European Economic and Social Committee

INT/581
Corporate governance framework

Brussels, 27 October 2011

OPINION

of the
European Economic and Social Committee
on the
Green Paper - The EU corporate governance framework
COM(2011) 164 final

Rapporteur: **Ms Angelova**
Co-rapporteur: **Mr Meynent**

Rue Belliard/Belliardstraat 99 — 1040 Bruxelles/Brussel — BELGIQUE/BELGIË
Tel. +32 25469011 — Fax +32 25134893 — Internet: http://www.eesc.europa.eu

EN

On 5 April 2011 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Green Paper - The EU corporate governance framework
COM(2011) 164 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 168 votes to six, with 14 abstentions.

*

* *

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the intent behind the European Commission's Green Paper, but strongly recommends[1] a more precise and robust definition of corporate governance.

1.2 The Green Paper asks genuinely important questions. When answering all of them, the EESC would always like to quote the ten principles of the good corporate governance, listed in 2.14 and calls the Commission to take the relevant measures to make sure that all companies comply with these principles and the relevant operationalised rules listed in 2.15.

1.3 However, given the wide diversity of national corporate governance models, as described in point 2.4, the EESC finds it particularly difficult to give a one-size-fits-all solution to them. The specific characteristics of legislation, traditions, manner of doing business and behavioural patterns of shareholders vary across Member States and make it very challenging to provide a sound legislative framework at EU level.

1.4 Although, in the EESC's opinion, most of the questions in the Green Paper have been answered by national corporate governance codes, this does not diminish the need for EU legislative intervention, with the scope set out in the Green Paper, in order to improve corporate governance in the European Union, by strengthening legislation and non-binding rules.

---

1 OJ C 84 of 17.3.2011, p. 13.

1.5 The EESC calls on the Commission to exercise caution, however, when deciding on regulatory initiatives. In this regard, careful impact assessment is strongly recommended before producing any legislation.

1.6 The EESC stresses that if the Commission seeks adequate answers to questions 16 to 25 it should perform and make available a detailed study on recent developments and trends in shareholders' types, structure and relative importance in terms of shares held.

2. Introduction

2.1 The EESC welcomes the Commission's complex initiative to improve corporate governance as stated in a number of papers and placed at the heart of the Commission's reform programme[2]. This opinion sets out and aims to develop the EESC's positions on the relevant European Commission papers to date[3].

2.2 The Green Paper aims to improve corporate governance in the European Union by optimising the system of legislation and "soft law". It asks 25 questions, structured in three sections, concerning the composition and work of the Board of Directors, the role of the shareholders and the application of the "comply or explain" approach which underpins the EU corporate governance framework.

2.3 In responding to the questions in the Green Paper, the EESC refers to the Top Board in a company, whether it is a board of directors or a supervising board. Indeed, the Commission should take better account of the specific characteristics of one-tier and two-tier systems. By evading this issue, drawing a brief (and erroneous[4]) distinction between the Board of Directors and the supervisory board, the Commission is failing to acknowledge the diversity of the systems in place in Europe.

2.4 The EESC invites the Commission to take into account the differences between the existing systems of corporate governance.

2.4.1 The British system of corporate governance is characterised by the specific concept of "shareholder value" with the stock market playing an important role for financing companies and for their external corporate control. Companies have a one-tier board system and usually very low levels of ownership concentration.

---

2 Together with the two Green Papers - COM(2010) 284 final and COM(2011) 164 final, the EC has published a series of documents related to corporate governance (i.e. COM(2010) 561 final, COM(2010) 579 final). This topic is also present in the commission's primary legislative initiative - The Single Market Act (COM(2010) 608 final).

3 OJ C 84 of 17.3.2011, p. 13, OJ C 248 of 25.8.2011, p. 92 and 101..

4 "The term 'board of directors' in this Green Paper essentially refers to the supervisory role of directors", p.5. If supervisory boards genuinely play a supervisory role, then boards of directors can play a management role by taking part in strategic decision-making (mergers/acquisitions, sale/purchase of companies).

