluation is not confidential, thus potentially undermining its benefits.

Board evaluation can reinforce the board's accountability to the company's vision and strengthen its importance within the organisation. Additionally, it can highlight opportunities for improvement within the board's processes and assist with establishing new goals. Areas identified for development can also assist the nominating committee with its recruitment strategy.

Evaluating the work of the board is usually done by the nominating committee or by the remuneration committee. An external evaluator may also carry it out. In addition to providing

each director with a standard questionnaire, evaluation programs typically consist of individual meetings with board members.

EuropeanIssuers takes the view that companies should be left free to select evaluation tools best suited to their specific circumstances and that using external resources may not necessarily produce the best results. This is an area where best practice is evolving.

Disclosure to the supervisory authorities, however, does not appear necessary. In addition, any EU regulation must take into account the specifics of the two-tier system of executive board and supervisory board established in several member states.

1.6. Should it be compulsory to set up a risk committee within the board of directors and establish rules regarding the composition and functioning of this committee?

We are not aware that those boards with risk committees performed significantly better than those without. In both cases there are good and less good examples. This raises the question of what it is intended that such a committee should achieve.

The focus should instead be on ensuring the effectiveness of the individual board. What is effective for each board will depend on the range of skills and experience among the individual directors. Where some but not all members have relevant expertise, a separate committee may work well. Where the board as a whole has the expertise, the board as a whole may manage the risks better. Particularly for smaller companies, setting up multiple committees is unlikely to be realistic, due to the potential overlap and limited resources. For some companies, combining risk and audit may be useful.

It is important that board structures should not divorce risk from discussions on strategy nor create communication gaps between risk and audit committees or between the committees and the board as a whole. This would in fact increase the risks faced by the company. If the problem was that the board was not spending sufficient time on risk strategy, then the solution may be for the board to ensure that it spends more time on risk in the future, rather than setting up a separate committee.

In any event, additional requirements concerning monitoring of risk management should be restricted to credit institutions and not extended to all issuing companies.

1.7. Should it be compulsory for one or more members of the audit committee to be part of the risk committee and vice versa?

EuropeanIssuers considers that it is neither desirable nor necessary that the same persons may be required to sit on both committees. Where two separate committees have been set up, it would be advisable for members of both committees to meet regularly to ensure consistency between their respective functions and the broadest possible coverage of risk related issues.

Again this raises the question as to whether separate audit and risk committees are required, or whether the board as a whole should look at risk strategy. This will depend on the range of skills and experience available to that particular board. We do not therefore support compulsion as to board structures.

1.8. Should the chairman of the risk committee report to the general meeting?

Acting only in an advisory capacity, the risk committee should report to the Board exclusively. While it is the practice in some markets for the committee chairman to be available at the AGM to answer any questions, we believe that this is preferable to a requirement to report to the AGM so as to avoid potential confusion of responsibilities between the Board and the shareholders.

1.9. What should be the role of the board of directors in a financial institution's risk profile and strategy?

In a one-tier system the Board's main role is to set the direction of the company's activities, which in other words means that the board should determine the company's strategic aims. When discussing the strategic aims, the board should consider the potential risks to that strategy and to the company in general. The scope of this function may, however, vary, depending upon the company's particular circumstances. As part of this role, the Board should not only oversee implementation of the decisions taken but also assess the merits of the direction taken.

The Chief executive officer, on the other hand, is responsible for the running of the company's business and represents the company vis-à-vis third parties.

With respect to credit institutions, the Board is responsible for determining the risk strategy and the components of the risk policy. It is also responsible for ensuring that risk management systems are in place. It should not, however, be the role of the Board to oversee individual risks in detail.

1.10. Should a risk control declaration be put in place and published?

Most national regulatory or corporate governance frameworks already mandate disclosure of the company's main characteristics of internal control and risk management systems. Adding a risk control declaration informing shareholders on the financial institution risk exposure's and risk strategy and tolerance may be useful, in view of recent events, provided that the disclosure is genuinely useful either to the board or to shareholders. Some cross-referencing of risk disclosures might also be useful, given that the reporting requirements are currently set out in IFRS, the Business Review and national company laws.

The name "risk control declaration" however might give the impression to shareholders and

other market participants that all risks are under control or even eliminated. A better name would be “risk report”.

It might also be helpful to consider examples of practice from which EU companies could learn, as highlighted by the FRC report on Rising to the Challenge: a review of narrative reporting by UK companies.

