



EUROPEAN COMMISSION

Internal Market DG

FINANCIAL MARKETS

Company law, corporate governance and financial crime

Brussels, 31 August 2005

## European Corporate Governance Forum

### Minutes of the meeting of 20 June 2005

#### 1. APPROVAL OF THE AGENDA

The Chairman welcomed three members who had not been able to participate in the Forum's first meeting on 20 January. The members approved the draft agenda.

#### 2. SHAREHOLDERS' RIGHTS

The discussion was structured into two parts: (1) questions related to the Commission's current initiative aimed at enhancing shareholders' rights and (2) the role of the shareholder.

##### a) *Update on the state of play of the Commission's initiative*

The Forum was informed of the results of the first public consultation launched in September 2004 (summary report available under [http://europa.eu.int/comm/internal\\_market/company/shareholders/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/shareholders/index_en.htm)) and the content of the second consultation launched on 13 May 2005. It held an exchange of views on the principles underlying the second consultation.

The Forum members agreed that there is a need for an EU directive in this area, as an effective exercise of shareholders rights is essential to good corporate governance practices. It should remain at the level of principles, given the large differences in legal systems and practices. However, on the particular issue of cross-border voting, the Forum thought there was a need to define, in consultation with the players involved, common rules and practices so that shareholders are not discouraged or prevented to vote. In this area, the directive should be precise and prescriptive enough to lead to effective results.

As regards the ultimate investor, i.e. the person who holds the real economic interest in the shares (without necessarily having to be the registered shareholder as, for technical reasons, some financial intermediary might be registered in his place), the majority of the members took the view that a possible Commission proposal at this stage should refrain from defining this person. Finding a reliable definition might be too difficult since shares are being held in quite different manners in Member

States. However, in order to ensure that also retail investors would benefit in practice from the measure it was proposed to consider whether an obligation should be imposed on the financial intermediaries to forward information to the investor and to forward the latter's vote back to the issuer.

The Forum members shared the view that share blocking requirements in Member States should be replaced by a record date system. They confirmed the result of the first public consultation according to which share blocking, i.e. the interdiction to trade shares during the days before the General Meeting in order to have the right to participate and to vote in the meeting, would constitute a major obstacle to voting in particular for institutional investors. Even where the national rules under certain circumstances would allow for shares being sold during that period, the complexity of the issue and legal uncertainty resulting from it would deter investors from voting. The period between the record date and the General Meeting should be determined on the basis of the practical needs to be examined at technical level. The risk that some shareholders having sold their shares between the record date and the meeting would still vote should not be overestimated.

*b) The role of shareholders in the company*

The Forum took the view that because of the differences in the national laws and cultures and in shareholder structures (mainly dispersed ownership in the UK and prevalingly large block holdings in continental Europe), it not would be appropriate to define a uniform role for shareholders in a company.

It decided instead to collect data on the situation in the Member States on four specific questions: (1) the key powers of shareholders (involvement in the nomination and dismissal of directors, in the determination of their remuneration and their role in the case of a change of the articles of association), (2) the process of the nomination of directors (considering both the criteria of independence and of competence), (3) the specific effects of large blocks of shareholders in one company and (4) the limits of the "one share one vote" concept. On the basis of such an analysis it may be possible to identify certain best practices, the application of which could be encouraged within the EU. The result of the analysis will be discussed at the Forum's next meeting.

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

It was decided to treat this item at the next meeting of the Forum.

### **4. IMPROVING THE FUNCTIONING OF COMPANIES**

#### **4.1. Independence of Directors**

The discussion on this issue was postponed until the results of the analysis mentioned under point 2 are available.

#### **4.2. Internal control**

Most members took the view that the increase in disclosure requirements and the requirement to establish audit committees that should be introduced by the

forthcoming modifications of the 4th, the 7th and the 8th Company Law Directives would constitute important steps towards improving corporate governance. Disclosure requirements would not only provide for transparency but also ensure that the companies' boards effectively lead regular discussions on these subjects and, therefore, keep them under review. However, there was a debate on the need to establish at EU level an obligation to create audit committees.

Members agreed that, in view of the US experience, a careful examination of the lessons to be drawn from experience should be carried out before any further legislative measure is considered. The public discussion on these issues should be maintained but it would be necessary to strike the balance between the benefits of additional requirements and the potential costs and burdens for companies. Therefore, the Forum advised unanimously against the imposition of an obligation for Boards to certify the effectiveness of internal controls at the present time. The subject would continue to be reviewed.

Conferences on corporate governance as those organised by the Luxembourg Presidency on 28 June, by the International Corporate Governance Network (ICGN) from 6 to 8 July and by the British Presidency on 14 November 2005 are suited to make important contributions to this end. Furthermore, the FEE, the European Federation of Accountants, launched a consultation in this area in March in order to explore whether stakeholders see any need for further action. On 25 October 2005 an event conference on Risk Management and Internal Control will be organised in Brussels by the FEE.

## **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.

### **a) Amendment of the 2<sup>nd</sup> Company Law Directive; Study on alternative capital protection**

Members were informed about the state of the negotiations on the draft directive amending the 2<sup>nd</sup> Company Law Directive on capital maintenance. This Directive is currently discussed in the Council and in the European Parliament. In accordance with the 2003 Action Plan, the Commission services furthermore are examining the launch of a call for tender for commissioning a study on an alternative capital protection system.

### **b) Amendment of the 4<sup>th</sup> and the 7<sup>th</sup> Company Law Directives**

The ECOFIN Council on 6 and 7 June agreed on a general approach to the proposal for amending the two accounting directives. These are examined in parallel in the European Parliament.

### **c) Amendment of the 8<sup>th</sup> Company Law Directive**

After the general approach agreed by the Council in December 2004, deliberations in the European Parliament are still going on.

d) Establishment of the Advisory Group on Corporate Governance and Company Law

The Advisory Group was established by a Commission Decision of 28 April 2005. The Decision was published on the website of DG Internal Market ([http://europa.eu.int/comm/internal\\_market/company/advisory/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/advisory/index_en.htm)).

The Advisory Group held its first meeting on 2 June 2005. It discussed procedural questions and held a first exchange of views on certain issues of substance, in particular the initiative on shareholders' rights and the modification of the 2<sup>nd</sup> Company Law Directive.

## 6. CONCLUSION

It was agreed that at the next meeting of the Forum in November the following issues will be addressed:

- 1) Questions linked to the principle of “comply or explain”;
- 2) Continuation of the discussion on the role of shareholders;
- 3) Developments in the field of internal control;
- 4) Updates on ongoing Commission initiatives and on the outcome of the Conference on Corporate Governance of 28 June.