2.4.2 At the same time, in the so-called "Germanic model" of corporate governance the company is seen as a partnership between various participants who have a "stake" in the activities of the firm. In addition to shareholder value maximisation, firms are concerned with a broader mix of strategic goals. Bank financing is much more important for raising capital for companies than capital markets. Very often banks own large equity holdings, perform financial services and advice and represent shareholders on corporate boards. The external market for corporate control is almost non-existent because of large block holdings and cross-shareholdings. Managerial decision-making is reinforced through the direct influence of shareholders in a two-tier system, where stakeholders are represented in addition to shareholders[5].

2.4.3 Between these two extremes but closer to the latter is the Latin model of corporate governance. It has similar features to both models, but differs because of the important role of the state and large family ownerships. After the collapse of the communist regime and during the transition to a market economy, a new model started to develop as well in the new EU Member States in Central and Eastern Europe. This model is not homogeneous - some countries in the region place the emphasis on shareholder value, whereas others resemble the continental models with its stakeholder orientation[6]. A specific common feature is the relatively large ownership participation of employees due to the process of privatisation while capital markets are relatively underdeveloped.

2.5 The EESC welcomes the objective of the Green Paper, but warns that the Commission's definition of corporate governance is not comprehensive; the EESC is of the view that it should be made more complete and suggests a more incisive and general concept[7]. In particular, the EESC would urge the Commission to bear in mind that the main objective of corporate governance is to ensure that the company survives and thrives in a sustainable way. To do this the Board must meet the reasonable expectations of shareholders while ensuring the reasonable satisfaction of the stakeholder community – consumers, partners, contractors, suppliers and employees[8].

2.6 The EESC calls on the Commission to carefully study and to take into consideration the new types of shareholders and their relative importance in terms of shares held in the EU capital market since the traditional continental forms of corporate governance underwent a dramatic transformation starting in the mid '90s. In the context of resurgent deregulation and globalisation of financial markets, financial institutions across Europe are increasingly

---

5 See: J. Weimer and J. Pape, A Taxonomy of Systems of Corporate Governance, Theory Papers in Corporate Governance, Vol 7(2), April 1999, Blackwell Publishers.

6 See: A. Vliegenthart, Transnational actors and the converging corporate governance regulation in ECE, Central and East European International Studies Association (CEEISA), 2006.

7 OJ C 84 of 17.3.2011, p. 13.

8 Ibid, point 2.4.

affected by global competitive pressures[9]. Large private banks and the largest blue-chip companies have shifted away from close bank-firm relationships. Concomitant to the process of unravelling of the relational banking regime is the growing importance of equity markets for corporate financing. The growing competition in product markets creates incentives for European companies to attain sufficient size and market influence, mainly through external growth strategies and equity swap strategies[10]. An important aspect is the increasing presence on European exchange markets of foreign (mainly British and American) institutional investors, i.e. pension funds, mutual and hedge funds. Such investors are strong advocates of shareholder value maximisation, and exert additional pressure on the traditional corporate governance models across Europe to shift away from emphasis on stakeholder interests towards short-term shareholder interests.

2.7 The EESC agrees with the Commission's criticism of the damage inflicted by short-termism and excessive risk-taking – two important parts of the corporate governance model, which have gradually increased in the last twenty years. The EESC is of the opinion that companies should aim at adding long-term value through sustainable policies, which in many cases requires continuing to amend the current corporate governance framework.

2.8 The EESC supports the need to strengthen the corporate governance role in the light of planning "actions to be taken to ensure sustainable growth and build a stronger international financial system"[11]. Respect for good corporate governance principles undoubtedly benefits the companies by allowing them to manage their business processes and risks more effectively and to achieve their goals, contributing at the same time to the growth of general welfare in the EU. Such a policy helps the consumer to obtain responsible products based on fair trade and relevant information. The expansion of corporate governance principles through the system of legislation and "soft law" towards unlisted companies is a process which must be promoted and encouraged.

2.9 The EESC would stress companies' social function in an inclusive society and the need for their governance to incorporate the principles of social responsibility.

2.10 The EESC recognises that in certain corporate governance models worker representatives are Board members and contribute directly to the corporate governance. Notwithstanding these arrangements, works councils and other participative arrangements facilitate employee engagement in company's operations. The EESC proposes that these considerations are included in the final EC document.

---

9 J. Fichtner, Activist hedge funds and the erosion of Rhenish capitalism: The impact of impatient capital, Working Paper Series Number 17 CCGES/CCEAE 2009.