1.11. Should an approval procedure be established for the board of directors to approve new financial products?

It is important to ensure that financial institutions have procedures in place for the approval of new products, but the board will not be best placed to conduct the actual approval of the products themselves, as opposed to setting the parameters within which the business should operate. That should remain the job of the executive.

1.12. Should an obligation be established for the board of directors to inform the supervisory authorities of any material risks they are aware of?

EuropeanIssuers agrees that an obligation to report to the competent authorities any material risk a board is aware of is appropriate for credit institutions, bearing in mind that, as a matter of principle, adherence to the other aforementioned governance principles, should be enforced on a “comply or explain” basis.

1.13. Should a specific duty be established for the board of directors to take into account the interests of depositors and other stakeholders during the decision-making procedure ('duty of care')?

The Board acts as a collective body representing the interests of the shareholding. In discharging its responsibilities, the Board is not expected to take into account the interests of other recognised stakeholders. The Board must act in the interests of the company, which should not prevent it from exercising a general duty of care requiring that each board member should act on an informed and prudent basis and approaching the company’s business in the same way that a private person would approach his own affairs.

2. Risk management

2.5. Should executives be required to approve a report on the adequacy of internal control systems?

This proposal could lead to a provision similar to section 404 of the US-Sarbanes-Oxley Act (US-SOX) that requires a management and auditor certification on the adequacy of the company's internal control over financial reporting. As we read the question it could be interpreted as such report should not only deal with financial reporting, but also with internal control systems. That would have even a wider range than the US-SOX.

We would strongly oppose such a development. US-American financial institutions have not done any better in preventing the impact of the financial crisis on their institutions than European ones, even though CEOs and CFOs have to certify their internal control systems. It is then obvious that an “approved report” is not providing for a better risk management culture as probably intended by the Commission but leads to huge implementing costs and to enormous efforts not only for ongoing testing manual and automated controls but also for documenting them.

3. Auditors

3.3. Should external auditors' control be extended to risk-related financial information?

The Green Paper is not very clear about what this additional risk-related financial information that is not under auditor's control yet should be. If it means having risk management and internal control systems audited like in section 404 of the US-SOX, EuropeanIssuers opposes such a provision (see our answer to the previous question).

4. Supervisory authorities

We do not agree that supervisory authorities are likely to be capable of checking the correct functioning of the board of directors or of assessing the individual qualities of future directors. We note that the UK has recently strengthened the role of the FSA in overseeing governance. We believe that this can only work if there are very senior individuals involved. Purely reviewing a list of criteria or asking standard questions seems unlikely to be useful. Requiring detailed technical or regulatory expertise from individuals, which is likely to be the regulators' main concern, might also restrict the available talent pool and thus reduce the diversity of experience on the board.

5. Shareholders

General question: Interested parties are invited to express their view on whether they consider that shareholder control of financial institutions is still realistic. If so, how in their opinion would it be possible to improve shareholder engagement in practice?

We disagree with the starting-point of the Green Paper. We strongly believe that shareholder oversight of boards under the comply or explain regime is realistic. It is, however, reliant upon shareholders receiving the right information in good time and it will never prevent all failures. These could be achieved by ensuring full implementation of the Shareholder Rights Directive and the effective delivery of information via the investment chain (cf. our answer to question 5.4)

This is not, however, the same as expecting shareholders to control financial institutions or to know better than the supervisors of the financial institutions. Ultimately the control of the institutions is in the hands of the board. It is the shareholders' responsibility to consider the explanations provided by the company and to remove the board if they think that there are major problems, but these are not always clear at the time.

It is also important to be clear about what the responsibilities of the shareholders and the supervisors should be. We believe that the major failure in the recent crisis has been one of supervision rather than one of shareholder control. In many cases, the supervisors were in a better position to understand the risks than the shareholders since they had access to more information. We do not therefore see the imposition of additional supervisory requirements as a panacea. The real question is the extent to which public policy should underwrite financial institutions.

In any event, the shareholders are to a great extent dependent on the information disclosed by the company. Given that in many cases the boards were themselves unaware of the risks that they were undertaking, their disclosures would not have been able to highlight those risks to shareholders.

Specific questions:

5.1. Should disclosure of institutional investors' voting practices and policies be compulsory? How often?

EuropeanIssuers considers that institutional investors should be required to have a clear policy on voting and disclosure of voting activity towards their clients: institutional investors should seek to vote all shares held; when abstaining or voting against resolutions, they should inform the company in advance and justify their reasons; they should also disclose voting records for their clients and beneficial owners.

