21 July 2011

Monsieur Michel Barnier
European Commissioner for Internal Market and Services
European Commission
BERL 10/034
B - 1049 Brussels

Dear Monsieur Barnier,

Green Paper: The EU Corporate Governance Framework

On behalf of the PwC network of member firms (PwC), I am pleased to send you the enclosed response to the EU's Green Paper on Corporate Governance.[1] We appreciate the opportunity to comment on this consultation paper. As a network, we are committed to promoting high quality corporate governance and to supporting the European Commission's consideration of possible reforms. We also recognise the importance of considering this consultation on corporate governance alongside the Green Paper on Audit, and the Green Paper on Corporate Governance in Financial Institutions to ensure a coherent response .We have considered all twenty five questions raised in the consultation paper. Where we have specific responses to the consultation questions, these are included in the annex to this letter. In this covering letter we provide some overall observations on what we believe to be some of the more important issues raised by this review. In particular:

- The importance of high quality corporate governance and its flexible application;
- The manner in which boards operate effectively with an appropriate focus on both behaviours and culture;
- The critical role played by independent non-executive directors and board committees; and
- The importance of transparent reporting as a mechanism to engage shareholders.

The importance of corporate governance

To achieve high quality corporate governance and to assess success in doing so, it is important to clarify what is meant by 'governance'. This definition is not currently addressed within the Green Paper. We note the definition in the OECD Principles of Corporate Governance[2] and whilst not held out as a model but by way of example, the UK Corporate Governance Code contains the classic definition that was originally established by Adrian Cadbury (who also went on to operate in the two tier European structure) in the Cadbury Code of 1992, and still holds good today. "Corporate governance is the system by which

[1] This letter and accompanying response are being filed on behalf of the network of member firms of Pricewaterhouse Coopers International Limited, each of which is a separate legal entity. References to "PwC", "PricewaterhouseCoopers", "we" and "our" refer to the member firms of PricewaterhouseCoopers International Limited. As a matter of record PwC's ID number on the European Commission's Register of Interest Representatives is 60402754518-05.
[2] OECD Principles of Corporate Governance, 2004, p. 11, accessible at http://www.oecd.org/dataoecd/32/18/31557724.pdf.

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companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting." It is particularly important to distinguish clearly between governance and prudential regulation.

The UK Corporate Governance Code is structured around five principal areas of leadership, effectiveness, accountability, remuneration and relations with shareholders. This reflects the broad and complex diversity of issues that corporate governance encompasses. It also makes clear that corporate governance is not just about processes, but also about culture, ethics and behaviours. A strong, robust governance framework creates the environment to achieve stability in markets, removing excessive volatility and providing a means for the sustained, long term growth of businesses. Therefore its effective exercise is critical. We consider governance to be best exercised through boards themselves, with transparent accountability to shareholders and the market in general. Independent non-executive directors serve as representatives of shareholders and other stakeholders, who can interact within the business. Reporting to shareholders and other stakeholders provides a vital mechanism for an institution to convey its response to the rigorous standards demanded by the market, and provides a basis for the two-way dialogue that should take place between companies and investors.

Flexibility is the key to successful implementation of corporate governance

Effective governance requires boards and senior management below board level to retain responsibility, with appropriate flexibility, for making decisions and judgments that will best promote the long term soundness and success of the institution for which they are responsible. Any system of corporate governance needs to be calibrated to the nature, scale and complexity of the organisation. We believe that the necessary flexibility is most appropriately built into corporate governance arrangements through a 'comply or explain' regime in relation to the best practice codes designed and applicable at a Member State level. It can be appropriate at Member State level to have some legislative or regulatory elements, for example requirements to disclose the extent of compliance with codes. However, we do not believe that there is a need for additional legislation or regulation at EU level in the area of corporate governance generally, but rather a focus on promoting and encouraging good practice, including in large private companies which do not fall within the remit of Member State codes, to follow the spirit of the codes in their disclosure.

Commercial versus Financial Institutions

We note that the European Commission has just proposed legislation for financial institutions. The two corporate governance reviews undertaken are complementary; however, leaving prudential regulation to one side, we see a difference in the required intensity of the corporate governance response needed for listed companies in the financial services industry versus those in the general commercial sector. Therefore we do not consider similar legislative proposals to be necessary for the commercial sector.

