

ANNUAL POLICY REPORT - 2011

Message from the Chairman

Dear Member,

2012 looks like a busy year in terms of legislative proposals affecting listed companies.

For the past 2 years, although there has been a great deal of regulation of the financial services sector, the corporate sector has been less impacted, and we have been able to respond to consultations for you. However, the time for consultations is now ending as legislative proposals are being published and MEPs want to hear directly from companies concerned on the legislative proposals coming from the Commission. So 2012 will be a time to act.

Areas on which we are planning to be active in 2012 where we believe that your involvement will be critical include:

- Avoiding Sarbanes-Oxley via the back door in the draft audit regulation, which contains provisions on internal control and some implementing powers over audit committees for the securities regulators in ESMA rather than the national corporate governance code commissions;*
- Keeping the comply or explain regime for corporate governance, whereby it is up to shareholders rather than up to regulators to decide how boards should be run, which is under attack from some quarters;*
- Potential EU rules on board composition (CEO / chairman, limit on directorships, board diversity) - the Commission will publish a company law and corporate governance action plan in the 2nd half of the year but will have made up its mind on the content by April 2012. Now is the time to brief MEPs, who are drafting their own initiative reports;*
- Mandatory rotation of audit firms and credit rating agencies, prohibition on non-audit services and thus a move to pure audit firms;*
- Unnecessary regulations governing companies' listing on exchanges, such as prospectus, market abuse, reporting requirements, and possible mandatory electronic voting*

requirements, plus various proposals that could affect companies' ability to understand who owns their shares.

I hope that we can work together to avert the threat of regulation that will undermine European boards' ability to function effectively. I know that some of you have your own contacts with MEPs and would ask you to help us coordinate all our lobbying with the relevant people, in order to be most effective at the EU, rather than just the national level.

Please do not hesitate to contact me or one of the team at EuropeanIssuers with any questions or for further briefing on any of the issues above.

Yours sincerely,

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1) REPORT FROM THE SECRETARY GENERAL

I believe that EuropeanIssuers exists to serve the interests of our members, the quoted companies of Europe. We do this by influencing public policy on your behalf, ensuring that your views as users of financial markets are heard in the debates on company law, corporate governance and capital markets.

I hope that this year's event with the opportunity to debate issues of concern to companies with our speakers alongside the AGM will provide us with an opportunity to increase the awareness of those concerns among policymakers and other market participants in the EU.

1.1 Achievements in 2011

Against the regulatory backdrop of increasingly detailed rules for the financial institutions, it has been a challenge to get the voice of the corporate sector heard. Nonetheless, we have tried to emphasise the need to take into account the impact of regulation on the real economy and the reality that life in the corporate sector is in many ways different to that of the financial sector.

We have been particularly active in our priority areas:

Corporate governance

We have raised our voice in defence of the system of comply or explain, expressing our support in meetings with Commission officials and cabinet, as well as in our response to the Commission, via participation in panel debates, and in a speech by the chairman. We have also tried to co-ordinate our work with other corporate associations e.g. BusinessEurope, EcoDa, ECIIA, FERMA.

We have contributed to a better understanding of monitoring the application of the various national codes, on which subject several of our national associations (e.g. AEM, AFEP, Assonime) have written reports, which have been cited by the network of national corporate governance code commissions as presenting a more positive view of the effectiveness of comply or explain regimes than the Commission's original research.

Shareholder identification

Following lobbying by EuropeanIssuers as to the potential unintended consequences of proposals by the European Central Bank to harmonise settlement systems in Europe, the ECB set up a Taskforce on Shareholder Transparency which reported in March 2011. The Taskforce accepted EuropeanIssuers' concerns that something should be done and made proposals for legislative and technical change. These are now being considered by the European Commission.

In addition, 2 industry groups (one chaired by EuropeanIssuers) spanning 25 Member States and different parties in the investment chain have been working on the implementation of market standards to harmonise and thus make more effective cross-border communications for general meetings and corporate actions.

Smaller issuers

The European Commission put forward two specific proposals that we had asked for to lighten the regulatory burden on smaller companies, being:

- The abolition of quarterly reporting in the Transparency Obligations Directive, and;
- The abolition of insider lists for smaller issuers in the Market Abuse Regulation.

In addition, the draft *Markets in Financial Instruments* Regulation recognises in principle the need to treat alternative markets differently to main markets. As always, the devil will be in the detail of these proposals and there are other forces at work which oppose any lightening of the regulatory burden for any company.

We have also submitted responses to consultations on proposed legislation on many other issues such as audit, credit rating agencies, prospectus etc – for full details, see the rest of the policy report.

1.2 Corporate Membership

We have started to hold some additional roundtables with Commission officials, in response to member demand for ways to participate in policy debates outside the previous committee structure.

We are happy to assist member companies that would like to get in touch with a network of peers in different EU countries on a particular issue. Companies tell us that they know their peers at national level or in their own area of business, but they may not always know the most active companies in other countries on company law or capital market issues.

