

## European Corporate Governance Forum

### Annual Report 2011

#### 1. INTRODUCTION

In 2011, the European Corporate Governance Forum<sup>1</sup> held two meetings (on 11 February and 9 June 2011). The minutes of these meetings are publicly available on the Forum's website<sup>2</sup>.

The Forum's work in 2011 had a strong emphasis on finalising the public statements on related party transactions and significant transactions for listed entities, on which the Forum had started to work in 2010 and were published on 10 March and 18 April 2011. The Forum also advised the Commission in relation to the preparation of its Green Paper on the Corporate Governance Framework (which was adopted in April 2011<sup>3</sup>). The statement on related party transactions is also of relevance for the Commission Green Paper, because the Green Paper consults, among others, on the need to take action in this field.

Other subjects that the Forum discussed related to the follow-up to the June 2010 Green Paper on Corporate Governance in Financial Institutions, the study on the application of the Takeover Bids Directive and the expert group report on the Future of Company Law.

#### 2. MINORITY SHAREHOLDER PROTECTION & RELATED PARTY TRANSACTIONS

The Forum continued its work on minority shareholder protection, which started in 2009. In 2010, the Forum had decided to focus, in the first place, on one aspect of minority shareholder protection, namely related party transactions. Related party transactions are transactions between a company and persons or organisations with which it has a relationship which existed prior to the transaction, for instance between a company, a majority shareholder or other group companies. The risk of related party transactions is that minority shareholders' (financial) interests are negatively affected. The Forum prepared a public statement with recommendations on the rules which should govern related party transactions in Europe. The statement was finalised and adopted in 2011 and was published on the Forum's website on 10 March 2011.

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<sup>1</sup> The Forum was established by Commission Decision of 15 October 2004, OJ L321, p. 53; ([http://ec.europa.eu/internal\\_market/company/docs/ecgforum/decision\\_2004\\_706\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/ecgforum/decision_2004_706_en.pdf)) and renewed in 2008. The list of the Forum's current members is contained in Annex 1 to this report.

<sup>2</sup> [http://ec.europa.eu/internal\\_market/company/ecgforum/index\\_en.htm](http://ec.europa.eu/internal_market/company/ecgforum/index_en.htm)

<sup>3</sup> The Green paper is available at:  
[http://ec.europa.eu/internal\\_market/company/docs/modern/com2011-164\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf)

The Forum agreed that it is for the Directors to provide leadership to companies but this authority is not absolute and should be balanced with a requirement to inform shareholders of important developments and in certain instances to seek authorisation for their actions either from independent agencies or from the shareholders themselves. The Forum recommended that related party transactions which represent more than 1% but less than 5% of assets should be publicly announced at the time of the transaction, notified to the relevant authority and accompanied by a letter from an independent advisor confirming that the transaction is fair and reasonable. Transactions which represent more than 5% of assets or which have a significant impact on profits or turnover should also be submitted to a shareholder vote, whereby the related party is precluded from voting. It also recommended that transactions with the same related party (or any of its associates) in any 12 month period should be aggregated and that the related party should abstain from any board deliberations about the transaction in question.

### **3. SIGNIFICANT TRANSACTIONS**

The Forum also continued its work on significant transactions, which started in 2010. The Forum prepared a public statement with recommendations on rules which should govern significant transactions of listed companies in Europe. The statement was finalised and adopted in 2011 and published on the Forum's website on 18 April 2011. The Forum held the view that companies should investigate the operational and financial consequences of these transactions in detail before determining a course of action and that the directors should take a leading role in the decision process. The Forum recommended that transactions representing 25% or more of assets or profits should be submitted to shareholders for their prior approval, although it also envisaged the possibility that companies may obtain a blanket authority from their shareholders provided this authority is renewed at least once every 12 months.

### **4. THE EU CORPORATE GOVERNANCE FRAMEWORK**

The Forum continued its work in advising the Commission in relation to the preparation of a Green Paper on the EU Corporate Governance Framework (see footnote 3), which had started in 2010, and discussed the Green Paper after its adoption in April 2011.

On the topic of boards, the Forum reviewed several national systems to enhance gender diversity. Some members stressed the importance of board evaluations, saying that they also have a role to play in the absence of a crisis. The Forum further discussed independence of directors, mentioning difficulties with finding a balance between the existing, formal definitions of independence and real independence in practice. It was also mentioned that the role of Audit Committees in relation to corporate governance could be strengthened.

On the 'Comply-or-Explain' principle, the Forum believed that it would be preferable to maintain the current approach where codes and legislation are combined. Some members raised concerns about the effects of possible regulatory proposals in the field of corporate governance. In particular on the issue of short-termism, it was mentioned that it is difficult to determine all the effects of regulation at this stage, while company law is not so much at stake. It was also said that codes can prove to be more efficient in stimulating behavioral change and may also inspire the public to be more attentive.