Board Effectiveness

We absolutely believe boards should regularly evaluate their effectiveness and consider that there is value in periodic external evaluations. We mentioned above that corporate governance is not just about process, but also culture, ethics and behaviours. Clarity of roles and responsibilities, having people with the right skills for the job, and the appropriate diversity of skills along with clear structure and processes, are all of course required to enable boards to perform their role. We consider however, that these alone are not sufficient for a board to be effective. Beyond infrastructural compliance, board members need to think about the manner in which they carry out their role, the behaviours they display, and how these might affect the quality of their performance. For example, those taking on non-executive director roles need to be prepared to act independently of management and any prevailing consensus; otherwise the degree of oversight is limited. Behavioural issues are therefore important in achieving successful corporate governance. Boards need to consider how to motivate the right culture and behaviours throughout the

organisation, but in particular at board and senior management level, because of the importance of the 'tone from the top'.

Board Committees

The board itself has the ultimate responsibility for ensuring effective corporate governance. However, board committees (for example nomination committees, remuneration committees and audit committees) all play an important role in the effective functioning of boards by ensuring that appropriate focus and time is consistently provided to key issues. Whilst in some Member States (including Germany, Sweden and the UK,) such committees are well established we recognise that they are a newer construct elsewhere. We consider that an aim of the European Commission should be to strengthen the operation of these committees throughout the Union, bringing the standard everywhere up, through encouragement of existing best practice. Below, we make some further observations in relation to both remuneration and audit.

Critical to raising this standard are effective, independent Non-executive directors (NEDs). NEDs need to be appointed and remain independent of management. For example the Danish Code recommends that at least half of the members elected to the supreme governing body by the general meeting be independent persons. We also consider that an appropriate range of expertise amongst the NEDs is important. Since the financial crisis board committees have experienced more meetings, often going into the agenda topics in more depth. These trends are not evident unless transparently reported, which is not always the case currently; companies may wish to critically review their current reporting in this area. We should also restate the importance of the link between NEDs and external parties including shareholders and stakeholders. An active two way dialogue will enhance the ability of the NED to operate and engage effectively in governance.

Remuneration Committees

We emphasise above the need for boards to consider how to motivate the right culture and behaviours. Clearly, there is a role here for remuneration committees to oversee reward packages in order to drive good behaviours. Performance measures should recognise the importance of individual directors and senior management demonstrating ethical decision making, a culture of openness and honesty, and behaviours that focus on the impact of the business on wider stakeholders as well as the primary aim of running profitable enterprises for the benefit of the shareholders.

Audit Committees

We believe that the audit committee has an important role to play in robust corporate governance. We note that the Green Paper does not directly consider this despite the introduction of the 8th EU Directive on statutory audit that requires audit committees (or bodies performing equivalent functions) to be established in all listed companies whose shares are traded on a regulated market.

We recognise that whilst for many territories audit committees are relatively new, the more established regimes find them a positive contributor to effective governance. This potential for audit committees to play a key part in audit oversight and shareholder engagement across Europe should be actively encouraged.

We understand that, in some Member States there may be difficulties in finding suitable candidates with both the appropriate level of knowledge and sufficient experience to act as an NED and audit committee member. Based on experience some audit committee members do not have the professional background to play their role effectively, lacking knowledge in areas such as audit, accounting, internal control and risk management. This can hinder their ability to challenge management, challenge the audit functions or display a sufficiently independent mindset. To increase confidence in audit committee effectiveness, in Member States where these are a relatively new function, the European Commission may wish to consider the following recommendations.

- The encouragement of Board training programmes for audit committee candidates, tailored to the regime of the Member State. These already exist in some Member States but would benefit from additional

content on accounting, internal control or audit-related topics which would help to increase the breadth and depth of the potential pool of candidates.

- Foster dialogue between audit committees and auditors in general, in line with that required by the International Standards on Auditing (for example ISA 260 and ISA 265) as discussed in the Green Paper on Audit Policy.
- An expanded audit committee report. The audit committee's report could address: dialogue with auditors, interaction with auditors, maintenance of auditor independence, appointment of auditors and the other duties of the audit committee. The audit committee report could be subject to a non-binding advisory vote of shareholders.
- Comprehensive reporting by the auditors to the audit committee and indeed the full board and the good practice that there should be private meetings between the audit committee and the auditors with no management present could be encouraged.