We are currently surveying our national associations to see what they do for their corporate members at national level, to see which services, if any, can usefully be replicated or reinforced at EU level. We are also trying to target more emails towards the corporate members where we think the subject matter may be of interest. If any corporate member has any views on what we do, or would like to be involved in the debate as to what we should do, I would be happy to hear from you.

1.3 Legal Committee

I have changed the way in which the committee operates, so as to be more effective. Although the committee was good at getting position papers agreed, I found that it was less accessible to members who are interested in getting involved in only one or two subjects, rather than the whole range of legislative proposals, and was also less effective at enabling follow-up on the position papers.

In order to be truly effective and achieve results, we need to be focussed on a few key issues. For more details of the changes, please see our Senior Policy Adviser's report.

I am always open to suggestions for how we can do better to serve your needs. If any member would like to speak or write to me, my contact details are below. I look forward to seeing many of you on 29 March.

Susannah Haan

Secretary General & Chairwoman of the Legal Committee

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2) OVERVIEW ON POLICY WORK 2011 – EXPECTATIONS 2012

2011 was in my eyes a turning point as to how EuropeanIssuers deals with policy work.

When I joined EuropeanIssuers in 2008 as policy adviser – a position that had been created at the time – my role was of EU legal expert and mediator. Along with updating the website and doing the newsletter, I was in fact mainly coordinating the position papers that EuropeanIssuers produced. This meant that EuropeanIssuers was itself at the time more a technical body rather than a lobbying machine, notwithstanding the occasional lobbying action with policy makers.

In 2011, I had to adapt to the development of the association: while we produced fewer position papers, we did much more lobbying and met with many more policy makers and stakeholders. I am glad to say that we are no strangers to MEPs and its assistants in ECON and in JURI, such as Wolf Klinz, Ashley Fox, Kay Swinburne, Pascal Canfin, etc.

We are acquainted with several Commission's units in DG Internal Market and Enterprise, with the Cabinet of Commissioner Barnier and to a lesser extent with Commissioner Tajani's Cabinet also. We are also in contact with ESMA through many of its staff, and met the new Executive Director in November.

As for other stakeholders, issuers as representatives of the real economy have been on demand and we met during this year with many representatives of the investors, the intermediaries (banks, CSDs, etc), issuers' agents, the audit profession, rating agencies, etc. We also built good partnerships at time with other corporate associations, particularly with BusinessEurope, with whom we have a very close relation.

Another aspect of my role that evolved was the organisation of meetings with members and policy makers – to that extent we organised several meetings this year including with ESMA's staff, its chairman, as well as with European Commission's staff. These meetings were very popular among members and companies have been quite keen on this side of the policy work of EuropeanIssuers.

During 2011, I co-ordinated the work of 17 working groups throughout the year. This meant that now I give support to all working groups in terms of secretariat but also in terms of policy overview, in order to ensure that the aims of each working group are in line with the overall policy of EuropeanIssuers.

The Legal Committee retains a co-ordinating role to enable the working groups to report back and exchange views. This allows us to make better use of the expertise available at national level, and the members to rely on each other to follow particular topics and thus to share out

the work more efficiently. This format has also enabled more companies to get involved in the policy debate, since few of them follow all subjects, unlike the national associations. It has also proven to be an efficient way of dealing with the many regulatory initiatives in existence.

I am still responsible for producing the newsletter and the website but in this I have to make note of the support of Joëlle Daem, our office manager, who makes a great deal of effort to keep the website updated.

As the Association grows my role has grown also – this is the message I wanted to convey.

Although many opportunities are ahead for issuers in 2012, there are challenges for EuropeanIssuers as a small organisation: the main one being the ability to be effective in its lobbying with reduced resources and a wide number of issues to tackle. I appreciate the very wide support of our members who do most of the technical work themselves – still EuropeanIssuers can improve much in the coordination of its lobbying efforts. That is why we would like to think further in 2012 on how to be clearer on the purposes of our lobbying activities and with that in mind develop guidelines on our policy work.

I hope this report gives you a good overview of what we have been doing in the past year. In any case, feel free to contact me if any of the issues raises your curiosity.

Paulo Pina da Silva

Senior Policy Adviser

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3) PRIORITIES

3.1 Corporate Governance

On 5 April 2011, the European Commission published the Green Paper "The EU Corporate Governance Framework". The paper described the current EU legal framework for corporate governance of all listed companies and discussed 3 topics for improvement:

1. Board of Directors (diversity, time commitment, evaluation, remuneration and risk management);
2. Shareholders (engagement and short-termism, asset managers and institutional investors' behaviour, proxy advisors, shareholder identification and minority shareholder protection);
3. Comply or Explain (enforcement systems and monitoring by the supervisor).

Although the European Commission admitted that governance in companies was not a reason for the crisis, it seemed to consider that a single rule book on governance in Europe was needed, which EuropeanIssuers clearly opposed.

