EUROPEAN COMMISSION
Directorate General Internal Market and Services

CAPITAL AND COMPANIES
Corporate governance, social responsibility

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FEEDBACK STATEMENT

SUMMARY OF RESPONSES TO THE COMMISSION GREEN PAPER

ON

THE EU CORPORATE GOVERNANCE FRAMEWORK

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http://ec.europa.eu/internal_market/

1. OVERVIEW

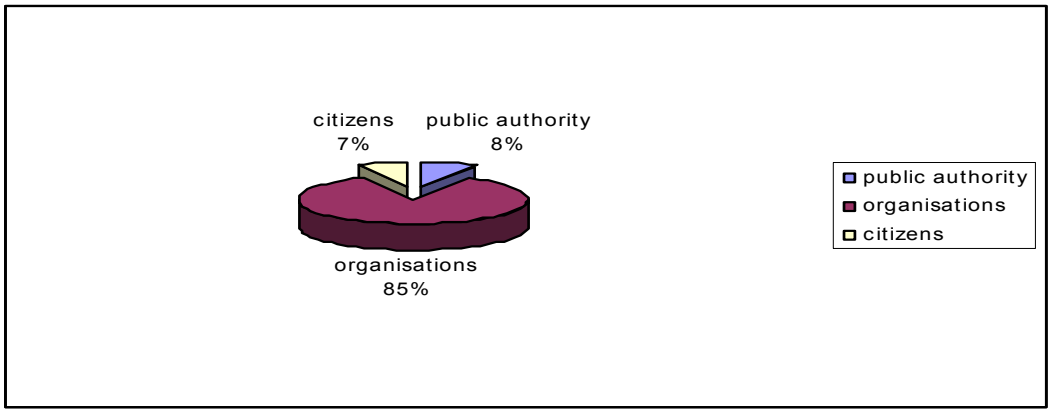
On 5 April 2011, the European Commission adopted a Green Paper[1] and launched a wide-ranging public consultation on the EU corporate governance framework. The consultation closed on 22 July 2011. In total, 409 answers were received from a wide range of professional representatives, citizens and public authorities.

Breakdown per type of respondent

Figure 1 provides a general presentation of the spread of the responses received, from organisations, public authorities and citizens.

Figure 1:

Organisations	***346***	***85%***
Public Authorities	***33***	***8%***
Citizens	***30***	***7%***
Total Contributions	***409***	***100%***



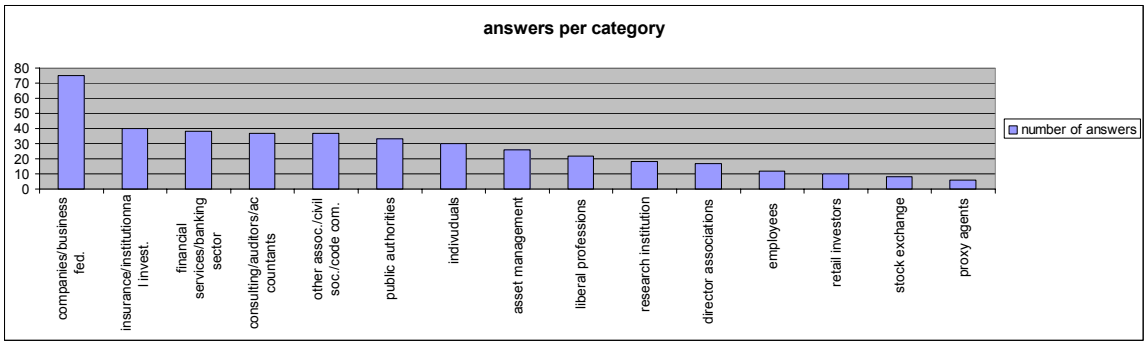
Breakdown per category

Figure 2 provides a more detailed presentation of the category of respondents. 15 categories have been identified: companies (other than banks and insurance companies) & business federations, insurance and institutional investors, financial services & banking sector, consulting, auditors and accountants, other associations, civil society and committees promoting codes, public authorities, individuals, other association, , asset management, other liberal professions, research institutions, director associations, employee representatives, retail investors stock exchanges, code and proxy agents.