Shareholders

We consider there are others in the market better placed to provide detailed responses on questions 13 to 21, and 23 on the role of shareholders in corporate governance. Broadly, we encourage measures which facilitate appropriate dialogue between companies and their investors. In order to ensure the process is practical for investors with a large number of portfolio investments, we prefer shareholders to have rights of intervention when they judge it appropriate, rather than an obligation to fulfil in all circumstances the full range of ownership functions. Whilst it is early days, the UK Stewardship Code provides a promising model for establishing a benchmark for institutional investors' conduct as responsible and engaged owners.

There are no questions included regarding the functioning of the Annual General Meeting of shareholders (AGM). The AGM is the forum in which corporate governance practices can and should be discussed by shareholders and the boards. This dialogue and discussion is at the heart of corporate governance codes, e.g. the Dutch Corporate Governance code states that 'It is up to the shareholders to call the management board and the supervisory board to account for compliance with the Code.'(preamble item 4). Considering how to enhance the discussion at the AGM and/or through other communication channels with investors on corporate governance issues could be beneficial.

In a number of European countries the external auditor participates in the AGM and in some the shareholders can address specific questions to the external auditor on the financial statement audit. Little research is available on the effectiveness of this instrument and further deliberation on how this dialogue may potentially impact the relationship between shareholders and the board could be considered.

We consider that any mandatory changes made in relation to shareholder engagement mechanisms, should be based on evidence of where the market mechanisms currently in place could be improved. We also suggest that impact assessments are important to policy formation as additional cost and infrastructural considerations, relating to legal or other mandatory measures on shareholder engagement could potentially reduce the competitiveness of the EU capital markets and carry the risk of unintended consequences.

Conclusion

In summary we are committed to promoting high quality corporate governance and to supporting the European Commission's consideration of possible reforms. Should you or your services have any questions regarding this letter, please contact David Devlin, Mobile: +353 86 819 6351, Email: david.devlin@ie.pwc.com, or Peggy Gondo, Tel: +44 20 7212 1282, Email: peggy.gondo@uk.pwc.com.

Yours sincerely

Ian Dilks
Global Leader, Public Policy and Regulatory Affairs

	Question raised in the paper	PWC Response
BOARDS		
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.	We do not consider that EU corporate governance measures should specifically take into account the size of listed companies. However at a National level the use of 'comply or explain' approaches can support flexibility. Taking a specific German recommendation as an example, it is recommended that German supervisory boards establish board committees, and for large boards this would usually occur. However, in practice supervisory boards with fewer members may make use of the comply or explain allowance to deviate from this recommendation. Feedback from Denmark is that as corporate governance recommendations are general in nature, the size of the company is not necessarily the relevant factor when looking at the extent management complies with the recommendations. Generally, we do not believe that the size of a company is the key issue to deal with, but rather the understanding of investors as to the balance of risk and reward, in this case, as reflected in the standards of corporate governance which apply. This is in place automatically for many 'owner-managed' SMEs. We also consider that there should be consistency at a National level in rules and regulations for listed companies, and note that the Transparency Directive does not make a difference based on company size and that the financial reporting requirements are identical for small as well as large listed companies with shares listed on a regulated EU market. Size thresholds also raise issues about transition regimes, as companies move above or fall below the thresholds, and therefore either have to change regime or stay with one that may no longer be appropriate. Flexibility therefore remains key, by using a 'comply or explain' approach. As we noted above, existing corporate governance frameworks have already developed ways in which differing regimes of governance can be applied. We do not think that taking further measures in relation to size at an EU level is necessary or appropriate but sharing good practice may be beneficial. • Relaxations for companies that are listed outside the main/regulated markets. For example in the UK code there are relaxations for companies listed on the main market that fall outside the FTSE 350 index. Also in the UK, the Alternative Investment