In order to respond on the aspects that were truly fundamental to us we had 6 teams working on different aspects and consolidated a single response afterwards.

Board Composition

We consider that corporate governance needs to be practical and consistent with the different ways in which companies operate across Europe. It is thus best done at national level, consistent with the national company law structures. We do not therefore support new EU action on Board composition, such as the separation of the roles of CEO and chairman.

Pierre Marsal

Chair of the Board Composition Working Group

Comply or Explain

We support the comply or explain system and want to make it work well. To do this, we recognise that we may need to sit down with the shareholders to better understand what they want to see by way of explanations. Those of us in companies should think about how we can share best practice across Europe in communicating our explanations as to why we have chosen not to follow particular recommendations of a code. The explanations themselves should then

be judged by the shareholders. Explanations in this context are to be considered as acts of compliance with the code. We do not, however, support a role for regulators in monitoring individual governance decisions. We believe that peer review should play an important role and should be encouraged at EU level. In different Member States, private organisations publish surveys on the compliance of companies to the corporate governance code every year with encouraging results (i.e. Afep-Medef and MiddleNext in France; Assonime - Emittenti Titoli in Italy; Association belge des sociétés cotées and GUBERNA in Belgium)

Valentina Allotti
Chair of the Comply or Explain Working Group

Shareholder Identification

Europe needs to develop better dialogue between companies and their shareholders to allow shareholders to effectively exercise all their shareholders rights and to prevent misconceptions on both sides which we need to try to overcome. One problem for EU companies in initiating the dialogue may be difficulties in identifying shareholders across borders. We therefore welcomed the fact that the European Commission has raised shareholder identification in its consultation paper. We would like to see all EU companies given the option to enjoy the rights that currently only some possess and to also see that intermediaries comply with existing applicable rules for shareholder identification in cross-border situations.

Markus Kaum
Chair of the shareholder identification working group

Shareholders

We support disclosure of voting policies by investors, in order to assist companies to understand their shareholders' approach and to ensure greater understanding in advance of any possible areas of disagreement. This would facilitate better dialogue between companies and their investors.

Susannah Haan
Chair of the Shareholders' working group

Risks

It was not very clear to non-financial companies whether the Commission was seeking in the Green Paper to extend the use of risk-based models used in the financial sector or was referring to the potential downside of company strategy.

While they measure the full benefit of monitoring the risks they face, non-financial companies oppose the suggested guidelines of the Green Paper for four main reasons:

- 1. The primary responsibility of senior management in the monitoring and management of risks;*
- 2. The lack of relevance of the concepts of "risk appetite" or "risk profile" as synthetic indicators, for many risks;*
- 3. The opposition to an overall assessment of risk management and internal control systems;*
- 4. The numerous existing European requirements relating to risks, including key societal risks, and risk management systems (under the 4th, 7th and 8th Company law Directives, the Transparency, Market Abuse and Prospectus Directives, and in IFRS).*

Given the plethora of existing requirements, it is not apparent what further disclosures would seek to achieve.

Francis Desmarchelier
Chair of the Risk Management Working Group

Remuneration

EuropeanIssuers supports the disclosure of remuneration policies as well as the remuneration of executives and non-executives but does not consider it necessary to have uniform rules on remuneration disclosure at a European level. EuropeanIssuers does not see the need to introduce at EU level a mandatory rule requiring either a consultative or binding vote on a remuneration report.

Odile De Broses
Chair of the remuneration WG

EuropeanIssuers organised on 6 July a meeting with Commission officials (for a summary, click [here](#)).

In November the Commission revealed the results of the Consultation at a conference and Commissioner Barnier also sent a recorded message by video conference where he highlighted the following:

- The Green Paper is not an ill considered reaction to the crisis but the crisis should not stop the Commission from improving Corporate Governance in listed companies (Nadia Calviño added

afterwards that listed companies were not the cause of the crisis but could be the solution and therefore any measures should aim at calibrating and improving their engine);

- His main concerns were: minority shareholders, director's pay, manager's transactions, long term investment and governance at Board level;

- Any measures would be taken with consideration to the European Parliament's initiative report (click [here](#)) and the responses to the future consultation on Company Law.

Nadia Calviño, Deputy Director General, also spoke about the shortcomings of comply or explain, the desire to tell investors that there are safeguards where there are rules, and the need for a single EU rulebook. The feedback statement and 400 responses are available [here](#).

At the same time the European Parliament has been discussing an initiative Report to which we have given comments.

We will meet again with the Commission in 2012 and also follow the work at the Parliament.

3.2 Smaller Issuers

The European Commission set up a SME Finance Forum to discuss better ways to improve finance for smaller companies. EuropeanIssuers followed the several meetings of the Forum. In June, Together with Tim Ward I delivered a presentation on the needs of smaller issuers. We called for recognition of the need for different markets for companies at different stages of growth, ease of listing and delisting, recognition of the role played by sponsors for smaller companies and simplification of administrative burdens, which would reduce advisory costs. Growth markets in Europe account for 19% of quoted companies and should not be subject to the same rules as the main markets. We are sceptical of the suggestion that listing rules should be harmonised at EU level for smaller companies.