[1] COM(2011) 164 final, http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf#page=2

Figure 2: Breakdown per category (in number of answers and %)

COMPANIES/BUSINESS FEDERATIONS	***75***	***18%***
INSURANCE/INSTITUTIONAL INVESTORS	***40***	***10%***
FINANCIAL SERVICES/BANKING SECTOR	***38***	***9%***
CONSULTING/AUDITORS/ACCOUNTANTS	***37***	***9%***
OTHER ASSOCIATION/CIVIL SOCIETY/CODES COMMITTEES	***37***	***9%***
PUBLIC AUTHORITIES	***33***	***8%***
INDIVIDUALS	***30***	***7%***
ASSET MANAGEMENT	***26***	***7%***
OTHER LIBERAL PROFESSIONS	***22***	***6%***
RESEARCH INSTITUTIONS	***18***	***5%***
DIRECTORS ASSOCIATIONS	***17***	***4%***
EMPLOYEE REPRESENTATIVES	***12***	***3%***
RETAIL INVESTORS	***10***	***2%***
STOCK EXCHANGES	***8***	***2%***
PROXY AGENTS	***6***	***1%***
TOTAL	***409***	***100%***

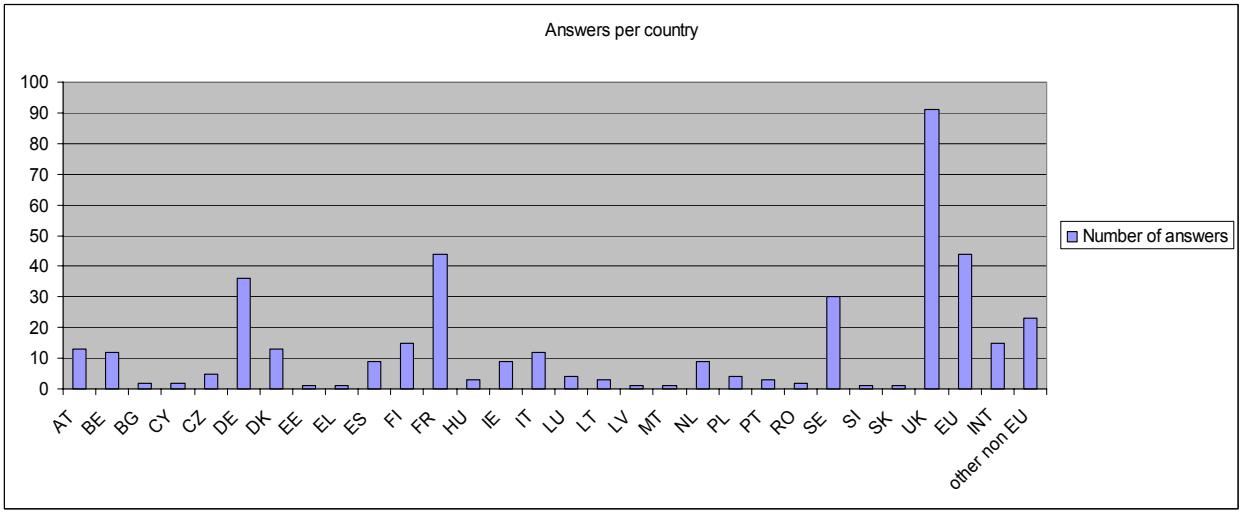


Breakdown per country

Figure 3 lists the 409 answers received according to their country of origin: about 91% responses were received from EU-domiciled organisations or European associations representing members from different Member States, 6% of answers were received from non-EU domiciled organisations (from Australia, Brazil, Canada, China, Norway, South Africa, Switzerland and the US) and 4% answers from international associations.

Figure 3: List of the answers received according to their country

Country		Country		Country	
AT	13	FI	15	PT	3
BE	12	FR	44	RO	2
BG	2	HU	3	SE	30
CY	2	IE	9	SI	1
CZ	5	IT	12	SK	1
DE	36	LT	3	UK	91
DK	13	LU	4	**Sub total**	**371**
EE	1	LV	1		
EL	1	MT	1	INT[2]	15
ES	9	NL	9	Other non EU	23
EU[3]	44	PL	4	**Total**	**409**



The replies of all the organisations, citizens and public authorities, who have accepted that their answers to the consultation are published, can be found on the website of DG Internal Market and Services[4].