		Market ('Aim'), which has no mandatory corporate governance reporting requirements, is available to companies that wish to trade their shares publicly with a much lower level of regulation than those listed on the main market. Many of this population use guidance issued by the Quoted Companies Alliance which has less rigorous provisions and takes a more streamlined approach when compared to the primary market regulations. Similarly in Sweden and the Netherlands there are relaxations for companies that are not listed on regulated markets. It is worth highlighting that companies on regulated markets may still be of variable size. • In France there are specifically segregated codes, both of which operate on a comply or explain approach, for large and medium sized companies (issued by AFEP-Medef for large companies and Middlenext for medium sized companies). • In Ireland industry sector rather than size is a driver for differentiation with the Corporate Governance Code for Credit Institutions and Insurance Undertakings. This code imposes minimum standards of corporate governance on all credit institutions and insurance undertakings licensed or authorised by the Irish Central Bank, including reinsurers but excluding captives.
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?	It is important that for the smaller unlisted companies measures should not detract from the growth agenda of EU and Member State governments, nor discourage entrepreneurship and therefore the administrative burden should remain low. It is not clear why shareholders in these unlisted companies require intervention by way of corporate governance measures, since they can usually arrange these (via board appointments and shareholders agreements), if required. Company law protections also exist within Member States. The lack of legislation or regulation for unlisted companies does not mean that where appropriate they could not undertake corporate governance activity and disclosure. Large non-listed companies can take the opportunity voluntarily to adopt the relevant corporate governance codes of listed entities if they consider it useful and appropriate as a result of their size or business. For example, in Denmark the corporate governance code is intended to provide inspiration for non-publicly traded companies e.g. state-owned companies, other companies of special public interest and certain companies owned by funds. We have seen evidence of this in practice; in the Netherlands, several non-listed companies voluntarily apply the Dutch Corporate Governance Code. We consider that an appropriate measure would be a recommendation on promoting development and application of voluntary codes for non-listed companies. Such Codes

		have been set up by private initiatives in several countries already, for example in Belgium the Buysse Code and in the UK, Corporate Governance Guidance and Principles for Unlisted Companies in the UK, from the Institute of Directors. We recognise that unlisted companies vary in size and the largest or those with a public interest may have a significant impact on the economy of Member States. Promoting initiatives of "self-regulation" such as the Governance Code for family-owned companies, which has been set up by a private Governance Code Commission of German non-listed companies, would be more beneficial than specific measures in EU law. The OECD has also issued guidelines on the Corporate Governance of State-owned Enterprises. A national adaptation of these can be seen in Ireland where the Department of Finance has a long established "Code of practice for the governance of State bodies" which provides a framework for the application of best practice in corporate governance by both commercial and non-commercial State bodies. We do not advocate legislation or regulations for unlisted companies in general, for the reasons stated here and in Question 1 above. Where, as in the financial sector, there are additional regulatory requirements, these are primarily a matter of prudential regulation and not corporate governance, although prudential regulators might consider good corporate governance to be important to prudential regulation. However, a voluntary application of corporate governance codes as referenced above might be further promoted if in local codes the principles and best practices that are most relevant for a non-listed company were highlighted. Such a recommendation from the EU could be beneficial.
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?	In our view, the EU should not introduce legislation or regulation on this matter as there must be a degree of flexibility to adapt to different circumstances that can arise and we think that this is best dealt with at a National level. We acknowledge that it is important that companies distinguish clearly between the two roles, and also clarify the role of the Board in relation to corporate governance. At present practice varies between Member States. In Germany where there is a two-tier corporate governance system mechanisms already exist that distinctly divide the roles. The Irish Code provides that the roles of Chairman and CEO shall be separate and further provides that any individual who has been CEO, executive director or member of senior

		management of a financial institution or insurance undertaking during the previous five years shall not advance to the role of Chairman of that institution. In Sweden where the Boards are predominantly composed of non-executive directors the role of the Board, the CEO and Chairperson are clearly divided as follows: • The Board of Directors is responsible for the company's organisation and the management of the company's business. The extensive decision-making authority assigned by the law to the Board of Directors is primarily limited by the legal provisions giving the shareholders' meeting exclusive decisions-making powers on certain matters. • The Board of Directors clarifies what is considered as day-to-day management; the CEO is then responsible for this. The Board of Directors must also be presented with matters of unusual nature or of exceptional importance due to their scope and the nature of the company's business. • The CEO may be a member of the board but not its chair. We observe that this is an area where on occasion shareholders have taken an active interest in the past and challenged companies that do not have a clear division between the roles so therefore the code approach is working as intended. Sometimes, for example during crises where a new CEO needs to be brought in at short notice, there can be instances where a model that combines the roles is advantageous. Therefore a market led solution is appropriate, with explanations where the divided role model is not applied, i.e. a 'comply or explain' model.
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, ie at national, EU or international level?	We consider that in principle increasing the specific nature of recruitment policies to achieve appropriate skills and diversity at Board level is best practice. We believe this is best achieved through a principles based, rather than rules based approach, and as a result of differing company law requirements and mechanisms for constituting boards, that this can best be achieved at national level. The recruitment plan should have some structure, but it should not be inflexible. The key is finding the right people at the right time, and there will be changes in these requirements over time. Value can be brought by people having skills that may not be those originally identified as being necessary when the job description was compiled, therefore the use of the 'comply or explain' approach at a National level is appropriate.