10 M. Goyer, Varieties of Institutional Investors and National Models of Capitalism: The Transformation of Corporate Governance in France and Germany. POLITICS & SOCIETY, Vol. 34,n° 3, September 2006 p.399-430.

11 G20 Finance Ministers' and Central Bank Governors' Communiqué, 5 September 2009.

2.11 Listed companies can vary in size, whether measured by capital, revenue or employees, from the large multinational to the smallest incorporated micro and SME. Most of the focus of the corporate governance debate is on the larger companies because of the economic and social impact they make, whether they succeed or whether they fail. Good corporate governance measures should be adapted to the characteristics and needs of SMEs. This is necessary because of the limited resources of SMEs, especially administrative and human resources.

2.12 When planning the changes in the corporate governance package, the EESC calls on the Commission to conduct a thorough impact assessment in terms of expenses, human resources and legislative reforms required, so that its future proposal will be realistic[12]. The most appropriate way to achieve this goal is by taking account of the size, structure and importance of the companies and the economic situation of international groups.

2.13 In its final version the Commission proposal must enable listed companies (and in case of expansion, unlisted companies as well) to perform their activities effectively and remain competitive, so that economic growth and job creation are not at risk[13].

2.14 The EESC calls on the Commission in its future legislative proposals to strike a balance between legislation and "soft law", including recommendations and corporate governance codes. However, the EESC firmly believes that all codes should be based on the following principles in order to provide for high quality corporate governance:

2.14.1 The main objective of corporate governance is to ensure that the company survives and thrives.

2.14.2 Corporate boards should act in the best interests of the company in line with the expectations of shareholders, who have to be treated equally. Corporate boards should maintain active dialogue with the stakeholder community, in order to be able to meet the expectations of the stakeholders as to provide long-term sustainability of the company, creating wealth and jobs.

2.14.3 Corporate boards should be responsible for the entire performance of the company including strategic guidance, major actions, risk management, business planning, effective monitoring of management and reporting.

2.14.4 The membership of corporate boards should be designed to meet the need for complex expertise, depending on the specific industry, scope and location of the business. Boards should also be adequately balanced in terms of authority, gender, executive and non-executive directors and diversity of interests among Board members in order to provide the company with a wider and broader perspective.

---

12 OJ C 248, 25.8.2011, p. 101.

13 OJ C 84 of 17.3.2011, p. 13.

2.14.5 Board members should be able to commit themselves effectively to their responsibilities, devoting enough time and effort to this endeavour. Their decisions should be based on accurate, relevant and timely information.

2.14.6 The Board must manage the company in its best interest taking into account the interests of the owners or shareholders and employees as well as those of society at large. Their decision should therefore be based on accurate, relevant and up-to-date information. Genuine independence of these independent directors should be guaranteed by the limitation of consecutive mandate they can hold.

2.14.7 Companies should establish transparent remuneration policies. These policies have to be accepted by the shareholders. Remuneration of the Board members should take into account the scope of their tasks and responsibilities, the achievement of corporate goals and the company's economic situation, and it should be approved by shareholders.

2.14.8 Companies should disclose in an accurate and timely fashion all material matters regarding the company. They should encourage shareholders to attend general meetings and be open to dialogue on corporate governance matters with shareholders and other stakeholders.

2.14.9 Companies should aim to apply good corporate governance practices, presented in the corresponding national corporate governance codes, which reflect the specific features of local economic development and legislation.

2.15 The EESC promotes the following operationalised rules of corporate governance concerning the work of the Board, which are to be included in the corporate governance codes:

2.15.1 Under a unitary corporate governance structure, the roles of the chairman of the board of directors and the chief executive of the company should be separated.

2.15.2 There should be a formal, rigorous and transparent procedure for the appointment of new directors to the Board.

2.15.3 All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively.

2.15.4 All directors should receive induction on joining the Board and should regularly update and refresh their skills and knowledge.

