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Internal Market DG

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Company law, corporate governance and financial crime

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European Corporate Governance Forum

Minutes of the meeting of 20 January 2006

1. APPROVAL OF THE AGENDA

The agenda was approved without discussion.

2. PRESENTATION OF THE OECD'S WORK ON A METHODOLOGY FOR MONITORING THE APPLICATION OF THE OECD PRINCIPLES ON CORPORATE GOVERNANCE APPLICATION OF THE COMPLY-OR-EXPLAIN PRINCIPLE IN EUROPE

The presentation was given by a representative of the OECD. The OECD principles¹ were adopted for the first time in 1999, following an outcome-oriented approach that does not focus on single rules but on the general achievements in terms of market efficiency. After the review of the principles in 2004 the OECD was mandated to enter into a permanent policy dialogue with its Member States in order to ensure the implementation of the principles in these countries. To this end, the OECD Steering Group on Corporate Governance is developing a methodology which should avoid "box-ticking" but instead focus on outcomes, taking into account the "corporate governance landscape" in a given country. This methodology notably builds on peer-review and peer-pressure. The group expects to finalise the methodology before the summer break 2006. Both the methodology and the assessments of countries should be published.

Members agreed that the work of the OECD could give important indications for the Forum's own task to monitor the application of the national codes. They therefore decided to continue following the process.

¹ The OECD Principles on Corporate Governance are available under http://www.oecd.org/document/42/0,2340,en_2649_37439_2048554_1_1_1_37439,00.html

3. APPLICATION OF THE COMPLY-OR-EXPLAIN PRINCIPLE IN EUROPE

a) Approval of the draft statement from the Forum on the principle of comply-or-explain

The Forum adopted a statement summarising basic principles of the "comply-or-explain" concept.

The statement will be published together with the annual report in February 2006.

b) Monitoring of the application of the principle in the Member States

The Forum agreed to get in contact with representatives of the bodies that have established the codes in the Member States, those that monitor their application and those which are competent to impose sanctions in the case of non-respect of the codes' rules (where these three functions are shared between different bodies).

The objective of the contact would be to obtain an overview of the operation of the national code of corporate governance, the rate of implementation and the issues at stake in the different systems.

The contacts with the national representatives will be taken in writing. A project will be set up for the consultation of and discussion with the national bodies identified in each Member State.

4. THE ROLE OF SHAREHOLDERS IN EU COMPANIES - UPDATE ON THE WORKS ON PROPORTIONALITY BETWEEN CAPITAL AND CONTROL

The Forum set up a working group consisting of Antonio Borges, Gerhard Cromme, Peter Montagnon, Rolf Skog and Jaap Winter to follow the work on this issue more closely and report regularly to the other members. The working group will first of all give the Commission input with a view to the terms of reference for the study the Commission intends to launch. It was decided that the working group should examine whether the issue could be the object of a corporate governance conference. One of the members will establish the appropriate contacts for the organisation of the conference.

5. UPDATE ON OTHER COMMISSION INITIATIVES

The Forum members were informed about the state of play of ongoing initiatives in the fields of corporate governance and company law.

(1) Commission consultation on the future of the Company Law Action Plan

The Forum members were informed about the state of play with a view to the consultation that had been launched on 20 December 2005². The deadline for the consultation has been fixed at 31 March 2006. The services of DG Internal Market and Services intend to organise a public hearing on the consultation which probably

² The consultation document is available under http://europa.eu.int/comm/internal_market/company/consultation/index_en.htm

will take place in May. The Chairman stressed that the Commission would particularly appreciate if Forum members would be available to participate in the conference in the role of moderators or members of the panels.

- (2) *Commission proposal for a directive on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC*

The proposal was adopted by the Commission on 5 January 2006³ and was transmitted to the Council and the European Parliament on the same day. The Austrian Presidency intends to start with the deliberations in the Council Working Group in February.

One member expressed the view that the 30 days notice period for general meetings would be excessive in particular in the case of extraordinary general meetings (EGMs). Another member took the view that in systems without reconciliation it would have to be possible to set the record date at an earlier point of time than the notice period which the current proposal would not allow for. A minimum period notice of 25 days would therefore be more appropriate where the record date could be set at maximum 30 days before the GM. The Forum agreed to issue a paper on the Commission proposal that should be made available to the other institutions (Council and European Parliament) in order to give them the opportunity to take account of these views during the negotiations.

One Member expressed the view that while the proposal does eliminate certain obstacles to cross-border voting through chains of intermediaries, it falls short of ensuring that investors can effectively exercise their voting rights through such chains. What is required is that intermediaries throughout these chains are required to facilitate the voting process either through voting instructions or proxies. The Forum agreed that this issue should be addressed in the final directive.

Several members also stressed the importance to ensure transparency for the companies about who their shareholders are. This question will be dealt with more in detail at the next meeting of the Forum.

- (3) *Amendment of the 2nd Company Law Directive; Study on alternative capital protection*

The Forum was informed that the Council had agreed on a general approach on the draft directive at its meeting on 29 November 2005. It is expected that the European Parliament will postpone its vote that originally was foreseen for February 2006, in order to be able to take account of the latest developments of the text.

On the question of an alternative capital protection system, the Commission intends to publish a slightly revised call for tender for the feasibility study within the next few weeks.

³ The text of the proposal and additional information are available under http://europa.eu.int/comm/internal_market/company/shareholders/index_en.htm

(4) *Amendment of the 4th and the 7th Company Law Directives*

Council and Parliament reached an agreement in December 2005. The text of the directive currently is being finalised in the different languages and should formally be adopted within the next few weeks.

6. ANNUAL REPORT 2005

The discussions focused in particular on the outlook to the works to be undertaken in 2006. One member stressed that it would be important that the Forum broadens its perspective to look also at the role of other stakeholders (in particular employees) in corporate governance. A short presentation will be given at the next meeting of the Forum on the conference that will be organised by ETUC in May 2006.

It was agreed to finalise the report in written procedure and to publish it together with the statement on comply or explain in the course of the month of February.

7. DEVELOPMENTS IN THE FIELD OF INTERNAL CONTROL

It was agreed that the Forum should adopt a statement on the current situation in the field of internal control at its next meeting. The statement will reflect the Forum's findings that for the moment there appears to be no need for taking concrete further steps but also the Forum's intention to keep under review whether the current approach is proving sufficient to ensure that internal controls within the EU meet best practice.

8. ANY OTHER BUSINESS

Members were informed about the Transatlantic Corporate Governance Dialogue which will take place on 27 June 2006 in Brussels. The programme of the conference is being finalised at the moment. One member furthermore informed members on the corporate governance conference to be organised in Berlin on 22/23 June 2006.

9. CONCLUSION

At its next meeting on 1 June 2006 the Forum will

- examine the progress of its works on the question of proportionality of capital and control;
- discuss the role of other stakeholders in corporate governance; and
- discuss the question of the disclosure of investors' identities.
- approve the Forum's statement on internal control.