DG Internal Market and Services would like to thank the respondents for their contributions.

[2] Responses submitted by international associations

[3] Responses submitted by European associations

[4] http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm

2. DETAILED ANALYSIS OF RESPONSES

The feedback statement presents a broad summary of responses to each of the 25 specific questions raised in the consultation paper. It is a factual document which presents the results of the consultation and does not announce any policy options.

During the analysis of the responses, opinions have been categorized into 'yes/no' categories of answers where possible. The majority of the respondents have also provided qualitative comments to supplement or nuance their 'yes/no' answers.

Some answers were unclear as to the allocation of a "yes" or "no" and required interpretation. This interpretation may not reflect fully or effectively the opinion of the respondent.

In addition, it should be noted that some respondents that provided individual contributions indicated that they also contributed to a submission by a professional association in which they are members.

Please note that some respondents have answered only a limited number of questions which they considered to be of particular relevance and did not provide a response to other questions.

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.

68% of the replies received expressed a clear view. The majority of respondents were not in favour of different corporate governance regimes based on the size of the respective companies. Opposition to the idea was particularly strong from business (companies and business federations) and investors (both institutional and retail) alike. Three main arguments were presented. The first is that the "comply or explain" principle already offers enough flexibility. It permits companies to apply only those recommendations which are suitable to their specific situation, which, of course, includes their size. The second one focuses on the investor perspective. In order to remain attractive and not to fall into a "sub-standard" category, it would be important for listed companies to provide the same corporate governance standards across all market capitalisations, particularly regarding transparency. The third argument was that it is difficult to establish meaningful size criteria across the EU. This was, however, challenged by the supporters of a differentiated approach. Support for differentiation came from the segments auditors/accountants and consulting/advisory. In addition, some business federations representing the needs of smaller companies or issuers were favourable to this idea. Respondents put forward various definitions or methodological elements. Others mentioned existing models of differentiation. Many of those supporting differentiation were motivated by the desire to reduce the administrative burden of SMEs.

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 non-listed companies?

More than 70% of respondents had a clear view on this. Out of this group, only 30% replied positively to the question. Employees, retail investors and civil society groups were amongst those who gave a positive response. Justifications cited for EU measures for unlisted companies were the common interest and in the potential risks emanating from these companies. It was held that an increased transparency was also needed for private companies. It was also argued that there was a widening regulatory gap between listed and unlisted companies, making it less and less attractive to remain listed. This called for a level playing field in terms of corporate governance. A majority of those who argued for EU action were in favour of an EU measure promoting voluntary codes.

70% of the replies were rather negative. Among them were almost all public authorities, the business sector (financial and non-financial), institutional investors, directors associations, liberal professions, asset managers and the research community. Many said that there was no need for EU action and that this issue should be left to the national level. The subsidiarity principle was evoked a number of times. Several of respondents said that many existing corporate governance rules were not suited for unlisted companies. The classical shareholder protection rules could not be translated easily as unlisted companies did not have the same principal-agent problems as listed ones.

The point was made that measures for unlisted companies would only produce extra costs. The business sector made the point that many subsidiaries of listed companies were unlisted making them less competitive if a new layer of rules was introduced. A number of participants who argued against the need for new measures mentioned that there was already useful guidance on corporate governance of unlisted companies in the market (such as the initiative developed by Ecoda). Some of the more negative replies were nonetheless in favour of encouraging the development and dissemination of strictly voluntary codes.

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?

74% of respondents had a clear view on this question. The outcome was equally divided between respondents supporting and those opposing. Employees, institutional and retail investors, civil society groups, the insurance sector, proxy agents and auditors/accountants were more favourable.

Those who favoured an initiative justified it with the need to avoid concentration of power and the potential conflict of interest a combination of both functions would entail. Separation would not only be essential, but could bring extra experience to the company. It would strengthen the impartiality and independence of the chairperson. Companies,

business federations, the banking sector and liberal professions tended to be against. Many claimed that the separation of the respective functions and duties was a good principle, but that a general rule was not needed. Instead of "ensuring" separation, the EU should "recommend" it.