Later on the Commission announced that it would publish an action plan – at this point mainly on bank finance and venture capital.

Our Committee continued its work throughout 2011, meeting quarterly to discuss the different frameworks in each country. Most meetings had guest speakers, for instance the Stuttgart Stock Exchange who presented to us the Bondm program which is specifically tailored for investment in bonds issued by smaller companies (for the presentation, click [here](#)).

EuropeanIssuers also issued an action plan of its own. We asked the question: *What do we want from policymakers on behalf of EU smaller quoted companies?* And answered:

- Better information about the regulatory landscape for small and mid-sized quoted companies in Europe and about their prospects for growth;
- Review of the current regulatory regime for requirements applicable to quoted companies, with a recognition that different markets are suitable for different companies at different stages of growth, and that there is no one size that fits all – there are historical differences in national company law and corporate governance which should remain;
- Proposals need to be based on real evidence, with an emphasis on how the proposals will deliver outcomes for the end users. This principle should be acknowledged by each of the various different workstreams designed for EU regulated v exchange-regulated markets;
- To achieve high-quality-regulation, we need qualitative research and comparative studies across different Member States on the above areas, including comparable statistics; collected data should reflect the costs of IPOs across different markets plus the ongoing costs of being listed (see below):
 - o Exchange fees – both regulated markets and alternative markets;
 - o Regulatory fees e.g. approval of prospectus by securities regulators on main v approval by sponsors on alternative markets, costs and frequency of revisions to documentation;
 - o Brokerage fees;
 - o Legal fees;
 - o Accountancy and audit fees;
 - o Any other fees e.g. costs of publication in national newspapers.
- Provision of educational materials for companies at EU level (stock exchanges have cut funding of support services to companies at national level).

In 2012 we intend to have a very short key message paper explaining the changes we want to see in regulation at EU level. The Committee members will target MEPs who are now in charge of most of the proposals published by the Commission.

Caroline Weber
Chair of the Smaller Issuers Committee

3.3 Shareholder Identification

After the recommendations from the T2S Group to include a principle on shareholder identification in the Transparency Directive, Commissioner Barnier has put this issue on the agenda. The European Commission has consulted on this issue in the corporate governance Green Paper as stated above. Our answer, the product of many discussions within our working

group, set out what we intend to achieve in this regard, i.e., EU recognition of a right for companies to identify their shareholders along the following lines:

- The company has the ability to either approach the intermediaries or, particularly if most of the investment chain is known, to target the end owner direct;
- The company has the right to ask for the information at any time;
- The shareholder (or intermediary) has no right to refuse to reply on grounds of privacy;
- In case of non-compliance with the request for information, the company has the right to apply sanctions such as withholding voting rights or payments such as dividends;
- It should be a criminal offence to file false information.

After the Consultation we met with Commission officials who informed us that the European Commission is considering inclusion of a principle in the Securities Law Directive. With that in mind, we provided with extensive information on how the situation in Europe is and how it works in practice in different countries.

We have also worked on shareholder identification through our continued involvement in standards for General Meetings and Corporate Actions – see report from the chair below on page 24.

Another aspect of our work has been raising awareness for this issue by speaking at conferences and events.

In 2012, we hope to see some development with the publication of the Securities Law Directive. We will also be promoting this topic by organising a panel discussion at our conference in March 2012.

4) LISTING REQUIREMENTS

4.1 Market Abuse

In October, EuropeanIssuers noted media reports on possible EU legislative proposals on Market Abuse and wrote to Commissioner Barnier to convey the following messages:

1. We do not think that it is appropriate to extend the disclosure obligation to issuers traded on demand only on MTFs (or exchange regulated markets);
2. We think that a simplification or exemption of the rules on insider lists should apply to all SMEs (small and medium issuers), wherever traded (regulated markets or MTFs);
3. We would support a higher threshold for the communication of managers' transactions. However, every time the threshold is reached, the calculation of the threshold should restart from zero;
4. The communication of managers' transactions should not be shortened from 5 working days;
5. A rule allowing an Authority to delay public disclosure only when the information is of systemic importance and in the public interest is not appropriate;
6. There should be an exemption for transactions of a portfolio manager performed in the interest of an issuer's director.

Afterwards, we went to see some key MEPs such as Dr Wolf Klinz and Arlene McCarthy's assistant. Dr Klinz understood a great deal about the subject and was very receptive to our views. McCarthy's assistant also listened carefully. We tackled some of the most contentious issues such as managers' transactions, definition of sanctions, and regulation on MTF's disclosure obligations.

On 24 January 2012 I will give a [speech](#) at a hearing on Market Abuse at the European Parliament.