		To support development of Committees within a robust corporate governance framework, we also consider that equivalent policies should apply to their members. For example the recruitment policy for Audit Committee members could express preference for skills in both audit and accounting. Some Member States already include reference to recruitment in their Corporate Governance codes. • In Denmark it is recommended that the supreme governing body: discuss and ensure that the necessary qualifications and financial resources are in place in order for the company to achieve its strategic goals; and specify the skills it must have to best perform its tasks at least annually. • The Dutch corporate governance code says the supervisory board should aim for a diverse composition in terms of such factors as gender and age and that this profile should be referred to in the case of each reappointment. • In Germany it is required that all supervisory board members are capable of fulfilling their duties. Moreover, the German corporate governance code recommends that the supervisory board: establishes a nomination committee that is responsible for nominating the right candidates; defines concrete composition goals regarding international and gender diversity, potential conflicts of interest and age (and makes these publicly available); and includes an adequate number of independent members. • In the Swedish corporate governance code this aim is fulfilled through the work carried out by the nomination committee, which often is made up of representatives for major shareholders. The sole task of the Nomination Committee is to propose decisions to the shareholders' meeting on electoral and remuneration issues and, where applicable, procedural issues for the appointment of the following year's nomination committee. • The UK Code recommends the appropriate balance of skills, experience, independence and knowledge when considering composition of the board, (UK Code ref: B1 main principle). Recruitment of board members should start with a role description, and the skills should be tied to the role to demonstrate the value that will be brought to the board by the role. • The Belgian Corporate Governance Code contains similar recommendations to those mentioned for the UK.
5.	Should listed companies be required to disclose whether	In our opinion diversity can be extremely relevant if the analysis of the competencies

	they have a diversity policy and, if so, describe its objectives and main content and regularly report on progress?	required by the board results in such a need. Various codes promoting gender and other types of diversity exist, but to date the related provisions are fairly generic, which has allowed companies to remain relatively passive. The appropriate approach is to ensure that the wording in national codes is crafted more specifically in terms of setting policy and disclosure about implementation of that policy, rather than legal requirements at either an EU or National level. Given the wide differences in practice in this area and recognising this is area of development and innovation, we therefore consider that this is a matter best dealt with at a National level. Any suggestions on best practices at EU level must allow for continuing changes in order to keep up with the moving expectations from stakeholders and the market in this area. Some examples of current thinking are included below to highlight the level of movement in this area. • The Danish corporate governance code recommends annual evaluation of membership to ensure integration of new talent whilst maintaining continuity. Commentary on membership composition including its diversity is recommended for inclusion in the annual report. • The Dutch corporate governance code outlines as best practice the preparation of a profile of the size and composition of the board, including desired expertise and background of the supervisory board members. The profile should deal with: diversity in the composition of the supervisory board as it is relevant to the company; state what specific objective is pursued by the board in relation to diversity; and account for any difference in the existing situation. • Since 2010 the German corporate governance code has recommended that supervisory boards of listed companies define, and make publically available, the specific composition goals regarding international and gender diversity, potential conflicts of interest and age. These guidelines are extended to consider recruitment of new executive directors and staffing of management internally. Publication is not required at this level but some companies have done so voluntarily. • In Sweden the nomination committee could, for transparency reasons, argue for the composition of the board on the company's website. Further the committee reports to shareholders at the AGM and gives an account of how it has conducted its work and explains its proposal.

		• The UK Government's "Women on Boards" report ("Davies Report") issued in February 2011, recommends changes to the UK Code to include a need for listed companies to have a policy on boardroom diversity including measurable objectives for implementation and disclosure requirements on progress made.
6.	Should listed companies be required to ensure a better gender balance on boards? If so, how?	Whilst diversity in the board-room is of utmost importance to widen the perspective and the pool of talent available in order to enhance the quality of decision-making, we do not support imposition of quotas as a corporate governance standard. Board appointments should be on the basis of business need and based on skills and experience of the individual. Additionally, the size of boards of certain companies may be too small to facilitate a perfectly balanced composition. Whilst gender balance is important, positive discrimination quotas should be avoided. However, encouragement by the EU to increase diversity through corporate governance codes against which there is a 'comply or explain' requirement, is appropriate. There are examples of encouragement in a variety of member states: • The Belgian corporate governance code recommends that Boards pay attention to gender diversity and diversity throughout the company. When it comes to diversity in the Boardroom itself, it contains the provision that composition should be determined on the basis of diversity, including gender. • In Germany, following the new corporate governance code recommendation DAX30 companies have announced their intention to raise female participation on supervisory boards to nearly 20% on average. • Whilst in France a specific legal provision was introduced in January 2011, this required that for listed companies, the Chairman communicates a specific report about the composition of the board and about the application of the principle of a balanced representation of men and women. • In the UK, under the Davies report, a diversity policy needs to be established this year, and disclosed in 2012 corporate governance statement; subsequently there will be a comply or explain disclosure on the suggested target (25% women on FTSE 100 boards by 2015). It is also important to highlight that we believe diversity should be a consideration not only for board members but further down the management chain, to assist with succession to board positions. Companies could be encouraged to share broader statistics