Some respondents stressed the need for flexibility to cater for special circumstances. Some held that a clear definition of functions would be enough. Others claimed that a separation of functions could even lead to confusion. More fundamentally, it was maintained that there was no evidence that a combination of both functions would lead to any particular problems. Based on their national legal system, some asserted that a separation was either not applicable or not suited. Many argued that companies or boards should decide whether a separation of functions and duties should be put in place. Finally, some participants said that for reasons of subsidiarity, the EU should not take any initiative at all on this point.

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?

The responses to the present question are almost equally divided between those who favoured specific measures to ensure that board are suitably diverse and those opposing to them. Nonetheless, most respondents recognised the importance of having diversity in the boards, in terms of expertise, skills, background, gender, etc.

Some of those favouring more specific recruitment policies were against regulation at EU level, considering either national level as more appropriate or even that the company should have the freedom to decide alone on such issues, for instance through its nomination committee. Other responses, preferring, however, an intervention at EU level, made reference to a recommendation or to a soft law approach.

Most of the respondents who were against specific recruitment policies considered that there is no need for action, in particular for regulation, at EU level and that "one size fits all" principle should not be applied in the present case.

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?

Most of the respondents that provided an answer to this question are positive about the disclosure of a diversity policy.

Some respondents make reference to the national provisions already in place (for instance in Austria, Germany or France), providing a positive or a negative response in the light of the national experience.

The respondents that replied positively to this question underlined that disclosure would for instance enhance transparency would enable investors to make more informed

decisions or would help reducing group think. Some of the respondents who replied favourably considered that an action (in particular regulation) at EU level was not needed and that the matter would be better dealt with at the national level through codes and a "comply or explain" approach. Others mentioned that disclosure of diversity policy could be part of the annual report.

The negative replies were either sceptical about the added value of such a disclosure or considered that it should be up to the companies to decide on recruitment profiles and diversity policy. They believed in addition that there was no need for a diversity policy, that it would lead to a ticking a box exercise and the matter should be better dealt with within national codes. Some responses argued in favour of encouraging companies to disclose their diversity policy, but they rejected a regulatory approach.

QUESTION 6

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

The majority of the respondents to this question rejected the idea of listed companies being required to ensure a better gender balance on the boards. Most of them refused firmly the introduction of a (compulsory) quota system, considered as not being an efficient tool. Nonetheless, certain respondents considered that it would be useful that the companies be encouraged (not obliged) to ensure a better gender balance on boards. Moreover, it is important to note that there was a general recognition of the importance that gender diversity has in a company.

The respondents that were against justified their choice on the grounds that it would be an interference in the shareholders' rights and decisions, that the company should be able to set its own requirements regarding the profiles of the board members, that there is already a decision taken at national (e.g. France, Spain, Norway) or company level to achieve it, etc. A number of them underlined that board diversity should not be limited to gender, but should be seen from a wider perspective, as the skills, the professional qualifications and experience for instance are fundamental criteria within the recruitment procedures.

The respondents that were in favour proposed different means for achieving a better gender balance, starting with a voluntary approach for a transitional period, followed by compulsory measures if need be.

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?

77% of replies showed a clear preference on this topic. Only about a quarter of those who expressed a view were in favour of such a measure. Support came particularly from employees and civil society. The main argument put forward was the improvement of oversight and quality of work provided by the directors in question. Some said that a recommendation on this issue would suffice.

The proponents of a measure gave details on how such a limit could operate. Elements that were regularly mentioned were the exclusion of mandates within the same group of companies, of only including listed companies or companies of equivalent complexity, taking into account whether the non-executive/supervisory director is acting as chairperson, whether the director is a full-time non-executive/supervisory director and whether executive functions were held in parallel. In terms of specific numbers, most respondents recommended limits varying between three and five mandates. Some voices were in favour of setting a limit at ten mandates. Many of the supporters admitted that it was difficult to find the right balance, as did those who spoke out against any limitation. Replies in this sense came from the business community (federations and companies), liberal professions, auditors/accounting, the financial services sector including stock exchanges and asset managers, various code committees and directors associations. Many felt that such an initiative would not be suitable because of its complexity or because the EU level was not the right one (subsidiarity). Some thought that no measure would be effective because it could not cater for all individual features (no one size fits all). Others asserted that quotas and limits would generally fail to achieve results. Some said that it should be for the company or the nomination committee to make sure that non-executive/supervisory directors would have enough time to fulfil their duties.