Carmine Di Noia
Chair of the Market Abuse WG

4.2 Prospectus Directive

In 2011, the EuropeanIssuers Prospectus Directive Working Group has focused on the implementing measures that will be adopted for the amended Prospectus Directive, which was published in the Official Journal last year. This Directive is extremely important for issuers of all sizes as it greatly affects how companies raise finance which is vital for their growth.

The group's work this year has been largely technical. The working group responded to ESMA's consultation on the first part of the technical advice in July 2011, which primarily focused on the format for final terms of the base prospectus and summary and the proportionate disclosure regimes for rights issues and SMEs and companies with reduced market capitalisations.

Following the publication of ESMA's technical advice in October, the group wrote to Commissioner Barnier to express our concerns over the lack of issuer input incorporated into the advice and highlighted a number of areas of the advice that could potentially harm European companies' ability to raise finance and that did not match up to the text and spirit of the Level I amending Directive. This letter was also copied to a number of influential MEPs on the Economic and Monetary Affairs Committee, including Wolf Klinz – the rapporteur on the Prospectus Directive. We received good feedback from MEPs, who we understand have voiced a number of our concerns informally with the Commission.

We are still waiting for the Commission to publish the final delegated acts for implementing the amended Prospectus Directive – and waiting to see whether our comments have been taken on board. In the meantime, ESMA continues to do work on more technical advice on the amending Directive, which we have been following closely.

Kate Jalbert
Chair of the Prospectus WG

4.3 Corporate Social Responsibility (CSR)

In January 2011, EuropeanIssuers replied to a public consultation conducted by DG MARKT in order to gather stakeholders' views on ways to improve the disclosure by enterprises of non-financial information.

EuropeanIssuers warned against too rigid regulation on the disclosure on non-financial information that could negatively impact future developments. It advocated resorting to the "comply or explain" principle which has proven to be successful and appropriate in other areas

such as corporate governance. In addition, specific approaches for different business sectors should be taken into account.

In October 2011 the European Commission published a new policy on corporate social responsibility in which it states that enterprises “should have in place a process to integrate social, environmental, ethical and human rights concerns into their business operations and core strategy in close collaboration with their stakeholders”.

The new policy puts forward an action agenda for the period 2011-2014 covering 8 areas among which the improvement of company disclosure of social and environmental information. The new policy confirms the Commission’s intention to bring forward a new legislative proposal on this issue.

Last but not least, the Commission highlights the OECD Guidelines for Multinational Enterprises, the 10 principles of the UN Global Compact and the UN Guiding Principles on Business and Human Rights.

In order to prepare a EuropeanIssuers’ position and action plan regarding the initiative - probably a legislative proposal - the Commission is currently preparing, it has set up a working group on CSR which will hold its first meeting on January 10, 2012.

Elisabeth Gambert
Chair of the Corporate Social Responsibility WG

4.4 Transparency Directive

Transparency issues haven't been on top of the agenda point for EuropeanIssuers in 2011 as European policy activities took mainly place in the last quarter. In October the European Commission published a proposal to amend the Transparency Directive which has been long expected by market participants. Issuers’ interests are affected in at least two respects by this proposal.

On the one hand their own transparency obligations will change due to the proposal. However, the effect is not clear in the moment as the Commission proposes to liberalise the regime in certain aspects (e.g. deletion of the duty to publish interim management statements) while at the same time is to introduce new transparency requirements (e.g. report on payments to governments).

On the other hand issuers may profit from an amendment to the major holdings notifications regime, so that they may get a better view of changes in the ownership structure. In particular,

the Commission proposes to include (derivative) financial instruments in the disclosure regime that "have a similar economic effect as the holding of shares" irrespective of the fact whether they are physically settled or not. These instruments have been frequently used to build up hidden major stakes in listed companies all over Europe in the previous years. However, as the Commission is also calling for maximum harmonisation with regard to major holding notifications and it is not clear for EuropeanIssuers whether this would enhance transparency or not. EuropeanIssuers is to prepare a position paper in the first quarter of 2012 in order to raise its voice in the political process on the European level.

Gerrit Fey
Chair of the Transparency Directive WG

5) OTHER GOVERNANCE & FINANCIAL REGULATION

5.1 Audit

In February, at a conference organised by the European Commission, Commissioner Barnier gave a speech with particular emphasis on the way forward on audit legislation. He focused on the role of auditors: according to him there is a general feeling that the role of auditors needs to be clarified. In particular it is essential to decide whether auditors should have a role in stating an opinion on the financial health of the company (as opposed to the current system whereby auditors provide comfort on the fact that the financial statements give a true and fair view of the situation of companies).

The European Parliament published a report in response to the Audit Green Paper in May that would be taken into account by the Commission.