However, disclosure of institutional investors' voting practices and policies remains conditional on their being actually able to exercise their voting right. In a cross-border environment, technical and legal barriers often hinder the exercise of these rights. Action is required at several levels:

- First, the EU should ensure that the Shareholder Rights directive has been properly implemented.
- Second, there is a need of an EU wide acknowledgement of the shareholder identification principle to ensure that the person entitled to exercise the voting rights has actually been identified and the information passed on to him or her.
- Third, EU legislation should make the account provider co-operate with a view of facilitating the exercise of the rights flowing from the securities so that the principle of equal treatment of all shareholders is upheld. At the moment, indirect shareholders may sometimes find it more difficult to access relevant information in a timely manner and so may be disadvantaged.
- Fourth, it is necessary to consider the possibility of technical solutions to help complement recognition of these principles: Target2 Securities, the central settlement platform currently being developed by the Eurosystem, is currently considering possible options on which public consultation might be helpful.

5.2. Should institutional investors be obliged to adhere to a code of best practice (national or international) such as, for example, the code of the International Corporate Governance Network (ICGN)? This code requires signatories to develop and publish their investment and voting policies, to take measures to avoid conflicts of interest and to use their voting rights in a responsible way.

We support a limited disclosure requirement such as that proposed by the UK FSA, which requires investors acting for others to state to their clients whether or not they comply with the UK Stewardship Code. We would therefore support a similar EU requirement in conduct of business for investors to disclose to their clients whether or not they comply with national or international codes in order to enable those clients to assess the manager's stewardship performance, so that this can be taken into account when awarding fund management mandates. We believe that adherence to such a code should be on a comply or explain basis.

In addition, institutional investors should be left free to adhere to the code best suited to their specific needs (whether national Stewardship Code, ICGN code, UN Principles of Responsible Investment, as appropriate) (e.g. management companies performing investment services in the frame of a mandate, credit or insurance institutions investing for own account, etc.). This would avoid compliance with a code becoming a *box ticking exercise*, which would not take into account the investor's and the issuer's characteristics.

5.3. Should the identification of shareholders be facilitated in order to encourage dialogue between companies and their shareholders and reduce the risk of abuse connected to 'empty

voting'?

Yes! EuropeanIssuers welcomes this question, as identification of shareholders is central to issuers' concerns. Only an EU wide acknowledgement of the shareholder identification principle would ensure, in a cross-border environment, effective disclosure by the intermediary, wherever the latter is located, of the clients it represents and proper identification of the person entitled to exercise the rights, including voting rights, attached to securities.

EuropeanIssuers reiterates that, in accordance with the Shareholder Rights Directive, only the shareholder/ owner of the shares or its representative is entitled to exercise the rights attached to the shares, including the right to receive information, the right to attend the GM and to cast votes, the right to cash dividends and the rights entailing a change of the relevant security (conversion, reorganisation).

Disclosure of shareholders' interests would reduce the risk of empty voting where an investor retains the voting rights without the economic exposure to the company's stock. Empty voting can be accomplished through a variety of instruments including stock lending, hedging economic exposure, or trading between record and voting dates. Requiring greater transparency about shareholders' actual interests, including for instance, in the case of stock lending, a picture of the interests that a shareholder actually owns and of interests held as the result of a temporary transfer, information about the identity of the lender and the duration of the temporary exchange, disclosure of voting agreements between lenders and borrowers, would help to reveal the short-term intentions of parties with respect to draft resolutions tabled at the meeting. See also our response to the Transparency Directive Review Consultation².

5.4. Which other measures could encourage shareholders to engage in Financial institutions' corporate governance?

Investment chain

Inefficiencies in the voting chain may play a role in undermining shareholders' ability to engage.

Increased transparency of proxy advisory services might help enhance the integrity of the voting system and shareholders' reliance on these services. Proposed remedies may include the following:

- Disclosure by proxy advisors of their voting policy sufficiently ahead of the GM,
- Exposure by proxy advisors of their policy for comments, including from issuers,
- Disclosure by proxy advisors in a manner that provides detailed information about the decision making process and the methodology used to their clients and to issuers,
- Disclosure of potential conflict of interests and of the way they are handled,

² EuropeanIssuers' Comments dated 30 Aug. 2010 to the Commission's [Consultation Paper](http://www.europeanissuers.eu/_mdb/position/212_Transparency_EuropeanIssuers_final_20100830.pdf) on the Review of the Transparency Directive of May 2010. In http://www.europeanissuers.eu/_mdb/position/212_Transparency_EuropeanIssuers_final_20100830.pdf

- A clear definition of acting in concert.