Many considered that the choice of suitable candidates was for shareholders. They should decide on the competency of candidates. Some suggested that to enable shareholders to make the right choices, more information on the candidates should be disclosed to them well in advance of the general meeting.

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?

71% of the replies expressed a clear view on this question. The outcome was rather balanced with slightly more than half in favour. The voices in favour came from civil society, the financial services sector other than banks, stock exchanges, liberal professions and the consulting/advisory sector. Many held that external evaluators could bring a useful outside view. External reviews were an effective tool and good corporate governance practice. It would give shareholders an assurance of the good internal functioning of the board. Some cautioned, however, that any initiative should only be targeted at larger companies.

The majority said that the right way forward would be a recommendation or the use of the "comply or explain" principle. Some participants asked to introduce a legal requirement. The suggested frequency for external evaluations ranged from two to five years, with most respondents being in favour of 3-year intervals. Many argued against a full disclosure of the results in order to safeguard the effectiveness of the evaluation. The view was expressed that key findings should be made available to the general meeting or even the market. Minimum information to be disclosed often included that an external review had taken place, by whom, the methodology used, the outcome and the impact/consequences of the review's results.

Companies, business federations, the banking sector and employees were mostly not in favour. Many argued that the annual internal review was sufficient to discover

weaknesses and that an additional external evaluation only produced extra burden and costs. Many said that it should remain the chairperson's/board's or company's decision whether to use such a tool. External scrutiny should be carried out by shareholders. The argument was put that the market offering such services was not mature enough. Moreover, external evaluators carried the risk of conflicts of interest, and particularly companies were worried that the reviewers would be privy to confidential information. Some employed the subsidiarity argument and said that, if anything, this issue should be handled at national level. It was suggested that in order to improve the current situation, disclosure of the internal evaluation could be considerably strengthened.

QUESTION 9

Should disclosure of the 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?

Almost three quarters of respondents who provided an answer to this question agree that disclosure of the remuneration policy, the annual remuneration report and individual remuneration of directors should be mandatory. They mention that this would contribute to the level playing field in the EU and improve the comparability of disclosed information on remuneration between companies in different Member States. Respondents also often mention that measures should be taken to avoid box-ticking in relation to disclosure on remuneration.

The respondents who are not in favour of mandatory disclosure of remuneration policy, the remuneration report and individual remuneration give, amongst others, the following reasons: the issue is already sufficiently regulated in their national jurisdiction, more time is needed to see the effect of the Commission Recommendations on remuneration and such a rule would interfere with the capacity of the board to decide on executive remuneration. Some respondents mentioned that they were in particular against mandatory disclosure of individual remuneration because this would interfere with the privacy of the concerned board members and could have an upward driving effect on remuneration levels.

QUESTION 10

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

A small majority of respondents who provided an answer to this question agrees that the remuneration policy and remuneration report should be put to a mandatory vote by shareholders. Most of those in favour of a mandatory vote further indicate that the vote should be advisory only, although some indicate that they would prefer a binding vote. One reason cited for this is that they believe that the advisory vote which is currently being applied in their jurisdiction has not brought forward enough reform in the area. Reasons which are given by respondents who are against include that the issue is already sufficiently regulated in their national jurisdiction and that such a rule would only be useful if shareholders have become more engaged in corporate governance issues.

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?

More than two third of the respondents that provided an answer to this question agree that the board should approve and take responsibility on risk matters. Respondents agree that setting out key risks is an essential part of strategy, which belongs naturally to the duties of the board duties. But this strong support is in many cases associated to the opinion that current legislation on that topic is adequate. Many respondents do not see any justification for further action at EU level.

Those giving a negative response (mostly companies) raise the issue of the potential expense of additional reporting requirements. Some respondents consider that existing European and national legislation already requires companies to disclose sufficient information on risk. Concerns were expressed that further declarations on risk would pose problems of business confidentiality. As regards societal risks, most respondents consider that all companies face such risks, and they should be integrated as with other risks into reporting requirements.