		on their senior management composition e.g. the percentage of women among those who directly report to executive directors, to cast further light on this area.
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?	We do not believe that an EU level intervention is required; however encouragement of consideration of a limitation at a national level via codes is a good idea, subject to appropriate consultation and use of 'comply or explain'. We note that different considerations may apply in regulated financial institutions. This may include the communication of the number of mandates in place for board members, or setting out the time expectation in directors' letters of appointment. Some examples of existing codes that achieve this are outlined below. In the UK, the Code places emphasis on the need for appropriate allocation of time to the role, especially for the role of chairman. A full-time executive director cannot accept more than one non-executive board position on a FTSE 100 company, nor the chairmanship of such a company. However, if a crisis arises such that it makes sense for the business for an individual to breach this generally accepted good practice, then the flexibility exists to do so. The 'comply or explain' approach therefore works well. Each company when recruiting a director should set clear expectations as to the number of hours that a board mandate normally requires. Likewise the Danish approach focuses on the importance of the committee member assessing the time commitment for any appointment and ensuring that they have sufficient capacity rather than defining specific limits. The Belgian corporate governance code requires listed companies, on a comply or explain basis, to make non-executive directors aware of the extent of their duties, and in particular on the time commitment involved in carrying out these duties. Moreover, provision 4.5 of that code states that non-executive directors should not consider taking on more than five directorships in listed companies. We note that in Germany, France and soon the Netherlands the number of mandates is limited by law. In Germany the number of mandates is limited in general to ten and for financial institutions to five. Moreover the German corporate governance code recommends a limit of three supervisory board memberships in non-group listed companies or in supervisory bodies of companies with similar requirements for executive board members of listed

		companies. In France the limitation applies only to the mandates in France, the limitation is applicable for all companies (with some exceptions for non-listed companies). There is a distinction between the mandates of non-executive board directors and executive board directors. The overall limit is 5 mandates per director. These may include up to 5 separate mandates for non-executive positions but only 1 mandate for an executive position (2 for non-listed companies). There are some exceptions, for example non-executive mandates in subsidiaries are not taken into account in the calculation if the director has an executive or non-executive board position in the controlling company. Consideration is currently being given to reducing the limit applicable at listed companies to 3, including mandates abroad.
8.	Should listed companies be encouraged to conduct an external evaluation regularly (eg every three years)? If so, how could this be done?	We do believe that companies should be encouraged to conduct evaluations, and that the evaluation process should be regular, open and transparent. We expect that generally it would be best practice to have these conducted by an external evaluator, although it should be up to each board to decide. Where evaluations are not conducted by external bodies a comply or explain regime could be used to introduce a requirement to explain how objectivity is assured by the internal evaluator. Likewise when using an external evaluator we recommend they be independent of the company and not also responsible for recruitment of board members. In respect of the frequency we recognise that there needs to be flexibility in the time interval so that companies do not find themselves having to undergo evaluation at inappropriate times e.g. when under stress. Some Member States e.g. Sweden, already advocate annual evaluations, but this may not be applicable across the EU. Again a 'comply or explain' regime could be an appropriate mechanism. It would also be useful to have guidelines on how an evaluation should be performed. We understand that in some states there can be a tendency to interpret a 'Board evaluation' as an assessment of the performance of individual board members, whereas that is only one element of a much wider range of factors that impact a Board's effectiveness. In addition, we note that board effectiveness often becomes more evident at times of stress, such as when dealing with non-routine matters. Therefore we recommend that the process of evaluation should consider likely performance in periods such as this.
9.	Should disclosure of remuneration policy, the annual	In several of the member states with long-standing corporate governance frameworks the