EuropeanIssuers set up a working group and in October wrote to Commissioner Barnier to say the following:

- Listed companies were not the cause of the financial crisis and so their activities via audit committees should not be included in any regulation on audit firms. Our experience of detailed regulations under the Sarbanes-Oxley Act is that companies suffered greatly increased additional costs, without a corresponding increase in protection for investors;
- The role of audit committees is already set out in the 8th company law directive and in national corporate governance codes, which respect the different corporate governance structures in different Member States;
- We do not support the proposals made in last year's Green Paper on Audit on mandatory rotation of audit firms, mandatory joint audits, prohibition of non-audit services and the introduction of pure audit firms, as we do not believe that they will improve the workings of the audit market, but may rather increase the costs and harm the quality of audits.

The Commission published its proposal for a Regulation in November 2011 as expected and at the same time, the working group started working on a briefing to MEPs as well as key message paper to be published in 2012. Our main messages are:

- We oppose new provisions on internal control that would introduce rules similar to Sarbanes Oxley in Europe;
- We oppose the introduction of common standards on audit committees and the involvement of ESMA in corporate governance;

- We oppose mandatory rotation of audit firms;
- We disagree with prohibition of non audit services and establishment of pure audit firms;
- We oppose any measures that would lead to mandatory joint audits.

EuropeanIssuers will be very vocal in opposing the Commission's proposals during 2012.

Arthur van den Hurk and Eva Dieben
Chairs of the Audit Working Group

5.2 Company Law

In May 2011, Commissioner Barnier gave an overview of the current framework for EU Company Law. He mentioned that he intended to work on initiatives to further harmonise Company Law, namely: a Green Paper on Company Law in 2012.

At the same time a Report by an expert group was published discussing the Purpose and tools of European Company Law. Some of the main points were:

- Company law should be flexible and provide freedom of choice;
- One size does not fit all;
- EU company law should adopt a long termist approach (e.g. some members were against quarterly reporting and one share one vote);
- Comply or explain: there is margin for improvement but not for regulation;
- There should be a distinction between listed and non listed companies;
- It is important to improve the relationship between management and shareholders;
- Long-term ownership should be encouraged in order to have a power shift from management to shareholders;
- Purpose of company law: to foster more efficient company law, respect stakeholders and protect investors.

With this in mind, EuropeanIssuers set up a working group to start building our views regarding the report on company law in view of the future Consultation. We circulated a questionnaire to members for preliminary views.

In 2012, EuropeanIssuers will hold a meeting with the European Commission on this subject and will respond to the Consultation during the Spring. Any subsequent legislative measures by the Commission are expected in the second semester of 2012.

Christian Stiefel and Jacques Beglinger
Chairs of the Company Law Working Group

5.3 Credit Rating Agencies

The European Regulation of September 2009 on credit rating agencies (“agencies”), which came into force in December 2010, requires in particular the registration of agencies, reinforces their governance and prescribes publication of rating methodologies. A first amendment of the Regulation, in May 2011, organises the approval and supervision of agencies by the European Securities and Markets Authority (ESMA), and assigns to it exclusive powers of supervision and investigation and power to impose penalties for non-application of the Regulation.

In 2011, the European institutions and the G20 conducted thinking which was organised around the following five themes: 1. the extent of the use of ratings and the sometimes excessive reference to ratings in legislation; 2. sovereign debt ratings; 3. competition; 4. the civil liability of agencies; 5. conflicts of interest and the issuer-pays model. Reference to ratings will be dealt with by the revision of the texts concerned.

All the other topics, however, will be dealt with shortly in a second amendment of the Regulation. In this context, the European Commission published in mid-November 2011 legislative proposals designed to impose restrictions on the influence and powers of agencies and having as their main objectives: fragmentation of the market; strengthening of rules concerning the independence of agencies; increased comparability of ratings; quality of agency processes and methodologies and reinforcement of the ESMA’s supervisory powers. The possible effects for companies are linked to three series of elements:

- ESMA's approval of new rating methodologies, harmonisation of rating scales and the establishment of a European Rating Index by ESMA;
- Constraints imposed on the choice of agencies and publications:
 - for solicited ratings of instruments other than sovereign debts, introduction of a mandatory rotation of agencies – after 10 ratings (and more than one year) or every three years – ; prohibition of rating of an issuer, at his request, for a period longer than three years (six years in both cases for one of the agencies in the event of voluntary or compulsory use of more than one agency); introduction of a 4-year cooling-off period;

- disclosure on agencies' websites, on an ongoing basis, of the information which is submitted to them for their initial reviews and for their preliminary ratings (whether or not issuers contract with the agency).
- At European level introduction of a system of civil liability of agencies towards investors, for infringements of the Regulation, either intentionally or with gross negligence, having an impact on a rating and causing damage to an investor who has relied on it (when purchasing a rated instrument). Under the EC proposals, where an investor establishes facts from which it may be inferred that a credit rating agency has committed any infringements listed in the Regulation, it would be for the rating agency to prove it has not committed an infringement or that the infringement did not have an impact on the issued rating.

The issuer-pays model is not questioned at this stage, but, by December 2012, the European Commission will submit a report on this subject to the EP and the Council and will consider more far going solutions, taking into consideration the thinking in progress in other jurisdictions, including the United States.