A further point worthy of note is that some negative comments were connected to the problems with interpreting the concept of responsibility concept within the various legal structures operating across the EU. It was argued, for example, that two tier board systems provide a different means of accommodating this concept.

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?

There is almost unanimous support for the principle that the board should ensure that risk management arrangements are effective and commensurate with the company's risk profile. However this support is associated quite often with a call for no further EU intervention.

Many respondents warned about two issues to be kept in mind:

- The fact that the day-to-day management of risk issues is a duty of the executive management. The involvement of the board is limited to the monitoring of the RM framework (especially as regards effectiveness aspects).

- Most companies are very different from institutions in the financial services sector. Arrangements set up as regards risk management of financial institutions may not suit or may even have damaging impact on companies operating in different sectors.

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

Several rules were identified as potential drivers for short-termism. Among the most frequently quoted are:

-Solvency II: notably the provisions not enabling long term investors to keep long term positions,

- MiFID: notably as regards "high frequency trading",

- Financial reporting: for example quarterly reporting,

- Accounting: "marked to market", fair value requirements are sometimes described as encouraging short-termism triggers.

Several respondents also pointed out that short term investors play a key role in markets by providing liquidity. Others called for a holistic approach before addressing such complex issue. All of them requested caution before any action is taken.

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?

This question was only answered by around half of the respondents to the consultation. A small majority of respondents who provided an answer to this question agrees that there is a need to take measures with regard to fee and incentive structures of asset managers. Most of the respondents who are in favour of measures would prefer legislative measures, while a few have mentioned that they would prefer to address the issue in a code or through self-regulation. Even some respondents who did not support measures in this field indicated that a code or self-regulation might be a better way of addressing these issues. Some also mention the UK stewardship code and are of the opinion that this code will catalyse improvement. Respondents who are against measures in this field also give as reasons that it is for the parties to the asset management agreement, the investors and the asset management company, to negotiate and decide on the terms of the agreement and the incentive and fee structures included therein.

As regards which measures could be taken to address fee and incentive structures and performance evaluation of asset managers, many of the respondents, who are in favour of taking measures, are of the opinion that there should be more transparency about the fee and incentive structure and/or that asset managers should more clearly report on this to their clients. It was mentioned that reporting to clients should clearly set out all elements of the fee structure and show how fees are linked to longer term performance and how incentives are aligned to investors´ objectives. Some respondents also mentioned that the

incentive structure should be better aligned to investors´ interests and that it should include a broader set of indicators. Some respondents also noted that it might be useful to educate investors on what to look for in an effective asset manager.

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?

This question was answered by about half of the respondents to the consultation. Of the respondents who provided an answer to this question, about half said they were in favour of EU regulations promoting more effective monitoring of asset managers by their clients. The other half said they did not favour such regulations, yet some of them supported measures subject to the "comply or explain" principle. Of those in favour of EU action, most mentioned that it is necessary to increase transparency on asset managers´ policies and the exercise of their duties. Respondents have, amongst others, suggested increased transparency on voting policy, investment policy, exercise of rights attached to securities, engagement activities, costs, including management costs, cost of trading or churning the portfolio and incentive structures, risk and (potential) conflicts of interest. Some also mentioned that more consistency is needed as regards disclosure by asset managers in the EU.

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?

This question was answered by about half of the respondents to the consultation. A majority of respondents who provided an answer to this question is not in favour of EU rules which require a certain independence of the asset managers´ governing body or any other measures to enhance disclosure and management on conflicts of interest of asset managers. Many respondents who are not in favour of EU rules to address this issue point out that they find the existing conflicts of interest rules for asset managers sufficient, or that existing rules should be better enforced.

Of the respondents who provided a positive answer to this question, most mentioned that they would support further conflicts of interest rules. A number of respondents added that they would also support rules which require a certain independence of members of the asset managers´ governing body. A few respondents mentioned it is necessary to disclose it when an asset manager is not an independent institution.

QUESTION 17

What would be the best way for the EU to facilitate shareholder cooperation?

A large number of respondents to this question indicated the need to clarify the provisions on acting in concert, which currently appear to raise problems for shareholders. In the respondents' view, this could take place either by a revision of the current provisions (e.g. Takeover Bid Directive), by providing guidance or by a negative list of what does not constitute acting in concert.