	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?	disclosure of all or part of these remuneration details is already in place. We consider this disclosure to be beneficial and therefore that this should be best practice. As a result of differing company law requirements and local listing rules, this would be best achieved at national level. It is worth noting that the detailed disclosure of individuals' remuneration is often blamed for creating a 'ratchet' mechanism, for instance with no company wanting to be seen as being in the bottom quartile. However, having in place an advisory vote such as that which is in place in the UK for listed companies[3] can serve as a check on this. Whilst there has been little or no history of remuneration policies and amounts being voted down, it is generally perceived that the arrangements in place represent a useful check on companies.
10.	Should it be mandatory to put the remuneration policy and the remuneration report to a vote by shareholders?	We recognise that, for example in Sweden and in Belgium, this practice is already in place. We support an advisory vote as being helpful in the case of listed companies, but we believe that it should be at the initiative of each Member State and caution against the practical challenges of any measure that is more prescriptive. See response to Q9.
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 risks?	Yes it makes sense that the board takes responsibility for the company's 'risk appetite' and hence discusses and approves the 'risk appetite' where it is defined clearly. Examples of where analogous requirements are already in place include: • Denmark where it is recommended that the central governing body, at least once every year, identify the most important business risks associated with the realisation of the company's strategy and overall goals as well as the risks associated with financial reporting. • Sweden where the board already has overall responsibility for all business activities including decisions on risk. In addition, we support transparent and meaningful reporting of risk as this is most certainly of interest to different stakeholders. However, there needs to be clarity about any terms being used, e.g. "risk appetite", "societal risks". We suggest caution in using

[3] In the UK Section 447 of the Companies Act 2006 requires that the remuneration report (for quoted companies only) has to be approved by the board of directors. These companies are then required by section 439 of the Act to give notice to members, prior to the general meeting at which accounts are laid, of an ordinary resolution to approve the directors' remuneration report for the year. The success or failure of the resolution does not affect the entitlement of the directors to the remuneration disclosed in the report. This is because remuneration will already be the subject of contracts that cannot be overturned. However, any 'no vote' or significant opposition is likely to spell trouble for the company in terms of investor relations.

these rather generic terms, which require careful definition if they are to be used in relation to any obligation of law, regulation or code and this, along with clarification of what information is considered "meaningful" might best be dealt with through national codes.

Generally, we consider defining "risk appetite" outside the financial sector to be very challenging. Perhaps a simpler approach would be the inclusion of an explanation of the principal risks to which the business is exposed and how the board manages the potential downside risks. For example, the UK Companies Act 2006 requires that the business review must contain (a) a fair review of the company's business, and (b) a description of the principal risks and uncertainties facing the company. We also note that societal risks should be seen in the context of the business - there would be minimal benefit in a separate disclosure of societal risks that do not directly affect the business, and perhaps exhaustive listing of such risks, driven by apprehension of legal consequences of failing to do so.

In some member states with more long-standing corporate governance codes best practice recommendations on the reporting of risk are already in place (see examples below). However we recognise they are missing in some other countries and encouraging risk reporting more widely would be beneficial. We point out that best practice on risk disclosures should evolve towards better and more informative disclosure over time and that legislation based on the current state of practice could constrain valuable innovation.

The EU 4th and 7th Directives require inclusion of a Director's report covering the company's likely future developments. In Germany this must also include essential risks and opportunities.

In Demark, it is recommended that the executive board report to the supreme governing body on the development within the most important areas of risk and compliance with adopted policies, frameworks etc. in order to enable the supreme governing body to track the development and make the necessary decisions.

In the Dutch Corporate Governance Code best practice provision II.1.4 defines that in the annual report the management board shall provide: (a) a description of main risks related to the strategy of the company; (b) a description of the design and effectiveness of the internal risk management and control systems for the main risks during the financial year; and, (c) a description of any major failings in the internal risk management and