In 2012 EuropeanIssuers will actively lobby to amend the proposed Regulation on the points above mentioned.

Francis Desmarchelier
Chair of the Credit Rating Agencies Working Group

5.4 MiFID

In October 2011, the European Commission published the much expected review of the Market in Financial Instruments Directive. The review divided the Directive in two: a revised Directive and a new Regulation that made several changes to the current models of trading platforms; transparency of markets, trades in financial instruments and pre-and post-trade data; conditions for carrying out automated or high frequency trading; investor and client protection, supervision. Our working group started working on the proposal at a very early stage and in December published a paper with key messages for the European Parliament and the Council. The main messages are as follows:

- Transparency: companies remain concerned about the possible lack of transparency in two areas: the size of the business evading pre-trade transparency; the quality of post-trade transparency;
- Over the counter: We consider that room should be left for derivatives used by non-financial companies;

- SMEs: we would like to see the issue set in a broader framework and a working group established by the Commission with a view to identifying the problems facing smaller companies and to considering possible solutions;
- High Frequency Trading: companies consider that the scope of application of the proposed supervisory and organisational regime, which applies to RM, should be extended to all organised trading venues;
- Corporate Governance: We are concerned that the proposed definitions and measures relating to the governance of investment firms impinge on existing corporate governance and national corporate law principles;
- Best execution: there is a need for more substantive information to enable clients to effectively understand how their orders are executed and at which venue.

The review is being highly debated in Brussels as it affects several large stakeholders. EuropeanIssuers will do its best to bring the corporate end users' perspective to the table.

Pierre Marsal & Francis Desmarchelier
Chairs of the MiFID Working Group

6) EXTERNAL REPRESENTATION

6.1 European Group on Market Infrastructure (EGMI)

Report from Susannah Haan, Secretary General of EuropeanIssuers and its representative at EGMI

I participated in the EU Group on Market Infrastructure. The Group's terms of reference and objectives were unclear at the start and were never resolved. There was no real attempt to make the subject matter relevant to the real economy, and so the report itself reflects mostly the state of play before the creation of the group, the regulatory preoccupations of the European Commission, and the concerns of the financial market participants. Membership of the group was thus an ineffective and frustrating experience.

The follow-up to the EGMI Group will be yet another group to look at the short-term barriers to EU clearing and settlement (the Giovanninni Barriers). The precise terms of reference are at the time of writing still being formulated, but are likely to include:

- 1. Communication** - Electronic, formatted and standardized communication throughout the entire value chain implemented based on ISO 15022 / 20022;
- 2. Clearing** - Availability of interoperable CCP services in all markets for adequately liquid cash securities, enabled by non-discriminatory access to trading venues & CSDs;
- 3. Settlement and related pre-settlement processes** - EU harmonisation proposed;
- 4. Asset servicing** - Implementation of the Market Standards for Corporate Actions Processing; in addition the intermediaries are pushing to try to harmonise record dates which currently sit under national company law at EU level;
- 5. Legal** - Harmonisation of securities laws through Securities Law directive (probably due in June 2012), which may include some proposals on shareholder identification via the investment chain (no decision has yet been taken);
- 6. Tax** - Implementation of Simplified Withholding Tax Relief Procedures;
- 7. LEI** - Implementation of a global solution for Legal Entity Identifier (LEI), which is apparently now being developed in the US by DTCC / SWIFT and financial intermediaries.

For further information, see http://ec.europa.eu/internal_market/financial-markets/clearing/egmi_en.htm

6.2 ESMA – Securities and Markets Stakeholder Group (SMSG)

Report from Carmine Di Noia, Deputy Director General of Assonime and representative of issuers at ESMA's Stakeholder Group

I joined ESMA's Stakeholder Group during 2011 as representative of issuers. The group was created as foreseen in the Regulation creating ESMA in order to give advice regarding ESMA's work. It is therefore composed of several stakeholders – issuers, shareholders, stock exchanges, fund managers, etc.

The group held 3 meetings in 2011. The first meeting on 21 July 2011 aimed at organising the group, electing a chairman and deciding on what should be its role and scope of intervention.

A second meeting took place on 11 October 2011 tackled issues such exchange-traded funds and CRAs regulatory technical standards. The third meeting on 22 November 2011 focussed on the Group's priorities and work plan 2012. Our work programme will be based on the ESMA work programme including issues such as the MiFID Review, PRIIPS, etc. In addition, I have suggested that the Group should also develop its own priorities in particular in view of ESMA's new legal powers.

We discussed also EMIR (in view of the imminent adoption of EMIR and the direct supervisory powers of ESMA, the Stakeholder Group suggested to create a working group to draft a report); MiFID (ESMA plans to consult on MiFID guidelines - compliance function and suitability - and the we decided to create a working group); CRAs (it was also decided the creation of a working group which I will chair).