Furthermore, numerous respondents considered that shareholders contacts and communication should be facilitated through internet, i.e. a forum. They called for an effective cross-border voting mechanism. Establishing such platforms would bring them together and give them the possibility to exchange views, enhancing therefore their information and cooperation. Networks or web based platforms such as Eurovote and Euresactiv have been mentioned as means to facilitate cross-border cooperation at the EU level.

However, some companies and business federations either rejected the idea of facilitating shareholders cooperation through the company's web site due to what they considered might be legal issues this may raise.

Finally, a number of respondents considered that there was no need for EU rules to facilitate shareholders' cooperation, in particular binding rules.

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?

More than three quarters of respondents who provided an answer to this question agree that EU law should require proxy advisors to be more transparent. Amongst others, respondents mentioned that proxy advisors should be more transparent about the following issues: their methodology for preparing voting advice, voting policies and records, conflicts of interest and the system in place to manage them, whether a code of conduct applies or whether there are internal rules of conduct, applicable procedures for contacting companies when preparing the advice and stewardship policies. A number of respondents believe that in particular the issue of conflicts of interest of proxy advisors should be addressed. Moreover, some respondents are of the view that proxy advisors should be required to register and become supervised entities. It was also mentioned that institutional investors should disclose when they make use of the services of a proxy advisor.

Most respondents who are not in favour of requiring proxy advisors to be more transparent mention that the issue should be addressed through voluntary or self-regulation measures. Others are of the view that this should be addressed at national level or would prefer to investigate the issue in more detail before committing to action.

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?

A small majority of respondents who provided an answer to this question believe that other measures are necessary to address conflicts of interest of proxy advisors. A number of respondents suggested that there should be mandatory separation of services to investors and services to companies, while a few respondents mention that it should be disclosed if proxy advisors also provide services to investee companies. Respondents who provided a negative answer to the question said that the issue could be addressed through self-regulation or codes, or were of the opinion that the issue would be resolved if there were sufficient disclosure on conflicts of interest.

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).

58% of replies expressed a preference on this question. Three quarters of this group saw a need for a European mechanism, one quarter spoke out against this idea. Support was particularly strong, though not unanimous, in the following sectors: companies, business federations, financial services, the insurance sector, retail investors and institutional investors. On substance, the suggestions varied considerably. Some were in favour of requiring issuers to offer forums to shareholders on their corporate websites. Quite a number suggested lowering the thresholds for notification of major holdings in the Transparency Directive in order to enable issuers to have a better view of who their shareholders were.

There was a strong view that Member States should be required to provide mutual recognition for existing national identification mechanisms. This could be accompanied by a requirement to introduce a national transparency tool with some minimum requirements, where this was still lacking. Some respondents spoke out in favour of a fully fledged EU system of shareholder identification. Quite a number of participants welcomed the efforts of the T2S task force which had been working on this topic. Diverging views were expressed on whether the identification should only be towards the issuer or also be accessible to other shareholders. Some argued to restrict the grounds for launching a transparency request to corporate governance reasons. Shareholders should not be approached for commercial or pure marketing reasons. Particularly smaller shareholders needed to obtain safeguards against abuse (e.g. through an opt-out option). Many argued in favour of having a large degree of flexibility as to the frequency and level of detail.

Many of the replies who were against introducing such a mechanism said that the Transparency Directive offered already a good insight to issuers into their shareholder base. It was also put forward that the existing national measures offered sufficient transparency, and that efforts, if any, should be made at national level where these measures were still inexistent. Another argument against a European mechanism was the existence of electronic communication means, which offered issuers excellent tools to get in touch with their shareholders. Quite a number of respondents voiced privacy concerns. Shareholders should not be obliged to reveal their financial positions. Concerns were expressed about the costs a European mechanism would produce.