		control systems which have been discovered in the financial year, any significant changes made to these systems and any major improvements planned, and a confirmation that these issues have been discussed with the Audit Committee and the supervisory board.
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?	We agree that it is for a board to ensure this, for example: • in Germany where the supervisory board has the responsibility to control risk management effectiveness, which includes controlling managements risk appetite; or • In Ireland where the Board is required to ensure that the risk management framework and internal controls of the financial institution reflect the risk appetite and that there are adequate arrangements in place to ensure that there is regular reporting to the Board on compliance with risk appetite. We do not however advocate a detailed legislative approach, since risk management arrangements evolve with market practice and company circumstances. The focus should be on the 'key' risks to the specific business, and the nature and number of these will vary from case to case.
SHAREHOLDERS		
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 hanged to prevent such behaviour.	See separate summary in our cover letter for our overall comments in relation to questions 13 to 21 and question 23.
14.	Are there measures to be taken, and if so, which ones, as regards the incentive structures for and performance revaluation of asset managers managing long-term institutional investors' portfolios?	
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?	
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?	
17.	What would be the best way for the EU to facilitate shareholder cooperation?	
18.	Should EU law require proxy advisors to be more transparent, eg 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?	
19.	Do you believe that other (legislative) measures are necessary, eg restrictions on the ability of proxy advisors to provide consulting services to investee companies?	
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 or corporate governance issues? If so, do you believe this would also benefit cooperation between investors? Please provide details (eg objective(s) pursued, preferred instrument, frequency, level of detail and cost allocation).	
21.	Do you think that minority shareholders need additional rights to represent their interests effectively in companies with controlling or dominant shareholders?	
22.	Do you think that minority shareholders need more protection against related party transactions? If so, what measures could be taken?	A statement issued by the European Corporate Governance Forum in March 2011 (appended to this response) contains some recommendations in this area, which the EC might wish to consider. We consider that common principles might usefully be introduced across the EU, complementary to and in addition to the existing requirements. We recognise that in some cases legislation is already in place, for example in Sweden there is Leo Law which restricts certain types of transaction that may circumvent minority interest and also laws for equal treatment among shareholders.
23.	Are there measures to be taken, and if so, which ones, to	

	promote at EU level employee share ownership?	
Monitoring and implementation of codes		
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?	Good quality explanations for departures are beneficial and those already within comply or explain regimes will have experience of this. However, a key benefit of the comply or explain approach is the flexibility it provides and therefore the level of detail required should be appropriate rather than forcing companies to comply except where they have "convincing" reasons not to. The quality of an explanation is not necessarily enhanced by excessive detail which can obscure key messages. We would support a Recommendation from the EU that Member States use the comply or explain approach within their corporate governance codes. We consider that specific content requirements for explanations are best dealt with at a national level.
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?	We consider that while review and commentary may be considered helpful, it should be for individual Member States to determine the role of the range of monitoring bodies depending upon local needs, and no overriding legislative arrangements should be put in place at EU level. At present practice varies between Member States. For example: in Germany courts have reviewed some corporate governance statements; in Denmark regulatory bodies have the authority to review compliance with mandatory disclosures, including the corporate governance reporting; and in France the AMF (French Stock Exchange) issue an annual report containing comments and recommendations on the application of the corporate governance codes based on its review of the Chairman's' reports on the corporate governance of listed companies. Spanish listed companies are required by the CNMV to complete the "Informe de Gobierno Corporativo" (Report on Corporate Governance). The report, which has a questionnaire format, is prepared by the company and disclosed on the CNMV website. It is not required to be reviewed by the auditor, although in a very few cases companies will engage a voluntary special review by the auditor. Corporate governance reporting is and should continue to be primarily governed by "soft law". However this does mean that when undertaken, review is more challenging and it may be an area in which monitoring bodies will need to recruit specialists with appropriate expertise, or take the necessary time to train their own people appropriately. The aim of any regulatory intervention should be to encourage application of best practices.

		We note that the question only addresses the role of monitoring bodies in checking the quality of corporate governance disclosures. We also consider there to be a potential role for the external auditor (assurance provider) to be involved in aspects of this area. There are examples of the consideration of these roles e.g. as described in the FEE (Federation of European Accountants) discussion paper 'Discussion paper for auditor's role regarding providing assurance on corporate governance statements' (November 2009). At a member state level the Dutch Professional Accountancy Association (NBA) issued in November 2010 its action plan 'Lessons learned from the credit crunch: plan of action'. In this paper the NBA introduces amongst others ideas / options for the extension of the auditors' gatekeepers' role including the broadening of the statutory duty of the auditor to provide assurance on the design and effectiveness of corporate governance, the wording of the report of the supervisory board and the CSR section of the annual report (chapter 4, page 8). We recommend that consideration is given to the option of the extension of the role of the external auditor regarding at least certain aspects of corporate governance disclosures, when undertaking further analysis of how corporate governance in listed companies can be improved.