The Forum also addressed the issue of risk management in listed companies. Concerns were raised about the way this is dealt with in companies because there seems to be trend that risk management is formalized and becoming unnecessarily time-consuming for the members of the board. The Forum agreed that the key solution was to build better and more effective risk management systems, rather than to encourage empty formal statements. On risk

disclosure it was further mentioned that there is a need for increased transparency on risk management when companies operate in zones with higher risks and that risk disclosure in the financial services sector is often very complex and should be simplified and made meaningful.

## **5. EXPIRATION OF THE MANDATE OF THE FORUM**

In July 2011, the mandate of the Forum expired. No further meetings of the Forum will be planned. The Commission thanked the members for their valuable contributions during the past years and will reflect on what kind of expert involvement is needed in relation to corporate governance policymaking in the future.

***European Corporate Governance Forum******List of Members 2011***

- Bistra Boeva (BG), Professor of Economics and Corporate Finance at the University for national and world economic studies Sofia; until 10/2007 Co-Chair of the Task Force for elaboration of the National Code for Corporate Governance;
- Niklas Bruun (SE), Professor in Business Law, Swedish School of Economics and Business Administration (Hanken), Helsinki, chairman of Ciel;
- Bertrand Collomb (FR), Honorary Chairman of Lafarge and former Chairman of 'Association Française des Entreprises Privées' (AFEP);
- David Devlin (IE), Partner PwC, former Chairman of the 'Fédération des experts comptables européens' (FEE);
- Peter Montagnon (UK), Senior Investment Adviser, The Financial Reporting Council and Chairman of the International Corporate Governance Network (ICGN);
- Klaus-Peter Müller (DE), Chairman of the Supervisory Board of Commerzbank AG, Chairman of the German Corporate Governance Code Commission;
- Colette Neuville (FR), Chairwoman of ADAM (Association de défense des actionnaires minoritaires);
- Roland Oetker (DE), Honorary Chairman of DSW (Deutsche Schutzvereinigung für Wertpapierbesitz);
- Rolf Skog (SE), Professor University of Stockholm;
- Marek Sowa (PL), CEO of Axel Springer Poland;
- Trelawny Williams (UK), Fidelity International, Director Corporate Finance;
- Jaap Winter (NL), Partner De Brauw Blackstone Westbroek, Professor of international company law University of Amsterdam;
- Eddy Wymeersch (BE), Chairman of the European Corporate Governance Institute, former Chairman of the supervisory board of CBFA (Belgian supervisory authority) and of the Committee of European Securities Regulators (CESR).

## EUCGF Statement – 10 March 2011

**Statement of the European Corporate Governance Forum on Related Party Transactions for Listed Entities**

Transactions with related parties are of vital interest to majority and minority shareholders alike and it is important that the interests of shareholders as a whole are fully protected especially when control of the company or the Board resides with a single party. The Forum recommends that consideration be given to introducing common principles across Europe to address this important area of corporate governance.

The Forum believes strongly that it is for the Directors to provide leadership to companies but this authority is not absolute and should be balanced with a requirement to inform shareholders of important developments and in certain instances to seek authorisation for their actions either from independent agencies or from the shareholders themselves.

In the interest of protecting all categories of shareholders the Forum therefore proposes the following guidelines for all transactions with related parties<sup>4</sup>:

1. Transactions representing less than 1% of assets should be exempted from any special reporting requirements although the independent Directors should take particular care to satisfy themselves that the transaction is in the best interest of the outside shareholders;
2. Transactions with the same related party (or any of its associates) in any 12 month period that have not been approved by shareholders should be aggregated and if these aggregated transactions exceed 5% of assets then approval should be sought for subsequent transactions;
3. Transactions representing more than 1% but less than 5% of assets should be publicly announced at the time of the transaction, notified to the relevant authority responsible for financial supervision and accompanied by a letter from an independent advisor confirming that the transaction is fair and reasonable from the perspective of the outside shareholders;
4. Transactions representing more than 5% of assets or which have a significant impact on profits or turnover should have the additional requirement of being submitted to a vote by the shareholders in General Meeting but with the related party being precluded from voting;
5. In all instances the related party should abstain from any Board deliberations about the transaction in question.

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<sup>4</sup> The Forum notes that there are existing requirements in EU law for disclosure of related party transactions in the annual and consolidated accounts of companies (Art 43(1)(76) 78/660/EEC and Art 34 (7b) 83/349/EEC). Related party disclosures are also required by IAS 24 as endorsed into EU law.

## EUCGF Statement – 18 April 2011

**Statement of the European Corporate Governance Forum on Significant Transactions for Listed Entities**

From time to time companies engage in the acquisition or disposal of significant businesses or assets and these transactions carry inherent risk and potential reward. Companies should investigate the operational and financial consequences of these transactions in detail before determining a course of action and the Forum believes that the directors should take a leading role in the decision process. However, there should also be a requirement to inform shareholders and in certain instances prior shareholder authorisation should be obtained before a transaction can become effective.

The Forum recommends that all acquisitions or disposals of businesses representing 25% or more of assets or profits should be submitted to shareholders for their prior approval before becoming effective, although alternatively companies may obtain a blanket authority from their shareholders provided this authority is renewed at least once every 12 months. These measures will help to ensure that the interests of companies and their owners are fully aligned for significant corporate transactions.