QUESTION 21

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

The vast majority of respondents that provided an answer to this question share the view that minority shareholders are already sufficiently protected. Many respondents think that additional rights are likely only to increase the potential for their abuse and that granting them would be contrary to shareholder equality. A number of respondents ask for more analysis of problems existing in Member States and consider that further protection, if any, should be provided at national level. However, some respondents indicate that action at EU level could help ensure a level playing field. Many respondents indicate that there should be a requirement for a proportion of board members to be 'independent'. They are however opposed to board representation of minority shareholders arguing, inter alia, that the latter do not form a homogenous group. Some respondents see a need to focus on the rational apathy of smaller shareholders with the aim of promoting their use of existing rights and on the enforcement of current rules.

Among respondents in favour of additional minority shareholder rights, a majority agrees that multiple voting rights ought to be abolished (one-share-one-vote). In addition, some ask to generally allow for cumulative voting in Europe. Such a system would allow shareowners to accumulate their votes for one nominated candidate. Others, in particular retail investors, stress the need to implement a right of shareholder associations to collect proxies and to present resolutions to the general meeting once a minimum percentage of shares through collected proxies is reached. A number of respondents consider shareholder approval of key corporate decisions (esp. major transactions) important. Many respondents think that a right of minority shareholders to appoint or nominate directors should be introduced. They agree that a percentage of board members (one third or half) ought to be 'independent'. Some respondents also see the need to ensure a more equal access to information.

QUESTION 22

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

The slight majority of respondents that provided an answer to this question, in particular companies, business federations, the banking and financial services sector, share the view that sufficient safeguards are already in place and that, accordingly, there is no need for regulatory intervention. In their view, the focus, if any, should be on clarifying and simplifying existing rules on related party transactions. Furthermore, respondents suggest first to assess the impact of new regulation before taking new measures into consideration. Some respondents stress that the general meeting is not the right place to discuss transaction agreements.

The slight minority of respondents in favour of more protection consider that more and better information on related party transaction is necessary. They also share the view that related party transactions above certain thresholds (at least) should be subject to ex ante board or shareholder approval with interested parties being excluded from voting. Many

respondents think that common principles should be introduced at EU level on the basis of the ECGF Statement[5]. Some respondents insist on the need of an independent opinion on the transaction or wish to see the auditors' role extended and strengthened. Others, in particular retail investors, suggest the introduction of an EU procedure when shareholders are squeezed-out.

QUESTION 23

How could employee share ownership be promoted at EU level?

A number of respondents are positive about the effects that employee share ownership may produce. Amongst the positive results they cite are: the potential for a favourable impact on long-term investment and an enhanced employee involvement in the company performance.

However, there is no majority to support intervention at EU level in this field. There is no clear trend in the non supportive majority. Many respondents stress that shareholders and companies should be free to decide on this topic.

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?

The large majority of responses were favourable to requiring companies departing from the recommendations of corporate governance codes to provide detailed explanations for such departure. Better quality of these explanations should be provided by companies (i.e. explanations should be meaningful and informative).

Several respondents indicated the Swedish model as being an adequate solution to tackle the current shortcomings in the "comply or explain" principle.

The justifications for the negative responses were that there is no need for further provisions as the existing ones suffice, it should be left to the Member States to deal with the matter, developments are already moving into this direction, the market should have its saying on the level of detail, difficulties in providing an alternative solution, etc. In addition, some respondents considered that the issue is sufficiently dealt with at the national level.

Many respondents expressed their position against compulsory rules. Some respondents underlined the need mostly for clear, rather than detailed explanations.

[5] Statement of the European Corporate Governance Forum on Related Party Transactions for Listed Entities (10 March 2011).

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?

Most of the responses to the present question were against authorising monitoring bodies to check the informative quality of the explanations in the corporate governance statements and to require companies additional explanations if need be.

A large number of those against consider that there are already control mechanisms, such as shareholders, boards, auditors, etc to assess the information. Others deem that there is no need for regulation or that it would be incompatible with the "comply and explain" principle. Practical difficulties relating to the monitoring of the quality of explanations have also been raised (e.g. costs to set them up, definition of roles, enforcement/difficult to measure 'informative quality', etc.) and different measures such as recognition and award or to stimulate in general a continuous improvement have been proposed as an alternative.

Certain respondents referred to the Danish, French and Italian experience which should be assessed before deciding on the matter.

Some respondents who replied positively to the present question considered that the "comply or explain" principle would work better with a sound monitoring process and that uniform sanctions would be need in order to ensure efficient enforcement.