However, it is not always clear to companies where the problems in the investment chain lie – in some cases we have heard anecdotally that the proxy voting advisers have been unable to give issuers sufficient time for comment, due not to their own actions, but due to problems with the actions of custodians further down the voting chain. It is important that such potential inefficiencies in the voting chain are investigated.

We note that the UK Shareholder Voting Working Group has looked into this at national level, but we would like to see similar work undertaken at EU level³, particularly to ensure that any action points are picked up if necessary in the Securities Law Directive.

At a cross-border level the problem seems to be even more serious. That is why over the last four years, European issuers and the industry have been working on a possible solution to make it easier for foreign investors to participate in shareholder meetings. This initiative, sponsored by the European Commission, recently resulted in a set of market standards for cross-border communications and operations, the Market Standards on General Meetings. In essence, the standards pave the way for a timely and efficient exchange of meeting related information. They offer a practical toolbox to implement some key aspects of the Shareholder Rights Directive of July 2007. The standards have been endorsed by all relevant stakeholders and we hope will soon be implemented by the market. The Commission's support for the success of this initiative is essential.

Incentive structures

We understand that fees charged by proxy voting agents are generally “per report” such that the most revenue is generated from widely dispersed ownership rather than concentrated holdings. This may also not support a substantial allocation of analyst resource to the production of proxy research reports.

There may be some work to be done to understand the costs as well as benefits of portfolio diversification. Many investors hold hundreds or even thousands of shares, which has generally been perceived as a good way to reduce the risk of individual holdings. The downside may be that the investor is less familiar with the companies in which (s)he invests. The high number of companies into which institutions have typically invested will naturally increase the distance between the owner and the investee and create a challenge to the development of effective communication.

In the same way that Lord Turner has questioned whether liquidity provides benefits beyond a certain point⁴, it might be useful to investigate whether diversification may also have its

³ <http://www.investmentuk.org/press/2007/20070730.asp>

⁴ http://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=22076

limitations and therefore to what extent public policy should encourage it beyond a certain point.

Finally, encouraging pension funds and others to avoid the use of relative benchmarks rather than absolute performance in judging fund managers' performance may also avoid creating pressure on fund managers not to move too far away from the index.

6. Effective implementation of corporate governance principles

General question 6: Interested parties are invited to express their opinion on which methods would be effective in strengthening implementation of corporate governance principles?

We do not believe that imposing additional liability would be likely to have any deterrent effect. As mentioned above, in many cases boards were unaware of the risks being run by the company. They would not therefore have perceived the risks to themselves either.

On the other hand, it might well have a deterrent effect on EU company listings and the merits of public v private ownership.

As indicated above, we favour giving shareholders access to better information to enable them to make better judgements regarding company explanations.

Specific questions:

6.1. Is it necessary to increase the accountability of members of the board of directors?

Accountability of the board is typically expressed by way of disclosure, e.g. disclosure of regulated information in annual reports and stock exchange filing.

In some instances, corporate governance principles advocate disclosure beyond what is already mandated by law, as illustrated by the management performance evaluation. The board should undertake a formal, annual evaluation of its own performance and that of its committees as well as individual directors, and state in the annual report how the evaluation has been conducted.

Going beyond what is already mandated by law or provided for under corporate governance principles new regulation does not appear, under these circumstances, necessary.

6.2. Should the civil and criminal liability of directors be reinforced, bearing in mind that the rules governing criminal proceedings are not harmonised at European level?

EuropeanIssuers considers that there is no need for introducing an EU-wide regime nor reinforcing existing regimes, which are already extensively addressed at the national level. Attempting to harmonise diverse national concepts and regimes would prove unworkable and does not offer any added value.

7. Remuneration

General question 7: Interested parties are invited to express their views on how to enhance the consistency and effectiveness of EU action on remuneration for directors of listed companies.

Specific questions:

7.1. What could be the content and form, binding or non-binding, of possible additional measures at EU level on remuneration for directors of listed companies?