6.3 General meeting market standards

Report from Markus Kaum, Munich Re (representing Deutsches Aktieninstitut) and chairman of the General Meeting Joint Working Group

The standards were agreed by industry representatives in 2010 are intended to pave the way for a timely and efficient exchange of information related to general meetings and to allow all shareholders across Europe to exercise their shareholders rights in issuers domiciled and listed in Europe. They offer a practical toolbox to implement some of the key aspect for the exercise of shareholders rights and are built on three pillars:

1. Standardised messaging of the meeting notice from the issuer to the end investor;
2. Record date and proof of entitlement for the end investor to put them into a position to participate in general meetings;

3. Notification of participation in a general meeting, be it in person or by proxy.

Foreign ownership of shares continues to grow across Europe. The right to vote at general meetings is often impeded by technical barriers and inefficiencies of intermediaries' processes. The standards aim to bring a practical solution by harmonising and streamlining communication between issuers and investors.

In 2011 two workshops of the European Market Implementation Group (EMIG) have taken place. Representatives of national Market Implementation Groups (MIGs) of a majority of European member states have gathered and discussed their own national rules and practices with regard to compliance with the general meeting market standards. Significant progress has been made during the two workshops on a European level and in the national MIGs. In order to prepare for the workshops detailed questionnaires had been sent out with a request to all European markets to assess compliance with the standards both in purely domestic and in cross-border situations. The results of the European workshops and the work undertaken in between have been very encouraging:

Some important conclusions are:

- The EMIG workshop has showed strong engagement from issuers, investors, custodians, banks and other intermediaries which are organised in the national MIGs in also addressing market standards for general meetings together with the ones on corporate actions. This has been illustrated by a high percentage of reporting (more than 20 markets out of 30), a large attendance to the workshop and a constructive dialogue between all participants;
- The standard by standard approach in reporting has proved to work well and has allowed for constructive peer pressure and positive exchange of experience and practices among participants. Representatives of member states have explained to the EMIG their approach to certain questions which has proven very useful for the work of other member states, e.g. some member states have already introduced fully electronic solutions, other member states have already harmonised the contents of meeting notices;
- The discussion has allowed a positive reassessment of individual standards by several MIGs. The EMIG workshops have allowed for a far better understanding of the rationale behind the market standards and have been very helpful in ensuring a common reading of the standards;
- Participants agreed on priorities (e.g. focus on domestic general meetings first) for the next steps;

- The EMIG will go back to the national MIGs with a list of action points to consider for the next workshop (listed below).

The conclusion I have drawn as the chairman is that all market participants across Europe are strongly committed to improving the situation for the effective communication and exercise of shareholders rights cross-border within Europe. The next workshop on General Meetings will take place in June 2012 in Milano, together with the European Market Implementation Group for Corporate Action Standards.

As the chairman I am very grateful for all the contributions, the time and the efforts all participants in the national and European MIGs have put into this important project. I am very confident we will be able to deliver on our promises in the near future.

6.4 IFRS Advisory Council

Report from Christoph Hütten, Chief Accounting Officer SAP AG, EuropeanIssuers' Representative at the IFRS Advisory Council

I am representing EuropeanIssuers and the European Roundtable on the IFRS Advisory Council. The IFRS Advisory Council is the formal advisory body to the IASB and the Trustees of the IFRS Foundation. It is comprised of a wide range of representatives from user groups, preparers, financial analysts, academics, auditors, regulators, professional accounting bodies and investor groups that are affected by and interested in the IASB's work.

The most important items on the IFRS Advisory Council's agenda in 2011 were:

- The strategy review that the Trustees of the IFRS Foundation performed which may result in changes to the IFRS Foundation's governance;
- The review that the Monitoring Board of the IFRS Foundation which dealt, among others, with the role of the Monitoring Board in the governance of IFRS and the IFRS Foundation;
- The consultation on the IASB's post-2011 agenda which will impact what topics the IASB will deal with over the coming years;
- The post implementation reviews that the IASB plans to perform to identify issues in new accounting standards by reviewing their adoption a few years after introduction (contentious issues that were identified when the standard was being developed, unexpected costs of application);
- XBRL and how the IFRS Foundation takes care of this topic;

- Translation of IFRS pronouncements into other languages;
- Cross cutting issues that affect more than one accounting standard;
- Protection of the IFRS brand;
- Integrated reporting and its impact on financial reporting;
- The Trustee's reviews of the work of the IFRS Interpretation Committee and the IASB's due process;
- Adoption of IFRS worldwide, particularly in the U.S.;
- The IFRS Foundation's education efforts and plans;
- The current major IFRS projects (revenue recognition, leasing, financial instruments, insurance);
- The IFRS Advisory Council's self assessment.

Most of the topics listed above will continue to be on the Council's agenda in 2012 with a focus on the completion of the IASB's post 2011 agenda. The final key items on this future agenda are also expected to be discussed individually in the Council's 2012 meetings.