



EUROPEAN COMMISSION

Internal Market DG

FINANCIAL MARKETS

Company law, corporate governance and financial crime

Brussels, 25 February 2005

European Corporate Governance Forum Minutes of the meeting of 20 January 2005

The meeting was chaired by Alexander Schaub.

1. INTRODUCTION AND WELCOME BY COMMISSIONER CHARLIE MCCREEVY

The Commissioner welcomed the members of the Forum to this first meeting and thanked them for their readiness to assist the Commission in its work in the field of Corporate Governance.

2. ROLE OF THE FORUM

The Chairman recalled the aims pursued with the creation of the Forum as set out in Commission decision 2004/706/EC of 15 October 2004 establishing it. He explained that, although the Commission formally is in the Chair, it would see its own role in the Forum rather as one consisting in asking and listening. It would be for the Forum members themselves to focus the Forum's activity.

The Forum held an exchange of views on the issue.

Several members stressed the need to examine and to exchange information on the development of corporate governance practices in the Member States and to identify shortcomings on the basis of common general principles of good governance. Action to enhance convergence should only be recommended where specific problems reduce the efficiency and therefore the competitiveness of companies. One example for such problems would be the cross-border exercise of shareholders' voting rights where the Commission has already entered into a consultation process in order to prepare a Community action.

There was agreement that it would not be sufficient to look at the existing corporate governance codes in the Member States. Effective practices in the field would also have to be examined as these on the one hand may cover areas not dealt with in the relevant code, but in company law or not at all, or on the other hand may simply not be in accordance with such a code, for reason of shortcomings in the enforcement. It was therefore agreed that point 6 of the meeting agenda ("National Codes of corporate governance – state of play") should be worded in a broader way. Furthermore, the need was stressed to take into account the international perspective (in particular developments in the US and at the level of the OECD). In this context, the Chairman

gave an overview over the state of discussion between the EU and the US concerning the Sarbanes-Oxley Act and the question of equivalence.

Some members emphasized also the educational role that the Forum could assume by raising awareness amongst the key players about the importance of corporate governance for investors' confidence and, thus, for the further integration of the European financial markets. This aim could be reached by having members of the Forum participating at conferences and through other forms of communication with the public.

A number of members stressed the importance of the annual report provided for in the Commission decision with a view to putting forward general principles that should be respected and to highlighting current problems in the field.

As to the scope of the Forum's activity, there was agreement between the members that the work should focus in the first place on listed companies because of their stronger European dimension compared to non-listed companies.

The relation to the Advisory Committee on Company Law, which is currently being set up by the Commission, was discussed. The Chairman explained that the Advisory Committee would primarily deal with technical issues relating to the various legislative initiatives, while the Forum is expected to give high level policy advice to the Commission.

3. WORKING METHODS INCLUDING TRANSPARENCY AND PRESS POLICY

The Chairman explained that it was the Commission's intention to convene meetings of the Forum two to three times per year. As regards the periods between meetings there would be full flexibility for members to decide how to organise their work.

In order to ensure transparency of the work, it was agreed to publish on DG MARKET's internet website in advance of each meeting the date and the agenda and, afterwards, summary minutes.

On communication with the public and with the press the members agreed that the focus should be on policy issues and not on giving opinions on specific cases. It would be the Spokesperson's task to make statements to the press on behalf of the Forum; where other members would be asked to make a statement they would do this on a personal basis.

4. RULES OF PROCEDURE

The Chairman announced that the draft rules of procedure would be revised in accordance with the results of the discussion and circulated for adoption in written procedure before the next meeting.

5. ELECTION OF THE SPOKESPERSON

The Forum unanimously elected Mr Bertrand Collomb as the Forum's Spokesperson, for a three-year mandate.

6. NATIONAL CODES OF CORPORATE GOVERNANCE – STATE OF PLAY

During the working lunch the members of the Forum exchanged their views on the current situation in different Member States and the discussion in the field of corporate governance in general.

The following issues were mentioned in a general way as possibly deserving further thought:

- Exact meaning of the principle of “comply or explain” in the Member States’ practice, ways to monitor implementation, degree of implementation, various mechanisms of enforcement, cross-border application;
- Non-executive directors: identification of the group of persons suited for exercising such a function, particularly in the light of the independence requirement;
- Role of shareholders, also with a view to problems caused by short-term investments; the need, in certain situations, to strengthen shareholders’ ownership in order to improve the balance of power inside the company;
- Internal control: increasing the adequacy and efficiency of internal control systems without imposing overly burdensome regulation on companies in order to make companies more attractive to investors.

7. PRIORITY SUBJECTS TO BE ADDRESSED BY THE FORUM’S FUTURE WORK

On the basis of the stocktaking that had taken place during the lunch, it was agreed to address at the next meeting the following questions:

- the role of shareholders, focusing primarily on shareholder rights with a view to the Commission initiative in this field while identifying also other issues that should be dealt with at the next stage;
- questions linked to the principle of “comply or explain”;
- ways for improving the functioning of companies (focusing on the questions of internal control and the independence of directors).

On each issue one or more members of the Forum will prepare an issue paper as the basis for discussion.

8. CONCLUSION

The next meeting of the Forum is planned for the summer. The Commission will propose to the members possible dates for the months of June and July.