Adopting further measures at EU level does not appear necessary as national rules and existing governance codes in major markets are already converging toward best standards and procedures. The Commission's recommendations on remuneration of 2009 are gradually being implemented by Member States and companies. More time should be given to companies to adapt to those recommendations.

In fact, under no circumstances should binding EU legislation seek to regulate behaviours or board structures. Any such proposals would need to be limited to disclosures of policies and amounts. We do not, however, support such action.

7.2. Do you consider that problems related to directors' stock options should be addressed? If so, how? Is it necessary to regulate at Community level, or even prohibit the granting of stock options?

Under most national corporate governance codes, the determination of an adequate level of remuneration, as well as of the relative importance of its variable and non-variable component, should be tailored to the specific circumstances and requirements of each company. The levels of remuneration should be sufficient to attract leaders of quality, but a company should avoid paying more than necessary. A proportion of executive remuneration should link rewards to corporate and individual performance.

Typically, determination of the appropriate level of remuneration is based on the following relevant criteria: competitive background, international benchmarks, size and complexity of the relevant company, etc.

Requiring the EU legislator to appraise the specific circumstances of every company would not, in European Issuers' view, prove workable.

Groups representing shareholders are better placed to comment on what if anything might be useful to them by way of disclosure.

7.3. Whilst respecting Member States' competence where relevant, do you think that the favourable tax treatment of stock options and other similar remuneration existing in certain

Member States helps encourage excessive risk-taking? If so, should this issue be discussed at EU level?

We do not believe that policies regarding stock options should be the subject of EU legislation.

7.4. Do you think that the role of shareholders, and also that of employees and their representatives, should be strengthened in establishing remuneration policy?

EuropeanIssuers is in favour of transparency requirements for listed companies with respect to remuneration: disclosure of remuneration policy allows shareholders and potential investors to have a better understanding of the principles of remuneration.

In EU Member States, the annual general meeting merely appoints companies' Boards of Directors or Supervisory Boards, whose main jobs is to select top executives and to determine their remuneration. When national laws provide the AGM with the power to dismiss directors or to decide not to renew their mandate, this gives shareholders the possibility to sanction inappropriate remuneration practices. This principle of governance is vital for companies' efficiency.

EuropeanIssuers strongly believes that remuneration issues (including the disclosure of director's remuneration, the process of setting director's remuneration and the substance of director's remuneration) should remain within the domain of soft law to allow Member States and companies a certain degree of flexibility while preserving good corporate governance principles.

7.5. What is your opinion of severance packages (so-called 'golden parachutes')? Is it necessary to regulate at Community level, or even prohibit the granting of such packages? If so, how? Should they be awarded only to remunerate effective performance of directors?

We do not support rewards for failure. However, defining severance packages and linking them to performance has proven to be difficult in practice.

As indicated above, handling the issue at European level should be confined to imposing transparency requirements on the various components of directors remuneration.

General question 7a: Interested parties are also invited to express their views on whether additional measures are needed with regard to the structure and governance of remuneration policies in the financial services. If so, what could be the content of these measures?

Specific questions:

7.6. Do you think that the variable component of remuneration in financial institutions which have received public funding should be reduced or suspended?

EuropeanIssuers agrees that, in such cases, the variable part should be reduced or suspended.

8. Conflicts of interest

We consider that there needs to be a more strategic review of the main areas for potential conflict rather than an approach which merely looks at differences between the current text of existing directives.

Such an approach should identify the main areas for potential conflicts between financial institutions and their clients, involving discussions with those clients as well as the institutions in order to identify any problems in practice, and only then look at the detail of regulation.

Consideration could be given to structural incentives around the ways in which the performance of investors is judged. For example, the Commission is considering conflicts of interest in the sales and advice process which may not result in outcomes that are in the best interests of the investor in its review of Packaged Retail Investment Products. It may be helpful to consider whether such processes may also drive short-term behaviours by rewarding fund managers for short-term rather than long-term performance, whether there are similar features in the institutional market, and whether there are any issues around the use of pooled v segregated accounts.

EuropeanIssuers was set up to represent the interests of publicly traded companies in Europe, which are subject to complex rules on issues such as shareholder rights, corporate governance and reporting and market regulations. Our members include both national associations and companies from all sectors in 14 European countries, where there are some 9.200 such companies with a combined market value of some € 5.000 billion.

EuropeanIssuers' ultimate goal is to achieve well functioning European financial markets which serve the interests of their users, together with good corporate governance and responsible share ownership. More information can be found at www.europeanissuers.eu.