2.15.5 The Board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

2.15.6 There should be a formal and transparent procedure for developing policy on executive remuneration.

3. Questions

3.1 Introduction

Question 1. *Should EU corporate governance measures take into account the size of listed companies? How? Should a differentiated and proportionate regime for small and medium-sized listed companies be established? If so, are there any appropriate definitions or thresholds? If so, please suggest ways of adapting them for SMEs where appropriate when answering the questions below.*

Regulated European markets trade securities of a variety of companies. Each company has its own characteristics, determined by the Member States' level of economic development and jurisdiction. The companies' size, structure and business model affects corporate governance. However, given the legitimate interest and involvement of the different stakeholders in all kinds of companies, the principles of corporate governance, set out in point 2.13 should apply to all listed companies. The Member States' national corporate governance codes provide a good basis for this, and they are also an effective mechanism for monitoring and controlling the companies' performance (this is usually done by the market regulator). The EESC is of the view that a differentiated and proportionate regime should be established for listed SMEs, which are not traded in the highest segments of regulated markets.

Question 2. *Should any corporate governance measures be taken at EU level for unlisted companies? Should the EU focus on promoting development and application of voluntary codes for unlisted companies?*

There is a large number of significant unlisted companies in each Member State. The EESC acknowledges that they can be as important to society as listed companies. However corporate governance measures for unlisted companies at EU level are unnecessary at this juncture since national company laws should regulate the critical elements of their governance. The Commission should emphasise and promote the development and application of voluntary codes at national level for unlisted companies especially those with significant importance to society in particular companies with state or municipal ownership[14] and companies with significant market power.

3.2 Boards of Directors

Question 3. *Should the EU seek to ensure that the functions and duties of the chairperson of the Board of Directors and the chief executive officer are clearly divided?*

---

14 The OECD has developed an international standard to help governments improve the way they exercise their ownership. See OECD Guidelines on Corporate Governance of State-Owned Enterprises, OECD 2005.

The EESC supports the division of the functions and responsibilities of the chairperson of the Board of Directors and the chief executive officer since it ensures that the Board is organised more efficiently, creates a better control system and prevents concentration of power. It nonetheless believes that any decision to divide these functions and responsibilities should be left to each company (shareholders and Board of Directors) and is not in favour of European regulation imposing this type of separation. But the ultimate decision should be left in the purview of company's sovereign corporate governance policy, since there are small companies whose boards consist of the minimum number of individuals. At EU level it is strongly recommended to have such a division.

3.2.1 Membership of the Board

Question 4. *Should recruitment policies be more specific about the profile of directors, including the chairman, to ensure that they have the right skills and that the Board is suitably diverse? If so, how could that be best achieved and at what level of governance, i.e. at national, EU or international level?*

It is desirable that the composition of the board should reach an appropriate balance between the experience, expertise, competence and diversity of its members, particularly to avoid the follow-behaviour and encourage the emergence of new ideas. In this endeavour, broader representation of foreign members, gender balance and worker representation could be accounted. In its response to a similar question in the *Green Paper - Corporate governance in financial institutions and remuneration policies*[15], the EESC has already noted and upholds the view that in establishing a Board of Directors, it is advisable to analyse skills and experience necessary for a particular function and thereafter to hire the candidate who best meets these criteria. It is important for the Board to consist of directors showing integrity, competence and dedication, and it is up to the company to decide about these qualifications.

Question 5. *Should listed companies be required to disclose whether they have a diversity policy and, if so, describe its objectives and main content and regularly report on progress?*

Corporate governance codes recommend or require information disclosure based on the "comply or explain" principle. Therefore a diversity policy disclosure should be "compulsory" for companies which have accepted/joined such codes. For companies which have not, reporting on diversity policy could be promoted as one of their advantages in terms of implementing in practice the transparency and disclosure principles.

15 OJ C 84 of 17.3.2011, p. 13

Question 6. *Should listed companies be required to ensure a better gender balance on boards? If so, how?*

The EESC notes the positive fact that the role of women in EU corporate and social life has undoubtedly increased, with more balanced representation in all areas in line with the European system of values[16]. In this respect we refer to the "Strategy of equality between men and women 2010 – 2015"[17], to the "Women on the Board" initiative[18] launched by Commissioner Viviane Redding and to the non legislative resolution on women on business leadership adopted by the European Parliament on 6 July 2011[19].

The EESC acknowledges that female participation in the decision-making process is still inadequate. Gender balance could bring different perspectives and should be encouraged. Women must have access to all posts for which they have the necessary experience, skills and qualifications. Of course, a Board seat should primarily be a matter of competence rather than gender, and the key criteria should be designed to guarantee appointment of Board members with an optimal balance of education, expertise, experience, knowledge and skills, thereby best enabling the company to meet its goals and satisfy the reasonable expectations of shareholders and other stakeholders.

3.2.2 Availability and time commitment

Question 7. *Do you believe there should be a measure at EU level limiting the number of mandates a non-executive director may hold? If so, how should it be formulated?*

The number of mandates a non-executive director can hold simultaneously should, in principle, be limited, but it would not be easy to set the precise number arbitrarily. In the EESC's opinion, a reasonable balance must be found, however, so that directors can carry out their duties properly, with sufficient time to study case files, to take part in meetings of specialist committees, to receive training and to carry out checks, particularly in relation to the companies' accounts, etc. In all cases, for any mandate the directors should have the time to perform the functions required.

---

16 See Article 2 and 3.3, Treaty of Lisbon and OJ C 83 of 30.3.2010, p. 17.

17 http://www.equalities.gov.uk/pdf/EN_document_travail%5Bmain%5D.pdf.

18 http://ec.europa.eu/commission_2010-2014/reding/womenpledge/index_en.htm.

19 See also the non-legislative resolution on women and business leadership adopted by the European Parliament on 6 July 2011, http://www.europarl.europa.eu/oeil/file.jsp?id=5862452&noticeType=null&language=en, http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2011-0210&language=EN.

3.2.3 Board evaluation

Question 8. *Should listed companies be encouraged to conduct an external evaluation regularly (e.g. every three years)? If so, how could this be done?*

Good corporate governance practices should be promoted and mechanisms built and applied in order to better inform investors, shareholders, consumers, employees and other stakeholders and society as a whole about corporate governance benchmarks. A good step in this direction could be to encourage formulation of stock exchange indexes and independent ratings of good governance practices. When appropriate, chairpersons or supervisory boards could commission external evaluations or request specific reports from the audit committees for internal use. This is considered to be good practice, which could be extended to unlisted companies, considered in Question 2.

3.2.4 Directors' remuneration

Question 9. *Should disclosure of remuneration policy, the annual remuneration report (a report on how the remuneration policy was implemented in the past year) and individual remuneration of executive and non-executive directors be mandatory?*

The EESC believes that shareholders, potential investors and all stakeholders must have sufficient and accurate information about the companies' corporate boards and senior management motivation schemes and their structure, and in particular about the company's remuneration policy[20](see point 2.13.7). The EESC therefore believes that each company should publish a clear and readily understandable statement on its remuneration policy, containing in particular the information laid down in Article 5 of Recommendation 2009/384/EC of 30 April 2009[21].

Question 10. *Should it be mandatory to put the remuneration policy and the remuneration report to a vote by shareholders?*

The EESC supports the proposal since shareholders must be informed and at the same time should have the right to accept future policy and to receive reports concerning remuneration. The motion proposed to shareholders at their general meeting must, however, be discussed and approved beforehand by the whole Board, reflecting the new practices in place in Germany pursuant to the 2009 law on the adequacy of directors' salaries.

---

20 OJ C 84 of 17.3.2011, p. 13.

21 OJ L 120 of 15.5.2009, p. 22.

3.2.5 Risk management

Question 11. *Do you agree that the Board should approve and take responsibility for the company's "risk appetite" and report it meaningfully to shareholders? Should these disclosure arrangements also include relevant key societal risks?*

The EESC would like to draw attention to the fact that timely reporting of risks helps enhance trust between companies' corporate boards and stakeholders. Currently corporate governance codes recommend the introduction and maintenance of stable risk management systems and companies which comply with the codes must state how these systems function and what difficulties they meet in this respect.

Social and societal risks must be taken fully into account, not just in internal risk supervision and control systems but also in their disclosure, and in accordance with the recommendations of the OECD[22]. In other words, the Board of Directors or the supervisory board should not just validate and control the company's appetite for risk (financial, social and environmental), it should also report it meaningfully to shareholders, workers and their representatives and other stakeholders in accordance with the information disclosure mechanisms envisaged by the codes.

Question 12. *Do you agree that the Board should ensure that the company's risk management arrangements are effective and commensurate with the company's risk profile?*

Yes. Where there are rules, corporate boards are and must be responsible for ensuring that risk management is effective and commensurate with the company's risk profile. Therefore, efficient risk management mechanisms are the responsibility of the Board as well as the other elements of the company's business strategy. In their reports, directors have to provide information about the business's activities and any associated risks. The principles adopted by EuropeanIssuers regarding the functioning of risk management and auditing systems[23] support this point.

22 "The corporate governance framework requires or encourages boards to take into account the interests of stakeholders and publicly disclose how it is doing so in relation to significant matters", OECD, 2006, Methodology for assessing the implementation of the OECD principles of corporate governance, p. 112.

23 EuropeanIssuers is an umbrella organisation of issuers' associations, see http://www.europeanissuers.eu/_mdb/position/200_Towards_Common_Principles_for_ICRM_European_Companies__final_100127.pdf.

3.3 Shareholders

3.3.1 Short-termism of capital markets

Question 13. *Please point to any existing EU legal rules which, in your view, may contribute to inappropriate short-termism among investors and suggest how these rules could be changed to prevent such behaviour.*

The arrival of new investors such as hedge funds and the influence of the motivation structure of asset managers have deeply changed capital markets. Current European regulation in the area of merger and acquisitions does not hamper hostile takeover bids, the sole purpose of which is to increase short term share prices, to the detriment of long term added value for shareholders and stakeholders. It should therefore be amended accordingly.

The EESC considers information disclosure to be more effective when performed as a two-sided process. Since listed EU companies are subject to a raft of legal requirements binding companies to disclose in a timely fashion any regulated, price sensitive or inside information, it could be useful if institutional investors were also subject to binding requirements to disclose their investment policies. This would provide benefits for the investee company, such as predictability in case of potential capital raising, more transparency and the possibility for listed companies to set up a long-term investor relations policy.

The EESC suggests that the Commission should revise the accounting rules for the solvency of pension funds, so that it would be possible to estimate potential problems. The short cycle of financial reporting requirements could also be revised for the same purpose.

3.3.2 The agency relationship between institutional investors and asset managers

Question 14. *Are there measures to be taken, and if so, which ones, as regards the incentive structures for and performance evaluation of asset managers managing long-term institutional investors' portfolios?*

Yes, the incentive structure and in particular the remuneration policy for portfolio managers of long-term institutional investors should be disclosed. The EESC calls on the Commission to take measures to avoid conflicts of interest in the process of managing assets, as well as to restrict transactions when the client's best interest is not taken into account.

Question 15. *Should EU law promote more effective monitoring of asset managers by institutional investors with regard to strategies, costs, trading and the extent to which asset managers engage with the investee companies? If so, how?*

The EESC sees the need for more rigorous requirements regarding the investee companies. This could happen through information disclosure from asset managers regarding their policy

towards investee companies. Strategies and expenses in most cases are well regulated at contract level, as well as in terms of information disclosure procedures.

3.3.3 Other possible obstacles to engagement by institutional investors

Question 16. *Should EU rules require a certain independence of the asset managers' governing body, for example from its parent company, or are other (legislative) measures needed to enhance disclosure and management of conflicts of interest?*

Yes, the EESC calls for clear, strict rules at EU level, which impose a certain degree of independence of the asset managers' governing body and require disclosure and management of conflicts of interests. Furthermore, asset managers must be encouraged to join voluntary initiatives such as accepting corporate governance codes and disclosing information that exceeds the volume of the preset minimum established by law.

Question 17. *What would be the best way for the EU to facilitate shareholder cooperation?*

The ESSC recommends, as a first step, clarifying the legal framework and identifying ways to encourage cooperation between long-term investors.

Current information technologies and their affordable price mean that cooperation among shareholders via internet is completely possible and very efficient. Dedicated forums could be set up to this effect with some form of institutional support, particularly with the cooperation of stakeholders and their organisations.

3.3.4 Proxy advisors

Question 18. *Should EU law require proxy advisors to be more transparent, e.g. about their analytical methods, conflicts of interest and their policy for managing them and/or whether they apply a code of conduct? If so, how can this best be achieved?*

The EESC proposes that new requirements be imposed so as to increase the transparency of proxy advisory services. They must disclose in due time, not only to their clients but also to the companies, the existence of any conflict of interest when casting a vote or when providing consulting services on how to vote, as they must also disclose their policies for preventing such conflicts. A proper supervision mechanism should also be considered.

Question 19. *Do you believe that other (legislative) measures are necessary, e.g. restrictions on the ability of proxy advisors to provide consulting services to investee companies?*

Yes, this would not impede the reputable issuers and at the same time will help to avoid potential conflicts of interest. Proxy advisors must not provide consulting services to companies for which they are proxy advisors for their own clients.

3.3.5 Shareholder identification

Question 20. *Do you see a need for a technical and/or legal European mechanism to help issuers identify their shareholders in order to facilitate dialogue on corporate governance issues? If so, do you believe this would also benefit cooperation between investors? Please provide details (e.g. objective(s) pursued, preferred instrument, frequency, level of detail and cost allocation).*

The EESC draws attention to the fact that the process of designing such mechanisms should take into consideration the specific characteristics of national legislation in the area of personal data protection[24]. That is why it would be better to resolve this problem at national rather than at European level. One possible measure could be to recommend to the national depository institutions that they include an internet address in the shareholders' books, which would expand the options for communication between the issuers and their shareholders.

3.3.6 Minority shareholder protection

Question 21. *Do you think that minority shareholders need additional rights to represent their interests effectively in companies with controlling or dominant shareholders?*

No, this is not necessary. The latest changes in the European legislative framework regarding the protection of shareholders' rights and facilitating their participation in general assemblies have created a good system which provides shareholders with the possibility to receive information, to participate easily in general assemblies and to exercise all of their rights. Any introduction of further complementary rights should carefully balance the interests of minority and controlling shareholders so that procedures for making important decisions are not blocked. The presence of a controlling shareholder could guarantee additional control over the membership and activities of the Board of Directors.

Question 22. *Do you think that minority shareholders need more protection against related party transactions? If so, what measures could be taken?*

Yes, because related party transactions could often be a source of potential conflict of interests. There should be uniform regulation of related party transactions at European level. It must be clear and at the same time flexible enough to prevent companies making major mistakes. It should not allow regulatory bodies to take arbitrary decisions in the case of unclear and misleading texts.

24 OJ C 248, 25.8.2011, p. 123.

3.3.7 Employee share ownership

Question 23. *Are there measures to be taken, and if so, which ones, to promote at EU level employee share ownership?*

No, the EESC does not believe that this is necessary at EU level. It is completely sufficient at this stage that such an opportunity exists in principle without being mandatory; it could be used when its application is appropriate.

Motivating employees and workers by offering them property in the form of shares could be used to increase their commitment and productivity, but under no circumstances must this be a substitute for existing remuneration or hinder collective wage bargaining, nor should it replace the other forms of participation mentioned in point 2.9. However this decision should fall within the scope of independence of each company because it may not always be appropriate[25].

3.4 **The "comply or explain" framework – monitoring and implementing corporate governance codes**

Question 24. *Do you agree that companies departing from the recommendations of corporate governance codes should be required to provide detailed explanations for such departures and describe the alternative solutions adopted?*

Yes. There may sometimes be good grounds for such departures. When they are explained and justified, the interests of the company are protected to the same degree as the interests of investors who would be informed about the need for such departures. Otherwise the role of the codes as an instrument for the promotion of good corporate governance practises would be undermined.

25 OJ C 51 of 17.2.2011, p. 1.

Question 25. *Do you agree that monitoring bodies should be authorised to check the informative quality of the explanations in the corporate governance statements and require companies to complete the explanations where necessary? If yes, what exactly should be their role?*

Yes. This is certainly information which is important for stakeholders and investors and should be taken into account when investment decisions are made. Regulating bodies must have this right by analogy with the rest of the information disclosed by issuing companies. Besides monitoring and educating on rare occasions (i.e. significant societal risks) they should have the ability to take action. Otherwise confidence in corporate governance declarations would drop and investors and other stakeholders would perceive more risks.

Brussels, 27 October 2011

The President
of the
European Economic and Social Committee

Staffan Nilsson